

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
BRANCH 3

STATE OF WISCONSIN,

PLAINTIFF,

JURY TRIAL
TRIAL DAY 9

vs.

Case No. 06 CF 88

BRENDAN R. DASSEY,

DEFENDANT.

DATE: APRIL 25, 2007

BEFORE: HON. JEROME L. FOX
Circuit Court Judge

APPEARANCES:

KENNETH R. KRATZ
Special Prosecutor
On behalf of the State of Wisconsin.

THOMAS FALLON
Special Prosecutor
On behalf of the State of Wisconsin.

NORMAN A. GAHN
Special Prosecutor
On behalf of the State of Wisconsin.

MARK R. FREMGEN
Attorney at Law
On behalf of the defendant.

RAYMOND L. EDELSTEIN
Attorney at Law
On behalf of the defendant.

BRENDAN R. DASSEY
Defendant
Appeared in person.

121 1

COPY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

* * * * *

TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR

Official Court Reporter

I N D E X

	<u>PAGE</u>
1	
2	
3	MOTIONS 4-14
4	JUDGE'S INSTRUCTIONS 17-49
5	CLOSING ARGUMENTS
6	By ATTORNEY FALLON 49-85
7	By ATTORNEY FREMGEN 85-107
8	By ATTORNEY EDELSTEIN 107-137
9	By ATTORNEY FALLON 137-153
10	FINAL INSTRUCTIONS 153-157
11	VERDICT 158-160
12	JURY POLLED 160-162

13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(Reconvened at 10:30 a.m.)

THE COURT: Good morning, counsel. This is State of Wisconsin vs. Brendan Dassey, 88 CF -- or, excuse me -- uh, 06 88 CF. Uh, appearances, please.

ATTORNEY KRATZ: The State of Wisconsin appears by Calumet County District Attorney Ken Kratz, Assistant Attorney General Tom Fallon, Assistant District Attorney Norm Gahn, appearing as special prosecutors.

ATTORNEY FREMGEN: Attorney Mark Fremgen with Attorney Ray Edelstein appear. Uh, Brendan Dassey appears in person.

THE COURT: All right. Uh, first, to the prosecution, any motions before we proceed to the jury?

ATTORNEY KRATZ: Yes, Judge. We, uh -- we have moved, uh, the Court, uh, for an order amending the Information, amending Count 3, uh, to second degree sexual assault as a party to the crime. Section 971.29 (2), uh, allows, uh, the Court to amend an Information to conform to the proof where the amendment is not prejudicial to the defendant. We alerted, uh, the Court and counsel, uh, as to our intent to do so, uh, given the, uh, state of the record.

1 Uh, State believes that second degree
2 sexual assault, uh, more accurately and
3 appropriately reflects the, uh, individual
4 behavior of this defendant, uh, Brendan Dassey,
5 and we have provided the Court with the original
6 Amended, uh, Information. Copy's been provided
7 to Mr. Fremgen.

8 THE COURT: Mr. Fremgen, do you have any
9 objection to that proposed amendment?

10 ATTORNEY FREMGEN: To the amendment, no.

11 THE COURT: Court is going to grant the
12 amendment. Any further motions from the State?

13 ATTORNEY KRATZ: Not from the State,
14 Judge.

15 THE COURT: The defendant?

16 ATTORNEY FREMGEN: Judge, we would renew
17 our motion, uh, now that all the evidence has
18 been presented and both parties have had -- or
19 the State's had an opportunity to do rebuttal,
20 but I would move, again, as previously, uh --
21 we -- we move this Court, following the close of
22 the State's case in chief, based on -- uh,
23 essentially, moving to dismiss Count 3, whether
24 it be now the amended Count 3.

25 Uh, again, rather than belabor the

1 argument before, essentially, uh, I would point
2 out to the Court the Supreme Court case of 1978,
3 **State v. Verhasselt**, which I don't think that law
4 has changed since then. In fact, the Court had
5 mentioned **State v. Bannister** case, 2006 case, and
6 I was able to review that. It appears to,
7 basically, reflect the same state of the law.

8 Uh, but, essentially, the state of the
9 law is that one may not be convicted solely upon
10 their uncorroborated confession. In the
11 **Verhasselt** case, the quote, uh, is basically,
12 quoting **Holt**, which is the more seminal case from
13 1962, but, essentially, indicates as to the need
14 for corroborating evidence, all the evidence --
15 all the elements of the crime do not have to be
16 proved independently in a -- of an accused's
17 confession. It's enough that there be some
18 corroboration.

19 Our position is that there has been no
20 independent corroboration of any element of Count
21 3, and for that reason, we'd ask the Court to
22 dismiss.

23 THE COURT: Mr. Kratz?

24 ATTORNEY GAHN: Your Honor, I'll be, um,
25 handling this portion of this motion.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Mr. Gahn.

ATTORNEY GAHN: Um, thank you, Your Honor. Um, I have also read the **State v. Bannister** at, uh, 294 Wis. 2d 359, a 2006 decision. And upon reading **Bannister**, it, uh -- is there are so many, uh, significant differences between this case and the **Bannister** case.

Um, the **Bannister** case, uh, basically, stated there was absolutely no real trial testimony elaborating on almost any fact of the confession. No details flushing out anything surrounding the confession. Uh, they even noted that there wasn't any testimony about what -- what room a transaction took place in, or how a visit was set up for that drug transaction.

When you look at this case from the very beginning, we have stipulated facts of why Teresa Halbach was at the Avery Salvage Yard, her purpose for being there for *Auto Trader Magazine*. We have testimony from Bobby Dassey stating that the last time he saw her, she was walking towards the Avery trailer. And in the Avery trailer was the bedroom where this sexual assault took place. So, we -- she is at the scene of, um, where the sexual assault took place.

1 Um, Mr., uh, Dassey spoke about the hand
2 irons and leg irons. That she was shackled to
3 that bed. Um, hand irons and leg irons have been
4 introduced in this trial as exhibits.

5 Uh, during his, uh, questioning and his
6 confession, he spoke about, uh, seeing and
7 observing the, um, unclothed body of Teresa
8 Halbach. Uh, there was no -- the -- no mention
9 of a tattoo or scars or birth marks or anything
10 unusual.

11 Um, this, I think, goes to the
12 surrounding facts and circumstances. I think,
13 also, noteworthy about the location of this
14 assault, the bedroom, was that, uh, Brendan
15 Dassey spoke of the location of the bed, and I
16 note Detective Wiegert, uh, stated how there
17 was -- they were somewhat perplexed when he gave
18 the location of the bed. And, then, they came to
19 find out that that bed had been changed. That
20 the furniture had been rearranged. And that, I
21 think, is a very significant fact about the
22 location of the sexual assault.

23 Uh, and just the change of furniture, I
24 think, is consistent with all the inferences that
25 one can draw, uh, from this case, uh, something

1 very horrific took place in that room, and, um,
2 I -- I think it goes to the, uh -- the inference
3 that, uh, cleaning was done. Bleach was found,
4 the Bissell, uh, the vacuum cleaner, and, uh,
5 Brendan Dassey spoke of cleaning up that took
6 place. And I think that seeing the furniture
7 moved is a reasonable inference, uh, that
8 supports that.

9 Also, um, I think that the -- just the
10 lack of physical evidence and forensic evidence
11 is consistent with the facts that have been
12 derived in this case. And from the statements of
13 Brendan Dassey, they burned the body of Teresa
14 Halbach.

15 We had testimony from Katie Halbach
16 describing the jeans that she believed her sister
17 was wearing, and the rivets were found in this
18 fire, and the zipper, uh, the Daisy Fuentes
19 rivets. And we also have outside testimony from,
20 um, Mr. Tadych, in a stipulation, that he saw a
21 huge fire in the burn pit of, uh, Steven Avery on
22 the night of October 31. Same testimony from
23 Blaine Dassey.

24 Um, I think, also, the Court to -- could
25 consider, um, that the victim knew her assailant.

1 She knew who was as -- um, assaulting her and
2 sexually assaulting her. And Brendan Dassey
3 spoke about the conversations he had with Steven
4 about then killing her.

5 And this was not a stranger sexual
6 assault. This is one that, uh, the victim knew
7 her assailants. And, really, the only course,
8 unfortunately, that I think they decided to take
9 was to kill the person. The only person who
10 could identify them.

11 And probably most noteworthy in this
12 case, is in the **Bannister** decision, the, um,
13 Court noted that, um, furthermore, they're
14 referring to Bannister's confession, did not
15 yield any unusual information or circumstances
16 that would not be widely known.

17 And I think that is probably the key
18 sentence in that, uh, decision that applies to
19 this case, especially when, after the confession
20 of Brendan Dassey, he spoke of her being killed
21 and shot in the garage, and in the garage is
22 found the bullet. The bullet which has the DNA
23 of Teresa Halbach on it. And that bullet, which
24 was matched to the very gun, to the exclusion of
25 all other guns, which was found in the bedroom

1 of, uh, where the sexual assault took place.

2 So, Brendan Dassey was in that bedroom.
3 He knew where the gun was. He told the police
4 where it was. And, sure enough, doesn't that
5 match the, um, bullet that was found in the
6 garage.

7 I think, um, I could go on. There are
8 other, uh, distinguishing features between our
9 situation and the **Bannister** case, but I certainly
10 believe that we have, uh, given far beyond, uh,
11 sufficient information from a reasonable
12 inference of all the evidence, the totality of
13 every -- all the testimony, that, uh, their
14 motion -- uh, that we did not provide independent
15 corroboration is without merit. Thank you, Your
16 Honor.

17 THE COURT: Any response, Mr. Fremgen?

18 ATTORNEY FREMGEN: Uh, briefly, Judge.
19 Uh, much of what Mr. Gahn points out, as far as
20 corroborating detail, certainly corroborates the
21 first degree intentional homicide and mutilating
22 the corpse.

23 The -- the quotation from **Verhasselt**,
24 which quotes **Holt** and **Triplett** and all the other
25 cases that have come down over the years dealing

1 with this issue, says, the elements of the crime.
2 None of the corroborating details pointed out by
3 the State have anything connected whatsoever to
4 do with Count 3.

5 Um, even many of the items, or the
6 comments by, uh, the State in regards to
7 corroborating details, are -- are not so
8 corroborating. The bedroom drawing is not
9 entirely accurate. The tattoo comment. Uh, in
10 the video, he actually, when confronted by Agent
11 Fassbender, uh, when he says, do you disagree
12 with me that there was no tattoo, he says, no.
13 Um, uh, or, I'm sorry, disagree with me that
14 there is a tattoo, he says, no, I just don't know
15 where it is.

16 As to the handcuffs and leg irons, the
17 State brought handcuffs and leg irons from his
18 own house. Um, nothing that points to its use in
19 the -- the crime, or the alleged allegations,
20 but -- but they were addressed as well.

21 And, once again, the issue of the
22 clean-up, uh, one -- on one hand, the State says
23 there was such a meticulous job done to clean up
24 the bedroom, yet, uh, Steven Avery's sloppy
25 enough to leave his blood all over the Rav 4. It

1 just seems to be somewhat inconsistent.

2 So, we would, again, stand upon the fact
3 that there is no corroborating detail of the
4 elements of this crime.

5 THE COURT: All right. I think Wisconsin
6 case law is clear, a confession must be corroborated
7 by -- and this is a quote from **Holt**, which Counsel
8 has cited -- a significant fact. Uh, **Holt** is at 17
9 Wis. 2d. This is at page 480.

10 Uh, here, in this case, we have three
11 counts charging acts which occurred
12 contemporaneously. The Court believes that the
13 confession given by this defendant is
14 corroborated by a number of significant facts;
15 the bullet fragments, the pieces of bone, the
16 rake and the shovel, to name just a few. This is
17 sufficient corroboration for the confession as a
18 whole, and that whole includes the sexual
19 assault.

20 The reason underlying the necessity of
21 corroboration is, as was said in **State v. Hauk** at
22 257 Wis. 2d 579, uh, specifically, at page 592,
23 is to, quote, produce confidence in the
24 truthfulness of the confession, end quote. This
25 confession is not limited to only the sexual

1 assault. Therefore, significant facts tending to
2 support any part of the confession, support or
3 tend to support all of that con -- confession.

4 Moreover, even if I were to view the
5 sexual assault count in isolation, I would say,
6 as I already have, that there exists, uh,
7 significant facts which corroborated the
8 handcuffs, the leg irons, uh, as Mr. Gahn pointed
9 out, uh, the location of the bed as shown in the
10 drawing, which was introduced here as an exhibit,
11 a drawing of Brendan Dassey. Uh, therefore, I'm
12 going to do as I did before. I'm going to
13 deny -- respectfully deny your motion.

14 Now, uh, we have had a chambers jury
15 conference. Uh, you gentlemen have had an
16 opportunity to review the proposed jury
17 instructions. Uh, first, to the, uh,
18 prosecution, any -- any changes? Any motions?

19 ATTORNEY KRATZ: No, Judge. We believe
20 that the instructions -- And the Court is
21 correct, we've had an informal, um, jury
22 instruction conference, where, um, most, if not
23 all, of these instructions were discussed.

24 We have now reviewed the, uh, proposed
25 instructions. We have no objection to the

1 instructions as presented, nor as to the verdict
2 forms, uh, as included and set forth within those
3 instructions.

4 THE COURT: I -- I would -- uh, I would
5 just note, uh, I believe that I amended Instruction
6 525, uh, to make it conform to one that was given in
7 the Avery case. Uh, I didn't have an opportunity to
8 tell you that before then, but the amendment doesn't
9 do anything substantively to it.

10 Now, to the defense.

11 ATTORNEY EDELSTEIN: Your Honor, as to
12 the -- as to the, uh, packet most recently
13 received, uh, we concur with those that are --
14 have been made available. I would, for the
15 record, um, ask the Court to enter its ruling on
16 the record regarding the defense instruction
17 specifically requested, uh, re -- requesting that
18 an instruction be provided regarding
19 corroboration.

20 THE COURT: The defense had customized a --
21 construc -- uh, a -- an instruction that, uh, in
22 effect, would have told the jury that before they
23 could find the confession to be a valid confession,
24 it had to be corroborated by a -- well, I'm going to
25 call it a significant fact -- had to be corroborated

1 by something in the record. Uh, the Court
2 suggested, in the informal conference, that while it
3 had reviewed that instruction, it was going to deny,
4 uh, the defense motion to employ it as part of the
5 jury instructions.

6 I will now do so formally. I'll deny it
7 on the record. I do not believe -- I believe
8 that the, uh, instruction on confession is, uh,
9 sufficiently detailed in the course of the
10 instruction that's going to be used as part of
11 this particular jury instruction. I've forgotten
12 whether it's 180 --

13 ATTORNEY FREMGEN: I believe it's 180.

14 THE COURT: 180? All right. And I think
15 that -- yeah, it is. Instruction No. 180 deals with
16 confessions and omis -- admissions, and I think that
17 that is the appropriate instruction. I do not
18 believe that, uh, giving what, in effect, is a legal
19 argument as part of the instruction as requested by
20 the defense is appropriate under the circumstances.
21 Therefore, I'll respectfully deny your motion.

22 Now, what I'd like to do is to make, uh,
23 15 copies of this set of instructions. I'd like
24 the jury to have them as I read them to them.
25 And it probably is going to take another ten

1 minutes to do that. So, I'm going to recess for
2 that period of time.

3 (Recess had at 10:45 a.m.)

4 (Reconvened at 10:58 a.m. Jury in)

5 THE COURT: Be seated. Morning, ladies and
6 gentlemen. In a moment, I'm going to be reading you
7 the instructions. The jury instructions. As you
8 can see, excuse me, um, the clerk is handing copies
9 of those instructions out. You can see how well I
10 read, I suppose, by trying to follow along with me.

11 Uh, you certainly can and are urged to
12 follow along. However, once closing argument has
13 begun by counsel, I ask that you put those down
14 and pay attention to, uh -- to what the lawyers
15 have to say in the closing argument.

16 Uh, additionally, just -- just so you
17 know, at the -- at the end of closing argument,
18 before you retire for deliberation, we will --
19 the clerk will have a little drum up here and
20 we're going to draw three names, the names of
21 three jurors out of that drum. The first two
22 will be discharged as jurors, and the third will
23 be sequestered for the remaining, uh, part of
24 the -- the deliberations. All right?

25 With that said, Members of the Jury, the

1 Court will now instruct you upon the principles
2 of law which you are to follow in considering the
3 evidence and in reaching your verdict.

4 It is your duty to follow all of these
5 instructions. Regardless of any opinion you may
6 have about what the law is or ought to be, you
7 must base your verdict on the law I give you in
8 these instructions. Apply that law to the facts
9 in the case which have been properly proven by
10 the evidence. Consider only the evidence
11 received during the trial and the law as given to
12 you by the instructions, and from these alone,
13 guided by your soundest reason and best judgment,
14 reach your verdict.

15 If any member of the jury has any
16 impression of my opinion as to whether the
17 defendant is guilty or not guilty, disregard that
18 impression entirely and decide the issues of fact
19 solely as you view the evidence. You, the jury,
20 are the sole judges of the facts, and the Court
21 is the judge of the law only.

22 One defendant, three counts.

23 The first count of the Amended
24 Information in this case charges Brendan Dassey,
25 on October 31, 2005, as a party to a crime, did

1 cause the death of Teresa M. Halbach, with the
2 intent to kill that person, contrary to Sections
3 940.01(1)(a), 939.50(3)(a), and 939.05 of the
4 Wisconsin Statutes.

5 To this charge, the defendant has
6 entered a plea of not guilty, which means the
7 State must prove every element of the offense
8 charged beyond a reasonable doubt.

9 The second count of the Amended
10 Information charges that Brendan Dassey, on
11 October 31, 2005, as a party to the crime, did
12 mutilate, disfigure, or dismember a corpse with
13 the intent to conceal a crime, contrary to
14 Sections 940.11(1), 939.50(3)(f), and 939.05 of
15 the Wisconsin Statutes.

16 To this charge, the defendant has also
17 entered a plea of not guilty, which means the
18 State must prove every element of the offense
19 charged beyond a reasonable doubt.

20 The third count of the Amended
21 Information charges that Brendan Dassey, on
22 October 31, 2005, as a party to a crime, by
23 threat or use of force or violence, did have
24 sexual intercourse with Teresa Halbach, without
25 the consent of that person, contrary to Sections

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

940.225(2) (a), 939.50(3) (c), and 939.05 of the
Wisconsin Statutes.

To this charge, the defendant has also
entered a plea of not guilty, which means the
State must prove every element of the offense
charged beyond a reasonable doubt.

First degree intentional homicide.
First degree reckless homicide. Party to a
crime, aiding and abetting. Defendant either
directly committed or intentionally aided the
crime charged.

Section 939.05 of the Criminal Code of
Wisconsin provides that whoever's concerned in
the commission of a crime is a party to that
crime and may be convicted of that crime although
the person did not directly commit it.

The State contends that the defendant
was concerned in the commission of the crime of
first degree intentional homicide by either
directly committing it or by intentionally aiding
and abetting the person who directly committed
it. If a person intentionally aids and abets the
commission of a crime, then that person is guilty
of the crime as well as the person who directly
committed it.

1 A person who intention -- a person
2 intentionally aids and abets the commission of a
3 crime when, acting with knowledge or belief that
4 another person is committing or intends to commit
5 a crime, he either knowingly assists the person
6 who commits the crime or is ready and willing to
7 assist, and the person who commits the crime
8 knows of the willingness to assist.

9 To intentionally aid and abet first
10 degree intentional homicide, the defendant must
11 know that another person is committing or intends
12 to commit the crime of first degree intentional
13 homicide and have the purpose to assist the
14 commission of that crime.

15 Before you may find the defendant
16 guilty, the State must prove by evidence which
17 satisfies you beyond a reasonable doubt that the
18 defendant directly committed the crime of first
19 degree intentional homicide or intentionally
20 aided and abetted the commission of that crime.

21 All 12 jurors do not have to agree
22 whether the defendant directly committed the
23 crime or aided and abetted the commission of the
24 crime. However, each juror must be convinced
25 beyond a reasonable doubt that the defendant was

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

concerned in the commission of the crime in one of these ways.

The defendant in this case is charged with first degree intentional homicide, and if -- you must first consider whether the defendant is guilty of that offense. If you are not satisfied that the defendant is guilty of first degree intentional homicide, you must consider whether or not the defendant is guilty of first degree reckless homicide, which is a less serious degree of criminal homicide.

The crimes referred to as first degree intentional and first degree reckless homicide are different types of homicide. Homicide is the taking of the life of another human being. The degree of homicide defined by the law depends on the facts and circumstances of each particular case.

Both intentional and reckless homicide require that the defendant caused the death of the victim. First degree intentional homicide requires the State to prove that the defendant acted with the intent to kill. First degree reckless homicide requires that the defendant acted recklessly, under circumstances which show

1 utter disregard for human life. It is for you to
2 consider of what type of homicide the defendant
3 is guilty, if guilty at all, according to the
4 instructions which define the two offenses.

5 The statutory definition of first degree
6 intentional homicide.

7 First degree intentional homicide as
8 defined in 940.01 of the Criminal Code of
9 Wisconsin, is committed by one who causes the
10 death of another human being with the intent to
11 kill that person or another.

12 Before you may find the defendant guilty
13 of first degree intentional homicide, the State
14 must prove by evidence which satisfies you beyond
15 a reasonable doubt that the following two
16 elements were present:

17 Number one, the defendant, or a person
18 with whom he was acting as a party to the crime,
19 caused the death of Teresa Halbach.

20 "Cause" means that the defendant's act,
21 or that the act of a person with whom he was
22 acting as a party to the crime, was a substantial
23 factor in producing the death.

24 Number two, the defendant, or a person
25 with whom he was acting as a party to the crime,

1 acted with the intent to kill Teresa Halbach.

2 "Intent to kill" means that the
3 defendant, or a person with whom he was acting as
4 a party to the crime, had the mental purpose to
5 take the life of another human being or was aware
6 that his conduct was practically certain to cause
7 the death of another human being.

8 While the law requires that the
9 defendant, or a person with whom he was acting as
10 a party to the crime, acted with intent to kill,
11 it does not require that the intent existed for
12 any particular length of time before the act is
13 committed. The act need not be brooded over,
14 considered, or reflected upon for a week, a day,
15 an hour, or even for a minute. There need not be
16 any appreciable time between the formation of the
17 intent and the act. The intent to kill may be
18 formed at any time before the act, including the
19 instant before the act, and must continue to
20 exist at the time of the act.

21 You cannot look into a person's mind to
22 find intent. Intent to kill must be found, if
23 found at all, from the defendant's acts, words,
24 and statements, if any, or those of a person with
25 whom he was acting as a party to the crime, and

1 from all the facts and circumstances in this case
2 bearing upon intent.

3 Intent should not be confused with
4 motive. While proof of intent is necessary to a
5 conviction, proof of motive is not. "Motive"
6 refers to a person's reasons for doing something.
7 While motive may be shown as a circumstance to
8 aid in establishing the guilt of a defendant, or
9 a person with whom he was acting as a party to
10 the crime, the State is not required to prove
11 motive on the part of the defendant, or a person
12 with whom he was acting as party to the crime, in
13 order to convict. Evidence of motive does not,
14 by itself, establish guilt. You should give it
15 the weight you believe it deserves under all the
16 circumstances.

17 If you are satisfied beyond a reasonable
18 doubt that the defendant caused the death of
19 Teresa Halbach, with the intent to kill, or are
20 satisfied beyond a reasonable doubt that the
21 defendant intentionally aided and abetted the
22 commission of the offense, you should find the
23 defendant guilty of first degree intentional
24 homicide.

25 If you are not so satisfied, you must

1 find the defendant not guilty of first degree
2 intentional homicide, and you should consider
3 whether the defendant is guilty of first degree
4 reckless homicide in violation of 940.02(1) of
5 the Criminal Code of Wisconsin, which is a lesser
6 included offense of first degree intentional
7 homicide.

8 You should make every reasonable effort
9 to agree unanimously on the charge of first
10 degree intentional homicide before considering
11 the offense of first degree reckless homicide.
12 However, if, after full and complete
13 consideration of the evidence, you conclude that
14 further deliberation would not result in
15 unanimous agreement on the charge of first degree
16 intentional homicide, you should consider whether
17 the defendant is guilty of first degree reckless
18 homicide.

19 First degree reckless homicide, as
20 defined in 940.02(1) of the Criminal Code of
21 Wisconsin, is committed by one who recklessly
22 causes the death of another human being under
23 circumstances that show utter disregard for human
24 life.

25 Before you may find the defendant guilty

1 of first degree reckless homicide, the State must
2 prove by evidence which satisfies you beyond a
3 reasonable doubt that the following three
4 elements were present:

5 Number one, the defendant, or a person
6 with whom he was acting as a party to the, uh --
7 the crime, caused the death of Teresa Halbach.

8 "Cause" means that the defendant's act,
9 or the act of a person with whom he was acting as
10 a party to the crime, was a substantial factor in
11 producing the death.

12 Number two, the defendant, or a person
13 with whom he was acting as a party to the crime,
14 caused the death by crimlin -- criminally
15 reckless conduct.

16 "Criminally reckless conduct" means the
17 conduct created a risk of death or great bodily
18 harm to another person, and the risk of death or
19 great bodily harm was unreasonable and
20 substantial, and the defendant, or a person with
21 whom he was acting as a party to the crime, was
22 aware that his conduct created the unreasonable
23 and substantial risk of death or great bodily
24 harm.

25 Number three, the circumstances of the

1 defendant's conduct, or the conduct of a person
2 with whom he was acting as a party to the crime,
3 showed utter disregard for human life.

4 In determining whether the conduct
5 showed utter disregard for human life, you should
6 consider all the factors relating to the conduct.
7 These include the following:

8 What the defendant, or a person with
9 whom he was acting as a party to the crime, was
10 doing.

11 Why the defendant, or a person with whom
12 he was acting as a party to the crime, was
13 engaged in that conduct.

14 How dangerous the conduct was.

15 How obvious the danger was.

16 And whether the conduct showed any
17 regard for life.

18 If you are satisfied beyond a reasonable
19 doubt that the defendant caused the death of
20 Teresa Halbach by criminally reckless conduct,
21 and that the circumstances of the conduct showed
22 utter disregard for human life, or are satisfied
23 beyond a reasonable doubt that the defendant
24 intentionally aided and abetted the commission of
25 the offense, you should find the defendant guilty

1 of first degree reckless homicide.

2 If you are not so satisfied, you must
3 find the defendant not guilty.

4 You are not, in any event, to find the
5 defendant guilty of more than one homicide
6 offense.

7 Mutilating a corpse. Party to a crime.
8 Aiding and abetting. The defendant either
9 directly committed or intentionally aided the
10 crime charged.

11 Section 939.05 of the Criminal Code of
12 Wisconsin, provides that whoever is concerned
13 with the commission of a crime is a party to that
14 crime and may be convicted of that crime although
15 the person did not directly commit it.

16 The State contends that the defendant
17 was concerned in the commission of the crime of
18 mutilating a corpse by either directly committing
19 it or by intentionally aiding and abetting the
20 person who directly committed it. If a person
21 intentionally aids and abets the commission of a
22 crime, then that person is guilty of the crime as
23 well as the person who directly committed it.

24 Person intentionally aids and abets the
25 commission of a crime when, acting with knowledge

1 or belief that another person is committing or
2 intends to commit a crime, he knowingly either
3 assists the person who commits the crime, or is
4 ready and willing to assist, and the person who
5 commits the crime knows of the willingness to
6 assist.

7 To intentionally aid and abet mutilating
8 a corpse, the defendant must know that another
9 person is committing or intends to commit the
10 crime of mutilating a corpse and have the purpose
11 to assist the commission of that crime.

12 Before you may find the defendant
13 guilty, the State must prove by evidence which
14 satisfies you beyond a reasonable doubt that the
15 defendant directly committed the crime of
16 mutilating a corpse or intentionally aided and
17 abetted the commission of that crime.

18 All 12 jurors do not have to agree
19 whether the defendant directly committed the
20 crime or aided and abetted the commission of the
21 crime. However, each juror must be convinced
22 beyond a reasonable doubt that the defendant was
23 concerned in the commission of the crime in one
24 of those ways.

25 Section 940.11(1) of the Criminal Code

1 of Wisconsin, is violated by one who mutilates,
2 disfigures, or dismembers a corpse with
3 intention -- intent to conceal a crime or avoid
4 apprehension, prosecution or conviction for a
5 crime.

6 Before you may find the defendant guilty
7 of this offense, the State must prove by evidence
8 which satisfies you beyond a reasonable doubt
9 that the following two elements were present:

10 Number one, the defendant, or a person
11 with whom he was acting as a party to the crime,
12 mutilated, disfigured or dismembered a corpse.
13 "Corpse" means the dead body of a human being.

14 Number two, the defendant, or a person
15 with whom he was acting as a party to the crime,
16 mutilated, disfigured or dismembered a corpse
17 with the intent to conceal a crime. This
18 requires that the defendant, or a person with
19 whom he was acting as a party to the crime, acted
20 with the purpose to conceal a crime.

21 You cannot look into a person's mind to
22 find out intent. Intent must be found, if found
23 at all, from the defendant's acts, words, and
24 statements, if any, or those of a person with
25 whom he was acting as a party to the crime, and

1 from all the facts and circumstances in this case
2 bearing upon intent.

3 If you are satisfied beyond a reasonable
4 doubt that both elements of this offense have
5 been proved, or are satisfied beyond a reasonable
6 doubt that the defendant -- defendant
7 intentionally aided and abetted in the commission
8 of the offense, you should find the defendant
9 guilty.

10 If you are not so satisfied, you must
11 find the defendant not guilty.

12 Second degree sexual assault. Party to
13 a crime. Aiding and abetting. The defendant
14 either charged -- uh, either directly committed
15 or intentionally aided the crime charged.

16 Section 939.05 of the Criminal Code of
17 Wisconsin, provides that whoever is concerned in
18 the commission of a crime, is a party to that
19 crime and may be convicted of that crime although
20 the person did not directly commit it.

21 The State contends that the defendant
22 was concerned in the commission of the crime of
23 second degree sexual assault by either directly
24 committing it or by intentionally aiding and
25 abetting the person who directly committed it.

1 If a person intentionally aids and abets the
2 commission of a crime, then that person is guilty
3 of the crime as well as the person who directly
4 committed it.

5 A person intentionally aids and abets
6 the commission of a crime when, acting with
7 knowledge or belief that another person is
8 committing or intends to commit a crime, he
9 knowingly either assists the person who commits
10 the crime, or is ready and willing to assist, and
11 the person who commits the crime knows of the
12 willingness to assist.

13 To intentionally aid and abet second
14 degree sexual assault, the defendant must know
15 that another person is committing or intends to
16 commit the crime of second degree sexual assault
17 and have the purpose to assist the commission of
18 that crime.

19 Before you may find the defendant
20 guilty, the State must prove by evidence which
21 satisfies you beyond a reasonable doubt that the
22 defendant directly committed the crime of second
23 degree sexual assault or intentionally aided and
24 abetted the commission of that crime.

25 All 12 jurors do not have to agree

1 whether the defendant directly committed the
2 crime or aided and abetted the commission of the
3 crime. However, each juror must be convinced
4 beyond a reasonable doubt that the defendant was
5 concerned in the commission of the crime in one
6 of those ways.

7 Second degree sexual assault. Sexual
8 intercourse without consent by use of threat or
9 violence.

10 Second degree sexual assault, as defined
11 in Section 940.225(2)(a) of the Criminal Code of
12 Wisconsin, is committed by one who has sexual
13 intercourse with another person without consent
14 and by use or threat of force or violence.

15 Before you may find that the defendant
16 is guilty of this offense, the State must prove
17 by evidence which satisfies you beyond a
18 reasonable doubt that the following three
19 elements were present:

20 Number one, the defendant, or a person
21 with whom he was acting as a party to the crime,
22 had sexual intercourse with Teresa Halbach.

23 Number two, Teresa Halbach did not
24 consent to the sexual intercourse.

25 Number three, the defendant, or a person

1 with whom he was acting as a party to the crime,
2 had sexual intercourse with Teresa Halbach by use
3 of threat -- by use or threat of force or
4 violence.

5 The use or threat of force or violence
6 may occur before or as part of the sexual
7 intercourse.

8 "Sexual intercourse" means any
9 intrusion, however slight, by any part of a
10 person's body or of any object, into the genital
11 or anal opening of another. Emission of semen is
12 not required.

13 "Did not consent" means that Teresa
14 Halbach did not freely agree to have sexual
15 intercourse with the defendant. In deciding
16 whether Teresa Halbach did not consent, you
17 should consider what Teresa Halbach said and did,
18 along with all the other facts and circumstances.
19 This element does not require that Teresa Halbach
20 offered physical resistance.

21 If you are satisfied beyond a reasonable
22 doubt that the defendant had sexual intercourse
23 with Teresa Halbach without consent and by use or
24 threat of force or violence, or are satisfied
25 beyond a reasonable doubt that the defendant

1 intentionally aided and abetted the commission of
2 the offense, you should find the defendant guilty
3 of second degree sexual assault.

4 If you are not so satisfied, you must
5 find the defendant not guilty.

6 Burden of proof and presumption of
7 innocence.

8 In reaching your verdict, examine the
9 evidence with care and caution. Act with
10 judgment, reason, and prudence.

11 Defendants are not required to prove
12 their innocence. The law presumes every person
13 charged with the commission of an offense to be
14 innocent. This presumption requires a finding of
15 not guilty unless, in your deliberations, you
16 find it is overcome by evidence which satisfies
17 you beyond a reasonable doubt that the defendant
18 is guilty.

19 The burden of establishing every fact
20 necessary to constitute guilt is upon the State.
21 Before you can return a verdict of guilty, the
22 evidence must satisfy you beyond a reasonable
23 doubt that the defendant is guilty.

24 If you can reconcile the evidence upon
25 any reasonable hypothesis consistent with the

1 defendant's innocence, you should do so and
2 return a verdict of not guilty.

3 The term "reasonable doubt" means any
4 doubt based upon reason and common sense. It is
5 a doubt for which a reason can be given arising
6 from a fair and rational consideration of the
7 evidence or lack of evidence. It means such a
8 doubt as -- as would cause a person of ordinary
9 prudence to pause or hesitate when called upon to
10 act in the most important affairs of life.

11 A reasonable doubt is not a doubt which
12 is based upon mere guesswork or speculation. A
13 doubt which arises merely from sympathy or from
14 fear to return a verdict of guilt is not a
15 reasonable doubt. A reasonable doubt is not a
16 doubt such as may be used to escape the
17 responsibility of a decision.

18 While it is your duty to give the
19 defendant the benefit of every reasonable doubt,
20 you are not to search for doubt. You are to
21 search for the truth.

22 Information not evidence. An
23 Information is nothing more than a written formal
24 accusation against a defendant charging the
25 com -- uh, commission of one or more criminal

1 acts. You are not to consider it as evidence
2 against the defendant in any way. It does not
3 raise any inference of guilt.

4 Evidence defined.

5 Evidence is, first, the sworn testimony
6 of witnesses, both on direct and
7 cross-examination, regardless of who called the
8 witness.

9 Second, the exhibits the Court has
10 received, whether or not an exhibit goes to the
11 jury room.

12 Third, any facts to which the lawyers
13 have agreed or stipulated or which the Court is
14 directed -- or which the Court has directed you
15 to find.

16 Anything you may have seen or heard
17 outside the courtroom is not evidence. You are
18 to decide the case solely on the evidence offered
19 and received at trial.

20 The district attorney and the attorney
21 for the defendant have stipulated or agreed as
22 follows:

23 Steven Schmitz is a citizen living in
24 New Holstein, Wisconsin, a community located 30
25 miles west of Manitowoc, Wisconsin.

1 JoEllen Zipperer is a citizen living in
2 rural Manitowoc County, Wisconsin.

3 That if called to testify, Steven
4 Schmitz would testify that on October 31, 2005,
5 Teresa Halbach came to the Schmitz property to
6 take a photo of a vehicle for *Auto Trader*
7 *Magazine*. Schmitz would indicate that Halbach
8 was at his residence at approximately 1:30 p.m.,
9 was there for approximately ten minutes, was
10 wearing a white shirt, waist-length
11 jacket, and blue jeans. Schmitz would state that
12 before leaving, Halbach provided Schmitz with the
13 latest *Auto Trader Magazine* and a bill of sale,
14 left his property, and drove away in her SUV.

15 Number three, that if called to testify,
16 JoEllen Zipperer would testify that on October
17 31, 2005, Teresa Halbach came to the Zipperer
18 property to take a photo of a vehicle for *Auto*
19 *Trader Magazine*. Zipperer would indicate that
20 Halbach was at her residence between
21 approximately 2:00 to 2:30 p.m., was at there --
22 was there for approximately ten minutes, was
23 wearing a white top, waist-length jacket, and
24 blue jeans. Zipperer would state that before
25 leaving, Halbach provided her with the latest

1 *Auto Trader Magazine* and a bill of sale, left her
2 property, and drove away in her SUV. Zipperer
3 would finally state that the Avery Salvage Yard
4 is no more than a ten-minute drive from her
5 residence in Manitowoc County.

6 On October 31, 2005, Bobby Dassey was
7 the son of Barb Janda and brother of the
8 defendant, Brendan Dassey. Bobby Dassey lived in
9 the same residence with Barb Janda and Brendan
10 Dassey at the time.

11 That if called to testify, Bobby Dassey
12 would state that between 2:30 and 2:45 p.m. on
13 October 31, 2005, he was inside the Janda/Dassey
14 residence, where he observed a blue, slash, green
15 Toyota Rav 4 stop outside the residence, in close
16 proximity to a maroon van that his mother, Barb
17 Janda, had for sale.

18 Bobby Dassey would state that he
19 observed a young woman, that he later came to
20 identify as Tressa Halbach, exit her vehicle,
21 take some photos of the maroon van and walk
22 toward the trailer of Steven Avery.

23 Bobby Dassey would further state that
24 after taking a shower, he left the residence at
25 approximately 3:00 p.m. to go deer hunting, at

1 which time he still observed the Rav 4 parked
2 outside his residence, but that Teresa Halbach
3 was not observed.

4 Bobby Dassey would state that he
5 returned to the residence at approximately
6 5:00 p.m. and no longer observed the Rav 4.

7 On October 31, 2005, Scott Tadych was
8 the boyfriend of Barba Janda, knew the defendant,
9 Brendan Dassey, Steven Avery, and other family
10 members living at the Avery Salvage Yard.

11 That if called to testify, Scott Tadych
12 would state that between 7:30 and 7:45 p.m. on
13 October 31, 2005, he was at the Janda, slash,
14 Dassey property, where he dropped off Barb Janda.

15 Tadych would state that he observed a
16 large fire in the burn area behind the detached
17 garage of Steven Avery.

18 Tadych would further indicate that at
19 the time, he observed Brendan Dassey and Seven
20 Avery standing next to the fire.

21 Number eight, Dr. Jeffrey Jentzen is the
22 Chief Medical Examiner for Milwaukee County,
23 Wisconsin, and is a Board Certified Forensic
24 Pathologist. Dr. Jentzen agreed to be a medical
25 consultant in this case and offered expert

1 testimony as to the manner and cause of death of
2 Teresa Halbach.

3 That if called to testify, Dr. Jentzen
4 would state that after consultation with Forensic
5 Anthropologist, Dr. Leslie Eisenberg, he reviewed
6 reports, photographs, x-rays, bone fragments, and
7 other materials surrounding the Teresa Halbach
8 death investigation.

9 Dr. Jentzen would testify that, in his
10 expert opinion, to a reasonable degree of medical
11 certainty, the manner of death of Teresa Halbach
12 was homicide, and the cause of death was gunshot
13 wounds to the head.

14 On October 31, 2005, Angela Schuster was
15 the manager for *Auto Trader Magazine*, with
16 headquarters in Milwaukee, Wisconsin. On the
17 same date, Dawn Pliszka, performed duties as
18 receptionist for *Auto Trader*.

19 That if called to testify, Angela
20 Schuster would testify that Teresa Halbach was
21 hired as a photographer for *Auto Trader* in
22 October, 2004, and continued in that employment
23 through October 31, 2005. Schuster -- Schuster
24 would further state that Teresa Halbach had
25 performed photo shoots at the Avery salvage

1 business on five occasions pri -- prior to
2 October 31 in 2005; including, June 20,
3 August 22, August 29, September 19, and October
4 10.

5 That if called to testify, Dawn Pliszka
6 would testify that on October 31, 2005, she
7 received a phone call from Steven Avery at
8 approximately 8:12 a.m., at which time Avery
9 requested that, quote, the same girl that had
10 been out here before, end quote, come to his
11 property to take photos of a van he had for sale.
12 Pliszka would further state that Avery made the
13 appointment under the name, quote, B. Janda, end
14 quote, and that Pliszka left a voice mail for
15 Teresa Halbach at 9:46 a.m., asking if she could
16 make the appointment.

17 Number 13, that if called to testify,
18 Dawn Pliszka would further testify that at
19 2:27 p.m., she did speak with Teresa Halbach on
20 Teresa's cell phone, at which time Ms. Halbach
21 indicated that she was, quote, on her way, end
22 quote, to the Avery property from her previous
23 appointment.

24 You will consider that testimony in the
25 same manner as if it had been given under oath

1 here in court.

2 Circumstantial evidence. It is not
3 necessary that every fact be proved directly by a
4 witness or an exhibit. A fact may be proved
5 indirectly by circumstantial evidence.

6 "Circumstantial evidence" is evidence from which
7 a jury may logically find other facts according
8 to common knowledge and experience.

9 Circumstantial evidence is not
10 necessarily better or worse than direct evidence.
11 Either type of evidence can prove a fact.
12 Whether evidence is direct or circumstantial, it
13 must satisfy you beyond a reasonable doubt that
14 the defendant committed the offense before you
15 may find the defendant guilty.

16 Confessions. Admissions. The State has
17 introduced evidence of statements which it claims
18 were made by the defendant, is for you to
19 determine how much weight, if any, to give to
20 each statement. In evaluating each statement,
21 you must determine three things:

22 Whether the statement was actually made
23 by the defendant. Only -- only so much of a
24 statement as was actually made by a person may be
25 considered as evidence.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Whether the statement was accurately restated here at trial.

Whether the statement, or any part of it, ought to be believed.

You should consider the facts and circumstances surrounding the making of each statement, along with all the other evidence, in determining how much weight, if any, the statement deserves.

Jurors knowledge. In weighing the evidence, you may take into account matters of your common knowledge and your observations and experience in the affairs of life.

Remarks of counsel. Remarks of the attorneys are not evidence. If the remarks suggest certain facts not in evidence, disregard the suggestion.

Closing arguments of counsel. Consider, carefully, the closing arguments of the attorneys, but their arguments and conclusions and opinions are not evidence. Draw your own conclusions from the evidence and decide upon your verdict according to the evidence under the instructions given to you by the Court.

Exhibits. An exhibit becomes evidence

1 only when received by the Court. An exhibit
2 marked for identification and not received is not
3 evidence. An exhibited -- an exhibit received is
4 evidence, whether or not it goes to the jury
5 room.

6 Objections of counsel. Evidence
7 received over objections.

8 Attorneys for each side have the right
9 and the duty to object to what they consider are
10 improper questions asked of witnesses and to the
11 admission of other evidence which they believe is
12 not properly admissible. You should not draw any
13 conclusions from the fact an objection was made.

14 By allowing testimony or other evidence
15 to be received over the objection of counsel, the
16 Court is not indicating any opinion about the
17 evidence. You, jurors, are the judges of the
18 credibility of the witnesses and the weight of
19 the evidence.

20 Improper questions. Disregard,
21 entirely, any question that the Court did not
22 allow to be answered. Do not guess at what the
23 witness' answer might have been. If the
24 evidence, it -- itself, suggested that certain
25 information may be true, ignore the suggestion

1 and do not consider it as evidence.

2 Stricken testimony. During the trial,
3 the Court has ordered certain testimony to be
4 stricken. Disregard all stricken testimony.

5 Weight of evidence. The weight of
6 evidence does not depend on the number of
7 witnesses on each side. You may find that the
8 testimony of one witness is entitled to greater
9 evidence than that of another witness or even of
10 several other witnesses.

11 Expert opinion testimony. Ordinarily, a
12 witness may testify only about facts. However, a
13 witness with expertise in a particular field may
14 give an opinion in that field. You should
15 consider the qualifications and credibility of
16 the expert, the facts upon which the opinion is
17 based, and the reasons given for the opinion.

18 Opinion evidence was received to help
19 you reach a conclusion. However, you are not
20 bound by any expert's opinion.

21 In resolving conflicts in expert
22 testimony, weigh the different expert opinions
23 against each other. Also consider the
24 qualifications and credibility of the experts and
25 the facts supporting their opinions.

1 Credibility of witnesses. It is the
2 duty of the jury to scrutinize and to weigh the
3 testimony of witnesses and to determine the
4 effect of the evidence as a whole. You are the
5 sole judges of the credibility. That is, the
6 believability of the witnesses and the weight to
7 be given to their testimony.

8 In determining the credibility of each
9 witness and the weight you give to the testimony
10 of each witness, consider these factors:

11 Whether the witness has an interest or
12 lack of interest in the result of this trial.

13 The witness' conduct, appearance, and
14 demeanor on the witness stand.

15 The clearness or lack of clearness of
16 the witness' recollections.

17 The opportunity the witness had for
18 observing and for knowing the matters the witness
19 testified about.

20 The reasonableness of the witness'
21 testimony.

22 The apparent intelligence of the
23 witness.

24 Bias or prejudice, if any has been
25 shown.

1 Possible motives for falsifying
2 testimony.

3 And all other facts and circumstances
4 during the trial which tend either to support or
5 to discredit the testimony.

6 Then give to the testimony of each
7 witness the weight you believe it should receive.

8 The defendant has testified in this
9 case, and you should not discredit the testimony
10 just because the defendant is charged with a
11 crime. Use the same factors to determine the
12 credibility and the weight of the defendant's
13 testimony that you use to evaluate the testimony
14 of any other witness.

15 There is no magic way for you to
16 evaluate the testimony. Instead, you should use
17 your common sense and experience. In everyday
18 life, you determine for yourselves the
19 reliability of things people say to you. You
20 should do the same here.

21 Ladies and gentlemen, at this time that
22 concludes the instructions I'm going to give.
23 Later on, I will give a few more. Now is the
24 time for closing argument. Counsel?

25 ATTORNEY FALLON: May it please the

1 Court, Counsel. In our opening remarks to you,
2 we asked you to think about two questions as you
3 listen to the evidence, as you examine the
4 evidence, as you evaluated the evidence. And
5 those questions were:

6 Was he there? Did he help?

7 In thinking about answering those
8 questions, there's been a great deal of
9 testimony, a great deal of information provided
10 about the defendant, Brendan Dassey, and his
11 uncle, Steven Avery. But there's one other
12 person here who's important. And that is this
13 woman, Teresa Halbach, because this case is about
14 her as well.

15 In thinking about these questions, we
16 pose them this way because there's an old maxim
17 that seems to really fit; he who helps the guilty
18 shares the crime.

19 We're going to evaluate the evidence
20 from another prospectus. From what happened, the
21 big picture, in the words of the defendant, and
22 in the evidence that we presented.

23 Then we'll look at what corroborates
24 that. Why is it believable, why is it reliable,
25 what the defendant told us?

1 And then we'll talk about the party to
2 the crime. Specifically, why he is guilty of
3 these offenses. What is it that he did that made
4 him a -- a party to the crime.

5 And, finally, we'll look at the
6 evidence. We'll turn that prism, and we'll look
7 ever so slightly at the same evidence from
8 another perspective. And that's the choices that
9 he made. Comparing what he did and what he
10 didn't do. The choices that he made, the
11 decisions that could have been made, that should
12 have been made, but were not made. And those
13 decisions, along with what he -- what he didn't
14 do, along with what he did do, is the proof.

15 All right. What happened? October 31.
16 Just like any other Monday, Teresa Halbach gets
17 up, seems like any other day, any other workday
18 for her. Little did she know that this would be
19 her last.

20 You see, this day she was on the Auto
21 Trader beat. She had a full day of appointments.
22 An afternoon full of appointments. As you
23 recall, the first appointment was with Mr. Steven
24 Schmitz of New Holstein. Mr. Schmitz, had he
25 been called to testify, would have told you that

1 Teresa Halbach was at his residence about 1:30.
2 A ten-minute business transaction to place his
3 vehicle in the *Auto Trader Magazine*. And Teresa
4 appeared with a waist-length jacket, a white
5 shirt and blue jeans.

6 Upon the conclusion of their business,
7 he provided her an *Auto Trader Magazine* and a
8 bill of sale. And Teresa moved on to her next
9 appointment.

10 And that was with the Zipperers. You
11 recall that if JoEllen Zipler -- Zipperer had
12 been called, she would have told you that Teresa
13 Halbach was at her residence in rural Manitowoc
14 County between 2 and 2:30. About that time.
15 Again, about a ten-minute transaction. Teresa
16 was wearing a waist-length jacket, a white top
17 and blue jeans.

18 And, again, the transaction was brief
19 and concluded with a copy of the *Auto Trader*
20 *Magazine* and a bill of sale. And, as
21 Ms. Zipperer would have told us, it's about a
22 ten-minute ride to her next appointment. That
23 appointment was with a B. Janda, which, we all
24 know now, was the appointment with Steven Avery.
25 The appointment with death. Little did she know

1 what awaited her.

2 Let's look at the evidence more closely.
3 Remember, about 2:27 now, Teresa calls into Auto
4 Trader to Dawn Pliszka. Says, I'm on my way to
5 my next appointment. It's a ten-minute ride.
6 Thereabouts.

7 So somewhere between 10:35 and 10:40,
8 Teresa Halbach arrives. And at 2:41 in the
9 afternoon on October 31, Teresa makes her last
10 call. You recall Exhibit 56, the Cingular
11 records documenting her very last call at 2:41.

12 As you recall from the other stipulation
13 reached, at about 2:45 p.m. Bobby Dassey's
14 getting up. Getting ready to start his day. He
15 looks out the window, and what does he see?

16 Called to testify, he would have told
17 you he observed a blue/green Toyota Rav 4 stop
18 outside of his residence in close proximity to
19 the maroon van that his mother, Barb Janda, had
20 for sale. He would tell you that he saw a woman,
21 that he later learned was Teresa Halbach, exit
22 her vehicle and take pictures of that van.

23 Now, remember, this is 2:45. She
24 concludes with the pictures and where does she
25 go? Bobby Dassey tells us that she was walking

1 toward the residence of Steven Avery. He takes
2 his shower, he gets up and he hits the road at
3 3:00. He likes to go hunting before he goes to
4 work. He leaves at 3:00 and what does he see?
5 He doesn't see Teresa, but her vehicle is still
6 there. The Rav 4.

7 But when he comes back at five, Teresa
8 is nowhere to be seen, and neither is the Rav 4.
9 And we now know, based on the words of the
10 defendant, himself, that Bobby Dassey was not the
11 last Dassey to see Teresa Halbach alive.

12 An hour passes. An agonizingly slow
13 hour for Teresa Halbach, no doubt. You see,
14 she's been overcome. She's now handcuffed,
15 leg-cuffed and spread eagle on the bed of Steven
16 Avery so that he can have his way with her.

17 Enter the defendant, Brendan Dassey.
18 You will recall there's no disputing that he got
19 off the bus at 3:45, again, about an hour after
20 her arrival on the property, with his brother,
21 Blaine, and they head up the driveway to the
22 house. And, as you might expect, as usually
23 happens in families, the older brother gets his
24 way and Blaine gets the computer and the phone
25 first to arrange his night's plans. And the

1 defendant watches TV for awhile and then he goes
2 out to get the mail.

3 He goes down and he gets the mail. And
4 he's coming back to his house, and he looks at it
5 and says, oh, I got something here for Uncle
6 Steve. Well, I'll just take it over there. So
7 he goes over to Steve Avery's trailer, and as
8 he's knocking on the door, he hears screams.
9 Screams for help. And he's knocking. And as he
10 told us in his statement, it takes five minutes
11 for his Uncle Steve to answer the door. And when
12 he does, what is his observation? Steven Avery
13 is dressed in red shorts, a white t-shirt and
14 sweating.

15 Come on in, Brendan. So he goes in.
16 And in a matter of moments he begins to
17 understand what's occurring, what horrors are
18 occurring in that room, because he can look down
19 that hallway and see Teresa Halbach's body on
20 that bed, at which time his uncle extends a most
21 gruesome invitation. Do you want some, he says.
22 They talk.

23 The defendant is trying to decide, well,
24 I -- I don't know. I -- I'm too young. I --
25 I'm -- I'm not ready for this. Do you want some?

1 This is between 4 and 4:30. But it's starting to
2 get late now. The defendant knows he's got to
3 get home, because his mother's going to be home
4 at five and Blaine is home. Got to find out
5 what's going on.

6 So he goes home and he has dinner with
7 his brother. He talks to his brother. And his
8 mother comes home and he talks to his mother.
9 And he learns that she's going to Green Bay to
10 see the mother of Mr. Tadych. He knows that his
11 brother, Blaine, is going treat or treating.

12 So what does the defendant decide to do?
13 He decides to return to Teres -- to Steven Avery.
14 He decides to take him up on the invitation. But
15 before he does, he gets a call. He gets a call
16 from Mike Kornely. I think Mr. Kornely was off
17 maybe a half an hour. He gave us an hour in
18 which that call would made. He thinks six. I
19 think that call came in closer to 5:30. The call
20 probably came in at 5:30, and Brendan clearly did
21 talk to Mike Kornely, we have no dispute about
22 that.

23 But he leaves and goes back. We know he
24 goes back. We know he goes back because he tells
25 the police he goes back. We know he goes back

1 because he tells his mother in those phone
2 conversations, ten weeks later on May 13 and May
3 15, that he went back. That he was there.

4 And we also know through one other fact,
5 he knows that Avery's fiancé, Jodi Stachowski,
6 calls, and she told us that she called the first
7 time about 5:30. So we know he went back.

8 Meanwhile, back at the Avery trailer,
9 Teresa remains a prisoner and we can only
10 imagine. But the defendant, this man, he goes
11 back. Why? Because he wanted sex. Because he
12 wanted to know what it was like. Because he
13 decided, he made his first choice, to accept the
14 invitation.

15 So he goes back and he rapes Teresa
16 Halbach while his uncle watches and applauds his
17 effort. Ata boy, Brendan, that's the way to do
18 it. Does that sound like something you'd make
19 up? So they go back to the front room and they
20 talk about their deeds. But more importantly,
21 they talk about, what are we going to do next?
22 Well, the answer is obvious. They decide to kill
23 her.

24 They go back to the bedroom. Steven
25 Avery stabs her in the stomach. He hands the

1 knife to the defendant. Says, here, cut her.
2 And the defendant, he tells us he does. Right
3 across here. Tells us that Mr. Avery chokes her
4 to the point of unconsciousness.

5 The defendant is then told to cut off a
6 lock of her hair. A souvenir, no doubt. She's
7 unconscious. They uncuff her. They tie her up
8 and they carry her unconscious body to the
9 garage. And then Steven Avery gets another
10 monstrous idea. I know, instead of burying her
11 in a nearby pond, we'll burn her. But, first,
12 but, first, Brendan, you wait here. I got to go
13 back and get the gun.

14 And at that moment, the defendant
15 becomes the silent sentinel for the last moments
16 of Teresa Halbach's life. Steven Avery returns
17 to that garage and shoots her 10 or 11 times on
18 the floor of that garage. And in the blink of an
19 eye the killers become pallbearers carrying her
20 out on the Black Jack creeper to the fire that's
21 already started, to the fire that's ready to go
22 under cover of darkness, to a bonfire that's
23 common on that property. Carrying her to the
24 funeral fire.

25 Only this is not a funeral fire of days

1 of antiquity where family and friends came to
2 honor the dead for their life. This was not
3 that. This was an incineration. It was not
4 conducted to honor her, it was conducted to
5 destroy her. It was conducted, more importantly,
6 to destroy the evidence of these heinous acts.

7 Moments pass, and it's time to clean up.
8 It's time to cover up. The SUV is taken down to
9 the other part of the salvage yard. It's covered
10 with tire -- uh, excuse me, with brush, fence
11 posts, with brush, and the hood of a car. All
12 part of the plan to cover up these acts.

13 Then it's back to the fire. What are we
14 going to do? Now, it's time for the fire to be
15 tended. More tires, more wood, more brush, a van
16 seat are all thrown onto the fire to conceal the
17 horrific acts that they have done.

18 Now, let's step back for a moment. It's
19 about 7, 7:30 -- 7:30 to 7:45 now. The
20 defendant's mother is returning with Scott Tadych
21 from Green Bay. And you recall the stipulation.
22 If called to the -- testify, Mr. Tadych would
23 state that between 7:30 and 7:45 on October 31,
24 he was at the property where he dropped off Barb
25 Janda.

1 Tadych would state he observed a large
2 fire in the burn area behind the detached garage
3 of Steven Avery. Tadych would further indicate
4 at that time he observed Steven Avery and the
5 defendant standing by the fire.

6 Time passes. But there's more cleaning
7 up to be done. There's more coverup to be done.
8 The floor in the garage where the shooting
9 occurred has to be cleaned with paint thinner,
10 with gasoline, and with bleach. Bleach. Why
11 would you use bleach to clean automotive stains
12 off a floor in a garage? You wouldn't. But, if
13 you're Steven Avery, you would know to use bleach
14 to destroy the evidence.

15 What else is destroyed? Her clothes.
16 There wasn't just a bag of rags that was used to
17 clean up. Teresa Halbach's clothes were used to
18 clean that up. And they were thrown in the fire
19 along with the bedding. And just as Teresa and
20 her clothes was burned, just as her personal
21 effects were earlier disposed of in the burn
22 barrel, the camera, the cell phone and the like,
23 her purse, her palm pilot, all of that, burned.

24 Eventually, the killers have to go back
25 to the fire, because to consume a body requires a

1 great deal of heat. More tires, more fuel. And
2 they go back and they tend the fire. And they
3 watch the fire. And they must have thought they
4 were home free. But we know they were not,
5 because Teresa's remains bear silent witness to
6 the killer's deeds. Tom Sturdivant, Rod Pevytoe,
7 Leslie Eisenberg and Dr. Jeffrey Jentzen would
8 see to that.

9 And you recall Dr. Jentzen's
10 stipulation. He would have told us, in his
11 expert opinion to a reasonable degree of medical
12 certainty, that the manner of death was homicide
13 and the cause of death was gunshot.

14 All right. Now, the question is, why
15 should we believe the things that the defendant
16 has told us? Let's talk about corroboration.
17 Teresa Halbach was in Steven Avery's trailer on
18 October 31. How do we know? His trailer was
19 searched. And what did we find? An *Auto Trader*
20 *Magazine* and a bill of sale. Just the same
21 information that Steven Schmitz received, that
22 JoEllen Zipperer received.

23 Teresa Halbach was restrained in Steven
24 Avery's trailer. How do we know? Handcuffs.
25 Handcuffs and leg cuffs. Restraints.

1 Teresa Halbach was shot in the garage.
2 How do we know? Well, remember, there was a
3 search warrant that was issued shortly after the
4 defendant gave his statement. His confession.
5 We have bullet fragments from a .22 caliber. We
6 have shell casings, 11 shell casings. Shell
7 casings that were discharged from this weapon.
8 Bullets discharged from this weapon. A
9 .22 caliber Marlin Glenfield rifle. The very
10 rifle that hung on the rack in Steven Avery's
11 bedroom. The very rifle that fired the bullet
12 which was found right there, in bullet number 23,
13 found in the garage. The bullet with the profile
14 of Teresa Halbach. Her DNA is on that bullet.

15 Now, let's think about that for a
16 minute. That rifle was effectively seized by 11
17 a.m. on Saturday, November 5, when the SUV was
18 discovered on that property, because law
19 enforcement had control of those premises. It
20 was collected into evidence the next day, Sunday,
21 the 6th, as the testimony revealed.

22 Now, that gun is the only gun that could
23 have fired the bullet with Teresa Halbach's DNA
24 on it. All right. Well, we know Teresa Halbach
25 was alive on Monday morning. We know she was

1 alive on Monday afternoon. So that bullet with
2 her DNA had to have been fired from that gun
3 between Monday afternoon, October 31, and
4 Saturday, the 5th, because how else does that
5 bullet get in that garage with her DNA on it?

6 The bullet gets there because it comes
7 from the gun of Steven Avery, from the shots
8 fired by Steven Avery, that only this man, the
9 defendant, knows. He told us she was shot ten
10 times. That's pretty close. As we say, we have
11 11 cartridges. She was shot with a .22 caliber
12 rifle. We have a .22 caliber rifle.

13 And what else did we find in the search?
14 More ammunition, .22 caliber long rifle magazine,
15 mini mags found in the trailer of Stre --
16 Steven -- Steven Avery.

17 Teresa Halbach was shot in the head
18 twice. She was shot on the left side of the
19 head. How do we know that? Well, we have two
20 bits of information. Dr. Leslie Eisenberg, the
21 forensic anthropologist, told you that she
22 examined the cranial fragments and found, not
23 one, but two fragments that showed internal
24 beveling consistent with a projectile, consistent
25 with bullet entry wounds to the left side of the

1 head. Remember? The parietal bone. And into
2 the back of the head, the occipital bone.
3 There's an example of the cranial damage to the
4 parietal bone right there. A bullet entrance
5 wound.

6 X-rays. Remember the testimony of
7 Mr. Olson? There's an x-ray from the parietal.
8 That's the inside picture. Traces of elemental
9 lead. Well, lead comes from bullets. There's
10 the parietal and the occipital. Left side of the
11 head and the back side.

12 Teresa Halbach's body was loaded into
13 the rear of an SUV after she was shot. How do we
14 know that? The defendant told us they did that.
15 Well, we have Sherry Culhane and Nick Stahlke to
16 tell us about that.

17 This particular photograph here shows
18 the presence of a stain on the right rear well
19 plastic molding. A stain that Mr. Stahlke told
20 us was consistent with hair. With bloody hair.

21 But that's not the only blood in the
22 back. We have the cargo door, the tailgate area
23 where you have impact stains, you have dropping
24 passive gravity stains. All blood stains. All
25 blood belonging to Teresa Halbach. Clearly,

1 corroborating the fact, as the defendant told us,
2 that her body was placed in and out of that
3 vehicle.

4 He told us that her body was burned. It
5 was mutilated in the fire pit behind Avery's
6 garage. How do we know? Well, let's look at the
7 site of the general layout. We have the
8 defendant's trailer, the van, Mr. Avery's trailer
9 and the burn area all in immediate close
10 proximity. And you remember the defendant told
11 us it only takes a minute to walk between his
12 place and Steven Avery's. The burn area contains
13 human remains. Remember, the silent witness.

14 Tom Sturdivant and Rod Pevytoe. Mr.
15 Sturdivant, the one who began to find the remains
16 of Teresa Halbach. The remains which were
17 provided to Dr. Eisenberg from this burn pit just
18 as the defendant said.

19 As Dr. Eisenberg told us, this was the
20 first bit of forensic evidence from that fire
21 pit. Now, all you have to do is look at that
22 box. Those are the remains of Teresa Halbach.
23 If that's not mutilation, if that's not burning
24 to the point of mutilation, to the point of
25 destroying, as best they could, her remains, I

1 don't know what is.

2 Remember Mr. Pevytoe telling us,
3 Dr. Eisenberg and Sherry Culhane, this piece of
4 bone recovered from the pit had the muscle tissue
5 of Teresa Halbach. This was tested and the DNA
6 confirms a match to Teresa Halbach. There's no
7 doubt that it is her remains in the pit just as
8 the defendant told you.

9 But as if that's not enough, do we have
10 any more? Dr. Eisenberg told us that there were
11 representative samples from almost every bone in
12 the skeleton of Teresa Halbach that was found in
13 that burn pit. You remember this photograph?
14 She was assisted by Trooper Austin from the
15 Wisconsin State Patrol, who put together this
16 diagram reflecting the -- the bone fragments
17 which were recovered from head to toe. There's
18 no doubt that she was burned in that pit, that
19 she was mutilated in that pit.

20 And if we needed more, we have more.
21 Dr. Simley. Tooth No. 31. The molar. He
22 fracture matched it together, compared it with
23 the dental x-rays he received from Teresa's
24 dentist, and was telling you that it was very
25 consistent, highly consistent with Teresa

1 Halbach.

2 So, you have DNA, you have the defendant
3 telling us, you have a dentist confirming all
4 what the defendant told us, it is her remains in
5 that burn pit. He told you that a van seat and
6 tires were thrown upon the fire. Is there any
7 doubt of that? There is no doubt.

8 Remember the testimony -- excuse me --
9 of Special Agent Pevytoe, with 27 years
10 experience in the Arson Bureau for the Wisconsin
11 Department of Justice, examining more closely the
12 pit and its remains. And what did he tell us?
13 He told us many things. Steel-belted wire from
14 radial tires was harvested from that pit. And
15 when he observed that wire, there were bone
16 fragments in that wire. So we know the tires
17 were used to consume Teresa Halbach. We also
18 know tires were used, but he could tell you that
19 encrusted-like surface of the ground from the
20 tires being consumed and melting down, from the
21 smell, he could confirm there were tires.

22 He also commented on this, Exhibit 170.
23 The implements of mutilation. You can still see
24 wire from steel-belted radial tire. There's the
25 picture from the scene as it was. You can see a

1 tire in the background and the van seat.

2 And, as Agent Pevytoe told us, this ball
3 of wire right here is steel-belted radial tires,
4 and in that spool of wire were more remains, when
5 he first saw them, of Teresa Halbach. He said
6 there were many tires, multiple tires, at least
7 five, probably more. Who knows how many radial
8 tires that weren't steel-belted were used in the
9 incineration of Teresa Halbach? He told us that
10 fires -- fired excellent source of fuel.

11 But he also told you about the van seat.
12 This van seat. A van seat, for all intents and
13 purposes, is going to take two people to pick up
14 and put on the fire. Agent Pevytoe told you that
15 the polyurethane in that seating is like solid
16 gasoline. It's a fuel that's roughly the
17 equivalent of the fuel in the tires, that you're
18 going to get quite a blaze from a tire. You can
19 have just a couple of tires and have a flame
20 that's going to go back and forth, three, four,
21 five feet. Couple more tires in, you might have
22 one that's going to go nine or ten feet with a
23 great deal of heat. Enough heat to consume a
24 body.

25 The defendant told us that Teresa

1 Halbach's SUV, her Rav 4, was driven to the pit
2 area, as they call it. To the salvage yard. To
3 a point in the yard as far away from Avery's
4 trailer, far away from the defendant's trailer,
5 in the far corner.

6 The defendant told you in his confession
7 that the vehicle was covered with branches and a
8 car hood as we talked about earlier. Well, we
9 have the picture upon recovery that night.
10 There's the car hood, the fence post and the
11 other items. Earlier in the day, upon its
12 initial discovery, another view. Branches on
13 top, boxes, cardboard, and there's the hood, just
14 as the defendant told us. The license plates
15 were removed. You recall the testimony and
16 stipulation. They were found by a firefighter in
17 an abandoned car on that property.

18 But here's a key point. In that
19 statement the defendant tells us that Steven
20 Avery opened the hood of that vehicle. How do we
21 know? Well, based on that statement on March 1,
22 they swabbed the hood and obtained a DNA profile
23 on that hood. A DNA profile of Steven Avery.
24 Only the killer and his accomplice would know
25 that, to look there, because law enforcement had

1 not looked there before. And not until he told
2 them to, is when they found this.

3 The garage floor was cleaned with
4 gasoline, paint thinner, and bleach. Remember
5 the testimony -- excuse me -- of John Ertl.
6 Mr. Ertl told us that one of his duties for the
7 crime lab is to come in and check areas for
8 possible blood stain residue. And one of the
9 tools they use is a -- is a spray called luminol,
10 because it reacts to a -- a number of items. But
11 most importantly it reacts to blood.

12 But when asked, what else does it react
13 to? He said, bleach. It reacts "vigorously", I
14 believe was his word, to bleach, just as it does
15 to blood. And although subsequent testing found
16 no blood, the luminol reacted to bleach. Bleach
17 used to clean the stain in the garage. Paint
18 thinner, bleach. Recovered items.

19 But here's a critical fact. The
20 defendant's blue jeans. Exhibit 58. Those
21 certainly look like bleach stains to me. The
22 defendant told the officers on March 1, before he
23 gave his statement, that these were the pants he
24 was wearing when they asked him, hey, we heard
25 from somebody else that you had bleach on your

1 pants. He said, yeah, there is the bleach.

2 There are the pants.

3 Now, it seems to me the last time that I
4 spilled bleach on any of my clothes, unless I
5 knew it, unless I saw it, you don't really
6 recognize that there's bleach on there until
7 they're washed. The defendant is trying to sell
8 you a bill of goods saying, well, I -- I didn't
9 bend over, I didn't get dirty, but I decided to
10 wash my pants even though I just put them on an
11 hour or two earlier. I don't think so.

12 The defendant told you that the key for
13 Teresa's vehicle was put, by Mr. Avery, in his
14 bedroom. The key was discovered in a search in
15 the defendant's bedroom. Now, that search
16 occurred on November 8.

17 Teresa Halbach's clothes. He told us
18 they were burned in the pit, but why should we
19 believe him? Well, we have the five Daisy
20 Fuentes rivets recovered in the burn area. We
21 know that Teresa had a pair of Daisy Fuentes
22 jeans from her sister, Katie. Exhibit 13. A
23 pair very much like these. A pair with six
24 rivets. Rivets that look just like that.

25 You remember Agent Sturdivant telling

1 you about a zipper pull, also, that he found when
2 he first began searching that burn area on
3 November 8. So we have a zipper pull, we have
4 Daisy Fuentes rivets, and I think he also told
5 you some grommets that are, no doubt, from her
6 shoes.

7 The defendant told you that his uncle's
8 finger had a cut on it at the time the SUV was
9 hidden in the corner of the salvage yard. All
10 right. There's multiple points that corroborate
11 this. A search of the defendant, Steven Avery.
12 You recall this picture with a cut on his hand.
13 Interestingly enough, the right hand. The hand
14 that you would put a key, if you were going to
15 start a car with your right hand, you'd put it in
16 that ignition. And where is the stain? Right
17 next to the ignition. Right here. Ignition is
18 right there behind the steering wheel, and
19 there's the stain. So if you were actively
20 bleeding, that's what you would expect to see.
21 Blood right where you would expect to see it.

22 But there was blood elsewhere.
23 Remember? Steven Avery's blood was on the CD
24 case and on the car seats, corroborating the fact
25 that he was actively bleeding, that he did have a

1 cut on the day that that vehicle was hidden.

2 We have burn barrel contents. Defendant
3 said he saw items in the burn barrel. Well, we
4 know that he was right, because recovered from
5 the burn barrel were various electronic devices,
6 or at least their remains. A canon A310
7 PowerShot camera, a Motorola RAZR phone, a palm
8 pilot, all recovered from the barrel. Things
9 that only the killers would know.

10 We have a couple more. We have more
11 corroboration. Jodi Stachowski testified that
12 she called Steven Avery twice on October 31. The
13 defendant told us that she called twice on the
14 31st.

15 Before we get to that, we have even two
16 more points. And it's almost like it's like
17 the -- the elephant in the room that no one's
18 paying attention to for corroboration. There are
19 two points. The richness of the detail provided
20 by the defendant in that confession tells us that
21 it's true. You can't have that rich of a detail
22 unless you were there, unless you experienced it,
23 unless you lived through it.

24 And the other one is the fact that
25 everything he said, everything he said in that

1 story, corroborates Steven Avery's involvement in
2 this. There was nothing inconsistent that
3 suggested anyone else other than Steven Avery was
4 his partner in this heinous act.

5 All right. Party to a crime. What he
6 did. Let's talk about that.

7 First degree intentional homicide,
8 mutilation of a corpse, second degree sexual
9 assault. I want to talk a little bit about
10 "party to the crime" before we review,
11 specifically, how the evidence applies to the
12 defendant. One is a party to the crime if they
13 directly commit it or they intentionally aid and
14 abet the person who's committing the crime.

15 The Court has just instructed you, and
16 let me emphasize, a person intentionally aids and
17 abets the commission of a crime when acting with
18 knowledge or belief that another person is
19 committing or intends to commit a crime. He
20 knowingly either assists the person, he helps the
21 person, or he is ready, willing to assist, and
22 the person who's doing the act knows of the
23 willingness to assist.

24 All right. So let's talk about that
25 knowledge component. Think back. He opens the

1 door, and he knocks, and he hears screaming. He
2 hears screaming for help. He goes in and he sees
3 her tied to the bed, cuffed, spread eagle. And
4 he hears the words again, help me. Clearly,
5 there's knowledge right there. He knows there's
6 a crime afoot. Whatever is happening, it isn't
7 good and he knows it.

8 But the critical fact is the invitation
9 by the defendant. The invitation to have sex
10 with Teresa Halbach. The invitation to rape her.
11 And he chooses. He decides to accept. So he
12 participates. He directly commits second degree
13 sexual assault because he rapes her. He assists.
14 He helps kill her. He rapes her. He cuts her
15 throat. Remember? The defendant stabs her in
16 stomach and he gives the knife to the defendant
17 and says, cut her. He cuts her.

18 He helps uncuff her. He holds her down
19 to make sure she doesn't try to get away, after
20 they've stabbed her and choked her, so that she
21 can be tied up. He helps to carry her to the
22 garage. He helps put her into the Rav 4 after
23 Avery shoots her. He watches her while he gets
24 the gun.

25 He helps carry her on the Black Jack

1 creeper to the fire pit. And he helps throw her
2 on the fire. He helps putting fuel on the fire;
3 tires and wood and brush and the van seat. All
4 affirmative acts. All things that he did. He
5 helped.

6 He gets the golf cart so that -- to make
7 it easier to collect a van seat, a wood cabinet,
8 and whatever else, and tires. Got to work fast
9 before everyone gets home. And he watches. He's
10 ready, willing and able to assist as Steven Avery
11 tends to the incineration of Teresa Halbach.
12 He's there. He knows what's going on. He saw
13 the body parts. You bet he did. And he told his
14 cousin that he did. We know that to be true.

15 Now, before we do that, let's talk a
16 little bit more about these jury instructions.
17 First degree intentional homicide. The
18 defendant, or a person with whom he was acting,
19 in this case, Steven Avery, caused the death of
20 Teresa Halbach. There is no doubt.

21 "Cause" means the defendant's act or
22 acts, or the person with whom he was acting, was
23 a substantial factor in producing her death.
24 Well, cutting her throat, tying her up and
25 carrying her to the garage so that Steven Avery

1 can shoot him -- shoot her is certainly a
2 substantial act in furtherance of her death. A
3 substantial factor in producing her death.

4 Clearly, they intended to kill her.
5 After they're done raping her, they have a little
6 chat in the front room to decide what we're going
7 to do next. That's the point they decide to kill
8 her. That's the point where he had the
9 knowledge. He knew that they were going to
10 commit a crime. He knew they were going to kill
11 her because they had to kill her, because she'd
12 been to the Avery Salvage Yard many times before.
13 She knew her killers. She certainly knew Steven
14 Avery. So to cover up the sexual assault, they
15 had to kill her, and they did. Those are the
16 acts.

17 Now, I'm going to comment on you've been
18 given what we call in the trade, "a lesser
19 included offense" called "first degree reckless
20 homicide". At clearly, at a minimum, his
21 behavior is reckless. It's clearly utter
22 disregard for human life. The callousness by
23 which he conducted himself. Turning a cold ear
24 to her pleas for help. Don't do it. Do the
25 right thing. Please. But he turned a deaf ear

1 and he didn't do the right thing. He wanted to
2 do what he wanted.

3 Well, that, at a minimum -- that is so
4 clearly beyond reckless. The evidence calls for
5 a verdict of guilty on first degree murder as a
6 party to the crime. He helped kill her. And
7 while it's true that we make no bones about it
8 that Steven Avery was the one who fired the gun,
9 he was clearly assisted by Brendan Dassey.

10 There is no question on mutilation of
11 the corpse. Why? You have to burn the body. We
12 got to get rid of the evidence. Fire is better
13 than discarding a body in some pond some near --
14 somewhere nearby. A fire will consume the
15 remains. There'll be nothing left. We'll get
16 away. Or so they thought.

17 Second degree sexual assault only
18 requires two elements. Did he have sexual
19 intercourse with her, and he did so without her
20 consent. Well, I think "without consent" is
21 pretty apparent here. And he told you. He
22 didn't have to tell you. That whole confession,
23 he could have laid it all on Steven Avery, but he
24 didn't. No one had to -- he didn't have to admit
25 that he raped her, but he did. We know he did

1 it.

2 All right. Now, let's look at the
3 evidence from another perspective. Let's look at
4 the evidence from the perspective of what he
5 didn't do, of the choices he made, because it's
6 important. While we are free to choose our
7 actions, we are not free to choose the
8 consequences of our actions. And this is about
9 consequences. This is about justice.

10 What's the first choice as we go back
11 and think about the evidence? What was the first
12 choice he really had to make here? Well,
13 remember, it's between 4 and 4:30, and he's over
14 there at Steven Avery's trailer, and he sees her
15 tied to the bed. He's asked, do you want some?
16 It's decision time.

17 Well, he could have tried to rescue her.
18 But I'll grant him that. He's not going to pull
19 that off. We all know that. But what were the
20 choices that he had? He could run, leave, call
21 9-1-1. He could just say, Uncle Steve, you can't
22 do this. He could have at least tried to talk
23 him out of it. He could have simply left and
24 said, no, to the invitation. And when he got
25 back at 5:00, he could have told his mother. As

1 we know in the call, and as she rightly noted, I
2 would have put you in the car and we would have
3 left.

4 The defendant was not someone who was in
5 the wrong place at the wrong time. He was in the
6 right place at the right time. He was the only
7 person who could have saved her, and he chose not
8 to save her. Why? Because he wanted to know
9 what it was like. That was the choice he made.

10 A second choice. Showing his
11 complicity. He didn't have to go back.
12 Remember, he's at home at 5:00. He hadn't done
13 anything yet but see what was likely to happen.
14 He hadn't done anything but receive an
15 invitation. At 5:00, he didn't have to go back.
16 He could have told Blaine. He could have told
17 his mother. He could have -- I got to go trick
18 or treating, Blaine, you got to take me. Or,
19 mom, can I go with you? But he didn't. He chose
20 to go back. That's the decision he made.

21 The third choice. Okay. He's still got
22 a chance to rape or not to rape Teresa Halbach.
23 Try to rescue her probably wouldn't have been too
24 successful. He could have ran out and called
25 9-1-1. He could have left. Or, you know what?

1 At least he could have said, no. But he didn't.
2 He chose to rape her. Even with her saying,
3 don't do it, do the right thing, tell him to
4 stop. But he didn't.

5 So think about the decisions that he had
6 to make along the way just in a matter of
7 moments. He's got to go into that room. He's
8 got to take his shirt off. Got to take his pants
9 off. He's going to take his shoes off. He's
10 going to take his underwear off. He's going to
11 climb into that bed and he's going to penetrate
12 her.

13 All steps along the way. Decisions.
14 Stop anywhere. Say, no, I don't want to do this,
15 Uncle Steve. But he didn't. He gets done and
16 they go into the other room, and he gets his --
17 Instead of making a call, instead of receiving
18 the thanks from the Halbachs, instead of
19 receiving that adulation from the -- from the
20 family for reporting this crime and saving their
21 daughter, instead of receiving thanks from them,
22 he's receiving thanks from Steven Avery. Ata
23 boy, that's how you do it. That's the choice.
24 He could have chosen thanks from the Halbachs,
25 but he chose thanks from his uncle.

1 Fourth choice. The decision to help
2 kill her. All right. He'd already found out
3 what he wanted to know. He found out about sex.
4 He didn't have to kill her. Could have let her
5 go. At least a conviction for rape is better
6 than a conviction for murder. Could have called
7 9-1-1, couldn't you. You know what? At that
8 point he probably wasn't going to call 9-1-1, but
9 he could have said, no, I don't want to do it.
10 He could have left. He could have gone back to
11 his trailer. But he didn't.

12 So he decides. He goes back into that
13 bedroom and his uncle stabs her, and he takes the
14 knife and he cuts her throat right across here
15 above the Adam's apple. Instead of saying, no,
16 instead of leaving, that's what he chooses to do.

17 There's a second part. He also chooses
18 to help carry her to the garage. He chooses to
19 help uncuff her, to hold her down while Uncle
20 Steve ties her up. He helps carry her to the
21 garage. He could have said, no. He could have
22 ran out that door and said, I can't do it
23 anymore. I just can't do it. This is wrong.
24 But he didn't.

25 Put her in the SUV, or, excuse me, on

1 the garage floor and he's left alone with her.
2 Now, think about that. He's left alone for a
3 moment or two. Probably a minute. He knows from
4 their conversation that Avery's going to go get
5 that gun. He could have ran out that door. He
6 did not have to be there. But he stayed as the
7 silent sentinel for Teresa Halbach's last moments
8 while his uncle fired 11 shots into her body.

9 The final choice was his choice to help
10 dispose of the body, to help cover up this crime,
11 to lie about it. He gets the cart. He gathers
12 the fuel, as we've just said, and they burn her,
13 they incinerate her in their effort to destroy
14 the evidence. The mutilation was made and done
15 for the purpose of concealing these brutal,
16 heinous acts. That's why that corpse was
17 mutilated. That's why it was burned. That's why
18 the fire was tended with the shovel and the rake,
19 to break up into pieces, to create more surface
20 area to burn the body quicker, more efficiently.

21 The cleanup and the coverup. Let's
22 clean up the garage. Let's hide the SUV. Let's
23 burn the bedding. Let's burn her clothes. Could
24 have stopped anywhere. But he didn't.

25 And if he is as innocent as he would

1 have you believe, he didn't have to lie to
2 Detective O'Neill. He who helps the guilty
3 shares the crime. Was he there? Absolutely. Is
4 there any doubt? This is beyond any doubt. He
5 clearly was there. The richness of the detail,
6 the corroborative evidence answers that question
7 as does it the second. Did he help? Did he
8 assist? Was he ready, willing and able to
9 assist? Yes. Did he assist? Yes, he did. Did
10 he help? Did he help Teresa Halbach? No. Did
11 he help Steve Avery? Absolutely.

12 The defendant cannot escape the
13 responsibility for his actions by claiming they
14 were the ideas, that it was the fault of Steven
15 Avery, because, in essence, this case comes down
16 to this very point. The invitation to
17 participate in these monstrous acts clearly
18 speaks to Steven Avery. No doubt. But this case
19 isn't about the invitation, this case is about
20 the acceptance of that invitation, and the
21 acceptance of that invit -- invitation speaks to
22 the defendant, Brendan Dassey.

23 The evidence calls for verdicts of
24 guilty on first degree murder, for second degree
25 sexual assault and for mutilation of a corpse. A

1 weakened sense of responsibility does not weaken
2 the fact of responsibility. And there's only one
3 verdict. Those are verdicts of guilty. And we
4 ask you to return those verdicts.

5 On behalf of the prosecution team, Mr.
6 Kratz, Mr. Gahn, Mr. Fassbender and Mr. Wiegert,
7 we thank you for your time and your
8 consideration.

9 THE COURT: All right. We will recess
10 until 2:00. Uh, ladies and gentlemen, again, I'll
11 advise you the time for deliberations has not yet
12 arrived so don't discuss this or anything about the
13 case amongst yourselves. All right. We're
14 adjourned.

15 (Recess had at 12:48 a.m.)

16 (Reconvened at 2:05 p.m. Jury in)

17 THE COURT: Good afternoon. Is the defense
18 ready to proceed?

19 ATTORNEY FREMGEN: Yes, Judge, thank you.

20 THE COURT: Go ahead.

21 ATTORNEY FREMGEN: In the opening, I -- I
22 explained to you that a good example of a trial is a
23 novel. There's a --

24 THE COURT: Counsel, you may wish to
25 turn the microphone --

1 ATTORNEY FREMGEN: Oh.

2 THE COURT: -- on.

3 ATTORNEY FREMGEN. Thank you, very much.

4 Can you hear me? Okay. Sorry about that. I
5 don't know if you're familiar with Sherlock
6 Holmes. I tend to like Sherlock Holmes novels
7 and there's a novel called the *Memoirs of*
8 *Sherlock Holmes*. And it's actually kind of a
9 compilation of stories, and one of the stories is
10 called the *Silver Blaze*.

11 And if you're familiar with Sherlock
12 Holmes and Sherlock Holmes stories, there's two
13 main characters. There's Sherlock Holmes, who is
14 the intelligent private detective, and there's
15 Dr. Watson, his sidekick, who he often has do the
16 grunt work. Dr. Watson goes and collects
17 statements from witnesses, talks to the police.
18 Dr. Watson is the one who is, essentially, doing
19 all the legwork.

20 And in the *Silver Blaze*, Dr. Watson goes
21 and talks to all of the witnesses and the police
22 officer. And he comes back to -- to Holmes, who
23 has a tendency to sit there and puff on his pipe
24 while he's listening to Dr. Watson, and he starts
25 puffing away as Dr. Watson explains and runs

1 down, this is what we know. We know this, we
2 know this, we know this. And as he's talking,
3 Sherlock Holmes interrupts him and says, well,
4 what about the dog?

5 Watson doesn't understand, and just
6 continues to keep reciting what he's learned from
7 the investigation. And he be -- begins to
8 continue to recite the investigation. And,
9 again, one -- Holmes interrupts and says, well,
10 what about the dog?

11 Finally, Watson says, Holmes, what do
12 you mean, what about the dog? And Holmes says,
13 what did the dog do? Watson starts sifting
14 through his notes and turns to Holmes and says,
15 the dog didn't do anything. And Holmes says,
16 there -- there you have it. I know who's the
17 killer. The killer is a person the dog knows.

18 Essentially, what Holmes -- The story
19 in -- in *Silver Blaze* is that Holmes was able to
20 determine that it's not necessarily what you
21 know, it's not necessarily what you see and what
22 you hear, sometimes it's what you don't see and
23 what you don't hear that's as important. And
24 that's something that I wanted to touch upon in
25 this case.

1 There's a lot in this case that we don't
2 know, there's a lot in this case we don't see,
3 and there's a lot in this case that we don't
4 hear. Much has been talked about DNA, and the
5 State focuses on DNA in their, uh, closing. They
6 talk about it in the trial. They have
7 witnesses -- several different witnesses that
8 explain what DNA is. Sher -- uh, Sherry Culhane,
9 Nick Stahlke. DNA is a very important aspect of
10 this case.

11 But what -- what we know is that they
12 tested over 180 items, over 500 items submitted
13 to the crime lab, not all for DNA, but items
14 individually. What we do know about the DNA is
15 that none of it matches Brendan Dassey.

16 We do know that there are handcuffs and
17 leg irons that were found in Steven Avery's
18 residence. The same handcuffs and leg irons that
19 the State brought out to show you. The same ones
20 that have Steven Avery's DNA on them. But
21 nothing with Brendan Dassey. Or Teresa Halbach
22 for that matter. There is no evidence of DNA
23 matching Brendan Dassey on any of the evidence
24 that's submitted to this Court, to you jurors to
25 consider.

1 Nothing on the rifle. The rifle that
2 was used, according to the State, according to
3 the witness, to shoot Teresa Halbach. There is
4 blood in Steven Avery's house. They find it on
5 the molding. But that's not Brendan Dassey's.
6 They find it in his bathroom. But that, as well,
7 is not Brendan Dassey's.

8 We do know that they decided not to test
9 certain items. The creepers. Now, the creepers
10 seem to be a pretty significant piece of evidence
11 for the State. But what we do not hear and do
12 not see is any evidence that suggests the
13 creepers were actually used by Brendan Dassey.

14 Mr. Fallon mentions in his closing
15 argument that this is how it happened. He
16 analogizes it to a funeral procession. Using the
17 creeper to move the body from one place to
18 another. But there's no blood found on the
19 creeper. And, yet, as important a piece of
20 evidence that this creeper apparently is, if it's
21 brought up by the State as being the item that
22 moved this body to the burn pit, why is it not
23 tested for DNA? The answer we received from
24 Sherry -- Sherry Culhane was, no one asked her
25 to. No one asked her to test it for DNA.

1 She looked for blood. That made sense,
2 because the theory of the State's case is that
3 this piece of evidence, this creeper, about
4 three- four-feet long with wheels, was used to
5 wheel Teresa Halbach to the burn pit. Yet, they
6 decide not to even test the creeper for DNA.

7 The knives. She indicated that they
8 received a number of knives. The police went
9 through Steven Avery's house, took out every
10 knife in the kitchen, sent the items down to the
11 crime lab. The crime lab looked for blood and
12 that was it. There was no blood on them. So
13 they stopped. Why? They were told -- they were
14 not told to test for DNA.

15 Now, State points out during the trial
16 when asked questions of Sherry Culhane, well,
17 could it have been wiped clean? And she said,
18 sure. Would you have been able to obtain DNA if
19 it had been wiped clean? Probably not. But the
20 bullet would -- had no visible blood, and she
21 talked about how they washed the bullet to be
22 able to tell if there was DNA, and that they did
23 find DNA. Teresa Halbach's DNA. So it is
24 possible. Why did they choose not to wash the
25 knives? They chose not to.

1 Brendan's jeans. They had bleach on
2 them. They appeared to be a significant piece of
3 evidence. The State pulled them out, showed you
4 the jeans again. When they tested it, they found
5 no blood. If he were crouched down on the
6 ground, as was presented to you by one of the
7 State's witnesses, why isn't there blood? They
8 could have tested for DNA. But, again, they
9 chose not to. Didn't find the blood. They chose
10 not to test.

11 And the hairs. Again, they chose not to
12 test. It's too difficult. Too much.

13 They went through yards and yards of
14 soil. You saw the pictures. Three, four, five
15 crime lab technicians digging through the soil to
16 find minute pieces of bone and teeth, which they
17 found. The box that Mr. Fallon referred to,
18 showed you the picture of, they found minute
19 pieces of bone by sifting inch by inch, piece by
20 piece through the dirt.

21 But the officer said it was just too
22 difficult to go through hundreds or thousands of
23 hairs in a vacuum. Again, that was their choice
24 not to fur -- fully investigate and fully
25 corroborate Brendan Dassey's statement.

1 The shell casings on the garage floor
2 and the Rambler hood. If you recall, I believe
3 that the first technician from the crime lab,
4 Mr. John Ertl, came, testified, indicated that
5 when he arrove (phonetic) -- when he arrived at
6 the, uh, Avery Salvage Yard, the first thing he
7 noted with the Rav 4 was that it might be, um --
8 it might be -- excuse me -- it might need to be
9 taken immediately to the crime lab because of the
10 in climate weather.

11 One thing he also noted was that instead
12 of processing the Rambler hood and the cardboard
13 box on top of the Rav 4, they sent it down
14 immediately with the Rav 4 to be processed,
15 fingerprinted, checked for blood. Steven Avery
16 has this cut finger and he's leaving blood
17 throughout the entire Rav 4. Certainly there
18 should be or may be some on the Rambler hood.
19 Rather than process it on the field, they sent it
20 to the crime lab.

21 That was the intent of the crime lab
22 tech. Was it ever checked? No. DNA person
23 indicated, no one asked me to. The fingerprint
24 analysis. No one asked me to check for
25 fingerprints. Two, apparently, vital pieces of

1 information, pieces of evidence that one of their
2 own crime lab technicians sent to the lab they
3 chose not to test.

4 The bedding and the carpet. The bedding
5 and the carpet is important to note that despite
6 the statement where Brendan indicates in his
7 statement to the officer that bedding was thrown
8 into the fire, there was other bedding that was
9 taken. The investigators felt it was necessary,
10 important enough to look at, but not test it.
11 The carpet. Never tested. Never checked.

12 The investigators -- Or excuse me. The
13 crime lab, uh, witnesses all indicated, we would
14 have checked had someone told us. So this
15 investigation, they chose not to test items that
16 didn't match with their theory. They'd already
17 decided what happened in this case. They needed
18 to prove their theory. The hairs, they're not
19 going to help their theory. The vacuum's not
20 going to help. Only time they would have looked
21 for DNA is when there was blood or the bullet.

22 The fingerprint analyst testified that
23 he did print Brendan. He also found a number of
24 different prints throughout the Rav 4, including
25 on the outside of the Rav 4 where, one, you would

1 suspect, if they're placing brush, a wooden post,
2 a hood, would have placed their hand upon it.
3 And he was able to actually detect a print. He
4 was able to actually process the print, save the
5 print, and compare the print. And when he
6 compared the print, didn't match the print they
7 had for Brendan Dassey. None of the prints
8 within the vehicle matched the print they have
9 for Brendan Dassey.

10 The fingerprint analyst indicated that
11 he could have checked the handcuffs. It was a
12 smooth surface. Wasn't rusted. He could have
13 looked for fingerprints, but no one asked them
14 to.

15 Could have looked at the leg irons.
16 Smooth surface. But no one asked them to.

17 The creeper. He could have looked at
18 the creeper. If the creeper were used by Brendan
19 Dassey, if Brendan Dassey actually helped use the
20 creeper to move Teresa Halbach's body into the
21 burn pit, then it could have been checked for
22 fingerprints. But it never was because nobody
23 asked them to.

24 The same with the Rambler hood and the
25 rake and the shovel. If they were, according to

1 the theory, using the rake and the shovel to move
2 around the body parts in the burn pit, then that,
3 too, could have been tested. But no one asked
4 them to test it.

5 The State indicated in opening
6 statements that this was the -- an investigation
7 of historic proportions in the state of
8 Wisconsin. From number of individuals involved,
9 to the cost of the investigation, the resources
10 that were used, yet they chose not to test
11 anything that didn't fit into their theory of
12 what they believe occurred.

13 What we don't see up to this point, and
14 have not heard, is anything scientific that
15 matches Brendan Dassey, that come -- that places
16 Brendan Dassey at Steven Avery's at the date and
17 time that Teresa Halbach is killed. No DNA. No
18 fingerprints.

19 If Brendan Dassey is to be believed, and
20 the statements he gave to the officer, then every
21 detail in the statements must be corroborated.
22 Not picking and choosing the ones that fit your
23 theory. The State has picked and chosen those
24 details and presented them to you that fit their
25 theory. But there are a number of uncorroborated

1 details and inconsistencies that they choose to
2 ignore.

3 Brendan claims they used the creeper to
4 move the body into the fire pit. That is what
5 was, uh, presented by Mr. Fallon just rec -- just
6 previous to my closing argument. Again, as I
7 point out, there's no blood found on either of
8 the two creepers. Never processed. Never asked
9 to process for DNA. They would have tested it if
10 someone had asked them to. An uncorroborated
11 detail.

12 The throat. What's interesting to point
13 out about the State's theory is the State
14 indicates they believe, they've argued to you
15 already, that Steven Avery first stabbed Teresa
16 Halbach in the stomach and Brendan Dassey slit
17 her throat. Nick Stahlke from the crime lab
18 testified, and did indicate, that if a person
19 were -- had their throat slit and were alive, it
20 would likely cause what's called "blood
21 splatter".

22 This is Steven Avery's bedroom. This is
23 the bed. This is where the State indicates
24 Teresa Halbach was lying with her arms pinned up
25 against the headboard. The headboard, itself. A

1 wooden dresser. A wall. And, if you could see
2 further, the carpeting.

3 If, according to Nick -- according to
4 Nick Stahlke, if she were alive when, according
5 to Brendan's statement, he slit her throat, there
6 would be blood throughout that bedroom. There'd
7 be blood on the walls, on the headboard, on the
8 posts, on the furnishings, on the carpet. No
9 evidence has been presented to you that anything
10 such as any blood, any splatter, any indication
11 of blood in that area. There's been no testimony
12 and no evidence presented to you by the State.

13 If you recall, I believe John Ertl
14 testified that when they did a luminol test, what
15 Mr. Fallon in -- indicated, as well, in his
16 closing argument, it became -- it came positive
17 right behind the John Deere. When asked, John
18 Ertl indicated that the stain appeared to come
19 and abut up to those boxes. So they did luminol
20 the box. A foot-and-a-half up on the boxes.

21 Why would they go a foot-and-a-half up?
22 Well, if there were blood splatter, blood
23 splatter -- splatter can go up. There might be
24 evidence on the box. There should be evidence on
25 the box. And there wasn't any evidence on the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

box.

Again, the State points out that you must believe Brendan Dassey's statement. If Brendan Dassey's statement is believable, he says to the officers that she was placed into the Rav 4 and shot in the Rav 4. That's what he initially says to the police. No blood splatter evidence. There's a swipe of blood. The indication of bloody hair. And as was pointed out by the State in their closing argument, passive blood drops which fall to the -- towards the ground due to gravity, not splatter.

Again, in Brendan Dassey's statement, if he is to be believed, every detail should be corroborated. Those are not corroborated. Neither is the mattress. He tells the, uh, officer that there's a blood stain about that big on the bedding. About six to eight inches in diameter. They never found any stain. Didn't find any bedding. But they certainly didn't find any stain on the mattress. They, in fact, if you recall, asked him, did you flip the mattress over? But there was no stain.

Again, if you believe Brendan Dassey's statement, as the State tells you you must

1 believe, then there should be rope fibers, or at
2 least rope. Somewhere on this table of evidence
3 should be some rope. Rope used to tie Teresa
4 Halbach's arms, legs and hands.

5 As I pointed out to you before, the
6 State commented that Steven Avery did a good job
7 cleaning up the house. That's why you don't find
8 evidence connecting Brendan, or Steven for that
9 matter, to any injuries that might have occurred
10 to Teresa Halbach within the house.

11 But if he's doing such a good job at
12 cleaning up the house, why such a sloppy job
13 leaving blood in the Rav 4? His DNA is on the
14 leg irons. His DNA is on the handcuffs. If he
15 wiped those clean, his wouldn't show up. But
16 only his show up. Not Teresa's. And certainly
17 not Brendan's. Another uncorroborated detail in
18 Brendan's statement.

19 And where is Teresa's hair? Could be in
20 that vacuum. It's possible. I'll grant you
21 that. But the State chose not to look in the
22 vacuum. Could be in that Bissell, I suppose, but
23 they chose not to look in the Bissell either. If
24 there was hair, according to Brendan's statement,
25 Steven kept it on his dresser. I think he first

1 said he put it on the counter. Upon further
2 questioning by the officer, he changed it and
3 said, well, I think it's on the dresser. And not
4 a lock of hair, as Mr. Fallon pointed out. He
5 told the officers cut her hair right off.

6 The State brought in evidence of a
7 cousin who claimed that Brendan told her, in
8 December of 2005, that he did see Teresa Halbach.
9 In her statement, she says, he said she was
10 pinned in a chair. Contrary to the State's
11 theory. Probably why, when Officer Wiegert was
12 questioned about that on the stand, he referred
13 to her being pinned in the bedroom. Not pinned
14 in the chair. Kayla said, pinned to the chair.
15 When asked, Officer Wiegert said, pinned in the
16 bedroom. Why? Because there is no chair that
17 they could find that would match that story.

18 Brendan's drawing of the bedroom.
19 Certainly it doesn't have to be to scale, but I
20 think it should at least match where items are.
21 If the bed were all the way up against the wall,
22 then that drawing should show the same. That's
23 all the way up against the wall.

24 Another uncorroborated detail, the
25 knife. Where's the knife? According to

1 Brendan's statement, if it's to be believed, as
2 the State wants you to believe, it should be in
3 the middle console of that Rav 4. That's what he
4 told the police when he first talked to them. He
5 said it was in between the front seats of the Rav
6 4. No knife was found in the Rav 4.

7 Later, Brendan changes it and says, oh,
8 he cleaned it up and put it back in the
9 kitchen -- put it right back in the -- in the
10 cupboard or the cabinet. And they got all the
11 knives out. They checked all the knives. They
12 took all the knives down to the crime lab.
13 Nothing with blood on it. Maybe there was DNA,
14 but they chose not to look for the DNA.

15 There is nothing in Brendan's statement,
16 independent of Brendan's statement, that
17 corroborates that there was any sexual
18 intercourse. There's no physical evidence that
19 suggests that. There's no DNA. No evidence of
20 semen or any other bodily fluids in the bedroom,
21 on any other bedding, on the mattress, because it
22 wasn't tested.

23 Which leads us to the inconsistencies.
24 As I said before, that if you are to believe
25 Brendan's statement, as the State wants you to

1 believe, everything, every detail, must be
2 corroborated. If he is so detail-oriented, as
3 Mr. Fallon said, there -- such concise detail,
4 such clear detail, then there shouldn't be any
5 uncorroborated detail. And, certainly, what
6 we've seen is significant amount of
7 uncorroborated detail.

8 But there shouldn't be any
9 inconsistencies either. But there are plenty of
10 inconsistencies as well. Brendan says in his
11 statement, originally to the officers, I helped
12 carry her to the burn pit. Had her by the feet.
13 As he talks to the officers more, he starts to
14 add things. Well, I actually used the creeper.
15 Same creeper that was -- no blood was found.

16 Then they -- he says, well, actually, we
17 placed her body in the back of the Rav 4. If
18 this bloodied body was placed in the Rav 4, why
19 just a small amount of what appears to be bloody
20 hair, some passive blood drops on the door? If
21 this bloodied, stabbed, throat-slit body was
22 placed in the Rav 4, there should be a pool of
23 blood. A stain as big as the back of the cargo
24 area. And there is none.

25 The gunshots. The first person that

1 brings up the idea that she was shot in the head
2 is Officer Wiegert. I believe he even admitted
3 that on the stand. He agreed. Yep, I was -- I
4 brought it up.

5 Brendan says, initially, it's two shots.
6 But he changes it. It's two shots in the head,
7 one shot in the stomach, which is okay. Doesn't
8 change the theory of the State's case. They can
9 live with that. But he goes further. It's three
10 shots. One in the head, one in the stomach, one
11 in the heart. That's different. Then it's ten,
12 which they want to latch on to because of the
13 casings found in the garage.

14 There are bullet holes in the burn
15 barrel. There are guns throughout this salvage
16 yard, different residences, as the testimony
17 showed. These people have lots of guns. It's
18 not unusual to see case shellings.

19 He first tells the officers that she was
20 shot in the Rav 4. That were the case, there
21 would probably be a significant amount of blood
22 in the burn -- Rav 4. But there isn't. Then he
23 gets back, changes it, and says, well, she was
24 shot on the floor. Now, that matches. That's
25 good. Let's keep that statement.

1 It fits the State's theory, so it must
2 be right. You can ignore all the other con --
3 inconsistencies. Ignore the fact that he changed
4 his story. Ignore the fact he first said it was
5 in the Rav 4. The number of times she -- she was
6 shot. Where she was shot. But, remember, it was
7 on the floor because that matches the State's
8 theory.

9 The times are inconsistent. He first
10 says he went to Steven's around 4 or -- 4 or
11 4:30, according to the videotape statement. He
12 also says it was sometime after he got back
13 from -- from school. Sometime after 3:45. Later
14 on, he says it was sometime around 6:30. When
15 questioned further, the times are somewhere
16 between 6 and 6:30. In fact, at the very end of
17 that videotape, he says it was actually around
18 5:30.

19 Now, that might not seem like a big
20 deal. A half-hour here or half-hour there. But
21 it is a big deal, because in order for it to fit
22 into the State's theory, there can't be any times
23 that are close to 5:30, because, as the State
24 pointed out, Mr. Kornely called sometime around
25 that period of time; 5:30, 5:45, 6. As Mr.

1 Kor -- Kornely said, he wasn't sure. It could
2 have been anywhere in that time frame, and they
3 conceded. Absolutely. He called. Probably
4 closer to 5:30, I think, is what Mr. Fallon said,
5 but it probably could have been as -- 5:45, as
6 Mr. Kornely said on the stand.

7 But in order for it to fit, the times
8 need to fit the State's theory, you have to
9 ignore all the other inconsistent times. Ignore
10 the 5:30 at the end of the videotape. Ignore the
11 6 to 6:30. Pick the time that fits the theory.
12 But that's not your role.

13 At the beginning, I mentioned to you
14 what your role is. Actually, I'm sure you all
15 knew your role. Your role is to simply use
16 common sense, make decisions based upon the
17 evidence. Your role is not to be the attorneys.
18 Your role is not to decide who is the victor.
19 This isn't a competition. It's not a basketball
20 game where somebody has to walk away as a winner.
21 If you decide that you have doubt, and it's a
22 reasonable doubt, then you have to acquit.

23 Finally, what I want to talk about, and
24 then I'm going to actually pass on to Attorney
25 Edelstein to finish, and he'll talk about the

1 statements a little further with you, and finish
2 up the closing, I want to talk about the sequence
3 of events that occur according to the videotape
4 statement of Brendan Dassey.

5 Initially, he tells the officers that
6 Teresa's stabbed by Steven Avery and then she's
7 tied up. He changes that and indicates that
8 Steven stabs Teresa, and then gives the knife to
9 him, and he slits her throat. And then Steven
10 chokes her and then ties her up. That's what the
11 State has told you in their closing argument is
12 what happened. They've now adopted that theory
13 of what happened.

14 But does that make sense? Someone have
15 their throat slit and then choked? Why choke
16 someone who just had their throat slit? And if
17 that occurred, there should be a lot of blood in
18 that bedroom. I know we talked about it. I know
19 I've -- I -- I spoke just recently about no
20 blood, no blood splatter. There's no evidence at
21 all that anyone was stabbed or had their throat
22 slit in that bedroom on October 31, 2005, or any
23 other time. The State's theory doesn't make
24 sense. And Brendan's statements are just simply
25 not consistent.

1 At this time I'm going to pass on to
2 Attorney Edelstein. Thank you.

3 ATTORNEY EDELSTEIN: Your Honor, members
4 of the jury, Counsel. Ladies and gentlemen, on
5 behalf of defense team and Brendan Dassey, I want
6 to thank you for your service in this case thus
7 far. But it's a long way from over.

8 We've heard a lot of testimony, and a
9 lot of exhibits have been received as evidence.
10 My colleague just went over with you some of the
11 things about the State's case that should result
12 in a finding of not guilty. So much of the
13 inconsistencies, so much of what the State has
14 adopted as their theory, that they just got done
15 arguing to you within the last couple of hours,
16 is absolutely unsupported by the evidence.

17 When we look at this case, when you look
18 at this case, guided by the evidence and the
19 rules of law that the Judge gave you, ask
20 yourself at some point, since, obviously, it's a
21 huge issue, is his statement reliable? Is it
22 believable? Well, things are believable when you
23 can demonstrate that it's accurate.

24 Now, were there some things that he said
25 that turned out to be accurate? Of course. But

1 the State has told you before and insists that
2 this is only because someone there would know. A
3 participant. But that's not necessarily true.
4 These instructions tell you about a reasonable
5 hypothesis, and I'm going to revisit that here in
6 a little bit.

7 Since, I guess, I'm among the
8 technically challenged here in the group, and you
9 guys have been looking at pictures all week, if
10 it's something critically sent -- important, I
11 guess I'll resort to the ELMO. We do have some
12 slides we want you to look at.

13 But let's begin with Brendan. That's
14 where I get to use this. Brendan's 16. At the
15 time, he was in the tenth grade. He has some
16 special education classes. He likes video games.
17 How many times -- and think about it, even on
18 that 3/1 statement -- how many times did the
19 police tell him, Brendan, start over again.
20 Start over again. What did you do? I got home,
21 got off the bus, played video games.

22 What else do we know about Brendan? We
23 have school records. We know from the school
24 records that he consistently does not look adults
25 in the eyes. It would be very easy -- And these

1 instructions allow you to use your common sense
2 and you should use your common sense. Anybody
3 that's ever been around kids, and they're feeling
4 bad, and if they did something, they kind of hang
5 their head, they don't want to look at you. And
6 it would be awful easy for the Government to get
7 up here and say, all you have to do is look at
8 that. All you have to do is look at him. And
9 he's covered with guilt. But he's not.

10 Brendan is expressionless. And, for the
11 record, and for the benefit of you members of the
12 jury, Exhibit 224. This is from his school.
13 Brendan is expressionless. No facial expression.
14 Seemingly blank stare, possibly indicating
15 daydreaming.

16 This isn't something new. This isn't
17 something that results because, as the State
18 wants you to believe beyond a reasonable doubt,
19 and that's the standard, beyond, that somehow
20 he's acting funny because of the way he comes
21 across in that video. That he's acting guilty.
22 They want you to surmise things. This isn't
23 about surmising. It's not about guessing. It's
24 about them meeting their obligation under the law
25 to prove each element beyond a reasonable doubt.

1 What else did we learn from the school?
2 On Exhibit 220, this was completed September of
3 2005. It describes various tests that were given
4 to Brendan.

5 Recalling sentences as a subtest.
6 Age-equivalent, five years and eight months.

7 Formulating sentences; nine years, nine
8 months.

9 Number repetition. Mr. Fallon, during
10 the cross-examination of Brendan, talked to him
11 about how well he did in math. Number repetition
12 forward; age-equivalent, five years, three
13 months. Backwards; six years, three months. His
14 percentile ranks are so low that it's sad.

15 Now, that is not to say that because he
16 may be a pathetic character, and I don't hesitate
17 to say that because nobody can choose their
18 family, you can't choose your parents, you can't
19 choose your uncles, and you can't choose your
20 cousins, and that's sad enough, that's not to say
21 that that negates the horrendous and horrific
22 tragedy that befell the Halbach family. But that
23 is not the issue. The issue is, have they proven
24 each element of every count they have accused him
25 of? That's where you folks come in.

1 We know from the school records that
2 there are specific learning disabilities. Speech
3 or language impairment. Now, why is all this
4 important? We'll get to Dr. Gordon here in a
5 minute. But why is this important about who
6 we're dealing with here? Who everybody here is
7 dealing with. Ultimately, you folks.

8 These officers, when the case began --
9 Now, I'm not going to sit here and say, well,
10 they're bad guys. No, they're not bad guys. But
11 I will sit here and say they did a bad job. Ask
12 yourselves, when you look at this, if they did a
13 bad job, and there's not the degree of
14 reliability in the statement that you believe is
15 required under the law, then you're going to
16 disregard it. When you disregard it, you've got
17 a table full of physical items, they're surely
18 not going to prove anything beyond a reasonable
19 doubt.

20 What did the officers do? You remember
21 Detective O'Neill from Marinette. And I remember
22 him because, I'm not trying to pick on him, but
23 we saw a lot of witnesses, and he had the biggest
24 thing hanging out of his pocket that I've ever
25 seen. He's the first one talked with him for

1 over an hour.

2 How did this begin? Remember, he said,
3 I had minimal information. Now, I bring this up
4 because -- because, as we have suggested and
5 believe to be the case, the police and the
6 prosecution are, to use the phrase of the
7 prosecution earlier in this case, "cherry
8 picking." We like this part of his statement,
9 but we're not sure about that, so we're just
10 going to stay away from it. We like this part of
11 his statement. But they were cherry picking.

12 When they testified, for example, they
13 didn't -- even O'Neill -- And he had no reason
14 not to give it up, but he claimed he had minimal
15 information, which really wasn't true. He knew
16 the Rav 4 had been found. He knew Brendan, uh,
17 was to be interviewed. He was in contact with
18 Skorlinski, from DCI, who was in contact with
19 Fassbender, from DCI, who was literally at the
20 command post at the Avery property. But even he,
21 when asked, well, did you get argumentative with
22 him? No, it was just kind of a give and take.
23 In his own report, he used the word "confronted".

24 Now, I expect at some point you're going
25 to hear an argument -- because the State gets

1 another opportunity to talk to you and we
2 don't -- but you're going to hear an argument
3 about, well, this is just good, proper technique.
4 And that might be true if you're dealing with
5 someone of average, normal, typical intelligence,
6 demeanor and memory. But neither O'Neill, the
7 first one, or Fassbender or Wiegert, the two lead
8 investigators, really knew much, if anything,
9 about this young man before they talked to him.

10 I think Wiegert admitted that. He
11 didn't check the school. He didn't know anything
12 about him. But this is not the typical young
13 man. He might have been on this earth for 16
14 years at the time, but he didn't act like it and
15 he didn't think like it.

16 And isn't it incumbent upon the
17 Government, when they bring these type of
18 allegations, to be able to satisfy you beyond a
19 reasonable doubt that the evidence that they're
20 asking you to rely upon is, in fact, credible
21 and believable and not tainted because of things
22 that may have been said or done.

23 I asked all these officers about
24 promises. And you folks, you had an opportunity
25 to see the tape, you had an opportunity to listen

1 to it. You've heard portions of it twice. Okay?
2 These are but excerpts. Excerpts from that.

3 Excuse me, if I might, but before --
4 before we even get to that 3/1 interview, keep in
5 mind that on two separate occasions on the 27th
6 Brendan was talked to. What did Wiegert say when
7 asked in response to when Brendan Dassey became a
8 suspect? He didn't become a suspect until
9 March 1. You folks can see what's up on the
10 screen. It's a rights waiver. It's the **Miranda**
11 warning. And didn't Wiegert say there's a big
12 difference between interviews and interrogations?
13 We don't read rights to people we're just
14 interviewing, trying to get information. He's
15 just a witness. He's just a witness.

16 But on the 27th, when they go down to
17 Two Rivers, lo and behold, Brendan, we're going
18 to read you your rights and you're going to sign
19 this waiver. Why is that? Was he telling you
20 everything there was to tell? It's all these
21 little things that accumulate, that build back
22 some of those bricks of the wall of innocence
23 that surrounds him, which is that presumption of
24 innocence that all of you swore that -- on your
25 oaths, that you would abide by unless and until

1 the State dismantled it by proof beyond a
2 reasonable doubt.

3 Again, one little item, in and of
4 itself, not a big deal, but it's an accumulation
5 of things, and you have to carefully scrutinize
6 everything they bring you before you can decide
7 if they've reached their burden. And if they
8 have not, you must acquit.

9 But here they are on the 27th. They
10 talk to him in Two Rivers. They have him sign
11 that.

12 Mark, can you switch that back?

13 We talked earlier, and there was
14 testimony on cross-examination particularly
15 about, well, what did you say to him? And this
16 ties in, folks, with what Dr. Gordon had to say.
17 And you're entitled to use your own common sense.
18 Would someone -- And this is a question you're
19 going to ask yourselves. Would someone admit to
20 something, especially a terrible crime, if it
21 wasn't so? Well, would any one of us? Maybe
22 not. But, here, we're not talking about us,
23 we're talking about Brendan.

24 Now, he is not ready for the
25 institution, but he's not going to go work at

1 NASA either. And he might be lucky to even work
2 down at the local machine shop. We know from the
3 academic testing, we know from the testing from
4 Dr. Gordon, he is at the lowest of the low
5 average and then borderline range of intelligence
6 and functioning.

7 But what do the police do? Go back to
8 our little slide show. There's promises, there's
9 praise, there's negative feedback, lies, and
10 suggestions. Now, they like to give it other
11 terms. It sounds, I guess, a little softer. In
12 fact, that's how they talk about the soft room.

13 I asked Wiegert, do you think you're a
14 little smarter, maybe a little more sophisticated
15 than Brendan? At first, he really didn't even
16 want to answer that, and then he finally said,
17 well, I should hope so. Well, I should hope so,
18 too.

19 You have an unequal -- an unequal
20 balance between the interrogators and Brendan.
21 What are some of the things that are said? We're
22 in your corner. We're on your side. Okay. You
23 don't have to worry about things. We'll stand
24 behind you. You're the good guy here. This is
25 critical. These type of statements. Look at the

1 last one. If I don't believe in you, I can't go
2 to bat for you.

3 Anybody that's ever had a child has used
4 somewhat of that same technique. I'm not going
5 to take you to the party. I'm not going to take
6 you to, uh, McDonald's to play in the balls. I'm
7 not going to take you to go get ice cream unless
8 you -- you're honest about what happened. In
9 other words, tell me what I want to hear and then
10 you get what you want.

11 The honest person's the one that's going
12 to get a better deal. Yet, when I asked him, did
13 you promise him anything? No, I wouldn't do
14 that. A better deal? It's not your fault. If
15 someone is repeatedly drilled that just tell it
16 to us, it's okay, it's not your fault, nothing's
17 really going to happen to you, don't you think
18 they might be a little bit more easily persuaded
19 to adopt what they are suggesting that they
20 adopt? And that occurs repeatedly.

21 We're going to help you through this,
22 all right? He even goes so far as to go over
23 there, patting him on his knee. At one point,
24 I'm sure you folks remember, during the course of
25 that video, Detective Wiegert's over there, he's

1 sitting on the -- the couch in the soft room,
2 here, draw this picture for me.

3 Says -- he tells you. And, again, not a
4 big deal, in and of itself, but it's an
5 accumulation. Why is it they don't want to tell
6 you everything? Just give it up. It's not
7 that -- that important. But part of it is
8 because they take the position, we're right,
9 nobody else's opinion matters, and you have to
10 accept what we say hook, line and sinker. We're
11 the professionals. We know better than you.
12 Well, it's a good thing that not everybody on a
13 jury is a police officer, because the defendant
14 would never have a fair fighting chance.

15 What about praise? Okay, Brendan,
16 you're doing a good job. When they hear what
17 they want, they praise him.

18 It's like patting the puppy and -- on
19 the head and giving him a treat when trying to
20 get him paper trained and you get them outside
21 and you go. You're doing a good job.

22 You're doing the right thing. Don't let
23 us down. I think you're doing a real good job up
24 to this point. That makes sense. Now we can
25 believe you.

1 Keep in mind, and I think that's coming
2 up here in a little bit, how many times he was
3 told, we don't believe you, give us the truth, be
4 honest with us. I think I asked Wiegert, well,
5 how many times did you say that? And he didn't
6 know. I wouldn't expect him to. I wouldn't
7 expect him to sit there and count, in the course
8 of a lengthy, three-hour interrogation, the
9 number of times he or his partner suggested to
10 Brendan, come on, be honest. Quit lying to us.
11 I wouldn't expect that. But it happened a lot.
12 And it's consistent with this technique.

13 And it wasn't so much at that point that
14 they're interested in getting the truth so much
15 as they want some information. Now, they took
16 that information and ran with it and made it
17 match as best they could. But, still, they
18 insist only a person who participated as party to
19 the crime would know these things. And that,
20 folks, is not true.

21 Your cooperation and help with us is
22 going to work in your favor. Now I can start
23 believing you. Here's some of the negative ones.
24 You're making this hard on us and yourself.
25 Don't start lying now. Be honest. You're just

1 hurting yourself. Oops, I'm sorry, I went a
2 little fast. You're just hurting yourself if you
3 lie now. These are just a few -- a few of the
4 things that were said to him in these type of
5 techniques.

6 What are some of the lies? They said
7 they didn't lie to him. They called it
8 "deceptive practices". It's going to be a lot
9 easier on you down the road if this goes to trial
10 and stuff like that. Why not tell somebody that?
11 It's absolutely untrue. But if they admit to
12 things, and you don't verify that what they say
13 is correct, how is it easier on him? You're
14 putting him in a box. They convince this boy, it
15 doesn't really matter, just tell us, we're your
16 friends.

17 At one point, I think Wiegert -- I think
18 it's in our presentation -- talks about, I just
19 want to give you a hug. No police officer, who's
20 investigating this type of an offense, vicious
21 and cruel as it was, can honestly sit there with
22 a straight face and tell you folks, I just want
23 to give this young man a hug when I think he had
24 something to do with this.

25 I'm your friend. Where was she? Come

1 on, we know this already. We know you were back
2 there. And he's talking about the bedroom. We
3 know you were back there. Where's the physical
4 evidence to support that? He wasn't confronted
5 one time.

6 You've all seen this on TV. They're
7 talking to somebody, oh, come on, we know you did
8 it. Somebody says, I didn't. They throw
9 something in front of him and say, well, there's
10 some pictures, here's some prints, here's this,
11 here's that.

12 They had -- they didn't know it -- this.
13 They kept accusing him of it without one piece of
14 evidence to back it up. And, eventually, he
15 adopts some of it. Of course they're going to
16 tell you, well, that's because he finally broke
17 down and told the truth. However, when they make
18 that statement, I challenge you folks to discern
19 for yourselves how much of what he said is true
20 and try to answer that question by what they
21 brought you. By what they brought you.

22 Even his own cousin, who they brought up
23 on the stand, it doesn't match. She's pinned up
24 in a chair. That's ridiculous. They never even
25 followed up on that.

1 How is this for a lie? Truthfully, I
2 don't think Steven intended to kill her. Awe,
3 Brendan, just tell us, because it was probably an
4 accident. We don't even think Steven intended to
5 do it.

6 What happened to Teresa was horrendous.
7 Steven Avery preyed upon that girl when he called
8 and said, send me the same girl. We know what
9 dates she'd been there before. She'd been there.

10 Now, that man -- young man, he's not
11 dead, and he hasn't been through a fire pit, but
12 if you do what the State asks, he might as well
13 be.

14 There's the hug. How about suggestions?
15 This is where they get to the part of saying,
16 well, now, you know, in order for us to believe
17 you, all you have to do is say you did some
18 things, because then we'd probably believe you.
19 It's not your fault. He makes you do it. It's
20 okay. He was telling you to do it. What does
21 Steven make you do? You went back into that
22 room.

23 Some of these are doubles. We'd be here
24 all day if we listed every single one and every
25 single category of lies, suggestions, promises.

1 The point simply is, this went on over and over
2 and over again. Was his will overcome? Did he
3 say these things because he'd had enough? We
4 know he's highly suggestible. You were there
5 when she died. You helped tie her up, though,
6 didn't you? What he made you do. We know he
7 made you do something else. I think he probably
8 told you.

9 You went over to his house. When the
10 times didn't match, but they wanted it to match,
11 their theory, they continually, repeatedly told
12 him that his times were wrong. Yet, there's
13 nothing, whatsoever, to suggest that the Kornely
14 information is wrong.

15 They're saying that he went over there
16 twice. Now, ask yourselves this, folks, would
17 this young man, even Brendan Dassey with the
18 limitations he has -- And like I said, he's not
19 ready for the institution. But would this young
20 man walk in, who's been described, not only by
21 the school personnel, as quiet, reserved,
22 respectful, tested out that way with the
23 counselors, the teachers, the other professionals
24 who examined him, is he just going to walk away
25 from that trailer like they want you to believe?

1 What was his brother's testimony? I got
2 off the bus. I saw Steve Avery walking over to
3 that burn barrel. The same burn barrel where
4 Teresa's property was found. What time was that?
5 That was when they were walking home. His own
6 brother said that. Their witness.

7 How many times did you shoot her?

8 Now, Mr. Fallon stood here and told you,
9 not less than twice, that Brendan Dassey never
10 pulled the trigger. He told you that. That's
11 their theory. They believe that.

12 However, examine the statement. When
13 Wiegert and Fassbender were asking him questions,
14 again, without really having much contact with
15 him, without knowing his cognitive limitations,
16 without knowing how his ability to receive and
17 process information and language, whether it was
18 a good talent that he had, a poor skill, they
19 asked him things like, how many times did you
20 shoot her? They don't even say who they're
21 talking about. And it's in there. If it would
22 say, how many times did Steve do it? How many
23 times did you do it? And they're going to talk
24 about resistance. How he resisted that.

25 But the truth of the matter is, a couple

1 of times, when they weren't specific about who
2 they're even talking about, he gives an answer,
3 such as a number. And it changes. It bounces
4 back and forth. He was confused. He was scared.

5 And let's just briefly touch upon that.
6 Ask yourselves, how probing were they when he
7 told them, I seen it. And he said, he told, he
8 seen me see it, so he told me not to say
9 something or else it will -- he threatened me a
10 little bit. He made it clear to them early on.
11 And they had no reason to doubt it. They just
12 didn't like the answers. They didn't like what
13 he said. But they never explored the potential
14 truth and alternative that this young man walked
15 over there and did see something in a fire, and
16 that something was Teresa Halbach.

17 They go through this scenario, and they
18 start -- once he tells them, I seen it, and Steve
19 knew it, and he said, don't say anything, that's
20 when it becomes, you saw this, you saw that.

21 They admitted, and Wiegert testified to
22 it, you saw it on the video, they brought up
23 specific facts, again, that they claim only
24 somebody involved would know, which at some point
25 he adopted. But his adoption doesn't make it

1 true.

2 You all heard the phrase "you can't
3 believe everything you read in the newspaper."
4 Well, you can't, necessarily, believe everything
5 Brendan Dassey says on a video, because there's
6 no independent verification from a source -- from
7 any source.

8 We know you shot her, too. Now, how
9 dare the State of Wisconsin come into the
10 courtroom in this state, that statement having
11 been given to a cognitively limited young man,
12 flat out accusing him of picking up that gun and
13 shooting this poor girl. And they didn't do it
14 just once. We know you shot her, too. Where?
15 Where is the evidence to support that?

16 He's making it up on the fly. Sounds
17 good to us. Let's see if he accepts it or
18 rejects it. Why would you even do it when you
19 combine that with the types of promises, offers
20 of leniency, telling him it's okay, he didn't do
21 anything wrong, somebody else made him do it,
22 especially when you're dealing with someone like
23 Brendan Dassey. Why?

24 And, yet, have the audacity to come in
25 here today and say, we know he didn't do it.

1 Steve Avery shot her. But he helped. He was
2 there. This isn't guilt by association. This
3 isn't guilt by what family you belong to. It's
4 guilt by proof beyond a reasonable doubt. And if
5 they don't climb that ladder, you don't give it
6 to them.

7 What did he do under the hood? They're
8 the first ones that brought this up. You saw the
9 hands and the forehead. Now, I can sit up here
10 all day long and talk about these techniques,
11 these statements, whether it's believable or not.
12 Obviously, we believe it is not. It is not
13 reliable, because it is not true that only a
14 person who participated would know these things.

15 How many times during the course of that
16 discussion on the 1st did they say, come on,
17 Brendan, we know you and Steven talked about it.
18 Mr. Fallon just got up here and told you. And
19 then they went from that bedroom into that front
20 room and had a little chat. That's how he
21 characterized it. A little chat about what
22 they're going to do. How they're going to get
23 rid of Teresa.

24 It's more likely that little chat
25 happened when he walked over there expecting a

1 Halloween bonfire, and went around with the
2 little cart, and picked up all the stuff, and
3 eventually they start throwing stuff in there,
4 and he probably did see something. Pretty
5 traumatic. Is that reason enough for a young man
6 to be despondent? To be sad? Is that a
7 reasonable hypothesis?

8 This is straight from the instruction.
9 If you can reconcile the evidence upon any
10 reasonable hypothesis consistent with the
11 defendant's innocence, you should do so and
12 return a verdict of not guilty.

13 That's a very reasonable hypothesis.
14 When he went over there, and I'm sure every one
15 of you is sitting here right now and saying,
16 where's this lawyer coming up with this? Brendan
17 was up on the stand. And he says he got it from
18 a book, and he said, "I don't know" countless
19 times. But he did tell the police. He did tell
20 the police he saw things. Steve threatened him.
21 He told him to keep his mouth shut.

22 Is this a young man whose memory
23 skills -- And this isn't just based upon what
24 people like to characterize as the "hired gun".
25 It's not just based on Dr. Gordon. The school

1 has no reason to tell you anything that's not so.
2 We know he has these difficulties. It's easy for
3 the State to say, well, the school said he's not
4 suggestible. The school never tested him for
5 that. They didn't test him. They had no reason
6 to test him.

7 Let's look at Dr. Gordon. You remember
8 him. And he's the gentleman going down to St.
9 Louis University. He's been in practice for
10 quite some time. In fact, we had quite the array
11 of specialists and experts in this trial. But
12 that, in and of itself, no matter how much, the
13 instructions tell you it doesn't matter how many
14 witnesses. It's not a balance like that. They
15 had more so they win. That's not how it works.
16 It's not a question of qualifications. Well,
17 they had a lot more experts.

18 But here's Dr. Gordon. He administered
19 these tests. He's shy. Socially avoidant. And
20 he has cognitive limitations. Borderline to low
21 average intelligence. In fact, he came in and
22 said the two different IQ tests that he provided,
23 which are done as a check against one an -- one
24 another, were actually a little bit higher than
25 what the school had. His bottom line conclusion?

1 Very vulnerable to suggestion.

2 You recall when Dr. Gordon was
3 testifying, he gave you this information about
4 some of these tests -- various tests that he
5 administered. I don't think there's much dispute
6 about the IQ. That's fairly obvious, even in the
7 video. And if it wasn't obvious in there, folks,
8 if you believe that that poor boy was acting up
9 there, then we should all chip in and buy him
10 Academy Award. He does haven't that kind of
11 skill. You saw him.

12 But look where he falls on the 16-PF.
13 On the lowest end. Well below average. He's not
14 independent. He's not socially bold. He's not
15 dominant. So when Mr. Fallon suggests he had all
16 these choices, did he really? When he walked
17 over there and saw what he saw, what choice did
18 he have? What choice did he have?

19 Don't hold it against him because he
20 said things like, well, I don't like the police
21 like the rest of my family. He can't pick his
22 parents. He can't pick his uncle. But look at
23 the results on that. That's not someone who's in
24 a position to turn around and either walk away --
25 he probably had no clue what to do. None.

1 Ask yourself, on this Gudjonsson
2 Scale -- Now, they brought Dr. Armentrout in who
3 said, I've been around forever, I know what I'm
4 doing, and I've never heard of this thing other
5 than what I've looked up on the internet, and I
6 know the guy's from Iceland, now he's in England.
7 And I really think it's stupid when you ask
8 somebody, um, about being on holiday. Maybe so.
9 But that's only one question. There wasn't
10 anything else he talked about. But Gordon
11 administered the test. It's a recognized,
12 acceptable test.

13 So many years ago, when the prosecution
14 came in and said to judge after judge after
15 judge, we want to use this scientific evidence
16 called DNA, it met with a lot of skepticism, but
17 has become accepted and reliable. This is no
18 different than any other measurement tool. He
19 was qualified to give it, and those are Brendan's
20 results.

21 You heard the testimony about the shift
22 and the yield. And it wasn't just from Gordon.
23 And what does that really mean? Basically, you
24 give somebody a lot of feedback that's negative.
25 He didn't like your answer. Are they going to

1 change it? Yes. And this is a one on one. This
2 is not some kind of group dynamic test. This is
3 one on one. He's faced two on one with very
4 skilled, experienced officers, who, between the
5 two of them, have got probably about three times
6 as much experience just in their law enforcement
7 career as many years as that boy's been alive.

8 And when asked, did Wiegert say, in
9 response to the question, well, isn't it true
10 that when you gave him negative feedback, that he
11 changed his answer for you? Yes. Isn't it true
12 that when you provided or suggested an answer to
13 him, he changed his answer? Yes, that's true.

14 Like I said before, folks, I'm not here
15 sitting here telling you that they're bad guys.
16 They're not bad guys. But this is how they're
17 trained to do this. But you don't apply the same
18 techniques on every single person. This is not
19 cookie cutter justice. One size does not fit
20 all. And it is incumbent upon them, when they
21 bring you what they characterize as a
22 "confession", to convince you that it is reliable
23 enough that you can hang your hat on it. And in
24 this case, you simply can't.

25 Was it an error? Certainly, it could

1 have been done better. I think they would even
2 acknowledge that. But that's what we have. And
3 that's what we have to deal with.

4 They might get up and argue, well, gee,
5 you heard this testimony about his ability to
6 resist things, which is not very strong, but he
7 resisted the shooting.

8 What about the phone call to his mom?
9 You guys heard that. Who does all the talking?
10 Barb does all the talking. You could have been
11 the hero. Yeah. That's kind -- That's more of a
12 response. It's not an affirmation in that phone
13 call.

14 And, again, trust your collective
15 memory, folks, if it's been different than mine.
16 I know you guys have your little pads the Court
17 gave you with all those notes of the testimony.
18 That's mine. I'm not going to sit here and go
19 through it. Not right now. But I've looked at
20 it every day during the course of this. But if
21 you remember it different, trust your memory.

22 Did he ever say -- Did his mom ever say,
23 did you kill that girl? Did Brendan ever say,
24 oh, you bet. No. That's not what happened. It
25 was something like, did you do those things? And

1 what was his answer? Some of it. Some of what?
2 Some of standing around the fire? Some of
3 picking things up with the golf cart? What does
4 that mean to him? It's not that clear. It's not
5 clear beyond a reasonable doubt. Never, ever
6 take anything out of context. You have to look
7 at everything.

8 If all it was was a matter of simply
9 saying, yes or no, we'd have left here days ago.
10 In fact, I made a point of demonstrating with
11 Detective Wiegert just how easily Brendan would
12 go along. How many times did Wiegert say things
13 like, Brendan, say yes or no. And Brendan would
14 go, yes. I remember one other time, same
15 interview, Brendan, say yes or no. No. He's
16 doing what he's told.

17 His limitations are such that he can't
18 go from the question up at the top of the page,
19 halfway down when they're coming back to it, when
20 they have interposed in between there promises,
21 assurances, lies. And then they come back and
22 say, aren't we right? He might say, yeah.

23 Tattoo's a perfect example of that.
24 They claimed, and they presented to you, that
25 they brought that up as an example of how he

1 could resist suggestion. Wrong. They're just
2 wrong. All he did was say, in response to
3 Wiegert, when Wiegert insisted that Teresa had a
4 tattoo, was when -- because I think the question
5 was, do you disagree with that, and he said, no,
6 but I don't know where it is. That makes no
7 sense. They want you to believe that the
8 response means one thing when, in fact, it means
9 something totally different.

10 The reliability of that video, of that
11 statement, is such, combined with the expert
12 testimony that's been presented in this case,
13 which has not been refuted, Armentrout has never
14 even heard of this, and the only thing he could
15 do is say, well, I don't see any notes on the
16 score sheet here, so I don't have a lot of faith
17 in this.

18 These are some things we already talked
19 about. Gordon's assessment's consistent with the
20 school. He has memory deficits. And Armentrout
21 doesn't know much about this test.

22 Mr. Armentrout went so far as to say, I saw the
23 word "suggestible" one time when I was checking
24 the internet.. And, again, he offers his opinion
25 about why Gordon shouldn't be believed. But

1 there's no basis for that.

2 Ladies and gentlemen, on behalf of
3 Brendan Dassey, Mr. Fremgen, myself, I want to
4 thank you for your service in this case. It's
5 been a long period of time. But this is so
6 important that you abide by your oaths that you
7 took when we first met you, when this case first
8 began, and to deliver a true verdict based only
9 on the law and only on this evidence.

10 And when you review it all, and you
11 listen to one another, and you take the time
12 necessary to consider it, and use your common
13 sense, and don't just rubber stamp the version
14 they provide you, keeping in mind it is their
15 burden, and it's an awesome burden, that they
16 have not -- they have not removed those bricks of
17 protection, that presumption of innocence that
18 surrounds him.

19 Don't convict him because this was a
20 horrible thing. Don't convict him because he
21 couldn't pick his parents. Don't convict him
22 because he simply doesn't know and he's honest
23 about it. If he doesn't know, and you believe
24 him, and you judge him like you would anyone else
25 under the instruction on credibility, you should,

1 and we hope that you will, return verdicts of not
2 guilty on all counts. Thank you, very much.

3 ATTORNEY FALLON: Would you like me to
4 go or do you want to take a break?

5 THE COURT: Uh, let's take 15 minutes.

6 ATTORNEY FALLON: All right.

7 THE COURT: All right. We'll be back
8 at, uh, ten of the hour.

9 (Recess had at 3:33 p.m.)

10 (Reconvened at 3:50 p.m.)

11 THE COURT: Mr. Fallon.

12 ATTORNEY FALLON: Thank you. Let me
13 begin by making two points crystal clear. We are
14 here and we're here for one reason; there's no
15 issue, there's no doubt, we're here because the
16 defendant has a constitutional right to have us
17 prove him guilty. That's why we're here. That's
18 what we've done. There's no mystery here.
19 There's no issue here.

20 Point number two, for all that stuff
21 that Counsel showed you on the screen, and for
22 all this testimony, I think there's one thing
23 that's inescapably clear about the defendant,
24 while not the sharpest knife in the drawer, he's
25 clearly low average intelligence, he's a

1 mainstream student, he's got two special classes.

2 All right. And I think Counsel probably
3 misspoke, but let me clarify something. He
4 wasn't reading as a five-year-old, he was reading
5 as a fifth grader. Let's just keep that clear.
6 Because he had some difficulties in reading,
7 which certainly makes one wonder as to what books
8 he was reading by the way. But we'll get to
9 that.

10 First point, and I want to make this
11 point because I think it's significant and it
12 feeds into the whole question of suggestibility,
13 or I -- should I say, the absence thereof. And
14 those are the statements to Kayla Avery.

15 Now, let's think about that. She's
16 telling us in a statement, in which she denied on
17 the stand, but she had a conversation with the
18 defendant in December about body parts and people
19 being pinned up. And while she thought he said
20 "chair", we got pinned up, and we got body parts
21 in a fire, we got blood coming out of concrete
22 floors; right?

23 Now, think about that. She was so
24 upset, so moved by that revelation that she went
25 to her counselor in early January. Now, if you

1 were 16 years old, if we were in a situation like
2 this, what would be the most disturbing images
3 for the experience if you really had experienced
4 it? It would be those images of a woman pinned
5 up. Of body parts in a fire. Of blood coming
6 out of a concrete floor.

7 Those are the things that would stick
8 with you in your memory. And I tell you that
9 because you know what? That's why he confessed.
10 Because he couldn't live with it. And it started
11 to eek out in his discussion little by little.
12 Peeling the onion, little by little, to his
13 cousin first. His peer. Followed by all that
14 trauma that winter. The loss of weight. The
15 tearful sessions. Sitting at a birthday party
16 and he's in tears because he's by himself. Why?
17 It's not because he lost a girlfriend, it's
18 because he couldn't live with it.

19 And when we get to the discussion of the
20 interrogation, that's the angle the officers
21 took. That's why he confessed.

22 All right. Theme two, the absence of
23 DNA or the absence of evidence. Well, it's been
24 a while since I had my human anatomy class, but
25 there was certainly a question about why there

1 isn't just oodles of blood all over that room if
2 there was someone's throat cut. But think, now.
3 Think about that description the defendant gave
4 you on the videotape. As I said, across the
5 front of the throat. And I believe -- my
6 recollection is it was above the Adam's apple.

7 Now, the last time I looked, the carotid
8 artery, or the jugular vein, which it seems to be
9 in common parlance, are on the sides of the neck.
10 You're not going to have a whole lot of blood
11 splurting (phonetic) around with a cut across
12 here. Which, by the way, is the correct
13 testimony of Mr. Stahlke from the crime lab. The
14 blood spatter expert.

15 Sure, if you cut somebody on their
16 carotid artery, you're going to have blood
17 spurting. If you cut them across here, there
18 isn't going to be a lot of blood. And that's
19 also consistent with, and also makes the
20 defendant's version credible because he wasn't
21 entirely sure that he wanted to cut all the way
22 through. As he said, he put his fingers up like
23 that and showed you a small cut. Not a
24 laceration. Not a severed artery or vein.

25 There's not more evidence in that room

1 because the bedding is burned. He tells us that.
2 The defendant is cleaning up. What's he going to
3 do? Not put bedding back on a bed? He's got to
4 sleep. He doesn't know when and if the police
5 are ever going to come. He's cleaning the room.
6 He's going to put fresh bedding on there.

7 And, remember, he's got four days to
8 clean up. Tuesday, Wednesday, Thursday, Friday.
9 That's four days. The police show up on
10 Saturday. Four days to clean that house. Four
11 days to clean.

12 He already knows about bleach. We got
13 bleach all over the garage. You think it takes
14 two seconds to wipe down some handcuffs?
15 Absolutely not. Counsel was saying, well, why
16 didn't they wash the handcuffs? Well, there's a
17 difference between handcuffs sitting around for
18 four days in the exclusive possession of Steven
19 Avery and a bullet that neither one of these guys
20 knew existed being found four months later in the
21 garage that she was able to obtain a profile
22 from.

23 And probably most importantly, and let's
24 talk about this, just because there is no DNA
25 profile, just because there were no fingerprints

1 of the defendant present doesn't mean he wasn't
2 there, doesn't mean he didn't do it. As Ms.
3 Culhane told you, very easy, it's still fragile.
4 DNA degrades. DNA gets cleaned up.

5 Mr. Riddle told you fingerprints
6 entirely dependent upon the nature of the
7 substance and to atmospheric conditions, weather
8 conditions. After all, what did he tell you?
9 They're 98 percent water. That's why there's no
10 prints.

11 On a car hood sitting outside for four
12 days, which, by the way, last time I looked that
13 car hood isn't exactly like your brand new car
14 off the showroom such that it's going to hold a
15 print. I'm surprised the defense didn't try to
16 sell you a bill of goods and say, jeez, why
17 didn't they test the car seat for prints?

18 I'm not going to even address the hairs
19 in the vacuum cleaner. That -- that's
20 ridiculous.

21 The best example for the absence of
22 evidence, even though we know someone was there,
23 is Steven Avery. He's driving the vehicle. He
24 drives it down there; right? He's opening the
25 doors. He's driving the vehicle down there. His

1 prints aren't on there either, are they? They're
2 not. We know he's there because his blood was
3 there, because he left his blood there.

4 Counsel will say, well, why didn't he
5 clean that up? Because he didn't think he had
6 to. Because he was going to crush that car.
7 That's what he was going to do with that car.
8 Don't have to worry about cleaning up the car.
9 Another day or two, that car would have been
10 gone.

11 And, finally, why is there no defendant
12 DNA there? Well, the last time I looked, I don't
13 think anyone said Brendan Dassey was actively
14 bleeding. There's no cut on him such that his
15 blood would be found anywhere.

16 All right. Let's talk about
17 interrogation. First of all, let's keep in mind
18 this is a gruesome rape/murder. This isn't your
19 average retail theft, your average burglary, your
20 average anything. The interrogation conducted by
21 these officers is nothing short of exemplary,
22 skilled, talented, pointed and directed, as I
23 suggested, to appeal to his sense of guilt. They
24 heard. They knew. They had that feeling.

25 As Counsel tell you, they've got three

1 times the experience that he has years on this
2 earth. They appeal to that sense of guilt. They
3 had that hunch that he wasn't going to be able to
4 live with it, and they were right.

5 People who are innocent don't confess in
6 the detail provided to the extent this defendant
7 provided it. They don't do that. This isn't
8 your walk in off the street I -- I killed
9 JonBenet Ramsey. We're about as far away from
10 that idea -- And I'm not quite sure where
11 Dr. Gordon's coming from, but I'm sure glad he's
12 going to Missouri.

13 People who are innocent don't confess.
14 The defendant confessed because he was guilty.
15 Because he did it. An innocent person is going
16 to deny the suggestion. They're not going to
17 admit to this. Not to the degree that the
18 defendant did. Now, let's keep one other thing
19 in mind. I'll listen to that argument, it makes
20 my blood boil, because those officers treated the
21 defendant a heck of a lot better than he treated
22 Teresa Halbach.

23 Now, let's clear up this corroboration
24 issue. The defense, in their opening comments on
25 argument, suggested to you that we needed to

1 corroborate everything in his statement. That's
2 not true. That's not the law. We need -- As
3 Mr. Edelstein corrected his colleague, we need
4 only prove beyond a reasonable doubt the elements
5 of those offenses; the murder, the rape, and the
6 mutilation. We don't have to corroborate. We
7 don't have to prove every single, solitary thing.
8 We'd be here for the next six months.

9 We're required to prove to you beyond a
10 reasonable doubt the elements of the offense.
11 The facts that make him guilty. So let's look at
12 some, what I would characterize as, irrefutable
13 corroboration. And it comes in facts that are
14 either known only to the killers or facts that
15 weren't discovered until after the defendant
16 provided them.

17 How about that Teresa was shot in the
18 garage? Sure, the officer said, well, who shot
19 her? Wiegert asked -- he got tired, he got
20 inpatient, he says, well, who shot her? He said,
21 he did. Who's he? Steven. Where? In the
22 garage. Where did that come from? With what? A
23 .22 caliber. More than once in the head. And in
24 the left side of the head.

25 And that the clothes were burned. That

1 was not discussed.

2 The officers had found some rivets.
3 That's true. And they knew it had -- there was
4 at least one gunshot to the left side of the head
5 from Dr. Eisenberg's initial report. But who
6 else would know that? You don't know that unless
7 you're there. That wasn't suggested, because if
8 it was, you can bet Counsel would have shown that
9 little tape to you. Even though he doesn't want
10 to take anything out of context, I didn't see any
11 of the answers or any of the setup to any of
12 those questions that he flashed on the screen
13 so -- so interestingly.

14 How about some facts discovered after he
15 talked. That was more than one shot in the head.
16 You recall, it was later on, as Detective Wiegert
17 told you, that they learned that there was at
18 least another gunshot in the head. They didn't
19 know more than one on March 1.

20 How about the location of the bed?
21 Counsel would have you believe that because the
22 defendant's version of all -- of the placement of
23 all the furniture is somewhat different than Jodi
24 Stachowski's, that he shouldn't be believed.
25 Again, core details versus peripheral. What's

1 important. What's not. The location of the bed
2 is the critical fact. In other words, you can
3 look down that hallway and see that bed, and
4 that's the point.

5 The other critical fact is we know,
6 because when the search warrant was executed the
7 bed wasn't there. The bed was underneath the gun
8 rack, also signifying that room was cleaned and
9 moved in an effort to thwart the investigative
10 efforts, in an effort to cover up this crime.

11 In fact, as you heard Detective Wiegert
12 tell you, jeez, we didn't think that made any
13 sense. We just thought that was just one of
14 those things we couldn't explain until they went
15 and they talked to Jodi Stachowski and they said,
16 well, by the way, before you traded off to jail,
17 where was that bed? She said, under the window,
18 on the wall by the door.

19 All right. And after -- after he
20 talked, they execute a search warrant and what
21 did they find? They find the bullets. Nobody
22 knew those bullets were there. Nobody knew for
23 sure until he said they were shot -- she was shot
24 in the garage. And they go back, well, let's go
25 look for bullets. And lo and behold, they find a

1 bullet with Teresa Halbach's DNA.

2 What else did they do? They went back
3 and they said -- Counsel will say, we'll, make a
4 big deal out about how they suggested to him that
5 he went under a hood. Well, let's take their
6 argument at face value. My response is, so what?
7 They went and they swabbed the hood and, jeez,
8 guess what? Steven Avery's DNA is on that hood.

9 Let's talk about successful resistance.
10 There were many examples. Think back. Many
11 times the officers -- well, what about those
12 wires hanging in the garage? Did you guys use
13 those? Did you do anything? Did you string her
14 up? Do you use those? Nope. Nope. He never
15 bought into that. He never adopted that.

16 He said, no, there was never any blood
17 on me from Teresa. Nope. He resisted knowing
18 anything about what happened to the hair that he
19 cut off her head. They tried to get him to say,
20 well, you've got it. Steven's got it. Where is
21 it? He didn't know. He didn't adopt that
22 suggestion.

23 He didn't adopt the suggestion when the
24 officers pressed him, well, you were the one --
25 how could you see that stuff in the burn barrel?

1 How did you know that was a cell phone and all
2 that stuff if it's in a bag? How could you have
3 known that? You were the one who put it in
4 there, weren't you? He didn't adopt that
5 suggestion.

6 And when he finally admitted to the
7 rape, they went back at him again and they say,
8 well, you saw Steven rape her, too, didn't you?
9 You were there when he did it; right? And he
10 said, no. No. He didn't adopt that.

11 But you know what the most important
12 suggestion resisted here? And that's the
13 suggestion that he shot Teresa Halbach. And you
14 all know why he was asked that. Because he
15 finally did cough up the fact that he held the
16 knife and then he cut her throat. So the next
17 logical question is, well, you also shot her too;
18 right? And they went at him several times during
19 that, and not once, once the "royal you" and the
20 "individual you" were cleaned up for him so that
21 he understood, he never said that he touched or
22 shot that gun. He resisted suggestion.

23 And while Counsel has him one foot away
24 from the institution, his presentation on the
25 witness stand is far from that. I don't know

1 about you, but he seemed to resist my suggestions
2 pretty well on cross-examination. At least to
3 the extent, well, you saw body parts in the fire;
4 didn't you? No, I didn't.

5 He resisted several of my suggestions,
6 but most of them he just said, I don't know.
7 We'll come back to that in a moment.

8 Well, the defense called Dr. Gordon. I
9 don't know what more we can say about Dr. Gordon,
10 but I took a couple of things, if you want to
11 believe them at all. Here's a guy who's using
12 this test which is normed, developed on
13 Europeans. A test he just recently got himself,
14 he said, after a year of trying. So it's not
15 like he's used this test a lot either.

16 The test about Anna Thompson on holiday
17 in the south of Spain who loses 50 pounds of
18 traveler's checks. What is a kid from Mishicot,
19 Wisconsin going to relate to that? Counsel says,
20 well, it's only one sentence. Sure. It's only
21 one sentence.

22 Then Dr. Gordon uses the Wechsler
23 Abbreviated Scale of Intelligence. And as we
24 heard, the Wechsler Scale of Intelligence has 11
25 scales, but you can give somebody the short

1 version, the *Reader's Digest* version, because
2 it's got four scales on there, and to give you an
3 idea as to how he would probably test out if you
4 took the time to run the whole test; right?

5 Well, our esteemed Dr. Gordon only
6 bothered to run two scales out of a four on the
7 abbreviated test. So he's abbreviating the
8 abbreviation. No matter. And, then, he has the
9 nerve to try to mislead you by using the scoring
10 criteria for the DSM-4, the Diagnostic and
11 Statistical Manual for Mental Diseases and
12 Disorders, and apply it to the Wechsler test,
13 when the Wechsler has its own scoring criteria,
14 all in an effort to make the defendant to be less
15 intelligent than he is.

16 I could go on about Dr. Gordon. But the
17 one thing Dr. Armentrout said that really made
18 sense, two words; so what? As Gordon said on
19 cross-examination, he's -- he's more -- he's
20 suggestible to telling a confession. Could be
21 telling the truth. Could be telling -- I can't
22 say. I don't know. So what?

23 All right. We come now to the
24 defendant. Counsel talked about the presumption
25 of innocence and the reasonable doubt. The

1 defendant takes the stand, says, I didn't do it.
2 I made it all up. Believe me.

3 And when I asked why -- repeatedly asked
4 why did you do this? Why did you do that? He
5 said, I don't know. He must have said, "I don't
6 know" 30 times, which, interestingly enough, is
7 about how many times the officers told him to
8 tell the truth during that interview.

9 While a defendant is presumed innocent,
10 he is not presumed believable. He is not
11 presumed credible. When he gets there and he
12 tells you, I don't know. I didn't do it. I made
13 it all up.

14 I want to play for you one brief clip,
15 and ask yourself, do people confess to rape, to
16 murder, and mutilation if they didn't do it, and
17 then apologize for it?

18 (Wherein portion of March 1 videotape is played)

19 There's your motive as sad as it is.
20 Just as Teresa's lifeless body was consumed by
21 that fire on Halloween night, the defendant's
22 presumption of innocence has been consumed by the
23 fires of his own desire. He wanted to know what
24 it was like. His presumption of innocence has
25 been destroyed by the fires of his own guilt.

1 There's only one verdict here for each
2 count, and that's a verdict of guilty. And we
3 ask you to bring that verdict. We ask you to
4 bring justice for Teresa. Thank you.

5 THE COURT: Uh, ladies and gentlemen, I'm
6 going to read you a closing instruction and several
7 others.

8 Now, members of the jury, the duties of
9 counsel and the Court have been performed. The
10 case has been argued by counsel. The Court has
11 instructed you regarding the rules of law which
12 should govern you in your deliberations. The
13 time has now come when the great burden of
14 reaching a just, fair and conscientious decision
15 of this case is to be thrown wholly upon you, the
16 jurors, selected for this important duty.

17 You will not be swayed by sympathy,
18 prejudice or passion. You will be very careful
19 and deliberate in weighing the evidence. I
20 charge you to keep your duty steadfastly in mind
21 and, as upright citizens, to render a just and
22 true verdict.

23 The following forms of verdict will be
24 submitted to you concerning the charges against
25 the defendant, Brendan Dassey.

1 We, the jury, find the defendant,
2 Brendan R. Dassey, guilty of first degree
3 intentional homicide, as a party to a crime, on
4 October 31, 2005, contrary to Sections 940.01
5 (1) (a), 939.50 (3) (a), 939.05 Wisconsin Statutes.

6 We, the jury, find the defendant,
7 Brendan R. Dassey, not guilty of first degree
8 intentional homicide, as a party to a crime, on
9 October 31, 2005, contrary to Sections 940.01
10 (1) (a), 939 -- excuse me -- uh, 50 point -- uh,
11 (3) (a), 939.05, Wisconsin Statutes.

12 We, the jury, find the defendant,
13 Brendan R. Dassey, guilty of mutilating a corpse,
14 as a party to a crime, on October 31, 2005,
15 contrary to Sections 940.11 (1), 939.50 (3) (f),
16 939.05 Wisconsin Statutes.

17 We, the jury, find the defendant,
18 Brendan R. Dassey, not guilty of mutilating a
19 corpse, as a party to a crime, on October 31,
20 2005, contrary to Sections 940.11 (1), 939.50
21 (3) (f), 939.05 Wisconsin Statutes.

22 We, the jury, find the defendant,
23 Brendan R. Dassey, guilty of second degree sexual
24 assault, as a party to a crime, on October 31,
25 2005, contrary to Sections 940.225 (2) (a), 939.50

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(3) (c), 939.05 Wisconsin Statutes.

We, the jury, find the defendant, Brenden R. Dassey, not guilty of second degree sexual assault, as a party to a crime, on October 31, 2005, contrary to Sections 940.225 (2) (a), 939.50 (3) (c), 939.05 Wisconsin Statutes.

We, the jury, find the defendant, Brendan R. Dassey, guilty of first degree reckless homicide, as a party to a crime, a lesser included offense, on October 31, 2005, contrary to Sections 940.02 (1) and 939.05 Wisconsin Statutes.

We, the jury, find the defendant, Brendan R. Dassey, not guilty of first degree reckless homicide, as a party to a crime, a lesser included offense, on October 31, 2005, contrary to Sections 940.02 (1) and 939.05 Wisconsin Statutes.

It is for you to determine whether the defendant is guilty or not guilty of each of the offenses charged. You must make a finding as to each count of the Information. Each count charges a separate crime and you must consider each one separately. Your verdict for the crime charged in one count must not affect your verdict

1 on any other count.

2 This is a criminal, not a civil, case.
3 Therefore, before the jury may return a verdict
4 which may be -- legally be received, the verdict
5 must be reached unanimously. In a criminal case,
6 all 12 jurors must agree in order to arrive at a
7 verdict.

8 When you retire to the jury room, select
9 one of your members to preside over your
10 deliberation. That per -- that person's vote is
11 entitled to no greater weight than the vote of
12 any other juror.

13 When you have agreed upon your verdict,
14 have it signed and dated by the person you have
15 selected to preside.

16 Before we swear the jury officer, I'm
17 going to, uh, ask the clerk to draw three names
18 from the tumbler. The first two of those names
19 will be jurors who are discharged. The third
20 will be a juror who will remain sequestered.

21 As to the discharged jurors, I'm going
22 to order the following:

23 That you are not to discuss the matter
24 with the media or anyone else until a verdict has
25 been received by this Court.

1 Uh, once the verdict is received, you
2 may, but are under no obligation to, discuss your
3 participation in the case with the media or
4 anyone you choose to discuss it with.

5 Madam clerk.

6 ATTORNEY FREMGEN: Judge, one thing, I --

7 THE COURT: Oh --

8 ATTORNEY FREMGEN: Are we -- are we
9 going to keep the name --

10 THE COURT: I -- I -- thank you for
11 reminding me. I'm going to ask at this point
12 that -- that any audio be muted so that any name is
13 not a -- a matter of public broadcast. Thank you.

14 THE CLERK: The first one is No. 11, Renee
15 Schmidt.

16 THE COURT: All right. Remain there
17 just a second, Ms. Schmidt -- Schmidt.

18 THE CLERK: Second one is No. 10,
19 Cynthia Edge.

20 THE COURT: All right. Ms. Edge and Ms.
21 Schmidt, uh, stay there just for a moment, but you
22 will be the -- the jurors who are -- are discharged.
23 Draw the third name, please.

24 THE CLERK: Third one is No. 1, Thomas
25 Oakes.

1 THE COURT: All right. The three of you
2 would exit the jury box, please, and join the
3 officer here. He will -- he will, uh, escort you
4 out. All right.

5 Would you swear the jury officer,
6 please?

7 (Wherein bailiff is sworn)

8 THE COURT: Madam Bailiff, here are the
9 original verdict form and 12 forms for the jurors to
10 review.

11 (Jury out at 4:26 p.m.)

12 THE COURT: Be seated. The Court is going
13 to adjourn during the deliberations. Uh, of course,
14 we may have to return in the event questions are
15 asked. Uh, the Court will provide a -- an hours
16 notice, uh, to the, uh, people who request it, uh,
17 after the return of the verdict, before the verdict
18 is announced, which may or may not be tonight. All
19 right? We're adjourned.

20 (Recess had at 4:27 p.m.)

21 (Reconvened at 10:10 p.m. Jury in)

22 THE COURT: This is State of Wisconsin vs.
23 Brendan Dassey 06 CF 88. Uh, appearances, please.

24 ATTORNEY KRATZ: The State continues in
25 its appearance by Special Prosecutors Ken Kratz,

1 Norm Gahn and Tom Fallon.

2 ATTORNEY FREMGEN: Attorney Mark Fremgen
3 appears with Attorney Ray Edelstein. Defendant
4 appears in person.

5 THE COURT: We're here now to receive the
6 verdicts from this jury. Before the Court receives
7 and reads the verdicts, I want to remind all those
8 present that this is a court of law. The Court
9 recognizes the emotional nature of this case and its
10 importance to all parties involved. However, vocal
11 outbursts or displays of emotion will not be
12 tolerated. Any violation will result in removal
13 from the courtroom.

14 Uh, ladies and gentlemen, have you
15 chosen a foreperson?

16 JUROR: Yes.

17 THE COURT: I ask that the foreperson hand
18 to the jury bailiff these verdicts.

19 As to Count 1, we, the jury, find the
20 defendant, Brendan R. Dassey, guilty of first
21 degree intentional homicide, as party to a crime,
22 on October 31, 2005, contrary to Sections 940.01
23 (1) (a), 939.50 (3) (a), 939.05 Wisconsin Statutes.
24 Dated this 25th day of April, 2007, and signed by
25 the foreperson.

1 As to Count 2, we, the jury, find the
2 defendant, Brendan R. Dassey, guilty of
3 mutilating a corpse, as party to a crime, on
4 October 31, 2005, contrary to Sections 940.11
5 (1), 939.50 (3)(f), 939.05 Wisconsin statutes.
6 Dated this 25th day of April, 2007, and signed by
7 the foreperson of the jury.

8 As to Count 3, we, the jury, find the
9 defendant, Brendan R. Dassey, guilty of second
10 degree sexual assault, as party to a crime, on
11 October 31, 2005, contrary to Sections 940.225
12 (2)(a), 939.50 (3)(c), 939.05 Wisconsin Statutes.
13 Dated this 25th day of April, 2007.

14 I'm going to poll the jury at this
15 juncture. I ask that, uh, any audio that is
16 currently being run in the courtroom be muted or
17 turned off.

18 And I'm going to start, uh, in chair No.
19 2, and ask, uh, Mr. Hughes, were these your
20 verdicts as read -- read by the Court and are
21 these still now your verdicts in this case?

22 JUROR HUGHES: Yes.

23 THE COURT: Ms. Tedder, were these your
24 verdicts as read -- read by the Court and are
25 they still now your verdicts in this case?

1 JUROR TEDDER: Yes.

2 THE COURT: Ms. Shea, were these your
3 verdicts as read by the Court and are they now still
4 your verdicts in this case?

5 JUROR SHEA: Yes.

6 THE COURT: Ms. Durst, uh, were these your
7 verdicts as read by the Court and are they still now
8 your verdicts in this case?

9 JUROR DURST: Yes.

10 THE COURT: Mr. Heinzl, were these your
11 verdicts as read by Court and are they still now
12 your verdicts in this case?

13 JUROR HEINZEL: Yes.

14 THE COURT: Ms. Foss, were these your
15 verdicts as read by the Court and are they now still
16 your verdicts in this case?

17 JUROR FOSS: Yes.

18 THE COURT: I'll go to the front row.
19 Mr. Covington, were these your verdicts as read
20 by the Court and are they now still your verdicts
21 in this case?

22 JUROR COVINGTON: Yes.

23 THE COURT: Ms. Running, were these your
24 verdicts as read by the Court and are they now still
25 your verdicts in this case?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUROR RUNNING: Yes.

THE COURT: Ms. Orth, were these your verdicts as read by the Court and are they still now your verdicts in this case?

JUROR ORTH: Yes.

THE COURT: Ms. McGuire, were these your verdicts as read by the Court and are they still now your verdicts in this case?

JUROR MCGUIRE: Yes.

THE COURT: Ms. Lowery, were these your verdicts as read by the Court and are they still now your verdicts in this case?

JUROR LOWERY: Yes.

THE COURT: I'm sorry?

JUROR LOWERY: Yes.

THE COURT: All right. Ms. Shippy, were these your verdicts as read by the Court and are they still now your verdicts in this case?

JUROR SHIPPY: Yes.

THE COURT: The polling has, uh, been com -- completed. Members of the jury, uh, on behalf of Manitowoc County, I would like to express my sincerest gratitude and appreciation for your service in this case. I recognize, particularly in this case, that personal sacrifice in terms of time

1 and restrictions on your normal activities have been
2 required by this trial. That sacrifice is a
3 necessary part of the price we pay for the judicial
4 system every citizen enjoys. You, as jurors, act as
5 the collective conscience of the community in making
6 these decisions. Again, I thank you.

7 Before discharging you, I have one final
8 instruction.

9 Now, that your service in this case is
10 completed, some of you may have questions about
11 the confidentiality of the proceedings. Many
12 jurors ask if they are at liberty to discuss the
13 case with anyone after receiving the verdicts.
14 Because your role in the case is over, you are
15 free to discuss it with any person you choose.
16 However, you should know that you do not have to
17 discuss the case with anyone or answer any
18 questions about it from anyone other than the
19 Court.

20 If you do decide to discuss the case
21 with anyone, I would suggest you treat any
22 discussion with a degree of solemnity such that
23 whatever you do say, you would be willing to say
24 in the presence of your fellow jurors or under
25 oath here in open court in the presence of the

1 parties. Also, always keep in mind if you do
2 decide to discuss the case, that your fellow
3 jurors fully and freely stated their opinions
4 with the understanding they were being expressed
5 in confidence. Please respect the privacy of the
6 views of your fellow jurors.

7 If any member or members of the jury
8 wish to discuss the case this evening with
9 representatives of the media, arrange --
10 arrangements can be made to permit you to do so
11 before you leave. Uh, if you wish to do so, let
12 the bailiff know that that is your desire.

13 Should anyone, whether from the media or
14 otherwise, persist in attempting to question you
15 over your objection, you should contact this
16 Court.

17 Finally, should any of you have any
18 questions for the Court before leaving this
19 evening, please let the bailiff know before you
20 leave the jury room.

21 Again, thank you. You are now excused
22 and discharged.

23 (Jury excused at 10:17 p.m.)

24 THE COURT: Mr. Kratz, I see the microphone
25 in front of you. Do you have a motion?

1 ATTORNEY KRATZ: I do, Judge. I'd ask
2 that the Court enter judgment on the verdicts.

3 THE COURT: The Court will, based on these
4 verdicts, enter judgment of guilty, uh, as reflected
5 in the verdicts of this jury.

6 Uh, are we prepared at this point to set
7 a sentencing date?

8 ATTORNEY KRATZ: Uh, we can certainly
9 set the date, Judge. There are two requests that
10 I would make. First, I would ask the Court, uh,
11 order a, uh, presentence, uh, investigative
12 report. I'm sure, uh, that, uh, will be done as
13 a matter of course.

14 Secondly, given the nature of the, uh,
15 convictions, uh, and although, uh, the bond and
16 bail that has been set in this case, uh, is,
17 uh -- is rather high, uh, given the mandatory
18 sentence, uh, that is, uh, necessary and
19 imperative in this case, uh, I would ask that the
20 Court, uh, revoke bail at this time.

21 THE COURT: Defense wish to be heard?

22 ATTORNEY FREMGEN: No, Judge.

23 THE COURT: All right. The -- the Court
24 will, for the -- the reasons stated by the
25 prosecutor, revoke the bail in this case. Court

1 will order that a presentence investigation be
2 completed by July 9, 2007. I would like to set
3 sentencing for July 17, 2007, and this assumes that
4 your calendars are open on that day.

5 ATTORNEY FREMGEN: Judge, I have a
6 two-day trial Monday and Tuesday of that week.

7 THE COURT: Your calendar's not open.

8 ATTORNEY FREMGEN: It is not open.

9 THE COURT: All right.

10 ATTORNEY KRATZ: Perhaps the week before
11 that, Judge. I know at the end of July I have a,
12 um -- a week-long arson trial. But if the Court
13 could set it, perhaps -- uh, maybe move up the,
14 uh -- the PSI and set it for the second week of
15 July.

16 THE COURT: Uh, the difficulty is in moving
17 up the PSI.

18 ATTORNEY KRATZ: I understand.

19 THE COURT: I -- I -- I'm sort of

20 cutting it close on that one in the first
21 instance. I could certainly set, uh -- set it
22 either later on in July toward the absolute end
23 or the beginning of August if that's --

24 ATTORNEY KRATZ: The first couple of
25 days of August would be just fine, Judge.

1 THE COURT: How about Monday, August 6?
2 ATTORNEY FREMGEN: That's fine.
3 THE COURT: Nine o'clock a.m.?
4 ATTORNEY FREMGEN: That's fine.
5 ATTORNEY KRATZ: August 6 at 9?
6 THE COURT: Yeah.
7 ATTORNEY KRATZ: That will work out
8 fine. Thank you, Judge.
9 THE CLERK: Do you still want the PSI to be
10 done by July --
11 THE COURT: Actually, we can move the
12 PSI, uh, to the --
13 ATTORNEY KRATZ: Sixteenth maybe?
14 That's a week later.
15 THE COURT: Yeah. The 16th, uh, is a
16 Saturday, so -- Well, that's June. Excuse me. Uh,
17 yeah, 16th is a Monday. That's fine. PSI will be
18 due then on the 16th.
19 THE CLERK: Do you want an order drafted
20 on the bail revocation?
~~21 THE COURT: The State will draft the order~~
22 ~~on the bail modification.~~
23 ATTORNEY KRATZ: I will, Judge.
24 THE COURT: Sentencing, 9:00, uh, August 6.
25 Anything more to come before the Court this evening?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ATTORNEY KRATZ: Not today, Judge, thank
you.

ATTORNEY FREMGEN: No, Judge.

THE COURT: Good evening, then.

(Court stands adjourned at 10:20 p.m.)

