

Planted key 'possible,' deputy says

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Green Bay Press-Gazette

February 23, 2007

CHILTON — A recurring question after nine days of testimony in the Steven **Avery** trial is why it took so many searches over so many days for investigators to turn up critical pieces of evidence linking **Avery** to Teresa Halbach's death.

The testimony phase of the trial has now lasted one day longer than the initial law enforcement searches in 2005 of the **Avery** family property after Halbach's vehicle was found among the scrap yard's wrecks.

Prosecutors are taking a methodical approach to hitting every detail of the searches, including the fact that the initial sweeps were made in hopes of finding Halbach alive, not with an eye toward gathering evidence of a homicide.

Jurors heard Thursday from the eighth consecutive investigator about what they found on the **Avery** property in 2005, where they found it and what they did with it after they found it. Jurors also are learning that key pieces of evidence — the key to Halbach's Rav-4 and a bullet fragment with her DNA on it — were found well after the first wave of searches.

Avery, 44, is accused of killing Halbach, 25, on Halloween 2005, burning her body and hiding the remains near his trailer. **Avery's** nephew, Brendan Dassey, 17, also is charged in Halbach's death and will go on trial in April.

Magic Bullet

Calumet County Sheriff's Deputy Dan Kucharski testified Thursday that he led a team of deputies who searched the **Avery** property, including **Avery's** garage and his trailer.

"As we entered the garage, the first thing we saw were the shell casings and then we also, in that general area, we found reddish-brown stains on the concrete that we believed to be blood," Kucharski said.

There were other stains on the floor like those found on most garage floors, Kucharski said.

"If it was something we believed was blood, that would be something important," he testified. "If we thought something was transmission fluid, that wasn't important.

"The probable blood spots we saw, we photographed them and swabbed them.

"We were looking for whatever jumped out at us," Kucharski said. "It was just a general search."

Jerome Buting, one of **Avery's** lawyers, spent the latter part of Thursday morning questioning Kucharski about what he found on the **Avery** property and how he documented his discoveries.

Among the issues:

- Why Kucharski did not document the contents and condition of the items in **Avery's** garage before removing a snowmobile in the search for evidence.
- How Kucharski miscounted the number of .22-caliber shell casings found on the garage floor. Kucharski's evidence notes indicate he found 10 spent shells; 11 were sent to the State Crime Lab for analysis.
- How four men searching the garage did not find a bullet fragment that was discovered by Manitowoc County Sheriff's Detective David Remiker during a search in early March. The bullet fragment — deemed the "Magic Bullet" by **Avery's** lawyers — was later determined to have Halbach's DNA on it.

"Did you see a bullet on Nov. 6, 2005?" Buting asked Kucharski, who said "No."

"Because if you had, you would have collected it, right?" Buting said.

"Yes," Kucharski said.

"Because it would have been an extremely important piece of evidence," Buting said, prompting Kucharski to agree.

"There were four of you in that garage and none of you found a bullet or a bullet fragment?" Buting asked.

"Correct," Kucharski said.

A Calumet County Sheriff's deputy — witness No. 29 — testified Thursday that he was with Remiker when the fragment was found and said he took custody of the metal shard after it was discovered and later passed it along to a state Justice Department agent.

Possibility of a plant

Avery's lawyers argue that Manitowoc County Sheriff's Lt. James Lenk and Sgt. Andrew Colborn planted the most important evidence, including the key to Halbach's sport utility vehicle. The defense team cites as motive **Avery's** 2004 wrongful conviction lawsuit, which was filed after he spent 18 years in prison for a sexual assault in Manitowoc County that DNA later proved he didn't commit.

Prosecutors explain that evidence initially wasn't uncovered because early searches of the **Avery** property were sweeps and not detailed shakedowns.

During his testimony Thursday, Kucharski said he was with Lenk and Colborn when the key to Halbach's Toyota SUV surfaced during a Nov. 8 search of **Avery's** bedroom.

"Based upon your positioning a couple of feet away from that key, did you believe that either Lt. Lenk or Sgt. Colborn had an opportunity — out of your eyesight — to place, or what's called plant, that key there?" Kratz asked.

"No, they did not," Kucharski said.

"How can you be so sure?" Kratz countered.

"Well, first of all, they would have had to have the key," Kucharski said. "I think the only person that would have had the key was the person that killed Teresa."

That comment drew an objection from Jerome Buting, one of **Avery's** lawyers on the grounds that it was speculation. Manitowoc County Circuit Judge Patrick Willis agreed, sustained the objection and struck the comment from the record.

"What about your observations (makes) you believe (it) was impossible or improbable to plant that key?" Kratz continued.

"My actual observations, I would have to say that it could be possible, as in I was doing other things, I was taking photographs, I was searching the nightstand," Kucharski said.

"So if we're just limiting it to if it was possible they could do it without me seeing it, then yes, I guess it is possible."

"Is that in the sense of anything's possible?" Kratz asked

"That's in the sense of 'It's possible that aliens put it there' I guess," Kucharski said.

Under additional questioning, Kucharski said that he wasn't watching to ensure Lenk and Colborn didn't plant evidence, bolstering the theory that it was possible.

Garage condition

Testimony closed Thursday with the prosecution questioning State Justice Agent Kevin Heimerl. He was the 14th law enforcement official to discuss searching **Avery's** property and the 30th witness overall.

Heimerl, who also was at the March searches of **Avery's** garage, said the condition of the garage had changed between when law enforcement released it as a crime scene Nov. 12, 2005, and March 1, 2006, when they returned with another warrant to search the garage to bolster incriminating statements made by **Avery's** nephew.

Heimerl also testified that investigators found rivets for clothing — Daisy Fuentes jeans — among debris in the burn barrels from the **Avery** property. Lawyers wouldn't comment about future testimony, but it's likely future witnesses will connect that brand to Halbach's wardrobe.

