

STATE OF WISCONSIN  
COURT OF APPEALS  
DISTRICT II

**FILED**  
AUG 26 2016  
CLERK OF COURT OF APPEALS  
OF WISCONSIN

Appeal No. 2015AP002489  
Circuit Court Case No. 2005CF00381

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STATE OF WISCONSIN,

Plaintiff- Respondent,

v.

STEVEN A. AVERY,

Defendant-Appellant.

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MOTION TO HOLD APPEAL IN ABEYANCE AND  
SUSPEND THE BRIEFING SCHEDULE

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Defendant-Appellant Steven Avery, by his attorneys Kathleen T. Zellner, Douglas H. Johnson, and Tricia J. Bushnell (local counsel), hereby moves this court pursuant for an order to hold this appeal in abeyance and to suspend the briefing schedule pending the resolution and completion of scientific testing in *State v. Avery*, 05 CF 381. In support of this motion, he

states the following:

1. This appeal concerns the conviction of Steven Avery for the 2005 death of Teresa Halbach. Mr. Avery was convicted on March 18, 2007 after a jury trial lasting nearly five weeks. Mr. Avery was found guilty of being a party to a crime of first degree intentional homicide and being a felon in possession of a firearm.

2. On June 29, 2009, Mr. Avery filed a direct post-conviction motion requesting a new trial. The motion was denied and unsuccessfully appealed to this Court. *State v. Avery*, 2011 WI App 124, 337 Wis.2d 351, 804 N.W.2d 216. Mr. Avery continued to maintain his innocence.

3. On February 14, 2013, Mr. Avery filed a motion for relief pursuant to Wis. Stat. 974.06 requesting an order vacating his conviction and sentence. The motion was denied on November 23, 2015. This appeal follows.

4. Throughout his appeals, Mr. Avery has continued to assert his innocence. On January 21, 2016, undersigned counsel entered their notice of appearance to represent Mr. Avery in his appeals and in his litigation to prove his innocence.

5. On August 26, 2016, Mr. Avery through undersigned counsel filed a Motion For Post-Conviction Scientific Testing (attached as Exhibit A), requesting additional testing which could prove Mr. Avery's innocence.

6. Because the results of the requested testing and any subsequent litigation could result in Mr. Avery's conviction being overturned, it is appropriate to hold this appeal in abeyance pending the results of that testing and any subsequent litigation in the circuit court, should testing be granted.

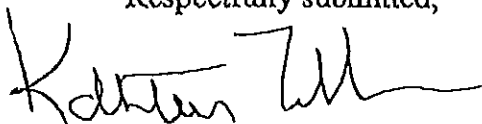
7. "A court has inherent power to stay proceedings before it in order to control disposition of the cases on its docket with economy of time and effort." *Evans v. Lane*, No. 82 C 6860, 1984 U.S. Dist. LEXIS 18739, at \*3-4 (N.D. Ill. Mar. 9, 1984), citing *Meditranean Enterprises v. Ssangyong*, 708 F.2d 1458, 1465 (9th Cir. 1983). A stay of proceedings is appropriate where the issues in the action may be disposed of or substantially affected by the outcome of another related suit. *Id.* citing *Goff v. Menke*, 672 F.2d 702, 704 (8th Cir. 1982); *New York State Teamsters Conference Pension and Retirement Fund v. Hoh*, 554 F.Supp. 519, 529 (N.D.N.Y. 1982).

8. Here, judicial efficiency and the interests of the parties and the public weigh in favor of placing this appeal on hold pending the resolution of the testing should testing be granted, and any subsequent litigation resulting from that testing. Should Mr. Avery prevail on his new appeal, this appeal would be moot. There is no harm to the Plaintiffs as the status quo includes Mr. Avery's continued incarceration.

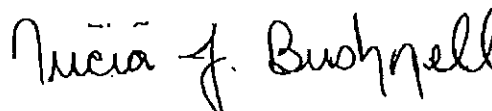
WHEREFORE, Mr. Avery respectfully requests that this appeal be held in abeyance, and the briefing schedule be suspended, pending the results of Mr. Avery's Motion for Post-Conviction Scientific Testing and any subsequent litigation.

Dated this 26 day of August, 2016

Respectfully submitted,



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