

STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY

STATE OF WISCONSIN
Plaintiff,

DA Case No.: 2020ML023811
Court Case No.:

vs.

CRIMINAL COMPLAINT

SMITH, TOMMY III
2935 NORTH 21ST STREET
MILWAUKEE, WI 53206
DOB: 03/22/1991

Defendant(s).

For Official Use

THE BELOW NAMED COMPLAINANT BEING DULY SWORN, ON INFORMATION AND BELIEF STATES THAT:

COUNT ONE: NEGLECTING A CHILD - CONSEQUENCE IS GREAT BODILY HARM

The above-named defendant on or about Saturday, September 19, 2020, in the area of 2101 North 38th Street, in the City of Milwaukee, Milwaukee County, Wisconsin, being a person responsible for the welfare of a child, RI, DOB 01/30/2018, through his failure to take action, for reasons other than poverty, did negligently fail to provide necessary care so as to seriously endanger the physical, mental, or emotional health of the child, and the child suffered great bodily harm as a consequence, contrary to sec. 948.21(2) and (3)(b)1, 939.50(3)(f) Wis. Stats.

Upon conviction for this offense, a Class F Felony, the defendant may be fined not more than Twenty Five Thousand Dollars (\$25,000), or imprisoned not more than twelve (12) years and six (6) months, or both.

Probable Cause:

This complaint is supported by the written reports of City of Milwaukee law enforcement officers whose written reports were prepared through the normal course of police business and which your complaining witness has relied upon in the past and found to be truthful and accurate. Based on a review of the reports pertaining to the investigation of this matter, your complaining witness believes that:

At 5:13 PM on September 19, 2020, City of Milwaukee Police Officer Jordon Kunya responded to Saint Joseph's Hospital in response to a report of a child with a gunshot wound to the head. The child, RI 1/30/2018 DOB, was brought to Saint Joseph's Hospital by his father, the above Defendant. Upon arriving on scene, Officer Kunya located RI. RI had brain matter protruding from RI's forehead. RI was unresponsive and had to be conveyed by ambulance to Children's Hospital of Wisconsin. Officer Kunya stayed with RI through transport to Children's Hospital of Wisconsin.

As Officer Kunya attended to RI, Officer Kunya's partner, Officer Luis Madrigal, interviewed the Defendant. The Defendant reported picking his girlfriend, Marguerita Yancy, up from work in the area of N 38th Street and W. Garfield Avenue, in the City of Milwaukee, County of Milwaukee. RI was in the back seat of the Defendant's 2004 white Mercedes Benz ML500 SUV. RI was not in a car seat, nor was RI restrained in any way. As the Defendant parked and waited for Marguerita Yancy, the Defendant heard a gun go off. The Defendant turned around and saw that RI had been struck by the round.

The Defendant disclosed finding the gun a few weeks ago and kept the gun in the cargo compartment of the Defendant's SUV. The Defendant claimed that RI must have located the gun and discharged the firearm.

City of Milwaukee Police Officer Ordlyn Sanders responded to Saint Joseph's Hospital and interviewed Marguerita Yancy, who provided the following information. Marguerita Yancy works at Lloyd's Foods, located at 2101 N. 38th Street, in the City of Milwaukee, County of Milwaukee. On September 19, 2020, Marguerita Yancy was at work when she peeked outside and observed the Defendant's white SUV. Shortly thereafter, the Defendant got out, exclaiming, "He found it, he found it!" Marguerita Yancy went outside and observed the Defendant's son, RI, in the SUV with a gunshot wound to the head. Marguerita Yancy drove the Defendant and RI to Saint Joseph's Hospital.

City of Milwaukee Detective Scott Schmitz responded to Saint Joseph's Hospital to assist with the investigation of this matter. Detective Schmitz examined the Defendant's white Mercedes ML 500 SUV and noted the edge of the sunroof was shattered. Inside the SUV there was blood on the front passenger seat, the rear passenger seat, the center console, and the rear floor behind the center console. The contents of the vehicle were photographed and processed as evidence.

City of Milwaukee Police Detective Rodolfo Alvarado arrived at Saint Joseph's Hospital and took a detailed statement from Marguerita Yancy. During the interview, Marguerita Yancy admitted that the Defendant instructed her to get rid of the handgun after she drove the Defendant and RI to Saint Joseph's Hospital. Marguerita Yancy followed the Defendant's instructions and went to a garbage can near the residence of 2869 N. 37th Street, where Marguerita Yancy placed the gun. Marguerita Yancy accompanied Detectives Alvarado and Martin Saavedra to 2869 N. 37th Street, where the detectives recovered a black and grey semi-automatic Taurus, Model PT738 .38 caliber gun wrapped in a blue bandana inside the garbage can. There was a casing in the chamber and 3 cartridges in the magazine.

During later interviews with police, Marguerita Yancy confirmed that the Defendant often drives around with a gun in the Defendant's lap.

On September 20, 2020, City of Milwaukee Police Detectives Scott Schmitz and James Jordan conducted an in custody interview of the Defendant, during which the Defendant made the following admissions against the Defendant's interests.

The Defendant acquired the handgun involved in this incident by stealing the gun from the boyfriend of RI's mother. On the day of the shooting, the Defendant drove to Marguerita Yancy's work with RI in the SUV. The Defendant denied having the gun in the Defendant's lap, but believed the gun was likely between the front driver side seat and the center console. The Defendant further admitted that RI was not in a car seat, nor was RI buckled into a seat in any way.

RI remains in critical condition at Children's Hospital of Wisconsin, having sustained a through and through gunshot wound to the head, with an entrance wound in the back of RI's head and an exit wound in RI's forehead. At this time, it is not known whether RI will survive.

****End of Complaint****

Electronic Filing Notice:

This case was electronically filed with the Milwaukee County Clerk of Circuit Court office. The electronic filing system is designed to allow for fast, reliable exchange of documents in court cases. Parties who register as electronic parties can file, receive and view documents online through the court electronic filing website. A document filed electronically has the same legal effect as a document filed by traditional means. You may also register as an electronic party by following the instructions found at <http://efiling.wicourts.gov/> and may withdraw as an electronic party at any time. There is a \$ 20.00 fee to register as

an electronic party. If you are not represented by an attorney and would like to register an electronic party, you will need to contact the Clerk of Circuit Court office at 414-278-4120. Unless you register as an electronic party, you will be served with traditional paper documents by other parties and by the court. You must file and serve traditional paper documents.

Criminal Complaint prepared by Matthew J. Torbenson.