

## Defense presses officer for specifics

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*Green Bay Press-Gazette*  
February 16, 2007

**CHILTON** – Despite the forced-friendly demeanor between the attorneys trying Steven Avery’s case, there appears to be no love lost between the police and Avery’s defense team.

When attorney Jerome Buting questioned Manitowoc County Sheriff’s Sgt. Jason Orth about where he stood while taking breaks from guarding Halbach’s sport utility vehicle, things got snippy.

“You were standing right next to Nikole and Pam Sturm when you would take those breaks?” Buting asked, referring to the two volunteer searchers who discovered Halbach’s vehicle.

When Orth’s response was different from what Orth had said a few moments earlier, Buting looked to clarify.

“Sir, didn’t you just say that you stood in the exact location that Pam and Nikole Sturm stood in and could see the vehicle from that spot?” Buting asked.

“I was in the same general area,” Orth replied. “I did not stand in the exact spot.”

“So you never stood in the exact spot where Pam and Nikole Sturm stood. Is that what you’re now telling us?” Buting pressed.

“That would be impossible,” Orth said. “They were standing there, standing in the exact spot.”

“All right, were you standing in almost the exact spot that Pam and Nikole were?” Buting said. “You understand that we’re talking about – I’m not saying you were standing on top of them, obviously.”

“I was standing in the same general area,” Orth said.

Buting said he thought he was justified pressing Orth for specifics.

“He was the guy who was guarding the most important piece of evidence in the case at

that point for three hours after the investigation had been turned over to Calumet County Sheriff's deputies," Buting said.

The defense has continued to accuse Manitowoc County Sheriff's officials of planting evidence to frame Avery.

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 limited 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 14<sup>th</sup> law enforcement official to discuss searching Avery's property and the 30<sup>th</sup> 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 hat brand to Halbach's wardrobe.