

DNA results tainted

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CHILTON — DNA expert Sherry Culhane spent nearly all of Monday defending her test results that show the origin of blood and DNA found in Teresa Halbach's sport utility vehicle in 2005.

Her testimony nearly doubled the half-day she spent Friday detailing the only piece of DNA evidence that directly connects Halbach to Steven **Avery's** property.

Avery, 44, is accused of killing Halbach, 25, on Halloween 2005 and burning her body to hide the crime. Monday was the 11th day of testimony in what is expected to be a six-week homicide trial. **Avery's** 17-year-old nephew, Brendan Dassey, also is charged in Halbach's death and is scheduled for trial in April.

At the core of the issue Monday was a test that revealed Halbach as the lone contributor of genetic material found on a bullet fragment recovered in **Avery's** garage. The piece of lead was pulled from a crack in **Avery's** garage four months after the investigation began in early November 2005.

Culhane's own DNA was found in a negative control sample processed along with the bullet fragment sample. The control sample is supposed to be void of any DNA and is used to validate the test's accuracy. Culhane speculated that she contaminated the sample while talking to trainees during the DNA extraction process.

The evidence sample was not compromised, Culhane maintained.

Defense lawyer Jerome Buting noted that standard lab protocol dictates the results should have been deemed inconclusive and the sample reanalyzed. However, that couldn't be done because the entire sample was used during the initial test.

Culhane testified that she was able to make a ruling on the DNA found on the bullet after discussing it with her supervisor.

"I felt this was probative evidence," Culhane said. "I felt it was appropriate because I could not go back and re-extract. I was stuck with what I had. I couldn't redo anything to remedy the situation.

Culhane admitted it was the only time in her 23-year career that she has deviated from protocol to make a conclusive ruling.

"The deviation I requested was appropriate for this situation, and the results reported were

correct," Culhane said.

Buting suggested Culhane made her results fit a request by prosecutors to find DNA evidence that connected Halbach to **Avery's** property.

"In this case, Mr. Tom Fassbender (a lead investigator) asked you to try to put Teresa Halbach in the defendant's garage or house," Buting said.

"Any request from the investigator had no bearing whatsoever on my examination or my results," Culhane said.

"No bearing whatsoever?" Buting challenged. "And yet, for the first time in your career, you deviate from protocol to include, to find one piece of evidence — the only piece of evidence in this entire case — that links Teresa Halbach with Mr. **Avery's** garage or house."

That exchange drew an objection from prosecutors, who said it was argumentative, and Manitowoc County Circuit Judge Patrick Willis sustained the objection.

After Monday's hearing, Buting said prosecutors cannot pick and choose which results they like. The contaminated test should have been excluded and is a sign of a bigger problem.

"It's like if you open up a microwave dinner and you see a fly in the little peach cobbler, are you going to eat the Salisbury steak?" Buting said after Monday's hearing. "I hope not. Most of us aren't.

"You find contamination in one area, you're going to find it in the entire test and that's why the protocol says throw it out."

"To me ... this is indicative of just how much effort has gone into trying to nail this man."

Also at issue Monday was the plausibility that **Avery's** DNA was planted inside Halbach's Rav-4. Culhane was the analyst who found and sampled a handful of blood spots inside the vehicle.

"In fact, where you found those six stains in November of 2005 ... the ones that were later attributed to Mr. **Avery's** DNA, one could have planted simply by opening two doors on that vehicle?" Buting asked.

"I really can't comment on that," Culhane said.

"If someone was to plant Mr. **Avery's** blood in that vehicle — to get those six stains, they would need to open the driver's door, right," Buting asked.

"Yeah," Culhane said.

Buting's cross-examination continued to work the angle that **Avery's** DNA was planted. He asked if the DNA found on the Toyota key recovered in **Avery's** bedroom could have been

rubbed with another item, allowing the transfer of DNA. Buting's questions suggested a toothbrush or a swab used to collect a DNA standard.

"In my experience, toothbrushes are not a real good source of DNA," Culhane said, but

added that a transfer might be possible. "It's very difficult to get a profile from a toothbrush."

"There are many ways, in fact, many personal items someone might rub on against a key that might also shed a deposit, a low amount of DNA, like such as what you found on this key?" Buting pressed.

"Yes, it's possible ..." Culhane said.

Buting cut off her response and followed with: "You cannot tell whether the DNA that was found on that key was planted there by somebody or not, can you?"

"No," Culhane said.

Buting also emphasized that Culhane did not find Halbach's DNA on a key she reportedly used daily. It was the first in a litany of places Halbach's DNA was not found and became issues in Buting's cross-examination.

Halbach's DNA was not present on handcuffs, leg irons, headboard and carpeting from **Avery's** bedroom, Culhane said.

A mixture of DNA was found on the handcuffs and leg irons seized from **Avery's** bedroom. It was **Avery's** own DNA and a sample from another unidentified person, Culhane said.