

STATE OF WISCONSIN

-vs-

Plaintiff,

Bryant Taylor Ellis
1852 Harold Street
Green Bay, WI 54302
DOB: 06/20/1998
Sex/Race: M/W
Eye Color: Brown
Hair Color: Blonde
Height: 6 ft 1 in
Weight: 185 lbs

DA Case No.: 2017BR001385
Assigned DDA: Mary M Kerrigan-Mares
Agency Case No.: 17-202008
Court Case No.: 2017CF _____
ATN:

CRIMINAL COMPLAINT

Defendant,

Complainant, District Attorney, being first duly sworn on oath, deposes and says that:

Count 1: FIRST DEGREE RECKLESS HOMICIDE, USE OF A DANGEROUS WEAPON

The above-named defendant on or about Monday, February 20, 2017, in the City of Green Bay, Brown County, Wisconsin, did recklessly cause the death of Andrew Zachary Tohulka, under circumstances which show utter disregard for human life, contrary to sec. 940.02(1), 939.63(1)(b) Wis. Stats., a Class B Felony, and upon conviction may be sentenced to a term of imprisonment not to exceed sixty (60) years.

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.

Count 2: ENDANGERING SAFETY BY USE OF DANGEROUS WEAPON - POSSESSION OF A FIREARM WHILE INTOXICATED

The above-named defendant on or about Monday, February 20, 2017, in the City of Green Bay, Brown County, Wisconsin, did operate a firearm while he had a detectable amount of a restricted controlled substance in his blood, contrary to sec. 941.20(1)(bm) Wis. Stats., a Class A Misdemeanor, and upon conviction may be fined not more than Ten Thousand Dollars (\$10,000), or imprisoned not more than nine (9) months, or both.

Count 3: POSSESSION OF A FIREARM BY ADJUDICATED DELINQUENT

The above-named defendant on or about Monday, February 20, 2017, in the City of Green Bay, Brown County, Wisconsin, did possess a firearm, having been adjudicated delinquent for an act committed on or after April 21, 1994, that if committed by an adult in this state would be a felony, contrary to sec. 941.29(1m)(bm) Wis. Stats., a Class G Felony, and upon conviction may be fined not more than Twenty Five Thousand Dollars (\$25,000), or imprisoned not more than ten (10) years, or both.

Complainant is a District Attorney with the Brown County District Attorney's Office and knows of the above offense on information and belief based upon:

PROBABLE CAUSE

The complainant, being duly sworn on oath, swears that he has had the opportunity to review the police reports from Officers Conley and Serres and Detectives Wanta and Kingston of the Green Bay Police Department, and other documents supporting this complaint, which are the types of reports and documents kept in the ordinary course of business, which complainant believes to be truthful and reliable because they have proven to be truthful and reliable on numerous occasions in the past.

The complainant further asserts that based upon his review of the reports and/or supporting documents, the incidents alleged occurred in Brown County, Wisconsin.

1. His review of the report of Officer Thomas Conley of the Green Bay Police Department who indicates that on February 20, 2017, at approximately 3:19 AM, he heard an emergency tone over the radio, indicating there would be a weapons call. He was then advised by dispatch that they were on the phone with a male party, later identified as Bryant T. Ellis (DOB: 06-20-98), who advised he had just shot his best friend. Officers were advised that Ellis stated he was just playing with the gun and didn't know it was loaded. Officers were also advised Ellis had shot his friend in the side of the head.

While en route officers were advised Ellis was going to go upstairs and check on the male. Ellis advised he believed the victim might be breathing. Officers were then advised the victim was gurgling and the gun was unloaded on the table. Upon his arrival, Officer Conley, along with additional officers entered the residence on the east side entrance. Prior to doing so, he made announcements that it was the Green Bay Police Department and to show themselves now. Officers did not get a response from anyone inside and began to clear the residence. Upon arriving in the upstairs, officers located a male, later identified as Andrew Z. Tohulka (DOB 02-24-96), on his back with a red towel on his head. Andrew was not moving and appeared to be very pale. Officer Walvort checked for a pulse on his right wrist and advised he did not feel one. Green Bay Rescue arrived on scene and advised the gunshot to his head was not survivable after Walvort removed the cloth away from Andrew's head.

2. His review of a report of Officer Anna Serres of the Green Bay Police Department who indicates that on February 20, 2017, at approximately 3:19 AM, she and multiple other units were toned out for a possible weapons call at 1852 Harold Street in the City of Green Bay, Brown County, WI. Dispatch advised that the complainant stated he was playing with the gun and did not know it was loaded and he just shot his best friend. Upon arrival, Officer Serres and Officer Conley were approaching the house. Officer Serres had dispatch tell the complainant to come outside with his hands visible. At that point, a male identified as Bryant Ellis came out with his hands up. Officer Serres noted that Bryant still had his cellphone in his hand. He also had blood all over his arms. He appeared to be extremely distraught. At that point, Officer Serres placed him into handcuffs and patted him down. He was extremely remorseful and just kept asking about his friend. At that point, Ellis told Officer Serres that he was playing with the gun and that he had shot his friend in the head. Officer Serres then placed him into my squad car and gathered basic contact information. Ellis again said that he didn't know the gun was loaded, that he was just joking around, and that he couldn't believe he shot his friend. At that point, other officers determined that it was indeed a fatality and the scene was secured. Officer Serres and Officer Conley transported Bryant back to the police department.

At that point, Bryant was taken into interview room number 2 at the police department. Officer Conley and Officer Serres then took photographs of Bryant and noted that there was blood on both his hands and forearms. There was blood splatter on his left leg and foot and there was also slight blood splatter on the left side of his face and forehead. There was also blood on both shoulders on his t-shirt. Bryant then said that he couldn't believe that he shot his friend and that he did not know the gun was loaded. He stated that his friend had pointed the gun at him first jokingly and he was pointing it at his friend jokingly then he accidentally hit the trigger. A short time later, Officer Conley and Officer Serres used the gunshot residue kit and swabbed both hands and his face. That was later turned over to detectives.

Bryant's mother Adrienne LeClair had arrived at the police department. Officer Serres brought her into an interview room and spoke with her about what had happened. She stated that she and her husband were both gone to work for their paper route and that at 3:30 AM, her son Bryant had called her. He told her that he had shot Andrew. She stated that she had misheard and thought that he had said "I fought Andrew." She had asked him why they were fighting and he had said, "no mom, I shot Andrew." She had asked him what happened and he said he had gone downstairs to get a bottle of water. He went back up upstairs and Andrew had a gun pointed at Bryant and said "freeze mother fucker." Bryant thought he was playing around because he had known that the gun was unloaded. Andrew tossed the gun on the bed. At that point, Bryant picked up the gun playing back and said, "no, you freeze mother fucker" and at that point he must've pulled the trigger. He said "I shot my best friend. I think I killed him." She wasn't able to speak with him any further. Adrienne said she usually keeps the gun in the locked safe in her bedroom which is locked when she's not there, but due to Christmas money she had the unloaded gun under her bed. She said it's been there since December. She said Bryant had told her that he took it a couple days ago, but she wasn't sure exactly when and she wasn't sure

how he obtained it. She said that he and Andrew were best friends and that she believed that this was an accident.

3. His review of the report of Detective Michael Wanta of the Green Bay Police Department who indicates that on February 20, 2017, at approximately 3:47 AM, he was contacted to assist in the investigation of a shooting that occurred earlier that morning. He responded to the Green Bay Police Department and was briefed about the case before interviewing the suspect, Bryant Ellis, along with Detective Bradley Linzmeier.

Det. Linzmeier read Bryant his Miranda rights from a Green Bay Police Department Miranda form. Bryant answered "yes" to understanding his rights, and "ya" to being willing to answer questions. Bryant immediately said that Andrew was his best friend. Bryant frequently appeared distraught, and was also hyper. Detectives asked Bryant to go through what happened, and he said that Andrew came over around 2:45 am, after Bryant's parents left at 2:30 am. Bryant explained that he fell asleep around 2 pm in the afternoon, and slept until around 10:30 pm. Bryant said that his mom brought him some food and they talked for a bit, and then he watched TV. Bryant said that Andrew called him around 11:30 pm, and said he wanted to come over. Bryant said that he told Andrew he would call him after his parents left and admitted that they had done this a few other times when his parents left. Bryant said when his parents left he called Andrew, who said he was only 10 seconds away. Bryant said that he let Andrew in and Andrew grabbed a water and two shot glasses and went upstairs. Bryant said that he went to the bathroom and then went upstairs, and Andrew had poured them a shot of Jack Daniels. Bryant said that Andrew had brought the Jack Daniels over with him, and that he had some marijuana too. Bryant said that they did a couple shots and smoked the marijuana while they were watching TV. He later estimated that they had smoked 3 or 4 bowls of marijuana. Bryant said that he went downstairs to go to the bathroom and grabbed a water for Andrew and a soda for him. Bryant said that when he came upstairs, Andrew was pointing a gun at him, and said "freeze mother fucker." Bryant explained that Andrew was sitting in the chair in his room when it happened, and that Andrew knew where the gun was because he told him. Bryant said he knew Andrew was joking around, and said "good joke" to him. Bryant said that he threw Andrew his water and Andrew gave him the gun. Bryant said that he pointed the gun at Andrew and said "freeze," and when he pulled the trigger the gun went off. Bryant said he looked at the gun and thought "what the fuck just happened." Bryant said he looked at Andrew and saw the bullet hole in his head and blood was coming out. Bryant said he put a shirt on Andrew's wound, called 911, and then put the gun and magazines over on the table. Bryant said the female on 911 told him to put Andrew on the floor and to check him for breathing. Bryant said that all he could hear was some gurgling. Bryant said after about 30 seconds the police showed up.

Detectives then asked Bryant for additional details. Bryant explained a few days before, he took the gun out of his mom's room, while she was gone. Bryant said that it was under the bed on his step dad Gary's side of the bed, unloaded in the case. He said he was playing with it in his room and at that time the gun did not have any magazines or any bullets in it. Bryant said that he was going to put it back but that night he heard someone at the door to the house. Bryant said that he was freaked out, stayed in his room, and he remembered

that he had the gun in his room. Later when he was going to put the gun away, his mom came home so he took it back upstairs, and put it in his drawer. Bryant gave conflicting information on when he loaded the magazines; initially saying that he loaded just one of them when he took the gun. Bryant said that he got the bullets from a closet in the guest room. At one point, Bryant speculated that Andrew loaded the second magazine, and put it in the gun just prior to the shooting.

Bryant said that during the time he had the gun in his room, approximately 4 or 5 days, that Andrew had come over 3 or 4 times, and they had played around with it. Bryant said there were times that Andrew would point the gun at the TV and pull the trigger, and even pointed it at him and pulled the trigger a few times. When Detective Wanta asked Bryant if he could have put the gun away in the dresser loaded with the magazine in it, he said it was possible. He then attempted to explain that he had also smoked the night before and he had the gun out, and maybe he loaded it and didn't unload it before he put it back in the drawer. Bryant later said that the gun was loaded when it was in his room, and both he and Andrew would play with it while it was loaded. Bryant explained how Andrew would load and unload the gun, and rack rounds out of the gun. Just prior to taking his statement, Bryant said that he now remembered that Andrew was the last one to play with the gun prior to putting it away and was the first one today to touch it. Bryant said Andrew may have given it to him while it was still loaded when he put the gun back in the dresser drawer.

Bryant said that today when he went downstairs to get the water, the gun was in one of his dresser drawers. Bryant said that Andrew knew where the gun was because it was the same place he had it before when Andrew had grabbed it. He said that when Andrew pointed the gun at him he didn't hear it click, as if he had pulled the trigger. He said Andrew put the gun down on the glass table in front of them and they did another shot of Jack Daniels. Bryant said that he was sitting on the floor near Andrew, and grabbed the gun from the table and started playing with it. Bryant said that he pointed the gun at Andrew, who was sitting to his left, and said "freeze." He demonstrated how he pointed across his body, and said when he pulled the trigger the gun went off. Bryant said that he didn't notice the weight of the gun, as if a clip was in it, and said he was high and they were buzzed and he didn't notice the weight. He said when he pulled the trigger he thought it would just go click, "like it always does."

4. His review of the report of Detective Lee Kingston of the Green Bay Police Department who indicates that on February 21, 2017, he and Detective Weiss attended the autopsy of Andrew Tohulka at the Dane County Medical Examiner's office. The autopsy was performed by Dr. Rogalska, Forensic Pathologist. At the autopsy Detective Kingston observed that Andrew had a small entrance wound above his right eyebrow, with an exit wound on the back right side of his head. These wounds were consistent with a small caliber handgun round. Dr. Rogalska examined the wounds and took measurements, noting that the wounds were consistent with the accounts that Bryant had given to investigators. The wound on his forehead had gunshot powder stippling. Given the size of the pattern of stippling and the type of weapon, Dr. Rogalska estimated that the gun was fired from about 2 feet away from the victim. This would also be consistent with Bryant's

account of what happened. Rogalska said that the bullet traveled through the entire right hemisphere of Andrew's brain rendering immediately unconscious. She said that he appeared to live "seconds, to minutes" after being shot as he had blood in his airway, brain swelling and Bryant's account of Andrew taking gurgling breaths to the 911 operator. Andrew did not have any major illnesses, or defects that contributed to his death. His body did not show any signs of a fight or struggle.

5. Complainant has further reviewed records of the Brown County District Attorney's Office which he has used in the past and found to be reliable which indicate that on 2 prior occasions the defendant has been adjudicated delinquent for an act which if committed by an adult would be a felony; Brown County Cases 15-JV-9 and 13-JV-76 and such adjudications are unreversed and remain of record.

Complainant believes the reports of Officers Conley and Serres and Detectives Wanta and Kingston of the Green Bay Police Department as they are sworn law enforcement officers whose reports complainant has reviewed in the past and found to be truthful and reliable.

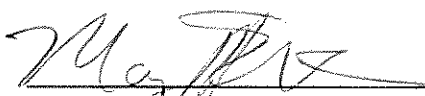
Based on the foregoing, the complainant believes this complaint to be true and correct.

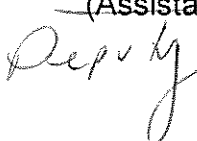
Subscribed and sworn to before me,
and approved for filing on:

This 21st day of February, 2017.



Complainant



(Assistant) District Attorney

Deputy