

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 IN  
LIMINE: ADMISSIBILITY  
OF DNA EVIDENCE

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 a pretrial ruling on the admissibility of expert testimony on DNA evidence testing results. The state intends to introduce DNA profiling evidence at the trial in the above matter. The state intends to introduce DNA PCR/STR identification evidence as well as DNA identification evidence derived from Mitochondrial DNA testing. As grounds for its motion, the state relies upon the DNA admissibility provisions in the Wisconsin State Statutes. In the summer of 2001, in the Wisconsin budget bill, 2001 Wis. Act 16, the legislature enacted laws pertaining forensic DNA testing. Included in this bill were DNA provisions updating the definition of a DNA profile to reflect the evolving nature of DNA testing. This bill repealed Wis. Stat. 972.11 (5) which addressed the admissibility of DNA evidence using the older RFLP technology. The older RFLP terminology was replaced with language encompassing newer PCR/STR profiling and other techniques. The newer language provided a more durable definition of a DNA profile as "an individual's patterned chemical structure of genetic information identified by analyzing biological material that contains the individual's deoxyribonucleic acid." Wis. Stat. section 939.74(2d)(a). The state submits that this definition of DNA profile identification evidence encompasses both PCR/STR and mitochondrial DNA testing methodologies.

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(1)

The newer law also addressed the admissibility of DNA profile identification evidence. In Wis. Stat. section 971.23 (9)(a), the definition of a DNA profile from section 939.74(2d)(a) is referenced and admissibility of DNA profile evidence is premised upon the notice and production requirements of section 971.23 (9)(b) and (c). For DNA profile evidence to be admissible, “the party seeking to introduce the evidence shall notify the other party of the intent to introduce the evidence in writing by mail at least 45 days before the date set for trial” and upon request, provide reports and findings of the DNA testing. Wis. Stat. 971.23(9)(b). Section 971.23(9)(c) goes on to state that “[t]he court shall exclude [DNA] profile evidence at trial, if the notice and production deadlines under par.(b) are not met...” Subsection (9)(c), however, provides exceptions to the statutory deadlines for the notice and production requirements.

The state asks the court to find that the statutory provisions of Wis. Stat. sections 939.74(2d)(a) and 971.23(9)(a),(b), and (c) provide for the admissibility of DNA PCR/STR and DNA mitochondrial profile evidence at trial. Attached to this Motion in Limine is a memorandum of law detailing the widespread acceptance of both PCR/STR and mitochondrial DNA testing methodologies by courts around the county.

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

  
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