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UNDER SEAL

STATE OF WISCONSIN v. *STEVEN AVERY*
Case No. 05-CF-381

Defendant's Memorandum On Teresa Halbach
Background Evidence

MANITOWOC COUNTY
STATE OF WISCONSIN
FILED

JAN 12 2007

CLERK OF CIRCUIT COURT

Unsealed per order
date 03-23-07

clearly excludable under WIS. STAT. § 904.03. In general, what Avery opposes either is cumulative or wholly unrelated to the alleged events of October 31, 2005. Of course, Avery does not concede the weight or import of any state evidence, and he reserves the right to challenge any of it on cross-examination, in the defense case-in-chief, by proper rebuttal or impeachment, or as unanticipated events during the course of trial may suggest. Avery understands this response only to concern the threshold admissibility question if the state offers this evidence, assessed in the light of facts Avery and his counsel know today. Avery uses the paragraph numbers in the state's offer of proof for reference.

1. No objection.
2. Objection, excluded by earlier court ruling.
3. No objection, provided the state can establish authenticity, relevance and evidentiary escort.
4. No objection.
5. No objection, provided the state can establish authenticity, relevance and evidentiary escort.
6. No objection, provided the state can establish authenticity, relevance and evidentiary escort. Specifically, though, Avery is uncertain about the meaning or relevance of the state's reference to "other electronic components."

7. No objection, other than possibly to the parenthetical reference in paragraph 7(l) on hearsay and confrontation grounds. Again, Avery offers the proviso that the state can establish authenticity, relevance and evidentiary escort.

8. No objection, subject to cross-examination and to the state establishing, by proper foundation of personal knowledge (or qualification, expertise, and timely disclosure under WIS. STAT. §§ 907.01 – 907.04) the alleged * functions and their use.

9. No objection.

10. No objection to testimony concerning the gift by Katie Halbach and to the apparent similarity of the fob and the lanyard to the gift. Object to any claim that the fob and lanyard are the precise ones given by Katie to Teresa, as beyond personal knowledge.

11. No objection, assuming the state can adduce the proffered evidence by admissible means.

12. No objection to one family photograph and to limited family background. No objection in principle to mitochondrial DNA testimony, provided that the state meets admissibility rules and expert notice and disclosure obligations.

13. No objection to limited and objective testimony concerning Teresa Halbach's physical stature, strength, agility, health, and age. Object to testimony of friends who assisted in the search effort as irrelevant and as excludable for each

reason listed in Wis. Stat. § 904.03. Object to Image ## 33, 34, and 35 for the same reasons. No objection to Image # 36.

14. No objection to such testimony, if otherwise admissibly offered.

15. No objection to such testimony, if otherwise admissibly offered.

16. Objection on confrontation and hearsay grounds to Brendan Dassey's extrajudicial statements. Objection to Brendan Dassey's testimony under *State v. Samuel*, 252 Wis. 2d 26, 643 N.W.2d 423 (2002), and on due process and reliability grounds.

17. No objection to testimony about when her parents reported Ms. Halbach missing. Object to testimony about the search on November 3-5 as irrelevant and excludable under WIS. STAT. § 904.03, other than as it relates to discovery of Ms. Halbach's Toyota RAV-4.

18. Object to the towel evidence; excluded by earlier court ruling. Object to evidence that Ms. Halbach was "a religious girl, who demonstrated efforts toward remaining safe from harm." WIS. STAT. §§ 904.01, 904.02, 906.10. Further, defense counsel already has alerted the prosecution privately that any effort to offer testimony in this area will 'open the door' to other evidence that the defense provisionally has agreed not to offer or pursue at trial. The prosecution knows what

evidence this is, and it can be shared with the Court in chambers if the prosecution in fact wishes to pursue this line of evidence.

19. Object as irrelevant and an opinion that invades the province of the jury and does not assist the jury, so is not proper under WIS. STAT. §§ 904.01, 904.02, 904.03, 907.02. The fact that the state improperly circumvented the Manitowoc County Coroner in a Manitowoc County death investigation, and defeated the performance of her statutorily required duties, *see* WIS. STAT. §§ 59.34, 69.18, is admissible as a matter of investigative bias and improper handling of a death investigation.

20. This evidence properly is considered expert testimony, and its admissibility will be governed by the Court's scheduling and disclosure orders and WIS. STAT. §§ 907.01 – 907.05.

21. This evidence properly is considered expert testimony, and its admissibility will be governed by the Court's scheduling and disclosure orders and WIS. STAT. §§ 907.01 – 907.05.

22. No objection to the state eliciting brief testimony from one Halbach family member that the family has not heard from or seen Teresa since 2:45 p.m. on October 31, 2005. Object to additional testimony as cumulative and excludable under WIS. STAT. § 904.03. No objection to Image # 28 as having specific relevance

of linking Ms. Halbach to her car. But Avery objects to Images ## 11, 31, 32, 34, and 39 as cumulative and either irrelevant or subject to exclusion under WIS. STAT. § 904.03. Avery does not object to the admission of one of those photographs, and its limited use in identifying Teresa Halbach. More than one such photograph is unnecessarily and unhelpfully cumulative.

III.

CONCLUSION

The Court should exclude the testimony and exhibits discussed here, as Steven Avery explains. The items to which he objects either are not relevant at all, or their slight probative value is outweighed substantially by cumulative quality, unfair prejudice, an inflammatory quality in the sense of appealing only to jurors' sympathy, confusion, or waste of time.

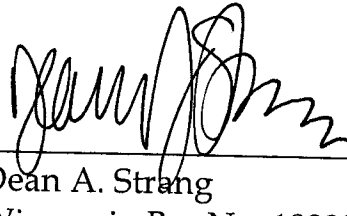
Dated at Madison, Wisconsin, January 11, 2007.

Respectfully submitted,

STEVEN A. AVERY, *Defendant*

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