

**TO BE FILED AND KEPT UNDER SEAL**

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**

JAN 18 2007

Case No. 05 CF 381

CLERK OF CIRCUIT COURT

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**DECISION AND ORDER ON STATE'S MOTION IN LIMINE  
REGARDING TERESA HALBACH HISTORY**

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As part of its motions in limine filed on June 15, 2006, the State sought to introduce certain evidence relating to the victim, Teresa Halbach. On December 13, 2006 the State filed its "Offer of Proof (Victim History)" which details the evidence it seeks to introduce pursuant to its motion in limine. The defendant filed his "Memorandum on Teresa Halbach Background Evidence" on January 11, 2007. In that memorandum, the defendant indicates he does not oppose the introduction of much of the evidence, subject to proper foundation.

As this Decision and Order involves some evidence which will not be permitted at trial, it shall be kept under seal at this time for the same reasons as other court documents detailing inadmissible evidence have been sealed.

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(1)

The court will address the offer of proof by the numbered paragraphs included with the State's December 13, 2006 offer of proof.

1. The defendant has no objection to this evidence, and, subject to adequate foundation, it is admissible.

2. The court issued an oral ruling concerning this offered evidence on August 22, 2006. Subject to proper foundation establishing relevance and probative value, Teresa Halbach's statement to a coworker that she observed the defendant greet her at the door of his residence wearing only a towel may be admissible under the hearsay exception found in §908.045(2). Any statements to coworkers concerning her state of mind do not appear to be admissible because they do not relate to an element of any charge which the State must prove. State v. Kutz, 267 Wis. 2d 531, 577-584 (Ct. App. 2003).

3. The defendant does not object to this evidence and it is admissible, subject to proper foundation.

4. The defendant does not object to this evidence and it is admissible, subject to proper foundation.

5. The defendant does not object to this evidence and it is admissible, subject to proper foundation.

6. The defendant does not object to this evidence and it is admissible, subject to proper foundation.

7. The defendant does not object to this evidence and it is admissible, subject to proper foundation. The court agrees with the defense that the offer of proof described in paragraph 7(1) relating to the content of the call would have to be received from the person who conveyed the information to Ms. Halbach or in some other fashion which would overcome any hearsay objection.

8. This evidence would be admissible subject to the foundation requirement noted in the defense's memorandum.

9. The defendant does not object to this evidence and it is admissible, subject to proper foundation.

10. The defendant does not object to this evidence and it is admissible, subject to proper foundation. The court understands the State to be arguing that the connection on the key fob found in the defendant's bedroom is consistent with the lanyard given to Teresa Halbach by her younger sister. The State may ask the jury to conclude that they are parts of the same lanyard given to Teresa Halbach by her sister, but the court does not understand the State to be offering testimony from any witness that they are definitely parts of the one gift.

11. The defendant does not object to this evidence and it is admissible, subject to proper foundation.

12. The defendant does not object to this evidence and it is admissible, subject to proper foundation.

13. The defense has no objection to testimony concerning Teresa Halbach's physical stature, strength, agility, health and age. Any of her friends who testify at trial would have to have more to say than just that they participated in search efforts for their testimony to be admissible. Participation in the search alone would not make their testimony material. Based on the offer of proof provided, the court concludes that images 33, 34, and 35 appear to be irrelevant and have no measurable probative value, and thus would not be admissible. The fact that Teresa Halbach was a volleyball coach does is not measurably probative of her physical agility. Not all coaches who coach physical sports are physically agile themselves. Image 34 adds nothing to the claim. The State could introduce evidence as to activities which Teresa Halbach performed that demonstrate her physical strength and agility, for example, from persons who know of these qualities through personal knowledge. In addition, any photos showing her engaged in physical activities might be admissible, but images 34 and 35 add nothing on this issue.

14. The defendant does not object to this evidence and it is admissible, subject to proper foundation.

15. The defendant does not object to this evidence and it is admissible, subject to proper foundation.

16. The subject of any testimony from Brendan Dassey is more appropriately addressed in another context.

17. The court will permit some testimony concerning the search for Teresa Halbach. The extent of the testimony the court will allow will depend on issues raised at trial. For example, some background concerning the search will be necessary to place the discovery of her vehicle in context. Evidence supporting the defendant's frame-up defense may permit additional testimony concerning the search. The court is not in a position at this time to describe the precise limits of the testimony that will be permitted on this issue.

18. The court does not understand how warnings to Teresa Halbach from other Auto Trader Magazine employees would be relevant or probative in this case. Such testimony could become relevant, if, for example, the defense disputed the observation Ms. Halbach made to a coworker that Avery greeted her wearing only a towel. Otherwise, the court fails to see the relevance or probative value of the fact that Teresa Halbach received any warnings from coworkers. The court likewise would not permit testimony that Teresa Halbach was a "religious girl, who demonstrated efforts toward remaining safe from harm." Obviously, no reasonable person would knowingly and willingly place herself in the situation the Complaint alleges led to Teresa Halbach's death. Image 37 is likewise not admissible.

19. The court does not have sufficient information to determine the admissibility of the death certificate. It would certainly be relevant, since the death of Teresa Halbach is one of the elements the State must prove on the homicide charge. The Calumet County medical examiner would have to testify as to how he or she determined Teresa Halbach's death and the basis for ruling it a homicide before the court could rule on the admissibility of the death certificate. The medical examiner would be subject to cross-examination and the jury would be left to make its determination based on all the evidence whether the State had proved the death of Teresa Halbach.

The defense does not explain and the court does not understand the defense's claim that because the Manitowoc County coroner did not make the determination of death, there is some showing of "investigative bias and improper handling of a death investigation." Until now, the court has understood that the defendant's bias claim was based on participation by Manitowoc County Sheriff's Department employees in the investigation. The defense would have to make a further showing before the court would permit evidence that participation by the Calumet County medical examiner was indicative of any type of bias.

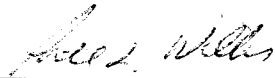
20. The defense agrees to the admission of this evidence as expert testimony, subject to other requirements for the admission of such testimony.

21. The defense agrees to the admission of this evidence as expert testimony, subject to other requirements for the admission of such testimony.

22. The State will be permitted to introduce evidence from individuals who would have been expected to have contact with Teresa Halbach later on October 31, 2005 that they did not have contact with her. At some point such evidence may be excludable as cumulative, but the court cannot make that determination at this stage of the proceedings. With respect to the photo images, the court believes that image 11 is duplicative of image 31, and only image 31 will be admissible. Likewise, image 32 and image 39 are duplicative and the State may introduce one but not both of those exhibits.

Dated this 17<sup>th</sup> day of January, 2007.

BY THE COURT:



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Patrick L. Willis,  
Circuit Court Judge