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STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
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STATE OF WISCONSIN,

PLAINTIFF,

JURY TRIAL

TRIAL DAY 4

vs.

Case No. 06 CF 88

BRENDAN R. DASSEY,

DEFENDANT.

DATE: APRIL 19, 2007

BEFORE: HON. JEROME L. FOX
Circuit Court Judge

APPEARANCES:

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

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

NORMAN A. GAHN
Special Prosecutor
On behalf of the State of Wisconsin.

MARK R. FREMGEN
Attorney at Law
On behalf of the defendant.

RAYMOND L. EDELSTEIN
Attorney at Law
On behalf of the defendant.

BRENDAN R. DASSEY
Defendant
Appeared in person.

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TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR

Official Court Reporter

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(Reconvened at 8:38 a.m.)

THE COURT: This is the case of State of Wisconsin vs. Brendan Dassey. It's 06 CF 88. Appearances, please.

ATTORNEY FALLON: Morning, Your Honor. May it please the Court, the State continues in its appearance by Special Prosecutors Ken Kratz, Tom Fallon, and Norm Gahn.

ATTORNEY FREMGEN: Attorney Mark Fremgen appears with Attorney Ray Edelstein and Brendan Dassey.

THE COURT: Morning, Counsel, morning jurors. Uh, members of the jury, if you recall at the beginning of this case, I gave you some preliminary instructions. One of them concerned evidence. It was evidence defined, and then it said, evidence is, and it -- it gave you three different kinds of evidence.

Uh, the third of that tripartite was something, uh, called a stipulation. Third, evidence is any facts to which the lawyers have agreed or stipulated.

Uh, there also is going to be an instruction later on that, uh, will tell you that the district attorney or, in this case, the

1 special prosecutor and the defense attorney have
2 stipulated or agreed to certain facts. And those
3 facts, uh, would be, as stated, if the particular
4 witness had been called, he or she would have
5 testified as follows.

6 I'm going to read to you now three
7 agreements or stipulations that the parties have
8 agreed to. These are called trial stipulations.
9 The first is as follows:

10 Steven Schmitz is a citizen living in
11 New Holstein, Wisconsin, a community
12 approximately 30 miles west of Manitowoc, uh,
13 Wisconsin.

14 JoEllen Zipperer is a citizen living in
15 rural Manitowoc County, Wisconsin.

16 That if called to testify, Steven
17 Schmitz would testify that on October 31, 2005,
18 Teresa Halbach came to the Schmitz property to
19 take a photo of a vehicle for *AutoTrader*
20 *Magazine*.

21 Schmitz would indicate that Halbach was
22 at his residence at approximately 1:30 p.m. Was
23 there for approximately ten minutes. Was wearing
24 a white shirt, waist -- waist-length jacket, and
25 blue jeans.

1 Schmitz would state that before leaving,
2 Halbach provided Schmitz with the latest
3 *AutoTrader Magazine* and a bill of sale. Left his
4 property and drove away in her SUV.

5 That if called to tref -- testify,
6 JoEllen Zipperer would testify that on October
7 31, 2005, Teresa Halbach came to the Zipperer
8 property to take a photo of a vehicle for
9 *AutoTrader Magazine*.

10 Zipperer would indicate that Halbach was
11 at her residence between approximately 2 to
12 2:30 p.m. Was there for approximately ten
13 minutes. Was wearing a white top, waist-length
14 jacket, and blue jeans.

15 Zipperer would state that before
16 leaving, Halbach provided her with the latest
17 *AutoTrader-Magazine* and a bill of sale. Left her
18 property and drove away in her SUV.

19 Zipperer would finally state that Avery
20 Salvage Yard is no more than a ten-minute drive
21 from her residence in Manitowoc County.

22 That's the first stipulation. Uh,
23 Counsel?

24 ATTORNEY KRATZ: Yes. And will that be
25 marked as an Exhibit; Judge?

1 THE COURT: I'm going to have it marked as
2 an exhibit. Now, I just want to have you affirm for
3 the record that this is your stipulation?

4 ATTORNEY KRATZ: That is, Judge.

5 THE COURT: Likewise, defense?

6 ATTORNEY FREMGEN: Yes, Judge.

7 THE COURT: Uh, this will be marked as an
8 exhibit, and we'll get to the exhibit -- Well, we --
9 I guess we'll get to the exhibit number now.

10 (Exhibit No. 196 marked for identification.)

11 THE CLERK: One ninety-six.

12 ATTORNEY KRATZ: One ninety-six? Thank
13 you.

14 THE COURT: The second trial stipulation is
15 as follows:

16 Number one. On October 31, 2005, Bobby
17 Dassey was the son of Barb Janda and brother of
18 the defendant, Brendan Dassey. Bobby Dassey
19 lived in the same residence with Barb Janda and
20 Brendan Dassey at the time.

21 Number two. That if called to testify,
22 Bobby Dassey would state that between 2:30 and
23 2:45 p.m. on October 31, 2005, he was inside the
24 Janda/Dassey residence where he observed a blue,
25 slash, green Toyota RAV 4 stop outside the

1 residence in close proximity to a maroon van that
2 his mother, Barb Janda, had for sale.

3 Bobby Dassey would state that he
4 observed a young woman, that he later came to
5 identify as Teresa Halbach, exit her vehicle,
6 take some photos of the maroon van, and walk
7 toward the trailer of Steven Avery.

8 Bobby Dassey would further state that,
9 after taking a shower, he left the residence at
10 approximately 3:00 p.m. to go deer hunting, at
11 which time he still observed the RAV 4 parked
12 outside his residence, but that Teresa Halbach
13 was not observed.

14 Bobby Dassey would state that he
15 returned to the residence at approximately
16 5:00 p.m., and he no longer observed the RAV 4.

17 That completes the second of the
18 stipulations.

19 Uh, Counsel -- and here I'm directing my
20 question to the special prosecutor -- is that
21 your stipulation?

22 ATTORNEY KRATZ: It is, Judge.

23 THE COURT: And counsel for the defense,
24 is that your stipulation?

25 ATTORNEY FREMGEN: That's correct.

1 THE COURT: It will be marked as Exhibit...
2 (Exhibit No. 197 marked for identification.)

3 THE CLERK: One ninety-seven.

4 THE COURT: The third stipulation is as
5 follows:

6 Number one. On October 31, 2005, Scott
7 Tadych was the boyfriend of Barb Janda. Knew the
8 defendant, Brendan Dassey, Steve Avery, and other
9 family members living at the Avery salvage
10 property.

11 Number two. That if called to testify,
12 Scott Tadych would testify that between 7:30 and
13 7:45 p.m. on October 31, 2005, he was at the
14 Janda, slash, Dassey property where he dropped
15 off Barb Janda.

16 Tadych would testify that he observed a
17 large fire in the burn area behind the detached
18 garage of Steven Avery.

19 Tadych would further indicate that, at
20 the time, he observed Brendan Dassey and Steven
21 Avery standing next to the fire.

22 To the State, is that your stipulation?

23 ATTORNEY KRATZ: It is, Judge.

24 THE COURT: The defense, is this your
25 stipulation?

1 ATTORNEY FREMGEN: Yes, Judge.

2 THE COURT: It will be marked as Exhibit...
3 (Exhibit No. 198 marked for identification.)

4 THE CLERK: One ninety-eight.

5 THE COURT: Uh, ladies and gentlemen, there
6 will be -- or -- additional stipulations, but not at
7 this time.

8 ATTORNEY KRATZ: Thank you.

9 THE COURT: You may proceed.

10 ATTORNEY FALLON: State would call
11 Mr. Rod Pevytoe to the stand.

12 **RODNEY PEVYTOE,**

13 called as a witness herein, having been first duly
14 sworn, was examined and testified as follows:

15 THE CLERK: Please be seated.

16 THE WITNESS: Thank you.

17 THE CLERK: Please state your name and
18 spell your last name for the record.

19 THE WITNESS: My name is Rodney Pevytoe,
20 P-e-v-y-t-o-e.

21 **DIRECT EXAMINATION**

22 BY ATTORNEY FALLON:

23 Q What do you do for a living?

24 A I'm a special agent with the Wisconsin Department of
25 Justice in the Division of Criminal Investigation. I

1 work in the Arson Bureau of that unit.

2 Q How long have you been in the employ of the
3 Department of Justice, Division of Criminal
4 Investigation?

5 A I've been with, uh, that agency for 27 years.
6 Twenty-five years have been in the Arson Bureau.

7 Q Prior to joining the Department of Justice, did
8 you have any other law enforcement experience?

9 A Yes. I was a reserve deputy sheriff in Marathon
10 County. It's near Wausau, Wisconsin.

11 Q What kinds of cases does the Arson Bureau involve
12 themselves with?

13 A Well, generally speaking, we investigate fires and
14 explosions, uh, that occur here in the state of
15 Wisconsin. We'll investigate the cause. If it's
16 determined to be of accidental origin, we do, uh,
17 some reporting, and then, basically, end our
18 involvement.

19 If it's determined that there's some
20 criminal activity, we, uh, work with local law
21 enforcement and further the criminal
22 investigation into that matter.

23 Q All right. Um, Agent, would you pull that
24 microphone a little bit closer to you?

25 A Sure.

1 Q Um, how do you, typically, get involved in a
2 case?

3 A Typically, an -- an Arson Bureau agent receives a
4 request, and it's generally either from a law
5 enforcement agency or sometimes from a fire
6 department, stating that they need some expertise in
7 determining the cause of a fire or an explosion, then
8 we go from there.

9 Q All right. And on approximately how many fire
10 investigations have you been involved in in your
11 tenure with the Arson Bureau?

12 A Uh, unfortunately, I don't have an exact number. Uh,
13 I could easily say it's between eight hundred and a
14 thousand. It's probably more than that but, it seems
15 like a whole lot.

16 Q And, um, of those investigations, have you ever
17 involved yourself in an investigation in which
18 there was a fatality associated with the, uh,
19 fire?

20 A Yes, sadly, many times I do get involved in a fatal
21 fire investigation.

22 Q All right. And approximately how many fatal fire
23 investigations have you involved yourself in
24 through the years?

25 A Again, I can't give you an exact number, but, um, an

1 estimate would be in -- in excess of a hundred. Some
2 of those would involve multiple fatalities, four,
3 five people dying at a time.

4 Q All right. Um, tell us a little bit about your
5 educational and training experience if you will?
6 Uh, do you hold any, uh, degrees?

7 A Yes. I have a Bachelor's Degree in criminal justice
8 from the University of Wisconsin. Uh, in addition to
9 that, I'm a certified police officer, certified
10 firefighter. I'm also a certified in -- fire
11 investigator by the International Association of
12 Arson Investigators.

13 Um, as part of my duties within the
14 Department of Justice, I've been able to receive
15 some additional training from a lot of different
16 agencies, to include the National Fire Academy,
17 the Bureau of Alcohol, Tobacco, Firearms and
18 Explosives, the FBI. Uh, numerous, uh, IAAI,
19 which means International Association of Arson
20 Investigators, uh, conferences, as well as
21 different private entities who have put on
22 various types of educational opportunities for
23 fire investigators.

24 Q If you could elaborate for us, what is the
25 International Association of Arson Investigators?

1 A The IAAI, International Association of Arson
2 Investigators, is an organization of people who are
3 devoted to the field of fire investigation, and it's
4 a worldwide association.

5 Uh, we have members in that association
6 from, uh, Europe, uh, Asia, uh, South America,
7 uh, the Middle East, as well as all of North
8 America. There's about 7 to 8,000 people that
9 are in that association um, at the present time.

10 Q All right. And, um, approximately how many
11 certified investigators are there? Do you know?

12 A Uh, certified fire investigators by the IAAI, there's
13 roughly a thousand of them right now.

14 Q All right. And is that in the world? The
15 country? North America?

16 A That's a thousand of them in the world.

17 Q In your, um, experience, um, have you been called
18 upon to instruct others in the -- in the field
19 of, um, uh, fire investigation?

20 A Yes. I, um, teach quite frequently in, um, a lot of
21 different areas. Um, I teach frequently for the
22 National Fire Academy as a member of their adjunct
23 faculty. Uh, as part of that, I travel throughout,
24 uh, most of the states, it seems, at one time or
25 another, as well as being, um, a guest speaker for

1 IAAI functions, and I teach fire-related subjects,
2 fire death investigation, uh, different subjects
3 related to our field.

4 Q All right. And are -- do you sit or are you
5 associated with any, um, boards which are
6 involved in either the training or the
7 investigation of fire scenes?

8 A Uh, yes, I am. I'm -- I'm on the board of directors
9 for the International Association of Arson
10 Investigators. Um, in addition to that, I also, um,
11 am the co-chair of the Certified Fire Investigator,
12 um, Committee as part of that. And so I've worked
13 with, uh, other people in our field in order to, uh,
14 gain the accreditation of being a CFI, a Certified
15 Fire Investigator.

16 Q All right. Um, as a result of your training and
17 your experience, um, are you capable of
18 recognizing human remains that have been damaged
19 by fire?

20 A Yes. I've seen them many times, and, uh, over the
21 course of many years that I've been doing those
22 investigations have, uh, gained that skill.

23 Q Now, uh, Mr. Pevytoe, directing your attention,
24 specifically, to this case, how did you become
25 involved?

1 A On November 9, that was a Wednesday, I was on a
2 different work assignment. I received a telephone
3 call from our Madison office, and they were directing
4 me to come down to Manitowoc to assist other
5 investigations in the ongoing investigation into this
6 incident.

7 Q And when did you arrive on the scene?

8 A Approximately mid-afternoon on the 9th.

9 Q Upon your arrival, what did you do?

10 A Uh, well, the first thing we had to do is we have a
11 security checkpoint. So I went through that. After
12 clearing security, I went down to the command area,
13 if you will, and I spoke to the two lead
14 investigators, uh, Special Agent Fassbender and
15 Detective Wiegert.

16 Q At some point was your attention directed to what
17 has now been referred to as a burn pit on the
18 salvage yard property?

19 A Yes. I was informed of that on the 9th, and actually
20 observed the area, but did no investigation at that
21 time. My actions on the 9th were, really, just
22 trying to assess what was there and what needs I
23 might do in order to further the investigation.

24 Q All right. And, um, describe the scene for us on
25 that, uh, Wednesday afternoon when you just,

1 generally, looked around?

2 A Uh, with respect to the burn pit area?

3 Q Yes.

4 A Uh, this burn pit is kind of a -- a large, sandy
5 plateau, um, and in there -- there's a depression in
6 there that had some charred remains. It was covered
7 with a tarp, uh, to protect it from the elements as
8 best as it could be done, and, um, it had covered an
9 area, oh, I don't know, um, maybe two-thirds the size
10 of this room. It seemed like the whole sandy area.
11 Maybe a little bit smaller than that. But the, uh,
12 burn pit, or the depression, was maybe five-by-six
13 foot. Something of that rough approximation.

14 Q Okay. After making this visual observation, um,
15 what was the first step in your investigation?

16 A Uh, the first thing I did was the following day, uh,
17 that was the 10th, and what I actually started out
18 the day doing is going over to the Sheriff's
19 Department in Chilton at Calumet County, and I did a
20 preliminary examination of some debris that had been
21 removed from the burn pit by other investigators
22 before me.

23 Q All right. Tell us about, uh, your, um, review
24 of, uh, the material?

25 A Well, I had an opportunity to take that debris and

1 put it under some high intensity lighting so it could
2 be inspected, uh, well, and then, uh, piece by piece
3 started to go through that and identify the different
4 items that I suspected would be of evidentiary value.
5 Um, and then I turned them over to the evidence
6 custodian, who was with me, uh, in order to maintain
7 the custody of those items.

8 Q Who assisted (phonetic) you in this, uh --
9 assisted you in this examination?

10 A Um, Special Agent Tom Sturdivant was with me and, uh,
11 Deputy, uh, Riemer, from the Sheriff's Department,
12 was the evidence custodian. He was not doing the
13 inspection, but he was there to receive the evidence.

14 Q All right. And tell us, uh, what items, if any,
15 did you find that, um, you thought were of some
16 evidentiary significance?

17 A Uh, during that pro -- uh, process, I recovered, uh,
18 some small fragments that I believed to be consistent
19 with bone. Uh, there was, uh, some fragments that I
20 suspected were some dental remains, and, in addition
21 to that, there were two small masses of, um, a
22 charred material that, uh, upon closer examination, I
23 felt that it was consistent with charred muscle, um,
24 like I've seen on, uh, burned fire victims. And I
25 recovered those items and turned those over for

1 evidentiary value.

2 Q Describe the -- the -- the pieces, or pieces that
3 you, uh, suspected to be bone and tissue, can you
4 tell us a little bit more about them?

5 A Um --

6 Q Their condition and their -- how they looked to
7 you?

8 A Sure. Uh, the two pieces of tissue material, um,
9 they were both relatively small. I -- I would
10 estimate between the size of a golf ball and maybe a
11 racket ball, just in -- in general size. They
12 weren't certainly round in shape, they were kind of
13 an unusual shape. But, uh, they were heavily charred
14 and blackened. Uh, you could see that they had some,
15 uh, cushioning. You could -- When you squeezed them,
16 they had some give to them, uh, and one of them had a
17 length of, uh, what appeared to be bone, uh, going
18 through it.

19 Q All right. And, uh, to whom did you provide that
20 material?

21 A I handed it directly to, uh, Def -- Deputy Riemer, or
22 Riemer, excuse me.

23 Q All right. Um, approximately how much time did
24 you and, um, Agent Sturdivant spend, uh, sifting
25 through this initial, um, harvest from the pit?

1 A I would estimate it was about half the day, because
2 it was close to the noon hour that we ended that
3 preliminary examination, decided to come back to the
4 scene.

5 Q Uh, and when you went back to the scene, where,
6 specifically, uh, did you go?

7 A To the -- to the Avery property. And then, in
8 particular, I went back to the burn pit area.

9 Q All right.

10 A And, uh, was going to do a reexamination of that
11 area.

12 Q All right. Who, if anyone, assisted you on the
13 reexamination of the area at that time?

14 A Uh, I had a couple different people. Um, we
15 established a couple different areas to be searched
16 around the burn pit. There were some, uh, evidence
17 technicians from the Manitowoc Police Department
18 there, and the grassy area that was around the burn
19 pit, um, just to make sure that there was nothing
20 that could be missed in there, we had them search
21 that entire area.

22 Then on the -- the pit, itself, of the
23 sandy mound, I had two additional special agents
24 that were helping me, a depu -- or, excuse me,
25 Special Agent Sielehr and Special Agent Rindt,

1 were both Arson Bureau agents with me.

2 Q All right. And, um, for the benefit of our
3 reporter there, could you spell Sielehr?

4 A I -- I can try. I think it's S-i-e-h-e-l-e-r.

5 Q All right. Um, approximately how much time did
6 you spend working on the pit on that area that
7 day?

8 A We spent several hours, because we had started in the
9 daylight, and I recall the fact that, uh, I requested
10 some generators and some high intensity lighting to
11 be brought in. Uh, once we started that process, I
12 didn't want to end it, so I think we went 'til close
13 to 10:00 at night, if my memory serves me right.

14 Q Uh, and did you then conclude?

15 A Yes.

16 Q All right. Now, I'd like to ask you a little bit
17 about your observations of the -- the soil, the
18 sod, and the ash that you, um, observed while you
19 were processing the pit. Um, first, tell us
20 about, um, the ash. Was there anything unusual
21 about the ash in this burn pit?

22 A Well, to a fire investigator, no ash is unusual, but
23 they may have characteristics, is probably the best
24 way to say it. Um, when I looked at the -- the loose
25 ash that was in the bottom of the pit, and there

1 still was some there, as well as the -- the bottom
2 layer of the burn pit, formed almost -- it looked
3 like just -- if you could imagine what blacktop
4 looked like, it was the soil that had bonded with
5 different, uh, distillance. Um, there was an odor
6 and a consistency there that I had seen before, and
7 that was from the burning of tires. Automobile tires
8 and such.

9 Q All right. What -- what do you mean by
10 distillant?

11 A Well, distillance would be -- When you burn a tire,
12 actually, some liquids come off and they begin to
13 flow, and they can bond in the soil. Uh, different
14 oils of petroleums will flow. When you take a solid
15 and you burn it, it actually has to be converted to a
16 vapor, so it will go through a very temporary liquid
17 stage. Sometimes that runs off.

18 Q All right. And so are you describing something
19 like a crust-like?

20 A Yes. That would be a very good characterization of
21 it.

22 Q In terms of, um, your examination of the pit,
23 what else, um, struck you of evidentiary
24 significance, uh, about, uh, the material that
25 was taken from the pit? And I'm now asking you

1 to focus on nonbiological?

2 A Well, we saw some metal items there.

3 Q All right.

4 A In particular, to describe a couple of them, uh, the
5 first thing that drew my attention, was there was a
6 mass or a ball, uh, that was about the size of a
7 tire, so 15-inches, of heavily oxidized wire. And,
8 uh, there were a multitude of wires there. And based
9 on my experience, what I've seen, is these wires are
10 consistent with what's left when you burn
11 steel-belted radial tires. Um, when you see -- It
12 shows up in this exhibit here.

13 Q Right. This is, uh -- Right now we're depicting,
14 uh, Exhibit 169. Does this help illustrate the
15 point?

16 A Yes, very well. Uh, you can see the mass of wire or
17 this ball of entwined wire there, uh, that's present.

18 Q Agent, there is a, um -- There it is. Right
19 there. And you can probably -- it's easier --
20 might be easier to -- if you would use that
21 screen --

22 A Oh, I'm sorry. Thank you. Um, right in that area is
23 the mass of wire. And that type of wire that's
24 heavily oxidized is what you see when you burn
25 steel-belted radial tires. That's what remains

1 there. And there's a -- a significant amount of wire
2 there. So we had a multitude of tires, steel-belted
3 radial tires, that were burned, and that would be
4 remaining.

5 In addition to that, I should also point
6 out, that in the pit, itself, and in the remains
7 of the ash, there were broken pieces of wire. So
8 that's -- What you see there is not
9 representative of all the steel-belting that we
10 saw at the scene, but that is the majority of it.

11 Q All right. Um, now, that mass of wire that
12 you've identified, was there anything else, um,
13 of significance about that mass of wire?

14 A Uh, yes. Um, as part of the scene examination, I
15 wanted to look at everything, and I started looking
16 at this entwined mass of wire. And I noticed that
17 inside the wire, deeply inside of it in some cases,
18 were some white fragments that I looked at closer,
19 and identified those to be bone material. And they
20 were entwined in there to the point where I actually
21 had to, physically, pull apart the wire in order to
22 get it there. It wasn't just on the surface. It was
23 actually down entwined into the wires.

24 Q Any, um -- Give my a second. Ah, yes. Now,
25 also, um, what is depicted in, uh, Exhibit, um,

1 169, is a, um, car seat, which we've, um,
2 previously identified and introduced as Exhibit
3 174. Did you have an opportunity to examine,
4 more closely, uh, the car seat which is depicted
5 in Exhibit 169, and which has now been marked as
6 Exhibit is 174?

7 A Yes. As you can see, it's in the center of that, uh,
8 exhibit right there. It's the, um, rusted mass as
9 pointed out right there. Um, I don't know if it's a
10 car seat or from an SUV type of vehicle, but it's --
11 it's a vehicle seat. I -- I interpreted it to be a
12 rear seat that may have been removed, or an extra
13 seat, uh, but I did have an opportunity to examine
14 it.

15 I didn't see any bone fragments entwined
16 in that, but that's a pretty open area. It's not
17 as dense as the wire, um, but as I looked at it,
18 you could see it was heavily oxidized, it
19 appeared to have some charred material on it, and
20 it was my impression that it had been burned and
21 destroyed in the fire.

22 Q All right. And what is it about the condition of
23 the, uh, car seat that led you to conclude that
24 it had been burned or exposed to fire?

25 A Well, there were several things. First of all, its

1 location next to a burn pit might be suggestive of
2 that. But when you look at, uh, the surface, one of
3 the things that happens to metal, frequently, that's
4 in a fire, is it rusts or oxidizes very quickly, and
5 we see that this seat is -- is oxidized evenly, for
6 the most part, over all of its surfaces.

7 During a fire, a lot of times the
8 protective coatings that would be on metal are
9 burned away. If there's oil or paint or whatever
10 might be protecting that from the elements, as
11 well as the -- the process of the fire, is -- is,
12 by its definition, of rapid oxidation. So we see
13 metal objects in a fire of rusting very quickly.
14 In addition to that, there's actually some little
15 fragments of charred remains there.

16 Q All right. Is that why, um, just for example
17 purposes, people who have burn barrels, they
18 don't seem to stay new very long?

19 A That's correct. They rust very quickly.

20 Q All right. Um, now, before we leave this
21 particular -- Well, actually, it would be a good
22 transition. I want to go back and revisit
23 something that we talked about just a few moments
24 ago, and that is, you, uh, told us that there
25 were remains of multiple steel-belted radial

1 tires.

2 Um, based on your examination of the pit
3 area, itself, uh, can you give us a rough
4 approximation of how many tires may actually be
5 reflected in the remains which were recovered?

6 A Based on my experience from looking at other burned
7 tires and different fire scenes, I could certainly
8 comfortably say it was in excess of five. Probably
9 more, uh, comfortably. But because they were so
10 entwined, it was difficult to pull them apart and
11 separate how many different tires that we had there,
12 because they were all so comingled together.

13 Q All right. Now, based on your, um, training and
14 experience and research, are you familiar, um,
15 with tires as a potential fuel source?

16 A Yes. I've actually burned them.

17 Q All right. Um, tell us, what type or what kind
18 of fuel source would a tire be?

19 A A tire is actually a very excellent fuel source. Uh,
20 those of you who have seen them burning on
21 television, or in real life, know that they burn with
22 great intensity. Um, I'm actually hard-pressed to
23 think of a commonly available material that's in
24 solid form that would be a better material to use to
25 accelerate a fire. And by accelerating, we're

1 talking about, by its definition to a fire
2 investigator, something that would make the fire burn
3 with greater intensity, a better fuel, or a better,
4 uh, oxidizer. And, uh, I -- I think it's realistic
5 to say that tires can be a form of a solid
6 accelerant. They burn with great intensity. They
7 release a lot of energy.

8 In fact, uh, studies have shown that one
9 pound of tires releases about 15 thousand BTUs of
10 energy as it burns, which is a pretty sizable
11 amount of energy.

12 Q And, um, what -- Give us an example, what is a
13 BTU?

14 A It's a -- By its definition, it's a British Thermal
15 Unit, and it's the amount of energy that's required
16 to heat one pound of water, one-degree Fahrenheit.

17 Q What's the weight of an average passenger tire?

18 A Twenty pounds.

19 Q All right. So one passenger tire would -- could
20 be expected to generate how many BTUs of energy,
21 roughly?

22 A About three hundred thousand.

23 Q All right. Could you put that into context for
24 us? Um, for instance, an average furnace in a
25 home? Anything like that? Can you relate that

1 BTU figure in --

2 A I -- I can try. Um, you know, your furnace size will
3 vary based on the size of the home and its
4 efficiency, but, uh, like in my home, I have a
5 hundred and -- a hundred and fifty thousand BTU
6 furnace, and that's how much energy it can put out in
7 one hour, uh, in order to heat that home. And that's
8 probably a pretty average size. So that's about
9 equivalent to half a tire.

10 Q All right. Now, um, if one is burning, um, two,
11 three, four, five tires, what kind of fire are --
12 are we -- would we expect to see?

13 A Uh, well, you'd see several things. First of all, I
14 think most of us know that a fire, in many cases,
15 will give off a pretty distinguishable, uh, black or
16 dark smoke from the burning of the tires, but the
17 intensity of the fire will be great. It will be a --
18 a very bright flame, usually in an orange color, and,
19 um, uh, you'll have a flame height -- it may vary,
20 depending on how the tires are oriented, if they're
21 flat or standing up, or maybe sloped up, but, uh,
22 generally, you'll see a flame anywhere from six to
23 nine feet would be a good average.

24 Uh, the other thing is, if you're
25 burning multiple tires at a time, um, for a human

1 to approach it is pretty difficult because of the
2 radiant heat that's coming off of it is a safety
3 hazard.

4 Q All right. How close would you be able to get to
5 a fire in its full effect? If you've got four or
6 five tires going at one time, would you be able
7 to be within two or three feet or would you be --

8 A No. No. I know from my own personal experience of
9 burning tires, I -- you know, I needed a long
10 implement, even if I'm burning one or two tires at a
11 time. And if you had three or four, you probably
12 wouldn't even be able to get close to it without a
13 rake or something, without getting some, you know,
14 uncomfortable feeling, and maybe even some, uh, skin
15 damage, thermal damage to the skin.

16 Q All right. Now, we talked a little bit about,
17 um, steel-belted radial tires. But how about
18 regular radial tires that don't have steel-belt
19 reinforcement? Are they a similar fuel source?

20 A Well, they're a very good fuel source. In fact,
21 there's many tires out there that don't have steel
22 belts in. Typically, uh, trailer tires. In the
23 sense of a snowmobile trailer or a utility trailer.
24 As well as there's glass-belted radial tires, and
25 they don't use that, uh, steel cording, so to speak,

1 that you would see in there. So there's, you know, a
2 fair number of tires out there.

3 Q Was there any way for you, after examining this
4 scene, to determine whether there were any
5 regular, uh, radial-belted tires or glass-belted
6 radial tires there?

7 A No.

8 Q Uh, in terms of their consumption, do they leave
9 a -- the similar type of ash and residue that you
10 previously described and attributed to the
11 steel-belted radial tire?

12 A Yeah. Their construction is basically all the same,
13 with the exception of the -- the belting material
14 being different.

15 Q All right. Now, in terms of, um, the, uh,
16 investigation that you've been involved in, is
17 there -- can you give us a range of how long it
18 would take to consume a human body in a fire to
19 the degree that, um, the remains that you
20 recovered here suggest?

21 A I couldn't give you an exact number of hours, um,
22 because there are some variables. If a body is
23 dismembered, it would burn faster because of higher
24 surface exposure.

25 Q Let's stop right there and start with that. Why

1 is that? Explain that?

2 A Well, if -- if you're looking at a body in a fire,
3 you have to consider it a piece of fuel that's --
4 that's exposed to the fire. And anytime you have
5 fuel with more surface area, it's going to burn
6 better.

7 It's like taking a -- a 12-inch stack of
8 newspapers and setting it on fire versus
9 separating all the newspapers out and giving it
10 more surface area. Obviously, the newspapers
11 will burn quicker.

12 In addition to that, when you're talking
13 about a body, one of the effects that -- first
14 effect that the fire has on the human body is to
15 dehydrate it, because I'm sure all of you know
16 that we have a lot of moisture in our bodies as
17 we're living here now, and that moisture has to
18 be driven out in order for a fire to consume the
19 body to reduce it down to fuel and consume it,
20 and down to its eventual skeletal remains.

21 So when you dismember a body, or if
22 there's some sort of an injury to the body, the,
23 uh, body will tend to bleed out, and if there's
24 less blood in the body, it actually will be
25 consumed quicker, because there'll be less

1 moisture for it to be, uh, dehydrated and
2 evaporated off before it's consumed.

3 Q So are you suggesting, then, if there are some
4 kind of pre-fire wounds to the body, that may
5 hasten the, uh, consumption of the body in the
6 fire?

7 A Exactly.

8 Q What are some of the variables? You -- you
9 mentioned there are a -- a host of variables, uh,
10 involved that would directly impact on how long
11 it would take to consume a body in a fire. What
12 are some of those variables oth -- other than the
13 one we just talked about?

14 A Well, the type of fuel that's used certainly would be
15 an important factor. Tires would be a very good
16 fuel, and would speed up that process as compared to
17 say, green wood or some different types of firewood.
18 Uh, the type of, uh, weather conditions that are
19 present. Uh, heavy winds, cold weather, extreme cold
20 weather, those would all be factors there, uh, as
21 well as the orientation of the fuel and the body.

22 And what I'm saying there is, um, if a
23 body's left in a scene, and it's undisturbed, the
24 part of the body that's in contact with the
25 ground, if you will, is protected by the ground

1 or the surface that it's laying on. We call
2 that, quite frankly, a protected area. Uh, if,
3 uh -- As in any type of fire, if you were to stir
4 the fire and mix up the fuel, that fuel tends to
5 burn better, and you -- you're removing --
6 exposing the protected area.

7 So if a body is in a fire, and at some
8 point the -- the body is moved around, you'll be
9 exposing more of its surfaces and you'll be
10 hastening that, uh, consumption process also.

11 Q All right. Now, um, what about continued
12 exposure to fuel or adding fuel? I mean, if you
13 were, uh, actively tending such a fire, what
14 effect would that have?

15 A Well, that would certainly be probably a requirement
16 in order to burn a body out in an open pit, uh,
17 unless you had just an extraordinary amount of fuel,
18 like we have in a house fire. Um, but if you're
19 talking about an open burn pit like the one we saw
20 there, um, you would have to be adding fuel in order
21 to continue that consumption process, because it
22 would take multiple hours in order to destroy a body
23 in a fire in an open surrounding like that.

24 Q All right. Um, I'm going to have, uh,
25 Investigator, uh, Wiegert, um, bring over a

1 couple of, uh, exhibits and have you take a look
2 at them. We'll start with the rake. Um, if you
3 would tell us, again, the exhibit number on
4 there?

5 A It's Exhibit No. 170.

6 Q All right. Exhibit -- Referencing, then, to, uh,
7 Exhibit No. 170, um, have you seen that item
8 before?

9 A I have. Yes.

10 Q And tell us about the condition of that, uh,
11 exhibit? The rake? Exhibit --

12 A May I stand --

13 Q -- 170.

14 A -- just stand up though?

15 Q Yes, please.

16 A Okay. Um, this is a rake that was found, uh, by the
17 burn pit. I guess I'd call it kind of a soil or a --
18 a beach rake, is typically what it has. Uh, you can
19 see that the bottom third or fourth of it is actually
20 charred, and you can see some of the charring,
21 especially on the sar -- side that would be exposed
22 down or towards the fire if it had been used to rake.

23 In addition to that, you can see some
24 wires in there, and those are some of those
25 steel-belted radial wires that I was telling you

1 about that we had observed in the burn pit. So
2 this bottom third or portion of that rake has
3 been exposed to a fire.

4 Q All right. Very good. And, uh, the next
5 exhibit, which is a spade?

6 A Okay. And that's Exhibit 171, and it's just a
7 regular wooden-handled soil shovel, but, also, you
8 can see it -- it's been exposed to a fire on its
9 lower extremity by the darkening that's there, only
10 to a lesser degree than the rake.

11 Q I see there's also some oxidation on the edging
12 of the spade?

13 A Yes.

14 Q Is that reflective of fire exposure in your
15 opinion as well?

16 A That could very easily have come from the fire
17 because it would tend to rust quicker.

18 Q All right. Thank you. You may be seated. All
19 right. I'd like to return, again, to our
20 discussion of, um, fuel sources. Um, again, I'm
21 directing your attention to, um, Exhibit 169, the
22 picture, um, which is still on the screen, which
23 displays the, um, uh, rear car or van seat that
24 we've talked about. Exhibit 174.

25 With respect to Exhibit 174, are you

1 familiar with what type of, um, packaging or
2 seating normally accompanies a car seat?

3 A Well, there's usually some sort of a vinyl, or
4 fabric, or leather-type covering over it, but the
5 padding material, frequently, is a polyurethane foam.
6 Um, from a fire standpoint, polyurethane foam is --
7 is a tremendous fuel. Um, in fact, uh, we have a --
8 a nickname for it, in the fire investigation, as
9 solid gasoline, uh, because, just like a tire, it is,
10 uh, either a synthetic or a petroleum distillant, but
11 once it's ignited, it has a tremendous amount of heat
12 release into a room, uh, or into the environment
13 that's burning. It's -- it's a very good fuel.

14 Q Uh, is it on a par, as it were, with tires in
15 terms of its ability to generate BTUs?

16 A Uh, I'm not sure of the exact breakdown, but I -- I
17 believe that it is. Um, yeah. In fact, I -- if I'm
18 not mistaken, it might be slightly better than en --
19 energy released pound for pound than that, just
20 because of its -- more often than not, it's a
21 capillary-type structure, an open cell, and it tends
22 to burn with greater intensity.

23 Q All right.

24 ATTORNEY FALLON: If I may just have a
25 moment? We will pass the witness. Thank you.

1 THE COURT: Cross.

2 **CROSS-EXAMINATION**

3 BY ATTORNEY FREMGEN:

4 Q Mr. Pevytoe, you indicated that you had arrived
5 on the scene on November 9?

6 A That's correct, sir.

7 Q Okay. And when you got there, your first, um,
8 step was to simply assess or evaluate the burn
9 pit?

10 A Well, that was the primary one. But I -- I looked at
11 other areas around that were designated to be
12 searched and whatever, and tried to make assessments
13 as to what type of needs we would have for personnel
14 and materials and that.

15 Q But -- but, in particular, you -- you were --
16 your attention was drawn to this burn area or
17 burn pit?

18 A Well, there were several areas, and the burn pit was
19 included in that.

20 Q When you arrived to look at the burn pit in
21 particular, uh, did it appear to be as Exhibit
22 169 shows?

23 A No. It was covered with a tarp.

24 Q Okay. Did you take the tarp off?

25 A Uh, they removed a portion of it, yes.

1 Q Were you able to see the van seat and the -- the
2 wiring, the large wad of wiring?
3 A I believe so. Yes.
4 Q Had they already removed much of the soil or the
5 upper ash from the burn pit?
6 A Well, they had removed the loose ash that was in the
7 pit, but there was still the darkened area and some
8 remains.
9 Q So when you went to -- Was it at the Sheriff's
10 Department that you next went to -- to look at
11 some of the items that had been removed?
12 A Well, that was on the following day.
13 Q Okay.
14 A Uh, on the 10th, in the morning, I went to the
15 Sheriff's Department, and I did a preliminary
16 examination of the, um, ash that had been removed
17 from the pit previous to me being at the scene.
18 Q So, obviously, you didn't remove any of that ash?
19 A That's correct.
20 Q And you didn't sift through the ash?
21 A Which ash?
22 Q The ash at the Sheriff's Department?
23 A Yes.
24 Q You did sift through all that ash?
25 A Well, we examined that multiple times, because when

1 you're examining something, looking for small
2 evidentiary items, such as bone fragments and dental
3 fragments, it may take time. So, as I said, on the
4 10th, that was a preliminary examination, but, also,
5 in December, we went back and literally went through
6 it piece by piece, over a course of many hours with
7 many people there, using a long, wooden skewer to
8 remove each little fragment and examine it and go
9 through the process there. So each time we were
10 doing a more and more detailed examination. It's a
11 very complex cli -- uh, process.

12 Q So over a period of about 30 or 40 days, you were
13 able to, several times, go through the items,
14 sift through items, to find, uh, things that
15 might have evidentiary value?

16 A I'm not sure of the time frame, but it was examined
17 multiple times, yes.

18 Q Now, you indicated that you didn't find any bone
19 in the van seat?

20 A That's correct.

21 Q But you did find some small pieces in the, uh --
22 the ba -- uh, the ball or the wad of -- of
23 steel-belted tire wiring?

24 A That's correct. I found multiple pieces entwined
25 into the mass of the wire.

1 Q And, again, just go back. No one had removed the
2 wiring or the van seat from the burn pit, just
3 some of the burn pit ash, itself?
4 A That's correct.
5 Q So when you went back, there was still more to do
6 in processing the burn pit?
7 A That's correct.
8 Q And -- And you were the one that, then, processed
9 it at that point? You and others?
10 A Yes, sir.
11 Q Did you oversee or supervise the final processing
12 of the pit?
13 A Uh, more or less, and as well as participated in it.
14 Q Now, you -- you estimated that a fire that, uh,
15 had approximately five tires -- And -- and
16 that -- that was your approximation of the number
17 of tires based on the -- the -- the amount of
18 steel-belted wiring in the burn pit?
19 A Well, that -- that's not fully correct, because there
20 could be additional tires that had -- would not be
21 steel-belted. Uh, what I believe my testimony was,
22 is that there was -- I could see -- I'm -- feel
23 comfortable in saying that there was more than five
24 steel-belted radial tires there. I certainly can't
25 give you an estimate as to glass-belted utility

1 tires, all those different things that might have
2 been present there. Judging by the ash that was
3 remaining in the pit, there was certainly a quantity.

4 Q And -- And you -- you agree with me that you
5 can't tell when tires may have been burned in the
6 pit as well?

7 A That's correct. I could just say that the remains
8 were there.

9 Q And the pit, itself, may have been used many
10 times other than immediately preceding law
11 enforcement coming to the pit?

12 A It's possible, but I don't know. I can only tell you
13 what I saw that day.

14 Q Correct. There are things you don't know about
15 the pit that you can't -- even from your
16 observations and your training, you're unable to
17 tell?

18 A That's correct.

19 Q Under the hypothetical that, uh, Attorney Fallon
20 had suggested, with, um, a number of tires in the
21 pit, you'd indicated the intensity level would,
22 uh, potentially see flames of between six and
23 nine feet; correct?

24 A Well, it'll vary with the fuel orientation and the
25 amount of fuel that's present there, but I have

1 burned tires and I know from my research that six to
2 nine feet -- And you have to remember that the flames
3 are kind of going up and down, so the estimate is
4 going to vary as it goes along. There may be times
5 where it could go higher than that, visually, and
6 then come back down.

7 Because -- What we call that is a
8 diffusion flame process. So it's not a, uh --
9 Or, excuse me. It's a turbulent flame, not a
10 diffusion flame. A candle flame is a diffusion
11 flame. It's a perfect flame. It doesn't seem to
12 vary. When we get an open fire, we see the
13 columns of visible, uh, luminescence coming up
14 and going down. The flames lick up and down.
15 That's why we see some variation of the flame
16 height.

17 Q And -- And the intensity of the fire, itself,
18 isn't simply vertical? It, uh -- be -- will
19 expand outward in a horizontal fashion as well?

20 A Well, you have heat transfer from several different
21 methods. One of those is radiant heat. And that
22 will be coming outward, unless it's impeded by an
23 obstruction.

24 Q And -- And your testimony, I believe, was that
25 the radiant heat, the intensity, potentially,

1 would, uh, make it very difficult, or maybe even
2 impossible, for someone to be several feet from
3 the fire?

4 A Well, that will depend on the intensity of the fire
5 at any given point. Uh, I just know from my own
6 practical experience of a burning, being by -- by
7 some burning tires, if you have multiple tires, and
8 it's -- they're burning freely in a full -- free
9 state of burn, it is difficult to approach them or
10 get close to them because of the radiant heat causing
11 thermal damage to the skin.

12 Q And, again, I simply was asking if that was what
13 your testimony was before with Attorney Fallon,
14 that that could have -- you know, that amount of,
15 uh, of -- of tires, or what have you,
16 accelerants, in the fire, because of the radiant
17 heat, would be very difficult to get within a
18 couple of feet?

19 A It would be, but you have to remember the variable of
20 how many tires are burning at a given time, because
21 the intensity of the fire is going to go up and down
22 with the fuel source. So if you have several tires
23 that are in full state of combustion, yes, it would
24 be difficult. If you have tires that are not fully
25 burned, or are already partially burned, then it

1 would be easier to approach.

2 Q So someone could be standing right next to the
3 fire?

4 A At a given time, yes, depending on the fuel that's
5 burning, because the fire will go up and down, and
6 you can approach, and have to stay away because of
7 the intensity of the fire.

8 Q And, hypothetically, with the more intensive
9 radiant heat, might have to stand three or four
10 feet beyond the fire?

11 A Correct.

12 Q From your, uh, experience and training, uh, are
13 you aware of any studies that have, um, been
14 conducted in regards to the, um, level of
15 intensity of -- of -- of the radiant heat from
16 one versus five tires? For example, wood versus
17 a -- a -- a tire-type of substance or
18 petroleum-based substance?

19 A There's a lot of studies that deal with the energy
20 release of various materials that are out there.

21 Q Would one tire in a fire be less intensive than
22 five tires in a -- a fire at one given time?

23 A Yes, because of the amount of energy that's being
24 released. Without getting too in depth, the
25 temperature would remain the same. Okay. The

1 temperature is not going to go up. It's always going
2 to be about the same, because they're going to burn
3 at the same temperature level.

4 However, the more fuel you're -- you add
5 in there, it -- the fuel is all being consumed
6 simultaneously. It will release more heat energy
7 in there just because more fuel is in the
8 combustion process.

9 Q So -- Correct. The temperature doesn't change.
10 It's the -- the energy or the -- that's released
11 from that fire that would be increased or
12 intensified?

13 A Correct. It's called a heat release rate. We
14 generally measure it in joules and megawatts.

15 Q A -- again -- Again, hypothetically, would wood
16 burn at the same intensity as one petroleum-based
17 tire, for instance?

18 A What specie of the wood and moisture content?

19 Q Let's just say standard oak wood.

20 A What's the moisture content?

21 Q Dry.

22 A How dry?

23 Q Fifty percent dry.

24 A Would not burn with the same intensity.

25 Q Okay. Would plastics, for instance, let's say,

1 milk cartons, burn at the same intensity as a
2 tire?

3 A Plastic milk cartons? The one-gallon jugs? Or the
4 wax paper cartons?

5 Q The one-gallon jugs you would find, let's say, at
6 the -- the grocery store?

7 A I don't believe that they burn with the same
8 intensity, but there's a lot of different
9 compositions there, so I'm reluctant to say, without
10 knowing its exact chemical composition, to being able
11 to research it.

12 Q I -- I'm not trying to belabor the point, but if
13 I -- my -- if you don't mind, I've -- have a
14 couple extra questions in that regard.

15 A Ask away.

16 Q All right. Clothing. Does cotton fabric
17 clothing, for instance, for example, burn at the
18 same intensity level as, um, one tire?

19 A No. Most things burn at the same temperature range.
20 Intensity, as far as the heat release, is going to
21 vary with the fuel product. And you -- you have to
22 be careful with the terms you're using. If you're
23 talking about the heat release rate, it's going to be
24 greater from certain products than others. If that's
25 what you're referring to as intensity? That's what

1 I'm assuming you're referring to as intensity.
2 Q I -- I mean -- Exactly. The radiant heat
3 released from the fire.
4 A The heat release rate from the fire?
5 Q Correct.
6 A Okay. That's what you mean?
7 Q Correct.
8 A All right. It will vary with the types of fuels.
9 Q Okay.

10 ATTORNEY FREMGEN: I have nothing else.

11 THE COURT: Any redirect, Counsel?

12 ATTORNEY FALLON: No, redirect.

13 THE COURT: You may step down.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: You're welcome. Your next
16 witness, Counsel?

17 ATTORNEY FALLON: State would call
18 Leslie Eisenberg.

19 THE CLERK: Please raise your right hand.

20 **LESLIE EISENBERG,**

21 called as a witness herein, having been first duly
22 sworn, was examined and testified as follows:

23 THE CLERK: Please be seated. Please state
24 your name and spell your last name for the record.

25 THE WITNESS: My name is Leslie Eisenberg,

1 E-i-s-e-n-b-e-r-g.

2 DIRECT EXAMINATION

3 BY ATTORNEY FALLON:

4 Q What is your occupation?

5 A I am currently employed at the Wisconsin Historical
6 Society as the program coordinator for the State of
7 Wisconsin's Burial Sites Preservation Program. I am
8 also, um, privately employed as a forensic
9 anthropologist.

10 Q What is a forensic anthropologist?

11 A A forensic anthropologist is someone who has had, uh,
12 training in anthropology, and, specifically, in a
13 subfield called physical anthropology, um, that looks
14 at human variation, how we are the same and different
15 from each other, um, with a specific focus on, uh,
16 anatomy and the study and understanding of -- of
17 human remains as it applies in a legal context.

18 Q All right. Doctor, uh, how is it that you are
19 involved in this case?

20 A I was requested, um -- My assistance was requested by
21 the Calumet County, uh -- by Calumet County law
22 enforcement, to provide assistance, um, looking at
23 human remains that, uh, were recovered in November of
24 2005.

25 Q And, um, you are here today to do what?

1 A I am here today to explain my findings, and, uh, also
2 here today to render several opinions, uh, notably,
3 about the sex and age of the remains of the
4 individual I examined, as well as rendering an
5 opinion as to the manner of death. Uh, how, um --
6 how the person, uh, whose remains I examined, um,
7 died.

8 Q Before we do that, um, if we could, uh, talk a
9 little bit about, um, your background and
10 training.

11 Um, first of all, beginning with your
12 educational experience, um, what degrees do you
13 hold?

14 A I hold a, um, Bachelor's Degree in anthropology, a
15 Master's Degree in anthropology, a Ph.D, or a
16 Doctorate, in anthropology. Um, and I am also a
17 board certified forensic anthropologist. One of 75
18 in the country.

19 Q What does board certified mean?

20 A Board -- Uh, being called a board certified forensic
21 anthropologist, um, means that you've jumped through
22 a lot of hoops and have had your work, um, carefully
23 scrutinized, um, by members on the American Board of
24 Forensic Anthropology. Uh, in order to receive the
25 title of what's called, diplomate, uh, which really

1 means board certification, one must, uh, submit case
2 reports for evaluation by the board. And the board
3 then will determine whether or not you are fit, um,
4 or ready to sit for an all-day examination, uh, the
5 morning of which involves a written examination, and
6 the afternoon is a hands-on practical examination
7 involving the examination, analysis, and
8 interpretation of bone in, uh, many different
9 conditions, um, much of it fragmentary.

10 Q What, if you would, um, are some of the key
11 positions or responsibilities that you have held
12 in the field of forensic anthropology that assist
13 you in performing that work?

14 A Uh, notably, I was a consultant for the Office of
15 Chief Medical Examiner of New York from 1986 until
16 1993, when I moved to Wisconsin, um, to take the
17 position as program coordinator for the Wisconsin
18 Historical Society's Burial Sites Preservation
19 Program, where I have occasion, on a fairly regular
20 basis, to examine and identify human bone, animal
21 bone, and so on, for law enforcement. Most of that
22 bone comes from archaeological or older context.

23 Uh, I also, since 1995, have been a
24 member of a federal disaster team, a regional
25 federal disaster team, that goes by the -- the

1 acronym DMORT, D-M-O-R-T, which stands for
2 Disaster Mortuary Operational Response Team.

3 And in that capacity I have been
4 deployed on several occasions. Uh, the earliest
5 of which was in 1999, uh, at the site of an
6 Amtrak train crash in Bourbonnais, Illinois,
7 where there were fatalities primarily as a result
8 of, uh, um, a fire in the sleeping car of -- of
9 that train.

10 Um, after that, I was asked, uh,
11 immediately after the World Trade Center attacks
12 on September 11, to be one of the first teams to
13 respond to the east coast disaster, um, where I
14 had occasion to work to identify, um, and
15 examine, uh, fragmentary human and nonhuman
16 remains. Many of those remains, uh, had been
17 exposed to considerable trauma, uh, and burning,
18 as you might imagine.

19 And, more recently, in September of
20 2005, I had occasion to be called or deployed
21 down to Mississippi after the, uh, Hurricane
22 Katrina, and at the same time, Hurricane Rita,
23 uh, came through, to help identify remains, um,
24 of, uh, individuals who died, uh, during the
25 hurricane, as well as collecting and identifying

1 skeletonized human remains that had been washed
2 out of cemeteries, uh, in-ground burials as well
3 as above ground mausoleums.

4 Q All right. And, um, so that we're -- How long
5 have you held your board certification in the
6 field of forensic anthropology?

7 A Four ten years now. I received that certification
8 in, uh, 1997.

9 Q Um, in addition to the, um, DMORT, uh,
10 appointments and status, have you received any
11 other, um, noteworthy appointments?

12 A Um, yes, I have. Um, I have, um -- May -- Are you
13 talking about memberships or -- If you can clarify
14 for me --

15 Q Sure. In the, uh -- In the field of forensic
16 anthropology, are -- are you -- there are some
17 appointments or memberships of groups that you
18 find particularly pertinent that assist you in
19 conducting your work?

20 A Understood. Thank you for that clarification. Uh,
21 from 1999 through 2005 I was an elected board member
22 for the American Board of Forensic Anthropology, and
23 for the last three years of that six-year
24 appointment, I was elected secretary of that board.

25 Q Do you have any particularly, um, uh -- Well,

1 let's ask it this way. Do you have any
2 publications in the field of forensic
3 anthropology?

4 A Yes, I do, sir.

5 Q Tell us about those?

6 A Um, some of those publications are jointly authored
7 by others with whom I've worked. Um, they appear in
8 what is the preeminent journal in the field of
9 forensic anthropology, which is called the Journal of
10 Forensic Sciences.

11 Uh, I also have a number of other
12 publications, uh, that span the, um -- the fields
13 of archaeology and forensic anthropology that are
14 specifically focused on human remains and the
15 identification of human remains.

16 Q I'm going to have, uh, Investigator Wiegert show
17 you Exhibit 199.

18 A Yes, sir.

19 Q All right. And do you recognize that?

20 A Yes, I do. It's my resumé, or what, uh, is referred
21 to in the academic field as a curriculum vitae, a
22 history, um, of your accomplishments, if you will.

23 Q And did you prepare that?

24 A Yes, sir, I did.

25 Q Is that a true and accurate summary of your

1 educational training and professional experience
2 in both, um, uh, forensic anthropology and
3 otherwise?

4 A Yes, sir, it is.

5 Q Very good. All right, Doctor. Directing your
6 attention, then, to this particular case, when
7 did you become involved in this case?

8 A I initially became involved in this case through a
9 telephone message that was left for me on November 9
10 of 2005.

11 Q What were you asked to do?

12 A The, um, contents of that voicemail message that was
13 left for me was, uh, that some remains had been
14 found, um, and I was, uh, asked to examine those
15 remains that had been left for me, uh, in a sealed,
16 uh, container in my office awaiting my return.

17 Uh, at the time I received that call on
18 November 9, I was in transit back to Madison from
19 a, uh, um, national, um, conference on missing
20 persons in Denver, Colorado. I was one of
21 several people at the time who was representing
22 the state of Wisconsin at that conference.

23 Q And what were the tasks? What, specifically,
24 were you asked to do, um, by law enforcement?

25 A I was asked to examine, um, items that were in a, um,

1 flat, uh, cardboard box that had been sealed with
2 evidence tape when I received it. Um, and I was
3 asked to identify if any of -- of the items in that
4 box were of human origin.

5 Q I'm going to have Investigator Wiegert bring you
6 a series of photographs.

7 A Thank you.

8 Q I believe the first photograph there is marked as
9 Exhibit 183. We'll have that displayed on the
10 screen in a moment. Um, let me ask, do you
11 recognize that?

12 A Yes, sir, I do.

13 Q All right. And what is, um, depicted in Exhibit
14 183?

15 A I, along with other investigators, are sorting, uh,
16 through material that was collected, um, uh, from the
17 Steven Avery property, and -- and we are looking
18 through this material, uh, with the objective of
19 looking for any human remains or other objects of
20 significance that had been collected from that
21 property.

22 Q Tell us a little bit about that process that's
23 depicted in the photograph, if you would?

24 A The process, uh, that I used to, um, examine all the
25 material presented to me for examination, um, is a

1 fairly systematic process, and a process that every
2 forensic anthropologist goes through.

3 And -- And the first thing that I do,
4 uh, and the major contribution that any forensic
5 anthropologist can make to an investigation like
6 this, involves, um, the recognition and sorting
7 of human bone, and in this case burned human
8 bone, from burned and unbone -- unburned, uh,
9 nonhuman bone.

10 The next step in that process is looking
11 at the burned human bone that has been sorted out
12 to see if there are any diagnostic or telling,
13 um, attributes or traits on any of those
14 fragments, um, that can tell the anthropologist
15 something about whose remains you are looking at.

16 The next step in the process is taking
17 those diagnostic fragments and developing what we
18 call in the field a biological profile. And what
19 that means is determining, if you can, the age of
20 the individual, the sex of the individual, the
21 stature of the individual, how tall they were,
22 um, and the ancestry, if possible.

23 Also, uh, critically important is to
24 determine, um, if there's anything else you can
25 tell from those diagnostic fragments, including

1 the presence of any trauma to those remains, uh,
2 that may have been sustained or may have occurred
3 in what we call the antemortem interval, the
4 interval before death, the perimortem interval,
5 p-e-r-i-m-o-r-t-e-m, and that simply means at or
6 near the time of death, or in the postmortem
7 interval, uh, during a time after death.

8 And, um, the other activity that I
9 undertook with these burn fragments was trying to
10 see if I could refit any of those fragments with
11 each other.

12 Q Very well. What is the -- the next photograph?
13 I believe would be Exhibit 184; is that correct?

14 A That is correct.

15 Q And what is depicted in Exhibit 184?

16 A That is, uh, a photo of myself and some other
17 investigators looking through additional material
18 that had been collected for the presence of any human
19 remains, bone fragments, dental structures, or
20 anything else that we considered significant.

21 Q All right. And the next photograph? Exhibit
22 185, I believe?

23 A That is correct.

24 Q All right.

25 A Exhibit 185 represents, um, the interior and contents

1 of the box that was initially left for me for
2 examination on November 9 of 2005 that I had the
3 opportunity to initially examine the following day on
4 November 10, 2005.

5 Q All right. Let's stop there for a moment and
6 talk a little bit about the -- the box and its
7 contents. What were the condition of those
8 contents? The bones that you -- or -- or
9 fragments, is probably the best way of describing
10 it, when --

11 A Well --

12 Q -- you looked at them?

13 A As I look in this photograph and -- and on the
14 screen, what I can see, and what I saw at the time,
15 are, um, fragments of material, some of which were,
16 um, clearly identifiable as human bone fragments that
17 were heavily burned and, in some cases, calcined.
18 Some of the bone that you see that looks white in
19 color, um, is what we call calcined.

20 Um, it is, um -- It represents bone that
21 has lost its moisture content, because all bone,
22 um, has -- has fat content, has moisture content,
23 has blood running through it, and when it's
24 exposed to heat, and considerable heat, that
25 moisture, and the blood, and the -- and the fatty

1 tissue, the marrow, um, will all dry up, and the
2 bone, itself, the or -- the organic content of
3 the bone, um, what makes bone, bone, um, also
4 disappears. And the bone -- calcined bone
5 becomes, um, almost like a piece of porcelain or
6 ceramic in that if you, um, knock it against a
7 table, it will sound very much like a piece of
8 porcelain.

9 Q In terms of -- As a forensic anthropologist, who
10 often is called upon to attempt identification of
11 remains, are there varying levels or degrees of
12 destruction that you forensic anthropologists
13 utilize to categorize exactly the condition of
14 the items you're examining?

15 A We do. Um, in 1996, there was, um, a very basic
16 scheme developed, uh, by a forensic anthropologist
17 from Texas, and a colleague of his. Um, it -- it's
18 known as the Crow-Glassman Scales. C-r-o-w, hyphen,
19 Glassman, G-l-a-s-s-m-a-n. And what Crow and
20 Glassman did was set up a five-stage, or five-level
21 scheme, if you will, that talks about increasing
22 levels of burning on bone.

23 Uh, level one, for example, would
24 involve a body that was charred, but would be
25 visually recognizable, um, to, uh, people who

1 know -- knew him or her, or to family members.

2 And that starts with level one and goes
3 up to level five, and, increasingly, um, there
4 is, uh, more destruction to the body. The body
5 then becomes unrecognizable. Um, and, um, level
6 five is, uh -- depicts the body in a state that
7 is primarily only recognizable, because of its
8 fragmentation and burning, to forensic
9 anthropologists and forensic dentists.

10 Q And in nip particular -- And in this particular
11 case, what was the level or condition of the, uh,
12 fragments you were asked to examine?

13 A In -- In my opinion, the fragments that I was asked
14 to examine, that I identified as -- as, uh, burned
15 human fragments, would have fallen into that last
16 category, um, the most destructive category, level
17 five.

18 Q All right. Is this what is sometimes referred to
19 as the ultimate level of destruction?

20 A Uh, by some auth -- authors, yes, it is.

21 Q In this particular case, of all the fragments
22 that you examined, did -- you were -- were you
23 able to locate any, um, human skull fragments?

24 A Yes, sir, I -- I was able to.

25 Q A -- A -- Approximately, how many fragments were

1 you able to locate?

2 A There were --

3 Q Or identify?

4 A There were approximately 58 fragments that were, um,

5 identifiable as human and diagnostic to the point

6 that I could say these fragments came from a human

7 skull.

8 Q In terms of, um -- How much of a human skull was

9 repre -- was represented by those 58 fragments?

10 Rough estimate, if you have one?

11 A A rough estimate, um, I would say, perhaps, a

12 quarter, and that may be an exaggerated estimate.

13 Q Could be less?

14 A It could be less.

15 Q All right, Doctor, let's begin with some of your

16 conclusions or findings. First, based on your

17 examination of the bones recovered from the pit

18 behind the garage of Steven Avery, did you find

19 evidence of human remains?

20 A Yes, sir, I did.

21 Q And were they in, um -- Were you able to identify

22 the relative age of the person whose remains you

23 examined?

24 A Yes, I was able to determine a relative age of -- of

25 the person whose remains I did examine.

1 Q Tell us about that, please?

2 A There are, um, many techniques that forensic
3 anthropologists use to determine someone's age, um,
4 when remains are unrecognizable and either too
5 decomposed or, um, skeletonized for a traditional,
6 um, autopsy.

7 Um, in this case, there, um -- Because
8 of the fragmentation and burning, um, many of --
9 of the characteristics or traits we look at to
10 make that determination, um, were not present or
11 not recognizable because of the condition of the
12 remains.

13 But there were several areas, um, of the
14 face, um, skull, if you will, and what we call
15 the postcranial remains, the remains below the
16 skull, that were able to help me come to a
17 determination of an approximate age of the
18 individual whose remains I examined.

19 Q And what was that?

20 A My determination was that the remains of the
21 individual I examined were no older than 30 to 35
22 years of age.

23 Q All right. If you could explain for us that --
24 that range, that step, you just gave us, 30 to
25 35, in terms of the field of forensic

1 anthropology and identification, what does that
2 mean or represent?

3 A Well, what that means to all of us, really, is that
4 once we, um -- as we age, and at about the year --
5 the age of about 30 to 35, um, our body starts
6 showing signs of wear, and that wear is -- is
7 degenerative. In other words, it's something that
8 happens with use, as -- as we use our bodies to do
9 lots of things. And that's at about the time when
10 forensic anthropologists can pick up signs of
11 arthritis, or what's sometimes called degenerative
12 joint disease, on many parts of the skeleton.

13 Um, what I did note, from the joint
14 surfaces that were present to examine, was that
15 there were absolutely no traces of the beginnings
16 of arthritis, um, which allowed me to cap the age
17 as no older than 30 to 35 years.

18 Um, I also had an opportunity in looking
19 at the skull fragments, um -- And some of those
20 fragments had suture lines. Um, when we think of
21 the skull, we may think of a -- a -- a ball-like
22 structure, or a sphere-like structure, but, in
23 fact, our skulls are made up of many joi -- uh,
24 bones that come together at what are kind of
25 joints. They're not like a shoulder joint or a

1 hip joint, but it's where the bones fit together,
2 almost like teeth in a zipper in -- in some
3 places, and -- and those openings, called
4 sutures, where those bones come together, uh, had
5 not fused, um, which is something you typically
6 see as someone, uh -- in someone who's much older
7 than 30 to 35.

8 Q All right. So, in effect, then, you're telling
9 us the -- these are the remains of a person who's
10 under age 30?

11 A Yes, sir.

12 Q All right. Were you able to determine the sex of
13 the person by the remains which were recovered?

14 A Yes, sir, I was.

15 Q And what -- what did you conclude?

16 A Based on examining certain diagnostic fragments, I
17 was able to determine that the remains presented to
18 me for analysis, those fragmented and burned remains,
19 were those of a female.

20 Q All right. I'm going to have, uh, uh, the next
21 exhibit, I believe the photograph is in front of
22 you, it should be at 186?

23 A That's correct, sir.

24 Q We have that now on the screen. Um, does this,
25 uh, photograph assist you in explaining why you

1 concluded these were the remains of a female?

2 A Uh, this -- this image, um, is -- is one of the areas
3 I looked at in the body that allowed me to make that
4 conclusion.

5 Q All right. Tell us about that?

6 A What --

7 Q Now -- Now, there is a laser pointer. It should
8 be right next to the --

9 A Ah, yes.

10 Q -- witness box?

11 A Thank you.

12 Q And if you would probably use the larger screen
13 to point, it might work better.

14 A Okay.

15 Q Are those shovels in the way? Rakes?

16 A No, they are -- they're not. Um, what we are looking
17 at in -- Here we go. What we are looking at in this
18 image are fragments from, um -- from a face, and we
19 are looking at these fragments as if we are looking
20 at someone face to face. And so let me point out
21 some of the landmarks to you to help you orient what
22 it is you're looking at.

23 Um, this area here represents the top of
24 the left eye socket. This fragmentary bone, um,
25 and this eye -- the top of the eye socket, is

1 actually part of the bone that continues up to
2 begin -- to become the forehead. So we have the
3 top of the left eye socket, the left half of the
4 nose. The nasal bones are two in number. And
5 what this fragment is, is the left half of the
6 nasal bones.

7 These are fragments from the right --
8 what would be the area above the right eye
9 socket.

10 This is a complete -- and one of the few
11 complete -- bones that I actually had an
12 opportunity to examine. A complete right
13 cheekbone. And while the placement may be a
14 little off in this photo, what you are looking at
15 here is the lower portion of the right eye
16 socket.

17 This is a fragmentary portion of the
18 left cheekbone, and a portion of a bone that runs
19 from the left cheekbone over and above the left
20 open -- the opening for the left ear.

21 Q All right. If we could go to the next exhibit,
22 uh, 187?

23 A Yes, sir.

24 Q And what are we looking at here?

25 A What we are looking at here is a closeup of -- of a

1 portion of what we saw in the previous graphic.
2 Excuse me. Again, this -- the top of the left eye
3 socket, the portion of what then continues up to be
4 the forehead, or what we call the frontal bone, and
5 the left half of the nose at -- this would be the
6 area that we would refer to as the bridge of the
7 nose. This is the left half of the two nasal bones.

8 Q All right. Now, with respect to the last two
9 exhibits, 186 and 187, what is it about them that
10 specifically assists you in, um, identifying
11 these remains as a female?

12 A Fairly diagnostic, or telling, to any forensic
13 anthropologist, or any biological anthropologist, is
14 that there are certain shapes that, um, are
15 characteristically female in the skeleton, and other
16 shapes, what we call morphology, that are
17 characteristically male. And one of those key
18 locations that anthropologists look at, um, is
19 actually the top of the eye socket.

20 In females, that rim, or ridge, is
21 fairly sharp and -- and, um, does not protrude.
22 In male skulls, that area, that edge, is very
23 blunt, and you often see heavy bone development
24 over the eye sockets. And we don't see that
25 here. I don't see that here. And what I see in

1 terms of morphology, and shape, and general bone
2 architecture to the facial bones, but especially
3 above the left eye socket, uh, leads me to
4 conclude that these facial bones and, in
5 particular, this bone here, um, comes from a
6 female.

7 Q All right. Now, um, Doctor, during the course of
8 preparing, um, and in reviewing the matters of
9 this case, did you have occasion to work with a
10 Tim Austin from the Wisconsin State Patrol?

11 A Yes, sir, I did.

12 Q And did he assist you with some of the, um,
13 exhibits that we're about to see?

14 A Yes, he did.

15 Q All right. If you would, uh, take your attention
16 to the next, uh, photograph? All right. And
17 this is Exhibit 188?

18 A Yes, sir.

19 Q And what are we looking at here with Exhibit 188?

20 A What we are looking at here is a graphic depiction,
21 um, of not a real skull, but a -- a
22 computer-generated skull, and, um, the arrows and the
23 descriptions on this graphic point to the areas of
24 the skull and the facial bones that have been
25 recovered, and identified by me, and described to

1 you, in the previous slides.

2 Q And that -- I see there's a notation, Evidence
3 Tag 8318. Is that at all referenced to the box
4 that we previously examined?

5 A Yes, sir. The area, uh -- We don't see all of it
6 here, but the identifier for this particular slide
7 that says, Evidence Tag 831 -- and we'll wait for the
8 8 to show up -- 8318, was the, um, evidence tag
9 identifier for that white opened box we saw earlier
10 on. Uh, the material that was illit -- initially
11 collected and, um, the material that I initially
12 examined and sorted through.

13 Q All right. All right. Next exhibit, please?
14 Should be Exhibit 189?

15 A Yes, sir.

16 Q All right. And, um, if you would, what is
17 depicted here?

18 A What is depicted here, through the work of, uh,
19 Trooper Tim Austin, um, are two, um,
20 computer-generated skeletons. Um, the one on the
21 left represents that of a female, and the one on the
22 right, that of a male.

23 Q All right. And, um, in terms of the, uh, eye
24 sockets, if you'd take a moment to, um, highlight
25 the distinctions that you've just been talking

1 about?

2 A In the fragmentary skull and facial bones that were
3 recovered, the area that I was pointing out a little
4 bit earlier was just above the left eye socket and
5 above, uh, the bridge of the nose. In this female
6 skeleton, on the left, I hope you can appreciate, um,
7 the roundedness and the sharpness of the rim, or the
8 top edge, of that left eye socket.

9 Q Would it help if we zoomed in on that?

10 A It may for the jury, sir. This area in particular,
11 um, is a hallmark of, um, what anthropologists
12 recognize, or identify, as -- as coming from a female
13 skeleton, because it's a relative, um, um,
14 gracileness or, um, I guess sharpness, and -- and,
15 um, smoothness of that edge. In contrast to what we
16 would see in a typical male skeleton, um, here's the
17 bridge of the nose, the top of the left eye socket,
18 and I hope you can appreciate or see, um, the area
19 here where above the left eye socket there's a
20 considerable buildup of bone, um, and, as well, the
21 edge or the shape of the top of the eye socket is
22 much more rounded and substantial.

23 Q Doctor, um, although you determined the relative
24 age and -- and sex of the person, were you able
25 to determine, um, ancestry or stature of the

1 person after your examination of the remains?

2 A No, sir, I was not. And that was, uh, because of the
3 extreme fragmentation and burning that did not allow
4 me to reconstruct, um, some of the long bones. In
5 particular, the thigh bone that I would typically
6 measure to develop a -- a stature estimate.

7 Likewise, many of the landmarks that I
8 would use to determine ancestry or racial
9 affiliation, uh, were not present because of that
10 fragmentation.

11 Q All right. As a forensic anthropologist, are you
12 familiar with the concepts of cause and manner of
13 death?

14 A Yes, sir, I am.

15 Q Um, first of all, tell us, um, are you frequently
16 asked to render opinions on, uh, for instance,
17 cause or, perhaps, manner of death?

18 A More often, and most often, I am asked to render
19 opinions as to what's called manner of death. By
20 what mechanism did someone die? Less often, cause of
21 death, because often that's the purview of a forensic
22 pathologist. But in cases like this, where the
23 remains are so fragmentary and, uh, are too
24 fragmentary, um, for a traditional autopsy, it often
25 falls to the forensic anthropologists to make a

1 determination about what's called cause of death and
2 manner of death.

3 Q All right. Then in your field of forensic
4 anthropology, what is the difference between
5 cause and manner of death, if you would explain
6 for us?

7 A As it's generally understood in -- in, uh, forensic
8 anthropology, cause of death is, um, fairly explicit.
9 In other words, what did the person die from?

10 Manner of death, however, speaks to the
11 mechanism. What caused the death? How did the
12 person die?

13 Q All right. Can you give us an example, for
14 instance, of a distinction that you might
15 commonly run across in -- in your forensic work?

16 A Oh, I guess cause of death, um, if -- if I pretended
17 to be a forensic pathologist for a minute, um, might
18 be, um, heart attack, or tuberculosis.

19 Um, a manner of death, um, for a heart
20 attack, might be, um, accidental. Manner of
21 death, uh -- in general, there are four different
22 categories, um, that are understood when we talk
23 about manner of death. And, um, one of those
24 categories can be a natural death, which might
25 result from a heart attack.

1 A second category of manner of death
2 might be considered accidental. Did someone fall
3 off a ladder, um, hit their head, uh, or sustain
4 a spinal injury and die accidentally?

5 Um, a third manner of death is suicide.

6 And fourth, most commonly recognized, is
7 homicide.

8 Q Is there sometimes a fifth? Such as unexplained?

9 A Unexplained. Or sometimes even a sixth, uh, being
10 undetermined.

11 Q Okay. Based upon your training and experience --

12 Excuse me. Based upon your training and
13 experience, and the examination that you
14 conducted in this case, do you have an opinion as
15 to the manner of death of the individual whose
16 remains you examined?

17 A Yes, sir, I do.

18 Q What is that opinion?

19 A It is my opinion that the remains of the individual I
20 examined died as a result of -- of a homicide, and,
21 in particular, homicidal -- what I am calling
22 homicidal violence.

23 Q All right. Now, during the course of this
24 investigation, um, did you have an opportunity,
25 uh, to meet and consult with a -- a physician by

1 the name of Jeffrey Jentzen?

2 A Yes, sir, I did.

3 Q And who is Jeffrey Jentzen?

4 A Dr. Jeffrey Jentzen is a very well-known and
5 well-respected forensic anthropologist who is the
6 medical examiner for Milwaukee County, Wisconsin.

7 Q All right. And just, generally, then, the
8 distinction between a forensic pathologist, and a
9 forensic anthropologist, which you are, just,
10 briefly, what's the difference?

11 A Well, if you ask a forensic pathologist what the
12 difference is, their first answer will be that they,
13 uh, have been to medical school. They are real
14 doctors. And forensic anthropologists are fake
15 doctors, because they only have a Ph.D. But, in
16 general, um, uh, forensic pathologists are doctors
17 who specialize, uh, in pathology and who have further
18 training and certification in a field called forensic
19 pathology, or pathology, um, that is applied in legal
20 context.

21 Um, they typically perform autopsies on,
22 um, all types of remains, most of which, I would
23 say, are recognizable. The -- the people can be
24 visually recognizable. Sometimes those
25 individuals, um, have died as a result of a

1 burning episode, or a drowning, um, or any other,
2 um, type of -- of, um, activity.

3 Q All right. And, um, did you and Dr. Jentzen look
4 at, um, several of the cranial fragments during
5 the course of this investigation?

6 A Yes, sir, on one occasion.

7 Q Very well. Um, I'd like to return, again, to
8 your opinion regarding homicidal violence, and
9 ask you, why do you believe, based on your
10 examination, that that is the correct or accurate
11 manner of death?

12 A After having examined all the fragments, and, uh, you
13 have just seen one box of 50 different containers
14 that I had the opportunity to, uh, sort through to
15 distinguish human from nonhuman bone, um, to look for
16 diagnostic human elements, to look for human bone
17 that may have showed signs of trauma, to try and
18 refit fragments that may have come from any one of 50
19 different containers, there were two, uh, skull
20 fragments, in particular, that, to me, showed clear
21 and, uh, unquestionable evidence for, uh, what I
22 consider antemortem, or before death, uh, trauma.

23 Q All right. Um, was there anything about the,
24 uh -- the fact that the fragments were burned or
25 calcined that attributed to your opinion on

1 homicidal violence?

2 A Well, I think anytime, um, remains are burned beyond
3 recognition, um, and, um, that burning is not of an
4 accidental nature, I think that the fact that these
5 remains came primarily from a burn pit, um, that the
6 fact that someone attempted to obscure the identity
7 of another individual through burning, certainly
8 could be considered, um, part of that umbrella
9 heading, homicidal violence.

10 Q All right. Doctor, would you look at the next,
11 uh, photograph? This is marked, I believe, as
12 Exhibit 190?

13 A Yes, sir.

14 Q What are we looking at in Exhibit 190?

15 A We are looking at something that's probably
16 unrecognizable to everyone in this courtroom except
17 myself. There are two skull fragments here. We are
18 looking at the internal side of two skull bones
19 that -- actually, three skull bones. I was able to
20 refit these two bones together along this, uh,
21 fracture break, as well as a third fragment that fits
22 along this edge.

23 These are three fragments from the left
24 side of a human skull, um, and one of those
25 fragments shows, uh, evidence that I believe

1 would speak to my determination of homicidal
2 violence.

3 Q All right. If you would take the, um, uh,
4 pointer and describe for us what it is you're
5 looking at?

6 A Yes, sir. Um, the reason I know that this is the
7 inside of a human skull, are these vessel
8 impressions, these blood vessel impressions, that
9 kind of look like spider webs, or an aerial view of
10 a -- of a road network somewhere in this country.

11 Um, the vessels that run along the
12 inside of the skull actually sit in these
13 channels, and, um, the positioning of these
14 channels, and the direction of these channels,
15 actually allows me to make a determination as to
16 whether this bone comes from the left side of the
17 skull or the right side of the skull.

18 These three bones are all part of a bone
19 called the parietal bone. P-a-r-i-e-t-a-l. And
20 we have a parietal bone on the left side of our
21 skull and a corresponding, or mirror, parietal
22 bone on the right side of our skull.

23 Q All right. And what is it about the indentation
24 at the top of the picture here which is of
25 significance to you in your opinion on homicidal

1 violence?

2 A When I looked at this fragment, there was an area of
3 this fragment that caught my attention almost
4 immediately, and it's this area here that I believed
5 was quite significant with respect to a -- a
6 determination of -- of hom -- homicidal violence.

7 To me, based on my experience, this
8 would be considered what's called internal
9 beveling. Now, remember, we're looking inside
10 the skull at this moment, and where the hard
11 compact bone of the inside of the skull stops,
12 um, what you're looking at is -- is kind of a
13 honeycomb-looking bone. That is, a bone that's
14 sandwiched between the outside of the skull and
15 the inside of the skull. And whenever there is,
16 um, a, uh -- an unnatural defect to the skull
17 that looks like this, um, where you have internal
18 beveling, or what some people call cratering of
19 the inside of the skull, um, it is identified,
20 uh, as, um, an entrance wound from a gunshot.

21 Q All right. Um, next exhibit? This is Exhibit
22 191?

23 A Yes, sir.

24 Q All right. And what are we looking at in Exhibit
25 191?

1 A What we are looking at here is the flip side of the
2 three bones we had just examined depicting the inside
3 of the skull. What you are looking at now is the
4 outer portion of the skull. And I would call your
5 attention to this area right here. That is the flip
6 side, or the other side, of the, um, area that I've
7 identified as an entrance wound from a gunshot.

8 Q All right. Now, I noticed, just so that we can
9 have it explained, there seem to be some, um, uh,
10 colored dots, and -- and, uh, one arrow on there,
11 if you could tell us, if you know, what those
12 are?

13 A I would be happy to. The, um -- Initially, because
14 there were so many fragments to examine, um, and
15 those fragments -- each were identified, um, with the
16 location from where they came, I thought it might be
17 necessary to begin to, um, mark the bone, um, to
18 reference their location of where they were initially
19 found. And what I started to do was, um, to mark
20 those individual fragments that had come from
21 different locations, or from the same general
22 location, simply with different color nail polish.

23 Um, additionally, the -- the skull
24 fragments were also taken to be x-rayed, and
25 whenever any of those fragments, um, showed

1 something unusual and unexpected in x-ray, those
2 fragments also received a nail polish color, but
3 of a different color to distinguish them from the
4 skull bone fragments that showed no unusual signs
5 in x-ray.

6 Uh, additionally, it's my understanding
7 that this copper-colored arrow pointing to the
8 opening, um, for what I believe is an entrance
9 wound on this left side of the skull, this, I
10 believe, was affixed or placed by, uh, staff from
11 the Wisconsin State Crime Laboratory.

12 Q And, as a matter of fact, um, to whom did you,
13 um, refer, um, these, um, fragments for further
14 radiological or metallurgic analysis?

15 A I had made contact with a forensic pathologist at the
16 Middleton Veterans Memorial Hospital in Madison, a
17 Dr. Michael Stier, S-t-i-e-r, who was able to set up
18 an appointment for me to have these, uh, skull
19 fragments x-rayed.

20 Q All right. And after they were x-rayed, did you
21 have anyone else at the Wisconsin Crime Lab
22 further examine them?

23 A Yes, sir. It was my recommendation that these
24 fragments -- The fragments that showed unusual
25 signatures, if you will, in x-ray, um, it was my

1 recommendation that those signatures be examined for
2 the presence of any non-natural element or object
3 other than what we would all expect to see associated
4 with human bone.

5 Q All right. And were they subsequently, uh,
6 examined by Kenneth Olson from the Crime Lab?

7 A Yes, sir, they were.

8 Q All right. Um, the next, uh, photograph, please?
9 This would be Exhibit 192?

10 A Yes, sir.

11 Q And what are we looking at in Exhibit 192,
12 Doctor?

13 A This is another one of those burned fragmentary skull
14 bones, uh, on which I identified what I believe is
15 another, uh, entry from a gunshot.

16 Q And what -- Which, um, type of the -- or what
17 part of the skull is depicted in Exhibit 192?

18 A What we are looking at here is a fragment from the
19 back of the skull, the part of the skull you can feel
20 when you rub your hand up and down above the nape of
21 your neck. It's called the occipital bone.

22 O-c-c-i-p-i-t-a-l.

23 Q All right. And, again, if you'd use the pointer.
24 Um, what was of interest or significance to you
25 with respect to this occipital bone?

1 A I saw the same bony signature, the same unnatural
2 defect, in this fragment from the occipital bone as I
3 did in the previous, uh, bone, the parietal bone,
4 from the left side of the skull, where you can see
5 that honeycomb appearance, uh, on the inside of the
6 skull.

7 And here we are looking at the inner
8 table, or the inside of the occipital bone,
9 seeing the same kind of concentric -- partial
10 concentric defect with the exposure of the
11 honeycomb portion, or the intermediate portion,
12 of the skull bone, um, where the force of the
13 entry actually, um, blows a larger area -- or
14 develops that cratering that I spoke about a
15 minute ago.

16 Q All right. Um, next exhibit, please? Now, we've
17 had some discussions regarding the parietal, uh,
18 defect. Um, we're showing you, now, Exhibit 193?

19 A Yes, sir.

20 Q All right. And does this, uh, show the relative
21 placement of the parietal bone and the defect
22 that you observed?

23 A Yes, sir, it does. What we are looking at is a
24 computer-generated image of a human skeleton, and we
25 are looking at that skeleton from -- you're looking

1 towards the left side of the skeleton. So we are
2 looking at the left side of the skull. And that area
3 identified with the arrow and the -- the purple or
4 lavender color is the parietal bone and the
5 approximate location of that initial defect that I
6 identified as a gunshot entry wound.

7 Q All right.

8 THE COURT: Counsel, I'm going to interrupt
9 just for a moment. Are we getting to the close of
10 this? Or, perhaps, it's appropriate to take a break
11 now?

12 ATTORNEY FALLON: Well, I was just
13 thinking of that. We have about 15 minutes or
14 so. Do you want to take a break?

15 THE COURT: Yeah. I think so. All right.
16 We'll take a 15-minute break.

17 (Recess had at 10:31 a.m.)

18 (Reconvened at 10:50 a.m.)

19 THE COURT: Proceed.

20 Q (By Attorney Fallon) All right. Doctor, I
21 believe we left off with discussion of the
22 parietal defect. We're going to go to the next
23 exhibit. See what is being projected now as
24 Exhibit 194?

25 A Yes, sir.

1 Q All right. And what is, uh, depicted in Exhibit
2 194?

3 A We are looking at the, uh, back of a skull. Uh, the
4 back of a computer-generated, uh, skeleton. Um, and
5 focusing on, this time, not the parietal bone on the
6 left side of the skull, but the bone at the lower
7 back of the skull, called the occipital bone, and, in
8 particular, the approximate area of the second
9 internally beveled defect.

10 Q All right. Uh, next? Should be, I believe,
11 Exhibit, um, 138? Is that the next one in line?

12 A Yes, sir.

13 Q Okay. Exhibit 138, do you recognize that?

14 A Yes, sir, I do.

15 Q What is Exhibit 138?

16 A We are looking at, um, one of ten x-rays that was
17 taken on November 17 of 2005, depicting two of the
18 left parietal bones. And, in particular, um, the --
19 the fragment that showed the initial, um, unnatural
20 defect, uh, and the presence of four different
21 radiopaque areas, um, small particles that are white
22 in color.

23 There's one here, right within and
24 adjacent to this cratering. Again, these are the
25 vessels that tell me that this is the inside of

1 the skull.

2 Here's another one of those bright white
3 flecks. And there are two others. One is right
4 here, and one just below it. And these flecks
5 show up as bright white like this because they,
6 uh -- the x-rays cannot penetrate them or pass
7 through them like they can with the remainder of
8 the bone.

9 Q All right. Now, um, Mr. Olson from the Crime Lab
10 has advised us that, um, his findings were that
11 they were, um, uh, in this particular exhibit,
12 traces of elemental lead. My question for you,
13 as a forensic anthropologist, is that a naturally
14 occurring phenomenon in human skull tissue to
15 your knowledge?

16 A It is absolutely not a naturally occurring defect and
17 something I would never expect to see in bone that
18 had not sustained a gunshot wound.

19 Q All right. Uh, your next exhibit, then, is which
20 one, please? One thirty-nine, I believe?

21 A One thirty-nine, yes.

22 Q All right. Directing your attention, then, to
23 Exhibit 139, and, in particular, the, um,
24 fragment -- There are eight fragments. Your
25 attention is directed to the fragment on the

1 upper left-hand corner. Um, that fragment that
2 you have now circled, what is it that we're
3 looking at there?

4 A This particular fragment is yet another fragment,
5 that occipital bone fragment, the fragment from the
6 back of the skull, that also shows an internally
7 beveled defect. And in this case, adjacent to and
8 within that defect, are a minimum of ten different,
9 um, areas, um, particles of -- of this bright white
10 again, which, um, is of a substance different than
11 the surrounding bone, radiopaque, in that the x-rays
12 cannot pass through them.

13 Q And, um, is -- You said that was taken on
14 November 17, 2005. Is that before you began
15 your, uh, ref -- your cranial refit, um, efforts?

16 A Yes, it is, sir.

17 Q Okay. And just so that we're clear, um, is that
18 the inside or the outside of the occipital bone
19 at the back of the skull that's being depicted?

20 A Um, I do not know because I do not believe the
21 radiology technician who took this image indicated
22 whether it was an anterior, front, or posterior,
23 back, image. From what direction she was taking the
24 image.

25 Q Very well. Um, next, please? Should be, I

1 believe, Exhibit --

2 A The last exhibit I have before me is Exhibit 195.

3 Q Okay. Very good. Now, um, I'm going to leave
4 that on the screen for a moment and ask a few
5 preliminary questions. Do the presence of the
6 radiopaque, these impenetrable flecks, as it
7 were, are they supportive, in your mind, of your
8 diagnosis that, uh -- that the manner of death is
9 homicidal violence?

10 A Absolutely, yes.

11 Q And why is that, Doctor?

12 A These non-naturally occurring particles that have
13 been identified by the Crime Lab as having, um, lead
14 content are not -- would never be seen in bone that
15 had not been subjected, um, to uh, gunshot trauma.

16 Q All right. Now, of interest, I think, to many of
17 us, uh, is this: Is there any way for you
18 determ -- for you to determine, based on your
19 examination of the remains, which entry defect,
20 the parietal or the occipital, came first?

21 A No, sir, I cannot make that determination.

22 Q However, were you able to determine whether these
23 exist -- these defects existed prior to them
24 being subjected to the burning episode or after?

25 A Yes, absolutely, I could make that determination.

1 Q And -- and what could you determine? What is
2 your opinion?

3 A As I examined these fragments, it was clear to me
4 that, uh, their edges were similar in color to the
5 burning of the rest of the bone. And what that tells
6 me is that these edges, um, these fragments, the bone
7 was fragmented with the edges exposed at the time it
8 was exposed to fire.

9 Q Now, were there other human remains in this case
10 that were examined that were not of the
11 cranial -- not from the cranial area?

12 A Yes, sir.

13 Q All right. And, uh, we have what is depicted on
14 the screen as Exhibit No. 195?

15 A Yes, sir.

16 Q And, um, first of all, ex -- would you be so kind
17 as to explain the phrase postcranial findings?

18 A Postcranial simply means anything below the head or
19 the skull.

20 Q And in terms of, um, your examination of the
21 remains here, um, what other, uh, cran -- uh,
22 postcranial remains were identified to you as
23 coming from the burn pit behind Steven Avery's
24 garage?

25 A Virtually, um, every other bone in the body was

1 represented by at least one fragment, and in some --
2 in some cases, many more fragments. And what we see
3 depicted here on this graphic, um, are areas of the
4 body from which I was able to identify one or more
5 fragments, or entire bones, that could be
6 definitively, definitely, identified as to their
7 origin.

8 For example, the clavicle or collarbone,
9 or, um, the, um, metacarpals. The hand bone. Or
10 the vertebrae. Parts of the spine.

11 Q Are all the remains consistent with that of an
12 adult female?

13 A Not every bone in the body will allow you to make a
14 determination of age and/or sex, but the fragments
15 that were diagnostic or held that information for me
16 to look at, um, allowed me to confirm that these
17 remains, these fragmentary burned remains, were those
18 of an adult female.

19 Q All right. Now, um, I have just a few more
20 questions. During the course of your
21 examination, did you find evidence of, um, human
22 remains, um, obtained from an area other than
23 the, um, burn pit behind Steven Avery's garage?

24 A Yes, sir, I did.

25 Q Tell us about that, please?

1 A There was a second location, away from the burn pit,
2 uh, and closer to the, um -- what was then referred
3 to as the Janda -- Dassey/Janda property, uh, one of
4 four burn barrels contained, uh, human bone
5 fragments.

6 Q All right. And, uh, just for the benefit of the
7 jury, can you kind of tell us a little bit about
8 what kind of human bone fragments were recovered
9 from that area?

10 A Yes, sir. In, um, the burn barrel identified as Burn
11 Barrel No. 2, there were human -- burned human bone
12 fragments from the spine, from the shoulder blade, or
13 what we call the scapula, a possible hand bone
14 fragment, what we call a metacarpal, um, and
15 fragments of long bones that could have been, uh,
16 from leg bones or from arm bones.

17 Q I'm going to show you one, um, other exhibit
18 before we conclude. I'm going to direct your
19 attention to Exhibit -- I believe it's 150, and,
20 um, do you recognize that?

21 A Yes, sir, I do.

22 Q All right. And what is, um, Exhibit 150?

23 A One-five-zero is a portion of burned human bone, um,
24 that was recovered with other smaller burned human
25 bone fragments and fragments of dried or desiccated

1 human muscle tissue.

2 Q All right. And is this a -- a, um -- the
3 fragment that you caused to be, um, transferred
4 to the Crime Lab for DNA analysis?

5 A That is one of the fragments that I transferred to
6 the Federal Bureau of Investigation for DNA analysis.

7 Q Now, um, in fact, there was a -- a subsequent
8 attempted analysis on a number of the fragments
9 which you were unable to identify, am I correct?

10 A There were fragments that, um -- whose origin -- I --
11 I knew what bone they came from, uh, that were sent
12 to the FBI, uh, DNA Lab, but because of the extent of
13 burning to those bones, they were not, in my
14 knowledge, able to obtain, uh, a DNA signature.

15 Q But they did obtain a -- and the Crime Lab here
16 in Wisconsin did obtain a DNA analysis from some
17 of the fragments?

18 A I believe that's correct.

19 Q All right. All right, Doctor, to conclude, the
20 opinion that the remains were those of an adult
21 female less than 30 years of age, do you hold
22 that opinion to a reasonable degree of scientific
23 certainty?

24 A I would qualify that, to be consistent with my
25 report, to say the remains were those of someone who

1 is younger than 30 to 35 years of age. Correct.

2 Q All right. And the opinion that the internal
3 beveling observed in the left parietal bone is
4 characteristic of a gunshot or bullet entrance
5 wound, do you hold that opinion to a reasonable
6 degree of scientific certainty?

7 A Yes, I do. The unnatural defect in the left temporal
8 area of the skull, uh, is the result of a gunshot
9 injury.

10 Q Um, the opinion that the internal beveling ob --
11 observed in the occipital bone, left of the
12 midline, is characteristic of a gunshot or bullet
13 entrance wound, do you hold that opinion to a
14 reasonable degree of scientific certainty?

15 A Yes, sir, I do.

16 Q The opinion that the internal beveling, observed
17 in the left parietal bone and in the occipital
18 bone, occurred, um, before the burning episode?

19 A Yes.

20 Q Do you hold that opinion to a reasonable degree
21 of scientific certainty?

22 A Yes, sir, I do.

23 Q And, finally, your opinion that the manner of
24 death for this person was homicidal violence, do
25 you hold that opinion to a reasonable degree of

1 scientific certainty?

2 A Yes, sir, I do.

3 ATTORNEY FALLON: We'd, um, move into
4 evidence, um, the exhibits identified by Doctor
5 Eisenberg. I believe they are Exhibits, uh, 183
6 through 195, and Exhibit 199.

7 THE COURT: Counsel, any objection?

8 ATTORNEY FREMGEN: No.

9 ATTORNEY FALLON: Would tender the
10 witness for cross.

11 THE COURT: They're received. You may
12 cross.

13 **CROSS-EXAMINATION**

14 BY ATTORNEY FREMGEN:

15 Q Doctor, I just have a few questions for you. Um,
16 no questions about your qualifications. I wanted
17 to ask you about the box of items that were
18 provided to you to, uh, view. The box of bone
19 fragments. You recall that testimony earlier and
20 the picture of the box that you received to go
21 through?

22 A Yes, sir. That was the first of 50 containers, um,
23 that I received to, as you say, go through. It was
24 identified as Evidence Tag No. 8318. That's correct.

25 Q Okay. Now, the bones were all as the picture

1 depicted? That would be how you received it?

2 A No. At the time I received it, the box was closed
3 and sealed with evidence tape.

4 Q When you opened it, that's how you observed the
5 bones?

6 A Yes, sir.

7 Q They weren't individually packaged within the
8 box?

9 A No, sir.

10 Q Okay. Did you receive any individually packaged
11 bones along with that box?

12 A In that box, and as we all saw in that photo, there
13 was a clear plastic bag that contained, um, some
14 items that had been segregated from all of the items
15 that were collected in that box.

16 Q Now, you indicated that the manner of death was
17 homicidal violence? Specifically, gunshot;
18 correct?

19 A I -- In terms of my determination of manner of death,
20 yes, homicidal violence would be considered the
21 manner of death. There was evidence for two discrete
22 gunshot wounds, and, uh, the extreme fragmentation
23 and burning of the body, um, was part of the process
24 in my opinion.

25 Q In regards, specifically, to the two gunshot

1 wounds, based on beveling and the -- the two
2 skull fracture fragments you received? Correct?
3 That's where you came up with that determination
4 or opinion?

5 A That is correct, sir.

6 Q You were able to determine that -- from your
7 testimony, I understand it, that the -- those
8 skull, um, defects could not have occurred during
9 the burning process?

10 A That is correct.

11 Q Would have to have occurred prior to the burning
12 process?

13 A Yes, sir.

14 Q But would you agree there is no evidence, at
15 least from what you have testified to so far,
16 that indicates that the individual was alive at
17 the time of the two, uh, gunshot wounds?

18 A I cannot make that determination. That's not within
19 my field of expertise.

20 Q So when you say this is the manner of death, it's
21 more of a educated guesstimate versus an exact
22 determination?

23 A Well, I am not a medical doctor, sir, but based on my
24 experience, and having, um, examined other cases that
25 show these characteristic signatures of gunshot

1 wounds, um, it's my opinion that, um, it certainly
2 would have contributed to the cause of death.

3 Q If the person were alive prior to the gunshots --

4 A Yes, sir.

5 Q -- correct? Okay. Were you, um, present during
6 the second -- the burn -- The four burn barrels
7 you testified to, were you present during, uh,
8 the sifting of those burn barrels?

9 A To my knowledge, I was not. Although, uh, I would
10 like to -- to qualify that answer by saying that I
11 did have, uh, occasion, on two separate occasions, to
12 reexamine material that may have originated from any
13 one of those four burn barrels.

14 Q Okay. That's all. Thank you.

15 A Thank you, sir.

16 THE COURT: Any redirect, Counsel?

17 ATTORNEY FALLON: No redirect.

18 THE COURT: You may step down.

19 THE WITNESS: Thank you.

20 THE COURT: You're welcome.

21 ATTORNEY FALLON: I believe there's a,
22 uh, trial stipulation?

23 THE COURT: There is. There's an
24 additional trial stipulation. Ladies and gentlemen
25 of the jury, I remind you what I told you earlier

1 this morning about stipulations. They are evidence.
2 I'm going to read the following as a trial
3 stipulation:

4 Number one. Dr. Jeffrey Jentzen is the
5 Chief Medical Examiner for Milwaukee County,
6 Wisconsin, and is a board certified forensic
7 pathologist. Dr. Jentzen agreed to be a medical
8 consultant in this case and offered expert
9 opinion as to the manner and cause of death of
10 Teresa Halbach.

11 Number two. That if called to testify,
12 Dr. Jentzen would state that after consultation
13 with forensic anthropologist, Dr. Leslie
14 Eisenberg, he reviewed reports, photographs,
15 x-rays, bone fragments, and other materials
16 surrounding the Teresa Halbach death
17 investigation.

18 Dr. Jentzen would testify that in his
19 expert opinion, to a reasonable degree of medical
20 certainty, the manner of death of Teresa Halbach
21 was homicide, and the cause of death was gunshot
22 wounds to the head.

23 To the prosecution, is that your
24 stipulation?

25 ATTORNEY FALLON: It -- It is.

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THE COURT: To the defense?

ATTORNEY FREMGEN: Yes.

THE COURT: It will be marked as
Exhibit --
(Exhibit No. 200 marked for identification.)

THE CLERK: Two hundred.

THE COURT: Exhibit No. 200. You have
an additional witness?

ATTORNEY FALLON: I -- I think we -- we
can start. We will not finish.

THE COURT: All right. Please start.

ATTORNEY FALLON: State at this time
would call Detective Anthony O'Neill. It may
take us a moment to set up.

THE COURT: That's fine. Just come here,
remain standing, and take the oath, please.

ANTHONY O'NEILL,

called as a witness herein, having been first duly
sworn, was examined and testified as follows:

THE CLERK: Please be seated. Please state
your name and spell your last name for the record.

THE WITNESS: Anthony John O'Neill,
O'-N-e-i-l-l.

DIRECT EXAMINATION

BY ATTORNEY FALLON:

1 Q While we're, um -- While we're setting up here,
2 I'll ask some preliminary questions. For whom
3 are you employed, sir?

4 A The Marinette County Sheriff's Department.

5 Q And, um, how long have you been employed at the
6 Marinette County Sheriff's Department?

7 A Approximately 18 years.

8 Q And in what capacity are you currently employed?

9 A A detective.

10 Q And how long have you been a detective, sir?

11 A Since 1998.

12 Q And during your time as a detective, have you
13 been asked to interview both witnesses and
14 suspects in your capacity as a detective with the
15 Sheriff's Department?

16 A Yes, I have.

17 Q And, um, uh, during the course of your, uh, time
18 at the Marinette County Sheriff's Department,
19 have you participated in homicide investigations?

20 A Yes, I have.

21 Q Approximately how many investigations, uh --
22 homicide investigations have you been involved
23 in?

24 A I'd say about eight.

25 Q All right. And in terms of general investigative

1 experience, um, how -- how -- how many
2 investigations? Any reference?

3 A It's the bulk of my job.

4 Q Okay. Fair enough. Um, I'd like to direct your
5 attention to a particular day, and that would be,
6 Sunday, November 6, 2005, shortly before noon.
7 On that day, um, did you have occasion to assist
8 the Calumet County Sheriff's Department, and the
9 Wisconsin Department of Justice investigation
10 involving the missing person of Teresa Halbach?

11 A Yes, I did.

12 Q And, first of all, tell us how you became
13 involved?

14 A On the previous day, uh, our office was contacted by
15 the Calumet County Sheriff's Department and asked to
16 assist them in speaking to the Avery family. The
17 family maintains a property in Town of Stephenson in
18 Marinette County.

19 Uh, our understanding was that the Avery
20 family was at that property and, uh, Teresa
21 Halbach would have been at the Avery property in
22 Manitowoc County previous to coming up there, and
23 she was reported as a missing person.

24 Q All right. And, um, who, if anyone else, from
25 your Department was involved in assisting the

1 Department of Justice and Calumet County Sheriff?
2 A Primarily myself. Uh, Detective Todd Baldwin, uh,
3 Sergeant Michael Siegert (phonetic) and some patrol
4 officers as well.
5 Q All right. And, again, um, particularly with
6 respect to the, um, late morning, almost noon
7 hour, what role were you asked to, um, fulfill by
8 the Department of Justice and Calumet County
9 Sheriff?
10 A Uh, we had arrived at the Avery property a little
11 earlier in the day, and, uh, completed some of the
12 interviews that we started the day before. Um, we
13 were also, in preparation of an -- or anticipating a
14 search warrant for the, uh, two vehicles that were
15 located at the Avery property.
16 Q All right. Now, it might be of some help if you
17 kind of direct that microphone a little bit
18 closer to your -- your mouth, or maybe tip it up
19 a little, I guess.
20 A Okay. Is that better?
21 Q Yep. Yeah, that's better. Maybe the end -- Just
22 straighten the end out. There you go. That
23 should do it. All right. Um, what were you
24 asked to do?
25 A Um, we were asked to stand by the Avery property in

1 anticipation of a search warrant being completed.

2 Q All right. And what kind of, um -- What was
3 being -- What was the object of the search?

4 A Uh, the seizure of, uh, Steven Avery's Pontiac Grand
5 Am, I believe it was, and also the, uh, Avery Auto
6 Salvage flatbed towing vehicle that was at that
7 property in the town of Stephenson.

8 Q All right. And, um, who else, um, in addition to
9 members, of the Marinette Sheriff's Department,
10 uh, were present to assist in the execution of
11 the warrant?

12 A Uh, also with us was a Department of Justice special
13 agent, Kim Skorlinski.

14 Q All right. Uh, did there come a time where you
15 executed, um, the search warrant and seized the,
16 um, vehicle in question?

17 A Uh, yes. The vehicle actually left the premises with
18 two occupants and, uh, we subsequently stopped the
19 vehicle in anticipation of the search warrant and
20 seized the vehicle.

21 Q All right. And, um, who were the occupants of
22 the vehicle at the time of your seizure?

23 A Uh, the driver of the vehicle would have been, um,
24 Bryan Dassey, and the passenger would have been
25 Brendan Dassey.

1 Q All right. And the passenger, Brendan Dassey,
2 um, do you recognize him as being present in the
3 courtroom today?

4 A Uh, yes, I do.

5 Q And would you briefly point out where he is
6 seated for the benefit of, um, Court and jury?

7 A Uh, Mr. Dassey's seated to the left of your -- of me,
8 wearing a white, long-sleeved shirt, uh, pair of
9 glasses, dark-colored pants, and I believe a pair of
10 sneakers.

11 Q All right.

12 ATTORNEY FALLON: The record reflect the
13 witness has identified the accused?

14 THE COURT: So reflect.

15 Q (By Attorney Fallon) What happened when you
16 stopped the vehicle with the two, uh, passengers?
17 The defendant and his brother?

18 A When I approached the vehicle, I intro -- introduced
19 myself to the driver, and al, Mr. -- also,
20 Mr. Dassey. Um, stated for them we had a search
21 warrant for the vehicle, and that we needed them to
22 exit the vehicle, and that we would, uh, provide them
23 a ride back to the Avery property.

24 Q Now, at that particular point, did you, um,
25 decide to interview either one of the occupants

1 of the vehicle?

2 A Um, yes.

3 Q What did you do?

4 A Uh, I asked Mr. Dassey if he'd be willing to talk to
5 me in my vehicle, and he told me that he was not
6 under arrest, free to leave at anytime. And, uh --

7 ATTORNEY EDELSTEIN: Can we identify
8 which --

9 THE COURT: Right.

10 ATTORNEY FALLON: We'll get there.

11 THE COURT: Well, have him identify
12 which Mr. Dassey.

13 ATTORNEY FALLON: I was just about to do
14 that.

15 THE COURT: Okay.

16 Q (By Attorney Fallon) Um, since there are two
17 Dassey's here, if -- if you would refer to them
18 both by their first and last name, that would
19 help, okay?

20 A Yes.

21 Q Um, did you, um, interview either one or both of
22 them?

23 A I interviewed Brendan Dassey.

24 Q All right. And who, if anyone else, participated
25 in the interview of Brendan Dassey?

1 A Detective Todd Baldwin.

2 Q All right. And, um, while you were interviewing
3 Brendan Dassey, uh, what was going on with Bryan
4 Dassey, if you know?

5 A Uh, Bryan Dassey was being interviewed by Agent Skim
6 (sic) Skorlinski and his partner.

7 Q Um, where did the interview of the defendant,
8 Brendan Dassey, take place?

9 A In my unmarked police car.

10 Q All right. Now, um, during the course of, uh,
11 uh -- Well, let's ask it this way. Approximately
12 how long or how much time did you spend -- you
13 and/or Detective Baldwin spend -- interviewing,
14 uh, Brendan Dassey?

15 A I believe it was just over -- a little bit over an
16 hour.

17 Q And during the course of the interview, was
18 there, uh, free give and take between the
19 participants in the conversation?

20 A Uh, yes, there was.

21 Q All right. And at any point during the course of
22 your conversation, your interview of the
23 defendant, Brendan Dassey, did he ask you to,
24 um -- to leave?

25 A No.

1 Q All right. Did he ask or make any other requests
2 of you during the course of the interview that
3 you recall?

4 A No, he did not.

5 Q All right. Um, during the course of the
6 interview, did he refuse or decline to answer any
7 of your questions?

8 A No, he did not.

9 Q All right. Now, um, this interview, was it
10 recorded in any way?

11 A Yes, it was.

12 Q All right. Tell us about what recording device
13 and how that came to pass?

14 A Uh, in my car I have a digital audio recorder. It's
15 just a small pocket one. And, uh, uh, during the
16 interview, it was in the record position, and, uh,
17 once it was recorded, I, uh, archived it to our
18 department computer, and, uh, subsequently sent, um,
19 to the district attorney, a copy of that audio file.
20 Actually, two audio files.

21 Q All right. Now, um, let me ask you this: Where,
22 in the vehicle, was your recorder?

23 A It was in my visor. I have a visor caddy, so it's
24 placed up there.

25 Q All right. And, um, who sat in the, um -- the

1 front seat of the car?

2 A I sat in the driver's seat, Detective Baldwin in the
3 passenger front.

4 Q All right. And where did Mr. Dassey sit?

5 A Uh, Brendan sat in the back seat passenger side.

6 Q All right. Now, um, during the course of this,
7 was -- or -- did Mr. Dassey, um, audibly respond
8 to all of your questions?

9 A For the majority, yes, but he's a very much nonverbal
10 responder as well.

11 Q All right. So what type of nonverbal responses
12 or cues were you receiving from him during the
13 course of the interview?

14 A Uh, sometimes he'd go, um-hmm. In that sense, not an
15 affirmative, yes or no. Or a, ugh-ugh. And then,
16 uh, those were the responses that were outside, yes
17 or no, or any explanation, but then we also look at
18 nonverbal-type responses as well.

19 Q All right. And did you receive, um, uh, from
20 time to time, nonverbal responses during the
21 course of this?

22 A Uh, very much so.

23 Q All right. And, um, thus, the recording that,
24 uh, we're about to play does not, um, contain all
25 of the -- there's no know way of capturing the

1 nonverbal responses?

2 A That's correct.

3 Q All right. Um, during the course of this, um,
4 interview, did you promise Mr. Dassey anything in
5 an effort to get him to, um, talk to you?

6 A Not at all.

7 Q Very well.

8 ATTORNEY FALLON: Um, Your Honor, at
9 this time I guess we would, um, begin to play the
10 interview, recognizing that it -- it may go, and
11 will go, longer than 12:00. So do you have an
12 idea as to when you'd like us to -- Yeah. We do
13 have -- There is two parts to it, so we might be
14 able to take a break at the end of part one.

15 THE COURT: How long is part one?

16 ATTORNEY FALLON: Probably about a half
17 an hour.

18 THE COURT: Okay. Then let's do that.

19 ATTORNEY FALLON: All right.

20 THE COURT: Start the playing, and
21 we'll -- we'll cut out after part one.

22 ATTORNEY FALLON: Okay. Very well.

23 THE COURT: All right. Do you want this
24 taken by the re -- by the reporter?

25 ATTORNEY KRATZ: No. We actually have a

1 copy for the Court, Judge. I -- I don't have any
2 objection to --

3 THE COURT: I --

4 ATTORNEY KRATZ: -- the --

5 THE COURT: Counsel?

6 ATTORNEY KRATZ: -- reporter not taking
7 it.

8 ATTORNEY FREMGEN: Just one moment.

9 THE COURT: While they're talking, is
10 there a transcript as well?

11 ATTORNEY FALLON: I believe we have a --
12 this is a closed caption, so it will be a -- a
13 read-along or follow-along --

14 THE COURT: I -- I -- I understand that.
15 But is there a separate trans -- Has someone
16 transcribed this?

17 ATTORNEY KRATZ: We can check, Judge.

18 ATTORNEY EDELSTEIN: Your Honor, I don't
19 believe it would be necessary for the rep -- I
20 don't believe it would be necessary for the
21 reporter to, uh, take this portion down so long
22 as it consists solely of the audio, um, that this
23 witness has described, and we're not stopping and
24 starting for questions of the witness.

25 THE COURT: And -- and is that, uh --

1 Mr. Fallon, is that what you intend to do? To -- to
2 play this completely?

3 ATTORNEY FALLON: Yes. Yes. We're
4 going to play this one, uh, at least, um, I would
5 say, pretty much all the way through and then
6 we'll have some follow-up questions for Detective
7 O'Neill, and, perhaps, for Detective Baldwin, as
8 well, and tender them for cross. Um, Counsel is
9 providing me -- We do have a, um -- a typed
10 transcript that we could utilize as an exhibit,
11 or our preference was simply going to be to mark,
12 uh, the audio copy as the official record and --

13 THE COURT: All right.

14 ATTORNEY FALLON: -- use that as an
15 exhibit.

16 THE COURT: Any objection to doing that,
17 Counsel?

18 ATTORNEY EDELSTEIN: None.

19 THE COURT: Marking the audio copy?

20 ATTORNEY FREMGEN: That's fine.

21 THE COURT: Or the CD?

22 ATTORNEY FREMGEN: Right.

23 THE COURT: Okay. That, then, would be
24 Exhibit 201?

25 THE CLERK: It will. Um-hmm.

1 (Wherein CD is played.)
2 (Wherein CD is stopped.)
3 ATTORNEY EDELSTEIN: May we approach?
4 (Discussion off the record.)
5 THE COURT: All right. Proceed.
6 (Wherein playing of CD continues.)
7 THE COURT: Is that the first disk?
8 ATTORNEY FALLON: That's the first half,
9 or -- We're about halfway through, so it probably
10 would be a good time.
11 THE COURT: Sure. Uh, we'll break for
12 lunch. We'll be back here at 1:15. Ladies and
13 gentlemen, I'll remind you, don't talk about this
14 among yourselves or with anyone else. We'll see you
15 at 1:15.
16 (Recess had at 11:59 a.m.)
17 (Reconvened at 1:10 p.m.; jurors not
18 present.)
19 THE COURT: Before we have the jury back
20 here, it's my understanding, uh, Mr. Edelstein, that
21 you wish to put some matters on the record?
22 ATTORNEY EDELSTEIN: Yes, Your Honor.
23 Thank you. Um, not long after the last witness,
24 uh, Detective O'Neill, took the stand and the
25 Government started playing an audio of an

1 interview of November 6, 2005, we did have a
2 bench conference and, for the record, I'm asking
3 the Court to memorialize that. Um, we'd have an
4 objection to the visual display of the closed
5 captioning with the highlighting of the line
6 purportedly being broadcast, uh, through the
7 audio, being highlighted in a very bright yellow.

8 Um, as the Court I'm sure is aware, the
9 courtroom is set up with these monitors. I think
10 everybody could agree that the jury is pretty
11 much split down the middle, some looking to the
12 left, some looking to the right, in order to try
13 to follow along.

14 The only graphic on the screen is, in
15 fact, I believe a clock timer showing the
16 duration of the playing of the recording, as well
17 as the closed caption, if you will. But it does
18 contain the highlighted yellow portion.

19 It's, specifically, to the yellow
20 portion, that we object. I believe it places an
21 undue emphasis on the printed word as opposed to
22 the spoken word, which is really the place the
23 jury should be focusing, not on somebody else's
24 transcription of what they believe to be the
25 conversation to be.

1 And, for that reason, we have objected,
2 and do continue to object, to the yellow
3 highlighting. We have no objection to the
4 display of the rendition, um, particularly if the
5 Court were to give the instruction, I believe,
6 the parties have agreed upon.

7 THE COURT: Before I ask for a response
8 from you, Attorney Fallon, uh, I think what
9 Mr. Edelstein has said accurately summarizes his
10 objection raised at a bench conference. To put it
11 in a little context, uh, the yellow highlighter that
12 he is referring to, moves down the printed text that
13 appears on a screen, and, uh, it does -- excuse
14 me -- it did does so, uh, in a manner that -- that
15 follows in a -- in a rough way, in an approximate
16 way, the spoken, uh, matter that comes over the --
17 the audio portion of the, uh -- uh, of the tape.
18 Now, Mr. Fallon.

19 ATTORNEY FALLON: Yes. Thank you,
20 Judge. Um, I understand Counsel's concern, but,
21 um, I guess I have two practical responses. Um,
22 first and foremost, I don't believe -- and this
23 is, of course, a judgment call on the part of the
24 Court -- but, um, I don't believe that the
25 highlighting necessarily, um, overemphasizes the

1 particular line which is being broadcast or
2 spoken at that very moment.

3 In fact, the whole idea for the
4 captioning and the yellow line is to try as best
5 as possible to sync together the audio, uh,
6 words, with the written word, and, thus, make it
7 easier to follow, especially, I might add, in a
8 case where one of the participants in the
9 conversation is a very soft-spoken individual,
10 and there is some distance between that
11 individual and the recording device.

12 Um, so in that regard, I do not believe
13 that it overemphasizes this, because it's a
14 momentary thing, and as the yellow line, or
15 highlighter, or cursor, follows the conversation,
16 in -- in -- in that regard, so I don't think it's
17 an overemphasis.

18 Secondly, and, uh, equally important,
19 if -- or, if not, more so, is the fact that
20 there -- there is an in -- instruction that we've
21 agreed on. Um, Counsel has, uh, written it up,
22 Counsel for the defense, and -- and I would
23 encourage the Court, uh, to read the instruction,
24 uh, to the jury at each and every point that
25 we're going to play one of these, um, audio

1 recordings, whether they are closed captioned or
2 not, because the instruction is, and we're all --
3 I think all the attorneys are in agreement that
4 the law is that the jury must first rely and
5 trust the spoken word rather than the written
6 word, if there's some incongruence, and I -- I
7 think that would take care of the matter.

8 THE COURT: Presumably, what you have in
9 your hand is the instruction?

10 ATTORNEY FREMGEN: Yes.

11 THE COURT: Why don't you bring it up here.
12 All right. And Mr. Edelstein, you've agreed to this
13 instruction?

14 ATTORNEY FREMGEN: I actually drafted
15 the instruction, Judge.

16 THE COURT: Presumably, that means you
17 agree?

18 ATTORNEY FREMGEN: Yes, we do.

19 THE COURT: All right. All right. The
20 Court is going to find just, uh -- just as -- for
21 the record here, that the yellow highlighter, I
22 believe, to be an -- a -- an -- an assist to the
23 trier of fact in this case. That some portions of
24 the audio are, uh, seemingly, disjunctive in that
25 one of the participants is in the backseat of the

1 car, two of them are in the front seat of the car.
2 There -- there isn't, uh, perfect timing in doing
3 this.

4 The yellow highlighter, uh -- the yellow
5 highlighter brings to the -- the screen the
6 attention of the listener exactly what is being
7 said, and Court finds that to be an assist to the
8 jury, which is the trier of fact, without
9 depreciating from either the value or the nuance
10 of any of the -- or nuances of any of the words
11 that are -- are being spoken.

12 With that said, however, I will, uh, at
13 the, apparently, joint request of counsel, read
14 to the -- the jurors each time that we -- we
15 undertake either an audio or a audio visual, uh,
16 this particular instruction.

17 All right. Anything else before we
18 bring the jury back in?

19 ATTORNEY FALLON: No. Uh, I would
20 indicate that we'll be, uh, resuming with, uh,
21 Detective O'Neill. I will ask him, oh, probably
22 a half dozen or so questions right now just to
23 break things up, and then we'll play the balance
24 of, uh, this interview, and there'll be a few
25 more questions, and then Mr. Edel -- Edelstein

1 will cross.

2 THE COURT: All right. Detective, why
3 don't you come back up here. Let's get the jury
4 back in. I'll instruct them, and then you may
5 proceed.

6 ATTORNEY FALLON: Thank you.

7 THE COURT: You're welcome.

8 (Jurors in at 1:19 p.m.)

9 THE COURT: Be seated. We're set to
10 proceed this afternoon. Before we do, uh, ladies
11 and gentlemen, I've been asked, and have agreed, to
12 read this instruction to you.

13 Closed captioned transcripts have been
14 added to the audiotape that you're listening to.
15 If you believe in listening to the audio
16 concurrently while reading the closed captioned
17 words, that there is a variation between the
18 audio and the closed caption, you are to rely
19 solely on the audio. All right. You may begin.

20 ATTORNEY FALLON: Yes.

21 Q Before we begin with part two of the interview,
22 uh, Detective, I wonder if you could answer a
23 couple of questions and put things in perspective
24 for us? Um, first of all, a -- on November 6,
25 this interview is indicated during the noon hour,

1 um, there seems to be a -- a fair amount of, um,
2 in and out of the car by yourself and Detective
3 Baldwin. Can you explain to us what's going on?
4 A Uh, during the interview, I was conferring with, uh,
5 Special Investigator Skorlinski from the Department
6 of Justice, as he was also conferring with, uh,
7 agents that were in the Manitowoc area at the Avery
8 residence and the salvage yard.
9 Q And, at this time, uh, on November 6, how much
10 did you know in terms of the, uh, advancement, as
11 it were, of the investigative efforts?
12 A Um, not much more than what I knew the day before,
13 and that was very minimal as well.
14 Q All right. And what was that? I mean...
15 A Um, our initial request was for the assistance and
16 trying to obtain information from witnesses that had
17 last seen Teresa Halbach, which would have been the
18 Avery family, or particularly, Steven Avery, and
19 outside of that, uh, we were made aware that Teresa
20 Halbach's vehicle was found in the Avery Salvage Yard
21 on that Saturday, as well as, I think only that
22 Sunday, that there was a, uh -- or it was a Saturday,
23 a burn barrel that had been -- uh, some charred
24 pieces of electronics that were found inside of it as
25 well. I think that information was about the only

1 information that we had outside of Teresa Halbach
2 being missing.

3 Q All right. And so were these, um, entries and
4 exits of the vehicle are efforts on the part of
5 you and Detective Baldwin to learn more of the
6 state of the investigation?

7 A Uh, yes. It was more of so to help clarify
8 information that we were either -- or receiving from
9 Brendan or, uh, not hearing.

10 Q All right. Now, um, there were, uh -- One point
11 here, um, there was a question that was asked of
12 you by the, um, defendant, Mr. Dassey, um, about
13 did he do it? Where did that come from?

14 A Um, I don't know. I mean, it came from Mr. Dassey,
15 and, uh, it was kind of confusing along the idea that
16 he talked about, uh, you know, do you think he raped
17 her? And, uh, up until that point there was never
18 even anything mentioned about any type of, uh, sexual
19 assault, or homicide, or kidnapping, or anything,
20 other than, uh, Teresa Halbach being at the Avery
21 property and missing.

22 Q All right. Very well. I think we'll, um,
23 continue with the presentation of the interview.

24 (Wherein playing of CD continues.)

25 (Wherein playing of CD ends.)

1 Q (By Attorney Fallon) Detective, O'Neill, where
2 were you when the -- the tape ends in terms of
3 physically?
4 A Uh, seated in the driver's side of my car.
5 Q All right. And where was your vehicle? Had
6 Brendan been returned yet to the family, uh,
7 residence up in Crivitz? Or were you still on
8 the roadside there?
9 A Still on the roadside, just getting to return him
10 back to there.
11 Q All right. And, um, after the interview was
12 completed where, uh, was Brendan taken?
13 A Uh, back to the cabin on the Avery property.
14 Q All right. And do you know, uh, who, um,
15 provided transportation for him?
16 A I believe I did.
17 Q All right. Uh, do you know who was, uh, present,
18 uh, uh, at the, uh, Avery property when you, uh,
19 dropped him off?
20 A I don't recall.
21 Q All right. Um, in terms of, um, this
22 investigation, did you have an opportunity to
23 speak with a -- a variety of -- of family people
24 up there?
25 A Yes, I did.

1 Q Generally, then, just who was there, uh, during
2 the days that you were assisting in this
3 investigation?

4 A Uh, Charles Avery, Steven Avery, uh, his father,
5 whose names escapes me. Uh, he -- that he refers to
6 as grandpa. Uh, his grandmother, uh, his brother,
7 Bryan, and I believe that's all I could recall.

8 Q All right. Now, first of all, tell us,
9 generally, about, um, Mr. Dassey's, uh, demeanor,
10 uh, during the course of your interview with him?
11 Looks like, according to the tape, about an hour
12 and twenty minutes total?

13 A Um, I interview a lot of people, and, uh,
14 Mr. Dassey's demeanor was, uh, different in that
15 during conversation he was almost to a point of
16 being, uh, engaged when he wanted to be and
17 disengaged when he didn't want to be. Just as what
18 I'm observing a lot today.

19 Q All right.

20 A Um, if it was a -- if it was something that we were
21 talking about that he was okay to talk about, he was
22 actively engaged. He'd tell you about it, bang,
23 bang, bang, and move on.

24 When it came to specifics regarding
25 Teresa Halbach, Steven Avery, what happened on

1 that day, he wasn't as engaged, and he went into
2 a inner struggle, physically. He'd sit there,
3 head down, withdrawn, motionless, answers would
4 be muffled. Uh, totally contrary to what he
5 chose to be involved with or engaged with.

6 It was his demeanor that I felt, from
7 all the years of training and experience I've had
8 with dealing with people, an inner struggle, a
9 conflict. He was hiding something. It was not
10 going be a ten-minute interview as to what he
11 saw. There was something more.

12 Q In speaking that, in terms of just, generally,
13 the -- the amount of information that you were
14 able to obtain from, um, Mr. Dassey, I mean,
15 ordinarily, how much -- if -- if someone was
16 freely to give that information, how long would
17 this interview have taken?

18 A From what, in totality, he had told -- he had told
19 us, or wanted us to believe, as far as his time in --
20 in being there, seeing Teresa Halbach, seeing
21 interaction between her and Steven Avery, it should
22 have taken us ten minutes.

23 Q All right. How long did the interview of, uh,
24 the other brother last?

25 A Not long at all. He was in and out of the car with

1 Agent Skorlinski, uh, way before, uh, Brendan.

2 Q All right. Now, there -- there was some
3 discussion about him being choked up, and
4 sweating, and things of that sort. Tell us about
5 that?

6 A Well, physically, you know, he even mentioned about
7 his eyes watering. I mean, we're all three sitting
8 in the car. It's November. And, of course, I got in
9 and out of the car a lot. But he's in the backseat
10 sweating like crazy, and I think even the other
11 officer noticed that as well.

12 Uh, his body posture, his body language.
13 Just as I'm sitting here with you today in the
14 openness. I mean, his was just totally
15 different. And, you know, from what I've seen in
16 my experience, it was that that would, uh,
17 suggest to me that there's something there.

18 Uh --

19 ATTORNEY FALLON: Your Honor, I believe
20 we've marked that, um, CD. Does -- Roberta, do
21 you have that?

22 THE CLERK: Yes.

23 ATTORNEY FALLON: That's Exhibit 201?

24 THE CLERK: Yep.

25 ATTORNEY FALLON: Uh, we would move into

1 evidence Exhibit 201. Uh, if the Court or
2 Counsel desires, we can provide a written
3 transcript to accompanying it, and maybe make it
4 208-A, if there's a need. But, otherwise, we
5 would move into evidence Exhibit 201 and tender
6 the witness for cross.

7 THE COURT: Uh, Counsel, any objection?
8 Other than that previously noted?

9 ATTORNEY EDELSTEIN: As to the
10 transcript, Your Honor, I would -- As to the
11 transcript, uh, I would at this time, uh, subject
12 to, perhaps, some agreed upon corrections, no
13 objection to the disk, itself.

14 THE COURT: All right.

15 ATTORNEY FALLON: That's fine.

16 THE COURT: Okay. It's received. Uh, you
17 may cross.

18 **CROSS-EXAMINATION**

19 BY ATTORNEY EDELSTEIN:

20 Q Detective O'Neill, you spent about an hour and
21 twenty minutes with Brendan during the course of
22 this contact on the 6th of November; correct?

23 A I'd have to take a lot out of that from being in and
24 out of the car, but, in totality, myself, Detective
25 Baldwin, that's correct.

1 Q And Skorlinski was there as well?

2 A For about, I think, the last five minutes, if that
3 was about right.

4 Q All right. This had been some time back; right?

5 A Uh, November 6.

6 Q Of what year?

7 A Two-thousand five.

8 Q All right, 2005. It's a while back; right?

9 A Yes.

10 Q Before coming to testify today, did you have an
11 opportunity to discuss with anyone, um, the --
12 your testimony to help you be prepared for this
13 jury?

14 A Uh, I discussed with the attorneys, uh, that I read
15 the transcripts, uh, some of the points that they
16 asked me about in the transcripts. On the way down
17 here, I listened to both audio recordings. It's a
18 two-hour drive for me. Uh, tried to bring myself up
19 to speed, of course, because of the, uh -- the time,
20 and, uh, also other things and matters that we have
21 going on in Marinette County, yes.

22 Q I'm sorry? What about Marinette?

23 A Other things that we have going on. Other cases and
24 so forth. So I try to refresh myself with the
25 attorneys, as well as my own records. Uh, the

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audios.

Q I don't want to get confused now. On the way -- are you talking about on the way down here you talked with these attorneys about things happening in Marinette?

A No. Outside of your question about if I had talked to anybody about what I was going to say today?

Q Right.

A I mentioned I'd spoke to the attorneys today.

Q Right.

A And then, also, I reviewed my notes and the audio recordings on the way down here.

Q Did you speak with any of the other officers who were involved in the investigation in this particular case?

A I believe I spoke to Detective Baldwin.

Q Did the, uh -- Did you and Baldwin come down together?

A No, sir.

Q But you talked to Baldwin prior to testifying here today?

A Yes.

Q Now, you knew that the girl's name, about whom everyone was concerned, was Teresa Halbach; right?

1 A Yes.

2 Q And you knew that the information was that the
3 last place she was seen was at the Avery Salvage
4 Yard; is that right?

5 A That's how it was reported. Yes.

6 Q And you knew the date that she was last there;
7 correct?

8 A Yes.

9 Q Prior to speaking with Brendan, had you spoken
10 with Steven Avery?

11 A Yes.

12 Q Charles Avery?

13 A Yes.

14 Q The grandfather?

15 A Yes.

16 Q Grandma?

17 A Yes.

18 Q And that was there at the cabin; right?

19 A Yes.

20 Q And that was actually the day before?

21 A For the most part, yes.

22 Q What do you mean the "most part"?

23 A I spoke to them -- Steven Avery on Sunday. I believe
24 I spoke to his dad on Sunday. His mom on Sunday, as
25 well. I mean, there were various people I spoke to

1 on both dates.

2 Q Okay. But you had been in and out of the -- the

3 cabin property a number of times over at least

4 two days?

5 A On two occasions. Yes.

6 Q Okay. Prior to talking with Brendan?

7 A Yes.

8 Q Brendan wasn't the first one you talked to?

9 A Correct.

10 Q And you were in contact with, uh, agents from

11 DCI; right?

12 A On a sporadic basis, yes.

13 Q Did you have daily contact over the course of the

14 two days with, uh, Skorlinski?

15 A I spoke to him a couple times. Maybe four.

16 Q Had -- How many times had you personally met with

17 Skorlinski before you spoke to Brendan?

18 A Twice.

19 Q And where was that?

20 A I believe he came up on Saturday night, and I would

21 have met him then, and then, also, on Sunday morning.

22 Q Prior to stopping the Pontiac and talking with

23 Brendan?

24 A Yes.

25 Q And the two of you, along with others, including,

1 uh, Baldwin, for example, you kind of laid the
2 game plan out as far as who was going to talk to
3 which of the boys; right?

4 A Um, it was spontaneous, but we decided that we'd talk
5 to them since we had the opportunity, yes.

6 Q All right. Well, the truth of the matter is, you
7 had the opportunity over at the cabin to talk to
8 him if you wanted to, didn't you?

9 A No.

10 Q And why was that?

11 A We were pretty busy, and we just didn't get to him.

12 Q You stopped the Pontiac on what day of the week?

13 A Sunday.

14 Q Okay. And what time did you do your last
15 interview on, um, the day before? On Saturday?

16 A It definitely was sunset.

17 Q It was a pretty important case, isn't it?

18 A Yes.

19 Q I don't mean to give you a hard time, but you can
20 work past sunset, can't you? You live in the
21 county? You know your way around?

22 A Well, what kind of case are you referring to at the
23 point that I was dealing with it, sir?

24 Q Well, on that Saturday night, you're working
25 with, uh, what you understand to be a, um --

1 certainly, at a very minimum, a missing persons
2 case; right?

3 A Uh, to my understanding and clarity that day it was a
4 missing person case, yes.

5 Q And was it important to make contact with
6 individuals who may have had the last contact
7 with this girl?

8 A Correct.

9 Q That's why you were there Saturday?

10 A Yes.

11 Q And you talked with a bunch of people that
12 Saturday, but you left out -- what you're telling
13 the jury, you left out about sunset?

14 A I believe so, yes.

15 Q Did you inquire on that Saturday as to the
16 whereabouts of Brendan when you were at the Avery
17 property?

18 A I'm sure I knew he was there.

19 Q Pard me?

20 A I'm sure I knew he was there.

21 Q So what stopped you from talking to him on
22 Saturday?

23 A Because up until the point of where we got on Sunday
24 there was no need to talk to him.

25 Q So you say up to a point on Sunday. What

1 happened between Saturday evening and Sunday?

2 A About 12 hours.

3 Q Well, can you be a little more specific? What

4 happened that caused you, besides the -- the

5 lapse of 12 hours time, that you deemed it

6 important at this point to talk with Brendan?

7 A Brendan was not the last person reported to see

8 Teresa Halbach. Let's --

9 Q Let me ask you this --

10 A -- start -- I'm trying to answer your question.

11 Q Okay. Go ahead.

12 A Okay? We talked to various people in the family, we

13 spoke -- spoke to family members, and, basically,

14 gave an order of importance, and Brendan came up on

15 Sunday.

16 Q When did you exactly learn that the bus driver

17 reported passing that area at roughly 3:45 on the

18 31st? You knew that on Saturday, didn't you?

19 A No, I did not.

20 Q When did you learn it?

21 A On Sunday when Agent Skorlinski and I conferred

22 outside the vehicle, uh, when Brendan was being

23 interviewed.

24 Q Now, you had -- What was your purpose in going

25 over there on Sunday?

1 A I believe, uh, the purpose was the search warrants
2 for the vehicles.

3 Q Okay. Besides learning from -- Was Brendan
4 already in your police vehicle when you learned
5 from Skorlinski that this information had been
6 developed about the bus driver?

7 A Yes.

8 Q Okay. And during the course of this hour and
9 twenty minutes, do you know when that was?

10 A I may, but I want to back up just, uh, two questions
11 before.

12 Q No. I -- I'd rather you answer my question. The
13 Government will get --

14 A Um --

15 Q -- their chance.

16 A I think it was about a third of the way into the
17 interview. I think it was pretty obvious, during the
18 audio part, where I got out of the vehicle, came back
19 and asked him the question about the, uh -- how many
20 people were on the bus, and the bus driver, and so
21 forth.

22 Q So you believe it was about the time you asked
23 him the question about the number of individuals
24 on the bus as far as the -- where that
25 information came to you during the course of the

1 hour and twenty minutes?

2 A Yes.

3 Q Now, Skorlinski is the one who actually made
4 application for and obtained the search warrant
5 for Steve Avery's Pontiac; right?

6 A I'd have to see a copy of the search warrant, but I
7 believe so.

8 Q Do you know when that occurred?

9 A The execution of the search warrant?

10 Q Correct.

11 A Uh, the seizure of the vehicle was on Sunday. I
12 don't know when I actually did the search of the
13 vehicles.

14 Q Okay. Do you know when Skorlinski actually got
15 the warrant?

16 ATTORNEY FALLON: Objection. Relevance.

17 THE COURT: Overruled.

18 THE WITNESS: Uh, no, I do not.

19 Q (By Attorney Edelstein) But you know it was
20 before Sunday; correct?

21 A I don't recall.

22 Q Detective, obviously, you filed and prepared some
23 reports as a result of your activity in this
24 case; correct?

25 A Yes.

1 Q And you testified earlier that you had reviewed
2 some of your notes, uh, to help refresh your
3 memory for purposes of testifying?
4 A The transcript and the audio recordings I did.
5 Q Okay. I thought that -- I thought you said your
6 notes.
7 A I probably did, but it was a transcript and the audio
8 files. I don't recall that I actually looked at the
9 report, although I had a copy of it in my folder.
10 Q Did you look at any notes that you made of your
11 activities, which you would ordinarily make, to
12 help you prepare reports, for example?
13 A Not recently, no.
14 Q Would those notes indicate when you learned that
15 Skorlinski had obtained the search warrant for
16 the Pontiac automobile?
17 A I'd have to review the reports.
18 Q The report or your notes?
19 A I don't have notes. There's a report that I
20 produced.
21 Q Now, before -- Are you the one who actually
22 stopped the Pontiac automobile?
23 A No, I'm not.
24 Q Do you know who did?
25 A I believe Deputy Degnitz.

1 Q Okay. And what time was that?

2 COURT REPORTER: Could you spell his
3 last name, please?

4 THE WITNESS: D-e-g-n-i-t-z. Before
5 noon.

6 Q (By Attorney Edelstein) Can you be more
7 specific?

8 A I got there -- I think I re -- put down, like, 11:50,
9 so shortly before that. We were only maybe half a
10 mile away.

11 Q Okay. So if -- if your report says at about
12 11:55 a.m. you and Baldwin, uh, met with Degnitz
13 on Parkway, that would -- you wouldn't take issue
14 with that?

15 A After he made the stop we did. I don't -- I don't
16 know.

17 Q Okay. Had he already stopped the Pontiac?

18 A Yes.

19 Q And who's the one that directed him to stop the
20 Pontiac?

21 A I believe, uh, one of the officers. Either myself,
22 Detective Baldwin, or Agent Skorlinski.

23 Q And you don't remember if you were the one who --
24 This -- this is a deputy within your department;
25 right?

1 A Yes.

2 Q And you can't tell us who -- whether you have an
3 independent memory of telling one of your own
4 deputies in your department to stop a vehicle
5 where you have a search warrant?

6 ATTORNEY FALLON: Objection. Relevance.

7 THE COURT: I -- I'm going to sustain
8 that objection. Move on.

9 Q (By Attorney Edelstein) So to the best of your
10 recollection, was the vehicle stopped by the time
11 you got there?

12 A Yes.

13 Q And I believe you testified that you and Baldwin
14 took Brendan into your vehicle; right?

15 A We asked him if he would talk to us in my vehicle.
16 He said, yes.

17 Q What happened to his brother?

18 A He went and talked to Agent Skorlinski in his
19 vehicle.

20 Q Was it just Skorlinski over in his car?

21 A I think Skorlinski also had a partner. I -- Her name
22 escapes me. I only met her once.

23 Q Is that the one referred to in your report as
24 Deb, paren, unsure last name?

25 A I believe so. Yes.

1 Q Okay. Now, before you -- You had never met
2 Brendan; right?

3 A No.

4 Q Okay. Other than the fact that he was related,
5 perhaps, to Steven Avery or some of the other
6 members of the Avery family that you had visited
7 with the day before, you -- you didn't know
8 anything at all about him, did you?

9 A No.

10 Q Did you know how old he was?

11 A Uh, yes.

12 Q And where did you get that information?

13 A From him.

14 Q No. I'm talking about before you talked with
15 him?

16 A If I had it before I talked to him, perhaps from
17 Steven when he was telling me about who he come up
18 with and who there were -- who was all present,
19 perhaps.

20 Q Steven didn't tell you that he came up there in
21 the -- with his nephew accompanying him, did he?

22 A No.

23 Q You didn't know what grade he was in?

24 A I don't recall what grade he was in.

25 Q No. I'm asking you, did you know, prior to

1 making contact with him on Sunday, November 6,
2 what grade he was in?

3 A No.

4 Q You didn't know what school he went to, did you?

5 A No.

6 Q You had no idea whether you were dealing with
7 what we would -- what you might typically call an
8 average teenager or a teenager with any type of
9 limitations, is that a fair statement?

10 A Yes.

11 Q You had no idea about, uh, his ability -- what
12 his memory skills were, did you?

13 A Before our conversation, no.

14 Q Correct. You had no idea about his ability to
15 perceive and understand, um, language; correct?

16 A Before our conversation, no.

17 Q Okay. Is it fair to say that during the course
18 of your conversation with him, that you came to
19 the conclusion that, um, he did have some
20 difficulty sometimes understanding the question
21 that was being asked of him?

22 A No.

23 Q You don't agree with that?

24 A No, I don't.

25 Q Mr. Fallon asked you about his demeanor. You had

1 never been around this young man before, had you?

2 A No, I had not.

3 Q You had no idea what he acted like when he was
4 playing a video game, for example?

5 A No.

6 Q Had no idea what he acted like when he was
7 dealing, uh, with a teacher, for example?

8 A No.

9 Q You had no idea what he acted like when he was
10 dealing with a person like yourself? Of a -- an
11 authoritative figure?

12 A Prior to our conversation, no.

13 Q And you told him you were a police officer;
14 right?

15 A Yes.

16 Q Before he got into the police cruiser that you
17 were driving, which I guess is unmarked; right?

18 A It's a Ford Taurus like what any other person may
19 have in their garage.

20 Q Okay. There's no cage in the back?

21 A No.

22 Q All right. How much time elapsed from the time
23 of the stop until you got him into the backseat
24 of your Taurus?

25 A From the time that I arrived there?

1 Q Well, yes.

2 A Not much.

3 Q Ballpark?

4 A Couple minutes.

5 Q Okay. You had some conversation with him before

6 he got in there? I'm talking about the back of

7 your car.

8 A Other than introducing myself, asking him if he'd

9 like to come in --

10 Q Right.

11 A -- to talk to me in the car, that's about it.

12 Q Okay. So he agreed, sure, I'm going to come

13 over, and you guys direct him into the backseat?

14 You're in the front, Baldwin's on the passenger

15 side --

16 A Yes.

17 Q -- correct? Okay. And you've got this audio,

18 um, recorder -- digital audio recorder stuck, you

19 said, in a visor? Which one was it in? Right or

20 left?

21 A The visor caddy? In the driver's side visor.

22 Q Was it visible?

23 A Yes.

24 Q You didn't tell him it was there, did you?

25 A No.

1 Q You first asked him something to the effect, last
2 Monday, do you remember seeing this girl at all?
3 Did you have a photograph that you showed him?
4 A I believe we did. Yes.
5 Q What became of that photograph?
6 A I don't know. I think you'd have to ask Detective
7 Baldwin.
8 Q Did you get that from someone in Calumet County?
9 If you know.
10 A I don't know.
11 Q Is it fair to say that you, as well as Baldwin,
12 were not pleased with the answers you received to
13 some of your inquiries?
14 A I can't say that. Are you asking if his answers were
15 suspect? Yes.
16 Q Well, I assume if somebody gives you what you
17 consider to be a suspect answer, it's not going
18 to please you, is it?
19 A Well, the idea that someone gives me an answer, it's
20 not supposed to please me. I -- I just don't base it
21 on, does it please me or not.
22 Q Well --
23 A I mean, I don't --
24 Q -- as an --
25 A -- want to mince words, but --

1 THE COURT: One at a time.

2 THE WITNESS: I'm sorry.

3 Q (By Attorney Edelstein) As an investigator,
4 you're trying to get information?

5 A Correct.

6 Q And it's important to get the right information?

7 A Truthful information.

8 Q Well, if it's truthful, it would be right,
9 wouldn't it?

10 A If it pleases you.

11 Q Well, do you believe that untruthful information
12 is sometimes right?

13 A It may please some people.

14 Q I'm not asking about pleasure. I'm asking how
15 you perceived to be information. If it's
16 truthful, it's right; correct?

17 A Yes, I agree with that.

18 Q Okay. And if it's not truthful, it's not right?

19 A It doesn't please me.

20 Q It does not please you?

21 A No.

22 Q Very good. Thank you. And you believed you were
23 getting, at certain points during the course of
24 this hour and twenty minutes, what you believed
25 to be untruthful information; correct?

1 A Correct.

2 Q And that did not please you; correct?

3 A I took no pleasure.

4 Q Do you think your displeasure was evident to
5 Brendan?

6 ATTORNEY FALLON: Your Honor, I -- I'm
7 going to interpose an objection. The question is
8 not pleasure or displeasure. I -- I just object
9 to the characterization to the line of inquiry.
10 Uh, let's -- Eith -- Either it's information that
11 they thought suspect or not suspect and what they
12 did. That's what's relevant, not displeasure.

13 ATTORNEY EDELSTEIN: Your Honor, if I
14 might respond?

15 THE COURT: Go ahead.

16 ATTORNEY EDELSTEIN: This witness has
17 testified about the demeanor of the defendant.
18 Those are subjective characterizations that he
19 places upon reactions. I believe we are entitled
20 to inquire of this witness what actions he may
21 have taken, whether he showed displeasure, his
22 feelings, as that, obviously, may have affected
23 how the defendant reacted. This jury is entitled
24 to evaluate that for themselves.

25 THE COURT: Well --

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ATTORNEY EDELSTEIN: I don't believe that this is beyond the scope.

THE COURT: You -- You're now reaching at -- at framing a question that seems to ask, do you think he reacted in a way to a question you might have asked, Detective, because you evinced some displeasure? At least that's where I hear you going, and I -- and I'm not -- I'm not sure that -- that, uh, this witness is competent to -- to be making that evaluation -- that -- that substantive evaluation about -- about the defendant.

Um, can you recast the question?

ATTORNEY EDELSTEIN: Let me try it this way, Judge. Maybe we can save a little time.

Q (By Attorney Edelstein) Detective, I guess you would agree with me that you -- you have no degrees of any sort, education, or training, which gives you any specific authoritative ability to evaluate, um, why an individual may react to you in the way they do? Is that a fair statement? You're not a psychologist?

A I'm not a psychologist. That's correct.

Q And certainly not a child psychologist?

A I am not a child psychologist. That's correct.

Q Okay. How far into the interview that took about

1 an hour and twenty minutes, um, did you become
2 confrontational with Brendan?

3 A I wasn't confrontational with him.

4 ATTORNEY EDELSTEIN: May I approach,
5 Your Honor?

6 THE COURT: Go ahead.

7 Q (By Attorney Edelstein) Detective, if you would,
8 and ignore all the colorful marks on here, does
9 this look to be -- these two pages look to be --
10 or three pages, I'm sorry, look to be a copy of
11 the official supplemental report from the
12 Marinette County Sheriff's Office, Investigative
13 Division, that you prepared?

14 A Yes.

15 Q That's a yes?

16 A Yes.

17 Q Okay. And for reference numbers for the record,
18 it's Complaint 0-5-4-1-2-0; right?

19 A Correct.

20 Q And I'm making reference to page one of three
21 right now?

22 A Yes.

23 ATTORNEY FALLON: Would you guys just
24 talk into the mike just for our juror here?

25 Q (By Attorney Edelstein) If you would, take a

1 look at the first paragraph of page two of your
2 report and just read that to yourself. Does that
3 help you, uh -- If I asked you the same question
4 again about what time during the course of this
5 hour and twenty minutes you got confrontational,
6 would it change your answer?

7 A No.

8 Q Did you not write, when I confronted Brendan?

9 A Yes.

10 Q For the record, this has been marked as, uh,
11 Exhibit 202; is that right?

12 A Yes.

13 Q Is that --

14 A I think so.

15 Q This is the same report we were just talking
16 about?

17 A Uh, outside of the highlighting and circumstances,
18 yes.

19 Q Well, you wrote in that report that you
20 confronted Brendan; right?

21 A Confronted. Yes.

22 Q Is that different than my understanding of being
23 confrontational?

24 A Yes.

25 Q Help me out. Explain it to me. Explain it to

1 this jury.

2 A Confrontational is more a presence of mind and
3 demeanor. Confronted is questioning or, uh, having a
4 person explain. I confronted him about his answer.
5 I called him on it. I asked him about it. Why did
6 you tell me this when you said this?

7 Confrontational --

8 Q And which -- And which ---

9 THE COURT: Just -- Just a moment. He
10 was -- he was going to finish the answer. Allow him
11 to finish please. Go ahead.

12 THE WITNESS: Confrontational would
13 suggest the demeanor that I had when interviewing
14 Brendan, and that was not correct statement that
15 she had in asking why I was confrontational with
16 him when I was not confrontational with him.

17 COURT REPORTER: Can you -- I'm sorry.

18 THE COURT: Yeah. You --

19 COURT REPORTER: Would you slow down,
20 please? I'm having a hard time understanding
21 you.

22 THE WITNESS: I did not have a
23 confrontational conversation with Brendan Dassey.
24 I confronted him, or questioned him, or called
25 him on one of his answers that he gave that was

1 not consistent with what he was telling us
2 before.

3 Q (By Attorney Edelstein) And which answer was
4 that?

5 A Multiple. Uh, things -- Specific one that's related
6 to in the report was the, uh, school bus.

7 Q Were you present -- If -- If you know, who was
8 the first one to ask Brendan, if anyone, be it
9 you, Baldwin, or Skorlinski, whether or not he
10 remembered anybody taking photographs of the van?

11 A I believe it was me.

12 Q And you were present when Baldwin said, you
13 remember that girl taking that picture. You're
14 getting off the bus. It's a beautiful day. Were
15 you there when -- during that exchange?

16 A I believe that was me. Not Baldwin, was it?

17 Q Well, in any event, you remember it; right?

18 A Yes.

19 Q Okay. You're getting off the bus. It's a
20 beautiful day. It's daylight. And everybody
21 sees her, comma, you do, too. Did you mean to
22 suggest to him that these are facts that he
23 should affirm by the way you asked that question?

24 A I'd have to see it in its full context, because I
25 know a couple times I asked him about seeing her on

1 the bus, and that may have been a reaffirming
2 question to him. I'm not certain as to where it is
3 in the transcript.

4 Q I think you told us already that you did have a
5 chance to review the transcript from the audio?

6 A Yes.

7 Q Okay. Can you take a look at what I have in
8 front of you here? Does this look to be a copy
9 of that transcript?

10 A Yes.

11 Q Okay. Directing your attention to page 17 at the
12 bottom where it's indicated, Detective Baldwin,
13 yeah, you remember that girl. That portion? You
14 thought maybe you said that? But if this
15 indicates Baldwin, do you have any problem with
16 it? Do you remember who said it?

17 A From the area you're representing inside the
18 transcript, uh, Detective Baldwin.

19 Q Okay. And would you agree with me that this is
20 really the first time, during the course of the
21 conversation, where somebody suggests to him the
22 girl's taking pictures?

23 A Could you repeat the question, please?

24 Q You had asked him about taking the pictures
25 earlier?

1 A Yes.

2 Q Okay. And you were the first one who brought
3 that up?

4 A Yes.

5 Q Okay. Then there was some follow-up by Baldwin;
6 right?

7 A By myself and then Baldwin.

8 Q Okay. But during the time that you first brought
9 it up -- Or, I'm sorry. That -- Yeah, that you
10 first brought it up, and then when Baldwin
11 brought it up, the question being, from yourself,
12 the girl taking pictures. You remember that.
13 Okay. Would you agree that that's how it was
14 asked?

15 A After the initial one, yes.

16 Q And you asked him in that fashion?

17 A After the initial -- initial affirmation by Dassey
18 that he did see the girl taking pictures, that next
19 inquiry was what you said.

20 Q You indicated after his initial affirmation that
21 he saw the girl taking pictures. Help me out and
22 show me where that is -- precedes that in the
23 transcript?

24 ATTORNEY FALLON: Are we still on page
25 17, gentlemen?

1 ATTORNEY EDELSTEIN: Yeah.

2 A Okay. Baldwin's comments were after my initial
3 asking him about the girl taking pictures.

4 Q (By Attorney Edelstein) All right. So you were
5 incorrect when you said it was after his initial
6 affirmation of seeing the girl take pictures?

7 A That's correct.

8 Q Okay. Well, nobody's perfect. We all make
9 mistakes. Won't hold that against you. So
10 you're the first one that really brought it up?

11 A Yes.

12 Q Okay. As long as I'm here, so I don't have to
13 chase back and forth, between the first time you
14 brought it up, you make the statement that's --
15 it's not on -- not everyday somebody's taking
16 pictures of a van; right?

17 A Correct.

18 Q The question then becomes, how many people are on
19 the bus?

20 A Correct.

21 Q He answers the question; right?

22 A Correct.

23 Q The next question, as far as taking pictures,
24 comes from you. The girl taking pictures. You
25 remember that. Right?

1 A Correct.

2 Q Okay. He says, well, I wasn't looking at. And
3 then it looks like he was interrupted; right?

4 A Uh --

5 ATTORNEY FALLON: I -- I would object to
6 that characterization. I think the, uh, tape,
7 itself, will speak another explanation.

8 THE COURT: Yeah. The -- the tape is
9 the -- is the best evidence here. I'll sustain the
10 objection.

11 ATTORNEY EDELSTEIN: That's fine.

12 Q (By Attorney Edelstein) In -- in any event,
13 there's no answer to that? He does not affirm or
14 deny what you're asserting; correct?

15 A According to the transcript, the written part, there
16 is no specific answer to it.

17 Q And if this is based upon the video everybody
18 just saw, and you com -- I -- did -- had -- did
19 you ever personally compare this to the -- to the
20 audio?

21 A Yes.

22 Q And it's accurate?

23 A To a point it can be, yes.

24 Q But he never either affirmed or denied what you
25 first suggested to him about the girl taking the

1 pictures?

2 A He does state that they -- he saw the girl taking
3 pictures.

4 Q Not until it's brought up again, especially in
5 this ex -- right in this little exchange, next,
6 not by yourself, but by Baldwin?

7 A Yes.

8 Q And his answer was, maybe. I don't know. Right?

9 A Initial copy, yes.

10 Q And that's when Baldwin said, Brendan, come on,
11 as if to suggest that Brendan was withholding
12 something?

13 A My opinion?

14 Q Yes, sir.

15 A Perhaps.

16 Q If you're disappointed about something,
17 Detective, would you be displeased?

18 ATTORNEY FALLON: Objection. Relevance.

19 THE COURT: That's sustained.

20 Q (By Attorney Edelstein) Did you not --

21 ATTORNEY FALLON: As to the form
22 anyways.

23 Q (By Attorney Edelstein) You told him, did you
24 not, Brendan, and I quote, you're not going to
25 disappoint us. Do you remember telling him that?

1 A Yes.

2 Q Do you remember asking him, did you see her
3 standing there taking a picture?

4 ATTORNEY EDELSTEIN: Counsel, I'm on
5 page 18.

6 Q (By Attorney Edelstein) And he -- he did answer,
7 yeah?

8 A Yes.

9 Q And then you -- did you immediately thereafter
10 ask him -- and if -- if you don't remember, I'll
11 come back, but did you ask him, why didn't you
12 tell me that?

13 A I'm going to save you a trip. Yes.

14 Q And you suggested to him the reason that he,
15 perhaps, didn't tell you that, was that he was
16 scared? Because you phrased it as, are you
17 scared? Right?

18 A I'm not sure if it was in response to him saying he
19 was afraid or if, by itself, I just said, are you
20 scared?

21 Q Is there some reason you didn't offer up as an
22 explanation for his failure or inability to
23 answer your earlier question that, perhaps, he
24 has a bad memory?

25 A I didn't have that opinion.

1 Q You didn't know anything about him other than the
2 brief contact you had that morning; correct?

3 A Uh, nothing before our conversation to suggest to me
4 that he had a bad memory.

5 Q All right.

6 ATTORNEY FREMGEN: Just one moment,
7 Judge.

8 THE COURT: Okay.

9 ATTORNEY FREMGEN: Judge, if I may, it's
10 3:00. I believe Mr. Edelstein still has some
11 significant amount of cross, and the State will
12 have a couple of questions. Court want to take a
13 break?

14 THE COURT: Sure. Uh, we'll break until
15 3:20.

16 (Recess had at 3:03 p.m.)

17 (Reconvened at 3:27 p.m.)

18 THE COURT: Counsel, you may resume.

19 ATTORNEY EDELSTEIN: Thank you.

20 Q (By Attorney Edelstein) Detective O'Neill,
21 during the course of one hour and twenty minutes,
22 roughly, would you agree or disagree with me that
23 both, yourself, as well as Skorlinski and
24 Baldwin, told Brendan that you believed that he
25 was being told what to say?

1 A We brought that up, yes.

2 Q All right. And when you say you brought it up,
3 you, basically, flat out told him, you're being
4 told what to say. Right? If -- if it'll help
5 speed it along, Detective, I think that
6 Mr. Fallon brought over --

7 A It was brought up. That's correct.

8 Q What's been marked as 203, does that look to be a
9 copy of the transcript that we were looking at
10 before?

11 A Yes, it is.

12 Q Same one that you compared to the audio?

13 A Yes.

14 Q And best you know, that's accurate?

15 A Yes.

16 Q Can you tell this jury how many times between
17 you, Skorlinski, and Baldwin that that assertion
18 was presented -- sor -- to Brendan?

19 A I believe we asked him, uh, at least two, probably
20 three, times, uh, whether or not he was told to say
21 something.

22 Q Okay. Can you tell this jury how many times
23 during the course of an hour and twenty minutes
24 interview that you had with Brendan that lies
25 were told to him by either you, Skorlinski, or

1 Baldwin?

2 A No lies.

3 Q Would you turn to page 33, please? Toward the
4 bottom of that, uh, specifically, Detective
5 Baldwin, the statement is made to Brendan, quote,
6 she needs medicine -- medicines on a daily basis,
7 okay? Do you see where I'm talking about?

8 A Yes, I do.

9 Q It's not true, was it?

10 A It's standard deception practice used by
11 investigators.

12 Q Okay. Well, I don't want to go down the please,
13 displeasure rows again, but can you tell me the
14 difference between standard -- That what you
15 said? Standard deception practices and a lie?

16 A I didn't say lie. Deceptive practices that we may
17 utilize as far as what responses we get from the
18 question.

19 Q Would you agree with me that a lie is something
20 that's not true?

21 A If there's a benefit gained that's ill will, yes.

22 Q I'm sorry. Could you repeat your answer?

23 A If you could repeat your question?

24 Q Okay.

25 A I'm sorry, I just -- You're asking about a lie and if

1 this was a lie?

2 Q I'm trying to understand whether -- when you used
3 the phrase "deceptive practices" --

4 A Um-hmm.

5 Q -- whether -- Let me ask it this way. In your
6 business, does a deceptive practice contain
7 intentionally false information that is conveyed
8 to another person?

9 A It's allowable to use some trickery and deceit.

10 Q I'm not asking what's allowable. I'm asking what
11 it is?

12 A Something in the idea of what we had asked him
13 concerning the medications that she would need. Yes.

14 THE COURT: You -- you're not answering the
15 question, Detective. Would you reask it, please?

16 Q (By Attorney Edelstein) Did -- Did you
17 understand my question?

18 A If you're asking me if I lied -- or if Detective
19 Baldwin lied to him, I'd say no.

20 Q All right. When the statement was made to
21 Brendan, quote, she needs medicine on a daily
22 basis, you acknowledge that the statement was
23 made; correct?

24 A Correct.

25 Q And you acknowledge, also, that when it was made,

1 neither you nor Baldwin had any basis for
2 believing that that was a true statement; isn't
3 that also correct?

4 A True.

5 Q All right. You, Baldwin, and Skorlinski implored
6 him to tell you the truth; correct?

7 A Yes.

8 Q In addition to the deceptive practice, lie,
9 misrepresentation, however you want to
10 characterize it, about the medicine, it was also
11 suggested to Brendan, in a similar fashion, that
12 his brother was looking out the kitchen window.
13 Do you recall that?

14 THE COURT: Do you have a page for that?

15 ATTORNEY EDELSTEIN: I'll have to find
16 it, Judge. I know it's in here.

17 Q (By Attorney Edelstein) Page 30, please? You
18 see at the bottom there, Detective, uh, by
19 Baldwin, you and your brother both? It's the
20 third entry from the bottom.

21 A I see it.

22 Q Okay. It recites, you and your brother both sat
23 there and looked out the window at her. Right?

24 A Yes.

25 Q You and -- You had no basis for believing that to

1 be true, did you?

2 A I didn't make that statement.

3 Q Well --

4 A I can't say for that statement.

5 Q All right. You were in and out of the vehicle

6 during this hour and twenty minutes; right?

7 A Yes.

8 Q Um, it was November. Do you remember what the

9 temperature was that day?

10 A It was cool.

11 Q Give me a range. If -- if you don't remember,

12 that's fine.

13 A I would say close to 35 to 40.

14 Q All right. Was the heater on in your vehicle?

15 A I don't recall.

16 Q Do you remember if Baldwin turned it off because

17 Brendan asked him to? Or turned it down?

18 A Not while I was in the vehicle.

19 Q Okay. So if it happened, it might have happened

20 when you were out talking to Skorlinski?

21 A It may have. I don't --

22 Q Okay. When you got out, that's what you were

23 doing, weren't you? You were going back to talk

24 to Skorlinski?

25 A For the most part, yes.

1 Q And you were sort of reporting into Skorlinski
2 what the progress was as far as, uh, gaining any
3 information from Brendan; right?

4 A Sometimes. Yes.

5 Q All right. Do you know how many times that you
6 told Brendan that he was not telling the truth?

7 A No.

8 Q But you acknowledge that it happened on multiple
9 occasions during the course of this hour and
10 twenty minutes; right?

11 A It may have. Yes.

12 Q Well -- Now, you testified on direct that I think
13 when Mr. Fallon first started having you explain
14 your involvement in this matter, I believe you
15 said the information that you had was minimal.
16 Do you remember that testimony?

17 A Yes.

18 Q Okay. Um, but, actually, you had certainly not
19 every piece of information but you knew more than
20 just name, rank, and serial number, so to speak,
21 didn't you? You had some very --

22 ATTORNEY FALLON: Objection.

23 Q (By Attorney Edelstein) -- specific details?

24 ATTORNEY FALLON: Name, rank and serial
25 number is -- is vague.

1 ATTORNEY EDELSTEIN: All right. That's
2 fine.

3 THE COURT: Rephrase that, please.

4 Q (By Attorney Edelstein) For example, Detective,
5 you knew that a vehicle had been found on the
6 Avery property?

7 A Yes.

8 Q And you knew that that vehicle, uh, had been
9 checked by a registration, and VIN, and all that,
10 and that it was Teresa Halbach's?

11 A There was presumptive that it was. Yes.

12 Q Okay. So you -- you presumed that that was, in
13 fact, the case?

14 A (No verbal response.)

15 Q All right. And, in addition to that, you also
16 knew that, uh, the vehicle had been, in some
17 respect, uh, apparently, concealed?

18 A Yes.

19 Q Okay. You knew that Teresa Halbach worked as a
20 freelance photographer; correct?

21 A Yes.

22 Q You knew that she worked, uh, with the *AutoTrader*
23 *Magazine*.

24 A Yes.

25 Q You knew that she had, uh, been at the Avery

1 property, or was scheduled to be at the Avery
2 property, on the 31st of October?

3 A Yes.

4 Q You knew a bus driver had reported seeing her at
5 the Avery property on the 31st of October?

6 A That Sunday. Yes.

7 Q Any other particular details that you may have
8 known where we can judge whether your answer on
9 the minimal is a good one or a bad one?

10 ATTORNEY FALLON: Objection.
11 Argumentative.

12 THE COURT: Uh, sustained.

13 Q (By Attorney Edelstein) You testified -- If
14 you'll bear with -- with me a second, I need to
15 find this in the transcript. You testified that
16 you made no sort of promises to him; right? Do
17 you recall that?

18 A No.

19 Q Did you make any promises to him?

20 A No.

21 Q All right. Detective, just so I don't have to go
22 through each individual present, did -- did you,
23 or either Skorlinski or Baldwin, in your
24 presence, make any promises to Brendan?

25 A Outside telling him he was free to leave, no.

1 Q Didn't someone tell him that, um, no matter what
2 he said, or something to that effect, that he was
3 not going to jail?

4 A He brought up the idea that he was afraid that we'd
5 take him to jail. I remember that.

6 Q All right. Directing your attention to page 36.
7 At the bottom. Four lines up.

8 A Um-hmm.

9 Q You said, okay, why did you not tell us the truth
10 about when you saw her leaving? Answer: I was
11 scared. Right?

12 A Correct.

13 Q Is there some reason -- Well, if -- What was the
14 very next thing that you said in response to his
15 assertion he was scared?

16 A Okay. Let's get beyond being scared.

17 Q All right.

18 A Continue?

19 Q Let me stop you right there. So you wanted to
20 get beyond this issue of being scared. Is there
21 some reason you didn't explore that more if your
22 goal is to gather as much information to get to
23 the truth of what happened? Why it happened?
24 Who did what?

25 A I did.

1 Q Why did you tell him, then, okay, let's get
2 beyond being scared?

3 A Because we had to deal with that part of it.

4 Q With what? I'm sorry.

5 A We had to deal with his fear. That part if he was
6 scared about something. Let's get beyond being
7 scared.

8 Q Well, I take that to mean that -- Let me ask you
9 this: Isn't it true that during the course of
10 the hour -- hour and twenty minutes, despite him
11 saying several times he was scared, you,
12 Skorlinski, or Baldwin never really inquired any
13 further about that? What were you scared of?
14 Why were you scared? When did you become scared?
15 You never -- You guys never had -- went into
16 that, did you?

17 A I think it was covered several times in the audio.
18 What are you afraid of, Brendan? I -- I think I
19 remember those words, specifically.

20 Q All right. Well --

21 A I think --

22 Q Maybe we'll find that in a second. I don't want
23 to get off 36, though, but let's go back to this
24 issue of promises. At the second to the last
25 entry on that page, Detective, right after

1 getting past being scared, um, what does -- you
2 told him, in fact, um, get beyond the idea of
3 getting in trouble and going to jail because
4 that's not going to happen. That's what you told
5 him; right?

6 A Correct.

7 Q Isn't that a promise? Aren't you promising him
8 that he's not going to jail?

9 A I told him he didn't have to talk to me and he was
10 free to leave. There was no --

11 Q Doesn't answer my question. Did you tell him he
12 wasn't -- that -- quote, going to jail because
13 that's not going to happen? Did you or did you
14 not tell him that?

15 A Yes.

16 Q Do you construe that as a promise to him?

17 A No.

18 Q Is it fair to say that during the course of the
19 interview, that you or the others suggest to him,
20 uh, potential reasons why Teresa could be
21 missing? For example, an accident?

22 A Yes.

23 Q Is it fair to say that during the course of the
24 interviews, that you, Skorlinski, or Baldwin
25 suggested to him alternatives, uh, such as

1 mistake?

2 A Yes.

3 Q Did you probe into Brendan when he indicated that
4 sometimes he gets shy when he's talking to people
5 he doesn't know?

6 A At the end of the interview? No.

7 Q Would it be fair to -- to characterize that --
8 during the course of the interview, that the
9 three of you, at various times, attempted to
10 increase the emotional feeling of guilt in the
11 mind of Brendan Dassey?

12 A I apologize, but would you repeat that?

13 Q Would you agree or disagree with me that during
14 the course of the hour and twenty minutes that
15 you, Baldwin, Skorlinski spent with Brendan
16 Dassey, that there was a conscious effort to
17 increase in his mind his belief and feeling of
18 guilt?

19 A No.

20 Q Could you go to page 40?

21 A Forty?

22 Q Yes, please. Fifth entry from the bottom? You
23 were there, and Baldwin said as follows: You
24 feel guilty right now that you didn't help that
25 girl. Correct? You see where I'm talking about?

1 A I see.

2 Q I see the glasses you got during the break.

3 A I see it.

4 Q In fact, the very next statement made by an
5 officer, and I'm just jumping down two lines
6 there, again, as Baldwin, where he says, I can
7 see in your eyes that you feel terrible about
8 something. Right?

9 A Yes.

10 Q Is that not a -- Did -- Did you and Skorlinski
11 ever discuss, uh, how you might appeal to or
12 cause Brendan to think that he was guilty of
13 something in order to try to get some
14 information?

15 A No.

16 Q Now, you indicated you made no notes at the time
17 of the interview; correct?

18 A Correct.

19 Q You produced, uh, the supplement report that we
20 talked about, uh, sometime after that; right?

21 A Yes.

22 Q So if it was dated 11/11, about five days later?

23 A Yes.

24 Q Okay. And you didn't use your handy dandy little
25 digital recorder that you had up on the visor to

1 make notes of this interaction with Brendan on
2 the way back to either, uh, your home, or
3 wherever you left when you did leave, uh, to help
4 you prepare the report; right?

5 A No.

6 Q So you're having to rely entirely upon your
7 memory when you described his demeanor; correct?

8 A Yes.

9 Q Okay. And that's about 16 months ago; right?

10 A Yes.

11 Q Okay. But you acknowledge there's nothing at all
12 in your report about his demeanor?

13 A No.

14 Q Isn't it true that the first individual to state
15 or suggest that Teresa Halbach went into the
16 Steve Avery trailer was a police officer, as far
17 as your interactions with Brendan on this date?

18 A Yes.

19 Q Okay. So it's not something that he came up with
20 in response to a question, that, well, for
21 example, I saw her when I got off the bus and I
22 saw her go into the house?

23 A Correct.

24 Q Okay. That notion or that concept was promoted
25 to him, uh, somewhat of a theme throughout this

1 interview, wasn't it?

2 A No.

3 Q You don't agree with that?

4 A No.

5 Q All right. But you acknowledge that it was a
6 police officer who first brought that alleged
7 fact up?

8 A Brought the question to him.

9 Q Okay. In fact, it happened more than once,
10 didn't it? That very notion that she went into
11 the trailer?

12 A I believe the question was brought through more than
13 once. Yes.

14 Q Do you understand the difference between an
15 open-ended question and a leading question, don't
16 you?

17 A Yes.

18 Q Every time that that concept was brought up,
19 i.e., she went into the trailer, it was done in a
20 leading and suggestive fashion; agree or
21 disagree?

22 ATTORNEY FALLON: I'm going to object to
23 that question. It's, um, vague as asked.
24 There's a specific legal definition for a leading
25 question under the *Sarinske* case, and then

1 there's a whole psychological concept. So I -- I
2 don't know what we're doing here, but I --

3 THE COURT: Well, you're objecting --
4 You -- You're objecting to the foundation, I -- I
5 take it, and -- and --

6 ATTORNEY FALLON: Foundation and the
7 manner --

8 ATTORNEY EDELSTEIN: I can --

9 ATTORNEY FALLON: -- in which the
10 question is asked.

11 THE COURT: All right. Objection is
12 sustained.

13 ATTORNEY EDELSTEIN: Just let me do it
14 this way.

15 Q (By Attorney Edelstein) When you're conducting
16 an interview, you oftentimes lead the
17 interviewee; correct? Know what I'm saying,
18 don't you?

19 A Well, I believe I do, except that, as Mr. Fallon
20 suggested and brought forward, your definition and
21 mine is different.

22 Q Pard me?

23 A Your -- your perception of leading question and what
24 I may use as a question is different.

25 Q If a question suggests the answer, do you think

1 it's leading?

2 A Yes.

3 Q During the course of the contact with Brendan,
4 when he was questioned, if he's asked the
5 question, and I make reference, for example, to
6 page 31, about halfway down, Brendan, she went
7 into that trailer, didn't she? Is that a leading
8 question or is it not a leading question?

9 A Yes.

10 Q It is a leading question?

11 A Yes.

12 Q Correct?

13 A Um-hmm.

14 Q All right. That's all for now. Thank you.

15 THE COURT: Any redirect, Counsel?

16 ATTORNEY FALLON: Yes, a few questions.

17 Thank you.

18 **REDIRECT EXAMINATION**

19 BY ATTORNEY FALLON:

20 Q Counsel asked you about promises, inducements.

21 For you, as a detective, did you make any
22 promises or inducements to Mr. Dassey in order to
23 get him to speak with you?

24 A Not at all.

25 Q All right. And, now, is that the concept of

1 promise that you had in your mind in response to
2 Counsel's question on promises?

3 A No, it is not.

4 Q No, I mean the concept. When he asked you about
5 promises, you said you made no promises. Is that
6 what you meant when you said, no, we didn't make
7 any promises?

8 ATTORNEY EDELSTEIN: Asked and answered
9 and suggestive, Your Honor.

10 ATTORNEY FALLON: He's clarifying --
11 First of all, under 906.11 (c), a leading
12 question in redirect examination to clarify a
13 point -- clarify a point on cross-examination is
14 permitted.

15 Number two, this witness clearly has
16 just indicated he was uncertain as to the nature
17 of my question, and I'm attempting to restructure
18 and direct it.

19 THE COURT: That's fair. Uh, you may ask
20 the question in that -- in that fashion.

21 Q (By Attorney Fallon) Do you understand?

22 A I'm trying to. I believe that, uh, got a little
23 confused with what he was trying to explain before,
24 my difference of it, and I'll try to get back on
25 track as to what my reason was. Go ahead, sir.

1 Q All right. When he was asking you what a promise
2 is, what did you understand him to mean? Let's
3 get at it that way.

4 A Uh, promises that I wouldn't do this in exchange for
5 that.

6 Q All right. Now, you did make promises to him
7 during the interview? For instance, you promised
8 to take him home?

9 A Correct.

10 Q All right. And you said he could leave if he
11 wanted to?

12 A Correct.

13 Q All right. Now, let's talk a little bit about,
14 um, the statement, uh, the deceptive practice,
15 regarding the need for medical attention. You
16 indicated that that was a common practice in a
17 missing persons case. Tell us about that?

18 A It's probative-type questions.

19 Q What do you hope to gain? I mean, what's the
20 idea behind suggesting that somebody may have a
21 medical need when you're trying to locate -- Why
22 do you ask that?

23 A Being probative. If his answers would have been
24 something to the effect, well, I think I could help
25 her, or, I really want to see her get medication, or,

1 I don't think she needs it now. It give us an idea.
2 You know, trying to determine as to whether or not,
3 is she alive? Is she injured? Is she not?
4 Q All right. Would it be fair to say you were
5 appealing to a sense of emotion on the part of a
6 person?
7 A Probing into that venue, yes.
8 Q Um, Counsel also asked, um, about you -- your
9 efforts, and Detective Baldwin's efforts, to
10 suggest that, perhaps, Teresa was, uh, in Steven
11 Avery's trailer. Do you recall that?
12 A Yes.
13 Q All right. And I believe you indicated that
14 that, um, tact was taken on more than one
15 occasion in the interview?
16 A Yes.
17 Q All right. At any point did Mr. Dassey adopt
18 that and say, yeah, that happened?
19 A No.
20 Q So he resisted that suggestion?
21 A Very firmly.
22 Q Um, you were asked about a picture. Do you know
23 if you had a picture of the missing persons, um,
24 report, a poster, or a card?
25 A I'm trying to recall, but I think -- We had a missing

1 person case a month before. Wisconsin has a website.
2 I think we might have yanked a picture or a poster
3 off of it.

4 Q All right. So you can't recall, particularly,
5 this case versus the last case, the missing
6 person you worked on, as to which picture you may
7 have had?

8 A No, I can't. But I think Detective Baldwin could
9 clear this -- that up.

10 Q All right. Um, I'm going to have another
11 photograph marked and, uh, shown to you.

12 (Exhibit 204 marked for identification.)

13 Q (By Attorney Fallon) Do you recognize the people
14 which are depicted in that photograph?

15 A Uh, yes, I do.

16 Q And who -- who is depicted in that photograph?

17 A Steven Avery, Brendan Dassey, I think it's Al Avery,
18 and Al's wife, Mrs. Avery, I think Carol? Barb?
19 That's her.

20 Q All right. And, um, are those the individuals
21 that you spoke with on Saturday and Sunday,
22 November 5 and November 6?

23 A Yes.

24 Q All right. And, now, Counsel asked you questions
25 about, um, uh, leaving the property so early. In

1 other words, sunset on Saturday evening. What
2 caused you to leave Saturday evening?
3 A Mr. Avery, Al Avery, was, uh, intoxicated, and riding
4 around in a golf cart, and told us to get off his
5 property or he'd shoot us.
6 Q All right. So you left?
7 A We left the Avery property and just maintained on the
8 road.
9 Q All right. And, thus, you resumed your
10 investigation the next day?
11 A Correct.
12 Q All right. And the next day was Mr. Avery more
13 receptive?
14 A Yes.
15 Q All right. And cooperative?
16 A Yes.
17 Q All right. And, thus, you were able to continue
18 with the, um, investigation on Sunday?
19 A With the interview of Steven Avery, initially, yes.
20 Q All right. Um, particularly with respect to the
21 picture of Brendan Dassey in, I think, Exhibit
22 204 it is?
23 A Yes.
24 Q All right. Um, is that a -- a fair depiction of
25 his, um, physical appearance and attributes at or

1 around the time of this, um, interview on
2 November 6?

3 A Yes.

4 Q Uh, in other words, he appears to be a little
5 heavier in that photograph than he does --

6 ATTORNEY EDELSTEIN: Your Honor --

7 Q (By Attorney Fallon) -- today?

8 ATTORNEY EDELSTEIN: -- object to the
9 leading nature.

10 THE COURT: Uh, overruled.

11 A Yes.

12 Q (By Attorney Fallon) All right. Do you
13 recognize the location of that picture?

14 A I believe so.

15 Q And what is it?

16 A It's the Avery cabin located in the town of
17 Stephenson, I believe. I was in there once, and, uh,
18 the table and the, uh, furnishings look familiar.

19 Q All right. Um, one last question. Uh, Counsel
20 asked you, uh, in response to my questions about
21 assessing Mr. Dassey's demeanor, does the playing
22 of the audiotape assist in recollecting his
23 demeanor during the course of the interview?

24 A Uh, definitely.

25 ATTORNEY FALLON: No further questions.

1 Would offer the exhibit.

2 THE COURT: Any objection to the exhibit?

3 ATTORNEY EDELSTEIN: No, that's fine,
4 Your Honor.

5 THE COURT: All right. The exhibit is
6 received. I think that's, uh, two thou -- 204?

7 THE CLERK: Yep.

8 ATTORNEY FALLON: May we publish the
9 exhibit, then, on the ELMO?

10 THE COURT: Sure.

11 ATTORNEY FALLON: Thank you.

12 THE COURT: Any recross?

13 ATTORNEY EDELSTEIN: Just very briefly.

14 RECROSS-EXAMINATION

15 BY ATTORNEY EDELSTEIN:

16 Q Uh, Detective, um, while they get that up on the
17 screen so the jury can see that picture, um,
18 where did that picture come from? Do you know?

19 A No, I do not.

20 Q Pard me?

21 A No, I do not.

22 Q All right. Um, Mr. Fallon asked you if that
23 fairly depicted the condition, demeanor of the
24 defendant, but he's sitting at the kitchen -- I'm
25 sorry. The -- the physical attributes. Um, when

1 you talked to him, um, you didn't get any
2 information from him about height, weight,
3 anything like that, did you?

4 A No.

5 Q Okay. Um, other than that hour and twenty-minute
6 contact, that was really -- that's -- that's
7 really the extent of your total contact with him
8 throughout your participation in this
9 investigation; right?

10 A Yes.

11 Q Okay. That's all.

12 ATTORNEY EDELSTEIN: Your Honor, we
13 would move, uh, 202 and 203.

14 THE COURT: Any objection to receiving the
15 Exhibit Nos. 202 and 203?

16 ATTORNEY FALLON: We would move for
17 their admission.

18 THE COURT: Well, it's -- it's already
19 been offered by the defense.

20 ATTORNEY FALLON: Oh.

21 THE COURT: I'm asking if you have any
22 objection.

23 ATTORNEY FALLON: I'm sorry. I
24 thought --

25 THE COURT: All right.

1 ATTORNEY FALLON: Obviously, we don't.
2 THE COURT: All right. They're received.
3 You may step down.
4 THE WITNESS: Thank you, Your Honor.
5 ATTORNEY FALLON: It's, um -- I think
6 it's too late to start our next witness. He'll
7 be a lengthy witness.
8 THE COURT: Can't we start it and at least
9 get some testimony now?
10 ATTORNEY FALLON: We -- We can, if you
11 wish.
12 THE COURT: Let's do it.
13 ATTORNEY FALLON: State would call, uh,
14 Investigator Wiegert.
15 THE COURT: I think, before he testifies
16 and is sworn in, there's a -- another trial
17 stipulation that is to be, uh, published; is that
18 correct?
19 ATTORNEY KRATZ: Yes.
20 ATTORNEY FALLON: I believe that's --
21 that's true.
22 THE COURT: All right. Ladies and
23 gentlemen, I reminded you before that trial
24 stipulations were evidence and should be treated
25 as such. This trial stipulation reads as

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follows:

Number one. On October 31, 2005, Angela Schuster was the manager for *AutoTrader Magazine* with headquarters in Milwaukee, Wisconsin.

On the same date, Dawn Pliszka performed duties as receptionist for *AutoTrader*.

Number two. That if called to testify, Angela Schuster would testify that Teresa Halbach was hired as a photographer for *AutoTrader* in October, 2004, and continued in that employment through October 31, 2005.

Schuster would further state that Teresa Halbach had performed photo shoots at the Avery salvage business on five occasions prior to October 31 in 2005, including June 20, October 22, October -- or, excuse me. Let me start again. June 20, August 22, August 29, September 19 and October 10.

Number three. That if called to testify, Dawn Pliszka would testify that on October 31, 2005 she received a phone call from Steven Avery at approximately 8:12 a.m., at which time Avery requested that, quote, the same girl that had been out here before, end quote, come to his property to take photos of a van he had for

1 sale.

2 Pliszka would further state that Avery
3 made the appointment under the name, quote, B.
4 Janda, end quote, and that Pliszka left a
5 voicemail for Teresa Halbach at 9:46 a.m. asking
6 if she could make the appointment.

7 Number four. That if called to testify,
8 Dawn Pliszka would further testify that at
9 2:27 p.m. she did speak with Teresa Halbach on
10 Teresa's cell phone at which time Ms. Halbach
11 indicated that she was, quote, on her way, end
12 quote, to the Avery property from her previous
13 appointment.

14 That is the entirety of that
15 stipulation. It will be marked as Exhibit 205?

16 THE CLERK: Yes.

17 (Exhibit 205 marked for identification.)

18 THE COURT: Uh, first to the State, is this
19 your stipulation?

20 ATTORNEY FALLON: It is.

21 THE COURT: To the defense, is this your
22 stipulation?

23 ATTORNEY FREMGEN: That's correct.

24 THE COURT: All right. It's received. All
25 right.

1 ATTORNEY FALLON: State will continue,
2 uh, with Investigator Mark Wiegert.

3 **MARK WIEGERT,**
4 called as a witness herein, having been first duly
5 sworn, was examined and testified as follows:

6 THE CLERK: Please be seated. Please state
7 your name and spell your last name explain for the
8 record.

9 THE WITNESS: Mark Wiegert,
10 W-i-e-g-e-r-t.

11 **DIRECT EXAMINATION**

12 BY ATTORNEY FALLON:

13 Q How are you employed?

14 A I'm an investigator with the Calumet County Sheriff's
15 Department.

16 Q How long have you been employed by the Calumet
17 County Sheriff's Department?

18 A Approximately 14 years.

19 Q How long have you held the rank of investigator?

20 A It will be about five years.

21 Q And what are, generally, the types of cases that
22 you've been asked to investigate in your capacity
23 at the Sheriff's Department?

24 A In our Department, we do a wide variety of
25 complaints. Anything from thefts, to burglaries, to,

1 um, missing persons complaints, um, death
2 investigations, up to homicide investigations.

3 Q All right. And, um, in this particular case, how
4 is it that you are involved in this case?

5 A Um, I happened to be working on, um -- in November.
6 I believe it was November 3, to be exact. Um, one of
7 our patrol deputies had taking a phone call -- or,
8 actually, a complaint, um, about a missing person
9 complaint. Um, it was actually, uh, Karen Halbach
10 had called our Department to report that her
11 daughter, uh, was missing and they haven't heard from
12 her in several days.

13 After, um, patrol deputy had taken the
14 initial information, excuse me, she had contacted
15 me and requested my assistance, um, in attempting
16 to locate Teresa.

17 Q All right. And, um, from that point on have you
18 been involved in the case?

19 A I have. Yes.

20 Q Now, there's been some, uh, discussion, uh, both
21 by, um, Special Agent Fassbender and others,
22 about your role as one of the lead investigators
23 in this case. Tell us when that occurred?

24 A Sure. Um, on November 5, when the vehicle was
25 discovered, um, on the Avery Salvage Yard property

1 uh, we were requested by Manitowoc County to lead the
2 investigation.

3 At that point when we realized how big
4 and how massive the salvage yard was, not only
5 the salvage yard but all the residences, uh, the
6 outbuildings, all the property that surrounded
7 it, um, we realized that it was a little more
8 than our Department could handle on its own. Um,
9 at that point we contacted the, uh, Wisconsin
10 Department of Justice and requested their
11 assistance.

12 Q And who responded on behalf of the Department of
13 Justice?

14 A Uh, at that time, uh, Agent Tom Fassbender, who you,
15 um, heard earlier in the week testify, um, did
16 respond, um, as well as several other agents from the
17 Department. Um, at that point our Department was
18 handed the investigation, and myself and Agent
19 Fassbender were named the lead investigators of the
20 com -- of the, uh -- of this case.

21 Q All right. And, um, let's set that aside for a
22 moment. And in the time we have, um, this
23 afternoon, I'd like to focus your attention on a
24 particular part of your investigation in this
25 case, all right? Specifically, that is with

1 respect to, uh, your interview, uh, in context
2 with a young woman by the name of Kayla Avery.
3 All right.

4 Specifically, um, directing your
5 attention to February 20, 2006, on that
6 particular day, did you have, uh, an opportunity
7 to interview Kayla Avery?

8 A I did. Um, myself, along with a female detective at
9 our Department by the name of, uh, Wendy Baldwin, had
10 went to, um, the Avery property, which would be the
11 Earl and Candy Avery property, um, to interview
12 Kayla.

13 Our purpose for going there was because
14 we had some information from another person,
15 which we had interviewed, that Kayla had
16 information about Steve Avery. Our purpose for
17 going there was to interview Kayla in reference
18 to Steve Avery.

19 Q All right. And at some point during that
20 interview did the discussion change focus from
21 Steve Avery to Brendan Dassey?

22 A Yes. Um, the interview started out about Steve
23 Avery, and Kayla was talking about her relationship
24 with Steve Avery. And just about at the end of that
25 interview, Kayla, uh, out of the blue, basically,

1 came out and told us that, uh, she had a cousin by
2 the name of Brendan, and that Brendan was, quote,
3 acting up lately.

4 So we asked Kayla what she meant by
5 Brendan acting up lately. At that point Kayla
6 told us that Brendan would just stare into space
7 and start crying, basically, uncontrollably. She
8 also told us that Brendan had -- had lost
9 approximately, what she estimated to be, about 40
10 pounds.

11 Q Now, based on this information, what did you
12 decide to do?

13 A Well, after looking at that information, um, and
14 reviewing other interviews that were done, we decided
15 that, um, we needed to talk to Brendan again.

16 Q And did you talk to him?

17 A We did. Yes.

18 Q And when did you talk to Brendan again?

19 A Um, myself and Agent Fassbender interviewed Brendan
20 on February 27 of 2006.

21 Q All right. Now, before we get into the details
22 of that, I have a few more questions relative to
23 Kayla Avery. On this December 20, 2006 interview
24 of Kayla, who was present?

25 A It had actually been February.

1 Q Excuse me. I'm sorry. February 20?

2 A Um, Kayla's -- Kayla was present. There was -- there
3 was two of us investigators, myself and Wendy
4 Baldwin, Kayla, her mother, Candy, and her father,
5 Earl.

6 Q All right. And, um, did there come a time where
7 you reinterviewed Kayla Avery?

8 A We did. Um, shortly after Brendan was arrested,
9 actually, we interviewed Kayla again, and that would
10 have been on March -- I believe it was March 7 of
11 2006.

12 Q All right. And what was the reason for, um,
13 revisiting or reinterviewing Kayla Avery?

14 A Well, I take you back a little bit, uh, shortly
15 after, uh, Brendan was arrested, and I believe would
16 have been on, like, February 28, we had received a
17 call from the Mishicot School District.

18 Um, two of the counselors at the
19 Mishicot School District, after hearing that
20 Brendan had been arrested, had called and
21 reported that they may have some information in
22 reference to the Teresa Hal -- Teresa Halbach,
23 uh, homicide.

24 Q All right. And, as such, did you then respond to
25 the school to interview the counselors?

1 A We did. Um, again, myself and Agent Fassbender went
2 to the school the following day, right away in the
3 morning, uh, where we met with, uh, two counselors,
4 uh, Mrs. Brandt, and I believe it was a
5 Mrs. Baumgartner.

6 Q All right. And you interviewed them?

7 A We did. Yes.

8 Q After interviewing them, where did you go next?

9 A Well, after getting the information, um, we thought
10 we needed to go back and talk to Brendan ag -- excuse
11 me -- Kayla again.

12 Q All right. Did you, in fact, go back and
13 reinterview Kayla Avery?

14 A We did. We -- Actually, after interviewing the two
15 counselors, we made phone contact with, um, Kayla's
16 mother and informed her that, um, we had been at the
17 school and that we needed to talk with Kayla again.
18 And we actually set up an appointment with Kayla's
19 mother, and Kayla's mother, Candy, invited us, um, to
20 her residence. Um, so waited for Kayla to come home
21 from school, and then we went over to the Avery
22 residence, and, uh, again, interviewed Kayla in the
23 presence of her mother, again, and her father.

24 Q All right. Uh, was her mother present for the
25 entire conversation?

1 A Her mother was. Uh, Candy Avery was present for the
2 entire conversation with Kayla. Um, her father,
3 Earl, was in and out.

4 Q All right. And during that interview with Kayla
5 Avery, did you discuss with her, um, the report
6 that Brendan Dassey told her he had seen body
7 parts in a fire behind Steven's garage?

8 A We did. Yes.

9 Q And what did she say about that?

10 A Well, Kayla came out and told us quite a few things
11 at that point. Um, basically, she first broke down
12 crying, and indicated to us, that, um, she had
13 learned from her cousin, Brendan, that, um -- she
14 stated that she had learned this in about December
15 around the time there was a birthday party that they
16 were both at at Kayla's house, and that Kayla --
17 correction -- Brendan had told Kayla that he had went
18 and got the mail, and went over to Steven Avery's
19 residence, and went into the residence, and observed
20 Teresa Halbach pinned up in Steve Avery's bedroom.

21 She went on to tell us a couple other
22 things. Um, she told us that Brendan had told
23 her that after he had saw Teresa Halbach pinned
24 up in the bedroom, that he exited the residence,
25 and while leaving Steve Avery's residence, he

1 heard screaming coming from Steve Avery's
2 residence.

3 Kayla went on to tell us how, um -- She
4 had mentioned Brendan being out at the fire on
5 Halloween night, and she also told us that her
6 and her mother had seen the fire on Halloween
7 night.

8 Kayla went on to tell us how Brendan
9 described seeing body parts later that day, or
10 that evening, in the fire behind Steve Avery's
11 residence.

12 Q Now, during -- during the, um, questioning of
13 Kayla Avery earlier this week, a statement,
14 Exhibit No. 163, was shown to her. Are you
15 familiar with that?

16 A I am. Yes.

17 Q All right. Was that statement generated by her?

18 A That's correct. Kayla wrote out that statement on
19 her own.

20 Q All right. And is that -- was that statement
21 written on this day, March 7, 2006?

22 A Yes.

23 Q During the, um, interview, uh, at Kayla's home,
24 did she appear confused at all? Unsure of what
25 she was telling you?

1 A No, she did not.

2 Q Was she upset?

3 A Yes, she was upset.

4 Q Did it appear to you that this was something easy
5 for her to tell you about?

6 A No. Obviously, not. I mean, like I explained
7 before, she, um -- she had broke down crying, and was
8 visibly upset when she was telling us about this
9 information.

10 Q All right. Now, I want to back up a little bit
11 here. Returning, then, three weeks earlier --
12 two weeks earlier, excuse me, to that February 20
13 interview, your first encounter with Kayla Avery,
14 at that particular point in the investigation
15 what plans, if any, did you investigators have
16 relative to speaking with other members of the
17 Avery family?

18 A Let me just back up a little bit. We were
19 constantly, as investigators, have meetings about
20 this case and where we should go with it, what we
21 should be doing.

22 Um, because of the enormity of the case,
23 we would get leads in all the time. There would
24 be people calling in, look at this, look at that.
25 Um, what we decided that we needed to do in order

1 to do a thorough investigation, we needed to go
2 back and interview everybody who had access or
3 who lived on that property.

4 Um, I felt, and I -- I think I can speak
5 for Mr. Fassbender, that I don't believe we --

6 ATTORNEY FREMGEN: Objection. Speaking
7 for another person, Judge. I think the witness
8 can only speak for himself.

9 THE COURT: All right. Sustained. Speak
10 for yourself.

11 THE WITNESS: Certainly. I felt that we
12 needed to -- In order to do a thorough
13 investigation, we needed to go back and talk to
14 everybody who lived on that property.

15 Q (By Attorney Fallon) All right. And so around
16 that time was that the plan?

17 A Yes. Absolutely was.

18 Q Based on the, um -- At that particular point in
19 time could you say, from an investigative point
20 of view, that Brendan Dassey was at all a
21 suspect?

22 A No. Uh, we didn't consider him a suspect any more
23 than we considered anybody else at that point as a
24 suspect. No.

25 Q All right. Now, who was the first one of the

1 family members to be reinterviewed?

2 A I can't recall exactly which one, but I can say
3 that -- And -- And if I can back up a little bit
4 again?

5 Q Sure.

6 A Um, we not only felt the people on that -- that lived
7 there, we thought the extended family, i.e., Kayla,
8 and Earl, and Candy, and their children should be
9 interviewed as well. So by my recollection, it was
10 probably, um, Kayla, most likely.

11 Q All right. And, uh, during the course, did you,
12 in fact, go back and reinterview a, um, um --
13 most, if not, all, of the immediate and extended
14 family?

15 A I can tell you everybody that lived on that property,
16 and the extended family, as far as we knew it, such
17 as, Earl, Candy, and their children, were
18 reinterviewed. Yes.

19 Q All right. In terms of the decision to
20 reinterview Brendan Dassey on February 27, um,
21 was there any particular reason that occurred at
22 or around that time?

23 A Yes. Um, after receiving information from Kayla on
24 the 20th of February, obviously, the loss of weight,
25 the uncontrollable crying, are signs that we look

1 for. I mean, it's a change in behavior. It's --
2 it's not normal for a 16-year-old boy to be just
3 crying uncontrollably and just lose that type of
4 weight. So, obviously, that's something we look for.

5 And, for lack of a better word, it kind
6 of moved into the front of the line, and we
7 needed to -- we needed to interview him and talk
8 to him.

9 Q Now, and at that particular point did you have
10 some suspicion as to what may be causing the
11 weight loss and change in behavior? I mean,
12 practically speaking?

13 A Well, absolutely. I mean, at that point, um, we felt
14 he knew more than he was telling us. And -- and
15 we -- we do a lot of other things before we go
16 interview people. We review prior interviews, such
17 as the gentleman's interview that was sitting here
18 prior to me. Marinette County's interview. I mean,
19 review that. And we take a look at what he told
20 them. There are things in there that didn't quite
21 fit either.

22 So you take some of the things that he
23 told the Marinette officers that just didn't seem
24 to fit. And then his, uh, the losing weight, and
25 the uncontrollable crying. Obviously, that, uh,

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points you in a direction you want to go. He's somebody you need to talk to.

Q All right.

ATTORNEY FALLON: Your Honor, at this particular point I think it's time to take that break.

THE COURT: I think -- Yeah. This would appear to be a good break point time. We'll adjourn for the day. Uh, ladies and gentlemen, I'll remind you, don't talk about this among yourselves or with anyone else. We'll convene tomorrow at 8:30.

(Court stands adjourned at 4:26 p.m.)

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