

STATE OF WISCONSIN,

*Plaintiff,*

*v.*

STEVEN A. AVERY,

*Defendant.*

MANITOWOC COUNTY  
STATE OF WISCONSIN  
**FILED**

JUL 18 2006

CLERK OF CIRCUIT COURT

Case No. 2005-CF-381

**DEFENDANT'S FIRST MOTION IN LIMINE**

Steven A. Avery, by counsel, now moves for an order *in limine* permitting evidence and comment in statements and argument to the jury on the following topics. He makes this motion at the request of the Court on July 5, 2006. To the extent any of this could be considered extrinsic evidence of deliberately altered evidence, Avery hereby gives notice of same in compliance with this Court's written order dated July 10, 2006.

1. *Prior Wrongful Conviction for Attempted Murder and Rape.* Avery seeks to offer some evidence and argument concerning his 1985 conviction for attempted murder and rape in Manitowoc County and his subsequent imprisonment. Specifically, the areas he wishes to cover are –

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(1)

- a. The fact of his arrest for attempted murder by Kenneth Petersen, the current Sheriff of Manitowoc County. Kenneth Petersen at the time was a Manitowoc County Sheriff's Deputy.
- b. The fact that the Manitowoc County Sheriff's Department was the lead investigative agency in that case.
- c. The fact of Avery's conviction at a jury trial on counts of attempted murder and sexual assault.
- d. The fact that subsequent scientific testing established that he did not commit the physical and sexual assault that resulted in those convictions.
- e. The fact that he spent 18 years in prison on a 32-year sentence for those convictions.
- f. The fact that he pursued a direct appeal and two post-conviction proceedings attacking the conviction, and challenging the role of the Manitowoc County Sheriff's Department in securing those convictions.
- g. The fact that he pursued DNA testing twice, in 1995-96 and again in 2001-03. Further, the Manitowoc County Sheriff's Department was involved the second time in transmitting DNA samples and other evidence from the 1985 case.
- h. The names and roles of the Manitowoc County Sheriff's Department employees who were involved in transmittal of DNA samples and other evidence in 2001-03.

i. Since 1985, the Manitowoc County Sheriff's Department has had in its possession one or more items which contained Steven Avery's DNA.

j. Any other areas opened up by the state's argument or examination of witnesses, or necessary to put in context state argument or evidence.

Avery offers this evidence on the issues of bias by members of the Manitowoc County Sheriff's Department against him (including the current head of that department, who supervises it, sets policy, and sets tone and values); reason for bias (including the attacks on the conviction that called into question the conduct of the Manitowoc County Sheriff's Department); and opportunity to obtain or tamper with items that included Steven Avery's DNA before November 5, 2005. Bias always is relevant to the credibility of witnesses, and to the weight that jurors should assign both to their testimony and to alterable physical evidence for which these witnesses are in the chain of custody. Opportunity to alter evidence collected is relevant in this case, where the integrity and reliability of physical evidence and trace evidence is very much in issue.

2. *2004 Federal Lawsuit Against Manitowoc County.* Avery seeks to offer some evidence and argument concerning his 2004 federal lawsuit against Manitowoc County. Specifically, the areas he wishes to cover are –

a. The filing of the lawsuit, the general cause of action, and the defendants named.

- b. The amount of damages sought.
- c. The number of lawyers representing defendants and insurers on the defendants' side of that lawsuit.
- d. The fact that Kenneth Petersen, James Lenk, and Andrew Colborn all were deposed in that lawsuit within three weeks before Teresa Halbach disappeared.
- e. The role of Andrew Colborn, and possibly of James Lenk, with respect to a 1995 or 1996 telephone call from another law enforcement agency reporting to the Manitowoc County Sheriff's Department that a person in custody admitted committing an assault in Manitowoc County for which another man was in jail.
- f. The fact that neither Sgt. Colborn nor Lt. Lenk prepared any report of that 1995 or 1996 telephone call until September 12, 2003, the day after Steven Avery's release from prison on the state's motion to vacate his conviction.
- g. The fact that Sheriff Petersen on or about September 12, 2003, issued a written directive to the Manitowoc County Sheriff's Department that its personnel were not to discuss Steven Avery.
- h. The fact that James Lenk may have known well before 2003 about the 1995 or 1996 telephone call from another law enforcement agency reporting to

the Manitowoc County Sheriff's Department that a person in custody admitted committing an assault in Manitowoc County for which another man was in jail.

i. The fact that Manitowoc County was able to settle the lawsuit on favorable terms after Avery was charged in this case.

j. Any other areas opened up by the state's argument or examination of witnesses, or necessary to put in context state argument or evidence.

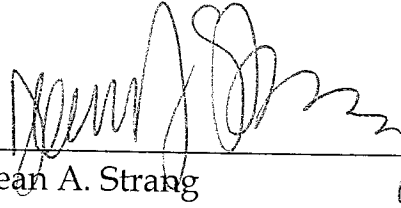
This evidence also goes directly to bias, especially on the part of Sheriff Petersen, Lt. Lenk, and Sgt. Colborn. It further goes to reasons for bias, and would support a reasonable inference of bias. It properly could affect a juror's assessment of credibility of Manitowoc County Sheriff's Department employees and of the weight to assign their testimony or to assign to physical evidence for which they were in the chain of custody.

WHEREFOR, Steven Avery asks the Court to admit evidence on each of the topics here addressed, and further to permit comment and argument on such evidence and topics in voir dire, opening statements, and summation.

Dated at Madison, Wisconsin, July 14, 2006.

Respectfully submitted,

HURLEY, BURISH & STANTON, S.C.



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