

ORIGINAL

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH I

MANITOWOC COUNTY

STATE OF WISCONSIN

Plaintiff,

STATE OF WISCONSIN'S
2nd SUPPLEMENTARY

vs.

MEMORANDUM IN SUPPORT
OF OTHER ACTS EVIDENCE

STEVEN A. AVERY,

Defendant,

[Submitted Under Seal]

MANITOWOC COUNTY
STATE OF WISCONSIN
FILED
AUG 14 2006

Case No. 05-CF-381

CLERK OF CIRCUIT COURT

PURPOSE

After the State submitted it's nine separate motions to allow the introduction of other acts evidence, a memorandum of law in support of it's motion, and a supplementary memorandum, the Court requested additional specificity from the State, in correspondence dated August 1, 2006. Specifically, the Court requires the State submit, as to each proposed other act: (1) the charge for which the evidence is offered; (2) how the evidence relates to an element of the charge; and (3) what witnesses will testify, and what they will say.

The State here attempts to more clearly explain it's theory of admissibility, and comply with the Court's request for additional specificity as to the nine other acts offered, although incorporating by reference the detailed information previously provided to the court.

ELEMENTS OF OFFENSES

Although the Court may already be aware of the charges the defendant faces, and the elements which must be proved by the State for each charge, the list below may be of assistance. It must be noted that Count 1 (First Degree Intentional Homicide), Count 2 (Mutilating a Corpse), and Count 4 (First Degree Sexual Assault) are charged as a "party to the crime" and can be proved whether the defendant committed each of the elements individually, or aided and abetted another in the commission of those elements. The State also paraphrases the elements to be proved, for simplicity of analysis.

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Count 1--First Degree Intentional Homicide [JI-1010]:

- (1) Defendant caused the death of Teresa Halbach;
- (2) Acted with intent to kill.

Count 2--Mutilating a Corpse [JI-1193]:

- (1) Defendant mutilated a corpse;
- (2) With intent to conceal a crime.

Count 3--Felon in Possession of Firearm [JI-1343]:

- (1) Defendant possessed a firearm;
- (2) Defendant had been convicted of felony before November 5, 2005.

Count 4--First Degree Sexual Assault [JI-1203]:

- (1) Defendant had sexual intercourse with Teresa Halbach;
- (2) Victim did not consent to the sexual intercourse;
- (3) By use or threat of use of a dangerous weapon.

Count 5--Kidnapping [JI-1281]:

- (1) Defendant seized Teresa Halbach;
- (2) Without her consent;
- (3) Forcibly;
- (4) With intent that victim be held to service against her will.

Count 6--False Imprisonment [JI-1275]:

- (1) Defendant confined or restrained Teresa Halbach;
- (2) Intentionally;
- (3) Without the victim's consent;
- (4) Defendant had no lawful authority to confine or restrain victim;
- (5) Defendant knew it was without victim's consent and without authority.

MOTION #1 – PHYSICAL VIOLENCE AND THREATS TO EX-WIFE, LORI AVERY

A. Charge(s) for which evidence is offered:

Count 1—First Degree Intentional Homicide

Count 2—Mutilating a Corpse

B. How evidence relates to an element of the charge:

The pattern of violence Avery exhibited toward his ex-wife, Lori, will be relevant as to the defendant's motive (the state of mind or emotion behind his decision to kill Teresa Halbach), and as to the element of "intent to kill" Ms. Halbach. Avery's stated intent to kill and mutilate his then wife, Lori, is also relevant as to plan; that is, the jury should be informed of this man's stated willingness to mutilate his ex-wife (Lori Dassey) when considering whether the defendant mutilated Teresa Halbach (the first element of Count 2 of the Information).

C. Witness testimony:

Lori Dassey (fka Lori Avery) will testify that she was previously married to Steven Avery, and that their marriage was filled with physical abuse being administered to Lori, consisting of Choking, hitting and punching. Lori will testify that Avery threatened that if she ever left him, he would kill her. Lori will say that Avery always gets what he wants, and becomes very violent when he is angry.

Lori Dassey will testify that in approximately February, 1988, she divorced Steven Avery. After the divorce, Avery would send Lori threatening letters in the mail, threatening to hurt or kill her and her family. Lori will indicate that Avery would sometimes send the threatening letters through their children, and that Lori obtained a court order so she no longer was required to have the children see Steven Avery in prison.

Lori will testify that while married to Avery, she ended up in the domestic violence shelter on a number of occasions, and that Avery had found her there in 1983 or 1984, when he

had to be removed from the facility. Lori will testify that it is her opinion that if Avery had not gone to prison in 1985, she would have been killed.

Investigator Wendy Baldwin (Calumet County Sheriff's Department) may provide testimony of statements made by Lori Dassey regarding the history of physical abuse between she and Steven Avery.

Manitowoc County Court documents, from Case 87-FA-118, include cards written to Lori by Steven Avery, including the statements: "I hate mom; she will pay; I will kill you; I will get you when I'm out; Daddy will git mom when daddy gits out." Findings of the family court include that Avery was "impulsive; had threatened to kill and mutilate his wife; and refused to participate in programming while in prison."

MOTION #2 – PHYSICAL VIOLENCE TOWARDS GIRLFRIEND
JODI STACHOWSKI

A. Charge(s) for which evidence is offered:

Count 1—First Degree Intentional Homicide

B. How evidence relates to an element of the charge:

Once again, this defendant's pattern of physical abuse of women he comes into contact with, is highly relevant on the element of intent to kill (regarding Count 1, First Degree Intentional Homicide). The escalating pattern of abuse also demonstrates the defendant's motive; as previously argued, even though motive is not an "element" that must be proved, per se, it remains highly relevant for the jury's consideration.

C. Witness testimony:

Jodi Stachowski will testify that she was the girlfriend of Steven Avery, and had lived at the trailer with him for approximately 18 months. Jodi will testify that on 10/31/05, she was in custody in the Manitowoc County Jail, and that she spoke to Avery from the jail each night,

including 10/31. Stachowski will testify that during her relationship with Steven Avery, he has been physically abusive towards her, including specific instances of slapping, hitting her with a closed fist, and throwing her to the ground. Stachowski also described one incident of Avery choking her, and that she was worried about Avery's temper. Stachowski will say that Avery has hit her on three or four occasions hard enough where it has left a bruise.

Stachowski will indicate that Avery is a controlling individual, and the only time she ever stood up for herself she and Avery argued, and he ended up choking her.

In a recorded phone conversation between Steven Avery and Jodi Stachowski on January 27, 2006, Jodi indicates that they (the police) know about Steve hitting Jodi; Avery indicates that she should deny everything and told Jodi that if she "cared about him, she would—that she could tell the police that she just fell down while she was drunk and that's how she got the bruises."

Candy Avery, wife of Earl Avery (and sister-in-law to Steven Avery) will testify that she was aware of physical abuse being inflicted upon Jodi Stachowski by Steven Avery. Candy's 14-year-old daughter, Kayla, came home from visiting Jodi on one occasion and told Candy that "Jodi is sick of being beat up by uncle Steven, can you help her?"

Investigator John Dederling (Calumet Sheriff's Department) and Deb Strauss (DCI) will testify that they interviewed Jodi Stachowski regarding her physically abusive relationship with Steven Avery.

MOTION #3 – ACT OF VIOLENCE TOWARDS AN ANIMAL (KILLING A CAT)

A. Charge(s) for which evidence is offered:

Count 1—First Degree Intentional Homicide

Count 2—Mutilating a Corpse

B. How evidence relates to an element of the charge:

The sadistic personality of Steven Avery is highly relevant on the elements on whether the defendant caused the death of Teresa Halbach (element #1 of Count 1); whether Avery mutilated Halbach's body after her death (element #1 of Count 2); and generally as to motive. When asked to consider who killed and mutilated Ms. Halbach, the jury must be allowed to consider the vicious and cold-hearted torture and death of Avery's cat; the striking similarity of placing the object of Avery's torture on a bonfire entitles the jury consider this evidence for that very purpose of determining "identity" of Ms. Halbach's killer.

C. Witness testimony:

Witnesses, including Jerry Yanda and Peter Dassey will testify that on August 31, 1982, Steven Avery was at his home, built a bonfire, and suggested that they "burn a cat." Avery chased the cat, caught it, poured gas and oil on the cat, at which time the cat was thrown on the bonfire. The cat jumped off the fire, ran around and died.

Lori Dassey (fka Lori Avery) will testify that she observed the cat burning through the window, and running around the yard. Steven Avery and his friends were laughing about it.

MOTION #4 – ENDANGERING SAFETY OF SANDRA MORRIS

(POINTING A FIREARM AND FORCING OFF THE ROAD)

A. Charge(s) for which evidence is offered:

Count 4—First Degree Sexual Assault

Count 5—Kidnapping

B. How evidence relates to an element of the charge:

The element of whether this defendant "seized" Ms. Halbach should include consideration by the jury of this defendant's "seizure" of Sandra Morris, at gunpoint, in 1984.

Again, the remarkable similarities in these acts (previously argued in the State's Supplementary Memorandum) argues for jury consideration on "identity" of Ms. Halbach's killer (and whether Avery forced Ms. Halbach to be held for service against her will). As clearly held in Wisconsin, sexual motive of a kidnapping is being held for "service" against one's free will. State v. Clement, 153 Wis.2d 287 (Ct. App. 1989).

The State here also reminds the court that whether there is actual evidence of sexual assault of Ms. Halbach or not, the motive of the request for Halbach's "visit" to the Avery compound and subsequent abduction by Steven Avery is clearly a sexual motive, rendering all past sexual misconduct and attempts to secure women against their will highly relevant!

C. Witness testimony:

Sandra Morris will testify that on September 20, 1984 she was having problems with Steven Avery, her 2nd cousin, as he had been repeatedly exposing himself to her while standing on the edge of the road as she drove past. Morris will indicate that Avery on occasion would masturbate as she drove by. Morris will testify that on November 27, 1984, Avery jumped in the middle of the road without clothes on, and she almost struck him.

Morris will say that on January 3, 1985, she noticed a car coming up behind her, and that vehicle then rammed into the side of her vehicle, forcing her off the roadway. At that time, Morris was confronted by Steven Avery, who appeared angry, was yelling and armed with a rifle. Morris will indicate that Avery pointed the rifle at her, ordering her to get in his vehicle, at which time Morris begged Avery to let her go because her baby was in the front seat of her vehicle, and would freeze to death if she went with Avery. Morris will testify that Avery followed her to her parents' house, where she immediately called 9-1-1 emergency dispatch and reported the incident.

Avery was interviewed by a Detective with the Manitowoc County Sheriff's Department, and admitted that he forced Morris off the road, pointed his 30-06 rifle at the victim, as he was intending to frighten Morris in an attempt to stop Morris from making statements about Avery being naked in the roadway. After the confrontation, Avery said he took the rifle and placed it under the bed of one of his kid's. Officers later recovered the 30-06 rifle from Avery's home, and noticed a live round in the gun's chamber. Officers also located paint transfer between Avery and Morris' vehicle.

Trial Exhibits will prove that Avery was convicted of Endangering Safety and being a Felon in Possession of a Firearm as a result of this incident.

MOTION #5 – POSSESSION OF FIREARM BY A CONVICTED FELON

A. Charge(s) for which evidence is offered:

Count 3—Felon in Possession of Firearm

B. How evidence relates to an element of the charge:

Knowledge by Avery that it was unlawful to possess a firearm, after having been previously convicted of a felony, is relevant for the jury to consider. Although not technically an "element" of the offense in Count 3, the defendant's previous experiences handling (and pointing) a long gun, together with fact of the subsequent conviction, should be considered by this jury.

C. Witness testimony:

See evidence description in Motion #4.

MOTION #6 – SEXUAL ASSAULT OF M.A.

A. Charge(s) for which evidence is offered:

Count 4—First Degree Sexual Assault

Count 6—False Imprisonment

B. How evidence relates to an element of the charge:

Element # 1 (intercourse), #2 (without consent), and #3 (using threats) are all appropriately joined for consideration by the jury's review of this proposed evidence. The court's "greater latitude" rule, as to other act analysis in sexual assault cases, should also be adopted. Finally, proof of the elements of False Imprisonment (that the victim, Teresa Halbach, was restrained when the defendant had no legal authority to do so) are also furthered by this jury considering the facts surrounding the sexual assault of this defendant's niece, just over a year before this series of crimes was committed.

As previously argued in memoranda, the similarity of acts (intercourse, without consent, while being restrained) argues strongly for admissibility.

C. Witness testimony:

M.A. (DOB 6/14/87) will testify that she is the niece of Steven Avery, and that during the summer months of 2004, Avery had forced sexual intercourse with her. M.A. indicted that Avery had forced her hands over her head and had penis to vagina intercourse while lying on a bed at her aunt Barb's house (believed to be that of Barb Janda). M.A. will testify that she is afraid of Steven Avery, and that Avery threatened to kill her and hurt her family if she told anyone. Avery also told M.A. that if she told the police, that everyone in the family would hate her.

Possible witness includes Investigator Wendy Baldwin (Calumet County Sheriff's Department) who took the statement from M.A. about being sexually assaulted and threatened by Steven Avery.

Doris Weber, a friend of the Avery family, will testify that she previously spoke with Steven Avery about M.A., at which time Avery indicated he was "going with" M.A., and further admitted that he was having sex with her. Tammy Weber, daughter of Doris Weber, will testify that on one occasion, she heard Jodi Stachowski refer to M.A. as Steven Avery's "bitch" and indicated that Steven has been "fucking her."

Jodi Stachowski will testify that she believed Steven Avery and M.A. had a sexual relationship, as Avery told Stachowski that he and M.A. were sleeping together. Avery justified the relationship with his niece to Stachowski, saying that they were not "blood relatives." Stachowski told Investigator John Dederig (Calumet County Sheriff's Department) that Steven had sex with M.A. at least twice, telling Investigator Wiegert (Calumet County Sheriff's Department) that it happened once at Barb's house and once "up north." When asked how Steve described the encounters, Stachowski indicated that Steve said he "fucked her."

MOTION #7 – SEXUAL ASSAULT OF J.A.R.

A. Charge(s) for which evidence is offered:

Count 4—First Degree Sexual Assault

B. How evidence relates to an element of the charge:

Although much further removed in time, this sexual assault of this acquaintance of the defendant remains relevant for those reasons above stated. The "remoteness" is further mitigated by the defendant's lack of opportunity to commit similar acts while incarcerated; a discussion fully explored in previous written argument.

C. Witness testimony:

J.A.R. (DOB 11/9/64) will testify that in 1982 or 1983, while living with Steven and Lori Avery, she was sexually assaulted by Steven Avery. J.A.R. will describe the incident as she laying on the couch, when Avery came over and began fondling her, and after the victim said “no,” Avery put his hand over her mouth and told her that “if you yell or scream there will be trouble.” J.A.R. will describe penis to vagina sexual intercourse, and that it took approximately 15 to 20 minutes; she remembers it very well because she could hardly breathe as Avery was so heavy. J.A.R. indicates that she told some family members, but did not report it to the police at the time.

Investigator Mark Wiegert (Calumet County Sheriff’s Department) is a possible witness, having interviewed J.A.R. about the sexual assault on 1/20/06.

MOTION #8 – SEXUAL HISTORY OF DEFENDANT

A. Charge(s) for which evidence is offered:

Count 4—First Degree Sexual Assault

B. How evidence relates to an element of the charge:

Again, whether Steven Avery sexually assaulted Teresa Halbach himself, or simply aided his nephew in the commission of that act, his purpose in luring Ms. Halbach to his property was sexually driven. This defendant’s pre-occupation with sex, consensual or otherwise, is very important for the jury’s consideration as to motive (his purpose for engaging in behavior leading up to Ms. Halbach’s murder) and as to the sexual assault elements themselves.

Possession of hundreds of sexually explicit images (of his ex-wife, girlfriend, and himself); “professionally” produced pornography; sex toys; restraints manufactured for sexual activity; and uncontroverted evidence of sexual “appetite” and lack of access to his sexual

partner, all combine to assist the jury as to determination of this defendant's motive for his sexual design for Ms. Halbach, well before her arrival on 10/31.

C. Witness testimony:

Jodi Stachowski will testify that she and Steven Avery had sex every day during their relationship, and sometimes had sex as many as five times per day. Stachowski will say that she and Avery experimented with "bondage" several times, with Avery having tied her up on occasion. Stachowski will testify that Avery has pornographic images throughout his trailer, including perhaps hundreds of his ex-wife (Lori), herself (Jodi) and Avery himself. Avery also was in possession of handcuffs, leg restraints, "marital aids," and pornographic magazines and movies.

MOTION #9 – PHONE CONVERSATION WITH MARIE LITERSKY

A. Charge(s) for which evidence is offered:

Count 1—First Degree Intentional Homicide

Count 4—First Degree Sexual Assault

B. How evidence relates to an element of the charge:

The defendant's failed attempt to lure Marie Litersky to his trailer, for a stated sexual purpose, less than 24 hours before Ms. Halbach's arrival is highly relevant as to the elements of the sexual assault count, as well as motive as to the homicide.

By denying the jury the opportunity to consider the solicitation of Ms. Litersky (another young, attractive acquaintance of Steven Avery), the context in which Ms. Halbach is "invited" to the Avery property is incomplete. When further considering that Avery used his sister's name when calling AutoTrader Magazine asking for Halbach (arguably due to previous "creepy" behavior of Avery confronting Ms. Halbach wearing only a towel), and the timing of the call to AutoTrader, the facts surrounding the Litersky call become essential for jury consideration.

C. Witness testimony:

Marie Litersky will testify that on October 30, 2005, while driving in a vehicle with her grandparents, she called the cell phone of her ex-boyfriend, Bryan Dassey, and that his uncle, Steven Avery, answered the phone. After a short conversation with Steven Avery, Litersky hung up the phone. A short time later, Litersky will indicate that her cell phone rang, and it was Steven Avery calling her back. Avery asked Litersky if she would like to “come over and have a little fun” and that “we can have the bed hit the wall real hard.”

Litersky told Avery that she would not come over to his house, and that he was wasting her cell minutes, and hung up the phone.

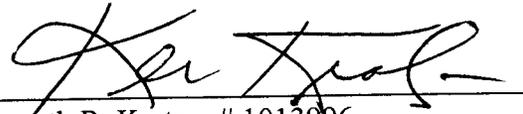
Special Agent Steven Lewis (DCI) is a possible witness having interviewed Marie Litersky about the solicitation made by Avery on 10/30/05.

CONCLUSION

For the reasons set forth in this 2nd Supplementary Memorandum, those of the original motions and supporting documents, the State seeks advanced rulings admitting these “other acts” for jury consideration. The State further requests specific limiting instructions be provided to the jury as to admissibility of this evidence.

Although the State did not include the three-pronged Sullivan analysis discussion in this document, it refers to previous discussion already submitted, and urges the Court engage in such analysis for each act offered.

Respectfully submitted this 9th day of August, 2006.



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