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STATE OF WISCONSIN CIRCUIT COURT MANITOWOC COUNTY

STATE OF WISCONSIN	)	
	)	
Respondent	)	
	)	
-v-	)	Case No.: 05-CF-381
	)	
STEVEN A. AVERY	)	
	)	
Petitioner	)	

NOTICE OF MOTION AND THIRD MOTION FOR POST-CONVICTION RELIEF PURSUANT TO WIS. STAT. § 974.06 AND § 805.15

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STATE OF WISCONSIN CIRCUIT COURT MANITOWOC COUNTY

State of Wisconsin *Respondent.*	)	Wisconsin Court of Appeals, Second District, Case No. 17-2288
v.	)	Case No. 05 CF 381
STEVEN A. AVERY, SR., *Petitioner.*	)	

NOTICE OF MOTION AND THIRD MOTION FOR POSTCONVICTION RELIEF PURSUANT TO WIS. STAT. § 974.06 AND § 805.15

PLEASE TAKE NOTICE that the Petitioner, Steven A. Avery ("Mr. Avery"), by and through his current postconviction attorneys, Kathleen T. Zellner and Associates, P.C., respectfully moves this Court pursuant to Wis. Stat. § 974.06 for an Order vacating the judgment of his convictions and sentence and ordering a new trial. In the alternative, he asks that this Court grant a new trial in the interests of justice pursuant to Wis. Stat. § 805.15 or its inherent authority because the real controversy was not fully tried. In support of his motion, Mr. Avery states as follows:

Mr. Avery requests an evidentiary hearing and that he be produced for that hearing.

INTRODUCTION

Two new witnesses have emerged in Mr. Avery's case with new and compelling evidence about a murder mystery that has intrigued a worldwide audience. The rush to judgment and tunnel vision that led to the arrest, prosecution and conviction of Mr. Avery is exposed by these new witnesses who provide new and undisputed evidence that directly links Bobby Dassey

("Bobby") to the murder of Teresa Halbach and the framing of Mr. Avery. Furthermore, this new evidence allows for a reconsideration of the real motive of this crime, as being a sexual homicide, which was the culmination of an obsession by Bobby with viewing thousands of images of violent, deviant poronography. On October 31, 2005 the obsessive fantasies of Bobby became a horrible reality when Teresa Halbach was brutally assaulted and murdered by two rifle shots to her skull. Her body was mutilated as were many of the female subjects in the Dassey computer images. Bobby was in possession of the Halbach vehicle, which contained the crucial evidence of this terrible crime: Ms. Halbach's blood, key, electronic devices, and license plate (which was concealed in another salvage car) and Mr. Avery's carefully deposited blood on the seats and dash and DNA on the hood latch. By being in possession of the vehicle Bobby was able to control the direction of the investigation. He planted the vehicle on the Avery property after he deposited Mr. Avery's blood and DNA in it. He had Ms. Halbach's key and electronic devices which ended up in Mr. Avery's bedroom and burn barrel. Bobby did all of this to exculpate himself and to frame his uncle, Mr. Avery. Mr. Avery does not have to prove who committed this terrible crime to receive relief. This is not his intent or purpose. However, he does have a right to prove he did not receive a fair trial. The new evidence, which establishes that Bobby meets all of the *Denny* criteria to be a third party suspect, and the evidence of two *Brady* violations demonstrate that Mr. Avery was deprived of a constitutionally guaranteed right to present a complete defense to the charges against him. *See Holmes v. South Carolina,* 547 U.S. 319, 324 (2006); *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).

STATEMENT OF THE CASE

1. This case began in early November 2005 with the disappearance of Teresa Halbach, a twenty-five-year-old professional photographer. Ms. Halbach was reported missing

on November 3, 2005. Volunteer searchers found Ms. Halbach's Toyota RAV-4 on the forty-acre site of Avery's Auto Salvage, a salvage yard business where Mr. Avery and other family members lived and worked on November 5, 2005. Ms. Halbach had photographed vehicles at this site previously, per Mr. Avery's request. According to State witness Bobby, Ms. Halbach was last seen walking towards Mr. Avery's trailer on October 31, 2005.

2. After finding Ms. Halbach's RAV-4, law enforcement searched the Avery property and, over the course of the next four months, discovered and identified evidence including: burned bone fragments in and around a burn pit, with DNA matching Ms. Halbach's; Mr. Avery's and Ms. Halbach's blood in the RAV-4; the remnants of electronic devices and a camera, the same models as Ms. Halbach's, in a burn barrel; Ms. Halbach's RAV-4 key in Mr. Avery's bedroom, with Mr. Avery's DNA on it; Mr. Avery's DNA on the hood latch of the RAV-4 (deposited, the State later claimed by Mr. Avery's "sweaty hands"); and a bullet in Mr. Avery's garage, containing Ms. Halbach's DNA.

PROCEDURAL HISTORY

I. THIRD PARTY SUSPECTS

3. On July 10, 2006, before Mr. Avery's trial, the trial court entered an order entitled "Order Regarding State's Motion Prohibiting Evidence of Third Party Liability" ("Denny Motion"). The order specified that if the defendant intended "to suggest that a third party other than Brendan Dassey is responsible for any of the crimes charged, the defendant must notify the Court and the State" of such intention at least 30 days prior to the start of the trial. The trial court further ordered that the defendant would be subject to the standards relating to the admissibility of any third party liability evidence pursuant to *State v. Denny*, 120 Wis. 2d 614, 357 N.W.2d 12 (Ct. App. 1984).

4. In light of the court's order, on January 10, 2007, Mr. Avery filed the "Defendant's Statement on Third Party Responsibility." There, Mr. Avery stated that he did not kill Ms. Halbach, and that there was "at least a reasonable possibility that one or more unknown others, present at or near the Avery Salvage Yard on the afternoon of October 31, 2005, killed her." Mr. Avery identified several persons as potential alternative perpetrators: Scott Tadych; Andres Martinez; Robert Fabian; Charles and Earl Avery; and the Dassey brothers. Mr. Avery argued that *Denny* did not apply to the circumstances in his case, and that as a result, he should not be bound by the three-part test set forth in *Denny*. He further argued that even if *Denny* did apply to his case, he should be permitted to introduce evidence at his trial of several alternative perpetrators in this case.

5. On January 30, 2007, the trial court entered its "Decision and Order on Admissibility of Third Party Liability Evidence." The court held that Denny's "legitimate tendency" test applies to any evidence the defendant wished to present regarding potential third parties who might have been responsible for Ms. Halbach's murder. The trial court found that "[i]n the absence of motive, it certainly may be more difficult for the defendant to offer evidence which is relevant and material connecting a third person to the crime. The court simply finds nothing in the offer made by the defendant that goes beyond the level of speculation." (238:1–15). **(App. 1-15)**[1].

[1] Citations to the record on appeal appear with the document number before the colon and the page number after the colon. A citation to 429:16, for instance, refers this Court to page 16 of document 429. Citations to different documents in the record are separated by semicolons. Where available, parallel citations to the Separate Appendix appear in separate parentheticals after the citations to the record. Mr. Avery shall cite to the concurrently filed Separate Appendix as "App. [page number(s)]."

II. VERDICT

6. 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). The jury found Mr. Avery not guilty of mutilation of a corpse. (719:3). **(App. 16).**

III. POSTCONVICTION AND DIRECT APPEAL

7. On June 29, 2009, prior postconviction counsel filed a motion for postconviction relief on Mr. Avery's behalf, pursuant to § 809.30(2)(h) seeking a new trial on grounds that: (1) the trial court improperly excused a deliberating juror; and (2) the trial court improperly excluded evidence of third party liability. (429:1–28; 427:1–31). **(App. 17-75).**

8. On January 25, 2010, the motion for postconviction relief was denied by the Honorable Patrick L. Willis in a written order. Regarding the issue of Bobby's third party liability, Judge Willis' found: "The only evidence offered by the defendant to show motive on the part of Bobby Dassey consisted of evidence allegedly supporting a motive to frame Steven Avery. No evidence is offered to suggest Bobby Dassey had a motive to murder Teresa Halbach." Judge Willis concluded, "The evidence offered against Bobby Dassey probably did meet the opportunity and direct connection to the crime requirements of the legitimate tendency test because of his presence on the property at the time Teresa Halbach was there. However, without any showing of motive, third party evidence against Bobby Dassey is precluded under *Denny*." (453:1, 95-96). **(App. 76-78).**

9. On December 14, 2011, the Wisconsin Supreme Court denied Mr. Avery's petition for review, pursuant to § 808.10. (470:1). **(App. 79).**

10. On February 14, 2013, Mr. Avery filed his first and only *pro se* collateral postconviction motion, pursuant to Wis. Stat. § 974.06. (496:1–41). **(App. 80-120).** The motion was denied by the Honorable Judge Angela Sutkiewicz on November 23, 2015.

11. On October 11, 2019, current postconviction counsel appealed the circuit court's denial of Mr. Avery's second postconviction motion and all of its supplements. He filed motions to stay and remand concerning two additional claims. At the Appellate Court's direction, Mr. Avery raised his claims in his motions to the circuit court as supplemental postconviction motions. The circuit court denied his motions to supplement. On April 12, 2021, Mr. Avery filed a motion to stay and remand and the Appellate Court denied it.

IV. THE APPELLATE COURT'S JULY 28, 2021 DECISION

12. On July 28, 2021, the Appellate Court issued a per curiam opinion, upholding the circuit court's summary denial of Mr. Avery's claims raised in his § 974.06 postconviction motion and two supplemental motions, holding: "Avery's § 974.06 motions are insufficient on their face to entitle him to a hearing." *State v. Avery*, 2022 WI App 7, 400 Wis. 2d 541, 970 N.W.2d 564 (herein "Opinion"). **(App. 121-68).**

V. PETITION FOR REVIEW

13. On November 17, 2021, the Wisconsin Supreme Court denied Mr. Avery's petition for review.

VI. THE APPELLATE COURT RESERVED MR. AVERY'S ABILITY TO FILE A SUCCESSIVE § 974.06 MOTION ON CERTAIN CLAIMS

14. On April 12, 2021, during the pendency of Mr. Avery's appeal, Mr. Avery filed a motion with the Appellate Court to stay his appeal and remand for evaluation of a new claim. The Appellate Court acknowledged this claim, stating the following:

> On November 9, 2020, we notified the parties that this case had been submitted to the court for decision on briefs. On April 12, 2021, Avery filed another motion with this

> court to stay his appeal and remand for evaluation of a new claim. This claim concerns an alleged *Brady* violation, the factual basis for which Mr. Avery obtained on April 11, 2021. Specifically, the claim is based on the affidavit of Thomas Sowinski, a Manitowoc motor route driver who attests that, days after Ms. Halbach's death, while on his paper route in the early morning hours, he spotted a shirtless Bobby Dassey and an unidentified older man pushing Ms. Halbach's vehicle down Avery Road towards the junkyard. Mr. Sowinski further attested that, after he delivered the paper, Bobby Dassey attempted to block his exit, causing him to swerve and drive into a shallow ditch. Mr. Sowinski claimed to have called the Manitowoc sheriff's office later that day to report what he had seen but was told they "already know who did it." He also claims to have attempted to contact Avery's trial attorneys after Season 1 of Making a Murderer, but never heard back from them.[2]

(Opinion, pg. 46, ¶76). **(App. 166).**

15. Further, in its July 28, 2021 opinion, the Appellate Court advised:

> When Avery filed this motion, we had already twice stayed his appeal, each time because he asserted that the new claims related to those previously litigated and that it would be most expeditious to resolve them as part of the instant appeal. By the time Avery filed this new motion, however, we had already evaluated the legal and factual bases for claims already raised. We therefore were, and are, in the position to conclude that this newly raised ***Brady*** claim bears little or no relation to those claims already before us. This is, instead, a distinct issue that the circuit court should resolve on a standalone basis through a new WIS. STAT. § 974.06 motion.
>
> Avery's latest motion arrived while our decision on his appeal was forthcoming. It would be an inefficient use of court resources to now, and once again, delay this appeal's resolution. We appreciate that Avery likely wishes us to consider this new *Brady* claim in the context of claims previously raised, but we must weigh that implicit consideration against those discussed above. Simply put, Avery's appeal cannot continue indefinitely. Accordingly, this decision operates as an order denying Avery's April 12, 2021 motion to stay and remand. If Avery wishes to raise this claim, he must file a new WIS. STAT. § 974.06 motion with the circuit court.

(Opinion, pgs. 46-47, ¶¶77-78). **(App. 166-67).**

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[2] Mr. Avery's current postconviction counsel has investigated the matter further to learn that Mr. Sowinski did not contact Mr. Avery's trial attorneys as he originally believed and stated in his original affidavit, but rather that he emailed the Innocence Project in 2016 after watching Making a Murderer, Season 1. His email was never passed along to any of Mr. Avery's attorneys. Mr. Sowinski's first attempt to contact Mr. Avery's current postconviction attorneys was in December of 2020, after Mr. Avery filed his second postconviction motion in 2017. Further, Mr. Sowinski's memory was refreshed, with a recorded dispatch that was recently discovered, in that he made the call to the Manitowoc Sheriff's Office on November 6, 2005.

16. The Appellate Court reserved Mr. Avery's ability to file a successive § 974.06 motion on the claim in his most recent filing concerning the new witness who came forth on April 11, 2021. (Motion #6) (Opinion, ¶1 and notes 18, 26). **(App. 122, 153, 161).** Specifically, the Appellate Court instructed the following:

> As discussed below, we are not addressing Avery's most recent filing to *this* court (see our discussion of Motion #6), which seeks to directly connect Dassey to Halbach's murder. If Avery wishes to raise that claim, he will need to bring a new WIS. STAT. § 974.06 motion. That motion would need to survive both ***Escalona-Naranjo*** scrutiny and be found to have merit—in which case, the evidence presented might supply the missing "direct connection." In that event, the Velie CD evidence might become relevant to showing Dassey's motive, and might bear on whether Dassey is, or should have been, a viable ***Denny*** suspect. We express no opinion on the merit of any such § 974.06 motion, as all such issues would be for the circuit court to decide in the first instance.

(Opinion, pg. 41, note 26, emphasis added). **(App. 161).**

17. Regarding certain claims Mr. Avery raised in his motion to reconsider the circuit court's October 3, 2017 order denying his second postconviction motion and its two supplements, the Appellate Court found that:

> Neither we nor the circuit court have squarely considered whether these claims are procedurally barred under ***Escalona-Naranjo*** or whether Avery pled sufficient materials entitling him to a hearing. Such consideration would have to come on a separately filed Wis. Stat. § 974.06 motion, and we express no opinion as to whether such claims would be barred in the event such a motion is filed.

(Opinion, pg. 33, note 18). **(App. 153).** Thus, the new material that Mr. Avery raised in his motion to reconsider and its supplements was never ruled upon by the circuit court.

EVIDENCE SUPPORTING MR. AVERY'S THIRD § 974.06 POSTCONVICTION MOTION

I. NEWLY DISCOVERED EVIDENCE: NEW WITNESS PROVIDES DIRECT CONNECTION BETWEEN BOBBY AND THE HALBACH MURDER AND PLANTING EVIDENCE TO FRAME MR. AVERY

18. Mr. Avery's new witness, Mr. Thomas Sowinski ("Mr. Sowinski"), contacted Mr. Avery's current postconviction counsel in December of 2020. Mr. Avery had already filed his appeal on October 11, 2019. Mr. Sowinski stated that he had witnessed Bobby and one other individual, a bearded man, pushing Ms. Halbach's RAV-4 onto the Avery Salvage Yard in the early morning hours of November 5, 2005.[3] Mr. Sowinski claimed that he had reported this information to the Manitowoc Sheriff's Office.

19. On April 11, 2021, Mr. Sowinski provided an affidavit to Mr. Avery's current postconviction counsel, stating the following:

> Mr. Sowinski was a motor-route driver for Gannett Newspapers, Inc. and delivered papers to the Avery Salvage Yard in the early morning hours of November 5th of 2005. Prior to delivering the newspapers to the Avery Salvage Yard, he turned onto the Avery property and witnessed two individuals, a shirtless Bobby Dassey ("Bobby") and an unidentified older male suspiciously pushing a dark blue RAV-4 down Avery Road towards the junkyard. The RAV-4 did not have its lights on. Mr. Sowinski drove past the two men and delivered newspapers to the Avery mailbox, and then he turned around and drove back towards the exit. When he reached the RAV-4 still over there, Bobby Dassey attempted to step in front of his car to block him from leaving the property. Mr. Sowinski came within 5 feet of Bobby Dassey and his headlights were on Bobby during this entire time, then Sowinski swerved into a shallow ditch to escape Bobby and exit the property. Mr. Sowinski states in his affidavit that he called out "Paperboy, gotta go" because he was afraid for his safety. He further stated that Bobby Dassey looked him in the eye and did not appear happy to see Mr. Sowinski there. After Mr. Sowinski learned that Teresa Halbach's car was found later in the day on November 5, 2005, he realized the significance of what he had observed and immediately contacted the Manitowoc Sheriff's Office.

(*See* Exhibit 1 to Mr. Avery's Motion for Remand and Stay of Appeal, Mr. Sowinski's original affidavit). **(App. 169-72).** The following day, April 12, 2021, Mr. Avery filed a motion for remand and stay of appeal to the Appellate Court containing Mr. Sowinski's original affidavit.

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[3] Throughout this motion, the information Sowinski provided will be referred to as "the Sowinski evidence" which is contained in two affidavits cited throughout this motion as **"Exhibit F"** and **"Exhibit 1 to Mr. Avery's Motion for Remand and Stay of Appeal."**

20. The Sowinski evidence provided by Mr. Sowinski to Mr. Avery's current postconviction counsel is newly discovered evidence, which provides the missing direct connection between Bobby and Ms. Halbach's murder making him a *Denny* suspect.

21. The discovery of new evidence may constitute a sufficient reason for a second or subsequent postconviction proceeding under Wis. Stat. § 974.06. *See State v. Love*, 2005 WI 116, ¶¶21, 56, 284 Wis. 2d 111, 700 N.W.2d 62. To prevail, however, the movant must carry the burden of proving that the evidence at issue is newly discovered. In most cases, to obtain relief based on newly discovered evidence, a convicted person must establish by clear and convincing evidence that (1) the evidence was discovered after conviction; (2) the defendant was not negligent in seeking evidence; (3) the evidence is material to an issue in the case; and (4) the evidence is not merely cumulative. *State v. Edmunds*, 2008 WI App 33, 13, 308 Wis. 2d 374, 746 N.W.2d 590. If the person satisfies those four requirements, then the circuit court must determine whether a reasonable probability exists that a different result would be reached in a new trial. *State v. Wilder*, No. 2020AP2043, 2022 Wisc. App. LEXIS 300, at *1 (Ct. App. Apr. 5, 2022).

1) The Sowinski Evidence was Discovered After Mr. Avery's Conviction

22. Mr. Avery did not have the Sowinski evidence before Mr. Sowinski came forward to Mr. Avery's current postconviction counsel in April of 2021. Mr. Sowinski attempted to contact the Innocence Project, and not Mr. Avery's trial defense counsel, via email in 2016 regarding the evidence he had, to no avail, and had not previously provided it to Mr. Avery's counsel. Rather, the Sowinski evidence was reported to the Manitowoc Sheriff's Office by Mr. Sowinski but the evidence was suppressed from Mr. Avery by the prosecution.

2) Mr. Avery was Not Negligent in Seeking the Evidence

23. Neither Mr. Avery nor his counsel were on notice that Mr. Sowinski had any knowledge about Bobby's actions on November 5, 2005. *See, e.g., Williams v. Taylor*, 529 U.S.

420, 442 (2000) (finding that Williams had not failed to use diligence in pursuit of a juror misconduct claim where "[t]he trial record contains no evidence which would have put a reasonable attorney on notice that [Juror] Stinnett's non-response was a deliberate omission of material information.").

3) The Evidence is Material to an Issue in Mr. Avery's Case

24. The Sowinski evidence is material to several issues in Mr. Avery's case. Most importantly, it is material for establishing Mr. Avery's defense, that is, that a third party committed the crime against Ms. Halbach. It is material for establishing the direct link to Bobby as a third party *Denny* suspect and to opening the door to reconsidering the 'Velie CD' as establishing a sexual motive for the murder. Additionally, the Sowinski evidence is material to the evidence in the RAV-4 being planted by Bobby, including Mr. Avery's blood and DNA. The RAV-4 also contained the Halbach vehicle key and Ms. Halbach's electronic devices which were discovered in Mr. Avery's bedroom and burn barrel, respectively. Further, the Sowinski evidence is material to impeach Bobby's trial testimony that Ms. Halbach never left the Avery property, and that she was last seen walking towards Mr. Avery's trailer.

25. Bobby was the State's primary witness against Mr. Avery. 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.

(696:104). **(App. 173).** Bobby's testimony was the most determinative of Mr. Avery's guilt[4] because the State used it to establish that Ms. Halbach never left the Avery property alive. (696:103–04). **(App. 174-75).**

[4] Bobby was 1 of only 2 witnesses whose testimony the jury requested to review during deliberations. (384:1–2). **(App. 180-81).**

26. 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. (689:36). **(App. 176).** Bobby then observed Ms. Halbach exit her vehicle and start taking pictures of his mom's maroon van right in front of his trailer. (689:37). **(App. 177).** Bobby testified that he then observed Ms. Halbach walking towards the door of Mr. Avery's trailer. (689:38). **(App. 178).**

27. The following exchange occurred between Prosecutor Kratz and Bobby:

> Q: After seeing this woman walking toward your Uncle Steven's, did you ever see this woman again?
>
> A: No.

(689:39). **(App. 179).**

Applicable Law re Denny

28. When a defendant seeks to present evidence that a third party committed the crime for which the defendant is being tried, the defendant must show "a legitimate tendency" that the third party committed the crime; in other words, that the third party had motive, opportunity, and a direct connection to the crime. *State v. Denny*, 120 Wis. 2d 614, 357 N.W.2d 12 (Ct. App. 1984).

29. To support the introduction of third party perpetrator evidence there must be a legitimate tendency that the third person could have committed the crime. The defendant need not establish the guilt of the third party to the level that would be necessary to sustain a conviction. However, evidence that simply affords a possible ground of suspicion against another person should not be admissible. *State v. Wilson*, 2015 WI 48, ¶1, 362 Wis. 2d 193, 199, 864 N.W.2d 52.

30. "The 'legitimate tendency' test asks whether the proffered evidence is so remote in time, place or circumstances that a direct connection cannot be made between the third person and the crime." *Denny*, 120 Wis. 2d at 624 (citation omitted).

The Denny Requirements Are Now Satisfied

A) Bobby's Motive to Commit the Murder of Teresa Halbach

31. Under the motive prong, the court must question whether "the alleged third party perpetrator [had] a plausible reason to commit the crime?" *State v. Wilson*, 2015 WI 48, ¶57, 362 Wis. 2d 193, 219, 864 N.W.2d 5222; *see also State v. Griffin*, 2019 WI App 49, ¶8, 388 Wis. 2d 581, 589, 933 N.W.2d 681.

32. A defendant's motive to commit a homicide is widely considered to be relevant. *State v. Wilson*, 2015 WI 48, ¶62, 362 Wis. 2d 193, 220, 864 N.W.2d 52. The admissibility of evidence of a third party's motive to commit the crime charged against the defendant is similar to what it would be if that third party were on trial himself. *Id.* ¶63, 221.

33. Other acts evidence may be admitted when offered for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. Wis. Stat. § 904.04(2).

34. Law enforcement considered pornography as evidence of motive in Ms. Halbach's murder. The clear working theory of the investigators was that the murder of Ms. Halbach was motivated by a sexual assault. Pursuant to that theory, the Dassey computer was seized by law enforcement on April 21, 2006. (632:31-32; Search Warrant) **(App. 182-83).**

35. Evidence of Bobby's motive to commit Ms. Halbach's murder is contained on the hard drive of the Dassey computer—namely, the material contained on the 'Velie CD.' The Appellate Court acknowledged this evidence could be relevant for establishing the motive

element of the *Denny* test if the new evidence directly connecting Bobby was raised. Specifically, the Appellate Court stated:

> "[T]he evidence [Sowinski's evidence] presented might supply the missing 'direct connection.' In that event, the Velie CD evidence might become relevant to showing Dassey's motive, and might bear on whether Dassey is, or should have been, a viable *Denny* suspect."

(Opinion, pg. 41, note 26). **(App. 161).**

36. Detective Velie's forensic examination of the Dassey computer searched for specific words the user had searched. Detective Velie selected the specific words and conducted a search for those words. There were 2,632 search results for the following words: "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). These selected words establish a direct link between the specific evidentiary items related to the Halbach murder and the searches performed on the Dassey computer. The 'Velie CD' contains the State's "recovered" pornography images relevant and material to the Halbach murder. The 'Velie CD' refined the 14,099 images on the 7 DVDs that trial defense counsel received in discovery and recovered 1,625 violent pornographic images, *which had been deleted.* The "recovered porn" depicted violent images of the torture and mutilation of young females. (741:23, 25). (emphasis added). **(App. 184-85).**

37. Brad Dassey ("Brad"), Barb's step-son and the half-brother of Bryan, Bobby, Blaine, and Brendan, avers that he had a conversation with Barb, in which she indicated that she had hired someone to remove evidence from the Dassey computer. (*Id.* ¶3). The authorities interviewed Brad after he reported this information, but he was not called as a witness, by either side, to testify at Mr. Avery's or Brendan's trials. (*Id.* ¶¶ 8-9). (632:35-36, Affidavit of Brad Dassey). **(App. 355-56).** This is corroborated by the law enforcement report, which states that on

June 6, 2006, Special Agent Fassbender and Investigator Weigert interviewed Brad who provided this information about the Dassey computer deletions. (Thomas Fassbender DCI Report No. 05-1776/284 attached and incorporated herein as **"Group Exhibit A-1"**).

38. The new forensic examination of the Dassey computer corroborates the affidavit of Brad. Mr. Hunt, in his computer examination, detected eight periods in 2005, close to the date of the murder, for which files are missing and "presumably deleted from the Dassey computer:" August 23-26; August 28-September 11; September 14-15; September 24-Octotober 22; October 23-24; October 26-November 2; November 4-13; and November 15-December 3. (633:38-39, Supplemental Affidavit of Gary Hunt). **(App. 186-87).**

39. In reviewing images contained on the Velie disc, Special Agent Thomas Fassbender made the following observations: (1) "Photographs of both Teresa Halbach and Steven Avery with an apparent date of April 18, 2006"; (2) "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"; and (3) "The disc received from Detective Velie, as well as the hardcopy pages of instant message conversations were maintained in S/A Fassbender's possession." (Thomas Fassbender DCI Report No. 05-1776/304 is attached and incorporated herein as **"Group Exhibit A-2"**).

40. There is sufficient evidence that it was only Bobby who had access to the Dassey computer during the day on weekdays between approximately 7:00 a.m. to 3:30 p.m. (737:69–70; 636:27-37, 39; 689:35; 705:56-57; 630:28-29; 633:47; 400:131; 743:12). **(App.**

188-209). Barb's work schedule was from 6:00 a.m. until 4:30 p.m. every day Monday through Thursday of every week. (630:160). **(App. 210).** Brendan and Blaine would get picked up by the school bus at Avery Road between 7:08 a.m. and 7:13 a.m. and dropped off at the same place between 3:30 p.m. and 4:00 p.m. (630:158) **(App. 211).** Therefore, Barb, Blaine, and Brendan—the three other individuals living at the Dassey residence are excluded from even having access to the Dassey computer at the times most of the violent searches occurred.

41. Moreover, 128 searches for the most violent porn images primarily occurred on weekdays when only Bobby was in the Dassey residence. (636:27–37, 39; 689:35; 705:56-57; 630:28-29; 633:47; 737:164; 739:154; 743:12). **(App. 212-32).** It is undisputed that Mr. Avery never accessed the Dassey computer. He did not have the password for the Dassey computer, nor did he possess a key to the Dassey residence, which was locked when no one was home. (636:89–90) **(App. 233-34).** The only time Mr. Avery ever entered the Dassey residence was when one of the Dassey family members was home. Mr. Avery worked at the Avery Salvage Yard, during the weekdays, from 8:00 a.m. to 5:00 p.m. (636:6, 91). **(App. 235-36).** Moreover, Mr. Avery would be eliminated from all but 15 of the 128 (11.7%) searches for the most violent porn images, at issue, simply by having been arrested on November 9, 2005. (630:85; 636: 33-37). Brendan would be eliminated from all but 26 of the 128 (20.3%) searches for the most violent porn images, at issue, simply by having been arrested on March 1, 2006. (636:33-37). **(App. 218-22, 237).**

42. Bobby testified that on October 31, 2005 he was the only person home between 6:30 a.m. and when he claims he left to go hunting at 2:45 p.m. (697:41). **(App. 238).** Therefore, it is undisputed that Bobby was the only person home on October 31 when searches were made on the Dassey computer at 7:00 a.m., 9:33 a.m., 10:09 a.m., 1:08 p.m., and 1:51 p.m. prior to Ms. Halbach's arrival at the Avery Salvage Yard. (632:37-38, Affidavit of Gary Hunt) **(App. 239-40).**

The timing of these internet searches on October 31 directly contradicts Bobby's trial testimony that on that day he was asleep from 6:30 a.m. to 2:30 p.m. (633:38–39; 689:35). **(App. 241-43).**

43. On November 17, 2017, in an interview of Bobby by State investigators, Bobby claimed that the Dassey computer was located "on a desk in the living room at the time." When Bobby was asked if the Dassey computer was ever located in his bedroom, he stated, "It was not." (737:64–65). **(App. 244-45).** Bobby's statement is directly contradicted by the crime scene footage taken by Sgt. Tyson on November 12, 2005, which shows the Dassey computer was located in Bobby's bedroom. (737:170; 763:1–2). **(App. 246-48).** Bobby's statements are further contradicted by his brother, Blaine, who stated in his affidavit to current postconviction counsel on June 25, 2018, that the Dassey computer was located in Bobby's room and Bobby was the primary user of it. (737:165–66). **(App. 249-50).**

44. Wis. Stat. § 904.04(2)(a), 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.

45. The depicted acts in the violent pornography Bobby was viewing are sufficiently similar to the violent murder of Ms. Halbach.

46. The evidence of Bobby's searches for violent pornographic images is not so remote in time as to be inadmissible but rather, so close in time to Ms. Halbach's murder that the searches are direct evidence of Bobby's motive to kill Ms. Halbach.

47. The 1,625 previously deleted but recovered images of violent pornography could have established motive for trial defense counsel's *Denny* motion. The court in *Dressler v. McCaughtry*, 238 F.3d 908, 910, 913–14 (7th Cir. 2001), held that the "acts" admitted pursuant to § 904.04(2)(a) 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.

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

> The fact that [the defendant] maintained a collection of videos and pictures depicting intentional violence is 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 are relevant.

Id. at 914.

49. The *Dressler* court 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. *Id.*

50. *Dressler* is persuasive authority that the same result should occur here. Ms. Halbach was killed in a violent manner. Maintaining the violent porn images is probative to establish that Bobby had an obsession with violence and therefore was more likely to commit murder. The violent porn images are relevant to Bobby's motive and would have resulted in trial defense counsel being able to establish his motive for Ms. Halbach's murder to meet the *Denny* standard.

51. As Mr. Avery's sexual homicide expert, Ann Burgess, PhD ("Dr. Burgess"), opines in her affidavit, submitted previously to this Court, there is a well-established causal connection between pornography consumption and violent behaviors. (738:2-8, Affidavit of Ann Burgess, PhD). **(App. 251-57).**

52. In Mr. Avery's motion to reconsider this Court's prior decision, former FBI agent and police procedure expert, Gregg McCrary ("Mr. McCrary"), submitted an affidavit wherein he described his opinion that the searches for violent, underage, and child pornography, combined

with the images of and searches for dead bodies, "reflects a co-morbidity of sexual paraphilias." It is the opinion of Mr. McCrary that "Bobby Dassey was becoming obsessively deviant in his viewing of violent pornography" in the weeks before Ms. Halbach's murder. (630:117-19, Affidavit of Gregg McCrary at ¶¶ 3, 4.). **(App. 258-60).**

B) Bobby's Opportunity to Commit the Murder of Teresa Halbach

53. The second prong of the *Denny* test—the opportunity prong—asks: "[C]ould the alleged third party perpetrator have committed the crime, directly or indirectly? In other words, does the evidence create a practical possibility that the third party committed the crime?" *Wilson*, 362 Wis. 2d 193, ¶58.

54. As a legal concept, "opportunity" appears in the Wisconsin Statutes in the context of "other acts" evidence. *State v. Wilson*, 2015 WI 48, ¶¶ 66-67, 362 Wis. 2d 193, 221-22, 864 N.W.2d 52 (citing Wis. Stat. § 904.04(2)):

> (2) OTHER CRIMES, WRONGS, OR ACTS. . . . [E]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. This subsection does not exclude the evidence when offered for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(Emphasis added.)

55. The case law as well as § 904.04(2) permits the introduction of other acts evidence to show a person's (whether a party or third person) "opportunity" to engage in certain conduct. "Opportunity" is a broad term . . . ; proof of opportunity may be relevant to place the person at the scene of the offense (time and proximity) or to prove whether one had the requisite skills, capacity, or ability to carry out an act. . . . It is incumbent on the proponent, however, to show the relevance of the "opportunity" evidence. 7 Wis. Prac., Wis. Evidence § 404.7 (3d ed.) (footnotes omitted).

56. According to the trial court, Mr. Avery's trial defense counsel has already established that Bobby had the opportunity to commit the murder of Ms. Halbach. (453:1, 95-96). **(App. 261-63).** The Sowinski evidence greatly strengthens the opportunity argument because Bobby is in possession of Mr. Halbach's vehicle, where her murder likely occurred.

C) Bobby's Access to Items of Evidence to Frame Mr. Avery

57. Additionally, the defense theory was that Mr. Avery was framed by evidence being planted in Ms. Halbach's car and Mr. Avery's trailer and burn barrel.

58. The Sowinski evidence that Bobby was in possession of Ms. Halbach's vehicle provides the opportunity/access to the items that were used "in the frame-up." *State v. Wilson*, 2015 WI 48, ¶68, 362 Wis. 2d 193, 222, 864 N.W.2d 52. The specific items that were planted and used in the frame-up of Mr. Avery were Mr. Avery's blood in Ms. Halbach's vehicle, Ms. Halbach's RAV-4 key in Mr. Avery's bedroom, and Ms. Halbach's electronic devices in Mr. Avery's burn barrel.

D) Bobby Had Access to Mr. Avery's Blood

59. Mr. Avery told law enforcement in a recorded interview that his finger, which had been cut open prior to October 31, 2005, re-bled on November 3, 2005, and dripped blood in his bathroom sink and on the bathroom floor. (646:6; 648:1–2). **(App. 264-66).** In Mr. Avery's trial, Rollie Johnson, the owner of Mr. Avery's trailer, testified that he observed that the cut on Mr. Avery's finger was present prior to October 31, 2005. (712:176). **(App. 267).** Mr. Avery consistently expressed his belief to his attorneys and the media that his blood found in Ms. Halbach's vehicle was planted and that it came from his bathroom sink. (604:22). **(App. 271).**

60. Mr. Avery's claim that he bled into his bathroom sink and on the floor was corroborated by the fact that law enforcement found some of his blood around his bathroom sink and on his bathroom floor. (604:22-30). **(App. 271-79).**

61. In the early evening of November 3, 2005, Sergeant Andrew Colborn ("Sgt. Colborn") came to the Avery Salvage Yard and spoke to Mr. Avery. After meeting with Sgt. Colborn, Mr. Avery went to his vehicle and drove to the Dassey residence. Barb, Blaine, and Bobby were home at the time.

62. Mr. Avery provided an affidavit on June 29, 2018. He stated the following in his affidavit regarding the events of the evening of November 3, 2005:

> I stopped at my sister, Barb Dassey-Janda's ("Barb"), property and broke open a cut on the outside of the middle finger of my right hand as I was attempting to unhitch her trailer for her. . . . I went to Barb's door to see if any of her sons wanted to go with me to Menards. Bobby and Blaine were home. I asked Bobby and Blaine if they wanted to go with me and my brother, Chuck, to Menards. I told both of them that a law enforcement officer had just left the property after asking me questions about Ms. Halbach's visit to photograph Barb's van on October 31, 2005. I noticed that Bobby was immediately nervous after I mentioned the visit by the officer. He said that he could not go with me to Menards and that he had "things to do." There is no doubt in my mind that Bobby saw that my finger was bleeding. My memory is that Blaine said that he wanted to go to Menards and he went with Chuck and me. Prior to leaving for Menards, I returned to my trailer to put tape on my bleeding finger. A large amount of blood dripped onto the rim and sink and the floor of the bathroom. I did not wash away or wipe up because Chuck was waiting for me to go to Menards in Manitowoc with him. While we were leaving Avery property, driving a flatbed to Menards in Manitowoc, I saw taillights in front of my trailer. The taillights were further apart and higher off the ground than sedan taillights. I told my brother, who was driving, about the taillights. We turned around and drove to my trailer, but the vehicle was gone. On November 4, I woke up at 6:00 a.m. and went into the bathroom to take a shower. I saw that most of the blood on my sink, which I had not cleaned up the previous night, was gone. It seemed to me that the blood had been cleaned up. After reviewing more case documents and thinking about what happened on November 3, 2005, I do not believe that law enforcement broke into my trailer and took blood from my sink and planted it in Ms. Halbach's vehicle.

(737:3-5) **(App. 280-82).**

63. According to Mr. Avery, he left his door unlocked when he went to Menards; however, the Dasseys also had a key to his residence. (737:3-5) **(App. 280-82).**

64. Mr. Avery told law enforcement and trial defense counsel that, as he was leaving his property around 7:00 p.m. on November 3, 2005, and exiting onto Highway 147, he observed tail lights of a vehicle close to his trailer. (604:80). Mr. Avery also told trial defense counsel that he noticed that his blood had been removed from his sink when he entered his bathroom, early in the morning on November 4, 2005. (604:27; 646:6). **(App. 283-85).**

E) Bobby's Direct Link to the Murder of Ms. Halbach

65. The third, and final, prong of the *Denny* test asks whether there is "evidence that the alleged third party perpetrator actually committed the crime, directly or indirectly?" *Wilson*, ¶ 59.

66. The Sowinski evidence demonstrates that Bobby could have committed the murder because he is in possession of Ms. Halbach's vehicle, where the murder likely occurred as evidenced by Ms. Halbach's blood in the vehicle. The vehicle is a key piece of evidence in the crime. *See, e.g., State ex rel. Koster v. McElwain*, 340 S.W. 3d 221, 249 (Mo. App. 2011) (evidence of third party guilt admissible when an alternative suspect "became connected to a key piece of evidence in the crime-the victim's purse where the canceled checks were found.").

67. The new evidence that Ms. Halbach's vehicle was returned to the Avery Salvage Yard from a different location is corroborated by the fact that a witness saw a vehicle similar to Halbach's leave the property on October 31. In Mr. Avery's trial, Mr. Leurquin, a propane driver, testified that he saw a green, midsize SUV leaving the Avery Salvage Yard driving towards Highway 147 between 3:30 and 4:00 pm on October 31. He informed law enforcement about this when he was stopped at a roadblock a few days later and had heard about the news of Ms. Halbach being missing. (712:128-29, 137). **(App. 286-88).**

68. Further, it is corroborated by Bobby's brother Blaine's account. On June 25, 2018, Bobby's brother, Blaine, provided Mr. Avery's current postconviction counsel with an affidavit

attesting, "On October 31, 2005 when the school bus driver brought Brendan and me home as we traveled west on STH 147 I saw Bobby on STH 147 in a bluish or greenish vehicle heading towards Mishicot. Bobby was not driving his black Blazer. Bobby was not home the rest of the evening while I was home." (737:164-67, Affidavit of Blaine Dassey, ¶ 20). **(App. 289-92).** Bobby's trial testimony contradicts Blaine's affidavit because Bobby testified that he was home at 5 p.m. (689:39, 41) **(App. 293-94).**

69. Bobby was with Michael Osmunson ("Osmunson") when Ms. Halbach's vehicle was discovered on November 5, 2005. (675:24-25). **(App. 295-96).** Current postconviction counsel's investigator met with and interviewed Osmunson about whether he was the individual with Bobby pushing the RAV-4 onto the Avery Salvage Yard. The interview was conducted because Osmunson fit the height, weight, and beard description provided by Mr. Sowinski of the individual helping Bobby push the car. When Osmunson was asked if he was the individual who helped Bobby push the vehicle on the Avery Property on November 5, 2005, Osmunson responded that he "could not remember" if he was that individual. (Affidavit of Steve Kirby attached and incorporated herein as **"Exhibit B."**)

70. Further evidence of Bobby's dishonesty, Bobby never reported to law enforcement the alleged statement Mr. Avery said to Bobby and Osmunson about "whether they wanted to help him get rid of a body." (697:30; *see also* 630:75-83; Combined reports re-interviews of Bobby Dassey) **(App. 297-306).** This was a major issue at trial. Trial defense counsel moved for a mistrial pointing out that they had never been apprised of Bobby's new claim. During Bobby's direct-examination, Prosecutor Kratz asked Bobby: "Now, Bobby, on the third of November, that would be a Thursday, I believe, do you recall having a conversation with your Uncle Steven regarding a body?" and Bobby responded, "Yes." (689:47) **(App. 307).** On cross-examination, Bobby testified that Mr. Avery stated this remark about getting rid of a body,

in jest, on November 3, 2005 when he and Osmunson were in his garage. (697:27-28) **(App. 308-09)**. However, Osmunson told law enforcement that Mr. Avery made such a statement to them on Thursday, November 10, 2005 (the only time Osmunson was at the Dassey residence between October 31st and November 11th) when he and Bobby were inside the Dassey garage and Mr. Avery came over. (630:84). **(App. 310).** This claim is unequivocally false, since Mr. Avery was arrested on November 9, 2005. (630:89, Arrest Warrant). **(App. 311).**

71. Remarkably, Osmunson stated to law enforcement that he first learned about the missing girl on Tuesday, November 1, 2005, when Ms. Halbach had not yet been reported missing. (630:84) **(App. 312).**

72. Further, the record reveals that Osmunson and Bobby were either suspiciously calling each other repeatedly or with each other at relevant times after Ms. Halbach's murder. Bobby's phone records reflect that on October 31, 2005, there were 7 phone calls between Bobby and Osmunson occurring between the following times in the morning and evening: 6:12 a.m.; 6:36 a.m.; 3:56 p.m.; 3:57 p.m.; 4:53 p.m.; 5:10 p.m.; and 6:01 p.m. Bobby's phone records reveal that Bobby called Osmunson a total of 66 times from October 24, 2005 to November 9, 2005. (737:73-75). **(App. 313-15)**.

73. The Sowinki evidence is newly discovered and directly links Bobby to Ms. Halbach's murder because as previously stated Ms. Halbach's RAV-4 was a key piece of evidence in her murder.

4) The Evidence is Not Cumulative

74. The Sowinski evidence provides, for the first time, the "missing" direct connection to Bobby as a third party suspect for Ms. Halbach's murder and is therefore not cumulative.

Reasonable Doubt as to Mr. Avery's Guilt

75. If the defendant satisfies all four criteria of newly discovered evidence, the reviewing court then examines whether it is reasonably probable that, had the jury heard the newly discovered evidence, it would have had a reasonable doubt as to the defendant's guilt. *State v. Plude*, 2008 WI 58, ¶32, 310 Wis. 2d 28, 48, 750 N.W.2d 42. This presents a question of law. *Id.*, ¶33. A reasonable probability of a different outcome exists if there is a reasonable probability that a jury, looking at both the old evidence and the new evidence, would have a reasonable doubt as to the defendant's guilt. *Id.*

76. Overwhelming evidence against the defendant may not serve as the basis for excluding evidence of a third party's opportunity (or direct connection to the crime): "by evaluating the strength of only one party's evidence, no logical conclusion can be reached regarding the strength of contrary evidence offered by the other side to rebut or cast doubt." *Holmes v. South Carolina*, 547 U.S. 319, 331 (2006).

77. If Bobby is established as a viable third party *Denny* suspect, the forensic evidence in this case is completely undermined. The newly discovered evidence that Bobby was in possession of Ms. Halbach's vehicle means that he had opportunity and access to plant evidence in the vehicle and from the vehicle. Because Bobby has been directly linked to the murder of Ms. Halbach there is a reasonable inference that he planted the bones in Mr. Avery's burn pit.

78. This new evidence creates a reasonable probability that, had the jury heard the new evidence, it would have had a reasonable doubt as to the defendant's guilt. Therefore, Mr. Avery should be granted a new trial. *See State v. Vollbrecht*, 2012 WI App 90, ¶37, 344 Wis. 2d 69, 100, 820 N.W.2d 443.

II. *BRADY* VIOLATION RE THE SOWINSKI EVIDENCE

79. The Sowinski evidence is not only newly discovered evidence but it also meets the criteria for a *Brady* violation.

80. After Mr. Sowinski contacted Mr. Avery's current postconviction counsel and provided the newly discovered evidence, Mr. Avery's current postconviction counsel, through its investigator, submitted its second Public Records Request pursuant to the Freedom of Information Act for audio recordings of incoming and outgoing phone calls and/or radio dispatches between November 3, 2005 and November 9, 2005 that relate to the Halbach case. (*See* Affidavit of James R. Kirby attached and incorporated herein as **"Exhibit C").** The FOIA-produced audio recordings did not contain the Sowinski call on November 6 at 10:28 p.m. nor did they contain any dates or times of the calls produced.

81. In May of 2022, Mr. Avery's current postconviction counsel received the previously suppressed Sowinski call to the Mantiwoc Sheriff's Office which contained a partial recording of the suppressed call to the Manitowoc Sheriff's Office on November 6, 2005. For the first time, current postconviction counsel received the exact dates and times of the Manitowoc County Sheriff's Office incoming calls. Attached and incorporated herein as **"Exhibit D"** is a track timestamp record from the disclosure provided in May of 2022.

82. As part of its further investigation, Mr. Avery's investigator interviewed Mr. Sowinski's ex-girlfriend, whom he was dating at the time of the November 5, 2005 incident. Mr. Sowinski's ex-girlfriend, Devon Novak, corroborated Mr. Sowinski's account of what he had witnessed and what he had relayed to law enforcement. Further, Ms. Novak recognized and identified Mr. Sowinski's voice on the recording, played to her by the investigator, of a phone call made to the Manitowoc Sheriff's Office on November 6, 2005 at 10:28 p.m. (Affidavit of Ms. Devon Novak is attached and incorporated herein as **"Exhibit E"**).

83. Mr. Avery's investigator also interviewed Mr. Sowinski again and played the same audio recording of the phone call that was made to the Manitowoc Sheriff's Office on November 6, 2005 at 10:28 p.m.. Mr. Sowinski identified his voice in the audio recording of the phone call from November 6, 2005. (Supplemental Affidavit of Mr. Thomas Sowinski's is attached and incorporated herein as **"Exhibit F"**).[5]

84. The recording of Mr. Sowinski's call was never disclosed by the State to Mr. Avery's trial defense counsel prior to or during the trial. Pre-trial, trial defense counsel made two specific requests, pursuant to Wis. Stats. § 971.23(1)(h), 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. (26:3–9). A second request was made by trial defense counsel for *Brady* material immediately before trial on January 18, 2007. (225:1–6). (Affidavits of Mr. Avery's trial defense counsel, Mr. Dean Strang and Mr. Jerome Buting are attached and incorporated herein as "**Group Exhibit G**," including an attached exhibit of trial defense counsel's July 24, 2006 letter to Prosecutor Kratz requesting all audio tapes).

Applicable Law re *Brady*

85. In *Brady*, the Supreme Court held that the prosecution violates an accused's constitutional right to due process of law by failing to disclose evidence favorable to the defense. *Brady v. Maryland*, 373 U.S. 83, 87 (1963). This rule encompasses evidence known to police investigators, but not to the prosecutor. *Kyles v. Whitley*, 514 U.S. 419, 438 (1995). To comply

[5] After realizing that he did not contact Mr. Avery's trial defense counsel, but rather contacted the Innocence Project in 2016, Mr. Sowinski provided current defense counsel with his new affidavit which also corrects his prior affidavit submitted in Mr. Avery's motion to stay and remand to the Appellate Court, in which Mr. Sowinski stated that he contacted Mr. Avery's trial defense attorneys.

with *Brady*, the prosecutor has a duty to learn of favorable evidence known to other government actors, including the police. *Kyles*, 514 U.S. at 437. "Brady suppression occurs when the government fails to turn over even evidence that is known only to police investigators and not to the prosecutor." *Wearry v. Cain*, 577 U.S. 385, 395, n. 8 (2016).

86. There can be a due process violation "irrespective of the good faith or bad faith of the prosecution." *Id.* (quoting *Brady,* 373 U.S. at 87). "The prosecution's duty to disclose evidence favorable to the accused includes the duty to disclose impeachment evidence as well as exculpatory evidence." *Id.* (citing *Strickler v. Greene*, 527 U.S. 263, 280 (1999)).

87. 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, 154 (1972)).

88. The State never disclosed the Sowinski evidence or the Sowinski call to Mr. Avery's current or past counsel. (*See* **Exhibits C, Group G**.)

89. The defense never received a law enforcement report of the Sowinski evidence provided to the Manitowoc Sheriff's Office in November of 2005. (*See* **Exhibits C, F, Group G**). The Sowinski evidence is corroborated by the partial recording of his attempt to report the evidence to the Manitowoc Sheriff's Office prior to his call being transferred.

90. There is no recording or law enforcement report of the remainder of Mr. Sowinski's call that Mr. Avery's current postconviction counsel, through reasonable diligence, has been able to locate through its Public Records Requests.

91. In *Banks v. Dretke,* 540 U.S. 668, 696 (2004), the United States Supreme Court instructed, "A rule thus declaring 'prosecutor may hide, defendant must seek,' is not tenable in a system constitutionally bound to accord defendants due process."

92. Further, the Wisconsin Supreme Court in *State v. Wayerski,* 2019 WI 11, 385 Wis. 2d 344, 922 N.W.2d 468 (2019), has specifically rejected the imposition of a reasonable diligence standard on trial defense counsel. The Wisconsin Supreme Court specifically stated:

> This court has never analyzed a *Brady* claim through the lens of "reasonable diligence" and we decline to adopt that requirement now, due to its lack of grounding in *Brady* or other United States Supreme Court precedent.

Id., at 25.

93. The *Wayerski* court specifically overruled prior Wisconsin cases which have imposed a requirement of exclusive possession and control of the material evidence by the State. The court specifically stated:

> There is no express support in the United States Supreme Court's *Brady* jurisprudence for the limitation that only favorable, material evidence in the "exclusive possession and control" of the State must be turned over to satisfy the due process obligations enunciated in *Brady*. This limitation further thwarts the purpose of the State's obligation under *Brady*: to prevent the State from withholding favorable, material evidence that "helps shape a trial that bears heavily on the defendant" and "casts the prosecutor in the role of an architect of a proceeding that does not comport with the standards of justice." *Brady*, 373 U.S. at 87-88. We hereby overrule the holding set forth in *Nelson*, 59 Wis. 2d 474, and its progeny that favorable, material evidence is only suppressed under *Brady* where the withheld evidence is in the State's "exclusive possession and control."

Id., at 23.

94. There is no duty for the defense to seek out information that has not been disclosed. However, Mr. Avery's current postconviction counsel has made diligent efforts to obtain any and all information regarding the Sowinski evidence, including re-requesting all incoming calls to the Manitowoc Sheriff's Office from the relevant time period.

95. The following timeline illustrates the diligence demonstrated by Mr. Avery's current postconviction counsel in investigating and corroborating the evidence that Mr. Sowinski provided to the Manitowoc Sheriff's Office on November 6, 2005:

- **December 26, 2020 at 10:42 p.m.**
  - Mr. Sowinski emailed stevenaverylawyers@gmail.com a summary of what he had observed on November 5, 2005. The subject line of his email was: "We need to talk!"
- **Investigation of Thomas Sowinski's Credibility**
  - Mr. Avery's current postconviction counsel conducted an investigation of Mr. Sowinski which included gathering information about the following: his date of birth, relatives, employment history, telephone numbers, email addresses, possible criminal record, possible civil record, and car and home ownership.
  - Mr. Avery's current postconviction counsel confirmed that Mr. Sowinski had worked for the Manitowoc Herald Times during the relevant time period. Financial documents dating 2005-2006 as well as newspaper articles from 2005-2006 listed Mr. Sowinski as a paper carrier of the Manitowoc Herald Times.
  - Mr. Avery's current postconviction counsel contacted Mr. Avery's trial defense counsel, Mr. Buting, who confirmed that Mr. Avery's trial counsel had not received any emails from Mr. Sowinski.
  - Mr. Avery's current postconviction counsel reviewed all discovery and FOIA requests made by prior counsel and current postconviction counsel to the Manitowoc Sheriff's Office. Any information relating to the Sowinski evidence was encompassed within those requests and should have been produced but was not.
- **April 7, 2021**
  - Mr. Avery's current postconviction counsel sent and delivered a letter to Mr. Sowinski through a local investigator in Denver, Colorado (where Mr. Avery's current postconviction counsel determined that Mr. Sowinski resided), requesting that Mr. Sowinski contact Mr. Avery's current postconviction counsel's office immediately.
- **April 8, 2021**
  - Mr. Avery's current postconviction counsel and her clerks had telephone contact with Mr. Sowinski and arranged a time to speak to him further.
- **April 9, 2021**
  - Mr. Avery's current postconviction counsel and clerks conducted a phone interview of Mr. Sowinski.
  - Mr. Avery's current postconviction counsel prepared an affidavit for Mr. Sowinski based on his statements in that interview.
  - Mr. Sowinski indicated that he was going to be visiting family in Manitowoc on April 10, 2021.
- **April 10, 2021**
  - Postconviction counsel's Investigator Steven Kirby met Mr. Sowinski, in person, in Manitowoc for an interview and reviewed his affidavit with him. The affidavit described the evidence Mr. Sowinski reported to the Manitowoc Sheriff's Office about what he observed on the Avery property while delivering newspapers on November 5, 2005 as well as the actions he took afterwards. (His affidavit included a map indicating where he observed the two males pushing the RAV-4).
  - After reviewing his affidavit and making any necessary changes, Mr. Sowinski executed the affidavit before a Wisconsin notary.

- **April 12, 2021**
  - Mr. Avery's current postconviction counsel filed Defendant-Appellant's Motion to Stay Appeal and Remand the Cause to supplement his postconviction motion with a new witness affidavit establishing a *Brady* violation and a new third party *Denny* suspect.
- **August 28, 2021**
  - Mr. Avery's current postconviction counsel listened to all audio recordings in its possession from discovery as well as its own investigation and determined there was **no** recording matching the description Mr. Sowinski provided to the Manitowoc Sheriff's Office.
- **March 15, 2022**
  - Mr. Avery's current postconviction counsel, through its investigators, submitted the following three new public records requests to the Manitowoc County Sheriff's Office:
    - The first request sought *copies of any non 911 recordings in your possession of incoming telephone calls to the Manitowoc County Sheriff's Joint Dispatch Center between the dates of November 3, 2005 at 12:01 AM through November 9, 2005 at 11:59 PM.*
    - The second request sought *copies of incoming and outgoing telephone call logs of the recorded Manitowoc County Sheriff's Joint Dispatch calls between the dates of November 3, 2005 12:01 AM through November 9, 2005 11:59 PM that relate to the Teresa Halbach investigation. Information should include date, time and telephone numbers involved in the calls.*
    - The third request sought *copies of audio recordings of incoming and outgoing calls and/or radio dispatches between the dates of November 3, 2005 12:01 PM through November 9, 2005 11:59 PM that relate to the Teresa Halbach investigation.*
- **May 3, 2022**
  - In response to Mr. Avery's current postconviction counsel's March 15, 2022 Public Records Request through its investigator, for the first time, recordings were provided to Mr. Avery's current postconviction counsel, who thoroughly reviewed and listened to all the audio recordings and located one of interest, which took place on November 6, 2005 at 10:28 p.m. For the first time, the time and date of the calls were revealed on the track files. (*See* **Exhibit D**).
- **August 6, 2022**
  - Current postconviction counsel's Investigator Steven Kirby met with Mr. Sowinski's former girlfriend, Ms. Novak on August 6, 2022 and played for her the audio recording from November 6, 2005 at 10:28 p.m. Ms. Novak identified the voice on the call as Mr. Sowinski's. Ms. Novak provided Mr. Avery's current postconviction counsel with an affidavit regarding her voice identification and her recollection of being with Mr. Sowinski when he placed the November 6 call to the Manitowoc Sheriff's Office. (*See* **Exhibit E**).
- **August 6, 2022**
  - Current postconviction counsel's Investigator Steven Kirby met with Mr. Sowinski and played for him the audio recording from November 6, 2005 at 10:28 p.m. Mr. Sowinski identified the voice on the call as his. Mr. Sowinski provided

Mr. Avery's current postconviction counsel with an affidavit regarding his voice identification. (*See* **Exhibit F**.).

96. As stated above, after a very thorough investigation of Mr. Sowinski individually and of the accuracy of the information he provided as the Sowinski evidence, Mr. Avery's current postconviction counsel determined that the Sowinski evidence necessitates filing a third § 974.06 motion.

97. In order for the defendant to prevail on the third component of the *Brady* analysis, the suppressed evidence must be material. *See State v. Harris*, 2004 WI 64, ¶15, 272 Wis. 2d 80, 98, 680 N.W.2d 737 (citing *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999)). "The evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *United States v. Bagley*, 473 U.S. 667, 682 (1985).

98. In *Kyles v. Whitley*, 514 U.S. 419, 434 (1995), the Court noted, "[t]he question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence." A "reasonable probability" is lower than a preponderance of evidence standard. It is demonstrated where the defense shows that the failure "undermine[d] confidence" in the conviction. *Youngblood v. West Virginia,* 547 U.S. 867, 869–70 (2006).

99. Mr. Avery's conviction for first degree intentional homicide was, in large part, based on trial defense counsel's unsuccessful efforts to name a third party *Denny* suspect that met all of the *Denny* requirements. The Sowinski evidence meets the *Denny* requirements and makes Bobby a third party *Denny* suspect in the murder of Ms. Halbach. Also, the Sowinski evidence meets the *Denny* requirements of establishing Bobby as having framed Mr. Avery for the murder. Bobby's possession of Ms. Halbach's vehicle gave him access and opportunity to plant Mr.

Avery's blood and DNA and to remove evidence from the vehicle and plant it in Mr. Avery's bedroom (Ms. Halbach's key) and burn barrel (Ms. Halbach's electronic devices). The Sowinski new and material evidence was suppressed when the Manitowoc Sheriff's Office failed to disclose the November 6, 2005 10:28 p.m. audio recording pursuant to defense discovery requests. The disclosure of the audio recording would have led to the identification of Mr. Sowinski and the evidence he has provided which directly connects Bobby to the murder and the framing of Mr. Avery. (715:35-40). **(App. 316-21).** The Sowinski evidence is both material and favorable to Mr. Avery's case.

100. The Sowinski evidence is material because it makes Bobby a third party *Denny* suspect in the murder as well as the source of the planted evidence that was used to convict Mr. Avery. The Sowinski evidence also impeaches Bobby's testimony and refutes the State's theory that Ms. Halbach's RAV-4 never left the Avery property and that Mr. Avery was the last person to see Ms. Halbach alive. Further, "materially favorable" evidence not only includes exculpatory evidence, but also evidence that is impeaching of a prosecution witness. *Bagley*, 473 U.S. at 676. Evidence tending to demonstrate the lack of credibility of a prosecution witness is material, especially where the prosecution's case depends on the credibility of that witness. *Giglio v. United States*, 405 U.S. 150, 154-55 (1972).

101. Bobby was the State's primary witness against Mr. Avery at his trial. 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." (696:104). **(App. 322).** Bobby testified that he observed Ms. Halbach's vehicle pull up in his driveway at 2:30 p.m. on October 31, 2005. Bobby then observed Ms. Halbach exit her vehicle and start taking pictures of his mom's maroon van right in front of his trailer. Bobby testified that

he observed Ms. Halbach walking towards the door of Mr. Avery's trailer. He testified that he never saw her again after that. He then testified that he took a three- or four-minute shower and then left his trailer to go hunting. Bobby walked to his Chevy Blazer, which was parked between the trailer and garage. He testified that as he walked to his vehicle, he observed Ms. Halbach's vehicle still parked in the driveway. He further testified that he did not see Ms. Halbach or any signs of her. (689:36-40). **(App. 323-27).**

102. Contrary to Bobby's trial testimony that Ms. Halbach was still on the Avery property when Bobby left "to go bow-hunting," Bryan, Bobby's brother, told law enforcement that Bobby saw Ms. Halbach leave the Avery property on October 31, 2005. On November 6, 2005, special agents with the Wisconsin DOJ Division of Criminal Investigation interviewed Bryan. When the investigators asked Bryan about the events of October 31, 2005, he told the investigators that he was not at home during the day other than waking up and going to work. He told the investigators the following:

> Bryan said he heard from his mom and Steven that Halbach was only at their residence about 5 minutes. He heard she just took the photo of the van and left. Bryan said the investigators should also talk to his brother Bobby, because he saw her leave their property.

The State was in possession of this report at the time of Mr. Avery's trial. Despite knowing this information, the State presented false testimony from Bobby. (630:28-29, 11/6/05 DCI report; 631:33–39; 633:5). **(App. 328-37)**.

103. On October 16, 2017, Bryan provided current postconviction counsel with an affidavit confirming that Bobby told him he saw Ms. Halbach leave the Avery property on October 31, 2005. In his affidavit, Bryan stated as follows:

> On or about November 4, 2005, I returned to my mother's trailer to retrieve some clothes, and I had a conversation with my brother, Bobby, about Teresa Halbach. I distinctly remember Bobby telling me, "Steven could not have killed her because I saw her leave the property on October 31, 2005."

Bryan provided Mr. Avery's current postconviction counsel with this affidavit after Mr. Avery's second postconviction motion was filed and the circuit court ruled on it. (630:30–31, Affidavit of Bryan Dassey) **(App. 338-39).**

104. The Appellate Court highlighted the importance of the Sowinski evidence when it stated the following in its July 28, 2021 Opinion:

> To admit evidence at trial that Dassey could have killed Halbach, Avery would have had to provide some evidence at the pretrial *Denny* hearing *directly connecting* Dassey to the crime. *See State v. Scheidell,* 227 Wis. 2d 285, 296, 595 N.W.2d 661 (1999) (evidence that another party committed the crime may be admissible pursuant to *Denny* if the defendant can show: (1) the third party's motive, (2) the third party's opportunity to commit the crime, and (3) some evidence directly connecting the third party to the crime). That Dassey possibly possessed violent pornographic images might have conceivably satisfied a separate requirement, motive, but is insufficient in and of itself to allow admission of third party liability evidence. *See id.* Avery failed to meet the "direct connection" requirement in his original *Denny* motion and has not presented additional evidence on this point in Motion #4.

(Opinion, pgs. 40-41). **(App. 160-61).** While the Appellate Court determined that Mr. Avery did not have sufficient evidence to meet the *Denny* requirements to admit evidence at trial that Bobby could have killed Ms. Halbach, it also advised that the Sowinski evidence could be that missing "direct connection." (Opinion, pg. 41, note 26). **(App. 161).**

105. Because the Sowinski evidence was suppressed, trial defense counsel was not able to establish Bobby as a third party *Denny* suspect or impeach Bobby's trial testimony as the State's primary witness. As a result, Mr. Avery did not receive a fair trial. Mr. Avery had a constitutionally guaranteed right to present a complete defense to the charges against him. *Holmes v. South Carolina,* 547 U.S. 319, 324 (2006); *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).

106. Prior to the discovery of the Sowinski evidence, the Appellate Court stated that impeaching Bobby would not have undermined the cumulative effect of the "significant forensic

(and other) evidence implicating Avery in a crime committed on his property." (Opinion, pg. 42 ¶ 68). **(App. 162).** However, the discovery of the Sowinski evidence, transforms this evidence from "implicating" Mr. Avery to implicating Bobby in the murder and planting evidence to frame Mr. Avery. Even if this Court determines that the evidence "implicating" Mr. Avery remains significant, it is unconstitutional to refuse to allow a defendant to present a defense simply because the evidence against him is overwhelming. *State v. Wilson*, 2015 WI 48, ¶61, 362 Wis. 2d 193, 220, 864 N.W.2d 52. Because of the existence of the new Sowinski evidence, Mr. Avery must be allowed to present a defense based upon it.

107. A reasonable probability of a different result exists if the suppressed information undermines confidence in the verdict. *Kyles*, 514 U.S. at 434. The suppressed Sowinski call undermines confidence in Mr. Avery's verdict. Its disclosure would have led to the discovery of the Sowinski evidence, which establishes Bobby as a third party *Denny* suspect in both the murder and planting of evidence to frame Mr. Avery. It also impeaches Bobby's trial testimony which he fabricated in order to exculpate himself and frame Mr. Avery for the murder of Ms. Halbach.

Mr. Avery is not procedurally barred from raising his Brady claim

108. A motion for relief under § 974.06 "is a part of the original criminal action . . . and may be made at any time." Wis. Stat. § 974.06(2). However, a defendant must meet certain requirements:

> All grounds for relief available to a person under this section must be raised in his or her original, supplemental or amended motion. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the person has taken to secure relief may not be the basis for a subsequent motion, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended motion.

Wis. Stat. § 974.06(4) (emphasis added); *State v. Allen*, 2010 WI 89, ¶23, 328 Wis. 2d 1, 12-13, 786 N.W.2d 124.

109. In *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185-86, 517 N.W.2d 157, 164 (1994), the Wisconsin Supreme Court held that any claim that could have been raised on direct appeal or in a previous Wis. Stat. § 974.06 (1999-2000) postconviction motion is barred from being raised in a subsequent § 974.06 postconviction motion, absent a sufficient reason. *Id.* ¶ 15. The *Escalona-Naranjo* doctrine provides that a ground for relief raised by the defendant in a later-filed § 974.06 motion may be summarily denied by the trial court in its discretion, without a decision on the merits of the claim, if the ground for relief could have and should have been raised in the original, supplemental, or amended § 974.06 motion.

110. In the context of a § 974.06 motion, the defendant must describe, with specificity, his or her "sufficient reason" for failing to raise the claim in any earlier proceeding—that is, the defendant must show why his or her claim is not procedurally barred under § 974.06(4). *See State v. Romero-Georgana,* 2014 WI 83, ¶37, 360 Wis. 2d 522, 543, 849 N.W.2d 668.

111. On April 12, 2021, Mr. Avery filed the Sowinski motion to stay his appeal and remand for evaluation of a new claim. The Appellate Court determined that "the circuit court should resolve on a standalone basis" the Sowinski motion "through a new Wis. Stat. § 974.06 motion." (Opinion, pg. 46, ¶ 77). **(App. 166).** The Appellate Court also stated that "[p]ursuant to *Escalona-Naranjo*, Avery will need to demonstrate why he could not have previously raised this claim, including in his June 2017 motion, before the merits can be reached." (Opinion, pg. 47, ¶ 78). **(App. 167).**

112. Current postconviction counsel could not have brought the Sowinski motion filed with the Appellate Court prior to April 12, 2021 and the current motion prior to May of 2022. Therefore the motions could not have been filed in any prior proceeding, including the filing of

the June 2017 second postconviction motion. The Sowinski evidence relayed by Mr. Sowinski to the Manitowoc Sheriff's Office was never provided to Mr. Avery's prior counsel by the State. The Sowinski evidence was only discovered by Mr. Avery's current postconviction counsel after being alerted to its existence by Mr. Sowinski in December of 2020. Current postconviction counsel had to then thoroughly investigate and corroborate Mr. Sowinski and the Sowinski evidence. As Paragraph 83 above illustrates, Mr. Avery's current postconviction counsel was diligent in investigating and corroborating Mr. Sowinski and the Sowinski evidence.

113. The Sowinski evidence provided to the Manitowoc Sheriff's Office on November 6, 2005 was unknown to Mr. Avery and undiscoverable at the time of Mr. Avery's 2017 postconviction motion, 2013 postconviction motion, direct appeal, and 2007 trial. It could not have been known or discovered by Mr. Avery because Mr. Sowinski had not come forward to Mr. Avery's current postconviction counsel until April of 2021 and the State had suppressed the audio recording of his November 6, 2005 phone call to the Manitowoc Sheriff's Office reporting his observations on November 5, 2005.

114. Therefore, the Sowinski evidence was unknown at the time of Mr. Avery's conviction; was not discoverable by reasonable diligence, and was not under the control or knowledge of Mr. Avery at any time prior to Mr. Sowinski contacting Mr. Avery's current postconviction counsel in December of 2020.

115. 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. *See State v. Allen*, 2010 WI 89, ¶¶ 44, 81, 328 Wis. 2d 1, 21, 786 N.W.2d 124 (noting a defendant's unawareness of the legal basis of his claim may constitute a sufficient reason in satisfaction of § 974.06); *see also State ex rel. Kyles v. Pollard*, 2014 WI 38, ¶54, 354

Wis. 2d 626, 648, 847 N.W.2d 805 (the defendant's unawareness of the factual basis of his claim was "inextricably intertwined" with the legal basis of his claim).

116. Even if the court determines there is not a *Brady* violation, the Sowinski evidence qualifies as newly discovered evidence as described above. Mr. Avery has a sufficient reason for not having brought forth the newly discovered evidence (*see infra*, Argument II) because Mr. Avery did not know and could not have known about the Sowinski evidence until Mr. Sowinski came forward in December of 2020 after Mr. Avery's appeal was pending. See *Williams v. Taylor*, 529 U.S. 420, 442 (2000).

117. Therefore, this Court should find that Mr. Avery is not procedurally barred from raising his newly discovered evidence claim or his new *Brady* claim regarding the Sowinski evidence.

III. A SECOND *BRADY* VIOLATION RE HALBACH'S RAV-4

118. Kevin Rahmlow ("Mr. Rahmlow") came forth to Mr. Avery's current postconviction counsel with new information in July of 2017. Mr. Rahmlow provided an affidavit and supplemental affidavit to current postconviction counsel. Because Mr. Avery's second postconviction motion was filed in June of 2017, these affidavits were filed in Mr. Avery's motion to reconsider the circuit court's October 2017 ruling denying his second postconviction motion. (630:18; 634:2-7). **(App. 340-51).**

119. In Mr. Rahmlow's affidavits, Mr. Rahmlow described observing Ms. Halbach's RAV-4 parked at the turnaround at STH 147 and the East Twin River Bridge on November 3 and 4, 2005. Mr. Rahmlow describes, in his affidavit, reporting his observation to a Manitowoc Sheriff's deputy he encountered on November 4, 2005 at the Cenex station on STH 147 in Mishicot. No law enforcement report was ever generated by this Manitowoc Sheriff's deputy memorializing the conversation between Mr. Rahmlow and this deputy.

120. Mr. Rahmlow's observation of Ms. Halbach's RAV-4 on November 3 and 4, 2005 is material to trial defense counsel's theory that evidence was planted to frame Mr. Avery. If the RAV-4 was spotted at the turnaround on Highway 147 on November 3 and 4, 2005, then it must have been moved and planted on the Avery property before it was discovered on November 5, 2005. Clearly, this information supports trial defense counsel's theory that the RAV-4 was planted on the Avery salvage yard before it was discovered there on November 5, 2005. Mr. Rahmlow's observations, on November 3 and 4, 2005, of the Halbach vehicle at the turnabout off of STH 147 is corroborative of Mr. Sowinski's observation of the RAV-4 being pushed down Avery Road, which directly intersects STH 147, in the early morning hours of November 5, 2005. Both witnesses support trial defense counsel's theory that the RAV-4 was planted.

121. Prosecutor Kratz admitted in his closing that the RAV-4 "couldn't be driven into that property unless somebody knew that property . . . ." (715:54). **(App. 352).** The only other evidence presented by the State that the RAV-4 never left the Avery property after October 31, 2005, was Bobby's testimony that the RAV-4 was still present when he left the Avery property at 2:45 p.m. (697:44). **(App. 353).**

122. Trial defense counsel had no evidence from witnesses that the RAV-4 was planted and simply argued in the closing that there were "lots of ways to get in and. . . for someone to plant the vehicle." (715:182). **(App. 354).**

Mr. Avery is not procedurally barred from raising his Brady claim

123. In the Appellate Court's July 2021 Opinion, the Appellate Court noted that in Mr. Avery's motion for reconsideration, he raised the issue that "the State withheld evidence that Halbach's vehicle was seen on the street days after her disappearance." (Opinion, pg. 33, note 18). **(App. 153).** The Appellate Court declined ruling on the issue but advised the following:

> Neither we nor the circuit court have squarely considered whether these claims are procedurally barred under Escalona-Naranjo or whether Avery pled sufficient material facts entitling him to a hearing (although our analysis overlaps with the former inquiry). Such consideration would have to come on a separately filed WIS. STAT. § 974.06 motion, and we express no opinion as to whether such claims would be barred in the event such a motion is filed.

(*Id.*)

124. Clearly, current postconviction counsel could not have included Mr. Rahmlow's affidavits in its June 7, 2017 filing on behalf of Mr. Avery since Mr. Rahmlow had not yet come forward with evidence that establishes a *Brady* violation. (630:18–23). There is no way that Mr. Rahmlow could have been discovered by prior defense counsel or current postconviction counsel because no law enforcement reports were prepared about his conversation with the Manitowoc sheriff's deputy, nor did he appear in any other law enforcement reports in the Halbach murder investigation. He had never been a customer at the Avery Salvage Yard, and he had no connection to the family besides being acquainted with Mr. Tadych's brother.

125. Mr. Avery was unable to discover the *Brady* violation with reasonable diligence prior to the filing of his second postconviction motion in June of 2017 because Mr. Rahmlow did not come forward to Mr. Avery's counsel until after June of 2017. He came forward in July of 2017. It would be impossible for Mr. Avery to have raised his *Brady* claim without Mr. Rahmlow first coming forward to current post-conviction counsel.

126. Therefore, Mr. Avery has a sufficient reason for not raising this issue previously pursuant to *Escalona-Naranjo*.

IN THE ALTERNATIVE, MR. AVERY IS ENTITLED TO A NEW TRIAL IN THE INTEREST OF JUSTICE PURSUANT TO WIS. STAT. § 805.15

127. Alternatively, Mr. Avery is entitled to a new trial in the interest of justice. If this Court were to conclude that this new evidence warrants a new trial in the interest of justice, this

Court need not resolve whether the new evidence satisfies the test for granting a new trial based upon newly discovered evidence.

128. Wis. Stat. § 805.15(1) establishes that the standard for granting a new trial under circumstances such as these, is whether this new trial would advance the interest of justice: "A party may move to set aside a verdict and for a new trial because of errors in the trial, or because the verdict is contrary to law of the weight of evidence, or because of excessive or inadequate damages, or because of newly-discovered evidence, or in the interest of justice." (§ 805.15(1)) (emphasis added).

129. Courts may grant a new trial in the interest of justice whenever, either: (1) the real controversy was not fully tried, or (2) it is probable that justice was for any reason miscarried. *State v. Hicks*, 202 Wis. 2d 150, 159-60, 549 N.W.2d 435 (1996). In the first circumstance, when the real controversy has not been fully tried, the court may grant a new trial without considering whether the outcome would probably be different on retrial. *Id.* at 160.

130. The Wisconsin Supreme Court has established that new evidence can provide the basis for a new trial in the interest of justice. In *State v. Armstrong*, the court ordered a new trial in the interest of justice because new DNA tests established that biological evidence asserted by the State at trial as having come from Armstrong could not have come from him. 2005 WI 119, 283 Wis. 2d 639, 700 N.W.2d 98. Because "the jury was not given an opportunity to hear important testimony that bore on an important issue in the case," the court found that "the real controversy was not fully tried" and thus ordered a new trial. *Id.* at ¶ 181; *see also Hicks*, 202 Wis. 2d at 161, 440 (a new trial was necessary in the interest of justice because the jury did not hear important DNA evidence and heard evidence which was later shown to be inconsistent with the DNA evidence). Similarly, in *Garcia v. State*, the court ordered a new trial because all of the material evidence was not presented to the jury, and "the integrity of our system . . . should

afford a jury the opportunity to hear and evaluate the evidence . . . ." 73 Wis. 2d 651, 652, 245 N.W.2d 654, 654 (1976).

131. As argued above the new Sowinski and Rahmlow evidence is material, and needs to be presented to a jury. The evidence refutes the State's theory that there were no third party suspects and no evidence was planted to frame Mr. Avery. The jury never heard this evidence and heard evidence that has now been refuted by this new evidence.

AN EVIDENTIARY HEARING IS REQUIRED

132. "[T]he circuit court must hold a hearing when the defendant has made a legally sufficient postconviction motion, and has the discretion to grant or deny an evidentiary hearing even when the postconviction motion is legally insufficient." *State v. Allen*, 2004 WI 106, ¶12, 274 Wis. 2d 568, 579, 682 N.W.2d 433, 438.

133. The Wisconsin Supreme Court in *State v. Allen* determined that a motion contains sufficient material facts, for an evidentiary hearing, if it includes, "the name of the witness (who), the reason the witness is important (why, how), and facts that can be proven (what, where, when) . . . and would entitle a defendant to a hearing." *Id.* ¶ 24, 586, 442.

134. Mr. Avery has sufficiently pled the name of the witness (Mr. Sowinski) and the reason Mr. Sowinski is important (he provides evidence material and favorable to Mr. Avery by directly connecting Bobby to the Halbach murder as a third party suspect and connecting Bobby to planting evidence to frame Mr. Avery). All corroborating materials have been identified, attached and incorporated into this motion (affidavits, law enforcement reports, trial testimony). These corroborating materials demonstrate that Bobby is a third party *Denny* suspect because he had motive, opportunity, and is directly linked to Ms. Halbach's murder. Additionally, he is a *Denny* suspect who is directly linked to planting evidence to frame Mr. Avery by having access

to key evidence of the crime because of his possession of the Halbach vehicle. Additionally, a new *Brady* violation has been identified as described previously in this motion. Sec. II. ¶ 79-126.

135. Similarly, Mr. Avery has sufficiently plead the name of the witness (Mr. Rahmlow) and the reason Mr. Rahmlow is important (he provided evidence material and favorable to Mr. Avery that refutes the State's theory and impeaches Bobby that the Halbach vehicle never left the Avery property). Also, Mr. Rahmlow describes a new *Brady* violation. A law enforcement report was never made of Mr. Rahmlow's conversation with a Manitowoc Sheriff's deputy on November 4, 2005 about Rahmlow spotting the RAV-4 in a location away from the Avery property. If trial defense counsel had had this information they would have been able to refute the State's theory and impeach Bobby.

136. The Sowinski and Rahmlow evidence would have been material and favorable to trial defense counsel because it would have undermined confidence in the verdict. *Kyles v. Whitley*, 514 U.S. 419, 434 (1995); *Youngblood v. West Virginia,* 547 U.S. 867, 869–70 (2006). Because of the suppression of this evidence, Mr. Avery did not receive a fair trial. Mr. Avery had a constitutionally guaranteed right to present a complete defense to the charges against him. *Holmes v. South Carolina,* 547 U.S. 319, 324 (2006); *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).

137. If this Court is disinclined to believe the Sowinski or Rahmlow new evidence, the Court must hold a hearing before making any credibility determinations. *See State v. Allen*, 2004 WI 106, at ¶12, 274 Wis.2d 568, 682 N.W.2d 433 (citing *State v. Leitner*, 2001 WI App 172, ¶ 34, 247 Wis. 2d 195, 633 N.W.2d 207 (holding that when credibility is an issue, it is best resolved by live testimony)).

CONCLUSION

Mr. Avery respectfully requests that this Court grant him one of the following alternate remedies: (1) order the State to file a response to the third Motion for Postconviction Relief, and/or grant an evidentiary hearing; (2) grant this Motion for Postconviction Relief by ordering a new trial; (3) grant the requested relief and grant any and all relief this Court deems appropriate.

Dated this 16th day of August, 2022.

Respectfully Submitted,

KATHLEEN T. ZELLNER
Admitted Pro Hac Vice
IL Bar No. 6184574
Kathleen T. Zellner & Associates, P.C.
4580 Weaver Parkway, Suite 204
Warrenville, IL 60555
Telephone: (630) 955-1212
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STEVEN G. RICHARDS
WI Bar No. 1037545
(Local Counsel)
Everson & Richards, LLP
127 Main Street
Casco, Wisconsin 54205
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Email: sgrlaw@yahoo.com
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I certify that on August 16th, 2022, a true and correct copy of Defendant Steven Avery's Third Motion for Post-Conviction Relief Pursuant to Wis. Stat. § 974.06 and § 805.15, 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 8th Street
3rd Floor, Room 325
Manitowoc, WI 54220
jacalyn.labre@da.wi.gov

Ms. Lisa E.F. Kumfer
Ms. Tiffany Winter
Assistant Attorney General
P.O. Box 7857
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Honorable Judge Angela W. Sutkiewicz
Circuit Court Judge
Sheboygan County Courthouse
615 North 6th Street
Sheboygan, WI 53081

Lynn Zigmunt
Clerk of the Circuit Court
Manitowoc County Courthouse
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EXHIBITS
GROUP A1 & A2

Wisconsin DOJ Division of Criminal Investigation

ACISS Investigative Report

Report Number: **05-1776/284** Report Date: **06/13/2006**

Primary Information	
Report Number:	**05-1776/284**
Report Date:	**06/13/2006**
Type Of Report:	**Investigative**
Description:	**TERESA MARIE HALBACH: Interview with Brad A. Dassey**
Dissemination Code:	**Agency**
Reporting LEO:	**Fassbender, Thomas J (Appleton Special Assignments / Wisconsin DOJ Division of Criminal Investigation)**
Approval Status:	**Approved**
Approved Date:	**06/15/2006**
Approved By:	**Kelly, Carolyn S (Madison Arson / Wisconsin DOJ Division of Criminal Investigation)**

Related Subjects

Name	Type	Sex	Race	DOB	Relationship
Dassey, Brad A	Person	Male	Unknown	11/1/1983	Interviewed
Avery, Steven Allen Sr	Person	Male	White	7/9/1962	Mentioned
Dassey, Brendan R	Person	Male	White	10/19/1989	Mentioned
Dassey, Peter	Person	Male	Unknown	—	Mentioned
Halbach, Teresa Marie	Person	Female	White	3/22/1980	Mentioned
Janda, Barbara Ellen	Person	Female	White	11/7/1964	Mentioned

Record Status Information	
Record Origination Operator:	**Price, Denise (Criminal Investigation / Wisconsin DOJ Division of Criminal Investigation)**
Record Origination Date:	**06/13/2006 13:40**
Last Update Operator:	**Kelly, Carolyn S (Madison Arson / Wisconsin DOJ Division of Criminal Investigation)**
Last Update Date:	**06/15/2006 10:06**

Reporting LEO	Date	Supervisor	Date
Fassbender, Thomas J (Appleton Special Assignments / Wisconsin DOJ Division of Criminal Investigation)		**Kelly, Carolyn S (Madison Arson / Wisconsin DOJ Division of Criminal Investigation)**	**6/15/2006**

Narrative begins on the following page.

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Wisconsin Division of Criminal Investigation Case Report
Case/Report Number: 05-1776/284

On Tuesday, June 6, 2006, at 2:04 p.m., S/A Thomas J. Fassbender and Investigator Mark Wiegert, of the Calumet County Sheriff's Department interviewed Brad A. Dassey, DOB 11/01/1983. The investigators made contact with Dassey at his residence, 1425 N 9th, #8, Manitowoc, WI. The investigators identified themselves to Dassey and Dassey agreed to answer questions and he accompanied the investigators to Investigator Wiegert's vehicle where the interview took place. Dassey advised he is half brothers with Brendan Dassey and stated that his father, Pete Dassey, is their common father.

Dassey confirmed that he had contacted the District Attorney regarding Barbara Janda having contacted him about re-formatting her computer hard drive. Dassey advised that Janda had contacted him and asked him if everything is gone from a hard drive when it is re-formatted. Dassey advised that Janda actually had someone else re-format it, but Dassey advised he did not know who did it. Dassey advised the other person re-formatted her computer hard drive for something like $15 and she didn't think he know what he was doing.

Dassey advised according to Janda, investigators came out and took her computer about a week after she had it re-formatted. Dassey advised that Janda told him about the investigators taking the computer approximately one week after they had taken the computer. Dassey advised that Janda did not tell him what was on her computer.

Dassey told the investigators that he wrote a letter to the Halbach's. Dassey advised he told Brendan about the letter he wrote just this past Sunday. Dassey advised that Janda also saw the letter. Dassey provided a copy of the letter he wrote. In the letter, Dassey essentially expressed his sympathy to them for the loss of Teresa and wrote a prayer for them. In the letter, he wrote that he is not like Brendan, Janda or Steven Avery.

Prior to concluding the interview, S/A Fassbender provided Dassey with his business card. The interview was concluded at 2:18 p.m.

At approximately 2:34 p.m., S/A Fassbender received a telephone call from Dassey. Dassey advised that he had spoken with Janda to try and find out who re-formatted her computer hard drive. Dassey advised she told him that Michael J. Kornely gave her phone numbers of individuals to contact and that Cornelli knows who the individual was. Dassey advised that after concluding his call with Janda, Janda called back and asked why he wanted to know.

At approximately 3:01 p.m., Dassey again telephoned S/A Fassbender. Dassey advised that he had contacted Cornelli, who said that he referred Janda to Milwaukee PC.

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Wisconsin Division of Criminal Investigation Case Report
Case/Report Number: 05-1776/284

Electronically attached to this supplemental report is a copy of Dassey's letter to the Halbach's and a copy will be submitted to DCIR.

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05-1776/284

Dear Halbach family,

Dear Lord thou art an Heaven... Extend your hand of love to this very family. Comforting your hand of grace, your hand of love, your hand of deliverance and peace. Please guide me into this prayer as I speak it to the Halbach's Lord because I am writing it through YOU all mighty God! You are in control of the Heavens, you are in control of our lives and you are also in control of all that is evil in this world. Lord God just let the Halbach's know that you are there for them. You WON'T let them down. You WILL bring them justice! You WILL bring them PEACE o Lord. You WILL protect them from all that is evil Lord. Place your hand upon their hearts Lord and sooth them, sooth every nook and cranny in their heart, mind, body and soul Lord. I pray that you give them the mind, the peace and love they deserve Lord. I pray that you keep their family together. I pray that you give them HOPE for the future Lord that they will continue to move on and not forget about Teresa but remember the awesome memories they've shared together as a family. I pray that you watch over them and I pray that you keep them calm. Love this family like you've never loved before all mighty God. In Jesus name I pray, AMEN!

I was very afraid to contact you, Halbach family, due to the fact that I am indeed a Dassey through marriage. My real mom and my real dad were never married, so all my Dassey brothers are half brothers. Barb Janda is my step mom. Peter Dassey is my real dad.

believe, in spirits or whatever but I felt something very [illegible] hard for me to be out there. I'm sure you could imagine.

I just wanted to leave off with my sympathy I have for you and I wanted you to [illegible] pray for you all as well as my church family in Two Rivers. If you ever have [illegible] contact me.

With Love,
Brad Dassey
djdassey@sbcglobal.net

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
Occurence From:	04/21/2006 00:00
Occurence 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
Fablan, 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 Status Information	
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

Reporting LEO	Date	Supervisor	Date
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.

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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 Count 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 gottta 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 mofia~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, "idk," (for

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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 Halbach 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 Velie, as well as the hardcopy pages of instant message conversations were maintained in S/A Fassbender's possession.

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EXHIBIT B

STATE OF WISCONSIN : CIRCUIT COURT: MANITOWOC COUNTY

STATE OF WISCONSIN,	)	
	)	
Plaintiff,	)	
	)	Case No. 05-CF-381
v.	)	
	)	Honorable Judge Angela Sutkiewicz,
STEVEN A. AVERY,	)	Judge Presiding
	)	
Defendant.	)	

AFFIDAVIT OF STEVEN KIRBY

Now comes your affiant, Steven Kirby, and under oath hereby states as follows:

1. Your affiant is of legal majority and can truthfully and competently testify to the matters contained herein based upon my personal knowledge. The factual statements herein are true and correct to the best of my knowledge, information, and belief. Your affiant is of sound mind and is not taking any medication nor has your affiant ingested any alcohol that would impair your affiant's memory of the facts stated in this affidavit.
2. Your affiant is the Chairman of Edward R. Kirby & Associates, Inc., a professional investigations firm located in Elmhurst, Illinois. Your affiant is a private investigator, licensed in Illinois and Wisconsin, with over forty years' experience. I have worked with Kathleen T. Zellner & Associates, P.C., on numerous cases in the past.
3. On February 16, 2022, your affiant interviewed Michael Osmunson outside of his residence at 955 Main Street, Mishicot. Jim Kirby was also present and witnessed the interview and Osmunson's responses.
4. Your affiant asked him if he ever helped Bobby Dassey push a car down the road leading to the Avery Salvage yard. He replied, "I don't recall." Your affiant then asked him if by saying he didn't recall, if in fact he could have helped Dassey push a car down that road in

EXHIBIT
B

November of 2005 but just forgot if he did. He replied, "I don't remember." At the conclusion of the interview, your affiant told him that your affiant wanted to be sure that he was not denying ever pushing a car with Dassey towards the Avery property but that he just couldn't recall if he did or did not. For the third time replied, "I don't recall."

5. In regard to the phone calls on October 31, 2005 to and from Bobby Dassey's phone number, he said he didn't recall making or receiving calls from Dassey that morning. When he was shown the print out of the message units, he said that 920-973-0514 was his number in 2005 and recognized 920-973-1742 as Bobby Dassey's number. He stated that the early morning call could have been about hunting but he didn't know for sure. When asked if he went hunting with Bobby that day he said that he didn't as he took his brother trick or treating. When asked about the multiple calls to and from Bobby Dassey between 3:56 P.M. and 6:02 P.M. on 10/31/05 he said that he couldn't explain them other than that "Bobby often doesn't answer his own phone."

FURTHER AFFIANT SAYETH NAUGHT

Steven Kirby

Subscribed and sworn before me
this 11 day of August, 2022.

Notary Public

OFFICIAL SEAL
SCOTT T PANEK
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES: 5/21/2025

EXHIBIT C

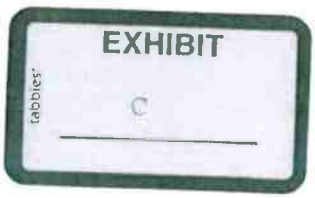
STATE OF WISCONSIN: CIRCUIT COURT: MANITOWOC COUNTY

STATE OF WISCONSIN, Plaintiff, v. STEVEN A. AVERY, Defendant.	)	Case No. 05-CF-381 Honorable Judge Angela Sutkiewicz, Judge Presiding

AFFIDAVIT OF JAMES R. KIRBY

Now comes your affiant, James R. Kirby, and under oath hereby states as follows:

1. Your affiant is of legal majority and can truthfully and competently testify to the matters contained herein based upon my personal knowledge. The factual statements herein are true and correct to the best of my knowledge, information, and belief. Your affiant is of sound mind nor has your affiant ingested any alcohol that would impair your affiant's memory of the facts stated in this affidavit.
2. Your affiant is the president of Edward R. Kirby & Associates, Inc., a professional investigations firm located in Elmhurst, Illinois. Your affiant is a licensed private investigator and have been licensed since 1988. Your affiant is currently licensed in Illinois and Wisconsin.
3. On March 20, 2018, your affiant submitted a Public Records Request to the Manitowoc County Sheriff's Office which read: *seeking any non-911 recordings in your possession of incoming phone calls to the Manitowoc County Joint Dispatch Center from/on November 3, 2005 and November 5, 2005.*



4. Your affiant subsequently received a package in the mail from the Manitowoc County Sheriff's Office, which included two CDs and a letter dated April 12, 2018 addressed to me signed by Larry Ledvina, Deputy Inspector, Manitowoc County Sheriff's Office stating:

> *"We have received and reviewed your request for any non (911) recordings in your possession of incoming calls to the Manitowoc County Joint Dispatch Center from/on November 3, 2005 and November 5, 2005. The dates in question are outside of our recording system storage. But in the timeframe you requested recording for, copies were made of this timeframe due to a different records request and we therefore have some of these recordings. The recordings we have are just recordings. They are date range of recordings. They are not broken down by date and time. I have two CDs enclosed that are responsive to your request:*
>
> *Phone number 683-4201 dated 2005 1103-1105*
> *Phone number 683-4202 dated 2005 1103-1112*

5. These CDs were delivered to the office of Kathleen T. Zellner subsequent to your affiant receiving them.

6. On March 15, 2022, Investigator Katherine McGovern of your affiant's office submitted three public records requested to the Manitowoc County Sheriff's Office. The first request sought *copies of any non 911 recordings in your possession of incoming telephone calls to the Manitowoc County Sheriff's Joint Dispatch Center between the dates of November 3, 2005 at 12:01 AM through November 9, 2005 at 11:59 PM.* The second request sought *copies of incoming and outgoing telephone call logs of the recorded Manitowoc County Sheriff's Joint Dispatch calls between the dates of November 3, 2005 12:01 AM through November 9, 2005 11:59 PM that relate to the Teresa Halbach investigation. Information should include date, time and telephone numbers involved in the calls.* The third request sought *copies of audio recordings of incoming and outgoing calls and/or radio dispatches between the dates of November 3, 2005 12:01 PM through November 9, 2005 11:59 PM that relate to the Teresa Halbach investigation.*

7. On April 18, 2022, Katherine McGovern from your affiant's office received an email from Amanda Mathiebe of the Manitowoc County Sheriff's Office regarding these requests. In this email, Amanda Mathiebe replied that she was updating Ms. McGovern regarding her requests of copies of incoming/outgoing telephone call logs, she responded that these records do not exist.
8. In reference to the request for copies of audio recordings of incoming and outgoing phone calls, she attached an invoice in the amount of $360.00 for these records. She requested your affiant's office remit payment so that she may begin working on copying these records. Your affiant's office subsequently paid the invoice for the requested amount.
9. On May 3, 2022 your affiant's office received thirty-five CDs marked as containing audio recordings from the Manitowoc County Sheriff's Office. On May 3, 2022, your affiant delivered the 35 CDs to the office of Kathleen T. Zellner.
10. A recording of a phone call from November 6, 2005 at 10:28 p.m., which was contained within one of the 35 CDs produced from your affiant's second Public Records Request, was discovered by your affiant and the office of Kathleen T. Zellner. Your affiant listened to this call.
11. Your affiant listened to the two CDs produced to your affiant after your affiant's first Public Records Request to the Manitowoc County Sheriff's Office in March of 2018.
12. The recording of the November 6, 2005 phone call in which Mr. Sowinski's voice was identified was not in the initial discs provided to your affiant following your affiant's March 20, 2018 Public Records Request.

FURTHER AFFIANT SAYETH NAUGHT

James R. Kirby

Subscribed and sworn before me
this 9 day of August, 2022.

Notary Public

OFFICIAL SEAL
SCOTT T PANEK
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES: 5/21/2025

EXHIBIT D

EXHIBIT

D

EXHIBIT E

STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY

STATE OF WISCONSIN, Plaintiff, v. STEVEN A. AVERY, Defendant.	)	Case No. 05-CF-381 Honorable Judge Angela Sutkiewicz, Judge Presiding

AFFIDAVIT OF DEVON NOVAK

Now comes your affiant, Devon Novak, and under oath hereby states as follows:

1. I am of legal majority and can truthfully and competently testify to the matters contained herein based upon my personal knowledge. The factual statements herein are true and correct to the best of my knowledge, information, and belief. I am of sound mind and I am not taking any medication nor have I ingested any alcohol that would impair my memory of the facts stated in this affidavit.
2. I have resided in Manitowoc, Wisconsin for over 17 years.
3. In 2005, I was in a relationship with Thomas Sowinski and residing with Thomas Sowinski and his son at 4221 Highway R, Manitowoc, Wisconsin.
4. Around the time that it became known that Teresa Halbach was missing, Thomas Sowinski provided me with information of an unusual nature relating to the case. One morning, after his paper route delivery, during the week that Ms. Halbach disappeared, Mr. Sowinski told me the following event had occurred: He had been delivering papers, and he saw two men pushing a car down a road. The men gave him dirty looks. Later, while watching the news, Mr. Sowinski saw Ms. Halbach's car and realized it was the same car that the men were pushing down a road.



5. Thomas Sowinski reported what he told me about the incident to the Manitowoc County Sheriff's Department. I know that he called them because either I was there when he reported it or he reported making the call to me immediately after making the call.
6. On August 6 2022, I spoke to Steven Kirby, an investigator on behalf of Steven Avery. Mr. Kirby asked me to listen to a voicemail recording of a call between a woman named Carla from Manitowoc County Sheriff's Department and a male calling in to speak to someone about the Teresa Halbach case. Mr. Kirby asked me if I recognized the voice of the male on the phone in the recorded call, and I recognized that the male in the call was Thomas Sowinski. (Attached and incorporated herein as Group Exhibit "A" is the phone call and a transcript of the phone call).
7. Nothing has been promised or given to me in exchange for this affidavit.

FURTHER AFFIANT SAYETH NAUGHT

Devon Novak

State of Wisconsin
County of MANITOWOC

Subscribed and sworn before me
this 6th day of AUGUST, 2022.

BERNARD R STANGEL
Notary Public
State of Wisconsin

Notary Public

My Commission Expires:
JUNE 28, 2026

EXHIBIT A

Transcript of Phone Call

MCSD Manitowoc County Sheriff's Department. This is Carla. Can I help you?

Male Uh...I...I...I don't know if I...if it's good information...bad information. Who do I talk to about this... the girl who is missing from Hillbert.

MCSD I can have you speak with my shift commander. Can you hold on a moment?

Male Thank you

MCSD Sure

MCSD (Unintelligible)...I'm going to transfer you to the shift commander. You'll be talking with Sgt. (unintelligible). Okay?

Male Thank you.

MCSD Okay.

(Call being transferred. Ringing.)

Sgt. (Unintelligible)

MCSD Scott, when I hang up it's a man on the phone who thinks he has some maybe more leads. He wants to speak with somebody on the case.

Sgt. Alright.

(End of call)

EXHIBIT F

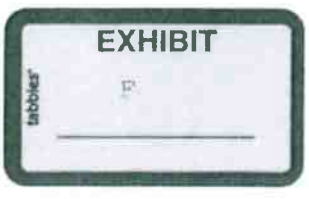
STATE OF WISCONSIN: CIRCUIT COURT : MANITOWOC COUNTY

STATE OF WISCONSIN, Plaintiff, v. STEVEN A. AVERY, Defendant.	Case No. 05-CF-381 Honorable Judge Angela Sutkiewicz, Judge Presiding

AFFIDAVIT OF THOMAS SOWINSKI

Now comes your affiant, Thomas Sowinski, and under oath hereby states as follows:

1. I am of legal majority and can truthfully and competently testify to the matters contained herein based upon my personal knowledge. The factual statements herein are true and correct to the best of my knowledge, information, and belief. I am of sound mind and I am not taking any medication nor have I ingested any alcohol that would impair my memory of the facts stated in this affidavit.
2. I resided in Manitowoc, Wisconsin for over 20 years.
3. I mistakenly stated in ¶ 7 of my prior affidavit filed with the appellate court that I contacted "Avery's trial attorneys to inform them of what I saw." My prior affidavit is attached and incorporated herein as "**Exhibit A**."
4. After reviewing materials, my recollection was refreshed that I did not actually contact Mr. Avery's trial defense counsel, Mr. Buting and Mr. Strang. I realized after looking though my emails that rather than contacting Mr. Avery's trial attorneys, I had contacted the Innocence Project in New York and I never heard back. My email to Innocence Project is attached herein as "**Exhibit B**."



5. I met with Investigator Steven Kirby for Mr. Avery's postconviction counsel on August 6, 2022. He played a phone call recording to me (Attached and incorporated herein as **"Exhibit C"** is the transcript and recording). I recognize my voice on the phone call made to the Manitowoc Sheriff's Office, which I described in my prior affidavit (Ex. A).
6. After listening to the first part of my call to the MSO, I refreshed my recollection that a woman answered the phone, and that she transferred me to a male officer. I then provided the information stated in my prior affidavit. I mistakenly recalled in my prior affidavit (¶ 6) that I had only spoken to a female officer, but after my recollection was refreshed by listening to a recording of the first part of my call, I realized that I also spoke to a male officer.
7. Nothing has been promised or given to me in exchange for this affidavit.

FURTHER AFFIANT SAYETH NAUGHT

Thomas Sowinski

State of Wisconsin
County of Manitowoc

Subscribed and sworn before me
this 6 day of August, 2022.

Notary Public

BERNARD R STANGEL
Notary Public
State of Wisconsin

My Commission Expires:
June 28, 2026

EXHIBIT A

STATE OF WISCONSIN,	)	
	)	
Plaintiff,	)	
	)	Case No. 05-CF-381
v.	)	
	)	Honorable Judge Angela Sutkiewicz,
STEVEN A. AVERY,	)	Judge Presiding
	)	
Defendant.	)	

1. I am of legal majority and can truthfully and competently testify to the matters contained herein based upon my personal knowledge. The factual statements herein are true and correct to the best of my knowledge, information, and belief. I am of sound mind and I am not taking any medication nor have I ingested any alcohol that would impair my memory of the facts stated in this affidavit.
2. I resided in Manitowoc, Wisconsin for over 20 years.
3. In 2005, I was employed as a motor route driver at Gannett Newspapers, Inc. and delivered papers in and around the Avery Salvage Yard. While delivering papers, I drove my personal car, which was a tannish-gold 4-door sedan. I cannot recall the make and model of the car at this time.
4. On Saturday, November 5, 2005, I was delivering papers on the Avery Salvage Yard in the early morning hours before sunrise. I drove down Highway 147 and turned left onto Avery Road. Soon after I turned onto Avery Road, I witnessed an individual who I later realized was Bobby Dassey and another unidentified older male pushing a dark blue RAV-4 down Avery Road on the right side towards the junkyard. Bobby Dassey was

shirtless, even though it was early November. The second man appeared to be in his 50's or early 60's, had a long grey beard, was wearing a worn puffy jacket, had a larger frame, and was around 6 feet in height. The RAV-4 did not have its lights on. Attached and incorporated herein as Exhibit A are photographs marked where I saw the RAV-4.

5. I drove down Avery Road towards the mailboxes, left the Herald Times in the mailbox, and turned back around. I felt very afraid as I approached the two individuals because Bobby Dassey attempted to step in front of my car, blocking my exit. I was within 5 feet of Bobby Dassey and my headlights were on the entire time. The older man ducked down behind the open passenger door. I swerved to the right and drove in the shallow ditch to avoid hitting Bobby Dassey. I called out, "Paperboy. Gotta go" because I was afraid for my safety. Bobby Dassey looked me in the eye, and I could tell with the look in his eyes that he was not happy to see me there. I knew that Bobby Dassey and the older individual were doing something creepy.
6. After I learned that Teresa Halbach's car was found on November 5, 2005, I contacted the Manitowoc Sheriff's Office and spoke to a female officer. I reported everything I have stated in this affidavit to the officer. The officer said, "We already know who did it." I provided my phone number and they said they would contact me soon. I never heard back from the police.
7. After watching Season 1 of Making a Murderer, I contacted Avery's trial attorneys to inform them of what I saw. I never heard back.
8. Nothing has been promised or given to me in exchange for this affidavit.

FURTHER AFFIANT SAYETH NAUGHT

Thomas Sowinski

State of Wisconsin
County of MANITOWOC

Subscribed and sworn before me
this 10 day of April, 2021.

Notary Public

My Commission Expires: 7/29/2022

JAMES R KIRBY
Notary Public
State of Wisconsin



Avery's Auto Salvage
Salvage yard in Manitowoc County, Wisconsin

EXHIBIT
number
A

EXHIBIT B

Gmail Kathleen Zellner <attorneys@zellnerlawoffices.com>

FW: Avery Sowinski email

Jim Kirby <jkirby@kirbyinvestigations.com> Tue, Apr 13, 2021 at 3:18 PM
To: Kathleen Zellner <attorneys@zellnerlawoffices.com>

From: Thomas Sowinski <tquest87@yahoo.com>
Sent: Tuesday, April 13, 2021 3:17 PM
To: Jim Kirby <jkirby@kirbyinvestigations.com>
Subject: Fw: Avery

Sent from Yahoo Mail for iPhone

Begin forwarded message:

On Thursday, January 7, 2016, 1:43 PM, tquest87 <tquest87@yahoo.com> wrote:

Hello. My name is Thomas Sowinski and I delivered newspapers to the Avery residence everyday for years. I delivered papers at the time of the halbach situation. Somewhere between Oct 31st and November 5th 2005, not sure which day, I turned down avery road to delivery their paper when I almost ran into 2 people pushing a dark colored small suv down the road with absolutely no lights on. It was dark ad I delivered the papers as soon as possible each day so I could get home in time to get my son ready for school and drop him off. As I passed them I realized I had stumbled onto something that seemed out of place. I spooked both of them tremendously. I drove down the dead end and put the paper in the tube and turned around to come back down the road. I knew I was in a shady situation so I approached them with a good amount of speed to get around them fast. As I approached the guy pushing from the driver side stopped and tried to stop ke in the middle of the road. I went half in the ditch and just waved to calm the men into thinking I was oblivious to what was going on. I didn't she who the man was on the passenger side but the young man, maybe 18 or so that tried to stop me was not brendan dassey. His build was thin and fit and about 5'9" tall. Days later after seeing the footage on t.v. of the rav 4 being found on the property it clicked that it wad probaby the suv I had seen that night. I called police and notified them. They didn't Semmes interested at all and said thanks for the info. Never asked me to fill out a report or even ask for my name or phone number. At the time I just figured they had enough evidence and we're not concerned with my information. After seeing the documentary on netflix I decided that someone other than manitowoc county officials needs to here this. They were pushing in the direction towards the house from the highway.

I feel obligated to share this now that I know some of the circumstances involving the way manitowoc handled the case

Sent from my T-Mobile 4G LTE Device

EXHIBIT C

Transcript of Phone Call

MCSD Manitowoc County Sheriff's Department. This is Carla. Can I help you?

Male Uh...I...I...I don't know if I...if it's good information...bad information. Who do I talk to about this... the girl who is missing from Hillbert.

MCSD I can have you speak with my shift commander. Can you hold on a moment?

Male Thank you

MCSD Sure

MCSD (Unintelligible)...I'm going to transfer you to the shift commander. You'll be talking with Sgt. (unintelligible). Okay?

Male Thank you.

MCSD Okay.

(Call being transferred. Ringing.)

Sgt. (Unintelligible)

MCSD Scott, when I hang up it's a man on the phone who thinks he has some maybe more leads. He wants to speak with somebody on the case.

Sgt. Alright.

(End of call)

EXHIBITS
GROUP G

STATE OF WISCONSIN CIRCUIT COURT MANITOWOC COUNTY

STATE OF WISCONSIN,

Plaintiff,

v. Case No. 2005- CF-381

STEVEN A. AVERY,

Defendant.

AFFIDAVIT OF DEAN A. STRANG

I, Dean A. Strang, first duly sworn on oath, hereby state as follows:

1. I was counsel with Jerome Buting for Steven Avery during much of the pretrial phase, at trial, and at sentencing in this case, from spring 2006 to June 2007.

2. I have reviewed Mr. Buting's affidavit of August 11, 2022. My recollection and understanding comports with his as to everything that he addresses in that affidavit. Within the scope of my personal knowledge, I agree with and confirm his affidavit.

Dated this 12th day of August, 2022.

Dean A. Strang



Subscribed and sworn before me, the undersigned
Notary Public of the State of Wisconsin,
this 12 day of August, 2022.



R. Richard Resch

Notary Public
State of Wisconsin

My commission ~~expires~~: is permanent

STATE OF WISCONSIN CIRCUIT COURT MANITOWOC COUNTY

STATE OF WISCONSIN,

Plaintiff,

v. Case No. 2005- CF-381

STEVEN A. AVERY,

Defendant.

AFFIDAVIT OF DEAN A. STRANG

I, Dean A. Strang, first duly sworn on oath, hereby state as follows:

1. I was counsel with Jerome Buting for Steven Avery during much of the pretrial phase, at trial, and at sentencing in this case, from spring 2006 to June 2007.

2. I have reviewed Mr. Buting's affidavit of August 11, 2022. My recollection and understanding comports with his as to everything that he addresses in that affidavit. Within the scope of my personal knowledge, I agree with and confirm his affidavit.

Dated this 12th day of August, 2022.

Dean A. Strang

Subscribed and sworn before me, the undersigned
Notary Public of the State of Wisconsin,
this 12 day of August, 2022.



R. Richard Resch

Notary Public
State of Wisconsin

My commission ~~expires~~: is permanent

STATE OF WISCONSIN CIRCUIT COURT MANITOWOC COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 2005 CF 381

STEVEN A. AVERY,

Defendant.

AFFIDAVIT OF JEROME F. BUTING

STATE OF WISCONSIN)
)SS
COUNTY OF WAUKESHA)

I, Jerome F. Buting, first duly sworn on oath, hereby state as follows:

1. I was counsel with Dean Strang for Steven Avery during much of the pretrial phase, at trial, and at sentencing in this case, from spring 2006 to June 2007. In general and as relevant here, I was familiar with all information disclosed by law enforcement and the prosecution to me, Mr. Strang, and any other member of what I call here "Mr. Avery's defense team" during the time that Mr. Strang and I represented Mr. Avery.

2. Mr. Strang and I repeatedly requested notice of all exculpatory or potentially exculpatory information and otherwise discoverable information and material from the prosecutors and the Manitowoc County Sheriff's Department. This included reports of any tips from citizens and

"audio tape copies of dispatch or all other communications relevant to law enforcement operations involved in the search for and investigation of Teresa Halbach's disappearance, for the period of November 3, 2005 through November 12, 2005." An example is my July 24, 2006, letter, attached as Exhibit A to this affidavit.

3. I received a CD-ROM that purported to contain all Manitowoc County Sheriff's Department dispatch calls related to the Halbach investigation covering the period November 3, 2005, through November 12, 2005. That CD-ROM was at some point turned over to Mr. Avery's successor counsel. I have recently reviewed the handwriting on a copy of that CD-ROM which I recognize as my handwriting. I am informed, and believe in part based on my own recollection, that this copy of the CD-ROM came from my files on Mr. Avery's case. I recognize my handwritten note on the CD-ROM which refers to one call on that recording, an untimed call to a dispatcher from then-Sgt. Andrew Colborn requesting information on a license plate of Teresa Halbach. That CD-ROM copy and my handwriting on it confirm my recollection that I listened to all of the calls recorded on that CD-ROM.

4. I have recently re-listened to all of the recordings on that CD-ROM that I received during my representation of Mr. Avery and I compared it to another CD-ROM that Mr. Avery's current counsel provided to me. Upon

information and belief, she received this CD-ROM as a response to a recent open records request. On the newly disclosed CD-ROM there is an additional call from a citizen tipster that was not included in the audio recordings that I received during Mr. Avery's representation. I have been informed that the caller on this recording is an individual later identified as Thomas Sowinski. The Avery defense team was not given the audio of his call, his identity as a potential witness or other information which we could have investigated and used at trial.

5. The newly received CD-ROM that current counsel for Mr. Avery has shared with us, which includes a call purported to be from Mr. Sowinski, indicates that the caller was transferred to an investigator, Sgt. Scott Senglaub. By inference, Sgt. Senglaub spoke to the caller as the recording shows that the dispatcher connected the caller to him. Neither I nor Mr. Avery's defense team ever was given a recording, a report, notes, or any other notice of a conversation between Thomas Sowinski and Sgt. Scott Senglaub of the Manitowoc County Sheriff's Department.

6. At the time we were requesting discovery and disclosure of exculpatory information, Mr. Strang and I were using a private investigator, Conrad O. (Pete) Baetz. We would have had him follow up on the call from Mr. Sowinski, had we known about it.

7. Had Mr. Strang and I known before Mr. Avery's trial about any information that a person had reported two men pushing an SUV on the Avery property in the darkness before the reported discovery of Ms. Halbach's Toyota RAV-4 SUV on the Avery Salvage Yard property, we would have pursued that information diligently, with Mr. Baetz and otherwise.

8. Had Mr. Strang and I received or known before Mr. Avery's trial about Thomas Sowinski's telephone call with the dispatcher, which shows that she transferred that call to Sgt. Scott Senglaub, we would have made a specific request for further information about the substance of that call from Sgt. Senglaub.

9. Although the new CD-ROM reveals that Thomas Sowinski indeed did call the dispatcher during the timeframe of the CD-ROM given to Mr. Avery's trial counsel, Mr. Sowinski's call was not included on the pretrial discovery CD-ROM.

10. As to the call from Andrew Colborn described in paragraph 3 above, neither the prosecution, the Manitowoc County Sheriff's Department, nor any agent or agency of the State of Wisconsin ever disclosed to me or the defense team the date and time at which that call was made. Like many other recorded calls that were disclosed to us, the audio record of that call from Andrew Colborn had no timestamp or other documentation of the time of the call

when it was disclosed to me and the defense team for Mr. Avery. We thus had no way to challenge or disprove any claim that Mr. Colborn might make about the specific timing of that call.

Dated this 12th day of August, 2022.

Jerome F. Buting

Subscribed and sworn to before me, the undersigned
Notary Public of the State of Wisconsin,
this 12 day of August, 2022.

Notary Public
State of Wisconsin

My commission ~~expires:~~ is permanent

Law Offices
BUTING & WILLIAMS, S.C.

Jerome F. Buting*
Kathleen B. Stilling

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Telephone: (262) 821-0999
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*Also admitted to practice in the District of Columbia

Dudley A. Williams

6165 N. Green Bay Avenue
Glendale, Wisconsin 53209-3813
Telephone: (414) 247-8600
Facsimile: (414) 247-8655

July 24, 2006

Via Facsimile Transmission Only

Special Prosecutor Kenneth Kratz
Calumet County District Attorney's Office
206 Court Street
Chilton, Wisconsin 53014-1127

FILE: 05-2467
DATE: 8/7/06
COPIES TO: SLC MBV JRE RLL JRW KBO MTR GSZ RNS SAH WLN

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

Dear Mr. Kratz:

I am writing to follow-up on some discovery issues in this matter. There are a number of items we do not have yet, and as I have gone through the discovery already provided, I have tried to make note of them. Most are referred to in discovery, but some are independent of that. By copy of this letter, I am also notifying Inv. Wiegert for his convenience as I assume he will assist you in responding to your request, as well as Norm Gahn since some of my requests concern Crime Lab DNA testing.

Please locate and produce the following:

(1) Audio tape copies of dispatch or all other communications relevant to law enforcement operations involved in the search for and investigation of Theresa Halbach's disappearance, for the period of November 3, 2005 through November 12, 2005. This would include anything recorded on any type of media by law enforcement or public safety agent. This should include, but is not limited to, radio communication, both voice and data, routinely recorded by any agency, on any and all frequencies available to law enforcement or public safety units assigned to the search and/or investigation. It should also include data or message transmissions made by and between any law enforcement or public safety agency pertinent to the search and investigation activities, via computer or teletype, and communication between any law enforcement or public safety agency and civilian assets, such as aircraft or ground vehicles involved in the search and investigation activities.

EXHIBIT
tabbies
A

MOS-2467

I made a similar, though perhaps not as detailed, request about one month ago and I believe Mark Wiegert spoke to Dean and he is working on this already.

(2) A listing of all Calumet and Manitowoc County Sheriff Department personnel involved in this investigation which includes their officer, personnel or squad number. This is so we can decipher who did what in reports that just refer to, for instance, "801 did arrive and ... ." Most reports we have received are easy to decipher but some, like the "log-in sheets" from officers checking people in and out are prepared strictly by reference to a number rather than a name.

(3) ~~Crime Lab "bench notes" for all analysts who have or will be preparing reports.~~ We received only part of Sherry Culhane's notes so far, and none from ballistics, identification, blood pattern analysis and others in the Crime Lab who have prepared reports. Also Sherry Culhane's last submission of bench notes only goes to early April (see her correspondence to you dates April 12, 2006). She has obviously done many examinations since then and must have generated many more pages in her file.

(4) Crime Lab (Madison office) error logs and other records of contamination of evidence by analysts' own DNA or other types of contamination revealed by the lab's testing process and proof of any and all corrective action taken by the lab once errors are detected. Please provide such records for the time period of January 1, 2004 to the present date.

(5) Copies of the electronic/computer data files from DNA testing in this case, as my expert needs to see the raw data himself. They should be copied onto write-only CD media. Specifically, we request, for ABI 310, 3100, or 3130 data the following:

a. Genescan project data files (electronic)
b. Genescan sample data files (electronic)
c. Genescan analysis parameters data files (electronic)
d. Genescan matrix data files for the instrument(s) used in this case (electronic)
e. Genescan injection list data files (electronic)
f. Genotype files (electronic)

(6) Reports of the Crime Lab's proficiency tests and documentation of any corrective action taken whenever proficiency testing discrepancies are detected, for the last five year period to date. Such testing and records shall include those indicated in the *DNA Advisory Board Quality Assurance Standards for Forensic DNA Testing Laboratories*, Standards No. 13.1 and 14.1.

(7) Another copy of the audio-tape interview of Brendon Dassey from February 27, 2006. The CD previously provided of this recording cannot be read by any computer in Dean's or my offices, so I assume it was just a defective "burn."

MDS-2467

(8) Copies of all video recordings made of the RAV-4 at its location when discovered at the Avery Salvage Yard.

(9) Copies of any and all video recordings made of the interior of Steven Avery's trailer, garage, or vehicle. (I believe the reports reference Sgt. Tyson making such a recording.)

(10) Copies of any and all video recording(s) of the burn barrels as well as the burn pit before it was altered by investigators' digging.

(11) Copies of any other video recordings made at the Avery Salvage property, with the exception of an 8mm recording of a view of the pit from the Radant property, and an 8mm recording of the conveyer area. To date, those are the only video recordings I think we have received concerning the Avery property.

(12) Copies of Orville Jacob's phone and visiting audio recordings and visitation logs for the entire length of time when he was housed together with Steven Avery.

(13) Copies of all (unedited) fly-over videos recorded from aerial searches on November 4, 2005 and November 6, 2005. We currently have a spliced copy on a DVD which is obviously from several different dates, times, or aircraft with no separation or designation as to their date and time. Thus I assume there must be a master copy of the complete videos.

(14) Crime Lab field response team reports from Ertl and Zheng (or other Crime Lab personnel) which describe their involvement at the Avery property and the transfer of the RAV-4 from the Avery property to whatever location it was next taken. Please also include reports which explain where and under what conditions the RAV-4 was kept up to the point Sherry Culhane began her examination on November 7, 2005 at approximately 11:00 a.m.; and

(15) Finally, I note that Calumet County Sheriff's Department report nos. 239 and 243 refer to detailed measurements and diagrams being taken of Steven Avery's residence and garage for possible court diagrams or 3-D representations. If those are available, I would appreciate an opportunity to view them at your earliest convenience.

MDS-2467

Please contact me if you have any questions or difficulty complying with this discovery request.

Very truly yours,

Jerome F. Buting

JFB:jlh
cc: Investigator Mark Wiegert (via USPS)
ADA Norm Gahn (via USPS)
A.A.G. Tom Fallon (via USPS)
Atty Dean Strang (via USPS)

FILED
08-16-2022
Clerk of Circuit Court
Manitowoc County, WI
2005CF000381

EXHIBITS
GROUP A1 & A2

Wisconsin DOJ Division of Criminal Investigation

ACISS Investigative Report

Report Number: **05-1776/284** Report Date: **06/13/2006**

Primary Information	
Report Number:	05-1776/284
Report Date:	06/13/2006
Type Of Report:	Investigative
Description:	TERESA MARIE HALBACH: Interview with Brad A. Dassey
Dissemination Code:	Agency
Reporting LEO:	Fassbender, Thomas J (Appleton Special Assignments / Wisconsin DOJ Division of Criminal Investigation)
Approval Status:	Approved
Approved Date:	06/15/2006
Approved By:	Kelly, Carolyn S (Madison Arson / Wisconsin DOJ Division of Criminal Investigation)

Related Subjects

Name	Type	Sex	Race	DOB	Relationship
Dassey, Brad A	Person	Male	Unknown	11/1/1983	Interviewed
Avery, Steven Allen Sr	Person	Male	White	7/9/1962	Mentioned
Dassey, Brendan R	Person	Male	White	10/19/1989	Mentioned
Dassey, Peter	Person	Male	Unknown	—	Mentioned
Halbach, Teresa Marie	Person	Female	White	3/22/1980	Mentioned
Janda, Barbara Ellen	Person	Female	White	11/7/1964	Mentioned

Record Status Information	
Record Origination Operator:	Price, Denise (Criminal Investigation / Wisconsin DOJ Division of Criminal Investigation)
Record Origination Date:	06/13/2006 13:40
Last Update Operator:	Kelly, Carolyn S (Madison Arson / Wisconsin DOJ Division of Criminal Investigation)
Last Update Date:	06/15/2006 10:06

Reporting LEO	Date	Supervisor	Date
Fassbender, Thomas J (Appleton Special Assignments / Wisconsin DOJ Division of Criminal Investigation)		Kelly, Carolyn S (Madison Arson / Wisconsin DOJ Division of Criminal Investigation)	6/15/2006

Narrative begins on the following page.

This report is property of Wisconsin DOJ Division of Criminal Investigation. Neither it or its contents may be disseminated to unauthorized personnel.



Wisconsin Division of Criminal Investigation Case Report
Case/Report Number: 05-1776/284

On Tuesday, June 6, 2006, at 2:04 p.m., S/A Thomas J. Fassbender and Investigator Mark Wiegert, of the Calumet County Sheriff's Department interviewed Brad A. Dassey, DOB 11/01/1983. The investigators made contact with Dassey at his residence, 1425 N 9th, #8, Manitowoc, WI. The investigators identified themselves to Dassey and Dassey agreed to answer questions and he accompanied the investigators to Investigator Wiegert's vehicle where the interview took place. Dassey advised he is half brothers with Brendan Dassey and stated that his father, Pete Dassey, is their common father.

Dassey confirmed that he had contacted the District Attorney regarding Barbara Janda having contacted him about re-formatting her computer hard drive. Dassey advised that Janda had contacted him and asked him if everything is gone from a hard drive when it is re-formatted. Dassey advised that Janda actually had someone else re-format it, but Dassey advised he did not know who did it. Dassey advised the other person re-formatted her computer hard drive for something like $15 and she didn't think he know what he was doing.

Dassey advised according to Janda, investigators came out and took her computer about a week after she had it re-formatted. Dassey advised that Janda told him about the investigators taking the computer approximately one week after they had taken the computer. Dassey advised that Janda did not tell him what was on her computer.

Dassey told the investigators that he wrote a letter to the Halbach's. Dassey advised he told Brendan about the letter he wrote just this past Sunday. Dassey advised that Janda also saw the letter. Dassey provided a copy of the letter he wrote. In the letter, Dassey essentially expressed his sympathy to them for the loss of Teresa and wrote a prayer for them. In the letter, he wrote that he is not like Brendan, Janda or Steven Avery.

Prior to concluding the interview, S/A Fassbender provided Dassey with his business card. The interview was concluded at 2:18 p.m.

At approximately 2:34 p.m., S/A Fassbender received a telephone call from Dassey. Dassey advised that he had spoken with Janda to try and find out who re-formatted her computer hard drive. Dassey advised she told him that Michael J. Kornely gave her phone numbers of individuals to contact and that Cornelli knows who the individual was. Dassey advised that after concluding his call with Janda, Janda called back and asked why he wanted to know.

At approximately 3:01 p.m., Dassey again telephoned S/A Fassbender. Dassey advised that he had contacted Cornelli, who said that he referred Janda to Milwaukee PC.

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.

Wisconsin Division of Criminal Investigation Case Report
Case/Report Number: 05-1776/284

Electronically attached to this supplemental report is a copy of Dassey's letter to the Halbach's and a copy will be submitted to DCIR.

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.

05-1776/284

Dear Halbach Family,

Dear Lord, thou art in Heaven... Extend your hand of love to this very family Lord. Extend your hand of grace, your hand of love, your hand of deliverance and peace. Please guide me into this prayer as I speak it to the Halbach's Lord because I am writing it through YOU all mighty God! You are in control of the Heavens, you are in control of our lives and you are also in control of all that is evil in this world. Lord God just let the Halbach's know that you are there for them. You WON'T let them down. You WILL bring them justice! You WILL bring them PEACE o Lord. You WILL protect them from all that is evil Lord. Place your hand upon their hearts Lord and sooth them, sooth every nook and cranny in their heart, mind, body and soul Lord. I pray that you give them the mind, the peace and love they deserve Lord. I pray that you keep their family together. I pray that you give them HOPE for the future Lord that they will be able to move on and not forget about Teresa but remember the awesome memories they've shared together as a family. I pray that you watch over them and I pray that you keep them calm. Love this family like you've never loved before all mighty God. In Jesus name I pray, AMEN!

I was very afraid to contact you, Halbach family, due to the fact that I am indeed a Dassey through marriage. My real mom and my real dad were never married, so all my Dassey brothers are half brothers. Barb Janda is my step mom. Pete Dassey is my real dad.

I just wanted to leave off with my sympathy I have for you and I wanted you to know that I will continue to pray for you all as well as my church family in Two Rivers. If you ever have any questions please feel free to contact me.

With Love.
Brad Dassey
djdassey@sbcglobal.net

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
Occurence From:	04/21/2006 00:00
Occurence 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
Fablan, 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

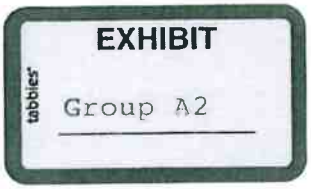
Record Status Information

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

Reporting LEO	Date	Supervisor	Date
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.

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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 Count 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 gottta 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 mofia~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, "idk," (for

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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 Halbach 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 Velie, as well as the hardcopy pages of instant message conversations were maintained in S/A Fassbender's possession.

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.

FILED
08-16-2022
Clerk of Circuit Court
Manitowoc County, WI
2005CF000381

EXHIBIT B

STATE OF WISCONSIN : CIRCUIT COURT: MANITOWOC COUNTY

STATE OF WISCONSIN, Plaintiff, v. STEVEN A. AVERY, Defendant.	)))))))))	Case No. 05-CF-381 Honorable Judge Angela Sutkiewicz, Judge Presiding

AFFIDAVIT OF STEVEN KIRBY

Now comes your affiant, Steven Kirby, and under oath hereby states as follows:

1. Your affiant is of legal majority and can truthfully and competently testify to the matters contained herein based upon my personal knowledge. The factual statements herein are true and correct to the best of my knowledge, information, and belief. Your affiant is of sound mind and is not taking any medication nor has your affiant ingested any alcohol that would impair your affiant's memory of the facts stated in this affidavit.
2. Your affiant is the Chairman of Edward R. Kirby & Associates, Inc., a professional investigations firm located in Elmhurst, Illinois. Your affiant is a private investigator, licensed in Illinois and Wisconsin, with over forty years' experience. I have worked with Kathleen T. Zellner & Associates, P.C., on numerous cases in the past.
3. On February 16, 2022, your affiant interviewed Michael Osmunson outside of his residence at 955 Main Street, Mishicot. Jim Kirby was also present and witnessed the interview and Osmunson's responses.
4. Your affiant asked him if he ever helped Bobby Dassey push a car down the road leading to the Avery Salvage yard. He replied, "I don't recall." Your affiant then asked him if by saying he didn't recall, if in fact he could have helped Dassey push a car down that road in

EXHIBIT
B

November of 2005 but just forgot if he did. He replied, "I don't remember." At the conclusion of the interview, your affiant told him that your affiant wanted to be sure that he was not denying ever pushing a car with Dassey towards the Avery property but that he just couldn't recall if he did or did not. For the third time replied, "I don't recall."

5. In regard to the phone calls on October 31, 2005 to and from Bobby Dassey's phone number, he said he didn't recall making or receiving calls from Dassey that morning. When he was shown the print out of the message units, he said that 920-973-0514 was his number in 2005 and recognized 920-973-1742 as Bobby Dassey's number. He stated that the early morning call could have been about hunting but he didn't know for sure. When asked if he went hunting with Bobby that day he said that he didn't as he took his brother trick or treating. When asked about the multiple calls to and from Bobby Dassey between 3:56 P.M. and 6:02 P.M. on 10/31/05 he said that he couldn't explain them other than that "Bobby often doesn't answer his own phone."

FURTHER AFFIANT SAYETH NAUGHT

Steven Kirby

Subscribed and sworn before me
this 11 day of August, 2022.

Notary Public

OFFICIAL SEAL
SCOTT T PANEK
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES: 5/21/2025

FILED
08-16-2022
Clerk of Circuit Court
Manitowoc County, WI
2005CF000381

EXHIBIT C

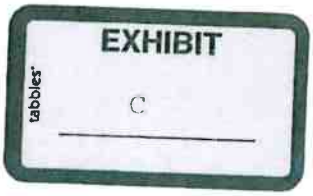
STATE OF WISCONSIN: CIRCUIT COURT: MANITOWOC COUNTY

STATE OF WISCONSIN, Plaintiff, v. STEVEN A. AVERY, Defendant.	)	Case No. 05-CF-381 Honorable Judge Angela Sutkiewicz, Judge Presiding

AFFIDAVIT OF JAMES R. KIRBY

Now comes your affiant, James R. Kirby, and under oath hereby states as follows:

1. Your affiant is of legal majority and can truthfully and competently testify to the matters contained herein based upon my personal knowledge. The factual statements herein are true and correct to the best of my knowledge, information, and belief. Your affiant is of sound mind nor has your affiant ingested any alcohol that would impair your affiant's memory of the facts stated in this affidavit.
2. Your affiant is the president of Edward R. Kirby & Associates, Inc., a professional investigations firm located in Elmhurst, Illinois. Your affiant is a licensed private investigator and have been licensed since 1988. Your affiant is currently licensed in Illinois and Wisconsin.
3. On March 20, 2018, your affiant submitted a Public Records Request to the Manitowoc County Sheriff's Office which read: *seeking any non-911 recordings in your possession of incoming phone calls to the Manitowoc County Joint Dispatch Center from/on November 3, 2005 and November 5, 2005.*



4. Your affiant subsequently received a package in the mail from the Manitowoc County Sheriff's Office, which included two CDs and a letter dated April 12, 2018 addressed to me signed by Larry Ledvina, Deputy Inspector, Manitowoc County Sheriff's Office stating:

> *"We have received and reviewed your request for any non (911) recordings in your possession of incoming calls to the Manitowoc County Joint Dispatch Center from/on November 3, 2005 and November 5, 2005. The dates in question are outside of our recording system storage. But in the timeframe you requested recording for, copies were made of this timeframe due to a different records request and we therefore have some of these recordings. The recordings we have are just recordings. They are date range of recordings. They are not broken down by date and time. I have two CDs enclosed that are responsive to your request:*
>
> *Phone number 683-4201 dated 2005 1103-1105*
> *Phone number 683-4202 dated 2005 1103-1112*

5. These CDs were delivered to the office of Kathleen T. Zellner subsequent to your affiant receiving them.

6. On March 15, 2022, Investigator Katherine McGovern of your affiant's office submitted three public records requested to the Manitowoc County Sheriff's Office. The first request sought *copies of any non 911 recordings in your possession of incoming telephone calls to the Manitowoc County Sheriff's Joint Dispatch Center between the dates of November 3, 2005 at 12:01 AM through November 9, 2005 at 11:59 PM.* The second request sought *copies of incoming and outgoing telephone call logs of the recorded Manitowoc County Sheriff's Joint Dispatch calls between the dates of November 3, 2005 12:01 AM through November 9, 2005 11:59 PM that relate to the Teresa Halbach investigation. Information should include date, time and telephone numbers involved in the calls.* The third request sought *copies of audio recordings of incoming and outgoing calls and/or radio dispatches between the dates of November 3, 2005 12:01 PM through November 9, 2005 11:59 PM that relate to the Teresa Halbach investigation.*

7. On April 18, 2022, Katherine McGovern from your affiant's office received an email from Amanda Mathiebe of the Manitowoc County Sheriff's Office regarding these requests. In this email, Amanda Mathiebe replied that she was updating Ms. McGovern regarding her requests of copies of incoming/outgoing telephone call logs, she responded that these records do not exist.
8. In reference to the request for copies of audio recordings of incoming and outgoing phone calls, she attached an invoice in the amount of $360.00 for these records. She requested your affiant's office remit payment so that she may begin working on copying these records. Your affiant's office subsequently paid the invoice for the requested amount.
9. On May 3, 2022 your affiant's office received thirty-five CDs marked as containing audio recordings from the Manitowoc County Sheriff's Office. On May 3, 2022, your affiant delivered the 35 CDs to the office of Kathleen T. Zellner.
10. A recording of a phone call from November 6, 2005 at 10:28 p.m., which was contained within one of the 35 CDs produced from your affiant's second Public Records Request, was discovered by your affiant and the office of Kathleen T. Zellner. Your affiant listened to this call.
11. Your affiant listened to the two CDs produced to your affiant after your affiant's first Public Records Request to the Manitowoc County Sheriff's Office in March of 2018.
12. The recording of the November 6, 2005 phone call in which Mr. Sowinski's voice was identified was not in the initial discs provided to your affiant following your affiant's March 20, 2018 Public Records Request.

FURTHER AFFIANT SAYETH NAUGHT

James R. Kirby

Subscribed and sworn before me
this 9 day of August, 2022.

Notary Public

OFFICIAL SEAL
SCOTT T PANEK
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES: 5/21/2025

FILED
08-16-2022
Clerk of Circuit Court
Manitowoc County, WI
2005CF000381

EXHIBIT D

EXHIBIT

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D

FILED
08-16-2022
Clerk of Circuit Court
Manitowoc County, WI
2005CF000381

EXHIBIT E

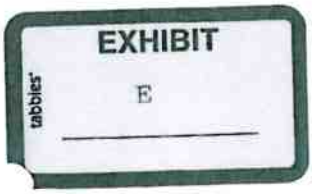
STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY

STATE OF WISCONSIN, Plaintiff, v. STEVEN A. AVERY, Defendant.	)	Case No. 05-CF-381 Honorable Judge Angela Sutkiewicz, Judge Presiding

AFFIDAVIT OF DEVON NOVAK

Now comes your affiant, Devon Novak, and under oath hereby states as follows:

1. I am of legal majority and can truthfully and competently testify to the matters contained herein based upon my personal knowledge. The factual statements herein are true and correct to the best of my knowledge, information, and belief. I am of sound mind and I am not taking any medication nor have I ingested any alcohol that would impair my memory of the facts stated in this affidavit.
2. I have resided in Manitowoc, Wisconsin for over 17 years.
3. In 2005, I was in a relationship with Thomas Sowinski and residing with Thomas Sowinski and his son at 4221 Highway R, Manitowoc, Wisconsin.
4. Around the time that it became known that Teresa Halbach was missing, Thomas Sowinski provided me with information of an unusual nature relating to the case. One morning, after his paper route delivery, during the week that Ms. Halbach disappeared, Mr. Sowinski told me the following event had occurred: He had been delivering papers, and he saw two men pushing a car down a road. The men gave him dirty looks. Later, while watching the news, Mr. Sowinski saw Ms. Halbach's car and realized it was the same car that the men were pushing down a road.



5. Thomas Sowinski reported what he told me about the incident to the Manitowoc County Sheriff's Department. I know that he called them because either I was there when he reported it or he reported making the call to me immediately after making the call.
6. On August 6 2022, I spoke to Steven Kirby, an investigator on behalf of Steven Avery. Mr. Kirby asked me to listen to a voicemail recording of a call between a woman named Carla from Manitowoc County Sheriff's Department and a male calling in to speak to someone about the Teresa Halbach case. Mr. Kirby asked me if I recognized the voice of the male on the phone in the recorded call, and I recognized that the male in the call was Thomas Sowinski. (Attached and incorporated herein as Group Exhibit "A" is the phone call and a transcript of the phone call).
7. Nothing has been promised or given to me in exchange for this affidavit.

FURTHER AFFIANT SAYETH NAUGHT

Devon Novak

State of Wisconsin
County of MANITOWOC

Subscribed and sworn before me
this 6th day of AUGUST, 2022.

BERNARD R STANGEL
Notary Public
State of Wisconsin

Notary Public

My Commission Expires:
JUNE 28, 2026

EXHIBIT A

Transcript of Phone Call

MCSD Manitowoc County Sheriff's Department. This is Carla. Can I help you?

Male Uh...I...I...I don't know if I...if it's good information...bad information. Who do I talk to about this... the girl who is missing from Hillbert.

MCSD I can have you speak with my shift commander. Can you hold on a moment?

Male Thank you

MCSD Sure

MCSD (Unintelligible)...I'm going to transfer you to the shift commander. You'll be talking with Sgt. (unintelligible). Okay?

Male Thank you.

MCSD Okay.

(Call being transferred. Ringing.)

Sgt. (Unintelligible)

MCSD Scott, when I hang up it's a man on the phone who thinks he has some maybe more leads. He wants to speak with somebody on the case.

Sgt. Alright.

(End of call)

FILED
08-16-2022
Clerk of Circuit Court
Manitowoc County, WI
2005CF000381

EXHIBIT F

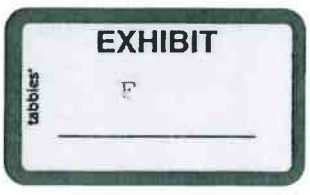
STATE OF WISCONSIN: CIRCUIT COURT : MANITOWOC COUNTY

STATE OF WISCONSIN,	)	
	)	
Plaintiff,	)	
	)	Case No. 05-CF-381
v.	)	
	)	Honorable Judge Angela Sutkiewicz,
STEVEN A. AVERY,	)	Judge Presiding
	)	
Defendant.	)	

AFFIDAVIT OF THOMAS SOWINSKI

Now comes your affiant, Thomas Sowinski, and under oath hereby states as follows:

1. I am of legal majority and can truthfully and competently testify to the matters contained herein based upon my personal knowledge. The factual statements herein are true and correct to the best of my knowledge, information, and belief. I am of sound mind and I am not taking any medication nor have I ingested any alcohol that would impair my memory of the facts stated in this affidavit.
2. I resided in Manitowoc, Wisconsin for over 20 years.
3. I mistakenly stated in ¶ 7 of my prior affidavit filed with the appellate court that I contacted "Avery's trial attorneys to inform them of what I saw." My prior affidavit is attached and incorporated herein as "**Exhibit A**."
4. After reviewing materials, my recollection was refreshed that I did not actually contact Mr. Avery's trial defense counsel, Mr. Buting and Mr. Strang. I realized after looking though my emails that rather than contacting Mr. Avery's trial attorneys, I had contacted the Innocence Project in New York and I never heard back. My email to Innocence Project is attached herein as "**Exhibit B**."



5. I met with Investigator Steven Kirby for Mr. Avery's postconviction counsel on August 6, 2022. He played a phone call recording to me (Attached and incorporated herein as **"Exhibit C"** is the transcript and recording). I recognize my voice on the phone call made to the Manitowoc Sheriff's Office, which I described in my prior affidavit (Ex. A).
6. After listening to the first part of my call to the MSO, I refreshed my recollection that a woman answered the phone, and that she transferred me to a male officer. I then provided the information stated in my prior affidavit. I mistakenly recalled in my prior affidavit (¶ 6) that I had only spoken to a female officer, but after my recollection was refreshed by listening to a recording of the first part of my call, I realized that I also spoke to a male officer.
7. Nothing has been promised or given to me in exchange for this affidavit.

FURTHER AFFIANT SAYETH NAUGHT

Thomas Sowinski
Thomas Sowinski

State of Wisconsin
County of MANITOWOC

Subscribed and sworn before me
this 6 day of August, 2022.

BERNARD R STANGEL
Notary Public
State of Wisconsin

Notary Public

My Commission Expires:
JUNE 29, 2026

EXHIBIT A

STATE OF WISCONSIN, Plaintiff, v. STEVEN A. AVERY, Defendant.	)	Case No. 05-CF-381 Honorable Judge Angela Sutkiewicz, Judge Presiding

1. I am of legal majority and can truthfully and competently testify to the matters contained herein based upon my personal knowledge. The factual statements herein are true and correct to the best of my knowledge, information, and belief. I am of sound mind and I am not taking any medication nor have I ingested any alcohol that would impair my memory of the facts stated in this affidavit.
2. I resided in Manitowoc, Wisconsin for over 20 years.
3. In 2005, I was employed as a motor route driver at Gannett Newspapers, Inc. and delivered papers in and around the Avery Salvage Yard. While delivering papers, I drove my personal car, which was a tannish-gold 4-door sedan. I cannot recall the make and model of the car at this time.
4. On Saturday, November 5, 2005, I was delivering papers on the Avery Salvage Yard in the early morning hours before sunrise. I drove down Highway 147 and turned left onto Avery Road. Soon after I turned onto Avery Road, I witnessed an individual who I later realized was Bobby Dassey and another unidentified older male pushing a dark blue RAV-4 down Avery Road on the right side towards the junkyard. Bobby Dassey was

shirtless, even though it was early November. The second man appeared to be in his 50's or early 60's, had a long grey beard, was wearing a worn puffy jacket, had a larger frame, and was around 6 feet in height. The RAV-4 did not have its lights on. Attached and incorporated herein as **Exhibit A** are photographs marked where I saw the RAV-4.

5. I drove down Avery Road towards the mailboxes, left the Herald Times in the mailbox, and turned back around. I felt very afraid as I approached the two individuals because Bobby Dassey attempted to step in front of my car, blocking my exit. I was within 5 feet of Bobby Dassey and my headlights were on the entire time. The older man ducked down behind the open passenger door. I swerved to the right and drove in the shallow ditch to avoid hitting Bobby Dassey. I called out, "Paperboy. Gotta go" because I was afraid for my safety. Bobby Dassey looked me in the eye, and I could tell with the look in his eyes that he was not happy to see me there. I knew that Bobby Dassey and the older individual were doing something creepy.
6. After I learned that Teresa Halbach's car was found on November 5, 2005, I contacted the Manitowoc Sheriff's Office and spoke to a female officer. I reported everything I have stated in this affidavit to the officer. The officer said, "We already know who did it." I provided my phone number and they said they would contact me soon. I never heard back from the police.
7. After watching Season 1 of Making a Murderer, I contacted Avery's trial attorneys to inform them of what I saw. I never heard back.
8. Nothing has been promised or given to me in exchange for this affidavit.

FURTHER AFFIANT SAYETH NAUGHT

Thomas Sowinski

State of Wisconsin
County of MANITOWOC

Subscribed and sworn before me
this 10 day of April, 2021.

Notary Public

My Commission Expires: 7/29/2022

JAMES R KIRBY
Notary Public
State of Wisconsin



Avery's Auto Salvage
Salvage yard in Manitowoc County, Wisconsin

EXHIBIT
tabbies
A

EXHIBIT B

Gmail

Kathleen Zellner <attorneys@zellnerlawoffices.com>

FW: Avery Sowinski email

Jim Kirby <jkirby@kirbyinvestigations.com>
To: Kathleen Zellner <attorneys@zellnerlawoffices.com>

Tue, Apr 13, 2021 at 3:18 PM

From: Thomas Sowinski <tquest87@yahoo.com>
Sent: Tuesday, April 13, 2021 3:17 PM
To: Jim Kirby <jkirby@kirbyinvestigations.com>
Subject: Fw: Avery

Sent from Yahoo Mail for iPhone

Begin forwarded message:

On Thursday, January 7, 2016, 1:43 PM, tquest87 <tquest87@yahoo.com> wrote:

Hello. My name is Thomas Sowinski and I delivered newspapers to the Avery residence everyday for years. I delivered papers at the time of the halbach situation. Somewhere between Oct 31st and November 5th 2005, not sure which day, I turned down avery road to delivery their paper when I almost ran into 2 people pushing a dark colored small suv down the road with absolutely no lights on. It was dark ad I delivered the papers as soon as possible each day so I could get home in time to get my son ready for school and drop him off. As I passed them I realized I had stumbled onto something that seemed out of place. I spooked both of them tremendously. I drove down the dead end and put the paper in the tube and turned around to come back down the road. I knew I was in a shady situation so I approached them with a good amount of speed to get around them fast. As I approached the guy pushing from the driver side stopped and tried to stop ke in the middle of the road. I went half in the ditch and just waved to calm the men into thinking I was oblivious to what was going on. I didn't she who the man was on the passenger side but the young man, maybe 18 or so that tried to stop me was not brendan dassey. His build was thin and fit and about 5'9" tall. Days later after seeing the footage on t.v. of the rav 4 being found on the property it clicked that it wad probaby the suv I had seen that night. I called police and notified them. They didn't Semmes interested at all and said thanks for the info. Never asked me to fill out a report or even ask for my name or phone number. At the time I just figured they had enough evidence and we're not concerned with my information. After seeing the documentary on netflix I decided that someone other than manitowoc county officials needs to here this. They were pushing in the direction towards the house from the highway.

I feel obligated to share this now that I know some of the circumstances involving the way manitowoc handled the case

Sent from my T-Mobile 4G LTE Device

EXHIBIT C

Transcript of Phone Call

MCSD Manitowoc County Sheriff's Department. This is Carla. Can I help you?

Male Uh...I...I...I don't know if I...if it's good information...bad information. Who do I talk to about this... the girl who is missing from Hillbert.

MCSD I can have you speak with my shift commander. Can you hold on a moment?

Male Thank you

MCSD Sure

MCSD (Unintelligible)...I'm going to transfer you to the shift commander. You'll be talking with Sgt. (unintelligible). Okay?

Male Thank you.

MCSD Okay.

(Call being transferred. Ringing.)

Sgt. (Unintelligible)

MCSD Scott, when I hang up it's a man on the phone who thinks he has some maybe more leads. He wants to speak with somebody on the case.

Sgt. Alright.

(End of call)

FILED
08-16-2022
Clerk of Circuit Court
Manitowoc County, WI
2005CF000381

EXHIBITS
GROUP G

STATE OF WISCONSIN CIRCUIT COURT MANITOWOC COUNTY

STATE OF WISCONSIN,

Plaintiff,

v. Case No. 2005- CF-381

STEVEN A. AVERY,

Defendant.

AFFIDAVIT OF DEAN A. STRANG

I, Dean A. Strang, first duly sworn on oath, hereby state as follows:

1. I was counsel with Jerome Buting for Steven Avery during much of the pretrial phase, at trial, and at sentencing in this case, from spring 2006 to June 2007.

2. I have reviewed Mr. Buting's affidavit of August 11, 2022. My recollection and understanding comports with his as to everything that he addresses in that affidavit. Within the scope of my personal knowledge, I agree with and confirm his affidavit.

Dated this 12th day of August, 2022.

Dean A. Strang



Subscribed and sworn before me, the undersigned
Notary Public of the State of Wisconsin,
this 12 day of August, 2022.



R. Richard Resch

Notary Public
State of Wisconsin

My commission ~~expires~~: is permanent

STATE OF WISCONSIN CIRCUIT COURT MANITOWOC COUNTY

STATE OF WISCONSIN,

Plaintiff,

v. Case No. 2005- CF-381

STEVEN A. AVERY,

Defendant.

AFFIDAVIT OF DEAN A. STRANG

I, Dean A. Strang, first duly sworn on oath, hereby state as follows:

1. I was counsel with Jerome Buting for Steven Avery during much of the pretrial phase, at trial, and at sentencing in this case, from spring 2006 to June 2007.

2. I have reviewed Mr. Buting's affidavit of August 11, 2022. My recollection and understanding comports with his as to everything that he addresses in that affidavit. Within the scope of my personal knowledge, I agree with and confirm his affidavit.

Dated this 12th day of August, 2022.

Dean A. Strang

Subscribed and sworn before me, the undersigned
Notary Public of the State of Wisconsin,
this 12 day of August, 2022.



R. Richard Resch

Notary Public
State of Wisconsin

My commission ~~expires~~: is permanent

STATE OF WISCONSIN CIRCUIT COURT MANITOWOC COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 2005 CF 381

STEVEN A. AVERY,

Defendant.

AFFIDAVIT OF JEROME F. BUTING

STATE OF WISCONSIN)
)SS
COUNTY OF WAUKESHA)

I, Jerome F. Buting, first duly sworn on oath, hereby state as follows:

1. I was counsel with Dean Strang for Steven Avery during much of the pretrial phase, at trial, and at sentencing in this case, from spring 2006 to June 2007. In general and as relevant here, I was familiar with all information disclosed by law enforcement and the prosecution to me, Mr. Strang, and any other member of what I call here "Mr. Avery's defense team" during the time that Mr. Strang and I represented Mr. Avery.

2. Mr. Strang and I repeatedly requested notice of all exculpatory or potentially exculpatory information and otherwise discoverable information and material from the prosecutors and the Manitowoc County Sheriff's Department. This included reports of any tips from citizens and

"audio tape copies of dispatch or all other communications relevant to law enforcement operations involved in the search for and investigation of Teresa Halbach's disappearance, for the period of November 3, 2005 through November 12, 2005." An example is my July 24, 2006, letter, attached as Exhibit A to this affidavit.

3. I received a CD-ROM that purported to contain all Manitowoc County Sheriff's Department dispatch calls related to the Halbach investigation covering the period November 3, 2005, through November 12, 2005. That CD-ROM was at some point turned over to Mr. Avery's successor counsel. I have recently reviewed the handwriting on a copy of that CD-ROM which I recognize as my handwriting. I am informed, and believe in part based on my own recollection, that this copy of the CD-ROM came from my files on Mr. Avery's case. I recognize my handwritten note on the CD-ROM which refers to one call on that recording, an untimed call to a dispatcher from then-Sgt. Andrew Colborn requesting information on a license plate of Teresa Halbach. That CD-ROM copy and my handwriting on it confirm my recollection that I listened to all of the calls recorded on that CD-ROM.

4. I have recently re-listened to all of the recordings on that CD-ROM that I received during my representation of Mr. Avery and I compared it to another CD-ROM that Mr. Avery's current counsel provided to me. Upon

information and belief, she received this CD-ROM as a response to a recent open records request. On the newly disclosed CD-ROM there is an additional call from a citizen tipster that was not included in the audio recordings that I received during Mr. Avery's representation. I have been informed that the caller on this recording is an individual later identified as Thomas Sowinski. The Avery defense team was not given the audio of his call, his identity as a potential witness or other information which we could have investigated and used at trial.

5. The newly received CD-ROM that current counsel for Mr. Avery has shared with us, which includes a call purported to be from Mr. Sowinski, indicates that the caller was transferred to an investigator, Sgt. Scott Senglaub. By inference, Sgt. Senglaub spoke to the caller as the recording shows that the dispatcher connected the caller to him. Neither I nor Mr. Avery's defense team ever was given a recording, a report, notes, or any other notice of a conversation between Thomas Sowinski and Sgt. Scott Senglaub of the Manitowoc County Sheriff's Department.

6. At the time we were requesting discovery and disclosure of exculpatory information, Mr. Strang and I were using a private investigator, Conrad O. (Pete) Baetz. We would have had him follow up on the call from Mr. Sowinski, had we known about it.

7. Had Mr. Strang and I known before Mr. Avery's trial about any information that a person had reported two men pushing an SUV on the Avery property in the darkness before the reported discovery of Ms. Halbach's Toyota RAV-4 SUV on the Avery Salvage Yard property, we would have pursued that information diligently, with Mr. Baetz and otherwise.

8. Had Mr. Strang and I received or known before Mr. Avery's trial about Thomas Sowinski's telephone call with the dispatcher, which shows that she transferred that call to Sgt. Scott Senglaub, we would have made a specific request for further information about the substance of that call from Sgt. Senglaub.

9. Although the new CD-ROM reveals that Thomas Sowinski indeed did call the dispatcher during the timeframe of the CD-ROM given to Mr. Avery's trial counsel, Mr. Sowinski's call was not included on the pretrial discovery CD-ROM.

10. As to the call from Andrew Colborn described in paragraph 3 above, neither the prosecution, the Manitowoc County Sheriff's Department, nor any agent or agency of the State of Wisconsin ever disclosed to me or the defense team the date and time at which that call was made. Like many other recorded calls that were disclosed to us, the audio record of that call from Andrew Colborn had no timestamp or other documentation of the time of the call

when it was disclosed to me and the defense team for Mr. Avery. We thus had no way to challenge or disprove any claim that Mr. Colborn might make about the specific timing of that call.

Dated this 12th day of August, 2022.

Jerome F. Buting

Subscribed and sworn to before me, the undersigned
Notary Public of the State of Wisconsin,
this 12 day of August, 2022.

Notary Public
State of Wisconsin

My commission ~~expires:~~ is permanent

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July 24, 2006

Via Facsimile Transmission Only

Special Prosecutor Kenneth Kratz
Calumet County District Attorney's Office
206 Court Street
Chilton, Wisconsin 53014-1127

FILE: M05-2467
DATE: 8/7/06
COPIES TO: SLC MBV JRE RLL JRW KBO MTR GSZ RNS SAH WJLW

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

Dear Mr. Kratz:

I am writing to follow-up on some discovery issues in this matter. There are a number of items we do not have yet, and as I have gone through the discovery already provided, I have tried to make note of them. Most are referred to in discovery, but some are independent of that. By copy of this letter, I am also notifying Inv. Wiegert for his convenience as I assume he will assist you in responding to your request, as well as Norm Gahn since some of my requests concern Crime Lab DNA testing.

Please locate and produce the following:

(1) . Audio tape copies of dispatch or all other communications relevant to law enforcement operations involved in the search for and investigation of Theresa Halbach's disappearance, for the period of November 3, 2005 through November 12, 2005. This would include anything recorded on any type of media by law enforcement or public safety agent. This should include, but is not limited to, radio communication, both voice and data, routinely recorded by any agency, on any and all frequencies available to law enforcement or public safety units assigned to the search and/or investigation. It should also include data or message transmissions made by and between any law enforcement or public safety agency pertinent to the search and investigation activities, via computer or teletype, and communication between any law enforcement or public safety agency and civilian assets, such as aircraft or ground vehicles involved in the search and investigation activities.

EXHIBIT
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I made a similar, though perhaps not as detailed, request about one month ago and I believe Mark Wiegert spoke to Dean and he is working on this already.

(2) A listing of all Calumet and Manitowoc County Sheriff Department personnel involved in this investigation which includes their officer, personnel or squad number. This is so we can decipher who did what in reports that just refer to, for instance, "801 did arrive and ... ." Most reports we have received are easy to decipher but some, like the "log-in sheets" from officers checking people in and out are prepared strictly by reference to a number rather than a name.

(3) ~~Crime Lab "bench notes" for all analysts who have or will be preparing~~ reports. We received only part of Sherry Culhane's notes so far, and none from ballistics, identification, blood pattern analysis and others in the Crime Lab who have prepared reports. Also Sherry Culhane's last submission of bench notes only goes to early April (see her correspondence to you dates April 12, 2006). She has obviously done many examinations since then and must have generated many more pages in her file.

(4) Crime Lab (Madison office) error logs and other records of contamination of evidence by analysts' own DNA or other types of contamination revealed by the lab's testing process and proof of any and all corrective action taken by the lab once errors are detected. Please provide such records for the time period of January 1, 2004 to the present date.

(5) Copies of the electronic/computer data files from DNA testing in this case, as my expert needs to see the raw data himself. They should be copied onto write-only CD media. Specifically, we request, for ABI 310, 3100, or 3130 data the following:

a. Genescan project data files (electronic)
b. Genescan sample data files (electronic)
c. Genescan analysis parameters data files (electronic)
d. Genescan matrix data files for the instrument(s) used in this case (electronic)
e. Genescan injection list data files (electronic)
f. Genotype files (electronic)

(6) Reports of the Crime Lab's proficiency tests and documentation of any corrective action taken whenever proficiency testing discrepancies are detected, for the last five year period to date. Such testing and records shall include those indicated in the *DNA Advisory Board Quality Assurance Standards for Forensic DNA Testing Laboratories*, Standards No. 13.1 and 14.1.

(7) Another copy of the audio-tape interview of Brendon Dassey from February 27, 2006. The CD previously provided of this recording cannot be read by any computer in Dean's or my offices, so I assume it was just a defective "burn."

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(8) Copies of all video recordings made of the RAV-4 at its location when discovered at the Avery Salvage Yard.

(9) Copies of any and all video recordings made of the interior of Steven Avery's trailer, garage, or vehicle. (I believe the reports reference Sgt. Tyson making such a recording.)

(10) Copies of any and all video recording(s) of the burn barrels as well as the burn pit before it was altered by investigators' digging.

(11) Copies of any other video recordings made at the Avery Salvage property, with the exception of an 8mm recording of a view of the pit from the Radant property, and an 8mm recording of the conveyer area. To date, those are the only video recordings I think we have received concerning the Avery property.

(12) Copies of Orville Jacob's phone and visiting audio recordings and visitation logs for the entire length of time when he was housed together with Steven Avery.

(13) Copies of all (unedited) fly-over videos recorded from aerial searches on November 4, 2005 and November 6, 2005. We currently have a spliced copy on a DVD which is obviously from several different dates, times, or aircraft with no separation or designation as to their date and time. Thus I assume there must be a master copy of the complete videos.

(14) Crime Lab field response team reports from Ertl and Zheng (or other Crime Lab personnel) which describe their involvement at the Avery property and the transfer of the RAV-4 from the Avery property to whatever location it was next taken. Please also include reports which explain where and under what conditions the RAV-4 was kept up to the point Sherry Culhane began her examination on November 7, 2005 at approximately 11:00 a.m.; and

(15) Finally, I note that Calumet County Sheriff's Department report nos. 239 and 243 refer to detailed measurements and diagrams being taken of Steven Avery's residence and garage for possible court diagrams or 3-D representations. If those are available, I would appreciate an opportunity to view them at your earliest convenience.

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Please contact me if you have any questions or difficulty complying with this discovery request.

Very truly yours,

Jerome F. Buting

JFB:jlh
cc: Investigator Mark Wiegert (via USPS)
ADA Norm Gahn (via USPS)
A.A.G. Tom Fallon (via USPS)
Atty Dean Strang (via USPS)