

FILED
01-20-2022
John Barrett
Clerk of Circuit Court
2022CF000051

STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY

STATE OF WISCONSIN

Plaintiff,

DA Case No.: 2022ML000407

Court Case No.: 2022CF000051

VS.

Ellis, Derrick Dwight
533 North 34th Street
Milwaukee, WI 53208
DOB: 03/27/1987

**AMENDED
CRIMINAL COMPLAINT**

Defendant(s).

For Official Use

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

Count 1: POSSESSION OF A FIREARM BY OUTSTATE FELON

The above-named defendant on or about Sunday, January 2, 2022, at 5120 West Capitol Drive, in the City of Milwaukee, Milwaukee County, Wisconsin, did possess a firearm, having been convicted of a crime elsewhere that would be a felony if committed in this state, contrary to sec. 941.29(1m)(b), 939.50(3)(g) Wis. Stats.

Upon conviction for this offense, a Class G Felony, the defendant may be fined not more than Twenty Five Thousand Dollars (\$25,000), or imprisoned not more than ten (10) years, or both.

Count 2: HOMICIDE BY NEGLIGENT HANDLING OF A DANGEROUS WEAPON, EXPLOSIVES OR FIRE

The above-named defendant on or about Sunday, January 2, 2022, at 5120 West Capitol Drive, in the City of Milwaukee, Milwaukee County, Wisconsin, did cause the death of Niesha Harris, by the negligent handling of a dangerous weapon, contrary to sec. 940.08(1), 939.50(3)(g) Wis. Stats.

Upon conviction for this offense, a Class G Felony, the defendant may be fined not more than Twenty Five Thousand Dollars (\$25,000), or imprisoned not more than ten (10) years, or both.

Probable Cause:

I am a City of Milwaukee law enforcement officer and base this complaint on my own investigation, on the written and oral reports of fellow officers, on a teletype of the defendant's record from the clerk of court in Berrien County, Michigan, on telephone confirmation of the Michigan conviction from the Berrien County prosecutor's office, and on Assistant District Attorney Lonski's review of Michigan statute sec. 750.110A3 .

First Response and Cause of Death:

On January 2, 2022, at about 10:13 PM, police responded to a shooting at the Burger King restaurant at 5120 W. Capitol Drive, Milwaukee. Upon arrival they found the 16-year-old female victim, NHB, lying on the floor near the drive-thru window, suffering from gunshot wounds to the chest. NHB was

transported to a hospital and was pronounced deceased at the hospital shortly after her arrival. Her body was transported to the Milwaukee County Medical Examiner.

Dr. Brian Linert, an assistant medical examiner, performed an autopsy. He concluded that the cause of death was multiple gunshot wounds and the manner of death was homicide.

Video from cameras in Burger King showing the circumstances of the shooting:

The footage from the camera inside of the drive-thru window shows that at about 10:05 PM, an Impala pulls up to the drive-thru window. The driver raps on the closed window. At that time no one is attending the window, as the restaurant is closed and the employees are busy cleaning and closing up. A juvenile male employee responds to the rapping and opens the window and briefly says something to the Impala driver. The Impala then pulls away, and the juvenile male closes the window.

About three minutes later, the same Impala and driver re-appear at the drive-thru window. This time the victim, NHB, is in the area of the window, and she opens it. She immediately and quickly backs away from the open window and stands off to the side of the window, so that she is no longer visible to the driver of the Impala. She removes the cash drawer from the cash register and stands there holding it while she calls out towards the other employees who are in the interior of the restaurant. She remains in this situation for about 40 seconds, and after that amount of time the driver of the Impala opens the car door, steps out of the car, and inserts his upper body into the drive-thru window, such that his head, both shoulders, and both arms and hands are now on the inside of the building. In one of his hands the Impala driver is holding a semiautomatic pistol.

In response to the Impala driver entering partway into the window, NHB backs away from him a few feet, moving further towards the interior of the building. The Impala driver waves the gun and points the gun in her direction, motioning with his free hand and reaching it towards the cash register drawer, which NHB has placed on a table next to her. NHB and the Impala driver remain in this situation for about 22 seconds, during which NHB is facing the Impala driver but continually looking back over her shoulder towards the interior of the building and calling out in that direction. Suddenly the Impala driver ducks and pulls himself out of the window, and at the same moment NHB falls to the floor. The Impala driver immediately drives away, and NHB remains on the floor, rolling about, bleeding, and crying out.

It does not appear that the Impala driver's gun ever discharged, since there is no muzzle flash or smoke, no cartridge casing is ejected, and there is no motion consistent with the recoil of a gun.

Other cameras show that a male employee, the defendant Derrick Ellis, was in the interior of the building at the start of the encounter between the NHB and the Impala driver at the drive-thru window. After the encounter has started and NHB is calling out, the manager is seen calling out towards Ellis. Ellis goes to a door that leads to the drive-thru area and peers around the door, at which time he would see the Impala driver holding a gun and pointing it at NHB. Ellis reaches around the door with a pistol and fires towards the drive-thru window. Muzzle flashes come from Ellis's gun, and casings can be seen being ejected from it.

The door where Ellis is positioned when he fires his gun is about 20 feet away from the drive-thru window. He positions himself by pressing his body against the door to hold it halfway open. With his entire body pressed flat against the door, with the door between himself and his target, he reaches around with his hand and fires. He is holding the pistol with one hand only and does not appear to be using the sights on the gun to aim it. At the time he takes these one-handed shots, NHB is positioned between Ellis and the Impala driver, such that Ellis would have to shoot past her in order to hit the Impala driver.

Crime Scene

Investigation of the shooting scene revealed bullet damage to a wall near the drive-thru window. This damage, in conjunction with the footage from several cameras, is consistent with the fatal shots having been fired from Ellis's gun. Nothing was found to suggest that the Impala driver fired his gun.

Follow-up Investigation and Arrest of Suspects:

The ensuing investigation (which is not being detailed in this complaint) led police to suspect that an Antoine Edwards, was the driver of the Impala, and that Edward's 16-year-old daughter was working in Burger King at the time of the incident and may have been involved with Edwards in staging a robbery to steal money from Burger King. Both of them were arrested and admitted the robbery was indeed staged and that the plan went awry when an employee from inside the Burger King fired a gun at Edwards. (Edwards is charged in separate complaint)..

Defendant's conduct after the shooting:

The video footage showed that after the shooting, Ellis crawls on the floor collecting the casings that were ejected from his gun. Ellis then meets with the restaurant manager, who opens a safe in the office, and Ellis places a white object into the safe. Ellis then leaves the restaurant without providing assistance to NHB. Ellis never contacts police to report what he witnessed or what happened. Police never find the casings that Ellis collected. A complaint and warrant were filed against Ellis on January 6, 2022, and he turned himself in to police twelve days later.

Statement of Burger King Manager, identification of defendant, and recovery of firearm:

Police interviewed the restaurant manager. She identified the defendant Ellis as her live-in boyfriend, who is also a Burger King employee. She said that the defendant carries the gun while he is at work and was carrying it on this particular day and had it on his person prior to the shooting. After the shooting the defendant asked her to hide the gun in the safe because he was a felon and could not possess it. She opened the safe for the officers, and they found a white .380 caliber pistol inside the safe.

She identified Ellis from a booking photograph and confirmed that he was the person in the video footage who was wearing all black, fired the gun, and collected the casings.

Defendant's status as a felon:

Records from the clerk in Berrien County, Michigan, show that in 2014 the defendant was convicted of Attempted Second Degree Home Invasion contrary to sec 750.110A3 Mich. Stats.¹ If this conduct had been committed in Wisconsin, it would constitute the felony offense of Attempted Burglary contrary to sec. 943.10 Wis. Stats.¹

****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

¹ Michigan State sec. 750.110(a)(3) provides as follows: "A person who breaks and enters a dwelling with intent to commit a felony, larceny, or assault in the dwelling, a person who enters a dwelling without permission with intent to commit a felony, larceny, or assault in the dwelling, or a person who breaks and enters a dwelling or enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, commits a felony, larceny, or assault is guilty of home invasion in the second degree."

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.

Subscribed and sworn to before me on 01/20/22

Electronically Signed By:

Michael J. Lonski

Assistant District Attorney

State Bar #: 1007134

Electronically Signed By:

Brian Maciejewski

Complainant