

STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY

STATE OF WISCONSIN

Plaintiff,

DA Case No.: 2013ML002013

Court Case No.:

vs.

CRIMINAL COMPLAINT

MOORE, DONALD D
5113 NORTH 38TH STREET
MILWAUKEE, WI 53209
DOB: 03/26/1988

Defendant(s).

For Official Use

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

Count 1: FIRST DEGREE RECKLESS HOMICIDE - PTAC, AS A PARTY TO A CRIME, HABITUAL CRIMINALITY REPEATER, USE OF A DANGEROUS WEAPON

The above-named defendant on or about Friday, December 28, 2012, at 1955 N. 32nd Street, in the City of Milwaukee, Milwaukee County, Wisconsin, as a party to a crime, did recklessly cause the death of Fawzi Abu-hamdan, another human being, under circumstances which showed utter disregard for human life, contrary to sec. 940.02(1), 939.50(3)(b), 939.05, 939.62(1)(c), 939.63(1)(b) Wis. Stats.

Upon conviction for this offense, a **Class B Felony**, the defendant may be sentenced to a term of imprisonment not to exceed sixty (60) years.

And further, invoking the provisions of sec. 939.62(1)(c) Wis. Stats., because the defendant is a repeater, having been convicted of at least one felony during the five year period immediately preceding the commission of this offense, which remains of record and unreversed, the maximum term of imprisonment for this offense **may be increased by not more than 6 years**, if the prior conviction was a felony.

And further, invoking the provisions of sec. 939.63(1)(b) Wis. Stats., because the defendant committed this offense while using a dangerous weapon, the maximum term of imprisonment for the felony **may be increased by not more than 5 years**.

Probable Cause:

Complainant is a City of Milwaukee Police Detective, currently assigned to the Milwaukee Police Department Cold Case Homicide Unit which investigates unsolved or uncharged homicides that are no longer under active investigation. As part of that unit, Complainant has reviewed the initial police reports and engaged in additional investigation of this case. Those reports and that investigation revealed the following:

First Responding Officers

On December 28, 2012, at approximately 9:00pm, Milwaukee Police Officer Joshua Nemeth responded to a shooting at the Zara Food Market, 1955 N. 32nd St., City and County of Milwaukee, State of Wisconsin. Upon arrival, Officer Nemeth saw a male that was flagging him down and motioning inside the store. Once inside the store, Officer Nemeth observed the victim, Fawzi Abu-hamdan, behind the store counter, face

down on his knees with his back against a rolling chair. Officer Nemeth and his partner pulled the victim from behind the store counter and observed that the victim was pulseless and not breathing. Officer Nemeth could not feel a pulse. The officer began life saving measures and cut open the victim's shirt to observe a single gunshot wound to the chest, just above the left nipple area. The victim did not survive his injuries.

Autopsy

Complaint is further based upon the statement of Dr. Brian Peterson, the Milwaukee County Medical Examiner, who is duly licensed to practice medicine in the state of Wisconsin and is trained and experienced in the field forensic pathology. Dr. Peterson performed an autopsy on Fawzi Abu-hamdan and determined that he had suffered a single gunshot wound that had entered and exited the victim's left hand and then entered the victim's left chest where a bullet was recovered. Dr. Peterson observed soot and stippling indicating to the victim's left hand indicating an initial close range shot. Dr. Peterson determined that the cause of death was gunshot wound to the chest and the manner of death was homicide.

The bullet recovered from the victim was determined by the Wisconsin State Crime lab to be a .22 caliber bullet.

Security Video Footage

This incident is captured on surveillance camera. The cameras show one suspect (suspect #1) walking into the store and heading toward the back. The cameras show the second suspect (suspect #2) enter the store, fire a shot into the ceiling, and then immediately turn the gun toward the victim. A second shot is heard and both suspects flee the store on foot. Total time in the store for the gunman (suspect #2) is less than 5 seconds.

Surveillance cameras also shows several customers inside the store, including two adult women and a then 7 year old male child that were mere feet away from the gunman (suspect #2) when the homicide occurred. The women were identified as witness SM, her sister, and her nephew TG.

Statement of Witnesses SM and TG

Both SM and TG were interviewed by Milwaukee Police in December, 2012. SM indicated that she was at the store with her sister and her nephew, TG to buy some items. SM indicated that while at the counter waiting to buy some items, she observed two black males walk into store. SM saw that one of the black males walked inside the store, yell out, and pull a revolver that he pointed at the store owner. SM then heard one gunshot. SM turned to run. SM did not pay much attention to the other male that walked in with the shooter, as her attention was primarily directed to the shooter who yelled and shot at the victim. SM did indicate that both males faces were partially covered by masks or coverings.

TG, who was seven years old at the time, stated that he was inside the victim's store, whom he knew as "Fred," when a man in a gray hoodie walked into the store and shoot the victim. TG stated that he heard "pop, pop" and the victim was shot in the chest. TG told police that he would recognize the man that shot the victim again if he saw him. TG stated that he was really sad when he saw the shooter shoot the victim.

Confidential Witness #1

In 2013, Confidential Witness #1 (hereinafter CW 1), an adult witness, informed police that he was aware of the identity of the shooter in the above case. CW 1 stated that in December 2012, CW 1 was present at a residence when a person CW 1 knows as "Duck," and whom CW 1 identified as the above mentioned Defendant upon viewing a photo, came over and was asking for assistance in conducting a robbery of the victim's store. CW 1 did not participate in the robbery.

CW 1 stated that approximately 30 to 45 minutes later, the Defendant returned to the residence, out of breath, and stated that he had just shot the store owner by accident while conducting a robbery. The Defendant told CW 1 that the Defendant shot the store owner because the store owner was going for his gun. CW 1 stated that when the Defendant returned he had a .22 caliber revolver with a long barrel in his possession.

Statement of Confidential Witness 2

Complaint is further based upon the statement of Confidential Witness 2 (hereinafter CW 2) who states that he is aware of the above homicide from his personal knowledge of the facts and the two participants in the homicide, the above defendant and "Kendell."

CW 2 indicated that in December of 2012, the above named defendant, whom CW 2 knows and identified through a photo, went over to a residence to get assistance in robbing a store. The Defendant asked "Kendell" to assist in the robbery and called "Kendell" a bitch when "Kendell" originally decided not to assist the Defendant in the robbery.

CW 2 states that "Kendell" went along with the robbery in which the two of them were going to rob "Fred," the store owner. CW 2 stated that the Defendant was armed with a chrome revolver. CW 2 stated that "Kendell" went into the store first and pretended to be a customer, and was followed by the Defendant who then fired a shot into the ceiling.

CW 2 stated that the store owner appeared to be getting his weapon, at which point the Defendant turned his weapon towards the store owner and fired again. CW 2 stated that the Defendant and "Kendell" then ran from the store and returned to the original residence.

CW 2 spoke to police in November, 2020.

Photo Arrays to Witnesses SM and TG

On February 26, 2021, Complainant showed a photo array to SM. SM positively identified the Defendant as the person she saw shooting on the day that Abu-Hamdan was killed. She pointed out the Defendant's eyebrows, eyes and hairline - stating that this was the part of his face that stood out to her. She further stated that how traumatic it was for her to be present when this occurred. She stated that trauma is probably why she is able to remember what the Defendant looks like so well, because the shooting had such a huge effect on her. Further, she stated that she and her family still talk about this incident often because of how loved the victim, Fred, was in the neighborhood. She stated her family was so scared after this occurred that they moved away and never went back to that part of town, which is likely why the police were unable to find them back when this happened.

On March 2, 2021, a photo array was shown to TG, who is no longer a juvenile. TG positively identified the Defendant as the shooter in this offense. TG stated about the Defendant, "that's the guy."

Prior Conviction

Complaint is further based upon review of CCAP of Milwaukee County Case 08 CF 2771 which indicated that the above mentioned defendant was convicted of the felony offense of Possession With Intent to Deliver – THC (<= 200 grams) in violation of Wis. Stat. Sec. 961.41(1m)(h)1 and said conviction remains of record and unreversed. The date of conviction was December 1, 2008 following the Defendant's failure to adequately complete a deferred prosecution agreement. Thus, the conviction was within five years prior to the date of this offense, December 28, 2012.

****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 Grant I. Huebner.

Subscribed and sworn to before me on 03/04/21

Electronically Signed By:

Grant I. Huebner

Assistant District Attorney

State Bar #: 1036890

Electronically Signed By:

Detective Timothy Keller

Complainant