



proper or improper based upon “the totality of the circumstances.” State v. Jerrell, 2005 WI 105, par. 20, 283 Wis.2d 145, 699 N.W.2d 110.

In this case, Wiegert and Fassbender made a series of statements, commitments and promises to Dassey to gain his confidence. The strategies used by them eventually induced his confession to crimes that exposed him possible incarceration for the rest of his natural life plus seventy-two and one-half years (72 ½ years).

First, Fassbender stated a purported personal opinion that Steve Avery didn’t intentionally kill Halbach (CCSD: 442-443) This was clearly designed to mislead Dassey. It minimized the seriousness of any conduct Dassey might have engaged in to aid and abet Avery. When Dassey provided more details, Fassbender and Wiegert continued to minimize the seriousness of the conduct. They consoled Brendan with the idea that “It’s not your fault. Remember that” (CCSD: 449-451). After asking Brendan if he was involved in burning a corpse, Wiegert stated, “If you did it’s OK” (CCSD: 453). Two respected adult authority figures repeatedly told Dassey on February 27, 2006 that what he was involved in was not so bad. The ability of this intellectually challenged 16 year old with no prior experience with the criminal justice system to judge the accuracy and meaning of those statements was seriously distorted.

Second, Fassbender and Wiegert promised to be an advocate for Dassey with the prosecution. Fassbender stated that “we’ll deal with this, the best we can for your good OK? I promise I will not let you high and dry. I’ll stand behind you.” Then Wiegert added, “We both will Brendan. We’re here to help ya.” (CCSD: 443). Later on, Wiegert stated that Fassbender and him wanted to be able to tell people that Brendan was honest (CCSD: 446-447). Fassbender

indicated that they could go to the District Attorney, tell him how it was weighing on Dassey and that they would understand that (CCSD: 448).

The combined effect of these statements to Dassey on February 27, 2006 deprived him of an ability to make a rational choice. It gave his inexperienced, intellectually challenged mind a totally unrealistic first impression of the criminal justice system that undoubtedly affected his responses to the renewed questioning on March 1, 2006.

At the beginning of the March 1, 2006 interview Wiegert and Fassbender reinforced the messages they gave Brendan on February 27, 2006. Fassbender continued to pretend to be an advocate for Brendan when he reassured Brendan that he and Wiegert were on his side and in his corner (CCSD: 540).

The detectives again minimized the seriousness of the offenses. Weigert stated at one point during a discussion on how Halbach got in the back of the jeep, "If you helped him, it's OK because he was telling you to do it. You didn't do it on your own." (CCSD: 552). Prior to Brendan stating he had sex with Halbach, Weigert asked "What happens next: Remember, we already know, but we need to hear it from you, it's OK. It's not your fault. What happens next?" (CCSD: 572-677).

Wiegert and Fassbender repeated their assurances to Brendan that he could get leniency. Fassbender stated that he thought Brendan was "all right" and did not have to worry about things (Id.). Weigert then stated that they could work thorough whatever Brendan did; that the honest person is one who would get a better deal out of everything; and that "honesty was the only thing that could set him free" (CCSD: 541). That last statement is particularly troubling. It appears

highly unlikely this was a reference to Dassey's spirituality. It appears much more likely that someone in Dassey's position would view it as a reference to leniency in exchange for cooperation. Later on, Weigart made further reminders to Brendan that ,”We already know Brendan. We already know. Come on. Be honest with us. Be honest with us. We already know, it's OK. We gonna help you through this, alright” (CCSD: 561)

During the March 1, 2006 questioning, the detectives played again on Dassey's fear of his relatives. Fassbender stated that Steve Avery (hereinafter Steve) was already saying things and might “lay crap” on Brendan (Id.). There was, in fact, no indication that Steve was casting blame on Brendan for the disappearance of Theresa Halbach.

Weigart also made reference to knowing “pretty much everything” (Id.). Both Weigart and Fassbender made repeated references to the need to be honest and they could not go to bat for him if he was not honest (CCSD:547). They stated to Brendan that “they already know what happened” and that Brendan's mother thought Brendan knew more also and was behind him 100% no matter what happened (Id.). . There were repeated assurances such as “come on buddy, Let's get this out, OK?” and “play the video for us, tell us what happened” (CCSD: 568, 570).

During the March 1, 2006 questioning, Fassbender used the same themes of offense minimization and vague promises of leniency that they used on February 27, 2006. While it was not improper *per se* for two experienced police detectives “double up” in a closed police interrogation room on an inexperienced 16 year old suspect with documented cognitive deficiencies, that has to be considered as part of the “totality of the circumstances” the court considers in determining whether the overall interrogation at some point overbore Dassey's will,

After being subjected to a battery of psychological strategies, Dassey's continued cooperation during the March 1, 2006 questioning was no longer "voluntary" as that term has been defined by the courts in the context of a juvenile interrogation.

### CONCLUSION

Dassey urges the court not to focus on each individual stratagem used by Wiegert and Fassbender as the State suggested. Taken in isolation and in the context of an adult subject of normal intelligence with some familiarity with the criminal justice system, the tactics used by Weigert and Fassbender were not sufficient to render the resulting statements as involuntary. However, under the "totality of the circumstances," Dassey suggests they deprived him of rational choice. As a result, the statements he gave on February 27, 2006 and March 1, 2006 or at least a portion of them were involuntary and inadmissible.

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SISSON AND KACHINSKY LAW OFFICES

By: Len Kachinsky

Attorneys for the Defendant

State Bar No. 01018347

[Redacted]

Phone: [Redacted]

Fax: [Redacted]

E-Mail: [Redacted]

Orig: Clerk of Courts, Manitowoc County, P.O. Box 2000, Manitowoc, WI 54221  
Copy: District Attorney Kenneth Kratz, 206 Court Street, Chilton, WI 53014  
Brendan Dassey, Sheboygan County Juvenile Detention Center, 527 N. 6<sup>th</sup> Street,  
Sheboygan, WI 53081