

STATE OF WISCONSIN

CIRCUIT COURT

WAUPACA COUNTY

STATE OF WISCONSIN,

Plaintiff,

CRIMINAL COMPLAINT

vs.

CASE TYPE: CF

AUSTIN HOVARTER
E410 REIBEN ROAD
WAUPACA, WI 54981
DOB: 08/08/1999
SEX/RACE: M/W
EYE COLOR:
HAIR COLOR:
HEIGHT: ;
WEIGHT: ;
DOB: 08/08/1999

Defendant.

DA CASE #:
2017WP001423
DCI #17-6139

AGENCY CASE #:
W17-10582

DA/ADA ASSIGNED:
VERONICA ISHERWOOD

JUDGE ASSIGNED:

The undersigned, being first duly sworn, states that:

Count 1: FIRST DEGREE RECKLESS HOMICIDE

The above-named defendant on Wednesday, July 26, 2017, in the Town of Farmington, Waupaca County, Wisconsin, did recklessly cause the death of Jacob A. Peglow, under circumstances which show 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 defendant may be sentenced to a term of imprisonment not to exceed sixty (60) years.

PROBABLE CAUSE:

Your complainant is a Special Agent with the State of Wisconsin, Department of Justice, Division of Criminal Investigations. Your complainant makes this complaint upon information and belief and upon reports and records of that department and records of the Waupaca County Sheriff's Office. Your complainant has relied upon these records in the past and has found them to be truthful and reliable.

Your complainant is aware that Jacob A. Peglow, DOB 09/20/2001, was fatally shot at a home located at E410 Reiben Road, Township of Farmington, Waupaca County, Wisconsin on July 26, 2017. Local law enforcement had issued a press release that stated in part "The Waupaca County Sheriff's Office believes the shooting is accidental and is still under investigation." The Waupaca County Post, in their August 3, 2017 edition quoted a law enforcement source as saying "They found the guns and were looking at them when one of them went off". Your complainant is aware that the Waupaca County District Attorney's office has the policy to review every sudden death that occurs within the geographical boundaries of the county. After a review of the reports generated from this incident and a discussion with Waupaca County Sheriff's Office personnel, the District Attorney requested additional investigation. Chief Deputy Allen Kraeger asked that the State of Wisconsin, Division of Criminal Investigations gather that information. Your complainant and other DCI personnel responded to assist.

09/15/2017

Your complainant reviewed the reports generated from the Waupaca County Sheriff's Office. They included the information that follows.

Deputy Jon Loken of the Waupaca County Sheriff's Office reported as follows:

On Wednesday, July 26, 2017, at approximately 12:49PM, I received a call to respond to a weapons complainant at E410 Reiben Road, Township of Farmington, Waupaca County, WI. A 16 year old was shot in the shoulder with a 22 and CPR was in progress.

Upon arrival, paramedics were working on the victim. I went into the shed/garage and made contact with Austin Hovarter (DOB 08/08/1999). Austin advised the injured male subject was Jacob Peglow (DOB 09/20/2001), he was a friend of Austin's and had been for approximately six to seven years. Austin stated Jacob had come over today after it rained and they were sent home from work.

They, Jacob, Austin and BWS, DOB: 11/22/02, had shot .17s outside which Austin said is a smaller rifle. Austin said when Jacob was done shooting the .17, Jacob made sure the gun was unloaded and the safety was on. They then went inside and Austin stated went upstairs into his mother and his stepfather's, bedroom where BWS and Jacob were looking at an old musket. Austin stated Jacob aimed the musket away from them and was looking at it, but he did not dry fired the gun. Austin said he removed the handgun from the safe and pulled the revolver from the holster and while hanging onto the holster in his left hand, pulled the gun up in his right hand in what he described as a gangster display of the weapon, lifting it up to the right above his shoulder height to the right of his head, canting it slightly. Austin then stated he remembered pulling the trigger. Austin said he has never used the gun himself and never witnessed the gun used. Austin said he believed the gun was unloaded. Austin stated the gun then went off and at that time, he believed Jacob said, "I think you shot me." Jacob then went running down the stairs through the house and out through the east side door towards the driveway. Austin stated BWS ran behind him. Austin advised he put the handgun back in the holster and placed it back in the safe and then ran after Jacob.

Later that day, at the Sheriff's Office, Deputy Loken continued his interview of Austin. Austin said he was by the gun safe and Jacob was on the other side of the bed towards the west wall and the stair area. Austin estimated the distance as approximately 15 to 20 ft. away. Austin stated he retrieved the .22 revolver which was black in color and in a holster, from the safe. Austin stated he did not look at the gun when he took it out of the holster and picked it up, pointing it in the direction of Jacob. Austin would physically show me during our interview, how he held the gun which he called more of a gangster style above his right shoulder with his right hand slightly in front of him. Austin advised me once again he has never seen this gun used and this gun has never been loaded. I asked him if he has ever done anything like this before with a gun. Austin stated approximately three or four times, he had played something similar to Cops and Robbers with BWS and had actually pointed in the direction of BWS with this same .22 revolver pulling the trigger and it was never loaded. Austin stated BWS asked Jacob, "Are you Ok?" Austin would advise me he believed he told Jacob's mother they were messing around with a gun and it fired.

Austin informed me he has been around guns for most of his life, since he was small. Austin has taken hunter's safety and is an avid hunter.

Detective Sgt. Carl Artz of the Waupaca County Sheriff's Office reported as follows:

Upon arrival at the residence where the shooting occurred I was informed the medical assessment on the victim, Jacob A Peglow was not good. Officers that were present at the

scene, indicated at the onset this was an accidental shooting in the residence. I was requested to assist in the collection of evidence and at a later time, to interview individuals related to this complaint. Once in the residence, I was informed the location of the shooting was in the parents' bedroom on the upper floor. The residence was a two-story dwelling with the parents' bedroom being on the upper floor and three children were on the lower floor. From initial reports and in speaking with Deputy John Loken, it was learned the weapon that shot Jacob A Peglow was still in the parents' bedroom on the upper floor.

I collected all weapons related to the investigation. The .22 revolver was recovered snapped into its leather holster and on a shelf next to the gun safe. An examination of the weapon revealed that the cylinder could hold 8 bullets. There were two empty slots, one shell casing that had been shot and 5 live rounds.

At approximately 3:27 PM I left the residence to proceed back to the Waupaca County Sheriff's office for an interview with the homeowner. He was asked in regards to how the weapons came in the possession of the children that were present in the home. He indicated no one should have been in possession of the weapons as they were in a safe and remarked that the door was open to the safe. The location of this pistol should have been on the upper shelf in the safe. The homeowner did not know if it was loaded or unloaded, it was his belief that the gun was unloaded as it has not been used in quite a period of time. It was his belief also that the musket type rifle was behind the gun cabinet. He indicated no one should have been in their bedroom on the upper floor playing with guns.

Detective Pat McClone of the Waupaca County Sheriff's Office reported as follows:

I conducted an interview of BWS on 7/26/2017. I asked BWS what had happened to Jacob. BWS said that he, Jacob, Austin were upstairs in his mom and dad's bedroom looking at an "antique musket". BWS told me the musket was on his parent's bed and he was looking at it. BWS told me Austin was looking at a "pistol" in the bedroom pointing the pistol at Jacob and pulling the trigger when the gun "went off".

BWS told me the three boys were the only individuals. BWS told me the pistol was normally unloaded and it fired. BWS was visually upset and surprised that the pistol had fired. BWS told me after the pistol fired that Jacob said, "Oh my god you shot me!"

The gun safe initially appeared to be covered in dust and the gun safe door was open. I asked BWS if he could show me what had happened. BWS explained he was on the north side of the bed and pointed towards a cross bow which was lying on the floor near the end of the bed on the north side. BWS told me Jacob was standing near the crossbow. BWS pointed at the opened gun safe and told me that Austin had been standing directly in front of the gun safe. BWS told me that they had been looking at the musket which was now on the bed and Austin had pointed the gun at Jacob. BWS told me Austin had pulled the trigger and the gun had "went off" referring to the weapon firing. BWS told me it was loud and his ear still hurt.

BWS told me Austin has looked at the pistol previously and had played with it before. BWS said that when Austin had played with the pistol previously Austin had pulled the trigger and the gun did not fire. BWS described the one previous incident when Austin had been playing with the revolver about a year ago. BWS estimated that Austin had pulled the trigger of the revolver three times and it had not fired. BWS told me Austin had never checked to determine if the revolver was unloaded Austin had just pulled the trigger.

Your complainant continued the investigation in this matter. On September 14, 2017 your complainant learned from BWS that when Austin shot the revolver on July 26, 2017 he held the gun out in front of him in his right hand, with his left hand supporting the shooting hand, he aimed the gun at Jacob and pulled the trigger. BWS further explained the only other time he had seen this revolver out of the gun case had been about a year previous. At that time he explained that Austin had brought the gun to his room to show him. On that occasion Austin put the muzzle of the gun in his mattress and dry fired it three times. BWS said that he has played cops and robbers with Austin in the past but was emphatic that they never played with real guns.

Your complainant also obtained additional information from Austin Hovarter on September 14, 2017. Austin explained that he has used the revolver four or five times playing cops and robbers and had pointed in the general direction of BWS and pulled the trigger “many times” on each of those occasions. Austin said on July 26, 2017 he and Jacob were playing cops and robbers when the shooting occurred.

Subscribed and sworn to before me on 09/15/17
Electronically Signed By:
Veronica Isherwood
District Attorney
State Bar #: 1022814

Electronically Signed By:
Special Agent Kyra M. Schallhorn
Complainant