

STATE OF WISCONSIN

CIRCUIT COURT

MANITOWOC COUNTY

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STATE OF WISCONSIN,

Plaintiff,

vs.

STEVEN A. AVERY,

Defendant.

MANITOWOC COUNTY  
STATE OF WISCONSIN  
**FILED**

JUN 19 2006

CLERK OF CIRCUIT COURT

Case Number: 2005-CF-381

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**MOTION TO SUPPRESS EVIDENCE:  
FRANKS VS. EDWARDS VIOLATION,  
LACK OF PROBABLE CAUSE FOR WARRANT,  
AND MULTIPLE EXECUTIONS OF WARRANT**

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TO: Special Prosecutor Kenneth Kratz  
Calumet County District Attorney's Office  
206 Court Street  
Chilton, Wisconsin 53014

Steven A. Avery, by his attorneys, BUTING & WILLIAMS, S.C., by Attorney Jerome F. Buting, and HURLEY, BURISH & STANTON, S.C., by Attorney Dean A. Strang, moves the court for an order excluding from trial all evidence seized from the Avery Auto Salvage property and the defendant's residence and garage on November 5-9, 2005, together with any derivative evidence. This motion is brought pursuant to Sec. 971.31(2), Stats., on the grounds that evidence was seized from Avery Auto Salvage Property and the defendant's premises, located at 12932 Avery

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(1)

Road, in the Town of Gibson, County of Manitowoc, Wisconsin, pursuant to a search warrant which was obtained on November 5, 2005, on the basis of an affidavit which intentionally or with reckless disregard for the truth contained false information without which the affidavit lacked sufficient facts to establish probable cause, in violation of the rights guaranteed the defendant under the Fourth and Fourteenth Amendments to the United States Constitution; Article I, Sections 1, 2, 9 and 11 of the Wisconsin Constitution; Chapter 968, Stats.; and *Franks v. Delaware*, 438 U.S. 154, 155-56 (1978); *Mapp v. Ohio*, 367 U.S. 643 (1961); *Trupiano v. United States*, 334 U.S. 699 (1948); *Weeks v. United States*, 232 U.S. 383 (1914).

Further, the defendant moves the court for the entry of an order excluding for use as evidence at trial all physical evidence seized from the defendant's trailer and garage after the first entry pursuant to a search warrant, which occurred at 3:48 p.m. on November 5, 2005, on the grounds that the officers thereafter re-entered the defendant's residence at least eight more times and his garage on at least three separate occasions over five days between November 5-9, 2005, without obtaining a new warrant to search these buildings.<sup>1</sup> Such additional searches were improper because a warrant may only be executed once. *See, generally, LaFave, Search and*

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<sup>1</sup>A separate search warrant was issued on November 7, allowing only the seizure of the defendant's home computer, but no other items from the house or garage. This warrant was derived directly from prior unlawful entries to Steven Avery's residence, so it too must be suppressed.

*Seizure*, (3d. ed., 1996) §4.10(d), Vol. 2, p. 679. The defendant requests an evidentiary hearing to establish facts for the record as to the manner in which this warrant was executed.

Further, the defendant moves for exclusion from use as evidence all derivative evidence, including but not limited to statements taken from the defendant and evidence seized as a result of additional search warrants issued on November 7, 2005, November 9, 2005, December 9, 2005, and March 1, 2006,<sup>2</sup> which were derived from the first defective warrant. *Taylor v. Alabama*, 457 U.S. 687 (1982); *Dunaway v. New York*, 442 U.S. 200 (1979); *Brown v. Illinois*, 422 U.S. 590 (1975); *Davis v. Mississippi*, 394 U.S. 721 (1969); *Wong Sun v. United States*, 371 U.S. 471 (1963); *Silverthorne v. United States*, 251 U.S. 385 (1920); *State v. Brady*, 130 Wis. 2d 443, 388 N.W.2d 151 (1986); *State v. Smith*, 131 Wis. 2d 220, 388 N.W.2d 601 (1986); *State v. Flynn*, 92 Wis. 2d 427, 285 N.W.2d 710 (1979), *cert. denied*, 449 U.S. 846 (1980).

In addition, Avery reserves the right to seek the suppression of any items seized during any of the searches which exceed the scope of the warrants, once Crime Lab testing is complete and it becomes evident whether such items have any

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<sup>2</sup>Two November 7 warrants sought the defendant's computer and DNA; a November 9 warrant renewed the November 5 warrant to search the Avery Auto Salvage property and residences contained on that property; the December 9 warrant from Calumet County sought a wooden cabinet/bookcase from Steven Avery's bedroom; and the March 1 warrant sought another search of Steven Avery's trailer and garage.

relevancy to the State's case.<sup>3</sup> *Maryland v. Garrison*, 480 U.S. 79, 84-85, 107 S. Ct. 1013, 94 L.Ed 2d 72 (1987) (Fourth Amendment particularity requirement limits scope of lawful search to those areas and items for which probable cause is described in the warrant application); *State v. Pires*, 55 Wis. 2d 597, 606, 201 N.W.2d 153 (1972) (search which is lawful at its inception may become unlawful by broadening its intensity and scope).

AS GROUNDS THEREFOR, the defendant submits the following:

### Legal Standards

The Fourth Amendment prohibition against unreasonable searches and seizures is designed to safeguard the privacy and security of individuals against arbitrary invasions by government officials. *State vs. Boggess*, 115 Wis. 2d 443, 448-49 (1983). A search warrant may only be issued on the basis of a finding of probable cause by a neutral and detached magistrate. *United States vs. United States District Court*, 407 U.S. 297, 318 (1972); *Ritacca vs. Kenosha County Court*, 91 Wis. 2d 72, 77 (1979). The existence of probable cause is determined by analyzing the "totality of the circumstances." *Illinois v. Gates*, 462 U.S. 213, 238 (1983).

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<sup>3</sup>The State claimed at the last court hearing that crime lab testing was completed and the results would be forwarded to the defense no later than May 12, 2006. In fact additional results of crime lab testing continue to be sent to the defense as recently as June 8, 2006. As a result of the sheer volume of discovery (over 7500 pages to date) it is still unclear whether any challenge need be made to seized items which may have been outside the scope of the warrants. In the event they prove irrelevant to the issues in the case an agreement by the parties may obviate the necessity of a court challenge.

A defendant may contest a finding of probable cause to issue a search warrant in certain circumstances. Under *Franks v. Delaware*, 438 U.S. 154, 155-56 (1978), if the defendant makes a substantial preliminary showing that when police requested a search warrant, the affiant provided false information intentionally or with reckless disregard for the truth, and the information was necessary to establish probable cause, the Fourth Amendment requires that a hearing be conducted. If, at the hearing, it is proved that false information was presented intentionally or with reckless disregard for the truth, and after setting aside the false information, there is no longer probable cause, the search warrant must be voided. Any fruits from the warrant must then be excluded from evidence to the same extent as if probable cause was lacking on the face of the affidavit in the first place. *Id.* The *Franks* rule applies not just to affirmative misstatements but also to material omissions of fact from the search warrant affidavit. *State v. Mann*, 123 Wis.2d 375, 385-86, 570 N.W.2d 601 (1985).

The majority rule in this country is that “a warrant may be executed only once.” *See, generally, LaFave, Search and Seizure, supra*, at p.679. Under this rule, if the police execute a warrant, perform a search, and then leave, they may not return to search again without obtaining another warrant. *See also State v. Trujillo*, 95 N.M 535, 624 P.2d 44, 48 (1981)(warrant is executed when a search is conducted, and its

legality expires upon execution; thereafter no additional search can be undertaken on the same warrant absent exigent circumstances.); *State v. Gomez*, 392 N.W.2d 308, 309-10 (Minn.App.1986); *United States v. Gagnon*, 635 F.2d 766, 769 (10th Cir. 1980); *State v. Pina*, 94 Ariz. 243, 383 P.2d 167, 168 (1963), *overruled on other grounds*, *Yuma County Attorney v. McGuire*, 111 Ariz. 437, 532 P.2d 157 (1975); *McDonald v. State*, 195 Tenn. 282, 259 S.W.2d 524, 525 (1953); *Duncan v. State*, 11 Okla. Cr. 217, 144 P.2d 629, 632 (1914).

### **Franks Motion: Search Warrant Affidavit**

Avery submits that the November 5, 2005, search warrant in this case was issued on the basis of an affidavit containing false statements which were presented intentionally or with reckless disregard for the truth, and that when such information is excised from the affidavit, the warrant lacked probable cause so that all evidence obtained directly or as a derivative of that warrant must be suppressed. *Franks v. Delaware*, 438 U.S. at 155-56. Avery requests an evidentiary hearing to establish the facts in support of his *Franks* motion. As an offer of proof, Avery submits that an evidentiary hearing will establish the following discrepancies, derived from the discovery in this case, between the claims in the search warrant affidavit (attached as Exhibit 1) and the true facts.

The search warrant affidavit, in ¶5, claims that “a vehicle matching the

description of the vehicle owned by Teresa Halbach” was found on the Avery property by “volunteer searchers.” The affidavit further claims that the “searchers” provided “the VIN #JT3HP10V5X7113044 taken from the vehicle they located,” which Investigator Remiker was able to confirm was the correct number for Teresa Halbach’s vehicle. Both of these claims are untrue.

The search warrant affidavit incorrectly characterized as “volunteer searchers” private individuals who were in fact acting in an agency capacity for law enforcement in that they were organized, coordinated and instructed by law enforcement authorities to go to the Avery property for purposes of conducting a search on behalf of law enforcement. *See, State v. Payano-Roman*, 2006 WI 47, ¶17-20, 714 N.W.2d 548 (private individuals acting in joint endeavor with law enforcement are subject to Fourth Amendment restrictions). Moreover, contrary to the affidavit, these individuals neither claimed that they found a vehicle which “matched” Teresa Halbach’s vehicle, nor did they provide a complete VIN from the vehicle they discovered on the Avery property.

On November 5, 2005, Calumet County Sheriff’s Department Investigator Mark Wiegert contacted Detective Remiker of the Manitowoc County Sheriff’s Department (hereinafter MTSO) and advised him that he wished his assistance for a meeting at the MTSO where Wiegert intended to meet with several volunteer

search parties to “coordinate efforts” (STATE 0080). Wiegert told Remiker that several searchers “were willing to go to the Avery property on Avery Rd to search the junkyard/salvage area” (*Id.*). Law enforcement authorities did not at that time have probable cause for a warrant to search the Avery property, and it was unlikely the Averys would allow Manitowoc County Sheriff’s deputies onto their property for a thorough search, given the open animosity between the parties as expressed in a pending \$36 million lawsuit by Steven Avery against that department. The “volunteer searchers” who asked permission of the Averys to conduct a search of their salvage yard did not advise the Averys that they were coordinated by or working on behalf of the Sheriff’s Department. The “volunteer searchers” who gained access to the Avery property were therefore utilized by law enforcement to conduct an end-run around the defendant’s Fourth Amendment rights. *See United States v. Feffer*, 831 F.2d 734, 737 (7th Cir. 1987) (“the government may not do, through a private individual, that which it is otherwise forbidden to do”).

Further, contrary to the averments in ¶5 of the search warrant affidavit, the “volunteer searchers” did not state that they had located a “vehicle matching the description of the vehicle owned by Teresa Halbach at Avery Salvage.” Neither did they supply a complete VIN number for identification. Rather, Patricia Sturm, one of the “volunteers searchers,” who was actually a private investigator, called the



Calumet County Sheriff's Department with only a partial VIN containing a few of the characters and pointedly noted that the color was different than the color she understood Teresa's car to be. Teresa's RAV-4 was identified as "green," but Sturm described the vehicle she found as "bluish-green though its more blue than green." (STATE 126-68). She told Investigator Wiegert that she believed the last four numbers of the VIN she saw were 3044, but that she could not see the beginning of the VIN. She was only able to see six other characters in the VIN number of the vehicle she discovered: "T0Z5X7."<sup>4</sup> So, in truth, Sturm was *not* able to describe the complete VIN of the vehicle she found on the Avery property as claimed in ¶5 of the affidavit, but only 9 or 10 of the 17 VIN characters contained in Teresa Halbach's vehicle, and even those were not all expressed with much certainty as she did not have her glasses with her.

The only other information contained in ¶5 of the search warrant affidavit -- that Detective Remiker saw the partially concealed Toyota RAV-4 and confirmed its complete VIN number -- was information derived directly from the detective's unauthorized and nonconsensual entry upon the Avery property when he arrived after Sturm's phone call. Whatever an officer finds during an unlawful entry cannot

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<sup>4</sup>The first character in the middle segment of Teresa's actual VIN is not a "T" but the number "1," which differs from the sequence Patricia Sturm initially relayed over the phone. Sturm did state that she was not sure if it was "a 1 or a T, a 1 or a T."

be used later to support probable cause before a search warrant magistrate. *Murray v. United States*, 487 U.S. 533, 540 (1988); *Silverthorne Lumber v. United States*, 251 U.S. 385, 392 (1920).

Thus, all of the information in ¶5 of the search warrant affidavit must be excised and the remainder of the warrant application must be considered to determine if the affidavit still states probable cause. *Franks*, 438 U.S. at 155-56. Avery contends that once ¶5 is excised the remainder of the search warrant affidavit does not come close to probable cause.

Paragraphs one and two of the search warrant affidavit simply describe the missing person complaint that was made to the Calumet County Sheriff's Department on November 3, 2005, in which Teresa Halbach's mother stated that her daughter had not been seen or heard from since October 31, 2005. The next paragraph describes Investigator Remiker's contact with Steven Avery on November 4, 2005, during which time he allowed the investigator to search his residence, with presumably no incriminating result. The affidavit does say that Avery informed the investigator that Teresa was on his property on October 31, 2005, to take pictures of a vehicle for sale. But that admission, alone, adds little to the probable cause equation. Avery notes that the affidavit does not allege that Avery is the last person known to have seen Halbach alive. *Cf., State v. Anderson*, 2005 WI

54, ¶69, 280 Wis. 2d 104, 146-47, 695 N.W.2d 73; *State v. Kutz*, 2003 WI App 205, ¶15, 267 Wis. 2d 531, 546-47, 671 N.W.2d 660; *Schenk v. State*, 51 Wis. 2d 600, 605, 187 N.W.2d 853 (1971). The remainder of paragraph two adds nothing further for probable cause as it simply describes the proximity of Avery's sister's residence to his own.

The fourth paragraph only provides a description of the exterior of Avery's residence and the other buildings located on the Avery Auto Salvage property, and adds the affiant's understanding that Steven Avery is employed at the Avery Auto Salvage such that he could have access to all of the buildings and vehicles on the parcel. Steven Avery's degree of access to the property may be relevant to define the appropriate scope of the search sought in the application, but does nothing to support probable cause that evidence of a crime exists on the property.

Paragraph six of the affidavit provides a description of Teresa's clothing when she was last seen, but adds no probable cause connecting Avery or the Avery Auto Salvage property to her disappearance. The only portion of paragraph seven that supports probable cause is the discovery of "her vehicle being abandoned at the Avery Auto Salvage yard." But this claim is derived directly, and only, from the excised paragraph 5 of the affidavit, so it, too, cannot be considered.

Thus, the November 5, 2005 search warrant for Steven Avery's residence,

garage, and Avery Auto Salvage property must be voided as lacking probable cause, and any fruits from the warrant must be suppressed as if the warrant lacked probable cause in the first place. *Franks*, 438 U.S. at 156.

### Execution of the Warrant

Avery requests an evidentiary hearing to establish facts for the record as to the manner in which the first search warrant was executed. The following facts are gleaned from the law enforcement reports provided in discovery.

The November 5, 2005, search warrant was executed at Steven Avery's residence at approximately 3:48 p.m. on that same date, by law enforcement officers from the Manitowoc County Sheriff's Department (MTSO)<sup>5</sup> and the Calumet County Sheriff Department (CASO). After the first search was completed on November 5, 2005, reports indicate that all personnel left the defendant's trailer at 3:58 p.m. Thereafter, Steven Avery's garage was entered between 4:03 and 4:06 p.m. on the same afternoon.

Later that evening, three high-ranking members of the Manitowoc County Sheriff's Department and one Calumet County deputy entered Steven Avery's trailer a second time at 7:44 p.m. The three Manitowoc officials searched Steven

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<sup>5</sup>Contrary to public statements indicating that Manitowoc County was not involved in the search of the Avery property, the reports reveal that high-ranking members of the Manitowoc County Sheriff's Department entered Steven Avery's residence on each and every occasion that any law enforcement officer entered his trailer or garage in the days following the discovery of the Halbach vehicle.

Avery's trailer very thoroughly for nearly two and one-half hours, finally leaving at 10:05 p.m. when officers "completed the processing of the residence." All items taken from his residence were found and seized by Manitowoc County Sheriff's Department officials, and then turned over to a Calumet County official for "documentation of the collection and identification of items." (STATE 0089).

Additional searches took place the second day, November 6, 2005. First, the defendant's detached garage was entered at 8:00 a.m. on November 6, 2005. The same three high-ranking MTSO agents conducted the search, while a different CASO deputy performed the collection duties. At 9:47 a.m. on that same date, the "officers were completed with the search and collection of possible evidence in the garage" (STATE 0090).

A third entry of Steven Avery's trailer occurred on November 6, 2005, at approximately 12:25 p.m., when the same four law enforcement officers "were requested to return to 12932 Avery Road, Steven Avery's residence" (STATE 0090-0091). The agents were requested to "obtain and retrieve any firearms which were located in the residence." Two firearms were seized, along with bedding and a vacuum cleaner. The "evidence process and collection of Steven's residence was completed," and all officers left the residence at 12:48 p.m.

Later, on the evening of November 6, 2005, Steven Avery's trailer was entered

on yet a fourth occasion, this time by two of the same three high-ranking MTSO officers who had made all prior entries, who re-entered this time along with members of the State Crime Lab. The Crime Lab officials used an alternate light source to point out areas of possible evidentiary value (STATE 0091-0092).

The next day, November 7, 2005, additional officers of the MTSO began to search the outdoor areas surrounding the defendant's residence, and a MTSO deputy pointed out a burn barrel outside the defendant's trailer, from which several evidentiary items were seized. Also on November 7, 2005, at 9:57 a.m., two of the three same high-ranking MTSO officers re-entered Avery's trailer a fifth time to obtain the serial number of his computer, which was later used to obtain a warrant to seize that computer.

On November 8, 2005, Steven Avery's trailer was entered for the sixth time after the original warrant had been executed three days earlier. Two of the original three high-ranking MTSO agents who entered the first time returned to re-search the defendant's trailer for the sixth time. They were joined by a deputy from CASO to act as the collection officer. The three Manitowoc officers searched Steven Avery's small bedroom for two hours before one of the high-ranking MTSO officials claimed to have discovered a Toyota key on the floor in plain view.

The next day, November 9, Steven Avery's trailer and garage were entered

and searched three more times, at 10:39 a.m., 11:40 a.m., and 11:51 a.m. Several additional items were seized each time (STATE 1386-88). It was not until late in the afternoon of November 9, 2005, that another search warrant was obtained which authorized the continued searches of the Avery Auto Salvage property and Steven Avery's residence and garage. Prior to that second search warrant Steven Avery's trailer had been entered on no less than eight separate occasions, and his garage no less than three times, spanning 5 days.

Avery contends that the repeated entries of his residence and garage were unlawful under the legal principle of "one warrant, one search."

Under the rule of "one warrant, one search," if law enforcement agents obtain a warrant, perform a search, and then leave, as the Manitowoc County and Calumet County Sheriff's Departments did repeatedly in this case, they may not return to search again without obtaining another warrant. *See, supra, LaFave, Search and Seizure*, at p.679.

The basic principle of "one warrant, one search" was explained in *McDonald v. State*, 259 S.W.2d at 524-25. The authorities obtained a warrant to search for intoxicating liquors on the premises. They searched and found nothing. An hour later they returned and searched again, on the basis of the first warrant, and found illegal alcohol. The Supreme Court of Tennessee found the second search

unconstitutional, recognizing the great potential for abuse of such practice:

In this state a search warrant may be executed and returned at any time within five days after its date. . . .If for no other reason than the officer still has it in his possession, a search warrant once served, but not returned, can be used a second time within that five days for the purpose of a second search of the premises described, then logically, it would seem to follow that such officer, with his squad of assistants, may use it to make an indefinite number of such searches during that five days. Thus, this warrant could become a means of tyrannical oppression in the hands of an unscrupulous officer to the destruction of the peaceful enjoyment of the home or workshop of him or her against whom the efforts of such officer are directed. On principle, therefore, such second search under the warrant seems to come within the prohibition of the unreasonable search and seizure clause of our constitution.

259 S.W.2d at 524-25 (citations omitted). In Avery's case, the Manitowoc and Calumet County Sheriff Departments, with a "squad of assistants," made not two, but *eight* separate searches of his trailer, and three of his garage, on the basis of the one warrant. And that series of searches extended over five days.

No Wisconsin case directly addresses the authority of an officer to make multiple entries into a premises to execute a single search warrant, but several cases have addressed multiple police searches in related contexts. For instance, the Wisconsin Supreme Court held that a search warrant does not permit a search to be continued after the items identified in the warrant have been located and seized. *State v. Starke*, 81 Wis. 2d 399, 414, 260 N.W.2d 739 (1978), citing *United States v. Odland*, 502 F.2d 148 (7th Cir. 1974), *cert. denied*, 419 U.S. 1088, 95 S.Ct. 679, 42 L.Ed.2d 680. In *Starke*, the defendant, a police chief, was charged with misconduct in public office for, among other things, his failure to serve an arrest warrant on his



niece and another person. The unserved arrest warrants and other items were found locked in his office desk. The court upheld the suppression of thirty-four additional items seized from his desk after the two unserved arrest warrants were found because the items sought by the search warrant had already been located and seized. 81 Wis. 2d at 414.

In *State v. Douglas*, 123 Wis. 2d 13, 365 N.W.2d 580 (1985), the Wisconsin Supreme Court addressed a second police entry and search of the defendant's home after he had impliedly consented to a first search. The police discovered three slain bodies after they responded to a 911 call from the defendant that he had shot his mother. State crime lab technicians and police were in the defendant's house investigating the crime over the next twenty-four hours. Then, more than twenty-two hours later, the police returned to the home to "re-create" the sequence of events of the crimes. During that time they found and seized a handwritten note from the defendant's bedroom. The court, affirming its earlier decision in *Kelly v. State*, 75 Wis. 2d 303, 308-09, 249 N.W.2d 800 (1977), found the note should be suppressed. 123 Wis. 2d at 19-21, 26.

Both *Douglas* and *Kelly* involved a second entry and search after a defendant had given consent for the first entry. In *Kelly*, the second entry occurred the following day, while in *Douglas* the entry in question was nearly two full days later.

Both cases found the police conduct unreasonable and the evidence seized was suppressed. In neither case had the police obtained a search warrant; the second entry was made on the basis of the initial consent.

In Avery's case, the Manitowoc and Calumet County Sheriff's Departments did obtain a search warrant and promptly executed it the same afternoon. So the issue presented in this case differs from either *Douglas* or *Kelly*. Of note, however, is the *Douglas* court's response to the state's argument that the second search was really just a "continuation" of the first. The state argued that since the scope of the original search was not expanded and the police had kept the premises secured between the two searches, the second search was really only a continuation of the initial lawful entry and search. 123 Wis.2d at 23-24. The *Douglas* court, citing *LaFournier v. State*, 91 Wis. 2d 61, 70, 280 N.W.2d 746 (1979), explained that time is an important factor in determining whether a re-entry is simply a continuation of an initial lawful entry and search. In *LaFournier*, a subsequent warrantless entry by police within minutes of the initial entry was found to be a continuation of the lawful initial warrantless entry because it was so "close in time and practically identical in nature so as to be analytically and factually inseparable." 91 Wis. 2d at 70. But in *Douglas*, the court found the subsequent entry the next day was factually and analytically separable such that it could not be considered a mere continuation

of the first search. 123 Wis. 2d at 24. *See also Michigan v. Clifford*, 464 U.S. 287, 296-97 (1984) (search of basement and upstairs of fire damaged home six hours after fire had been extinguished was not a continuation of earlier valid search).

Likewise, the subsequent entries in Avery's case are separable from the initial entry on the search warrant. They are separated by hours and days, not just minutes, and extended over more than 96 hours by the time of the last entry on November 9, 2005.<sup>6</sup> Thus, the MTSO and CASO entries and searches of the defendant's trailer are separate and distinct searches, for which only one warrant was ever obtained. Under the majority rule of "one warrant, one search," therefore, evidence seized from the defendant's apartment after the first entry must be suppressed.

The Manitowoc and Calumet County Sheriff Departments made no effort to obtain additional judicial authorization to permit more than one entry. Indeed all indications are that they simply acted as if the original warrant allowed them to come and go into Avery's trailer and garage at will. It did not.

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<sup>6</sup>It does not matter that the statutory five day time period under §968.15, Wis. Stats., for the warrant to be executed and returned, had not lapsed until after the multiple entries on November 5-9, 2005. *See State v. Edwards*, 98 Wis. 2d 367, 372, 297 N.W.2d 12 (1980) (irrespective of compliance with a statutory time limit, the Fourth Amendment imposes its own limits on the execution of a warrant). *See also United States v. Keszthelyi*, 308 F.3d 557, 572-73 (6th Cir 2002) (re-entry was unreasonable under Fourth Amendment even though statutory time for execution of warrant had not lapsed). The claim here is not that the November 5 search warrant had become stale and would not support even one search, but, rather, that the multiple searches on the purported authority of the same warrant violated the "one warrant, one search" principle regardless when those searches took place.

WHEREFORE, the defendant respectfully requests that the court issue an order suppressing for use as evidence at trial any and all property seized from any place on the Avery Auto Salvage property and Steven Avery's residence and garage at 12932 Avery Road, County of Manitowoc, Wisconsin, beginning on November 5-9, 2005, and any derivative evidence, including statements made by the defendant, which resulted from the searches.

Dated this 15th day of June, 2006.

Respectfully Submitted,

By: 


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05 SW 53

STATE OF WISCONSIN

CIRCUIT COURT

MANITOWOC COUNTY

SEARCH WARRANT

SERVED  
3:48 PM  
NOVEMBER 5TH, 2005

TO THE SHERIFF OR ANY CONSTABLE OR ANY PEACE OFFICER OF SAID COUNTY:

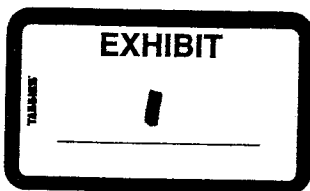
WHEREAS, Investigator Mark Wiegert of the Calumet County Sheriff's Department, being duly sworn, has complained in writing to the said Court, and states on information and belief, that on November 5, 2005, in and upon certain premises in the Town of Gibson, County of Manitowoc, Wisconsin, specifically:

(1) 12932 Avery Road, in the Town of Gibson, County of Manitowoc, Wisconsin, occupied by Steven A. Avery, Sr. (DOB: 07/09/1962), more particularly described as follows: a single family trailer, red in color, with white trim around the windows. The trailer has an attached wooden deck and has the number 12932 on the front of the residence next to the front entrance. There is a detached garage next to the residence that is red and blue in color with a single white garage door and a white service door.

(2) 12930A Avery Road, in the Town of Gibson, County of Manitowoc, Wisconsin, occupied by Barbara E. Janda (DOB: 11/07/1964), more particularly described as a single family trailer with gray vinyl siding with maroon shutters. The numbers 12930A are located on the front of the residence. 12930A Avery Road has a detached garage with gray siding, two white garage doors and white trim around the windows and doors.

(3) The residences and garages are located within the property of Avery Auto Salvage. The auto salvage yard is approximately 40 acres in size and is surrounded by a berm and some fencing. On the property, there are numerous outbuildings and vehicles, those that are operational and also junked and scrapped vehicles, associated with the salvage yard business.

MANITOWOC COUNTY, WIS  
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There are now located and concealed certain things, to-wit:


- (1) 1999 Toyota Rav 4, dark blue in color, VIN #JT3HP10V5X7113044.
- (2) Women's clothing including, but not limited to, blue jeans, a white button-down shirt, and a spring jacket.
- (3) Teresa Marie Halbach, DOB: 03/22/1980, described as a white female, sandy blonde hair, 5'6", approximately 135 pounds.
- (4) Property belonging to Teresa Halbach including, but not limited to, cameras, film and photography equipment, and electronic storage devices.
- (5) Forensic evidence including, but not limited to, fiber evidence, blood, hair, saliva, semen, and fingerprints.
- (6) Instrumentalities capable of taking a human life including, but not limited to, weapons, firearms, ammunition, knives, cutting instruments, ropes, and ligatures.

which things were used in the commission of, or may constitute evidence of a crime, to-wit: violations of secs. 940.01, 940.225, 940.30, 940.31 and 943.20, Wis. Stats.

and prays that a Search Warrant be issued to search said premises for said items.

NOW, THEREFORE, in the name of the State of Wisconsin, you are commanded forthwith to search the said premises for said things, and if the same or any portion thereof are found, to bring the same, and the persons(s) in whose possession the same are found, and return this warrant within forty-eight hours of service, before the said Court, to be dealt with according to law.

Dated this 5 day of November, 2005.

  
 JUDGE OR COURT COMMISSIONER  
 MANITOWOC COUNTY, WISCONSIN

STATE OF WISCONSIN

CIRCUIT COURT

MANITOWOC COUNTY

05 SW 53

## AFFIDAVIT FOR SEARCH WARRANT

WHEREAS, Investigator Mark Wiegert of the Calumet County Sheriff's Department, being first duly sworn on oath, states on information and belief that the facts tending to establish the grounds for issuing a search warrant are as follows:

The facts tending to establish the grounds for issuing a search warrant are as follows:

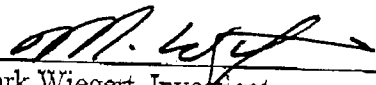
1. Your affiant is an investigator with the Calumet County Sheriff's Department. Your affiant has duties that include missing person investigations in and around Calumet County, Wisconsin. The Calumet County Sheriff's Department on November 5, 2005, was requested by the Manitowoc County Sheriff's Department to lead the investigation on behalf of the Manitowoc County Sheriff's Department under the doctrine of mutual aid.
2. Your affiant is informed that on November 3, 2005, at 5 p.m., Karen Halbach contacted the Calumet County Sheriff's Department. Halbach stated that her daughter, Teresa Marie Halbach, DOB: 03/22/1980, had not been seen or heard from since Monday, October 31, 2005. Halbach said it was unusual for Teresa not to have had personal or telephone contact with her family or friends for this length of time. Halbach stated that her daughter was driving a 1999 Toyota Rav 4, dark blue in color.
3. Your affiant is informed that on November 4, 2005, Investigator Dave Remiker of the Manitowoc County Sheriff's Department interviewed Steven A. Avery (DOB: 07/09/1962) on November 4, 2005. Upon speaking with Steven Avery, Avery stated that he resides at 12932 Avery Road in the Town of Gibson, Manitowoc County, Wisconsin. Avery also did provide Investigator Remiker with verbal consent to search his residence, and Investigator Remiker was allowed into Avery's residence on November 4, 2005. Avery informed Investigator Remiker that Teresa Halbach was on his property on Monday, October 31, 2005, to take photographs of a vehicle he was selling. Avery also stated that Barbara Janda lives at 12930A Avery Road in the Town of Gibson, Manitowoc County, Wisconsin. Janda's residence is very close in proximity to the location where Teresa Halbach conducted her business on the Avery property on October 31, 2005.
4. On November 5, 2005, your affiant observed the property at 12932 Avery Road, in the Town of Gibson, County of Manitowoc, Wisconsin, occupied by Steven A. Avery, Sr. (DOB: 07/09/1962), and describes it as follows: a single family trailer, red in color, with white trim around the windows. The trailer has an attached wooden deck and has the number 12932 on the front of the residence next to the front entrance. There is a detached garage next to the residence that is red and blue in color with a single white garage door and a white service door. Also located on the property is 12930A Avery Road, in the Town of Gibson, County of Manitowoc, Wisconsin, occupied by Barbara E.



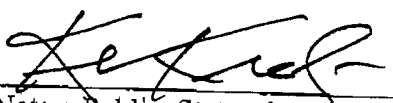
Janda (DOB: 11/07/1964), and describes it as a single family trailer with gray vinyl siding with maroon shutters. The numbers 12930A are located on the front of the residence. 12930A Avery Road has a detached garage with gray siding, two white garage doors and white trim around the windows and doors. Your affiant states that the residences and garages are located within the property of Avery Auto Salvage. The auto salvage yard is approximately 40 acres in size and is surrounded by a berm and some fencing. On the property, there are numerous outbuildings and vehicles, those that are operational and also junked and scrapped vehicles, associated with the salvage yard business. Your affiant is aware that Steven Avery is employed by Avery Auto Salvage and would have access to all the buildings, vehicles, and residences on the parcel.

5. Your affiant is informed that on November 5, 2005, officers received information from volunteer searchers that they had located a vehicle matching the description of the vehicle owned by Teresa Halbach at Avery Auto Salvage located 12932 Avery Road, in the Town of Gibson, County of Manitowoc, Wisconsin. Your affiant is informed that Investigator Remiker was provided with the VIN number of the Rav 4 located at Avery Auto Salvage; the searchers provided the VIN #JT3HP10V5X7113044 taken from the vehicle which they located. Investigator Remiker was able to confirm that VIN #JT3HP10V5X7113044 is the correct number for Teresa Halbach's Toyota Rav 4. During a visual observation of the vehicle, Investigator Remiker noted that there were tree branches covering the vehicle and also vehicle parts placed alongside of the vehicle which looked as though someone had attempted to conceal the vehicle.
6. Your affiant received information that when Teresa Halbach was last seen, she was wearing blue jeans, a white button-down shirt, and a spring jacket.
7. Your affiant believes that based upon Teresa's lack of contact with her employer and family members and her vehicle being abandoned at the Avery Auto Salvage yard, that Teresa Halbach is the victim of a crime including, but not limited to, homicide, sexual assault, kidnapping, false imprisonment, and theft.

Respectfully submitted this  
5th day of November, 2005.

  
 \_\_\_\_\_  
 Mark Wiegert, Investigator  
 Calumet County Sheriff's Department

Subscribed and sworn to before me  
 this 5<sup>th</sup> day of November, 2005.

  
 \_\_\_\_\_  
 Notary Public, State of Wisconsin  
 My commission: is permanent

ENDORSEMENT

*Nov. 5th m.w.*

Received by me, *Feb 5th m.w.*, 2005

at *2:10* o'clock *PM*.

*M. West*