

FILED  
01-29-2024  
CIRCUIT COURT  
DANE COUNTY, WI  
2022CF002481

STATE OF WISCONSIN : CIRCUIT COURT : DANE COUNTY

-----  
STATE OF WISCONSIN,

Plaintiff,

v.

CASE NO. 22-CF-2481

MARK WAGNER,

Defendant.  
-----

MOTION TO DISMISS  
-----

NOW COMES the Defendant, Mark Wagner, by and through his attorneys, Michael J. Steinle and Daniel H. Sanders, upon all the records, files and proceedings heretofore had herein, respectfully moves the Court for entry of an order dismissing the matter based upon the State’s substantial alteration of apparently exculpatory evidence of the Hyundai Tucson (vehicle) involved in this matter.

1. On January 4, 2024, Counsel met with District Attorney Ismael Ozanne and investigators as well as our experts to view all the evidence in this case.

2. When it came time to view the vehicle in this matter, it became apparent that the State altered the windows, molding and exterior of the vehicle during a reconstruction of the events from February 3, 2022.

3. The State has altered such evidence that has apparent exculpatory value to the Defense of this case which is evidenced by the State’s impoundment of the vehicle, and

seizure of a ballistic shield and Halligan tool used during the events on February 3, 2022.

4. Said vehicle, shield, and tool have been in the State's custody stored inside a Sheriff's Department storage unit and property room.

5. The evidence alteration directly relates to factual and legal issues that are to be tried in this case.

6. The alteration of the evidence has made it impossible to obtain other comparable evidence.

7. Defense expert Emanuel Kapelsohn opined:

"The prosecution's alteration of the subject vehicle prior to its inspection by myself and other Defense experts is unusual, improper and may have hindered the ability of the defense to see and analyze important evidence helpful to the Defense."

8. In particular, it will be shown at trial that the Halligan tool hit the window, slid down into the molding and became lodged in said window/molding frame. The State has substantially altered said window by replacing it and covering up the hole that was created by the Halligan tool striking said window by removing the molding that was on the vehicle and replacing it with new and different molding. The original indentation can no longer be seen due to the alterations and proper measurements could be made by Mr. Kapelsohn.

The Defense relies on the State's failure to preserve evidence as a violation of Defendant Wagner's due process rights as is set forth in *State v. Greenwold*, 189 Wis. 2d 59, 67, 525 N.W. 2d, 294, 297 (Ct. App. 1994), *California v. Trombetta*, 467 U.S. 479, 488 (1984),

*State v. Hahn*, 132 Wis. 2d 351, 392 N.W. 2d 464 (Ct. App. 1986) and *State v. Huggett*, 2010 WI App. 69, 324 Wis. 2d 786, 783 N.W. 2d 675.

Dated at Milwaukee, Wisconsin, this 29<sup>th</sup> day of January, 2024.

Respectfully submitted,

TERSCHAN, STEINLE, HODAN &  
GANZER, LTD.

*Electronically Signed By:*

MICHAEL J. STEINLE  
Attorney for Mark Wagner  
State Bar No. 1018859

P.O. ADDRESS:

309 North Water Street, Suite 215  
Milwaukee, Wisconsin 53202  
Telephone: 414-258-6200

HART & POWELL SC

*Electronically Signed By:*

DANIEL H. SANDERS  
Attorney for Mark Wagner  
State Bar No. 1092309

P.O. ADDRESS:

735 North Water Street, Suite 1212  
Milwaukee, Wisconsin 53202  
Telephone: 414-271-9595

