

Avery trial: Defense questions blood clues

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December 21, 2006

CHILTON—An 11-year-old vial of blood that was used to clear Steven Avery in a 1985 rape conviction has become central in his defense against charges he killed Teresa Halbach.

Jerome Buting of Brookfield, one of Avery's attorneys, said the vial he found – unsealed and in an unsecured area of the Manitowoc County Clerk of Courts office – could show that blood was planted to implicate Avery in Halbach's death.

Court records indicate drops of Avery's blood were found in Halbach's vehicle, which was partially concealed in the Avery Salvage Yard.

“Now we have blood existing and that could have happened,” Buting said.

While prosecutors contend testing on the sample will show none of that blood was placed in Halbach's vehicle, Buting said Wednesday after a motion hearing at the Calumet County Courthouse that he doesn't believe such a test is possible.

But what the vial shows, Buting said, is that Avery's blood would have been available to someone who wanted to frame him in Halbach's death.

Halbach's vehicle was found on the Avery family property November 5, 2005, two days after the 25 year old photographer from Calumet County was reported missing, and five days after she was last seen taking a photo of a van Avery had for sale.

Buting said he found the vial in a room in the clerk of court's office while he was researching Avery's 1985 rape conviction.

Avery was convicted largely on being identified by the victim, but was freed from prison 18 years later when DNA testing showed evidence matched the DNA of another Manitowoc County man who was already in prison for sexual assault.

Norman Gahn, an assistant Milwaukee County district attorney and national DNA expert who is a special prosecutor in the case, told Manitowoc County Circuit Judge Patrick

Willis Wednesday that he thinks he found a lab that can test the blood and determine it was not planted.

Gahn said an initial investigation by prosecutors has not determined who drew the blood, and said there may be problems with custody of the evidence, or showing who did or did not have access.

“We are confident the testing we will do will show this blood had absolutely nothing to do with this (Halbach) case,” he said.

Buting and lead defense counsel Dean Strang of Madison asked Willis to hold that evidence and assure that defense attorneys are present if the vial is reopened for more testing.

“It is in a secured place now,” Gahn said.

Avery’s father, Allan Avery, declined comment after the court hearing.

“All I can tell you is that Avery Auto Salvage is not involved. They found a car there,” he said.

Avery has contended Manitowoc County police had a motive to frame him, since he filed a \$36 million federal civil suit against the county, a former prosecutor and a former sheriff, in regards to the department’s handling of his 1985 arrest and conviction.

He settled that suit for \$400,000 after he was charged in the Halbach case.

Buting said the blood was in an area of the clerk’s office where people need permission to enter, but where access to evidence was not monitored. He did not know if blood from that vial, or from another sample, was eventually the DNA that cleared Avery of the 1985 rape.

Kratz, who listened to Buting’s comments to reporters after the hearing, cited a judge’s gag order in declining comment.