

1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 1

3 STATE OF WISCONSIN,

4 PLAINTIFF, PARTIAL MOTION HEARING

5 vs. Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** AUGUST 10, 2006

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES :**

12 KENNETH R. KRATZ
13 Special Prosecutor
14 On behalf of the State of Wisconsin.

14 THOMAS J. FALLON
15 Special Prosecutor
16 On behalf of the State of Wisconsin.

16 DEAN A. STRANG
17 Attorney at Law
18 On behalf of the Defendant.

18 JEROME F. BUTING
19 Attorney at Law
20 On behalf of the Defendant.

20 STEVEN A. AVERY
21 Defendant
22 Appeared in person.

22 * * * * *

23 **PARTIAL TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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1 THE COURT: At this time the Court calls
2 State of Wisconsin vs. Steven Avery. It's Case No.
3 05 CF 381. We're here this morning for a
4 continuation of a hearing on some pretrial motions
5 that started yesterday. Will the parties state
6 their appearances for the record, please.

7 ATTORNEY KRATZ: State appears by Special
8 Prosecutors Kratz and Fallon.

9 ATTORNEY BUTING: Attorney Jerome Buting
10 appears on behalf of Mr. Avery. Also present is
11 Attorney Dean Strang.

12 THE COURT: All right. And I believe we're
13 taking testimony this morning on the defense motion
14 challenging the multiple execution of search
15 warrants. Mr. Buting, you may call your first
16 witness.

17 ATTORNEY BUTING: Thank you.

18 **DETECTIVE DAVID REMIKER**, called as a
19 witness herein, having been first duly sworn, was
20 examined and testified as follows:

21 THE CLERK: Please be seated. Please state
22 your name, spell your last name for the record.

23 THE WITNESS: Dave Remiker, R-e-m-i-k-e-r.

24 ATTORNEY BUTING: Good morning.

25 THE WITNESS: Good morning.

DIRECT EXAMINATION

BY ATTORNEY BUTING:

Q. We left off your last testimony with the efforts to obtain a warrant, search warrant, on November 5th, for the Avery property, correct?

A. I believe so.

Q. And I believe you said that you went with Investigator Wiegert, and one or more lawyers, to get the warrant itself, from Judge Fox?

A. Yes.

Q. And then you returned to the Avery property with the warrant at what time?

A. I believe it was about 3:30 in the afternoon.

Q. And then, what was your assignment after that?

A. Well, there were several discussions about how we were going to go about doing this. Obviously, the scope of our concern, in our search, was to locate Teresa. And eventually we put some teams together, some individuals.

What we tried to do is coordinate our efforts so that there was a Calumet County officer and a Manitowoc County officer together. And we were assigned different locations to go in and find Teresa.

Q. And by that time, you were aware that, because of

1 the possible appearance of a conflict of
2 interest, the Manitowoc Sheriff's Department had
3 turned over lead authority for the investigation
4 to Calumet, right?

5 A. Yes.

6 Q. And so, you first were paired with an
7 Investigator Steier, I believe?

8 A. Gary Steier, correct.

9 Q. From Calumet?

10 A. Yes.

11 Q. And you made your first entry, on the warrant, to
12 Mr. Avery's trailer?

13 A. Yes.

14 Q. And that would have been at 3:48 p.m., on
15 November 5th?

16 A. Correct.

17 Q. And you did that by force, by kicking in the
18 door, did you not?

19 A. Yes.

20 Q. And then, what did you do when you were inside?

21 A. We entered. There was two doors. The door to
22 the right, we entered. We entered into a living
23 room, the kitchen is to the right. There is a
24 hallway to the left that leads to the bathroom,
25 and then another bedroom way on the end.

1 Just went through the residence checking
2 closets, looking for Teresa, or any evidence that
3 Teresa was there, any clothing, anything obvious
4 that would indicate Teresa would be in that
5 residence.

6 Q. Now, so we're clear on the record, you testified
7 yesterday that you had actually -- the day
8 before, November 4th, you had been in the very
9 same trailer with consent?

10 A. Yes.

11 Q. So you had gone through and opened up doors and
12 closets, on that occasion as well?

13 A. Correct.

14 Q. And neither the 4th, nor the 5th, then, when you
15 made this first entry, did you see anything that
16 would indicate that Teresa had been there?

17 A. I did not find Teresa in his trailer.

18 Q. I'm sorry, the last part of that?

19 A. I did not find Teresa in his trailer.

20 Q. In the trailer?

21 A. Correct.

22 Q. So you were in it only about 10 minutes at that
23 time?

24 A. Well, I believe we went to the garage.

25 Q. Let's stick with the trailer, first?

1 A. I'm recalling the times, the garage was around a
2 little after 4 o'clock.

3 Q. If I told you that you entered the trailer at
4 3:48 on November 5th, and exited at 3:58 p.m.,
5 would that be --

6 A. Correct, yes.

7 Q. Okay. And then, after leaving the trailer, you
8 went immediately into the detached garage that
9 was located next door?

10 A. Yes.

11 Q. And if I told you that you entered at 3:58 p.m.
12 and left the garage at 4:06 p.m.; would that fit
13 with your recollection?

14 A. If that's what my report says, that would be
15 accurate.

16 Q. Okay. And, again, in the garage, you were
17 looking for Teresa or any evidence that would
18 indicate Teresa had been there?

19 A. I would say that's pretty accurate.

20 Q. And, again, you found neither?

21 A. Well, I didn't -- We didn't find her. There was
22 some shell casings on the floor.

23 Q. Did you pick those up at that time?

24 A. No.

25 Q. Okay. So, nothing else?

1 A. I don't believe so.

2 Q. All right. Now you -- You went back, I assume,
3 had some other duties elsewhere on the property
4 after that, but then you returned to the trailer,
5 that is, Steven Avery's trailer, at 5:35 p.m.,
6 with the dog handler; do you recall that?

7 A. No.

8 Q. Do you ever remember going in the trailer, in
9 Steven Avery's trailer, at any point, with the
10 dog handler?

11 A. I did not.

12 Q. Let's see. I'm going to show you an excerpt from
13 the Calumet County Sheriff's Department report,
14 Page 89, at the top, ask you to review that last
15 three paragraphs; are you familiar with that?

16 A. Yeah, I have had discussions about that entry.

17 Q. About that what?

18 A. About the entry on the report, that makes
19 reference to myself going into the residence with
20 a dog handler.

21 Q. Does that refresh your recollection on this?

22 A. No, that wasn't me.

23 Q. So you are saying that this report is in error?

24 A. It is not my report. My report indicates the
25 times that I was in the residence. For some

1 reason, my name was listed as an individual going
2 in on that occasion. That's not the case.

3 Q. Okay. So you, at no point, entered with a
4 cadaver dog, to look around the apartment?

5 A. Must have been somebody else that he documented.
6 That wasn't me.

7 Q. Were you aware that that was done?

8 A. I don't believe so.

9 Q. Okay. All right. In any event, you did go back
10 in the trailer, that is, Mr. Steven Avery's
11 trailer, again, on November 5th, correct?

12 A. Yes.

13 Q. And I'm talking about after the search warrant
14 was obtained?

15 A. Correct.

16 Q. And it was approximately 7:30, I believe?

17 A. Correct, yes.

18 Q. And so we have these times for the record, if I
19 told you that you entered the Avery trailer,
20 Steven Avery trailer, at 7:30 p.m. and exited and
21 10:05 p.m.; would that fit with your
22 recollection?

23 A. That sounds right.

24 Q. That's on Page 11 of 22?

25 A. Yup.

1 THE COURT: Was that 10:05, the time?

2 ATTORNEY FALLON: Yes.

3 ATTORNEY BUTING: Yes, 7:30 to 10:05 p.m.

4 Q. (By Attorney Buting)~ Now, on that occasion, you
5 also entered with Sergeant Colborn, correct?

6 A. Yes.

7 Q. And Lieutenant Lenk?

8 A. Yes.

9 Q. And Calumet Sheriff's officer, Sergeant Tyson?

10 A. Correct.

11 Q. So there were four officers, three of which were
12 Manitowoc Sheriff's Department officers, right?

13 A. Yes.

14 Q. And the 4 of you then spent 2 1/2 hours, 2 hours
15 and 35 minutes, searching the entire trailer; is
16 that right?

17 A. Yes.

18 Q. And you seized a number of items?

19 A. Yes.

20 Q. Including bedding, photographs, handcuffs; do you
21 recall that?

22 A. I believe so, yes.

23 Q. And you, yourself, were also searching, looking
24 at the walls, and the doorways, and areas like
25 that, to see if there might be any evidence of

1 blood as well, correct?

2 A. That's my job, yes.

3 Q. Okay. And you did locate some items that, at the
4 time, you believed might be bloodstains, later
5 determined not to have any relationship to Teresa
6 Halbach, but you did make note of those, right?

7 A. There were several areas within the residence
8 that contained a red dried substance.

9 Q. Okay. And you had photographed them?

10 A. I believe I took some digital photographs of
11 those areas, yes.

12 Q. Okay. And then you also took swabs of those
13 areas?

14 A. Yes.

15 Q. And by that, I mean, you were taking a -- Well,
16 you tell me, I don't want to lead you. Tell me
17 what taking a swab means.

18 A. Well, what you do is, you take a sealed, unused,
19 sterile cotton-tipped applicator, you remove that
20 from its packaging. Usually what you do is, you
21 prepare another package for that applicator to go
22 into.

23 You use a sealed, distilled water
24 container, and you apply a few drops to the end
25 of the sterile cotton-tipped applicator. You

1 then swab the dried, liquid substance with the
2 applicator. You place it into your evidence
3 packaging. You seal it. You label it. You
4 secure it.

5 And then a lot of times, in many cases,
6 you would also take a controlled swab, which is
7 another swab. You use the same technique. You
8 swab an area in close proximity to the area where
9 you took the first swab from.

10 Q. All right. And you did that more than once while
11 you were in the Steven Avery trailer, on November
12 5th, that evening, correct?

13 A. Yes.

14 Q. And the point of that was, you were looking for
15 trace evidence, right?

16 A. Yes.

17 Q. Specifically, to see whether or not there might
18 be any DNA associated with Teresa Halbach?

19 A. Well, many -- Many of the areas I observed looked
20 consistent with blood.

21 Q. Okay. And that's your job, was to do that and to
22 look for that?

23 A. Absolutely.

24 Q. And you were commanded by the warrant to do that,
25 right?

1 A. Yes.

2 Q. And so, you did do that, you took swabs? You can
3 refer to your report if you need to. It's on
4 Page 12, just to refresh your recollection. But
5 you identified three different spots on the
6 wooden frame area surrounding the doorway; is
7 that right?

8 A. Yes. Right outside of Steven's bedroom, there
9 was a wooden frame around the door. And along
10 the wall there was some dried, red substances on
11 the wall.

12 Q. Okay. And then you also found some -- a drop of
13 similar dried, red substance on the floor of the
14 bathroom, correct?

15 A. Yes.

16 Q. And you took a swab of that?

17 A. Yes.

18 Q. And you also found a similar type of a red
19 marking on the wooden molding on the right side
20 of the bedroom doorway? I'm sorry, right side of
21 the doorway, facing the doorway, from the
22 interior of the residence?

23 A. That's the first one I talked about, the molding
24 around the doorway.

25 Q. Okay. But now you took another one, second to

1 last full paragraph.

2 ATTORNEY FALLON: Your Honor, I'm going to
3 object, because it seems to me that, although they
4 were in there doing their search and that it does
5 take time, and we'll certainly concede that, I'm not
6 sure that the painstaking detail of what was
7 collected where, and how it was collected, other
8 than the fact that collecting evidence takes time
9 and is detailed work, beyond that, I'm not sure how
10 this relates to the multiple execution argument.

11 THE COURT: Mr. Buting.

12 ATTORNEY BUTING: Well, I could tighten it
13 up a little bit, but it is relevant in terms of, you
14 know, their evidence, whether or not he was
15 completing his search of the residence at that time.

16 THE COURT: Well, I agree that -- I can
17 understand why you have to get it in, but I don't
18 want to be here until midnight either. I think for
19 purposes of this hearing, the level of detail that
20 we're going into right now is probably unnecessary.

21 Q. (By Attorney Buting)~ All right. Let me ask you
22 this way, if you recall. Do you know how many
23 swabs, in total, you took of things that you
24 thought might possibly be bloodstains? I
25 understand later they have proven not to have any

1 relevance, but you were doing your job at the
2 time. How many swabs did you take from the
3 residence on that evening?

4 A. The entire residence?

5 Q. Yes.

6 A. I can't give you an exact number. In my
7 estimation, I would say probably between 10 and
8 20.

9 Q. So you found a lot of possible areas to look,
10 throughout the trailer, right?

11 A. Yes.

12 Q. Not just by the doorway, but also in the living
13 room, front door, areas like that?

14 A. There were some areas on the front door, wasn't
15 sure if it was paint, blood, other substance. I
16 wasn't sure. I believe I took some swabs in that
17 area. I don't know if there was anything in the
18 living room. It was more in the bathroom and
19 Steven's bedroom.

20 Q. Now, was it primarily your responsibility? Of
21 the four officers in there, was it primarily your
22 responsibility to be doing the trace evidence
23 search, or what?

24 A. We all played a part. We all had a section of
25 the residence, or the bedroom. I have done

1 collection similar to this in the past, the use
2 of those types of kits. I felt very confident in
3 my abilities, and we worked together.

4 One individual may have taken the
5 collection, the other individual may have
6 prepared the packaging, to put the collection in.
7 So, using my equipment --

8 Q. Sure.

9 A. -- it made the most sense.

10 Q. So, but do you know whether any of the other
11 three remaining officers that were in there, also
12 collected trace evidence, in the form of swabs?

13 A. In the form of swabs, I would say that it was
14 either myself or Sergeant Colborn who would have
15 done the swabs or participated in the collection
16 of those.

17 Q. Okay. Now, you also seized -- In terms of trace
18 evidence, you also found like a lint roller with
19 some sort of adhesive material on it?

20 A. Yes.

21 Q. And you seized that?

22 A. I did not seize that, I used that.

23 Q. Oh, I'm sorry. You used that in order to take
24 samples of fibers, hairs, things like that?

25 A. It's a technique you use. In this case, the

1 carpeting in Steven's bedroom, I used a lint
2 roller to just roll over the carpeting to collect
3 trace hair, trace items of evidence that may have
4 been in the carpeting.

5 Q. Okay. And you went all around the bedroom, or
6 all around the bed, anyway?

7 A. I think the main area that I -- that I used was
8 when you first walk into the bedroom, between the
9 doorway and the bed, near the night stand, that
10 area.

11 Q. Okay. And then, also a number of items, many,
12 many items, were seized. Do you know about how
13 many items were actually taken on that search?

14 A. It's my job to collect it, search, and then
15 everything was turned right over to Calumet
16 County. They did the list. I have no idea.

17 Q. Could it be as many as 50 items; would that fit
18 with your recollection?

19 A. It could have been.

20 Q. Okay. And I'm not going to go through all of
21 those, I'm sure your happy to hear.

22 A. Thank you.

23 Q. But it did include a vacuum cleaner bag and
24 filter, correct?

25 A. I believe that was taken. Whether that was taken

1 Saturday or Sunday, I'm not sure.

2 Q. You could look at the bottom of Page 22 -- I'm
3 sorry, 12 --

4 A. 12.

5 Q. -- of your report, last full paragraph.

6 A. Yes.

7 Q. The vacuum bag and filter were removed from the
8 vacuum cleaner on that search, right?

9 A. Correct.

10 Q. And the four of you searched and continued as
11 long as necessary, that evening; isn't that
12 right?

13 A. Yes.

14 Q. No one kicked you out of the trailer and said
15 it's time to go?

16 A. No.

17 Q. No one put any kind of time limit on when you
18 should get out of that trailer that night; is
19 that right?

20 A. No. That's right, I'm sorry.

21 Q. Okay. And then, when you left at 10:05 p.m., you
22 had completed your search of the entire trailer,
23 Steven Avery trailer; is that right?

24 A. Well, that search, yes.

25 Q. As far as you knew, at that point, you had

1 searched -- or you had seized everything that had
2 any apparent evidentiary value, from Steven
3 Avery's trailer?

4 A. No. I know we had some questions about certain
5 things. I mean, at that time, we didn't know a
6 lot. And there were magazine, after pornographic
7 magazine, in there. There was pictures. There
8 was stuff, we weren't sure at that time whether
9 it was relevant or whether we should take it, so.

10 Q. But anything that had obvious evidentiary value,
11 that fit within your parameters of the search
12 warrant, you took on that night?

13 A. No. We -- Obviously, we went back to get a
14 number of other things. There was a shotgun, or
15 a gun, in the bedroom.

16 Q. Answer my question though, is -- did you leave
17 the -- is there some reason you didn't take the
18 shotgun that night?

19 A. I don't recall. There may have been a question
20 whether it was included in the search warrant.
21 We had a lot of questions about what we should
22 take, what we shouldn't take.

23 Q. Okay. But in your actual words of your report,
24 at 2205, 10:05 p.m., the officers were completed
25 with the processing of the residence and out

1 of -- went out of the residence; isn't that what
2 it says?

3 A. That's what it says.

4 Q. While that was going on, by the way, Sergeant
5 Tyson, the Calumet officer, was also doing sort
6 of a written log of all of the items, and the
7 times that they were seized, and where they were
8 located, and all of that?

9 A. Right alongside of us.

10 Q. Okay. All right. Now, the next morning, this is
11 November 6th, did you return to the Avery salvage
12 property?

13 A. Yes.

14 Q. At about what time?

15 A. I believe I arrived at about, around 8 o'clock
16 a.m.

17 Q. Okay. And were you assigned certain duties
18 again?

19 A. Yes.

20 Q. And who gave you those assignments?

21 A. Well, again, we met Investigator Wiegert, Agent
22 Fassbender, Lieutenant Lenk. We were all
23 involved in discussions. And there was a
24 decision made to go process the garage. And we
25 made assignments, who would participate in that

1 search and went and did.

2 Q. My question is, who made those assignments, or
3 did you just sort of volunteer for it?

4 A. We all did, depending on who was there, who the
5 personnel was, who had the equipment, who worked
6 well together. It was a cooperative effort
7 amongst all of us making those decisions.

8 Q. All right. And on that occasion --

9 A. I had a say in that. Wiegert had a say in that.
10 We all did.

11 Q. And on that occasion, the team, the same team was
12 formed. I'm sorry, I take that back. It was the
13 same team of Manitowoc officers?

14 A. Correct.

15 Q. Yourself?

16 A. Yes.

17 Q. Lieutenant Lenk and Sergeant Colburn?

18 A. Yes.

19 Q. But a different Calumet officer, this time a
20 Deputy Kucharski was assigned to go along with
21 you?

22 A. Yes.

23 Q. His responsibility was primarily, he was going to
24 be taking custody, as well, of any of the items?

25 A. Correct.

1 Q. And when you went back to the Avery property, you
2 did not go into Mr. Avery's trailer residence at
3 that time, did you?

4 A. Not initially, no.

5 Q. Instead, you went into the garage, the detached
6 garage next to it?

7 A. Yes.

8 Q. Which you had not -- you had entered only once
9 before, for about seven minutes, on the day
10 before?

11 A. Correct.

12 Q. And if I told you that you entered the detached
13 garage next to Mr. Steven Avery's residence at 8
14 a.m. and left at 9:47 a.m; would that fit with
15 your recollection?

16 A. That sounds accurate.

17 Q. So, the four of you, the four officers were
18 inside the garage searching, for about 1 hour and
19 47 minutes?

20 A. Correct.

21 Q. And can you tell me how big the garage is,
22 approximate estimate?

23 A. About a standard two car garage size.

24 Q. Okay. And the four of you had went through the
25 garage, thoroughly looking for, again, any

1 evidence of Teresa Halbach or evidence that would
2 fit with what was sought in the warrant?

3 A. Correct.

4 Q. And no one kicked you out of the garage at any
5 particular time?

6 A. No.

7 Q. You were able to stay as long as you wanted?

8 A. Yes.

9 Q. And you did seize some items, including some .22
10 caliber shells, correct?

11 A. Correct.

12 Q. And also some, again, possible bloodstains that
13 you noted on the floor in the various areas?

14 A. Correct.

15 Q. And, again, you did the same type of a process of
16 collecting them with swabs, sealing them, for
17 possible DNA tests, and that sort of thing?

18 A. Correct.

19 Q. And I recognize, again, that those didn't turn
20 out like you thought they might but,
21 nevertheless, you were doing your job and were
22 looking for possible blood of Teresa Halbach; is
23 that right?

24 A. I guess I was -- If it was blood I was collecting
25 and whose it was, I'm not able to determine that.

1 Q. Okay. Or whether it was even blood at all?

2 A. Correct.

3 Q. Okay. And now you finished searching the garage

4 at 9:47 a.m., you were right next door to the

5 Steven Avery trailer, just a few feet away,

6 right?

7 A. Yes.

8 Q. Did you go back into the trailer at that time?

9 A. No.

10 Q. In fact, you didn't go back into the trailer

11 until -- that is, Steven Avery's trailer, until

12 about 12:25 p.m.?

13 A. Correct.

14 Q. That same day, November 6th?

15 A. Yes.

16 Q. And you went back, because you were asked to go;

17 is that right?

18 A. I believe so.

19 Q. By who?

20 A. I'm guessing those conversations took place with

21 Investigator Wiegert and/or Agent Fassbender.

22 Q. And if I told you that you entered at 12:25 p.m.

23 and left at 12:48 p.m., this is Mr. Steven

24 Avery's trailer, on November 6th; would that fit

25 with your recollection?

1 A. Sounds about right.

2 Q. And on that occasion you seized -- you went back
3 to get the weapons you saw?

4 A. We -- Earlier I talked about some of the
5 questions we had. Obviously, this was in
6 reference to some other items that we had
7 observed on the first search. And we went back
8 and collected some additional things.

9 Q. Some magazines, I think you mentioned,
10 photographs?

11 A. Photographs, the weapon above the bed, I believe
12 there was some additional bedding in the other
13 bedroom, within the residence. There may have
14 been a carpet shampooer that was taken also.

15 Q. And, again, you had as much time as you wanted in
16 that trailer, on that occasion, no one kicked --
17 Is that right?

18 A. Yeah, I mean, we had a lot of searches to do that
19 day. We had our work cut out for ourselves. So
20 I wouldn't say we were rushing, but we knew there
21 were other places that needed to be processed,
22 so.

23 Q. And, again, the officers who entered Mr. Avery's
24 trailer at 12:25 p.m., November 6th, were the
25 same ones that had gone into the garage; that is,

1 yourself, Detective Remiker, Lieutenant Lenk,
2 Sergeant Colborn, all from Manitowoc, as well as
3 Calumet's Deputy Kucharski; is that right?

4 A. I believe so, yes.

5 Q. So all four of you were back in there?

6 A. I believe so.

7 Q. And did you, at any time after that, go back into
8 Mr. Avery's -- or the detached garage next to
9 Mr. Avery's residence?

10 ATTORNEY FALLON: Your Honor --

11 A. Second time?

12 ATTORNEY FALLON: -- I'm going to oppose an
13 objection here. As I'm listening to the line of
14 questioning here, it seems remarkably similar, if
15 not identical, to the questions and information
16 obtained from Lieutenant Lenk in yesterday's call.
17 So this does seem to me, duplicitous.

18 I'm not quite sure how this adds to the
19 equation. I mean, it's quite obvious that they
20 entered the residence on a number of occasions
21 while conducting this overall search. So, I'm
22 not quite sure what we are accomplishing with
23 Detective, or Investigator Remiker's echoing what
24 Lieutenant Lenk testified to.

25 ATTORNEY BUTING: Actually, I think we are

1 done with his. That was going to be my final
2 question.

3 Q. (By Attorney Buting)~ Did you go back in the
4 garage, yourself?

5 THE COURT: You may answer.

6 A. No.

7 ATTORNEY BUTING: All right. Thank you.

8 THE COURT: Mr. Fallon, are you going to be
9 conducting cross?

10 ATTORNEY FALLON: I am. Thank you, Judge.

11 THE COURT: Go ahead.

12 **CROSS-EXAMINATION**

13 BY ATTORNEY FALLON:

14 Q. How long have you been an evidence collector, or
15 evidence technician, as they are sometimes
16 referred to?

17 A. Well, I don't recall when I attended the State
18 Crime Lab Evidence Tech School. I would guess
19 that's at least six, seven years ago, would be a
20 guess.

21 Q. All right. Is evidence -- Is the search for
22 evidence, particularly trace evidence, time
23 consuming?

24 A. It's very detail oriented. You have to be very
25 careful; yes, definitely.

1 Q. Does it take time?

2 A. Takes a lot of time.

3 Q. All right. And why does it take time?

4 A. Well, when you are looking for trace evidence, it
5 doesn't stand out. You have got to look for it.
6 You have got to find it. You have to be on your
7 hands and knees. And then, when you are
8 collecting those things, you are dealing with
9 very small samples, you are using tweezers. You
10 are using small patching material.

11 You are using cotton-tipped applicators
12 that you have to apply sterile water to. You are
13 doing a collection. You are doing a controlled
14 sample. You are packaging it. You are sealing
15 it. You are labeling it. Each item, there's a
16 process that you follow to make sure that that
17 evidence is secure and is as pure as you can
18 collect it.

19 Q. All right. So in effect, first of all, you have
20 to spend time to find trace evidence, right?

21 A. Definitely.

22 Q. And then there's an entirely separate process of
23 collecting the evidence, correct?

24 A. Yes.

25 Q. And that collection is sometimes painstakingly

1 slow?

2 A. It can be.

3 Q. Sometimes it's rather quick, for instance, if you
4 are just securing a gun from the wall; that takes
5 but a matter of a moment or two. Perhaps a
6 minute or two to collect it, log it in, and
7 secure it. But perhaps, as opposed to looking
8 for fiber evidence, or possible blood splots --
9 spots, that takes more time, doesn't it?

10 A. Definitely.

11 Q. And as I understand it, you are required to,
12 basically, once you find an item, you deal with
13 that item. You log it in; you picture it, if you
14 do take a picture; you collect it; you secure it;
15 you label it, before you go on to the next item.
16 It's one item at a time.

17 A. Correct.

18 Q. And that's to ensure the integrity of the piece
19 of evidence you are collecting?

20 A. Without a doubt.

21 Q. And as a matter of fact, especially when you are
22 looking for trace evidence and things like that,
23 there are environmental factors that affect the
24 collection of trace evidence?

25 A. Yes.

1 Q. For instance, would you say it's easier to find
2 trace evidence with natural daylight, as opposed
3 to artificial incandescent light?

4 A. Natural daylight is always advantageous.

5 Q. So -- So -- And your recollection was that you,
6 yourself, took anywhere from 10 to 20 swabs, each
7 one had to be individually processed?

8 A. Yes.

9 Q. All right. And as counsel suggested, there could
10 have been perhaps 50 or more items secured that
11 evening?

12 A. That's possible.

13 Q. All right. And each one had to be individually
14 found, right?

15 A. Correct.

16 Q. They had to be pictured or preserved, and then
17 they were collected, correct?

18 A. Correct. Packaged, labeled. Insert number,
19 date, and time of collection, everything.

20 Q. Before the next item could be processed?

21 A. Definitely.

22 Q. All right. Now, with respect to the assignments,
23 it's true, is it not, that although there was a
24 great deal of give and take and discussion
25 amongst the investigators, that notwithstanding

1 that, Investigator Wiegert and Special Agent
2 Fassbender were in charge of the overall
3 investigation, correct?

4 A. Definitely.

5 Q. So, in terms of the cooperative effort, in other
6 words, they sought your ideas and your input,
7 correct?

8 A. Yes.

9 Q. But the decisions, in terms of what was to be
10 done and when and how and allocation of
11 resources, those were decisions made by Wiegert
12 and Fassbender?

13 A. Correct.

14 Q. Based on your input and available resources?

15 A. You are exactly right.

16 ATTORNEY FALLON: That's all. Thank you.

17 THE COURT: Anything else, Mr. Buting?

18 ATTORNEY BUTING: Just one or two.

19 **REDIRECT EXAMINATION**

20 BY ATTORNEY BUTING:

21 Q. Mr. Fallon asked you a number of questions about
22 what you were trained to do, or what you might do
23 in certain cases, how long it takes to collect
24 trace evidence in general, correct?

25 A. Yes.

1 Q. But in this case, on November 5th, in those 2 1/2
2 hours, while you were in that trailer, you did,
3 in fact, get down on your hands and knees, right,
4 with a lint roller?

5 A. Yes.

6 Q. And to collect a swab off of the bathroom floor?

7 A. Correct.

8 Q. And you were doing all of those things that you
9 would normally do, to find trace evidence,
10 correct?

11 A. Yes.

12 Q. And you are a thorough officer, aren't you?

13 A. I believe so.

14 Q. And you did as thorough and complete a job as you
15 could that night?

16 A. I believe so.

17 Q. And Mr. Fallon mentioned that Agents Fassbender
18 and Investigator Wiegert were in charge?

19 A. Investigator Wiegert.

20 Q. Wiegert, I'm sorry, I say that half the time. Is
21 that right?

22 A. Well, yeah, they were assigned as the lead
23 investigators, correct.

24 Q. So they were the ones who -- Well, let me ask you
25 this, then, Lieutenants -- Lieutenant Sippel, are

1 you familiar with him? Maybe I'm pronouncing his
2 name wrong.

3 A. I've heard his name. If I would see him, I would
4 probably recognize him. I don't --

5 Q. Lieutenant Bowe, I think it is; do you know him?
6 Or Bowe?

7 A. I'm sure if I seen him, I would recognize him.

8 Q. So, neither of them were directing you or
9 advising you what to do during the entire week or
10 so that the Avery property was seized?

11 A. If I'm correct, I believe those individuals had a
12 lot to do with the security, or the watching over
13 the property, some of the layers of security that
14 we had out there.

15 Q. Okay. They would have been in the command post
16 area that was set up?

17 A. No, they would have been parked right next to
18 Steve's trailer, in a squad car, or standing
19 outside the trailer providing security, or
20 watching over that residence. There were several
21 layers of security out there.

22 Q. Are you talking about lieutenants?

23 A. Those Calumet County officers.

24 Q. Okay. But my question is, were they involved in
25 the direction or decision making of the search,

1 in particular, the search of Mr. Avery, Steven
2 Avery's residence?

3 A. I don't believe so, no.

4 Q. That was Wiegert and Fassbender, collectively,
5 with your cooperative decisions?

6 A. Yes.

7 ATTORNEY BUTING: Thank you.

8 THE COURT: Anything else?

9 ATTORNEY FALLON: I just have one question.

10 **RECROSS-EXAMINATION**

11 BY ATTORNEY FALLON:

12 Q. What did you mean when you said, we had a lot of
13 searches to do that day, in response to Counsel's
14 question, on your Sunday's questioning?

15 A. Well, we had about 37 acres, thousands of cars,
16 residences, shops, outbuildings. There was a lot
17 to do.

18 ATTORNEY FALLON: All right. Thank you.

19 ATTORNEY BUTING: One last.

20 **FURTHER REDIRECT EXAMINATION**

21 BY ATTORNEY BUTING:

22 Q. Do you know how many officers, law enforcement
23 officers, were out there on that 40 acre parcel,
24 besides yourself?

25 A. When?

1 Q. During the week.

2 A. No idea.

3 Q. As many as a hundred?

4 A. Could have been.

5 Q. So there were many others available to do
6 searches, besides yourself and your foursome that
7 was doing these searches, correct?

8 A. Based on our discussion, based on our confidence
9 in our abilities, based on our experience working
10 together, based on the access to equipment, and
11 the being comfortable with that equipment, and
12 being able to use that equipment properly --

13 ATTORNEY BUTING: Judge, he's not answering
14 my question. Would you please answer the question I
15 asked, which is --

16 THE WITNESS: I was getting to that.

17 Q. (By Attorney Buting)~ Were there other officers
18 available, that were searching in other areas,
19 besides just the four of you?

20 A. There may have been, but it didn't make sense for
21 those individuals to do those searches.

22 Q. To do what searches?

23 A. Of the residences, the garage, the buildings.

24 Q. Didn't make sense for them, for anyone but you
25 four, to search any of the buildings on that

1 property?

2 A. Well, you obviously want to use evidence techs,
3 people who are trained to do those types of
4 searches and collections of evidence.

5 Q. And you had --

6 A. It's limited.

7 Q. Well, you had plenty of evidence techs out there,
8 during that week, did you not?

9 A. No.

10 Q. Well, you had the Crime Lab?

11 A. They showed up with two people on Saturday --

12 Q. Okay. You had --

13 A. -- which one was a photographer only.

14 Q. You had DCI?

15 A. Fassbender may have been the only one out there
16 Saturday.

17 Q. But during the week, as we went on, up to
18 November 9th?

19 A. I was only there until Sunday night.

20 ATTORNEY BUTING: All right. Thank you.

21 THE COURT: All right. You are excused.

22 THE WITNESS: Thank you.

23 THE COURT: Defense may call its next
24 witness.

25 THE CLERK: Please raise your right hand.

1 **SERGEANT ANDREW L. COLBURN**, called as a
2 witness herein, having been first duly sworn, was
3 examined and testified as follows:

4 THE CLERK: Please be seated. Please state
5 your name, spell your last name for the record.

6 THE WITNESS: Andrew L. Colburn,
7 C-o-l-b-o-r-n.

8 **DIRECT EXAMINATION**

9 BY ATTORNEY BUTING:

10 Q. Sergeant, how are you employed?

11 A. I'm a patrol supervisor with the Manitowoc
12 Sheriff's Department.

13 Q. And how long have you been so employed?

14 A. 14 years.

15 Q. As a police officer, you say?

16 A. As a corrections officer until 1996. I have been
17 a police officer since '96.

18 Q. Okay. And how long have you been a sergeant?

19 A. Since 2002.

20 Q. Okay. And on November 5th of 2005, were you so
21 employed?

22 A. Yes, sir.

23 Q. And did you become involved in a Teresa Halbach
24 matter?

25 A. Yes, I did.

1 Q. And what date was that?

2 A. On Saturday, I believe it was the 3rd of
3 November.

4 Q. Could that have been Thursday, November 3rd?

5 A. Yes, sorry, Thursday, November 3rd.

6 Q. Okay.

7 A. That was my initial involvement.

8 Q. And you received a phone call from somebody at
9 Calumet?

10 A. Yes, sir.

11 Q. Advising you that there was a missing person
12 investigation?

13 A. Yes, sir.

14 Q. And were you asked to do something in your
15 jurisdiction, in Manitowoc?

16 A. Yes, the officer that called from Calumet asked
17 if we could send a deputy, or if I could go out
18 to the Avery Auto Salvage area and check to see
19 if that young lady was there.

20 Q. And that was that very same evening, November
21 3rd, is what they wanted you to do, right?

22 A. Yes, sir.

23 Q. And so did you do so?

24 A. Yes, I went out there personally.

25 Q. You did?

1 A. Yes.

2 Q. Okay. And the name, Steven Avery, was mentioned
3 to you; is that right?

4 A. No. When I was contacted, I was just told that
5 the last address that she had been at, they
6 thought, was an address on Avery Road. I didn't
7 know of any other residences on Avery Road, but
8 the Avery Auto Salvage area.

9 Q. Okay. And so when you went out there, did you
10 see Steven Avery?

11 A. Yes.

12 Q. And he was somebody that you were familiar with,
13 right?

14 A. Not real familiar with, but I knew who Steve was,
15 by sight.

16 Q. Well -- And you knew his involvement with your
17 department as well, right?

18 A. Yes.

19 Q. In fact, you had been deposed in his civil case
20 just three weeks earlier, right?

21 A. Yes.

22 ATTORNEY FALLON: Objection, relevance.

23 THE COURT: Mr. Buting.

24 ATTORNEY BUTING: I will move on.

25 Q. (By Attorney Buting)~ When -- Did you find

1 Mr. Avery at home, or outside the trailer, or
2 tell me what happened?

3 A. Probably the two -- the two Avery's that I'm most
4 familiar with are Charles and Earl. I knew Earl
5 doesn't live out there, so my initial -- the idea
6 in my head was to make contact with Charles.

7 And so I drove directly towards where I
8 knew Charles lived, which is in close proximity
9 to the shop building. Got out of my squad. And
10 before I could get to Charles' residence, Steve
11 came out of his parent's home and asked what I
12 was doing.

13 Q. Okay. And so what did you tell him?

14 THE COURT: Excuse me, I have a question
15 here. I think this testimony is for the multiple
16 execution of the warrant section. Is this testimony
17 necessary for purposes of this motion?

18 ATTORNEY BUTING: If it's whether it's an
19 entry or not, I don't know whether he went into the
20 residence at that time or not, it could be.

21 ATTORNEY FALLON: But what relevance is
22 that, in terms of once a warrant is obtained,
23 whether it was properly executed.

24 THE COURT: Right.

25 ATTORNEY BUTING: Well, it relates to

1 whether -- the necessity of how many times you need
2 to go back into someone's residence.

3 ATTORNEY FALLON: Well, we're talking -- If
4 you want argument, I'm prepared to argue more.

5 THE COURT: I think we have to get to the
6 point after the warrant was issued, to hear
7 testimony that's relevant to your motion. I mean,
8 I'm sure that the questions you are asking might
9 be -- may well be relevant at a different time,
10 during trial, for example, but I don't see how they
11 relate to the motion.

12 ATTORNEY BUTING: Well, I guess it's not
13 clear to me whether he entered. That's really what
14 I'm getting at, but I'm trying not to lead him, so
15 it's going a little bit slower. My real question
16 is, did he go into the Avery trailer on that night
17 or not.

18 THE COURT: How is that relevant to the
19 issue relating to multiple executions of the search
20 warrant, which wasn't issued until a couple days
21 later?

22 ATTORNEY BUTING: Well, I think it relates
23 to it because every entry makes it less necessary to
24 go in again.

25 ATTORNEY FALLON: We would disagree. We're

1 talking two conceptually different concepts, one a
2 breeze through based on consent and --

3 ATTORNEY BUTING: I don't know if there is
4 or not. I mean, I haven't asked the question yet
5 and don't have an answer on that yet. He may have
6 never gone in, I don't know.

7 THE COURT: I will let you ask a few brief
8 background questions, but I think we should move on
9 to the point fairly quickly once the point is
10 issued.

11 ATTORNEY BUTING: Sure. Let me just get to
12 the point.

13 Q. (By Attorney Buting)~ Did you, on that night,
14 November 3rd, accompany or go into Mr. Avery's
15 trailer?

16 A. No, I didn't.

17 Q. Okay. So you just talked with him outside?

18 A. That's correct.

19 Q. All right. Did you go in the next day, to his
20 trailer?

21 A. No, I didn't.

22 Q. Okay. Now, moving onto Saturday, November 5th,
23 did you -- can you tell me what time you arrived
24 at the Avery property?

25 A. Sometime between 6 and 6:30 in the evening.

1 Q. Is that when you are on duty?

2 A. No, I was on my day off.

3 Q. Okay. So you were called in?

4 A. Yes.

5 Q. And you -- Did you meet with -- with somebody who

6 was assigning you tasks to do?

7 A. Yes.

8 Q. Who was that?

9 A. I believe it was Investigator Wiegert from the

10 Calumet Sheriff's Office.

11 Q. Were you aware, at that point, that the --

12 because of the appearance of a conflict of

13 interest, because of Mr. Avery's pending 36

14 million dollar lawsuit against your department,

15 that Calumet had taken over -- supposedly taken

16 over the lead investigation?

17 A. Yes, I was told that the Calumet Sheriff's Office

18 would be the lead investigative agency and we

19 were to assist them.

20 Q. And do you know how many officers were out on the

21 scene of the property, on that day, when you

22 arrived?

23 A. No, I do not.

24 Q. Do you have an estimate of whether it's more or

25 less than 50?

1 A. I would hazard a guess at less than 50, but I
2 don't have an accurate head count of how many
3 officers were out there, sir.

4 Q. All right. Or what about the following day, do
5 you have any other -- the November 6, do you have
6 any information or knowledge about how many
7 officers were there then?

8 A. Again, approximately the same amount as on
9 Saturday.

10 Q. All right. Now, on November 5th, after you
11 arrived at the property, did there come a time
12 when you entered Mr. Steven Avery's residence to
13 conduct a search, based on a search warrant?

14 A. Yes.

15 Q. And who were you with?

16 A. A Sergeant Bill Tyson from the Calumet Sheriff's
17 Department, Detective Remiker from our agency,
18 Lieutenant Lenk from our agency, and myself.

19 Q. And how was it you were assigned to perform those
20 duties?

21 A. One of my additional duties or specializations in
22 the area of criminal investigation, is evidence
23 tech. And I was acting in that capacity.

24 Q. Let me ask you, in your department, as patrol
25 supervisor, are you among the top three

1 individuals qualified to search Mr. Avery's
2 trailer?

3 A. I'm not sure I understand the question, sir. Are
4 you asking for the rank structure of the Patrol
5 Division?

6 Q. No. No. I'm asking for your qualifications as
7 a --

8 A. I would probably be in the top three choices,
9 yes.

10 Q. To search a residence?

11 A. Yes.

12 Q. Okay. And you have done that a number of times?

13 A. Yes.

14 Q. Do you know how many, approximately?

15 A. 25 or better.

16 Q. Okay. And you completed your search of the
17 residence at some point around 10 o'clock that
18 night; is that right?

19 A. Yes, sir, that sounds right.

20 Q. And did you come back the next day and do some
21 more searches of the Avery property?

22 A. Yes, sir.

23 Q. Do you know what time you started?

24 A. Would have been around 8 o'clock in the morning.

25 Q. And did you go immediately into Mr. Avery's

1 trailer, again?

2 A. I don't believe we went immediately into his
3 trailer. I believe that we went into his garage,
4 though --

5 Q. Okay.

6 A. -- which is in close proximity to it.

7 Q. If I told you you were there in the garage from
8 about 8:00 a.m. to 9:47 a.m.; would that fit with
9 your recollection?

10 A. Yes, sir.

11 Q. And were you there with Detective Remiker,
12 Lieutenant Lenk, again?

13 A. Yes.

14 Q. And Deputy Kucharski from Calumet?

15 A. Yes, sir.

16 Q. And then you completed the search of the garage;
17 is that right?

18 A. Yes, sir.

19 Q. Were you asked to go back in Mr. Avery's trailer
20 sometime during the noon hour, 12:30?

21 A. I'm not sure of the time, but I believe, yes, we
22 were asked to go back into Mr. Avery's trailer.
23 Steve Avery, I'm talking about.

24 Q. And was that with a specific -- Was that from
25 Investigator Wiegert's direction?

1 A. I don't know who exactly gave the direction to go
2 back in there. One of the Calumet County
3 supervisors just said, the next thing we need you
4 to do is go back in, you know. I didn't -- Every
5 time I was directed to go into the trailer, it
6 didn't come directly from Investigator Wiegert.
7 Could have come from any number of supervisors
8 that were out there.

9 Q. At any rate, you were directed to go back in,
10 specifically, to seize some weapons --

11 A. Yes, sir.

12 Q. -- that were located in the bedroom of Mr. Steven
13 Avery?

14 A. Yes, sir.

15 Q. And you did that?

16 A. Yes.

17 Q. And you went in, the same four officers went in
18 on that occasion, right?

19 A. Yes, sir.

20 Q. And you completed your search on that occasion,
21 right?

22 A. Yes, sir.

23 Q. Now, there's a similar request the following day,
24 I believe, November 7th. Do you recall being
25 asked to go into the Steven Avery trailer again,

1 to simply get a serial number of a computer?

2 A. Are we talking Monday, now. Is it Monday?

3 Q. Yes, that would be Monday, November 7th.

4 A. Yes, I do recall being asked to obtain a serial
5 number for a computer.

6 Q. And you went in with Lieutenant Lenk and Sergeant
7 Tyson from Calumet?

8 A. I believe so, yes.

9 Q. And did you get the serial number?

10 A. Yes, I did.

11 Q. And then you left on that occasion, right?

12 A. Yes, sir.

13 Q. And then, on the following day, this would be
14 Tuesday, November 8th, did you again go back into
15 Mr. Steven Avery's residence?

16 A. Yes, I did.

17 Q. And if I told you 8:25 a.m. you entered and left
18 at 12:08 p.m.; would that fit with your
19 recollection?

20 A. That sounds accurate, yes, sir.

21 Q. And on that occasion, you went in with who?

22 A. That occasion I believe it would have been
23 myself, Lieutenant Lenk, and Deputy Dan
24 Kucharski, from Calumet County Sheriff's Office.

25 Q. So the three of you were inside the apartment for

1 almost four hours?

2 A. Yes, sir.

3 Q. On that same day -- I'm sorry -- Yes, on that
4 same day, immediately after you completed the
5 search of Mr. Avery's trailer, you went into the
6 garage again; is that right, the same three of
7 you?

8 A. On Tuesday are you talking about?

9 Q. Yes.

10 A. I don't recall if we went in the garage that day
11 or not.

12 Q. If I told you you entered at 12:19 p.m. and left
13 at 12:45 p.m. and you were looking for tools and
14 things, specific tool to match up with something,
15 did that -- would that -- that --

16 A. Yes, I do recall that.

17 Q. Okay.

18 A. I didn't know if that was on Tuesday but, yes, I
19 do recall that.

20 Q. And then, the following day, November 9th, do you
21 recall going back into Mr. Avery's trailer with a
22 specific intent to look for a garage door opener,
23 some gloves, and things of that nature?

24 A. It's possible; that, I don't recall.

25 Q. Do you recall going into his residence at all on

1 November 9th, that would be --

2 A. Wednesday?

3 Q. Wednesday.

4 ATTORNEY FALLON: Your Honor, I think this
5 question is -- I know it hasn't been asked
6 specifically of Sergeant Colborn, but I believe
7 Lieutenant Lenk did indicate that he was in there
8 that day. And I think we stipulated, if I recall,
9 that the entry was 10:39 to 10:59, with an
10 interruption at 10:59, and then resumed at 11:40,
11 and ended at 11:50. I think we agreed to that
12 yesterday, so I'm not sure what this adds to the
13 equation.

14 ATTORNEY BUTING: That's correct, your
15 Honor, I forgot that we had stipulated to that, so I
16 can move on.

17 THE COURT: All right.

18 Q. (By Attorney Buting)~ Did you have anything to do
19 with getting the search warrant?

20 A. No, sir.

21 Q. Did you have anything to do with the decisions of
22 when you went into his residence, or not?

23 A. No, sir.

24 Q. Lieutenant Lenk out ranks you; is that right?

25 A. That's correct.

1 Q. And on -- Let me go back to this first search for
2 a minute, the November 5th entry, in the evening,
3 when you were there from, like 7:30 to
4 10:05 p.m.; are you oriented for that?

5 A. Yes, sir.

6 Q. Okay. You said that you are an evidence tech;
7 does that mean you collect evidence as well?

8 A. Collect evidence, photograph evidence, locate
9 evidence, it's all, yes.

10 Q. Okay. I'm sorry. And did you do so on that
11 occasion?

12 A. Yes, I did.

13 Q. Were you collecting swabs and things that could
14 be trace evidence?

15 A. My -- excuse me -- My primary job, if you want to
16 use that term, was probably photographing and
17 assisting in collecting. I didn't do a lot of
18 the swabbing on Saturday.

19 Q. Okay.

20 A. I did assist Detective Remiker with that task,
21 though.

22 Q. Okay. And you did, I believe, find some fiber
23 evidence, or something, on the living room floor;
24 do you recall that?

25 A. It's entirely possible, yes.

1 Q. Okay. Do you know how many items you actually
2 collected yourself, that night?

3 A. Myself, personally, if you are talking about just
4 me, I didn't, like, collect any items myself, bag
5 them up and say I have this. I would locate
6 items that I thought were of evidentiary value
7 and I pointed them out to Sergeant Tyson of the
8 Calumet Sheriff's Office and, collectively, we
9 would pick those items up.

10 Q. Okay. And by the way, did you review anything
11 before your testimony today?

12 A. I did review these two reports that I have in my
13 hand here. The one is the Calumet County
14 Sheriff's Department report and the other one is
15 our Manitowoc Sheriff's Department report that
16 was compiled by Detective Remiker.

17 Q. That's the 22-page report?

18 A. My report indicates it's -- this is page one of
19 24.

20 Q. Twenty-four. May I see the Calumet report for a
21 minute, please? You have reviewed both of these
22 items?

23 A. Yes, sir.

24 ATTORNEY BUTING: May I have just a moment,
25 Judge, I think I have seen these, but there's a

1 couple pages that are different now.

2 THE COURT: Go ahead.

3 ATTORNEY FALLON: Your Honor, I would just
4 observe that, given the sequencing of that report,
5 those last pages, if that's what's in issue here, I
6 would be surprised if they are relevant to this
7 particular motion. I mean, they may be certainly
8 entitled to that under discovery, but I'm not sure
9 that it adds anything to Sergeant Colborn's
10 testimony relative to the events of the week of
11 November 5th.

12 Q. (By Attorney Buting)~ All right. Lieutenant, the
13 Manitowoc official report of the investigation in
14 this case is -- it's now 24 pages, right?

15 A. Are you asking me to count each page or?

16 Q. Well, I'm just asking you how many total pages it
17 is?

18 A. It says this is Page 1 of 24. I didn't take any
19 pages out, this is 24 of 24, so I'm assuming
20 these to be --

21 Q. Okay.

22 A. -- 24 pages.

23 Q. All right. How much of that report consists of
24 reports that you wrote or dictated into this
25 sequential system?

1 A. Oh, there's only a very few entries that I
2 personally have on here.

3 Q. In fact, the last couple of pages involve a
4 report that you did very recently?

5 A. Yes, sir.

6 Q. And -- But it deals with an investigation that
7 you did way back on November 3rd?

8 A. Yes, sir.

9 Q. Particularly, it's the encounter with Mr. Avery
10 that night that we talked about briefly at the
11 beginning of this testimony?

12 A. Yes, sir.

13 Q. But you only recently, within the last month or
14 two, prepared a report of that?

15 A. Only within the past month or so made an addition
16 on this report about that, yes.

17 Q. And until you did that report, you had almost no
18 personal reports in that entire Manitowoc
19 official report, right?

20 A. That is correct.

21 Q. And were you directed to add that report to it,
22 this newer one?

23 A. Yes.

24 Q. By whom?

25 A. We had a pretrial conference -- and I'm just

1 using the term pretrial, generically --
2 conference in Calumet County and all the officers
3 were talking about what involvement they had in
4 this case.

5 And when I mentioned that I had initial
6 contact with Mr. Avery on 11/3/2006, it was
7 suggested that I make an entry to this report,
8 the Manitowoc County Sheriff's Department report,
9 about the nature of that contact.

10 Q. Okay. That was one of your supervisors directing
11 you to do that?

12 A. Yes.

13 ATTORNEY BUTING: Thank you. I have no
14 further questions.

15 THE COURT: Mr. Fallon.

16 ATTORNEY FALLON: Pass. We have no
17 questions for this witness.

18 THE COURT: All right. You are excused.
19 You may call your next witness.

20 ATTORNEY BUTING: Your Honor, if you give
21 me just a minute here, we may be able to shorten
22 this.

23 THE COURT: All right. We'll take a 10
24 minute break at this time and then resume.

25 ATTORNEY BUTING: Thank you.

1 (Recess taken.)

2 THE COURT: All right. Mr. Fallon, you
3 may -- or -- Yes.

4 ATTORNEY BUTING: Judge, at this time we're
5 not presenting any other evidence on the multiple
6 entries motion.

7 THE COURT: Mr. Fallon, any witnesses for
8 the State?

9 ATTORNEY FALLON: Yes, the State will be
10 presenting witnesses. State would call as it's
11 first witness, Tom Fassbender.

12 **SPECIAL AGENT THOMAS FASSBENDER**, called
13 as a witness herein, having been first duly
14 sworn, was examined and testified as follows:

15 THE CLERK: Please be seated. Please state
16 your name, and spell your last name for the record.
17 Thomas Fassbender, F-a-s-s-b-e-n-d-e-r.

18 **DIRECT EXAMINATION**

19 BY ATTORNEY FALLON:

20 Q. What do you do for a living?

21 A. I'm a Special Agent with the Wisconsin Department
22 of Justice, Division of Criminal Investigation.

23 Q. How long have you been so employed?

24 A. With DCI, I have been employed 21 years.

25 Q. And prior to that, any law enforcement

1 experience?

2 A. I had five years as a patrol officer on the State
3 Patrol.

4 Q. What is your current assignment as an agent with
5 the Department of Justice?

6 A. I currently work within our Special Assignments
7 Bureau, which is primarily responsible for
8 homicide investigations.

9 Q. All right. And how long have you held that
10 particular assignment?

11 A. About five years.

12 Q. Prior to that, what duties or assignments did you
13 hold?

14 A. When I came in with DCI, I was a narcotics agent
15 for five years. And then I went into white color
16 and government corruption for about 11 years.
17 And during that period, I worked internet crimes
18 against children for about two years at the same
19 time.

20 Q. All right. With respect to your current
21 assignment, approximately how many homicide
22 investigations have you been involved in?

23 A. Well, if we're counting what we term "cold case"
24 homicide investigations, I have a file drawer
25 full of those, which would go anywhere from 8 to

1 15 cases there. Other homicide investigations,
2 probably anywhere from 5 to 10.

3 Q. All right. Now, during those particular
4 investigations, are they -- Where are those
5 homicide investigations? Where did they take
6 place? What is your jurisdiction or area of
7 operation?

8 A. Jurisdictionwise would be State of Wisconsin.

9 Q. All right. With respect to this particular case,
10 I would like to draw your attention to
11 November 5th, 2005; how did you become involved
12 in this case?

13 A. DCI was re -- Or the assistance of DCI was
14 requested by the Calumet County Sheriff's
15 Department and I was assigned by my supervisor.

16 Q. And did you arrive upon the scene of the Avery
17 Auto Salvage Yard on November 5th?

18 A. Yes, somewhere around shortly after 2:00 p.m.
19 that day.

20 Q. Had you had any association at all with the
21 missing person case involving Teresa Halbach
22 prior to that?

23 A. No.

24 Q. All right. When you arrived at 2:00 p.m., which
25 law enforcement agency was in control and in

1 charge?

2 A. Calumet County Sheriff.

3 Q. All right. At some point during the
4 investigation -- Well, let's ask the question
5 this way. What was your role? As a member of
6 the Division of Criminal Investigation, what was
7 your role in this missing persons case on
8 November 5th?

9 A. Initially, it was to come in and provide
10 assistance to the Calumet County Sheriff's
11 Department, investigating the scene. And shortly
12 after arrival and having some briefing sessions,
13 I took over role as a co-lead investigator.

14 Q. All right. Who was the other co-lead
15 investigator in the case?

16 A. Investigator Mark Wiegert, with the Calumet
17 Sheriff's Department.

18 Q. And approximately how long after your 2:00 p.m.
19 arrival did that take place, roughly?

20 A. I'm not real sure, probably within an hour, hour
21 and a half.

22 Q. All right. Were you on site when a search
23 warrant was obtained?

24 A. Yes.

25 Q. All right. And are you familiar with the area

1 which was the subject of the search?

2 A. Yes.

3 Q. All right. Specifically, I would like to first
4 of all draw your attention to, I believe it's
5 Exhibit 18, if I'm correct. Yes, Exhibit 18.
6 Are you familiar with what is depicted in
7 Exhibit 18?

8 A. Yes, it is the Avery's Salvage Yard, with some
9 additional properties up in the northwest corner,
10 I believe that is, Steven Avery's residence.
11 Barb Yanda's residence up in that area would be
12 an additional several acres up there.

13 Q. All right. And the overall area which was
14 subject to the search warrant that was obtained,
15 was how many acres?

16 A. Approximately 40 acres.

17 Q. All right. And what is depicted in Exhibit 18,
18 is that a fair and accurate depiction of the
19 Avery Auto Salvage Yard and the adjoining
20 properties?

21 A. Yes, that would be that, and that would be the
22 scene, the initial scene, we were dealing with.

23 Q. So what is depicted there is the 40 acres?

24 A. Yes.

25 Q. With respect to the 40 acres, are you aware of

1 the breakdown as to how much of that general area
2 contained the auto salvage yard business and it's
3 inventory?

4 A. Yes, approximately 37 acres would have been
5 attributed to that.

6 Q. All right. And during the course of the
7 investigation, were you able to determine a
8 ballpark estimate as to approximately how many
9 junked cars, for lack of a better term, are
10 located on that 37 acre portion of the parcel?

11 A. Initially, when we got there, we believed it to
12 be well over 1,000 junked cars. And, ultimately,
13 a rough count was taken by searchers, that put it
14 more in the neighborhood of 36 to 3800 junk cars.

15 Q. All right. And in terms of including residences
16 and commercial buildings, approximately how many
17 buildings are located on that parcel?

18 A. About 15.

19 Q. All right. Out of the 15, how many of them were
20 residences which were subject to the execution of
21 the search warrant?

22 A. Four.

23 Q. And did the four also include immediate out
24 buildings, such as garages?

25 A. That is correct, yes.

1 Q. All right. And the remaining buildings there
2 were commercial buildings, or support buildings,
3 for the business of the salvage yard?

4 A. Yes, with the exception of one, I guess you would
5 term it a house trailer, alongside the road going
6 down to Barb Yanda and Steven Avery's residence.
7 It was a large trailer alongside that road. I
8 would count that as a building that was searched.

9 Q. All right. Now, when the warrant was obtained
10 and about to be executed, were any precautions
11 taken to secure the overall premises, again,
12 directing your attention to Exhibit 18?

13 A. Yes.

14 Q. All right. And tell us about those.

15 A. Well, there were checkpoints established out on
16 the primary, or the main highway, running
17 parallel to the property, as well as a checkpoint
18 coming into the property on Avery road. There
19 was, as you got down to the end of Avery Road, or
20 the south end of Avery Road, and getting onto the
21 Avery property, business property, is where a
22 command post had been set up.

23 Q. All right. If I were to -- I'm going to have
24 you -- I'm going to give you a laser pointer. If
25 you would just direct out where the command post

1 was located.

2 ATTORNEY BUTING: Could he mark it?

3 THE WITNESS: I don't think I will have to,
4 it's real near No. 3, where 3 is marked, just maybe
5 a little south of 3 there, you can see some vehicles
6 and stuff. So it would have been right at that
7 nexus, right around 3.

8 Q. (By Attorney Fallon)~ Now, I would also like to
9 direct your attention to Exhibit, I believe it's
10 19, which is behind you on the chalkboard.

11 A. Yes.

12 Q. Are you familiar with what is depicted there?

13 A. Yes.

14 Q. All right. And just so that we're clear, what is
15 depicted in Exhibit 19?

16 A. That's an aerial view, a little broader version
17 of an aerial view, that shows the Avery salvage
18 yard and adjoining properties, about right in the
19 center of that view, and then the surrounding
20 parcels of land and property.

21 Q. All right. I believe we had a stipulation
22 yesterday, but just to illustrate your testimony,
23 can you refer to where this Highway 147 is
24 located on Exhibit 19?

25 A. Certainly, with the pointer, it's running

1 essentially east-west, east to southwest, right
2 there, which would be about one parcel of land or
3 field, north of the Avery property.

4 Q. All right. Now, you indicated there was a
5 checkpoint that was set up, can you describe the
6 locations on -- using Exhibit 19, to tell us
7 where the checkpoints were?

8 A. Okay. The day that I arrived, I can't remember
9 if the checkpoints out on the highway had been
10 set up yet; I'm not going to speak to that for
11 sure. But I know if they weren't, shortly
12 thereafter, the highway checkpoints would have
13 been set up.

14 Q. All right.

15 A. The highway checkpoints would have been out on
16 Highway 147, which would have been to the west of
17 the Avery property, somewhere toward the upper
18 left corner of this picture.

19 Q. All right. I'm going to give you a pen, if you
20 could just put a checkmark and the number 1, that
21 may illustrate that, please. Is the area where
22 the checkpoint located, is that on the map, or
23 could it be farther west or farther east of what
24 is depicted there; do you recall?

25 A. To my memory, the checkpoints may have moved

1 during the course of the week. They may have
2 expanded. They may have started, you know,
3 closer to Avery Road and then eventually expanded
4 out a little further.

5 Q. All right.

6 A. So that's where I'm having problems definitely
7 putting the X --

8 Q. All right.

9 A. -- on where it was at any given point.

10 Q. Okay.

11 A. I know at some times it was as far west as here,
12 but it may have been as close as this, earlier in
13 the week.

14 Q. All right. We'll put a check on each of those
15 locations then. The one farthest to your left,
16 we'll make that No. 1, and then -- right.

17 A. And if that is the little city I'm thinking about
18 here, I know there was an intersection of a road.

19 ATTORNEY BUTING: Could we identify what
20 road, the names of those roads are, if you know?

21 THE WITNESS: I'm not going to be able to
22 do that. It's just that there was Highway 147.
23 There was an intersection, and I'm going to, again,
24 put an X there and a 1, by that one, and it may
25 have been as close as what I'm designating as X-2,

1 to the west of Avery Road.

2 Q. (By Attorney Fallon)~ Is it possible there could
3 have been one even farther west, which is not
4 depicted on the map?

5 A. It's possible. And I'm not going to say for sure
6 at this point.

7 Q. Were there any checkpoints on Avery Road?

8 A. Yes.

9 Q. All right. And tell us about those.

10 A. The checkpoints on Avery Road, again, moved.
11 Generally, during the day, when we were there
12 working, the checkpoint was toward the north end
13 of Avery Road, out near Highway 147.

14 Q. Pretty close to the intersection of Avery Road
15 and 147?

16 A. That's correct.

17 Q. All right. So put a check there.

18 A. I will put an X there with a 3.

19 Q. All right. And you said it moved, tell us about
20 that.

21 A. At night, when most of the personnel, the
22 investigative personnel, left the scene, they
23 would often times draw that back in toward the
24 command post area.

25 Q. What was the thinking for that?

1 A. The thinking was to draw it back in, contain the
2 scene a little better, and actually have that
3 personnel right there at the corner of the scene,
4 to provide security for the scene, and also for
5 break purposes, because there were porta-potties
6 and stuff that were there, and food and water,
7 and shift changes, and stuff like that.

8 Q. All right. Now, were there any checkpoints east
9 of Avery Road, on 147, anything that you can
10 place on our map there, or were they farther east
11 than what is depicted?

12 A. I don't believe so. I think they were around
13 this intersection, in the vicinity of this
14 intersection, on Highway 147.

15 Q. All right.

16 A. I will put an X-4 there.

17 Q. All right. You may resume your seat. Directing
18 your attention, again, to Exhibit 18, the 40 acre
19 plot of land depicted there, once the initial
20 search warrant was obtained and you began the
21 searches, was that area under your continuous
22 control?

23 A. Yes.

24 Q. And when did you give up control of that 40 acre
25 plot of land?

1 A. Saturday, November 12, at about 11:28 a.m.

2 Q. All right. Now, during the course of the week
3 that you were there, was there plans made to
4 secure the premises -- the perimeter of the 40
5 acre plot on Exhibit 18?

6 A. Yes.

7 Q. All right. And what can you tell us about that?

8 A. The plans to secure the perimeter was to have law
9 enforcement personnel, at minimum, on each corner
10 of the property.

11 Q. All right. And was that around the clock
12 securance?

13 A. Yes.

14 Q. All right. At any point during the seven days,
15 did you ever leave -- were any of the guards
16 removed or any of the postings from the corners
17 of the property?

18 A. Other than changes, shift changes, to my
19 knowledge, no.

20 Q. All right. Was it Lieutenant Sippel and
21 Lieutenant Bowe, from the Calumet County
22 Sheriff's Department, who were in charge of the
23 overall perimeter security?

24 A. Yes.

25 Q. All right. Again, returning to the time on

1 November 5th when Detective Wiegert and Detective
2 Remiker and others returned with the search
3 warrant, what was the initial plan or focus of
4 executing the search warrant?

5 A. That would have been to do a protective sweep of
6 the buildings on that scene, and also to search
7 for Teresa Halbach.

8 Q. All right. And what did you mean by protective
9 sweep; what was the point or purpose of that?

10 A. When law enforcement executes a search warrant or
11 a search, we generally do a protective sweep for
12 our safety, or the satisfy of anyone on that
13 scene, to look for anything that could endanger
14 us people, people armed with weapons, whatever.

15 Q. All right. And that's so you could also see if
16 there were any other individuals who were
17 actually on the premises at the time the warrant
18 was being executed?

19 A. Certainly.

20 Q. All right. You also said that the other point or
21 purpose was to look for Teresa Halbach, tell us
22 about that.

23 A. Well, essentially, this was a missing case -- or
24 a missing person investigation at that point.
25 And the search warrant was to look for -- one of

1 the things, the search warrant, was to look for
2 the body or to look for Teresa Halbach, in the
3 hopes of finding her alive.

4 Q. All right.

5 A. And that was the primary purpose at that time.

6 Q. And given that primary purpose, were there any --
7 Well, given that as a purpose, how did you go
8 about attempting to accomplish that particular
9 aspect, what did you do?

10 A. Based on the personnel we had, teams were set up
11 to disseminate throughout the property and do
12 that sweep, through the buildings, looking for a
13 protective sweep and looking for Teresa.

14 Q. All right. Now, in your capacity as an agent
15 with the Department of Justice, have you been
16 involved in the execution of search warrants?

17 A. Yes.

18 Q. Numerous times?

19 A. Yes.

20 Q. In terms of the focus, for instance, is there a
21 difference in the way you approach things if the
22 focus is looking for a particular person as
23 opposed to looking for something like blood, or
24 narcotics, or something of a smaller size?

25 A. Most certainly.

1 Q. All right. Tell us about that.

2 A. If I'm looking for something larger size,
3 something obvious or evident, it's obvious that
4 that search is going to be a little quicker and
5 easier because it's much more visible and
6 apparent.

7 If I'm looking for evidence that might
8 constitute forensic evidence or trace evidence,
9 so to speak, blood, or hair, or fibers, that's
10 going to be a much more detailed search, which
11 may involve artificial lighting, may involve
12 getting down on hands and knees, using magnifying
13 glasses, etcetera. So there's a big difference.

14 One could -- conceivably could call it a
15 search, while the other one may be, you know,
16 searching for evidence and then the processing
17 and collection of evidence. So there's a
18 difference.

19 Q. All right. Now, in terms of organizing the
20 search teams, who organized the teams?

21 A. It would have been either myself, or Investigator
22 Wiegert, or someone in our stead at times. And I
23 believe that probably would have been, in this
24 instance, Investigator Wiegert, because I would
25 have been involved with a search of my own, or

1 with one of the dogs at that time.

2 Q. Now, on -- All right. How did you and
3 Investigator Wiegert assign responsibilities or
4 duties during the execution of this search
5 warrant?

6 A. Again, based on the personnel present, a decision
7 had been previously made that Calumet was going
8 to take over the investigation, and that
9 resources being as they were, we were going to
10 use Manitowoc County personnel to assist in the
11 investigation of this scene, and the search of
12 this scene.

13 And, basically, what we decided to do,
14 as the teams were set up, we would have either a
15 person or an investigator, from Calumet County or
16 DCI, accompany Manitowoc County personnel, if
17 they were on a search team.

18 Q. All right. Now, what kind of teams were actually
19 put together?

20 A. I'm not sure if I understand the question.

21 Q. Is there a difference, for instance, from a
22 search team and/or an evidence collection team?

23 A. Well, certainly. Again, this initial search, we
24 weren't concerned with having evidence collection
25 technicians on those particular teams

1 necessarily. It may have been deputies. It may
2 have been jail personnel. It may have been DCI
3 agents on the teams.

4 Again, their primary purpose was the
5 protective sweep and the searching for Teresa,
6 and not necessarily a concern of finding and
7 locating trace evidence, so to speak.

8 Q. All right. And once -- Did there come a time
9 when the focus shifted from looking for Teresa to
10 one looking more detailed, looking for more trace
11 evidence, as it were, or other evidentiary items,
12 found or listed in the warrant?

13 A. Yes.

14 Q. All right. Tell us about that.

15 A. What happened was, they did the protective sweep
16 and the search for Teresa in the buildings area.
17 After that, we had some trained cadaver dogs come
18 in. And I initially accompanied one of those
19 trained cadaver dogs, with some other personnel.
20 And we did a search all along the south end of
21 the property, where the dog alerted on Teresa's
22 RAV 4 vehicle.

23 We continued that search along that
24 south border of the property and actually into
25 the adjoining property owned by Radandt. During

1 that time, additional dogs arrived and additional
2 searches were done, utilizing the dogs, of some
3 of the buildings. Just a walk through, basic
4 search, with the dogs, to see if the dogs alerted
5 on anything.

6 Again, the thinking being, if the dog
7 alerted on something, that might be a clue or an
8 assist in helping locate Teresa or the body of
9 Teresa Halbach. And again, that was a fairly
10 quick search, walking the dogs through.

11 Q. When you say fairly quick search, are you
12 referring to the buildings?

13 A. Yes.

14 Q. All right. Were the dogs used to search other
15 areas on the property?

16 A. Yes.

17 Q. Tell us about that.

18 A. Again, Lieutenant Sippel and Bowe would probably
19 be better to address that. But the dogs were
20 used to take into the pit area, the salvage area,
21 walking through and around cars and to see if
22 they were alerting on anything there. So that's
23 that 37 acre area that we were talking about.

24 Q. So would it be fair to say that when you were
25 using the dogs, the primary focus was still

1 looking for Teresa, or something, some part of
2 her remains, for instance?

3 A. Certainly.

4 Q. All right. Now, you indicated you were -- You
5 mentioned something about the Toyota RAV 4; did
6 you have any involvement in securing that item of
7 evidence?

8 A. To a degree. After I arrived, sometime after I
9 arrived, we had approached the RAV 4 and used a
10 flashlight to confirm that there was no body in
11 the RAV 4. While we were there, we were getting
12 reports and seeing obvious signs of inclement
13 weather approaching, getting reports of serious
14 inclement weather approaching.

15 The Crime Lab, Wisconsin State Crime Lab
16 was involved and I was in contact with them. And
17 as such, we would be agreeing to attempt to put a
18 tarp over the RAV 4 vehicle, which we did.
19 Inclement weather arrived and there was some
20 rain, not the worst of it yet, but that was
21 accompanied by some high winds. And the winds
22 were blowing the tarp all over. So, ultimately,
23 we went back to that scene and we ended up
24 removing the tarp, because it was just flailing
25 around anyways.

1 Q. You couldn't keep the tarp on because of the
2 weather?

3 A. No.

4 Q. At some point, was the vehicle removed?

5 A. Yes.

6 Q. Approximately when?

7 A. Approximately 8:45 p.m.

8 Q. All right. You mentioned something about serious
9 inclement weather on the way; what concerns, if
10 any, did that pose for you during the course of
11 executing the search warrant?

12 A. Well, that, as well as other things. We were
13 getting into dark now, losing daylight.
14 Searching, anything, is much better and well done
15 during daylight as opposed to artificial light or
16 in the dark. Add to that the horrendous
17 rainstorm that ultimately moved in that evening,
18 very much limiting any of the outdoor search,
19 except the removal of the RAV 4, which we
20 accomplished in that storm.

21 Q. How bad was the weather?

22 A. It was raining extremely hard when the storm hit,
23 as hard as I have experienced.

24 Q. And how long did that rain persist?

25 A. You know, I don't remember exactly, but most of

1 the night that we worked there it was raining.

2 Q. All right. And did that create some concerns
3 with you, with respect to evidence detection and
4 collection?

5 A. Well, obviously, we had concerns with any
6 evidence collection and detection outside,
7 coupled with the dark. Lights were brought in to
8 illuminate the southeast corner where the RAV 4
9 was found, that area. But the rain affected that
10 quite heavily, also. So we were fairly or pretty
11 much limited to inside or in building searches at
12 this time.

13 Q. All right. I will come back to that in a minute.
14 I would like to direct your attention, again, to
15 Exhibit 19. And -- which is behind you -- and
16 ask, during the course of the week that you were
17 executing the search warrant on the premises
18 depicted in Exhibit 18, were you called upon to
19 investigate, or participate, or coordinate
20 searches of surrounding areas?

21 A. Yes.

22 Q. And tell us about that.

23 A. Ultimately, when we were done searching, it was
24 estimated that we had searched approximately six
25 to 800 acres of property.

1 Q. That's in addition to the 40 acres?

2 A. In addition to the 40 acres on the Avery
3 properties. And that property included a lot of
4 surrounding areas which were gravel pits, sand
5 pits; I think most of them owned by Radandt.

6 And then many ponds and lakes. I'm not
7 sure of the count, but numerous ponds and lakes
8 that had to be searched, either with dive teams
9 or walk-throughs of some sort. Again, all taxing
10 the personnel and resources during the course of
11 that week.

12 Q. With respect to your role and Investigator
13 Wiegert's role, were the two of you responsible
14 or more or less in charge of the perimeter
15 searches; in other words, the 6 to 700 acres, was
16 that your responsibility or someone else's?

17 A. That would have been more Lieutenant Bowe and
18 Sippel coordinating that, managing that part.

19 Q. But who oversaw their work?

20 A. Investigator Wiegert, myself.

21 Q. All right. And returning then to the weather on
22 Saturday night and limiting to building searches,
23 did there come a time where you, and/or
24 Investigator Wiegert, directed various search
25 teams to enter the buildings?

1 A. Yes.

2 Q. All right. And tell us how that came to pass.

3 A. I keep returning to this, but again, pertaining
4 to the personnel we had present and the resources
5 yet available that evening, now we're organizing
6 what we believe to be a search to look for
7 evidence, potential processing and collection of
8 evidence. And for such a search, we need
9 evidence technicians or trained officers who were
10 trained in the collection of evidence.

11 Q. All right. And on Saturday night, I would say
12 approximately 7:30 or thereabouts, how many
13 evidence technicians, or evidence collection
14 teams, were available on Saturday?

15 A. I believe we put one evidence collection team
16 together that night.

17 Q. All right. During the course of the week, were
18 other evidence collection teams put together?

19 A. Yes. And I'm going to back up, Saturday night,
20 if you count the Crime Lab, the two technicians
21 that came from the Crime Lab, we would have had
22 two.

23 Q. All right. What assignment did the Crime Lab
24 people have on Saturday night?

25 A. To process and seize and transport the RAV 4,

1 Teresa's vehicle.

2 Q. Did they actually do an examination or processing
3 of the vehicle itself, on scene, or just the
4 collection and removal?

5 A. The only thing they processed or looked at, on
6 scene, was the debris and the items that had been
7 used to conceal the vehicle, but the vehicle
8 itself, to my knowledge, no.

9 Q. All right. And what happened to the Crime Lab
10 after the vehicle was removed, the Crime Lab
11 personnel, after the vehicle was removed?

12 A. The Crime Lab personnel remained with the
13 vehicle. I believe one of the technicians rode
14 with the individual towing the vehicle, while the
15 other one followed the vehicle, or led the way to
16 Madison.

17 Q. All right. So in terms of after they left the
18 scene, you only had one evidence collection team
19 on site that evening?

20 A. Correct.

21 Q. All right. So in terms of using their
22 capabilities, what was the plan?

23 A. The plan was to start searching buildings. And
24 we started with Steven Avery's residence on the
25 northwest corner of the property, at about 7:30,

1 if I remember right.

2 Q. All right. And did there come a time that you
3 and/or Investigator Wiegert, directed additional
4 entries into Mr. Avery's trailer?

5 A. Yes.

6 Q. All right. And did there come a time where you
7 directed additional entries to other residences
8 during the course of the week?

9 A. I believe so, yes.

10 Q. And the businesses, or buildings associated with
11 the business?

12 A. Yes.

13 Q. All right. And there's been some testimony that
14 through the course of the week, and in particular
15 the first five days, there were as many as -- I
16 think perhaps eight entries, thereabouts, to
17 Mr. Avery, Steven Avery's trailer. And three or
18 four entries to the garage.

19 So what was it about the circumstances,
20 in your mind, that caused you to direct
21 successive or additional entries, first of all,
22 with respect to Mr. Avery's trailer?

23 A. I think that's a longer answer than you might
24 anticipate. But additionally, we have the
25 same -- you have got your protective sweep and

1 looking for a body, and using the dogs. I would
2 categorize those into, basically, the same type
3 of search, a walk-through, a sweep. So you have
4 two entries there.

5 I have got a search warrant for a scene
6 here, which is a 40 acre scene. I don't have a
7 search warrant specifically for any building or
8 Steven's house, or Barbara's house. I have got a
9 40 acre scene here. That's why I say I'm holding
10 that scene. Okay. Ultimately, that evening, we
11 get a team put together and we start the
12 buildings.

13 We start with Steven's residence. When
14 the technicians go in there, they are looking for
15 evidence that's obvious. And they are also
16 looking for trace or forensic evidence, which is
17 a little more difficult, sometimes, to detect.

18 At this point in time, you are talking
19 it's dark, it's night, you have got a horrendous
20 rain storm going on. We want to look, to the
21 best of our abilities, for that type of evidence.
22 Because of the rain, because of people maybe
23 going in and out of their house to get evidence
24 collection bags, gloves, whatever they need,
25 flashlights, you run the risk of evidence being,

1 in effect, destroyed or lost. So we look for
2 that type of evidence as quickly as possible,
3 because that is the most susceptible to that type
4 of danger.

5 So, they go in there about 7:30.

6 Keeping in mind also, at this point in time most
7 of those investigators that went in that trailer
8 are already going on 12 hours, or more, of work.
9 So you are talking that they are getting tired,
10 there could be safety issues, and exhaustion's
11 becoming a factor. So they go in there --

12 Q. Does that affect the ability to locate and
13 collect evidence --

14 A. I would think --

15 Q. -- based on your experience --

16 A. -- so, yes.

17 Q. Was that based --

18 A. I felt it, yes.

19 Q. All right.

20 A. So, they go in there until about 10:30 and they
21 clear Steven's residence that evening. They come
22 back and we have, Mark and I, as well as the
23 sheriff and other people that are involved,
24 Sippel, and Bowe, and whoever, are continually
25 having debriefing sessions, and planning

1 sessions, and assessing what's going on.

2 Taking in all the intelligence
3 information that's happening. We debrief that
4 team. And even as early as that night, in my
5 mind, I'm telling people -- or my mind I'm
6 thinking -- either that night or the next night,
7 I'm telling people, we are not done in that
8 house. We will be going back there, for several
9 reasons: Number 1, they noted guns. They talked
10 to us about a vacuum cleaner, and having taken, I
11 believe, the bag out of the vacuum cleaner.

12 But we talked about the roll -- about
13 the brush that's in the vacuum cleaner, how that
14 can collect -- possibly collect trace evidence.
15 And we're going to want to take that. Bedding in
16 a spare bedroom, yeah, we're going to want to
17 take that.

18 That's how these meetings occurred, you
19 know. What did you find? What did you see in
20 that residence? We're going to want that.

21 Q. All right.

22 A. That building is still part of my scene. This is
23 an ongoing search. So as early as that, we're
24 going to be returning there. That night, that
25 completed that night. The following evening is

1 when we continued the search in process,
2 involving going in the buildings, including
3 Steven's garage.

4 Q. Now, did the apparent evidentiary significance of
5 items observed in the buildings, in particular,
6 Mr. Avery's trailer; did that change during the
7 course of the week?

8 A. Certainly.

9 Q. Tell us about that.

10 A. Beginning just at that first night, I mean, we
11 have -- we have investigative personnel. To
12 start with, we have investigative personnel up in
13 Marinette, at the Avery's other property up
14 north, who are speaking with Avery members,
15 gleaning intelligence and information, which is
16 being reported back to us.

17 We have investigators at the scene that
18 are going out and doing interviews either of
19 relatives, family members, friends, or just
20 people who may have been involved in this scene.

21 We have neighborhood canvasses that are
22 started the following day. We're constantly
23 bringing in intelligence and information,
24 assessing that information and intelligence.

25 We have evidence teams that are finding

1 evidence and we're making determinations on:
2 What's been found; what we need to look for; do
3 we need to look somewhere else; are there things
4 that we're missing.

5 That's all affecting what's going on in
6 this ongoing process. This is not a static
7 process, that's just standing still. We have a
8 RAV 4 that went down to the Crime Laboratory,
9 that's being analyzed. I think it's as early as
10 Sunday that there is a presumptive positive test
11 for human blood in that vehicle. That's
12 affecting what we may be doing, or what we're
13 looking for, obviously.

14 Q. All right. Now, at some point did the Crime Lab
15 come down and assist further in the search of the
16 scene, and/or the collection of evidence, or the
17 identification of evidence?

18 A. Yes, they came back. The other team came back on
19 Sunday I believe, afternoon, later afternoon,
20 Sunday.

21 Q. And what did they do to assist in either the
22 identification or collection of additional
23 evidence?

24 A. They were being sent all over the place. Again,
25 on Sunday, we have search teams that are going

1 out and searching. We're accounting for the
2 vehicles, the trunks of the vehicles, underneath
3 the vehicles, and the insides of the vehicles;
4 the car crusher, the crushed vehicles, the
5 crushed vehicle in the car crusher; the
6 buildings, and even maybe starting some of the
7 surrounding areas.

8 As the search teams are going through,
9 again, they are not necessarily evidence
10 technicians, but they are looking for potential
11 evidence, or identifying potential evidence, and
12 either marking or flagging the potential
13 evidence. And that could include, and in many
14 instances did include, potential blood in junked
15 vehicles.

16 And the Crime Lab was being utilized to
17 go check or analyze those areas of potential
18 evidence, to see if it needed to be collected, if
19 it was blood, if it wasn't blood. They went to
20 vehicles. I think they went to a golf cart at
21 one time, to check something that had been found
22 in a golf cart.

23 Ultimately, they were directed to go
24 back -- or asked to go back into Steven Avery's
25 residence, to use alternate light sources to

1 check for the presence of blood.

2 Q. All right. And did they, in fact, go into
3 Mr. Avery's residence at some time during the
4 course of one of these searches, with alternate
5 light sources, to look for blood?

6 A. Yes, I believe they did that Sunday evening.

7 Q. All right. And did they actually collect what
8 they observed, or how did you work with them,
9 best utilizing their abilities?

10 A. Yes. Generally, they would be able to identify
11 and help process. And the collection of
12 evidence, if they collected it, it was
13 immediately turned over to Calumet County
14 personnel.

15 ATTORNEY BUTING: I'm going to object to
16 his testimony about what they did or didn't do, in
17 Mr. Avery's residence, unless this witness was there
18 and observed it.

19 ATTORNEY FALLON: I will clear up with a
20 foundation question.

21 Q. (By Attorney Fallon)~ Were you responsible --
22 Strike that. Let's try it this way. Once
23 someone entered a residence and did something in
24 the residence, was that information conveyed back
25 to you in the command post or -- and/or Detective

1 Wiegert?

2 A. Yes.

3 Q. All right. So in terms of your responsibility
4 and Investigator Wiegert's responsibility, you
5 were made aware of the results, or what the
6 observations were, during the course of entering
7 any of these residences?

8 A. I would believe so, in most of the cases, yes.

9 Q. Now, specifically, since the Crime Lab personnel
10 work also for the Department of Justice, did you
11 have constant contact with them regarding what
12 they were doing and how they were assisting?

13 A. The majority of time, yes, I agree.

14 Q. Now, with respect to their participation in one
15 of the searches of Mr. Avery's trailer, that
16 being Steven Avery's trailer, with respect to
17 using an alternate light source, were you made
18 aware of that?

19 A. Yes.

20 ATTORNEY BUTING: Objection, hearsay.

21 THE COURT: For purposes of this hearing, I
22 think it's relevant to determine how this witness
23 acted and what he did, rather than for the truth of
24 the matter, so I'm going to accept it on that basis.

25 ATTORNEY FALLON: Fine, thank you.

1 Q. (By Attorney Fallon)~ So, did the Crime Lab
2 collect evidence after they went through --

3 ATTORNEY BUTING: Same objection. It's
4 hearsay, as to what was done inside that house, if
5 he wasn't there. He can talk about why he did or
6 didn't do things afterwards, but he -- it is hearsay
7 for him to relate what someone else did, outside of
8 his presence, and came back and told him. What
9 other purpose does the State have to offer that?

10 THE COURT: Mr. Fallon?

11 ATTORNEY FALLON: Certainly. First of all,
12 it does go to the state of mind. After all, he is
13 one of the two people responsible for the overall
14 execution of this warrant. He's already established
15 the fact that he and Investigator Wiegert were in
16 charge of the investigation, so they were clearly
17 made aware.

18 He's already testified that there were
19 debriefings after each search. This is all
20 information that factors into the decision making
21 process as to how that warrant was executed.

22 Secondly, under 904.01, a certain amount
23 of hearsay under these circumstances is
24 permitted.

25 Third, taking the Court's previous

1 example, it does go relative to his state of
2 mind.

3 THE COURT: For purposes of this hearing,
4 what they found or what they didn't find isn't
5 really that important. It's hearsay if it's
6 introduced for the purpose of proving the truth of
7 the matter asserted.

8 In this case, I take the information to
9 be an explanation of why orders were given, why
10 searches were ordered to be conducted, why they
11 came back the next day. And I think so for that
12 purpose, which is most relevant to the defense
13 motion here, it is not hearsay because it's not
14 offered to prove the truth of the matter
15 asserted; therefore, I'm going to allow it.

16 ATTORNEY FALLON: Thank you.

17 Q. (By Attorney Fallon)~ What occurred with respect
18 to the Crime Lab's participation and what affect
19 did that have on you, in terms of what you were
20 doing and organizing, with respect to
21 continuation of the executing the search warrant?

22 A. They identified additional areas in Steven's
23 trailer that show the presence of blood, or the
24 potential presence of blood. They collected a
25 few of the areas. They identified the other

1 areas, as areas that were needed to go in and
2 collect yet.

3 Q. And subsequent to that, did you direct additional
4 entries to collect the information requested by
5 the Crime Lab?

6 A. Yes.

7 Q. All right. Are you an evidence technician, by
8 the way?

9 A. I have attended a week long evidence technician
10 course put on by the State Crime Laboratory.

11 Q. All right. After you directed the subsequent
12 entry suggested by the Crime Lab, in other words,
13 the collection of these additional samples, in
14 your mind, were you -- was the execution of the
15 search warrant, as a whole, completed?

16 A. Absolutely not.

17 Q. With respect to the part of the warrant
18 permitting entrance, authorizing entrance to
19 Mr. Avery's trailer, and his garage, for that
20 matter, after Sunday evening, did you, in your
21 mind, think that you had completed or, quote,
22 gotten everything there was to get?

23 ATTORNEY BUTING: I think what's in his
24 mind is really irrelevant. It's ultimately going to
25 be a legal question. It's more what he did and

1 didn't do. He's not --

2 ATTORNEY FALLON: It's a foundational
3 question to explain subsequent conduct.

4 THE COURT: Well, in a sense, you are both
5 right. Even what his thoughts were may not
6 necessarily control the outcome of the decision on
7 your motion, but as both parties have already
8 informed the Court, there's not a lot of case law on
9 this, and it may be that what was going through his
10 mind is important. So, for that reason, I'm going
11 to allow the question.

12 Q. (By Attorney Fallon)~ Did you feel you had
13 completed that portion of the execution of the
14 search warrant with respect to the defendant's
15 residence and garage?

16 A. Based on -- a lot on the factors I already talked
17 about, no.

18 Q. All right. And why not?

19 A. Reiterating a lot of those factors, and the
20 purpose of a lot of the searches up to that
21 point, we were not done with those areas. We
22 had, like I said, after that first forensic
23 search, based on the weather and lighting
24 conditions, exhaustion of the searchers, I knew
25 that building, even without Steven being the

1 primary suspect necessarily, was going to be
2 searched again. It was too likely that things
3 would have been missed, based on those factors.

4 They did see some things in there, guns
5 and stuff, that we needed to go back in and get
6 the following day, due to the lateness of hour,
7 etcetera. And we did. We knew there was a
8 computer in there that we had to obtain
9 information off of, which we got a separate
10 search warrant for.

11 And then the Crime Lab was asked to go
12 in because that first search team found evidence
13 of blood in there. So we asked them to use their
14 technology to determine if there was any other
15 blood in there. Again, as I said, this was
16 ongoing.

17 After they identified other areas of
18 blood, we knew we had to go back there and get --
19 collect those items. During this whole course of
20 things, through debriefings and interviews,
21 interviews being conducted, we're obtaining more
22 intelligence information that tends to indicate
23 that Steven is definitely the suspect, or a
24 suspect in this case, which makes it even more
25 relevant that we make sure we do a complete and

1 thorough search of that area before we release
2 the scene.

3 Q. With respect to that, what additional information
4 was uncovered on Tuesday, for instance, that led
5 you to continue the belief that you needed to
6 gain additional entry into the trailer and the
7 garage; what was happening?

8 A. Number one, Monday, we were -- we were busy in
9 other areas, again, in the junkyard, other
10 buildings, etcetera. So we did not get back to
11 Steven's trailer on Monday like we had planned
12 to, because of what the Crime Lab showed, and
13 just my beliefs.

14 So Tuesday, it was planned to go back in
15 there. I believe Tuesday they went back in there
16 and got the computer. And then Tuesday we were
17 going back in, that that's where we put the team
18 up to go back in there and hopefully do a final,
19 thorough search of that trailer.

20 Things that were coming in, I mean from
21 interviews and intelligence, we're interviewing
22 people and finding that Steven's initial story,
23 it was inconsistent with later stories that he
24 had given, whether to us or to the press.

25 We have other interviews of other

1 individuals that are contradicting --
2 contradicting his statements.

3 We have information coming in from the
4 Crime Lab, the presence of blood. And I believe
5 it was Tuesday, and I'm not sure, but I believe
6 it was Tuesday I was advised by the Crime Lab
7 that DNA analyzed from the RAV 4, matched up with
8 Steven Avery's DNA from the Wisconsin data base,
9 DNA data base. That may have been later on
10 Tuesday, but these are the types of things that
11 are coming in and we're analyzing and basing our
12 decisions on.

13 Q. Did the fact that there were bone fragments
14 uncovered from a burn pit on Tuesday factor into
15 the equation?

16 A. I'm sure that factored into the equation, to make
17 sure that the residence was searched properly and
18 held. I believe -- I'm not sure what time of day
19 the bone fragments were found, whether they were
20 found a little later, or the search had conducted
21 earlier, so I'm going to say I'm not sure.

22 Q. All right. During the course of overseeing the
23 execution of this search warrant, were you,
24 and/or Investigator Wiegert, more or less was
25 your attention drawn away from the scene to other

1 locales outside of the perimeter here?

2 A. Oh, yes, a lot of times.

3 Q. Tell us about that and why you felt that you had
4 to address those.

5 A. Again, you are getting information from many
6 different sources, whether it's evidence
7 technicians finding evidence, or agents or
8 investigators doing interviews and obtaining
9 information and intelligence. And you perform
10 sort of a triage, I guess. Is this something
11 that we need to address? Do we have the
12 personnel and resources to address it now, or
13 could it wait?

14 And a good example, we had the Crime Lab
15 personnel running around trying to address
16 different areas. During Tuesday, I think it was
17 Tuesday morning, license plates were found in a
18 vehicle on the yard that were Teresa Halbach's
19 license plates from her vehicle. At that point
20 we made the decision to pull the Crime Lab off
21 what they were doing to go address the seizure
22 and the processing of the plates from that
23 vehicle.

24 Other areas where maybe blood was found,
25 we were directing evidence technicians to go

1 there. We had search teams out that were
2 identifying these various areas of evidence.
3 They would report back to us and we would
4 determine, do we need to send someone there now,
5 or can we just hold that scene until we can get
6 someone available to go process that.

7 We need people who have been trained in
8 processing evidence to do that. And we only had
9 so many people that were trained to do that. So
10 we're constantly making those decisions. We had
11 a site that, potentially, could have been a
12 clandestine burial site, that we pretty much
13 pulled everyone off of, for quite a period of
14 time, until we determined that it wasn't.

15 Q. Where was that? Was that in the perimeter or
16 somewhere else?

17 A. That was outside the perimeter, to the west.

18 Q. And were individuals dispatched to areas such as
19 Maribel Caves Park?

20 A. We had intelligence coming in that some pants,
21 and I think some lotion or something, had been
22 found at this park. So, yes, we dispatched some
23 evidence technicians over there.

24 We had a report of a cell phone being
25 found in the ditch. We ultimately dispatched

1 people there. We had that clandestine site. We
2 had reports of some bones found on some property
3 west of this area, that Mark and I actually went
4 out on because there was no one available,
5 technicians available, that we checked that.

6 Q. When you say Mark, you mean Mr. Wiegert?

7 A. Our investigator, Wiegert. We had intelligence
8 coming in from interviews that someone may have
9 seen something; for example, a bus driver
10 dropping someone off, that we had to send people
11 out to interview and obtain information from that
12 person.

13 Q. All right. Now, during the course of this week
14 long event, did you have assistance of other law
15 enforcement agencies?

16 A. Yes.

17 Q. All right. What agencies assisted?

18 A. Wow, I don't even know the whole list, but the
19 State Patrol for sure. They were assisting in
20 perimeter security, I think from day one or day
21 two, and then en masse. I think on Tuesday was
22 the first day they were there en masse, where
23 upwards of 60 troopers arrived to help search
24 that, go over that yard, again.

25 Q. When you say the yard, you are talking about the

1 salvage yard?

2 A. The salvage yard, the vehicles. And they
3 actually came and assisted in searching the
4 properties adjacent to the Avery properties.

5 Q. All right. Other law enforcement entities
6 assist?

7 A. Of course, Manitowoc County Sheriff, Manitowoc
8 City, I think Two Rivers may have had some people
9 there, and then Calumet County Sheriff's
10 Department, obviously, and some various, I think,
11 police departments in Calumet County also
12 assisted in perimeter and scene protection, and
13 security.

14 Q. And did -- At some point did you receive
15 assistance from some local firemen?

16 A. Yes.

17 Q. All right. And how were they employed?

18 A. I believe the first day they were employed was on
19 Sunday, and they were employed in searching the
20 vehicles. And I believe they brought in their
21 Jaws of Life to open trunks of vehicles, and car
22 doors, and whatever needed to be opened. And
23 they were broken up into teams.

24 And I believe each of those teams had
25 one law enforcement -- at least one law

1 enforcement personnel with them. And they went
2 through the yard and went through every vehicle
3 to make sure that, again, Teresa, or evidence of
4 Teresa, was not apparent in those vehicles. And
5 that's in the vehicles, under the vehicles,
6 evidence that the vehicle had been moved, or not
7 moved. And if it was moved, we had to get
8 personnel in there to lift that vehicle up, move
9 it, check under it.

10 Q. All right. Now, with the -- in terms of having
11 at least the benefit of these additional
12 resources, did that ease the strain at all with
13 respect to the actual evidence collection
14 processing component associated with the
15 execution of a warrant?

16 A. Not nearly as much, no, because these people
17 weren't trained to process or collect evidence.

18 Q. Who was responsible for coordinating their
19 efforts?

20 A. The efforts of whom?

21 Q. The State Patrol, the firemen, the Two Rivers
22 officers; in other words, the supporting law
23 enforcement cast, as it were?

24 A. The hands on portion was probably more Lieutenant
25 Sippel and Bowe, but Investigator Wiegert and I

1 were ultimately responsible for what we were
2 going to do.

3 Q. All right. And you decided how they were going
4 to be employed, these law enforcement assists?

5 A. Yes.

6 Q. All right. During the course of the week, do you
7 recall, you mentioned two evidence collection
8 teams; were there other evidence collection teams
9 available at your disposal?

10 A. Off the top of my head, Sunday we had two primary
11 evidence collection teams made up of Calumet
12 County Sheriff's evidence technicians, Manitowoc
13 County and Manitowoc City.

14 And then we had the Crime Lab personnel,
15 who I would describe more as roving where needed.
16 And then later in the week, we actually brought
17 in an evidence technician from the Grand Chute
18 Police Department that assisted us.

19 Q. All right. Now, all this is going on, did you
20 have law enforcement personnel in other parts of
21 the state who were collecting information and
22 providing it to you during the execution on the
23 search warrant?

24 A. Yes.

25 Q. And tell us about that.

1 ATTORNEY BUTING: Objection, it's
2 irrelevant.

3 ATTORNEY FALLON: It goes to the resource
4 allocation issue and how they went about their
5 business. They keep questioning why it took eight
6 searches, or four days, to complete processing of
7 that. This is -- all goes to that explanation.
8 Now, the hallmark of Fourth Amendment is
9 reasonableness, under the circumstances.

10 THE COURT: I will let you ask a few
11 questions about it.

12 ATTORNEY FALLON: Thank you.

13 A. The primary area in question would have been up
14 in Marinette County where the Avery's have
15 property up there. And many of the Avery's were
16 there on that Saturday, November 5. So I had
17 to -- or I did, allocate special agents to go up
18 there. We had Marinette County personnel up
19 there.

20 I had special agents running definitely
21 throughout Manitowoc County as well as into other
22 counties, following up leads, reports of this or
23 that. I had many special agents transporting
24 evidence from the Avery property, or Calumet
25 Sheriff's Department, down to Madison Crime

1 Laboratory, to forensic anthropologists down
2 there. So, yeah, a lot of special DCI personnel
3 was eaten up doing a lot of that too.

4 Q. Were there other -- What I guess, for lack of a
5 better term, were there other volunteers which --
6 who assisted in the searches?

7 A. Yes.

8 Q. All right. And who is responsible -- When did
9 they come into the play?

10 A. For my part, or our part, I'm going to guess
11 mid-week, talking about the week of November 7.
12 Mid to early week, we had -- we realized we had
13 acres and acres and acres of property outside the
14 40 acre Avery scene that still needed to be
15 walked through and searched.

16 There was a point in time that we
17 weren't sure we had a body. And we decided to
18 utilize the searchers who were still standing by,
19 you know, hanging around; the civilian searchers
20 that Ryan Hillegas had kind of coordinated. And
21 so we decided to utilize them to walk through
22 some of those areas outside of that 40 acre area
23 accompanied by, again, a member of law
24 enforcement.

25 Q. All right. Now, were there other neighborhood

1 canvasses or leads called in by just citizens,
2 that impacted upon the allocation of resources?

3 A. Yes.

4 Q. Tell us about that.

5 A. We had leads coming in, like I said, I mentioned
6 the cell phone, someone found a cell found.
7 There were leads coming in that someone said --
8 or people said they saw Teresa or saw Teresa's
9 vehicle; we had to send investigators out to
10 that.

11 We were finding evidence on the property
12 that would lead investigators to go out; for
13 example, handcuffs or leg irons, and receipts for
14 the purchase of such things, and we sent people
15 out on. We had -- Just lost my train of thought.

16 Q. Okay. So you had received information, or
17 benefits from some community searchers?

18 A. Yes.

19 Q. All right. One second. During the course of
20 executing the initial search warrant here, at
21 some point did you become cognizant of the fact
22 that this was taking several days?

23 A. Oh, absolutely.

24 Q. And what, if anything, did you do, or what did
25 you do in recognition of that?

1 A. Well, if I understand your question correctly,
2 number one, holding the scene.

3 Q. Right.

4 A. Number two, attempting to get additional
5 resources and personnel in place.

6 Q. Right.

7 A. Number three, we did obtain additional search
8 warrants for various things and, ultimately,
9 mid-week, we obtained another search warrant for
10 the whole scene.

11 Q. Right. Now, in terms of your experience, have
12 you ever been involved in overseeing the
13 execution of a search warrant this comprehensive?

14 A. No.

15 Q. In terms of your experience with the Department
16 of Justice, have you ever been involved in the
17 execution of a search warrant of this magnitude?

18 A. That I was personally involved with?

19 Q. Yes.

20 A. No.

21 Q. All right.

22 ATTORNEY FALLON: That's all.

23 THE COURT: Mr. Buting.

24 **CROSS-EXAMINATION**

25 BY ATTORNEY BUTING:

1 Q. Let me start right, for the moment, with where
2 you ended. You said you got other search
3 warrants during that week, right?

4 A. Yes.

5 Q. And this is during the period from November 5th
6 to November 12th, when you had that property
7 under your control, right?

8 A. Correct.

9 Q. How many other search warrants did you obtain
10 during that week?

11 A. Related to the property.

12 Q. No, related to the case.

13 A. Related to the case.

14 Q. Investigation.

15 A. So you are talking about DNA --

16 Q. Everything.

17 A. -- search warrants. I can't give you a number.

18 Q. Dozens, would that be right?

19 A. It may be as many as dozens, yes.

20 Q. So you were going back and getting warrants
21 throughout the week, applying for warrants
22 related to this case, dozens of times?

23 A. I just -- I don't know about the dozens, but, yes
24 numerous times.

25 Q. Say as many as 20?

1 A. That would probably be fair, yes.

2 Q. Okay. But it wasn't until late in the day on
3 November 9th, that you went back and asked for an
4 additional warrant to allow you to search
5 Mr. Avery's residence and garage; isn't that
6 right?

7 A. Now, the 9th being Wednesday, if I'm correct?

8 Q. Yes.

9 A. I believe it was Wednesday, yes.

10 Q. 4:40 in the afternoon, I believe, would you --

11 A. I didn't -- I don't believe I went back and got
12 that search warrant. I think I served it, but I
13 didn't go get it.

14 Q. All right. So, you served it at 4:40 p.m. on
15 November 9th?

16 A. Without seeing that, I can't say.

17 Q. Well, let's see if I can find it for you. I'm
18 showing you a copy of the warrant, just to
19 refresh your recollection.

20 A. This warrant shows it was endorsed on November 9,
21 at 4:40 p.m.

22 Q. All right. And that warrant was intended to
23 allow you to continue searching Mr. Steven
24 Avery's property, as well as the other areas in
25 this 40 acre parcel, correct?

1 A. Yes.

2 Q. You were worried that the original warrant from
3 November 5th was going to expire, as a matter of
4 time, was going to expire with the five day
5 statutory limit, correct?

6 A. I believe so, it wasn't my decision. My
7 decision -- That wasn't my decision.

8 Q. And that warrant on November 9th -- I can show it
9 to you again if you would need to, but that
10 warrant contained more information, gathered
11 through your intelligence and your investigation,
12 to support a probable cause finding, than was in
13 the original warrant from November 9th, correct?

14 A. Yes.

15 THE COURT: The original one from the 9th
16 or the 5th?

17 Q. (By Attorney Buting)~ I'm sorry, from November
18 5th, correct?

19 A. Yes.

20 Q. So as you -- Throughout the week, the week
21 November 6th, November 7th, November 8th, you
22 talked about how you kept gathering all this
23 additional information, right?

24 A. Yes.

25 Q. There would have been nothing to prevent you from

1 going back to a judge, on Saturday, November 6th,
2 with new information, saying I want another
3 warrant to be able to go back into Mr. Avery's
4 trailer or garage, correct?

5 A. The only constraints would have been time and
6 personnel, but you're probably right, yes.

7 Q. Or November 7th?

8 A. Yes.

9 Q. Or November 8th?

10 A. The 8th, we served numerous other warrants and
11 that would have been a tough day, probably.

12 Q. Well, you are serving numerous warrants. You are
13 going to a judge. You are filling out
14 applications for other warrants, throughout that
15 time, up to 20 different warrants.

16 Nothing would have prevented you, on
17 those occasions, from getting another warrant to
18 allow you to go into Mr. Avery's house a second
19 time, or a third time, or a fourth time, or a
20 eighth time; isn't that right?

21 A. Except the fact that we had the scene.

22 Q. Except what?

23 A. The fact that we were still holding that scene.
24 In our estimation, this was ongoing.

25 Q. You had no lack of personnel, to go to a court

1 and get search warrants, from November 5th
2 through the 9th; isn't that right?

3 A. Yes. And that strained our personnel, getting
4 those search warrants, phone search warrants.

5 Q. But you did it, didn't you?

6 A. Yes.

7 Q. They were there, in front of a judge?

8 A. Yes.

9 Q. And all it would have taken was another affidavit
10 to present to the judge, saying, we think that
11 there's reason why we need to go back into
12 Mr. Avery's residence. That's all you would have
13 needed in order to get another warrant from a
14 judge, right?

15 A. Yes.

16 Q. You could have done that, right?

17 A. Yes.

18 Q. You chose not to?

19 A. Yes.

20 Q. You believed that this warrant gave you cart
21 blanche to go in and out of his residence and
22 trailer as many times as you wanted, right?

23 A. Yes.

24 Q. Now, meanwhile, you had that property secured
25 from the owner's and residents, the people who

1 lived and worked on that property, right?

2 A. Yes.

3 Q. For one solid week, the owners of the property
4 and the people who lived on that property, were
5 denied access to that property, right?

6 A. Yes.

7 Q. This was a business that was completely shut down
8 while you had it secured, right?

9 A. Correct.

10 Q. There were people who had to feed -- who had dogs
11 and pets on the property, who were unable to get
12 to it, right?

13 A. Yes. That was another one of our concerns,
14 taking care of them. And dealing with the
15 property owners and trying to help them get
16 things off their property. I dealt with the
17 Averys numerous times on the phone, taking them
18 into the property, helping them get things, yes.
19 It wasn't my intent to deprive them of the
20 property. We wanted to get that back to them as
21 soon as we could.

22 Q. But you did, in fact, hold it for an entire week?

23 A. Yes.

24 Q. Now, let's talk about the personnel you had.
25 Give me a number, how many officers -- how many

1 law enforcement officers, during that week, did
2 you have searching that property? Forget the
3 firemen. Let's just talk law enforcement
4 officers.

5 A. On any given day, or during the course of a week?

6 Q. During the course of a week, over 100?

7 A. I would say over 100.

8 Q. Easily over 100, right?

9 A. Yes.

10 Q. This was a high profile case, correct?

11 A. Yes.

12 Q. This was a case that was in the media everyday,
13 if not throughout the day, correct?

14 A. Certainly.

15 Q. This Toyota RAV 4, when it was brought to the
16 Crime Lab, they dropped everything and started
17 working on it right away, didn't they?

18 A. Yes.

19 Q. And we know how backed up the Crime Lab is on
20 other cases, right?

21 A. Yes.

22 Q. This case took priority for them?

23 A. Yes.

24 Q. Okay. And this case took priority for you?

25 A. Well, certainly. And one of the reasons was to

1 release that scene as soon as we could.

2 Q. How many DCI agents did you have working on this
3 case between November 5th and November 12th.

4 A. I can't answer that, but on and off, probably
5 upwards of 10.

6 Q. Okay. So you had at least 10 DCI agents
7 available to you during that week?

8 A. Yes.

9 Q. And are each of those agents -- did they have
10 evidence collection training?

11 A. No.

12 Q. Any of them have evidence collection training?

13 A. To my knowledge, no, but I'm not sure.

14 Q. Does DCI have anybody else in the state who
15 collects evidence?

16 A. I'm sure there are agents that collect evidence.
17 The arson agents would, obviously, collect
18 evidence. Have they been certified? Have they
19 gone to specific evidence training, or schools?
20 I don't know.

21 Q. This is the State Department of Justice we're
22 talking about, correct?

23 A. Yes.

24 Q. Criminal investigation?

25 A. Yes.

1 Q. How many agents work for that department, in the
2 state?

3 A. Approximately 60, I'm not sure.

4 Q. And they go through a lot of training, don't
5 they?

6 A. Yes.

7 Q. Probably more than your average police officer?

8 A. Yes.

9 Q. And you are telling me that those 10 agents, that
10 you had at your disposal, were not capable of
11 collecting evidence from a crime scene?

12 ATTORNEY FALLON: That's argumentative, the
13 question, did he have trained agents at his
14 available disposal? That's one question, but the
15 way the question is asked --

16 THE COURT: Well, I will ask you to
17 rephrase the question. I think what he's getting at
18 is relevant, but.

19 Q. (By Attorney Buting)~ Did you have -- Is it your
20 testimony that you had -- that those 10 agents
21 that you actually used, forget about the other 50
22 available somewhere in the state, but those 10
23 agents, are you telling me that they were not
24 capable, trained enough, to collect any evidence?

25 A. What I'm telling you is, a lot of the agents that

1 I had at my disposal were transferring evidence
2 to and from Madison, around Madison. Many of the
3 agents I utilized, I utilized for interview
4 purposes. Because DCI agents, in my estimation
5 at that time, would be better used to go out in
6 the field and do interviews because they're --

7 Q. Answer my question.

8 ATTORNEY BUTING: Judge --

9 A. I'm getting to it.

10 ATTORNEY BUTING: -- I would ask you to
11 direct the witness to answer my question.

12 ATTORNEY FALLON: If you would let the
13 witness finish his statement, you might get his
14 answer.

15 ATTORNEY BUTING: It's a simple question;
16 he can answer it, or he can say no.

17 THE COURT: Well, there is some ambiguity,
18 in trained to collect evidence. I have heard
19 references to evidence technicians who are
20 apparently trained in a special way to collect
21 certain types of evidence; and then there's other
22 officers who just collect evidence. So make your
23 question a little more specific, and then he can
24 answer it directly.

25 Q. (By Attorney Buting)~ As part of the training of

1 a police officer, you are trained to -- in crime
2 scene evidence searches, right?

3 A. Yes.

4 Q. All police officers go through that, do they not?

5 A. Yes.

6 Q. Every single one?

7 A. Yes.

8 Q. And they are taught how to avoid contaminating
9 evidence by touching it with their hands, or
10 smearing fingerprints, all of that sort of thing,
11 correct?

12 A. They are taught the basics.

13 Q. All right. And you had a hundred police officers
14 at your disposal that week, who would have that
15 training; isn't that right?

16 A. Yes.

17 Q. And then, some also have more specialized
18 training. Did they get some sort of certificate
19 that says they are an evidence collector, or
20 what?

21 A. When I went to the training, you got a
22 certificate that you attended and completed that
23 week long training.

24 Q. And you are a qualified evidence technician, are
25 you not?

1 A. I went to that training.

2 Q. Well, are you qualified to collect evidence, or
3 not?

4 A. I believe I'm qualified to collect certain
5 amounts of evidence, certainly.

6 Q. And during this week, isn't it true that you have
7 spent a total of 55 minutes in Mr. Avery's
8 trailer?

9 A. I don't know.

10 Q. Isn't it true that you never even entered his
11 trailer until November 10th, at 5:05 p.m., when
12 you did a brief walk through, looking for hacksaw
13 blades?

14 A. No.

15 Q. I'm sorry, isn't it true that's when you entered
16 the garage for the first time?

17 A. That may be true, yes.

18 Q. And isn't it true that the first time you entered
19 the residence of Mr. Avery, you personally, was
20 November 12th, at 8:20 a.m., and you left at
21 8:45 a.m., and seized some direct TV documents?

22 A. No.

23 Q. That's not true?

24 A. No.

25 Q. Well, what is true? You weren't there that day?

1 A. I was there that day, but that's not the first
2 day I was there.

3 Q. What's the first day you ever entered his
4 residence?

5 A. I believe Tuesday, when a key was found. We went
6 there and viewed that, entered the residence to
7 view that.

8 Q. Okay. And you just looked at what they found,
9 and left?

10 A. Essentially, yes.

11 Q. After that, the next time was this November 12th
12 date?

13 A. To actually go in the trailer, probably. I may
14 have been outside looking in. I know I was,
15 standing on the porch, looking in the door, but I
16 did not go in.

17 Q. And this November 12th, just so we're clear,
18 that's the day you released the whole property,
19 right?

20 A. Yes.

21 Q. That was a week later?

22 A. Yes.

23 Q. And did you ever collect any evidence from his
24 trailer?

25 A. I assisted in the collection of a small tin of

1 ashes. I didn't take it, but I assisted in that.

2 That was on Saturday, the 12th.

3 Q. So that was a week later?

4 A. Yes.

5 Q. Is Investigator Wiegert a trained evidence
6 collection, or at least as much as you are?

7 A. I don't know.

8 Q. Do you know how long or how many times
9 Investigator Wiegert went into Mr. Avery's
10 trailer?

11 A. No.

12 Q. So, out of that hundred police officers that you
13 had, that included the State Patrol, right?

14 A. Yes.

15 Q. State patrol has evidence collection teams, do
16 they not?

17 A. I don't know.

18 Q. Well, you utilized them in this case, right?

19 A. Yes.

20 Q. Did you ask whether they could provide any
21 assistance to you as evidence collection
22 technicians?

23 A. We wanted them for searchers and to identify
24 potential evidence, after which we would send
25 collection teams to take the evidence.

1 Q. Well, you just told us that you were strained for
2 resources, to collect evidence, isn't that what
3 you testified about earlier?

4 A. I would say that we were.

5 Q. Let's go into that. Did you ask any of the State
6 Patrol officers, that you were working with,
7 whether they were trained and capable evidence
8 technicians to collect evidence?

9 A. State patrol has no criminal authority and we
10 weren't going to use them to collect evidence.

11 Q. Did you ask them whether they had any --

12 A. No.

13 Q. -- experience? Okay. How about Calumet County
14 Sheriff's Department; how many officers did they
15 have who could collect evidence?

16 A. That we wanted to collect evidence?

17 Q. How many officers did they have, on their
18 department, who were capable of collecting
19 evidence?

20 A. I don't know.

21 Q. So, when you say you're strained and you didn't
22 have enough resources, it's because you didn't
23 even know what your resources were capable of
24 doing; is that it?

25 A. No, it's because we had a certain type of

1 individual that we wanted to collect the
2 evidence, that was trained, that had experience.

3 Q. Oh, you mean evidence people from Manitowoc
4 County Sheriff's Department?

5 A. Calumet, Manitowoc, Manitowoc City, Crime Lab.

6 Q. Well, in fact, you sent in Manitowoc County
7 officers to search Mr. Avery's residence?

8 A. Yes.

9 Q. After you knew that Manitowoc County had recused
10 themselves, or stepped down as the lead
11 investigators of this case, because of their
12 civil lawsuit that Mr. Avery had filed?

13 A. Absolutely.

14 Q. Did you decide to send Lieutenant Lenk into
15 Mr. Avery's apartment -- or trailer?

16 A. Whether it was me personally, or a combined
17 decision with Investigator Wiegert, I'm not sure.

18 Q. But between the two of you, you had made that
19 decision to send Lieutenant Lenk in?

20 A. Yes.

21 Q. And to send Sergeant Colborn in?

22 A. Yes.

23 Q. Did you know, at that time, that Lieutenant Lenk
24 had been deposed as a witness in the 36 million
25 dollar lawsuit that Mr. Avery had filed just

1 three weeks earlier?

2 A. No.

3 ATTORNEY FALLON: Objection, relevance.

4 This line is irrelevant.

5 ATTORNEY BUTING: He brought it up on
6 direct examination. He asked about the decision
7 making and who and why he decided to bring people
8 in. I'm entitled to cross-examine him on that.

9 ATTORNEY FALLON: The question, there was a
10 civil lawsuit pending, has little to do with the
11 collection of the evidence.

12 THE COURT: I don't know that to this
13 motion it has much probative value, but if -- there
14 were a few questions on direct, so I will allow a
15 few on cross.

16 ATTORNEY BUTING: Thank you, Judge.

17 Q. (By Attorney Buting)~ So you did not know, at
18 that time, that Lieutenant Lenk had been deposed
19 as a witness in this lawsuit?

20 A. No, I didn't.

21 Q. He did not tell you?

22 A. No.

23 Q. And did you know that Sergeant Colborn had also
24 been a witness, deposed in Mr. Avery's lawsuit,
25 just three weeks before you sent him into his

1 house to search?

2 A. No.

3 Q. Sergeant Colburn didn't tell you that either, did
4 he?

5 A. No.

6 Q. And if you had known that, would you have sent
7 those two officers into his house to search?

8 ATTORNEY FALLON: Objection, speculation,
9 relevance, argumentative.

10 THE COURT: For purposes of this hearing,
11 on this motion, I will sustain the objection.

12 Q. (By Attorney Buting)~ Now, Sergeant Colburn is
13 just a patrol supervisor, right?

14 A. To my knowledge.

15 Q. He is not a detective, right?

16 A. Correct.

17 Q. And yet you put him into a team to go search
18 Mr. Avery's residence, right?

19 A. To my knowledge, he has had experience and
20 training in evidence collection.

21 Q. Using this patrol supervisor as a benchmark, how
22 many other officers were that qualified to also
23 have gone in and searched for, or collect
24 evidence? Strike that search for, let's just
25 leave it with collect evidence.

1 A. How many other officers would have been qualified
2 to search for evidence?

3 Q. No, to collect it.

4 A. To collect it. That determination was made on
5 their experience and training, not whether they
6 were a road sergeant, not whether they were a
7 trooper, not whether they were a special agent.

8 Q. How many of these 100 officers had sufficient
9 training to collect evidence at a crime scene?

10 A. I don't know.

11 Q. Why do you not know?

12 A. I wasn't directly involved in that decision, when
13 they put the teams together, to determine who was
14 going to be on those teams.

15 Q. You said you were a co-leader.

16 A. Yes.

17 Q. Of this entire investigation, right?

18 A. Yes.

19 Q. And you just told us -- or tried to explain why
20 it took so long was because you didn't have
21 enough resources, right?

22 A. At times, yes.

23 Q. Is it your testimony, then, that you did not even
24 ask these 100 officers, what degree of training
25 they had, to see whether -- how many of them

1 might have actually been able and capable of
2 collecting evidence?

3 A. I don't know. For example, the first night, I
4 was assigned with the Crime Lab and the wrecker
5 operator, to go down and secure the RAV 4.
6 During that period of time, Mark was up --
7 Investigator Wiegert was up at the command post
8 organizing the evidence collection team. So,
9 him, along with Lieutenants Bowe and Sippel,
10 would have been more involved in a specific
11 detail of organizing and putting together those
12 teams.

13 Q. All right. So you don't really know then, you
14 would have to correct your testimony -- prior
15 testimony -- about whether you had any personal
16 knowledge of how much resources you did or didn't
17 have, from law enforcement, who could have
18 collected evidence?

19 A. I don't know if I have to correct my testimony.
20 I'm looking at what happened when teams were put
21 together. I mean, I'm in that command post, and
22 if there's officers that had had training, I
23 would anticipate that they would have come
24 forward and told us that they had training. My
25 assumption was that we had the people who had the

1 training experience, that we wanted to do that
2 task.

3 Q. How many teams did you have -- did you actually
4 put together? How many different teams did you
5 put together to search? Let's just talk about
6 the buildings on that property.

7 A. Again, if we're talking search teams, or teams
8 that were going in to collect evidence, these are
9 two different things, in my mind. My evidence
10 collection teams, to my knowledge, there were two
11 primary teams earlier in the week, a third team
12 if you count the Crime Laboratory.

13 And then, when we started processing the
14 bones and the burn pit area, it would have been
15 our arson guys, DCI arson guys, along with
16 someone collecting it from Calumet County.

17 Q. So how many of those -- You say your arson guys,
18 those are DCI agents who are trained to collect
19 evidence?

20 A. They are arson investigators and they collect
21 evidence related to arson, so I would imagine,
22 yes, they are trained and experienced in that
23 field.

24 Q. And how many of them were on the scene?

25 A. This would have been mid-weekish, probably, when

1 we had them come, had upwards of probably four or
2 five, at any given moment, four maybe.

3 Q. All right. You said you had the Manitowoc City
4 Police out there at the scene as well, right?

5 A. On Sunday, for sure.

6 Q. All right. How many officers from that
7 department did you use?

8 A. For evidence collection, I think two.

9 Q. So there were evidence collectors qualified, and
10 employed, and working for the Manitowoc City
11 Police?

12 A. Yes.

13 Q. And you had them out there on the scene?

14 A. Yes.

15 Q. What about Two Rivers Police Department, did they
16 have any trained evidence collection people?

17 A. I don't know.

18 Q. Did you bring any of them out to the scene?

19 A. I think they may have had some personnel out
20 there; in what capacity they acted, I'm not sure.

21 Q. Did you ever ask any of these law enforcement
22 departments who had come to your aid and
23 assistance, if they would have some evidence
24 collection teams that they could assist you --
25 that they could loan you and give you to work on

1 this case?

2 A. Yes, I went out and obtained the Grand Chute
3 evidence technician to come over.

4 Q. But you didn't ask that of Two Rivers; is that
5 what you're saying?

6 A. No, not me personally.

7 Q. And what about Mishicot Police, were also there?

8 A. I don't know.

9 Q. You mentioned some other police departments from
10 Calumet County?

11 A. Some of the small police departments there
12 allowed us to use personnel, I believe, but that
13 was mainly for perimeter and scene security, and
14 stuff like that.

15 Q. You said this was the most comprehensive, biggest
16 search you had ever done, right?

17 A. Yes.

18 Q. Did you ever go to your supervisor, call your
19 supervisor and say, hey, I need more evidence
20 collectors out here, give me everybody you've
21 got?

22 A. We talked about it.

23 Q. Did you ever ask for it?

24 A. She said I could have the personnel that I had
25 needed, I mean within reason.

1 Q. All right. You basically had the whole
2 department, within reason, at your disposal,
3 right?

4 A. Right. And I took what I could get.

5 Q. So, in truth, you had plenty of officers capable?

6 A. If you want to take officers off of scenes, off
7 of other searches, yeah. But those things had to
8 be done too. Interviews had to be done. It's
9 not that these officers were all sitting around
10 in a carton of eggs, waiting to be used. They
11 were being utilized in other areas.

12 Q. I understand that. And I'm not criticizing that.
13 But what I'm questioning you about, though, is
14 you have a search warrant that commands you to,
15 forthwith, search these places. You don't have
16 all day, or all week, or whatever. You don't
17 have an unlimited time to execute that warrant;
18 isn't that right?

19 A. Yes.

20 Q. You know that when the judge says you can go onto
21 someone's property, and go into their house and
22 search, you are to do that with all due dispatch,
23 right?

24 A. Correct.

25 Q. That's a priority?

1 A. Yes.

2 Q. And that if you have officers available to assist
3 you and do that, you should do that, right?

4 A. I believe I did.

5 Q. Mr. Avery's trailer, Mr. Steven Avery's trailer,
6 can you tell me about how big that is?

7 A. Kitchen, living room, hallway, bedroom, bathroom,
8 another bedroom, all average size.

9 Q. It's a single width trailer, right?

10 A. Yes, I believe so.

11 Q. It's not a double-wide, right?

12 A. Probably 12 to 14 feet wide.

13 Q. Okay. And maybe, what, 30 feet long?

14 A. No, probably longer than that.

15 Q. Forty, maybe; does that sound fair?

16 A. Forty, fifty feet, I'm not sure.

17 Q. But it's a regular common size house trailer?

18 A. Yeah, what you would commonly associate with a
19 house trailer.

20 Q. On the evening of November 5th, you had 4 trained
21 police officers going through Mr. Avery's
22 trailer, for 2 1/2, 3 hours, right?

23 A. Yes.

24 Q. And you had no concern about the capabilities of
25 that team of officers, to collect and seize any

1 evidence, right?

2 A. Other than what I mentioned on direct.

3 Q. What?

4 A. Other than what I mentioned on direct.

5 Q. I'm sorry. I don't know what you are referring
6 to?

7 A. Lighting conditions, weather conditions,
8 exhaustion.

9 Q. Well, did any of them tell you they were
10 exhausted?

11 A. Independent recollection, I don't remember.

12 Q. Okay. But, so to your knowledge, none of those,
13 Lenk, Colburn, Remiker, or --

14 A. Tyson.

15 Q. -- or Tyson, came to you and said, Hey, boss, I'm
16 beat; I'm just exhausted; I have to quit for the
17 night?

18 A. When they were done, yes. At 10, 10:30, whatever
19 time they cleared that.

20 Q. Did anybody of them ever come up to you and say,
21 we just got to quit, we're just too tired?

22 A. Did they ever say that, no.

23 Q. All right. This Steven Avery trailer had no
24 attic, did it?

25 A. No.

1 Q. Had no basement?

2 A. There may have been a crawl area, crawl space,
3 but I'm not sure.

4 Q. Okay. So if we take the dimensions of about
5 14 feet wide, by 50, that's maybe 700 square
6 feet?

7 A. If you say so.

8 Q. That's a really small area for a search, isn't
9 it?

10 A. Depends what you are looking for.

11 Q. Well, by Saturday, November 5th, you had cadaver
12 dogs on that property, didn't you?

13 A. Yes.

14 Q. You were searching not only for Teresa alive, you
15 also were contemplating the possibility she was
16 not alive, right?

17 A. Correct.

18 Q. So your investigation, in part, was a potential
19 homicide investigation, even then, was it not?

20 A. Yes.

21 Q. Did you ever take any of those cadaver dogs into
22 Mr. Avery's trailer?

23 A. Yes.

24 Q. And did the dog alert on any part of his trailer?
25 He did not, did he?

1 A. I don't believe so.

2 Q. And you said the dogs were kind of all over the
3 property, right?

4 A. Yes.

5 Q. This was Saturday, November 5th?

6 A. I was aware, because I was with one dog, where we
7 went, and I know that there were some other dogs
8 that swept through the buildings, and I believe
9 they were then utilized to sweep through the
10 salvage yard.

11 Q. Okay. And because you were a co-leader, you
12 would be told if there were any areas where these
13 dogs were alerted?

14 A. Myself or Investigator Wiegert.

15 Q. Okay. And the whole purpose of these dogs is
16 that they are trained to be able to -- I don't
17 know whether it's scent, or whatever training it
18 is, but they can assist in locating blood, as
19 well as deceased bodies?

20 A. The theory -- Yeah, the theory is, human blood or
21 cadavers.

22 Q. And I think you used the dogs only that one day,
23 Saturday?

24 A. No.

25 Q. You used them throughout the?

1 A. They were brought back on other occasions, along
2 with bloodhound.

3 Q. And isn't it true, that none of those dogs ever
4 alerted on a burn pit, behind Mr. Avery's
5 detached garage?

6 ATTORNEY FALLON: Objection, relevance.

7 THE COURT: Mr. Buting.

8 ATTORNEY BUTING: He's talking about
9 ability to search, and where to search, and what his
10 resources are, and he brought up the dogs on direct.

11 THE COURT: Mr. Fallon?

12 ATTORNEY FALLON: Just because -- I don't
13 see how that's relevant to the multiple execution
14 theory or the resource issue. The fact that they
15 used dogs, yes, that's admitted, they used dogs. So
16 what. Whether the dog hit on the burn pit or not,
17 how does that add to the -- why does that make
18 something more probative, more relevant, more
19 material?

20 ATTORNEY BUTING: Then why were we bringing
21 it up in the first place. It's a resource issue
22 that I can explore on cross-examination.

23 THE COURT: It's a resource that he used
24 the dogs. And the questions about how often he used
25 them and what they were used for, is fine. But

1 whether or not he hit on this particular case,
2 again, that's an issue that may be highly relevant
3 for the trial, but I don't think it's particularly
4 probative on this motion. So, I'm sustaining the
5 objection.

6 Q. (By Attorney Buting)~ Let me ask it this way.
7 When the dogs would alert on something, that
8 would cause you to devote some resources, you or
9 Wiegert, to devote some police resources to then
10 start searching, right?

11 A. Certainly.

12 Q. And that would, potentially, include evidence
13 collection officers if, upon search, they found
14 something that looked like it was of evidentiary
15 value, right?

16 A. Yes.

17 Q. And you talked about, for instance, a suspected
18 clandestine grave site, right?

19 A. Yes.

20 Q. The dogs alerted on that?

21 A. Yes.

22 Q. And you took a team over and you spent some time
23 working on that?

24 A. Yes.

25 Q. And it ended up being -- In fact, you were very

1 seriously thinking that this was potentially a
2 new grave site and that Teresa's body might even
3 be in there, right?

4 A. Yes.

5 Q. So you pulled a bunch of people over there to go
6 look at it?

7 A. To deal with it, yes.

8 Q. Okay. And then it ultimately determined -- was
9 determined to be nothing of value, correct?

10 A. Correct.

11 Q. So tell me, during that week, did you have to
12 take your resources, your evidence collection
13 team, to the burn pit behind Mr. Avery's garage,
14 before November 8th? On the 5th, 6th, or the
15 7th, did you have to take an evidence collection
16 team to the burn pit behind Mr. Avery's garage,
17 because a dog had alerted?

18 A. No.

19 Q. Thank you. Let me go back for just a minute. We
20 were talking about search warrants you could have
21 gotten. One of the search warrants you did get
22 was for Mr. Avery's computer, right?

23 A. Yes.

24 Q. You believed at that time that the original
25 warrant was not sufficient to allow you to seize

1 the computer; is that why you went back?

2 ATTORNEY FALLON: Objection,
3 mischaracterization. He's already testified it was
4 not his decision to seek a renewal of the warrant.

5 ATTORNEY BUTING: This is not a renewal.
6 This is a different warrant.

7 ATTORNEY FALLON: I'm sorry, is this the
8 November 9th or --

9 ATTORNEY BUTING: No, this is the computer.

10 ATTORNEY FALLON: Oh, I'm sorry, then I
11 withdraw it.

12 THE COURT: I will allow the question.

13 ATTORNEY BUTING: Could you read it back,
14 please.

15 (Last question read back.)

16 A. I would have to speculate. I don't think I was
17 involved in that decision, as it related to the
18 computer.

19 Q. Who was?

20 A. I would believe Investigator Wiegert, as the
21 other co-lead investigator, probably dealt with
22 that.

23 Q. Did you ever see the affidavit, the application
24 for that warrant?

25 A. Yes.

1 Q. And that included -- I mean, that was a warrant
2 to permit a specific search within Mr. Avery's
3 residence, right? Specific item?

4 A. I have seen it, but I don't really remember.
5 There's a warrant to seize the computer, I
6 imagine, and to search said computer.

7 Q. And there would have been nothing to prevent you
8 or Investigator Wiegert, to, at that same time,
9 seek an additional warrant to allow you to search
10 his trailer?

11 A. I imagine.

12 Q. And that was November 7th?

13 A. Seventh or eighth. Obtained on the seventh?

14 Q. I believe so.

15 A. Okay. And served on the 8th, I believe, yes.

16 Q. These checkpoints that were set up were
17 maintained either in their original spot, or in
18 some similar close area, for the entire week of
19 November 5th to the 12th, right?

20 A. Yes.

21 Q. Around the clock, correct?

22 A. Yes.

23 Q. Did you have a guard stationed outside
24 Mr. Avery's trailer, around the clock, for the
25 entire week?

1 A. I believe there was. Again, that would be more a
2 question to the Lieutenants, Sippel or Bowe.
3 Partly from the fact that that was one of the
4 corners of the property so, ultimately, there was
5 someone there from almost minute one, because
6 they had someone on each corner of that scene.

7 Q. So you had no concern about the -- somebody -- or
8 somehow the scene being compromised while you
9 went off to go get an additional warrant; that
10 wouldn't have been a concern, would it?

11 A. That's correct.

12 Q. When I say additional warrant, I mean an
13 additional -- potential, additional warrant for
14 Mr. Avery's residence or garage?

15 A. Correct.

16 Q. You also got telephone search warrants, telephone
17 record search warrants?

18 A. Subpoenas and search warrants, yes.

19 Q. And DNA?

20 A. Telephone records.

21 Q. Right, telephone records. And DNA search
22 warrants?

23 A. Yes.

24 Q. Seeking -- In other words, requiring individuals
25 to submit to examinations for DNA samples and all

1 of that?

2 A. Yes.

3 Q. Now, on November 9th -- I'm sorry, November 5th,
4 6th, 7th, 8th and 9th, you permitted or, indeed,
5 instructed Manitowoc Sheriff Department officers
6 to go in and out of Mr. Avery's residence, right?

7 A. Yes.

8 Q. But after that second warrant was obtained, at
9 4:40 p.m., November 9th, suddenly for the
10 remaining three days, no Manitowoc officers were
11 allowed to go into Mr. Avery's residence, or
12 directed to go into Mr. Avery's residence?

13 A. I don't know, if it wasn't.

14 Q. You wouldn't dispute that, that there was --
15 that, in fact, after a second warrant was
16 obtained, you no longer had any Manitowoc
17 officers go into his residence?

18 A. Do I not -- No, I don't dispute that.

19 Q. Did something happen? Were you -- Somebody tell
20 you, Hey, maybe we better stop using Manitowoc to
21 go into his office -- or his residence?

22 A. Not that I recall.

23 Q. Did you and Investigator Wiegert ever talk about
24 it and say, Hey, maybe we better stop using the
25 Manitowoc Sheriff people to go into Mr. Avery's

1 residence?

2 A. No.

3 Q. This rain that occurred on November 5th, what
4 time did that start?

5 A. There was an initial lighter rain, which would
6 have been in the afternoon, between 3 and 4, some
7 time. Then it bypassed, or stopped for a while,
8 and I can't tell you when exactly it started at
9 this time. Probably toward dark, after dark,
10 right in there.

11 Q. Now, there was nothing to stop your searchers
12 from searching the buildings while it's raining
13 outside, correct?

14 A. Correct.

15 Q. And you know, Mr. Avery's residence and garage
16 weren't leaking rain -- or leaking water during
17 the rain or anything of that sort, right?

18 A. Right.

19 Q. So, you can't say that the rain somehow prevented
20 your searchers from completing their search of
21 Mr. Avery's residence that night, can you?

22 A. I factored it as a condition, when I'm
23 determining whether or not I felt that search was
24 adequately done and complete.

25 Number one, it's darker when it's

1 overcast and raining.

2 Number two, it's affecting -- I mean,
3 there's wet, people going in and out of the
4 trailer are bringing in wetness and stuff. I
5 factored it.

6 Q. Well, the officers that you sent in there, or you
7 and Wiegert sent in there, the four officers,
8 into this little 700 square foot trailer, stayed
9 in that trailer for 2 1/2 hours; they didn't come
10 in and out, did they?

11 A. I don't know. If they had to go out to their
12 vehicle to get collection devices, or storage
13 things, I don't know.

14 Q. Well, indeed, the fact that it was raining, would
15 have been a benefit to you, to assist you to --
16 or to allow you to more quickly complete the
17 searches of the buildings, because you could use
18 all of your officers in those buildings, instead
19 of spread out over 40 acres; isn't that right?

20 A. That evening, that's correct. We didn't have a
21 lot of officers that evening.

22 Q. Well, how many officers did you have that
23 evening? This is the first day that this thing
24 is discovered, right?

25 A. Yes.

1 Q. You had helicopters flying over, doing aerial
2 flyovers, right?

3 A. I think so, I'm not sure.

4 Q. You had officers coming in on their days off,
5 right?

6 A. Yes.

7 Q. This was big news. We got this vehicle here.
8 We're going at it, right?

9 A. Whatever officers we could get in that amount of
10 time, we got, yes. Some were sent up to
11 Marinette, some were out doing interviews that
12 were important to do, and some were there.

13 Q. And were some also assigned to search the shop?

14 A. At some time during this search, yes.

15 Q. Were there other teams, on that night of November
16 5th, available to search Mr. Avery's residence,
17 other than the three Manitowoc officers you chose
18 to put in there?

19 A. My answer would be speculative, and it would be,
20 no. I was busy down in the pit. The decision
21 would have been made by Mark -- or Investigator
22 Wiegert that night. I knew our resources, our
23 personnel, were not that many, so my answer would
24 be, yes, it's speculation.

25 Q. So then your focus at the beginning was on

1 Mr. Avery's residence, of all those buildings,
2 that was your initial focus?

3 A. Yes.

4 Q. That's where you wanted to send the team in,
5 right?

6 A. That's where we started.

7 Q. And it was important for to you find -- At that
8 point, you were certainly considering this to be
9 a homicide investigation, potentially?

10 A. We were thinking dirty.

11 Q. Okay. That's a yes, is it not?

12 A. Yes.

13 Q. Okay. And so those officers were sent in there
14 to look for any possible evidence, including
15 trace evidence, that might indicate that Teresa
16 Halbach was killed in that trailer?

17 A. Certainly.

18 Q. And they did, in fact, seize trace evidence,
19 didn't they?

20 A. Yes.

21 Q. And they did, in fact, get down on their hands
22 and knees and use lint rollers, and swab stains
23 off of the floor, and all of that, didn't they?

24 A. Whether they got down on hands and knees, I don't
25 know, but I would assume, yes.

1 Q. And when the Crime Lab told you that they thought
2 there was maybe some other trace evidence that
3 might be worth searching, or seizing, you didn't
4 go and get a warrant on that basis, did you?

5 A. No.

6 Q. Nothing would have prevented you from going to a
7 judge and saying, Hey, now I have got some
8 additional evidence I can present to you. Crime
9 Lab has gone in with their expertise and they
10 found this spot or that spot, that should be
11 seized?

12 ATTORNEY FALLON: Objection, asked and
13 answered.

14 THE COURT: I don't recall if that specific
15 question has been asked and answered. I will allow
16 it.

17 A. No, nothing would have prevented that, other than
18 I was still holding that scene.

19 Q. Now, you mentioned that as part of this
20 intelligence and information you were getting,
21 you specifically mentioned that Mr. Avery's
22 story, initial story, was somehow inconsistent?

23 A. Yes.

24 Q. Give me examples of that, at that point I'm
25 talking about. Give me examples of what was

1 inconsistent about his story.

2 ATTORNEY FALLON: Objection, foundational,
3 relevance.

4 ATTORNEY BUTING: He's saying as part of
5 his decision making, it's taking --

6 THE COURT: The objection is overruled.
7 That was given as one explanation for the actions of
8 the witness, so I will allow the question.

9 A. Steven Avery's initial statement to, I believe
10 Investigator -- or Sergeant Colborn, was that he
11 never left his trailer, and that Teresa Halbach
12 never came up to the trailer, he never spoke with
13 Teresa Halbach.

14 Ultimately, we received information that
15 Teresa Halbach was seen walking up to his
16 trailer. We received information later,
17 obviously, that he did talk to her.

18 Q. So you are saying, in his initial story, he said
19 he never talked to her?

20 A. His initial statement to Sergeant Colborn was
21 that he never spoke with Teresa Halbach. He
22 never left the trailer. He watched her out of
23 the window, of the trailer.

24 Q. Okay. And some subsequent information was
25 that -- I'm sorry, you said someone saw her

1 walking up --

2 A. Subsequent interviews indicated that she was seen
3 walking from her vehicle up to the trailer, and
4 then that individual lost sight of her, and then
5 when he went outside, she was gone, and the
6 vehicle was still there.

7 Q. Who was this?

8 A. Bobby Dassey.

9 Q. Okay. And Bobby Dassey at one point was a
10 possible suspect too, wasn't he?

11 ATTORNEY FALLON: Objection, relevance.

12 THE COURT: Sustained.

13 Q. (By Attorney Buting)~ On November 5th, when you
14 got there, you said it was around 2 o'clock?

15 A. Yes.

16 Q. And you directed -- You drove down to the
17 southeast corner of the property where the RAV 4
18 was located?

19 A. By the car crusher, yes.

20 Q. And did you walk over to the RAV 4?

21 A. No, I viewed it from that distance, at that time.

22 Q. At some point, did you walk over to the RAV 4?

23 A. Yes.

24 Q. I believe you said you looked inside with a
25 flashlight.

1 A. Yes.

2 Q. You were looking for -- to see if anybody was in
3 there?

4 A. Yes.

5 Q. Did you see any blood?

6 A. No.

7 Q. Did you check the doors?

8 A. No.

9 Q. Did you touch it at all?

10 A. No.

11 Q. You put a tarp over it?

12 A. Yes.

13 Q. How long was that tarp on there?

14 A. No more than a half hour, probably.

15 Q. Do you know whether the tarp was on there when
16 there were flyovers?

17 A. I don't know.

18 ATTORNEY BUTING: I have no other
19 questions at this time.

20 THE COURT: All right. We'll take our
21 lunch break at this time, and resume at 1:15.

22 (Noon recess taken.)

23 THE COURT: At this time we'll go back on
24 the record. Mr. Fassbender, you are still under
25 oath, and I believe Mr. Fallon is up for his

1 redirect.

2 ATTORNEY FALLON: Right, just a couple
3 questions.

4 **REDIRECT EXAMINATION**

5 BY ATTORNEY FALLON:

6 Q. Now, as far as you know, in terms of utilizing
7 personnel from other jurisdictions, Kucharski,
8 Tyson, and Riemer are from Calumet County
9 Sheriffs Office?

10 A. Yes.

11 Q. And they were placed on the evidence collection
12 teams because they are evidence technicians?

13 A. Yes.

14 Q. Now, in terms of the Division of Criminal
15 Investigation and the Wisconsin Department of
16 Justice, in cases of homicides or other major
17 offenses, the Crime Lab is, in fact, the evidence
18 technicians or evidence collectors in those types
19 of cases?

20 A. Yes. If I go to a homicide, I get called to a
21 homicide, our evidence techs are the Crime Lab,
22 that's who we take.

23 ATTORNEY FALLON: That's all I have for
24 this witness.

25 THE COURT: All right, anything else?

1 ATTORNEY BUTING: No questions.

2 THE COURT: Witness is excused.

3 ATTORNEY FALLON: State at this time would
4 call Lieutenant Kelly Sippel.

5 THE COURT: Very well.

6 THE CLERK: Please raise your right hand.

7 **LIEUTENANT KELLY SIPPEL**, called as a
8 witness herein, having been first duly sworn, was
9 examined and testified as follows:

10 THE CLERK: Please be seated. Please state
11 your name, spell your last name for the record.

12 THE WITNESS: Kelly Sippel, S-i-p-p-e-l.

13 THE COURT: Counsel, before we proceed, is
14 everybody in compliance with the sequestration
15 arrangement here? Are there any other --

16 ATTORNEY FALLON: Yes, I only have one
17 other witness and I believe he is out in the hall.

18 THE COURT: Okay.

19 **DIRECT EXAMINATION**

20 BY ATTORNEY FALLON:

21 Q. Where are you employed?

22 A. Calumet County Sheriff's Department.

23 Q. How long have you been employed?

24 A. Since October 21st, 1981.

25 Q. What rank do you currently hold?

1 A. Lieutenant.

2 Q. How long have you been a lieutenant?

3 A. Since '94.

4 Q. All right. Prior to that, what duties or rank
5 had you held?

6 A. Patrol officer, patrol duties, related to street
7 level activities.

8 ATTORNEY BUTING: Judge, can I interrupt
9 for one second?

10 THE COURT: Yes.

11 ATTORNEY BUTING: With regard to
12 sequestration, I see that Investigator Wiegert is in
13 back. I understand the State is not intending to
14 call him; however, there may still be a possibility
15 I would -- It's unlikely, but it's still possible I
16 might call him after this, and I would ask that he
17 be sequestered.

18 ATTORNEY FALLON: I can ask him to leave.
19 He's right, I wasn't going to call him.

20 THE COURT: Mr. Wiegert, we'll ask you to
21 leave the courtroom then.

22 Q. (By Attorney Fallon)~ Directing your attention to
23 the events of November 5th, 2005, were you called
24 upon to assist in the execution of a search
25 warrant at the Avery property, located here in

1 Manitowoc County?

2 A. Yes, I was.

3 Q. All right. Approximately what time did you first
4 arrive upon the scene?

5 A. About 3:20 p.m., on the 5th.

6 Q. What were your duties?

7 A. Upon arriving at the scene, I was initially put
8 with two other Manitowoc County investigators to
9 assist in doing a sweep of the buildings on the
10 property, in an attempt to locate the potential
11 victim and/or other civilians that still may be
12 on the property, to secure them off the property.

13 Q. All right. And how long did that particular duty
14 take you, estimated time?

15 A. That went until about 5:30, 5:40 in the evening,
16 on the 5th.

17 Q. All right. And once those duties were completed,
18 what was your next assignment relative to the
19 execution of the warrant?

20 A. At that point in time, I began to contact
21 additional officers and staff from our
22 department, in an attempt to secure and lock down
23 the property, and start initiating shifts for the
24 upcoming hours.

25 Q. All right. And so would it be fair to say that

1 you were assigned, or in charge of perimeter
2 security?

3 A. That would be correct, of the inner perimeter.

4 Q. All right. Just so that we're clear, what would
5 be the inner perimeter; first directing your
6 attention to Exhibit 18, which is on the easel
7 resting on the jury box?

8 A. We took the inner perimeter utilizing the roadway
9 at the top of the map. If you would like I can
10 go over.

11 Q. You can have that, I think we have a laser
12 pointer there for you.

13 A. Above this roadway, there is a fence line located
14 here.

15 Q. And you're pointing to the roadway which goes
16 east, west across --

17 A. Travels east and west, due north would be to the
18 top of the photograph.

19 Q. All right.

20 A. We also had the roadway here, but we had another
21 fence line or berm, a property divider,
22 basically.

23 Q. Now, you are referring to the east?

24 A. East.

25 Q. East of the property.

1 A. And then the western half of the property, there
2 was another berm, and beyond that berm, it went
3 into some open gravel pit areas. And pretty much
4 the same across the bottom half of the property
5 here. And then we made a containment within this
6 general area.

7 Q. All right. Now, briefly, if I may direct your
8 attention to Exhibit 19, which is behind you.
9 And can you locate Exhibit 18, within the
10 confines of Exhibit 19?

11 A. This would be the property in question right
12 here.

13 Q. All right. Now, in terms of the perimeter
14 security here, starting Saturday night, what
15 efforts did you undertake?

16 A. Prior to my arrival on the 5th, the vehicle had
17 been located in this lower southeast quadrant of
18 the property. We had assigned a deputy to stay
19 at this location during the processing and the
20 removal of that vehicle.

21 We also had about -- I believe it was
22 around 1:30 in the afternoon, they had assigned
23 an officer to stay in this quadrant of the
24 property, in regards to the buildings here. That
25 officer was relieved at about 1430 hours by

1 another officer. And then --

2 Q. I'm going to stop you right there. The last
3 quadrant, that would be the northwest quadrant?

4 A. This would be the northwest corner of the
5 property.

6 Q. All right. That's the area for which Mr. Avery's
7 trailer, and garage, and his sister, Barbara's,
8 residences are located?

9 A. That would be correct.

10 Q. All right. Please continue, you said after that
11 area.

12 A. I had -- At this point, we had set up a command
13 post at the intersection here, coming off of
14 Avery Road and where these two roads come off of
15 that, heading south. And at approximately 7 or 8
16 o'clock in the evening, a sergeant from the
17 Manitowoc County Sheriff's Department informed me
18 of the area located in the southwest quadrant,
19 that vehicular traffic may be able to get into
20 the property.

21 Q. All right. Now, you just pointed to Exhibit 19,
22 so you are referencing what would be the
23 southwest corner of the property?

24 A. That's correct.

25 Q. All right. Once you learned that, what steps did

1 you take?

2 A. Both him and I, then, went around to that, to
3 take a look at what kind of access or easement
4 there would be into this particular area, and
5 determined that the vehicular access would
6 basically incur in this corner. At that point in
7 time, we made arrangements to cover that corner,
8 as well, with an officer.

9 Q. All right. And when you covered the area with an
10 officer, can you tell us what you meant by that?

11 A. We placed -- We were able to place a patrol
12 officer at that location for the remainder of the
13 week, 24/7.

14 Q. All right. Now, if I may, for a moment,
15 Exhibit 18 is a photograph with a flight date of
16 November 11th. I draw your attention, first of
17 all, to this corner, on the southwest side. Do
18 you recognize what is depicted there?

19 A. Yeah, this would be one of the units or patrol
20 vehicle that we used for staffing that corner.

21 Q. Now, is that -- would that be a typical location
22 where a perimeter security was set up for that
23 southwest corner?

24 A. That is correct. There was -- there is a -- this
25 line that you see here is an old rail, overhead

1 rail.

2 Q. Yes.

3 A. The unit would either be on one side, or the
4 other side, of that rail.

5 Q. Now, with respect to the upper quadrant, there is
6 a vehicle, which is depicted right here,
7 underneath the sign, Plymouth Voyager?

8 A. That's correct.

9 Q. Or the arrow points elsewhere, what is that
10 vehicle?

11 A. That is also a patrol unit that was used. Those
12 cars change periodically depending upon who was
13 covering that corner. But during the day we
14 would have the officer back up and allow the
15 investigators to do their work throughout this
16 area. Then at night we would move that patrol
17 car closer into the buildings, in about this area
18 here.

19 Q. All right. So, you are pointing to an area which
20 is directly in front of the residence of Steven
21 Avery, the garage; is that correct?

22 A. That's correct.

23 Q. All right. Now, how about in the southeast
24 corner, were there evidence of -- on this
25 photograph, for instance -- where it's

1 exemplifying perimeter security placement?

2 A. That's correct. We have a patrol car located
3 right here. This car would utilize this corridor
4 through here, through the day, and through the
5 evening, to cover this berm area.

6 This is a area that goes up, be
7 estimating 60 feet, an upward climb, basically,
8 to a hay field. And there was a bit of berm back
9 here. And he was -- he or she was able to cover
10 this corner and watch those berms.

11 Q. All right.

12 A. At night, the first two days, we actually had
13 that lit even.

14 ATTORNEY BUTING: Could we just let the
15 record reflect that when he was pointing to the
16 southeast corner, talking about a berm along the
17 south edge of the property; where were you talking?

18 THE WITNESS: There's two berms. There's a
19 higher berm of approximately 60 feet or better,
20 located along this edge. And then there's a
21 shallower --

22 ATTORNEY BUTING: This edge being the
23 eastern edge?

24 THE WITNESS: That would be the eastern
25 edge.

1 ATTORNEY BUTING: Okay.

2 THE WITNESS: And then along this southern
3 edge here, there is another berm that goes up
4 approximately anywhere from -- it varies, you know,
5 10, 15, 20 feet and then drops down into another
6 quarry, an actual old gravel or sand pit quarry.

7 ATTORNEY BUTING: That's fine.

8 ATTORNEY FALLON: Thank you.

9 Q. (By Attorney Fallon)~ All right. And in terms of
10 the northeast corner, what was happening there?

11 A. The northeast corner, on Saturday, the 5th, right
12 about in this area, we had a command post set up.

13 Q. Just for identification purposes, that's an area
14 to the right of the exhibit sticker and slightly
15 north --

16 A. Yeah.

17 Q. -- of the number three?

18 A. It would be just adjacent to the number three.
19 You can just kind of catch it on the photograph,
20 where we had the command post.

21 Q. All right. And now, in terms of perimeter
22 security, were there any other command post
23 locations, or anything that were -- that you
24 utilized?

25 A. Saturday we, and in through Saturday evening, we

1 utilized this command post. And Sunday morning
2 the Calumet County Sheriff's Department brought
3 in our own command post and we reorganized at
4 this location here, utilizing this command post
5 for the investigators, and this command post
6 became command security, basically, for the
7 property.

8 Q. All right. Would you put your initials on that
9 particular -- All right. Thank you. And you put
10 your initials -- For the record, what initials
11 did you put on there?

12 A. K.S.

13 Q. K.S. Thank you. All right. Now, in terms of
14 the perimeter security here, who else, if anyone,
15 assisted you in performing those duties?

16 A. The interior perimeter was pretty much maintained
17 by employees of the sheriff's department, with
18 assistance from various other agencies when we
19 couldn't fill staffing gaps. Basically, we had
20 to rely on other municipal agencies to assist us
21 on that, on the inner perimeter.

22 Referring to the map behind me, the
23 exterior perimeter, being the highway and the
24 roadways around the adjacent acreage, was
25 maintained by the Wisconsin State Patrol and

1 managed by the State Patrol. And they were also
2 assisted by various sheriff's departments and
3 municipal agencies.

4 Q. All right. Now, in terms of returning then,
5 again, to Exhibit 18, these postings on the four
6 corners of the property, was there always a car
7 there during the course of the week long
8 occupation of the property?

9 A. That is correct.

10 Q. All right. And during the course of the week,
11 were any artificial lights or anything used
12 during the evening hours to assist in keeping an
13 eye on things?

14 A. That is correct. In this lower quadrant here, in
15 the southeast quadrant, we did have lights set up
16 to cover these berms coming into the property,
17 where we could actually light up the physical
18 berm to see anybody breaching from the top.

19 Q. All right. At any point did those lights move,
20 or were they utilized for any other purpose?

21 A. As the week went on, through searching -- we
22 started searching properties adjacent to the 40
23 or so acres involving our inner perimeter. And
24 we started finding items what we felt that might
25 be evidentiary purpose -- or needed for

1 evidentiary purposes, and quarries to the
2 southwest of the property.

3 At that point, mid-week, going into
4 Thursday, we started putting officers, additional
5 officers, on those evidence areas, until we could
6 physically recover. Then we began to light these
7 quarry areas as well, at that point.

8 Q. And what was the purpose of that?

9 A. To secure, basically, the evidence or what we
10 felt was evidence, that we were finding in those
11 quarries.

12 Q. All right. Now, in terms of overall -- although
13 not your primary function, were you aware of
14 where certain checkpoints were located on the
15 surrounding roads?

16 A. Referring to the map behind me, primary
17 checkpoints --

18 Q. That's Exhibit 19 --

19 A. Exhibit 19.

20 Q. -- for the record.

21 A. I'm not sure how to pronounce the community,
22 Larrimore, I believe, or Larrame, I'm not quite
23 sure. It's a small community just off this
24 particular photo, where the highway meets here
25 with another county trunk. And the primary

1 checkpoint for the exterior perimeter was located
2 there.

3 Q. And that's Highway 147. And is the road that it
4 intersects with, is that -- any part of that road
5 depicted on the exhibit?

6 A. This part of the map here, or photograph, you can
7 see a portion of that roadway.

8 Q. All right. And you are referring to Exhibit 19,
9 the road that runs diagonally across the south --

10 A. Quadrant.

11 Q. Southwest quarter.

12 A. And then they had an officer located at this
13 intersection here. And this intersection was
14 also blocked at this location. And Manitowoc
15 County Sheriff provided an officer at the north
16 end of Avery Road, at 147, to manage individuals
17 coming in and out of the crime scene.

18 Q. All right. Now, in terms of access, was the
19 inner perimeter, as you say that you were
20 responsible for, was security maintained for the
21 entire seven days?

22 A. Correct.

23 Q. All right. At any time -- Well, let's ask this
24 question. You, yourself, in charge of perimeter
25 security, were you at the property the entire

1 seven days?

2 A. No.

3 Q. All right. Who else filled in your duties when
4 you were not there?

5 A. I was relieved by Lieutenant Bowe of the Calumet
6 County Sheriff's Department.

7 Q. All right. And in terms of that, how did you and
8 Lieutenant Bowe organize or supervise those
9 responsible for perimeter security?

10 A. We would supervise the security from the command
11 post. We would work approximately 30 hour
12 shifts. I would -- Lieutenant Bowe relieved me
13 Sunday morning. I stayed on Sunday morning, the
14 6th through the 7th, where we worked together in
15 trying to organize staffing as we were going on.
16 Approximately 6, 7 p.m., on Sunday evening, I
17 left. And then I would return on Monday morning
18 to relieve Lieutenant Bowe, who then would leave
19 sometime late afternoon, on Monday, early
20 evening.

21 So we always had a portion of at least 8
22 hours, the two of us working together, trying to
23 formulate and create and keep the security. And
24 then we always would have one of us working the
25 night shift.

1 Q. All right. And during the course of the week, to
2 your knowledge, were there any attempts by other
3 individuals, none law enforcement people, to come
4 in and see what's going on?

5 A. If I could refer to Exhibit 19, behind me, we did
6 have several attempts. First attempt would have
7 occurred, an incursion by the press, from this
8 farm located to the southeast of the property.

9 The press did come in and park at this
10 farm. And as the individual was walking across
11 this field, and as he began to breach the berm,
12 the officer at this location observed that
13 breach, contacted the command post. I then left
14 on an ATV, made contact with that press
15 individual, on that berm, prior to him setting
16 up. Removed him and walked him back to the farm,
17 to his vehicle, identified him, and removed him
18 from that area.

19 Q. As a result of that incident, were there any
20 additional precautions taken, with respect to
21 perimeter security?

22 A. At that point we then -- this town road, I
23 believe, that travels north and south here, was
24 then closed by the Manitowoc Sheriff's
25 Department, to local travel only at that point.

1 Q. All right. Any other concerns, or possible
2 interested bystanders who approached the area
3 while it was under your control?

4 A. We had another attempt by two individuals, two
5 local residents, curious residents, who as they
6 were coming down this fence line, approaching
7 from 147, from the north, heading south to the
8 northwest corner of the property, they got to
9 about halfway down this fence line when officers
10 from the command post area, as well as officers
11 that were working within the interior scene,
12 started to move towards them.

13 They then retreated up the fence line,
14 and were apprehended by Manitowoc Sheriff on a
15 driveway just off of 147. They were placed in
16 handcuffs, returned to my location at the command
17 post. I identified them, warned both individuals
18 that a return to the property would result in
19 their arrest.

20 Q. All right. Were they then escorted back to
21 beyond the checkpoint?

22 A. They were then escorted back out, up to the
23 checkpoint, back out to 147.

24 Q. All right. Now, at night time, just so that
25 we're fair here, is it conceivable or possible,

1 that there could have been a perimeter breach?

2 Could someone have hoofed it in, so to speak?

3 A. It's very possible that somebody coming in from
4 anyone of the quarries or wooded areas, could
5 have breached by foot.

6 Q. All right. Is that the reason why lights were
7 then placed down in the quarry area, later on in
8 the week?

9 A. Initially, those lights were placed at the
10 vehicle location, for the vehicle. And then we
11 began to use them when the vehicle was removed,
12 for that purpose.

13 Q. All right.

14 A. And, secondarily, at the command post here, we
15 had a state trooper sergeant at the command post.
16 He would relieve his staff for breaks and
17 bathroom breaks and meal breaks. And when he
18 would return, I would travel, or Lieutenant Bowe
19 would travel, through the property, periodically,
20 at night, and relieve our staff on the corners
21 for breaks and meals and so forth.

22 Q. During the course of the week, was it difficult
23 to navigate through the property to get from one
24 side to the other?

25 A. Unfortunately, on Saturday evening, we had a

1 heavy rainstorm and the roadways within this area
2 here filled, at locations, with water. Most
3 became fairly impassable -- you can see some of
4 the water still in some of the locations on this
5 photo -- with passenger vehicles.

6 We, as an agency, did have a four-wheel
7 drive Explorer. And that first day or two, we
8 did travel through, but because of how difficult
9 it became at times, we then, when we had to move
10 out to this location, we quite often went all the
11 way around the perimeter and off of the county
12 trunk here, through the quarries. But, yes, it
13 was difficult at times.

14 Q. All right. And do you have any approximate
15 estimate for us, approximately how many officers
16 you utilized or were assisting you, in just the
17 task of perimeter security?

18 A. Everyday, 24/7, we always had security here,
19 officer in this corner, this corner, and the
20 southeast corner. And then throughout the day,
21 due do searching, evidentiary reasons, there were
22 officers throughout the property as well.

23 And then we had the exterior covered,
24 you know, by other agencies. I would have to
25 resurrect logs to determine exactly how many

1 officers was on the security.

2 Q. All right. Now, one moment.

3 ATTORNEY FALLON: I have no other questions
4 for the witness.

5 ATTORNEY BUTING: No cross, your Honor.

6 THE COURT: Okay. The witness is excused.

7 THE WITNESS: Thank you.

8 THE COURT: The State may call it's next
9 witness.

10 ATTORNEY FALLON: Yes, we're -- I'm going
11 to call Lieutenant Bowe.

12 THE CLERK: Please raise your right hand.

13 **LIEUTENANT BRETT BOWE**, called as a
14 witness herein, having been first duly sworn, was
15 examined and testified as follows:

16 THE CLERK: Please be seated. Please state
17 your name, spell your last name for the record.

18 THE WITNESS: Brett Bowe, B-o-w-e.

19 **DIRECT EXAMINATION**

20 BY ATTORNEY FALLON:

21 Q. What do you do for a living?

22 A. I work for the Calumet Sheriff's Department as a
23 deputy.

24 THE COURT: Mr. Bowe, can you move the
25 microphone over, please.

1 Q. (By Attorney Fallon)~ Say that answer again.

2 A. I work for the Calumet Sheriff's Department as a
3 deputy.

4 Q. All right. What rank do you currently hold?

5 A. Patrol lieutenant.

6 Q. All right. How long have you been so employed
7 with Calumet County?

8 A. Sixteen years I have been there.

9 Q. And how long have you held the rank of
10 lieutenant?

11 A. Almost two years.

12 Q. What were your previous duties?

13 A. Prior to that, I was a patrol sergeant. Before
14 that, I was a patrolman. And I was a jailer for
15 a year and a half.

16 Q. All right. Directing your attention now to the
17 week of from November 5th to November 12th, were
18 you involved at all in the execution of a search
19 warrant on the property of the Avery Auto Salvage
20 Yard and the residences located therein?

21 A. Yes, I was.

22 Q. And in what role or capacity did you have with
23 respect to that?

24 A. I was in charge of the command post.

25 Q. All right. And specifically, what duty were you

1 assigned?

2 A. My main duty was to guarantee security on the
3 property, and also to coordinate the searches.

4 Q. All right. And in terms of the security, who
5 else did you share those responsibilities with?

6 A. Lieutenant Sippel.

7 Q. All right. And in terms of yourself and
8 Lieutenant Sippel, how did you work? In other
9 words, were you both there at the same time,
10 alternating shifts? What did you do?

11 A. During the day, we were there at the same time.
12 He started on Saturday morning, I arrived Sunday
13 morning. He left Sunday night, I would have
14 stayed through the night. He would have come
15 back Monday morning and then I would have left
16 Monday night. And we kept alternating that way.

17 Q. All right.

18 A. So we were both there during the day.

19 Q. All right. We have heard some testimony already
20 from Lieutenant Sippel, so I don't want to repeat
21 that, but I have a question for you, are you
22 familiar, yourself, with any attempted breaches
23 of the security that you were involved in, in
24 ferreting out?

25 A. Yes, I am.

1 Q. Tell us about that.

2 A. There were three that I was aware of. There was
3 one that I was personally involved with.

4 Q. All right.

5 A. Is that the one you want?

6 Q. If need be, there should be a laser pointer in
7 front of you and there's an exhibit to your
8 immediate right and one behind you. In terms of
9 the incident you were involved in, tell us about
10 that.

11 A. The incident I was involved in, the officer that
12 was stationed down in the southeast corner
13 notified us that he had observed a person on the
14 berm, to the south, which would have been located
15 a little further south than what this map shows.

16 Q. All right. And you just briefly turned and
17 pointed to Exhibit 19, the one on the chalkboard?

18 A. Yes.

19 Q. All right. And if that assists you better, tell
20 us about what you -- what incurred -- occurred,
21 excuse me.

22 A. The officer indicated that there was an
23 individual just south, on top of the berm. I
24 proceeded around to the quarry and got up on top
25 of the berm. And I could see a set of footprints

1 that came along there.

2 They were approximately 20 yards south
3 of the southeast corner of the property. And I
4 saw that the footprints led to a residence that
5 was just to the east of where the footprints
6 were. So I followed them up to that residence.

7 Q. All right. And were you able to ascertain who
8 was responsible for the footprints and/or the
9 attempted entrance?

10 A. I spoke with a gentleman there who indicated that
11 his wife had just left for work. He indicated
12 that she had gone out and had fed their dog and
13 was gone for approximately five minutes. And
14 that he had heard her car leave at that time and
15 that that was the only person on the property
16 that could have been back where we were.

17 Q. All right. In terms of your particular time,
18 while you were in charge, were there any other
19 attempted entrances to the -- the inner
20 perimeter, as it's been described?

21 A. Yes, there were. There was an individual that
22 was also in the southeast corner, further north,
23 so they would have been just east of the
24 property. And Lieutenant Sippel addressed that.
25 That was a member of the media.

1 And then there were two gentleman that
2 came in from the north, on the west side of the
3 property, were walking a line fence down, and I
4 believe they made it about two-thirds of the way
5 down through the 40 acre field. And when they
6 saw numerous officers approaching them, they
7 turned and headed back toward the north. And
8 they were apprehended --

9 Q. All right.

10 A. -- north of that property.

11 Q. All right. And during your time, when you were
12 solely in charge of the -- of the perimeter, were
13 there postings at each corner of the perimeter;
14 in other words, was there, the euphemism of
15 today, 24/7 security?

16 A. Yes, there was.

17 Q. All right.

18 ATTORNEY FALLON: That's all.

19 THE COURT: Mr. Buting, any questions?

20 ATTORNEY BUTING: None.

21 THE COURT: Witness is excused.

22 ATTORNEY FALLON: I believe Exhibits 18 and
23 19 have already been received, so that being the
24 case, just in the odd chance they aren't, I would
25 move for their introduction. And secondly, we would

1 rest the presentation of our evidence on this issue.

2 THE COURT: All right. With respect to 18
3 and 19, have they been admitted?

4 THE CLERK: Yes.

5 THE COURT: All right. They are already
6 admitted. Any rebuttal witnesses from the defense?

7 ATTORNEY BUTING: None. Are there any
8 exhibits that are not admitted? I should --

9 THE CLERK: Everything is received.

10 ATTORNEY BUTING: Everything is received.
11 Okay. Thank you.

12 THE COURT: All right. Does that conclude
13 the witnesses then, for all the outstanding motions
14 at this time.

15 ATTORNEY STRANG: The only thing I will add
16 is, I should have thought to do this yesterday when
17 I had Mr. Glynn on the stand, but I will make an
18 offer of proof on what his answer would have been,
19 had the hearsay objection not been sustained. I
20 expect Mr. Glynn would have testified that, as he
21 had said something to the effect that, he had told
22 Mr. Avery that he wanted Mr. Avery to tell the
23 officer that he didn't wish to speak to the officer
24 without a lawyer.

25 And Mr. Avery agreed to say that, with

1 the cellphone still -- the line still open, and
2 Mr. Glynn heard that. He thinks before Mr. Avery
3 got into the car, heard Mr. Avery saying to
4 somebody, you know, nearby, I don't want to talk
5 to you any more without my lawyer, or words to
6 that effect.

7 THE COURT: All right. Is that --

8 ATTORNEY FALLON: Obviously, we still hold
9 to our objection.

10 THE COURT: Let me ask this, is that
11 something that was on the CD transcript?

12 MR. STRANG: It's not on the transcript
13 but, you know, the tape goes off and then comes back
14 on as Avery, I think, is probably getting into the
15 car.

16 THE COURT: Okay. So that's a statement,
17 had it been admitted, that the defense would have
18 contended came in between parts three and four of
19 the tape recorded --

20 MR. STRANG: That's my best inference.
21 That's an inference only.

22 ATTORNEY FALLON: Then I have a second
23 objection to that. And the second objection is,
24 that's speculation on the part of Mr. Glynn, as to
25 when that occurred relative to the getting into the

1 vehicle or the turning on the tape, because he
2 wasn't there. So, now I have another grounds to
3 object.

4 THE COURT: Okay. I didn't understand that
5 Mr. Glynn would have said that. I understood --

6 MR. STRANG: Glynn thought it was before
7 Avery -- If you assume Avery was out of the car,
8 Avery says it right away, you know, before he would
9 have had a chance to go an open a car door. Glynn
10 doesn't hear car doors opening and there's no pause
11 in there.

12 THE COURT: All right. I would like to
13 take a short break at this time, to meet with
14 counsel and determine what else we're going to do
15 today.

16 ATTORNEY KRATZ: Judge, could we have just
17 one moment.

18 THE COURT: Yes.

19 ATTORNEY FALLON: Judge, before we do that,
20 I would like you to make a record on two points
21 since it appears that the testimonial part of this
22 motion has now ended. With respect to the Franks
23 motion and, more importantly, with respect to the
24 State's challenge to his standing to even raise a
25 challenge, that you engage in a colloquy with the

1 defendant, Mr. Avery, that he did, in fact, have a
2 right to take the stand and assert his reasonable
3 expectation of privacy in any of the locations
4 subject to the search.

5 Secondly, we would ask the Court to
6 engage in a second colloquy with the defendant,
7 relative to the circumstances surrounding the
8 taking of this statement by the Marinette
9 detective, Anthony O'Neill. If he had the right
10 to testify, he had the right to say, in his mind,
11 what occurred and when things occurred,
12 vis-a-vis, that statement. And he apparently has
13 chosen not to. So I would ask that you engage in
14 a colloquy with Mr. Avery, on both of those
15 matters, before we close and move to argument.

16 THE COURT: Let me --

17 ATTORNEY STRANG: May I -- I'm sorry.

18 THE COURT: Just a second, before I give
19 you a chance to speak, Mr. Strang. Your first
20 request, Mr. Fallon, was to what, the right to
21 privacy to?

22 ATTORNEY FALLON: His right to testify,
23 relative to his right to challenge the search
24 warrant. We had objected, demanded that he
25 establish standing to challenge the warrant and,

1 thus, standing to bring the Franks motion. So,
2 obviously, he has that right and he has chosen not
3 to exercise it.

4 So that would be the first colloquy,
5 that that was a decision that he made with,
6 presumably, advice of counsel, that he's given up
7 his right to testify and offer his point of view.
8 That's the first one. And the second one is, his
9 right to testify regarding the motion to suppress
10 the statement to Detective O'Neill.

11 THE COURT: All right. Mr. Strang.

12 ATTORNEY STRANG: I understand and
13 appreciate that the flow of Wisconsin law, in the
14 last 15 or 20 years, has advanced steadily toward
15 inserting the Court ever more frequently into
16 strategic decisions and decisions on which witnesses
17 to call, or whether to call the defendant in a
18 pretrial matter, and so I understand full well why
19 the State makes the request that it does.

20 I also acknowledge that I have invited
21 the Court, on at least one or two occasions so
22 far, to engage in a colloquy with Mr. Avery,
23 where we were requesting some relief or some
24 indulgence. And I thought that would be the
25 better way to make a record, or to make clear

1 that this was done with the accused's personal
2 consent.

3 That said, I'm not aware of any
4 authority here that would invite the Court to
5 insert itself, at this point, in the decision on
6 what witnesses to call on pretrial matters, or on
7 foundational matters in the case of the standing
8 question, or personal interest in privacy on a
9 pretrial motion.

10 And I think that, you know, obviously,
11 Mr. Avery has been present here. The record has
12 reflected that all along. He's been awake. He's
13 been an active participant at the defense table.

14 But I don't think it's a wise move to --
15 to have the Court, or then the adversarial party,
16 involved in every decision in the defense camp
17 about what witnesses to call or how,
18 strategically, to handle the pretrial motion.
19 So, you know, while the Court will do as it sees
20 fit, I don't think a colloquy on either of these
21 points is either required or appropriate under
22 the circumstances.

23 THE COURT: Let me -- Mr. Fallon, I'm not
24 sure -- I understand what you are saying about the
25 motion to suppress the statement to Officer O'Neill;

1 I'm not sure with respect to the Franks motion.

2 ATTORNEY FALLON: The Franks motion is
3 ancillary. The real issue is, does he have the
4 right to even bring a Franks motion. Does he have
5 standing to challenge the search? And he has to
6 establish standing by a preponderance of the
7 evidence. That's his burden.

8 And if it's the defense burden, then,
9 one rightly ought to assume that he has the right
10 to testify, to assert his constitutional
11 interests. And if he's choosing not to, that's
12 fine. I just want to make sure that it's his
13 choice, presumably with the advice of counsel.

14 If not, we would be more than happy to
15 accept a waiver of any subsequent claim in the
16 future of ineffective assistance of counsel for
17 not putting their client on the stand, for
18 purposes of completing the record on these two
19 motions.

20 THE COURT: All right. I want to make sure
21 that I'm understanding your point on the Franks
22 motion correctly. I understand, and I believe the
23 State has already asserted that the motion that was
24 filed by the defense did not constitute a
25 substantial preliminary showing that a false

1 statement had knowingly and intentionally been made,
2 or a statement with reckless disregard for the
3 truth; you have made that motion, have you not?

4 ATTORNEY FALLON: Yes, relative to the
5 Franks aspect of this.

6 THE COURT: Right. And argued that the
7 Court should not have even conducted an evidentiary
8 hearing because the defense motion does not meet
9 that initial plateau to be entitled to a hearing.

10 ATTORNEY FALLON: That's the second
11 argument. The first argument, they didn't have
12 standing to bring a Franks motion, except as it
13 pertains to the trailer and the garage. His
14 residence, the trailer. And the garage.

15 THE COURT: Okay.

16 ATTORNEY BUTING: Judge, it's the same
17 warrant. Mr. Fallon has been making this argument
18 for two days now. And the warrant, it's the same
19 warrant; it involves his trailer as well as all the
20 property. So, how can he say he doesn't have
21 standing to challenge a warrant that has his trailer
22 residence on it.

23 THE COURT: Well, I suppose the State could
24 argue that the Court should find in the State's
25 favor, and in the alternative, if the Court doesn't

1 find in the State's favor, it should only sustain
2 the argument made by the defense as it relates to
3 the trailer and the garage. I mean, I don't know if
4 that's where we're heading or not.

5 One of the things I was going to discuss
6 with counsel in chambers was what we were going
7 to do from here forward. And one of those was
8 going to be, to hear your arguments, because I
9 believe I told Mr. Fallon I would hear his
10 argument, which I have not heard yet.

11 ATTORNEY FALLON: That's right. So our
12 only question is, is it seems to me that wisdom
13 would suggest that we take colloquy from the
14 defendant so that we're sure that he had the right
15 to testify on these matters, if he wanted to, and
16 he's chosen not to.

17 THE COURT: Let me ask the defense, and I
18 don't know that this is self-evident in the
19 pleadings, is the defendant asserting that he has a
20 right to privacy that extends beyond the trailer,
21 the garage, and the immediate surrounding area, if
22 you will, that is, to the rest of the 40 acre
23 parcel? I don't know that I have -- that the
24 defense has asserted, to this point, that the
25 defendant has such an interest.

1 ATTORNEY BUTING: Judge, I think -- I think
2 it's pretty clear from the testimony that what we
3 focused on, and from the motion, is the entries to
4 his residence and to his garage and, you know, the
5 reasonable curtilage, or whatever, in that area.

6 The testimony regarding the other
7 aspects of the property is that he was basically
8 an employee or worked there, not an actual
9 ownership -- owner of it. But that testimony
10 went to the question of whether or not there was
11 probable cause for the officers to have been in
12 the location they were at, before consent was
13 given to the officers, such that the information
14 that Detective Remiker obtained, that is, the VIN
15 number, was improperly obtained and should not
16 have been considered in the warrant, as part of
17 the probable cause.

18 In other words, if the Franks motion --
19 if the Franks motion is granted and the Court
20 strikes that portion of it that is considered
21 deliberately false or recklessly untruthful, and
22 then you look at the remainder of the warrant to
23 see if there's still probable cause, and that
24 consideration has to -- in my estimation we can
25 argue all this, but that's what the testimony

1 went to, as to why that portion of the police
2 observations could also not be considered in
3 determining whether there was probable cause.

4 THE COURT: All right. Maybe I missed it,
5 I know there was testimony that Detective Remiker
6 didn't ask consent -- I don't think he asserted that
7 he asked consent -- before responding to the scene
8 on Saturday, and responding to the location of the
9 RAV 4, and looking at the VIN number.

10 But I guess to this point, I also didn't
11 understand that the defendant to be asserting
12 that he had a right to privacy with respect to
13 that portion of the property that required --
14 would have required Detective Remiker to ask for
15 the defendant's consent to visit it.

16 I don't know, I mean, it's not -- it's
17 not clear to me, in the motion papers that were
18 filed, what the arguments were going to be.
19 That's why -- one of the reasons I'm going to
20 permit each side to make oral argument, perhaps
21 some of those points can be clarified.

22 Is the defendant arguing that he had an
23 individual right to privacy that was violated,
24 that required Remiker to get consent or a warrant
25 before responding to the location of the RAV 4

1 and looking at the VIN number?

2 ATTORNEY FALLON: Excuse me, your Honor, I
3 think we're getting a little off track. Because we
4 are going to argue these points shortly, the only
5 issue on the table right now, as I understand it, is
6 whether or not we're going to take a colloquy from
7 Mr. Avery, that he was mindful that he had the
8 opportunity to testify and chose not to. And if
9 we're not, then that's fine, and then we can proceed
10 to argument. I mean that's the only -- I don't want
11 to mix up the two concepts.

12 THE COURT: Well, this is a pretrial
13 motion, let me ask you this, Mr. Strang or
14 Mr. Buting, have the two of you discussed this with
15 your client and made a decision, after your
16 discussions with him, that you would not be calling
17 him to testify?

18 ATTORNEY STRANG: We have not had extensive
19 discussion about it. And I think, beyond that, it's
20 privilege. And really this is the point. I mean,
21 if we could do a colloquy with Mr. Avery and,
22 essentially, what the State would be hoping to
23 accomplish is, his ratification of decisions that
24 haven't been his, strategic decisions about how to
25 proceed on a pretrial motion and which witnesses to

1 call, and not to call, him included.

2 If -- if these calls are so far wrong
3 that they fall below a reasonable level of
4 defense counsel's performance, then that's the
5 fact. And having him ratify them doesn't change
6 that. The decisions on what witnesses to call
7 here and which not to call, including Mr. Avery,
8 have been mine and Mr. Buting's.

9 THE COURT: Well, I understand that. I
10 guess my question is directed to something that's a
11 little -- that falls a little short of actually
12 conducting a personal colloquy with Mr. Avery, and
13 that is, whether or not the two of you have
14 discussed this with him. I'm not looking to get
15 into any privilege.

16 ATTORNEY STRANG: No, and in a very general
17 way, we have had very brief discussions about it, as
18 to the -- as to these two motions.

19 THE COURT: All right.

20 ATTORNEY STRANG: And I will say,
21 discussion to the extent that that implies a two-way
22 discourse, may be gilding the lily to some extent.
23 I know that, very briefly, I have expressed an
24 opinion or made an assertion. I'm not sure that
25 beyond that I should be implying a two-way

1 discourse.

2 THE COURT: All right. I'm going to take a
3 short break at this time. Before I ask counsel to
4 meet with me in chambers, I'm going to ask that
5 defense counsel address this issue with Mr. Avery.
6 And we'll discuss in chambers how to proceed further
7 when we come back out on the record, after that's
8 been completed.

9 ATTORNEY STRANG: Is there a place we can
10 talk in private?

11 THE COURT: Yes, I believe the jury room
12 would work for that purpose.

13 ATTORNEY KRATZ: Two-fifteenish?

14 THE COURT: Let's say 2:20, in my chambers.

15 ATTORNEY STRANG: We can use the jury room,
16 but that will require one of two things: First,
17 preferably all the law enforcement people or
18 representatives of the State, being outside a closed
19 door.

20 Or, second, much less preferably,
21 anybody who's within the room being deputized as
22 a defense investigator for purposes of that
23 meeting, and being instructed that he or she is
24 within the lawyer/client privilege, on the work
25 product doctrine, forever more, for purposes of

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what he or she would overhear.

THE COURT: Well, I will meet with who's
ever in charge of security and then address that
with you after I do that.

(Recess taken.)

(End of partial transcript.)

1 STATE OF WISCONSIN)
)ss
2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 1st day of September, 2006.

Diane Tesheneck, RPR
Official Court Reporter

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