

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

Case No. 2017 AP 002288

STATE OF WISCONSIN,)	
)	
Plaintiff-Appellee,)	Case No. 05-CF-381
)	
v.)	Honorable Angela Sutkiewicz,
)	Judge Presiding
STEVEN A. AVERY,)	
)	
Defendant-Appellant.)	

**DEFENDANT-APPELLANT'S MOTION FOR LEAVE
TO FILE REPLY TO THE STATE'S RESPONSE TO
MOTION TO STAY APPEAL AND REMAND, INSTANTER**

The Defendant-Appellant, Steven Avery ("Mr. Avery"), by his undersigned attorneys, Kathleen T. Zellner and Steven G. Richards, hereby moves this Court for leave to file his reply to the State's response to his motion to stay this appeal and remand. In support thereof, Mr. Avery states as follows:

1. On April 12, 2021, Mr. Avery filed a motion to stay this appeal following the discovery of new evidence establishing a *Brady* violation and a third-party *Denny* suspect. The motion asks this Court to remand the case to the circuit court for Mr. Avery to file a supplemental postconviction motion.

2. On April 16, 2021, the State filed a response in opposition to the motion.

3. On April 22, 2021, Mr. Avery filed a reply to the State's response. *See* Reply attached to this motion.

4. On April 27, 2021, the State filed a motion to strike Mr. Avery's reply. The motion relies on Wisconsin Stat. § (Rule) 809.14, *State v. Quackenbush*, 2005 WI App 2, ¶ 16, 278 Wis. 2d 611, 692 N.W.2d 340, and *Bilda v. County of Milwaukee*, 2006 WI App 57, ¶ 20 n.7, 292 Wis. 2d 212, 713 N.W.2d 661 for the proposition that a party must seek leave from this Court before filing a reply to a response.

5. Neither the Rule nor the cases cited by the State explicitly prohibit the filing of a reply to a response to a motion, nor do those authorities require leave of court before doing so.

6. Indeed, the State filed responses in opposition to each of Mr. Avery's three previous motions to remand to which Mr. Avery filed replies without leave of court. The State did not object to the filing of any of those replies, and this Court considered each of them.


7. Nevertheless, out of an abundance of caution, if leave from this Court is required before filing a reply, Mr. Avery seeks leave to file the attached reply.

8. Leave should be granted to file the reply in the interests of justice, as the State's response casts false aspersions concerning the extent to which defense counsel investigated the new evidence before filing the motion to stay and remand. Moreover, the State presents legal arguments as to why the appeal should not be stayed which absent leave to file a reply Mr. Avery will have no chance to address.

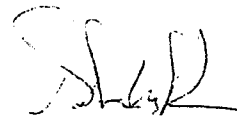
Wherefore, Mr. Avery respectfully requests that this Court grant him leave to file the attached reply, instanter.

Dated this 28th day of April , 2021.

Respectfully submitted,



Kathleen T. Zellner
Admitted pro hac vice
Kathleen T. Zellner & Associates, P.C.
1901 Butterfield Road, Suite 650
Downers Grove, Illinois 60515
(630) 955-1212



Steven G. Richards
State Bar No. 1037545
Everson & Richards, LLP
127 Main Street
Casco, Wisconsin 54205
(920) 837-2653

Certificate of Service

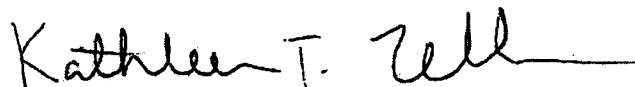
I certify that on April 28, 2021, a true and correct copy of Defendant-Appellant's Motion for Leave to File Reply to the State's Response to Motion to Stay Appeal and Remand, Instante was furnished via electronic mail and by first-class U.S. Mail, postage prepaid, to:

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

Ms. Tiffany M. Winter
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707

Manitowoc County D.A.'s Office
1010 S. 8th Street
Room 325
Manitowoc, WI 54220

Ms. Lisa E.F. Kumfer
Assistant Attorney General
P.O. Box 7858
Madison, WI 53707



Kathleen T. Zellner