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Judge to allow tapes, dog hair at trial

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For the Daily Tribune*

STEVENS POINT -- A Portage County judge will allow dog hair discovered in the cab of a truck where a Kolbe & Kolbe truck driver was found dead six years ago to be used as evidence in the first-degree intentional homicide trial of Michael Haydon.

Circuit Court Judge Thomas Flugaur made the decision Tuesday at a motion hearing in Portage County court.

Haydon is charged with killing Pat Zemke, who was found dead in the cab of his truck as it was parked Nov. 18, 2003, on the Highway DB exit ramp of Interstate 39 in Dewey.

In April 2008, Haydon, who is serving a 25-year sentence in the Green Bay Correctional Institution, was convicted of stealing the dogs of a former girlfriend and sexually assaulting her at gunpoint on the night of Nov. 17, 2003. He was charged with a single count of first-degree sexual assault, as well as charges of threats to injure, false imprisonment and several counts of wiretapping for illegally taping her phone calls.

Flugaur also ruled that tapes Haydon made of phone conversations that took place on his former girlfriend's phone in 2003 would be admissible, though he said the court could decide to include certain conversations and not others. Many of the tapes include conversations leading up to the sexual assault. Assistant District Attorney Veronica Isherwood said the tapes would give the jury the background they would need to understand the case. She added that they show Haydon's state of mind at the time of Zemke's death, a time at which the state believes he was using drugs and was "out of control."

The state claims that after the assault Haydon killed Zemke because Haydon wrongly assumed Zemke was having an affair with his girlfriend.

The state said DNA testing on the hair shows it is consistent with those belonging to the dogs of Haydon's former girlfriend. It plans to use the hairs to show that Haydon was inside Zemke's truck the day he was killed. The dog hair is the only physical evidence that places Haydon at the scene.

Haydon's attorney, Len Kachinsky, questioned the admissibility of the dog hair Tuesday. He stated that the method by which the hairs found in the cab were compared to those belonging to the dogs of Haydon's former girlfriend was different than the typical method. He also stated that DNA could skew a jury's decision because it has an "aura of scientific" certainty.

"The DNA is consistent with the two dogs the defendant had contact with the day Zemke was killed," said Portage County District Attorney Tom Eagon. "It is relevant in making a connection between the defendant and the crime scene."

Flugaur denied a request by Eagon to include information showing that shortly after Zemke's death, Haydon may have robbed another man he thought was having an affair with his former girlfriend.

The judge still is considering a motion by Kachinsky to allow statements that Haydon has said show another man could be responsible for Zemke's murder. The judge plans to make a ruling on that evidence within the next month.

Haydon's trial is scheduled for February.
