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STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
BRANCH 3

STATE OF WISCONSIN,
PLAINTIFF, DECISION
vs. Case No. 06 CF 88
BRENDAN R. DASSEY,
DEFENDANT.

DATE: MAY 12, 2006
BEFORE: Hon. Jerome L. Fox
Circuit Court Judge

APPEARANCES:
KENNETH R. KRATZ
Special Prosecutor
On behalf of the State of Wisconsin.
LEONARD D. KACHINSKY
Attorney at Law
On behalf of the Defendant.
BRENDAN R. DASSEY
Defendant
Appeared in person.

* * * * *

TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR
Official Court Reporter

COPY

1 THE COURT: Morning, counsel, morning
2 ladies and gentlemen. This is 06 CF 88. State of
3 Wisconsin vs. Brendan R. Dassey. Appearances,
4 please.

5 ATTORNEY KRATZ: The State of Wisconsin
6 appears by Ken Kratz, Calumet County D.A.,
7 appearing as special prosecutor.

8 ATTORNEY KRATZ: The defendant appears
9 personally and with Attorney Len Kachinsky.

10 THE COURT: All right. Um, we are here
11 today for a decision on a motion to suppress. Uh,
12 the defendant, Brendan Dassey, has brought this
13 motion requesting that the Court suppress statements
14 he made to Investigator Mark Wiegert with the
15 Calumet County Sheriff's Department and Agent Thomas
16 Fassbender of the Wisconsin Department of Justice.

17 The motion brought contends that the
18 statements made by Brendan Dassey were obtained
19 from him involuntarily and should, under the
20 applicable law, be suppressed. The motion was
21 heard in this courtroom last Thursday, May 4.

22 Court heard testimony from Investigator
23 Wiegert. It heard testimony from the defendant's
24 mother, Barb Janda, and Kris
25 Schoenenberger-Gross, a school psychologist for

1 the Mishicot School District. The Court also
2 received, five exhibits during the course of the
3 hearing.

4 In addition, the Court has read the
5 relevant case law cited by the parties in their
6 briefs as well as a number of other pertinent
7 cases.

8 The Court has also reviewed the DVDs of
9 the interviews, read the transcripts and listened
10 to the audiotapes. The audiotape in the form of
11 a CD. Now, these electronic recordings are all
12 part of Exhibit 5. Based on those exhibits, that
13 testimony, the briefs, and arguments of Counsel,
14 the Court makes the following findings of fact:

15 Number one. The defendant, Brendan
16 Dassey, was born October 19, 1989, and was, at
17 the time of the police interviews in February and
18 March of 2006, 16 years of age.

19 Number two. At the time of the police
20 interviews, he was a student at Mishicot High
21 School enrolled in mostly regular classes, but
22 also in some special education classes. Testing,
23 it disclosed, an IQ level in the low average to
24 borderline range. There is no evidence that he
25 suffered from any emotional disorder which made

1 him unusually susceptible or vulnerable to police
2 pressures.

3 Three. Prior to his interviews which
4 are the subject of this motion, his only known
5 police contacts were on November 6 and
6 November 10, 2005, when he was questioned in
7 Marinette County about Teresa Halbach.

8 Number four. The parties have
9 stipulated to the noncustodial nature of the
10 police interviews with Brendan Dassey on
11 February 27, 2006, and March 1, 2006.

12 Hearing Exhibit No. 1 is a **Miranda**
13 warning and waiver signed and initialed by
14 Brendan Dassey on February, uh, 27, 2006, at
15 3:21 p.m. And Exhibit 2 is a **Miranda** warning and
16 waiver signed and initialed by Brendan Dassey on
17 March 1, 2006, at 10:10 a.m.

18 Number five. Investigator Wiegert and
19 Agent Fassbender met with Brendan Dassey on
20 February 27, 2006, at Mishicot High School at
21 approximately 12:30 p.m. He was told by them
22 that he didn't have to answer any questions and
23 he was free to go whenever he wanted. Exhibit 5,
24 transcript page 440.

25 He was questioned for approximately an

1 hour and was again told he could stop answering
2 questions and could, quote, walk out anytime, end
3 quote. Exhibit five, transcript page 467.

4 At the close of that interview, he gave
5 the investigators a written statement. The
6 investigators both complimented him for giving
7 them a voluntary statement telling him they knew
8 how difficult it was to tell -- tell them the
9 details he divulged. The interview ended at
10 2:14 p.m. He returned to his eighth hour class
11 at Mishicot High School.

12 Number six. At approximately 3:00 p.m.
13 on February 27, 2006, the same day of the earlier
14 interview, Brendan Dassey and his mother, Barb
15 Janda, met with the investigators at Mishicot
16 High School and agreed that Brendan Dassey could
17 do a videotape interview with the Two Rivers
18 Police Department.

19 Ms. Janda was asked if she wanted to be
20 present during the interview. She said it was
21 not necessary. And Brendan Dassey said he did
22 not care if his mother was present or not.

23 After he signed and initialed Exhibit 1,
24 the **Miranda** warnings and waiver, the
25 investigators interview Brendan Dassey about

1 certain events which he claimed occurred on the
2 night of October 31, 2005.

3 The interview lasted approximately 41
4 minutes and was conducted entirely in a
5 conversational tone of voice by the interviewers.
6 At no time during the interview did Brendan
7 Dassey appear visibly stressed or pressured by
8 the questions or conducts -- conduct of the
9 interviewers.

10 Number seven. On March 1, 2006,
11 Investigators Wiegert and Agent Fassbender sought
12 and received permission from Brendan Dassey's
13 mother, Barb Janda, to speak with Brendan. She
14 was to pick him up at the conclusion of the
15 interview. Following her grant of permission,
16 Investigators Wiegert and Fassbender picked up
17 Brendan Dassey at Mishicot High School at
18 approximately 10:05 a.m. and transported him to
19 the Manitowoc County Sheriff's office, stopping
20 on the way at Brendan Dassey's residence so he
21 could retrieve a pair of blue jeans that the
22 investigators wanted for evidentiary purposes.

23 Number eight. The conversation in the
24 car on the way to the sheriff's office was
25 electronically recorded except for the time spent

1 in Brendan Dassey's residence. The three arrived
2 at the sheriff's office at approximately 10:43
3 a.m. and went to a carpeted interview room
4 equipped with videotaping equipment.

5 Shortly after arriving in the interview
6 room and while the videotape equipment had been
7 activated, Brendan Dassey was asked by
8 Investigator Wiegert whether he remembered his
9 **Miranda** rights that had been read to him and
10 whether he still wanted to talk to the
11 investigators.

12 He responded in the affirmative to both
13 questions by saying, quote, yeah, unquote, and
14 nodding his head.

15 Uh, number nine. The interview between
16 Brendan Dassey and the two investigators lasted
17 approximately three hours during the course of
18 which Brendan Dassey made a number of inculpatory
19 admissions. At no time during the interview was
20 Brendan Dassey handcuffed or otherwise physically
21 restrained.

22 On several occasions during the course
23 of the interview the investigators offered soda,
24 water, or food to Brendan Dassey and asked him if
25 he wanted to use the bathroom. Throughout the

1 interview, Brendan Dassey was seated on an
2 upholstered loveseat.

3 Number 10. At various times during the
4 interview the investigators encouraged Brendan
5 Dassey to provide details to them by appealing to
6 his sense of honesty. Quote, honesty here is the
7 thing that's going to help you, end quote.
8 Exhibit 5, transcript page 541.

9 Quote, honesty is the only thing that
10 will set you free, uh, end quote. Exhibit 5, uh,
11 transcript 5 -- page 541.

12 Quote, come on Brendan, be honest. I
13 told you before that's the only thing that's
14 going to help ya here, end quote. Exhibit 5,
15 transcript page 547.

16 Quote, we just need you to be honest
17 with us. Exhibit 5, transcript page 584.

18 These are but a few example of
19 admonitions to be honest made to Brendan Dassey
20 by the investigators. The entire interview,
21 including the admonitions, was done by both
22 investigators in a normal speaking tone with no
23 raised voices, no hectoring, or threats of any
24 kind.

25 Nothing on the videotape visually

1 depicts Brendan Dassey as being agitated, upset,
2 frightened, or intimidated by the questions of
3 either investigator. His demeanor was steady
4 throughout the actual questioning.

5 He displayed no difficulty in
6 understanding the questions asked of him. At no
7 time did he ask to stop the interview or request
8 that his mother or a lawyer be present. Instead,
9 he answered the questions put to him.

10 Sometimes he revised his answers after
11 being prodded to be truthful or being told by his
12 questioners that they knew his answer was either
13 incomplete or untrue and he should be honest.

14 These appeals to honesty made by the
15 interviewers were nothing more than a reminder to
16 Brendan Dassey that he had a moral duty to tell
17 the truth.

18 Number 11. On occasion, the
19 interviewers purported to know details which, in
20 fact, were not true or which represented
21 uncorroborated theories of the crime in which
22 they presented to Brendan Dassey as factually
23 accurate in order to draw information from him.
24 In the context of this interview, the Court finds
25 that this tactic of misleading Brendan Dassey by

1 the interviewers occasionally pretending to know
2 more than they did was neither improper nor
3 coercive because it did not interfere with
4 Brendan Dassey's power to make rational choices.

5 Number 12. No frank promises of
6 leniency were made by the interviews to --
7 interviewers to Brendan Dassey. He was told,
8 quote, we can't make any promises, but we'll
9 stand behind you no matter what you did, end
10 quote. Exhibit 5, transcript page 541.

11 Quote, I want to assure you that Mark
12 and I are both in your corner. We're on your
13 side, end quote. Exhibit 5, uh, transcript page
14 540.

15 Quote, we don't get honesty here. I'm
16 your friend right now, but I gotta -- I gotta
17 believe in you, and if I don't believe in you, I
18 can't go to bat for you, end quote. Exhibit 5,
19 page 547.

20 Quote, we're in your corner, end quote.
21 Exhibit 5, page 547.

22 These and similar statements made by the
23 interviewers were an attempt to achieve a rapport
24 with Brendan Dassey and convince him that a
25 truthful account of events would be in his best

1 interest.

2 Based on those findings of fact, based
3 on the record, the exhibits in this matter, the
4 Court concludes, as a matter of law, the
5 following:

6 Under a totality of the circumstances
7 test, which I'm using here, given Brendan
8 Dassey's relevant personal characteristics as set
9 forth in the previous findings and on the record
10 in this case, the State has met its burden by
11 showing by a preponderance of the evidence that
12 the statements made by Brendan Dassey to
13 Investigators Wiegert and Fassbender, and which
14 are the subject of this motion, were the product
15 of Brendan Dassey's free and unconstrained will
16 reflecting deliberateness of choice. In short,
17 they were voluntary statements.

18 Accordingly, the defendant's motion to
19 suppress these statements is denied. And, I
20 might add as a -- as a footnote or, perhaps, more
21 than a footnote here, the parties stipulated to
22 the fact that this was not -- either of these
23 interviews, the 27th of February, March 1 of
24 2006, were noncustodial interviews.

25 Uh, the Court, after reviewing the

1 record, has determined that even had they been
2 custodial interviews, that the appropriate
3 **Miranda** warnings were given, were understood by
4 this defendant, and, thus, had they been
5 custodial -- had they been custodial interviews,
6 uh, the result, uh, that the statements were
7 voluntary would remain unchanged.

8 Now, uh, Exhibit 5, which I've alluded
9 to in the preface of -- of the findings, as well
10 as during the course of the findings, is, as I
11 noted at the last hearing, uh, an in camera, that
12 means in chambers, uh, exhibit. The Court is
13 going to seal that exhibit, uh, and it will
14 remain sealed until the trial.

15 The Court believes, given the continuing
16 media scrutiny in this matter, that the
17 dissemination of Exhibit 5, uh, would have,
18 conceivably, a tendency to taint a jury pool.
19 It's my understanding -- And, gentlemen, correct
20 me if I'm wrong. First you, Mr. Kratz, you have
21 no objection to proceeding in that fashion?

22 ATTORNEY KRATZ: That's correct, Judge.

23 THE COURT: Mr. Kachinsky?

24 ATTORNEY KACHINSKY: I don't object either,
25 Your Honor.

1 THE COURT: All right. Anything else on
2 this before we move on to -- And I'm going to ask
3 you, Mr. Kratz, to draft the order.

4 ATTORNEY KRATZ: I will -- I will do that,
5 Judge. Uh, Your Honor, I -- I know that the Court
6 was reading from a -- a -- a prepared statement. Is
7 it possible that I can get a copy of that to, uh,
8 amend or attach that to the order, or would the
9 Court just prefer I indicate in the order, for
10 reasons stated on the record.

11 THE COURT: Um, why don't you put, for
12 reasons stated on the record. Or, I suppose, in the
13 alternative, you can ask the already overworked
14 court reporter to -- to type a transcript here.

15 ATTORNEY KRATZ: I won't do that, Judge.
16 I'll just, uh, draft a generic order. That's
17 fine. Thank you.

18 THE COURT: All right. Um, the next item,
19 I believe, Mr. Kachinsky, is yours. It's -- it's a
20 motion. Do you want to be heard on your motion to,
21 uh, revise the terms of -- of the bail?

22 ATTORNEY KACHINSKY: Um, yes, Your Honor.

23 ATTORNEY KRATZ: Judge, before we get into
24 the -- to the merits of that, I -- I wonder if I
25 could be heard just -- just briefly on, uh -- on

1 that, uh -- on that procedure. Um, because the,
2 um -- one of the factors on any motion to modify
3 bond, uh, directs the Court to consider the, uh,
4 strength of the State's case. Because of, uh, this
5 morning's rulings, uh, it is the State's position
6 that the strength of the State's case has become,
7 uh, significantly, uh, solidified.

8 Uh, let me also tell the Court that, um,
9 and Mr., uh, Kachinsky, uh, is to be, uh, made
10 aware of this, that additional, uh, forensic
11 conclusions were received. Additional reports
12 were received two days ago in our office which,
13 again, need to be revealed to this Court under
14 seal.

15 Lastly, Judge, the Manitowoc County, uh,
16 Corporation Counsel in a similar request made by
17 Mr. Avery, uh, made their position known, and I
18 don't know in this case if they've been invited
19 to do so.

20 With all of those factors, Judge, and
21 with the, uh, bond modification on the State's
22 part being at least an option, uh, I'm wondering
23 whether the Court would grant the State, uh, an
24 opportunity, perhaps five to seven days, to, uh,
25 file those matters with the Court to include, in

1 camera, uh, the additional information that, uh,
2 we have received, uh, and if the Court would be
3 willing, uh, to allow a, uh, more inclusive bail
4 modification hearing again in the next five to
5 seven days.

6 That seems to, uh, address those matters
7 that I cannot relay to the Court in open court
8 today, uh, and would provide this Court an
9 opportunity to reflect upon, or at least
10 consider, the relative, uh, strength of the
11 State's case in the bail modification motion.

12 THE COURT: When were the -- the -- When
13 was the forensic evidence of -- of which you make
14 mention received?

15 ATTORNEY KRATZ: The 10th. Two days
16 ago, Judge.

17 THE COURT: All right. Mr. Kachinsky?

18 ATTORNEY KACHINSKY: Well, Your Honor, this
19 motion was filed, I believe, on the 24th or 25th
20 of -- of April, 2006. Uh, State's aware, from
21 having prosecuted the Avery case as well, at least
22 as to, uh, the values of the property that's --
23 that's involved, uh, and, uh, other factors relating
24 to bond other than the recent forensics evidence,
25 uh, as to whether or not the motion would be granted

1 or not. Um, I don't know if the State's forensic
2 evidence would add that much more to what the
3 Court's already ruled today in terms of the
4 admissibility of Mr. Dassey's statements.

5 So, it would be our -- our preference
6 that the Court, uh, proceed with the motion
7 and -- and make a ruling today.

8 THE COURT: Well, let me ask you,
9 Mr. Kratz, is it your intention to, in effect,
10 request that -- that, uh, bail be revoked here and
11 no bail be allowed at all?

12 ATTORNEY KRATZ: No, Judge. But I am going
13 to be asking that bail be increased, uh, having the
14 Court now consider the relative strength of the
15 State's case. That's in -- that's information I
16 didn't have until three minutes ago.

17 THE COURT: All right. Uh, the -- the
18 Court -- the Court is inclined, uh -- Since the
19 State says it -- it -- it has received some
20 additional information that -- that have -- may have
21 a bearing on the, uh, uh -- on the outcome of the
22 motion, the Court is inclined to -- to, uh -- to
23 adjourn this particular motion today, Mr. Kachinsky,
24 and -- and set, uh, uh -- set a near date for -- for
25 hearing on it.

1 Uh, I don't have my calendar with me.

2 ATTORNEY KRATZ: I can file my motion by
3 Wednesday, if that's okay, Judge.

4 THE COURT: Okay.

5 ATTORNEY KRATZ: If the Court can give me
6 five days to do that, I -- I can certainly have that
7 to the Court and Mr. Kachinsky.

8 THE COURT: So that would be, uh, Wednesday
9 the 17th. Um, all right. Could, um -- Well, I
10 think what we'll -- we'll -- we'll do, uh,
11 following -- uh, following business in this court
12 today is -- is, uh, discuss a motion date in
13 chambers. I have to, uh -- I have to take a look at
14 the calendar and you, gentlemen, probably do have to
15 look at yours as well, and there's some other
16 matters we should be discussing.

17 So, I am going to, uh, grant the -- the
18 State's motion to adjourn, order that, uh --
19 order that the revised motion or information be
20 filed by Wednesday, May 17. Um, any other
21 matters to come before the Court today?

22 ATTORNEY KACHINSKY: Your Honor, perhaps,
23 just to avoid unnecessarily calling, a -- a witness,
24 I don't know if the State disputes at all the value
25 of the property that's involved, I could submit to

1 the Court, uh, extra copy of the appraisals that
2 were made and, I believe, perhaps, submitted in the
3 Avery case.

4 If that's not the issue, if the issue is
5 this additional evidence regarding the State's
6 case, if that -- at least that portion of the,
7 uh, motion was taken care of, uh, that would,
8 perhaps, facilitate some of the inconvenience
9 that this delay is going to cause us.

10 ATTORNEY KRATZ: How about if we do this,
11 Judge, I'm willing to share with Mr. Kachinsky my,
12 uh -- my feelings on that after going through the
13 documents and at least alert him whether or not
14 we'll need a witness at that next hearing.

15 THE COURT: Well, I -- I noticed in his
16 motion -- in Mr. Kachinsky's motion -- he said that
17 he had sent you some documentary, uh, proof as to
18 values that he was claiming in motion.

19 ATTORNEY KRATZ: He -- he brought some with
20 him today as well.

21 THE COURT: Yeah. Well, is there any
22 reason we can't just have those marked and be part
23 of the record?

24 ATTORNEY KRATZ: No. That's fine.

25 THE COURT: Yeah. Let's do that. And the

1 bailiff was kind enough to bring a calendar here so
2 let's take a look. How about Friday? The
3 afternoon? Friday, May 26?

4 ATTORNEY KRATZ: State's available, Judge.

5 ATTORNEY KACHINSKY: The only thing -- Uh,
6 I've got something in Chilton, but, perhaps, that
7 can be, uh, taken care of, Your Honor.

8 ATTORNEY KRATZ: I'll see what I can do,
9 Judge, to --

10 THE COURT: How about 1:15?

11 ATTORNEY KACHINSKY: Sure.

12 THE COURT: Anything else, gentlemen?

13 ATTORNEY KRATZ: Judge, I have to, uh,
14 place on the record, and receive the Court's
15 acquiescence, as the information that I intend to
16 provide certainly has not been publicly disclosed
17 and would, uh, I believe, be the kind of information
18 that the Court, uh, likely would not want disclosed.
19 May I file my motion to amend under seal as well?

20 THE COURT: All right. It -- it will be
21 received as -- as an in camera motion, or at least
22 the exhibits to the motion, and -- and anything in
23 the motion that, uh, would be revelatory will be
24 received as an -- an -- as an in camera motion.

25 ATTORNEY KRATZ: That's fine, Judge.

1 THE COURT: Anything further?
2 ATTORNEY KRATZ: No.
3 ATTORNEY KACHINSKY: And, Your Honor, the,
4 uh, appraisal's been marked. I don't know if we're
5 going to -- I didn't see what letter you --
6 THE CLERK: One.
7 ATTORNEY KACHINSKY: As Exhibit 1.
8 THE COURT: Okay. The appraisal will be,
9 uh, Exhibit 1 and it will be part of the -- the
10 motion, uh, and, uh, Mr. Kratz, do you have any
11 objection to the appraisal?
12 ATTORNEY KRATZ: No.
13 THE COURT: I mean, you're not --
14 ATTORNEY KRATZ: Not to -- not to its
15 receipt for this hearing, Judge.
16 THE COURT: All right. All right.
17 Anything else?
18 ATTORNEY KRATZ: No. Thank you, Judge.
19 ATTORNEY KACHINSKY: No.
20 THE COURT: Could I see you both in about
21 ten minutes in chambers, please?
22 ATTORNEY KRATZ: Yes, Judge.
23 THE COURT: Thanks. We're adjourned.
24 (PROCEEDINGS CONCLUDED.)
25

1 STATE OF WISCONSIN)
2)SS.
3 COUNTY OF MANITOWOC)

4 I, Jennifer K. Hau, Official Court
5 Reporter for Circuit Court Branch 3 and the State
6 of Wisconsin, do hereby certify that I reported
7 the foregoing matter and that the foregoing
8 transcript has been carefully prepared by me with
9 my computerized stenographic notes as taken by me
10 in machine shorthand, and by computer-assisted
11 transcription thereafter transcribed, and that it
12 is a true and correct transcript of the
13 proceedings had in said matter to the best of my
14 knowledge and ability.

15 Dated this 29th day of August, 2006.

16
17
18 
19 _____
20 Jennifer K. Hau, RPR
21 Official Court Reporter
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25