

STATE OF WISCONSIN  
COURT OF APPEALS  
DISTRICT II

Case No. 2017AP002288

---

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

---

**DEFENDANT-APPELLANT’S REPLY TO THE STATE’S  
RESPONSE TO MOTION TO STAY APPEAL AND REMAND**

The Defendant-Appellant, Steven Avery (“Mr. Avery”), by his undersigned attorneys, Kathleen T. Zellner and Steven G. Richards, for his reply to the State’s response in opposition to his motion to stay the appeal and remand the cause to the circuit court, states as follows:

**INTRODUCTION**

It is a supreme irony that in one of the most blatant examples of a wrongful conviction the State’s only response is to falsely accuse Mr. Avery’s lead counsel of nefarious conduct for discovering a 6th *Brady* violation. Rather than seeking justice, the State wants to “slay the messenger” by putting forth more false allegations, a skill that it has mastered over the last 16 years. The State turns a blind eye towards its past actions of withholding exculpatory evidence. When the State disclosed a CD of violent porn from the Dassey-Janda computer 12 years after the CD was created and

concealed from prior counsel, the State argued, as it does now, that Mr. Avery was attempting to add new material to his § 974.06 motion. (740.5). When the State facilitated the destruction in 2011 of evidence it had agreed to allow Mr. Avery to test, the State argued, as it does now, that Mr. Avery was attempting to add new material to his § 974.06 motion. (*See* 770.2). This Court did not accept those disingenuous responses then, and it should reject the same disingenuous response now.

The State asks this Court to overlook the fact that in further violation of discovery, it failed to disclose to Mr. Avery's prior counsel that a former driver who delivered newspapers to the Avery Salvage Yard in November of 2005 observed two men, including a shirtless Bobby Dassey, the State's primary witness in securing Mr. Avery's conviction, pushing Ms. Halbach's RAV-4 down Avery Road prior to its later "discovery" on the Avery Property.

In its response, the State states, "[i]t is reasonable to conclude at this point that [Mr. Avery] is not pursuing these claims in good faith" (State's response at p. 2). However, the State's conclusion is clearly refuted by the procedural history of this case, the veracity of Mr. Sowinski's statements, the supporting affidavits, and the State's history of misconduct.

While the State has not been prejudiced in any way by its own misconduct and this Court's prior rulings granting Mr. Avery's motions to remand, its response merely mimics its previous responses to Mr. Avery's motions, arguing that Mr. Avery is "dragg[ing] this appeal out" and that he should voluntarily dismiss his pending appeal. (State's Resp. at p. 4). It is the State's pattern of concealing and withholding

exculpatory evidence that has forced Mr. Avery to delay his appeal numerous times already, delaying his quest for a new trial and eventual freedom.

### ARGUMENT

#### **I. The State's argument that Avery did not conduct a reasonable investigation before filing his motion is completely meritless.**

The State argues that Avery's counsel violated Wis. Stat. § 802.05 by not conducting any "affirmative investigation" into the assertions made by Mr. Sowinski in his affidavit before filing the motion for remand.<sup>1</sup> (State's Resp. at pp. 12–13). Without citing any precedent, or acknowledging Mr. Avery's prior discovery requests, the State suggests that Avery was required to attempt a new open records request to verify Mr. Sowinski's call and/or ascertain the identity of the female officer with whom Mr. Sowinski spoke prior to filing the motion. (State's Resp. at pp. 14–15). Citing *Belich v. Szymaszek*, 224 Wis. 2d 419, 431 (Ct. App. 1999), the State maintains that Avery's counsel may not "rely simply on the word of a person like Sowinski" before presenting Mr. Sowinski's affidavit to the Court. (State's Resp. at p. 16).

The State's argument should be rejected because it is based on a false premise, *i.e.*, that Mr. Avery's attorney did not conduct a reasonable investigation into Mr. Sowinski and the averments in his affidavit before filing the motion for remand. The State's argument appears to be based on its self-serving conclusion that Mr. Avery's counsel stumbled upon Mr. Sowinski and, within 24 hours, filed the pending motion to stay the appeal and remand for Mr. Avery to file a supplemental postconviction

---

<sup>1</sup> Ironically, the State does not describe what investigation it conducted to support its assertion that Avery's attorney did not investigate Mr. Sowinski or the averments made in his affidavit before filing its response in opposition to the pending motion.

motion with the circuit court. The State's conclusion is demonstrably false and the result of a careless, sloppy reading of Mr. Avery's motion. The simple truth is that Mr. Avery's counsel conducted a thorough investigation relative to Mr. Sowinski.

Certainly, a great deal more effort was made to vet Mr. Sowinski than the State made to vet its primary witness, Bobby, who has been caught in numerous untruths. During Mr. Avery's trial, Bobby testified that he was asleep and woke up around 2:30 p.m. and looked out of the kitchen window of the Dassey-Janda residence, and that he saw Ms. Halbach's RAV-4 pull up, Ms. Halbach exit the vehicle, and start taking pictures of the Dassey-Janda van. (689:38–39). When Ms. Halbach finished photographing the van, Bobby claimed to see her "walking up towards Uncle Steve's trailer." (689:38; 715:91). Bobby testified that he took a shower, and when he left the property at about 2:45 p.m. to go bow hunting, he claimed that Ms. Halbach's RAV-4 was still on the property but he did not see her. (689:38–40). (*See Avery's Br. 43-44*). Bobby's testimony was the only evidence presented by the State that the RAV-4 never left the Avery property after October 31, 2005. (697:44) (*See Avery's Br. 57*). Bobby's testimony was the most determinative of Mr. Avery's guilt because the State used it to establish that Ms. Halbach never left the Avery property. (696:103–04). Based upon Bobby's testimony, the State claimed that Mr. Avery was the last person to see Ms. Halbach alive. (696:51). However, Bobby's testimony is replete with lies and contradicted by numerous witnesses, including his own brother, Bryan, who told law enforcement that Bobby saw Ms. Halbach leave the Avery property on October 31, 2005. (630:29; 631:33–39; 633:5). (*See Avery's Br. 84*). The CD, which the State withheld from Mr. Avery's counsel, also establishes a timeline of internet searches

directly contradicting Bobby's trial testimony that on October 31, he was asleep from 6:30 a.m. to 2:30 p.m.<sup>2</sup> (633:38–39; 689:35) (App. 215–16). (App. 216) (*See* Avery's Br. 57-58). Additionally, Bobby's testimony that his back was scratched by his puppy has been refuted by Mr. Avery's expert, Larry Blum, MD. (737:153, 155–62) (App. 1082, 1084–91) (*See* Avery's Br. 86-87).

Unlike the State's failure to investigate the credibility of its primary witness, Bobby, Mr. Avery's counsel rigorously investigated Mr. Sowinski's claims. Mr. Sowinski first emailed Mr. Avery's counsel's law firm on December 26, 2020 and Mr. Avery's counsel and her investigator vetted the legitimacy and veracity of the information provided by Mr. Sowinski over the next three-and-a-half months before filing the pending motion to stay. Prior to filing the motion, Mr. Avery's counsel:

- 1) Reviewed Mr. Sowinski's email sent on December 26, 2020 (Zellner Affidavit, ¶ 3);
- 2) Conducted an extensive background check producing, among other information, Mr. Sowinski's previous addresses, phone numbers, job history, social media accounts, car purchases, criminal history, relatives, etc. (Zellner Affidavit, ¶¶ 4, 7);
- 3) Reviewed all of the discovery produced by the State prior to Mr. Avery's 2007 trial, searching for any record of Mr. Sowinski's phone call to the Manitowoc County Sheriff's Office (Zellner Affidavit ¶ 5);

---

<sup>2</sup> Mr. Avery's expert determined that the internet on the Dassey-Janda computer was accessed on October 31, 2005, when only Bobby was home 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. (633:39).

- 4) Searched and corroborated Mr. Sowinski's statements based on other evidence, including but not limited to the affidavits of Blaine Dassey and Kevin Rahmlow (Zellner Affidavit ¶ 5);
- 5) Hired an additional licensed investigator, James R. Kirby (Investigator Kirby), to conduct an additional background check of Mr. Sowinski through additional databases (Zellner Affidavit ¶ 10; Kirby Affidavit ¶ 4);
- 6) After confirming the veracity of Mr. Sowinski by its extensive investigation, Mr. Avery's counsel and staff conducted a telephone interview with Mr. Sowinski on April 9, 2021 related to what he claimed to witness (Zellner Affidavit ¶ 11);
- 7) After this interview Mr. Avery's counsel and staff prepared an affidavit and requested Investigator Kirby to meet with Mr. Sowinski in person and conduct a second interview of him to determine his credibility. After thoroughly interviewing Mr. Sowinski and reviewing his affidavit with him for any changes Mr. Sowinski executed his affidavit on April 10, 2021 (Zellner Affidavit ¶ 12; Kirby Affidavit ¶¶ 8, 9).

(See affidavits of Kathleen T. Zellner and Investigator James R. Kirby, attached as **Group Exhibit A**). Based on the foregoing, the notion that Mr. Avery's counsel did not reasonably investigate Mr. Sowinski and the information he has provided is simply untrue. Undersigned counsel and her investigator have had the opportunity to assess Mr. Sowinski's credibility based on his demeanor and the consistency between his observations and other known facts related to the disappearance of

Teresa Halbach. Undersigned counsel's investigation into Mr. Sowinski and his affidavit have continued since the filing of the motion to remand, the results of which to date have only confirmed the credibility of the information he has provided.<sup>3</sup>

The State's "reasonable investigation" argument—which reasonably can be construed as an attempt to unreasonably divert this Court's attention from the materiality of the information provided by Mr. Sowinski—is based on a misleading characterization of Wis. Stat. § 802.05. The State's response suggests that an attorney must detail the steps Mr. Avery's counsel took to verify the truthfulness of assertions made in a pleading in the pleading itself. Wis. Stat. § 802.05 imposes no such obligation. On the contrary, requiring an attorney to disclose such information would infringe upon the work-product privilege. *State ex rel. Dudek v. Circuit Court for Milwaukee Co.* (34 Wis.2d 559 (1967) ("[M]ost materials, information, mental impressions and strategies collected and adopted by a lawyer after retainer in preparation of litigation and relevant to the possible issues must be initially classified as a "work product" of the lawyer, not subject to inspection or discovery unless good cause for discovery is shown.")).

The State's argument that Mr. Avery's counsel did not reasonably investigate Mr. Sowinski and the statements in his affidavit because a new open records request was not made, is not only unsupported by precedent, but is illogical. Based on the information in Mr. Sowinski's affidavit, the State was constitutionally required to disclose Mr. Sowinski's phone call and the information he provided to law

---

<sup>3</sup> Also, contrary to the State's false claim, which Mr. Sowinski's affidavit states quite clearly, Mr. Sowinski did not receive any reward, nor did he seek to receive any award. (See **Group Exhibit A, Zellner Affidavit ¶¶ 12, 14, Ex. 6**).

enforcement to the defense before Mr. Avery's trial. Undersigned counsel has reviewed all of the discovery disclosed by the prosecution, including records of phone calls made to the Manitowoc County Sheriff's Office, and nowhere in the discovery does such a record exist of Mr. Sowinski's phone calls. The State provides no explanation as to why a record of Mr. Sowinski's call would be produced in response to an open records request now if evidence of the call was withheld in the first instance. Indeed, the non-disclosure or concealment of exculpatory information is the crux of a *Brady* violation. The State seems unaware that the Manitowoc County Sheriff's Department disclosed in 2018 that it no longer had the telephone calls from citizens to its non-emergency number. (See **Group Exhibit A, Zellner Affidavit, ¶ 6, Ex. 2**).

Lastly, the State's efforts to compare this situation to *Belich* is a complete nonstarter. In *Belich*, the plaintiff alleged that the defendant—whom she had hired to replace windows in her home—stole \$60,000.00 in cash from her office. *Belich*, 224 Wis.2d at 422–23. However, the homeowner was present when the defendant removed the window from her home and admitted that she did not observe any unusual bulge in the defendant's clothing to suggest that he had secreted away such a large amount of cash. *Id.* at 424. It was also undisputed that although the plaintiff discovered the money missing three days after the windows were replaced, she did not report the cash as missing to either her husband or the sheriff for another month. *Id.* at 424, 431. The sheriff's office investigated the complaint and closed the investigation without referring the defendant for criminal prosecution. *Id.* at 431. The circuit court granted summary judgment in favor of the defendant and further



found that the lawsuit was frivolous, awarding attorneys fees and costs to the defendant. *Id.* at 422.

In affirming the circuit court's award of sanctions under Wis. Stat. § 802.05, this Court noted that the plaintiff's attorney did not conduct any pre-filing investigation or post-filing discovery to confirm his client's allegations. *Id.* at 431. This Court also observed that a number of circumstances about the plaintiff's allegations—including the unlikelihood that she would leave so much money unattended in the presence of a stranger, the improbability of the defendant being able to walk out of the residence with 3,000 twenty dollar bills on his person, and the plaintiff's delay in reporting the cash as missing—did not pass the “smell test,” which should have triggered additional investigation by her attorney. *Id.* at 431–32. This Court held that given these “warning bells,” the plaintiff's attorney's failure to conduct *any* investigation beyond taking his own client's word for what occurred violated § 802.05. *Id.* at 431–35.

It is readily apparent why *Belich* is inapplicable. Unlike the plaintiff in *Belich*, as set forth herein, undersigned counsel has conducted a thorough investigation of the allegations in the motion for remand. Moreover, undersigned counsel is not relying on her client's rendition of events to support the allegations in the motion. Instead, she is relying on the assertions of an independent third party who has no stake in this litigation. Most importantly, unlike *Belich*, the State has not identified any undisputed evidence that sounds “warning bells” calling into question the veracity of Mr. Sowinski's averments. In short, *Belich* has no bearing on any issue presented by Mr. Avery's motion for remand. Likewise, it is readily apparent that

the State has not shown the motion for remand to be based on frivolous allegations, and/or that the motion was filed in violation of § 802.05.

**II. Because the State disputes Mr. Thomas Sowinski's credibility, this cause must be remanded.**

In its response, the State is quick to cast judgment on Mr. Avery's new witness and the information he provided without producing any evidence and/or arguing that any evidence rebuts anything attested to by Mr. Sowinski. However, besides Mr. Avery's counsel's verification of Mr. Sowinski's background and information he provided, the record itself supports the veracity of Mr. Sowinski's affidavit and corroborates his statements. Among other evidence discovered by Mr. Avery's counsel, Mr. Sowinski's affidavit is consistent with Kevin Rahmlow's affidavit that he spotted the RAV-4 on Highway 147, east of Avery's Salvage Yard, on November 3 and 4. (See affidavit of Kevin Rahmlow, attached as **Exhibit B**). Additionally, Mr. Sowinski's affidavit is consistent with the affidavit of Bobby Dassey's own brother, Blaine Dassey, in which he attested that he saw Bobby in possession of and driving a bluish green vehicle Blaine did not recognize from the Avery property onto Highway 147 around 3:30-3:40 p.m. on October 31, the day Teresa Halbach disappeared. (See affidavit of Blaine Dassey, attached as **Exhibit C**).

All this aside, the State's criticism of the veracity of Mr. Sowinski's statements is inappropriate for this Court to consider anyway. It is not for this Court, but rather for the circuit court sitting as the trier of fact, to weigh the evidence presented at trial. *Langlade County v. Lettau*, 2020 WI App 6, 390 Wis. 2d 426, 939 N.W.2d 432; see also Wis. Stat. § 805.17(2). "[D]ue regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." *Bottomley v. Seaverson*, 2018 WI

App 45, 383 Wis. 2d 601, 918 N.W.2d 128. The State's response merely substantiates that a conflict concerning Mr. Sowinski's credibility demands the circuit court's intervention for a credibility determination.

### **III. Mr. Avery's motion is proper.**

As the State's response acknowledges, the decision to remand is left to this Court's discretion.

In its response, the State makes unfounded accusations of Mr. Avery's counsel trying to delay Mr. Avery's appeal. The State should be reminded that this Court previously granted three of the four motions Mr. Avery filed to remand and supplement his post-conviction motion. (See remand orders dated 09/08/2016, 06/11/2018, and 02/27/2019, attached as **Group Exhibit D**). Like Mr. Avery's current motion, none of these were considered "frivolous" nor "filed for an improper purpose" as the State now argues. (State's Resp. at p. 18). Therefore, the State's convoluted argument that Mr. Avery somehow does not have a right to file a motion to stay his appeal and remand his case does not have any merit.

Pursuant to Wis. Stat. § 974.06, all grounds for relief available to a person must be raised in his or her original, supplemental or amended motion. Mr. Sowinski's affidavit supports Mr. Avery's claim that the State has engaged in a pattern of withholding exculpatory and/or impeaching evidence from the defense. In addressing a *Brady* claim, a court is required to assess the cumulative impact of all the suppressed evidence to determine its materiality. *Kyles v. Whitley*, 514 U.S. 419, 434 (1995). Mr. Avery submits that this Court's reasoning in its February 27, 2019 remand order that, "due to this case's extensive history, there is a benefit to having

existing claims developed or litigated while they are relatively fresh, rather than positioning the claims to be procedurally barred in a future proceeding” should apply here. (See remand order dated 02/27/2019 at pp. 2–3, attached as **Group Exhibit D-3**).

Mr. Avery has brought this issue to the Court’s attention in a timely manner. That the information Mr. Sowinski provided was not discovered and investigated by Mr. Avery’s counsel until after the briefs were submitted in this appeal should not effect this Court’s decision whether to remand Mr. Avery’s case.

Mr. Avery does not want to waive this issue by not addressing it at this time. The appeal must be stayed and this issue must be remanded to the circuit court for proceedings that should include a hearing concerning the undisclosed phone call Mr. Sowinski made to the Manitowoc County Sheriff’s Office. The undisclosed phone call and information Mr. Sowinski provided to the Manitowoc County Sheriff’s Office is exculpatory and/or impeaching evidence which contradicts the State’s primary witness, Bobby Dassey’s testimony and inculpates Bobby Dassey as a third-party suspect pursuant to *Denny*. The State cannot credibly argue that Mr. Sowinski did not contact Manitowoc County Sheriff’s Office with information related to seeing Bobby and another unidentified man, pushing the RAV-4 before the RAV-4 was “discovered” on the Avery Property on November 5th, 2005 (694:230). (See Avery’s Br. 10). The State’s actions demand that further proceedings be conducted to determine if Mr. Avery’s due process rights have been violated under *Brady*.

For the reasons above, this Court should allow Mr. Avery’s appeal to be stayed and remanded to the circuit court for further proceedings to determine whether Mr.

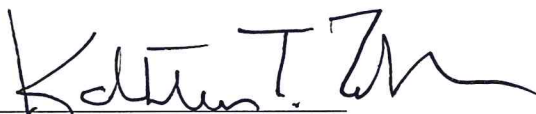
Avery can supplement his motion to support his claim that the State violated his constitutional rights under *Brady*.

### CONCLUSION

Wherefore, undersigned counsel respectfully requests that this Court enter an order staying this appeal and remanding the cause to the circuit court to permit Mr. Avery to pursue a supplemental postconviction motion in connection with Mr. Avery's discovery of previously suppressed evidence by the State.

Dated this 22nd day of April, 2021.

Respectfully submitted,



Kathleen T. Zellner  
Admitted pro hac vice  
Kathleen T. Zellner & Associates, PC  
1901 Butterfield Road, Suite 650  
Downers Grove, Illinois 60515  
(630) 955-1212  
[attorneys@zellnerlawoffices.com](mailto: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](mailto:sgrlaw@yahoo.com)

**CERTIFICATE OF SERVICE**

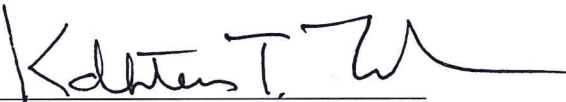
I certify that on April 22, 2021, a true and correct copy of Defendant-Appellant's Reply Brief to the State's Response to Mr. Avery's Motion to Stay Appeal and Remand the Cause for Mr. Avery to supplement his post-conviction motion with a new witness affidavit establishing a *Brady* violation and a third-party *Denny* suspect was furnished via electronic mail and by first-class U.S. Mail, postage prepaid, to:

Lynn Zigmunt  
Clerk of the Circuit Court  
1010 S. 8<sup>th</sup> Street  
Manitowoc, WI 54220

Ms. Tiffany M. Winter  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707

Manitowoc County D.A.'s Office  
1010 S. 8<sup>th</sup> Street  
Room 325  
Manitowoc, WI 54220

Ms. Lisa E.F. Kumfer  
Assistant Attorney General  
P.O. Box 7858  
Madison, WI 53707

  
\_\_\_\_\_  
Kathleen T. Zellner

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 KATHLEEN T. ZELLNER

Now comes your affiant, Kathleen T. Zellner, and under oath hereby states as follows:

1. Your affiant is of legal majority and can truthfully and competently testify to the matters contained herein based upon my personal knowledge. The factual statements herein are true and correct to the best of your affiant’s knowledge, information, and belief. Your affiant is of sound mind and is not taking any medication nor has your affiant ingested any alcohol that would impair your affiant’s memory of the facts stated in this affidavit.
2. Your affiant is the lead counsel for Steven Avery in case number 05-CF-381.
3. Your affiant states that on December 26, 2020 at 10:42 pm, her law office received an email from an individual by the name of Thomas D. Sowinski. Mr. Sowinski’s email is attached and incorporated herein as *Exhibit 1*.
4. Your affiant reviewed the email carefully and decided to conduct a thorough background investigation of Mr. Sowinski before contacting him.
5. Your affiant reviewed all materials related to the Avery case, including all prior discovery requests, witness affidavits and interviews to determine if Mr. Sowinski could be determined to be a credible witness.



6. Your affiant also reviewed all discovery requests that she had made since assuming the representation of Mr. Avery in 2016. Specifically, your affiant made the following request:

“Please provide a copy of the dispatcher log related to Manitowoc County Sheriff’s Office case #2005-00008844 and/or any document/log that exists related to communications between Manitowoc County Sheriff’s Office dispatch and law enforcement as well as with any private citizens.”

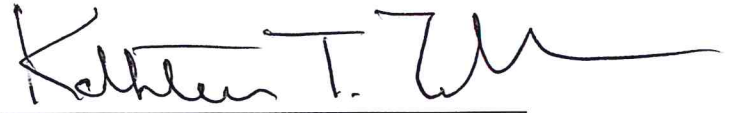
Mr. Larry Ledvina, Deputy Inspector at the Manitowoc County Sheriff’s Office, responded “**we do not have recordings from that time period**” (emphasis added). Your affiant realized that any phone call from Mr. Sowinski to the Manitowoc County Sheriff’s Office had been destroyed. This request and the response are attached and incorporated herein as *Group Exhibit 2*.

7. Your affiant’s law firm conducted an investigation of Mr. Sowinski which included gathering information about the following: his date of birth, relatives, employment history, telephone numbers, email addresses, possible criminal record, possible civil record, and car ownership.
8. Your affiant’s law firm confirmed that Mr. Sowinski had worked at the Manitowoc Herald Times during the relevant time period. Financial documents dating 2005-2006 as well as newspaper articles from 2005-2006 listing Mr. Sowinski as a paper carrier of the Manitowoc Herald Times are attached and incorporated hereto as *Group Exhibit 3*.
9. Your affiant’s law firm confirmed that Mr. Sowinski emailed the Innocence Project on January 7, 2016 regarding his witness observations. Attached and incorporated herein as *Exhibit 4* is a copy of the relevant email. Your affiant confirmed that Mr. Dean Strang, Mr. Avery’s prior attorney, did not have an email from Thomas D. Sowinski, but he could not confirm whether Mr. Buting had received an email because when Mr. Buting switched email servers, some of his prior emails had been inadvertently deleted.



10. On April 1st, 2021, a request was made to your affiant's investigators, Edward R. Kirby and Associates, that a further investigation be done of Thomas D. Sowinski as delineated in the affidavit of James R. Kirby.
11. On April 9th, 2021, your affiant's law firm conducted an interview of Mr. Sowinski by telephone and prepared an affidavit reflecting that interview. Mr. Sowinski was visiting relatives in Manitowoc County.
12. On April 10th, 2021, James R. Kirby drove to Manitowoc County to interview Mr. Sowinski and review the accuracy of his affidavit which was based on his telephone interview conducted by your affiant's law firm. Mr. Sowinski executed the affidavit which was notarized by Mr. Kirby. Mr. Sowinski's affidavit is attached and incorporated herein as *Exhibit 5*.
13. On April 12th, 2021, your affiant's law firm filed Defendant-Appellant's Motion to Stay Appeal and Remand the Cause for Mr. Avery to supplement his post-conviction motion with a new witness affidavit establishing a *Brady* violation and a third-party *Denny* suspect.
14. Mr. Sowinski confirmed on April 21st, 2021 with your affiant that he did not know of any reward money being offered and that if money were given to him, he would donate it to the Halbach family. Mr. Sowinski's text message is attached and incorporated hereto as *Exhibit 6*.
15. Your affiant and her law firm hold the opinion that Mr. Sowinski is a credible witness based upon the extensive investigation your affiant conducted as described above and in the affidavit of James R. Kirby.

FURTHER AFFIANT SAYETH NAUGHT



Kathleen T. Zellner

Subscribed and sworn before me  
this 22<sup>nd</sup> day of April, 2021.



Notary Public





Steven Avery &lt;stevenaverylawyers@gmail.com&gt;

---

**We need to talk!**

---

Thomas Sowinski <tquest87@yahoo.com>  
To: stevenaverylawyers@gmail.com

Sat, Dec 26, 2020 at 10:42 PM

Just finished 2nd season.

I lived there at the time. I was a motor route driver that was on the property everyday to deliver newspapers.

A few days before they found the Rav I was delivery papers at about 1-2 am and saw Bobby dassey and another old man pushing the Rav down the road towards the junkyard.

No lights at all, I almost hit them. They were very spooked. As you know, it's a dead end street. After delivery paper I had to go right back past them. Dassey stood in the road next to the Rav trying to stop me from getting by. As I approached my headlights were on them 100%. Other guy hid behind open passenger door that was open from pushing the vehicle.

I didn't slow down and drove in the ditch to get by, waving as I said "paperboy, gotta go"

Dassey had no shirt on and the other guy had a very scraggly beard and seemed to be in his 60s

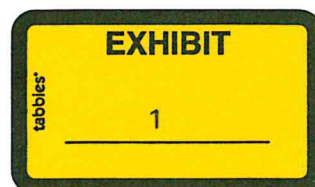
I did call police and they said they would contact me, they never did.

After season one, I emailed an attorney of Stevens and no response.

I've decided to reach out one more time as this information seems vital especially after what I just watched.

I live in Denver now but lived in manitowc for over 20 years.

Sent from Yahoo Mail for iPhone



Please provide a copy of the dispatcher log related to Manitowac County Sheriff's Office case #2005-00008844 and/or any document/log that exists related to communications between Manitowac County Sheriff's Office dispatch and law enforcement as well as with any private citizens.



**Subject:** Fwd: Request  
**From:** Kay Hall (khall0412@yahoo.com)  
**To:** jkirby@kirbyinvestigations.com;  
**Date:** Wednesday, February 1, 2017 11:38 AM

Sent from my iPhone

Begin forwarded message:

**From:** Larry Ledvina <LarryLedvina@co.manitowoc.wi.us>  
**Date:** February 1, 2017 at 9:16:35 AM CST  
**To:** "khall0412@yahoo.com" <khall0412@yahoo.com>  
**Subject:** Request

I have received your request for recordings of calls from November 3, 2005.

We do not have recordings from that time period.

For any document requests, be specific on what "documents" and cases you are requesting.

Thank you.

Larry Ledvina, Deputy Inspector  
Manitowoc County Sheriff's Office  
1025 S. 9th St.  
Manitowoc, WI 54220  
(920) 683-4199  
[LarryLedvina@co.manitowoc.wi.us](mailto:LarryLedvina@co.manitowoc.wi.us)

This message is intended for the use of the person or organization to whom it is addressed. It may contain information that is confidential, privileged, or otherwise protected from disclosure by law. If you are not the intended recipient or a person responsible for delivering this message to the intended recipient, any copying, distribution, or use of this message or the information that it contains is not authorized and may be prohibited.

Say you saw it in the Lakeshore Chronicle

NEWSPAPER CARRIERS

Sunday, October 15, 2006 Page D-5

# Thank you, carriers



MATTHEW WEGNER



WINSTON WEINERT



BRUCE WILDMAN



KATHLEEN WILHELM



REBECCA WILINSKI



WILLIAM WITCZAK

## The rest of the newspaper carrier force ...

Here is a list of the remaining members of the newspaper carrier force that delivers the *Herald Times Reporter*, *Lakeshore Chronicle* and *Laker Shopper* to your doorstep:

Charles Adams, Samuel Adams, Holly Anderson, Rick Armstrong, Pamela Babcock, Trevor Bennin, JoAnn Berger, Lois Blake, Willie Bolden, Barb Bornemann, Barbara Borths, Mary Boury, Dianna Brandl, Judith Braun, Joe Brull, Daniel Brunmeier, Joshua Burns.

Jane Cannon, Wilford Chase, Thomas Chizek, Thomas Cochrane, Sharon Coleman, Frank Copus, Logan Cramer, April De Noyer, Adam Delsman, Matthew Dessart, Jacob Doney, Alec Dose, Joe Ducat, Gene Dvorachek, Shaun Dymerski.

Aaron Fleisner, Tyler Fricke, Samantha Gamez, Matthew Gass, Carol Gauthier, James Greetan, Christine Grimm, Kristi Habeck, Travis Hacker, Kyle Hansen, Tina Haupt, Heather Hauschultz, James Henke, Matthew Hesse, Justin Hietpas, Glen Hines, Dylan Holtz, Cindy Hufeld, Mandi Hurkmans, Brian Hurley, Ron Hutterer.

Daniel Jacobson, Kyle Jacquart, Ashley Jandrey, Adam Janowski, Michael Jeffers, Chad Johnson, David Jung, Marlene Kahrs, Dylan Kazda, Jerome Keehan, Dean Kettenbeil, Jo Ann Kettenbeil, Daniel Kielsmeier, Jaymeson Kirt, Connie Kline, Richard Klosterman, Tammi Koch, Jacob Kokesch, Brittany Konik, Kenneth Kono, Chelsea Korte, Robert Krueger, Kollen Kunesh, Veronica Kyllonen.

Anne Lappen, Seth Laurin, Roger Lehrmann, Samantha Lippert, Matthew Mahuna, Jack Marsh III, Peter Mason, Mary McClary, Rose Meihnsner, Catherine Mercier, Julie Mercier, Charles Messman, Nickolas Meverden, Donald Meyer, James Mishler, Sullivan Moreau, Arnold Mott, Cynthia Nadeau, Alex Nelson, Devon Novak.

Calvin Pautz, Frank Pietroske, Candace Ploor, Crystal Porier, Martin Posvic, Michael Powalisz, Steven Powell, Mike Prucha, Jo Ann Rathsack, Ronald Rathsack, William Rauens, Kara Roberts, Ashley Roloff, Joshua Roloff, Patricia Ruelle, Thomas Rutherford.

Robert Samz, Mary Schermetzler, Jerry Schneider, John Schroeder, Lynette Schultz, Michaela Schultz, Mary Jo Sepnesky, Brandon Shaw, Clyde Shaw, Catlin Sheraski, Curt Siebold, Derek Siebold, Steven Snyder, Sara Solberg, Heidi Soodsma, Casey Sorenson, Thomas Sowinski, Charles Sprang, Guy Strzyzewski Jr., Tammy Strzyzewski.

Kathleen Tanck, Cheryl Taylor, James Terry, Joshua Terry, Jerry Thao, Malia Thao, Cody Thiel, Terry Traurig, Matthew Troyer, Jo Ann Van Abel, Glenn Vandenbusch, Stacey Vandenbusch, Cheeng Leng Vang, Yee Leng Vang, Josiah Vogt.

Shannon Wadzinski, Scott Walotkiewicz, Ciera Watkins, Mitch Webb, Tracy Weber, Kevin Wehner, Wendy Wellner, Garey Whorley, Shawn Wiegert, Shane Wohlgenuth, Kim Wolf, Henry Wright, Greg Zabler, Nicole Zettel, Ryan Zipperer.



BRYAN WUENSCH



BLAEC ZAHN

### Broadsheet vs. tabloid newspaper?

A broadsheet is the standard format with a single dimension of approximately 13 inches wide by 21 inches deep. A tabloid is approximately 10 1/2 inches wide by 13 inches deep.



## COSMIC BOWLING

Every Friday and Saturday Evening After 9pm



C8 • Saturday, October 15, 2005

www.htrnews.com

HERALD TIMES REPORTER

# Thank you to all Herald Times Reporter and Lakeshore Chronicle carriers

Only a few of the Herald Times Reporter and Lakeshore Chronicle carriers had pictures taken for this section. Other dedicated carriers include:

Charles Adams, James Anderson, Justin Anderson, Rick Armstrong;

Bridgett Baeckmann, Anthony Balk, Seth Bast, Christopher Behnke, Travis Behnke, Ashley Biel, Ronald Bierman, Debra Bjarnarson, Lois Blake, Laura Blodgett, Barb Bornemann, Barbara Borths, Judith Braun, Daniel Brunmeier, Barbara Buck, Joshua Burns;

Jane Cannon, Matthew Chada, Steven Chase, Thomas Chizek, Ben Cisler, Logan Cramer;

Jared DeBauche, Adam Delsman, April Denoyer, Shane Diederichs, Jacob Doney, Jenna Dose, Trevor Downing;

Alexander Ebert, Lisa Elliot, Troy Enfors, Thomas Epley, Nicole Eyerley;

Brenda Faber, Michael Farr, Kraig Free, Carol Gauthier, Adriene Grider;

Jeffery Haberman, Kyle Hansen, Ashley Hecker, Patrick Heili, Norbert Helminiak, James Henke, Sher Her, Caitlin Hermann, Joseph Hieber, Justin Hietpas, Lisa Hietpas, Mickenzie Hubbart, Cindy Hufeld, Andrew Hunt, Mandi Hurkmans, Brian Hurley, Ron Hutterer;

Daniel Jacobson, Kendra Janke, Adam Janowski, Michael Jeffers;

Marlene Kahrs, Lori Kempf-Lotz, Dean Kettenbeil, Caitlyn Keune, Megan Kieffer, Jaymeson Kirt, Jason Klein, Connie Kline, Richard Klosterman, Tammi Koch, Brittany Konik, Kenneth Kono, Justin Kraemer, Gerald Kronberg, Ashley Krueger, Robert Krueger, Vanessa Krueger;

Seth Laurin, Lisa La Violette, Jacob Lawson, Chouyee Lee, Danielle Lee, Luckie Lee, Roger Lehrmann, Greg Leslie, Kevin Lietz, James Love-Gove, Amanda Ludwig;

Erik Malach, Lorraine Mason, Charles Messman, Julie Mercier, Amy Mevenden, Donald Meyer, Jordan Micke, Nathan Miles, Abaigeal Mleziva, Austin Mleziva, David Mleziva, Arnold Mott, Eric Mueller, Matthew Mueller;

Judy Nething, Brandon Nickels, Devon Novak, Monica Nowak;

David Osten, Calvin Pautz, Cole Payne, Frank Pietroske, Candace Ploor, Mikaela Posen, Martin Posvic, David Powell, Elizabeth Pritzl, Paul Proehl;

Taylor Qualman, Kim Radzinske, Richard Radzinske, Jo Ann Rathsack, Ronald Rathsack, Ambrosia Rauens, William Rauens,

Wyndin Reindl, Ben Rezach, Dustin Reznicek, Tina Richmond, Kara Roberts, Tammy Robinson, Joshua Roloff, Patricia Ruelle;

Robert Samz, Christee Schlorf, Ross Schmitt, Jeremy Schnell, Lynette Schultz, Samantha Schultz, Tannor Schuricht, Brian Schweigl, Paul Schweigl, Kelilyn Seefeldt, Mary Jo Sepnesky, Curt Siebold, Derek Siebold, Kyle Siebold, Clyde Shaw, Connie Shillcox, Coty Sippel, Steven Snyder, Heidi Soodsma, Ivy Sowinski, Thomas Sowinski, Charles Sprang, Guy Strzyzewski Jr., Stephani Swokowski;

Kathleen Tanck, James Terry, Boon See Thao, Malia Thao, Pa Nhia Thao, Pao Thao, Cody Thiel, Terry Traurig;

Stacey Vandebusch, Kelsi Vanderwarf, Rikki Vogel, Josiah Vogt;

Shannon Wadzinski, Emily Walker, Scott Walotkiewicz, Mitch Webb, Philip Weber, Winston Weinert, Chris Welch, Daniel Whorley, Nicholas Wier, Rebecca Wilinski, Kathleen Wilhelm, Kyle Witak, William Witezak, Shane Wohlgemuth, Waldemar Wohlgemuth Jr., Logan Wood, Henry Wright, Jason Wuellner, Bryan Wuensch;

Joe Xiong, Greg Zabler, Blaec Zahn, Ashli Zawacki, Chandler Zich, Lynn Zich, Ryan Zipperer.

**MANITOWOC TROPHY**  
"We Specialize in Recognition"  
Wedding Gifts • Corporate & School Awards  
2402 Washington Street 684-7318  
www.manitowoc trophy.com

**Fresh-Baked**  
Breads • Buns • Hard Rolls  
Danish • Pies • Cookies • Donuts  
"Something yummy for everyone's tummy!"  
**Jerry's Bakery, Inc.**  
1213 Madison St., Two Rivers • 794-7244  
M-F 5AM-5:30PM • Sat. 5AM-3PM

**WINTERIZE YOUR CAR NOW!** **SERVICE Makes the Difference!**  
• Tune Ups • Exhaust Work • Complete Brake Service  
• Hunter 4-Wheel Alignments • Quick Lube  
• Fuel Injection and Computer • Air Conditioning Service  
• ASE Certified Mechanics • Certified AC Delco Tech  
• Tires, Batteries and Accessories • Tow Service Available  
**TIRE SALE NOW IN PROGRESS**  
**Sauve's Auto Service**  
Open Mon-Sat. 9 a.m.-10 p.m.; Sun. 7 a.m.-9 p.m.  
CITGO 1421 Washington Street • Two Rivers • 793-3344

Many Delicious Flavors of Our Premium Ice Cream  
Also featuring:  
• Sundae's • Malts • Shakes  
• Old Fashioned Ice Cream Sodas  
• Fountain Sodas  
Cleverly hidden behind the Big Cow  
2000 S. 10th Street  
Manitowoc  
Open Daily 11:30am  
www.cedarcresticecream.com

STATE FARM INSURANCE COMPANIES  
HOME OFFICES: BLOOMINGTON, ILLINOIS  
**BOB MAHLIK**  
Agent  
1211 Madison Street Two Rivers, WI 54241 Bus.: (920) 793-4112 Fax: (920) 794-7535

4/20/2021

WIEB Live Area

**05-37960-mdm** Thomas D. Sowinski

**Case type:** bk **Chapter:** 7 **Asset:** No **Vol:** v **Judge:** Margaret Dee McGarity  
**Date filed:** 10/01/2005 **Date of last filing:** 02/08/2006 **Date discharged:** 02/05/2006  
**Date terminated:** 02/06/2006

### Case Summary

**Office:** Milwaukee  
**County:** MANITOWOC-WI  
**Fee:** Paid  
**Origin:** 0  
**Previous term:**

**Filed:** 10/01/2005  
**Terminated:** 02/06/2006  
**Discharged:** 02/05/2006  
**Reopened:**  
**Converted:**  
**Dismissed:**  
**Confirmation hearing:**

**Joint:** n  
**Current chapter:** 7

**Disposition :** Standard Discharge

**Nature of debt:** consumer  
**Pending status:** 341 Meeting Scheduled,Case Closed  
**Flags:** CLOSED

**Trustee:** Office of the U. S. Trustee  
**City:** Milwaukee **Phone:** 414-297-4499 **Email:** ustpregion11.mi.ecf@usdoj.gov  
**Trustee:** Andrew N. Herbach  
**City:** Milwaukee **Phone:** 414-272-0761 **Email:** aherbach@trustee7.com

**Party 1:** Sowinski, Thomas D. (Debtor)  
SSN / ITIN: xxx-xx-1530

**Atty:** Grant D. Glynn **Represents party 1:** Debtor **Phone:** 920-889-3500  
**Email:** gdglvlo@gmail.com

**Location of case files:**  
**Volume:** CS1  
The case file may not be available.

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
04/20/2021 14:09:29			
<b>PACER Login:</b>	ERK00048	<b>Client Code:</b>	
<b>Description:</b>	Case Summary	<b>Search Criteria:</b>	05-37960-mdm
<b>Billable Pages:</b>	1	<b>Cost:</b>	0.10



1458

Official Form 1 (12/03)

<b>FORM B1</b>	<b>United States Bankruptcy Court Eastern District of Wisconsin</b>	<b>Voluntary Petition</b>
----------------	---	---------------------------

Name of Debtor (if individual, enter Last, First, Middle): <b>Sowinski, Thomas D.</b>	Name of Joint Debtor (Spouse) (Last, First, Middle):
--	--

All Other Names used by the Debtor in the last 6 years (include married, maiden, and trade names): <b>AKA Tom D. Sowinski; DBA Thomas Sowinski</b>	All Other Names used by the Joint Debtor in the last 6 years (include married, maiden, and trade names):
---	--

Last four digits of Soc. Sec. No. / Complete EIN or other Tax I.D. No. (if more than one, state all): <b>xxx-xx-1530</b>	Last four digits of Soc. Sec. No. / Complete EIN or other Tax I.D. No. (if more than one, state all):
---	---

Street Address of Debtor (No. & Street, City, State & Zip Code): <b>4221 N. Rapids Manitowoc, WI 54220</b>	Street Address of Joint Debtor (No. & Street, City, State & Zip Code):
---	--

County of Residence or of the Principal Place of Business: <b>Manitowoc</b>	County of Residence or of the Principal Place of Business:
---	--

Mailing Address of Debtor (if different from street address):	Mailing Address of Joint Debtor (if different from street address):
---	---

Location of Principal Assets of Business Debtor (if different from street address above):

**Information Regarding the Debtor (Check the Applicable Boxes)**

**Venue (Check any applicable box)**

- Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.
- There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.

**Type of Debtor (Check all boxes that apply)**

- Individual(s)
- Corporation
- Partnership
- Other \_\_\_\_\_
- Railroad
- Stockbroker
- Commodity Broker
- Clearing Bank

**Chapter or Section of Bankruptcy Code Under Which the Petition is Filed (Check one box)**

- Chapter 7
- Chapter 9
- Sec. 304 - Case ancillary to foreign proceeding
- Chapter 11
- Chapter 12
- Chapter 13

**Nature of Debts (Check one box)**

- Consumer/Non-Business
- Business

**Filing Fee (Check one box)**

- Full Filing Fee attached
- Filing Fee to be paid in installments (Applicable to individuals only.) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form No. 3.

**Chapter 11 Small Business (Check all boxes that apply)**

- Debtor is a small business as defined in 11 U.S.C. § 101
- Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e) (Optional)

**Statistical/Administrative Information (Estimates only)**

- Debtor estimates that funds will be available for distribution to unsecured creditors.
- Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.

Estimated Number of Creditors	1-15	16-49	50-99	100-199	200-999	1000-over
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Estimated Assets	\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Estimated Debts	\$0 to \$50,000	\$50,001 to \$100,000	\$100,001 to \$500,000	\$500,001 to \$1 million	\$1,000,001 to \$10 million	\$10,000,001 to \$50 million	\$50,000,001 to \$100 million	More than \$100 million
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

THIS SPACE IS FOR COURT USE ONLY

AFTER HOURS  
 2005 OCT - 1 - 1 PM 8:59  
 FILED  
 UNITED STATES BANKRUPTCY COURT  
 EASTERN DISTRICT OF WISCONSIN

Form B61  
(12/03)

In re **Thomas D. Sowinski**

Case No. \_\_\_\_\_

Debtor(s)

**SCHEDULE I. CURRENT INCOME OF INDIVIDUAL DEBTOR(S)**

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by a married debtor in a chapter 12 or 13 case whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

Debtor's Marital Status:  <b>Single</b>	DEPENDENTS OF DEBTOR AND SPOUSE	
	RELATIONSHIP <b>Son</b>	AGE <b>12</b>
<b>EMPLOYMENT</b>		
	DEBTOR	SPOUSE
Occupation	<b>Delivery</b>	
Name of Employer	<b>d/b/a Thomas Sowinski</b>	
How long employed	<b>Since 9/05</b>	
Address of Employer	<b>Independent Contractor for Gannett News 4221 N. Rapids Manitowoc, WI 54220</b>	

INCOME: (Estimate of average monthly income)	DEBTOR	SPOUSE
Current monthly gross wages, salary, and commissions (pro rate if not paid monthly)	\$ <u>0.00</u>	\$ <u>N/A</u>
Estimated monthly overtime	\$ <u>0.00</u>	\$ <u>N/A</u>
<b>SUBTOTAL</b>	<b>\$ <u>0.00</u></b>	<b>\$ <u>N/A</u></b>

**LESS PAYROLL DEDUCTIONS**

a. Payroll taxes and social security	\$ <u>0.00</u>	\$ <u>N/A</u>
b. Insurance	\$ <u>0.00</u>	\$ <u>N/A</u>
c. Union dues	\$ <u>0.00</u>	\$ <u>N/A</u>
d. Other (Specify) _____	\$ <u>0.00</u>	\$ <u>N/A</u>
	\$ <u>0.00</u>	\$ <u>N/A</u>

**SUBTOTAL OF PAYROLL DEDUCTIONS**

<b>\$ <u>0.00</u></b>	<b>\$ <u>N/A</u></b>
<b>\$ <u>0.00</u></b>	<b>\$ <u>N/A</u></b>

**TOTAL NET MONTHLY TAKE HOME PAY**

<b>\$ <u>0.00</u></b>	<b>\$ <u>N/A</u></b>
-----------------------	----------------------

Regular income from operation of business or profession or farm (attach detailed statement)	\$ <u>1,000.00</u>	\$ <u>N/A</u>
Income from real property	\$ <u>0.00</u>	\$ <u>N/A</u>
Interest and dividends	\$ <u>0.00</u>	\$ <u>N/A</u>
Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above	\$ <u>245.00</u>	\$ <u>N/A</u>
Social security or other government assistance (Specify) _____	\$ <u>0.00</u>	\$ <u>N/A</u>
	\$ <u>0.00</u>	\$ <u>N/A</u>
Pension or retirement income	\$ <u>0.00</u>	\$ <u>N/A</u>
Other monthly income (Specify) <b>Student Loans</b>	\$ <u>175.00</u>	\$ <u>N/A</u>
<b>Government Grants (Pell)</b>	\$ <u>417.00</u>	\$ <u>N/A</u>

**TOTAL MONTHLY INCOME**

<b>\$ <u>1,837.00</u></b>	<b>\$ <u>N/A</u></b>
---------------------------	----------------------

**TOTAL COMBINED MONTHLY INCOME** \$ 1,837.00

(Report also on Summary of Schedules)

Describe any increase or decrease of more than 10% in any of the above categories anticipated to occur within the year following the filing of this document:

**Debtor is a full time student. Debtor currently lives with his girlfriend. Debtor shares the household expenses.**

Sent from Yahoo Mail for iPhone

Begin forwarded message:

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

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

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

Sent from my T-Mobile 4G LTE Device



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


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



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

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

FURTHER AFFIANT SAYETH NAUGHT

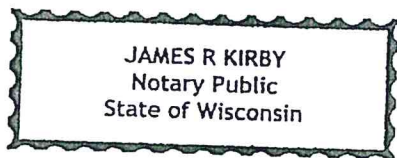
  
\_\_\_\_\_  
Thomas Sowinski

State of Wisconsin  
County of MANITOWOC

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

  
\_\_\_\_\_  
Notary Public

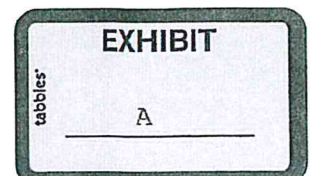
My Commission Expires: 7/29/2022





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

*Thomas Savitt*



4/21/2021

Screenshot 2021-04-21 at 3.52.15 PM.png

I just wanted to let you know that I never heard of any \$100k reward until after this just all recently came out.

Of course money is nice but this was never about a reward, I never knew of a reward and if the \$100k ever happens to get released to me, I would like it all donated to the Halbach family!!

I don't like my integrity being questioned  
Feel free to make this public

Thomas sowinski





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 JAMES R. KIRBY

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

1. Your affiant is of legal majority and can truthfully and competently testify to the matters contained herein based upon my personal knowledge. The factual statements herein are true and correct to the best of my knowledge, information, and belief. Your affiant is of sound mind and is not taking any medication nor has your affiant ingested any alcohol that would impair your affiant’s memory of the facts stated in this affidavit.
2. Your affiant is the president of Edward R. Kirby & Associates, Inc., a professional investigations firm located in Elmhurst, Illinois. Your affiant is a licensed private investigator and have been licensed since 1988. Your affiant is currently licensed in Illinois, Indiana, and Wisconsin.
3. Your affiant undertook an investigation in the above captioned case starting on April 1st, 2021 at the request of the law firm of Kathleen T. Zellner and Associates.
4. Ms. Zellner requested that your affiant conduct a background check on an individual named Thomas D. Sowinski, which included a current residential address and contact information. Additionally, your affiant ran Thomas D. Sowinski’s name through a Wisconsin Court Access database and a similar data source for the State of Colorado. Ms.

Zellner indicated that her office had already conducted a background check on Mr. Sowinski but she was looking for additional information.

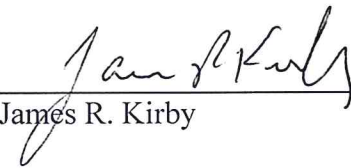
5. After your affiant completed those tasks, Ms. Zellner requested that your affiant attempt to contact Mr. Sowinski. Your affiant made repeated phone calls to Mr. Sowinski's cell phone; however, his voicemail had not been set up and your affiant was unable to reach him.
6. Your affiant had a local investigator from Denver, Colorado deliver a letter prepared by Ms. Zellner to the witness on April 7, 2021 requesting that he contact her office directly.
7. Your affiant was notified by Ms. Zellner's office that they had made telephone contact with Mr. Sowinski on April 8, 2021 and that he was visiting his family in Manitowoc and was willing to speak to Ms. Zellner directly. It is your affiant's understanding that Ms. Zellner and her staff interviewed Mr. Sowinski on April 9, 2021 and prepared an affidavit from that interview.
8. Ms. Zellner requested that your affiant do an in-person interview of Mr. Sowinski on April 10, 2021 and review the affidavit that had been prepared as a result of Mr. Sowinski's interview with Ms. Zellner and her staff.
9. Your affiant drove to Manitowoc on April 10th and met with Mr. Sowinski who reviewed the affidavit and felt confident that the encounter occurred on a Saturday because his normal routine was to deliver papers very early on Saturdays. It was very startling to Mr. Sowinski to see someone on Avery Road that early in the morning.
10. Your affiant has interviewed over 10,000 individuals throughout the course of his career. In reviewing the affidavit with Mr. Sowinski, your affiant found him to be credible because of his demeanor and his affidavit was supported, in part, by the investigation that your affiant did of Mr. Sowinski. Furthermore, Mr. Sowinski's story is supported by

information that your affiant had obtained from his investigation from other witnesses regarding Bobby Dassey and the vehicle.


11. From speaking to Mr. Sowinski, your affiant observed that Mr. Sowinski displayed no knowledge or expectation of a reward during your affiant's interview with him.

12. Currently, your affiant is investigating Mr. Sowinski's description of a second individual that he observed with Bobby Dassey as detailed in Mr. Sowinski's affidavit.

**FURTHER AFFIANT SAYETH NAUGHT**

  
James R. Kirby

Subscribed and sworn before me  
this 21<sup>st</sup> day of April, 2021.

  
Notary Public



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 KEVIN RAHMLOW

Now comes your affiant, Kevin Rahmlow, and under oath hereby states as follows:

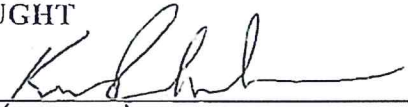
1. I am of legal majority and can truthfully and competently testify to the matters contained herein based upon my personal knowledge. The factual statements herein are true and correct to the best of my knowledge, information, and belief. I am of sound mind and I am not taking any medication nor have I ingested any alcohol that would impair my memory of the facts stated in this affidavit.
2. In 2005, I lived near Mishicot, Wisconsin. I am familiar with the Tadych family because I am acquaintances with Shaun Tadych. Shaun's brother Scott is now married to Steven Avery's sister, Barb.
3. On November 3 and 4, 2005, I was in Mishicot. I saw Teresa Halbach's vehicle by the East Twin River dam in Mishicot at the turnabout the bridge, as I drove west on Highway 147.
4. Around midday on November 4, 2005, I stopped at the Cenex gas station at the intersection of Highway 147 and State Street in Mishicot. While there, I saw and read a missing person poster for Teresa Halbach. I remember that the poster had a picture of



Teresa Halbach and written descriptions of Teresa Halbach and the car she was driving. I recognize the poster attached as **Exhibit A** to this affidavit as a copy of the one I saw at the Cenex station on November 4, 2005.

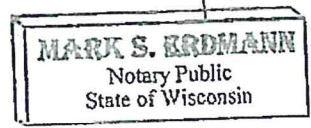
5. I recognized that the written description of the vehicle on the poster matched the car I saw at the turnaround by the dam.
6. While I was in the Cenex station, a Manitowoc County Sheriff's Department officer came into the station. I immediately told the officer that I had seen a car that matched the description of the car on Teresa Halbach's missing person poster at the turnaround by the dam.
7. In December 2016, I watched Making a Murderer. In the series, I recognized the officer who I talked to at the Cenex station on November 4, 2005. A photograph of this officer is attached as **Exhibit B** to this affidavit. Having watched Making a Murderer, I now know that his name is Andrew Colborn.
8. After I watched Making a Murderer, I sent a text message to Scott Tadych. Having reviewed a saved copy of that message, I know that I sent it on December 12, 2016, at 6:13 p.m. In the message, I told Scott Tadych that I had seen Teresa Halbach's car in Mishicot on November 4, 2005, and had told the officer in the Cenex station. On December 19, 2016, I sent Scott Tadych another message. I never heard back from Scott Tadych. Copies of the text message conversation I had with Scott Tadych are attached as **Exhibit C** to this affidavit.
9. Nothing has been promised or given to me in exchange for this affidavit.

10. FURTHER YOUR AFFIANT SAYETH NAUGHT

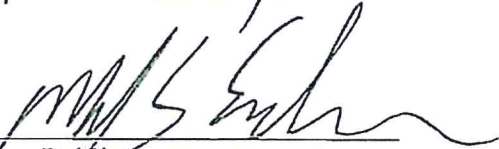
  
\_\_\_\_\_  
Kevin Rahmlow

State of Wisconsin  
County of Manitowish

Subscribed and sworn before me  
this 15<sup>th</sup> day of July, 2017.



Commission Expires  
11/15/2019

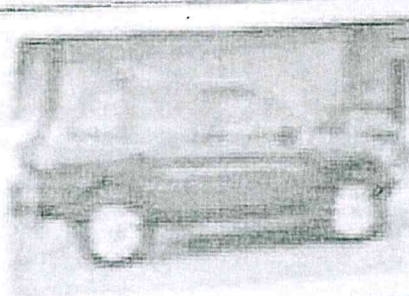
  
\_\_\_\_\_  
Notary Public

# TERESA MARIE HALBACH

1971 - 2016 - Left Member - Florida State



The following information was obtained from the Florida State Department of Corrections, Bureau of Adult Corrections, on 04/22/2021.



2016 Ford Focus  
VIN: 1FADP3C064L000000  
PLATE: 1B0000000000000000

Issued with information & instructions to  
Colombus County Sheriff's Department & Deputies  
in Columbus County, Georgia, on 04/22/2021.

tabbles

**EXHIBIT**

A

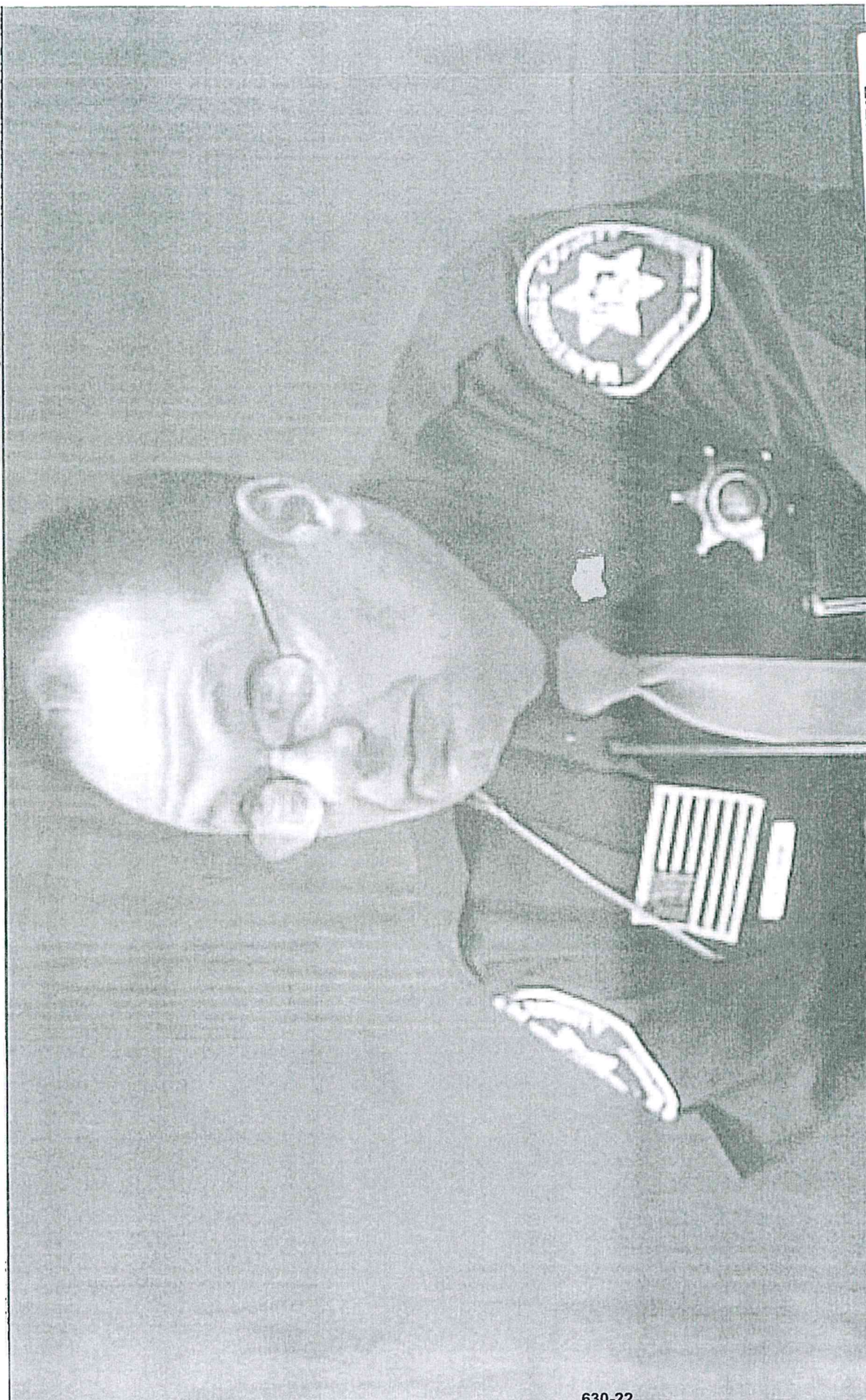
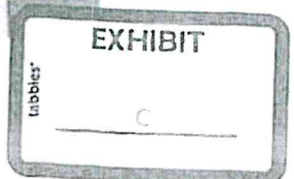
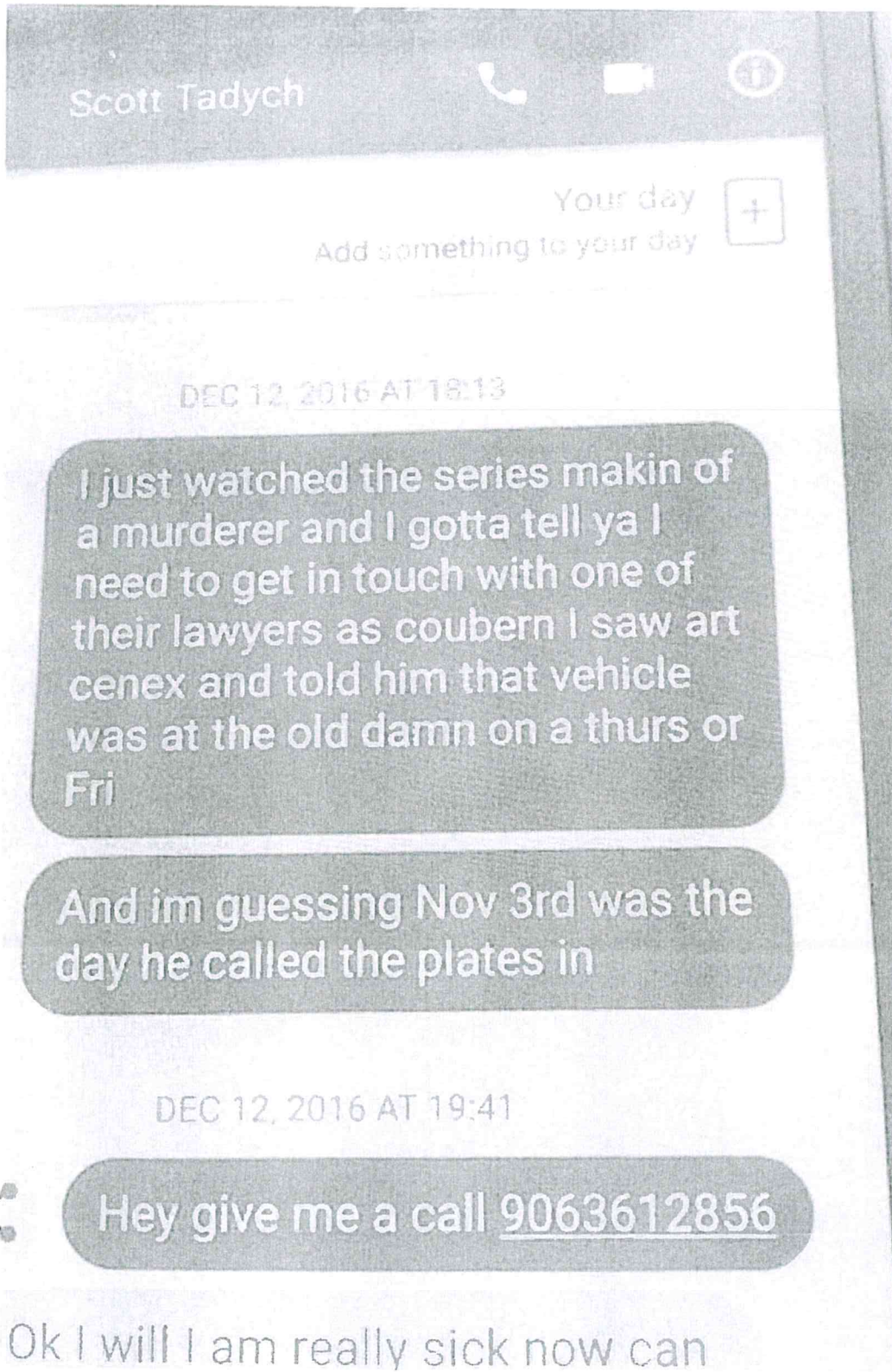


EXHIBIT \_\_\_\_\_  
Labbies





STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY

STATE OF WISCONSIN

)

v.

)

Case No. 05 CF 381

)

STEVEN A. AVERY

)

AFFIDAVIT OF BLAINE DASSEY

Now comes your affiant, Blaine Dassey, 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. In October 2005, I lived with my mother and brothers at 12930A Avery Road, Two Rivers, WI 54241. My brothers' names are Brendan, Bryan, and Bobby Dassey. Brendan and I shared a bedroom. Bobby had his own bedroom. Bryan kept some clothes at the house but lived with his girlfriend and was rarely at the residence. Tom Janda had moved out of the residence in early 2005.

3. When none of us were home, the residence was always locked.



4. My uncle Steven Avery ("Uncle Steven") only came to the residence when my mother and his sister Barb was home. I never remember my uncle Steven entering the residence when my mother was not home.

5. I remember that my Uncle Steven had cut his finger 1-2 weeks before October 31, 2005.

6. I remember, on October 31, 2005, seeing my Uncle Steven carry a white plastic bag to his burn barrel. I did not see a fire in the burn barrel. However, the police pressured me into saying that there was a fire in the burn barrel and visible smoke coming from the burn barrel. My testimony about the fire and smoke coming from the burn barrel was not true.

7. I remember, on October 31, 2005, seeing a bonfire behind my Uncle Steven's garage that was about 3-feet high. The police tried to pressure me into saying that the flames of the bonfire were much higher, so at trial I testified that the flames of the bonfire were 4-5 feet high but that testimony was not true. The police put the height of the flames "in my head and I agreed to it."

8. On October 31, 2005, I was with Brendan up until I left to go trick-or-treating. I distinctly remember Brendan wanted to use the computer at slightly before 5 p.m. because I wanted to make a phone call and his use of the dial-up internet computer would have prevented me from doing that. I know that Brendan was not at Uncle Steven's trailer up until I left to go trick-or-treating.

9. There was only one computer at the residence and it was always in Bobby's room sitting near a desk.

10. The computer had a password.

11. The computer had an AOL dial-up internet connection.

12. Bobby was the primary user of the computer.

13. At no time did I ever do searches for pornographic images or words related to pornography, words related to violence, words related to death, words related to mutilations, words related to torture, words related to guns or knives, words related to Teresa Halbach, words related to Steven Avery, words related to DNA, or words related to dead, mutilated or dismembered female bodies.

14. At no time did I ever create a folder for Teresa Halbach, my Uncle Steven, DNA, or news stories on the murder.

15. The only time I used the computer was to do my homework and occasionally send instant messages.

16. I remember my mother Barb hiring someone to “reformat the computer” but I’m not sure who that person was.

17. I do not have any personal knowledge of who made the appointment with AutoTrader to have my mother’s van photographed but I did help clean the van so that it could be sold.

18. At the time, my family had two burn barrels located behind our house.

19. I was familiar with the gravel pits to the south of the Avery salvage yard but I did not go to the gravel pits to hunt. I stopped hunting when I was 22.

20. On October 31, 2005 when the school bus driver brought Brendan and me home as we travelled west on STH 147 I saw Bobby on STH 147 in a bluish or

greenish vehicle heading towards Mishicot. Bobby was not driving his black Blazer. Bobby was not home the rest of the evening while I was home. (Attached and incorporated herein as **Exhibit A** is a map that of the location of Bobby's vehicle that I described in this paragraph.)

**FURTHER AFFIANT SAYETH NAUGHT**

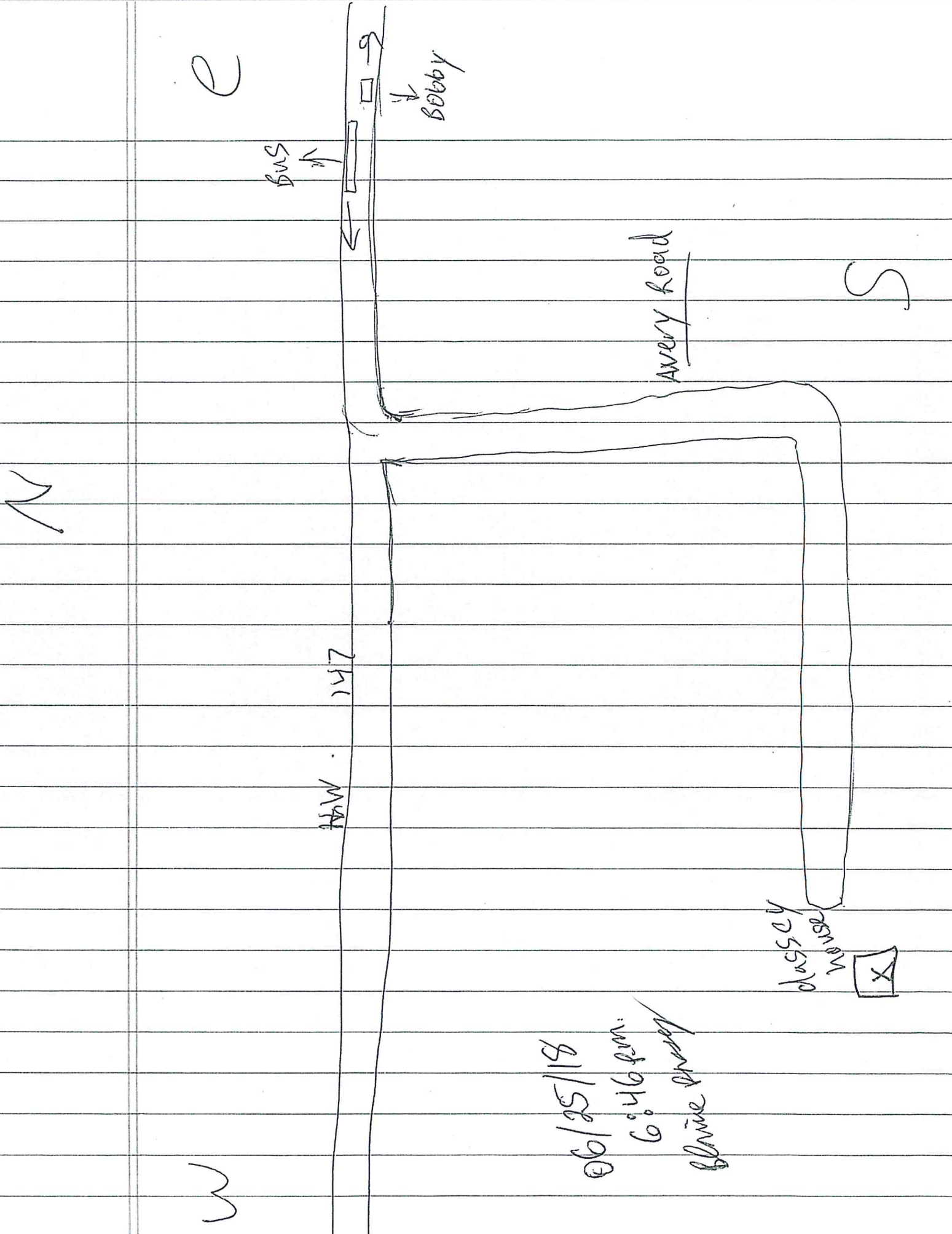
  
\_\_\_\_\_  
Blaine Dassey

State of Wisconsin  
County of Manitowoc

Subscribed and sworn before me  
This 25<sup>th</sup> day of June 2018.

  
\_\_\_\_\_  
Notary Public

My Commission expires:  
2-24-2020



06/25/18  
 6:46 pm.  
 Blaine Street

12550  
 NW



OFFICE OF THE CLERK  
**WISCONSIN COURT OF APPEALS**

110 EAST MAIN STREET, SUITE 215

P.O. Box 1688

MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880

TTY: (800) 947-3529

Facsimile (608) 267-0640

Web Site: [www.wicourts.gov](http://www.wicourts.gov)

**DISTRICT II**

September 8, 2016

To:

Hon. Angela W. Sutkiewicz  
 Circuit Court Judge  
 Sheboygan County Courthouse  
 615 N. 6th St.  
 Sheboygan, WI 53081

Lynn Zigmunt  
 Clerk of Circuit Court  
 Manitowoc County Courthouse  
 1010 S. 8th Street  
 Manitowoc, WI 54220-5380

Tricia J. Bushnell  
 Midwest Innocence Project  
 605 W. 47th. St., Ste. 222  
 Kansas City, MO 64112

Thomas J. Fallon  
 Assistant Attorney General  
 P.O. Box 7857  
 Madison, WI 53707-7857

Douglas H. Johnson  
 Kathleen T. Zellner  
 Kathleen T. Zellner and Associates, P.C.  
 1901 Butterfield Rd., Ste. 650  
 Downers Grove, IL 60515

Jeffrey J. Kassel  
 Assistant Attorney General  
 P. O. Box 7857  
 Madison, WI 53707-7857

Steven G. Richards  
 Everson & Richards, LLP  
 127 Main St.  
 Casco, WI 54205

You are hereby notified that the Court has entered the following order:

2015AP2489

State of Wisconsin v. Steven A. Avery (L.C. # 2005CF381)

Before Reilly, P.J.

Steven Avery, by counsel, moves the court to stay this appeal pending disposition of a motion filed in the circuit court on August 26, 2016 seeking postconviction scientific testing of evidence. The State does not object to the stay request and suggests remanding the record to the circuit court pursuant to WIS. STAT. § 808.075(5) (2013-14) for the court's use in determining the



No. 2015AP2489

pending motion and any subsequent motion based on the results of further testing, if any, authorized by the circuit court. A stay of this appeal and remand of the record are appropriate.

Avery also moves the court to substitute Attorney Steven G. Richards for Attorney Tricia J. Bushnell as local, sponsoring counsel. The motion is granted. Our January 22, 2016 order explained the obligations of sponsoring counsel. Successor sponsoring counsel, Steven G. Richards, must sign every document filed in this court.

Upon the foregoing reasons,

IT IS ORDERED that this appeal is stayed pending further order of this court.

IT IS FURTHER ORDERED that within twenty days after the date the circuit court enters an order disposing of the motion filed in the circuit court on August 26, Steven Avery shall inform the clerk of this court whether (1) WIS. STAT. § 808.075(8) applies to this appeal; (2) whether briefing may commence; or (3) whether there will be additional circuit court proceedings relating to the subject matter of the August 26 motion.

IT IS FURTHER ORDERED that the record on appeal is remanded to the circuit court for the court's use in determining the pending motion and any subsequent motion based on the results of further testing, if any, authorized by the circuit court. WIS. STAT. § 808.075(5).

IT IS FURTHER ORDERED that the motion to substitute local, sponsoring counsel is granted. Attorney Steven G. Richards is now local, sponsoring counsel. Attorney Richards must sign every document filed in this court.

---

*Diane M. Fremgen*  
*Clerk of Court of Appeals*





OFFICE OF THE CLERK  
**WISCONSIN COURT OF APPEALS**

110 EAST MAIN STREET, SUITE 215  
 P.O. BOX 1688

MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880

TTY: (800) 947-3529

Facsimile (608) 267-0640

Web Site: www.wicourts.gov

**FILED**

JUN 11 2018

CLERK OF CIRCUIT COURT  
 MANITOWOC COUNTY, WI

**DISTRICT II**

June 7, 2018

To:

Hon. Angela W. Sutkiewicz  
 Circuit Court Judge  
 Sheboygan County Courthouse  
 615 N. 6th St.  
 Sheboygan, WI 53081

Lynn Zigmunt  
 Clerk of Circuit Court  
 Manitowoc County Courthouse  
 1010 S. 8th Street  
 Manitowoc, WI 54220-5380

Lisa E.F. Kumfer  
 Assistant Attorney General  
 P.O. Box 7857  
 Madison, WI 53707-7857

Jacalyn C. LaBre  
 District Attorney  
 1010 S. Eighth St.  
 Manitowoc, WI 54220

Steven G. Richards  
 Everson & Richards, LLP  
 127 Main St.  
 Casco, WI 54205

Tiffany M. Winter  
 Assistant Attorney General  
 P.O. Box 7857  
 Madison, WI 53707-7857

Kathleen T. Zellner  
 Kathleen T. Zellner and Associates, P.C.  
 1901 Butterfield Rd., Ste. 650  
 Downers Grove, IL 60515

You are hereby notified that the Court has entered the following order:

2017AP2288

State of Wisconsin v. Steven A. Avery (L.C. # 2005CF381)

Before Reilly, P.J.

The appellant, Steven A. Avery, by counsel, moves to supplement the record with a compact disc "disclosed to defendant for the first time on April 17, 2018." Avery alleges that the CD contains exculpatory, material evidence and that State's failure to disclose the CD earlier violates his due process right to a fair trial under *Brady v. Maryland*, 373 U.S. 83 (1963). The State objects because the CD was not part of the record before the circuit court when it denied Avery's WIS. STAT. § 974.06 postconviction motion and his motions for reconsideration. Avery

No. 2017AP2288

has filed a reply asserting that supplementation is appropriate because although the CD itself was not presented to the circuit court, the facts surrounding the “suppression of the contents of the undisclosed CD to trial defense counsel” are contained in the record through Avery’s prior postconviction motions and the attachments thereto. Avery contends that we should add the CD to the record “because the circuit court had all of the *Brady* issues before it” and “[t]he State should not be rewarded for having suppressed the CD until after the appellate record was completed.”

Avery’s reply misses the point, which is that we are not a fact-finding court and cannot consider items not presented to the circuit court. Based on the assertion that Avery recently received previously withheld discovery or other new information, we retain jurisdiction but remand this case to enable Avery to file an appropriate supplemental postconviction motion in the circuit court. Avery shall file any supplemental postconviction motion within thirty days of the date of this order. The circuit court shall hold proceedings on the supplemental postconviction motion and enter its written findings and conclusions deciding the supplemental postconviction motion within sixty days after the motion is filed. In the event Avery remains aggrieved, the circuit court clerk shall re-transmit the record, including any post-remand papers, according to the procedures described below, and the appeal will continue. In addition to any pre-existing issues, the parties’ appellate briefs shall address any new issues arising from the circuit court’s post-remand order deciding Avery’s supplemental postconviction motion. If Avery is afforded relief pursuant to his supplemental postconviction motion, he may seek dismissal of the pending appeal. If the appeal is dismissed but the State is aggrieved, it may file a notice of appeal from the circuit court’s order deciding any supplemental postconviction motion entered pursuant to this remand. Therefore,

No. 2017AP2288

IT IS ORDERED that the motion to supplement the record is denied.

IT IS FURTHER ORDERED that this appeal is remanded forthwith to the circuit court to permit Steven A. Avery to pursue a supplemental postconviction motion in connection with Avery's receipt of previously withheld discovery or other new information.

IT IS FURTHER ORDERED that any supplemental postconviction motion shall be filed in the circuit court within thirty days.

IT IS FURTHER ORDERED that the circuit court shall conduct any necessary proceedings and enter an order containing its findings and conclusions within sixty days after the supplemental postconviction motion is filed.

IT IS FURTHER ORDERED that if Avery intends to order a transcript of any post-remand hearing, he shall do so within ten days after the circuit court enters its order deciding the supplemental postconviction motion. Any such transcript shall be filed and served within twenty days after its request. Avery shall provide the court reporter with a copy of this order.

IT IS FURTHER ORDERED that Avery shall file a statement on transcript within fifteen days after the circuit court enters its post-remand order deciding the supplemental postconviction motion. The statement on transcript shall reflect either that a post-remand transcript has been ordered or that such a transcript is not necessary for this appeal.

IT IS FURTHER ORDERED that the circuit court clerk shall re-transmit the record to this court within twenty days after the later of the entry of the circuit court order resolving the supplemental postconviction motion or the filing of any post-remand hearing transcript, if ordered. The record shall include any papers filed pursuant to this remand.

No. 2017AP2288

IT IS FURTHER ORDERED that the appellant shall file an appellant's opening brief presenting all grounds for relief within forty days after the filing of the record.

---

*Sheila T. Reiff*  
*Clerk of Court of Appeals*



OFFICE OF THE CLERK  
**WISCONSIN COURT OF APPEALS**

110 EAST MAIN STREET, SUITE 215  
P.O. Box 1688

MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
Web Site: www.wicourts.gov

**FILED**

FEB 27 2019

**CLERK OF CIRCUIT COURT  
MANITOWOC COUNTY, WI**

**DISTRICT II**

February 25, 2019

To:

Hon. Angela W. Sutkiewicz  
Circuit Court Judge  
Sheboygan County Courthouse  
615 N. 6th St.  
Sheboygan, WI 53081

Jacalyn C. LaBre  
District Attorney  
1010 S. Eighth St.  
Manitowoc, WI 54220

Lynn Zigmunt  
Clerk of Circuit Court  
Manitowoc County Courthouse  
1010 S. 8th Street  
Manitowoc, WI 54220-5380

Steven G. Richards  
Everson & Richards, LLP  
127 Main St.  
Casco, WI 54205

Lisa E.F. Kumfer  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

Tiffany M. Winter  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

Kathleen T. Zellner  
Kathleen T. Zellner and Associates, P.C.  
1901 Butterfield Rd., Ste. 650  
Downers Grove, IL 60515

You are hereby notified that the Court has entered the following order:

---

2017AP2288                      State of Wisconsin v. Steven A. Avery (L.C. # 2005CF381)

Before Reilly, P.J.

Steven A. Avery, by counsel, appeals from the circuit court's denial of his WIS. STAT. § 974.06 postconviction motions. He moves this court to stay the appeal and remand to the circuit court so that he may raise new claims premised on the recent discovery of "a previously undisclosed police report" dated September 20, 2011, which, according to Avery's appellate counsel, reflects law enforcement's "transfer of multiple suspected human bones from the Manitowoc County Gravel Pit to Wieting Funeral Home for return to [Teresa] Halbach's

family.” Avery alleges that the State violated its statutory duty to preserve evidence, *see* WIS. STAT. § 968.205, and that the State’s actions violated Avery’s constitutional due process rights, *see Youngblood v. Arizona*, 488 U.S. 51 (1988).

The State has filed an objection to Avery’s remand motion on the ground that it constitutes “a new and separate action” which is unrelated to the orders Avery presently appeals, is unnecessary to the resolution of his pending appeal, and “would result in unnecessary delay and litigation.” The State’s objection points out that this is, in effect, Avery’s third remand request. The State’s objection does not address the merits of Avery’s claimed statutory and constitutional violations, and it has not responded to Avery’s supplemental filings alleging the possible destruction of evidentiary items which, it appears, the parties previously agreed to preserve.

The State suggests that the appeal is languishing and that if Avery wishes to pursue new claims outside the scope of the WIS. STAT. § 974.06 postconviction orders presently on appeal, he could dismiss the pending appeal, or wait until its conclusion to file his new claims. As to the former, Avery understandably disagrees, aware that dismissing this appeal will preclude review of the underlying orders entered to date.

Having considered the parties’ submissions, we determine that the best course of action is to grant Avery’s motion to stay the appeal and to remand under WIS. STAT. § 808.075(5) “for action upon specific issues.” As the State’s response acknowledges, the decision to remand is left to this court’s discretion. *See* § 808.075(6). Though we are not required to remand, we determine that this procedure strikes an appropriate balance given the specific circumstances of this case. Due to this case’s extensive history, there is a benefit to having existing claims

developed or litigated while they are relatively fresh, rather than positioning the claims to be procedurally barred in a future proceeding. For these reasons, we desire a ruling on the merits so that all claims to date can be considered in a single appeal. The briefing in this appeal has not commenced. There appears to be some potential overlap between the “old” and “new” issues. Therefore,

IT IS ORDERED that this appeal is remanded forthwith to the circuit court to permit Steven A. Avery to pursue a supplemental postconviction motion raising “claims for relief in connection with the State’s violation of WIS. STAT. § 968.205 and *Youngblood v. Arizona*.”

IT IS FURTHER ORDERED that any supplemental postconviction motion shall be filed in the circuit court within fourteen days.

IT IS FURTHER ORDERED that the circuit court shall conduct any proceedings necessary to address the claims raised in the supplemental postconviction motion, and shall enter an order containing its findings and conclusions.

IT IS FURTHER ORDERED that if a party intends to order a transcript of any post-remand hearing, the party shall do so within ten days after the circuit court enters its order deciding the supplemental postconviction motion. The ordering party shall file a statement on transcript. Any such transcript shall be filed and served within thirty days after its request. The ordering party shall provide the court reporter with a copy of this order.

IT IS FURTHER ORDERED that the circuit court clerk shall re-transmit the record to this court within twenty days after the later of the entry of the circuit court order deciding the

supplemental postconviction motion or the filing of any post-remand hearing transcript, if ordered. The record shall include any papers filed pursuant to this remand.

IT IS FURTHER ORDERED that the appeal is stayed until the return of the record following remand.

IT IS FURTHER ORDERED that the appellant shall file an appellant's opening brief presenting all grounds for relief within forty days after the return of the record.

---

*Sheila T. Reiff*  
*Clerk of Court of Appeals*