STATE'S RESPONSE [1]	AVERY'S REPLY
State's Footnote 1 - Bobby's Whereabouts	
• The State's response (in footnote 1) reiterates what the COA stated about Avery "misrepresenting facts." The COA' statement in its opinion specifically concerned proof of whether Bobby was home alone on October 31, 2005, on his computer. The COA believed there was no proof that Bobby was home alone that day.	• *See* Avery's Petition: "It is evident that the Court of Appeals was either unfamiliar with the record or disregarded it entirely. It stated that "it was skeptical" that the Velie report impeaches Bobby's testimony about sleeping, and accused current postconviction counsel of misstating that Bobby was home alone on October 31 during the time the computer searches were conducted (P-App. 141; note 25)" (Pet. 15-16). However, the Court of Appeals did not consider the fact that Bobby himself testified that he was the only person home from 6:30 a.m. until 2:30 p.m. that day (R.298:035), the relevant time period of the searches." • Bobby's testimony that he was asleep from 6:30am-2:30pm is clearly impeached. • The COA' failure to be familiar with Bobby's trial testimony caused it to miss this important impeachment evidence.
State's Footnote 2, ¶1 - The Bullets	
• The State erroneously claims that Avery is contending that the State witnesses testified that the two bullets recovered from Avery's garage were actually the two bullets used in the fatal shots. The State miscites Avery's Petition at page 18. (Page 18 of Avery's Petition discusses COA' improper reliance on a Southern District of New York case for assessing *Brady*)	• The State mischaracterizes Mr. Avery's argument. He has never claimed that State witnesses testified that the two bullets in Avery's garage were used in the fatal shots. Rather, Avery's argument (page 12) is that the COA' statement is incorrect ("that the State did not argue that the specific bullet (#FL) entered Halbach's skull or killed her" (P-App. 126-127, ¶45). • The State ignores Dr. Eisenberg's testimony: The State does not acknowledge that the forensic shell casings were not linked to FL or FK or that Dr. Eisenberg testified that there was no evidence of other gunshot wounds to the bones from other parts of Halbach's body (R.706:188). • Dr. Jensen's testimony is that Ms. Halbach's DNA found on the bullet was

[1] *which consistently miscites the page numbers of Avery's Petition.

the result of the bullet passing through Ms. Halbach's brain. The exact testimony from the State's expert, Dr. Jensen, in the record (R.703:64–65, 71), which is:

Q. Sure. I would like you to simply tell the ladies and gentlemen of the jury what information you have here that allows you to conclude that either of these gunshot wounds occurred while the victim was alive, that is, bullet struck bone, while that person was alive?
A. I don't specifically think that there's any one piece of information that would say that the person was alive, with a beating heart, or an intact brain. There's material and I was given information that there was a spent bullet recovered at the scene that contained the blood specimens of the decedent.
And that would be indicative to me that the bullet had passed through the brain at a time, whether it was liquified blood, or that it wasn't going through specifically bone fragments. And I would think that that would be the predominant -- that would be information that I think would be helpful in making that type of opinion.
Q. All right. We have certainly had testimony that Teresa Halbach's DNA was found on a bullet fragment?
A. Right.

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Q. I, at least, recall no testimony that Teresa Halbach's blood was found on a bullet fragment, but the jury will decide in the end, that. And in a sense it doesn't matter.
Is there any way to distinguish the bullet you -- hole you saw, either one, from a gunshot that was fired into the head of an intact corpse, from a gunshot that was fired into the head of a living person?
A. I don't think I could make a definitive determination based on whether the individual was in a peri-mortem time frame or whether the individual was skeletonized. It would be my opinion that the wounds showed an intact, robust bone that is consistent with what I would say non-skeletonized material, meaning that these look like -- typically like an entrance wound through a bone of a person who is not a skeleton.
And the way -- the reason I described that and I would make that -- that clarity is that in a skeletonized bone, where you have got dried bone material, as the bullet passes through it, I would suspect that there would be a different kind of fracturing and that it wouldn't get the same type of gunshot wound, particularly

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See also R703:71:

	of death, if the gunshot wounds occurred after death? A. On the cause of death, yeah, I would say so. Q. And then, likewise, once -- once we don't have a cause of death, it's similarly difficult to assign a manner of death? A. Well, medical examiners and forensic pathologists don't make determinations on manner of death in a vacuum. We utilize, as I mentioned, evidence from the scene. And if we can go to the scene, personally, we use that information. Or if we can't, then we use photographs and other people's reports to use that information. We use laboratory data. We use evidence that's recovered. And we -- we put that together and we render our opinion as to what the manner of death is. We don't do it in a vacuum with a single piece of information, in isolation from all others. Q. Of course not. Of course not. And in a cause of death, for example, you cited to these jurors, your understanding that a bullet or bullet fragment was found with what you thought was blood of the victim on it. And that, initially, factored into your opinion on cause of death? 71
State's Footnote 2, ¶2: - IAC Claim	
• The State claims that Avery is miscasting his newly discovered evidence claims as ineffective assistance of counsel claims in his petition.	• It is the COA that casted Mr. Avery's newly discovered evidence claims as ineffective assistance of counsel claims, not Mr. Avery. (See Opinion pg. 13-14).
State's Response: Page 4 - COA Errors	
• The State argues that the Wisconsin Supreme Court is not an error-correcting court.	• Mr. Avery asserted in his petition that "the court's blatant misstatement of the facts undermines the integrity of its opinion. *See Brumfield v. Cain,* 576 U.S. 305, 307 (2015)." (Petition 13). • The State misconstrues Mr. Avery's Petition: he is not asking that the Wisconsin Supreme Court edit the COA' factual errors; rather, Mr. Avery claims that the COA' unreasonable application of facts, including its significant factual errors in determining the facts, supports his argument that the COA' decision opposes United States Supreme Court and Wisconsin Supreme Court precedence.
State's Response: Page 4 - Compelling Legal Issue Re: *Brady*	

• The State claims there is no compelling legal issue for the Wisconsin Supreme Court to address.	• The misapplication of the *Strickland* standard, requiring Mr. Avery to prove his pleading would establish an acquittal, is contrary to United States Supreme Court and Wisconsin Supreme Court cases. • Further, the COA' analysis on the Velie CD (Mr. Avery's *Brady* claim) is unprecedented and relies exclusively upon a Southern District of New York opinion that is inapposite and has been criticized and not followed, even by other district courts in New York. More importantly, the COA' opinion directly contradicts the Wisconsin Supreme Court in *State v. Wayerski,* 2019 WI 11, 385 Wis. 2d 344, 372, 922 N.W.2d 468 (2019). See 809.62(1r)(d)(Wisconsin's Supreme Court Criteria for Granting Review)
State's Response: Pages 6-7 - Avery's Experts	
• The State claims that "Avery's new experts all reached conclusions that were consistent with his guilt."	• Avery's experts refuted each claim made by the State in his trial by demonstrating through experiments and their own expertise some of the following: 1) that the blood in the RAV-4 did not come from an actively bleeding finger as the State claimed and it would have been in many more places in the car (door handle, gear shift, key, steering wheel, and hood latch) and that the blood above the ignition was placed there using an applicator and the blood flakes on the carpet had been placed there after they were dry; 2) that the DNA on the hood latch swab was 90 times greater than the DNA that would be deposited by opening the hood latch one time; 3) that Avery's DNA on the ignition key found in Avery's trailer 10 times more than what Avery deposited on an identical ignition key on an experiment; 4) No human body was ever burned in Avery's burn pit and the bones in his burn pit had been placed there; 5) that no plastic was ever burned in his burn barrel, which had foliage growing in it.; 6) that it was impossible to duplicate the RAV-4 key being discovered in its location by the testimony given by Sergeant Colburn about shaking the bookcase; 7) that the bullet #FL did not have any evidence of skull fragments demonstrating that it had ever entered the skull of Ms. Halbach.

	● The State never explains how these findings are consistent with Mr. Avery's guilt.
State's Response Page 7 - CD	
● The State advocates for a new *Brady* standard when it contended that, "*Virtually* all of the contents of the Velie CD were indisputably turned over to the defense . . ." (emphasis added)(page 7).	● There has never been any court that has endorsed a "virtually all of the contents" standard. The State is conceding that the contents of the Velie CD were not identical to the 7 DVDs. Because the State creates a new standard for a *Brady* claim, it does not address the significant evidentiary differences between the DVDS and the CD and it does not deal with the State's misrepresentations to trial defense counsel that the computer belonged to Brendan and had nothing of evidentiary value. Significantly, the COA admitted with the new witness who saw Bobby Dassey pushed Ms. Halbach's vehicle after her disappearance, that the CD might establish his motive as a third party *Denny* suspect in a new §974.06 filing.
State's Response Page 8 - Bones	
● The State defers to *District Attorney's Office for Third Judicial District v. Osborne*, 557 U.S. 52, 67-72 (2009), for its proposition that there is no right to DNA testing of bones.	● *Osborne* specifically refers to a federal due process right to DNA testing; *Osborne* defers to the State's DNA statutes. ● *Osborne* merely states that there is no right to federal DNA testing, allowing the State's to impose their own DNA statutes. The State's response is a complete misinterpretation of *Osborne*.
State's Response Page 7 - "Sufficient" Reason	
● The State claims that "the only reason Avery provided for not raising his claims in 2013" is Avery's "mere pro se status or indigency."	● This is simply not true as evinced by the COA opinion which analyzed Mr. Avery's many reasons for his inability to raise his claims in his 2013 petition and accepted one: that "it would have been impossible for him to have undertaken the extensive investigations later carried out by current postconviction counsel, which resulted in new theories as to how he was framed and additional factual support for previous theories." (Opinion, page 13). ● Mr. Avery raised several sufficient reasons for not raising his claims before in

	his §974.06 motion (*See* 603:202-05; Avery Br. 113-16)