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UNDER SEAL

STATE OF WISCONSIN v. STEVEN AVERY

Case No. 05-CF-381

Defendant's Second Motion in Limine

Unsealed per
order dated
03-23-07

MANITOWOC COUNTY
STATE OF WISCONSIN
FILED

JAN 26 2007

CLERK OF CIRCUIT COURT

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 2005-CF-381

STEVEN A. AVERY,

Defendant.

MANITOWOC COUNTY
STATE OF WISCONSIN
FILED

JAN 26 2007

DEFENDANT'S SECOND MOTION IN LIMINE CLERK OF CIRCUIT COURT

Steven A. Avery, by counsel, now moves the Court for orders *in limine* on the following topics, based on recently disclosed or developed information.

1. *Converted Jail Calls.* In recent discovery materials, the state refers to certain recorded calls of Steven Avery at the Calumet County Jail that it evidently is converting to some other format of recordation. ACISS Report No. 05-1776/324. Mr. Avery presumes this conversion is for the purpose of evidentiary presentation at trial. Before such converted recordings are discussed in the jury's presence or played, the Court should conduct a hearing outside the jury's presence pursuant to Wis. STAT. § 901.04, to determine the admissibility of those statements. Issues include authentication, lack of material modification in the conversion, absence (or

presence) of enhancement techniques, if the state has employed any during or preparatory to the conversion, completeness (*see* WIS. STAT. § 901.07), and the possible application of any privilege (for example, lawyer-client or clergy communications). This motion applies to any statements of Mr. Avery recorded at the Calumet County Jail that the state proposes to use at trial, or to discuss in the jury's presence.

2. **67 Claim.* In its Offer of Proof (Victim History), filed under seal on December 13, 2006, the state has made the claim that Mr. Avery, or someone using his cell phone, used the *67 feature of the cell phone in making two telephone calls to Teresa Halbach's cell phone on October 31, 2005. The state apparently further contends that the *67 feature was not used in a third phone call to Ms. Halbach's cell phone that day. Although defense counsel have tried diligently to determine the factual basis of that conclusion in the discovery materials disclosed to date, they are unable to do so. The foundation of the state's claim remains unclear, then. Because that testimony may be important, and potentially is unfairly prejudicial if incorrect or inadmissible, Mr. Avery requests a hearing out of the jury's presence under WIS. STAT. § 901.04 to determine the basis and admissibility of that claim, before either party makes any mention of it in the jury's presence or adduces any such evidence.

WHEREFOR, Steven Avery asks the Court to enter orders *in limine* as described above.

Dated at Madison, Wisconsin, January 25, 2007.

Respectfully submitted,

STEVEN A. AVERY, *Defendant*

HURLEY, BURISH & STANTON, S.C.



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