

STATE OF WISCONSIN

CIRCUIT COURT  
Branch I & III

MANITOWOC COUNTY

STATE OF WISCONSIN,

Plaintiff,

MANITOWOC COUNTY  
STATE OF WISCONSIN  
**FILED**

v.

FEB ' 2 2007

Case No. 05-CF-381& 85-FE-118

STEVEN A. AVERY,

CLERK OF CIRCUIT COURT

Defendant.

Motion for Release of Blood Vial Evidence and Blood Spot Cards for Scientific Testing

In accordance with the last paragraph on page 14 of the court's Decision and Order on State's Motion to Exclude Blood Vial Evidence, dated January 30, 2007, the State requests access to the vial of blood currently under seal in the Manitowoc County Clerk of Court's Office. In order to meet the Defendant's claim of "planted evidence," the State deems it critical to its case to meet that defense with scientific testing. There are a range of tests that the State wishes to consider, but cannot adequately determine suitable scientific testing until the condition of the blood is evaluated. This range of potential scientific tests spans simple fingerprinting analysis, to analysis of cellular degradation, to chemical EDTA testing. The State has been informed that due to the intercession of the US Attorney's Office, the FBI may be able to perform some scientific testing of the blood vial, for use in the state's rebuttal case.

The state reminds the court, and opposing counsel, that when offering a defense, it is done at the party's peril, and the state has no obligation to alert the defense as to how that defense will be met. As Wisconsin law clearly states, the defense takes its chances when offering a theory of defense, and the state can keep knowledge of its legitimate rebuttal witnesses from the defendant without violating sec. 971.23(1)(d). State v. Konkol, 2002 WI App 174, par. 1 (Ct. App. 2002).

The State further requests that it have access to blood spot cards currently in the possession of Laboratory Corporation of America. Based upon information provided in "Defendant's Motion for Order Allowing Access to Prior Court File," dated December 6, 2006, DNA testing was performed by stipulation and court order in Manitowoc County Case No. 85-FE-118. This testing was performed at Laboratory Corporation of America in 1996. According to documents attached to defendant's motion, blood spot cards were

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(1)

made from the vial of blood in question. The State maintains that these blood spot cards will be important in interpreting scientific testing of the blood vial.

The State will ensure that blood from the vial be preserved for the defense, should they wish to also conduct scientific testing. If requested, the state will make samples immediately available to the defense to allow "simultaneous" analysis, if the defense so chooses.

The State further requests that Branch 3 of the Circuit Court of Manitowoc County relinquish any future jurisdiction over said vial of blood to this court in accordance with the last paragraph of page 14 of this court's Decision and Order on State's Motion to Exclude Blood Vial Evidence, dated January 30, 2007.

The state bases this request on the court's recent finding that this evidence will not only be admissible, but raises to the level of having "constitutional" importance to this case. The court has also represented, in prior contacts with counsel, that it would release said blood vial for testing, anytime to the parties upon request.

Dated this 31<sup>st</sup> day of January, 2007.

Respectfully submitted,



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