

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH I

MANITOWOC COUNTY

STATE OF WISCONSIN

vs.

STEVEN A. AVERY,

MANITOWOC COUNTY
STATE OF WISCONSIN
FILED
Plaintiff,
JAN 18 2007

CLERK OF CIRCUIT COURT
Defendant,

MOTION FOR RELIEF FROM
PRETRIAL SCHEDULING ORDER

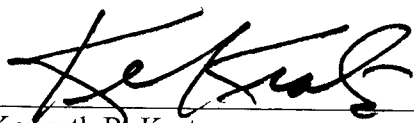
Case No. 05-CF-381

The state requests relief from paragraph 4(b)4 of the Court's October 19, 2006 Pretrial Scheduling Order. Depending on the Court's ruling pertaining to the admissibility of the blood vial currently held under seal in the Manitowoc County Clerk of Courts office, the state may need to conduct scientific testing on the blood vial and other related evidence. The state maintains that the defense was aware of the existence of the vial of blood on July 20, 2006, or earlier, and did not reveal the existence of said vial of blood to the state until December 6, 2006. This vial of blood has been under seal since then. Since the defendant waited until December 6, 2006 to disclose the existence of the vial of blood, and since the state may need to conduct scientific testing on said vial of blood, the state asks for relief from the Order requiring identification of any rebuttal expert witnesses, along with copies of reports of any such expert witnesses, by January 19, 2007 in accordance with the Pretrial Scheduling Order.

As support for this request, the State offers State v. Konkol, 256 Wis. 2d 725, 649 N.W. 2d 300 (WI App. 2002), wherein the court held "that the discovery statute places no duty on a prosecutor to list a rebuttal witness even if he or she knows before trial that the witness will be called. To put it bluntly, 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 §971.23(1)(d)." Id. at 727. See also, §971.23(1)(d), Wis. Stats., which excludes rebuttal witnesses from what a district attorney must disclose to a defendant.

For the above reasons the state seeks relief from paragraph 4(b)4 of the Court's October 19, 2006 Pretrial Scheduling Order.

Respectfully submitted this 16th day of January, 2007


Kenneth R. Kratz
Calumet County District Attorney
Special Prosecutor
State Bar 1013996