

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH I

MANITOWOC COUNTY

STATE OF WISCONSIN,

vs.

STEVEN A. AVERY,

Plaintiff,

Defendant.

MANITOWOC COUNTY
STATE OF WISCONSIN
FILED

JUL 5 2006

CLERK OF CIRCUIT COURT

STATE'S RESPONSE TO
DEFENDANT'S MOTION TO
DISMISS (PRETRIAL
PUBLICITY)

Case No. 05-CF-381

BACKGROUND

On November 3, 2005, the Calumet County Sheriff's Department (and Calumet County District Attorney's Office) became involved in a "missing persons" investigation regarding the disappearance of Teresa Halbach. As part of the investigation, law enforcement officials sought assistance from members of the media to find Ms. Halbach; citizen volunteers were also very much involved in search efforts.

When Teresa Halbach's vehicle was discovered at the Avery Salvage Yard on November 5, 2005, the Calumet County Sheriff's Department was named lead investigative agency, and Calumet County District Attorney Special Prosecutor, due to a possible conflict of interest, as a resident of the salvage yard, Steven Avery, had previously filed a civil law suit against Manitowoc County.

As the Court is well aware, the investigation into Ms. Halbach's disappearance and subsequent criminal justice involvement has created almost unprecedented media attention in northeast Wisconsin, and to a lesser extent, the State of Wisconsin altogether.

The State concedes that four press conferences were held prior to the defendant's arrest (for being a felon in possession of a firearm), occurring between November 5 and November 8, 2005. As the defendant's motion did not include media clips or materials, the State must rely upon independent recollection of those referenced press conferences, but understands the Court may have independent sources of that information.

The State argues that the first four news conferences were designed to inform the understandably concerned public regarding the ongoing missing persons investigation, and to continue to seek public information as to the fate of Teresa Halbach (as authorized by SCR20:3.6(c)(3) and (5)).

On November 9, 2005, a press conference was held announcing the arrest of Steven Avery (regarding the charge of felon in possession of a firearm). It must be noted that prior to (and after) November 11, 2005, Steven Avery, family members, supporters, and other citizens advanced the theory that Avery was being "set up" by law enforcement officials, and the Court

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will note that information disseminated on November 11 specifically refuted a conspiracy theory as authorized by SCR20:3.6(d).

The last two press conferences, on March 1 and 2, 2006, related to the arrest and subsequent charging of codefendant Brendan Dassey. Details of the criminal complaint were released at the March 2, 2006 press conference, as authorized by SCR20:3.6(c)(2); included in that press conference as noted by the defense, was the admonition that all defendants are presumed innocent until proven guilty (see SCR20:3.6(b)(6)).

ARGUMENT

The defense has asked this court to dismiss the charges against the defendant, Steven Avery, including homicide, mutilation of a corpse, sexual assault, kidnapping, and false imprisonment, due to the amount and character of pretrial publicity, claiming that Avery cannot get a fair trial in Manitowoc County, and that dismissal of the case is Avery's only "logical remedy" (see defendant's memorandum page 11). Interestingly, the defense concedes that dismissal due to pretrial publicity has not been deemed an acceptable remedy in this state, citing State ex rel Schulter vs. Roraff, 39 Wis. 2d 342 (1968); the State agrees that Schulter remains the applicable law in Wisconsin.

If Steven Avery believes that pretrial publicity prevents a fair trial in Manitowoc County, he has available to him the opportunity to apply for a change of venue, which motion has already been made and is pending. The strategic choice to request or not request the change of venue is that of the defendant's alone and would waive the defendant's right to be tried within Manitowoc County, should he choose that option. See State vs. Mendoza, 80 Wis. 2d 122 (1977). As noted in Schulter, the defendant cannot insist on a jury trial in the county where the offense was committed (here Manitowoc County), and also claim that the county is prejudice and he cannot receive a fair trial. When constitutional rights conflict, the accused must make a choice and the solution is not in the avoidance of such choice because a choice is required, or it may prove to be a difficult one for the accused. Schulter, Id.

The criminal process, like the rest of the legal system, is replete with situations requiring the making of difficult judgments as to which course to follow. McMann vs. Richardson, 397 US at 769. Both the right to request a change of venue and the right to be tried in the county where the crime occurred, are intended to secure a fair trial. Mendoza, 80 Wis. 2d at 143. They are mutually exclusive methods of achieving a common goal. The defendant's decision as to which right would better provide a fair trial is to be respected.

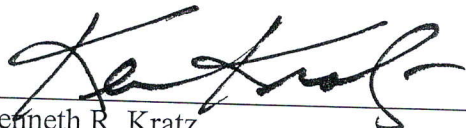
As in Schulter, the publicity in this case is not so prejudicial that the defendant cannot receive a fair trial using the available remedies to overcome potential prejudice, including extended voir dire and possible change of venue. Dismissal of the charges is too drastic a cure for the alleged infirmity.

As a final argument, the Court should note that the State has not engaged in unnecessary pretrial publicity, and other than announcing criminal charges against Steven Avery (on November 11, 2005), and against Brendan Dassey (on March 2, 2006), the State has consistently refused

comment in this case. While the defendant, Steven Avery himself, continues to grant media interviews, the State remains silent; while family members continue to advance conspiracy theories of Avery being framed, the State remains silent; while prior defense attorney Steve Glynn announces on NBC Dateline, what purports to be superior knowledge that the "Steven Avery he knows could never have committed this crime", the State remains silent; while the State entertains invitations from local, regional, and national news organizations for extrajudicial comment, the State remains silent.

The facts of the case itself (how the victim was raped, tortured, murdered, and mutilated) raises intense public interest in this matter, and continued efforts by all involved parties will ensure a fair and impartial jury process for the accused.

Respectfully submitted this 27th day of June, 2006,



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

KRK:sbg