

STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY

STATE OF WISCONSIN

Plaintiff,

DA Case No.: 2016ML028105

Court Case No.:

vs.

CRIMINAL COMPLAINT

HEAGGAN-BROWN, DOMINIQUE L
5313 NORTH 65TH STREET
MILWAUKEE, WI 53218
DOB: 01/08/1992

Defendant,

For Official Use

RICARDO TIJERINO BEING DULY SWORN, ON INFORMATION AND BELIEF STATES THAT:

Count 1: FIRST DEGREE RECKLESS HOMICIDE

The above-named defendant on or about Saturday, August 13, 2016, at 3216 North 44th Street, in the City of Milwaukee, Milwaukee County, Wisconsin, did recklessly cause the death of Sylville Kwame Smith, 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 defendant may be sentenced to a term of imprisonment not to exceed sixty (60) years.

Probable Cause:

Complainant states that he is a Special Agent for the Wisconsin Department of Justice, Division of Criminal Investigation and he bases this complaint on information and belief and the following:

On Saturday, August 13, 2016 at 3:45pm, Lt. Erwin of the Milwaukee PD contacted Special Agent in Charge David Klabunde regarding an officer involved death (OID) that occurred at 3218 N. 44th Street in the City of Milwaukee. Lt. Erwin advised that the decedent had no pulse and was not breathing at the scene. A request was made for the Division of Criminal Investigation (DCI) to be the lead investigating agency pursuant to Wis. Stat. 175.47.

Preliminary information indicated that two male subjects fled from a vehicle and were pursued by Milwaukee Police Officers Heaggan-Brown and Malafa. One individual ran into a gangway between houses. The subject was armed with a semi-automatic pistol and was subsequently shot two times by P.O. Dominique Heaggan-Brown. The decedent was later identified as Sylville K. Smith.

A Glock .40 caliber model 22 semi-auto pistol with an extended magazine was recovered on scene, and two spent cartridge casings consistent with ammunition issued to Milwaukee Police Department officers were also recovered.

The investigation revealed that both P.O. Heaggan-Brown and P.O. Malafa were wearing body cameras during this incident. DCI agents took possession of those units and downloaded the videos to a disc for review. A review of the body camera footage from both officers shows that Smith fled from a 2016 Ford Fusion and ran around the front of the car and into the yard between 3216-3218 North 44th Street while carrying a black semi-automatic handgun with an extended magazine. Officers Heaggan-Brown and Malafa pursued Smith on foot. The video shows Smith slip to the ground as he approaches

a chain link fence between two houses. The video shows Smith rise back to his feet with the gun still in his right hand and Smith turns his head and upper body towards the officers. He then raises the gun upward while looking in the direction of the officers and throws the gun over the fence into the yard. Smith's firearm was not discharged.

While Smith raises his gun upward, P.O. Heaggan-Brown discharges one shot from his service weapon at Smith and Smith falls to the ground on his back. It was later determined that Heaggan-Brown's first shot struck Smith in his right bicep area with the bullet passing through Smith's bicep and lodging in a window casement to the east of the shooting. After going to the ground, Smith was unarmed.

P.O. Malafa was in pursuit behind P.O. Heaggan-Brown, and the action was captured by his body camera as well. The video shows Smith fall to his back, with his legs and arms going up towards his head in what appears to be a half backwards roll. P.O. Heaggan-Brown is observed standing a short distance from Smith with his weapon pointed down at Smith when Heaggan-Brown discharges a second shot from his weapon at what appears to be Smith's chest. After the second shot, Smith's arms and legs are still moving and he appears to bring his left hand toward his waistband. A review of the body camera video from both Heaggan-Brown and Malafa confirms that at the time of the second shot, Smith was unarmed and had his hands near his head.

The audio portion of the video engages after approximately 30 seconds (after the discharge of the firearm) and P.O. Heaggan-Brown is heard yelling at Smith to, "Stop reaching", and P.O. Heaggan-Brown secures Smith's left hand away from his waist. The elapsed time between the discharge of the first shot and the second shot by P.O. Heaggan-Brown was determined to be 1.69 seconds.

P.O. Heaggan-Brown was interviewed regarding the incident by DCI Special Agents. Heaggan-Brown stated that he was patrolling in the area of the 3200 block of North 44th Street when he observed a car with an out of state license plate and an individual leaning into the passenger window of the car. Based on his experience he believed it could be consistent with drug activity and he stopped his squad car to the west of the suspected car at which time the driver fled east through the area between two houses. The individual stopped at a fence in the gangway and brought a pistol up while looking at Heaggan-Brown. Heaggan Brown fired once at which time he observed the pistol fly out of Smith's hands and over the fence into the backyard of the residence. Smith then fell to the ground and Heaggan-Brown believed he was reaching for his waist so he discharged his weapon a second time. A review of the body camera footage shows that at no time after the shooting did Heaggan-Brown or any other officer search Smith for a second firearm. In fact, when Smith demonstrably reaches for his waistband *after* being shot the second time, Heaggan-Brown does not discharge his weapon, but moves Smith's hand away with his own hand.

A review of both Heaggan-Brown's body camera and Malafa's body camera confirm that Smith was unarmed at the time of the second shot.

Sylvile Smith was pronounced dead on scene by Dr. Nicole Lopez of the Milwaukee County Medical Base and transported from the scene of the shooting to the Medical Examiner's Office by Milwaukee Fire Department personnel. The autopsy of Sylvile Smith was conducted at the Milwaukee County Medical Examiner's Office on Monday, August 15, 2016 by Dr. Lelinski and was attended by DCI Special Agents Conrad and Tijerino. The autopsy revealed that Smith suffered two gunshot injuries in this incident. Smith suffered a through and through gunshot wound to his right upper arm and a penetrating gunshot wound to the right upper chest. Dr. Lelinski determined to a reasonable degree of medical certainty that the cause of death was gunshot wounds to the arm and chest.

The bullet was recovered by Dr. Lelinski and collected as evidence by DCI agents. During the autopsy, Dr. Lelinski recovered several bullet fragments that were determined to be from injuries sustained outside of this current incident. Those fragments were recovered and collected by DCI agents.

On Friday, August 19, 2016, DCI returned to the scene to conduct a secondary search along with the WSCL mobile response team and the WSP TRU. The scene investigation was completed and a spent bullet was located within the area of the shooting, believed to be the bullet from Heaggan-Brown's first shot that is identified as a through and through wound to Smith's right bicep area.

****End of Complaint****

Subscribed and sworn to before me and approved for filing this _____ day of December, 2016.

John T. Chisholm
District Attorney
1023023

Complaining Witness