

FILED
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Clerk of Circuit Court
Brown County, WI
2022CF001981

STATE OF WISCONSIN CIRCUIT COURT BROWN COUNTY

STATE OF WISCONSIN,

Plaintiff,

Case No. 2022 CF 1981

vs.

SIENNA MARIE PECORE,

Defendant.

MOTION TO DISMISS

Sienna Marie Pecore, by undersigned counsel, moves this Court for an order dismissing the criminal complaint for lack of probable cause. The complaint does not provide sufficient allegations to demonstrate a violation of WIS. STAT. § 940.02(1). As a result, this Court lacks jurisdiction over Sienna, who is a juvenile, and the complaint must be dismissed in its entirety. *See* §§ 938.12(1) & 938.183(1). This motion is made pursuant to WIS. STAT. § 971.31; Article I, §§ 7 and 8 of the Wisconsin Constitution; the Fifth and Fourteenth Amendments to the United States Constitution; and those cases, statutes, and other authorities cited herein.

The complaint alleges that around 7:30 PM on October 30, 2022, fifteen-year-old Sienna Pecore was driving a 2017 Toyota Corolla registered to her mother when she was involved in a three-vehicle accident at the intersection of South

Oneida Street and West Mason Street in Green Bay. Sienna was speeding as she drove eastbound on Mason Street and approached the intersection. A grey sedan began to turn left from Oneida Street onto Mason Street. Sienna swerved to avoid a collision with the sedan, but was unsuccessful. Upon colliding with the sedan, Sienna lost control of the Corolla, which hit a blue Toyota that was stopped on Mason Street, waiting to turn left onto Oneida Street. The Corolla then spun to a stop. A 17-year-old boy identified as CB was pronounced dead at 8:22 PM after being taken from the scene of the accident to the hospital. After the accident, CB was seen in the rear seat area of the Corolla that Sienna had been driving.

First-degree reckless homicide, as defined in § 940.02(1), contains three elements. The State must prove that:

1. The defendant caused the death of a human being;
2. The defendant caused the death by criminally reckless conduct; and
3. The circumstances of the defendant's conduct showed utter disregard for human life.

WIS. JI-CRIM. 1020. Here, the criminal complaint fails to state facts sufficient to establish probable cause as to the first and third elements of the offense.

I. The complaint does not allege facts sufficient to establish probable cause as to causation.

The first element of first-degree reckless homicide is causation. The State must prove that “the defendant’s act was a substantial factor in producing the death” of another human being. WIS. JI-CRIM. 1020.

The criminal complaint identifies CB as the victim, but it does not allege the cause of CB’s death. The criminal complaint alleges that after the crash, CB was seen in the rear seat area of the Corolla that Sienna had been driving, and that he was taken to the hospital where he was later pronounced dead by medical staff. Dkt. 2, at 5. The criminal complaint does not allege the cause of CB’s death. The reader is left entirely to speculation. Perhaps CB suffered injuries during the crash. Perhaps he suffered from a disease or illness. Perhaps he suffered from an overdose of prescription or nonprescription drugs. Without factual allegations regarding the identified medical cause of his death, the criminal complaint does not establish probable cause of the causation element.

II. The complaint does not allege facts sufficient to establish probable cause as to utter disregard.

The third element of first-degree reckless homicide is “utter disregard.” The State must prove that “the defendant’s conduct showed utter disregard for human life.” WIS. JI-CRIM. 1020. Utter disregard is an “aggravating element”

distinguishing first-degree reckless homicide from second-degree reckless homicide. *Id.* cmt. 4. It “is intended to reflect the substance of case law defining ‘conduct evincing a depraved mind, regardless of human life.’” *Id.* In both *Balistreri v. State*, 83 Wis. 2d 440, 458, 265 N.W.2d 290 (1978), and *Wagner v. State*, 76 Wis. 2d 30, 47, 250 N.W.2d 331 (1977), the Wisconsin Supreme Court “held that swerving one’s vehicle to avoid a collision precluded a finding of utter disregard.” *State v. Geske*, 2012 WI App 15, ¶ 12, 339 Wis. 2d 170, 810 N.W.2d 226. The criminal complaint alleges that Sienna swerved to avoid colliding with the first vehicle, and that the resulting lack of control caused the collision with the second vehicle. This allegation alone, and in context with other allegations in the complaint, is insufficient as a matter of law to demonstrate probable cause of utter disregard.

A. The law

In *Wagner*, the defendant struck and killed a pedestrian who was crossing a main city street late at night. 76 Wis. 2d at 31–35. The defendant had taken pain and sleeping pills and had gone out drinking; he was engaged in a drag race at the time of the crash; two eyewitnesses saw him suddenly swerve to the left immediately before striking the victim; he then continued driving and was later found at home, unconscious, with a blood alcohol content of .178. *Id.* The Supreme

Court reversed his conviction because “his attempt to avoid striking the victim by swerving to the left indicates some regard for the life of the victim.” *Id.* at 47.

In *Balistreri*, the defendant struck another vehicle, killing a passenger, at an intersection while involved in a police chase through downtown Milwaukee during rush hour, weekday traffic. 83 Wis. 2d at 445–53. In the course of attempting to elude the police, the defendant drove the wrong way down at least two one-way streets, substantially exceeded the speed limit, and drove through at least five red lights. *Id.* At one point, he swerved to avoid an oncoming police vehicle, forcing three pedestrians in a crosswalk to jump out of the way. *Id.* The Wisconsin Supreme Court reversed his conviction because “[t]he uncontroverted evidence that the defendant attempted to avoid a collision precludes a finding that his conduct was devoid of concern for others or indifferent to the life of others.” *Id.* at 458.

The Court of Appeals explained in *Geske* that a swerve has been held to show regard for life, but it does not always preclude a finding of utter disregard. 2012 WI App 15, ¶ 17. Context matters. In *Geske*, the defendant struck another vehicle, killing both occupants, at an intersection. *Id.* ¶¶ 2–6. The defendant had taken prescription medication, which carried recommendations against consuming alcohol, and she had then gone out drinking; she drove through a red light at a

high rate of speed, without breaking; two eyewitnesses saw her swerve just before the crash; her blood alcohol content was .072 about two hours after the crash; the wreckage was severe, the most damage to a vehicle that multiple public safety professionals had ever seen. *Id.* The Court of Appeals held that there was sufficient evidence to support utter disregard for human life: the defendant had consumed alcohol and prescription pills prior to driving over eighty miles per hour on a major city street; she “never braked or slowed down before running the red light,” which provided her with “ample notice that her victims might cross her path,” and she caused a “catastrophic type of collision.” *Id.* ¶¶ 17–21.

B. Application

Here, the criminal complaint alleges that the vehicle driven by Sienna “began to swerve left just prior to” the crash. Dkt. 2, at 8. Specifically, Sergeant Hamill of the Green Bay Police Department’s traffic crash reconstruction unit reviewed two surveillance videos depicting the crash and reported that the videos showed that the Corolla “began to swerve left just prior to striking the northbound vehicle.” *Id.* And an eyewitness explained, “the vehicle going eastbound on W. Mason Street attempted to swerve to avoid the vehicle on Oneida Street and it possibly hit that vehicle. The eastbound vehicle then lost control and hit C.S.’s

vehicle head on.” *Id.* at 4. That allegation alone may preclude a finding of utter disregard, as it did in *Balistreri* and *Wagner*.

Of course, as *Geske* teaches, context matters. But here, unlike *Geske*, the context provided by the other allegations confirms that Sienna did not act with utter disregard. There are no allegations suggesting that Sienna consumed alcohol, prescription, or nonprescription drugs prior to driving—to the contrary, the criminal complaint alleges that Sienna denied use of drugs or alcohol prior to the accident. *Id.* No blood draw was performed.

As for the extent of the injuries suffered as a result of the collision, they are not of the “catastrophic type” that occurred in *Geske*. The occupants of one of the three cars allegedly involved in the crash “were standing outside of [their car] and they stated they were okay” shortly after the crash. *Id.* at 2-3. They later explained to law enforcement that “they both sustained cuts to their hands” and that their vehicle was “smoking.” *Id.* at 4. (Although a 911 call suggested that there was a vehicle on fire, the specific allegations regarding the condition of all the vehicles on the scene suggest that that was not the case.) The second of the three cars allegedly involved in the crash was first noted to have “significant damage to the passenger side rear door,” but the owner of the car later explained that “the large dent of the passenger rear door was old damage, and not as a result of the accident

that had just occurred.” *Id.* at 3. There was damage to the front bumper—the part of the car designed to absorb shocks from car accidents and reduce or prevent damage to the rest of the vehicle—but the owner was able to drive the vehicle to a parking lot immediately after the crash. *Id.* Sienna herself is alleged to have sustained “a broken arm as a result of the accident.” *Id.* at 7. And as explained above, there are no allegations as to what injuries, if any, CB sustained.

The alleged speed of Sienna’s vehicle, although excessive, is not alone sufficient to supply probable cause of utter disregard. *See Balistreri*, 83 Wis. 2d at 452. And importantly, after analyzing the videos depicting the crash, Sergeant Hamill determined that the Corolla’s speed markedly *decreased* in the seconds before impact—in other words, that Sienna braked, as well as swerved, in an attempt to avoid a crash. *See* dkt. 2, at 9.

As for the traffic light at the intersection: Sergeant Hamill’s review of surveillance video from two nearby business did not show the traffic signals but he reported that “it was clear from the behavior of other vehicles that the signal for traffic on W Mason St was red and the signal for S. Oneida St was green at the time of the crash.” *Id.* at 9. The complaint also alleges that Sienna “saw that the light was green, but then it turned yellow so she thought she could make it through the intersection.” *Id.* at 8. RGM, the driver who had been traveling

northbound on Oneida and was beginning to turn left to go westbound on Mason when the collision occurred, stated that the signal for Oneida had been red, and that he began to turn left once it turned green. *Id.* at 3. He was still in the intersection, completing the left turn, when his car was struck. *Id.* In other words, the complaint alleges that the traffic signals had just changed prior to the accident occurring – thus not providing the “ample notice” to Sienna that the defendant in *Geske* had.

Finally, there is Sienna’s age. Unlike the defendant in *Geske*, Sienna was only 15 years old at the time of the crash. “From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult.” *Roper v. Simmons*, 543 U.S. 551, 570 (2005). “Utter disregard” is an aggravating element, that is, an element that when met allows for an increased penalty as a result of increased blameworthiness or culpability. WIS. JI-CRIM. 1020. Here, Sienna’s “culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity.” *Roper*, 543 U.S. at 571. To put it simply, juveniles are “less culpable than adults.” *Id.* And the fact that Sienna left the scene of the accident – just like the defendant in *Wagner* did – must also be viewed in light of her age and the circumstances. The complaint alleges that Sienna’s flight was not a conscious decision on her part, but rather was done at the urging of two-year-

old Rezhun Scott, who took Sienna to his white SUV and drove her to his apartment for the night, despite her broken arm. Dkt. 2, at 3, 8. Sienna used Rezhun's phone to call her mother, but only spoke to her for about 10 seconds before Rezhun picked up the phone and took over the conversation. *Id.* at 6.

CONCLUSION

For the foregoing reasons, Sienna Pecore respectfully requests that the Court issue an order dismissing the criminal complaint.

Dated this 6th day of January, 2023.

Respectfully submitted,

SIENNA MARIE PECORE, *Defendant*

Electronically signed by Stephen P. Hurley

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