



KATHLEEN T. ZELLNER & ASSOCIATES, P.C.

ATTORNEYS AT LAW

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February 13, 2019

Wisconsin Court of Appeals
110 East Main Street, Suite #215
P.O. Box 1688
Madison, WI 53701
(608) 266-1880

RECEIVED

FEB 13 2019

CLERK OF COURT OF APPEALS
OF WISCONSIN

Re: *State of Wisconsin -v- Steven Avery*
Case No: 2017AP2288

Dear Justices:

I will not apologize for being forced to send a second letter to supplement Mr. Avery's pending motion because, as the attached transcript and CD illustrate, the State is trying to deceive undersigned counsel and this Court about the status of the pelvic bone (#8675), which was recovered in 2005 from the Manitowoc Gravel Pit.

The State has continuously represented to undersigned counsel since 2016 that the State was in possession of the pelvic bone (#8675). Undersigned counsel received a packet of never-before disclosed ledger sheets on Friday, February 8, 2019. Undersigned counsel noted that the new ledgers showed that the pelvic bone was listed as Item #9 and as being "only human." (Attached and incorporated herein as **Group Exhibit 1** are new CCSD ledgers 87-90; the ledgers disclosed to prior counsel, State 1_6869-70, do not have the September 11, 2011 entry). The September 20, 2011 police report has been previously provided to this Court as Exhibit A to the January 24, 2019 Motion to Stay the Appeal and Remand the Cause for Proceedings on Claims for Relief in Connection with the State's Violation of Wis. Stat. § 968.205 and *Youngblood v. Arizona*. The report indicates that the human bones from #8675 were separated from the non-human bones, and all the human bones were transferred to the Wieting Funeral Home for return to the Halbach family.

In light of this new information that the pelvic bone (#8675) was categorized as “human” and, therefore, would have been returned to the Halbach family, undersigned counsel made two urgent email requests today of Assistant Attorney General Thomas Fallon (attached and incorporated herein as **Group Exhibit 2** are the two email requests to Mr. Fallon) to call undersigned counsel immediately on her cell phone to confirm whether or not the State was in possession of the “human” pelvic bone (#8675). Mr. Fallon has consistently represented to undersigned counsel for the last three years that the State was in possession of the pelvic bone. (Attached and incorporated herein as **Group Exhibit 3** are the documents reflecting undersigned counsel’s request for #8675 to be produced for testing).

Mr. Fallon never returned Ms. Zellner’s telephone call and was instructed not to by his co-counsel, Attorney Mark Williams. Mr. Williams inadvertently called Ms. Zellner’s cell phone at 9:13 a.m. today and left a message for Mr. Fallon which stated:

Hi, Tom. This is Mark Williams. Um, I’ll send you an email later today, but I don’t think we should do anything or respond to her at all until tomorrow, uh, when we look into the bag and—and see exactly the pelvic bones are in there or not. Um, so I—I would not respond, uh, until we look into the bag, uh, tomorrow morning and then we can talk about it, uh, before we send a response. Thanks a lot. Bye.

(Attached and incorporated herein as **Group Exhibit 4** is a CD of the telephone call and transcript of that call).

Clearly, for the last three years, Mr. Fallon has misrepresented that the State was in possession of the “human” pelvic bone (#8675). On September 18, 2017, Mr. Fallon again misrepresented that the State was in possession of the pelvic bone (#8675) when he agreed with undersigned counsel to allow microscopic examination of the pelvic bone to determine whether it is human. Specifically, undersigned counsel and Mr. Fallon agreed to have the State’s expert, Dr. Leslie Eisenberg, and undersigned counsel’s expert, Dr. Steven Symes, perform a microscopic examination of #8675. Because of the new information produced in the previously undisclosed ledger sheets that #8675 was determined to be human, undersigned counsel does not know if prior undisclosed testing has occurred prior to the bones being returned to the Halbach family. (*See, Group Exhibit 1, CCSD Ledger, p. 90*).

Undersigned counsel respectfully requests that this Court consider this letter and the attached exhibits in its ruling on Mr. Avery's pending motion, particularly his claim that the State has acted in bad faith in violation of *Youngblood v. Arizona* and his request for an evidentiary hearing on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kathleen T. Zellner', written over a horizontal line.

Kathleen T. Zellner

A handwritten signature in black ink, appearing to read 'Steven G. Richards', written over a horizontal line.

Steven G. Richards

CERTIFICATE OF SERVICE

I certify that on February 13th, 2019, a true and correct copy of Defendant-Appellant's letter to the Court providing 4 additional group exhibits to Mr. Avery's Motion to Stay Appeal and Remand the Cause for Proceedings on Claims for Relief in Connection with the State's Violation of Wisconsin Statute § 968.205 and Youngblood -v- Arizona, was furnished via electronic mail and by first-class U.S. Mail, postage prepaid to:

Manitowoc County District Attorney's Office
1010 South 8th Street
3rd Floor, Room 325
Manitowoc, WI 54220

Attorney General's Office
Ms. Lisa E.F. Kumfer
Ms. Tiffany Winter
P.O. Box 7857
Madison, WI 53707

Lynn Zigmunt
Clerk of the Circuit Court
Manitowoc County Courthouse
1010 South 8th Street
Manitowoc, WI 54220


Kathleen T. Zellner

EVIDENCE/PROPERTY CUSTODY DOCUMENT Calumet County Sheriff's Department 206 Court St., Oshkosh, WI 53041-1198		INCIDENT # 05-0157-955	Page: 1 of: 4
Name and Title of Person From Whom Received:		Address:	

<input type="checkbox"/> Owner RECEIVED FROM O.I. IN PRESENCE OF NIKKUS	Address:
<input type="checkbox"/> Other S262K4	City, State, Zip:
Address From Where Obtained:	Phone:
Reason Obtained: EVIDENCE	Time/Date Obtained: 11-11-05

ITEM NUMBER	PROPERTY TAG NUMBER	DESCRIPTION OF ARTICLES (Incl. to model, serial number, condition and unusual marks or notations)	TIME COLLECTED	DISP.
1	8694	Description: COMPACT DISC (G) Location Found: NORTHWEST OF RED TRAILER BY TREE LINE	08:10	
2	8700	Description: NECKLESS (J) Location Found: N 44° 15' 07 W 87° 41' 43	10:02	
3	8695	Description: DEBRIS (K) Location Found: N 44° 15' 16 W 87° 41' 45	10:17	
4	8696	Description: FEZES WITH HAIR (H) Location Found: N 44° 15' 09 W 87° 41' 44	10:30	
5	8697	Description: DEBRIS PILE CONTENTS (N1) Location Found: N 44° 14' 53 W 87° 41' 51	10:47	
6	8698	Description: DEBRIS PILE (N) Location Found: N 44° 14' 53 W 87° 41' 51	11:19	
7	8699	Description: DEBRIS PILE (N2) Location Found: N 44° 14' 53 W 87° 41' 51	11:19	
8	8484	Description: DEBRIS PILE (O) Location Found: N 44° 14' 51 W 87° 41' 51	11:32	
9	8675	Description: DEBRIS PILE CONTENTS (O1) Location Found: N 44° 14' 51 W 87° 41' 51	11:36	
10	8676	Description: HAIR FIBERS (P) Location Found: CLUB CAR SEAT IN GREEN GARAGE	12:33	
11	8677	Description: DRY RESIDUE (Q) Location Found: CLUB CAR SEAT IN GREEN GARAGE	12:50	
12	8678	Description: CLOTH SAMPLE (R1) Location Found: CLUB CAR SEAT IN GREEN GARAGE	12:52	
13	8679	Description: BOTTLE WITH WHITE POWDER (R) Location Found: CHEV. MALIBU IN GREEN GARAGE	12:54	

EXHIBIT
Group 1

ITEM NUMBER	DATE	RELEASED BY	RECEIVED BY	PURPOSE OF CHANGE FOR CUSTODY
1-44	11-11-05	Signature: Robert Powell Name, Title: ROBERT POWELL SPECIAL AGENT	Signature: [Signature] Name, Title: NICHOLAS J. SAALATI DEPUTY	EVIDENCE
1-44	11-11-05	Signature: [Signature] Name, Title: NICHOLAS J. SAALATI DEPUTY	Signature: [Signature] Name, Title: KRISTY RICK RILEY 332	EVIDENCE
1-44	11-11-05	Signature: [Signature] Name, Title: Robert Rick Riemer	Signature: [Signature] Name, Title: Terney Hankens I.E.C.	T.O.T EVID. CUSTODIAN

401115 3/03
9 AAA-17 50

LOCATION: 4 Holes 2 1/4" Dia. 3-1/2" x 1-1/2" x 1-1/2" LEDGER NUMBER: 05-208

CHAIN OF CUSTODY (Continued)

ITEM NUMBER	DATE	RELEASED BY	RECEIVED BY	PURPOSE OF CHANGE OF CUSTODY
3, 6, 7, 8, 18, 19, 23, 24, 25, 27, 28, 29, 31	11-21-05	Signature: <i>[Signature]</i> Name, Title: <i>Serjey Hawkins / E.C.</i>	Signature: <i>[Signature]</i> Name, Title: <i>Deputy</i>	Transport to Crime Lab
3, 6, 7, 8, 18, 19, 23, 24, 25, 27, 28, 29, 31	11-21-05	Signature: <i>[Signature]</i> Name, Title: <i>Serjey Hawkins / E.C.</i>	Signature: <i>[Signature]</i> Name, Title: <i>Kimber Bass / Deputy</i>	Transport to Crime Lab
3, 6, 7, 8, 18, 19, 23, 24, 25, 27, 28, 29, 31	11-21-05	Signature: <i>[Signature]</i> Name, Title: <i>[Signature] Deputy</i>	Signature: <i>[Signature]</i> Name, Title: <i>D. Larson Evid Tech</i>	Evidence for Inspection
3, 6, 7, 8, 18, 19, 23, 24, 25, 27, 28, 29, 31	12/20/05	Signature: <i>[Signature]</i> Name, Title: <i>Deputy Rick Pironce</i>	Signature: <i>[Signature]</i> Name, Title: <i>Serjey Hawkins / E.C.</i>	Return to Custodian
Signature: [Signature] Name, Title: [Signature]				
Signature: [Signature] Name, Title: [Signature]				
9	5/17/06	Signature: <i>[Signature]</i> Name, Title: <i>Serjey Hawkins / E.C.</i>	Signature: <i>[Signature]</i> Name, Title: <i>Deputy Coroner Tomen</i>	TOT Dove Co. Carcasses
10	6/13/06	Signature: <i>[Signature]</i> Name, Title: <i>Serjey Hawkins / E.C.</i>	Signature: <i>[Signature]</i> Name, Title: <i>mail</i>	Sent to Crime Lab via Mail
3, 6, 7, 8, 18, 19, 23, 24, 25, 27, 28, 29, 31	09/10/06	Signature: <i>[Signature]</i> Name, Title: <i>Serjey Hawkins</i>	Signature: <i>[Signature]</i> Name, Title: <i>Deputy Rick Pironce</i>	PROCESSING

Item #	Date	Name	Address	Relationship
33, 35, 36		John J. Vashby	Serjey Hawkins	TOT Evidence Custodian
9	12/15/06	John J. Vashby	Serjey Hawkins	Custodian
9	12/15/06	Serjey Hawkins	Gerald E. Mullen	TOT FBI for Testing
		Serjey Hawkins	Gerald E. Mullen	Testing

FINAL DISPOSAL AUTHORITY

ITEMS _____ ON THIS DOCUMENT, PERTAINING TO THE INVESTIGATION INVOLVING _____
 Name, Address _____ //are
 NO LONGER REQUIRED AS EVIDENCE AND MAY BE DISPOSED OF AS INDICATED ABOVE. (If articles must be retained, do not sign, but explain in separate correspondence.)

Typed/Printed Name and Title _____ Signature _____ Date _____

WITNESS TO DESTRUCTION OF EVIDENCE

The article(s) listed at item number(s) _____ was/were destroyed by _____
 the evidence custodian, in my presence, on the date indicated above.

Printed Name _____ Signature _____ Date _____
 Printed Name _____ Signature _____ Date _____

Name and Title of Person From Whom Received: _____ Address: _____ City, State, Zip: _____ Phone: _____

Owner
 Other

Address From Where Obtained: _____ Reason Obtained: _____ Time/Date Obtained: _____

ITEM NUMBER	PROPERTY TAG NUMBER	DESCRIPTION	LOCATION FOUND	TIME COLLECTED	DISP.	PURPOSE OF CHANGE OF CUSTODY
14	86820	2 LETTERS (5)	CHEV MALIBU GREEN GARAGE	12:55	Disp:	
15	86811	WHITE POWDER MEASIS (T)	TRUCK OF CHEV MALIBU GREEN GARAGE	13:06	Disp:	
16	86822	SPARE TIRE PLASTIC HOLD DOWN NUT (V)	MALIBU TRUCK IN GREEN GARAGE	13:10	Disp:	
17	86823	BOX OF BAKING SODA (V)	TRUCK OF CHEV MALIBU GREEN GARAGE	13:13	Disp:	
18	86444	DEAKIS PILE (W)	N 44° 44' 46" W 087° 41' 58"	13:45	Disp:	
19	86445	TIRE AND RIM (X)	NEAR GARY MURKIN'S SOUTHWEST END OF FIRE JURISDICTION EAST (Y)	14:07	Disp:	
20	86446	MEASUREMENTS OF MEASIS PILE (W)	N 44° 44' 46" W 087° 41' 58"	14:44	Disp:	
21	86447	UNCLIPPED 22 LONG ROUNDS 70.839 UNCLIPPED ROUNDS (2)	N 44° 44' 45" W 087° 41' 58"	14:48	Disp:	
22	86448	MEASIS PILE (I)	N 44° 44' 46" W 87° 41' 57"	14:54	Disp:	
23	86449	MEASIS PILE (2)	N 44° 44' 44" W 87° 42' 10"	15:06	Disp:	
24	8650	MEASIS PILE (2)	N 44° 44' 44" W 87° 42' 10"	15:08	Disp:	
25	8651	MEASIS PILE (2)	N 44° 44' 44" W 87° 42' 10"	15:08	Disp:	
26	8652	MEASIS PILE (2)	N 44° 44' 44" W 87° 42' 10"	15:08	Disp:	
27-31						
32-34						
35-41						
10	5/35/06	Signature: <i>Arthur Lab</i>	Signature: <i>Frankling E. C.</i>			Transport to CASO

CHAIN OF CUSTODY (Continued)

ITEM NUMBER	DATE	RELEASED BY	RECEIVED BY	PURPOSE OF CHANGE OF CUSTODY
10	5/25/06	Signature: Wendy Baldwin Name, Title: W. Baldwin Env	Signature: Jerry Hawkins Name, Title: Jerry Hawkins/LEC	TOT Custodian
3, 6, 7, 8, 14, 19, 23, 24, 26-33, 35-41	10/9/06	Signature: Jerry Hawkins Name, Title: Jerry Hawkins/LEC	Signature: Nicholas J. Spitzer Name, Title: Nicholas J. Spitzer, PIADU	Items in Back Carriage Seized Area to remain in chain of custody
3, 6, 7, 8, 14, 19, 23, 24, 26-33, 35-41	10/9/06	Signature: Jerry Hawkins Name, Title: Jerry Hawkins/LEC	Signature: Jerry Hawkins Name, Title: Jerry Hawkins/LEC	TOT Evidence Custodian
42	11/16/06	Signature: Jerry Hawkins Name, Title: Jerry Hawkins/LEC	Signature: Charles E. Pacey Name, Title: Charles E. Pacey	RETURN TO Family member
9	01/31/07	Signature: Gerald E. Mullen Name, Title: Gerald E. Mullen Special Agent	Signature: Jerry Hawkins Name, Title: Jerry L. Hawkins/LEC	Returned TO CASO
9	02/21/07	Signature: Jerry Hawkins Name, Title: Jerry Hawkins/LEC	Signature: M. West Name, Title: M. West Agent FDW	TOT Custodian
9	02/21/07	Signature: M. West Name, Title: M. West Agent FDW	Signature: Jerry Hawkins Name, Title: Jerry Hawkins/LEC	TOT Evidence Custodian
4	04/09/07	Signature: Jerry Hawkins Name, Title: Jerry Hawkins/LEC	Signature: D. Packer Name, Title: Det. Dave Packer MTSO	
9 only 1 item	09/20/11	Signature: Jerry Hawkins Name, Title: J. Hawkins/LEC	Signature: M. West Name, Title: Sgt. Mark West Agent	

FINAL DISPOSAL ACTION

Item #	Date	Name	Address	Relationship

FINAL DISPOSAL AUTHORITY

ITEMS _____ ON THIS DOCUMENT, PERTAINING TO THE INVESTIGATION INVOLVING _____

Name, Address _____ //are
NO LONGER REQUIRED AS EVIDENCE AND MAY BE DISPOSED OF AS INDICATED ABOVE. (If articles must be retained, do not sign, but explain in separate correspondence.)

Typed/Printed Name and Title _____ Signature _____ Date _____

WITNESS TO DESTRUCTION OF EVIDENCE

The article(s) listed at item number(s) _____ was/were destroyed by _____
the evidence custodian, in my presence, on the date indicated above.

Printed Name _____ Signature _____ Date _____ Printed Name _____ Signature _____ Date _____

EVIDENCE RECEIPT
 CALIFORNIA DEPARTMENT OF JUSTICE
 208 GOLD STREET, OAKLAND, CALIF. 94612

INCIDENT # 05-0157-955
 CITATION #
 Page: 1
 of: 2

Name and Title of Person From Whom Received: **REVEREN FARA DE JUVENILE DE HICKS**
 Address: **548 W 4** City, State, ZIP
 Phone:
 Reason Obtained: **EVIDENCE** Time/Date Obtained: **11-11-05**

ITEM NUMBER	ROBERTA JAGNUMBER	DESCRIPTION	LOCATION FOUND	TIME COLLECTED	DISP.
1	✓	COCKET Disc (G)	Location Found: NORTH WEST OF RED TRUCKED DITCHES LANE	02:10	DISP.
2	✓	NECKLASS (N)	Location Found: N 44° 15' 07 W 87° 04' 43	10:02	DISP.
3	✓	DEBRIS (R)	Location Found: N 44° 15' 16 W 87° 04' 45	10:17	DISP.
4	✓	FEELS WITH HAIR (A)	Location Found: N 44° 15' 09 W 87° 04' 44	10:30	DISP.
5	✓	DEBRIS DUE CONTENTS (N)	Location Found: N 44° 14' 53 W 87° 41' 51	10:44	DISP.
6	✓	DEBRIS PILE (N)	Location Found: N 44° 14' 53 W 87° 41' 51	11:19	DISP.
7	✓	DEBRIS PILE (A)	Location Found: N 44° 14' 53 W 87° 41' 51	11:19	DISP.
8	✓	DEBRIS PILE (D)	Location Found: N 44° 14' 51 W 87° 41' 51	11:32	DISP.
9	✓	DEBRIS PILE CONTENTS (D)	Location Found: N 44° 14' 51 W 87° 41' 51	11:36	DISP.
10	✓	HAIR/FIBERS (P)	Location Found: CLUB CAR SEAT IN GREEN GARAGE	12:33	DISP.
11	✓	DRY RESIDUE (R)	Location Found: CLUB CAR SEAT IN GREEN GARAGE	12:50	DISP.
12	✓	CALCULATED SAMPLE (R)	Location Found: CLUB CAR SEAT IN GREEN GARAGE	12:52	DISP.
13	✓	BOTTLE WITH WHITE POWDER (R)	Location Found: CHEV MALIBU IN GREEN GARAGE	12:54	DISP.
1-44	11-11-05	Signature: <i>Robert Fara</i> Name, Title: ROBERT FARA SPECIAL AGENT	Signature: <i>Michael</i> Name, Title:	PURPOSE OF CHANGE	
1-44	11-11-05	Signature: <i>Michael</i> Name, Title: NICKOLAS STANLEY DETARY	Signature: <i>Robert Fara</i> Name, Title: ROBERT FARA RISK REMOVER	EVIDENCE	
1-44	11-11-05	Signature: <i>Robert Fara</i> Name, Title: ROBERT FARA RISK REMOVER	Signature: <i>Robert Fara</i> Name, Title: ROBERT FARA RISK REMOVER	EVIDENCE	
1-44	11-11-05	Signature: <i>Robert Fara</i> Name, Title: ROBERT FARA RISK REMOVER	Signature: <i>Robert Fara</i> Name, Title: ROBERT FARA RISK REMOVER	EVIDENCE	

CHAIN OF CUSTODY (Continued)

ITEM NUMBER	DATE	RELEASED BY	RECEIVED BY	PURPOSE OR CHANGE OF CUSTODY
3, 4, 7, 8, 19, 21, 25, 28, 29, 31, 35	11-21-05	Signature: <i>[Signature]</i> Name, Title: <i>Jeremy Hawkins / E.C.</i>	Signature: <i>[Signature]</i> Name, Title: <i>Kenrick Bass / Deputy</i>	Transport to Crime Lab
3, 4, 7, 8, 19, 21, 25, 28, 29, 31, 35	11-21-05	Signature: <i>[Signature]</i> Name, Title: <i>Jeremy Hawkins / E.C.</i>	Signature: <i>[Signature]</i> Name, Title: <i>Kenrick Bass / Deputy</i>	Transport to Crime Lab
3, 4, 7, 8, 19, 21, 25, 28, 29, 31, 35	11-21-05	Signature: <i>[Signature]</i> Name, Title: <i>[Signature] Deputy</i>	Signature: <i>[Signature]</i> Name, Title: <i>D. Larson Evid Tech</i>	Evidence for Inspection
3, 4, 7, 8, 19, 21, 25, 28, 29, 31, 35	12/20/05	Signature: <i>[Signature]</i> Name, Title: <i>[Signature] Rick Pironne</i>	Signature: <i>[Signature]</i> Name, Title: <i>Jeremy Hawkins / E.C.</i>	Return to Custodian
3, 4, 7, 8, 19, 21, 25, 28, 29, 31, 35	11-21-05	Signature: <i>[Signature]</i> Name, Title: <i>[Signature]</i>	Signature: <i>[Signature]</i> Name, Title: <i>[Signature]</i>	
9	01/17/06	Signature: <i>[Signature]</i> Name, Title: <i>Jeremy Hawkins / E.C.</i>	Signature: <i>[Signature]</i> Name, Title: <i>Deputy Coroner Irmen</i>	To T Done Co. <i>[Signature]</i>
10	01/31/06	Signature: <i>[Signature]</i> Name, Title: <i>Jeremy Hawkins / E.C.</i>	Signature: <i>[Signature]</i> Name, Title: <i>mail</i>	Sent to Crime Lab via mail.
3, 4, 7, 8, 19, 21, 25, 28, 29, 31, 35	04/10/06	Signature: <i>[Signature]</i> Name, Title: <i>Jeremy Hawkins</i>	Signature: <i>[Signature]</i> Name, Title: <i>Deputy Rick Pironne</i>	PROCESSING

FINAL DISPOSAL ACTION

Item #	Date	Name	Address	Relationship
33, 35, 36				
37, 39				
34, 40, 41				

FINAL DISPOSAL AUTHORITY

ITEMS _____ ON THIS DOCUMENT, PERTAINING TO THE INVESTIGATION INVOLVING _____
 Name, Address _____
 NO LONGER REQUIRED AS EVIDENCE AND MAY BE DISPOSED OF AS INDICATED ABOVE. (If articles must be retained, do not sign, but explain in separate correspondence.) //are

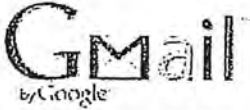
 Typed/Printed Name and Title _____ Signature _____ Date _____

WITNESS TO DESTRUCTION OF EVIDENCE

The article(s) listed at item number(s) _____ was/were destroyed by _____
 the evidence custodian, in my presence, on the date indicated above.
 Printed Name _____ Signature _____ Date _____ Printed Name _____ Signature _____ Date _____

2/13/2019

Kathleen T. Zellner Law Offices Mail - URGENT: Avery: Pelvic Bone #8675



Kathleen Zellner <attorneys@zellnerlawoffices.com>

URGENT: Avery: Pelvic Bone #8675

attorneys@zellnerlawoffices.com <attorneys@zellnerlawoffices.com>
To: fallontj@doj.state.wi.us
Bcc: attorneys@zellnerlawoffices.com

Wed, Feb 13, 2019 at 4:49 AM

Mr. Fallon,

As you know we have a motion pending with the appellate court regarding the bones from the Manitowoc Gravel Pit. We received ledger forms this last Friday 2/8/19 that indicate that the "human" pelvic bone was returned to the Halbach family. (Tag #8675).

You have been representing to us for 2 years that the State has possession of the pelvic bone. On September 18, 2017 when Mr. Johnson and I met with you, Norm Gahn and Mark Williams you agreed to the microscopic examination of the pelvic bone by Dr. Eisenberg and Dr. Steven Symes to conclusively determine if the bone was human.


Now, we learn that this pelvic bone may have been returned to the Halbach family in 2011. We are requesting that you notify us immediately about the current status of the pelvic bone #8675. Is the pelvic bone #8675 in the possession of the State or was it returned to the Halbach family in 2011 or at any other time?

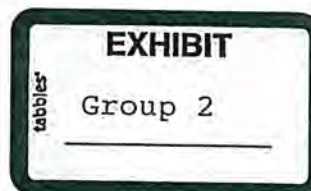
We expect to hear from you immediately concerning this urgent matter.

Sincerely,

Kathleen Zellner

Kathleen T. Zellner & Associates
Esplanade IV
1901 Butterfield Rd.
Suite 650
Downers Grove, Illinois 60515
(630) 955-1212

 Exhibit-25-Letter-from-AAG-Thomas-Fallon.pdf
136K





Kathleen Zellner <attorneys@zellnerlawoffices.com>

(Second Request) URGENT: Avery: Pelvic Bone #8675

1 message

Kathleen Zellner <attorneys@zellnerlawoffices.com>
To: "Fallon, Thomas J." <fallontj@doj.state.wi.us>

Wed, Feb 13, 2019 at 9:35 AM

Mr. Fallon,

As you know we have a motion pending with the appellate court regarding the bones from the Manitowoc Gravel Pit. We received ledger forms this last Friday 2/8/19 that indicate that the "human" pelvic bone was returned to the Halbach family. (Tag #8675).

You have been representing to us for 2 years that the State has possession of the pelvic bone. On September 18, 2017 when Mr. Johnson and I met with you, Norm Gahn and Mark Williams you agreed to the microscopic examination of the pelvic bone by Dr. Eisenberg and Dr. Steven Symes to conclusively determine if the bone was human.

Now, we learn that this pelvic bone may have been returned to the Halbach family in 2011. We are requesting that you notify us immediately about the current status of the pelvic bone #8675. Is the pelvic bone #8675 in the possession of the State or was it returned to the Halbach family in 2011 or at any other time?

We expect to hear from you immediately concerning this urgent matter.

Sincerely,

Kathleen Zellner

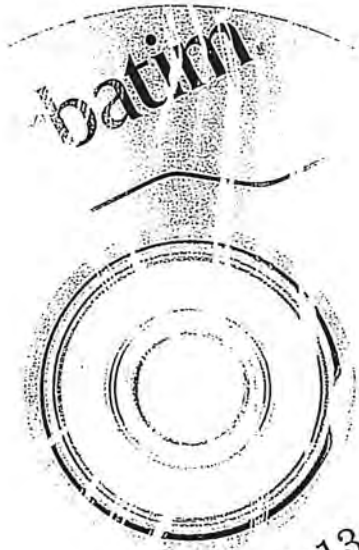
--
Kathleen T. Zellner & Associates, P.C.
Esplanade IV
1901 Butterfield Road, Suite 650
Downers Grove, Illinois 60515
Office: (630) 955-1212
Fax: (630) 955-1111

website: kathleentzellner.com

Confidentiality Notice: This communication is confidential and may contain privileged information. If you have received it in error, please notify the sender by reply email and immediately delete it and any attachments without copying or further transmitting the same.

February 13, 2019 Voicemail from Mark Williams

Williams: Hi, Tom. This is Mark Williams. Um, I'll send you an email later today, but I don't think we should do anything or respond to her at all until tomorrow, uh, when we look into the bag and—and see exactly the pelvic bones are in there or not. Um, so I—I would not respond, uh, until we look into the bag, uh, tomorrow morning and then we can talk about it, uh, before we send a response. Thanks a lot. Bye.



2/13/2019 9:13 a.m.
Voicemail from
Mark Williams



STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No.:2005 CF 381

STEVEN A. AVERY,

Defendant,

MOTION FOR POST-CONVICTION SCIENTIFIC TESTING

FILED

AUG 26 2016

CLERK OF CIRCUIT COURT
MANITOWOC COUNTY, WI

Kathleen Zellner*
Douglas Johnson*
Zellner Law Office
1901 Butterfield Rd #650,
Downers Grove, IL 60515
(630) 955-1212
attorneys@zellnerlaw.com
**admitted pro hac vice*
Lead Counsel

Tricia J. Bushnell #1080889
Midwest Innocence Project
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(816) 221-2166
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tbushnell@themip.org
Local Counsel

EXHIBIT

Group 3

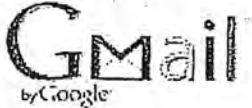
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which holds up the hood; and C) the interior hood release. These previously-untested items should disclose the perpetrator's DNA because the ungloved perpetrator, of necessity, would have touched all of these items in order to operate the car, open the hood, and remove the battery cable. The defense forensic team will swab the RAV-4 at the Calumet County Sheriff's Department.

- * • Calumet County property no. 8675: Mr. Avery is requesting DNA testing on the alleged human pelvic bones recovered from the quarry property southwest of the Avery Salvage Yard in order to conduct more advanced DNA testing to determine the origin of these bones.
 - Calumet County property nos. 7958 and 7963: Mr. Avery is requesting DNA testing on the burnt material found at the Radandt deer hunting camp west of the Avery Salvage Yard to determine whether there are any items of evidentiary value at the deer camp.
35. The source testing and the new DNA testing will be performed by Dr. Karl Reich ("Dr. Reich") at Independent Forensics. CV of Dr. Reich (attached and incorporated herein as Exhibit M). Mr. Avery is requesting that all of the evidence described above be shipped to Independent Forensics, 500 Waters Edge, Suite 210, Lombard, IL 60148.
36. Mr. Avery is entitled to mandatory DNA testing of all blood stains found in or the victim's vehicle pursuant to the prior trial court order entered on

2/13/2019

Kathleen T. Zellner Law Offices Mail - State of WI v. Steven Avery Sr. — Requested items numbers per conversation with Ms. Zellner



Kathleen Zellner <attorneys@zellnerlawoffices.com>

State of WI v. Steven Avery Sr. — Requested items numbers per conversation with Ms. Zellner

Kathleen Zellner <attorneys@zellnerlawoffices.com>
To: "Fallon, Thomas J." <fallontj@doj.state.wi.us>

Mon, Mar 20, 2017 at 11:18 AM

Dear Mr. Fallon:

Per your phone conversation with Ms. Zellner, I am providing the following item numbers for requested items:

- Cal. Co. tag no. 8623: Crime Lab Item No. FL, bullet fragment recovered from Steven Avery's garage
- *• Cal. Co. tag no. 8675: Suspected human pelvic bones recovered from gravel pit south of Avery property

—
Kathleen T. Zellner & Associates, P.C.
Esplanade IV
1901 Butterfield Road, Suite 650
Downers Grove, Illinois 60515
Office: (630) 955-1212
Fax: (630) 955-1111

website: kathleentzellner.com

Confidentiality Notice: This communication is confidential and may contain privileged information. If you have received it in error, please notify the sender by reply email and immediately delete it and any attachments without copying or further transmitting the same.



Kathleen Zellner <attorneys@zellnerlawoffices.com>

State v. Steven Avery — Evidence request

Fallon, Thomas J. <fallontj@doj.state.wi.us>
To: Kathleen Zellner <attorneys@zellnerlawoffices.com>
Cc: "norm.gahn@gmail.com" <norm.gahn@gmail.com>

Wed, Mar 29, 2017 at 9:40 AM

Dear Kathleen,

Pursuant to our conversation on March 20th, I discussed your additional postconviction discovery requests with Mr. Gahn and Lieutenant Wiegert. As we understand it, you have asked for the following information and or examinations:

1. The 2:12 voicemail message that Teresa Halbach left on the Zipperer's answering machine on October 31. Inv. Dederer reports that Det. Jacobs made a copy.
2. The entire Flyover footage of the Avery Salvage Yard on Friday November 4, 2005.
3. CASO Dispatch calls pertaining to Teresa Halbach murder investigation from Nov 3, 2005 through 11-12-05.
4. Item FL the bullet fragment found in the garage which contained Halbach's DNA. You requested production of this item for additional microscopic testing.
- * 5. Item 8675, a bone fragment, found on the Radandt quarry property near a hunting camp. This is the item that Dr. Eisenberg could not determine was human or not. You requested production of this item for additional microscopic testing to aid in that determination.

Here are our thoughts:

First, we have decided to provide some of the requested information. But, we have questions we would like answered regarding the requested microscopic examinations; and we would like to know the results of the DNA source testing and microscopic examination on the key and the hood latch before we make any final decisions on the requests for production of the bullet and the bone fragment.

As to request #1 above: We have not been able to locate a copy of that audio recording referred to by Detective Dederer in his report. We have spoken to representatives of the Calumet & Manitowoc Sheriff's Offices. We are unable to locate the recording.

As to request #2, I think you have all that we have. According to our notes a copy was provided on January 30, 2006. We will nonetheless provide a fresh copy of what we have. Lt. Wiegert is sending that to me and I will forward it on to you.

As to request #3, we have located those calls and we will provide them to you. Lt. Wiegert is sending them to me. I will send them on to you.

3/29/2017

Kathleen T. Zellner Law Offices Mail - State v. Steven Avery — Evidence request

As to requests # 4 & 5; we would first like to know what are the results of the microscopic examinations and the DNA source testing on the key and the hood latch to put this current request in perspective. It appeared from our discussions that you know the results but that a report had not yet been prepared. The results will assist us in evaluating this latest request.

* Second, we would like to know what kind of new high-powered microscope will be used in the reexamination of the bullet fragment FL and Item 8675 the bone fragment. Are they the same *new* microscope? Equally important, who will be doing the examinations of these items and where would they be done?

* Our *preliminary* foray back into the world of forensic anthropology yielded no report of new technology or procedures for reexamining a bone fragment like Item #8675 (calcined and damaged) that would assist in the identification of the fragment as human. Admittedly, we haven't heard back from all our sources.

Thanks for your inquiry, regards Tom

From: Kathleen Zellner [mailto:attorneys@zellnerlawoffices.com]

Sent: Monday, February 20, 2017 12:55 PM

To: Fallon, Thomas J. <fallontj@doj.state.wi.us>

Subject: State v. Steven Avery — Evidence request

[Quoted text hidden]



KATHLEEN T. ZELLNER
DOUGLAS H. JOHNSON
NICHOLAS M. CURRAN
SCOTT T. PANEK
OFFICE MANAGER

KATHLEEN T. ZELLNER & ASSOCIATES, P.C.
ATTORNEYS AT LAW
Esplanade IV
1901 Butterfield Road
Suite 650
Downers Grove, Illinois 60515

Telephone: (630) 955-1212
Facsimile: (630) 955-1111
attorneys@zellnerlawoffices.com
kathleentzellner.com
AV-Precminent Rating

April 4, 2017

Mr. Thomas Fallon
VIA EMAIL: fallontj@doj.state.wi.us

Dear Mr. Fallon:

* Thank you for your prompt response to my request for the bullet fragment (Item FL) and possible human pelvic bones (Item #8675). The bullet fragment would be examined at Microtrace LLC, 790 Fletcher Drive, Ste. 106, Elgin, Illinois 60123, which is owned and operated by Skip and Dr. Christopher Palenik. They have informed me that they have an electron microscope that was produced in 2014.

Dr. Christopher Palenik has provided me with the following background of their microscope and proposed analysis:

Microtrace would conduct analyses of the 22 LR bullet fragment using a field emission scanning electron microscope (FE-SEM) with a silicon drift energy dispersive x-ray detector (EDS) for elemental analysis. This particular microscope as well as the associated SDD-EDS system had not been developed in 2005. This particular microscope (JEOL 7100FT) was introduced in 2012. While variants of FE-SEM and drift detector technology have been utilized in academic research settings, this combination of technology is utilized in few, if any, US state crime laboratories today.

Microtrace continues to push the limits of trace evidence analysis to increasingly smaller particles. In the early 2000's, Microtrace found and analyzed paint particles (using other technologies) that played a pivotal role in the confession of Gary Ridgway to the Green River murders. Those particles were an order of magnitude smaller than those looked for and analyzed by typical state crime laboratories at the time. The FE-SEM technology that we propose to apply to the 22 bullet fragment evidence in the Avery matter provides resolution two orders of magnitude (100x) beyond than that used in the Green River murders. In addition, Microtrace is presently conducting NIJ sponsored research focused on sub-visible and nanoscale evidence with the purpose of bringing such advances to state crime and

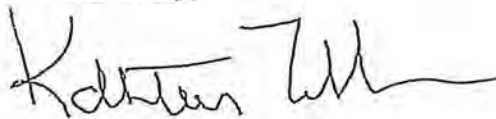
federal forensic laboratories. Finally, Microtrace has a wide range of experience in the identification of bone by microchemical methods, light microscopy, and electron microscopy.

Clearly, the capabilities of the 2014 electron microscope were not available in 2005-2007. We believe it is very important to re-examine the bullet fragment.

Regarding the possible human pelvic bones, Dr. Steven Symes would conduct the examination of those bone fragments with his electron microscope, which was constructed in 2013 . Additionally, Dr. Symes would make histological slides of the bones, which would confirm the origin of those fragments with absolute certainty. Even if this examination could have been done with a 2005-2007 era microscope and histological slide, we still have the right to make an ineffective assistance of counsel argument against Mr. Buting and Mr. Strang for failing to perform these analyses.

I greatly appreciate your cooperation in this matter. We would like to pick up the bullet fragment and possible human pelvic bone as soon as possible. We can return the RAV-4 key (Item C, trial exhibit 211) to you at that time. Our scientists are preparing affidavits that reflect the testing they have performed on the key and we are preparing to file our post-conviction petition soon.

Sincerely,

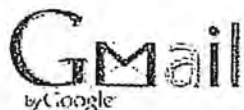
A handwritten signature in black ink, appearing to read 'Kathleen Zellner', with a long horizontal flourish extending to the right.

Kathleen T. Zellner

KTZ | kwk

2/13/2019

Kathleen T. Zellner Law Offices Mail - State of Wisconsin v. Steven Avery — Update on bullet fragment and pelvic bone request



Kathleen Zellner <attorneys@zellnerlawoffices.com>

State of Wisconsin v. Steven Avery — Update on bullet fragment and pelvic bone request

Kathleen Zellner <attorneys@zellnerlawoffices.com>
To: "Fallon, Thomas J." <fallontj@doj.state.wi.us>

Fri, Apr 14, 2017 at 12:16 PM

Dear Mr. Fallon:

* It has been 10 days since I sent you a letter regarding testing of the bullet fragment and pelvic bones. We are hoping to conclude our scientific testing in the near future. Can you apprise me on that status of these items of evidence?

Regards,
Kathleen Zellner



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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608/266-7340
FAX 608/267-2778

April 20, 2017

Kathleen T. Zellner & Associates, P.C.
Esplanade IV
1901 Butterfield Road, Suite 650
Downers Grove, Illinois 60515

Re: Scientific Testing

Dear Ms. Zellner:

Please find enclosed the Calumet County Sheriff's Office dispatch tapes for the requested time period. Also, pursuant to your request, we are providing you a copy of the *Flyover* of the Avery Salvage Yard during the initial search for Ms. Halbach. According to our records, these were previously provided to trial counsel. Additionally, as previously indicated, our search of the records from the Calumet County and Manitowoc County Sheriff's Offices failed to locate a recording of the phone message Ms. Halbach left on George Zipperer's voice mail service. Also, pursuant to another request from you, we were unable to determine the amount of fuel in the Toyota RAV4 at the time it was recovered on November 5, 2005. Previously, we provided copies of exhibits which were introduced into evidence; principally, the photographs of the ballistic comparisons made by former crime lab analyst William Newhouse.

As to your more recent requests for production of Item FL, the bullet fragment that contained Ms. Halbach's DNA fired from Mr. Avery's .22 cal. Marlin Glenfield rifle; and the bone fragments located one half mile away in the Radandt quarry pit, identified as Item #8675; these items are beyond the scope of the Preservation and Independent Testing Order of 2007, and beyond the Stipulation and Order entered this past November. Nevertheless, we are evaluating your requests and are inclined to make them available for further examination. But we would like to study the results from the Radiocarbon F14C and DNA Methylation tests to establish the age of Mr. Avery's blood, as well as the results of the body fluid source testing of the Toyota key and RAV4 hood latch; any new and improved DNA testing results of the swabs from the RAV4; and the results of the trace testing for

EXHIBIT

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Kathleen Zellner
April 20, 2017
Page 2

the presence of chemicals, solvents, or fibers on the Toyota key and RAV4 hood latch.

When we began this process last fall we agreed to proceed in stages. This first stage of testing appears to be complete and you seemed to indicate as much in our March 20th phone conference. We asked for the results of these initial tests in our March 29th email. The results and/or testing efforts will assist us in evaluating these latest requests. Paragraph 8 of both the Stipulation and Order provides:

There will be simultaneous disclosure in writing to the defendant and the state of the testing results, bench notes, photographs and procedures employed and or protocols used in any scientific testing of the Exhibits covered by this stipulation, including but not limited to DNA Methylation, DNA Source Testing, EDTA and or Radiocarbon F14 C of the Exhibits covered by this stipulation.

Italicization added. The results will place these additional requests in context.

Lastly, while you have told us who will be examining the bullet fragment, you did not tell us for what purpose(s) and/or how any results might bear upon a request for a new trial. The bone fragments have some apparent relevance, albeit marginal; but a reexamination of Item FL, the bullet fragment, does not appear to have relevance to us at this point in time.

We look forward to continued discussion on these requests for scientific testing.

Sincerely,



Thomas J. Fallon
Assistant Attorney General

TJF:ajs

Enclosures

2/13/2019

Kathleen T. Zellner Law Offices Mail - State of WI v. Steven Avery — Letter for AAG Fallon



Kathleen Zellner <attorneys@zellnerlawoffices.com>

State of WI v. Steven Avery — Letter for AAG Fallon

Fallon, Thomas J. <fallontj@doj.state.wi.us>
To: Kathleen Zellner <attorneys@zellnerlawoffices.com>
Cc: "norman.gahn@gmail.com" <norman.gahn@gmail.com>

Wed, May 3, 2017 at 9:15 AM

Kathleen:

Norm and I have considered your request for re-examination of item FL-the bullet fragment. We are inclined to grant the request. However, upon looking into the matter we realized when the FL came back from independent defense testing during direct appeal it was returned to the circuit court. We contacted the Manitowoc County Circuit Court and confirmed they have custody. FL is not in Madison at the crime lab.

X We would like to deal with the bullet and the bones at the same time. There are logistical and scientific concerns that we should discuss at our meeting on Friday. And, I have alerted the crime lab that you will be dropping off the key between 10 and 11 on Friday. See you Friday, regards, Tom

From: Kathleen Zellner [mailto:attorneys@zellnerlawoffices.com]
Sent: Tuesday, April 04, 2017 10:51 AM
To: Fallon, Thomas J. <fallontj@doj.state.wi.us>
Subject: State of WI v. Steven Avery — Letter for AAG Fallon

Mr. Fallon:

Please find a letter from Ms. Zellner attached. If you have any questions or would like to speak with Ms. Zellner, please feel free to call.

Kurt Kingler
Law Clerk

—
Kathleen T. Zellner & Associates, P.C.
Esplanade IV
1901 Butterfield Road, Suite 650
Downers Grove, Illinois 60515
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Fax: (630) 955-1111

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2/13/2019

Kathleen T. Zellner Law Offices Mail - State of WI v. Steven Avery — Letter for AAG Fallon

STATE OF WISCONSIN

CIRCUIT COURT

MANITOWOC COUNTY

STATE OF WISCONSIN,

v.

STEVEN A. AVERY,

Defendant.

)
)
)
)
)
)
)


Case No. 2005-CF-381

**MOTION FOR RELIEF FROM JUDGMENT OR ORDER OF
OCTOBER 3, 2017, PURSUANT TO WIS. STAT. § 806.07 (1)(a)**

NOW COMES DEFENDANT, STEVEN AVERY, by and through his attorneys, Kathleen Zellner and Steven Richards, and for his Motion for Relief from Judgment or Order of October 3, 2017, pursuant to Wis. Stat. 806.07 (1)(a), states as follows:

- 1) On October 3, 2017, this Court entered an Order dismissing Defendant's Motion for Relief filed on June 7, 2017, pursuant to Wis. Stat. § 974.06. (See Order, attached as Exhibit A).
- 2) Defendant hereby moves for relief from that order pursuant to Wis. Stat. § 806.07 (1)(a) due to matters pending at the time the order was entered.
- 3) At the time the order was entered, the parties, through Defendant's Attorney Kathleen Zellner and Assistant Attorney General Thomas Fallon, had an agreement that further testing would take place on certain evidentiary items. The parties also had an agreement that the previously filed § 974.06 Motion For Relief would be amended.
- 4) On September 18, 2017, in Madison, Wisconsin, the parties reached the aforesaid agreement.
- 5) Defense Counsels Zellner and Johnson, together with Prosecutors Fallon, Norman Gahn and Mark Williams specifically agreed as follows:

The RAV-4 (Wisconsin State Crime Lab ("WSCL") Item A) would be made available to Defendant's experts Drs. Karl Reich and Christopher Palenik for examination at the Calumet County Sheriff's Department for additional items to test and for collection of swabs from the:

- a. Battery cables (swabs previously collected and designated WSCL Items IE and IF);
 - b. Swabbing the bar under the driver's seat;
 - c. Swabbing the hood crutch;
 - d. Swabbing the interior hood release; and
 - e. A complete examination of the interior and exterior of the RAV-4 for additional forensic evidence.
- 6) The prosecutors stated that they would schedule the examination the RAV-4 testing in the very near future before the weather worsened.
 - 7) The prosecutors also agreed that Defendant would be allowed to attempt testing of the license plates (WSCL Items AJ and AK) for DNA.
 - 8) The prosecutors also agreed that Defendant would be allowed to test the lug wrench. (WSCL Item A16).
 - 9)  The prosecutors agreed that Drs. Steven Symes and Leslie Eisenberg would be able to do a microscopic examination of the pelvic bones (Calumet County tag no. 8675) located in the Manitowoc County gravel pit.
 - 10) The prosecutors and defense counsels also agreed that to streamline the litigation, Defendant would amend the Petition. It was generally agreed as to what claims would be added to and removed from the petition. Additionally, prosecutors and defense counsels agreed that if an evidentiary hearing was necessary to resolve the issues in the amended petition, the evidentiary hearing could last 4 weeks or more. Scheduling was discussed and prosecutors and defense counsels agreed that the

evidentiary hearing could be started in the Spring and could proceed during the Summer to completion.

- 11) Defense counsel agreed to remove the issues of ethical violations perpetrated by prosecutor Kenneth Kratz (6/7/17 Motion for Post-Conviction Relief, ¶¶ 380-422).
- 12) Defense counsel also agreed to remove the references to brain fingerprinting test of Steven Avery performed by Dr. Lawrence Farwell (6/7/17 Motion for Post-Conviction Relief, ¶¶ 328-358).
- 13) Defendant intended to inform the court that an amended motion would be filed so that the dates for a scheduling conference for an evidentiary hearing, if needed, could be set. Defendant did not anticipate the court filing its order prior to the time Defendant could notify the court of the matters set forth herein.
- 14) On October 6, 2017, defense counsel spoke the prosecutors and informed them that this motion would be filed today to vacate the order. This motion has been presented to and reviewed by the prosecutors and the prosecutors agree to the factual accuracy of the representations regarding the content of the September 18, 2017 meeting made in this motion.
- 15) The prosecutors stated that they could not join in the motion.
- 16) Defense counsel submits that justice and finality require that the proposed testing go forward.
- 17) Defense counsel submits that the Order of October 3, 2017, should be vacated so that the agreed upon testing can take place.

Respectfully Submitted,



KATHLEEN T. ZELLNER
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STEVEN G. RICHARDS
Atty No. 1037545
(Local Counsel)
Everson & Richards, LLP
127 Main Street
Casco, Wisconsin 54205
920-837-2653
sgrlaw@yahoo.com

CERTIFICATE OF SERVICE

I certify that on October 6th, 2017, a true and correct copy of Our Motion for Relief from Judgment or Order of October 3rd, 2017, Pursuant to Wisconsin Statute 806.07 (1)(a) was furnished by first-class U.S. Mail, postage prepaid to:

Manitowoc County District Attorney's Office
1010 South 8th Street
3rd Floor, Room 325
Manitowoc, WI 54220

Mr. Thomas J. Fallon
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707

A handwritten signature in black ink, appearing to read 'Kathleen T. Zellner', written over a horizontal line.

Kathleen T. Zellner

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

Case No. 2017AP002288

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

STEVEN A. AVERY, SR.,

Defendant-Appellant.

**DEFENDANT-APPELLANT'S MOTION TO STAY APPEAL AND
REMAND THE CAUSE FOR NEW SCIENTIFIC TESTING**

The Defendant-Appellant, Steven Avery ("Mr. Avery"), by his undersigned attorneys, Kathleen T. Zellner and Steven G. Richards, hereby moves this Court pursuant to Wisc. Stat. § 974.07(2)(c) and the trial court's Order on Preservation of Blood Evidence and Independent Defense Testing of April 4, 2007 to stay this appeal and remand the cause for new DNA testing of suspected human skeletal remains recovered from the Manitowoc County Gravel Pit. (395).¹ In support of this motion, Mr. Avery states as follows:

¹ Citations to the record on appeal appear with the document number before the colon and the page number after the colon. A citation to 429:16, for instance, refers this Court to page 16 of document 429.

A. Previous Examinations of Human Skeletal Remains Located in Mr. Avery's Burn Pit, the Dassey-Janda Burn Barrel, and the Manitowoc Gravel Pit

1. The State relied upon the testimony of DNA analyst Sherry Culhane ("Ms. Culhane") of the Wisconsin State Crime Lab ("WSCL"), who testified that Item BZ, from Mr. Avery's burn pit, which she identified as "tissue close to the bone," produced a partial DNA profile of Teresa Halbach ("Ms. Halbach"). (699:158-59). Specifically, the profile produced from BZ was limited to "seven loci" that were consistent with Ms. Halbach's DNA profile. (11:2). The only other attempted identification of Ms. Halbach from the remains was by Dr. Simley, a forensic odontologist, who could not make a "positive identification" based upon the tooth fragments presented to him for identification. (706:89-91). Prosecutor Kenneth Kratz ("Prosecutor Kratz"), recognizing the weakness of Dr. Simley's identification testimony, told the jury in his closing, "Mr. Simley [sic], although unwilling because of his scientist nature, make 100 percent match, used these words, it's as close to a positive match as you can get, using one tooth." (715:102). Prosecutor Kratz inaccurately described the item as a tooth when it was actually a "root fragment." (706:91).

2. Forensic anthropologist Dr. Leslie Eisenberg ("Dr. Eisenberg"), was unable to identify the bones fragments behind Mr. Avery's garage as anything other than those of an adult female, "no older than between 30 to 35 years of age." (706:137-38). Dr. Eisenberg also identified human bones from the Dassey-Janda

burn barrel, but she did not offer an opinion that the bones were female or of a certain age. (706:228).

* 3. Dr. Eisenberg testified that there was a “possible” human pelvic bone in the Manitowoc Gravel Pit. (707:10–11). Dr. Eisenberg was never questioned about two other bones piles with multiple human bones identified by her, which were present in the Manitowoc Gravel Pit. The Master Index of Gravel Pit Bones attached and incorporated herein as Group Exhibit 1. The Map of Gravel Pit Bone Piles is attached and incorporated herein as Exhibit 2 to this motion.

4. On January 12, 2007, a report about DNA analysis was issued by the FBI laboratory. (247:6–10). The FBI DNA testing attempted on the bones was unsuccessful due to the degraded condition of the submitted bone fragments. At trial, the parties entered a stipulation, which stated:

The parties are agreed that the bone fragments identified as human from the burn pit behind Steven Avery's garage, bone fragments identified as human from burn barrel number two behind the residence of Barb Janda, and bone fragments suspected as possible human bones from the quarry pile . . . south of the Avery Salvage Yard, were sent to the FBI Laboratory in Quantico, Virginia, on November 2nd, 2006, November 7th, 2006, and December 19th, 2006, to attempt further DNA analysis. If called to testify, Dr. Leslie McCurdy, of the FBI DNA Analysis Unit, would testify that due to the condition of the submitted bone fragments, no DNA examinations could be conducted.

(707:50–51).

B. Previous Court Orders Providing for DNA Testing

5. On April 4, 2007, the trial court² entered an order for the Preservation of Blood Evidence and Independent Defense Testing. This order contemplates and allows future DNA testing by Mr. Avery as DNA technology improves. (395:1-3).

6. On November 23, 2016, the circuit court entered an order in agreement with the parties' stipulation for further scientific testing of certain items. (581; 582). The November 23, 2016 order relied in part upon the April 4, 2007, Order on Preservation of Blood Evidence and Independent Defense Testing. (582:1). Along with certain items of blood evidence, the parties agreed and the circuit court ordered reexamination of non-blood items of evidence; specifically, the order allowed retesting of Item C, the Toyota key recovered from Mr. Avery's bedroom and Item FL, a bullet fragment recovered from Mr. Avery's garage. (582:2; 581:2).

7. On September 18, 2017, a meeting took place in Madison, Wisconsin, where current post-conviction counsel and the State agreed to further testing of crime scene evidence. Among other items of evidence, it was agreed that a microscopic examination would be conducted of the suspected human pelvic bone found in the Manitowoc Gravel Pit. The parties agreed a microscopic examination of the pelvic bone by Dr. Eisenberg and Dr. Steven Symes, Mr. Avery's forensic anthropologist, to determine if the bone was human. Clearly, by agreeing to this

² For purposes of this motion, Mr. Avery shall refer to the Manitowoc County Circuit Court that heard his trial as the "trial court." Mr. Avery shall refer to the specially assigned Sheboygan County Circuit Court that ruled on his most recent § 974.06 motion as the "circuit court."

examination, the State recognized that the outcome of this examination was material and relevant to the larger issue in the case about the location of the murder and mutilation of Ms. Halbach's body. Prior to the parties being able to complete this microscopic examination, the circuit court, without awareness of the parties' agreement, dismissed Mr. Avery's Motion for Post-Conviction Relief (640:1-5). The circuit court's action in dismissing the appeal and denying Mr. Avery's Motion to Reconsider and its supplements is an issue in Mr. Avery's pending appeal.

C. Location of the Bones was Critical to the State's Prosecution of Mr. Avery for the Murder of Ms. Halbach

8. The location of the bones in Mr. Avery's burn pit was critical to the successful prosecution of Mr. Avery for the intentional murder of Ms. Halbach. In his closing, Prosecutor Kratz told the jury the following:

We could start with the moment or with the visual or with the image of that man, Steven Avery, standing outside of a big bonfire, with flames over the roof, or at least over the garage roof, and the silhouette of Steven Avery, with the bonfire in the background and the observation made by some witnesses. . . . And that moment by the way, although dramatic and although important, should tell the whole story.

(715:35)

9. The State's theory intertwined the evidence supporting the intentional murder of Ms. Halbach with the evidence supporting the charge of mutilation of her body. The jury found Mr. Avery not guilty of the mutilation charge presumably because the evidence was insufficient to prove that charge beyond a reasonable doubt. However, the jury found Mr. Avery guilty of intentional murder, which the


State contended occurred in Mr. Avery's garage and was immediately followed by the burning and mutilation of Ms. Halbach's body in Mr. Avery's burn pit. (715:15). The jury may have believed there was a reasonable doubt about the State's contention that Mr. Avery chopped up the bones with a shovel or some other detail in the State's story so the jury acquitted him on the mutilation charge. However, regardless of the acquittal on the mutilation charge, the potential identification of Ms. Halbach's bones in the Manitowoc Gravel Pit is relevant and material evidence on the issues of the location of the murder, the mutilation of the body, and planting evidence to frame Mr. Avery for the murder.

10. Prosecutor Kratz claimed in his closing that the events which proved intentional murder were intertwined with the alleged events which proved the mutilation of the body. The unifying theme, according to the State, was the location of these alleged events which were linked exclusively to Mr. Avery. According to the State, the murder allegedly occurred in Mr. Avery's garage and the mutilation in his burn pit. Prosecutor Kratz told the jury the events at these two locations told "the whole story" and only one person committed this crime. (716:119).

11. At Mr. Avery's trial, his trial defense counsel, Jerome Buting, stressed the importance of the bones found in the Manitowoc Gravel Pit when he said:

[I]f that body was burned somewhere and then moved and dumped on Mr. Avery's burn pit, then Steven Avery is not guilty, plain and simple. . . . Now that is why the State has gone to such trouble avoiding the fact that the bones were moved, that's why you heard nothing about it here. Because it does not fit with their theory that Avery is guilty.

(715:148-49).

 12. Prosecutor Kratz stated in his rebuttal at trial: "These bones in the quarry, I'm going to take 20 seconds to talk about, because the best anybody can say is that they are possible [sic] human." (716:78). Prosecutor Kratz acknowledged the importance of having the bones identified as human, but he dismissed the defense claim that the bones were human because of the lack of scientific verification for that claim.

13. Therefore, the identification of the Manitowoc Gravel Pit bone fragments as Ms. Halbach's is relevant and material because it would prove the murder and mutilation did not occur in a location tied exclusively to Mr. Avery. No reasonable trier of fact could conclude that, if Mr. Avery murdered and mutilated Ms. Halbach in the Manitowoc Gravel Pit that he would move her bones to his own burn pit and thereby incriminate himself.

14. If the new DNA testing identifies Ms. Halbach's bones in the Manitowoc County gravel pit, two inferences are reasonable, namely, Mr. Avery is not the murderer and the bones recovered from Mr. Avery's burn pit were planted. There is a reasonable probability this new evidence would undermine confidence in the jury's verdict.

D. ANDE Rapid DNA Identification System Testing is Now Available to Test the Manitowoc Gravel Pit Bones to Determine their DNA Identity

15. New DNA testing called the ANDE Rapid DNA Identification ("ID") system has been successfully used in a number of ways, including to identify charred and calcined bones. Dr. Richard Selden ("Dr. Selden") pioneered and developed the

ANDE Rapid DNA ID System. Dr. Selden's affidavit is attached and incorporated herein as Exhibit 3 to this motion. A copy of Dr. Selden's curriculum vitae is attached and incorporated herein as Exhibit A to Dr. Selden's affidavit.

16. On June 4, 2018, the ANDE Rapid DNA ID system received National DNA Index System ("NDIS") approval from the FBI. The approval allows all accredited forensic DNA laboratories to utilize the ANDE system for the processing of buccal swabs and to submit DNA ID data to the Federal DNA database ("CODIS") and to search CODIS with data generated from the ANDE system. The FBI has publicly stated that it intends to allow NDIS-approved Rapid DNA systems to be utilized to test arrestees while in custody in police booking stations as required by the Federal Rapid DNA act of 2017 (passed unanimously in the House of Representatives and Senate).

17. The ANDE Rapid ID system has also been successfully used to identify DNA from calcined and charred bones. A recent application of the system has been successful in identifying victims from the November 2018 Camp Fire in Butte County, California. Working under the authority of the Sheriff-Coroner of Butte County and in close collaboration with the Coroner of Sacramento County, the ANDE system successfully generated DNA IDs from approximately 85% of the cases, most of which were generated within seven days. The wildfire victims' bones were in a highly degraded condition from the fire, as are the bone samples in the instant case from the Manitowoc Gravel Pit.

18. On December 6, 2018, current post-conviction counsel contacted Dr. Selden on behalf of Mr. Avery for the review of photographs and laboratory reports in Mr. Avery's 2007 criminal case. The items Dr. Selden reviewed are as follows:

- A. Forensic Anthropology photos depicting bones recovered from quarry piles south of the Avery salvage yard (attached and incorporated herein as Group Exhibit C to Dr. Selden's affidavit):
 - i. PA150009.jpg
 - ii. PA150010.jpg
 - iii. PA150011.jpg
 - iv. PA150012.jpg
 - v. PA150013.jpg
 - vi. PA150014.jpg
 - vii. PA150015.jpg
 - viii. PA150016.jpg
 - ix. PA150018.jpg
 - x. PA150020.jpg
 - xi. PA150021.jpg
 - xii. PA150022.jpg
 - xiii. PA150023.jpg
 - xiv. PA150025.jpg
 - xv. PA150027.jpg
 - xvi. PA150028.jpg
 - xvii. PA150029.jpg
 - * xviii. Fragments of possible cut human bone Tag #8675.jpg
 - xix. Reverse side of sacroiliac area.jpg
 - xx. Right sacroiliac area N.B. vertical cuts on either side of artic.jpg
- b. Stipulation at trial that the FBI conducted no DNA examination of the possibly human bones from the quarry pile south of the Avery salvage yard due to the degraded condition of the bone fragments (labeled R. 707:50-51) (attached and incorporated herein as Exhibit D to Dr. Selden's affidavit).
- c. FBI DNA analysis reports (labeled R. 247:6-10) (attached and incorporated herein as Selden Affidavit Exhibit E to Dr. Selden's affidavit)

19. Each of the above-listed items of evidence was recovered from the Manitowoc County gravel pit. (See, Group Exhibit 1 and Exhibit 2).

20. Based upon Dr. Selden's review of the items listed above, and his education, training and experience, it is his opinion, to a reasonable degree of scientific certainty, that there is a "reasonable likelihood of more accurate and probative results" being obtained from these samples if processed using ANDE Rapid DNA technologies which would reveal the DNA ID of these bones. The condition of the bones, as depicted in the forensic anthropology photos, are consistent with the bones from which Dr. Selden has recently successfully obtained DNA IDs in the November 2018 California Camp Fire.

21. Dr. Selden proposes that the bones depicted in the photographs in paragraph 11 as well as any other relevant bones and burned matter from the crime scene that the parties agree upon, be processed using Rapid DNA ID system at his facility in Waltham, Massachusetts. The techniques are straightforward, and Dr. Selden would welcome observation by any representative of the State of Wisconsin and current post-conviction counsel.


22. Dr. Selden will not fully consume any sample, ensuring material is available for later analyses.

E. Statutory Authority and Case Law Support for the ANDE Rapid DNA ID System Testing of the Manitowoc Gravel Pit Bones

23. Wis. Stat. § 974.07(2) states as follows:

- a. The evidence is relevant to the investigation or prosecution that resulted in the conviction, adjudication, or finding of not guilty by reason of mental disease or defect.
- b. The evidence is in the actual or constructive possession of a government agency.

- c. The evidence has not previously been subjected to forensic deoxyribonucleic acid testing or, if the evidence has previously been tested, it may not be subjected to another test using a scientific technique that was not available or was not utilized at the time of the previous testing and that provides a reasonable likelihood of more accurate and probative results.

24. Mr. Avery meets the requirements of Wis. Stat. § 974.07(2)(c), because, as stated above, the bones were submitted to the FBI for testing in 2006 but the testing was not attempted due to the charred and calcined condition of the bones. Rapid DNA ID testing was not available in 2006, but now provides a reasonable likelihood of “more accurate and probative results.” As discussed previously, the State clearly believed that the identification of the Manitowoc Gravel Pit bones was material and relevant because of the prior FBI testing, and the September 18 agreement between the parties to further examine the human pelvic bone  microscopically.

25. As demonstrated by the trial court’s April 4, 2007, order, Mr. Avery was given the authority at “any time” to submit items of evidence for DNA testing. (395:2).

26. The Wisconsin Supreme Court has established that new evidence can provide the basis for a new trial in the interest of justice. In *State v. Armstrong*, the court ordered a new trial in the interest of justice because new DNA tests established that biological evidence asserted by the State at trial as having come from Armstrong could not have come from him. *State v. Armstrong*, 2005 WI 119, 156. Because “the jury was not given an opportunity to hear important testimony

that bore on an important issue in the case,” the court found that “the real controversy was not fully tried” and thus ordered a new trial. *Id.* at ¶ 181. See also *Hicks*, 202 Wis. 2d 161 (a new trial was necessary in the interest of justice because the jury did not hear important DNA evidence and heard evidence which was later shown to be inconsistent with the DNA evidence). Similarly, in *Garcia v. State*, the court ordered a new trial because all of the material evidence was not presented to the jury, and “the integrity of our system . . . should afford a jury the opportunity to hear and evaluate the evidence” 73 Wis. 2d 651, 655-56 (1976).

27. The State’s entire prosecution of Mr. Avery was dependent upon the location of the bones being in Mr. Avery’s burn pit. If Ms. Halbach’s bones are confirmed to be in the Manitowoc Gravel Pit, Prosecutor Kratz’s claim would be refuted that the location of the bones told “the whole story” of Mr. Avery murdering and mutilating Ms. Halbach in his garage and burn pit. Mr. Avery’s request for post-conviction testing of the skeletal remains satisfies *Hicks* because the requested testing is consequential to his conviction and the production of the sought-after evidence and the potential results of the ANDE Rapid DNA ID testing would be material evidence that was not presented to the jury and would potentially mandate that a new trial be ordered in the interest of justice.

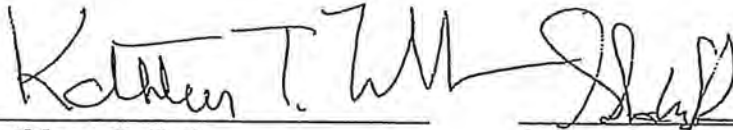
28. Current post-conviction counsel will pay for any cost incurred from the ANDE Rapid DNA ID testing by Dr. Selden.

CONCLUSION

Wherefore, undersigned counsel respectfully requests that this Court enter an order staying this appeal and remanding the cause to the circuit court for a determination as to whether an order should be entered for the ANDE Rapid ID testing by Dr. Richard Selden of the Manitowoc County Gravel Pit bone fragments, described in **Exhibit 1**.

Dated this 17th day of December, 2018.

Respectfully submitted,



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CERTIFICATE OF SERVICE

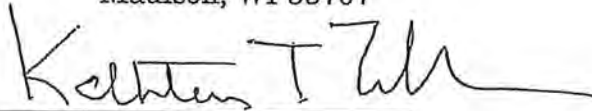
I certify that on December 17, 2018, a true and correct copy of Defendant-Appellant's Motion to Stay Appeal and Remand the Cause for New Scientific Testing was furnished via electronic mail and by first-class U.S. Mail, postage prepaid, to:

Lynn Zigmunt
Clerk of the Circuit Court
1010 S. 8th Street
Manitowoc, WI 54220

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Madison, WI 53707



Kathleen T. Zellner

MASTER INDEX OF GRAVEL PIT PILES

CCSD Tag No.	Dr. Eisenberg's Description	Extracted from:	Coordinates	Forensic Anth. Photos	Quarry Pile No.
7411	"Calcined human bone frags; possible cut edges" (STATE 1_9280; R. 756:29)	CCSD #8658 (STATE 5677)	N44 14'44 W87 42'10 (STATE 4929)	PA150009 – PA150010	3
7412	"Human and non-human bone, non-biological; some bone not calcined; 5 of 13 burned/calcined with cut edges; most bone fragments are all cut bone fragments are human; no element ID" (STATE 1_9280; R. 756:29)	CCSD #8484 (STATE 5677)	N44 14'51 W87 41'51 (STATE 4928)	PA150011 – PA0014	1
7413	"one burned human frag[ment]" (STATE 1_9280; R. 756:29)	CCSD #8653 (STATE 5677)	N44 14'44 W87 42'10 (STATE 4929)	PA150015	3
7414	"Burned/calcined human bone fragments" (STATE 1_9280; R. 756:29)	CCSD #8653 (STATE 5677)	N44 14'44 W87 42'10 (STATE 4929)	PA150016	3
7416	"Human . . . bone fragments; human is calcined with one cut edge" (STATE 1_9280; R. 756:29)	CCSD #8652 (STATE 5677)	N44 14'44 W87 42'10 (STATE 4929)	PA150018	3



MASTER INDEX OF GRAVEL PIT PILES

CCSD Tag No.	Dr. Eisenberg's Description	Extracted from:	Coordinates	Forensic Anth. Photos	Quarry Pile No.
7419	"Cut/burned human bone" (STATE 1_9280; R. 756:29)	CCSD #8687 (STATE 5677)	N44 14'44 W87 42'08 (STATE 4928)	PA150020 – PA150023	2
7422	"2 [bone fragments] of possible human origin" (STATE 1_9280; R. 756:29)	CCSD #8662 (STATE 5678)	N44 14'44 W87 42'08 (STATE 4928)	PA150025	2
7424	"Cut sacrum frags, not likely human" (STATE 1_9280; R. 756:29)	CCSD #8657 (STATE 5678)	N44 14'44 W87 42'10 (STATE 4929)	PA150027 – PA150029	3
* 8675	"possible human burned cut pelvis fragments (n=7); 4 calcined bone fragments of unknown origin" (STATE 1_9280; R. 756:29)	N/A	N44 14'51 W87 41'51 (STATE 1_6869)	"Fragments of possible cut human bone Tag #8675;" "Reverse side of sacroiliac area;" "Right sacroiliac area N.B. vertical cuts on either side of artic"	1

Calumet County Sheriff's Department Case No. 05-0157-955
 WI Department of Criminal Investigation Case No. 05-1776

8140	December 20, 2005		Burned and unburned non-human, non-biological, possible small undiagnostic calcined and burned human fragments; possible cut fragment of unknown origin; WCL rescreen
8148	December 20, 2005		Non-diagnostic human, non-human, fabric; rescreened at Crime Lab (Madison)
7955	January 12, 2006		Bone, dirt, non-bone; nothing diagnostic; returned to CCSD 12 January 2006
7964	January 17, 2006		Human bone (element ID), non-human non-biological; 1 shaft fragment with cut marks sent to FBI on 7 Nov 2006; pupal casings
7960	January 17, 2006		Non-human large avian unburned and bleached, PMCD
* 8675	January 17, 2006		Non-human unburned with 3 cut frags; burned non-biological; possible human burned cut pelvic fragments (n=7); 4 calcined bone fragments of unknown origin
8701	January 17, 2006		Non-human unburned with desiccated soft tissue
7937	January 26, 2006	D 6266 (Item 6)	Dog stool inside of bags in volatile can
7411	April 25, 2006		Calcined human bone frags; possible cut edges
7412			Human and non-human bone, non-biological; some bone not calcined; 5 of 13 burned/calcined with cut edges; most bone fragments and all cut bone fragments are human; no element ID
7413			18 non-human, one burned human frag
7414			Burned/calcined human bone fragments
7415			Non-human
7416			Human and non-human bone fragments; human is calcined with one cut edge
7418			Non-human bone
7419			Cut/burned human bone; wood
7420			Undiagnostic bone frags charred; 1 non-bone item
7421			1 small calcined bone fragment, possibly human but not diagnostic; part of small diameter shaft
7422			12 bone fragments; 2 of possible human origin, non-diagnostic
7423			4 non-human bone frags
7424			Cut sacrum frags, not likely human

STATE OF WISCONSIN

CIRCUIT COURT

MANITOWOC COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

STEVEN A. AVERY, SR.,

Defendant.

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Case No. 05-CF-381

Honorable Judge Angela Sutkiewicz,
Judge Presiding

AFFIDAVIT OF RICHARD F SELDEN, MD, PhD

Now comes your affiant, Richard F Selden, MD, PhD, and under oath hereby states as follows:

1. I am of legal majority and can truthfully and competently testify to the matters contained herein based upon my personal knowledge and to a reasonable degree of scientific certainty. The factual statements herein are true and correct to the best of my knowledge, information, and belief.

2. I obtained my MD from Harvard Medical School in 1989 and my PhD in Genetics from Harvard Graduate School of Arts and Sciences in 1986. In 2004, I founded ANDE, a developer and manufacturer of Rapid DNA technologies. I have served as Director of ANDE since 2004 and was its Chief Executive Officer from 2004–October 2016. Since October 2016, I have served as Chief Scientific Officer of ANDE. A copy of my CV is attached and incorporated herein as **Exhibit A**.

3. In 2009, ANDE was awarded the contract for a competitive research and development program sponsored by a consortium of Federal agencies, including the Department of Defense (DOD), the Federal Bureau of Investigation (FBI), and the Department of Homeland



Security (DHS). The result of the program was the development of an automated rapid human DNA identification capability that minimizes analytical complexity and user manipulations for field-forward biometric and forensic applications. The ANDE program achieved its objectives to deliver fully automated and integrated field-deployable systems that would rapidly generate human DNA identifications with no user manipulations after inserting a sample into the system.

4. ANDE has undergone extensive lab and field testing by DHS in partnership with the National Institute of Standards and Technology, the DOD in partnership with the Defense Forensic Science Center, and the FBI laboratory. This program resulted in the first and only field-forward, fully-automated, and integrated Rapid DNA Analysis system. The ANDE System is currently used operationally to help support public safety around the world.

5. The ANDE Rapid DNA identification system allows rapid generation of DNA IDs from a wide range of sample types. A DNA ID (also referred to as a short tandem repeat profile or DNA fingerprint) provides a unique numerical description of an individual with random match probabilities approaching one in billion to trillions. By interrogating 27 chromosomal loci, which include the 20 CODIS (Combined DNA Index System) loci selected as the standard by the FBI for use in forensic laboratories around the U.S., the random match probability for an individual may be as low as one in one trillion trillion.

6. One advantage of the system is that it enables DNA identifications to be generated from a wide range of samples in less than two hours, months or years more quickly than typically required than in conventional forensic laboratories. Furthermore, the ease of use of the ANDE system would allow dozens to hundreds of samples to be processed in days as opposed to a smaller number of samples being processed conventionally in months or years. This would allow for rapid evaluation of all of the bones in the instant case.

7. In general, the ANDE system is more sensitive than conventional laboratories. One of the major advantages of speed is that it allows review of the results and informed selection of additional samples in real time. The expedited time to result greatly has enabled us to optimize our results with a broad range of sample types. Furthermore, the 27-chromosomal locus assay utilized in the ANDE system provides more in-depth genetic ID data than any other extant short tandem repeat assay.

8. On June 4, 2018, the ANDE Rapid DNA ID system received National DNA Index System (NDIS) approval from the FBI. The approval allows all accredited forensic DNA laboratories to utilize the ANDE system for the processing of buccal swabs and to submit DNA ID data to the Federal DNA database (CODIS) and to search the Federal DNA database with data generated from the ANDE system. The FBI has publicly stated that it intends to allow NDIS-approved Rapid DNA systems to be utilized to test arrestees while in custody in police booking stations as required by the Federal Rapid DNA act of 2017 (passed unanimously in the House of Representatives and Senate).

9. The ANDE system processes samples in addition to buccal swabs. The system also process blood, oral epithelial samples (bottles, cigarette butts, etc.), handled objects, sexual assault forensic examination samples, saliva, and tissues including muscle, liver, brain, teeth, and bone. These samples, which are relevant to crime scenes as well as disaster victim identification, have been validated or processed by a wide range of laboratories (*See* list of government entities that have used or validated the technology, attached and incorporated herein as **Exhibit B**).

10. With respect to disaster victim identification, we have experience in a range of settings. We have participated in a number of disaster victim identification exercises sponsored by the Department of Homeland Security and other federal agencies. We have also collaborated

extensively with the body farm at the University of Tennessee to optimize protocols for tissue sampling, particularly of teeth and bone. We also have successfully processed bones that are decades old.

11. In November 2018, we responded to the November 2018 Camp Fire in Butte County, California, the most devastating fire in the history of that state. Our involvement with this disaster relief effort began with my examination of photographs of bones to determine their likelihood for yielding DNA identifications. Working under the authority of the Sheriff-Coroner of Butte County and in close collaboration with the Coroner of Sacramento County, the ANDE system successfully generated DNA IDs from approximately 85% of the cases, most of which were generated within seven days. Furthermore, this data has allowed dozens of the victims to be identified, the most rapid DNA identification in a disaster in history.

12. The wildfire victims' bone samples that we successfully processed were in a highly degraded conditions. Samples from the highly degraded remains included bones. In some cases, the remains consisted entirely of extremely charred and calcined bone fragments.

13. On December 6, 2018, I was contacted by Kathleen Zellner on behalf of Steven Avery for the review of photographs and laboratory reports in Mr. Avery's 2005 criminal case. Ms. Zellner has provided me several documents for review; they are described as follows:

- a. Forensic Anthropology photos depicting bones recovered from quarry piles south of the Avery salvage yard (attached and incorporated herein as **Group Exhibit C**):
 - i. PA150009.jpg
 - ii. PA150010.jpg
 - iii. PA150011.jpg
 - iv. PA150012.jpg
 - v. PA150013.jpg
 - vi. PA150014.jpg
 - vii. PA150015.jpg
 - viii. PA150016.jpg
 - ix. PA150018.jpg

- x. PA150020.jpg
 - xi. PA150021.jpg
 - xii. PA150022.jpg
 - xiii. PA150023.jpg
 - xiv. PA150025.jpg
 - xv. PA150027.jpg
 - xvi. PA150028.jpg
 - xvii. PA150029.jpg
 - xviii. Fragments of possible cut human bone Tag #8675.jpg
 - xix. Reverse side of sacroiliac area.jpg
 - xx. Right sacroiliac area N.B. vertical cuts on either side of artic.jpg
- b. Stipulation at trial that the FBI conducted no DNA examination of the possibly human bones from the quarry pile south of the Avery salvage yard due to the degraded condition of the bone fragments (labeled R. 707:50–51) (attached and incorporated herein as **Exhibit D**).
 - c. FBI DNA analysis reports (labeled R. 247:6–10) (attached and incorporated herein as **Exhibit E**).

14. Based upon my review of Exhibits C and D, the FBI laboratory did not attempt to develop any DNA identification from the remains recovered from the quarry piles south of the Avery salvage yard. I believe there is value in applying this new technology to such samples that have previously been deemed of high importance.

15. Based upon my review of the forensic anthropology photos in Group Exhibit B, it is my opinion to a reasonable degree of scientific certainty that there is a “reasonable likelihood of more accurate and probative results” that the samples would generate DNA identifications if processed using ANDE Rapid DNA technologies. The condition of the bones, as depicted in the forensic anthropology photos, are consistent with the bones from which we have recently successfully obtained DNA IDs in the devastating November 2018 California Camp Fire.

16. I propose that the bones be processed using Rapid DNA technology at our facility in Waltham, Massachusetts. Our techniques are straightforward and I would welcome observation by any representative of the State of Wisconsin. Furthermore, we would not fully consume any sample, ensuring material is available for later analyses..

17. The service I can provide in this case is an impartial scientific analysis that has a reasonable likelihood of identifying the recovered bones from the Manitowoc County Gravel Pit.

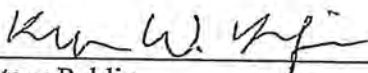
FURTHER AFFIANT SAYETH NAUGHT



Richard F Selden, MD, PhD

State of Illinois
County of DuPage

Subscribed and sworn before me
this 17th day of December, 2018



Notary Public

FORENSIC ANTHROPOLOGY
PHOTO(S) OF CALUMET
COUNTY SHERIFF'S
DEPARTMENT TAG NUMBER
8675



DS-177
DS-015

Cut box
Tag



DS-0152-866



File name
Fragments of possible cut
human bone Tag #8675.jpg



File name
Reverse side of sacroiliac
area.jpg



File name
Right sacroiliac area
N.B. vertical cuts on
either side of artic.jpg

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STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
BRANCH 1

STATE OF WISCONSIN,

PLAINTIFF,

JURY TRIAL
TRIAL - DAY 14
Case No. 05 CF 381

vs.

STEVEN A. AVERY,

DEFENDANT.

MANITOWOC COUNTY
STATE OF WISCONSIN
FILED

DATE: MARCH 1, 2007

NOV 21 2007

BEFORE: Hon. Patrick L. Willis
Circuit Court Judge

CLERK OF CIRCUIT COURT

APPEARANCES: KENNETH R. KRATZ
Special Prosecutor
On behalf of the State of Wisconsin.

THOMAS J. FALLON
Special Prosecutor
On behalf of the State of Wisconsin.

NORMAN A. GAHN
Special Prosecutor
On behalf of the State of Wisconsin.

DEAN A. STRANG
Attorney at Law
On behalf of the Defendant.

JEROME F. BUTING
Attorney at Law
On behalf of the Defendant.

STEVEN A. AVERY
Defendant
Appeared in person.

TRANSCRIPT OF PROCEEDINGS

Reported by Diane Tesheneck, RPR

Official Court Reporter

3/8
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(Jury present.)

THE COURT: You may be seated. Mr. Strang, I understand that the defense wishes to move admission of some exhibits.

ATTORNEY STRANG: I do. I move admission of Exhibit 401, which was the skeleton diagram tag 7964, and Exhibit 402, which was a schematic map of the Avery Salvage yard, and then the quarry pile site. I also used, for demonstrative purposes, a third image of a skeleton. And it matters not to me whether that's marked and admitted or not. It was used simply for demonstrative purposes.

THE COURT: Any objection to admission of the marked exhibits?

ATTORNEY FALLON: I have no objection to the admission of 401 and 402 and nor do I think it's necessary for us to produce a photograph of the exhibit counsel used for demonstrative purposes, so.

THE COURT: Very well, 401 and 402 will then be deemed admitted.

Members of the jury at this time I believe the parties have a stipulation to present to the jury. Mr. Fallon.

ATTORNEY FALLON: Yes, thank you, Judge. The parties are agreed that bone fragments

1 identified as human from the burn pit behind Steven
2 Avery's garage, bone fragments identified as human
3 from burn barrel number two behind the residence of
4 Barb Janda, and bone fragments suspected as possible
5 human bones from the quarry pile in the Radandt *
6 gravel pit south of the Avery Salvage Yard, were
7 sent to the FBI Laboratory in Quantico, Virginia, on
8 November 2nd, 2006, November 7th, 2006, and
9 December 19th, 2006, to attempt further DNA
10 analysis. If called to testify, Dr. Leslie McCurdy,
11 of the FBI DNA Analysis Unit, would testify that due
12 to the condition of the submitted bone fragments, no
13 DNA examinations could be conducted.

14 THE COURT: And, Mr. Strang, is that an
15 accurate statement of the parties stipulation?

16 ATTORNEY STRANG: It is. That's the
17 stipulation as to Dr. McCurdy's testimony, were he
18 called.

19 THE COURT: Thank you. Members of the
20 jury, you may take those facts as established. And
21 at this time, then, the State may call its next
22 witness.

23 ATTORNEY KRATZ: Thank you, Judge, the
24 State calls Curtis Thomas to the stand.

25 CURTIS THOMAS, called as a witness

February 13, 2019 Voicemail from Mark Williams

Williams: Hi, Tom. This is Mark Williams. Um, I'll send you an email later today, but I don't think we should do anything or respond to her at all until tomorrow, uh, when we look into the bag and—and see exactly the pelvic bones are in there or not. Um, so I—I would not respond, uh, until we look into the bag, uh, tomorrow morning and then we can talk about it, uh, before we send a response. Thanks a lot. Bye.



2/13/2019 9:13 a.m.
Voicemail from
Mark Williams

