

STATE OF WISCONSIN  
COURT OF APPEALS

DISTRICT II

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Case No. 2015AP2489

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SEP 01 2016

CLERK OF COURT OF APPEALS  
OF WISCONSIN

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STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

STEVEN A. AVERY,

Defendant-Appellant.

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**RESPONSE TO MOTION TO HOLD  
APPEAL IN ABEYANCE**

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Defendant-appellant Steven A. Avery has filed a Motion to Hold Appeal in Abeyance and Suspend the Briefing Schedule. He asks this Court to hold this appeal in abeyance pending the resolution of a motion for scientific testing that he has filed in the circuit court and any subsequent litigation in that court.

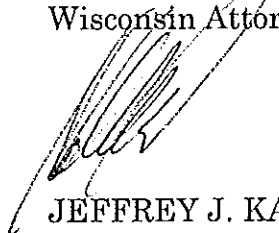
Avery asserts that this Court has the inherent authority to place this appeal on hold while he pursues further litigation in the circuit court and relies on decisions from other jurisdictions to support that assertion. His reliance on the Court's inherent authority is misplaced, however, as there is a Wisconsin statute, Wis. Stat. § 808.075 (5), that governs his request.

That statute provides that notwithstanding the limitations of Wis. Stat. § 808.075 on permitted circuit court actions pending appeal, “any party may petition the appellate court for remand to the circuit court for action upon specific issues.” Wis. Stat. § 808.075(5). If this Court construes Avery’s motion as one under Wis. Stat. § 808.075(5), the State does not object to a remand limited to the circuit court’s disposition of Avery’s motion for scientific testing and, if the circuit court grants that motion, any motion based on the results of the testing authorized by the circuit court.

Avery’s motion is silent with respect to whether he is asking this Court to return the record to the circuit court. Because the circuit court cannot properly assess Avery’s postconviction discovery motion without the record, the State requests that, if this Court grants Avery’s stay motion, it order that the record be returned to the circuit court.

Dated: September 1, 2016.

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