

STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY

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

**DEFENDANT'S MOTION TO ISSUE SUBPOENA
DUCES TECUM TO BARBARA TADYCH**

Defendant, Steveny Avery, by his undersigned attorney, respectfully moves this Court to issue a subpoena duces tecum to Barbara Tadych, pursuant to Wis. Stat. §§ 805.07 and 885.01, for the production of a certain computer in her possession to this Court. In support thereof, Defendant states as follows:

1. As this Court is aware, Mr. Avery has raised claims based on the State's failure to disclose its analysis of a computer seized from the bedroom of Bobby Dassey. Mr. Avery has raised alternative claims that his attorneys were ineffective for not presenting evidence from the computer to impeach Bobby Dassey and connect him to the murder of Theresa Halbach.

2. The State seized and examined the Dassey computer during its initial investigation. See supplemental report of Detective Velie, attached as Exhibit A. The computer was described as a Hewlett-Packard Pavillion, serial #PJ562AA.

10. A copy of the proposed subpoena is attached to this motion as Exhibit D.

Wherefore, for the reasons stated herein, Mr. Avery respectfully requests that this Court grant the instant motion and issue a subpoena to Barbara Tadych for the Dassey computer, Hewlett-Packard Pavillion serial #PJ562AA, returnable to the Court.

Respectfully submitted,



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Admitted *pro hac vice*
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AGENCY ASSIST

SUPPLEMENTAL

I, Detective Michael Velie was contacted by Special Agent TOM FASSBENDER of the Wisconsin Division of Criminal Investigations. S/A Fassbender indicated he had obtained a computer and twelve CD's as part of a search warrant and requested I do a forensic analysis on the computer and CD's.

On April 22, 2006 Special Agent Fassbender delivered a Hewlett-Packard Pavilion computer tower, serial #PJ562AA as well as twelve compact disks to me. Those items were logged into evidence at the Grand Chute Police Dept and attached to this report is a copy of the Grand Chute Police Dept evidence form.

On April 24, 2006 I started my forensic exam on the Hewlett-Packard Pavilion. I photographed the computer, both inside and out and removed the Seagate 40 gigabyte hard drive from the computer tower. I then acquired the 40GB Seagate hard drive to evidence drive E-500 using Encase version 5. Upon completion of acquiring the 40GB hard drive I verified the acquisition, disconnected the Seagate hard drive and returned it to the Hewlett-Packard Pavilion computer tower. I then ran a signature and hash analysis on the drive and began doing an overall layout analysis of the drive. I then ran a file finder Enscript for images. The pornographic recovered images were separated and book marked into a final report. I also book marked all of the images for S/A Fassbender's review. S/A Fassbender provided me a key word list and I entered the key word list into Encase and ran the key word search. I also took the same key word list and ran a HTML carver searching for key words within web pages. The results of those searches were transferred to a final report for S/A Fassbender's review.

On April 27, 2006 I started an FTK case file and began indexing the Seagate 40GB hard drive. It should be noted, however the majority of the information obtained as part of this investigation was obtained through the use of the computer forensic program Encase. During my analysis of this hard drive I extracted the MSN messenger chat logs as well as specific MSN chat information for screen name "Nigerforlife". The contents of that information were also transferred to the final report for Investigator Fassbender's review. I ran an initialized case



AGENCY ASSIST

Enscript and extracted the registry information for the time settings as well as the operating system information. I extracted the Internet history as well as miscellaneous registry information such as the Internet Explorer auto complete information. Upon completion of analyzing the 40GB hard drive I then analyzed all twelve CD's that S/A Fassbender provided. Each one of the CD's was analyzed using CD/DVD Inspector and all twelve CD's contained audio files on each of the CD's. That information was also recorded and attached to the final report.

At this time pending any additional requests from S/A Fassbender or Investigator Wiegert from Calumet County Sheriff's Dept this final report will be turned over to S/A Fassbender for his review.

End of supplemental report

Detective Michael Velie 7727
Grand Chute Police Dept./pjp

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.)

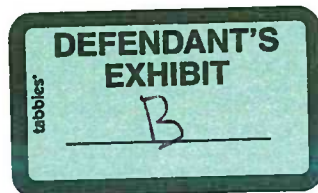
AFFIDAVIT OF BARBARA TADYCH

Now comes your affiant, Barbara Tadych, 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 am the biological mother of Bryan, Bobby, Blaine, and Brendan Dassey.

3. On November 10, 2017, I was interviewed by Special Agent Jeff Wisch and Special Investigator John Dederling. I met with them at a Subway and identified myself as Barbara Tadych.



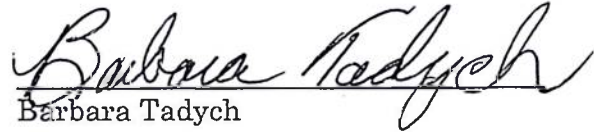
4. I specifically told the investigators that I did not believe that Steven Avery was involved in the murder of Teresa Halbach.

5. Sometime after the interview, I was shown a portion of the police report about my interview and I noted that the report stated, "BARBARA was asked if STEVEN was involved in TERESA HALBACH's death and she stated she did think so [. . .]" (Attached and incorporated herein as **Exhibit A** is the November 10, 2017 police report). I have no idea why the investigators would incorrectly attribute this statement to me when I told the police officers that I did not believe Steven Avery was involved in the murder of Teresa Halbach.

6. After the interview, I returned home to my residence at 12520 Princel Road in Mishicot. At this time, the investigators requested that I turn over my computer tower, which was the same one that was in my home in 2005 and had been examined before. I agreed to turn the computer tower to the investigators.

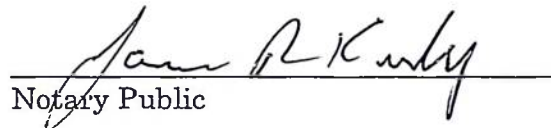
7. I distinctly remember, at the time I turned over the computer tower to the investigators, saying "I am thinking of getting rid of this computer." After I made that comment, Investigator John Dederling replied, "That would be a good idea, and you should not give the computer to Kathleen Zellner."

FURTHER AFFIANT SAYETH NAUGHT

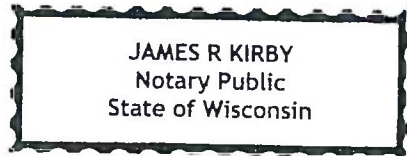

Barbara Tadych

State of Wisconsin
County of Manitowoc

Subscribed and sworn before me
This 2 day of August, 2018.


Notary Public

my COMMISSION
EXPIRES ON 7/29/2022



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TYPE OF ACTIVITY: Contact with Scott Tadych and Barbara Tadych

DATE OF ACTIVITY: 11/10/17

REPORTING OFFICER: Special Inv. John Dederling

On Friday, 11/10/17 at 1348 hours, Special Agent JEFF WISCH of the WISCONSIN DEPARTMENT OF CRIMINAL INVESTIGATION and I (Special Inv. JOHN DEDERING of the CALUMET COUNTY SHERIFF'S DEPARTMENT) met with SCOTT TADYCH at the SUBWAY restaurant located at 219 E. Main Street in Mishicot, Wisconsin. SCOTT identified himself to us by his Wisconsin driver license and Special Agent WISCH and I displayed our law enforcement credentials to SCOTT.

SCOTT was asked if he was in any way involved in the homicide of TERESA HALBACH and he indicated "No, not at all." SCOTT was specifically asked if he killed anyone, including TERESA HALBACH, and his answer was "No."

SCOTT was asked to review, as best he could, the events of 10/31/05. SCOTT stated his mother had back surgery at AURORA BAY CARE in Green Bay, Wisconsin on that date. SCOTT was unsure if the surgery was in the late or early morning. SCOTT stated that after visiting his mother, he came to back to his residence at 12764 STH 47 in Mishicot between 2:30 p.m. and 3:30 p.m., but thought closer to 3:30 p.m. SCOTT stated then he changed into his hunting clothes and went hunting. SCOTT went on to indicate that he now thought his mother's surgery occurred early to mid-morning on 10/31/05.

SCOTT stated after hunting he changed out of his hunting clothes and went to pick up his girlfriend at the time, how is now his wife, BARBARA. SCOTT stated he and BARBARA then went back to the hospital in Green Bay to visit his mother some more. SCOTT indicated that he could not recall whether his mother had surgery in the morning or afternoon on 10/31/05. SCOTT stated it took approximately 25 to 30 minutes to get from his residence to the hospital in Green Bay.

SCOTT stated the mobile home where he resided at 12764 STH 47 is no longer there. SCOTT stated the lady who he rented from had sold the mobile home.

SCOTT was asked where he was hunting on 10/31/05. SCOTT stated he was hunting in an area off of CTH Q in Kewaunee County, near Heidman Lake. SCOTT stated he met BOBBY DASSEY on STH 147 when he was going toward his hunting area. SCOTT was asked whether his mother is still alive and he indicated she is. SCOTT stated her first name is PATRICIA and she lives in the Two Rivers area. SCOTT stated his mother is 71 or 72 years of age.

I was aware that on 10/24/17, STEVEN AVERY had made phone contact with BARBARA TADYCH, at which time, STEVEN referenced SCOTT striking his mother. SCOTT was asked



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where STEVEN might have gotten the idea that SCOTT struck SCOTT's mother. SCOTT indicated he had no idea and it "pisses me the fuck off." SCOTT stated he knew STEVEN AVERY for approximately two years before the events of 10/31/05. SCOTT indicated he had not been dating BARBARA very long before 10/31/05.

SCOTT was asked if he had much contact with STEVEN after STEVEN was incarcerated. SCOTT stated STEVEN will call BARBARA, but indicated "not much." SCOTT stated BARBARA will talk with STEVEN once in a while. SCOTT stated STEVEN called approximately two to three weeks ago. SCOTT stated, since this phone call was made public, he has been receiving threats on Facebook, Messenger, and text messages. SCOTT stated these are "random people" making threats. SCOTT indicated he lost his temper during the course of the conversation and doesn't remember what he exactly said.

SCOTT indicated that just prior to 10/31/05, he was not at BARBARA's residence a lot and thought it was because BARBARA's then husband, TOM JANDA, was still living at the mobile home BARBARA owned on the AVERY property. SCOTT stated his relationship with BARBARA was kind of hidden. SCOTT stated BARBARA would come to his house more than he would go to hers. SCOTT stated he barely knew BARBARA's children at that time.

SCOTT was asked if he knew or ever met TERESA HALBACH and he denied knowing or having ever met her.

SCOTT was asked how he got along with BRYAN DASSEY. SCOTT stated he got along good with BRYAN at first, but that the relationship began to sour when BRYAN began speaking about this matter with Attorney ZELLNER's investigators. SCOTT believed that BRYAN was not telling the truth with respect to what he advised ZELLNER's investigators. SCOTT described BRYAN as being an "edgy person." SCOTT stated that BRYAN once "threw" SCOTT off of BRYAN's property when SCOTT made comments about some electrical work BRYAN was doing.

SCOTT stated he gets along okay with BOBBY DASSEY. SCOTT stated none of the children live with them any longer.

SCOTT indicated BLAINE now lives in Two Rivers and SCOTT "gets along when we're all together." SCOTT stated BRYAN now has BLAINE on BRYAN's side, regarding the events of 10/31/05. SCOTT stated that BARBARA talks to BOBBY, but she does not speak with either BLAINE or BRYAN. SCOTT stated BLAINE and BRYAN do not talk with BARBARA at all. SCOTT stated this is difficult because they all work at WOODLAND FACE VENEER. SCOTT stated BARBARA works days and BLAINE and BRYAN work second shift.

SCOTT was asked if he heard anything about other people being involved. SCOTT stated this is not something that he talks about with BARBARA or her family. SCOTT was asked how often they see BRENDAN. SCOTT stated they visit BRENDAN weekly and sometimes two times per

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week. SCOTT stated BRENDAN is currently incarcerated at COLUMBIA CORRECTIONAL INSTITUTION in Portage.

SCOTT stated he does not believe BRENDAN is involved at all in the TERESA HALBACH matter, but stated STEVEN "that's a different story."

SCOTT went on to indicate that STEVEN controlled and ruined the AVERY family life in the two years that STEVEN was out of prison. SCOTT stated he does not believe STEVEN's brothers are involved. SCOTT was asked if BARBARA was inside or outside her trailer by the fire when he picked her up after hunting on 10/31/17. I had pointed out to SCOTT that he had given both these versions in statements. SCOTT stated he did not recall whether BARBARA was in the house or by the fire when he picked her up after hunting. SCOTT recalled that when he and BARBARA came back from visiting his mother, the fire was very big. SCOTT stated he observed STEVEN by the fire and another person, who he believed must have been BRENDAN. SCOTT stated, at the time he gave the statements to law enforcement, he didn't know the boys all that well as he and BARBARA had not been seeing one another very long.

SCOTT was asked if he ever met or had contact with RYAN HILLEGAS or SCOTT BLOEDORN. SCOTT denied knowing or having any contact with either RYAN or SCOTT.

SCOTT was asked if he ever had any direct conversation with BOBBY about what BOBBY saw on 10/31/05, regarding TERESA's vehicle. SCOTT stated he did not recall having any such direct conversation with BOBBY. SCOTT stated he and BOBBY may have talked, but he does not remember. SCOTT stated he does not know if BARBARA talked with BOBBY directly about this or not.

SCOTT was asked if he had done anything that would minimize STEVEN's involvement such as "fudging" statements and he indicated that he had not. SCOTT stated when all of this started he believed that STEVEN had indicated law enforcement should look at SCOTT.

SCOTT denied doing anything that would minimize BARBARA's involvement. SCOTT was asked about minimizing BRENDAN's involvement and his response was "No, I don't believe so." It should be noted, SCOTT indicated he does not believe the text message he received from KEVIN RAHMLow concerning this matter.

SCOTT was asked if he thought BARBARA would speak with us concerning this matter. SCOTT then called BARBARA and at 1427 hours BARBARA arrived at SUBWAY. BARBARA identified herself as BARBARA TADYCH.

BARBARA indicated she has spoken with STEVEN AVERY maybe eight times by phone during his incarceration. BARBARA stated she used to visit STEVEN, but was taken off of his visitors list. BARBARA stated she is now back on STEVEN's visitors list.

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BARBARA stated she does not know who killed TERESA HALBACH.

BARBARA was asked if she knew she had dialup through AMERICA ONLINE (AOL) during October, 2005. BARBARA stated she did not remember if she had AOL dialup or not. BARBARA was asked where the computer that they had at the time was kept and she indicated it was a tower type computer and she thought it was kept in one of the boys rooms. BARBARA believed that it may have been in BOBBY and BRENDAN's room, but she was not positive. BARBARA stated the computer was also left in the living room at one time. BARBARA was unsure as to whether the computer had a password. BARBARA stated everyone used the computer and her ex-husband, TOM JANDA, was on it "all the time." BARBARA made the statement that she never used to lock her house and that anyone could go in there. BARBARA was asked if she still had the computer that we were speaking about from 2005 and she indicated she did. BARBARA was asked if we could have access to it and she indicated "take it."

BARBARA stated that it was unknown whether STEVEN would come into her residence while she was at work, but she stated STEVEN would just walk into her residence a couple of times per week. BARBARA, again, stated STEVEN would just walk in. BARBARA also believed that JODI STACHOWSKI was in her house from time to time as BARBARA would notice liquor missing.

BARBARA was asked about BRAD DASSEY's affidavit regarding her asking to have the computer reformatted. BARBARA stated this did not take place. BARBARA stated she wanted someone to clean her computer, as it was running slow. BARBARA stated she believed this conversation took place "way before this," prior to 10/31/05.

BARBARA remembered BRAD asking her about a password and that he thought he could do it at home. BARBARA stated, once again, she never asked BRAD to reformat anything and just wanted to make the computer faster.

BARBARA was asked about her knowledge of any pornography on the computer. BARBARA stated she did not download any pornography and did not know of anyone who downloaded pornography. BARBARA stated her ex-husband, TOM JANDA, would view pornography and he had eight to ten VHS tapes of pornography. BARBARA indicated she never saw TOM view pornography on the computer.

BARBARA stated TOM moved out of the residence on 10/15/05 and went to a residence somewhere in Manitowoc. BARBARA stated TOM knew the doors to her residence would be unlocked. BARBARA stated TOM was not welcomed on the property by BARBARA, but TOM used to visit BARBARA's parents after she and TOM separated. BARBARA also stated that TOM would go "up north" with her parents. BARBARA indicated her parents did not like and still do not like SCOTT TADYCH.

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At this time, BARBARA drew a map of the AVERY property, a copy of which can be found incorporated in this report. BARBARA was asked about files on the computer titled "TERESA HALBACH" and "DNA." BARBARA stated she knew nothing about the files. BARBARA stated she had never seen them and had no idea who would have created the files. BARBARA denied seeing the page that showed STEVEN and TERESA together.

BARBARA was asked about the statement that Attorney ZELLNER provided, indicating that BOBBY was the only person with access to the computer. BARBARA stated that was not true and that anyone who came into their residence would have had access to the computer. BARBARA specifically mentioned her sons and TOM JANDA. BARBARA indicated the doors to the residence were always unlocked.

BARBARA was asked if BOBBY accessed the internet. BARBARA stated she was not sure how much BOBBY was on the internet, as he worked third shift. BARBARA was asked when the family got the computer. BARBARA believed it was sometime between 2002 and 2004, but was unsure of exactly when. BARBARA was asked if she could recall when they got AOL dialup and she stated she had no memory of having it. BARBARA recalled that the kids would get cards that would give them credits to SMS messages.

BARBARA was asked if she stayed overnight by SCOTT on 10/31/05. BARBARA stated she was unsure specifically about 10/31/05, but stated that she would spend a lot of nights at SCOTT's house. BARBARA was asked if she watched Prison Break with SCOTT on 10/31/05. BARBARA recalled getting back to the hospital around 8:00 p.m. and then driving over to SCOTT's house to watch Prison Break.

BARBARA was asked what was going on in the family that would suddenly make STEVEN start accusing everyone of doing things. BARBARA stated she did not know. BARBARA stated she only knew that STEVEN wants out. BARBARA was asked if STEVEN was involved in TERESA HALBACH's death and she stated she did think so, but had no idea as to who might be involved.

BARBARA stated she did not believe SCOTT was involved in this, as she was with him all day. BARBARA, at one point during the interview, indicated that she also believed that BRENDAN DASSEY was "innocent."

BARBARA was asked how many times Attorney ZELLNER has been out to the AVERY property. BARBARA stated she was unsure of how many times Attorney ZELLNER had been at the property and, at this point, SCOTT indicated this is pretty "hush hush."

I asked BARBARA about what evidence she wanted to provide to Attorney ZELLNER. BARBARA stated she wanted to talk to Attorney ZELLNER about KEVIN RAHMLow. BARBARA also indicated that they were asked to provide Attorney ZELLNER with a phone number for one of the parents of a young lady named CARMIN BERTWELL (ph), who died

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from an overdose. BARBARA stated CARMIN was cremated and CARMIN's parents had to wait approximately one month to get CARMIN's cremains. SCOTT stated he was asked if he would be willing to provide the parents phone number to Attorney ZELLNER. SCOTT also indicated that the family was willing to give CARMIN's cremains to Attorney ZELLNER to test against what ashes had been recovered. SCOTT indicated the information regarding the ashes was "third hand information." BARBARA indicated that she had given the phone number for CARMIN's parents to her brother CHUCK, but CHUCK did not pass along the information to Attorney ZELLNER. BARBARA stated it was never her intention to "kick Ms. ZELLNER off the property," but when Attorney ZELLNER's team found out that BARBARA and SCOTT were on their way over, Attorney ZELLNER's team drove off the property. BARBARA and SCOTT estimated that there between five and eight cars that they met leaving the property when they arrived.

SCOTT went on to indicate that STEVEN has his family controlled "really bad." BARBARA was asked why she thinks Attorney ZELLNER is pointing the finger at BOBBY and SCOTT and she indicated she did not know why. BARBARA indicated that she never actually provided any evidence to Attorney ZELLNER concerning this matter.

BARBARA was asked if she had learned anything in the past 12 years that might make her think that STEVEN would have had involvement. BARBARA indicated she did not hear anything, but SCOTT mentioned a conversation that STEVEN had with BOBBY DASSEY and BOBBY's friend, MICHAEL OSMONSON (ph) about helping to hide or move a body.

It should be noted, I was aware that BARBARA left a message for Attorney ZELLNER on 10/24/17. I asked BARBARA what the content of that message was. BARBARA stated she did not remember what was said, but remembered it was an angry message.

BARBARA was asked what made her move off the AVERY property. BARBARA stated she and SCOTT bought a home in 2007. BARBARA also indicated that, at one point, MARK WIEGERT and TOM FASSBENDER had told her that it might be in her and SCOTT's best interest to move away. BARBARA stated, as SCOTT did not get along well with her parents, in an effort to make things easier she moved out.

BARBARA was asked what had taken place regarding her family that no one would talk to her for four years. BARBARA stated it was "a little bit of everything." BARBARA indicated that the trials put a lot of stress on her family. BARBARA was asked why STEVEN seems to control her family. BARBARA stated STEVEN has always thought that he was in control of the family. BARBARA stated three-quarters of the time she does not listen to what STEVEN has to say. SCOTT interjected that STEVEN has always been very controlling individual, even before he went to jail the first time.

BARBARA was asked if there were any favorites of her parents and what the order of favorites might be regarding her siblings. BARBARA stated STEVEN and EARL are tied in her parents

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eyes and then CHUCKY and she is lowest on the order of preference. SCOTT indicated even though STEVEN is in prison, his parents are buying him property to live on when he gets out. BARBARA indicated she was, at one time, very angry with STEVEN.

BARBARA went on to indicate that she remembered there was a fire on 10/31/05, as she saw it herself. BARBARA could not recall whether it was dark or light at the time she saw the fire. BARBARA did not remember whether the fire was present when she and SCOTT left for AURORA BAY CARE MEDICAL CENTER, but she remembered seeing it when she came back between 8:00 p.m. and 8:15 p.m. BARBARA stated she saw people she identified as STEVEN and BRENDAN standing at the fire at this time.

BARBARA remembered BRENDAN being home when she arrived home from work on 10/31/05 between 4:50 p.m. and 5:00 p.m. BARBARA stated all her boys were home to her recollection. BARBARA stated, to her recollection, BOBBY was laying down, BLAINE was getting ready to go trick-or-treating and BRENDAN was playing video games. BARBARA, once again, indicated that she believed to have gotten home from the hospital at approximately 8:00 p.m. BARBARA stated when she arrived home, she believed BOBBY was sleeping and thought BRENDAN was outside with STEVEN. BARBARA stated she called STEVEN's cell phone and talked with BRENDAN to see if BRENDAN had a coat on. BARBARA also indicated she advised BRENDAN, at that time, to be home at a certain time. BARBARA stated BRENDAN sounded normal on the telephone. BARBARA stated BRENDAN had not had a coat on, but went back home and got one of BARBARA's. BARBARA stated she believed she told BRENDAN to be home between 9:00 p.m. and 10:00 p.m.

The interviews with SCOTT and BARBARA TADYCH terminated at 1530 hours.

At 1545 hours on 11/10/05, BARBARA turned over to Special Agent WISCH the tower for the computer that we had been previously discussing and Special Agent WISCH provided a receipt to BARBARA. The computer tower was collected at the TADYCH's residence located at 12520 Princel Road in Mishicot. The computer was taken for reasons of possible additional forensic examination.

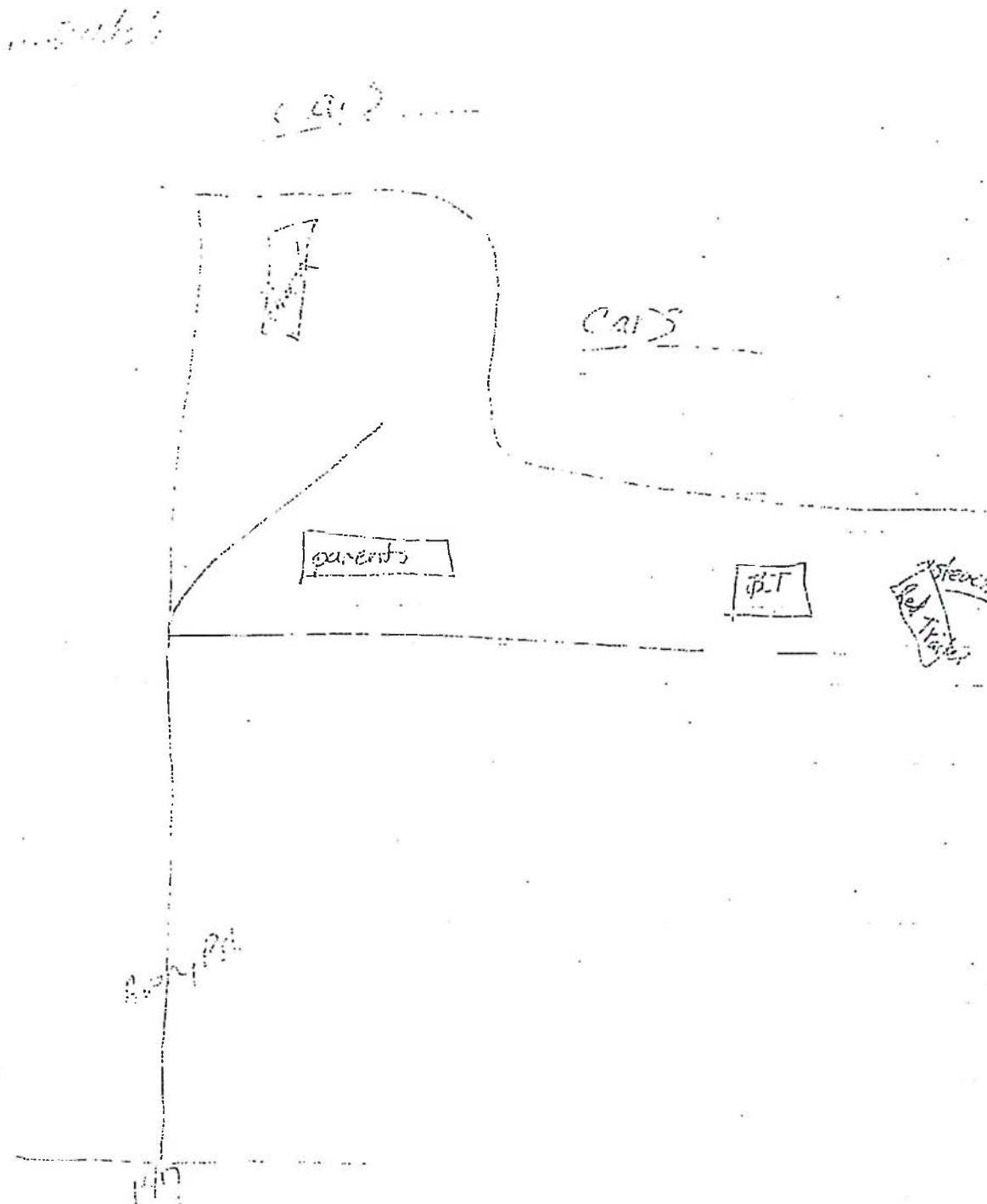
Investigation continues.

Special Inv. John Dederling
Calumet Co. Sheriff's Dept.
JD/ab

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AV-Preeminent Rating

June 12th, 2018

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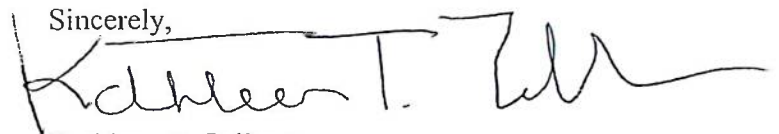
RE: People -v- Steven Avery

Dear Tom,

As you know, the appellate court remanded our case to the circuit court to allow us to supplement our Motion for Post-Conviction Relief with evidence related to the Dassey CD, which you disclosed on April 17, 2018. I am in possession of new police reports from the Calumet County Sheriff's Department that reference the seizure of the Dassey computer on November 10, 2017 at 1545 hours by Special Agent Wisch. The computer was located at the Tadych residence 12520 Princel Rd. in Mishicot. The computer was kept for 146 days and returned to the Tadych residence on April 5, 2018. I am requesting that you immediately provide us with any and all documentation, including any drafts of notes, typed or handwritten memorandums, interoffice communications, files, logbooks, any video or motion picture taken of the examination performed, writings (electronic or otherwise) of any type or nature that make reference to the computer examination performed during the above time period, including but not limited to, computer images, recovered images, internet searches and history, including any and all word searches, computer discs, computer tapes, computer cards, computer printouts, photo records, reports, recovered pornography, all data from the Windows registry, any and all folders with Steven Avery and Teresa Halbach's photographs, any other information about Teresa Halbach's murder, DNA folders, messages (instant, email, or text), all chain of custody document related to the seizure of the Dassey computer on November 10, 2017. I am also requesting any and all documents confirming that the computer belonged exclusively to Brendan Dassey.

I am also requesting any and all reports of the current investigation of any and all witness interviews from June 2017 to the present.

Sincerely,


Kathleen T. Zellner





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AV-Preeminent Rating

June 25, 2018

Mr. Thomas Fallon

VIA EMAIL: fallontj@doj.state.wi.us

Dear Tom:

With our circuit court filing date of July 6, 2018, fast approaching, I wish to renew my request for documents made in my letter of June 12, 2018. A copy of that letter is enclosed for your review.

On June 12, 2018, I made a request for any and all documentation, including drafts of notes, typed or handwritten memoranda, interoffice communications, files, logbooks, any video recorded or photographs taken of the examination performed, writings (electronic or otherwise) of any type or nature that make reference to the computer examination performed during the above time period, including any and all word searches, computer discs, computer tapes, computer cards, computer printouts, photo records, reports, recovered pornography, all data from the Windows or internet browser registry, any and all folders with Steven Avery's and Teresa Halbach's photographs, any other information about Teresa Halbach's murder, DNA folders, messages (instant, email, or text), all chain of custody documents related to the seizure of the Dassey/Tadych computer on November 10, 2017, from the Tadych residence at 12520 Princ Road in Mishicot. I am also requesting any and all documents confirming that the computer belonged exclusively to Brendan Dassey. Further, I am renewing my request for any and all reports generated in the current investigation from June 2017 to the present.

Considering your office's ongoing *Brady* obligation and open-records policy, I ask that you transmit these documents at your earliest convenience.

Sincerely,

Kathleen T. Zellner

Enc.
KTZ | kwk



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AV-Preeminent Rating

July 2, 2018

Mr. Thomas J. Fallon
State of Wisconsin, Office of Attorney General
114 East State Capitol
Madison, WI 53702-7857
(608)266-7340

Dear Mr. Fallon,

You have not responded to my June 25, 2018 letter requesting that you produce any data or other documentation from the most recent forensic examination that we performed on the Dassey computer while it was in possession of the State from November 10, 2017 to April 5, 2018. You previously stated that we had not provided any legal or factual basis for our request. Therefore, I am once again requesting the most recent forensic examination documentation, and in support thereof state the following legal and factual basis for our request:

1. The Wisconsin Supreme Court, in *O'Brien*, addressed post-conviction discovery demands. The *O'Brien* court specifically stated, “[W]e conclude that a defendant has a right to post-conviction discovery when the sought-after evidence is relevant to an issue of consequence.” *Id.* at 321. Specifically, the *O'Brien* court set forth a criteria that must be met in order to obtain post-conviction discovery:

“(1) provide supporting affidavits with the motion which describe the material sought to be discovered and explain why the material was not supplied or discovered at or before trial; (2) establish that alternative means or evidence is not already available such that the postconviction discovery is necessary to refute an element in the case; (3) describe what results the party hopes to obtain from discovery and explain how those results are relevant and material to one of the issues in the case; and (4) after meeting the first three criteria, the party must then convince the trial court that the anticipated results would not only be relevant, but that the results would also create a reasonable probability of a different outcome. General allegations that material evidence may be discovered are inadequate for post-conviction discovery motions.”

Id. at 343-44.

2. Trial defense counsel Jerome Buting (“Attorney Buting”) provided an affidavit which has been reviewed by the Appellate Court in ordering the case to be remanded. Attorney

Buting explains that the Dassey computer CD of Det. Velie's report was not supplied by the State prior to trial because it was in the sole possession of Investigator Thomas Fassbender ("Inv. Fassbender"). Specifically, in paragraph 6 of his affidavit, Attorney Buting states:

Neither the above referenced CD nor the investigative report of Det. Velie was ever turned over in discovery. The December 14, 2006 letter from Special Prosecutor Kratz (Exhibit 1) which itemizes the discovery related to this report, confirms by omission that no CD entitled "Dassey's computer, final report, investigative copy" was included in this batch of discovery. (R.636:19) (Attached and incorporated herein as **Exhibit F** is a copy of Attorney Buting's affidavit including Exhibit 1 of that affidavit).

3. Attorney Buting, in his affidavit, describes how the evidence on the Dassey computer CD of Det. Velie's report would have been relevant and material to the *State v. Denny*, 120 Wis.2d 614, 357 N.W.2d 12 (Ct. App. 1984) pre-trial issue. Specifically, in paragraph 10 of his affidavit, Attorney Buting states that trial defense counsel was preparing a *Denny* motion to "introduce evidence of third-party suspects at Mr. Avery's trial." Mr. Buting offers the following opinion about the Dassey computer CD of Det. Velie's report being consequential in meeting the motive requirement of *Denny* and allowing trial defense counsel to name a third party suspect:

"In that *Denny* motion, subsequently filed by the defense on January 8, 2007, we named Bobby Dassey as a possible suspect for the homicide of Teresa Halbach. We established that he had access and opportunity to have committed the crime, but the court ruled no motive was established and therefore denied the *Denny* motion as to Bobby Dassey and others. If there was anything that was on the CD investigator report from Det. Velie that would have linked Bobby Dassey to the violent porn images found on the Dassey computer, we would have included such information in our *Denny* motion. Such information could have strengthened Bobby Dassey as a possible suspect who may have sexually assaulted and killed Ms. Halbach, and specifically would have provided evidence of a motive."

(R. 636:19) (**Exhibit F**).

4. Current post-conviction counsel believes that the new investigation has uncovered additional, consequential evidence on the *Denny* issue. Current post-conviction counsel is entitled to the new forensic examination done of the Dassey computer CD of Det. Velie's report because that evidence will likely meet the requirements of newly discovered evidence in that: 1) The evidence was discovered after the conviction; 2) The defendant was not negligent in seeking to discover it; 3) The evidence is material to an issue in the case; and 4) The evidence is not merely cumulative. *State v. Vollbrecht*, 2012 WI App 90, 344 Wis.2d 69, 820 N.W.2d 443.

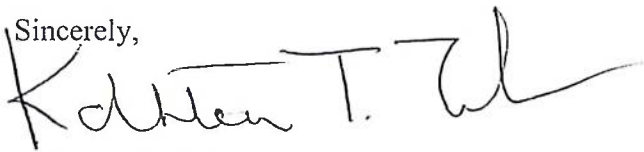
5. As Mr. Buting has explained in his affidavit, trial defense counsel was preparing a motion pursuant to *Denny* to introduce evidence of third-party suspects in Mr. Avery's trial. (R. 636:18-20). Trial defense counsel named Bobby as a potential suspect in Ms. Halbach's homicide but was unsuccessful in meeting the *Denny* requirement of establishing motive for the murder. If trial defense counsel had the Dassey computer CD of Det. Velie's report, revealing all of the violent pornography, trial defense counsel would have been able to establish motive and successfully establish Bobby as a *Denny* third-party suspect.
6. The Appellate Court order of June 7, 2018 clearly contemplates that the material on this CD is "consequential" to the case because it discusses the possibility of the entire case being resolved on this *Brady* issue. (**Exhibit E**).
7. It is hard to contemplate how a subsequent forensic examination of the Dassey computer would not be consequential to the *Denny* issue when the first forensic examination of the Dassey computer is consequential enough to the Appellate Court to cause it to remand the case to the circuit court for further proceedings on this alleged *Brady* violation.
8. Wis. Stat. § 904.04(2), provides that "[e]vidence of other crimes [and/or] wrongs [and/or] acts...when offered...as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident" is admissible. The court in *Dressler v. McCaughtry*, 238 F.3d 908 (7th Cir. 2001), held that the "acts" admitted pursuant to this section were the defendant's possession of the pornographic videotapes and pictures. Those images depicting intentional violence were admitted as evidence of the defendant's motive, intent, and plan to murder the victim. (R. 636:7).
9. The defendant in *Dressler* argued that the videotapes and pictures were irrelevant and constituted inadmissible propensity evidence. The 7th Circuit disagreed stating:

The fact that the defendant maintained a collection of videos and pictures depicting intentional violence was probative of the State's claim that he had an obsession with that subject. A person obsessed with violence is more likely to commit murder, and therefore the videos and photographs were deemed relevant. *Id.* at 914.
10. The *Dressler* court also rejected the defendant's argument that the videos and pictures were inadmissible propensity evidence and held that, although evidence of the general character of a defendant is inadmissible to prove he acted in conformity therewith, the above exception from § 904.04(2) was deemed to apply.
11. The same result, as in *Dressler*, is required here. Ms. Halbach was killed in a violent and vicious manner. An obsession with images depicting sexual violence against women made it more likely that person would commit a sexual homicide. The violent sexual images were relevant to motive and would have resulted in trial defense counsel being able to establish motive to meet the *Denny* standard.

12. The United States Constitution and the Wisconsin Constitution guarantee criminal defendants a meaningful opportunity to present a complete defense. *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006). Whether the right is rooted in the due process clause, or the compulsory process or confrontation clauses of the Sixth Amendment, the defendant has the fundamental right to defend himself. *Holmes* at 324.
13. “The rights granted by the confrontation and compulsory process clauses are fundamental and essential to achieving the constitutional objective of a fair trial.” *State v. Pulizzano*, 155 Wis.2d 633, 645, 456 N.W.2d 325 (1990), citing *Chambers v. Mississippi*, 410 U.S. 284, 294-95 (1973).
14. Mr. Avery has a constitutionally-guaranteed right to present a complete defense to the charges against him. Mr. Avery was deprived of his constitutional right to present a complete defense because of the *Brady* violation committed by the State in failing to tender the first forensic examination of the Dassey computer CD of Det. Velie’s report. Mr. Avery also has a constitutionally-guaranteed right to receive the second forensic examination of the Dassey CD of Det. Velie’s report.
15. Clearly if the State kept the Dassey computer for an additional 146 days, some type of forensic examination was performed even if no new evidence was produced. Mr. Avery is entitled to be so informed and to have his expert review the results of the second forensic examination of the Dassey computer CD of Det. Velie’s report so that he can attempt to meet the *Denny* motive requirement and therefore be accorded a meaningful opportunity to present a complete defense in a new trial.

If we do not receive the data or documentation from the most-recent forensic examination of the Dassey computer by 4 p.m. tomorrow (July 4, 2018), we shall proceed in filing a motion to compel production of these documents with the circuit court.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kathleen T. Zellner', written in a cursive style.

Kathleen T. Zellner

STATE OF WISCONSIN, CIRCUIT COURT, Manitowoc COUNTY

For Official Use

Case Caption:

Subpoena and Certificate of Appearance

State of Wisconsin -v- Steven A. Avery

Case No. 2005-CF-381

The State of Wisconsin to (Witness Name and Address):

Barbara Tadych
12520 Princ Road
Mishicot, Wisconsin 54228

Service Information		
Date Served	Time Served	Fee Charged
		\$
Manner of Service		Witness Fee Enclosed
<input type="checkbox"/> Personal <input type="checkbox"/> Substitute: _____		\$
Serving Agency		
Served By (Signature)		

You are required to appear and give evidence:

APPEARANCE INFORMATION		
Date	Time	Location (Include Room Number)
Presiding Official		
On Behalf Of	Type of Proceeding	

You are further required to bring with you the following:

Hewlett-Packard Pavilion personal desktop computer,
serial number PJ562AA

If you have any questions about this subpoena, please contact:		Issuing Official	
Name (Type or Print) Kathleen T. Zellner & Associates, P.C.		By:	
Title Attorney for Steven Avery	Telephone Number 630-955-1212	_____ Signature	
Address 1901 Butterfield Road, Suite 650 Downers Grove, Illinois 60515		_____ Date	
If you need help in this matter because of a disability, please call:			

For Court Use Only

Witness Information	Witness Certificate of Appearance	
Telephone Number	Date Witness Appeared	Mileage
Address Correction	Signature of Witness	



Subpoena and Certificate of Appearance

This form shall not be modified. It may be supplemented with additional material.

§§805.07, 885.02 and 885.03, Wisconsin Statutes

CERTIFICATE OF SERVICE

I certify that on August 3rd, 2018, a true and correct copy of Motion to Issue Subpoena Duces Tecum to Barbara Tadych, was furnished via electronic mail and by Federal Express, postage prepaid to:

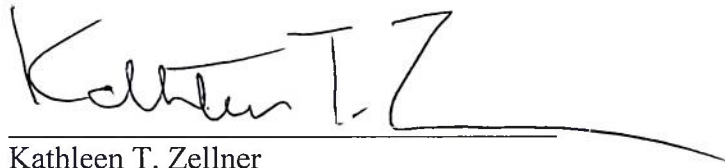
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Manitowoc County Courthouse
1010 South 8th Street
Manitowoc, WI 54220


Kathleen T. Zellner