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STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
BRANCH 3

STATE OF WISCONSIN,

PLAINTIFF,

DECISION & MOTION
HEARING

vs.

Case No. 06 CF 88

BRENDAN R. DASSEY,

DEFENDANT.

DATE: JUNE 2, 2006

MANITOWOC COUNTY
STATE OF WISCONSIN
FILED

BEFORE: Hon. Jerome L. Fox
Circuit Court Judge

DEC 11 2007

APPEARANCES:

CLERK OF CIRCUIT COURT

KENNETH R. KRATZ
SPECIAL PROSECUTOR
On behalf of the State of Wisconsin.

LEONARD D. KACHINSKY
Attorney at Law
On behalf of the Defendant.

BRENDAN R. DASSEY
Defendant
Appeared in person.

* * * * *

TRANSCRIPT OF PROCEEDINGS

Reported by Jennifer K. Hau, RPR

Official Court Reporter

1 THE COURT: This is the State of Wisconsin
2 vs. Brendan R. Dassey, 06 CF 88. Appearances,
3 please, counsel?

4 ATTORNEY KRATZ: The State appears by
5 Calumet County District Attorney Ken Kratz,
6 appearing as special prosecutor in the case.
7 Joining me this afternoon is Tom Fallon from the
8 Department of Justice.

9 ATTORNEY KACHINSKY: The defendant
10 appears personally with Attorney Len Kachinsky.

11 THE COURT: All right, uh, we last were in
12 this courtroom Friday, May 26, last week. Uh, at
13 that time we had scheduled here a motion on bail.
14 Actually, two competing motions on bail. One from
15 the defense asking that property be posted -- be
16 allowed to be posted as a surety for bail in this
17 instance, and the other from the prosecution asking
18 that, actually, bail be increased. At the -- at the
19 commencement of that proceeding, uh, I asked, uh,
20 Mr. Dassey whether or not -- because it had been
21 discussed in chambers prior to coming in here, uh,
22 whether or not he desired new counsel.

23 Uh, in response to that inquiry he told
24 me he did. Uh, at that point I adjourned the
25 hearing to come back here today to flush out the

1 record, specifically, by finding out from
2 Mr. Dassey, uh, what his objections to court
3 counsel were, if any, and, uh, whether or not
4 those objections rose to the level that
5 substitute counsel could be appointed.

6 Uh, does that comport with your
7 understanding, gentlemen? First, you,
8 Mr. Kachinsky?

9 ATTORNEY KACHINSKY: Uh, yes, Your Honor,
10 it does.

11 THE COURT: Special prosecutor?

12 ATTORNEY KRATZ: Yes, Judge.

13 THE COURT: Mr. Dassey, would you pull that
14 microphone a little closer to you, please? Remember
15 at the -- the last time you were in court I asked
16 you whether or not you wanted someone to replace
17 Mr. Kachinsky?

18 THE DEFENDANT: Yeah.

19 THE COURT: And you responded at that time
20 that you did?

21 THE DEFENDANT: Yeah.

22 THE COURT: Is that your answer today? If
23 I were to ask you the same question, do you want
24 someone to replace Mr. Kachinsky, what would your
25 answer be?

1 THE DEFENDANT: Yes.

2 THE COURT: How do you -- Basically, how do
3 you get along with Mr. Kachinsky?

4 THE DEFENDANT: Not bad.

5 THE COURT: Does "not bad" mean good or
6 what?

7 THE DEFENDANT: Yeah.

8 THE COURT: You guys fight when you're
9 together?

10 THE DEFENDANT: No.

11 THE COURT: You argue?

12 THE DEFENDANT: No.

13 THE COURT: Can you talk with him?

14 THE DEFENDANT: Yeah.

15 THE COURT: Does he listen to you when you
16 talk?

17 THE DEFENDANT: Yeah.

18 THE COURT: Does he explain things to you?

19 THE DEFENDANT: Yeah.

20 THE COURT: Does he explain things to you
21 in a way that you understand them?

22 (No verbal response.)

23 THE COURT: Are you still talking to him?

24 THE DEFENDANT: Yeah.

25 THE COURT: Do you think he's doing what he

1 believes to be in your best interest?

2 THE DEFENDANT: Sort of.

3 THE COURT: And "sort of" mean yes, no, or
4 a little of each?

5 THE DEFENDANT: Little of each.

6 THE COURT: You think he understands your
7 case?

8 THE DEFENDANT: Yeah.

9 THE COURT: Is there any way in which the
10 two of you are -- are in any serious conflict? Any
11 serious difference of opinion?

12 THE DEFENDANT: Not that I know of.

13 THE COURT: Tell me why you want to change
14 lawyers at this point.

15 THE DEFENDANT: Because I think he -- that
16 he -- I think he -- he -- that I think he thinks I'm
17 guilty.

18 THE COURT: And that's the reason that
19 you -- you want to get a different lawyer?

20 THE DEFENDANT: Yeah.

21 THE COURT: Did someone else bring this up
22 to you? The -- the notion that you should have a
23 new lawyer?

24 THE DEFENDANT: Just my mom.

25 THE COURT: And -- and she urged you to

1 find different counsel?

2 THE DEFENDANT: Yeah.

3 THE COURT: Is there any other reason,
4 other than the one that you -- you have given me,
5 that you -- you think Mr. Kachinsky should be
6 replaced by someone else?

7 THE DEFENDANT: No.

8 THE COURT: All right. Mr. Kachinsky, you
9 have, uh, filed an affidavit, uh, to which you've
10 attached -- or I shouldn't say attached -- but
11 you've also filed at the same time a -- a short
12 memorandum of law. I'm going to just touch upon a
13 couple of the -- the items that are in your
14 affidavit, although we all understand that since the
15 affidavit's been filed it is a matter of record.

16 You note in the affidavit that you are
17 approximately one of four lawyers in Wisconsin
18 certified as a criminal trial specialist by the
19 National Board of Trial Advocacy; is that
20 correct?

21 ATTORNEY KACHINSKY: Uh, yes, Your Honor.

22 THE COURT: What is the National Board of
23 Trial Advocacy?

24 ATTORNEY KACHINSKY: Uh, the National Board
25 of Trial Advocacy is an ABA certified organization

1 that tests, uh, attorneys that wish to apply for
2 certification so they can place it in advertisement
3 and other purposes, uh, in their state, uh -- under
4 state codes. Uh, they have to be qualified as a
5 criminal trial specialist. There's requirements for
6 a certain amount of jury trial experience. There's
7 also educational requirements in terms of continuing
8 education, uh, requirements for references, and,
9 also, a -- a check with the reputation among the
10 local judges. Uh, based on that, uh, then
11 they'll -- they'll certify you. They also have
12 certifications for other types of specialties, uh,
13 such as civil trial specialties and family and
14 probate law.

15 THE COURT: Just for the record, ABA means
16 American Bar Association; does it not?

17 ATTORNEY KACHINSKY: Uh, yes, Your Honor.

18 THE COURT: Uh, in your opinion, is this an
19 honor to be certified by the National Board of Trial
20 Advocacy?

21 ATTORNEY KACHINSKY: Uh, it's not so
22 much an honor as it is just a recognition of, uh,
23 considerable experience and, uh, certain level of
24 talent in the area.

25 THE COURT: According to your affidavit, as

1 of May 26, 2006, you had spent over 140 hours
2 representing Mr. Dassey; is that correct?

3 ATTORNEY KACHINSKY: Uh, yes, Your Honor.

4 THE COURT: You've hired an investigator to
5 assist you in the preparation of this case; have you
6 not?

7 THE DEFENDANT: I have, Your Honor.

8 THE COURT: You note, in the course of the
9 affidavit on page two, that there has not, at least
10 in your opinion, been a breakdown of the attorney-
11 client relationship.

12 ATTORNEY KACHINSKY: Uh, correct, Your
13 Honor.

14 THE COURT: This was -- I think this
15 affidavit is dated, uh, May 30. That isn't -- isn't
16 long ago. Has there been any change in that?

17 ATTORNEY KACHINSKY: Uh, I talked to
18 Mr. Dassey, uh, earlier this week. The tone of our
19 discussion was the same as it was before, and pretty
20 much as he just described it to the Court.

21 THE COURT: All right. Uh, you say, as
22 well, that -- that Mr. Dassey appears to understand
23 the -- the issues in this case on an intellectual
24 level; is that correct?

25 ATTORNEY KACHINSKY: Yes, Your Honor.

1 THE COURT: And that your -- your
2 interaction with him, the tone of your
3 conversations, has generally been casual and
4 relaxed?

5 ATTORNEY KACHINSKY: Uh, yes, Your
6 Honor.

7 THE COURT: Uh, has there been any
8 irreconcilable differences between the two of you?

9 ATTORNEY KACHINSKY: Not at this point.

10 THE COURT: Have you received any notice of
11 retention of private counsel for Mr. Dassey?

12 ATTORNEY KACHINSKY: I have not, Your
13 Honor.

14 THE COURT: Uh, are you, uh, in the event
15 Mr. Dassey so desires, prepared to try this case on
16 his behalf?

17 ATTORNEY KACHINSKY: Um, yes, Your Honor, I
18 would be.

19 THE COURT: Uh, all right. That ends the
20 Court's, uh -- Court's inquiry. And -- and I'm now
21 going -- I'm now going to rule.

22 Um, Mr. Dassey has requested that he
23 have substitute counsel appointed for -- for
24 Mr. Kachinsky. In order for that to occur in
25 Wisconsin, the defendant in this case,

1 Mr. Dassey, Dassey must show that there exists a
2 factual basis for appointing a successor counsel.
3 In fact, the defendant, who has appointed
4 counsel, which is what Mr. -- which -- which is
5 what Mr. Kachinsky is, must show that there is,
6 quote, good cause, end quote, uh, to warrant
7 substitution of his current lawyer. And -- and,
8 uh, that -- that's set forth in a number of
9 Wisconsin cases. I -- I'm taking it, for -- for
10 this hearing, from a case called **State v. Haynes**
11 at 118 Wis. 2d page 21 at page 27.

12 Uh, another case, uh, sets forth a
13 number of examples of good cause, and that case
14 is **State v. Wanta**, and that's 224 Wis. 2d 679 at
15 703.

16 Now, I'm not suggesting that these are
17 exclusive examples or illustrations of good
18 cause, but, frankly -- and I think I've read
19 almost all of this -- all the cases that touch on
20 this -- uh, I haven't really seen any cases that
21 embodied other than these factors or these
22 examples I'm about to -- to run through.

23 One of them is attorney -- attorney
24 incompetency. Another is conflict of interest
25 between the lawyer and client. Another is an

1 irreconcilable conflict or difference. And
2 that -- and another is the complete breakdown in
3 communications between the lawyer and his client.

4 Additionally, uh, the ca -- case sounds
5 a cautionary note by pointing out that, uh,
6 exchanging or substituting counsel can't be
7 manipulated in such a way as to interfere with
8 the administration of justice.

9 So, where does it get us based on --
10 based on these facts and using the -- the legal
11 standard that I said applies here?

12 Now, let's look at attorney
13 incompetency. Here, we have a lawyer in
14 Mr. Kachinsky who is one of a handful of
15 Wisconsin attorneys who is certified as a, uh,
16 criminal trial specialist by a -- a acknowledged
17 national board, namely, the National Board of
18 Trial Advocacy.

19 He spent over 140 hours since his
20 appointment on this matter in March -- in early
21 March of 2006 preparing the case.

22 I've had an opportunity to evaluate not
23 only his court appearance, uh, but his written
24 product, uh, brief, uh, motions, pleadings, and I
25 don't think, uh, anyone would even remotely

1 suggest that there's any showing here of
2 incompetency.

3 Uh, conflict of interest between lawyer
4 and client. I don't think that exists. Uh,
5 there's not even a threshold question. By way of
6 illustration, uh, Mr. Dassey originally had an
7 attorney who, uh, determined at one point or
8 another that he was related to, uh, some members
9 of the -- the victim's family in this case. And
10 that's a conflict of interest. Obviously, he
11 requested that he be removed. That was good
12 cause on his part to be removed, and he was
13 removed and replaced by Mr. Kachinsky.

14 The next one is irreconcilable conflict
15 or difference. Um, I don't see or hear anything
16 that tells me that there is an irreconcilable
17 conflict or difference. Uh, Mr. Dassey says he
18 has, uh -- he has some reservations about counsel
19 because of Mr. Dassey's perception of -- of what
20 counsel may or may not think about his guilt.

21 Well, that, in and of itself, and there
22 is case law on this, does not constitute good
23 cause. It also, uh, is part, I would, uh -- I
24 would suggest of a substantial number, if not a
25 majority of -- of criminal law cases, so, I don't

1 think that -- I don't think that there is any
2 irreconcilable conflict or difference.

3 Uh, lastly, for purposes of this
4 discussion, I'm going to use the -- the factor
5 the complete breakdown in communication. There
6 didn't seem to be much, if any, breakdown. There
7 may be a difference of opinion about one thing or
8 another.

9 But, here, uh, Mr. Dassey was -- was
10 very candid, uh, said he could talk to him, he
11 said, uh, Mr. Kachinsky -- Mr. Kachinsky
12 explained things to him. Um, that appeared that
13 Mr. Kachinsky's take on it is that the
14 relationship is pretty cordial. Mr. Dassey did
15 nothing to gainsay that. Uh, so, there certainly
16 isn't, I don't believe, any breakdown, complete
17 or otherwise, in communication.

18 With that said, uh, the Court is -- is
19 going to find here that there has not been good
20 cause shown for substitution of -- of this
21 attorney. Uh, accordingly, I'm going to treat
22 this request as a motion. Accordingly, I'm going
23 to, uh, deny Mr. Dassey's motion to substitute
24 someone for, uh, Mr. Kachinsky as his counsel.

25 Now, we started out on May 12 discussing

1 a couple -- or discussing one bail motion. Uh,
2 the matter was set for a hearing. The defense
3 was prepared to proceed. The defense actually
4 started to proceed. I think we, uh, marked an
5 Exhibit, Exhibit No. 1.

6 Uh, during the course -- or, actually,
7 at the very beginning of the process, special
8 prosecutor raised an objection to proceeding and
9 said that, uh, prosecution wanted to file a
10 motion asking that bail be increased in this
11 instance.

12 Uh, the defense motion was to use
13 property owned in Marinette County by the
14 grandparents of this defendant as a property bond
15 surety for the defendant's two hundred fifty
16 thousand dollar bail.

17 The property, according to Exhibit 1,
18 had been appraised, uh, with a fair market value
19 of three hundred fifty-two thousand, six hundred
20 dollars. The, uh, local tax authorities had
21 valued it at, three hundred thirty-two thousand,
22 uh, six hundred dollars. It -- it -- it's owned
23 by Allen -- Allen and Delores Avery.

24 Um, the special prosecutor, uh, after
25 the hearing, filed, on May 17, uh, a motion

1 requesting that bail be raised from two hundred
2 fifty thousand to five hundred thousand. The
3 motion was received under seal. After reviewing
4 the motion, this Court sees no reason why the
5 motion should remain under seal. The Court is,
6 uh, going to lift that portion of its order that
7 placed the, uh -- placed the motion under seal.

8 I'm also going to request that Counsel,
9 when he -- he talks about this motion, uh,
10 discusses the factual basis for -- for the
11 items -- or for the, uh, material found in it.

12 Uh, I should note as well that Manitowoc
13 County, through its corporation counsel, Steven
14 Rollins, has written a letter that is a matter of
15 record in this court, uh, requesting that the
16 Court not grant the motion of the defendant.
17 Specifically, uh, the defendant's motion
18 envisions Manitowoc County as being the mortgagee
19 for any mortgage that would be, uh, taken against
20 the property in Marinette County.

21 Gentlemen, have I accurately, uh,
22 summarized -- I'll start with you, Mr. Kratz --
23 summarized the issue that's here before the Court
24 today?

25 ATTORNEY KRATZ: Yes, Judge.

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THE COURT: Mr. Kachinsky?

ATTORNEY KACHINSKY: Uh, yes, Your Honor.

THE COURT: All right. What I'm going to suggest we do is, Mr. Kachinsky, you can, uh, should you wish, make whatever argument you want on your motion. Uh, Mr. Kratz, you can respond. And at, uh -- following your own response, uh, make an argument on your motion and you can reply to his response. Go ahead.

ATTORNEY KACHINSKY: Well, Your Honor, we've asked the Court to permit, uh, Mr. Dassey to be released on a property bond, and we certainly acknowledge, uh, the concerns expressed by, uh, Corporation Counsel Rollins about a property bond not being as easily, uh, uh, dealt with, uh, in the event that there's a violation and they wish to fork out the forfeiture of the bond because it is real property and not, uh -- not cash, uh, that can simply be moved from one account, uh, into another.

Um, and that because of those logistical problems that would exist in terms of ever forfeiting the bond, should there be a -- a violation or desire by the State, uh, to do so, is why we suggested that the amount of the lien be three hundred thousand dollars rather than two

1 hundred fifty thousand dollars to compensate for
2 possible attorney's fees and other costs that
3 Manitowoc County might have in the event that
4 Manitowoc -- that the State had to foreclose the
5 bond because of a violation.

6 I think in terms, though, of -- of
7 securing, uh, Mr. Dassey's, uh, presence in
8 further proceedings and compliance with the
9 conditions of bond that, uh, basically tying up
10 his grandparents' property in, uh -- in
11 Marinette, uh, is just as effective as, uh, tying
12 up two hundred fifty thousand dollars in a trust
13 account that's managed by the clerk of courts,
14 uh, of Manitowoc County.

15 Uh, the property involved, unlike the,
16 uh, property in this county, which is a salvage
17 yard, um, doesn't have nearly the environmental
18 concerns that, uh, would exist when, uh, Steve
19 Avery made a similar motion, uh, in his case,
20 which the Court, uh, is well aware of.

21 And, in fact, the paperwork we submitted
22 to the Court regarding the form of the mortgage,
23 etc., was taken from that case. It provided, uh,
24 to us, with the assistance of, uh, Steve Avery's,
25 uh, attorneys, uh, I believe by increasing the

1 amount of the bond and tying up that significant
2 amount of property, which had been valued higher
3 than the present bond, that, uh, it's quite, uh,
4 realistic to believe that that would serve as a
5 significant incentive for Mr. Dassey, uh, to, uh,
6 comply with the law, show up in court, and not,
7 uh, violate other terms of bail, uh, should the
8 Court, uh -- Court grant that.

9 Uh, he's a -- he's a -- a 16-year-old
10 with, uh, community -- plenty of community ties
11 and someone who feels a great deal of affection
12 toward his, uh, grandparents and wouldn't, uh,
13 uh, I think, with any malice or forethought, do
14 anything that would cause them to forfeit, uh,
15 property worth over quarter of a million dollars
16 up in Marinette County.

17 THE COURT: Mr. Kratz?

18 ATTORNEY KRATZ: Thank you, Judge. Some of
19 the factors that argue against a, uh, property bond,
20 uh, also argue for the increase in the cash bond. I
21 will defer to Mr. Rollins, as he's much more
22 familiar with the, uh, process by which a property
23 bond is, uh, converted, uh, to cash. Uh, since the
24 value of the property remains an open question, uh,
25 Mr. Rollins', uh, opinion, I think, should be given,

1 uh, a lot of, uh -- a lot of deference.

2 The, uh, primary factor, however, is
3 that the State believes that property, rather
4 than cash, would be insufficient to secure
5 Mr. Dassey's appearance at, uh, future court
6 appearances. And, therefore, cash should be
7 required.

8 The grandparents, if they're so
9 inclined, had the ability to go to a bank, and if
10 the property is really worth what it's worth,
11 they can convert that property, uh, by way of
12 mortgage to cash and, uh, have that posted, but,
13 the property, uh, not belonging to Mr. Dassey
14 himself, the State believes is, uh, insufficient
15 to secure his appearance at future court
16 appearances.

17 That, of course, is the primary purpose
18 of bond under Chapter 969. That is to secure,
19 uh, future court appearances, uh, and because of
20 the nature of the offense, because of the risks
21 that I'll talk about, uh, in just a moment, uh,
22 the State agrees with the corporation counsel for
23 Manitowoc that the property bond is, uh,
24 insufficient and the Court should require that it
25 remain a cash bond.

1 Cash bail, however, uh, sometimes is
2 necessary to secure appearances. That has been
3 already determined by this Court. The factors
4 that the Court considers when determining the
5 amount of the cash bail includes the gravity of
6 the offense and the penalties the defendant
7 faces, uh, if, in fact, he's convicted. Uh,
8 those, by the way, haven't changed since our last
9 time, uh, here in court.

10 Uh, but the Court should also consider
11 the degree of violence involved, the character
12 and strength of evidence. This Court, as I
13 heard, uh, this afternoon, uh, has, uh, ordered
14 the State, uh, to, uh, release the information by
15 way of factual basis that we've included in -- in
16 our, uh, motion, uh, and I will, uh, do that at
17 this time because the -- the new information
18 that's been developed does go not only to the
19 degree of violence that's involved in this case
20 but also to the character and strength of
21 evidence.

22 First of all, this Court ruled, on the
23 1st of, uh, March, that the statements given by,
24 uh, Brendan Dassey, or I should say the
25 statements that he made on the 1st of March, are,

1 in fact, admissible. As I argued, uh,
2 previously, that solidifies, uh, the relative,
3 uh, uh, strength and, uh, position of the case as
4 far as proceeding.

5 However, I've also included for the
6 Court by way of -- of, uh, specific information
7 in my motion that there have been new forensic
8 findings, uh, specifically in a report received
9 by the, uh, D.A.'s office. Uh, the report is
10 dated the May 8 has been shared with, uh, Mr.,
11 uh, Kachinsky, and, also, uh, Counsel in, uh, the
12 co-defendant's case.

13 Uh, this Court is now aware that on the
14 2nd of March a bullet fragment was recovered from
15 the garage of the property belonging to Steven
16 Avery. This Court may recall that in
17 Mr. Dassey's statement, Mr. Dassey's admission,
18 uh, he indicated that Mr. Avery, as part of the
19 taking the life of Teresa Halbach, uh, used a
20 firearm, uh, in the, uh, garage area.

21 With that statement having been given,
22 uh, this Court is aware that a search warrant was
23 sought, was obtained, and was executed on the 1st
24 and 2nd of March at the Avery, uh, property.
25 And, in the Avery garage, as I mentioned, a

1 bullet fragment, uh, was recovered. That bullet
2 fragment was submitted to the Wisconsin Crime
3 Laboratory for DNA analysis. And, in fact, a DNA
4 profile was recovered from that bullet fragment.
5 We now know that Teresa Halbach's DNA, uh, was
6 found on that bullet fragment taken from the
7 Avery garage.

8 That, of course, is significant
9 evidence, significantly corroborates Mr. Dassey's
10 statement, uh, as to, uh, the, uh, manner, uh, of
11 homicide, uh, and it does go directly to the
12 strength and character of the evidence.

13 Mr. Dassey also mentioned during his
14 admission on, uh, the 1st of March, that, uh,
15 Mr. Avery, uh, opened the hood of, uh, Teresa
16 Halbach's SUV. Thereafter, law enforcement
17 officials processed the hood latch of the SUV.
18 Again, a DNA profile was developed from the hood
19 latch and was found to be a positive match for
20 that of Steven Avery.

21 Once again, Judge, these are new
22 forensic findings that, uh, corroborate not only
23 Mr. Dassey's statements, but go to the strength
24 of the evidence, uh, that is available to the
25 State.

1 Lastly, Judge, there was a new statement
2 provided by Brendan Dassey to law enforcement
3 officials on the 13th of May. After this Court
4 ruled on the 12th of May the admissibility of
5 Mr. Dassey's statements, Mr. Dassey, uh, while
6 inviting law enforcement to meet with him,
7 provided new and important details, uh, as to the
8 homicide and surrounding circumstances.
9 Mr. Dassey himself, on the 13th, indicated that
10 he and co-defendant, Steven Avery, planned the
11 homicide of Teresa Halbach. That is, that they
12 targeted Teresa Halbach several days prior to
13 October 31.

14 He and Mr. Avery met, discussed not only
15 the, um, manner in which the homicide would
16 occur, but who the victim would be. They
17 targeted Teresa Halbach, and, in fact, uh, as
18 Mr. Avery's initial statement -- Excuse me. As
19 Mr. Dassey's initial statement, uh, may have, uh,
20 suggested, that he simply walked into, uh, a
21 circumstance on the 31st, out of Mr. Dassey's own
22 mouth on the 13th of May, we now know that that
23 wasn't true. This was a premeditated act.
24 Didn't just happen across this, uh, crime being,
25 uh, committed.

1 Mr. Dassey, on the 13th also, uh,
2 indicates that the location of the homicide, uh,
3 was the garage rather than the, um, bedroom,
4 which again provides in more detail as to
5 mechanism and location of death. And, finally,
6 more details were provided as to mutilation, uh,
7 of the, uh, victim's corpse.

8 This Court has to consider, when
9 deciding what the appropriate amount of cash bail
10 to be, uh, risks. Uh, there is a risk of flight
11 that the State argues has increased. There's a
12 risk of harm not only to Mr. Dassey himself by
13 himself, but from others not wishing Mr. Dassey
14 to be available to testify, if necessary, in
15 future court proceedings, not just his own, but
16 in other matters that he may be required to
17 testify in. Risk of manipulation from external
18 sources. Tampering with the attorney-client
19 relationship. Decisions that are helpful to
20 persons other than Brendan Dassey, I think
21 Mr. Kachinsky's already alleged, and is a risk,
22 that this Court can and, I think, should
23 consider, lastly, the risk to the general public
24 is something the Court can and should consider.

25 Given now, Mr. Dassey's statement that

1 this was a premeditated crime, that it was
2 planned, that they targeted the victim, the
3 violence and the cruelty exhibited, uh, in this
4 series of events, the State believes now requires
5 or justifies the Court increasing cash bail from
6 two hundred fifty thousand dollars to five
7 hundred. The state believes that amount
8 necessary to secure Mr. Dassey for future court
9 appearances.

10 That's all the State has, Judge. Thank
11 you.

12 THE COURT: Mr. Kachinsky.

13 ATTORNEY KACHINSKY: Your Honor, in terms
14 of whether or not the present amount of bail is, uh,
15 sufficient or not to assure Mr. Dassey's presence at
16 trial, or to ensure compliance with the issues of
17 bond, the Court needs to compare the circumstances
18 that existed at the time it was originally set when
19 he was arraigned or March 3 of, uh, this year, uh,
20 to the present, and to see what the new evidence as
21 been cited by Mr. Kratz really adds in terms of the
22 likelihood, of, uh, conviction and eventual
23 sentence, uh, based on -- uh, to Mr. Dassey.

24 When Mr. Dassey first appeared before a
25 court and bond was, uh, scheduled at two hundred

1 fifty thousand dollars, uh, the Court was aware,
2 uh, and it was contained in the Criminal
3 Complaint, that there was a videotaped, uh,
4 confession that, uh, was sufficient to support
5 the three charges that were, uh -- were in the
6 Complaint.

7 Confession, of course, uh, if it's, uh,
8 valid and jury believes it, and doesn't believe
9 that it was, uh, coerced or the result of some
10 type of coaching by -- by law enforcement
11 officials, this is probably about the strongest
12 type of evidence, uh, you could ever have, uh, in
13 a criminal case.

14 There were, of course, at that time
15 other circumstances that would tend to, perhaps,
16 show that Mr. Dassey was the perpetrator of these
17 offenses in terms of his, uh, location at his
18 residence, uh, his presence in the area around
19 the time of the, uh, offense, uh, and so forth.

20 The question is, does this new evidence,
21 cited by the State, really add very much to that?
22 It doesn't really change, uh, any evidence that
23 didn't already exist; that Mr. Dassey lived in
24 the vicinity of Mr. Avery, knew Mr. Avery, or
25 that, uh, Mr. Dassey had made statements on

1 videotape, uh, claiming to have been involved in
2 the offenses that, uh, Mr. Avery, uh, had
3 previously been, uh, charged with.

4 Uh, his character, uh, before the bond
5 was originally set, was someone who never had any
6 contact with law enforcement other than previous,
7 um, meetings with law enforcement officials in
8 connection with this, uh, investigation. The
9 Court saw those later on when the motion to
10 suppress was -- was litigated and it really
11 doesn't add very much, uh, to that as well.

12 Uh, whatever degree of -- of planning
13 may have existed, uh, it's still rather clear
14 that the, uh, impetus behind this was that it did
15 occur, that Steven Avery and not, uh, Brendan
16 Dassey. The relative ages of the individuals are
17 known by the Court. The Court has seen
18 Mr. Dassey's, uh, interaction with others in
19 those videotapes, which the Court reviewed in the
20 motion to suppress, uh, to see that Mr. Dassey is
21 not someone who's a leader or aggressor in terms
22 of violence against, uh, other individuals.

23 I don't believe that the, uh, State's
24 additional evidence has added much to beyond what
25 already existed at the time bond was originally

1 set. So we'd ask that the bond amount, uh,
2 remain where it is.

3 THE COURT: All right. Uh, the Court has
4 before it two motions, and -- and I'll treat them as
5 they came in.

6 First is the motion on the part of the
7 defendant to be permitted to use as surety for
8 two hundred fifty thousand dollar bail property
9 in Marinette County that has been, uh, valued at
10 I think it was between three hundred thirty and
11 three hundred fifty thousand dollars. The
12 defendant proposes executing a mortgage in favor
13 of Manitowoc County in the sum of three hundred
14 thousand dollars to, uh, secure Mr. Dassey's two
15 hundred fifty thousand dollar bail.

16 Uh, as both counsel have noted, uh, bail
17 is a -- a -- bail setting is something of a
18 balancing act under Wisconsin law. Specifically,
19 under Chapter 969, uh, our statutes. The Court
20 in setting bail here has taken a look at the
21 nature, number, and gravity of the offenses, the
22 potential penalty the defendant faces and, uh,
23 the violence of the acts involved, and came up,
24 as a result of that, with two hundred -- with
25 bail of two hundred fifty thousand dollars.

1 Uh, the statutes permit under certain
2 circumstances that property be posted in lieu of
3 cash. Uh, and that is precisely what, uh, the
4 defendant is proposing to do in this case. It's
5 not the defendant's property, it's his
6 grandparents' property. Uh, and that becomes
7 part of the -- the calculus in here but, uh, not,
8 uh, from my perspective a great part of the
9 calculus.

10 Uh, I believe that under the -- the case
11 of **State v, Gassen** at -- at 143 Wis. 2d 761,
12 specifically, at page 763, uh, the Court is
13 permitted to reject the use of a surety bond in
14 lieu of cash, and the Court can base that
15 rejection, and I'm going to do so, on the
16 seriousness of the offenses, the severe possible
17 penalties, and under those circumstances I think
18 that, uh -- I think that in this instance cash
19 is -- is going to have to be necessary.
20 Therefore, I deny the motion to -- to lower bail.

21 Now, Mr. Kachinsky -- Excuse me.
22 Mr. Kratz has filed a motion and he has asked
23 for, uh, an increase in bail from two hundred
24 fifty thousand to five hundred thousand dollars.

25 Uh, 969.08 of the statutes the -- the --

1 the title of it says, grant reduction increase or
2 revocation conditions of release. Uh, subsection
3 two talks about violations of the conditions of
4 release or the bail bond constitutes the grounds
5 for the court to increase the amount of bail or
6 otherwise alter the conditions of -- of -- of
7 release.

8 Now, I -- I'm not suggesting that that's
9 the only time, obviously, that -- that one can do
10 this because, uh, uh, there are other instances.

11 However, I think there has to be some --
12 some significant change, uh, at least arguably
13 significant change, in -- in -- in the -- uh, in
14 the matter before I am going to be granting an
15 increase in the bail.

16 In this case, uh, the special prosecutor
17 has told us that the -- the -- they have since,
18 uh, discovered forensic evidence that, uh, tends
19 to support, I suggest, uh, some of the admissions
20 made by this defendant, and also tie together a
21 little bit more completely the case and, as well,
22 this defendant apparently has -- has made some
23 other -- other admissions.

24 While this is true, and from the
25 standpoint of the texture of the case it -- it

1 changes, uh, I don't think qualitatively the case
2 changes. The same -- same crimes are being
3 charged. Same penalties are -- are -- are -- uh,
4 the defendant's going to be subject to the -- the
5 same penalties. I don't think, in short, that
6 the grounds offered here today by the special
7 prosecutor, uh, constitute sufficient grounds to
8 increase the bail, and accordingly, I'm
9 denying -- denying the special prosecutor's
10 motion as well.

11 ATTORNEY KRATZ: Judge, should the, uh,
12 defendant be in a position, whether himself or,
13 more, uh, typically, uh, by a -- a family member,
14 uh, wish to, uh, post cash bail, uh, is the Court,
15 uh, going to, uh, fashion, uh, some nonmonetary
16 conditions of bond that might be appropriate.

17 Because of the -- the threats that I
18 mentioned about, uh, manipulation, uh, and, uh,
19 other, uh, factors, uh, the State believes things
20 like, uh, place of, uh, residence, uh, other
21 conditions of release all become important, and
22 should that eventuality occur, uh, I would simply
23 ask that the State be given an opportunity to be
24 heard by the Court in fashioning a nonmonetary
25 condition.

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THE COURT: And that may well be the case and you'll certainly have a chance to -- to make that motion. Anything else from you, Mr. Kachinsky, today?

ATTORNEY KACHINSKY: No. I would agree with Mr. Kratz that if the bond is, uh -- if posted, there should, perhaps, be a held -- hearing held very promptly to determine if there's any additional nonmonetary conditions that ought to be set.

THE COURT: All right. Um, each of you can draft the -- the order denying the other's motion. Anything else today, gentlemen?

ATTORNEY KRATZ: Nothing, Judge. Thank you.

THE COURT: All right. We're adjourned.

(PROCEEDINGS CONCLUDED.)

