

STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY

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

**DEFENDANT’S REPLY TO STATE’S RESPONSE TO MOTION TO COMPEL
PRODUCTION OF RECENT EXAMINATION OF THE DASSEY COMPUTER**

INTRODUCTION

Defendant-Appellant-Petitioner’s (hereinafter “Mr. Avery”), *Motion to Compel Production of Recent Examination of the Dassey Computer* concerns evidence that existed before his case went to trial in 2007 and not after the trial, as the State contends.¹

Although the second forensic examination of the Dassey computer was performed over an 8-month time period in 2017-18 it covered 280 days prior to Mr. Avery’s trial. Mr. Avery is requesting that this court perform an in camera inspection of the second forensic analysis performed by Detective Michael Velie (“Det. Velie”). The State never addresses the fact that Mr. Avery is requesting an in camera inspection and therefore fails to address the appropriate test for this court to apply.

¹ All exhibits to Mr. Avery’s Reply to the State’s Response to the Motion to Compel are in bold, such as **Exhibit 1**. All other exhibits previously cited in Mr. Avery’s Motion to Supplement and Mr. Avery’s Reply to the Motion to Supplement are not in bold. The State’s Response to the Motion to Compel is cited as “St. Resp., p. ____.” All citations to the Appellate Record will be cited, with the page number, as “R. __: __.”

Mr. Avery has set forth a specific factual basis from the first forensic analysis of Detective Velie, which demonstrates a reasonable likelihood that the second forensic examination contains relevant information that is necessary to a determination of guilt or innocence of Mr. Avery and is not merely cumulative of evidence which was already available to him. *State v. Robertson*, 2003 WI App 84, 263 Wis. 2d 349, 661, 661 N.W.2d 105

ISSUE

Is Mr. Avery entitled to post-conviction discovery of evidence that existed before his case went to trial in February 5, 2007?

PERTINENT FACTS WHICH RESULTED IN A SECOND FORENSIC EXAMINATION OF THE DASSEY COMPUTER

The State does not dispute that Det. Velie's forensic analysis of the Dassey computer, contained on the CD, was not disclosed to Mr. Avery until April 17, 2018. Rather, the State contends that "Mr. Avery, since December 2006, had the forensic image of the Dassey computer to do his own analysis." (St. Resp., p. 1).

The State ignores Mr. Avery's argument that his trial defense counsel was deliberately misled by former Prosecutor Kenneth Kratz's ("Prosecutor Kratz") discovery disclosures. On December 14, 2006, Prosecutor Kratz sent a letter to trial defense counsel, which disclosed the December 7, 2006, Investigator Thomas Fassbender report. (Motion to Supplement, Exhibit 2 is the Fassbender report). The Fassbender report was prepared 218 days after Det. Velie completed his final investigative report for the State on May 10, 2006, which was saved to the undisclosed CD.

On December 15, 2006, Prosecutor Kratz, again, deliberately misled trial defense counsel in his itemized inventory of discovery disclosure, in which he labeled "7 CD's: contents of Brendan Dassey's computer." Prosecutor Kratz's stipulation proposal, paragraph R, stated, "Computer

Analysis of Steve, Teresa's and Brendan 's Computer—Mike Veile [*sic*], of the Grand Chute PD, analyzed the hard drives of these 3, and found *nothing of evidentiary value.*” (emphasis added) (Motion to Supplement, Exhibit 5) (R.266:2).

Mr. Avery’s trial defense counsel were misled by the Fassbender report, which identifies the computer as belonging to Brendan Dassey (“Brendan”). (Motion to Supplement, Exhibit 2). The Fassbender report minimizes the number of violent images and fails to identify the images of torture, pain, mutilation, rape, and death as being those of young women. A number of those images bear a striking resemblance to Teresa Halbach (“Ms. Halbach”). (Defendant’s Reply to the State’s Response to Defendant’s Motion to Supplement, p. 2). The Fassbender report omits the timeline when the images were viewed, which excludes all family members, except Bobby, from 562 of the searches. (Motion to Supplement, Exhibit 2) (R.636:28). Also, the Fassbender report fails to reference that the 7 DVDs establish that Bobby was awake and using the computer on October 31, 2005, contrary to Bobby’s trial testimony. (Motion to Supplement, Group Exhibit 8).

Assistant Attorney General Thomas Fallon (“Attorney Fallon”) admits in his April 17, 2018 letter that the 7 DVDs were simply a “raw data download.” (Attached and incorporated herein as **Exhibit 1** is Thomas Fallon’s April 17, 2018 letter). Because trial defense counsel were misled about the evidentiary value of the 7 DVDs, they did not hire a forensic computer expert to analyze “the raw data download” which was provided to them on December 15, 2006. (**Exhibit 1**).

The Fassbender report fails to specifically identify the most important data extracted by Det. Velie which is present on the undisclosed CD. That data is as follows:

1. 1,625 pornographic photos extracted from the 14,099 images (Defendant’s Reply to the State’s Response to Defendant’s Motion to Supplement, Ex. D is the Fourth Supplemental Affidavit of Gary Hunt);
2. The internet history of 1,803 pornographic search terms (Defendant’s Reply to the State’s Response to Defendant’s Motion to Supplement, Ex. D);

3. Relevant MSN chat logs regarding Bobby and his sexual solicitation of underage girls (Motion to Supplement, Exhibit 21); and
4. 2,632 word searches Det. Velie performed that investigators believed were relevant to Ms. Halbach's murder (Defendant's Reply to the State's Response to Defendant's Motion to Supplement, Ex. D).

Even if trial defense counsel had recognized the State's deception in its disclosures, there was not time, prior to filing their *Denny* motion on January 10, 2007, to hire an expert to extract from the raw data of the 7 DVDs the 1,625 pornographic photos from the 14,099 images, to reduce the internet history to 1,803 pornographic search terms, to review the 1,468 pages of MSN chat logs and extract relevant conversations, and to perform the 2,632 word searches for terms relevant to Ms. Halbach's murder.

ARGUMENT

The violent pornographic images depicting bondage, torture, pain, decapitation, and mutilation of young females on the Dassey computer are indisputably relevant to the motive requirement of *State v. Denny*, 120 Wis. 2d 614, 357 N.W.2d 12 (Ct. App. 1984). 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, absence of mistake or accident” is admissible.

A number of state and federal cases have determined that pornographic images are admissible to establish motive for a crime: *State v. Normington*, 2008 WI App 8, ¶ 21, 306 Wis. 2d 727, 744 N.W.2d 867 (2007) (the probative value of the pornographic images substantially outweighed the danger of unfair prejudice, and the images established the defendant's motive in committing the crime); *State v. Jensen*, 2011 WI App 3, 331 Wis. 2d 440, 794 N.W.2d 42 (pornographic photographs admitted to establish motive in committing the crime); *State v.*

Luchinski, 2009 WI App 110, 320 Wis. 2d 702, 771 N.W.2d 928 (pornographic photographs admitted to establish motive in committing the crime); *State v. Wayerski*, 2017 WI App 80 (pornographic photographs admitted to establish motive in committing the crime); *United States v. Torrez*, 869 F.3d 291 (4th Cir. 2017) (upholding admission of pornographic videos showing violence against women who were sleeping, unconscious, or restrained to establish motive for homicide); *United States v. Blauvelt*, 638 F.3d 281, 292 (4th Cir. 2011) (upholding admission of adult pornographic videotapes in order to prove identity, motive, and intent in child pornography case); *Dressler v. McCaughtry*, 238 F.3d 908 (7th Cir. 2001) (upheld admission of videotapes and pictures of violence to establish defendant’s obsession with violence and greater likelihood of committing murder because of that obsession).

Collateral Estoppel Effect of Prior Court Rulings re Denny

In this case, the *Denny* issue as to Bobby’s opportunity and direct connection to the crime has been actually litigated. Moreover, the admissibility of third-party evidence as to Bobby was necessary to Mr. Avery’s conviction and is necessary to the adjudication of the present post-conviction motion.

“[I]ssue preclusion forecloses relitigation of an issue that was litigated in a previous proceeding involving the same parties or their privies.” *Masko v. City of Madison*, 2003 WI App 124, ¶ 4, 265 Wis. 2d 442, 665 N.W.2d 391. For issue preclusion to limit subsequent litigation, the question of fact or law must have been actually litigated and necessary to the judgment. *Mrozek v. Intra Fin. Corp.*, 2005 WI 73, ¶ 17, 281 Wis. 2d 448, 699 N.W.2d 54. “An issue is ‘actually litigated’ when it is ‘properly raised, by the pleadings or otherwise, and is submitted for determination, and is determined.’” *Randall v. Felt*, 2002 WI App 157, ¶ 9, 256 Wis. 2d 563, 647 N.W.2d 373 (quoting Rest. 2d of Judgments § 27 cmt. D (1980)). If the question of fact or law has

been actually litigated and is necessary to the judgment, then the court must “conduct a fairness analysis to determine whether it is fundamentally fair to employ issue preclusion given the circumstances of the particular case at hand.” *Mrozek*, 281 Wis. 2d 448, ¶ 17. The party asserting issue preclusion bears the burden of demonstrating that it applies. *Paige K.B. v. Steven G.B.*, 226 Wis. 2d 210, 219, 594 N.W.2d 370 (1999).

In the instant case, the parties fully litigated the issue of third-party evidence before trial. (See, R.75, State’s motion prohibiting evidence of third party liability; R.92, Defendant’s response to State’s motion to prohibit evidence of third party liability; R.97, State’s reply to Defendant’s response on the motion to prohibit third party liability evidence; R.198, Defendant’s statement on third-party responsibility; and R.205, State’s memorandum to preclude third party liability evidence). Moreover, the trial court issued a pre-trial order on the issue of *Denny* evidence. (R.238). The State, in its response, acknowledges its previous concession made before trial that "opportunity to commit the crime may be arguable because Bobby Dassey was on the grounds of the salvage yard on the day in question." (St. Resp., pp. 16-17).

Post-trial, the parties again litigated the issue of third-party evidence. On January 25, 2010, the trial court held that "[t]he 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*." (R.453:95-96). Therefore, the State is collaterally estopped from arguing that Bobby’s opportunity and direct connection to the crime had not been established by the previous trial court ruling on January 10, 2010.

In *State v. Wilson*, 2015 WI 48, ¶ 3, 362 Wis. 2d 193, 864 N.W. 2d 52, the Wisconsin Supreme Court found defendant established the *direct connection* to the crime requirement of *Denny* because of the third party's presence at the scene combined with motive—not wanting to pay child support to the victim whom he had impregnated. However, the *Wilson* defendant failed to establish opportunity because he could not establish either of 2 propositions: (1) the third party had employed a gunman to kill the victim or (2) the ballistic evidence demonstrated that the third party was actually the shooter himself. *Id.* at ¶ 90. Therefore, the *Wilson* court concluded that the third-party suspect could not have “engineered” the crime. *Id.*

Even if this court refuses to apply collateral estoppel, there is an abundance of evidence that meets the opportunity and direct connection requirements. The following evidence fits within the contours of the known facts of the case and cannot be readily disproven. *Id.* at ¶ 88. Mr. Avery does not have to actually prove that Bobby committed the crime as long as his theory is based on evidence beyond “a possible ground of suspicion.” *Denny*, 120 Wis. 2d at 623. The evidence supporting that Bobby was a viable third-party suspect and had a realistic opportunity to engineer the crime, is as follows:

1. Bobby had developed an obsession with Ms. Halbach and, on a number of occasions, watched her from his residence, and commented on her visits the next day. (R.636:89). Because of Bobby's obsessive and compulsive preoccupation with viewing violent pornography of women, many of whom resembled Ms. Halbach, he developed violent sexual fantasies about her. (Motion to Supplement, Group Exhibit 9 is the Affidavit of Ann Burgess) (Defendant's Reply to the State's Response to the Motion to Supplement, p. 2). The Dassey computer also contained images of unconscious or deceased young females who resembled Ms. Halbach. (Motion to Supplement, Exhibit 22, at AverySupp-00015, 21, 41, 74-75, 103, 117, 126, 131, 140, 199, 221, 245, 247, 251, 259, 330, 354, 377, 475, 489, 502).
2. Mr. Avery did not leave the Dassey phone number (920-755-8715) with *AutoTrader* because he was waiting for a return call to his cell phone or landline to confirm the appointment. (R.604:23-24). Because Bobby was awake, he would have heard the voice message left by Ms. Halbach on the Dassey answering machine at 11:43 a.m. (R.702:159). Someone other than Mr. Avery, or *AutoTrader*,

who knew that Ms. Halbach did not have the Dassey address provided her with the Dassey address prior to 2:27 p.m. when she told Dawn Pliszka (“Ms. Pliszka”) that she was on her way to the Avery property. (R.694:80). Bobby was the only person who could have listened to Ms. Halbach’s voice message to the Dassey residence at 11:43 a.m. and known that Ms. Halbach did not have an address for the appointment.

3. Bobby lied to the police when he denied knowing that, on October 31, 2005, Ms. Halbach was coming to the property. (Motion to Supplement, Exhibit 10 is the Wisconsin Public Defender interview of Bobby) (R.632:37-38).
4. On October 31, 2005, Bobby told police that he saw Ms. Halbach by her vehicle for approximately 10 seconds. However, Bobby was able to describe Ms. Halbach’s clothing, physique, and hair style, indicating that he had more direct contact with Ms. Halbach than simply seeing her out of his window for 10 seconds. (R.630:76-77).
5. Bobby's computer was in use on October 31, 2005, which impeaches his trial testimony that he was asleep from 6:30 a.m. to 2:00 p.m. (R.689:35-36). The computer was used to access the internet on October 31, 2005 at 6:05 a.m., 6:28 a.m., 6:31 a.m., 7:00 a.m., 9:33 a.m., 10:09 a.m., 1:08 p.m., and 1:51 p.m. (Motion to Supplement, Group Exhibit 8). The Dassey computer internet browsing data indicates that 22 pornographic searches were made on October 31, 2005. (Defendant’s Reply to the State’s Response to the Motion to Supplement, Exhibit A, p. 12).
6. As Ms. Halbach left the property, Bobby followed her in his Blazer. (Motion to Supplement, p. 27, ¶ 5; Exhibit 14 is Calumet County Sheriff's Department Report of the Bryan interview on 11/3/2017; Group Exhibit 11). (WDOJ November 6, 2005 Report of Interview with Bryan: R. 630:34-37; Affidavit of Bryan Dassey: R.630:30-31; R.689:39-40; Barb's 10/30/17 Facebook post: R.633:40; Barb and Scott's phone call with Steven Avery on 10/24/17: R. 633:20).
7. Ms. Halbach’s cell phone records indicate that she had left the Avery property by 2:41 p.m. and headed west on STH 147 and south on CTH Q. (R.603:140; 631:44). It was established at trial that Ms. Halbach frequently did hustle shots. (R.694:41-42, 45-47, 52-57, 96, 99-103). Because Bobby lied about following Ms. Halbach from the Avery property, he most likely is the person who waved her down for a hustle shot. Ms. Halbach was in the area of Kuss Road, so it is a reasonable inference that she stopped her vehicle for the hustle shot at the Kuss Road cul-de-sac. Ms. Halbach opened the rear cargo door of her RAV-4 to obtain her camera for the photograph. The blood spatter on the inside of the RAV-4 cargo door demonstrates that a struggle ensued between Ms. Halbach and her attacker. Specifically, the blood spatter indicates that the perpetrator knocked her to the ground and struck her repeatedly with a rock, or other hard object, while she was

lying next to the rear tire on the driver's side of the RAV-4. (Motion to Supplement, Exhibit D to Group Exhibit 11 is the Supplemental Affidavit of Stuart James).

8. The dog alerts indicate that Ms. Halbach was in the area of the suspected burial site for a period of time where she may have been assaulted. (R.603:130).
9. The hair bloodstain patterns on the inside panel of the rear cargo area of the RAV-4 were created by Ms. Halbach being placed in the rear cargo area of the RAV-4 and her injured head bouncing on the inside panel as the RAV-4 was moving. (Motion to Supplement, Exhibit D to Group Exhibit 11).
10. Bobby testified that he saw Ms. Halbach taking photographs at approximately 2:30 p.m. (R.689:35-37). Mr. Avery claims that Ms. Halbach left the property shortly thereafter. (R.636:92). Bryan Dassey ("Bryan") also claims that Bobby saw Ms. Halbach leave the property. (R.630:30-31). It is a reasonable inference that Ms. Halbach and her vehicle were brought back to the Avery Salvage Yard after she left the property the first time.
11. It is a reasonable inference that Ms. Halbach was shot by Bobby's .22 LR because Scott Tadych ("Mr. Tadych") attempted to sell Bobby's .22 LR the next week to a fellow employee at the Wisconsin Aluminum Foundry. (R.630:73-74; 706:165-66). The Dassey garage was never luminolled or checked for forensic evidence of any type; however, blood, which was never tested, was found between the Dassey garage and residence.
12. According to John Leurquin, a propane truck driver who was on the Avery property on October 31, 2005, a vehicle similar to Ms. Halbach's RAV-4 drove past him at 3:45-3:50 p.m. Mr. Leurquin was uncertain whether the driver was male or female or which direction the vehicle turned as it exited the Avery property. (R.712:127-28).
13. According to Blaine, he observed Bobby driving a green vehicle east on STH 147 between 3:45-3:50 p.m. on October 31, 2005. (Motion to Supplement, Group Exhibit 19 is the Affidavit of Blaine Dassey).
14. On October 31, 2005, a vehicle matching Ms. Halbach's RAV-4's description was observed, parked by a tree at the Old Dam, east of the Avery Salvage Yard on STH 147 before sunset by witness Paul Burdick. (Motion to Supplement, Exhibit 23 is the Affidavit of Paul Burdick).
15. On November 2 and 3, 2005, a vehicle matching Ms. Halbach's RAV-4's description was observed parked in the same location at the Old Dam by witness Kevin Rahmlow. (R.630:18-23).
16. The distance from the Old Dam to the Avery Salvage Yard is 1.7 miles, a 20-30 minute walk at most.

17. Ms. Halbach's electronic devices were burned on October 31, 2005, in the Dassey burn barrel behind the Dassey residence at approximately 4:30-5:00 p.m., and that fire was observed by Josh Radandt from his property. (R.621:224-28).
18. It is a reasonable inference that Ms. Halbach was dismembered in the Dassey garage because of Bobby's attempt to conceal evidence by hanging a deer in the Dassey garage and lying about the time frame of when that happened. (Excerpt from the 11/6/05 Interview of Barb Janda STATE0804, 815-16, is attached and incorporated herein as **Exhibit 2**) (R.697:19-21).
19. On October 31, 2005, Ms. Halbach's body was put in the Dassey burn barrel and transported to the Manitowoc County Gravel Pit after sunset. According to Mr. Avery, Bobby was the only Dassey or Avery family member who frequently hunted in the Manitowoc Gravel Pit, was very familiar with the terrain, and burned deer in his burn barrel. Ms. Halbach's body was burned in the Dassey burn barrel, and the odor was detected by Travis Groelle as he was working on CTH Q after sunset. (Defendant's Reply to the State's Response to Defendant's Motion to Supplement, p. 21).
20. On October 31, 2005, Bobby was 2 hours late leaving for work from the Avery property. He did not leave for work until 11:30 p.m. (R.630:78).
21. After Ms. Halbach was initially burned on October 31, 2005, 60 percent of her skeleton and most of her teeth were removed from the Manitowoc County gravel pit and burned elsewhere. (Motion to Supplement, Exhibit 28 is the Affidavit of Lisa Novachek) (R.636:87-88). Some of her bones were inadvertently dropped on the ground in 3 locations in the Manitowoc gravel pit. (Dr. Leslie Eisenberg's Bone Evidence Worksheet, STATE_1_9279-81, is attached and incorporated herein as **Exhibit 3**).
22. The burn barrel was returned to the Dassey residence, leaving some of Ms. Halbach's bones in the burn barrel. On November 4 or in the early morning hours of November 5, 2005, Bobby planted some of Ms. Halbach's bones in Mr. Avery's burn pit. Mr. Avery's dog, Bear, knew him and did not bark. Bobby tipped the Dassey burn barrel into Mr. Avery's burn pit, planting some of the bones, but inadvertently left the remainder in the bottom of the Dassey burn barrel. (R.706:229-30). The bone mass in the Dassey burn barrel and Mr. Avery's burn pit totaled 40 percent of Ms. Halbach's total bone mass. (R.706:226).
23. On November 3, 2005, Mr. Avery told Bobby about Sgt. Andrew Colborn's visit to the Avery salvage yard regarding Ms. Halbach's disappearance. Bobby observed that Mr. Avery's finger was cut and bleeding. When Mr. Avery left the property to go to Menard's, Bobby entered Mr. Avery's trailer and wiped up blood from Mr. Avery's sink. He transported the blood to the RAV-4 and selectively dripped the blood into Ms. Halbach's vehicle in order to frame Mr. Avery for the murder.

(Motion to Supplement, Group Exhibit 11 and Exhibit D to Group Exhibit 11). Bobby was the only person who could have planted Mr. Avery's blood in the RAV-4 because he was the only person home on November 3, 2005, when Mr. Avery's finger started bleeding again and who had access to Mr. Avery's blood in the sink during the crucial time period before the blood completely coagulated. It could only have been the taillights from Bobby's vehicle that Mr. Avery saw by his trailer because no one else could have driven to Mr. Avery's trailer in that time frame. The court in *Wilson* held that, "[i]f the defense theory is that a third party framed the defendant, then the defense might show opportunity by demonstrating the third party's access to the items supposedly used in the frame-up." 2015 WI 48, ¶ 66. Bobby is the only family member on the Avery property who was present and had access to the blood dripped in Mr. Avery's sink on November 3, 2005.

24. Bobby misrepresented the comments that were made in a conversation between Mr. Avery and Bobby. The conversation did not occur in the Dassey garage. The conversation was initiated by Bobby who asked Mr. Avery if he had Ms. Halbach hidden somewhere. Mr. Avery thought Bobby was joking, and stated "under my bed." Mr. Avery did not start this conversation. When Mr. Avery reviewed Bobby's recent interview, he thought it was suspicious that Bobby was referring to Ms. Halbach as deceased since, at that point on November 4, 2005, everyone thought that she was missing and Mr. Avery did not know she had been murdered. (Motion to Supplement, Group Exhibit 11).
25. Bobby had scratches on his upper back, in close proximity to the time of the murder, that were consistent with human fingernails. (R. 630:78-80). According to current post-conviction counsel's forensic pathologist, Larry Blum, M.D. ("Dr. Blum"), the scratches on Bobby's back were not caused by a labrador puppy and are consistent with human fingernails scratching Bobby's back. (Motion to Supplement, Exhibit 18 is Dr. Blum's affidavit).
26. In Bobby's 2017 reinterview by the police, he denied that the computer was in his bedroom even though the crime scene video shows the computer in his bedroom. (Attached and incorporated herein as **Exhibit 4** is the audio of Bobby's 11/17/17 interview) (Motion to Supplement, Exhibit 20 is the 11/12/05 Sgt. Tyson Crime Scene Video).

The Weakness of the Forensic Evidence Used Against Mr. Avery

The State has failed to dispute Mr. Avery's forensic experts' opinions about the weakness of the forensic evidence used to convict him. The following expert opinions have been expressed to a reasonable degree of scientific certainty:

1. Mr. Avery's blood spatter expert, Stuart James ("Mr. James"), demonstrated that Mr. Avery's blood deposited in the RAV-4 did not come from an actively bleeding cut on

Mr. Avery's hand, but that it was "purposefully distributed" in some locations but not in others where it should have been if there was active bleeding. (Defendant's Motion to Supplement, Exhibit D to Group Exhibit 11). It is not scientifically possible that Mr. Avery was actively bleeding from a cut finger and left no fingerprints, but 6 drops of blood in the RAV-4.

2. Mr. Avery's DNA expert, Dr. Karl Reich ("Dr. Reich"), through a series of experiments with a RAV-4 hood latch, has demonstrated that "it would take approximately 90 attempts at opening the hood to deposit the amount of DNA recovered by the Wisconsin State Laboratory." (R.630:3). Mr. Avery's theory is unrebutted that the hood latch swab is actually a substituted groin swab taken from him at the Aurora Medical Center on November 9, 2005. (R.603:86-91).
3. Dr. Reich also conducted experiments on an exemplar key. Mr. Avery held the exemplar key for 12 minutes, and left 10 times less DNA than the Wisconsin State Crime Laboratory determined was present on the RAV-4 key discovered in Mr. Avery's residence. (R.604:110). Dr. Reich was unable to perform an experiment in which 2 people had touched the exemplar key, but only one profile was detected.
4. The bullet (#FL) that was found in Mr. Avery's garage, with Ms. Halbach's DNA on it, has been refuted as being the bullet that entered Ms. Halbach's skull, causing her death. Mr. Avery's trace expert, Dr. Christopher Palenik ("Dr. Palenik"), and ballistics expert, Mr. Lucien Haag ("Mr. Haag"), have determined that #FL did not have bone particles embedded in it, as it would have had it been fired through Ms. Halbach's skull. (R.621:38, 258). Dr. Palenik also discovered that there were wood and red droplet deposits on #FL's surface. (R.621:37). The red droplets were not identified as blood by the State's forensic analyst, Sherry Culhane. (R.704:105-06).
5. Dr. Palenik also noted that #FL had a waxy deposit on it. (R.621:36-37). Current post-conviction counsel notes that Investigator Wiegert, on November 6, 2005, requested that items be obtained from Ms. Halbach's residence that might contain her DNA. Among those items, Inv. Wiegert specified ChapStick and possibly a vibrator. (11/6/05 CCSD report by Deputy Craig Wendling, STATE1307-08, is attached and incorporated herein as **Group Exhibit 5**). Those items, including the ChapStick, were collected from Ms. Halbach's residence and put into a sealed plastic bag. (11/6/05 report, **Group Ex. 5**). Inexplicably, on November 8, 2005, Deputy Jeremy Hawkins ("Dep. Hawkins") documented that the toothbrush and ChapStick from Ms. Halbach's residence (Property Tag #7096) were at the Avery property and repackaged into paper bags for transport to the Wisconsin State Crime Lab. (11/8/05 CCSD Supplemental Report by Dep. Hawkins, STATE2631-32, is attached and incorporated herein in **Group Exhibit 5**).

The forensic evidence against Mr. Avery was not "vast, overwhelming, and damning."

State v. Denny, 368 Wis. 2d 363, ¶ 86, 878 N.W.2d 679. Mr. Avery's jury was out for 3 days, not

3 hours, and he was acquitted of the mutilation charge, which was based on allegations that he had burned Ms. Halbach's body in his burn pit.

POST-CONVICTION DISCOVERY

The State's Most Recent Forensic Examination of the Dassey Computer Covering the Time Period from April 22, 2006 to February 5, 2007 Concerns Pre-Trial Computer Data

The State contends that "since any new analysis or reexamination constitutes evidence that did not exist at the time of Defendant's trial it could not be consequential; *i.e.*, it could not have changed the outcome." (St. Resp., p. 4). The State totally and completely misses the point of Mr. Avery's argument by mistakenly assuming that Mr. Avery is seeking to compel production of the Dassey computer data created *after* the trial in March, 2007. Mr. Avery is not. He is seeking the evidence that existed on the Dassey computer *prior* to his trial from May 6, 2006 to February 5, 2007.

The 280 days before Mr. Avery's trial would most probably have produced hundreds more images of violent porn involving the torture, bondage, mutilation and death of young females, some of whom would have borne a striking resemblance to Ms. Halbach. The "Recovered Pornography" in Det. Velie's report only covered 180 days, from October 9, 2005 to April 21, 2006.

Because the State disclosed the 180 days of recovered pornography on the Dassey CD to current post-conviction counsel on April 17, 2018, it has waived any argument that the balance of 280 days of pre-trial computer data from the second forensic examination conducted in 2017-18 should not be disclosed. Clearly, at the pre-trial stage, all of the computer data is consequential because it had a reasonable probability of undermining confidence in the outcome of Mr. Avery's trial by having produced evidence that established the *Denny* motive requirement for Bobby.

O'Brien is not the Proper Standard for an in Camera Review

Because Mr. Avery is attempting to make a *preliminary* showing to compel an in camera review by the circuit court, he should not be held to the *O'Brien* “consequential evidence” test for the determination by this court of whether to conduct an in camera review.²

The court in *State v. Robertson*, 2003 WI App 84, 263 Wis. 2d 349, 661, 661 N.W.2d 105 explained, “As such, the defendant’s preliminary burden for seeking in camera review must be less stringent than the test applied by the court during its in camera inspection. *See Ritchie*, 480 U.S. at 58 n. 15, 107 S. Ct. 989” *Id.* at ¶ 20. The *Robertson* court stated that “[w]e therefore conclude that the *O'Brien* ‘consequential evidence test’ should not be used to decide whether to conduct an in camera review.” *Id.* at ¶ 22. *Robertson* involved a request for an in camera inspection of psychiatric records in a post-conviction setting. The *Robertson* court determined that, if the first 4 factors of the newly-discovered evidence test are met, “the trial court should apply the *O'Brien* ‘consequential evidence test’ to determine whether the material it reviews during its in camera inspection should be disclosed to the defendant.”

The *Robertson* court articulated an in camera review standard, requiring that “a defendant must set forth a specific factual basis demonstrating a reasonable likelihood that the records contain relevant information that is necessary to a determination of guilt or innocence and not merely cumulative to evidence already available to the defendant.” (citations omitted). The court is required to look at “the existing evidence in light of the request for an in camera review and to

² The State is correct that, in *State v. O'Brien*, 223 Wis. 2d 303, 319 (¶ 22c), 588 N.W.2d 8 (1999), the Wisconsin Supreme Court did not adopt all 4 of the of the guidelines set forth in the appellate decision in *State v. O'Brien*, 214 Wis. 2d 328, 343-44, 572 N.W.2d 870 (Ct. App. 1997). Rather, the Wisconsin Supreme Court, in affirming the appellate court, chose to adopt only one of the guidelines, and that is that “evidence is consequential 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.” (St. Resp., p. 4).

determine ‘whether the records will likely contain evidence that is independently probative to the defense.’” (citations omitted).

In *Robertson*, the defendant proffered a letter from the victim’s doctor, which stated:

“E.B. had been diagnosed with depression approximately one year before the alleged sexual assault and that psychotic features had accompanied her depression. The doctor also noted in the letter that E.B. had an exacerbation before the alleged sexual assault.”

Id., at ¶ 27.

The *Robertson* court allowed the post-conviction in camera review by the trial court of the victim’s psychiatric records because the letter revealed that the victim had been diagnosed with depression at the time of her alleged sexual assault and that the “information in the records concerning E.B.’s psychiatric treatment and the nature of the psychotic features presented by her depression could explain her behavior in a way that was not possible to do during trial. *Robertson* could not offer any reason for why E.B. ‘freaked out’ and ran from the van, thereby leaving one plausible explanation for E.B.’s behavior—that she had just been forced into sexual intercourse. Providing an explanation could in turn rebut or weaken the commonsense explanation offered by the State and thus could affect E.B.’s credibility and lend credence to *Robertson*’s defense of consent.” *Id.* at ¶ 28.

Similarly, Mr. Avery has submitted, in his Motion to Supplement, the contents of the CD from the Dassey computer of Det. Velie’s forensic analysis of the Dassey computer up to April 21, 2006. The CD contains an abundance of relevant evidence that could have established motive for purposes of meeting the *Denny* requirement of identifying a third-party suspect. There is no doubt that the *additional* 280 days of pre-trial computer analysis performed by Det. Velie could reveal more relevant information that would greatly strengthen Mr. Avery’s argument that Bobby Dassey met the requirements to be named as a third-party *Denny* suspect. If Bobby had been named

as a *Denny* third-party suspect, there is no question that this evidence was necessary for a determination of Mr. Avery's guilt or innocence.

The Second Forensic Examination of the Dassey Computer is New Evidence

It is obvious that the second forensic examination of the Dassey computer would cover the 280 days pre-trial that were not previously examined. The first examination covered the time period up to April 21, 2006. The second examination would have covered the time period from May 6, 2006 until the beginning of Mr. Avery's trial on February 5, 2007.

The court considers 5 factors when deciding whether to grant a new trial in the interests of justice based on newly-discovered evidence. *State v. Behnke*, 203 Wis. 2d 43 at 553 N.W.2d 265. The 5 factors are: (1) the evidence must have come to the moving party's knowledge after trial; (2) the party must not have been negligent in seeking to discover it; (3) the evidence must be material; (4) the evidence must not be cumulative; and (5) it must be reasonably probable that a different result would be reached on a new trial. *Id.*, at 53-54.

The second forensic examination was performed on the Dassey computer over an 8-month time frame in 2017-18, so Mr. Avery easily meets the first 2 factors.

Materiality

The evidence on the CD is material because it would have established the motive requirement for Bobby as a third-party *Denny* suspect. The court in *Wilson* described the requirement for motive as to a *Denny* third-party suspect as follows:

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. Because motive is not an element of any crime, the State never needs to *prove* motive; relevant evidence of motive is generally admissible *regardless of weight*. See *State v. Berby*, 81 Wis.2d 677, 686, 260 N.W.2d 798 (1977). The same applies to evidence of a third party's motive—the defendant is not required to establish motive with substantial certainty. Evidence of motive that would be admissible against a third party were that third party the defendant is therefore

admissible when offered by a defendant in conjunction with evidence of that third party's opportunity and direct connection.

Wilson, 2015 WI 48, ¶ 63 (emphasis added)

It is clear from the *Wilson* opinion that relevant evidence of motive is admissible regardless of weight and it need not be evidence that reaches the level of "substantial certainty." As discussed above, the previously undisclosed CD provided the following new information based on Det. Velie's analysis:

1. 1,625 pornographic photos extracted from the 14,099 images (Defendant's Reply to the State's Response to Defendant's Motion to Supplement, Ex. D is the Fourth Supplemental Affidavit of Gary Hunt);
2. The internet history of 1,803 pornographic search terms (Defendant's Reply to the State's Response to Defendant's Motion to Supplement, Ex. D);
3. Relevant MSN chat logs regarding Bobby and his sexual solicitation of underage girls (Motion to Supplement, Exhibit 21); and
4. 2,632 word searches Det. Velie performed that investigators believed were relevant to Ms. Halbach's murder (Defendant's Reply to the State's Response to Defendant's Motion to Supplement, Ex. D).

Mr. Avery's forensic computer expert has connected 562 of the pornographic searches exclusively to Bobby. (R.636:28).

The Second Forensic Examination of the Dassey Computer has Discovered Information Connected Directly to Ms. Halbach's Murder that has Never been Disclosed Previously

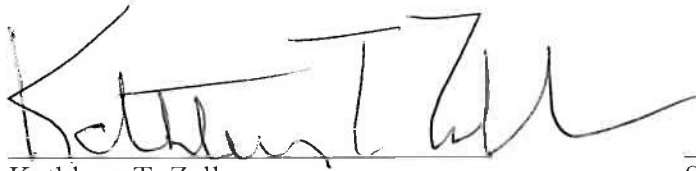
The State's interview of Bobby that was conducted on November 17, 2017, 7 days after the Dassey computer was taken on November 10, 2017 by law enforcement for a second examination by Det. Velie, reveals that the State has discovered new information as a result of the second forensic examination that is directly relevant to Ms. Halbach's murder.

Bobby was asked if he knew "who created the folder with the page depicting STEVEN and TERESA's photographs. BOBBY indicated he knew how to create folders, but he had no idea

as to who created those folders. BOBBY was specifically asked who created ‘TERESA’ and ‘HALBACH’ and ‘DNA’ folders that were on the computer and he stated he had no idea who did this. BOBBY was asked if he did it and he indicated, ‘No.’” (Motion to Supplement, Exhibit 13 is the 11/17/17 CCSD interview of Bobby Dassey). The information about the existence of folders for “Teresa,” “Halbach,” and “DNA” is completely new information that is not contained on the CD disclosed to current post-conviction counsel on April 17, 2018. Obviously, the information in the folders about Ms. Halbach and DNA is material and, after this court’s in camera examination of that material, should be provided to current post-conviction counsel so that Mr. Avery can establish with reasonable probability that a different outcome would have resulted at his trial if this evidence had been disclosed to his previous counsel. Clearly, the “[e]vidence is [consequential] 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.” *Bagley*, 473 U.S. 667, 682-84.

Therefore, the court should conduct an in camera review of the State’s second forensic examination of the Dassey computer, grant Mr. Avery’s *Motion to Compel Production of Recent Examination of the Dassey Computer*, conduct an evidentiary hearing regarding the results of this examination, and grant Mr. Avery’s Motions for Post-Conviction Relief and to Supplement the Previously-Filed Motion for Post-Conviction Relief.

Dated this 9th day of August, 2018.



Kathleen T. Zellner
Admitted *pro hac vice*
Kathleen T. Zellner & Assoc., P.C.
1901 Butterfield Road, Suite 650
Downers Grove, Illinois 60515
(630) 955-1212 / IL Bar No. 6184575
attorneys@zellnerlawoffices.com



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

STATE OF WISCONSIN,

)

)

Respondent

)

v.

)

)

Case No. 05-CF-381

STEVEN A. AVERY,

)

)

)

Petitioner.

)

**DEFENDANT’S REPLY TO STATE’S RESPONSE TO MOTION TO COMPEL
PRODUCTION OF RECENT EXAMINATION OF THE
DASSEY COMPUTER EXHIBITS**

1. Thomas Fallon’s April 17, 2018 letter
2. Excerpt from the 11/6/05 Interview of Barb Janda regarding the deer hanging in the Dassey garage (STATE0804, 815-16)
3. Dr. Leslie Eisenberg’s Bone Evidence Worksheet (STATE_1_9279-81)
4. CD with audio of Bobby’s 11/17/17 interview with CCSD Special Investigator Dederling and DCI Special Agent Wisch
5. Group exhibit containing the 11/6/05 CCSD Supplemental Report by Deputy Wendling (STATE1307-08), and the 11/8/05 CCSD Supplemental Report by Deputy Hawkins (STATE2631-32)

1



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

BRAD D. SCHIMEL
ATTORNEY GENERAL

Paul W. Connell
Deputy Attorney General

Delanie M. Breuer
Chief of Staff

17 W. Main Street
P.O. Box 7857
Madison, WI 53707-7857
www.doj.state.wi.us

Thomas J. Fallon
Assistant Attorney General
fallontj@doj.state.wi.us
608/266-7340
FAX 608/267-2778

April 17, 2018

Attorney Kathleen Zellner
Law Offices of Zellner & Associates
1901 Butterfield Road Suite 650
Downers Grove, Il 60515

Re: *State v. Steven Avery*
Manitowoc County Case No. 05-CF-381

RECEIVED

APR 21 2018

Kathleen Zellner & Associates

Dear Attorney Zellner:

Consistent with our email correspondence and phone conversation of April 16, please find copies of cell and land line phone records (Barb Tadych 22 pages & 10 pages – Cell) (Bobby Dassey –3 pages Cell) (Scott Tadych – Subscriber Information page 4 of Cellcom response) in response to the Investigative Subpoena issued on October 31, 2006. We believe these were previously provided to attorneys Strang & Buting during the discovery process in November and December 2006. As previously indicated, no cell phone records were subpoenaed for Scott Tadych. The Cellcom subpoena of October 31, 2006, asked only for subscriber information for eight phone numbers, one of which was # 920.973.2222 which turned out to be Scott Tadych's number.

Additionally, we provide a copy of the CD containing Detective Mike Velie's report of his download analysis of the Dassey computer. We thought this was provided as a late non-itemized addition to the other discovery provided on December 14, along with seven other discs (copies of the raw data download). We also note that in the December 14 correspondence, item #67, notes 134 pages of Miscellaneous Cell Phone Records were provided. This was in addition to 38 pages of cell phone record material provided on November 16, 2006. Lastly, other Cellcom records were provided to prior counsel, Erik Loy, on December 21, 2005. We think this resolves all outstanding pre-conviction discovery issues.

Sincerely,

Thomas J. Fallon
Assistant Attorney General

TJF:ajs

c: Special Prosecutors Norman Gahn & Mark Williams

Enclosures



2

05-1776 TERESA MARIE HALBACH

Date of Report: 11/11/2005

Interview: BARBARA E. JANDA

Date of Activity: 11/06/2005



STATE0804

BARBARA JANDA DISCUSSES DEER HANGING IN HER GARAGE

BARBARA JANDA told the agents that her son, BOBBY, had gotten a deer, and that a deer carcass was hanging in JANDA'S garage. BARBARA stated that the deer was gutted out and skinned. BARBARA told the agents that the deer hanging in her garage had been road kill, which BOBBY had received on Thursday evening, 11/03/2005.

BARBARA stated that when she came home on Thursday evening, she asked BOBBY if he wanted to claim a deer because it had just been killed up the road by SCHULTZ'S. BOBBY stated that he would take the deer. BARBARA told BOBBY to call the Manitowoc County Sheriff's Department to ask them if he could claim the deer that had been road kill. BOBBY contacted the Manitowoc

County Sheriff's Department and received permission for a tag in order to claim the deer. BOBBY and BARBARA traveled to where the deer was located. BARBARA was with BOBBY when he gutted the deer on the road at the accident scene. After BOBBY gutted out the deer, BARBARA and BOBBY went to 310 Mobil located between Mishicot and Manitowoc on Highway 310 in order to register the deer. BARBARA stated that after BOBBY had gutted out the deer, they had placed the deer inside BOBBY'S Blazer. They then drove to 310 Mobil to register the deer. After they registered the deer, they went home. BARBARA stated that "we" hung the deer in BARBARA'S garage. After they hung the deer up, BARBARA and BOBBY skinned the deer the same night they brought it home.

BARBARA thought the tag should still be in the deer's ear. BARBARA could not recall the exact time that BOBBY and she had obtained the deer, but it was dark. BARBARA told the agents that the deer has not moved from where they had hung it since that time. BARBARA told the agents that they only took the inner tenderloins out while the deer was hanging in BARBARA's garage.

BARBARA wanted the agents to know that she thought they had obtained the deer on Thursday, 11/03/2005, but she was not certain. BARBARA told the agents that they would have to verify the exact date on the tag located on the deer.

BARBARA told the agents that STEVEN AVERY was home on the night that they obtained the deer as BARBARA observed STEVEN'S garage lights on when BARBARA and BOBBY pulled into BARBARA's garage with the deer.

3

Calumet County Sheriff's Department Case No. 05-0157-955
 WI Department of Criminal Investigation Case No. 05-1776

Evidence Tag #/Identifier	Date Received by Eisenberg/DCCO	Associated DCI Property Receipt #	Comments
8318	November 10, 2005	C 10987	DCI obtained from Crime Lab; transfer of empty white corrugated box, one bag of fabric and plant material and one bag of non-metal/non-biological material and one bag of metal objects to CCSD 19 December 2005; diagnostic human bone
7924	November 11, 2005	D 6264	Human bone; non-human; non-biological; transferred one bag of fabric fragments and one bag of non-biological to CCSD 19 December 2005; Cranial & PC with dental
7942	November 11, 2005	D 6264	No human or other bone in box; other items transferred to CCSD 19 December 2005
7943	November 11, 2005	D 6264	Non-diagnostic human bone (no cranial); non-biological; non-biological material returned to CCSD on 18 December 2005
7944	November 11, 2005	D 6264	Human bone (no cranial, but identifiable as to element); non-biological; non-human; one bag non-biological, one bag metal & plant material and one bag of fiber transferred to CCSD 19 December 2005
7936	November 11, 2005	D 6264	Non-biological; human bone; transferred empty box to CCSD 19 December 2005; Cranial
7925	November 15, 2005	D 6258	Wood; 3 dental structures; bone frag.
7926*	November 15, 2005	D 6258	* To FBI 18 Nov 2005; human bone/tissue
7928	November 15, 2005	D 6258	Box empty
6200	December 20, 2005		Dental; WCL rescreen
8150	December 20, 2005		Dental; WCL rescreen
6197	December 20, 2005		Human (diagnostic) and non-human bone (all items very black, even after rinsing); separate bag for diagnostic human bone; WCL rescreen
8118	December 20, 2005		Human and non-human bone, including dental; some recognizable human fragments; lots of human shaft fragments; WCL rescreen

STATE_1_9279



Calumet County Sheriff's Department Case No. 05-0157-955
 WI Department of Criminal Investigation Case No. 05-1776

8140	December 20, 2005		Burned and unburned non-human, non-biological, possible small undiagnostic calcined and burned human fragments; possible cut fragment of unknown origin; WCL rescreen
8148	December 20, 2005		Non-diagnostic human, non-human, fabric; rescreened at Crime Lab (Madison)
7955	January 12, 2006		Bone, dirt, non-bone; nothing diagnostic; returned to CCSD 12 January 2006
7964	January 17, 2006		Human bone (element ID), non-human non-biological; 1 shaft fragment with cut marks sent to FBI on 7 Nov 2006; pupal casings
7960	January 17, 2006		Non-human large avian unburned and bleached, PMCD
8675	January 17, 2006		Non-human unburned with 3 cut frags; burned non-biological; possible human burned cut pelvic fragments (n=7); 4 calcined bone fragments of unknown origin
8701	January 17, 2006		Non-human unburned with desiccated soft tissue
7937	January 26, 2006	D 6266 (Item 8)	Dog stool inside of bags in volatile can
7411	April 25, 2006		Calcined human bone frags; possible cut edges
7412			Human and non-human bone, non-biological; some bone not calcined; 5 of 13 burned/calcined with cut edges; most bone fragments and all cut bone fragments are human; no element ID
7413			18 non-human, one burned human frag
7414			Burned/calcined human bone fragments
7415			Non-human
7416			Human and non-human bone fragments; human is calcined with one cut edge
7418			Non-human bone
7419			Cut/burned human bone; wood
7420			Undiagnostic bone frags charred; 1 non-bone item
7421			1 small calcined bone fragment, possibly human but not diagnostic; part of small diameter shaft
7422			12 bone fragments; 2 of possible human origin, non-diagnostic
7423			4 non-human bone frags
7424			Cut sacrum frags, not likely human

Calumet County Sheriff's Department Case No. 05-0157-955
 WI Department of Criminal Investigation Case No. 05-1776

7426		Calcined to unburned bone fragments; 1 may be human but not diagnostic
7427		Non-human bone
7428		Non-human bone; unidentifiable non-bone items
7429		Tiny non-human long bones and skull; burned paper
7430		Non-human bone; non-bone items
7431		Non-human bone
7432		Non-human, 2 possible non-human cut
7433		Non-human; one non-bone item
7434		Non-human (1 cut), non-biological items, 1 calcined undiagnostic possible human fragment
7435	April 25, 2006	Non-human, non-biological
8315	October 24, 2006	Non-human calcined and unburned; non-biological items
8314	October 24, 2006	Possible calcined human bone frag - not diagnostic
8317	October 24, 2006	Non-human (avian)
8319	October 24, 2006	Calcined/burned non-human (desiccated muscle tissue attached), non-biological
Brown corrugated box (#5)		Contained sealed bags Tag# 9597 (originally labeled by Eisenberg as "Cranial/face/dental 10 November 2005, Package #2 Anthro"); N.B. one occipital fragment sent to FBI on 11/6/06, Tag #9598 (originally labeled by Eisenberg as "Cranial refits for Ken Olson WCL, 15 Feb 2006)/Ziploc bag given Tag # when returned to CCSD from Crime Lab); N.B. one parietal fragment from Tag #9597 sent to FBI 11/6/06. Tagged by CCSD when bag returned to them from WCL in May 2006; from original recovery Tag 8318
9597		Tagged by CCSD when bag returned to them from WCL in May 2006; from original recovery Tag 8318
9598		N.B. The Comments section is not meant to be an exhaustive inventory of all items examined and identified but was developed as a reference to help organize the massive amounts of material presented for forensic anthropological examination.

4

 Verbatim

AUDIO | 11/17/17 Calumet Co.
Sheriff's Dept. interview of
Bobby Dassey by
Special Inv. John Dederling



5

CALUMET COUNTY SHERIFF'S DEPARTMENT

Complaint No.
05-0157-955

Page
103
File Number

TYPE OF ACTIVITY: Supplemental Report

DATE OF ACTIVITY: 11/06/05

REPORTING OFFICER: Deputy Craig Wendling

On 11/06/05, I (Deputy CRAIG WENDLING of the CALUMET COUNTY SHERIFF'S DEPARTMENT) was called by Inv. MARK WIEGERT who asked if I would be able to go over to TERESA HALBACH's residence at W3637 CTH B to collect evidence. Inv. WIEGERT wanted me to pick up evidence that would contain TERESA HALBACH's DNA in case it would be needed for further identification. I informed Inv. WIEGERT I would go en route and collect some evidence. Inv. WIEGERT told me a toothbrush, lip ChapStick and possibly a vibrator that was located in her dresser would be good items to collect.

I did arrive at the residence at approximately 0750 hours. I was let into the residence by a party who was TERESA HALBACH's roommate, SCOTT A. BLOEDORN, DOB 11/02/79. I introduced myself to SCOTT BLOEDORN and told him Inv. WIEGERT wanted me to stop by to collect some items of TERESA's that would assist us, if needed, for identification purposes. SCOTT did bring me into the bathroom, which is located on the southeast side of the house on the first floor. SCOTT opened up the top drawers of a cabinet in the bathroom, which he stated contained all her belongings. In the left top drawer just to the left of the sink, I did find TERESA's toothbrush, which I was told by SCOTT would be hers, and some ChapStick. I did collect those items at 0759 hours. Those items were placed into a plastic bag and sealed.

I then looked into the top drawer on the very right of the cabinet in that southeast bathroom on the first floor and also located another lip moisturizer that had some hair stuck to it and a hairbrush, which also contained some hair. Those items were also collected at approximately 0759 hours and placed into a plastic bag and sealed.

I then asked SCOTT if he could bring me to TERESA's bedroom, which is located on the first floor in the southwest corner of the residence. Once inside the room, I did locate the center compartment cabinet doors on the dresser and inside there was a cardboard box containing a reddish maroon case with a zipper. Once I opened up that case, I did locate a vibrator or a sexual device. I unzipped the case, placed it into a plastic bag and sealed it. That item was collected at approximately 0803 hours.

I did take a quick scan around the room to see if there would be any other items useful for identification purposes for DNA and was unable to see anything that would be as helpful as I already had.



STATE1307

117 Co. 3
CALUMET COUNTY SHERIFF'S DEPARTMENT

Complaint No.
05-0157-955

Page
104
File Number

At that time, I did end contact with SCOTT and went en route to the sheriff's department where all the items I collected were placed into evidence and secured in Locker #5 in the evidence room.

Inv. WIEGERT was notified that the items were obtained and placed into evidence.

Deputy Craig Wendling
Calumet Co. Sheriff's Dept.
CW/bdg

CALUMET COUNTY SHERIFF'S DEPARTMENT

Page
152
File Number

Complaint No.
05-0157-955

TYPE OF ACTIVITY: Supplemental Report

DATE OF ACTIVITY: 11/08/05

REPORTING OFFICER: Deputy Jeremy Hawkins

On 11/08/05, JOHN ERTL, CHARLES CATES and GUANG ZHANG from the WI STATE CRIME LAB arrived at the CALUMET COUNTY SHERIFF'S DEPARTMENT. The three barrels that were remaining at the sheriff's department, a barrel Deputy MATUSZAK had brought back from the AVERY property and the Suzuki Samurai door were signed over to JOHN ERTL. While JOHN ERTL, CHARLES CATES and GUANG ZHANG were going through the barrels, I again continued logging in evidence once it arrived from the crime scene at the AVERY property.

I contacted District Attorney (DA) KENNETH KRATZ and asked DA KRATZ about keeping the barrels. I was advised by DA KRATZ that the barrels from the AVERY property would remain in evidence. DA KRATZ also wanted the barrel marked #4 that was returned to the AVERY property to be brought back. After talking with DA KRATZ, arrangements were made for long-term storage in the back garage of the CALUMET COUNTY SHERIFF'S DEPARTMENT.

I was advised by the CALUMET COUNTY COMMAND POST, located on the AVERY property, to get some items that were brought back from the AVERY property ready for pick-up by DCI Agent MATTHEY JOY to be transported to the WI STATE CRIME LAB located in Madison:

- Property Tag No. 7096, a toothbrush and ChapStick
- Property Tag No. 7097, lip moisturizer and hairbrush
- Property Tag No. 7098, a maroon case containing a vibrator sexual device

These items were repackaged in paper bags.

Also gathered to be sent with DCI Agent JOY to the WI STATE CRIME LAB were 22 swabs of possible bloodstain from Sgt. BILL TYSON of the CALUMET COUNTY SHERIFF'S DEPARTMENT and Deputy DAN KUCHARSKI of the CALUMET COUNTY SHERIFF'S DEPARTMENT. The swabs bore Property Tag Nos. 639, 651 through 659, 7120 through 7122, 7177 through 7199, 7104 through 7105, and 8115 through 8116.

A knife with a red/brown stain, bearing Property Tag No. 7123, that was turned over by Sgt. TYSON, a floor mat with stains and also a rag with a red stain, that was turned over by Deputy KUCHARSKI, was placed in the box for DCI Agent JOY to transport.

CALUMET COUNTY SHERIFF'S DEPARTMENT

Page

153

File Number

Complaint No.
05-0157-955

Once JOHN ERTL, CHARLES CATES and GUANG ZHANG were finished with the four barrels, the barrels and the Suzuki door were signed over to my custody. The barrels were put into the long-term secure area of the back garage. The Suzuki door was brought down and placed behind the locked cage.

When DCI Agent JOY arrived at the CALUMET COUNTY SHERIFF'S DEPARTMENT, he stated he received a Toyota key from Deputy KUCHARSKI while at the scene, to be transported to the WI STATE CRIME LAB located in Madison. I received the paperwork for the Toyota key from DCI Agent JOY. DCI Agent JOY was given a transmittal letter and also a cover letter with the items I was requested to send to the WI STATE CRIME LAB. DCI Agent JOY signed for the evidence that he came to pick up to transport of the WI STATE CRIME LAB.

After the items were given to DCI Agent JOY, I continued logging items that were obtained from the AVERY residence.

Deputy Jeremy Hawkins
Calumet Co. Sheriff's Dept.
JH/bdg

STATE2632

CERTIFICATE OF SERVICE

I certify that on August 9th, 2018, a true and correct copy of Defendant's Reply to State's Response to Motion to Compel Production of Recent Examination of the Dassey Computer, 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

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

Mark S. Williams
11708 Settlers Road
Cedarburg, WI 53012

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

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

A handwritten signature in black ink, appearing to read "Kathleen T. Zellner", with a long horizontal flourish extending to the right.

Kathleen T. Zellner