

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH I

MANITOWOC COUNTY

STATE OF WISCONSIN,

Plaintiff,

**REDACTED COPY**

vs.

MOTION IN LIMINE  
(SERIES 1)

MANITOWOC COUNTY  
STATE OF WISCONSIN  
**FILED**

STEVEN A. AVERY,

Defendant.

Case No. 05-CF-381

JUL 12 2006

**CLERK OF CIRCUIT COURT**

The State of Wisconsin, by Special Prosecutor Kenneth R. Kratz, hereby seeks an advanced ruling from the Court on the following:

1. For an order precluding in the presence of the jury, both prior to and at trial, discussion of the defendant's prior "wrongful conviction" for sexual assault and the ramifications of that conviction on the defendant's life. It is inappropriate for the jury to consider this information in ascertaining whether or not the defendant has committed the present offenses. The State argues that such an attempt to illicit sympathy from the jury is improper and otherwise irrelevant pursuant to Sec. 904.03 and Sec. 904.02, Wis. Stats.

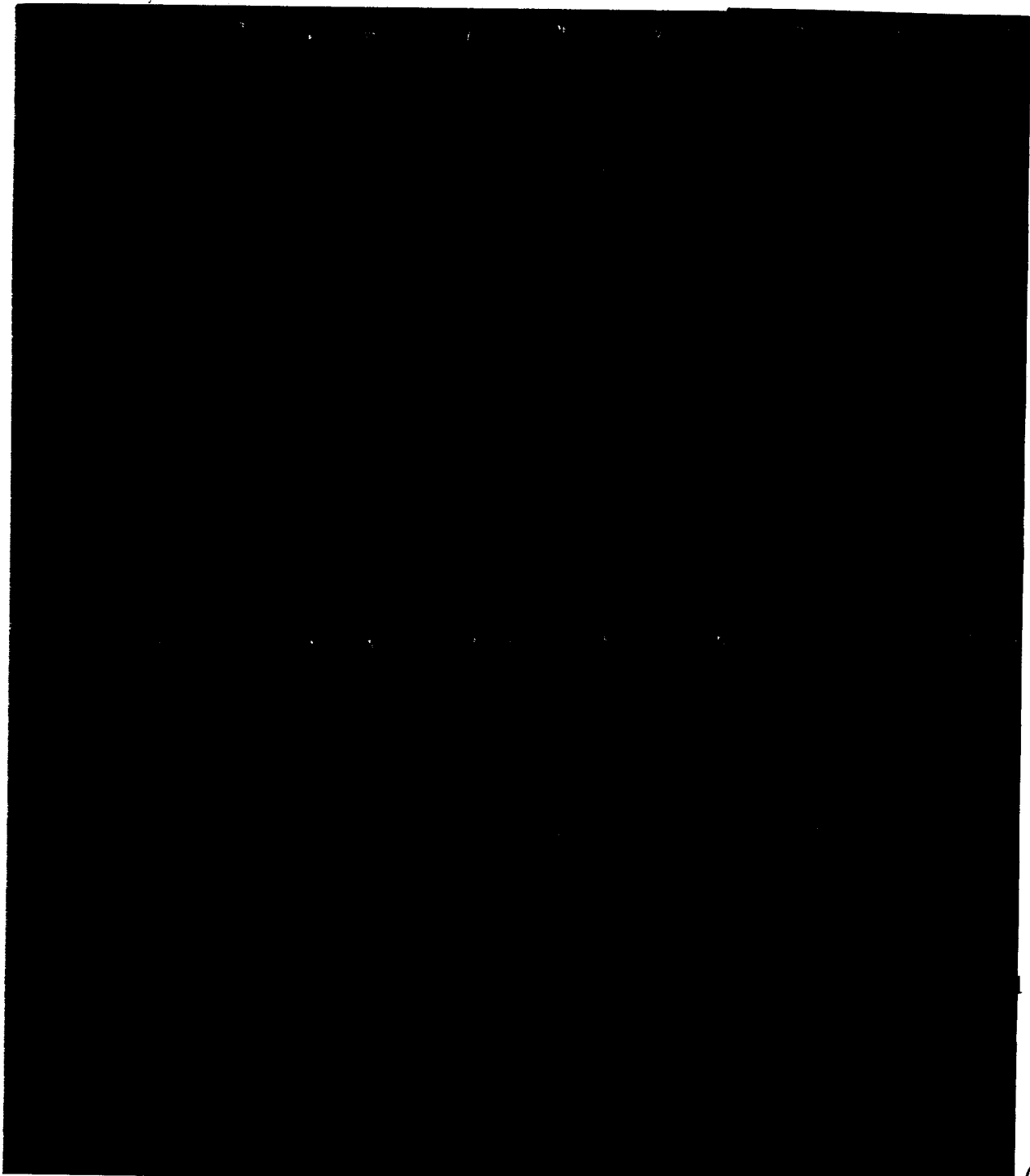
2. If the defendant elects to testify on his own behalf, that the State be allowed to elicit the number of prior criminal convictions of the defendant, as impeachment, pursuant to Section 906.09(1), Wis. Stats.

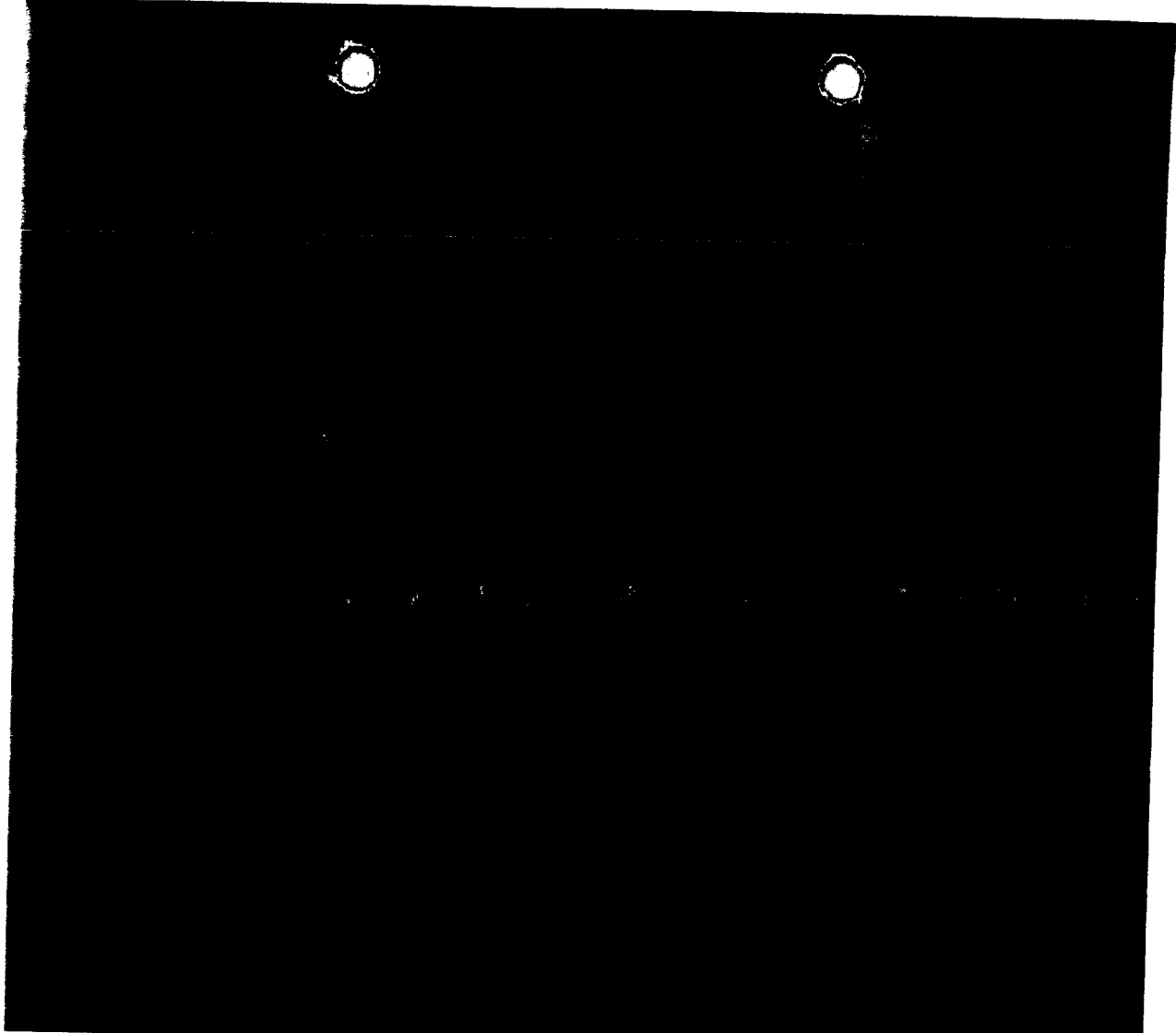
3. For an order allowing the State to introduce portions of Teresa Halbach's life history to the jury. The State must prove that the defendant acted with the intent to kill Teresa Halbach, another human being. The state intends to offer testimony which will identify Teresa's family status, employment and leisure activities. Some photographs will be offered, which admissibility is a matter of discretion with the trial judge. Hayzes v. State, 64 Wis.2d 189, 198, 218 N.W.2d 717 (1974).

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(1)

4. For an order allowing the State to introduce evidence of the defendant's prior felony conviction for Recklessly Endangering Safety and Felon in Possession of a Firearm (Manitowoc County case number 85-FE-3), proving an element of the offense of the pending charge of Felon in Possession of a Firearm.

5. The State intends to subpoena Brendan Dassey and provide "use and derivative use immunity" for testimony against Steven Avery, pursuant to Wis. Stats. Sec. 972.085.





7. For an order allowing the State to introduce statements of Teresa Halbach made to coworkers concerning Steven Avery, made prior to her death.

Wis Stat. § 908.045(2) provides that the following is not excluded by the hearsay rule if the declarant is unavailable as a witness:

A statement, not in response to the instigation of a person engaged in investigating, litigating, or settling a claim, which narrates, describes, or explains an event or condition recently perceived by the declarant, made in good faith, not in contemplation of pending or anticipated litigation in which the declarant was interested, and while the declarant's recollection was clear.

"The recent perception exception is similar to the hearsay exceptions for present sense impression and excited utterances, "but was intended to allow more time between the observation

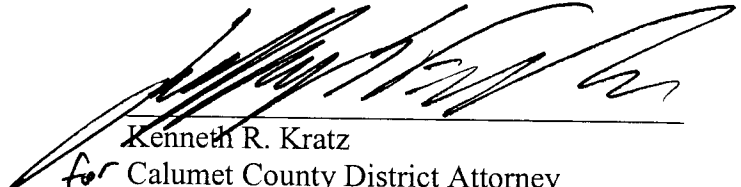
of the event and the statement.' " *State v. Weed*, 2003 WI 85, ¶ 15, 263 Wis.2d 434, 666 N.W.2d 485 (quoting *Kluever v. Evangelical Reformed Immanuel's Congregation*, 143 Wis.2d 806, 813-14, 422 N.W.2d 874 (Ct.App.1988)). The purpose of the exception is to " 'admit probative evidence which in most cases could not be admitted under other exceptions due to the passage of time.' " *Id.*, ¶ 15, 666 N.W.2d 485 (quoting *Kluever*, 143 Wis.2d at 814, 422 N.W.2d 874). Specifically, the exception " 'is based on the premise that probative evidence in the form of a noncontemporaneous, unexcited statement which fails to satisfy the present sense impression or excited utterance exceptions would otherwise be lost if the recently perceived statement of an unavailable declarant is excluded.' " *Id.* (quoting *Kluever*, 143 Wis.2d at 814, 422 N.W.2d 874).

The defendant forfeited his confrontation clause objection because he unlawfully and intentionally killed the victim. In *Reynolds v. United States* (1879) 98 U.S. 145, 158-159.), the Supreme Court explained: "The Constitution gives the accused the right to a trial at which he should be confronted with the witnesses against him; but if a witness is absent by his own [the accused's] wrongful procurement, he cannot complain if competent evidence is admitted to supply the place of that which he has kept away. The Constitution does not guarantee an accused person against the legitimate consequences of his own wrongful acts." (*Reynolds, supra*, 98 U.S. at p. 158.) Stated more bluntly: "The law simply cannot countenance a defendant deriving benefits from murdering the chief witness against him." (*United States v. Thevis* (5th Cir.1982) 665 F.2d 616, 630, superseded by statute on other grounds as stated in *United States v. Zlatogur* (11th Cir.2001) 271 F.3d 1025, 1028.)

8. For an order requiring sequestration of all witnesses. The State would designate Investigator Mark Wiegert of the Calumet County Sheriff's Department and Special Agent Tom

Fassbender of the Wisconsin Department of Justice, Division of Criminal Investigation, as its court officers, pursuant to Section 906.15(2)(b), Wis. Stats.

Respectfully submitted this 11<sup>th</sup> day of July, 2006.



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Manitowoc County Special Prosecutor  
State Bar # 1013996

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