

STATE OF WISCONSIN,

Plaintiff,

**NOTICE OF MOTION AND MOTION  
TO SUPPRESS STATEMENTS**

v.

BRENDAN R. DASSEY,

Case No. 06 CF 88

Defendant.

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TO: Special Prosecutor Kenneth Kratz

PLEASE TAKE NOTICE that on Thursday, May 4, 2006 at 9:00 a.m., the defendant, through his/her attorneys, SISSON AND KACHINSKY LAW OFFICES will move the Court to issue an Order suppressing the use as evidence of the statements of the defendant to law enforcement agents on February 27, 2006 and March 1, 2006 and the fruits thereof because said statements were obtained involuntarily and in violation of the defendant's rights under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Sections 8 and 11 of the Wisconsin Constitution. As to the merits of said motion, the defendant asserts the following factual and legal basis:

**STATEMENT OF FACTS**

Brendan R. Dassey (hereinafter Brendan) was born on October 19, 1989. Theresa Halbach died on October 31, 2005. At all times relevant to the statements at issue regarding this motion, Brendan was sixteen (16) years old. Prior to the death of Theresa Halbach, Brendan had no contact with law enforcement officials or the criminal justice system.

Brendan was enrolled in and attended schools in the Michicot School District (MSD). On

October 30, 2002, Kris Schoenenberger-Gross, the MSD school psychologist conducted an evaluation of Brendan. That evaluation noted the following:

a. Tests conducted in September 1996 revealed a WISC-III full scale IQ of 74. Brendan's verbal IQ was 65. His performance IQ was 87. Thereafter, Brendan began receiving special education services.

b. Follow-up reevaluation results in November 1999 indicated similar results. Brendan's full scale IQ was 73. His verbal IQ was 69. His performance IQ was 82. Special education services were continued.

c. Testing of Brendan conducted on October 30, 2002 indicated that Brendan's overall level of cognitive ability was within the borderline to below average range. His Verbal Ability was 81 with a percentile rank of 10, within the borderline to below average range. His Thinking Ability had a standard score of 93 and a percentile rank of 31, within the below average to average range. Brendan's short term memory abilities are within the well below average to borderline range and his long-term retrieval skills were within the below average range.

On November 6, 2005, following a vehicle stop in Marinette County, Brendan was interviewed by Detective O'Neil of the Marinette County Sheriff's Department. Brendan at first denied but then admitted seeing Halbach and Steve Avery (hereinafter Steve) outside of Steve's trailer when he got off the school bus at the end of the driveway the afternoon of October 31, 2005. He and Blaine Dassey got out of the way when Halbach drove away down the driveway.

On November 10, 2005, Special Agent Kim Skorlinski of the Department of Justice and Detective Todd Baldwin of Marinette Sheriff Department interviewed Brendan outside Brendan's grandfather's residence in Marinette County. During that interview, Brendan repeated that he saw Steve Avery and Halbach outside Steve's residence. This time, however,

Brendan stated that he saw Halbach get in her vehicle but not drive away. Brendan denied seeing a fire on Steve's property the night of October 31, 2005 but stated that he saw one on November 1, 2006 or November 2, 2006. Brendan also stated that he helped Steve around 8 p.m. with the fire at Steve's request around 8 p.m.

The above were the only police contacts Brendan had in his lifetime prior to February 27, 2006. At about 12:30 p.m. on February 27, 2006, Brendan was removed from his 10<sup>th</sup> grade class at Michicot High School. He met with Investigator Mark Weigert and SA Tom Fassbender. The meeting was at a conference room in the high school. The interview was audiotaped. A rough transcript of the interview was produced on Pages 440-482 of Calumet County Sheriff's Department (CCSD) Report No. 05-0157-955. Further references to the transcripts of the Brendan Dassey interviews of February 27, 2006 and March 1, 2006 will be referenced by (CCSD: \_\_\_\_\_) .

Fassbender informed Brendan he was free to leave and not under arrest (CCSD: 440). No Miranda warnings were given. At the beginning of the interview, Fassbender talked to Brendan about how things were bothering him (CCSD: 440). He also mentioned that law enforcement officials were trying to link Brendan to what happened (CCSD: 442). He also stated a personal opinion that Steve didn't intentionally kill Halbach (CCSD: 442-443). Later, Fassbender stated that "we'll deal with this, the best we can for your good OK? I promise I will not let you high and dry. I'll stand behind you." Then Weigert added, "We both will Brendan. We're here to help ya." (CCSD: 443). Later on, Weigert stated that Fassbender and him wanted to be able to tell people that Brendan was honest and that Brendan was not being totally honest (CCSD: 446-447). They later told Brendan that "Steve doesn't care about you..[just] himself (CCSD: 447). Weigert asked Brendan, "How would you feel if that was your sister" (CCSD:

447). Then, Fassbender indicated that they could go to the District Attorney, tell him how it was weighing on Dassey and that they would understand that (CCSD: 448). Then they both exhorted Brendan to tell the truth and promised not to tell his grandparents what he told them (Id.).

After that, Brendan provided more details. The investigators made occasional references to “telling the truth” and “being honest” but consoled Brendan with the idea that “It’s not your fault. Remember that” (CCSD: 449-451). After asking Brendan if he was involved in burning a corpse, Wiegert stated, “If you did it’s OK” (CCSD: 453).

At the end of the interview, Brendan prepared a written statement and the detectives reviewed it with him before he signed it (CCSD: 468-477). Fassbender asked Brendan if he understood that everything he told them could be used in court and determined Brendan had not told anyone about it before (CCSD: 478). They also let Brendan go back to class and indicated that they would call his mother (CCSD: 480-481).

At about 3:00 p.m., Brendan and his mother, Barbara Janda, at the conference room. They agreed to go to the Two Rivers Police Department for a second interview. Barb indicated she did not need to be in the interview room and Brendan was indifferent as to her presence there (CCSD:482).

The interview at the Two Rivers Police Department was also with Wiegert and Fassbender and began at around 3:21 p.m. with Miranda warnings (CCSD: 484). During the interview, Brendan stated that he went outside about 9:30 to the bonfire by Steve’s and saw female clothes burning (CSD: 487-494). Brendan denied that he stabbed Halbach or helped place the body in the fire (CCSD: 494-495).

After the interview terminated, the investigators arranged for Brendan and his mother to stay at the Fox Hills Resort in Mishicot for the evening. They left the next morning.

On March 1, 2005 at about 9:50 a.m., Weigert and Fassbender contacted Barbara Janda and received permission to conduct another interview with Brendan at the Manitowoc County Sheriff's Department. At about 10:05 a.m., Brendan left Mishicot High School with Weigert and Fassbender and rode with them to Manitowoc County Sheriff's Department. During the ride, Weigert advised Brendan of his Miranda rights (which Brendan waived) and picked up some bleach stained jeans at Brendan's residence (CCSD: 526-529). Brendan was offered food and drink but declined. At 10:43 a.m. they arrived at the Manitowoc County Sheriff's Department.

Fassbender, Weigert and Brendan went into an interview room that was set up for videotaping. Brendan sat down on a soft chair. Weigert reminded Brendan of his Miranda rights (CCSD: 539). At the beginning of the interview Fassbender assured Brendan that he and Weigert were on his side and in his corner (CCSD: 540). He thought Brendan was "all right" and did not have to worry about things (Id.). Fassbender stated that Steve was already saying things and might "lay crap" on Brendan (Id.). Weigert then stated that they could work through whatever Brendan did; that the honest person is one who would get a better deal out of everything; and that "honesty was the only thing that could set him free" (CCSD: 541). Weigert also made reference to knowing "pretty much everything" (Id.). Then Brendan stated that he saw Steve and Halbach talking on the porch and that Steve later called him around 6:30 (CCSD: 545-546). Then both Weigert and Fassbender made repeated references to the need to be honest and they could not go to bat for him if he was not honest (CCSD:547). They stated to Brendan that "they already know what happened" and that Brendan's mother thought Brendan knew more also and was behind him 100% no matter what happened (Id.). Then Brendan told them that Halbach's jeep was in the garage (CCSD: 548). During a discussion on how Halbach got in the back of the jeep, Weigert stated, "If you helped him, it's OK because he was telling you to do it.

You didn't do it on your own." (CCSD: 552). Later on, Weigart made further reminders to Brendan that ,”We already know Brendan. We already know. Come on. Be honest with us. Be honest with us. We already know, it's OK. We gonna help you through this, alright” (CCSD: 561). There were repeated assurances such as “come on buddy, Let's get this out, OK?” and “play the video for us, tell us what happened” (CCSD: 568, 570). Prior to Brendan stating he had sex with Halbach, Weigart asked “What happens next: Remember, we already know, but we need to hear it from you, it's OK. It's not your fault. What happens next?” (CCSD: 571). Thereafter Brendan gave the details of the sexual assault, homicide and mutilation of a corpse by Steve and him of Halbach. (CCSD: 572-677).

The facts above will be presented through the testimony of witnesses at the hearing on May 4, 2006. Further facts may be developed at the hearing on May 4, 2006.

## **ARGUMENT**

**DASSEY'S STATEMENTS WERE OBTAINED FROM HIM INVOLUNTARILY AND SHOULD BE SUPPRESSED.**

The Wisconsin Supreme Court's recent decision in State v. Jerrell, 2005 WI 105. 283 Wis. 2d 145, 699 N.W.2d 110 accurately summarized the requirements of the law in determining the admissibility of statements made by juvenile suspects to law enforcement personnel:

Par. 17. The first issue presented for our review is whether Jerrell's written confession to police was constitutionally voluntary. If his confession was involuntary, its admission would violate Jerrell's due process rights under the Fourteenth Amendment of the U.S. Constitution and Article I, Section 8 of the Wisconsin Constitution. Id., ¶36 (citing Rogers v. Richmond, 365 U.S. 534, 540 (1961); State v. McManus, 152 Wis. 2d 113, 130, 447 N.W.2d 654 (1989)). It is the State's burden to prove the voluntariness of a confession by a preponderance

of the evidence. Id., ¶40 (citing United States v. Haddon, 927 F.2d 942, 945 (7th Cir. 1991); State v. Agnello, 226 Wis. 2d 164, 182, 593 N.W.2d 427 (1999)).

¶18 The principles of law governing the voluntariness inquiry are summarized in Hoppe, 261 Wis. 2d 294. There, the court observed that a defendant's statements are voluntary "if they are the product of a free and unconstrained will, reflecting deliberateness of choice, as opposed to the result of a conspicuously unequal confrontation in which the pressures brought to bear on the defendant by representatives of the State exceeded the defendant's ability to resist." Id., ¶36 (citing Clappes, 136 Wis. 2d at 236; Norwood v. State, 74 Wis. 2d 343, 364, 246 N.W.2d 801 (1976); State v. Hoyt, 21 Wis. 2d 284, 308, 128 N.W.2d 645 (1964)).

¶19 A necessary prerequisite for a finding of involuntariness is coercive or improper police conduct. Id., ¶37 (citing Colorado v. Connelly, 479 U.S. 157, 167 (1986); Clappes, 136 Wis. 2d at 239). However, police conduct need not be egregious or outrageous in order to be coercive. Id., ¶46. "Rather, subtle pressures are considered to be coercive if they exceed the defendant's ability to resist. Accordingly, pressures that are not coercive in one set of circumstances may be coercive in another set of circumstances if the defendant's condition renders him or her uncommonly susceptible to police pressures." Id.

¶20 The voluntariness of a confession is evaluated on the basis of the totality of the circumstances surrounding that confession. Id., ¶38 (citing Clappes, 136 Wis. 2d at 236); Therriault v. State, 66 Wis. 2d 33, 41, 223 N.W.2d 850 (1974). This analysis involves a balancing of the personal characteristics of the defendant against the pressures and tactics used by law enforcement officers. Hoppe, 261 Wis. 2d 294, ¶38 (citing Clappes, 136 Wis. 2d at 236). The Hoppe court explained:

The relevant personal characteristics of the defendant include the defendant's age, education and intelligence, physical and emotional condition, and prior experience with law enforcement. The personal characteristics are balanced against the police pressures and tactics which were used to induce the statements, such as: the length of the questioning, any delay in arraignment, the general conditions under which the statements took place, any excessive physical or psychological pressure brought to bear on the defendant, any inducements, threats, methods or strategies used by the police to compel a response, and whether the defendant was informed of the right to counsel and right against self-incrimination.

Id., ¶39 (internal citations omitted).

¶21 When applying this test to a juvenile interrogation, we note that "[t]he Supreme Court in the past has spoken of the need to exercise 'special caution' when assessing the voluntariness of a juvenile confession, particularly when there is prolonged or repeated questioning or when the interrogation occurs in the

absence of a parent, lawyer, or other friendly adult." Hardaway v. Young, 302 F.3d 757, 762 (7th Cir. 2002) (citing In re Gault, 387 U.S. 1, 45 (1967); Gallegos v. Colorado, 370 U.S. 49, 53-55 (1962); Haley v. Ohio, 332 U.S. 596, 599-601 (1948)).

Id. Par. 17-21.

The Jerrell court cited with approval other courts that held that statements by juvenile suspects must be judged by a different standard than those of adults. Id., Par. 25-26.

In this case, Brendan was 16 years of age with no prior court experience and no prior contacts with law enforcement other than the November 2005 interviews in connection with this case. He had an introverted personality and was of limited intelligence and academic achievement. All of the interrogations took place outside the presence of his mother or an attorney. The first interview of February 27, 2006 at Mishicot High School took place without Barbara Janda's prior knowledge or consent.

This must be balanced against the tactics used by Weigert and Fassbender. First, by both participating in the interview it placed them in a position of power of two against one. In the limited space of a high school conference room or police interview room, this gave the investigators a dominant position over a young boy with no friend or adult of his own available for advice and counsel. Further, Weigert and Fassbender took advantage of Brendan's ignorance by implying that they were looking out for Brendan's interests and would "go to bat for him." In fact, they had no authority to obtain any benefit or reward for Brendan for his cooperation. The promises were designed to prey upon /Brendan's ignorance. Similarly, Weigert and Fassbender implied greater knowledge of other evidence in the case and Brendan's role in the homicide of Halbach by the continued statements of "we already know" and "we just need to hear it from you." Finally, Weigert and Fassbender implied that Brendan's honesty in and of itself would help Brendan avoid



consequences for his own behavior by statements such as “we can deal with it but be honest with us.” While not outright promises of amnesty or a pardon, the statements used to induce Brendan’s cooperation implied that only the mildest of punishment as long as Brendan was honest. The fact, of course, is now that Brendan faces the possibility of life imprisonment without parole plus seventy – two and one-half (72 ½) years in prison.

These factors substantially outweighed the factors the State might cite in claiming the statements were voluntary. Those factors favoring the State include the non-custodial and largely non-threatening nature of the questioning, the Miranda warnings for the second interrogation on February 27, 2006 and the interrogation of March 1, 2006 and the generally nonleading nature of the questions asked. Had Brendan been much older and more experienced with the police, these would have been sufficient to prove the statements were voluntary by a preponderance of the evidence as required. However, he was 16 years old with substantial learning disabilities. Brendan’s will was clearly overwhelmed by the stratagems of law enforcement. His statements should be suppressed.

This motion is based upon the pleadings, records and files in this action as well as such evidence as may be presented at the time of the hearing upon this motion.

Dated this 19th day of April, 2006.

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SISSON AND KACHINSKY LAW OFFICES  
By: Len Kachinsky  
Attorneys for the Defendant  
State Bar No. 01018347

103 W. College Avenue #1010  
Appleton, WI 54911-5744  
Phone: (920) 993-7777  
Fax: (775) 845-7965  
E-Mail: [len@sissonlaw.com](mailto:len@sissonlaw.com)

Orig: Clerk of Courts, Manitowoc County, P.O. Box 2000, Manitowoc, WI 54221  
Copy: District Attorney Kenneth Kratz, 206 Court Street, Chilton, WI 53014  
Brendan Dassey, Sheboygan County Juvenile Detention Center, 527 N. 6<sup>th</sup> Street,  
Sheboygan, WI 53081 (in-person on 4-18-06)