

State of Wisconsin

Circuit Court

Outagamie County

STATE OF WISCONSIN

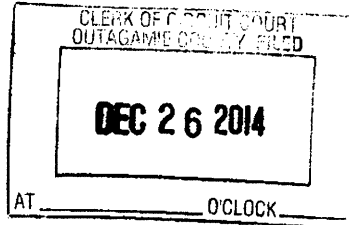
-VS-

Jay L. Fuss  
N4731 Cty U  
DePere, WI 54115  
DOB: 02/24/1966  
Sex/Race: M/W  
Eye Color: Hazel  
Hair Color: Blonde  
Height: 5 ft 10 in  
Weight: lbs  
Alias:

Plaintiff,

DA Case No.: 2014OU005157  
Assigned DA/ADA: Peter A. Hahn  
Agency Case No.: LOU14-040127  
Court Case No.: 2014CF001027

ATN:



INFORMATION

Defendant,

I, Peter A. Hahn, Assistant District Attorney in and for Outagamie County, Wisconsin, do hereby inform the Court that:

**Count 1: ATTEMPTING TO FLEE OR ELUDE A TRAFFIC OFFICER**

The above-named defendant on or about Wednesday, December 17, 2014, Outagamie County, Wisconsin, while operating a motor vehicle on a highway, after having received a visual or audible signal from a marked police vehicle, did knowingly flee or attempt to elude a traffic officer by increasing the speed of the vehicle in an attempt to flee, contrary to sec. 346.04(3), 939.50(3)(i), 973.046(1r) Wis. Stats., a Class I Felony, and upon conviction may be fined not more than Ten Thousand Dollars (\$10,000), or imprisoned not more than three (3) years and six (6) months, or both.

And furthermore, invoking the provisions of Wisconsin Statute 343.31(3)(d)1, upon conviction the department shall revoke the defendant's operating privileges for 6 months.

And furthermore, invoking the provisions of Wisconsin Statute 973.046(1r), if the court imposes a sentence or places a person on probation, the court shall impose a deoxyribonucleic acid analysis surcharge, calculated as follows: (a) For each conviction for a felony, \$250 (b) For each conviction for a misdemeanor, \$200.

Date: December 23<sup>rd</sup>, 2014

Peter A. Hahn  
Assistant District Attorney  
State Bar No. 1084726

cc: Attorney Brandt Swardenski

12/23/2014

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STATE OF WISCONSIN

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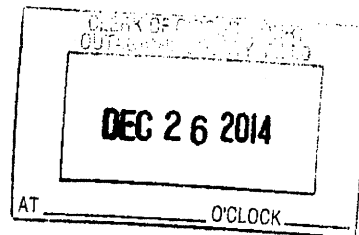
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ATN:

**STATE'S DISCOVERY DEMAND AND  
MOTION FOR PRE-TRIAL ORDERS**



Defendant,

THE STATE OF WISCONSIN, by Peter A. Hahn, Assistant District Attorney, makes the following discovery demand of the defendant in paragraph 1 and under paragraphs 2-15 moves the Court for the following orders in the above referenced case in advance of the jury trial:

1. **The State Demands** compliance with Section 971.23(2m) and (8) by the defendant (and defense counsel) and specifically requests: (A) a list of all witnesses to be called by the defense, (B) any written or recorded statements of any witness, (C) any statements or reports of expert witnesses or a written summary of the expert's findings if no report was prepared, (D) the results of any scientific tests by any defense witnesses, (E) the criminal record of any defense witness, (F) any physical evidence, photograph or document that the defense intends to present at trial, and (G) notice of any alibi and alibi witness.
2. **For An Order** sequestering all defense witnesses during the entire jury trial.
3. **For An Order** requiring defense counsel to immediately disclose to the District Attorney and not less than **30 days** prior to trial the criminal records of any defense witnesses pursuant to s.971.23(2m)(b) of the Wisconsin Statutes.
4. **For An Order** requiring defense counsel to disclose a list of all defense witnesses under s.971.23(2m)(a) of the Wisconsin Statutes not less than **30 days** prior to trial.
5. **For An Order** requiring defense counsel to immediately turn over any written or phonographically recorded statements of witnesses pursuant to s.971.23(2m)(am) of the Wisconsin Statutes. The State further requests that any documents or photographs to be used by the defense at trial be made available to the State for copying no less than **30 days** prior to the start of the jury trial.

6. **For An Order** requiring defense counsel to immediately produce any physical evidence, expert reports, or scientific testing to the District Attorney pursuant to s.971.23(2m)(c) of the Wisconsin Statutes. Such evidence should be available for review by the State not less than **30 days** prior to the start of the jury trial.
7. **For An Order** excluding the use of any documents, photographs or physical evidence mentioned in paragraphs 5 and 6 at trial if the defense does not make such available to the State within 30 days of trial and consistent with Section 971.23(2m) and (7m) of the Wisconsin Statutes.
8. **For An Order** precluding defense counsel, defense witnesses, or the defendant from mentioning any potential penalties involved in this case during jury selection, opening statements, closing argument, or testimony during the trial. Further, an Order, precluding any reference to the timing of the charges, the discretion and motives of the prosecutors in filing such charges, or whether the statutes charged have been ever charged in any other case in this County or State.
9. **For An Order** precluding the defendant or defense counsel from referring in jury selection or at trial to the fact that the defendant has no prior adult criminal convictions (if such is the case) pursuant to State v. Bedker, 149 Wis.2d 257, 269 (Wis. App. 1989). Also, that any other attempt by defense counsel to interject character evidence of the defendant, profile evidence or non-criminal behavior of the defendant with others be excluded under Section 904.04(1) of the Wisconsin Statutes and State v. Tabor, 191 Wis.2d 483 (Wis. App. 1995).
10. **For An Order** prohibiting the defense from making any comment on whether the State failed to call a witness pursuant to s.971.23(3) of the Wisconsin Statutes.
11. **For an Order** prohibiting any reference as to whether the charges against the defendant are felonies or misdemeanors. Such a reference is irrelevant under s.904.01 of the Wisconsin Statutes.
12. **For An Order** directing defense counsel to provide the State with a report/summary of any expert testimony that the defense may present at trial pursuant to s.971.23(2m)(am) of the Wisconsin Statutes within **30 days** of the start of the jury trial.
13. **For An Order** prohibiting the defendant, defense counsel, or any witness from making any reference to any other pending case in this county for comparison purposes.

Such evidence is irrelevant and inappropriate under Sections 904.01 and 904.03 of the Wisconsin Statutes. Further, such irrelevant evidence is prohibited by State v. Robinson, 146 Wis.2d 315, 332 (Wis. 1988). Further, an order requiring a hearing under Section 901.04 of the Wisconsin Statutes if defense counsel intends to get

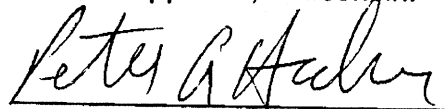
into any issues of plea agreements, polygraphs or criminal convictions of any potential witness.

14. **For An Order** precluding any reference, question or comment by defense counsel, defendant or any witness about the victim's sexual history or prior relationships as prohibited by Wisconsin's Rape Shield Law, Section 972.11(2)
15. **For An Order** precluding any attempt by the defense to argue jury nullification, including any claims that, despite the fact that the defendant committed the alleged crimes, the jury should find him Not Guilty. Based on case law, it is inappropriate to raise issues of jury nullification in argument, testimony, or jury selection.

In Sporf v. United States, 156 U.S. 51 (1895), the United States Supreme Court stated its position on the now well-settled issue of jury nullification when the Court wrote, "It is the duty of juries in criminal cases to take the law from the Court and apply that law to the facts . . ." Sporf at 102. The Court then went on to rule that there is no federal Constitutional right to urge jurors to "take the law into their own hands, and . . . disregard the directions of the court." Sporf at 106. The rule set out in Sporf still stands today.

The U.S. Court of Appeals for the Seventh Circuit is in accord with this view. In fact, the United States v. Brown, 548 F.2d 204 (1977), with a one-sentence discussion, this circuit summarily dismissed the defendant's contention that the district court abused its discretion by prohibiting the defense counsel from mentioning the possibility of jury nullification. The Seventh Circuit stated that "an invitation to the jury to disregard the instructions of the court . . . [is] clearly improper." Brown at 210. The issue of jury nullification is also well-settled law in Wisconsin. State v. Bjerkaas, 163 Wis.2d 949, 472 N.W.2d 615 (1991), the most recent Wisconsin published opinion to address the issue included a thorough discussion of the concept. Essentially, Bjerkaas concluded that while "[i]n broadest terms, juries do have nullification powers . . . this power does not translate to a right to have a jury decide a case contrary to law or fact, much less a right to an instruction telling jurors they may do so or to an argument urging them to nullifying applicable laws." Bjerkaas at 960. Indeed, "it is a basic tenet of our system of government that decisions are based on law, not personal whim." Peot v. Farraro, 83 Wis.2d 727, 747, 266 N.W.2d 586, 596 (1978).

SO SUBMITTED this 23<sup>rd</sup> day of December, 2014, at Appleton, Wisconsin.



Peter A. Hahn  
Assistant District Attorney  
State Bar No. 1084726

CC: Attorney Brandt Swardenski