

ORIGINAL

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH I

MANITOWOC COUNTY

STATE OF WISCONSIN,

MANITOWOC COUNTY  
STATE OF WISCONSIN  
**FILED**  
Plaintiff,  
JUN 15 2006

STATE'S MOTION FOR JURY  
VIEW PURSUANT TO § 972.06  
WIS. STATS.

vs.

STEVEN A. AVERY,

**CLERK OF CIRCUIT COURT**  
Defendant.

Case No. 05-CF-381

The State of Wisconsin, by Special Prosecutor Kenneth R. Kratz, hereby moves the Court for an order allowing the jury to view the Avery property located at 12930 Avery Road in the Township of Gibson, Manitowoc County, Wisconsin pursuant to Wis. Stats. Sec. 972.06.

More specifically, the State requests that the court allow jurors to be transported to the Avery property to view the layout of the residences and other buildings located on the property as well as the geographical location where key pieces of evidence were located. The State respectfully requests the jury be allowed to view:

1. the residence at 12932 Avery Road, occupied by Steven Avery on October 31, 2005;
2. the detached garage at 12932 Avery Road, utilized by Steven Avery on October 31, 2005;
3. the residence at 12930A Avery Road occupied by Barbara Janda and Brendan Dassey on October 31, 2005;
4. the residence at 12930 Avery Road occupied by Allan and Delores Avery on October 31, 2005;
5. the residence at 12928 Avery Road occupied by Charles Avery on October 31, 2005;
6. the buildings which comprise the Avery Auto Salvage business at 12930 Avery Road;
7. the location where Teresa Halbach's vehicle was discovered on November 5, 2005;
8. the areas where the car crusher was located on November 5, 2005;
9. the specific location where the license plates from Teresa Halbach's vehicle were observed on November 8, 2005;
10. the location which comprised the "burn area" discovered behind the detached garage of the Steven Avery residence at 12932 Avery Road;

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(1)

11. the area from which a "burn barrel" was recovered in front of the Steven Avery residence at 12932 Avery Road.

A. Jury View

Wisconsin Statutes section 972.06 states "View. The court may order a view by the jury."

The purpose of a jury view is to assist the jury in understanding the evidence. Townsend v. State, 257 Wis. 329, 334, 43 N.W.2d 458, 460 (1950). Whether to permit a view is in the trial court's discretion. State v. Marshall, 92 Wis.2d 101, 124, 284 N.W.2d 592, 602 (1979). A view of the scene is not evidence and is not to be considered as evidence. Id.

In Marshall, a witness, Cummings, occupied the cottage directly to the rear of the building in which a homicide occurred. While in the cottage, Cummings made visual observations and also heard loud noises including "three quick noises that sounded like gunshots." Id. at 110. The trial court allowed a jury view of the scene; the defendant objected.

The Wisconsin Supreme Court held that:

[i]n ordering a view of the scene, the trial court was proceeding under sec. 972.06, Stats., which states simply, 'The court may order a view by the jury.' Under the facts of this case not only was a view of the scene not prejudicial or inflammatory, but must have been of great assistance to the jury in reaching its verdict. The location of the victim's apartment and its relationship to, and distance from, the cottage occupied by Cummings were important facts the knowledge of which would necessarily have helped the jury in assessing the credibility of the State's witness. Moreover, the record shows that the jury was specifically instructed that the view of the scene was not evidence and was not to be considered by it as evidence. It was also instructed that the time of day and the environment were different at the time of the murder from what they were as it viewed the scene. These instructions were sufficient to correct any misapprehension the jury may have had.

Id. at 124.

In State v. Harrington, 41 Wis. 2d 757, 165 NW2d 120, (1969), and pursuant to sec. 972.06, Stats., the trial court, over the objection of defense counsel, ordered both a daytime and

nighttime view of the scene of the crimes. The court held the view to be an appropriate exercise of discretion because the record revealed that the trial court ordered the view for the purpose of assisting the jury in understanding the evidence. The trial court also instructed the jury regarding the limited purpose for which the view was undertaken (that what they observed at the scene was not evidence and they were not to consider it as such).

In State v. Coulthard, 171 Wis.2d 573, 588-590, 492 N.W.2d 329,336 - 337 (Wis.Ct.App.,1992), the court held that “[a] view of the scene of the shooting gave the jury an idea of the local terrain and highways and the relative locations of the sites described in testimony. Since that assisted the jurors' understanding of the evidence, granting the view was within the trial court's discretion.” The court found that the possibility of juror confusion was slight at best because the jurors knew the date and hour of the shooting.

In the present case, the State intends to illicit testimony from witnesses that were on and around the Avery property between October 31, 2005 and November 11, 2005. The testimony will include descriptions of the locations of buildings and residences as well as the locations where key pieces of evidence were located. The State believes that only a physical trip to the Avery property and a jury view of the scene can adequately relay to the jury the great expanse of the Avery property as well as the relationship of residences, buildings and the locations of physical evidence.

As in Marshall, Harrington and Coulthard, a view of the scene will assist jurors in understanding the evidence. While aerial photographs have been taken of the Avery property, most jurors are not going to have the life experience necessary to review, in this case, an aerial photograph and extrapolate the distances. The jury being physically present at the scene to view Steven Avery's residence and detached garage in relationship to the burn area and Brendan Dassey's residence will be of great assistance to the jury in understanding the evidence provided by multiple witnesses during a trial that may take a number of weeks.

B. Defendant's Presence During Jury View

The State recognizes that a defendant has the right to be present at every stage of trial, State v. Haynes, 118 Wis.2d 21, 25, 345 N.W.2d 892, 894 (Wis.Ct.App.1984), but it is within the discretion of the trial court to order that a defendant be restrained. Flowers v. State, 43 Wis.2d 352, 363, 168 N.W.2d 843, 849 (1969). The court must state its reasons for a restraint. State v. Clifton, 150 Wis.2d 673, 682, 443 N.W.2d 26, 29 (Ct.App.1989).

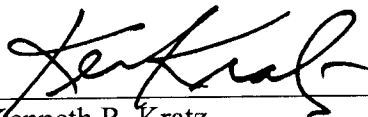
Given the nature of the charges against Mr. Avery, the State is concerned for the safety of the jury and, indeed, Mr. Avery's own security. Ordering that Steven Avery be equipped with a protective vest as well as a stun belt and that he be accompanied by armed, plain clothes officers as a pre-condition to his attendance is a reasonable request and within the court's discretion. Clifton, 150 Wis.2d at 682-83, 443 N.W.2d at 29-30.

C. Jury Instruction

The State requests that the Court utilize WIS JI-Criminal 152 "View of Scene" both before and after the view of the Avery Property to make clear to the jury that the view is not evidence and is not to be considered as evidence.

Dated this 9<sup>th</sup> day of June, 2006.

Respectfully submitted,

  
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Kenneth R. Kratz  
Calumet County District Attorney  
Manitowoc County Special Prosecutor  
State Bar # 1013996

Calumet County District Attorney's Office  
206 Court Street  
Chilton, WI 53014  
(920) 849-1438