

STATE OF WISCONSIN    CIRCUIT COURT    MANITOWOC COUNTY

---

---

STATE OF WISCONSIN                    )  
  )  
       *Respondent*                          )  
  )  
       -v-                                   )  
  )  
STEVEN A. AVERY                          )  
  )  
       *Petitioner*                          )

Case No.:    05-CF-381

---

---

**MOTION TO SUPPLEMENT PREVIOUSLY FILED  
MOTION FOR POST-CONVICTION RELIEF**

---

---

KATHLEEN T. ZELLNER  
*Lead Counsel*  
DOUGLAS H. JOHNSON  
KATHLEEN T. ZELLNER &  
ASSOCIATES, P.C.  
1901 Butterfield Road, Suite #650  
Downers Grove, Illinois 60515  
(630) 955-1212

*Counsel for Petitioner*

STEVEN G. RICHARDS  
*Local Counsel*  
Casco, Wisconsin 54205  
(920) 837-2653  
Atty#: 1037545

*Local Counsel for Petitioner*

---

---

## TABLE OF AUTHORITIES

### Cases

<i>Chambers v. Mississippi</i> , 410 U.S. 284 (1973).....	24
<i>Dressler v. McCaughtry</i> , 238 F.3d 908 (7th Cir. 2001).....	23
<i>Giglio v. United States</i> , 405 U.S. 150 (1972).....	13
<i>Holmes v. South Carolina</i> , 547 U.S. 319 (2006).....	24
<i>Kyles v. Whitley</i> , 514 U.S. 419 (1995).....	31
<i>Napue v. Illinois</i> , 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959).....	2
<i>Rohl v. State</i> , 96 Wis.2d 621, 292 N.W.2d 636 (1980).....	30
<i>Socha v. Richardson</i> , 874 F.3d 983 (7th Cir. 2017).....	14
<i>State v. Denny</i> , 120 Wis.2d 614, 357 N.W.2d 12 (Ct. App. 1984).....	5
<i>State v. Dressler</i> , 180 Wis.2d 468 (Ct. App. 1998).....	23
<i>State v. Escalona-Naranjo</i> , 185 Wis.2d 168, 517 N.W.2d 157 (1994).....	13
<i>State v. Grant</i> , 222 Wis.2d 217, 587 N.W.2d 213 (Ct. App. 1998).....	13
<i>State v. Harris</i> , 2004 WI 64, 272 Wis.2d 80, 680 N.W.2d 737.....	13
<i>State v. Pulizzano</i> , 155 Wis.2d 633, 456 N.W.2d 325 (1990).....	24

<i>State v. Vollbrecht</i> , 2012 WI App 90, 344 Wis.2d 69, 820 N.W.2d 443.....	23
<i>Strickland v. Washington</i> , 466 U.S. 668, 104 S. Ct. 2052 (1984).....	30
<i>Tolliver v. McCaughtery</i> , 539 F.3d 766 (2008).....	22
<i>Wearry v. Cain</i> , 136 S.Ct. 1002, 194 L.Ed.2d 78 (2016).....	17
<i>Youngblood v. West Virginia</i> , 547 U.S. 867 (2006).....	32
<i>Zuehl v. State</i> , 69 Wis.2d 355, 230 N.W.2d 673 (1975).....	31

STATE OF WISCONSIN, )  
 )  
 *Plaintiff,* )  
 )  
 v. ) Case No. 05-CF-381  
 )  
 STEVEN A. AVERY, )  
 )  
 *Defendant.* )

---

**MOTION TO SUPPLEMENT PREVIOUSLY-FILED  
MOTION FOR POST-CONVICTION RELIEF**

---

Now comes Defendant, Steven A. Avery, by and through his attorneys, Kathleen Zellner and Steven Richards, and hereby respectfully moves this Court to supplement his previously-filed Motion for Post-Conviction Relief pursuant to Wis. Stat. 974.06 and 805.15. In support of this motion to supplement, Mr. Avery states as follows:

On June 7, 2018, the Appellate Court ordered that “this appeal is remanded forthwith to the circuit court to permit Steven A. Avery to pursue a supplemental postconviction motion in connection with Avery’s receipt of previously withheld discovery or other new information.” The Appellate Court further ordered “that the circuit court shall conduct any necessary proceedings and enter an order containing its findings and conclusions within sixty days after the supplemental postconviction motion is filed.” (Attached and incorporated herein as **Exhibit 1** is a copy of the Appellate Court’s June 7, 2018 Order).<sup>1</sup>

---

<sup>1</sup> Citations to the motion to supplement appear as exhibit numbers with the corresponding appellate record citations when applicable. New evidence will simply have an exhibit cite without a corresponding appellate record cite. Citations to the appellate record appear with the document number before the colon and the page number after the colon. A citation to Exhibit 2 of the motion to supplement will appear as (**Exhibit 2**; R. 636:24-26). If a new affidavit is presented, it will have an exhibit number only, such as (**Exhibit 19**).

On March 18, 2007, Mr. Avery was convicted, following a jury trial, of first degree intentional homicide contrary to Wis. Stat. § 940.01(1)(a) and felon in possession of a firearm contrary to Wis. Stat. § 941.29(2)(a). (R. 719:3). The jury found Mr. Avery not guilty of mutilation of a corpse. (R. 719:3). A fourth count of false imprisonment was dismissed by the trial court. (R. 712:20-23).

### **Overview**

Mr. Avery did not receive a fair trial and he is entitled to a new trial. His trial defense and prior post-conviction counsel were deprived of presenting favorable evidence on his behalf, which was directly relevant to the credibility of Bobby Dassey (“Bobby”), the State’s primary witness, and to establishing Bobby’s motive as a *Denny* third-party suspect in the Halbach murder.

The suppressed evidence consists of 2449 pages on a CD, including a timeline that impeaches Bobby’s trial testimony and thousands of images of young females being tortured, dismembered, mutilated, blindfolded, and bound, which reveal a propensity for sexual violence that would have established a motive for Ms. Halbach’s murder. Many of the images bear a striking resemblance to Ms. Halbach and to the nature of the crime committed against her. Mr. Avery’s prior defense counsel was deprived of this CD entirely, and current post-conviction counsel only received the CD on April 17, 2018, 4,360 days after it was created by the State. Current post-conviction counsel has not received any of the data from the most recent forensic examination performed on the Dassey computer in 2017 and 2018. The United States Supreme Court has held that, “when the reliability of a given witness may well be determinative of guilt or innocence, non-disclosure of evidence affecting credibility falls within the *Brady* rule.” *Napue v. Illinois*, 360 U.S. 264, 269, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959). Mr. Avery has been the victim of a *Brady*

violation which deprived him of the ability to discredit the State's key witness, Bobby, whose testimony was determinative of Mr. Avery's guilty verdict.<sup>2</sup>

### **Timeline of Dassey Computer DVDs and CD Disclosures**

1. On April 21, 2006, pursuant to a search warrant, S/A Thomas Fassbender ("S/A Fassbender") and Investigator Mark Wiegert ("Inv. Wiegert"), of the Calumet County Sheriff's Department seized a personal computer CPU and 12 CD-R's from the residence of Barbara Janda-Dassey ("Barb").
2. On April 22, 2006, according to S/A Fassbender's report, Fassbender transferred these items to Detective Mike Velie ("Det. Velie") of the Grand Chute Police Department for a forensic examination. (Attached and incorporated herein as **Exhibit 2** is the report of S/A Fassbender ("Fassbender report"), R. 636:24-26).
3. On May 10, 2006, according to current post-conviction counsel's computer forensic expert Gary Hunt ("Mr. Hunt"), Detective Velie's Final Investigative Report ("Velie Final Investigative Report") was completed and downloaded to a CD. (Attached and incorporated herein as **Exhibit 22** is the CD of the Velie Final Investigative Report with Bates numbering AverySupp00001-AverySupp02449).
4. On May 11, 2006, Det. Velie returned said items to S/A Fassbender to return to Barb.
5. On December 14, 2006, 218 days after the completion of the Velie Final Investigative Report, trial defense counsel was first provided with the Fassbender report by Prosecutor Kratz. Trial defense counsel received a report with the Bates numbers STATE\_1\_9915 through 1\_9917 under a cover letter from Prosecutor Kratz dated December 14, 2006. The Kratz letter lists on page 3 the Fassbender report. (**Exhibit 2**). The Kratz letter does not

---

<sup>2</sup> The strongest forensic link to the involvement of a member of the Dassey residence is the indisputable fact that some of Ms. Halbach's bones were found in the Dassey burn barrel. (R. 707:4-5).

refer to any enclosed CD titled “Dassey’s Computer, Final Report, Investigative Copy.” (Attached and incorporated herein as **Group Exhibit 3** is the December 14, 2006 letter from Prosecutor Kratz to Attorney Dean Strang (“Attorney Strang”) and December 15, 2006 letter with an Itemized Discovery List from Prosecutor Kratz, R. 636:21-23).

6. The Fassbender report was misleading in a number of ways:
  - a. The Fassbender report refers to the “examination of **Brendan Dassey’s** computer.” (*emphasis added*). There is absolutely no proof that the computer belonged to Brendan Dassey and there is proof that it was primarily used by his brother Bobby. (Attached and incorporated herein as **Exhibit 19** is the affidavit of Blaine Dassey).
  - b. The Fassbender report minimizes the number of violent pornographic images, the severity of the violent pornographic images, and incriminating word searches that demonstrate an obsession with inflicting pain on young females, dead female bodies, and mutilating female bodies. The Fassbender report also ignores the timeline of the images being viewed which excludes other family members and incriminates Bobby. (**Exhibit 2**, R. 636:24-26).
  - c. The Fassbender report refers to a few messages of Brendan about whether he thought Mr. Avery was guilty of the Halbach murder, while ignoring Bobby’s prolific, graphic, and sexually aggressive messages to underaged girls. (**Exhibit 2**, R. 636:24-26).
  - d. The Fassbender Report conspicuously omits the date of May 10, 2006, which is when Det. Velie completed the Velie Final Investigative Report and downloaded it onto a CD. (**Exhibit 2**, R. 636:24-26).

7. On December 15, 2006, Prosecutor Kratz sent Attorney Strang an “itemized inventory of our Steven Avery file.” In the inventory, Prosecutor Kratz references “7 CD’s: Contents of Brendan Dassey’s Computer.” Again, this statement is completely misleading to the defense because 7 DVDs were disclosed that could not be opened without the EnCase program, but the CD, which required no specialized software, was not disclosed. (**Group Exhibit 3**).
8. On December 19, 2006, Attorney Strang had his paralegal send the 7 DVDs to Attorney Jermone Buting (“Attorney Buting”), but no CD is referenced in her letter because trial defense counsel had not been provided with this CD. (Attached and incorporated herein as **Exhibit 4** is the December 19, 2006 letter of paralegal Shavon Ryan to Attorney Buting documenting 7 DVDs with attached photocopies of the DVDs). Because S/A Fassbender kept the CD in his possession, trial defense counsel only received the 7 DVDs.
9. There was not time for trial defense counsel to retain a forensic computer expert and perform the forensic analysis of the 7 DVDs, which took Detective Velie 16 days, by the January 10, 2007 due date for trial defense counsel to file their *State v. Denny*, 120 Wis.2d 614, 357 N.W.2d 12 (Ct. App. 1984) motion. Additionally, because they were not provided a CD with the Velie Final Investigative Report, which contained his criteria, word searches, registry, recovered pornography, internet history, windows registry, and all MSN messages, they could not effectively use this information to impeach Bobby or establish a motive to murder Ms. Halbach pursuant to *Denny*. (Attached and incorporated herein as **Group Exhibit 8** is Mr. Hunt’s third supplemental affidavit, with attached Exhibits B, C, and D which are Mr. Hunt’s affidavits, dated October 20, 2017, October 30, 2017, and November 16, 2017, respectively, pertaining to his forensic examination of the 7 DVDs ).



10. On January 25, 2007, on the eve of trial, Attorney Strang received a document entitled “Stipulation Project” from Prosecutor Kratz. In that document, Paragraph R stated, “Computer Analysis of Steve, Teresa’s and Brendan’s Computer---Mike Veile [*sic*], of the Grand Chute PD, analyzed the hard drives of these 3, and *found nothing of evidentiary value*. We may wish to introduce the fact that they looked. This stip eliminates Officer Veile [*sic*] as a witness.” (*emphasis added*). (Attached and incorporated herein as **Exhibit 5** is Prosecutor Kratz’s Stipulation Project, R. 266:2).
11. On January 30, 2007, Judge Willis denied trial defense counsel’s *Denny* motion because there was no proof of motive for the murder provided by trial defense counsel. (R. 238:1-15).
12. On February 5, 2007, jury selection began for Mr. Avery’s trial.
13. On January 25, 2010, Judge Willis denied trial defense counsel’s claim of error on his previous *Denny* motion, and once again stated that trial defense counsel failed to prove a motive for any of the named third-party suspects to kill Ms. Halbach. (R. 453:1-106).
14. On July 15, 2017, a new *Brady* witness, Kevin Rahmlow (“Mr. Rahmlow”), in 2 affidavits, described seeing Ms. Halbach’s RAV-4 on November 3 and 4, 2005, by the old dam on STH 147 and reporting it to Sgt. Andy Colborn (“Sgt. Colborn”). (R. 630:18-23, 634:2-6). The RAV-4 was located within half a mile of Scott Tadych’s (“Scott”) former and current residences.
15. On July 31, 2017, current post-conviction counsel retained forensic computer expert Gary Hunt (“Mr. Hunt”) to examine the 7 DVDs that had been extracted from the Dassey hard drive. Mr. Hunt examined the 7 DVDs and discovered an abundance of violent

pornography and created a timeline that linked a majority of the search for violent pornography to Bobby. (**Group Exhibit 8**).

16. On November 13, 2017, current post-conviction counsel met with trial defense counsel. She obtained an affidavit from Attorney Buting. (Attached and incorporated at **Exhibit 6** is the affidavit of Attorney Buting, R. 636:18-26). In the affidavit, Attorney Buting states that neither the CD or the Velie Final Investigative Report were ever disclosed to trial defense counsel. (**Exhibit 6**, R. 636:19).
17. Attorney Buting points out that the CD was never logged into evidence but instead S/A Fassbender kept the CD in his possession. (**Exhibit 6**, R. 636:19) (**Exhibit 2**, R. 636:26). This explains why trial defense counsel never saw the CD when they reviewed all of the evidence in the case at the Calumet County Sheriff's Department. (**Exhibit 6**, R. 636:19).
18. On November 14, 2017, December 4, 2017, and March 20, 2018, current post-conviction counsel repeatedly requested the CD from Attorney Fallon. (Attached and incorporated herein as **Group Exhibit 25** is a copy of said correspondence).
19. On April 17, 2018, Attorney Fallon finally produced the CD, which contained 2,449 pages. (**Exhibit 22**) (Attached and incorporated herein as **Exhibit 6** is a copy of the package label that contained the CD produced by Attorney Fallon)
20. On May 25, 2018, current post-conviction counsel filed a motion to supplement the record on appeal with the CD produced by Attorney Fallon.
21. On May 30, 2018, current post-conviction counsel's investigator, James Kirby ("Mr. Kirby"), pursuant to the Freedom of Information Act ("FOIA"), received 64 pages of new reports pertaining to a "follow-up investigation, regarding several allegations or questions raised in several filings of STEVEN AVERY's current defense attorney, KATHLEEN

ZELLNER” from the Calumet County Sheriff’s Department. It was at that time that current post-conviction counsel first realized that the Dassey computer had been “turned over to Special Agent Wisch” for “reasons of possible additional forensic examination.”

22. On June 7, 2018, the Appellate Court ordered the appeal remanded. (**Exhibit 1**).<sup>3</sup>

23. Current post-conviction counsel provided the newly obtained CD to Mr. Hunt. Mr. Hunt has evaluated the contents of the CD and provided his third supplemental affidavit to current post-conviction counsel. (**Group Exhibit 8**). Mr. Hunt, after his examination of the 7 DVDs and the CD, made the following conclusions based upon a reasonable degree of scientific certainty in the field of forensic computer science:

- a. The 7 DVDs required the Encase data extraction software be used, and Mr. Hunt used 2017 software extraction technology to open the 7 Encase DVDs. (**Group Exhibit 8**, affidavit of Mr. Hunt attached as Exhibit B, R. 630:93).
- b. Hr. Hunt detected eight periods in 2005, which are relevant to the murder of Teresa Halbach, when computer records are missing and presumably deleted from the Dassey computer: August 23-26; August 28-September 11; September 14-15; September 24-October 22; October 23-24; October 26-November 2; November 4-13; and November 15-December 3. (**Group Exhibit 8**, supplemental affidavit of Mr. Hunt attached as Exhibit C, R. 633:38).
- c. On October 31, 2005, the Dassey computer was used to access the internet at 6:05 a.m., 6:28 a.m., 6:31 a.m., 7:00 a.m., 9:33 a.m., 10:09 a.m., 1:08 p.m., and 1:51

---

<sup>3</sup> On May 30, 2018, current post-conviction counsel received new police reports documenting that a second forensic examination had been performed on the Dassey computer, which was taken from Barb on November 10, 2017 and returned on April 5, 2018. On July 3, 2018, current post-conviction counsel filed a motion to compel production of the recent examination of the Dassey computer; that motion is still pending before this court.

p.m. (**Group Exhibit 8**, supplemental affidavit of Mr. Hunt attached as Exhibit C, R. 633:39).

- d. The CD produced on April 17, 2018 did not require specialized software to open and examine. (**Group Exhibit 8**, third supplemental affidavit of Mr. Hunt at ¶ 16).
- e. The CD contained 2,632 searches results for the terms: blood (1); body (2,083); bondage (3); bullet (10); cement (23); DNA (3); fire (51); gas (50); gun (75); handcuff (2); journal (106); MySpace (61); news (54); rav (74); stab (32); throat (2); and tires (2). (**Group Exhibit 8**, third supplemental affidavit of Mr. Hunt at ¶ d).
- f. The CD contained 14,099 images recovered from the computer. The CD also contained 1,625 photos categorized as “recovered pornography,” which means that these images had been deleted and then recovered. (**Group Exhibit 8**, third supplemental affidavit of Mr. Hunt at ¶ b).
- g. A search of the MSN messages reveals communications between “bobby” and various individuals who identified themselves as teenage girls in the age range of 14-15. “bobby” identified himself as being a 19 year old. The messages have explicit sexual content. (Attached and incorporated herein as **Exhibit 21** are the MSN messages).

*Bobby's Misrepresentations Regarding the Violent Pornography on the Dassey Computer:*

- 24. On November 17, 2017, in a recent interview of Bobby by the CCSD, Bobby claimed that the computer was located “on a desk in the living room at the time.” When Bobby was asked if the computer was ever located in his bedroom, he stated, “It was not.” (Attached and incorporated herein as **Exhibit 13** is the Calumet County Sheriff's Department Report

of the Bobby interview on November 17, 2017). However, Bobby's statement is directly contradicted by the crime scene footage taken by Sgt. Tyson on November 12, 2005, which shows the computer is located in Bobby's bedroom. (Attached and incorporated herein as **Exhibit 20** is Sgt. Tyson's November 12, 2005 crime scene video).

25. In his November 17, 2017 interview, Bobby denied that he downloaded pornographic images on the Dassey computer, but he "may have watched porn at some point but did not know if he had." (**Exhibit 13**). Bobby's claim is directly contradicted by the fact that he was the only individual at home in the Dassey residence at the time during which the majority of the pornographic searches were performed. (**Exhibit 8**, second supplemental affidavit of Mr. Hunt attached as Exhibit D, R. 363:28).

*The DVDs and CD Impeach Bobby's Trial Testimony:*

26. Bobby testified at trial that he was asleep on October 31, 2005 until he "got up at two." (R.689:35). However, Mr. Hunt has detected evidence that impeaches Bobby's testimony by examining the timeline on the Dassey computer on October 31, 2005. Mr. Hunt has confirmed that someone accessed the internet on the Dassey computer on October 31 at 6:05 a.m., 6:28 a.m., 6:31 a.m., 7:00 a.m., 9:33 a.m., 10:09 a.m., 1:08 p.m., and 1:51 p.m., when only Bobby was at the Dassey residence. (**Exhibit 8**, supplemental affidavit of Mr. Hunt attached as Exhibit C, R. 633:39).

27. In his November 17, 2017 interview, Bobby denied creating the folders with the page depicting Mr. Avery and Ms. Halbach's photographs, and folders entitled "Halbach" and "DNA." (**Exhibit 13**). Bobby's claim is directly contradicted by the fact that he was the only individual at home in the Dassey residence at the time that the folders were created. (**Exhibit 8**, second supplemental affidavit of Mr. Hunt attached as Exhibit D, R. 636:28).

28. On June 25, 2018, current post-conviction counsel obtained an affidavit from Blaine Dassey (“Blaine”) regarding the computer and its usage at the Dassey residence. Blaine’s affidavit directly contradicts Bobby’s November 17, 2017 interview by stating the following:

- a. The computer was located in Bobby’s room.
- b. The computer had a password.
- c. The computer had an AOL dial-up internet connection.
- d. Bobby was the primary user of the computer.
- e. At no time did Blaine do searches for pornographic images of words related to pornography, violence, death, mutilation, torture, guns, knives, Teresa Halbach, Steven Avery, DNA, or dead, mutilated, or dismembered female bodies.
- f. The only time Blaine used the computer was to send instant messages or do homework.
- g. He remembers his mother, Barb, hiring “someone” to reformat the computer before it was seized by the police.
- h. The Dassey house was always locked and he never remembered Mr. Avery entering the residence unless Barb was home.
- i. Blaine never remembers Mr. Avery using the Dassey computer.

**(Exhibit 19).**

*The Correlation Between Violent Pornography and Sexual Aggression and Homicide:*

29. Current post-conviction counsel has retained Dr. Ann Burgess (“Dr. Burgess”), an expert on the correlation between violent porn and sexual aggression, homicide, and rape, who has offered the opinion that the images of violent pornography found on the Dassey

computer and linked to Bobby, by the timing of the searches, demonstrate that he should have been considered a suspect in the murder of Ms. Halbach. (Attached and incorporated herein as **Group Exhibit 9** is the affidavit and CV of Dr. Burgess).

30. Dr. Burgess offers the following opinions regarding the content of the Dassey CD:

- a. Numerous scientific studies have established the relationship between pornography consumption and violent behavior.
- b. Ms. Halbach's murder was a sexually-motivated homicide.
- c. The Dassey computer contains numerous images of teenage pornography, morbid images of dead and dismembered bodies, sexual toys and objects forced into vaginas, and most of those searches occur when only Bobby was home.
- d. The MSN messages on the computer reveal that Bobby identified himself to 14-15 year old girls and engaged in sexually explicit dialogue which involved using a webcam to obtain images of the girls in sexual poses.
- e. Dr. Burgess concludes that the searches show the compulsive nature of the offender -- specifically, the translation of a fantasy life to a compulsion to act out sadistic fantasies. In Dr. Burgess' opinion, a person obsessed with violence is more likely to commit a murder than someone not so obsessed.
- f. Dr. Burgess concludes that Bobby had developed an unhealthy obsession with Ms. Halbach.
- g. Dr. Burgess relies upon Mr. Hunt's identification of 8 periods of deletion on the Dassey computer related to when Ms. Halbach visited the Avery property. In Dr. Burgess' opinion, clearly a person who is deleting records and evidence must be considered a suspect in any homicide investigation. Similarly, the offender would

attempt to cover his tracks, interject himself into the investigation as a primary witness for the state, mislead the investigators, and plant evidence to try to frame someone else for the murder. (**Exhibit 9**).

### **ARGUMENT**

The issues surrounding the suppression of the Dassey computer CD cannot be resolved by application of the holding in *State v. Escalona-Naranjo* 185 Wis.2d 168, 517 N.W.2d 157 (1994). *Escalona-Naranjo* pertained to ineffective assistance of counsel and not a *Brady* violation. It is axiomatic that the discovery of a *Brady* violation *subsequent* to filing a motion pursuant to § 974.02 (or § 974.06) constitutes a sufficient reason for failing to raise the issue in a prior motion. *E.g.*, *State v. Grant*, 222 Wis.2d 217, 587 N.W.2d 213 (Ct. App. 1998) (“Grant had sufficient reason in that he did not realize the alleged discovery violation until after his direct appeal.”) In the instant case, it is indisputable that the 7 DVDs were not disclosed in a timely manner, and the State was deceptive about their disclosure. The CD, containing the Velie Final Investigative Report, was not disclosed until April 17, 2018, which is 4,360 days after the report was completed by Det. Velie.

To establish a *Brady* violation, a defendant must demonstrate that (1) the prosecution suppressed evidence, (2) the evidence was favorable to the defense, and (3) the evidence was material to an issue at trial. *State v. Harris*, 2004 WI 64, ¶ 13, 272 Wis.2d 80, 680 N.W.2d 737 (citing *Giglio v. United States*, 405 U.S. 150 (1972)).

#### *Suppression of Evidence*

Pre-trial, trial defense counsel made two specific requests pursuant to Section 971.23(1)(h) Wis. Stats. for all exculpatory evidence and/or information within the possession, knowledge, or control of the State which would tend to negate the guilt of the defendant, or which would tend to affect the weight or credibility of the evidence used against the defendant including any



inconsistent statements. (R. 26:4-5). A second request was made by trial defense counsel for *Brady* material immediately before trial on January 18, 2007. (R. 225:1-6).

*Brady* requires the timely disclosure of evidence within “a reasonable time before trial to allow for its effective use.” *State v. Harris*, 2004 WI 64, 272 Wis.2d 80, 680 N.W.2d 737. *Socha v. Richardson*, 874 F.3d 983 (7th Cir. 2017). As described above in paragraphs 4-9, there was not sufficient time for trial defense counsel to have a forensic examination done of the 7 DVDs they received on December 19, 2006 prior to the January 10, 2007 due date for their *Denny* motion. In regard to the CD, there is no question that it was not received until April 17, 2018 by current post-conviction counsel, so trial defense counsel was deprived entirely of the ability to hire experts such as Mr. Hunt, Mr. McCrary, and Dr. Burgess, to analyze and evaluate the CD material for purposes of impeaching Bobby and to establish him as a third-party *Denny* suspect.

On June 27, 2018, current post-conviction counsel received an affidavit from Attorney Strang. (Attached and incorporated herein as **Exhibit 7** is Attorney Strang’s affidavit). In that affidavit, Mr. Strang concludes that he and Mr. Buting were deceived by Prosecutor Kratz regarding the importance of the Dassey CD:

“I accepted without challenge Ken Kratz's assertion in a January 25, 2007 email to me that Velie's analysis of "Steve, Teresa's and Brendan's" computers yielded "nothing much of evidentiary value." With the belated production of the Velie forensic analysis to Mr. Avery's current lawyers in April 2018, it now appears to me from materials that Ms. Zellner and co-counsel have filed that the Velie forensic analysis in fact did include much of evidentiary value, in direct contradiction to Mr. Kratz's claim. Given what I know now about the existence and content of the Velie forensic analysis, this looks to me like deceit. It looks like deceit about who used this computer; it looks like deceit about the evidentiary value of the information extracted from the computer. At a minimum, it looks like material information bearing on innocence that the state knowingly possessed, had exclusively in its possession, and withheld from the defense.” (**Exhibit 7** at ¶ 4).

Additionally, as described above in paragraph 6 a-d, the Fassbender report was misleading because it referred to only 6 discs, when in fact there were 8, and also represented that the computer belonged to Brendan, when it did not. (R. 636:18-20) (App. 184-86).

*Favorability and Materiality of the Brady Violations:*

The primary witness for the State was Bobby. During his opening statement, prosecutor Kratz explicitly informed the jury of the significance of Bobby's putative observations on the date of Ms. Halbach's disappearance:

"You are going to hear that Bobby Dassey was the last person, the last citizen that will have seen Teresa Halbach alive."

(R. 696:104).

At trial, Bobby testified that he observed Ms. Halbach's light green or teal-colored SUV pull up in his driveway at 2:30 p.m. on October 31, 2005. (R. 689:36). Bobby then observed Ms. Halbach exit her vehicle and start taking pictures of his mom's maroon van right in front of his trailer. (R. 689:37). Bobby testified that he then observed Ms. Halbach walking towards the door of Mr. Avery's trailer. (R. 689:38). The following exchange occurred between Mr. Kratz and Bobby:

"Q: After seeing this woman walking toward your Uncle Steven's trailer, did you ever see this woman again?

A: No."

(R. 689:39).

Bobby then testified that he took a 3 or 4 minute shower and then left his trailer to go hunting. (R. 689:39). Bobby walked to his Chevy Blazer, which was parked between the trailer and garage. (R. 689:39). Bobby testified that as he walked to his vehicle, he observed Ms. Halbach's vehicle

still parked in the driveway. (R. 689:40). Bobby further testified that he did not see Ms. Halbach or any signs of her. (R. 689:40). Bobby testified that when he returned to his trailer around “five-ish,” Ms. Halbach’s vehicle was gone. (R. 689:41).

During closing argument, Mr. Kratz once again emphasized the importance of Bobby’s testimony:

“We talked more about the timeline and we heard from Bobby Dassey, again, in the same kind of a position to be — his credibility to be weighed by you, but is an eyewitness. Again, an eyewitness without any bias. It is a [*sic*] individual that deserves to be given a lot of credit. Because sometime between 2:30 and 2:45 he sees Teresa Halbach. He sees her taking photographs. He sees her finishing the photo shoot. And he sees her walking up towards Uncle Steve’s trailer.”

(R. 715:91-92).

Clearly, the jury was concerned about Bobby’s credibility because he was the only witness whose testimony they requested to review during deliberations. (Attached and incorporated herein as **Exhibit 26** is the jury notes regarding Bobby’s testimony) (R. 384:1-2).

As pointed out above in paragraph 26, Bobby’s trial testimony about being asleep from 6:30 a.m. to 2 p.m. would have been impeached by the contents of the 7 DVDs and 1 CD, which would have shown that he was awake and on the computer 8 times in that time frame. (**Exhibit 8**, supplemental affidavit of Mr. Hunt attached as Exhibit C, R. 633:39). The vast quantities of child pornography and the violent images of young females being tortured, sexually assaulted, and mutilated on the Dassey computer at times when only Bobby was home, in addition to his MSN sexually-explicit conversations with 14 and 15 year olds, as well as the word searches after the murder that indicate an interest in skeletons, dismemberment, knives through skin, fire, handcuffs, guns, bullets, and blood, could have been utilized by trial defense counsel to impeach Bobby’s

credibility with the jury by illustration of his knowledge and preoccupation with unique details of the crime. (R. 636:27-37, at pp. 33-37).

The Wisconsin Supreme Court in *Harris* stated:

We agree with Harris that here, the undisclosed information is favorable to the accused because it casts doubt on the credibility of the State's primary witnesses and may have supported an inference that B.M.M. was projecting her grandfather's assaults onto Harris. The United States Supreme Court has noted that "there are situations in which evidence is obviously of such substantial value to the defense that elementary fairness requires it to be disclosed...." *Agurs*, 427 U.S. at 110, 96 S.Ct. 2392. Here, the undisclosed information is not directly exculpatory in the sense that DNA evidence might be because the fact that B.M.M. had alleged being previously sexually assaulted by her grandfather does not, in and of itself, tend to negate Harris's guilt regarding the separate assault that B.M.M. alleged he committed. However, the evidence here constitutes impeachment information that could be used to challenge the credibility of witnesses whose credibility would have been determinative of Harris's guilt. *Giglio*, 405 U.S. at 154, 92 S.Ct. 763.

*Id.* at 108-109.

Similar to *Harris*, of all of the witnesses in Mr. Avery's trial, Bobby's testimony was the most determinative of Mr. Avery's guilt. It was Bobby's testimony alone that the State used to establish that Ms. Halbach never left the Avery property and was last seen walking towards Mr. Avery's trailer.

Clearly, the impeachment of Bobby, the primary witness for the State, would have enhanced the possibility of Mr. Avery's defense succeeding. It is not necessary that Mr. Avery establish that he would have been acquitted if Bobby had been impeached with the *Brady* evidence.

The United States Supreme Court, in *Wearry v. Cain* 136 S.Ct. 1002, 194 L.Ed.2d 78 (2016), held:

"*Brady* applies to evidence undermining witness credibility. Evidence qualifies as material when there is 'any reasonable likelihood' it could have 'affected the judgment of the jury.' [...] To prevail on his *Brady* claim,

Weary need not show that he ‘more likely than not’ would have been acquitted had the new evidence been admitted. (*Citations omitted*).”

*Id.* at 1006.

### **The Disclosure of the CD Would Have Established Bobby as a Third-party *Denny* Suspect**

Mr. Strang explains in his affidavit that the CD would have allowed trial defense counsel to establish Bobby as a third-party *Denny* suspect. Specifically, Attorney Strang states:

“Had my co-counsel, Jerome Buting, and I known before trial or during trial about the contents of the Velie forensic analysis described now in Gary Hunt's affidavits, we would have used the information in the Velie forensic analysis to support our *Denny* motion by strengthening our showing that Bobby Dassey was an alternate suspect. At a minimum, that information would have gone to Bobby Dassey's availability and opportunity to commit violent crimes against, and kill, Teresa Halbach on October 31, 2005; to his sexual motive or other deviant motive to do so; to his proclivity or propensity-his legitimate tendency-to consider and commit exactly the sort of violence inflicted on Teresa Halbach; and to the credibility of his alibi. We also would have sought to introduce evidence of incriminating internet searches that likely were made by Bobby Dassey, and would have confronted him on cross-examination with those searches and other information contained in the Velie forensic analysis.” (**Exhibit 7** at ¶ 5).

Similarly, in Attorney Buting’s affidavit, he explains that, if they had been given the CD, they would have included it in their *Denny* motion to establish Bobby as a third-party suspect who had a sexual motive to kill Ms. Halbach:

At approximately the same time that the December 14, 2006 mass of discovery was received by us, defense counsel was preparing a motion under *State v. Denny* to introduce evidence of third-party suspects at Mr. Avery's trial. In that *Denny* motion, subsequently filed by the defense on January 8, 2007, we named Bobby Dassey as a possible suspect for the homicide of Teresa Halbach. We established that he had access and opportunity to have committed the crime, but the court ruled no motive was established and therefore denied the *Denny* motion as to Bobby Dassey and others. If there was anything that was on the CD investigator report from Detective Velie that would have linked Bobby Dassey to the violent porn images found on the Dassey computer, we would have included such information in our *Denny* motion. Such information could have strengthened Bobby Dassey as a possible suspect who may have

sexually assaulted and killed Ms. Halbach, and specifically would have provided evidence of motive. (**Exhibit 6**, R. 636:18-26).

Mr. Buting explained that, as of December 14, 2006, a “massive discovery” was received by trial defense counsel, who was preparing a motion pursuant to *State v. Denny*, 120 Wis.2d 614, 357 N.W.2d 12 (Ct. App. 1984) to introduce evidence of third-party suspects at Mr. Avery’s trial. (R. 636:18-20). In that *Denny* motion, subsequently filed by trial defense counsel on January 10, 2007, Bobby was named as a potential suspect in Ms. Halbach’s homicide. (R. 636:18-20). According to the trial court, trial defense counsel had established that Bobby had “access and opportunity to have committed the crime,” but, because no motive evidence was presented, the *Denny* motion was denied as to Bobby as well as others. (R. 636:18-20).

Current post-conviction counsel’s expert Mr. Hunt’s forensic examination of the 7 DVDs revealed 128 violent images of young females being tortured, sexually assaulted, and mutilated. (**Exhibit 8**, R. 636:27-37, at pp. 33-37). There were dozens of images depicting young females in pain because of having objects and fists forced into their vaginas. (**Exhibit 8**, R. 636:39-40). The images also depicted dismembered, decapitated, and drowned bodies of young females. (**Exhibit 8**, R. 636:40). Many of the female images, both alive and deceased, bear an uncanny resemblance to Ms. Halbach. (**Exhibit 8**, R. 636:18-19; 630:96). Two pictures were found in the unallocated space; the first showing Ms. Halbach and Mr. Avery, the second showing only Ms. Halbach. The pictures were in an unallocated space because someone had deleted them. There is no way to know when these images were acquired or deleted. (**Exhibit 8**, R. 630:96; 633:36-37). Therefore, prior counsel was deprived of a complete compilation of all the violent images, word searches, timelines, messages, and recovered images that had been deleted during the Halbach murder investigation. The State’s forensic analysis by the State’s forensic examiner was also suppressed. All of this material could have been used to establish Bobby as a third-party *Denny* suspect. (**Exhibits 6, 7**).

### *Timing of the Searches*

Mr. Hunt, in his examination of the 7 DVD images using 2017 technology, detected 667 searches for sexual images on the Dassey computer on weekdays when Bobby was the only member of his family at home during the week from 6:30 a.m. to 3:45 p.m. (R. 636:27-37). All other Dassey family members who lived at the residence (Barb, Bryan, Bobby, Blaine, and Brendan) were either at work or school during those hours. (R. 689:35; 705:56-57, 145, 148; 630:28-29; 633:47; 636:39).

By mid-October, Tom Janda and Barb were separated, so he was no longer living at the residence on the Avery property. (**Exhibit 19**). According to Barb, Tom Janda moved out before October 15, 2005 and never looked at pornography on the Dassey computer. (Attached and incorporated herein as **Exhibit 30** is the police report of Barb Tadych's interview on November 10, 2017).

Bobby was the only person at the Dassey residence from 6 a.m. to 3:45 p.m. on the weekdays. (**Group Exhibit 11**). During the week, Blaine and Brendan were in school until 3:45 p.m. Bryan lived with his girlfriend and worked during the day. (**Exhibit 14**). Barb also worked a day shift, and Tom Janda no longer lived at the residence. (**Exhibit 19**) (R. 636:27-37; 689:35; 705:56-57, 145, 148; 630:28-29; 633:47; 636:39; 630:28; 400:131).

Mr. Hunt was able to analyze 667 searches related to sexual content, which were performed on the Dassey computer on a weekday from 6 a.m. to 3:45 p.m. Mr. Hunt was able to identify 562 searches performed on just weekdays: August 16, 2005 (4 searches); September 13, 2005 (12 searches); February 23, 2005 (48 searches); March 29, 2006 (37 searches); March 30, 2006 (23 searches); April 3, 2006 (93 searches); April 5, 2006 (96 searches); April 6, 2006 (14 searches);

April 13, 2006 (39 searches); April 19, 2006 (196 searches). (R. 636:27-37, at ¶ 3). (**Group Exhibit 8**, second supplemental affidavit attached as Exhibit D, R. 636:27-30).

Gregg McCrary (“Mr. McCrary”), current post-conviction counsel’s police procedure and investigation expert, opines that these Dassey computer searches demonstrate the “obsessively compulsive nature of Bobby Dassey’s internet searches and the fascination with sexual acts that involve the infliction of pain, torture, and humiliation on females and an equally disturbing fascination with viewing dead female bodies.” (Attached and incorporated herein as **Exhibit 24** is the second supplemental affidavit of Mr. McCrary) (R. 636:38-95, at p. 39).

Barb hired someone to “reformat” the Dassey computer prior to law enforcement seizing it. The “reformatting” resulted in a number of images being removed during the critical time period before and after the murder. (Attached and incorporated herein as **Exhibit 27** is the affidavit of Brad Dassey (“Brad”)) (R. 633:36-37). Mr. Hunt identified 8 periods in 2005 when computer records were presumably deleted: August 23-26, August 28-September 11, September 14-15, September 24-October 22, October 23-24, October 26-November 2, November 4-13, and November 15-December 3. (**Exhibit 8**, second supplemental affidavit attached as Exhibit D) (R. 633:38-39). Bobby cannot be excluded from the additional 79 remarkably similar searches of the same categories that were typed into the Dassey computer when other family members may have been home. (**Exhibit 8**, second supplemental affidavit attached as Exhibit D) (R. 636:27-37).

*The Forensic Examination of Mr. Avery’s Computer Revealed No Searches of Violent Pornography*

The State attempted to convince the jury that Mr. Avery’s motive in setting up the appointment with Ms. Halbach on October 31, 2005 was to lure her to his property to sexually assault her. (R. 694:76-78; 258:1; 715:93; 705:154). During the searches of the Avery property, the State focused on trying to gather pornography from Mr. Avery’s residence. However, a forensic



analysis performed by the State's examiner of Mr. Avery's computer in 2006 revealed no searches of sexual images, much less violent images and dead bodies. (R. 636:58-59).

Mr. Avery never accessed the Dassey computer. He did not have the password for the computer, nor did he possess a key to the Dassey residence which was locked when no one was home. (**Exhibit 19**) (**Group Exhibit 11**). Mr. Avery only entered the residence with permission of a Dassey family member. Mr. Avery worked during the weekdays from 8:00 a.m. to 5:00 p.m. (R. 636:6, 89-96, at ¶¶ 3, 5, 10) (**Group Exhibit 11**). Mr. Avery would be eliminated from all but 15 of the 128 searches (11.7%) at issue simply by having been arrested on November 9, 2005. (R. 630:85). Brendan would be eliminated from all but 26 of the 128 searches (20.3%) at issue by having been arrested on March 1, 2006. (R. 636:11, 33-37).

In *Tolliver v. McCaughtery*, 539 F.3d 766 (2008), the 7th Circuit reversed and remanded the Wisconsin Appellate Court for its unreasonable application of clearly established Supreme Court precedent when the Wisconsin court required that the *Brady* evidence result in a different outcome. The *Tolliver* Court stated:

“The state court had determined that “Mr. Smith’s testimony possibly would have affected the jury’s views of the persons Mr. Smith named, their motives for testifying, and Oliver’s reasons for shooting Ms. Rogers,” but the court nevertheless concluded that *the result of the proceeding would not have been different*. . . . There is little doubt that, had the disputed evidence been admitted, it would have been reasonable for the jury to conclude as the Court of Appeals of Wisconsin believed that it would. With great respect, however, we believe that it is not reasonable to conclude that such a result was the *only* result or even the probable result that the jury would have reached. Again, we believe that our colleagues on the Court of Appeals of Wisconsin failed to apprehend the nature of Mr. Toliver’s defense and failed to assess how the evidence in question might have enhanced the possibility of that defense succeeding.”

*Id.* at 778. (emphasis added).

Using the *Tolliver* analysis, it is indisputable that the evidence presented from the Dassey CD and the 7 DVDs would have “enhanced the possibility” of Mr. Avery’s defense succeeding. Despite all of the alleged forensic evidence against Mr. Avery, the jury took 3 days to reach a verdict and clearly had questions about Bobby’s credibility. The CD would have allowed the trial defense team to impeach Bobby’s testimony about being asleep from 6:30 a.m. until 2:30 p.m. and, more importantly, it would have allowed trial defense counsel to establish motive to name Bobby as a third-party *Denny* suspect.

*The Dassey CD is Newly-Discovered Evidence:*

The Dassey CD is newly discovered evidence that meets the materiality standard of *Brady*. The non-disclosure of the CD deprived trial defense counsel of the ability to meet the *Denny* standard by establishing motive of Bobby a third-party suspect. The court in *State v. Vollbrecht*, 2012 WI App 90, 344 Wis.2d 69, 820 N.W.2d 443, held:

“the parties parse out all of the issues on appeal -- addressing the newly discovered evidence, third-party perpetrator (*Denny*) evidence and the alleged *Brady* violation as if disconnected. However, the overarching issue is that of newly discovered evidence, under which all other issues on appeal are subsumed. We therefore examine it as such.”

*Id.* at 85.

Wis. Stat. § 904.04(2), provides that “[e]vidence of other crimes [and/or] wrongs [and/or] acts...when offered...as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident” is admissible. The court in *Dressler v. McCaughtry*, 238 F.3d 908 (7th Cir. 2001), *State v. Dressler*, 180 Wis.2d 468 (Ct. App. 1998), held that the “acts” admitted pursuant to this section were the defendant’s possession of the pornographic videotapes and pictures. Those images depicting intentional violence were admitted as evidence of the defendant’s motive, intent, and plan to murder the victim. (R. 636:7).

The defendant in *Dressler* argued that the videotapes and pictures were irrelevant and constituted inadmissible propensity evidence. The 7th Circuit disagreed stating:

“The fact that the defendant maintained a collection of videos and pictures depicting intentional violence was probative of the State’s claim that he had an obsession with that subject. A person obsessed with violence is more likely to commit murder, and therefore the videos and photographs were deemed relevant.”

*Id.* at 914.

The *Dressler* court also rejected the defendant’s argument that the videos and pictures were inadmissible propensity evidence and held that, although evidence of the general character of a defendant is inadmissible to prove he acted in conformity therewith, the above exception from § 904.04(2) was deemed to apply.

The same result as in *Dressler* is required here. Ms. Halbach was killed in a violent and vicious manner. An obsession with images depicting sexual violence against women made it more likely that person would commit a sexual homicide. The violent sexual images were relevant to motive and would have resulted in trial defense counsel being able to establish motive to meet the *Denny* standard.

The United States Constitution and the Wisconsin Constitution guarantee criminal defendants a meaningful opportunity to present a complete defense. *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006). Whether the right is rooted in the due process clause, or the compulsory process or confrontation clauses of the Sixth Amendment, the defendant has the fundamental right to defend himself. *Id.* at 324.

“The rights granted by the confrontation and compulsory process clauses are fundamental and essential to achieving the constitutional objective of a fair trial.” *State v. Pulizzano*, 155 Wis.2d 633, 645, 456 N.W.2d 325 (1990), citing *Chambers v. Mississippi*, 410 U.S. 284, 294-95 (1973).

Mr. Avery had a constitutionally guaranteed right to present a complete defense to the charges against him. Mr. Avery was deprived of his constitutional right to present a complete defense because of the *Brady* violation committed by the State in failing to tender the forensic examination CD and the Velie Final Investigative Report. The failure of trial defense counsel to have the benefit of using the CD to establish the *Denny* motive requirement deprived Mr. Avery of a meaningful opportunity to present a complete defense.

As previously stated by Attorney Strang in his affidavit, trial defense counsel was actively misled by Prosecutor Kratz in his proposed trial stipulation letter. (**Exhibit 7** at ¶ 4) (R. 266 at ¶ R). Attorney Buting makes a similar claim about the Fassbender report being deliberately vague to the point of being misleading. (**Exhibit 6**).

*The CD's Materiality is Also Established by the Multiple Misrepresentations Made by Bobby During the Investigation at Trial and in the Most Recent Investigation:*

Current post-conviction counsel has identified numerous inconsistencies in the statements made by Bobby to law enforcement and at trial prior to the discovery of the CD contents on April 17, 2018. Those prior inconsistencies are as follows:

1. **November 23, 2005:** Bobby was interviewed by the Wisconsin Public Defender Office (“WPDO”). He was asked “if he knew that someone was coming to photograph the van and he stated that he knew she was coming that day, the van was ready for photos, and it was not unusual for Steven to be selling cars for AutoTrader to come and take pictures.” (Attached and incorporated herein as **Exhibit 10** is the WPDO Report of the November 23, 2005 Interview). Contrary to the WPDO report, at trial, Bobby testified that he was unaware that Ms. Halbach was coming to the Avery property on October 31, 2005. (R.689:37). Additionally, Mr. Avery remembers having a telephone conversation with Bobby around 8:39 a.m. and telling him to get the battery in the van charged because the

photographer was coming to take pictures of the van. Mr. Avery also recalls having a face-to-face conversation with Bobby after he stopped by Barb's residence and talked to Bobby around 11 a.m. Mr. Avery specifically recalls talking to Bobby about charging the van, and Mr. Avery believes that they actually tried to charge the van at that time. (Attached and incorporated herein as **Group Exhibit 11** is Mr. Avery's second supplemental affidavit with his prior affidavits attached).

2. Bobby frequently commented on Ms. Halbach to Mr. Avery when she would come to the property. Bobby would state to Mr. Avery, "I see that your girlfriend was over yesterday," each time after Ms. Halbach left the Avery property. (**Group Exhibit 11**). At trial, Bobby testified that he did not know who Ms. Halbach was when she arrived on the property on October 31, 2005. (R. 689:37).
3. November 23, 2005: Bobby was interviewed by the WPDO, and he stated that on October 31, 2005 he saw **Mr. Avery** walking towards his trailer, **not Ms. Halbach**. (**Exhibit 10**). Contrary to the WPDO report, Bobby testified at trial that he observed Ms. Halbach pull up the driveway and walk towards Mr. Avery's trailer. (R. 689:36-38). Contrary to the WPDO report, at trial, Bobby testified that he observed Ms. Halbach pull up to the driveway, take photographs, and then walk towards Mr. Avery's trailer. (R. 689:36-38). A reenactment video prepared by Mr. Avery's current post-conviction counsel illustrates that the field of vision from Bobby's bedroom window excludes Mr. Avery's trailer. (Attached and incorporated herein as **Exhibit 12** is the reenactment video filmed from the Dassey window directed towards Mr. Avery's trailer).
4. At trial, Bobby testified to the following sequence of events: he observed Ms. Halbach get out of her vehicle, take one picture of the maroon van parked in front of his house, and

walk within 25 yards of Mr. Avery's trailer door. At that point, Bobby stopped watching and took a shower. (R.689:38). On November 17, 2017, in a police interview, Bobby stated that he observed Ms. Halbach park her vehicle opposite his mother's van, get out, and start taking pictures. At that point, Bobby took a shower, got dressed, looked outside his window, and observed Ms. Halbach walking "half-way" towards Mr. Avery's trailer. (**Exhibit 12**).

5. November 6, 2005: Bryan Dassey was interviewed by the Wisconsin Department of Justice (WDOJ) and stated that Bobby told Bryan that Bobby saw Ms. Halbach leave the Avery property. (WDOJ November 6, 2005 Report of Interview with Bryan: R. 630:34-37) (Affidavit of Bryan Dassey: R. 630:30-31) (Attached and incorporated as **Exhibit 14** is Calumet County Sheriff's Department Report of the Bryan interview on 11/3/2017). Contrary to Bryan's WDOJ report, Bobby testified at trial that when he left to go hunting, he saw Ms. Halbach's car still in the driveway, but he did not see Ms. Halbach. (R. 689:39-40). On October 30, 2017, Barb, Bobby's mother, posted on Facebook that Bobby told her that he did not see Ms. Halbach walking towards Mr. Avery's trailer, contrary to his trial testimony. (Barb's 10/30/17 Facebook post: R. 633:40). On October 24, 2017, Barb and Scott admitted that they did know that Ms. Halbach had left the Avery property on October 31, 2005. (Barb and Scott's phone call with Steven Avery on 10/24/17: R. 633:20).
6. Bobby testified at trial that, on October 31, 2005, he went hunting between 2:45 p.m. and 5:00 p.m. (R. 689:39-40). However, he contradicted that timeframe in a November 5, 2005 interview in which Bobby claimed he got home at 4:45 p.m. (R. 630:75-77). In a recent interview on November 17, 2017, Bobby provided another contradicting time when he stated that he got home at 5:30 p.m. (**Exhibit 13** at p. 38). Most importantly, Bobby's

brother Blaine has provided an affidavit in which he describes seeing Bobby at 3:45 p.m. driving a greenish-blue vehicle, the same color as Ms. Halbach's, in the area Mr. Rahmlow described seeing the RAV-4 parked on November 3 and 4, 2005. Another witness has come forward and identified Ms. Halbach's vehicle as being parked at the old dam in the identical spot as Mr. Rahmlow on October 31, 2005. (Attached and incorporated here as **Exhibit 23** is the affidavit of Paul Burdick).

7. Bobby stated that he would hunt on the property behind Tadych's house at 12764 SH 147, which was **east** of the Salvage Yard. (**Exhibit 13** at p. 37). At 3:02 p.m. on October 31, 2005, Bobby hit off Tower 363X, 5.47 miles **west** of the Dassey residence. Bobby's hunting spot was only 1.5 miles from tower 370X. (Bobby Dassey's 10/31/05 phone records are attached and incorporated herein as **Exhibit 15**) (Cell tower maps are attached and incorporated herein as **Exhibit 16**). If Bobby was hunting where he claimed to be hunting **east** of the Avery property, there would be no reason that his call at 3:02 p.m. would have bounced off of tower 363X, **west** of the Avery property, instead of 370X.
8. November 6, 2005: Mr. Avery stated to the Marinette County police that, after going into his trailer to leave the Autotrader magazine, he came back outside and saw Ms. Halbach making a left turn off Avery Road onto CTH 147 going west. Mr. Avery then looked at the Dassey residence and noticed that Bobby's vehicle was gone. (Attached and incorporated herein as **Group Exhibit 17** is the transcription and police report regarding the 11/6/05 Marinette interview with Mr. Avery).
9. November 9, 2005: In his interview with the Calumet County Sheriff's Department, Bobby stated that he was more than two hours late to work on October 31, 2005. His shift started at 10 p.m. and he did not leave for work from the Avery property until 11:30 p.m. (The

11/9/05 CCSD interview of Bobby Dassey: R. 630:78-80). At trial, Bobby testified that he left for work at 9:30 p.m. and “started work at ten p.m.” but he never mentioned being late on October 31, 2005. (R. 689:44-45). In his November 17, 2017, Bobby completely contradicted his November 9, 2005 statement to law enforcement, when said he left for work at 9:20-9:25 p.m. (**Exhibit 13**).

10. November 9, 2005: During a hospital examination of Bobby, the medical examiner detected scratches on Bobby’s back that are “fairly recent.” In that interview, Bobby stated that the scratches were due to his labrador puppy jumping on his back. (R. 630:78-80). According to current post-conviction counsel’s forensic pathologist, Larry Blum, M.D. (“Dr. Blum”), the scratches on Bobby’s back were not caused by a labrador puppy and are consistent with fingernails on a human hand scratching Bobby’s back. (Attached and incorporated herein as **Exhibit 18** is Dr. Blum’s affidavit.).
11. November 14, 2005: In an interview with CCSD, Mike Osmunson (“Mr. Osmunson”), Bobby’s friend, claimed that he had been to the Avery property one time on November 10, 2005. Mr. Osmunson “indicated he was aware STEVEN was one of the last people to see the missing girl and jokingly asked STEVEN if STEVEN has her (the missing girl) in a closet.” Mr. Osmunson claimed that Mr. Avery then asked him if he wanted to “help bury the body” and that they had “laughed” about this together. (The 11/14/05 CCSD interview of Mike Osmunson: R. 630:84). Clearly, Mr. Osmunson’s story was fabricated because Mr. Avery was arrested and in custody beginning on November 9, 2005.
12. At trial, Bobby contradicted Mr. Osmunson’s police report and testified that Mr. Avery made a comment to them about getting rid of a body on November 4, 2005. (R. 697:25-28). Mr. Avery, in his most recent affidavit, disputes the content of this conversation. Mr.



Avery contends that it was Bobby and Mr. Osmunson that asked him if he knew how to “get rid of a body.” Mr. Avery believes that it is highly suspicious that Bobby and Mr. Osmunson were referring to a body on November 4, 2005, since the investigation at that point in time was for a missing person. **(Group Exhibit 11)**.

13. In his CCSD interview on November 17, 2017, Bobby claimed that he had never hunted on the Radandt property, in the Manitowoc gravel pit, or in the area off Kuss Road in Two Rivers. **(Exhibit 13)**. Mr. Avery had given an affidavit that directly contradicts Bobby’s statements and claimed that Bobby frequently hunted in the Manitowoc gravel pit area. **(Exhibit 13)**.

#### *Ineffective Assistance of Counsel*

If the court denies the *Brady* violation and determines that prior counsel was at fault for not having the 7 DVDs forensically examined and requesting the CD, Mr. Avery pleads ineffective assistance of counsel as an alternative remedy pursuant to *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052 (1984). The failure to hire a computer forensic expert, a police procedure and investigation expert, and a sexual homicide expert fell below an objective standard of reasonableness. Mr. Avery incorporates paragraphs 93-113 of his Motion for Post-Conviction Relief Pursuant to Wis. Stat. 974.06 and 805.15. (R. 603:60-67).

*Mr. Avery is Entitled to an Evidentiary Hearing on Whether the Withheld CD Constitutes a Brady Violation that Entitles Him to a New Trial:*

The Wisconsin Supreme Court has ruled that a trial court may deny a motion for postconviction relief under § 974.06, Stats., without a hearing if the motion fails to allege sufficient facts to raise a question of fact, or presents only conclusory allegations, or if the motion, files, and record conclusively show that the defendant is entitled to no relief. *Rohl v. State*, 96 Wis.2d 621, 625, 292 N.W.2d 636 (1980).

In *Rohl*, the defendant filed a motion for postconviction relief. The circuit court denied the motion and the defendant appealed. The Court of Appeals reversed, and the State petitioned for review. The Wisconsin Supreme Court held that, while the allegations in the petition were initially conclusory, the circuit court had permitted the defendant to supplement his allegations with an affidavit. Because the affidavit “provided some support for the conclusory allegation” the Wisconsin Supreme Court held that the circuit court abused its discretion in dismissing the petition without an evidentiary hearing. *Rohl v. State*, 96 Wis.2d 621 (1980).

In *Zuehl v. State*, 69 Wis.2d 355, 230 N.W.2d 673 (1975), the Wisconsin Supreme Court held that circuit court abused its discretion because the motion set forth sufficient factual allegations such that it should not have been summarily dismissed. Defendant’s only support for his allegations was his own affidavit. The circuit court dismissed the motion, finding that the defendant’s allegation was not supported by the previous trial court record. *Id.* at 362. The Wisconsin Supreme Court explained: “that is not the test. A silent record does not conclusively show that the defendant is entitled to no relief.” *Id.* The defendant’s burden at the first stage of the Act is to present an issue of fact that, if later proven at a hearing, would entitle him to relief. *Id.*

Mr. Avery has presented this court with sufficient allegations of a *Brady* violation that meet the *Kyles* standard that the absence of the CD evidence deprived Mr. Avery of a fair trial, meaning a trial resulting in a verdict worthy of confidence.

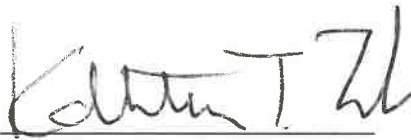
The leading Supreme Court case on the issue of materiality is *Kyles v. Whitley*, 514 U.S. 419 (1995). The *Kyles* Court noted that “the question is not whether the defendant would more likely than not have received a different verdict with evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence.” *Id.* at 434-

38. A “reasonable probability” is lower than a preponderance of evidence standard. It is demonstrated where the defense shows that the failure “undermined confidence” in the conviction. *Youngblood v. West Virginia*, 547 U.S. 867, 869-70 (2006).

Confidence in Mr. Avery’s verdict is undermined because of the suppression of material evidence contained on the CD, which could have been used to impeach Bobby’s trial testimony at the State’s primary witness and also to have established him as a third-party *Denny* suspect, because the CD would have supported a sexual assault motive for the murder of Ms. Halbach.

WHEREFORE, undersigned counsel respectfully requests that this court conduct an evidentiary hearing to determine the merits of the factual allegations set forth in this motion and to grant Mr. Avery a new trial based upon the court's findings in said evidentiary hearing.

Dated this 6th day of July, 2018,



Kathleen T. Zellner  
Admitted pro hac vice  
Kathleen T. Zellner & Associates  
1901 Butterfield Road, Suite 650  
Downers Grove, Illinois 60515  
(630) 955-1212 / IL Bar #: 6184574  
attorneys@zellnerlawoffices.com



Steven G. Richards  
State Bar No. 1037545  
Everson & Richards, LLP  
127 Main Street  
Casco, Wisconsin 54205  
(920) 837-2653  
sgrlaw@yahoo.com

**CERTIFICATE OF SERVICE**

I certify that on July 6<sup>th</sup>, 2018, a true and correct copy of Defendant Steven Avery's Motion to Supplement Previously-Filed Motion for Post-Conviction Relief, Pursuant to Wisconsin Statute 806.07 (1)(a) was furnished via electronic mail and by Federal Express, postage prepaid to:

Ms. Jacalyn C. LaBre  
Manitowoc County District Attorney's Office  
1010 South 8<sup>th</sup> Street  
3<sup>rd</sup> Floor, Room 325  
Manitowoc, WI 54220

Mr. Thomas J. Fallon  
Ms. Lisa E.F. Kumfer  
Ms. Tiffany Winter  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707

Mark S. Williams  
11708 Settlers Road  
Cedarburg, WI 53012

Honorable Judge Angela W. Sutkiewicz  
Circuit Court Judge  
Sheboygan County Courthouse  
615 North 6<sup>th</sup> Street  
Sheboygan, WI 53081

Lynn Zigmunt  
Clerk of the Circuit Court  
Manitowoc County Courthouse  
1010 South 8<sup>th</sup> Street  
Manitowoc, WI 54220



Kathleen T. Zellner

STATE OF WISCONSIN,

)

*Respondent*

)

)

v.

)

)

STEVEN A. AVERY,

)

)

*Petitioner.*

)

Case No. 05-CF-381

**MOTION TO SUPPLEMENT PREVIOUSLY FILED MOTION FOR  
POST-CONVICTION RELIEF EXHIBITS**

1. 6/7/18 Wisconsin Court of Appeals Remand Order, pp. 1-4
2. 4/21/06 Wisconsin Division of Criminal Investigation (“DCI”) report by S/A Fassbender documenting the examination of the Dassey-Janda Computer (R.636:24-26)
3. Group exhibit containing the 12/14/06 Itemized Discovery List from Prosecutor Kratz to Attorney Strang (R.636:21-23), and the 12/15/06 itemized inventory from Prosecutor Kratz to Attorney Strang, pp. 1-23
4. 12/19/06 letter from paralegal Shavon Ryan to Attorney Buting documenting seven DVDs with attached photocopies of the DVDs
5. 1/25/07 “Stipulation Project” from Prosecutor Kratz to Attorney Strang and the 2/4/07 response from Attorney Strang (R.266:1-5)
6. Group exhibit containing the 11/13/17 Affidavit of Jerome F. Buting with attached exhibits (R.636:18-20):
  1. 12/14/06 Itemized Discovery List from Prosecutor Kratz to Attorney Strang (R.636:21-23)
  2. 4/21/06 Wisconsin Division of Criminal Investigation (“DCI”) report by S/A Fassbender documenting the examination of the Dassey-Janda Computer (R.636:24-26)
7. Group exhibit containing the 6/27/18 Affidavit of Dean A. Strang and attached exhibits:
  - a. Photocopy of “DOJ DCI DFU Evidence Disc” disclosed on 4/17/18
  - b. 12/19/06 letter from paralegal Shavon Ryan to Attorney Buting
8. Group exhibit containing the Third Supplemental Affidavit of Gary Hunt and attached exhibits:

- a. CV of Gary Hunt
  - b. 10/20/17 Affidavit of Gary Hunt (R.630:92-113)
  - c. 10/30/17 Supplemental Affidavit of Gary Hunt (R.633:38-39)
  - d. 11/16/17 Second Supplemental Affidavit of Gary Hunt (R.636:27-30)
  - e. Bobby's MSN messages from the Dassey-Janda computer from , 2/16/06-2/17/06, and 2/27/06 (HUNT 12, 51-61, 131-35)
  - f. Web searches from Detective Velie's Report
9. Group exhibit containing the Affidavit of Dr. Ann Burgess and attached exhibits:
- a. CV of Dr. Burgess
  - b. 5 key articles re the relationship between pornography consumption and rape and other violence towards women
10. 11/23/05 Wisconsin Public Defender Office interview of Bobby Dassey, pp. 1-3
11. Group exhibit containing the 6/29/18 Second Supplemental Affidavit of Steven A. Avery, Sr. and attached exhibits:
- a. Map drawn by Bobby Dassey on 11/17/17 depicting where the RAV-4 was parked, and Mr. Avery's corrected map on 6/29/18 depicting the location of the RAV-4 in relation to Barb's van
  - b. Mr. Avery's cell phone records from 10/30/05-10/31/05
  - c. 11/23/16 Affidavit of Steven A. Avery (R.604:22-30) and the 11/14/17 Supplemental Affidavit of Steven A. Avery (R.636:89-96)
  - d. 7/6/18 Supplemental Affidavit of Stuart H. James re bloodstains in the RAV-4 and attached exhibit:  
James A. CV of Stuart James
12. CD containing videos showing views from the north-facing windows of the Dassey-Janda residence
13. 11/17/17 Calumet County Sheriff's Department interview of Bobby Dassey, pp. 48-52
14. 11/03/17 Calumet County Sheriff's Department interview of Bryan Dassey, pp. 36-38
15. 10/31/05 cell phone records of Bobby Dassey
16. CD containing Cellcom tower maps with distances relative to the Kuss Rd/Hwy Q intersection and Bobby Dassey's hunting spot
17. Transcribed 11/06/05 interview of Mr. Avery with the Marinette County Sheriff's Department, pp. 1-72
18. Group exhibit containing the 6/25/18 Supplemental Affidavit of Dr. Larry Blum and attached exhibits:
- a. CV of Dr. Blum
  - b. Photographs of the scratches on Bobby Dassey's back
19. Group exhibit containing the 6/25/18 Affidavit of Blaine Dassey and attached exhibit

- a. Map drawn by Blaine Dassey depicting where the school bus passed Bobby on STH 147
20. 11/12/05 Dassey-Janda trailer and garage walk-through video by Sgt. Tyson
21. Bobby's MSN messages from the Dassey-Janda computer from 2/16/06-2/17/06, and 2/27/06 (HUNT 7-66, 131-35)
22. CD of Detective Velie Final Report Investigative Copy with Bates numbering (Avery Supp00001-AverySupp02449)
23. 6/28/18 Affidavit of Paul Burdick
24. 11/16/17 Second Supplemental Affidavit of Gregg McCrary with attached exhibits (R.635:38-95):
  1. List of searches from the Dassey-Janda computer (R.635:45-48)
  2. Copies of the police reports focusing on pornography in the possession of Mr. Avery (R.635:49-84)
  3. Scott Tadych's criminal history re battery conviction (R.635:85-90)
  4. Copy of the 11/10/05 CCSD report regarding the "Sikikey" note, a copy of the "Sikikey" note, and 11/11/05 Manitowoc Herald Times articles re public disclosure of evidence that Ms. Halbach's bones had been burned (R.635:91-95)
25. Emails from Attorney Zellner to Attorney Fallon on 11/14/17, 12/4/17, and 3/20/18 requesting the CD of Detective Velie's "Dassey Computer Final Report, Investigative Copy"
26. 3/16/07 Jury Question No. 1 requesting a transcript of Bobby Dassey's testimony (R.384:1-2)
27. 10/30/17 Affidavit of Brad A. Dassey (R.633:36-37)
28. 5/4/18 Affidavit of Lisa Novachek
29. 8/21/17 Affidavit of Thomas Pearce
30. Group exhibit with the redacted copy of 11/10/17 Calumet County Sheriff's Department interview of Scott and Barbara Tadych re Tom Janda moved out of the Dassey-Janda residence on 10/15/05 and Barb's statement that she never saw Tom view pornography, pp. 39, 43



1

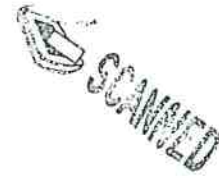


OFFICE OF THE CLERK  
**WISCONSIN COURT OF APPEALS**

110 EAST MAIN STREET, SUITE 215  
P.O. BOX 1688  
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
Web Site: www.wicourts.gov

**DISTRICT II**



June 7, 2018

To:

Hon. Angela W. Sutkiewicz  
Circuit Court Judge  
Sheboygan County Courthouse  
615 N. 6th St.  
Sheboygan, WI 53081

Lynn Zigmunt  
Clerk of Circuit Court  
Manitowoc County Courthouse  
1010 S. 8th Street  
Manitowoc, WI 54220-5380

Lisa E.F. Kumfer  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

Jacalyn C. LaBre  
District Attorney  
1010 S. Eighth St.  
Manitowoc, WI 54220

Steven G. Richards  
Everson & Richards, LLP  
127 Main St.  
Casco, WI 54205

Tiffany M. Winter  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

Kathleen T. Zellner  
Kathleen T. Zellner and Associates, P.C.  
1901 Butterfield Rd., Ste. 650  
Downers Grove, IL 60515

You are hereby notified that the Court has entered the following order:

---

2017AP2288

State of Wisconsin v. Steven A. Avery (L.C. # 2005CF381)

Before Reilly, P.J.

The appellant, Steven A. Avery, by counsel, moves to supplement the record with a compact disc “disclosed to defendant for the first time on April 17, 2018.” Avery alleges that the CD contains exculpatory, material evidence and that State’s failure to disclose the CD earlier violates his due process right to a fair trial under *Brady v. Maryland*, 373 U.S. 83 (1963). The State objects because the CD was not part of the record before the circuit court when it denied Avery’s Wis. STAT. § 974.06 postconviction motion and his motions for reconsideration. Avery

has filed a reply asserting that supplementation is appropriate because although the CD itself was not presented to the circuit court, the facts surrounding the “suppression of the contents of the undisclosed CD to trial defense counsel” are contained in the record through Avery’s prior postconviction motions and the attachments thereto. Avery contends that we should add the CD to the record “because the circuit court had all of the *Brady* issues before it” and “[t]he State should not be rewarded for having suppressed the CD until after the appellate record was completed.”

Avery’s reply misses the point, which is that we are not a fact-finding court and cannot consider items not presented to the circuit court. Based on the assertion that Avery recently received previously withheld discovery or other new information, we retain jurisdiction but remand this case to enable Avery to file an appropriate supplemental postconviction motion in the circuit court. Avery shall file any supplemental postconviction motion within thirty days of the date of this order. The circuit court shall hold proceedings on the supplemental postconviction motion and enter its written findings and conclusions deciding the supplemental postconviction motion within sixty days after the motion is filed. In the event Avery remains aggrieved, the circuit court clerk shall re-transmit the record, including any post-remand papers, according to the procedures described below, and the appeal will continue. In addition to any pre-existing issues, the parties’ appellate briefs shall address any new issues arising from the circuit court’s post-remand order deciding Avery’s supplemental postconviction motion. If Avery is afforded relief pursuant to his supplemental postconviction motion, he may seek dismissal of the pending appeal. If the appeal is dismissed but the State is aggrieved, it may file a notice of appeal from the circuit court’s order deciding any supplemental postconviction motion entered pursuant to this remand. Therefore,

IT IS ORDERED that the motion to supplement the record is denied.

IT IS FURTHER ORDERED that this appeal is remanded forthwith to the circuit court to permit Steven A. Avery to pursue a supplemental postconviction motion in connection with Avery's receipt of previously withheld discovery or other new information.

IT IS FURTHER ORDERED that any supplemental postconviction motion shall be filed in the circuit court within thirty days.

IT IS FURTHER ORDERED that the circuit court shall conduct any necessary proceedings and enter an order containing its findings and conclusions within sixty days after the supplemental postconviction motion is filed.

IT IS FURTHER ORDERED that if Avery intends to order a transcript of any post-remand hearing, he shall do so within ten days after the circuit court enters its order deciding the supplemental postconviction motion. Any such transcript shall be filed and served within twenty days after its request. Avery shall provide the court reporter with a copy of this order.

IT IS FURTHER ORDERED that Avery shall file a statement on transcript within fifteen days after the circuit court enters its post-remand order deciding the supplemental postconviction motion. The statement on transcript shall reflect either that a post-remand transcript has been ordered or that such a transcript is not necessary for this appeal.

IT IS FURTHER ORDERED that the circuit court clerk shall re-transmit the record to this court within twenty days after the later of the entry of the circuit court order resolving the supplemental postconviction motion or the filing of any post-remand hearing transcript, if ordered. The record shall include any papers filed pursuant to this remand.

IT IS FURTHER ORDERED that the appellant shall file an appellant's opening brief presenting all grounds for relief within forty days after the filing of the record.

---

*Sheila T. Reiff*  
*Clerk of Court of Appeals*

2

# Wisconsin Case Management

## ACISS Investigative Report

Report Number: 05-1776/304

Report Date: 12/07/2006

Primary Information	
Report Number:	05-1776/304
Report Date:	12/07/2006
Type Of Report:	Investigative
Description:	TERESA MARIE HALBACH: Examination of Brendan Dassey Computer
Occurrence From:	04/21/2006 00:00
Occurrence To:	12/30/1899 00:00
Dissemination Code:	Agency
Reporting LEO:	Fassbender, Thomas J (Appleton Special Assignments / Wisconsin Department of Justice DCI)
Approval Status:	Approved
Approved Date:	12/12/2006
Approved By:	Kelly, Carolyn S (Madison Arson / Wisconsin Department of Justice DCI)

Related Subjects					
Name	Type	Sex	Race	DOB	Relationship
Avery, Marie F	Person	Female	White	6/14/1987	Mentioned
Fabian, Danny	Person	Male	Unknown	---	Mentioned
Janda, Barbara Ellen	Person	Female	White	11/7/1964	Mentioned
Walker, Emily A.	Person	Female	White	6/2/1987	Mentioned
Avery, Steven Allen Sr	Person	Male	White	7/9/1962	Person of Interest
Dassey, Brendan R	Person	Male	White	10/19/1989	Person of Interest

Record Origination Operator:	Price, Denise (Criminal Investigation / Wisconsin Department of Justice DCI)
Record Origination Date:	12/07/2006 08:24
Last Update Operator:	Kelly, Carolyn S (Madison Arson / Wisconsin Department of Justice DCI)
Last Update Date:	12/12/2006 14:20

Fassbender, Thomas J (Appleton Special Assignments / Wisconsin Department of Justice DCI)	Kelly, Carolyn S (Madison Arson / Wisconsin Department of Justice DCI)	12/12/2006
---	--	------------

Narrative begins on the following page:

*This report is property of Wisconsin Case Management. Neither it nor its contents may be disseminated to unauthorized personnel.*

fassbenderj 12/12/2006 14:48

Page 1 of 3



STATE\_1\_9915

Wisconsin Division of Criminal Investigation Case Report  
Case/Report Number: 05-1776/304

On Friday, April 21, 2006, pursuant to search warrant, S/A Thomas J. Fassbender and Investigator Mark Wiegert, of the Calumet County Sheriff's Department seized a personal computer CPU and 12 CD-R's from the residence of Barbara Janda.

On Saturday, April 22, 2006, S/A Fassbender transferred said items to Detective Mike Velie, of the Grand Chute Police Department for forensics examination.

On Thursday, May 11, 2006, Detective Velie returned said items to S/A Fassbender for subsequent return to Barbara Janda. S/A Fassbender subsequently received from Detective Velie materials pertaining to his computer analysis of the hard drive and CD-R's. This included numerous hard copy pages of instant message conversations from the hard drive; and a CD titled "Dassey's Computer, Final Report, Investigative Copy." The CD contained information on web sites and images from the harddrive. Also provided by Det. Velie were 6 DVD+R's containing a copy of the harddrive. S/A Fassbender examined the items received and made the following observations:

On February 28, 2006, there was an instant message conversation between an individual, using the screen name "nigerforlife," believed to be Brendan Dassey, and an individual using the screen name "pickup my hand break my fingers and when they feel numb i'll let you know i will scream until i'm out of breath," (Danny\_fabian6495269747, believed to be Danny Fabian). During said conversation, Fabian asked Dassey why detectives wanted to speak with Fabian's brother and Dassey stated they just wanted to ask him why Dassey was losing weight.

On February 28, 2006, there was an instant message conversation between Dassey and an individual using the screen name "i gotta make it to heaven fo goin through hell" (slowmotion4ya1091495196), believed to be Emily, a recent girlfriend of Dassey's. During said conversation, Emily asked "Do you think he is guilty?" Dassey responded, "Ya Yea," Emily then asked, "Why do you," and Dassey responded, "I don't know enough to say."

On March 4, 2006, there was an instant message conversation between an individual using Dassey's screen name of "nigerforlife," who identified themselves as "Brendan's mom," and the person utilizing the screen name, "EMILY," believed to be Emily. During said conversation, Emily advised that her mother doesn't want her to be involved with this and she apologizes for that. Barbara Janda responded, "He's not a bad person, his uncle is."

On February 28, 2006, there was an instant message conversation between Dassey and an individual using the screen name, "--jr mafia--nices!!!!bitches, bitches every where i look there is bitches!!!julie i love u to deth!!!" (super\_hotty\_6924154349921), believed to be Travis Fabian. During said conversation, Dassey asked Fabian if he thought Steven was guilty and Fabian responded, "ydk," (for

Narrative Page 1

*This document contains neither recommendations nor conclusions of the Division of Criminal Investigation. It is the property of this Division, and is loaned to your agency. Its contents are not to be distributed outside your agency.*

STATE\_1\_9916



Wisconsin Division of Criminal Investigation Case Report  
Case/Report Number: 05-1776/304

I don't know), "y." Fabian then asked Dassey if he felt Avery was guilty. Dassey responded, "Ya Emily asked that to me". Fabian asked what Dassey said and Dassey wrote, "Ya," and "Yea". Fabian then repeated, "You saed Ya he's guilty".

On February 28, 2006, there was an instant message conversation between Dassey and an individual using the screen name, "Friendship is long lost love, that you wish you'll be able to overcome," (wingless-angel-2006173960984), believed to be Marie Avery. During said conversation, Dassey asked Marie Avery if she thought Steven was guilty and Marie Avery responded, "Yes yes yes y es yes yes yes finaty". Dassey then wrote, "So do I now of the evidence they got".

In reviewing the images contained on the disc marked final report, S/A Fassbender made the following observations:

Photographs of both Teresa Habach and Steven Avery with an apparent date of April 18, 2006.

There were numerous images of nudity, both male and female, to include pornography. The pornography included both heterosexual, homosexual and bestiality. There were images depicting bondage, as well as possible torture and pain. There were also text images with the name, "Emily". There were images depicting potential young females, to include an infant defecating. There were images of injuries to humans, to include a decapitated head, a badly injured and bloodied body, a bloody head injury, and a mutilated body.

The disc received from Detective Vefie, as well as the hardcopy pages of instant message conversations were maintained in S/A Fassbender's possession.

Narrative Page 2

*This document contains neither recommendations nor conclusions of the Division of Criminal Investigation. It is the property of this Division, and is loaned to your agency. Its contents are not to be distributed outside your agency.*

STATE\_1\_9917

3

*Finny*

**CALUMET COUNTY  
DISTRICT ATTORNEY'S OFFICE**  
Kenneth R. Kratz, District Attorney

Jeffrey S. Froehlich,  
Assistant District Attorney  
Julie L. Leverenz/London K. Thomas  
Victim/Witness Assistance Coordinators

206 Court Street  
Chilton, WI 53014  
(920) 849-1435  
FAX: 849-1464

December 14, 2006

Attorney Dean Strang  
10 E. Doty Street #320  
P.O. Box 1528  
Madison, WI 53701-1528

Re: **State of Wisconsin vs. Steven A. Avery**  
**Manitowoc County Case No. 05-CF-381**

Dear Attorney Strang:

Recognizing this office's continuing duty of providing discovery, enclosed please find additional information regarding the above-captioned case.

1. CD – Toyota Rav 4 Original Laser Scans – 11/15/06
2. CD – Avery Calls: 11/1/06 – 11/13/06
3. CD – Avery Calls: 11/14/06 – 11/27/06
4. CD – Avery Calls: 11/28/06 – 12/4/06
5. CD – Avery Calls: 12/5/06 – 12/12/06
6. CD – Jodi Phone Calls: 12/15/05 – 1/8/06
7. CD – Jodi Stachrowski: 2/15/06
8. Photos: S3 (1-192)
9. Photos: E2 (1-133)
10. Photos: A18 (1-23)
11. Photos: A19 (1-68)
12. Photos: A20 (1-17)
13. Search Warrant & Return for Dassey Residence – 4/21/06 (12 pgs)
14. Search Warrant & Return for Avery's Kodak Easyshare camera – 10/6/06 (9 pgs)
15. MCSD Narrative Report – Officer Shallue – 11/30/06 (2 pgs)
16. Supplemental Report – Officer JoAnn Mignon (BPD) – 11/7/05 (2 pgs)
17. MCI Voice Services – Toll Free Call Detail of Auto Trader – 10/15/05 – 11/14/05 (30 pgs)
18. FBI Laboratory Report dated 1/17/06 re: charred remains & buccal swabs of Karen Halbach (3 pgs)
19. FBI Report dated 1/4/06 by Gerald Mullen re: examination of Canon Sure Shot digital camera and cellular telephone – received 1/6/06 (4 pgs)



STATE\_1\_9970

20. FBI Report from Gerald Mullen re: examination of digital camera and cellular telephone – received 4/19/06 (3 pgs)
21. Written statement of Bobby Dassey – 11/5/05 (1 pg)
22. Written statement of Josh Radandt – 11/5/05 (1 pg)
23. Written statement of Jodi Stachowski – 11/6/05 (1 pg)
24. Written statement of George Zipperer – 11/6/05 (1 pg)
25. Written statement of Paul Metz – 11/20/05 (1 pg)
26. Written statement of William Elroy Brandes, Jr. – 12/7/05 (1 pg)
27. Written statement of Nikole Sturm – 11/5/05 (1 pg)
28. Written statement of JoEllen Zipperer – 11/6/05 (1 pg)
29. Diagram drawn by Bobbie Dassey on 2/27/06 (1 pg)
30. Signed Miranda Warnings: Earl Avery (11/9/05); Bobby Dassey (11/9/05); Jodi Stachowski (11/8/05); Jodi Stachowski (11/11/05); Brendan Dassey (5/13/06) (5 pgs)
31. Leads Information: 11/8/05 – 11/12/05 (6 pgs)
32. Info provided from Kohl's regarding Teresa Halbach's credit card account (25 pgs)
33. Photo Log & Photos – Wisconsin State Patrol (30 pgs)
34. CCSD Evidence/Property Custody Document Re: Fiber, Vacuum Roller & Carpet Cleaner (1 pg)
35. Receipt of Physical Evidence received from State Crime Lab (57 pgs)
36. Crime Lab Report – Sherry Culhane – 11/14/05 (4 pgs)
37. Crime Lab Report – Sherry Culhane – 12/5/05 (3 pgs)
38. Crime Lab Report – Sherry Culhane – 3/31/06 (7 pgs)
39. Crime Lab Report – Sherry Culhane – 5/8/06 (5 pgs)
40. Crime Lab Report – Sherry Culhane – 12/4/06 (6 pgs)
41. Crime Lab Report – John Ertl – 11/23/05 (5 pgs)
42. Crime Lab Report – Michael Haas – 11/9/05 (1 pg)
43. Crime Lab Report – William Newhouse – 2/21/06 (1 pg)
44. Crime Lab Report – William Newhouse – 5/10/06 (1 pg)
45. Crime Lab Report – Kenneth Olson – 12/13/05 (1 pg)
46. Crime Lab Report – Kenneth Olson – 2/27/06 (1 pg)
47. Crime Lab Report – Kenneth Olson – 5/26/06 (1 pg)
48. Crime Lab Report – Kenneth Olson – 12/4/06 (1 pg)
49. Crime Lab Report – Michael Riddle – 3/8/06 (1 pg)
50. Crime Lab Report – Michael Riddle – 3/17/06 (1 pg)
51. Crime Lab Report – Michael Riddle – 4/26/06 (1 pg)
52. Crime Lab Report – Michael Riddle – 12/5/06 (1 pg)
53. Crime Lab Report – Michael Riddle – 4/26/06 (1 pg)
54. Crime Lab Report – R. Nick Stahlke – 1/31/06 (2 pgs)
55. Crime Lab Report – Joseph Wermerling – 12/6/05 (1 pg)
56. CCSD Supplemental Contact Reports – (19 pgs)
57. CCSD Narrative Reports pgs. 967-969 w/ attached letter written by Tiffany to Sandra Barth (4 pgs)
58. CCSD Narrative Reports pgs. 970-1006
59. CCSD Narrative Report pg. 1007 w/ attached letters from Andres Martinez (6 pgs)
60. CCSD Narrative Report pgs. 1008-1009 w/ attached letter from Terry Vollbrecht (4 pgs)

61. CCSD Narrative Report pgs. 1010 w/ attached Crime Lab Report of Sherry Culhane dated 12/4/06 (6 pgs) & Crime Lab Report of Michael Riddle dated 12/5/06
62. CCSD Narrative Report pgs 1011-1017
63. CCSD Narrative Report pg. 1018 w/ attached Crime Lab Report of Kenneth Olson dated 12/4/06
64. CCSD Narrative Reports pgs. 1019-1021 w/ attached Crime Lab Receipt of Physical Evidence dated 9/19/02 & Order signed by Judge Hazelwood on 5/2/02 (6 pgs)
65. CCSD Narrative Reports pgs. 1022-1023
66. Responses to Subpoenas For Records - Misc Telephone Numbers (134 pgs)
67. DCI Narrative Reports: 05-1776/303; 05-1776/304; 05-1776/305; 05-1776/306; 05-1776/307; 05-1776/308; 05-1776/309; 05-1776/310; 05-1776/311; 05-1785/4; 05-1785/5 (115 pgs)
68. Report of Dr. Kenneth Bennett dated 11/10/05 (2 pgs)

Sincerely,



Kenneth R. Kratz  
Manitowoc County Special Prosecutor

KRK:mlm  
Enclosures

cc: Attorney Jerome Buting  
Attorney Norman Gahn  
Attorney Thomas Fallon

STATE\_1\_9972

**CALUMET COUNTY  
DISTRICT ATTORNEY'S OFFICE**

**Kenneth R. Kratz, District Attorney**

Jeffrey S. Froehlich,  
Assistant District Attorney  
Julie L. Leverenz/Llonda K. Thomas  
Victim/Witness Assistance Coordinators

206 Court Street  
Chilton, WI 53014  
(920) 849-1438  
FAX: 849-1464

December 15, 2006

Attorney Dean Strang  
10 E. Doty Street #320  
P.O. Box 1528  
Madison, WI 53701-1528

**Re: State of Wisconsin vs. Steven A. Avery  
Manitowoc County Case No. 05-CF-381**

Dear Attorney Strang:

Enclosed please find an itemized inventory of our Steven Avery file. All of these items were sent to you as discovery. Although some of these items were actually forwarded to Attorney Loy, it was our understanding that he forwarded it to you. Separate itemized lists of the Calumet County Sheriff's Department and DCI narrative reports were included with the discovery materials given to you on December 14, 2006.

Please review this list carefully. If you are unable to locate any of the items and want us to make another copy, please contact my office.

Sincerely,



Kenneth R. Kratz  
District Attorney

KRK:mlm

cc: Attorney Jerome Buting  
Attorney Thomas Fallon  
Attorney Norm Gahn

**STEVEN AVERY FILE INVENTORY**

<u>BINDER</u>	<u>DOCUMENT</u>	<u># PAGES</u>
<b>CCSD Reports #1</b>	Narrative Report pgs. 1-200	
<b>CCSD Reports #2</b>	Narrative Report pgs. 201-223	
	Narrative Report pg. 224 w/ attached letter found at Green Bay Post Office & copy of Evidence ID Label	3
<b>CCSD Reports #3</b>	Narrative Report pgs. 225-400	
	Narrative Report pgs. 401-412	
	Narrative Report pg. 413 w/ attached 27 pgs of Teresa's journal	28
	Narrative Report pgs. 414-417	
	Narrative Report pgs. 418 w/ attached ATF firearms trace - Marlin .22 rifle	4
	Narrative Report pgs. 419-435	
	Narrative Report pg. 436 w/ attached letter of Dr. Donald Simley - 2/21/06	5
	Narrative Report pgs. 437-523	
	Narrative Report pg. 524 w/ attached report of Kenneth Olson dated 2/27/06 re: charred cranial pieces	2
	Narrative Report pgs. 525-600	
<b>CCSD Reports #4</b>	Narrative Report pgs. 601-695	
	Narrative Report pg. 696 w/ attached report of William Newhouse dated 2/21/06 re: .22 LR Marlin Glenfield 60 rifle & casings	3
	Narrative Report pgs. 697-736	
	Narrative Report pgs. 737-738 w/ attached Waiver of Rights & Voluntary Statement of Orville Jacobs	5
	Narrative Report pgs. 739-742	
	Narrative Report pg. 743 w/ attached reports of Brendan Dassey's Ace Driving School Records	9
	Narrative Report pgs. 744-749	

BINDER

DOCUMENT

# PAGES

	Narrative Report pg. 750 w/ attached report from Michael Riddle dated 4/26/06 re: fingerprint on Avery's headboard	2	
	Narrative Report pg. 751 w/ attached letter from "Carol"	2	
	Narrative Report pg. 752 w/ attached report of Sherry Culbane dated 5/8/06 re: DNA (on bullet fragment, door handle, light switch, hood latch)	6	
	Narrative Report pg. 753 w/ attached report from MCSD of Det. Dave Remiker re: whether they had DNA samples in their custody from Avery	26	
	Narrative Report pg. 754 w/ attached report from William Newhouse dated 5/10/06 re: testing performed on 22 LR Martin Glenfield 60 rifle & bullets		
	Narrative Report pgs. 755-866		
	Narrative Reports pg. 867 w/ attached info from George Cramer re: PalmZire not registered to Avery or Dassey	2	
	Narrative Report pg. 868 w/ attached report from Kenneth Olson dated 5/26/06 re: evidence recovered from headboard on spindles	2	
	Narrative Report pg. 869 w/ attached Autopsy Report of Michael Stier dated 5/23/06 re: remains found on Avery property	4	
	Narrative Report pg. 870-872		
	Narrative Report pg. 873 w/ attached report of Curt Judson, Parts Manager with LeMieux Toyota	3	
	Narrative Reports pgs. 874-875		
<b>CCSD Reports #5</b>	Narrative Reports pgs. 876 w/ attached receipts from Target & Cingular re: Teresa's purchase of PalmZire and cell phone	3	
	Narrative Reports pgs. 877-966		
	Narrative Reports pgs. 967-969 w/ attached attached letter written by Tiffany to Sandra Barth	4	
	Narrative Reports pgs. 970-1006		
	Narrative Report pg. 1007 w/ attached letters from Andres Martinez	6	
	Narrative Report pgs. 1008-1009 w/ attached letter from Terry Vollbrecht	4	



**BINDER**

**DOCUMENT**

**# PAGES**

	Narrative Report pgs. 1010 w/ attached Crime Lab Report of Sherry Culhane dated 12/4/06 (6 pgs) & Crime Lab Report of Michael Riddle dated 12/5/06	8
	Narrative Report pgs 1011-1017	
	Narrative Report pg. 1018 w/ attached Crime Lab Report of Kenneth Olson dated 12/4/06	2
	Narrative Reports pgs. 1019-1021 w/ attached Crime Lab Receipt of Physical Evidence dated 9/19/02 & Order signed by Judge Hazelwood on 5/2/02	6
	Narrative Reports pgs. 1022-1023	
<b>CCSD - Misc Documents</b>	<b>Reporting Form &amp; Supplemental Contact Reports/Contact Info</b>	66
	Dispatch Records: 11/3/05 - 11/12/05	60
	Leads Information: 11/7/05 - 12/29/05	32
	Steven Avery: Calhoun County Jail Log Entries, Visiting Records, Names of Cellmates, Conduct Report & Special Watch Logs	148
<b>CCSD - Crime Scene Logs</b>	<b>Crime Scene Logs &amp; Incident Group Time Logs</b>	211
<b>DCI Reports #1</b>	Narrative Reports: 05-1776 to 05-1776/5	
<b>DCI Reports #2</b>	Narrative Reports: 05-1776/6 to 05-1776/40	
<b>DCI Reports #3</b>	Narrative Reports: 05-1776/41 to 05-1776/80	
<b>DCI Reports #4</b>	Narrative Reports: 05-1776/81 to 05-1776/120	
<b>DCI Reports #5</b>	Narrative Reports: 05-1776/121 to 05-1776/160	
<b>DCI Reports #6</b>	Narrative Reports: 05-1776/161 to 05-1776/200	
<b>DCI Reports #7</b>	Narrative Reports: 05-1776/201 to 05-1776/250	

**BINDER**

**DOCUMENT**

**# PAGES**

<b>DCI Reports #8</b>	Narrative Reports: 05-1776/251 to 05-1776/311 & 05-1785/1 to 05-1785/5	
<b>Law Enforcement Reports (MCSD)</b>	Fax from MCSD to CCSD Re: Officer Duty Log - 11/28/05 Narrative Report: Detective Remiker - 12/13/05 Narrative Report: Detective Remiker w/ attached fax from State Crime Lab re: evidence transmittals (receipts/returns) - 5/4/06 Time System Transmissions from 11/3/05 - 11/12/05 Narrative Report: Detective Remiker re: events of 3/1/06 & 3/2/06 w/ attachments - 7/17/06 Narrative Report: Detective Remiker - 7/18/06 Narrative Report -- Officer Shalhue -- 11/30/06	7 22 25 147 10 24 2
<b>Law Enforcement Reports (Other Agencies)</b>	<u>Manitowoc Police Department:</u> Narrative Report: Officer J. Hoyer - 11/9/05 - Re: Christopher Avery Narrative Report: Detective Swetlik - 11/8/05 - Int Susan Vetter Re: David Munroe Narrative Report: Detective Swetlik - 11/8/05 - Int Doug Laes  <u>Brillion Police Department:</u> Supplemental Report -- Officer JoAnn Mignon (BPD) -- 11/7/05  <u>Eau Claire Police Department:</u> Narrative Report: Detective Donn Adams - 12/21/05 Re: 12/7/05 Int of Jessey Welein	2 2 2  2  5

**BINDER**

**DOCUMENT**

**# PAGES**

<b>Grand Chute Police Department:</b>	
Fax from Mike Veile GCPD to Wiegert CCSD - 11/9/05 - Re: Return of Warrant (Computer)	3
<b>Marquette County Sheriff's Department:</b>	
Narrative Report: Sgt. Michael Sievert - 11/7/05 - Includes written statements of Charles Avery, written statements of Allan & Dolores Avery, two sketch diagrams	15
Narrative Report: Officer Degnitz - 11/8/05	1
Narrative Report: Det. O'Neill - 11/11/05 - Re: Int Brendan Dassey, Affidavit & Search Warrant; DOT records; Impound Sheets; Property Receipts	19
Narrative Report: Det. O'Neill - 11/16/05 - Re: 11/5/05 Interview of Steven Avery & Sketch Diagram	6
Narrative Report: Det. O'Neill - 11/17/05 - Re: 11/6/05 Interview of Steven Avery & 4 pages sketch diagrams	9
<b>Two Rivers Police Department:</b>	
Narrative Report: Kohlmeier & Sheahan - 11/19/05 - Int McKee & Hauschultz	4
<b>Winneshago County Sheriff's Department:</b>	
Narrative Report: Lt. M. Haback - 11/8/05 - Re: Assist With Search	6
<b>Wisconsin State Patrol:</b>	
Narrative Report: Cindy Paine - 11/8/05 - Re: Search for License Plate (Includes Log of All Persons Entering Secured Area)	157
Photo Log & Photos	30

<u>BINDER</u>	<u>DOCUMENT</u>	<u># PAGES</u>
DNA Materials #1	DNA Materials binders have not been indexed yet. All DNA materials have been sent to defense.	
DNA Materials #2		
DNA Materials #3		
Witness Notes #1 (Victim's Family/Friends)	Nikole Sturm - Written statement dated 11/5/05	1
Witness Notes #2 (CCSD)	All narrative reports are contained in CCSD Reports	
Witness Notes #3 (State Crime Lab)	<u>Sherry Culhane:</u> Report dated 11/14/05 re: Toyota Rav 4 4 Report dated 12/5/05 re: charred materials, buccal cell standard, pap smear 3 Report dated 3/31/06 re: misc items 7 Report dated 5/8/06 re: misc items 5 Report dated 12/4/06 re: misc questioned stains collected on swabs 6	
	<u>John Ertl:</u> Report dated 11/23/05 re: events of 11/5/05 2 Report dated 11/23/05 re: events of 11/6/05 3	
	<u>Michael Haas:</u> Report dated 11/9/05 re: processing of flatbed Letter & report received 8/24/06 re: exam of International truck 1 14	
	<u>William Newhouse:</u> Report dated 2/21/06 re: rifle & cartridge casings 1 Report dated 5/10/06 re: rifle & bullets 1	

BINDER

DOCUMENT

# PAGES

	<u>Kenneth Olson:</u>	
	Report dated 12/13/05 re: charred debris from barrel	1
	Report dated 2/27/06 re: charred cranial pieces	1
	Report dated 5/26/06 re: headboard	1
	Report dated 12/4/06 re: charred cranial pieces w/ attachments	48
	<u>R. Nick Stahlke:</u>	
	Report dated 1/31/06 re: Toyota Rav 4 & Grand Am	2
	<u>Joseph Wermerling:</u>	
	Report dated 12/6/05 re: soil samples	1
<u>Witness Notes #4:</u>	<u>Charles Avery</u>	
	Aurora Medical Center records re: forensic exam dated 11/9/05	3
	<u>Dolores Avery</u>	
	Aurora Medical Center records re: forensic exam dated 11/9/05	2
	<u>Earl Avery</u>	
	Eyewear Order from Dr. Thaddeaus Daniel - 10/19/05	1
	Waiver of Rights signed 11/9/05	1
	Aurora Medical Center records re: forensic exam dated 11/9/05	3
	<u>Kayla Avery</u>	
	Written statement dated 3/1/06	1
	Notes re: Kayla Avery dated 1/06	2

BINDER

DOCUMENT

# PAGES

<b>Steven Avery</b>		
Aurora Medical Center records re: forensic exam dated 11/9/05		3
<b>Bobby Dassey</b>		
Written statement dated 11/5/05		1
Waiver of Rights signed 11/9/05		1
Aurora Medical Center records re: forensic exam dated 11/9/05		2
Diagram of Property Drawn 2/27/06		1
<b>Brendan Dassey</b>		
Waiver of Rights signed 2/27/06		1
Written statement dated 2/27/06		2
Waiver of Rights signed 3/1/06		1
Picture of knife, garage, bedroom, and property drawn 3/1/06		4
Waiver of Rights signed 5/13/06		1
<b>Bryan Dassey</b>		
Aurora Medical Center records re: forensic exam dated 11/10/05		3
<b>Barbara Janda</b>		
Aurora Medical Center records re: forensic exam dated 11/9/05		2
Consent to Search signed 3/1/06		1
<b>Jodi Stachowski</b>		
Waiver of Rights signed 11/6/05		1
Written statement dated 11/6/05		1
Waiver of Rights signed 11/8/05		1

**BINDER**

**DOCUMENT**

**# PAGES**

	Waiver of Rights signed 11/11/05	1
<b>Witness Notes #4: Other</b>	William Brandes - Written statement dated 12/7/05	1
	Paul Metz - Written statement dated 11/20/05	1
	Josh Radandt - Written statement dated 11/5/05	1
	Michael M. Stier MD - UW Medical School Dept of Pathology - Autopsy Report dated 11/17/05	3
	George Zipperer - Written statement dated 11/6/05	1
	JoEilen Zipperer - Written statement dated 11/6/05	1
<b>Computer Records:</b>	Grand Chute Police Department: Computer Forensics Report of Detective Mike Velie - Analysis of Steven Avery's Computer	601
	Grand Chute Police Department: Computer Forensics Report of Detective Mike Velie - Analysis of Teresa Halbach's Computer	409
	Grand Chute Police Department: Computer Forensics Report of Detective Mike Velie - Analysis of Teresa Halbach's Computer: Maps (261 pgs)	261
<b>Evidence: Other</b>	Auto Trader: Photo Shoot Appointment Records including 10/31/05 appointment with "B. Janda"	10
	"Bloodhound Tracks": Includes 11/7/05 Fauske Report, Tracks One - Seven (Including Maps)	23
	Training Resume: Officer Sarah Fauske & K9 Loof	12
	Jody Disher & K-9 letter & certificates	10
	K-9 Emergency Response Teams Search Narrative - 11/6/05	32
	Fax to John Dederer from Donna Conick Re: Key Code for Teresa's Rav 4	1

**BINDER**

**DOCUMENT**

**# PAGES**

	Fax from George Cramer to Mark Wiegert dated 5/26/06 re: Palm Zire 31 device	1
<b>Prior Court Proceedings:</b>	Manitowoc County Court documents regarding divorce of Lori Mathieson & Steven Avery (1987 - 1993)	136
<b>Expert Witness:</b>		
<b>Dr. Leslie Eisenberg</b>	Forensic Anthropology Case Report (11/9/05 - 7/4/06)	18
	Letter from Eisenberg dated 11/27/05 w/ attachments	11
	Letter from Eisenberg dated 6/17/06 w/ attachments	8
	Evidence Transmittal to Alice Isenberg from Leslie Eisenberg: 11/5/06	3
	Forensic Anthropology Case Report (7/21/06 - 12/3/06) - Final	29
<b>Expert Witnesses: Other</b>		
	Ken Bennett: Anthropologist - Report dated 11/10/05 re: Bones	2
	Jeffrey Jentzen: Medical Examiner - Letter dated 12/14/06	1
<b>Photo Envelopes - A's</b>		
	A1 (1-137); A2 (1-187); A3 (1-231); A4 (1-229); A5 (1-70); A6 (1-33)	
	A7 (1-58); A8 (1-37); A9 (1-26); A10 (1-19); A11 (1-28)	
	A12 (1-49)	
	A13 (1-100, 101-146)	
	A14 (1-140); A15 (1-49); A16 (1-48)	
	A17 (1-16)	
	A18 (1-23); A19 (1-68)	
<b>Photo Envelopes - B's</b>	B1 (1-19)	
<b>Photo Envelopes - C's</b>	C1 (1-17)	
	C2 (1-37)	
<b>Photo Envelopes - D's</b>		
	D1 (1-4); D2 (1-15); D3 (1-10); D4 (1-6); D5 (1-56)	



**BINDER**

**DOCUMENT**

**# PAGES**

	D6 (1-49); D7 (1-36) D8 (1-26); D9 (1-16); D10 (1-72); D11 (1-11) D12 (1-3); D13 (1-22); D14 (1-28); D15 (1-24); D16 (1-23); D17 (1-24); D18 (1-11); D19 (1-24); D20 (1-24); D21 (1-24); D22 (1-13); D23 (1-24); D24 (1-2); D25 (1-11)	
<b>Photo Envelopes - E's</b>	E1 (1-160) E2 (1-133) E1 (1-285) E2 (1-27)	
<b>Photo Envelopes - F's</b>	F1 (1-285) F2 (1-27)	
<b>Photo Envelopes - H's</b>	H1 (1-93); H2 (1-40); H3 (1-52); H4 (1-26); H5 (1-51); H6 (1-118); H7 (1-77); H8 (1-50) H9 (1-206) H10 (1-206) H11 (1-10); H12 (1-67); H13 (1-108); H14 (1-34); H15 (1-11); H16 (1-4); H17 (1-13); H18 (1-6); H19 (1-8) H20 (1-14) H21 (1-34) H22 (1-2)	
<b>Photo Envelopes - M's</b>	M1 (1-7)	
<b>Photo Envelopes - S's</b>	S1 (1-217); S2 (1-174) S3 (1-102)	
<b>Photo Envelopes - Z's</b>	Z1-01 (1-20); Z1-02 (1-16); Z1-03 (1-24) Z2-01 (1-21); Z2-02 (1-11); Z2-03 (6) Z3-01 (1-25) Z4-01 (1-14); Z4-02 (1-20); Z4-03 (1-23); Z4-04 (1-16); Z5-01 (1-9); Z5-02 (1-22); Z5-03 (1-6); Z6-01 (1-8); Z6-02 (1-13); Z6-03 (1-13); Z6-04 (1-5); Z6-05 (1-9); Z6-06 (1-28); Z7-01 (1-16); Z7-02 (1-28) Z8 (1-19)	

BINDER

DOCUMENT

# PAGES

	Z9 (1-12); Z10 (1-24); Z11 (1-24); Z12 (1-24); Z13 (1-24); Z14 (1-12); Z15 (1-24); Z16 (1-24); Z17 (1-24); Z18 (1-24); Z19 (1-24); Z20 (1-12); Z21 (1-24); Z22 (1-24); Z23 (1-20); Z24 (1-24); Z25 (1-24); Z26 (1-12); Z27 (1-12); Z28 (1-12)	
	Z29 (1-8)	
<b>Photo - Others</b>	Halbach Family Photos (1-8)	
	Photos taken by Zhang (Crime Lab) - 8 x 10's of Toyota Rav 4 SUV (1-6)	
	Photos taken by Groffy (Crime Lab) - 8 x 10's of Grand AM (1-15)	
	Photos taken by Larry Ventura on 11/7/05 of Flat Bed & Grand Am (8 pgs of photo proof sheets)	
<b>Search Warrants</b>	MCSD Consent to Search signed by Earl Avery - 11/5/05 - Entire Avery property	
	MCSD Consent to Search signed by Todd Vanderwarf - 11/7/05	
	MCSD Consent to Search - Joshua Radandt - 11/5/05	
	MCSD Permission to Search signed by Earl Avery - 11/5/05 - 2 Story Frame Dwelling & Out Buildings	
	MCSD Permission to Search signed by Milton Maly - 11/8/05	
	DOJ Consent to Search signed by Susanne Richmond - 11/7/05	
	Civil Court Record - Manifowoc Co - Search Warrants filed - 3/24/06	
	Search Warrant & Return: Grand Am & Tow Truck - 11/5/05	
	Search Warrant & Return: Entire Avery Property - 11/5/05	
	Search Warrant & Return: Two Other Residences - 11/6/05	
	Search Warrant & Return: Voicemail - Cingular #1 - 11/6/05	
	Search Warrant & Return: Voicemail - Cingular #2 - 11/16/05	
	Search Warrant & Return: Avery Auto Salvage Business Records-11/7/05	
	Search Warrant & Return: Avery's Computer and Contents - 11/7/05	

BINDER

DOCUMENT

# PAGES

	Search Warrant & Return: Allan Avery DNA/Prints/Wounds - 11/7/05	
	Search Warrant & Return: Delores Avery DNA/Prints/Wounds - 11/7/05	
	Search Warrant & Return: Barbara Janda DNA/Prints/Wounds - 11/7/05	
	Search Warrant & Return: Bobby Dassey DNA/Prints/Wounds - 11/7/05	
	Search Warrant & Return: Bryan Dassey DNA/Prints/Wounds - 11/7/05	
	Search Warrant & Return: Charles Avery DNA/Prints/Wounds - 11/7/05	
	Search Warrant & Return: Earl Avery DNA/Prints/Wounds - 11/7/05	
	Search Warrant & Return: Steven Avery DNA/Prints/Wounds - 11/7/05	
	Search Warrant: #2 Avery Cars - 11/8/05	
	Search Warrant & Return: Entire Avery Property (Final) - 11/9/05	
	Search Warrant & Return: Residence - Cabinet - 12/9/05	
	Search Warrant & Return: Avery Residence & Garage - 3/1/06	
	Search Warrant & Return: Brendan Dassey - DNA/Prints - 3/3/06	
	Search Warrant & Return: Brendan Dassey Residence/Computer - 4/21/06	12
	Search Warrant & Return for Avery's Kodak Easyshare camera - 10/6/06	9
<b>Telephone Records</b>		
	Teresa Halbach Cellular Telephone Records: Cingular	85
	Teresa Halbach Home Telephone Records: TDS	6
	Steven Avery Cellular Telephone Records: Cellicom	32
	Avery Landline Telephone Records: Verizon	80
	Auto Trader Telephone Records: MCI	30
	Other Telephone Records: Ryan Hillegas, Scott Bloedorn	15
	Misc Telephone Records: Allen Avery, Bryan Dassey, Auto Salvage, Etc.	32
	Responses to Subpoenas For Records - Subscriber Info for Misc Telephone Numbers (10/31/06)	134

BINDER

DOCUMENT

# PAGES

<b>Traffic Survey Material</b>	Traffic Survey Material: 11/5/05 - 11/10/05	124
<b>Evidence Log Sheets</b>	CCSD Evidence/Property Custody Documents (Evidence Logs)	127
	CCSD Evidence/Property Custody Documents (Evidence Logs)	130
	State Crime Lab "Evidence Release - Return Forms"	4
	State Crime Lab "Receipt of Physical Evidence" Forms	33
	State Crime Lab "Receipt of Physical Evidence" Forms	57
<b>Business Records</b>	Credit card and checking account information for Teresa Halbach - contains records from August through October of 2005	99
	Info provided from Kohl's regarding Teresa Halbach's credit card account	25
	Direct TV invoice of Steven Avery	1
<b>CD's</b>	<u>Interviews - Steven Avery:</u>	
	Interview with Steven Avery & Brendan Dassey - 11/5/06 & 11/6/06	
	Interview With Steven Avery at Two Rivers PD - 11/9/05	
<b>CD's</b>	<u>Interviews - Brendan Dassey:</u>	
	Interview with Steven Avery & Brendan Dassey - 11/5/06 & 11/6/06	
	Audio Interview (2-27-06) Brendan Dassey (enhanced) #1	
	Audio Interview (2-27-06) Brendan Dassey (enhanced) #2	
	Brendan Dassey interview 3/1/06 #1	
<b>CD's</b>	<u>Interviews - Others:</u>	
	Interview With Dolores Avery 11/9/05	
	Barl Avery Interview 11/9/05 (Re: DCI Report #05-1776/201)	
	Interview With Bryan Dassey	
	Interview With Barbara Janda	

**BINDER**

**DOCUMENT**

**# PAGES**

	Interview with Jodi Stachowski (dated 10-11-2006)	
	Interview with Jodi Stachowski (w/ DOJ Investigative Report #05-1776/295	
<b>CD's</b>	<b><u>Property Views:</u></b>	
	Steven Avery Trailer Video	
	Steven Avery Bedroom Video	
	Steven Avery Garage Video	
	Sergeant Tyson's Video of Property - 11/12/05	
	Avery Fly-Overs	
	Air National Guard 11/8/05 WI - Madison: Electro-Optical & Color Wet	
	Film Cameras (Re: DCI Report #05-1776/48) ??	
	Copy of 8mm View of Conveyor Area	
	Copy of 8mm View from Radant Pit	
	Copy of 8mm Tape of Scene by DCI (2)	
<b>CD's</b>	<b><u>Other CDs:</u></b>	
	Teresa's Voicemail from Cingular	
	Teresa's Cell Records (Data CD)	
	Pam Sturm's 911 call on 11/5/05	
	Copy of Orville Jacobs Phone Calls from 'D' Block (3-25-06 --4-18-06)	
	Menards Security Tape (Re: DCI Report #05-1776/194 & 199)	
<b>CD's</b>	<b><u>Steven Avery Telephone Calls (Sent as Discovery):</u></b>	
	11/01/05 - 11/30/05	
	11/10/05 - 11/16/05	
	11/11/2005	
	11/16/05 - 11/17/05	
	11/16/05 - 11/21/05	

**BINDER**

**DOCUMENT**

**# PAGES**

	11/18/05 - 11/26/05	
	11/18/05 - 11/30/05	
	12/01/05 - 12/09/05	
	12/01/05 - 12/09/05	
	12/09/05 - 12/12/05	
	12/11/05 - 12/18/05	
	12/12/05 - 12/18/05	
	12/18/05 - 12/27/05	
	12/27/05 - 01/17/06	
	01/17/06 - 01/22/06 (from Brown County Jail)	
	01/20/06 - 01/25/06	
	01/25/06 - 01/29/06	
	01/29/06 - 02/01/06	
	02/01/06 - 02/04/06	
	02/01/06 - 02/09/06	
	02/04/2006	
	02/05/06 - 02/08/06	
	02/09/06 - 02/14/06	
	02/13/2006	
	02/15/06 - 02/17/06	
	02/17/06 - 02/20/06	
	02/26/06 - 03/02/06	
	03/03/06 - 03/06/06	
	03/08/06 - 03/09/06	
	03/09/06 - 03/19/06	
	03/09/06 - 03/19/06	
	03/23/06 - 04/08/06	
	04/7/06 - 04/14/06	

BINDER

DOCUMENT

# PAGES

04/11/06 - 04/18/06	
04/14/06 - 05/1/06	
05/01/06 - 05/15/06	
05/03/06 - 05/04/06	
05/10/06 - 05/15/06	
05/15/06 - 05/26/06	
05/16/2006	
05/24/2006	
05/30/06 - 06/01/06	
06/01/06 - 06/05/06	
06/05/06 - 06/13/06	
06/13/06 - 06/16/06	
06/14/06 - 06/21/06	
06/17/06 - 06/19/06	
06/21/06 - 06/26/06	
06/23/06 - 07/03/06	
07/03/06 - 07/11/06	
07/11/06 - 07/13/06	
07/14/06 - 07/10/06	
07/20/06 - 08/01/06	
08/02/06 - 08/03/06	
08/04/06 - 08/17/06	
08/15/06 - 08/22/06	
08/22/06 - 08/29/06	
08/30/06 - 09/05/06	
09/06/06 - 09/10/06	
09/11/06 - 09/14/06	
09/15/06 - 09/27/06	

**BINDER**

**DOCUMENT**

**# PAGES**

	09/27/06 – 09/28/06	
	09/29/06 – 10/05/06	
	10/06/06 – 10/12/06	
	10/13/06 – 10/15/06	
	10/16/06 – 10/19/06	
	10/20/06 – 10/22/06	
	10/23/06 – 10/26/06	
	10/27/06 – 10/31/06	
<b>CD's</b>	<b>Avery Visits (Sent as Discovery):</b>	
	11/01/05 – 03/28/06	
	04/01/06 – 05/18/06	
	06/28/2006	
<b>CD's</b>	<b>Dassey Telephone Calls (Sent as Discovery)::</b>	
	03/01/06 – 03/09/06	
	03/10/06 – 03/13/06	
	03/14/06 – 03/16/06	
	03/16/06 – 03/17/06	
	03/17/06 – 03/19/06	
	03/20/06 – 03/22/06	
	03/22/2006	
	03/23/06 – 03/24/06	
	03/24/06 – 03/26/06	
	03/27/06	
	03/28/06 – 03/29/06	
	03/31/2006	
	04/01/06 – 04/02/06	



**BINDER**

**DOCUMENT**

**# PAGES**

	04/03/06 - 04/04/06	
	04/04/06 - 04/09/06	
	04/10/06 - 04/13/06	
	04/14/06 - 04/18/06	
	04/18/06 - 04/19/06	
	04/20/06 - 04/25/06	
	04/25/06 - 04/28/06	
	04/29/06 - 05/05/06	
	05/06/06 - 05/10/06	
	05/10/06 - 05/13/06	
	05/15/06 - 05/18/06	
	05/19/06 - 05/25/06	
	05/26/06 - 06/01/06	
	06/02/06 - 06/05/06	
	06/02/06 - 06/06/06 #1	
	06/02/06 - 06/06/06 #2	
	06/09/06 - 06/16/06	
	06/17/06 - 06/23/06	
	06/26/06 - 07/07/06	
	07/07/06 - 07/14/06	
	07/15/06 - 07/28/06	
	07/29/06 - 08/03/06	
	08/04/06 - 08/11/06	
	08/12/06 - 08/23/06	
	08/24/06 - 09/01/06	
	09/02/06 - 09/08/06	
<b>CD's</b>	<b>Jodi Stachowski Telephone Calls from Manitowac County Jail:</b>	

**BINDER**

**DOCUMENT**

**# PAGES**

	10/28/05 – 12/06/05	
	10/30/05 – 11/04/05	
	11/05/05 – 11/07/05	
	01/09/06 – 01/19/06	
	01/20/06 – 01/24/06	
	01/25/06 – 02/15/06	
	02/14/06 – 02/19/06	
	02/14/06 (Jody & Steve)	
<b>CD's</b>	<b>Media:</b>	
	Fox 11 Footage Through 11/15/05	
	WBAY Footage 11/4/05	
	WBAY Footage 11/7/05	
	WBAY Footage 11/12/05	
	WFRV Avery Jail Interview 11/18/05	
	WFRV General Avery Footage	
	NBC 26 Avery Coverage	
	WHBY Avery Interviews 11/8/05 & 11/9/05	
	Steven Avery's interview to A.P. reporter (weekend of 4-1-06)	
<b>CD's</b>	<b>Interviews:</b>	
	DCI – Steven Avery interview 11/9/05	
	Interview with Steven Avery 11/9/05	
	Brendan Dassey interview 3/1/06 #1	
	Brendan Dassey interview 3/1/06 #2	
	Brendan Dassey interview 3/1/06 #3 & Audio CD 3/1/06	
	Brendan Dassey Interview dated 5/13/06 (tape #1)	
	Brendan Dassey Interview dated 5/13/06 (tape #2)	

**BINDER**

**DOCUMENT**

**# PAGES**

	Audio Interview (2-27-06) Brendan Dassey Audio Interview (2-27-06) Brendan Dassey (enhanced) Jody Interview 8-31-06 at MTSD Jody Interview 8-31-06 at MTSD Jody Interview 8-31-06 at MTSD	
<b>CD's</b>	<b>Property Views:</b> Sergeant Tyson's Video of Property - 11/12/05 Avery Fly-Overs Air National Guard 11/8/05 WI - Madison: Electro-Optical & Color Wet Film Cameras (Re: DCI Report #05-1776/48) Copy of BMM View of Conveyor Area Copy of BMM View from Radant Pit Copy of 8mm Tape of Scene by DCI Copy of 8mm Tape of Scene by DCI Video of Avery Property (11-12-05)	
<b>CD's</b>	<b>DNA:</b> CD containing DNA Unit's protocol CD containing DNA protocols CD containing DNA Units protocols CD containing DNA electronic data	
<b>CD's</b>	<b>Other CDs:</b> Menards Security Tape (Re: DCI Report #05-1776/194 & 199) Pam Sturm's 911 call on 11/5/05 Copy of Orville Jacobs Phone Calls from "D" Block (3-25-06 - 4-18-06) CD labeled M05-2467, received 8/24/06	

**BINDER**

**DOCUMENT**

**# PAGES**

	7 CD's: Contents of Brendan Dassey's Computer	
<b>TRIAL NOTEBOOK</b>	Weather: Midwestern Regional Climate Center - 12/5/05 - Re: Weather Conditions	8

4

970689  
RA 7-48-9

HURLEY, BURISH & STANTON, S.C.  
ATTORNEYS AT LAW

TEN EAST DOTY STREET, SUITE 320  
Mailing Address:  
POST OFFICE BOX 1528  
MADISON, WI 53701-1528

Virginia M. Bartelt  
Marcus J. Berghahn  
Mark D. Burish  
Ralph Cagle  
Clifford "Joe" Cavitt  
Andrew Erlandson  
\*Also Licensed In Illinois

Erik R. Guenther  
Stephen P. Hurley\*  
John D. Hyland  
Daniel J. Schlichting  
Marie A. Stanton  
Dean A. Strang  
Howard A. Sweet

Tel. (608) 257-0945  
Fax. (608) 257-5764  
www.hbslawfirm.com  
Author's e-mail:  
dstrang@hbslawfirm.com

December 19, 2006

Mr. Jerome F. Buting  
Buting & Williams, S.C.  
400 Executive Drive, Suite 205  
Brookfield, Wisconsin 53005

Re: *State of Wisconsin v. Steven Avery*  
Case No. 05-CF-381

Dear Jerry:

I enclose seven DVDs containing copies of Brendan Dassey's hard drive. These DVDs are an archive copy of the hard drive and can only be viewed with Encase V4 or V5. Any questions please contact me.

Sincerely,

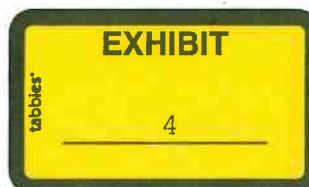
HURLEY, BURISH & STANTON, S.C.

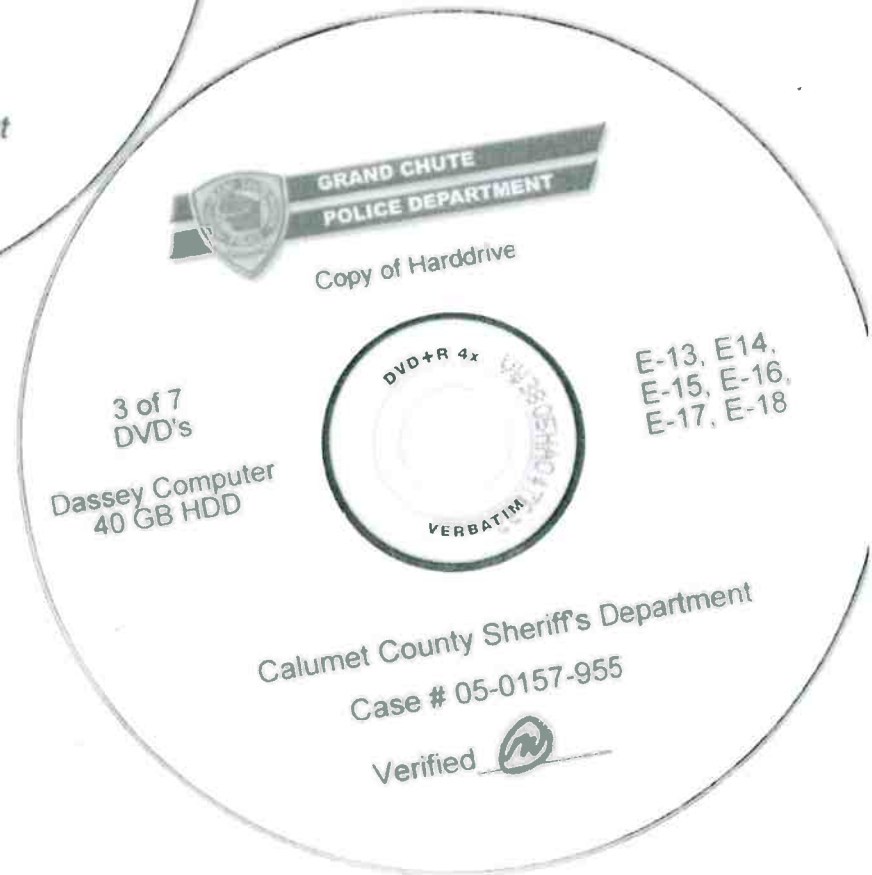
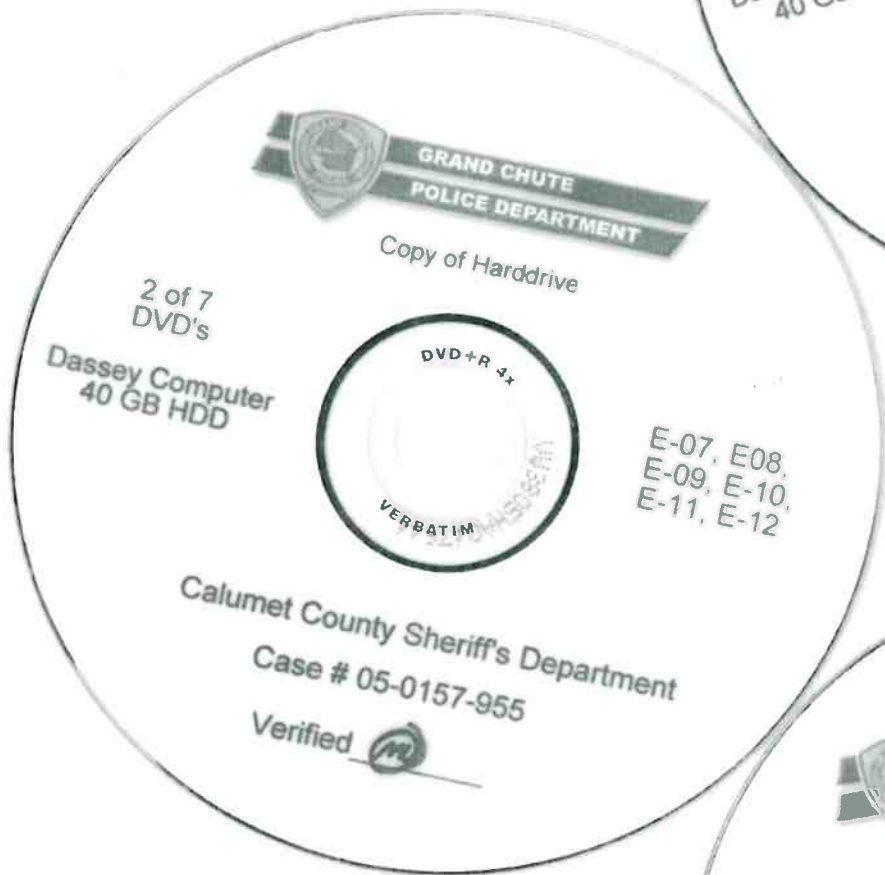


Shavon M. Ryan  
Paralegal

0607600  
F:\clients\avery\Buting\061219.vwpd  
Enc.

DEC 20 2006







Copy of Harddrive

4 of 7 DVD's  
Dassey Computer  
40 GB HDD



E-19, E-20,  
E-21, E-22,  
E-23, E-24

Calumet County Sheriff's Department  
Case # 05-0157-955

Verified



Copy of Harddrive

5 of 7 DVD's  
Dassey Computer  
40 GB HDD



E-25, E-26,  
E-27, E-28,  
E-29, E-30

Calumet County Sheriff's Department  
Case # 05-0157-955

Verified



Copy of Harddrive

6 of 7 DVD's  
Dassey Computer  
40 GB HDD



E-31, E-32,  
E-33, E-34,  
E-35, E-36

Calumet County Sheriff's Department  
Case # 05-0157-955

Verified





Copy of Harddrive

7 of 7  
DVD's

Dassey Computer  
40 GB HDD



E-37, E-38,  
E-39, E-40,  
E-41, E-42

Calumet County Sheriff's Department

Case # 05-0157-955

Verified 

5

**Kratz, Ken**

To: Dean Strang  
 Subject: stipulation project



1/25

Dean:

I'm going to take another stab at this stipulation project that we started, because it may influence what we tell Judge Willis by the time the SJQ is submitted Monday (although much more utility for trial planning purposes).

I have reviewed your previous position on witness stipulations, and I think I understand what you are generally going to agree to...now, if we can just reduce that to paper without getting too bogged down???

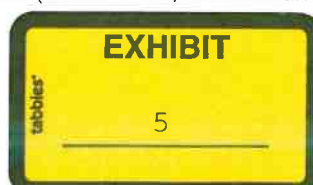
OK, here's my proposals:

1. I give you a disc (or a couple) that include all photos that I intend to offer. I'll name the jpegs with both the prosecution numbering system, and their "proposed" trial exhibit number. Then we can start referring to items by exhibit number and both of us will know what we are talking about.
2. You already have all documents that are likely to be exhibits (except for those recently generated, or those generated specifically for trial, like expert CV's or summary exhibits). I would like to meet sometime you are around, and have you look at what we intend to introduce, what "proposed exhibit number" corresponds with them, and then we can be on the same page with document exhibits.
3. Regarding items seized, you should already have a very good understanding of what that exhibit number refers to, since we have a photo that corresponds to the item itself (I can't think of an item of physical evidence that we don't also have either a scene photo or evidence photo of)---so those are likewise easy, and we can start calling them by their exhibit number.
4. I suspect it's easier to stipulate to the admissibility of an item or fact, rather than stipulating to the expected testimony of a person---although we get to the same place, the application of the business records exception to the hearsay rule, self-authenticating documents, case law making most physical evidence admissible irrespective of chain of custody (going to weight instead of admissibility), etc, all suggest an easier approach to stipulate to "admissibility of stuff" rather than excusing witnesses from needing to be around. A little long-winded, but I think you get the point.

So, with that in mind, I am asking for your approval of admissibility of the following:

- A. Teresa Halbach's Pap Smear---this was taken by Dr. Brown-Sullivan at UWGB Health Services; maintained by custodian Karen Swan at UWGB; shipped to Bellin Health Center, where it was maintained by custodian Carrie Majeski; and transported by DCI to Sherry Culhane at the Lab, where a DNA profile was developed. This stip eliminates all those witnesses, except Sherry of course.
- B. Aerial Photos of the Avery Property---these were taken either by DCI, the State Patrol, or Local Law Enforcement, and all look pretty much the same. Although I'll still be calling witnesses to ID things shown in those photos, it does eliminate Al Hunsader as a witness.
- C. PalmZire Records---these records indicate that Teresa Halbach had owned and registered her PalmZire 31 PDA; and that Steven Avery did not own one. This eliminates George Cramer as a witness.
- D. Verizon Records---these records are Steven Avery landline phone records (I can only think of 10/31 being relevant at this point). Melissa Marchant, data analyst for DOJ will be testifying about all phone calls as part of a timeline analysis (Steve's cell, Steve's landline, Teresa's cell and Teresa's

1/25/2007



266-1

landline)...but I don't think these records themselves are at issue. This eliminates Shelly Halfman as a witness.

E. TDS Records---these records are Teresa Halbach's landline phone records, and eliminate Nicole Mauritz as a witness.

F. Cingular Records---these records are Teresa Halbach's cell records, and eliminate Deanna Bache as a witness. If unwilling to stip to these records, will you at least allow us to substitute a "local" Cingular records custodian, so that Ms. Bache does not have to travel from out of state just to authenticate the records?

G. Cellcom Records---I am not asking that you stipulate to Steve's cell records, as I may have a few questions for Bobbie Dohrwardt about what some codes mean on the records themselves---she will be a short witness. Again, Melissa Marchant will be "putting all 4" set of records together and can be questioned about any of the calls made!

H. 911 Call to Calumet Sheriff's Dept. on 11/5---this call was placed by Pam Sturm, she talks to Wiegert. Pam and Wiegert will be witnesses, but this stip eliminates Marie Oosterhaus as a witness to authenticate the call/record...she was the dispatcher on that day.

I. Citizen Photos of RAV4 on 11/5---Pam Sturm will view the photos, testify about what she and her daughter did and saw on the scene that morning---I understand that although Pam was standing next to her daughter Nikole when the photos were taken, that it was actually Nikole that snapped the photos. This stip eliminates Nikole as a witness. Feel free to interview her to make sure that her testimony would be the same as her mom's anyway.

J. Photos of RAV4 Processing at Crime Lab---these photos speak for themselves, but all the people who "processed" the vehicle will be testifying (mostly by Sherry Culhane)---this stip eliminates the need for Ron Groffy to ID and authenticate the photos.

K. Photos by the Crime Lab at the Scene---John Ertl, who was the Crime Lab Field Response guy, will be testifying in the case...along with him was Guang Zhang who took some photos...again they seem to depict what they show, and Ertl can testify, but this stip eliminates Zhang from having to testify from the Lab.

L. Records from Motorola/Cingular---Teresa purchased a Motorola Razr V3 phone in August 2005 from Nick Walschinski. We intend to introduce the contract and receipt for that purchase. This stip eliminates Walschinski as a witness.

M. Intimate Treasurer's Records---Steve and Barb shop at Intimate Treasures, an adult novelty store in Manitowoc on October 10, 2005 (I think) and each purchase a set of handcuffs and leg irons. The receipt for these items, and the items themselves may or may not be admitted, but I'd like to not have to call Ms. Lehr just for that purpose. Stipulation to what she would testify to would be good...and we can discuss the relevance or probative value without her having to be there I suspect.

N. Teresa Halbach Dental X-Rays---Teresa had dental work done by Dr. John Krupka in Kaukauna, which included standard "Panorex" X-Rays. These are used later by the Forensic Odontologist, Dr. Simley, who will testify as to ID of Tooth #31 which is found. Stipulation to these dental records and X-Ray eliminate the need for Dr. Krupka.

O. Teresa Halbach's Death Certificate---this is a great example of a self authenticating record, but your stip eliminates Mike Klaeser, the Calumet County Medical Examiner from having to testify. By the way, I'm not asking you to concede this document's relevance.

P. The Analysis of Steve's Grand Am---this vehicle was seized by Marinette Co. Sheriff's Deputy Barry Degnitz, transported to Madison for processing, where Sherry processed it. This stip eliminates Degnitz, and any transport officers.

Q. Toyota Key Records---Donna Conick would testify that 1 out of every 5000 keys, of the kind found in Avery's bedroom, would be cut to fit the ignition of a random Toyota (or similar testimony)...as I

understand, Ms. Conick is not from Toyota itself, but an insurance research outfit that knows such things. All I'm asking is that if we intend to introduce this testimony, you allow a local rep, with the same credentials, to testify so Ms. Conick does not need to travel from out of state. That local witness would be Larry Burzinski from Valders.

R. Computer Analysis of Steve, Teresa's and Brendan's Computer---Mike Veile, of the Grand Chute PD, analyzed the hard drives of these 3, and found nothing much of evidentiary value. We may wish to introduce the fact that they looked. This stip eliminates Officer Veile as a witness.

S. FBI Animation of the SUV---Carl Adrian, of the FBI in Virginia, did the computer animation of the SUV...if the judge rules this demonstrative evidence admissible, I'd like to avoid flying Carl out here. Like any good cop, however, he's happy to come, so this one is not that big a thing.

T. FBI Transmittal Officers---as you know, transmittal of evidence from Wisconsin to whatever FBI Lab does the analysis is pure chain of custody stuff---those witnesses that could be avoided include Jerry Mullen; Fred Pflueger; Frank Magestro; and Eric Lawson. We would still call whoever recovered the evidence at the scene, and whoever the analyst was who looked at the evidence (Doug Hares, Les McCurdy, Eric Smith, Curtis Thomas, or others) if required.

U. DCI Transmittal Officers---transmittal of evidence from around here to Madison usually was done by a DCI person, who may be eliminated with a stip. Those people include Dorinda Freymiller; Jim Holmes; Matt Joy; Kim Skorlinski; and Lisa Wilson. You may have other uses for these witnesses, but I'm hoping transmittal is not one of them---by the way, Tom is examining these wits and I haven't discussed this with him, but you can still give me your thoughts on objection to admissibility as it relates to transmittal people.

V. X-Rays of Cranial Pieces---Dr. Eisenberg, the Forensic Anthropologist, had some cranial pieces x-rayed, with the assistance of Margaret Kessenich. She's an X-Ray Tech only, and I'd ask that you stip to her part. Several experts may have opinions about those x-rays, but I'm guessing the films themselves will not be at issue.

W. Photos Generally---as you know, photos have been taken throughout this case. We've been diligent in getting them to you. Whether at the scene, or of other evidence, they are helpful to both sides. I'd like to agree to have them admitted, so we don't have to worry about authentication (since they show what they show)---but we are prepared to do that if you require. Please let me know if this stip can be reached, because it may not eliminate any witnesses per se, but will eliminate a great deal of unnecessary and boring testimony. These photos are identified in the exhibit proposal I sent you.

There are several witnesses I have decided to cancel and some that I am going to "save" for rebuttal, but those remain potential witnesses and we'll just have to wait and see what the defense intends to introduce at trial.

By the way, although we don't have to list rebuttal witnesses, do you think we should add other Manitowoc County Officers who "may" be called in this case?---what I envision is that the defense makes something out of what happened at the scene, and we call a cop who was out there as a rebuttal witness, and maybe a juror knows them. Now we have the situation that we haven't identified them on the SJQ (because they are lay rebuttal wits), but it could raise an issue when the trial begins---any thoughts about that?

OK, there's my effort for the day---let me know when you can, so we can tell Judge Willis where we are at regarding stipulated facts or witnesses. We'll have to have this done by 2/2 obviously! It's a big job, but it has to be done. This and the exhibit list will go a long way to this trial running as smooth as possible. Thanks.

Ken

**Kratz, Ken**

---

**From:** Dean Strang [dstrang@hbslawfirm.com]  
**Sent:** Sunday, February 04, 2007 3:16 PM  
**To:** kratz.kenneth@mail.da.state.wi.us  
**Cc:** jfbBrook@aol.com  
**Subject:** Stipulations

Ken – With apologies for the time this has taken, Jerry and I are willing to stipulate as follows. See your own January 25, 2007 e-mail to me for the lettered paragraphs.

- A. We will stipulate to the authenticity of the pap smear. You need only tie up relevance with Sherry Culhane.
- B. We will stipulate to the authenticity of aerial photographs of the Avery property. Our objections, if any, would be to relevance or 904.03 considerations (perhaps cumulative quality?) only.
- C. We will stipulate that Teresa Halbach owned and registered a PalmZire 31 PDA and that Steven Avery did not.
- D. On this we are unclear, because we cannot decode the Verizon Records entirely. Shelly Halfman may remain a necessary, but short, witness.
- E. We will stipulate to the authenticity and business records foundation for Teresa Halbach's TDS records. There will be no hearsay or authenticity objections, in other words. We reserve the right to challenge relevance or completeness, although I am not sure that we will.
- F. We will not stipulate to Teresa Halbach's Cingular records, or to use of a "local" stand-in custodian. You should plan to call Deanna Bache as a witness.
- G. As to Steven Avery's Cellcom records, I understand you not to be requesting any stipulation.
- H. We will stipulate to the authenticity of the 911 call, so you need not call Marie Oosterhaus. Relevance and 904.03 and conceivably hearsay remain open questions.
- I. We will stipulate to the authenticity of the Sturm photographs. Again, although relevance and 904.03 may prove undisputed, we reserve the right to challenge either or both. But you need not call Nikole Sturm.
- J. This is the one topic (the necessity of Ron Groffy) on which we remain undecided. Let us tell you that Monday or Tuesday. Since he works for the Wisconsin Crime Lab, I assume that is no great inconvenience. If it is, let me know and we will resolve the issue sooner rather than later.
- K. We will not stipulate the Crime Lab's scene photographs. So you should plan, I assume, on calling both Ertl and Zhang.
- L. We will stipulate that Teresa Halbach purchased a Motorola Razr V3 phone in August 2005, and allow admission of the contract and receipt. You need not call Nick Walschinski.

2/5/2007

- M. We will not stipulate as to Intimate Treasure or its records. If you want to introduce evidence about this stuff, we want an appropriate live witness.
- N. We will stipulate to the authenticity of Dr. Krupka's Panorex x-rays, and further will stipulate that he would have testified that the x-rays at issue show Teresa Halbach's teeth. The intention is that you not have to call Dr. Krupka.
- O. We will not stipulate to admission of the death certificate or stipulate away the testimony of Mike Klaeser.
- P. We will stipulate to the transport of Steven Avery's Grand Am. You need not call Degnitz or other transport officers.
- Q. We will not object to a local person, such as Larry Burzinski, offering the testimony you outline in this paragraph.
- R. As to Mike Veile, we will not stipulate as to Teresa Halbach's computer because we may want to offer some of her e-mails. Brendan's computer is not relevant unless he is a witness or his statements are offered, so that is premature. We will stipulate that nothing of evidentiary value was found on Steven Avery's computer when the hard drives were analyzed by law enforcement.
- S. We will not stipulate away Carl Adrian's testimony, or the authentication and admissibility of the RAV-4 computer-generated exhibit(s).
- T. Other than the blood vial at issue on Friday, February 2, 2007, we will stipulate to the authenticity of exhibits transported by the FBI, so that you need not call FBI witnesses solely for chain of custody.
- U. Likewise, other than the blood vial described in paragraph T above, we will stipulate to the authenticity of exhibits transported by DCI, so that you need not call DCI witnesses solely for chain of custody. The proviso is this: we will not stipulate away Kim Skorlinski entirely, so if you were planning to call him ONLY as to evidentiary escort, we want him to testify. If he is going to testify anyway about other topics in the state's case-in-chief, you need not elicit testimony on pure transmittal or evidentiary escort.
- V. We will stipulate to the authenticity of the x-rays of bone fragments, without conceding relevance or possible 904.03 or 907.01 – 907.05 issues. But in any event, this means you need not call Margaret Kessenich.
- W. We will stipulate to authenticity of photographs, provided none have been digitally altered or otherwise altered materially. Again, we reserve the right to make relevance or 904.03 objections.

I think that covers it all. If I have missed anything, let me know.

Dean

2/5/2007