

STATE OF WISCONSIN

CIRCUIT COURT

MANITOWOC COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

STEVEN A. AVERY,

Defendant.

MANITOWOC COUNTY
STATE OF WISCONSIN
FILED

MAR 8 2007

Case No. 2005-CF-381

CLERK OF CIRCUIT COURT

**DEFENDANT'S PROPOSED
JURY INSTRUCTIONS**

Steven A. Avery, by counsel, now proposes the following final jury instructions. He reserves the right to supplement, withdraw, or modify these requests as further developments during trial may warrant.

Dated at Madison, Wisconsin, March 8, 2007.

Respectfully submitted,

STEVEN A. AVERY, *Defendant*

HURLEY, BURISH & STANTON, S.C.

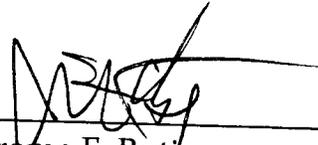


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DEFENDANT'S PROPOSED INSTRUCTION No. 1

Bloodstains in Toyota

The defendant, Steven Avery, has raised the possibility that his blood was planted in the Toyota RAV-4 that Teresa Halbach owned. That evidence was admitted because it has some tendency to make it less likely that Mr. Avery himself is responsible for any of his blood that you may conclude was found in the Toyota RAV-4. You should consider the possibility that Mr. Avery's blood was planted, along with all of the evidence in this case. Bear in mind that Mr. Avery has no burden to prove that his blood was planted, or who planted it. Rather, the state bears the burden to prove, beyond a reasonable doubt, that Mr. Avery committed the crimes charged.

AUTHORITY:

State v. Richardson, 210 Wis. 2d 694, 704-08, 563 N.W.2d 899, 902-04 (1997).

Given _____

Denied _____

Withdrawn _____

Modified _____

DEFENDANT'S PROPOSED INSTRUCTION No. 2

Bone Fragments

The defendant, Steven Avery, has raised the possibility that bone fragments were planted in the area behind his detached garage. That evidence was admitted because it has some tendency to make it less likely that Mr. Avery himself is responsible for any bone fragments you conclude were found in that location. You should consider the possibility that bone fragments were planted there, along with all of the evidence in this case. Bear in mind that Mr. Avery has no burden to prove that bone fragments were planted, or who planted them. Rather, the state bears the burden to prove, beyond a reasonable doubt, that Mr. Avery committed the crimes charged.

AUTHORITY:

State v. Richardson, 210 Wis. 2d 694, 704-08, 563 N.W.2d 899, 902-04 (1997).

Given _____

Denied _____

Withdrawn _____

Modified _____

DEFENDANT'S PROPOSED INSTRUCTION No. 3

Chain of Custody of Tested Items

The fact that the Court has admitted certain items of physical evidence that later were tested for DNA, such as bullet fragments, a Toyota key, and bloodstains, and also has admitted test results concerning those items, does not mean that you must find that these things are what witnesses claim them to be or that the items contained DNA when discovered. The Court's decision to admit these items and evidence about tests performed on them means only that you may find that the items are what they purport to be and that they contained DNA when found, if you choose. In deciding whether you believe that the items were found as the witnesses claim, and were submitted for testing in the condition in which they were found, you should consider all the evidence, including any evidence or lack of evidence of the chain of custody of those exhibits. "Chain of custody" means simply the succession of people who handled or had access to those items from the time they were found through the time they were tested. You may consider any gaps in the chain of custody in deciding what weight to give these items and the test results on them.

AUTHORITY:

WIS. STAT. § 909.01; *State v. McCoy*, 2007 WI App. 15 (Ct. App.).

Given _____

Denied _____

Withdrawn _____

Modified _____

DEFENDANT'S PROPOSED INSTRUCTION No. 4

Investigative Bias and Tunnel Vision

Mr. Avery contends that the officers investigating this case, beginning with the Manitowoc County Sheriff's Department and infecting the entire investigation, were biased against him and immediately focused most of their efforts on making a case against him, to the exclusion of other possible suspects and in spite of evidence pointing away from Mr. Avery's involvement in the charged crimes. You should consider any evidence supporting this claim of investigative bias and tunnel vision, along with all other evidence in the case, in deciding whether the state has proven one or more of its charges against Mr. Avery beyond a reasonable doubt.

AUTHORITY:

State v. Missouri, 291 Wis. 2d 466, 714 N.W.2d 595 (Ct. App. 2006) (other acts demonstrating police officer's racial bias should have been allowed as bearing on officer's credibility where defense theory was that police officer was lying because of racial bias); *McDonald v. United States*, 904 A.2d 377, 380-81 (D.C. 2006) (evidence of police brutality in arrest relevant and should have been admitted where theory of defense was that police fabricated case); *State v. Hughes*, 748 S.W.2d 733, 738-39 (Mo. Ct. App. 1988) (theory of defense was bias and hostility of sheriff's deputies; no error because adequate evidence admitted to allow jurors to consider that theory).

Given _____

Denied _____

Withdrawn _____

Modified _____

DEFENDANT'S PROPOSED INSTRUCTION No. 5

Experts and Common Sense

Members of the jury, I have admitted certain expert testimony in this case. Like all other evidence, you should consider that expert testimony and give it in the end such weight as you think it deserves, if any. Keep in mind, though, that you never should surrender your common sense in evaluating an expert witness's testimony or any other witness's testimony. If an expert's conclusions or premises defy common sense, you may rely on your common sense and set aside expert testimony to the contrary. An expert's testimony is intended only to assist you, as the trier of fact. If it does not assist you, then you may give it no weight whatsoever, if you choose.

AUTHORITY:

See generally City of West Bend v. Wilkens, 278 Wis. 2d 643, 654, 693 N.W.2d 324, 329 (Ct. App. 2005); *State v. Bednarz*, 179 Wis. 2d 460, 466-68, 507 N.W.2d 168, 171-72 (Ct. App. 1993); *State ex rel. Cholka v. Johnson*, 96 Wis. 2d 704, 713-14, 292 N.W.2d 835, 840-41 (1980); *see also United States v. Barnard*, 490 F.2d 907, 912-13 (9th Cir. 1973), quoted approvingly in *Hampton v. State*, 92 Wis. 2d 450, 457, 285 N.W.2d 868, 871-72 (1979).

Given _____

Denied _____

Withdrawn _____

Modified _____

DEFENDANT'S PROPOSED INSTRUCTION No. 6

Lack of Motive

Motive is not an element of any crime and it does not by itself establish guilt or innocence. But evidence of motive is relevant if it meets the same standards of relevance as other evidence. Motive is an evidentiary circumstance which may be given as much weight as the fact finder deems it entitled to. Accordingly, although the state need not prove that Mr. Avery had a motive to commit the charged crimes, it is also true that if you find that he had a lack of motive, you may consider that in deciding whether the state failed to prove him guilty of one or more of the charged offenses.

AUTHORITY:

State v. Berby, 81 Wis. 2d 677, 686-87, 260 N.W.2d 798, 803 (1978) (first three sentences taken verbatim from *Berby*).

Given _____

Denied _____

Withdrawn _____

Modified _____

DEFENDANT'S PROPOSED INSTRUCTION No. 7

Spoliation

You have heard evidence concerning the manner in which bone fragments were recovered by the state from an area behind Mr. Avery's garage and from a burn barrel behind the Janda residence. There is a duty to preserve evidence, if possible. If you conclude that the state's actions in recovering those bone fragments deliberately destroyed evidence relevant to the question of where those bone fragments were burned, you may draw an inference if you wish that such evidence would have been unfavorable to the state and favorable to Mr. Avery.

AUTHORITY:

Estate of Neumann ex rel. Rodli v. Neumann, 242 Wis. 2d 205, 244-47, 626 N.W.2d 821, 840-42 (Ct. App. 2001).

Given _____

Denied _____

Withdrawn _____

Modified _____