

1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY  
2 BRANCH 1

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3 STATE OF WISCONSIN,

4 PLAINTIFF, INITIAL APPEARANCE

5 vs.

6 Case No. 05 CF 375 & 05 CF 381

7 STEVEN A. AVERY,

8 DEFENDANT.

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10 **DATE:** NOVEMBER 15, 2005

11 **BEFORE:** Hon. Patrick L. Willis  
12 Circuit Court Judge

13 **APPEARANCES :**

14 KENNETH R. KRATZ  
15 Special Prosecutor  
16 On behalf of the State of Wisconsin.

17 ERIK LOY  
18 Attorney at Law  
19 On behalf of the Defendant.

20 CRAIG JOHNSON  
21 Attorney at Law  
22 On behalf of the Defendant.

23 STEVEN A. AVERY  
24 Defendant  
25 Appeared in person.

\* \* \* \* \*

**TRANSCRIPT OF PROCEEDINGS**

Reported by Diane Tesheneck, RPR

Official Court Reporter

1 THE COURT: At this time the Court calls  
2 two matters that are scheduled for initial  
3 appearance today, both entitled State of Wisconsin  
4 vs. Steven A. Avery, Case No. 05 CF 375 and 05 CF  
5 381. Will the parties state their appearances for  
6 the record, please.

7 ATTORNEY KRATZ: Your Honor, the State of  
8 Wisconsin appears by Calumet County District  
9 Attorney Ken Kratz. I appear in each case as  
10 Special Prosecutor.

11 ATTORNEY LOY: Steven Avery appears  
12 personally with his attorneys, Erik Loy and Craig  
13 Johnson, your Honor. We would note this is a  
14 special appearance subject to objection of the  
15 jurisdiction of the Court.

16 THE COURT: Has the defendant received a  
17 copy of the Complaint in each of these matters?

18 ATTORNEY LOY: We have, your Honor. We  
19 just received a signed copy of the Complaint in 05  
20 CF 381. Previously, I obtained a copy of the  
21 Complaint in the other felony matter in that case.  
22 At this time, Mr. Avery is not eligible for our  
23 services. We'll be looking into that further, but  
24 at this time he's not eligible for our services on  
25 that case.

1 THE COURT: He is not eligible on one case,  
2 but is on the other?

3 ATTORNEY LOY: That's correct.

4 THE COURT: What's the basis for that?

5 ATTORNEY LOY: There's an asset.

6 THE COURT: Okay. Are you representing him  
7 on that matter for purposes of today's hearing?

8 ATTORNEY LOY: We aren't allowed to due to  
9 the eligibility standards, your Honor. I guess it's  
10 up to the Court whether the Court wants to appoint  
11 counsel in that case.

12 THE COURT: To this point, I haven't  
13 received an application for appointment of counsel.  
14 And I was not aware until this moment that you would  
15 not be representing him on both cases. But a  
16 defendant is entitled to be represented by an  
17 attorney at all stages of these proceedings. Are  
18 you asking for a continuance on that case?

19 ATTORNEY LOY: Perhaps that case could be  
20 continued and the Court could hold a status  
21 conference on it on the next date of the other case.

22 THE COURT: All right. You have received a  
23 copy of the Complaint in 05 CF 381?

24 ATTORNEY LOY: Yes, your Honor. We'll  
25 waive reading of that Complaint, request a

1 preliminary hearing. We are willing to waive time  
2 limits on that case.

3 THE COURT: All right. And, Mr. Kratz, how  
4 much time do you anticipate will be required for the  
5 preliminary examination?

6 ATTORNEY LOY: I would ask for a half a  
7 day, Judge.

8 THE COURT: I should indicate for the  
9 record, I met briefly with counsel, before we began  
10 today, concerning their schedules. And it's my  
11 understanding that 1:00 on Tuesday, December 6th  
12 works for both parties.

13 ATTORNEY LOY: That works fine for us, I  
14 believe, your Honor.

15 THE COURT: Very well. The Court will  
16 schedule the preliminary examination in this matter,  
17 then, for 1:00 p.m. on Tuesday, December 6th. I do  
18 not believe that bail has been set yet; what is the  
19 State's request on bail?

20 ATTORNEY KRATZ: Just prior to talking  
21 about bail, Judge, I know that the Court has put  
22 aside the felon in possession case, obviously the  
23 evidence which would lead to potential probable  
24 cause finding of the Court is similar in that file  
25 as well.

1 I don't know if the Court is in a  
2 position to have a continued initial appearance  
3 between now and then, perhaps use that same time  
4 as the preliminary hearing date, if and when  
5 Mr. Avery is afforded the assistance of counsel.  
6 That would certainly be our request, that it be a  
7 joint preliminary hearing. And once that  
8 decision is made by the Court, I'm prepared to be  
9 heard on bond. Thank you.

10 THE COURT: Mr. Loy, I'm not sure, you  
11 mentioned, he didn't qualify on 375 because of an  
12 asset. Doesn't he have the same asset on the other  
13 case?

14 ATTORNEY LOY: The standard for eligibility  
15 are different for the two types of cases, your  
16 Honor.

17 THE COURT: All right. Let's do this, I  
18 want to look into the matter on 375 a little  
19 further, but I am going to schedule the preliminary  
20 examination, at least on 381, for 1:00 on the 6th.  
21 And it may be, depending on my review, that the  
22 prelims can be joined between now and then or may  
23 not, because I, frankly, was not ready for this  
24 issue today. Moving on, then, to the question of  
25 bail.

1                   ATTORNEY KRATZ: Thank you, Judge. Judge,  
2                   the State is recommending a substantial cash bond in  
3                   this case. As the Court knows, there are statutory  
4                   factors that the Court need consider when deciding  
5                   the issue of bond, including the gravity of the  
6                   offense; potential penalties; the degree of violence  
7                   involved; prior record, if any; character and  
8                   strength of the evidence that is to be presented;  
9                   whether a defendant has substantial ties to the  
10                  community.

11                  Of those, Mr. Avery, the State argues,  
12                  can only claim that he has ties to the community  
13                  in that he does live and work within the  
14                  community. The rest of the factors are strong  
15                  indicators of the need for a substantial cash  
16                  bond. The homicide nature and mutilation of a  
17                  corpse speaks to the gravity of the offense with  
18                  potential imprisonment that Mr. Avery faces  
19                  includes life, plus 22 and a half years.

20                  The act that is alleged in the  
21                  Complaint, as well as the destruction of  
22                  evidence, is all of a highly violent nature.  
23                  Mr. Avery comes before this Court with a prior  
24                  criminal history including a 1986 conviction for  
25                  endangering safety, which was a case involving

1 pointing a firearm at a citizen; includes a 1980  
2 and 1981 burglary conviction; as well as a 1982  
3 conviction for the criminal offense of cruelty to  
4 an animal.

5 The State argues that the character and  
6 strength of evidence in this case is substantial,  
7 as alleged in the Complaint. There's been a DNA  
8 match, or series of matches implicating Mr. Avery  
9 in the commission of each of these offenses.

10 And for all of those reasons, especially  
11 given the likelihood that Mr. Avery would flee so  
12 as not to be made available for future court  
13 appearances, the State is asking for a \$1 million  
14 cash bond. That's all I have this afternoon.

15 Thank you, Judge.

16 THE COURT: Mr. Loy.

17 ATTORNEY LOY: Your Honor, this case was  
18 being investigated for several days and Mr. Avery  
19 was free to come and go as he pleased. Despite the  
20 fact that Mr. Avery knew about this investigation,  
21 knew that he was a suspect, he didn't go anywhere.

22 He has substantial ties to the  
23 community, numerous family members, a number of  
24 them are here in court today. The convictions  
25 that Mr. Kratz mentioned are all cases that are

1 quite old. I would ask the Court, if the Court  
2 is going to set a cash bail on this case, to set  
3 a more reasonable amount that perhaps Mr. Avery  
4 and his family might have some hope of posting,  
5 perhaps in the neighborhood of \$50,000. Thank  
6 you.

7 THE COURT: All right. The -- As counsel  
8 points out, there are factors the Court is to  
9 consider that cut both ways in this case. I think  
10 Mr. Avery has had ties to this community as not  
11 indicated -- or there's been no indications that he  
12 is inclined to flee.

13 On the other hand, he does have a prior  
14 criminal record, as the State points out. At  
15 this early proceeding, there's some indications  
16 in the Complaint of corroborating elements to the  
17 evidence, but I think the primary factor here is  
18 the severity of the offenses that are charged, in  
19 terms of warranting a significant cash bail.

20 So the Court is going to set cash bail  
21 in this case at \$500,000. Is there anything  
22 further from either party this afternoon?

23 ATTORNEY KRATZ: Judge, is there an  
24 opportunity that the Court would like to discuss the  
25 375 case, or perhaps in a phone conference, or

1 something along those lines? My concern, and I  
2 appreciate the Court's dilemma, my concern is that,  
3 especially the victim's family, doesn't have to go  
4 through the prelim process twice.

5 THE COURT: All right. How about a  
6 telephone status conference this coming Monday at  
7 4:00?

8 ATTORNEY LOY: It's possible I will be  
9 involved in a trial then, your Honor; although it's  
10 doubtful.

11 THE COURT: Let's do this, we'll  
12 tentatively set it for 4:00. It's only going to be  
13 a status conference. The defendant need not be  
14 present; we won't be going on the record. If for  
15 some reason, Mr. Loy, you are in trial and  
16 unavailable, let my judicial assistant know and  
17 we'll arrange it for a different time.

18 ATTORNEY KRATZ: That's the 21st, Judge?

19 THE COURT: Correct.

20 ATTORNEY KRATZ: Who should initiate that  
21 call? I'm happy to do it, Judge, if you want me to  
22 do it.

23 THE COURT: That will be fine.

24 ATTORNEY LOY: I will probably just come  
25 over to your chambers.

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THE COURT: Anything else this afternoon?

ATTORNEY KRATZ: That's all for today.

Thank you, Judge.

THE COURT: At this time the bail is set to cover both files. I will make the bail decision at this time even though the initial appearance is continued on Case 375. If there's nothing further, we're adjourned for today.

(Proceedings concluded.)

1 STATE OF WISCONSIN )  
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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this        day of        , 2006.

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Diane Tesheneck, RPR  
Official Court Reporter

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<b>R</b>		<b>years</b> [1] 6/19 <b>Yes</b> [1] 3/24 <b>yet</b> [1] 4/18 <b>you</b> [13] <b>your</b> [10] 2/7 2/13 2/18 3/9 3/24 4/14 5/15 7/17 9/9 9/25
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