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STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT II

Case No. 2017AP002288 CR

STATE OF WISCONSIN

Plaintiff-Respondent,

v.

STEVEN AVERY

Defendant-Appellant.

**REPLY TO RESPONSE IN OPPOSITION TO THE
MOTION TO SUPPLEMENT THE APPELLATE RECORD**

INTRODUCTION

Defendant-Appellant, Steven Avery, replies to the Plaintiff-Respondent's opposition to his motion to supplement the appellate record. Plaintiff-Respondent incorrectly states that Defendant-

Appellant's motion to supplement the record was not before the circuit court when it denied his Wis. Stat. § 974.06 Motion and Motions for Reconsideration and Supplements. In fact, when the circuit court rendered its decision on November 28, 2017, the issues regarding the Dassey-Janda computer contents, including the violent pornography depicting torture, mutilation, and deceased and dismembered bodies of young women, were all before the circuit court.

BACKGROUND

Plaintiff-Respondent relies on the June 2017 filing by Mr. Avery of his Wis. Stat. § 974.06 Motion and the subsequent October 3, 2017 court order, while ignoring the issues raised in Mr. Avery's Motion to Reconsider and several supplements to that motion, which were all before the circuit court when it issued its November 28, 2017 ruling. Contrary to Plaintiff-Respondent's response, all of the exhibits, affidavits, and recordings regarding the *Brady v. Maryland*, 373 U.S. 83 (1963) issues, surrounding the suppression of the contents of the undisclosed CD to trial defense

counsel, have been included in the appellate record pending before this court and considered by the circuit court. Currently, the appellate record includes the following:

1. Affidavit of trial defense counsel, Jerome Buting, referencing the withholding of the Dassey-Janda CD pre-trial. (R.636:18-20) (App. 184-86).
2. Affidavits of Gary Hunt, current post-conviction counsel's computer forensic expert, analyzing the images of the 7 DVDs of the Dassey-Janda computer. (R.630:92-97) (App. 187-92) (R.633:38-39) (App. 193-94) (R.636:27-30) (App. 202-05).
3. Affidavit of Gregg McCrary, current post-conviction counsel's police procedure and investigative expert, regarding the obsessive searching and viewing of violent porn on the Dassey-Janda computer. (R.615:203-15) (App. 295-307) (R.630:117-19) (App. 308-10) (R.636:38-44) (App. 195-201).
4. Affidavit of Brad Dassey regarding deletions on the Dassey-Janda computer, ordered by Barb Janda-Dassey, of violent pornographic images. (R.633:36-37).

5. Calumet County District Attorney Office disclosure of October 14, 2006, which omits disclosing the CD from the Dassey-Janda computer. (R.636:21-23).
6. Wisconsin Department of Justice Case Report, which misidentifies the Dassey-Janda computer as belonging exclusively to Brendan Dassey and misstates that there are 6 DVDs instead of 7. (R.636:25).
7. Defendant-Appellant's Motion to Reconsider on October 23, 2017, raising the *Brady* issues surrounding the undisclosed CD of the Dassey-Janda computer contents. (R. 631:3, 46-48; 630:92-160).
8. Defendant-Appellant's Motions to Supplement on October 31, 2017 and November 1, 16, and 17, 2017. These motions specifically reference the Dassey-Janda violent pornographic images and Mr. Avery's *Brady* arguments. (R. 632:3-4, 8, 14-49; 633:3-4, 7-8, 15-50; 635:2-60; 636:18-51).

9. Supplemental Affidavit of Steven Avery addressing his lack of knowledge of the violent porn on the Dassey-Janda computer. (R.636:90) (App. 365).

ARGUMENT

This court should grant Defendant-Appellant Mr. Avery's Motion to Supplement the Record because the circuit court had all of the *Brady* issues before it regarding the violent pornography on the Dassey-Janda computer, as cited above. However, the State chose not to disclose the CD of Det. Velie's report until April 17, 2018. The *Brady* obligation "does not cease to exist at the moment of conviction" but "continues to apply" to the plaintiff's posttrial assertion that he "did not receive a fair trial because of the concealment of exculpatory evidence known and in existence at the time of that trial." *Thompson v. City of Chicago*, 772 F.3d 963 (7th Cir. 2013).

The State should not be rewarded for having suppressed the CD until after the appellate record was completed. All of the issues related to the violent pornography on the Dassey-Janda computer

are in the record on appeal with the exception of the missing crucial data, which has been in possession of the State and withheld from 2006 to 2018. This information included the Det. Velie forensic report, 14,099 images, an additional 1,625 recovered pornographic images, and 2,632 search results for the terms “body, blood, bondage, bullet, cement, DNA, fire, gas, gun, handcuff, journal, myspace, news, RAV, stab, throat, tires.” This court should not allow the State to hinder Mr. Avery’s appeal by allowing it to deliberately withhold evidence that has been in its possession for years and is critical to the determination of Mr. Avery’s *Brady* issues.

CONCLUSION

This court should grant Mr. Avery's Motion to Supplement
the Record with the CD produced by the State on April 17, 2018.

Dated this 29th day of May, 2018.

Respectfully submitted,



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CERTIFICATE OF SERVICE

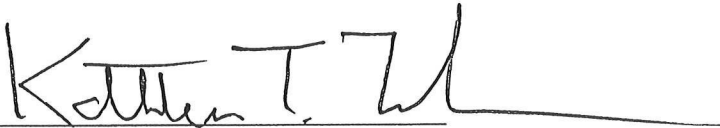
I certify that on May 29th, 2018, a true and correct copy of Defendant-Appellant's Reply to Response in Opposition to the Motion to Supplement the Record was furnished via electronic mail and by first-class U.S. Mail, postage prepaid, to:

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