

STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY

STATE OF WISCONSIN

Plaintiff,

DA Case No.: 2021ML019357

Court Case No.:

vs.

CRIMINAL COMPLAINT

HINTON, JAMES B
5029 NORTH 50TH STREET
MILWAUKEE, WI 53218
DOB: 11/28/1990

MALONE, JAMES E
4946 NORTH 68TH STREET
MILWAUKEE, WI 53218
DOB: 10/27/1983

Defendant(s).

For Official Use

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

Count 1: OPERATING WITH RESTRICTED CONTROLLED SUBSTANCE IN BLOOD - 2ND OFFENSE (As to defendant James B Hinton)

The above-named defendant on or about Tuesday, August 18, 2020, at or near 2173 North 35th Street, in the City of Milwaukee, Milwaukee County, Wisconsin, did drive a motor vehicle with a detectable amount of a restricted controlled substance in his blood, contrary to sec. 346.63(1)(am), 346.65(2)(am)2 Wis. Stats.

Upon conviction for this offense, a Misdemeanor, the defendants shall, for the second offense counted under s. 343.307(1) within ten (10) years, be fined not less than Three Hundred and Fifty Dollars (\$350) nor more than Eleven Hundred Dollars (\$1,100), and imprisoned for not less than five (5) days nor more than six (6) months.

And furthermore, invoking the provisions of Wisconsin Statute 343.301(1g), the court shall order a person's operating privilege for the operation of "Class D" vehicles be restricted to operating vehicles that are equipped with an ignition interlock device and, except as provided in 343.301(1m), shall order that each motor vehicle for which the person's name appears on the vehicle's certificate of title or registration be equipped with an ignition interlock device.

And furthermore, invoking the provisions of sec. 343.30(1q)(b)3 and (1q)(c) Wis. Stats., upon conviction, the court shall revoke the defendant's operating privilege for not less than one (1) year nor more than eighteen (18) months, and shall order the defendant to submit to an alcohol and drug abuse assessment and to comply with treatment as a condition of reinstatement.

And the defendant may also be subject to additional collateral consequences upon conviction, including revocation of operating privileges, assessment and treatment requirements, and future restrictions on operation of motor vehicles under Wisconsin Statute 343.31(1m).

Count 2: FIRST DEGREE RECKLESS HOMICIDE (As to defendant James E Malone)

The above-named defendant on or about Saturday, August 7, 2021, at or near 6000 West Hampton Avenue, in the City of Milwaukee, Milwaukee County, Wisconsin, did recklessly cause the death of Devante Gaines, another human being, under circumstances which showed utter disregard for human life, contrary to sec. 940.02(1), 939.50(3)(b) Wis. Stats.

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

Count 3: FIRST DEGREE RECKLESS HOMICIDE (As to defendant James E Malone)

The above-named defendant on or about Saturday, August 7, 2021, at or near 6000 West Hampton Avenue, in the City of Milwaukee, Milwaukee County, Wisconsin, did recklessly cause the death of Jerrold Wellinger, another human being, under circumstances which showed utter disregard for human life, contrary to sec. 940.02(1), 939.50(3)(b) Wis. Stats.

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

Count 4: FIRST DEGREE RECKLESS INJURY (As to defendant James B Hinton)

The above-named defendant on or about Saturday, August 7, 2021, at or near 6000 West Hampton Avenue, in the City of Milwaukee, Milwaukee County, Wisconsin, did recklessly cause great bodily harm to RAY, another human being, under circumstances which showed utter disregard for human life, contrary to sec. 940.23(1)(a), 939.50(3)(d) Wis. Stats.

Upon conviction for this offense, a Class D Felony, the defendants may be fined not more than One Hundred Thousand Dollars (\$100,000), or imprisoned not more than twenty five (25) years, or both.

Count 5: KNOWINGLY OPERATE MOTOR VEHICLE WHILE REVOKED - CAUSE GREAT BODILY HARM TO ANOTHER (As to defendant James B Hinton)

The above-named defendant on or about Saturday, August 7, 2021, at or near 6000 West Hampton Avenue, in the City of Milwaukee, Milwaukee County, Wisconsin, while being a person whose operating privileges had been revoked pursuant to the laws of the State of Wisconsin, and as a person who knew his operating privilege had been revoked, did operate a motor vehicle on a highway during such revocation or thereafter, and in the course of the violation caused great bodily harm to another person, RAY, contrary to sec. 343.44(1)(b) and (2)(ar)3, 939.50(3)(i) Wis. Stats.

Upon conviction for this offense, a Class I Felony, the defendants 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.

Probable Cause:

Complainant is a City of Milwaukee Police Officer assigned to the Milwaukee Police Department Crash Reconstruction Unit, is trained and experienced in the field of crash reconstruction and bases this complaint upon review of police reports and his involvement in this investigation. Those reports and that investigation revealed the following:

Part I August 18, 2020 Fatal Crash (Defendant Hinton only)

On August 18, 2020, City of Milwaukee Police Officers were dispatched to a fatal crash in the area of the 2200 block of N. 35th Street, City and County of Milwaukee, State of Wisconsin. Upon arrival, officers determined that the above mentioned defendant James Hinton was driving his 2013 Infiniti north on N.35th Street and made a left turn into the gas station at 2173 N. 35th Street, City and County of Milwaukee, State of Wisconsin. While Defendant Hinton was turning into the gas station, a motorcycle driver collided into Defendant Hinton's passenger doors causing that driver's death.

Complaint is further based upon the statement of Defendant James Hinton, who stated to police that on August 18, 2020 he was driving his vehicle in the 2200 block of N. 35th Street when he decided to turn into the gas station. While he entering the entry driveway to the gas station, he saw a blur and then felt a violent collision. Defendant Hinton stated that he was only going about 5 to 10 mph when the deceased motorcycle driver hit the passenger side of his vehicle.

Defendant Hinton voluntarily provided a sample of his blood.

Complaint is further based upon the statement of Analyst Leah Macans, who is employed by the Wisconsin State Crime Lab and is trained and experienced in the field of toxicology and who tested the blood of Defendant Hinton and determined that the defendant's blood tested positive for THC with a Delta-9-tetrahydrocannabinol (THC) level of 5.2 ug/L.

Part II August 7, 2021 Fatal Crash (Both Defendants)

First Responding Officers

On August 7, 2021, City of Milwaukee Police Officers were dispatched to the area of the intersection of 60th and Hampton, at 6000 W. Hampton Avenue, City and County of Milwaukee, State of Wisconsin. Upon arrival, Officers located a vehicular crash in the intersection of 60th and Hampton. A 2018 Dodge Charger driven by the above mentioned Defendant Malone struck a 2006 Chevrolet Cobalt which contained deceased victims Jerrold Wellinger and Devante Gaines. The victim's vehicle was then thrown into a utility pole by the impact, causing catastrophic damage. Victim Devante Gaines was found pinned inside the Cobalt and victim Jerrold Wellinger was found on the ground after having been ejected from the vehicle. Both were declared deceased at the scene.

Additionally, a 2017 Infiniti driven by the above mentioned Defendant Hinton followed Defendant Malone's vehicle into the intersection, and then proceeded into the median, collided with several boulders and then hit a parked vehicle. The investigation revealed that it appeared that Defendant Malone and Defendant Hinton were racing each other a high rate of speed.

Defendant Malone admitted to police that he was the driver of the 2018 Dodge Charger and Defendant Hinton admitted that he was the driver of the 2017 Infiniti. Defendant Malone was the only occupant of his vehicle. Defendant Hinton had a passenger at the time of impact, victim RAY. Defendant Hinton also admitted to police that he knew his driver license was revoked.

Complainant notes that this crash occurred at approximately 4:40 p.m. at an intersection and street that was heavily populated with vehicles and people in the midday.

Autopsy of Victims

Complaint is further based upon the statement of Dr. Douglas Kelly, a Deputy Milwaukee County Medical Examiner who is trained and experienced in the field of forensic pathology and is duly licensed to practice medicine in the state of Wisconsin. Dr. Kelly performed autopsies on both Jerrold Wellinger and Devante Gaines. Dr. Kelly determined that both victims died as a result of multiple traumatic injuries consistent with a motor vehicle collision.

Security Video

Complaint is further based upon the statement of Officer Schnier who reviewed video from a Milwaukee County Bus that stopped at the intersection. The video shows the 2006 Chevy Cobalt which contained the two deceased victims in the left turn lane preparing to head north. Defendant Malone's Dodge Charger can be seen traveling at a high rate of speed passing vehicles. The victim's vehicle is halfway through its legal turn when the vehicle driven by Defendant Malone hits the passenger side of the victim's vehicle.

Just prior to the impact, the vehicle driven by Defendant Hinton can be seen following Defendant Malone at a high rate of speed. Defendant Malone's vehicle hits the victim's car causing a massive impact with visible flames.

Officer Schnier states that a female can be seen sitting at the intersection where the crash occurs and appears to be very nearly struck by the crash.

Officer Schnier also states that the vehicles driven by Defendant Hinton and Defendant Malone appear to be traveling at speeds in excess of 100 mph.

Statement of Witness JL

Complaint is further based upon the statement of JL, who stated that on August 7, 2021, he was at the Citgo Gas station at the intersection of 60th and observed the crash. JL stated that there were two cars, later determined to be the vehicles driven by Defendant Hinton and Defendant Malone, that "definitely racing" at a high rate of speed, going westbound on Hampton. JL described the two vehicles as "neck and neck" while racing. Then a crash occurred.

Statement of Witness MB

Complaint is further based upon the statement of witness MB who stated that she was traveling towards the intersection of 60th and Hampton when she observed two vehicles, consistent with those driven by Defendant Malone and Defendant Hinton. MB stated that it appeared to her that both cars were driving at speeds over 100 mph and appeared to be racing each other. She then saw Defendant Malone's vehicle impact the victim's car.

Airbag Control Module Data

Complaint is further based upon the statement of Milwaukee Police Officer William Hanney, of the Milwaukee Police Department Crash Reconstruction Unit, who downloaded the Airbag Control Module data for the vehicles driven by Defendant's Malone and Hinton.

Officer Hanney downloaded the data from Defendant Malone's vehicle and observed that at five seconds before the crash, Defendant Malone's vehicle was traveling at 119 mph, at 123 mph 3.9

seconds before the crash, and then decreases to 115 mph at 2.1 seconds before the crash and then finally to 102 mph at .1 seconds prior to the crash into the victim's vehicle.

Officer Hanney also downloaded the data from Defendant Hinton's vehicle and observed that at 5 seconds before his vehicle impacted the boulder, his vehicle was traveling 120 mph. His vehicle decreased to 94 mph at the time of impact.

The speed limit at the location of the crash 30 mph.

Injuries to RAY

Complaint is further based upon the statement of Milwaukee Police Officer Mary Porter who went to check on RAY, the passenger in the vehicle driven by Defendant Hinton. RAY suffered a broken left femur and a broken pelvis during the crash. She further indicated that she had two surgeries on her femur and will be in the hospital for at least a week. She stated that she was a passenger in the vehicle driven by Defendant Hinton when the crash occurred.

Defendant Hinton's Driving Record

Complaint is further based upon Complainant's review of Defendant Hinton's DOT record which states that Defendant Hinton's driver's license status was revoked at the time of the fatal crash that occurred on August 7, 2021. Defendant Hinton's driver license was revoked on March 26, 2021 for non-compliance with a driver's safety plan.

Also on June 2, 2021 Defendant Hinton was convicted of Operating After Revocation in Milwaukee County Case 21 TR 660, thus showing that Defendant Hinton was aware that he was revoked at the time of the August 7, 2021 fatal crash.

****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 08/12/21

Electronically Signed By:

Grant I. Huebner

Assistant District Attorney

State Bar #: 1036890

Electronically Signed By:

Officer William Hanney

Complainant