

NO. _____

IN THE
Supreme Court of the United States

JOHN YANG,

Petitioner,

V.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

APPENDIX

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In the
United States Court of Appeals
For the Seventh Circuit

No. 21-2745

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JOHN YANG,

Defendant-Appellant.

Appeal from the United States District Court for the
Eastern District of Wisconsin.

No. 1:20-cr-00234 — **William C. Griesbach, Judge.**

ARGUED MAY 16, 2022 — DECIDED JULY 12, 2022

Before EASTERBROOK, BRENNAN, and ST. EVE, *Circuit Judges.*

BRENNAN, *Circuit Judge.* John Yang challenges the district court’s denial of his motion to suppress evidence obtained in a warrantless search of a vehicle in which he was a passenger. He argues that officers lacked reasonable suspicion for the stop and unlawfully extended the seizure. Because officers had reasonable suspicion to believe that a traffic violation occurred and that the vehicle’s occupants were involved in illicit

drug activity, and because the officers did not unlawfully prolong the stop, we affirm.

I

On November 23, 2020, Officer Garth Russell was on patrol in the “Bravo” district of Green Bay, Wisconsin. Five days prior, Russell had received an email from another officer discussing suspected drug activity at 826 Kellogg Street, a house in that district. The email included at least one report of repeated “in and out traffic at suspicious times.” Russell was also aware of drug activity at several other homes in the area. In addition to making narcotic-related arrests, he had discovered drug paraphernalia at the nearby Express Convenience Center gas station on Dousman Street (“Dousman Express”).

Sometime after 1:00 a.m., Russell observed John Yang standing near a Dodge Ram truck at the Dousman Express. Yang was with two other men, one of whom was holding a chainsaw. As Russell drove past, he made eye contact with Yang, who “kept staring at [Russell’s] vehicle, … looking to make sure [his] vehicle disappeared.” After driving out of view, Russell turned around and headed back to the Dousman Express, but when he arrived, the three men and the truck were gone.

Meanwhile, Officer Benjamin Harvath was also on patrol in a nearby neighborhood. Harvath had been a member of the Green Bay police force for four years, during which he had received training on drug interdiction. Like Russell, Harvath had received the email about suspicious narcotics activity at 826 Kellogg Street. Harvath also knew about drug trafficking in that area of Green Bay because he had previously discovered narcotics during traffic stops on Kellogg Street.

According to Harvath, "this area of Bravo district is one that is known to me and other officers to be of heightened drug activity."

At approximately 1:30 a.m., while driving east on Kellogg Street, Harvath noticed a Dodge Ram truck parked near 826 Kellogg Street, facing west. The truck's engine was running, but its lights were turned off, and Harvath thought he saw two people inside the vehicle. Harvath drove by the truck, made a U-turn, and then drove by again. This time, he saw a third person (later revealed to be Yang) a few houses away walking towards the truck from the direction of 826 Kellogg Street.

Harvath became suspicious because he knew that neighborhood did not experience much foot traffic, and no other vehicles or pedestrians were around this early in the morning. Harvath also knew from his training and experience that drug purchasers often park down the block from a dealer's home to avoid suspicion or association with a particular house. Temperatures that morning were at or below freezing. So, Harvath could "think of no other reason why the driver of the pick-up would park and make his passenger walk to his location, as opposed to driving up to the house from which he had emerged," per the district court.

Harvath radioed his suspicions to other officers in the area. As he did so, the driver of the truck turned on its headlights, drove away from the curb, and turned south onto North Oakland Avenue. After the truck was out of view, Harvath made a second U-turn on Kellogg Street and pursued it. The remainder of the encounter is recorded on Harvath's patrol car dashcam.

After a few seconds in pursuit, Harvath witnessed the truck roll through a stop sign at the corner of North Oakland Avenue and Dousman Street. His dashcam video depicts the truck's brake lights activating near the stop sign, but the video is grainy and out of focus, so the footage is unclear as to whether the truck came to a full and complete stop. Moments after the truck turned west onto Dousman Street, Russell responded to Harvath's prior radio message. Russell informed Harvath that he witnessed a similar Dodge Ram earlier in the evening involved in suspicious activity, and that its passengers were "being shady." At this point, as the truck turned south onto Ashland Avenue, Harvath announced his intention to stop the vehicle.

The truck pulled into a restaurant parking lot on Ashland Avenue. With his patrol car lights activated, Harvath parked behind the truck. Within a few seconds, Russell also arrived and positioned his patrol car next to Harvath's vehicle. Russell's dashcam recorded the Dodge Ram from an angle virtually identical to Harvath's.

When Harvath approached the driver's door, he saw three men seated on a bench seat in the front of the truck—the driver Adam Zimdars, the middle-seat passenger Justin Taylor, and the window-seat passenger Yang. Harvath questioned Zimdars about his plans and the origin of his trip. Harvath then explained that the truck was stopped for the traffic violation at the stop sign and a burnt-out license plate light.¹ He asked Zimdars for his identification. Before Zimdars could reach for his wallet, though, Harvath asked if there were any

¹ Before the district court, the Government did not rely on the lamp light as a justification for the stop.

weapons in the vehicle. Zimdars responded equivocally. He said he was not “aware” of any weapons in the car and that he did not personally “have a gun.” This further raised Harvath’s suspicions. After obtaining Zimdars’ identification, Harvath called for a canine unit, returned to his patrol car, and worked with dispatch to process the men’s driving records and check for warrants.

Meanwhile, Russell had approached the passenger side of the truck and spoke with Yang and Taylor. Russell told the passengers that earlier in the evening he had seen them with a chainsaw and the Dodge Ram at the Dousman Express. Because neither passenger was wearing a seatbelt, Russell also asked for their identification information, which he later provided to Harvath. Throughout his questioning, Russell repeatedly told Yang to keep his hands visible, as Yang frequently put them down and out of Russell’s view.

While Harvath was waiting in his patrol car for dispatch to process the identification information, a canine unit arrived. Russell then opened the Dodge Ram’s passenger door and instructed the occupants to exit. At this point, according to Russell, Yang became visibly pale and his shoulders slumped down. As Yang exited the truck, Russell again ordered him to keep his hands where Russell could see them. Yang did not comply and reached for his waist, which prompted Russell to grab Yang’s hands and press him up against the side of the truck. Yang fought back, and Harvath ran from his patrol car to help Russell. During the struggle, a handgun fell from Yang’s waistband, along with a package containing methamphetamine and marijuana. Russell saw the gun and shouted to alert the other officers. As Yang broke free

from the officers' grasp and attempted to flee the scene, Harvath subdued Yang with a taser.

After Yang was placed under arrest, the officers found additional methamphetamine in the Dodge Ram. The drug-detection dog remained in the canine squad car throughout the stop. The entire episode—from Harvath's first communication with the truck's occupants to the start of the altercation—lasted less than six minutes, according to Harvath's dashcam video.

A federal grand jury indicted Yang for possession with intent to distribute methamphetamine, possession of a firearm in furtherance of a drug-trafficking crime, and two other gun offenses. Yang moved to suppress all physical evidence found on his person and in the Dodge Ram, arguing that officers lacked specific and articulable facts under the Fourth Amendment to justify the traffic stop. At Yang's request, the district court held an evidentiary hearing on the motion, at which Harvath and Russell testified.

After post-hearing briefing, the district court denied Yang's motion to suppress. The court ruled that Harvath had two independent grounds to justify the stop. First, there was reasonable suspicion to believe that a traffic violation had occurred. While acknowledging that "one cannot discern from the video taken by the dashboard camera of Officer Harvath's squad car whether the truck came to a complete stop," the court found "the testimony of both police officers credible," and credited Harvath's testimony recounting his personal observation of the truck rolling through the stop sign. "It is not foreign to human experience," the court stated, "for personal observation in matters involving motion, distance, and

perspective to be more clear when viewed live than from a video recording.”

Second, the court held that the stop was justified under *Terry v. Ohio*, 392 U.S. 1 (1968), because Harvath testified to specific and articulable facts providing reasonable suspicion of unlawful drug activity. These facts included the time of night; the truck engine running with its headlights turned off; the location being “less than two blocks away” from a house with suspected drug activity (826 Kellogg Street); and Yang’s walking towards the parked truck from a measurable distance despite the freezing temperatures—a common tactic for drug deals which Harvath knew from his training and experience. While Yang argued that each individual fact had an innocent explanation, the court reasoned that those facts must be examined under the totality of the circumstances. Applying that standard, the court concluded “Harvath had a reasonable suspicion that criminal activity ‘may be afoot’ when he stopped the pick-up truck and questioned its occupants.” (citation omitted) (quoting *United States v. Arvizu*, 534 U.S. 266, 273 (2002)).

As a final matter, the court noted the short duration “from the time the officers approached the truck until Yang was arrested.” Because Harvath was attempting to verify the identities of the truck’s occupants when the physical altercation ensued, the court concluded “[n]either officer prolonged the stop beyond the time needed to address the concerns that gave rise to it.”

Following the denial of his motion to suppress, Yang entered conditional pleas of guilty to the charges of possession of methamphetamine and possession of a firearm in furtherance of drug trafficking, while the other two counts were

dismissed at sentencing. The plea agreement preserved his right to appeal the court's denial of his motion to suppress. Yang was sentenced to 111 months' imprisonment.

II

A

On appeal, Yang contends the traffic stop was not supported by reasonable suspicion in violation of the Fourth Amendment. When evaluating the denial of a motion to suppress, we review the court's factual findings for clear error, while legal conclusions and mixed questions of law and fact are reviewed *de novo*. *United States v. Gholston*, 1 F.4th 492, 496 (7th Cir. 2021). "A factual finding is clearly erroneous only if, after considering all the evidence, we cannot avoid or ignore a 'definite and firm conviction that a mistake has been made.'" *United States v. Burnside*, 588 F.3d 511, 517 (7th Cir. 2009) (quoting *United States v. Marshall*, 157 F.3d 477, 481 (7th Cir. 1998)).

"[T]he ultimate touchstone of the Fourth Amendment is reasonableness." *United States v. Price*, 28 F.4th 739, 748 (7th Cir. 2022) (alteration in original) (quoting *Riley v. California*, 573 U.S. 373, 381 (2014)). "Reasonableness, in turn, is measured in objective terms by examining the totality of the circumstances." *United States v. Cole*, 21 F.4th 421, 427 (7th Cir. 2021) (en banc) (quoting *Ohio v. Robinette*, 519 U.S. 33, 39 (1996)). As traffic stops are seizures, they must be reasonable under the circumstances. *Id.* Because "a routine traffic stop is 'more analogous to a so-called *Terry* stop ... than to a formal arrest,'" *Rodriguez v. United States*, 575 U.S. 348, 354 (2015) (quoting *Knowles v. Iowa*, 525 U.S. 113, 117 (1998)), only reasonable suspicion of wrongdoing is required. *Cole*, 21 F.4th at

427. Although a mere hunch will not suffice, “the level of suspicion the standard requires is ‘considerably less than proof of wrongdoing by a preponderance of the evidence,’ and ‘obviously less’ than is necessary for probable cause.” *Navarette v. California*, 572 U.S. 393, 397 (2014) (quoting *United States v. Sokolow*, 490 U.S. 1, 7 (1989)). Rather, an officer “must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant th[e] intrusion.” *United States v. Rodriguez-Escalera*, 884 F.3d 661, 668 (7th Cir. 2018) (alteration in original) (quoting *Terry*, 392 U.S. at 21).

When assessing reasonable suspicion under the totality of the circumstances, courts should not engage in a “divide-and-conquer analysis.” *District of Columbia v. Wesby*, 138 S. Ct. 577, 588 (2018) (quoting *Arvizu*, 534 U.S. at 267). Factors supporting reasonable suspicion may be discussed separately, but courts must still “consider the reasonable inferences that a law enforcement officer could draw from the objective facts in combination” rather than “examin[ing] each factor … in isolation.” *Rodriguez-Escalera*, 884 F.3d at 668.

The Government offers two independent grounds for why Harvath stopped the truck, either of which would render the seizure constitutionally permissible. First, Harvath had a reasonable suspicion that a traffic violation had occurred. Second, Harvath pointed to specific and articulable facts supporting a reasonable suspicion that the occupants of the Dodge Ram were involved in illicit drug activity.

The district court twice found Harvath’s testimony credible, in which he recounted his personal observation of watching the Dodge Ram roll through a stop sign at the corner of North Oakland Avenue and Dousman Street. Importantly,

when evaluating an officer's testimony regarding traffic infractions, "[t]he question ... is whether [the officer] reasonably believed that he saw a traffic violation, not whether [the defendant] actually violated the [law]." *Cole*, 21 F.4th at 428. "We accord special deference to the district court's credibility determinations because the resolution of a motion to suppress is almost always a fact-specific inquiry, and it is the district court which heard the testimony and observed the witnesses at the suppression hearing." *United States v. Bebris*, 4 F.4th 551, 560 (7th Cir. 2021) (quoting *Burnside*, 588 F.3d at 517).

Yang makes various challenges to Harvath's credibility. He insists the dashcam video from Harvath's patrol car shows the truck came to a complete stop. But that video is grainy and out of focus, and while it depicts the truck's brake lights turning on temporarily, it does not demonstrate that the truck came to a complete stop, as opposed to slowly approaching and passing through the intersection.

Yang argues that the dashcam video shows two cars crossing the intersection perpendicular to the Dodge Ram, which proves that the truck must have fully stopped. But again, the low-quality video footage does not confirm the truck's distance from the intersection, nor does it establish whether the vehicle was stopped or slowly moving forward when the other cars crossed. In fact, the video reveals that the truck's brake lights were off as the second car crossed the intersection, which could show that the Dodge Ram was in motion despite other traffic. Our review of the dashcam footage does not leave us with a "definite and firm conviction that a mistake has been made." *Burnside*, 588 F.3d at 517 (quoting *Marshall*, 157 F.3d at 481). And even if the video raised doubts as to whether a traffic violation occurred, the question is

whether our confidence is undermined that Harvath reasonably believed he witnessed a traffic violation, which it is not.

As a practical matter, Yang also contends that Harvath was not well positioned to observe whether the truck rolled through the stop sign. He suggests that Harvath's observations were made while he was driving several hundred feet behind the Dodge Ram, so it is improbable that Harvath could have seen the truck's tires spinning. But Yang failed to raise any of these questions or concerns at the evidentiary hearing. It is also contradictory for Yang to suggest that Harvath was not well positioned to see whether the truck was stopped, while also contending that a blurry video taken from Harvath's vantage point shows just that. None of the circumstances Yang raises provide an adequate basis for disturbing the district court's credibility determinations.

Yang further contends Harvath equivocated as to whether he saw the truck roll through the intersection without stopping. But Yang's only basis for this contention is that Harvath testified he "perceived" a traffic infraction—a term Yang says denotes uncertainty. But "perceived" does not inherently imply indecision in perception, and multiple times in the record Harvath testified the truck did not fully stop.²

Yang offers only one argument that directly calls into question Harvath's credibility. According to Yang, when Harvath pulled the truck over, Harvath informed Zimdars that

² Dist. Ct. D.E. 22 at 25 (Q: "[D]id the Dodge Ram come to a complete stop?" A: "No, it did not."); R. 22 at 30 (Q: "[W]hat you're saying is a rolling stop, an incomplete stop?" A: "Yes."); *id.* at 44 (Q: "Officer Harvath, ... you thought ... the vehicle went through an intersection without stopping, ... is that correct?" A: "That's accurate, yup.").

one of the license plate lights was burnt out. But at the evidentiary hearing, Harvath admitted his dashcam video depicts “the light bulb on the driver’s side is illuminating the plate.” Yang suggests this shows that Harvath was predisposed to seeing traffic violations that did not occur. But as the district court correctly noted, neither Harvath’s testimony nor the video footage touch on the passenger-side license plate light, leaving the “possibility that a second lamp on the passenger side was out.” Yang does not address this possibility, and the record is silent on whether the passenger-side license plate light was functioning. Without more, the district court’s credibility determinations stand.

While Harvath’s reasonable suspicion that a traffic violation had occurred is sufficient to uphold the stop, the officers also had reasonable suspicion, under the totality of the circumstances, to believe that the truck’s occupants were engaged in unlawful drug activity. The events unfolded in a residential neighborhood at 1:30 a.m. with low foot traffic and no other pedestrians. Harvath knew—from his personal experience and the email he had received five days earlier about 826 Kellogg Street—that this neighborhood experienced heightened drug trafficking. A Dodge Ram was parked with its engine on and lights off less than two blocks away. Yang was walking towards the truck from that address. Even though it was dark with freezing temperatures, the driver of the truck waited for Yang to reach the vehicle, which Harvath knew was consistent with illegal drug activity. After Harvath made his second U-turn and returned to that location, the truck and Yang were gone. As Harvath followed the truck, Russell relayed over the radio that Russell had seen a Dodge Ram earlier that night and thought the occupants acted “shady.” These specific and articulable facts, taken together

with all rational inferences from those facts, reasonably warranted the stop.

Yang responds that many of these facts have innocent explanations. He suggests that police intelligence identifying 826 Kellogg Street as a suspected drug house might have been thin, Yang might not have been walking from that address, the Dodge Ram's lights might have been off for innocuous reasons, and Yang might not have been walking to the truck.

Although Yang offers alternative explanations for these facts, he does not demonstrate why Harvath's inferences from the facts were unreasonable. It has been "consistently recognized that reasonable suspicion 'need not rule out the possibility of innocent conduct.'" *Navarette*, 572 U.S. at 403 (2014) (quoting *Arvizu*, 543 U.S. at 277). While Yang explains why Harvath might have drawn alternative inferences from what he observed, conduct explained by another, innocuous cause does not negate reasonable suspicion. *Id.* Moreover, while Yang's analysis effectively shows that any individual factor would not independently give rise to a reasonable suspicion of wrongdoing, his piecemeal approach does not overcome the cumulative weight of the specific and articulated facts known to Harvath, which is what a totality-of-the-circumstances approach demands.

Yang discusses in detail one fact he believes the district court improperly considered. Yang is correct that, per the audio from Harvath's dashcam, Russell is only heard to tell Harvath that the Dodge Ram's occupants were "being shady." But it is uncertain if Russell ever relayed to Harvath the basis for this belief, including that Russell saw the truck's occupants with a chainsaw and that Yang had given Russell suspicious looks. Yet this argument proves too little. The district

court provided a detailed analysis of the facts known to Harvath before concluding that he had reasonable suspicion to stop the truck, and Russell's prior encounter with Yang was not a factor in the court's evaluation. Only after concluding that Harvath had reasonable suspicion did the court reference Russell's encounter as "additional grounds for suspicion." Thus, the court did not improperly impute Russell's knowledge to Harvath as a justification for the stop.

Because Harvath had reasonable suspicion to believe both that the driver of the Dodge Ram had committed a traffic violation and that the truck's occupants were engaged in illegal drug activity, we conclude that the stop was justified under the Fourth Amendment.

B

For the first time on appeal, Yang contends that officers unlawfully extended the duration of the stop. He points to a number of questions Harvath asked, which related to the occupants' travel plans that evening, the owner of the Dodge Ram, and whether anyone in the truck had any weapons. Yang also criticizes Russell for asking the passengers about their presence at the Dousman Express with a chainsaw, as well as his request for identification information. None of these questions, Yang contends, related to the rolled stop sign, and thus they unlawfully prolonged the seizure.

Yang's argument fails for three reasons. First, he waived it. "Waiver occurs when a party intentionally relinquishes a known right and forfeiture arises when a party inadvertently fails to raise an argument in the district court." *United States v. Flores*, 929 F.3d 443, 447 (7th Cir. 2019). Here, in response to the district court's invitation to the parties to provide an

overview of the issues at the evidentiary hearing, the Government stated that the stop was justified and “that it wasn’t prolonged.” Yang’s attorney responded that Yang was challenging the basis for the stop, “[n]ot so much arguing that it was extended.” That response was borne out in the post-hearing briefing, in which Yang did not argue that the duration of the stop was unconstitutional.

This record shows that Yang intentionally relinquished the right to challenge the duration of the stop. Yang quibbles that the phrase “[n]ot so much arguing” is “hardly an express, unequivocal, and intentional relinquishment of Yang’s argument.” But the Government affirmatively raised the duration of the stop, which was met with Yang’s attorney denying that the issue was being raised. This was followed by briefing that failed to mention the subject. So, the phrase “[n]ot so much arguing” constitutes an intentional relinquishment of the point. Even if Yang’s contention was forfeited rather than waived, Yang has made no effort to show that his argument survives under the demanding standard of plain-error review. *See United States v. Thomas*, 933 F.3d 685, 690 (7th Cir. 2019) (describing the standard for plain-error review).

Second, Yang’s prolonged-stop argument fails because it is based on the faulty premise that the only justifiable purpose for the stop was to explore the traffic violation. But as Yang’s appellate counsel conceded during oral argument, none of the questions that Harvath and Russell asked would be inappropriate if the purpose of the stop was to investigate illicit drug activity.³ Because Harvath had reasonable suspicion to

³ Oral Arg. at 15:13–25.

investigate the individuals for involvement with illegal drugs, the questions fell within the scope of the traffic stop's mission.

Third, even if we assumed that Harvath only had reasonable suspicion to investigate a traffic violation, the questions the officers posed were still constitutionally permissible. As our court recently emphasized in *Cole*, the duration of a stop is determined by the seizure's mission, which is "to address the traffic violation that warranted the stop and attend to related safety concerns." 21 F.4th at 428 (quoting *Rodriguez*, 575 U.S. at 354). Tasks that fall within the mission of a traffic stop include "'determining whether to issue a traffic ticket' and pursuing 'ordinary inquiries incident to [the traffic] stop.'" *Id.* (alteration in original) (quoting *Rodriguez*, 575 U.S. at 355). These ordinary inquiries include "'inspecting the automobile's registration and proof of insurance'" and "travel-plan questions," provided they "remain reasonable ... based on all the circumstances." *Id.* at 428, 430 (quoting *Rodriguez*, 575 U.S. at 355).

Each question Yang challenges is in line with inquiries we have recognized as permissible. Harvath's first four questions—"What are you guys doing tonight?", "What were you doing parked over on Kellogg and Ashland there?", "Where were you at before then?", and "[W]hat's going on tonight? Is there some occasion?"—all relate to where the truck's occupants had driven from and where they were headed, which are permissible travel-plan questions under *Cole*. Next, Harvath asked who owned the Dodge Ram, which is part of the standard license-and-registration inquiry. Last, before Zimdars looked for his identification, Harvath asked whether any weapons were in the truck. This question was

proper because it concerned officer safety and was directly related to his request for production of documentation.

Russell's questions did not extend the duration of the stop because he made his inquiries while Harvath questioned Zimdars and while Harvath processed the men's identification information with dispatch. And "[a]n officer's inquiries into matters unrelated to the justification for the traffic stop ... do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop." *Arizona v. Johnson*, 555 U.S. 323, 333 (2009). So, Yang's challenge to the duration of the stop fails.

We hold that the traffic stop was predicated on reasonable suspicion of wrongdoing. Further, Yang cannot show the officers unlawfully extended the stop's duration. We therefore AFFIRM the judgment of the district court.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

Case Number: 20-CR-234
USM Number: 21188-509

JOHN YANG

Scott L. Stebbins
Defendant's AttorneyDaniel R. Humble
Assistant United States Attorney

THE DEFENDANT pled guilty to counts one and two of the indictment. The Defendant is adjudicated guilty of these offense(s):

Title & Section	Nature of Offense	Date Concluded	Count(s)
21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B)	Possession with Intent to Distribute Methamphetamine	November 23, 2020	1
18 U.S.C. § 924(c)(1)(A)(i)	Possession of a Firearm in Furtherance of a Drug Trafficking Crime	November 23, 2020	2

The defendant is sentenced as provided in this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

All remaining counts are dismissed upon motion of the United States.

IT IS ORDERED, that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the Court and the United States Attorney of material changes in economic circumstances.

Date Sentence Imposed: September 13, 2021

s/ William C. Griesbach
United States District Judge

Date Judgment Entered: September 14, 2021

DEFENDANT: JOHN YANG

CASE NUMBER: 20-CR-234

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of fifty-one (51) months as to count one and sixty (60) months as to count two to run consecutive to each other for a total term of one hundred eleven (111) months imprisonment. The sentence shall run concurrent with the state sentences the defendant is currently serving in Brown County Circuit Court Case Nos. 16CF1578 and 17CF1621. The sentence shall commence as of September 13, 2021.

- The court makes the following recommendations to the Bureau of Prisons:
The defendant be placed at a facility nearest to his home as possible.
- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
with a certified copy of this judgment.

United States Marshal

By: Deputy United States Marshal

DEFENDANT: JOHN YANG

CASE NUMBER: 20-CR-234

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of five (5) years as to counts one and two to run concurrently for a total term of five (5) years.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess or use a controlled substance.
 - You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court. *(check if applicable)*
 - The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. *(check if applicable)*
3. You must make restitution in accordance with 18 U.S.C. §§ 3363 and 3363A or any other statute authorizing a sentence of restitution. *(check if applicable)*
4. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
5. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
6. You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached pages.

DEFENDANT: JOHN YANG

CASE NUMBER: 20-CR-234

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You shall report to the probation office in the district to which you are released within 72 hours of your release from the custody of the Bureau of Prisons and shall report to the probation officer in a manner and frequency as reasonably directed by the Court or probation officer.
2. You shall not leave the district in which you are supervised without permission of the court or probation officer.
3. You shall answer truthfully all inquiries by the probation officer, subject to your Fifth Amendment right against self-incrimination, and follow the reasonable instructions of the probation officer.
4. You shall use your best efforts to support your dependents.
5. You shall use your best efforts to find and hold lawful employment, unless excused by the probation officer for schooling, training, or other acceptable reasons.
6. You shall notify the probation officer at least ten days prior to any change in your place of residence or employment. When such notification is not possible, you shall notify the probation officer within 72 hours of the change.
7. You shall not knowingly go to places or enter buildings where controlled substances are unlawfully sold, used, distributed, or administered.
8. You shall not associate with any persons known by you to be engaged or planning to be engaged in criminal activity. "Associate," as used here, means reside with or regularly socialize with such person.
9. You shall permit a probation officer to visit you at reasonable times at home and shall permit confiscation of any contraband observed in plain view of the probation officer.
10. You shall notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer.
11. You shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.

DEFENDANT: JOHN YANG

CASE NUMBER: 20-CR-234

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant is to participate in a program of testing to include not more than six urinalysis tests per month and residential or outpatient treatment for drug and alcohol abuse, as approved by his probation officer, until such time as he is released from such program. The defendant shall pay the cost of this program under the guidance and supervision of his probation officer. The defendant shall also refrain from the excessive use of alcoholic beverages throughout the supervised release term. Excessive as used here shall be defined as exceeding a blood alcohol level of 0.08%, the recognized level for being legally intoxicated.
2. The defendant shall submit his person, property, house, residence, vehicle, office, papers, computers, other electronic communications or data storage devices, or media, to a search conducted by the United States Probation Officer. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that the defendant has violated a condition of their release and that the areas to be searched may contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

DEFENDANT: JOHN YANG

CASE NUMBER: 20-CR-234

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on the attached page.

<u>Total Special Assessment</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>	<u>Total Fine</u>	<u>Total Restitution</u>
\$200.00	\$0.00	\$0.00	\$0.00	\$0.00

- The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If a defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid.

PAYEE	AMOUNT
TOTAL:	

- Restitution amount ordered pursuant to plea agreement: \$ _____.
- The defendant must pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest, and it is ordered that the interest requirement is waived for the fine restitution.

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

DEFENDANT: JOHN YANG

CASE NUMBER: 20-CR-234

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A** Lump sum payment of \$200.00 due immediately
- B** Payment to begin immediately (may be combined with C, D, or F below); or
- C** Payment in equal monthly installments of not less than \$ _____ or 10% of the defendant's net earnings, whichever is greater, until paid in full, to commence 30 days after the date of this judgment; or
- D** Payment in equal monthly installments of not less than \$ _____ or 10% of the defendant's net earnings, whichever is greater, until paid in full, to commence 30 days after release from imprisonment to a term of supervision; or
- E** Payment during the term of supervised release will commence within 30 days after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F** Special instructions regarding the payment of criminal monetary penalties: _____

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several

Case Number

Defendant and Co-Defendant Names
(including defendant number)

Total Amount

Joint and Several
Amount

Corresponding Payee,
if appropriate

- The defendant shall pay the cost of prosecution; or The defendant shall pay the following court costs:
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 20-CR-234

JOHN YANG,

Defendant.

ORDER DENYING MOTION TO SUPPRESS

John Yang is charged in an indictment with possession with intent to distribute 5 grams or more of actual methamphetamine, in violation of 21 U.S.C. § 841, and possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c). The charges arise out of a police encounter with Yang and other occupants of the vehicle in which he was riding in the early morning hours of November 23, 2020. The case is before the Court on Yang's motion to suppress the evidence obtained during the encounter. Yang contends that police violated his Fourth Amendment rights by stopping the vehicle without probable cause or even a reasonable suspicion that either he or the driver had committed a crime. The Court held a hearing on Yang's motion on February 10, 2021, and the motion became fully briefed on April 5, 2021. What follows are the Court's findings of fact, conclusions of law, and decision.

I.

On November 23, 2020, at approximately 1:30 a.m., Green Bay Police Officer Benjamin Harvath was on routine patrol in the Bravo District of the City of Green Bay when he observed a dark colored Dodge Ram pick-up truck parked on the north side of Kellogg Street near the

intersection with Ashland Avenue facing westbound. Officer Harvath was traveling eastbound on Kellogg. As he drove by the pick-up truck, Officer Harvath noticed that there were two people in the vehicle. The engine was running but no lights were on. After he passed the vehicle, Officer Harvath made a U-turn and again drove past the pick-up truck to obtain its license number. As he traveled westbound past the vehicle on Kellogg, Officer Harvath noticed a person walking eastbound on Kellogg toward the vehicle about two or three houses away.

Officer Harvath immediately suspected that the people he observed were involved in purchasing drugs. He had been a Green Bay police officer since October 2016 and had received training in drug interdiction. Five days earlier, he had received an email from Officer Krueger, who had previously worked an overlapping shift, advising him that he had received multiple complaints about suspected drug activity at 826 Kellogg Street. Neighbors had complained of traffic in and out of that location at suspicious times of the day. The person he observed in the early morning hours of November 23 appeared to be coming from the location of that house.

Officer Harvath also thought it significant that the person he observed was walking toward the pick-up truck he saw parked on a residential street at 1:30 on a cold morning with two occupants and the motor running about a block away from the suspected drug house. Harvath knew from experience and training that customers of drug dealers frequently park down the block from a drug dealer's house in order to avoid creating the type of suspicion by neighbors that provided the basis of Officer Krueger's email. Given the cold temperature and the time of day, he could think of no other reason why the driver of the pick-up would park and make his passenger walk to his location, as opposed to driving up to the house from which he had emerged. Officer Harvath also noted that this was a residential neighborhood and that at 1:30 a.m. there were no

other vehicles or pedestrians moving about. Even aside from Officer Krueger's email, Officer Harvath knew from his own experience that this area of Bravo District had significant drug activity.

As Officer Harvath continued past the pick-up truck, he communicated his suspicions via radio to other officers in the area. As he was doing so, the pick-up turned on its lights and proceeded to turn south onto N. Oakland Avenue. Officer Harvath performed another U-turn and attempted to follow it. Officer Harvath testified that as the pick-up truck approached the stop sign at the intersection of N. Oakland Avenue and Dousman Street, he was turning onto N. Oakland Avenue. As he watched it approach the intersection, he observed the truck's brake lights come on and the pick-up conduct a "rolling stop" before suddenly signaling and turning left onto Dousman. At that point, Officer Harvath sped up and followed the truck as it turned from Dousman onto Ashland. He activated his emergency lights as the vehicle pulled into the parking lot for the Blackstone Family Restaurant where the occupants intended to eat.

Officer Garth Russell, who was also patrolling Bravo District, had seen the same Dodge Ram pick-up truck earlier at the Express Convenience Center near one of the gas pumps as he was passing by shortly after 1:00 a.m. He saw three males standing outside the vehicle, one of whom was holding a chain saw. This observation and the fact that one of the individuals, the defendant, was staring at him during the entire time he was driving by made Officer Russell suspicious. When he heard Officer Harvath's radio transmission about his own observations of the same truck, Officer Russell proceeded to follow the vehicle as well and arrived at the Blackstone Restaurant just as Officer Harvath was approaching the driver's side of the truck.

The dashboard cameras of the two officers' squad cars and their respective body microphones reveal what then occurred. Within 30 seconds of stopping his squad car, Officer Harvath was at the driver's door speaking with the driver who identified himself as Adam Zimdars.

Within another minute, Officer Russell was at the passenger window speaking with the middle-seat passenger, Justin Taylor, and the window-seat passenger, John Yang, who appeared to be the person Officer Harvath had seen earlier walking toward the truck. In response to Officer Harvath's questions about what they were doing, Zimdars confirmed they had picked Yang up near Kellogg and Ashland and drove to the restaurant. Zimdars further confirmed they had been at the Express gas station and, before that, the casino. When Officer Harvath asked Zimdars why they were out so late, he replied that he had trouble sleeping from his time in the military. Zimdars told Officer Harvath that the truck belonged to his uncle, but the registered owner turned out to belong to someone else. When asked if there were any weapons or anything illegal in the car, Zimdars replied "I don't have anything illegal" and "not that I'm aware of."

These equivocal responses increased Officer Harvath's level of suspicion. Based on his experience, he noted that most people with nothing to hide answer more directly. Officer Russell meanwhile had approached the passenger side, where Yang was seated, and asked for identification. Yang and Taylor were not carrying identification, and Yang challenged why they should provide it. Officer Harvath then explained to Zimdars that they were stopped for rolling through the stop sign at Oakland Avenue. Harvath also said a license plate light was out, though he did not intend to make an issue of it. Officer Russell also noted that neither passenger was wearing his seat belt. Officer Russell then wrote down the occupants' names and dates of birth and handed them to Officer Harvath, who proceeded to his squad car to check for warrants. As he proceeded to his squad, Officer Harvath conveyed to Officer Russell that he had called for the canine unit to conduct an exterior sniff of the vehicle for drugs.

Officer Russell continued to converse with the truck occupants at the passenger window. He told them he had seen them earlier at the Express store. Yang seemed to deny having been

there, and Zimdar gave confusing information about when and who had been dropped off in the residential area where Officer Harvath had first spotted the truck. Yang also seemed unusually nervous and kept moving his hands to his waistband where Officer Russell could not see them, notwithstanding Officer Russell's repeated directions to keep them where they were visible.

By this time, approximately six minutes after the stop, Officer Reetz had arrived at the scene with his drug detection dog. It was department policy to have the occupants of a vehicle exit it before a drug detection dog conducted an exterior sniff. When Officer Russell instructed the occupants to exit the vehicle and opened the passenger door, he noticed that Yang became pale and slumped down in his seat. As Yang exited the truck, Officer Russell again told him to keep his hands visible, but Yang did not comply and reached for his waist. Russell tried to grab Yang's hands, but he pulled away. Russell turned Yang around and tried to stabilize him against the car, and a struggle ensued. Officer Harvath ran from his squad car to assist Officer Russell, and in seconds, Yang and the two officers were wrestling on the ground. During the course of the struggle, a gun and packaged marijuana and methamphetamine fell to the ground from Yang's person. Yang was then placed under arrest while Officer Reetz maintained watch of Zimdars and Taylor. The drug detection dog remained in Reetz' squad car throughout the incident and never did approach the truck.

II.

“The Fourth Amendment, which protects ‘against unreasonable searches and seizures,’ does not shield citizens from heads-up police work.” *United States v. Morrison*, 254 F.3d 679, 681 (7th Cir. 2001). The question presented in his motion to suppress is whether what Yang and his friends encountered here was simply “heads-up police work.” A law enforcement officer may stop a vehicle when there is probable cause or at least a reasonable suspicion to believe the driver

has committed a traffic violation or is otherwise involved in criminal conduct. *United States v. Jackson*, 962 F.3d 353, 357 (7th Cir. 2020); *see also Kansas v. Glover*, 140 S. Ct. 1183, 1187 (2020) (“Under this Court’s precedents, the Fourth Amendment permits an officer to initiate a brief investigative traffic stop when he has ‘a particularized and objective basis for suspecting the particular person stopped of criminal activity.’” (quoting *United States v. Cortez*, 449 U.S. 411, 417–18 (1981) and citing *Terry v. Ohio*, 392 U.S. 1, 21–22 (1968))). “Although a mere ‘hunch’ does not create reasonable suspicion, . . . the level of suspicion the standard requires is considerably less than proof of wrongdoing by a preponderance of the evidence, and obviously less than is necessary for probable cause.” *Navarette v. California*, 572 U.S. 393, 397 (2014) (citation omitted).

Pulling over a motor vehicle, whether for a routine traffic violation or on suspicion of involvement in criminal conduct, is a seizure under the Fourth Amendment. *Delaware v. Prouse*, 440 U.S. 648, 653 (1979). “A *Terry* stop based on reasonable suspicion can ripen into a de facto arrest that must be based on probable cause if it continues too long or becomes unreasonably intrusive.” *United States v. Bullock*, 632 F.3d 1004, 1015 (7th Cir. 2011). To prevent abuse, the investigation following such a stop “must be reasonably related in scope and duration to the circumstances that justified the stop in the first instance so that it is a minimal intrusion on the individual’s Fourth Amendment interests.” *Id.*; *see also Rodriguez v. United States*, 575 U.S. 348, 354 (2015) (“Like a *Terry* stop, the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure’s ‘mission’—to address the traffic violation that warranted the stop . . . and attend to related safety concerns.”). Where the stop is simply for a routine traffic violation, the accepted inquiries “involve checking the driver’s license, determining whether there are outstanding warrants against the driver, and inspecting the automobile’s registration and proof

of insurance.” *Rodriguez*, 575 U.S. at 355. Where the stop is based on reasonable suspicion of involvement in more serious criminal activity, additional questions might be warranted. *See United States v. Sharpe*, 470 U.S. 675, 686 (1985) (“In assessing whether a detention is too long in duration to be justified as an investigative stop, we consider it appropriate to examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant.”); *see also* 3 W. LAFAVE, SEARCH AND SEIZURE § 9.2, at 36–37 (1978) (“It is clear that there are several investigative techniques which may be utilized effectively in the course of a *Terry*-type stop. The most common is interrogation, which may include both a request for identification and inquiry concerning the suspicious conduct of the person detained.”). Finally, “[d]uring a valid traffic stop, an officer may order the driver and passengers out of the vehicle without violating the Fourth Amendment.” *United States v. Tinnie*, 629 F.3d 749, 751 (7th Cir. 2011) (citing *Pennsylvania v. Mimms*, 434 U.S. 106, 112 n.6 (1977)).

In this case, Officer Harvath offered two justifications for his decision to stop the pick-up truck in which Yang was riding. The reason he offered to the occupants of the vehicle at the time of the stop was that Zimdars had not come to a full stop at the stop sign at the corner of N. Oakland Avenue and Dousman Street. In addition, however, and in fact the real reason Officer Harvath decided to stop the pick-up truck was that he suspected the occupants were involved in a drug transaction. Yang challenges both justifications and contends that Officers Harvath and Russell acted on no more than a hunch.

Yang challenges Harvath’s testimony that Zimdars had failed to come to a complete stop at the intersection of N. Oakland and Dousman, noting that one cannot discern from the video taken from the dashboard camera of Officer Harvath’s squad car whether the truck came to a

complete stop or not. The video from Officer Harvath's squad car, which was following at least a city block behind the truck, shows the truck's brake lights come on as the truck slowed down at the stop sign and then proceed to take a left turn onto Dousman after another vehicle traveling on Dousman clears the intersection. Yang also notes that Officer Harvath also stated to the occupants that the license plate lamp on the truck was out, but the video at the stop shows that at least the lamp on the driver's side was lit after the truck stopped at the restaurant. As to Officer Harvath's suspicion that the occupants of the truck were involved in a drug transaction, Yang argues that Officer Harvath's observations of entirely innocent conduct, even when considered together, do not support a reasonable suspicion.

The Court finds the testimony of both police officers credible and that the stop was lawful. Yang is correct that one cannot discern from the video taken by the dashboard camera of Officer Harvath's squad car whether the truck came to a complete stop. But that does not mean the vehicle actually came to a complete stop or that the officer was mistaken. The dashboard camera's recording of the asserted violation was taken at a distance. Officer Harvath's testimony was based on his personal observation at the time as he was following the vehicle. It is not foreign to human experience for personal observation in matters involving motion, distance, and perspective to be more clear when viewed live than from a video recording. *See, e.g., United States v. Cole, ___ F.3d ___, 2021 WL 1437201, at *3 (7th Cir. Apr. 16, 2021)* ("The dashboard camera's recording of the asserted violation was taken from a distance, and it is grainy, with a partially obstructed view. The magistrate judge did not clearly err in crediting Trooper Chapman's testimony that he saw what was in his judgment a violation and in treating that judgment as objectively reasonable."). Nor does the fact that the driver's side registration lamp was lit at the time of the stop undermine Officer Harvath's credibility as to the stop. As Officer Harvath testified, it was the driver's side

lamp that was lit, leaving the possibility that a second lamp on the passenger side was out. It was perhaps for this reason that Officer Harvath stated he did not intend to make an issue of it. In any event, the Court finds Officer Harvath's testimony credible and concludes he had at least a reasonable suspicion to believe a traffic violation had occurred.

The Court also finds the stop was justified under *Terry*. Officer Harvath, an experienced patrol officer with significant training and experience in drug interdiction, had more than "inarticulate hunches." *Terry*, 392 U.S. at 22. He was "able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant[ed] that intrusion." *Id.* at 21. Officer Harvath articulated those facts in his testimony. He noted he observed a pick-up truck parked on a residential street with two occupants, its lights off, and the engine running at 1:30 in the morning. He had received information from another officer who covered the same area that there was a house less than two blocks away where drug trafficking was suspected based on the number and timing of visitors. When he turned around and went past the vehicle a second time, Officer Harvath noticed a person several houses away walking toward the truck. Although he did not personally observe the person get into the truck, he reasonably inferred that the truck was waiting for him to arrive. Other than the person walking and the people in the running truck, the streets were deserted. Because it was cold and dark, Officer Harvath thought it strange that the truck had not driven to the location from which the individual came, instead of waiting for him to walk to the truck. Based on his training and experience, he knew that people who purchase drugs in residential neighborhoods frequently park a block or two away from their source so as not to draw neighbors' attention and generate reports to police. The fact that the truck started driving away shortly after Officer Harvath passed by in the time it would have taken the individual he saw to enter the truck further supported his suspicions.

Yang notes that none of Officer Harvath's observations were of illegal conduct and all of them could be consistent with innocent explanations. But, of course, that is not the test. As the Court explained in *Terry*, the acts observed by the officer may be innocent in themselves. In *Terry*, a police officer suspected two men of planning a daytime robbery when he saw them repeatedly take turns walking down the sidewalk to peer into a store window on a public street at 2:30 in the afternoon. After they walked away, the officer approached the men, identified himself as a police officer, and asked them to identify themselves. The men mumbled something in response to his inquiries, and the officer grabbed one of the individuals, later identified as Terry, and patted down the outside of his clothing. He felt a pistol in the left breast pocket of Terry's overcoat and later discovered another revolver in the outer pocket of the overcoat the other man was wearing. In affirming the state court decisions denying Terry's motion to suppress, the Court made clear that the acts giving rise to a reasonable suspicion can be innocent in themselves. *Id.* at 22. Since then the Court has explicitly rejected the kind of "divide and conquer analysis" where each fact relied upon by the officer is considered in isolation and then rejected as innocent explanations are suggested. *United States v. Arvizu*, 534 U.S. 266, 275 (2002). When determining whether an officer had the reasonable suspicion required for a brief investigatory stop, a court "must look at the 'totality of the circumstances' of each case to see whether the detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing." *Id.* at 273.

Applying that test here, the Court concludes that Officer Harvath had a reasonable suspicion that criminal activity "may be afoot," *id.*, when he stopped the pick-up truck and questioned its occupants after they pulled into the Blackstone parking lot in the early morning hours of November 23, 2020. Officer Russell's previous observations of the truck at the Express store, in particular, Yang's intense staring at Officer Russell as he drove past, provided additional

grounds for suspicion, as did Zimdars' equivocal responses to Officer Harvath's questions, the confusing and inconsistent responses to Officer Russell's questions, and the increasing nervousness of Yang and his refusal to keep his hands where Officer Russell could see them. In all, about seven minutes elapsed from the time the officers approached the truck until Yang was arrested. Officer Harvath was attempting to verify their identifications and determine whether any of the occupants had warrants when the struggle ensued between Yang and Officer Russell, resulting in the discovery of the gun and drugs. Neither officer prolonged the stop beyond the time needed to address the concerns that gave rise to it.

Based upon these findings, Yang's motion to suppress (Dkt. No. 13) is **DENIED**. The Clerk is directed to set this case on the Court's calendar for a conference with counsel to discuss further proceedings.

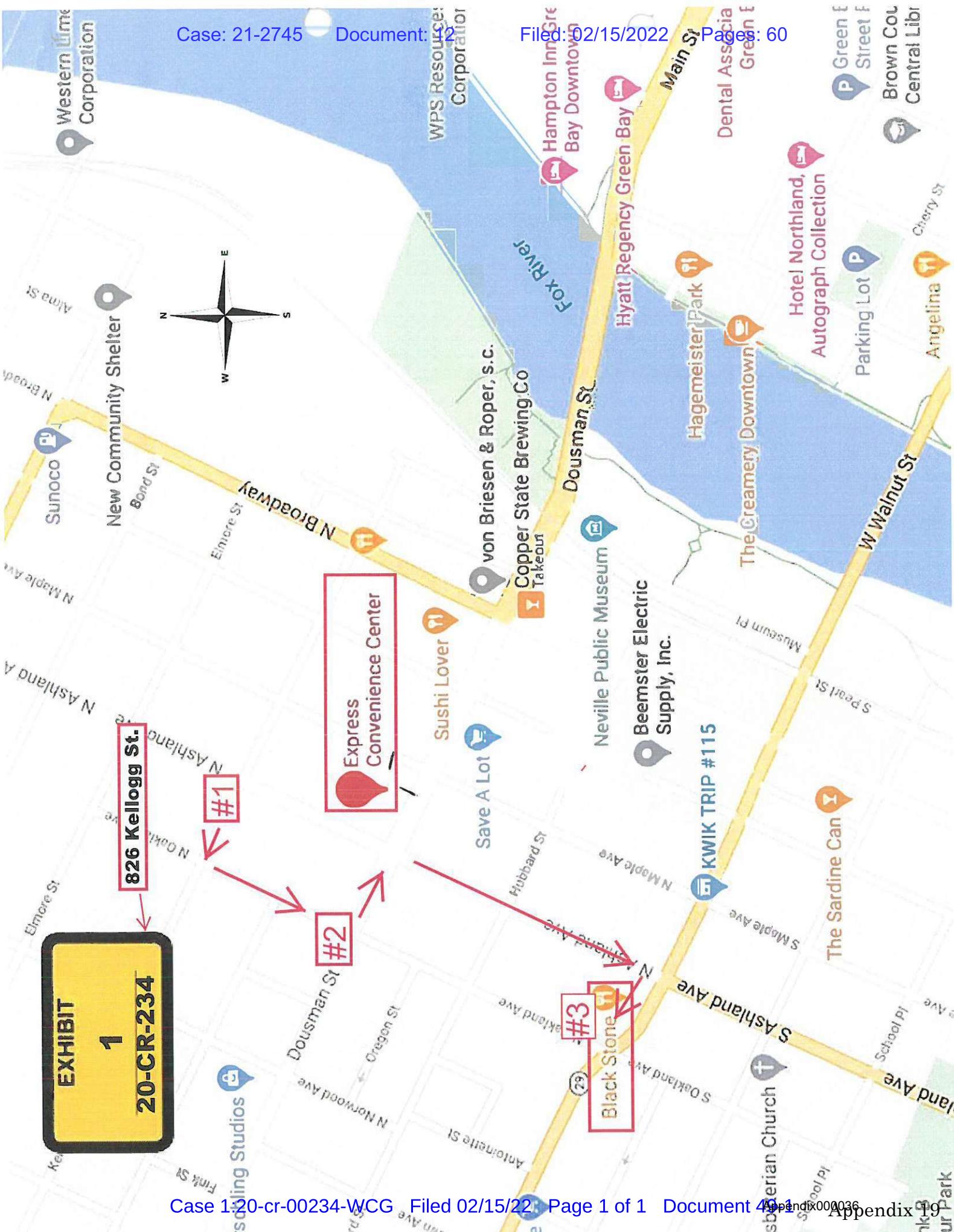
SO ORDERED at Green Bay, Wisconsin this 26th day of April, 2021.

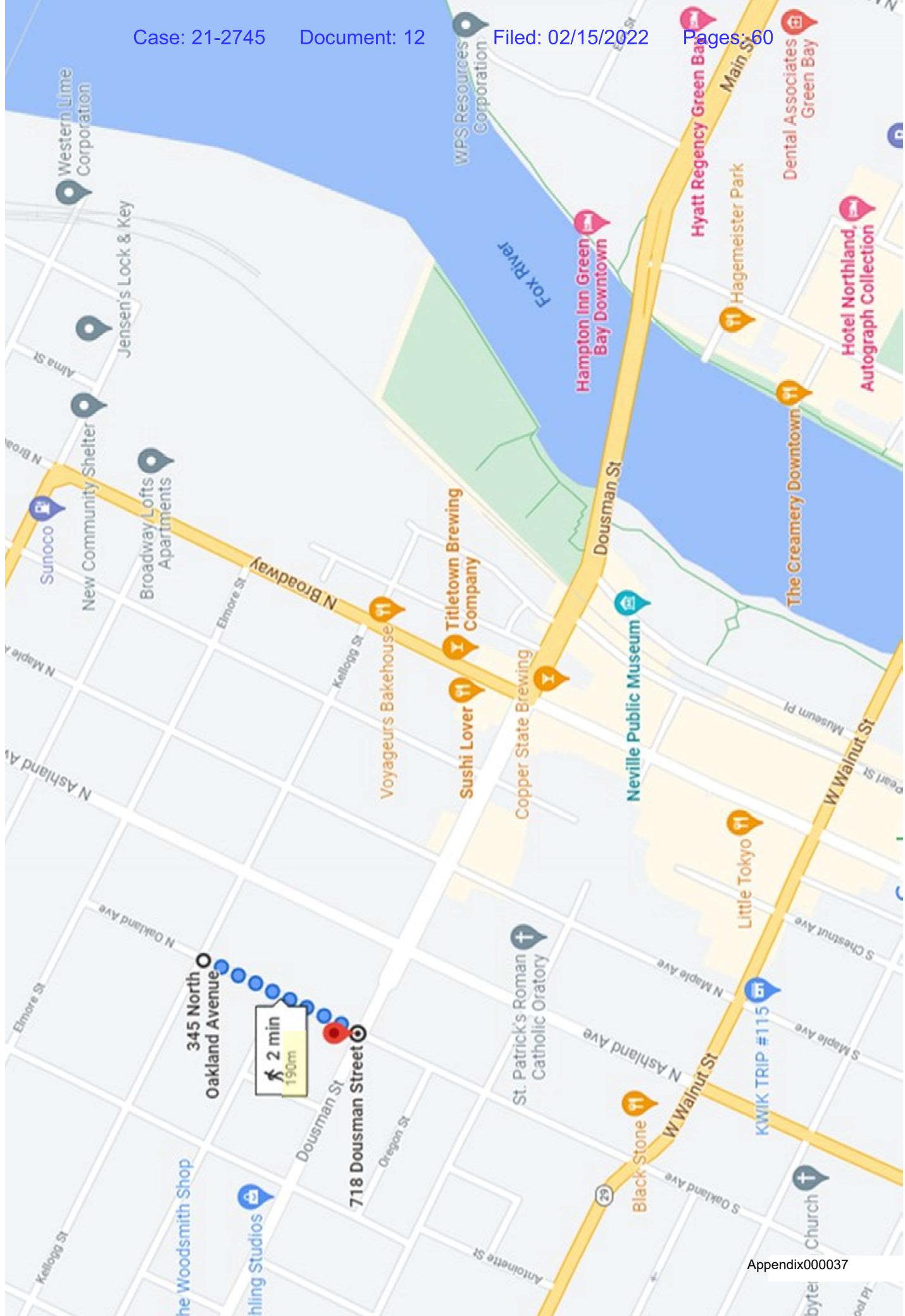
s/ William C. Griesbach
William C. Griesbach, District Judge
United States District Court



EXHIBIT

1
20-CR-234





**GREEN BAY POLICE DEPARTMENT
NARRATIVE SHEET**

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On November 23, 2020, I was in full police uniform, working as a police officer for and in the City of Green Bay, located in Brown County, Wisconsin. I was in an unmarked police car and I was unit 4B1. Officer Harvath radioed to me that he had a vehicle at the intersection of Kellogg Street and North Ashland Avenue that was suspicious to him. Officer Harvath stated he saw the vehicle running, and he thought he saw a person walk up to the vehicle. Officer Harvath relayed the plate to me, which was Wisconsin registration of PM5490. I asked Officer Harvath if this was a Dodge Ram, and he stated it was. The reason I asked Officer Harvath this question, was because I saw the same vehicle sitting in the Dousman Express premises located at 606 Dousman Street. The Dodge Ram at this point was parked by a gas pump, and it seemed like there were 3 males around the vehicle. One of the males appeared to be manipulating a chainsaw. As I drove by the Dousman Express, a male Asian dressed in a black jacket kept staring at my vehicle until I was out of sight. I thought at the time the individuals warranted further investigation, so I decided to turn around and go to Dousman Express. When I went back, the vehicle was already gone and was nowhere in the area.

Officer Harvath then stated via radio that the vehicle had left the area where he first saw it. I started helping Officer Harvath look for the Dodge Ram. Officer Harvath then stated that he saw the vehicle, and he stated that he would attempt a traffic stop. Officer Harvath stopped the vehicle and stated that it turned into the parking lot of the Blackstone Restaurant at 706 W. Walnut Street. I then responded to Officer Harvath's location in order to assist him.

Upon arrival, Officer Harvath was already at the driver side window speaking with the driver, so I decided to approach the Dodge on the passenger side. It is important to know that upon me seeing the Dodge Ram, it was the same vehicle I had seen at the gas

GREEN BAY POLICE DEPARTMENT
NARRATIVE SHEET

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pump at the Dousman Express. When I arrived to the passenger side, I saw that there were 3 males inside the Dodge. I recognized the male Asian who was sitting in the passenger seat closest to the passenger door, as the male who was looking at me when I was driving by the Dousman Express until I was out of sight. I shined my flashlight into the vehicle, and the male looked at me with a “deer in the headlight” look and then looked away. I knocked on the window and told the male to roll the window down. The male slowly rolled the window down, and I asked him if I had seen him at the Dousman Express with the chainsaw.

The male Asian, who was later identified as **John (NMI) Yang DOB (08-15-1988)**, looked confused when I asked him about being at the Dousman Express with the other two males. John began shaking his head as though he was not at the Dousman Express, and began acting as though he did not know what I was talking about. I then asked John if he had his identification on him, and he began asking why he had to produce his identification. I told John that neither he nor the rest of the occupants had their seatbelts on, which is why I was asking for their ID. John then started telling me he had just taken off his seatbelt, and I again asked him for his identification. John stated he did not have his identification on him, so I asked him for his name. John again started saying something along the lines of “I don’t know why you are asking me for my ID”, so I reiterated to him that he did not have his seatbelt on, and then again demanded that he give me his name. I also told John that he could either give me his identification or be taken out of the vehicle. This is when he verbally gave me his identifying information.

At this point, John seemed as if he began getting nervous. I began to suspect that John possibly had a warrant for his arrest. John’s hands were out of my sight at this point, so I ordered him to place them on the dash board where I could see them. John seemed as

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though he was increasingly getting nervous, and asked why the vehicle was being stopped in the first place. It was at this time that Officer Harvath informed John of the reason for the vehicle being stopped (for rolling through a stop sign).

I then turned my attention to another male who was sitting in the middle of the bench seat in the Dodge Ram, and he later verbally identified himself as **Justin M Taylor DOB (05-27-1983)**. Finishing with identifying the two passengers in the vehicle, I again asked the men about seeing them and the vehicle at the Dousman Express. I told the men I saw them manipulating a chainsaw near a gas pump. I then told them Officer Harvath saw them on Kellogg Street near Ashland Avenue. I further told the men that Officer Harvath saw a male walking up to the vehicle. I asked them for an explanation of their actions while they were on Kellogg Street near North Ashland Avenue. The driver who was later identified by Officer Harvath as Adam J Zimdars, stated something along the lines of “Justin getting in the vehicle”. Adam then explained the reason he had the chainsaw was because he had a tree trimming business, and he also made me aware that another chainsaw was behind the seat of the Dodge. Adam stated he had the chainsaw out of the vehicle because he had to make room for Justin getting into the Dodge. I asked Adam if he was planning trimming trees at this time of the night, and he stated “no”. I clarified with Adam about him removing the chainsaw from the vehicle in order for Adam to enter the vehicle. I told Adam I saw 3 people around his vehicle while it was at the Dousman Express. He stated something to the effect of “all 3 men getting into the vehicle” at that point. I then tried to further clarify what Adam was telling me as it was not making sense to me. I told him he had told me he had picked up Justin from Kellogg and Ashland Streets. I then asked Adam if he had dropped Justin off at the intersection to pick him up

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again, and he stated “yes”. I told Adam that his story seemed a little confusing, and I decided to clarify with him further.

I asked Adam if he dropped off Justin and then picked him back up, and he stated he dropped Justin off and then he parked. Adam stated after he dropped off Justin, he did not move from where he was parked. I asked Justin where he went, and he stated he was in the vehicle. This differed from what Adam had told me, because Adam did point to Justin and stated that Justin was the one he dropped off while he was at the intersection. I tried to clarify with Adam exactly who he dropped off at the intersection of Kellogg and Ashland, and he stated he dropped John off. Again, this differed from what Adam told me, because he specifically said Justin was the one he left at the intersection.

I asked John where he went, and he stated something to the effect of “going to a friend’s house”. At this point, Adam also started to become nervous and started moving his hands away from the steering wheel and out of my sight. I advised Adam to place his hands back on the steering wheel, and he stated he was only stretching. I reiterated to Adam that I wanted his hands on the steering wheel. Officer Harvath had already requested a K9 unit to the scene, so I decided to begin taking all the individuals out of the vehicle. I opened the passenger door, and I asked John to step out of the vehicle. As soon as I asked John to step out of the vehicle, I could see a change in his body language, and he seemed to grow pale with nervousness. John started reaching down with his hands near his waistbands, and I grabbed onto his hands and made him aware this was not ok. As soon as I grabbed both of John’s hands, I could feel the muscles in his wrist tense up with resistive tension. John then started saying “I’m sorry” as I began stabilizing him against the truck. The resistive tension in John’s arms began to intensify, and I put his hands behind his back so I could handcuff him. As soon as I began putting John’s hands behind

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NARRATIVE SHEET**

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his back to handcuff him, he immediately pulled away from grasp, and attempted to flee from me. At this point, Officer Harvath was already near me and was helping me place John in handcuffs. John pulled away from Officer Harvath as well and tried running away. Officer Harvath and I grabbed onto John, and while he was pulling in one direction, we began pulling him in another direction in order to make sure he did not get away. At this point, we managed to get John away from the truck, and I wrapped my hands around his waist as I planned to decentralize him to the ground. While attempting to decentralize John to the ground, he ran forward, but I managed to get him on the ground. While I had John on the ground, he attempted to reach in his waistband in the front with both hands.

At this point in time, I began fearing that John had a handgun that he was trying to access. I decided to put my hands around his neck to better stabilize him, and wrapped my legs around his body. At this point, I verbalized to John he needed to stop reaching as he was still actively digging in his waistband, and I thought he was trying to access a gun. John managed to roll onto his knees with me still trying to control him, and it was at this time that Officer Harvath came in and grabbed John's arms. As John got up to his feet, I saw what appeared to be a silver handgun fall from the front of his waistband. I immediately picked up the handgun, and John managed to get out of Officer Harvath's and my grasp, and began running to the east. Officer Harvath managed to deploy his Taser on John, which caused him to fall to the ground. At this time, since John attempted to access a handgun from his waistband, I un-holstered my department issued firearm and pointed it at John. I gave John commands that he was not to move. John was still trying to get up after he was tazed, and he was given commands again to not move and stay on the ground.

It seemed to me while John was getting up, John was still trying to put his hands near his waistband again, and I did not know if he had another gun on him or not. Officer

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Reetz delivered a kick to John since he was still actively resisting officer's attempts to take him into custody. Fearing that John was reaching in his waistband for another weapon, I delivered a strong side kick to John's head. The dynamics of the fight between officers and John is what led to him being kicked to create temporary dysfunction. Officer Reetz finally managed to put the handcuffs on John's wrists, which ceased his resistive behavior. I felt that John was attempting to shoot myself and Officer Harvath because of his determination to go into his waistband for the gun that fell onto the ground while he resisted being taken into custody.

Other officers eventually arrived on scene and helped secure Adam and Justin, who were still in the vehicle. I asked Justin if he knew that John had a firearm on him, and he stated "absolutely not officer". I began to assist in processing the scene, and I saw a clear plastic Ziploc bag with a green leafy substance in it a few feet from the Dodge Ram. I thought this baggy of what I thought was marijuana fell out during our struggle with John. Other officers ended up searching John on our behalf, and I was shown a small Ziploc baggy that was taken from John. This small Ziploc baggy had a white crystal like substance inside of it, which I recognize as methamphetamine, based on my training and experience. I was later shown a broken glass pipe that resembled a meth pipe that was found on John as well. I was later shown a black pouch that contained a digital scale, along with numerous empty gem baggies, two gem baggies with white residue, and two plastic bags that had white residue in them (taken from John).

Other officers searched the vehicle and advised that various drug paraphernalia and methamphetamine was found underneath the bench seat of the vehicle. I was told that a meth pipe was found underneath the seat where Justin was sitting, and I was also told that a brown pouch with another meth pipe and methamphetamine in it was found underneath

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the seat between where Adam and Justin were sitting. There were some bystanders in front of the restaurant, so I asked them if they saw the police fighting with John. All the parties stated they did not see the fight, but they did hear the commotion and saw all the police arriving in the parking lot. I spoke to a worker from the restaurant, and asked if they had cameras that might have captured the entire parking lot. The worker stated they did have cameras, but stated only the manager could access the cameras from the parking lot. The worker stated that the manager would arrive at the restaurant between 4:30am and 5:00am. I asked if it was possible to have the manager respond to the restaurant immediately. I was later advised by the worker that the manager would be responding at the normal time.

Officer Xiong ended up removing the firearm from my back pocket, and he cleared the weapon. Officer Xiong then told me that the weapon was loaded with one in the chamber. He also told me that the serial number had been filed off the weapon. The weapon in question is a small pistol made by Sterling Arms, being the model LR Auto. All evidence from the vehicle was given to Officer Harvath, and all evidence found by other officers from John was given to me. I then informed Justin that he would be placed under arrest for possession of drug paraphernalia and possession of methamphetamine, and he began telling me that none of the items found in the vehicle were his. It is important to know that one of the methamphetamine pipes was found directly underneath the seat where Justin had been sitting, and the brown pouch containing the meth pipe along with the crystal like substance was found underneath the seat between where Adam and Justin was sitting. Officer Harvath and I returned to the Green Bay Police Department, where I assisted Officer Harvath in entering evidence and testing the substances found in the vehicle, as well as on John.

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Officer Garth Russell

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I tested samples of all the methamphetamines found using the Marquis Reagent test, and after breaking the single ampule and agitating, I observed an immediate color change to orange and then to brown. This indicated to me that the samples from both the suspected methamphetamines found on John and in the vehicle were positive for methamphetamine. I also tested samples from both the crystal like substance found in the vehicle as well as on John, using the methamphetamine/MDMA reagent test. I broke the ampules in this order: left, then agitating, middle, then agitating, and right, then agitating. I observed and immediate color change to blue, which indicated the presence of methamphetamine in both substances.

At this point in time, I do not have anything else to add to the report. See other officer's details for further information.

END OF NARRATIVE.

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On Monday, November 23, 2020, at approximately 01:31 hours, I, Officer Harvath, was working patrol in a full uniform and in a marked squad car for the City of Green Bay as unit 4B3. While on patrol in my district I was near the intersection of Kellogg Street and N. Ashland Avenue in Green Bay, Brown County, Wisconsin, when I observed a dark colored pickup truck parked at the northwest corner of the aforementioned intersection facing westbound. This pickup truck was running and did not have any headlights on. The vehicle appeared to be occupied and I was traveling eastbound on Kellogg Street past this vehicle when I noticed it.

I continued to travel eastbound on Kellogg Street and I performed a U-turn near the intersection of Kellogg Street and N. Maple Avenue. I proceeded to travel back westbound on Kellogg Street and I continued to observe the vehicle. I obtained the registration information for the vehicle, which was Wisconsin truck plate no. BM5490. I ran this information through the Department of Transportation database as I was traveling westbound past the vehicle. While I was going past the vehicle, I still observed it to be running and still believed it to be occupied.

There was a male on the north side of the street walking eastbound towards the vehicle and this particular area of Kellogg Street is believed to be one of heightened levels of drug activity. I believe that it was possible that this male was walking to the vehicle from an address that is believed to be involved in the trafficking of illegal drugs. In addition to this location and the circumstances surrounding the vehicle, the time of day and the fact that temperatures were below freezing made me suspicious of the situation.

I communicated to other units in my district the suspicious circumstances while I continued to travel westbound on Kellogg Street. I asked if one of my fellow district units was near the intersection of N. Ashland Avenue and Kellogg Street and requested that they

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check that area and advise of any further observations. The reason I continued to travel westbound on Kellogg Street and requested a different unit to assist was because I did not want to alert the occupants of the vehicle that they had garnered my attention.

Officer Russell communicated to me that he was near the area and when he responded to the aforementioned location he thought he had located the suspect vehicle that was east of N. Ashland Avenue on Kellogg Street. I had not given a description of the vehicle that was the subject of my attention and as I looked in my rearview mirror, I observed a second vehicle that was east of Ashland Avenue on Kellogg Street that was not the subject vehicle. Simultaneously, the subject vehicle that I was interested in had activated its headlights and started to travel westbound on Kellogg Street.

I informed Officer Russell that the vehicle that he had located was not the vehicle that I was talking about and after the dark colored truck, the subject vehicle, had turned southbound onto N. Oakland Avenue, I performed a U-turn at the intersection of Kellogg Street and N. Norwood Avenue. I traveled eastbound on Kellogg Street in an attempt to locate the subject vehicle.

Prior to turning southbound onto N. Oakland Avenue, I noted that I did not observe the initial male party that I had observed walking eastbound on the north side of Kellogg Street. Based on the timing of these events, I believed that the male that was on foot had walked to the pickup truck. **The fact that the pickup truck did not park directly in front of the address that I believed it to be picking up the male that had been walking on foot from struck me as suspicious and this is a tactic that those involved in criminal activity will use to prevent law enforcement officers from locating their residence or addresses where criminal activities occur.**

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As I turned southbound onto N. Oakland Avenue, I observed the subject vehicle, the dark colored truck, to fail to come to a complete stop at stop sign that controlled southbound traffic on N. Oakland Avenue at the intersection of N. Oakland Avenue and Dousman Street. The vehicle proceeded through the intersection after applying its brakes and activated its left turn signal after it had attempted to stop for the stop sign and release its brakes. This behavior from the vehicle made me believe that it was attempting to avoid law enforcement attention and that the driver had decided to alter its path when it saw me turn southbound onto N. Oakland Avenue.

As I pursued the vehicle and attempted to close the distance between it and myself, Officer Russell asked me over the radio if the vehicle was a Dodge Ram. I indicated to Officer Russell that I believed that it was a Dodge Ram and he told me that he had seen the vehicle earlier in the night at the Dousman Express. The Dousman Express is known to officers as a place of high drug activity and criminal activity in general. Officer Russell had told me that he had found the vehicle to be suspicious when he had located it earlier in the night at the Dousman Express.

Based on the observed stop violation and the totality of the circumstances previously indicated, I pursued the vehicle with the intention to conduct a traffic stop on it. After the vehicle had turned eastbound onto Dousman Street from N. Oakland Avenue, it turned southbound onto N. Ashland Avenue and as I got closer to the vehicle I also observed that the vehicle had a defective registration plate lamp.

When I got close to the vehicle it activated its right turn signal and proceeded to turn into the Blackstone Restaurant parking lot. It was at this point that I activated my overhead lights to initiate the traffic stop on the vehicle. The vehicle proceeded westbound through the lot and pulled into a parking spot near the southwest corner of the Blackstone

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Restaurant parking lot located at 706 W. Walnut Street, Green Bay, Brown County, Wisconsin.

I approached the vehicle on the driver's side and noticed that the driver's side window was not being rolled down. I called out to the driver and requested that the driver roll the window down and place their hands on the steering wheel. The driver complied and I made contact with the vehicle on the driver's side. When I made contact I noticed that the vehicle had three male occupants sitting on the bench seat of the truck and it did not appear that any of them had been wearing their seatbelts. Officer Russell had arrived on scene shortly after I had made contact and was on the passenger's side of the vehicle.

I asked the driver what the vehicle's business was where I had initially observed it at the corner of Kellogg Street and N. Ashland Avenue, and the driver told me that he was picking up the passenger that was sitting on the passenger side of the vehicle. The Asian male sitting in the front passenger seat was who the driver was referring to and I believed that this was the male that I had observed walking eastbound on Kellogg Street.

The occupants of the vehicle would be identified by officers as follows: the driver was identified by Wisconsin identification card as **Adam J. Zimdars, (12/07/82), M/W**; the passenger in the center of the bench seat was identified verbally and later confirmed via in-house photo as **Justin M. Taylor, (05/27/83), M/W**; and, the male on the passenger side of the bench seat was identified verbally and later confirmed via in-house photo as **John (NMI) Yang, (08/15/88), M/A**.

Adam would go on to tell me that before they were at the intersection I had observed them at, they were at the Dousman Express gas station which cooberated what Officer Russell had told me. According to Adam, before they were at the Dousman Express gas

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station they had gone to the casino which is also a location known to officers to be a place where drug activity occurs.

When I asked the driver if it was normal for him to be out at such a late hour, he told me that he stays out at night because he has such a hard time sleeping during the day due to his experience in the Marine Corps. I informed the driver of the stop violation and he did not dispute his not coming to a complete stop at the intersection of N. Oakland Avenue and Dousman Street. I also informed the driver that the registration plate lamp was not working and he began to tell me that the vehicle was not his. Adam told me that the vehicle was his uncle's truck and he identified his uncle as "Michael B. Thyrion." I did not recall this name being the registered owner when I had initially ran the registration information for the vehicle and this recollection would later be confirmed. The registered owner per the plates affixed to the vehicle was David M. Laughrin.

I asked the driver for his identification and before he went to retrieve his identification, I asked him if there were any weapons inside of the vehicle. Adam told me that he was not aware of any weapons inside of the vehicle and I have found answers such as this to be indicative of deception and a guilty conscious, based on my training and experience. I sought to clarify that there were no weapons inside of the vehicle with Adam and he would not deny the presence of guns within the vehicle.

I told Adam not to reach or make any furtive movements inside of the vehicle and I noticed that the passengers engaging in dialogue with Officer Russell were arguing the validity of the stop. I explained the reason for the stop to the passengers who were arguing whether or not there was a reason for the stop with Officer Russell and I again asked Adam if there were any weapons or anything illegal inside of the vehicle. Adam told me, "I don't have anything illegal," and I pointed out to Adam that this did not answer my

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question and did not deny the presence of contraband or weapons inside of the vehicle. Adam again stated that he was not aware of anything inside of the vehicle and all of the parties seemed to be increasingly evasive with officers based on their anxiousness and their answers to officers' questions.

Based on the totality of the circumstances, I requested a K-9 unit to respond to the stop location to perform a sniff of the vehicle. I met with Officer Russell on the passenger side of the vehicle and obtained the identifying information that he had obtained from the passengers. I also notified Officer Russell that a K-9 unit was enroute to our stop location.

I returned to my squad car to index the parties and it should be noted that at this time, only Department of Transportation returns were available due to department wide computer issues. Probation and Parole, warrant, and criminal history information was not readily available at this time.

While I was indexing the occupants of the vehicle, K-9 Officer Reetz arrived on scene. Standard procedure to prepare a vehicle for a K-9 sniff is to have all occupants exit the vehicle. I observed Officer Russell working with John and having him exit the vehicle in preparation for the K-9 sniff as I walking back to the stopped vehicle. As I was doing this I observed John start to pull his hands towards the front of his body while Officer Russell was attempting to direct his hands towards his back in preparation for Officer Russell's performing a pat down for weapons to ensure everyone's safety on the traffic stop. I observed John continually resist Officer Russell's attempts to bring the male's hands behind his back and I went to aid Officer Russell in detaining John.

When I got to the passenger side of the vehicle, I went to grab John on his left side and he pulled away from myself and Officer Russell. John ran towards the open front passenger door to the truck and I went to go grab him by his right shoulder and arm so that

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he could be decentralized. John ran back towards officers and attempted to get past us. I grabbed John by his back and in his left shoulder area and I attempted to decentralize John by pushing him forward to use his momentum and the momentum from my pushing him forward to cause him to lose his balance so he could be decentralized and detained.

John lost his balance and Officer Russell grabbed him and brought him to the ground. Officer Russell was on the ground with John and was attempting to control his arms, but John continued to force his hands towards the front of his pants. I assisted Officer Russell in trying to obtain control of John's hands and I told John multiple times to "stop reaching." The male was not complying with officers' orders, was actively resisting, and he was trying to access an area that is commonly used to possess weapons.

As the struggle continued I accessed Green Bay Police Department taser no. 17-27. The male got to his feet and as soon as I was able to deploy the taser I deployed the first round into the male's back. Almost immediately I deployed a second round in a similar area and the taser seemed to have an effect on John. John fell to the ground and I continued to hold the trigger of the taser while officers gained control of John. Once John was able to be controlled, I released the trigger and I assisted officers in taking John into custody. Other officers had since responded to the scene and while John was taken into custody, Officer Russell informed me that a firearm had fallen from John's person while we were trying to detain him. I seized a gray and black zipper pouch and currency from John's person and these items were placed with the gun that Officer Russell had seized.

I was informed by other officers that a bag of marijuana was located on the ground near where officers had contact with John and those other officers assisted in searching the rest of the immediate scene around the stop along with the stop vehicle. It should be noted

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that before searching the vehicle, Justin and Adam were taken into custody by officers on scene without incident.

I worked on case building in my squad car and found Wisconsin Circuit Court access records that indicated that John and Adam were both out on bond for open felony cases. I also found that John had a prior felony conviction which made charges of Bail Jumping and Felon in Possession of a Firearm applicable depending on officers' findings.

Officer Whitman provided me with contraband that she had seized from within the vehicle. Officer Russell, other officers on scene, and I collaborated on scene and determined what charges would be applicable. Based on officers' findings and information that was later discovered, it was determined that each party would be charged as follows:

- John would be charged with Felon in Possession of a Firearm; Causing Substantial Harm to an Officer while Resisting; Obstructing an Officer or Attempting to Flee; Possession of Methamphetamine; Possession of Marijuana/THC; Possession of Drug Paraphernalia; Altering Marks/Manufacture of Property; Felony Bail Jumping for Brown County case no. 2020CF000123; and Probation and Probation decided to put a hold on John after they were contacted. John Yang had a number of criminal convictions according to Wisconsin Circuit Court access records and Brown County case no. 2017CF001621 indicated that John had been found guilty of a felony charge, which is why he was charged with felon in possession of a firearm. The Wisconsin Circuit Court access records that were used to support the charges of bail jumping and felon in possession of a firearm have been uploaded into this case file. Officer Russell sustained injuries to his

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knee and wrist during the apprehension of John and the extent of those injuries is unknown at the time of this report's completion.

- Adam Zimdars was charged with the following: Possession of Methamphetamine; Possession of Drug Paraphernalia; Bail Jumping; and he was issued a citation for Operating with a Suspended Driver's License. Two counts of felony bail jumping were referred for Adam due to Wisconsin Circuit Court access records indicating that he had two open felony cases. The two open felony cases were Winnebago County case no. 2020CF00493 and Brown County case no. 2017CF001527. The Wisconsin Circuit Court access records to support these two bail jumping cases have been uploaded to this case file.
- Justin Taylor was charged with the following: Possession of Methamphetamine and Possession of Drug Paraphernalia.

It was determined by officers on scene that the vehicle would be towed to the department's storage facility due to it possibly containing evidence of other crimes along with officers' inability to obtain complete information as a result of the computer issues that were present. Officer Russell and I then obtained all items seized by officers of evidentiary value and returned to the Green Bay Police Department to log those evidentiary items.

Upon arriving at the Green Bay Police Department, Officer Russell and I entered all evidentiary items as follows and then placed them into evidence locker no. 128:

- Exhibit no. 657001-7.44 grams of a crystal, cloudy, white, rock-like substance located by Officer Olson in John Yang's coin pocket if his pants. This substance was weighed in the bag that it was found in and it tested as

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methamphetamine via positive Marquis and Methamphetamine/MDA Reagent Tests. The substance testing positive for methamphetamine is based on a sample of the suspect material being taken and tested using a Marquis Reagent Test. After breaking the first ampule and agitating it, officers observed an orange color changing to a brown color within 12 seconds. Officers then took a sample of the suspect material and tested it using the Methamphetamine/MDMA Reagent Test. The ampules were broken in a left, middle and then right order; agitating after the breaking of each. After breaking the first ampule there was no color change. After breaking the second ampule there was no color change. After breaking the third ampule, a blue color was immediately observed. These observations indicated a positive test for a meth amphetamine substance.

- Exhibit no. 657002-plastic bag that contained Exhibit no. 657001.
- Exhibit no. 657003-17.32 grams of a green, leafy, plant-like substance weighed in the bag that it was found in. This substance was found on the ground near the vehicle where officers had contact with John Yang. The substance tested positive for the presence of THC via the Duquenois Levine Reagent Test. The test was found to yield a positive result by taking a sample of the plant-like material and using a Duquenois Levine Reagent Test. After breaking the first ampule no color change was observed. After breaking the second ampule, the liquid was observed to turn to a purple color. After breaking the third ampule and rotating the packet a one-quarter turn, separation of the purple color was observed by officers; light over dark. These

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observations indicated a positive test for marijuana which contains THC, a controlled substance.

- Exhibit no. 657004-the plastic bag that contained Exhibit no. 657003.
- Exhibit no. 657005-black zip pouch with gray stripes that contained Exhibit nos. 657006, 657007 and 657008. This pouch was found on John Yang's person.
- Exhibit no. 657006-black digital scale found inside of Exhibit no. 657005 with a white, powdery residue on the plate used to weigh substances.
- Exhibit no. 657007-multiple empty gem baggies found within Exhibit no. 657005. These types of gem baggies are commonly used to store illicit drugs, based on my training and experience.
- Exhibit no. 657008-two empty plastic bags and two empty plastic patterned gem bags all of which contained white residue inside of them. These bags were found within Exhibit no. 657005.
- Exhibit no. 657009-Five .22 caliber bullets recovered from Exhibit no. 657010.
- Exhibit no. 657010-black handgun with a serial no. that had been altered that fell from the subject while officers were attempting to apprehend John Yang. The magazine is included in this exhibit and the firearm is made by Sterling Arms, it is a LR auto model and it is a .22 caliber semi-automatic pistol.
- Exhibit no. 657011-damaged cylindrical glass smoking pipe with a bulb that was found on John Yang's person. The residue was not testable but pipes like this are commonly used as drug paraphernalia, based on my training and experience.

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- Exhibit no. 657012-black digital scale with minimal crystal-like residue. This residue was unable to be tested and it was found on the plate that items are placed on to be weighed. This item was found by officers inside of the vehicle that had been stopped.
- Exhibit no. 657013-green glass bottle with a plastic tube. The manner in which this green bottle and plastic tube were fashioned led officers to believe that it was used for ingesting illicit drugs based on officers' training and experience. This item was located inside of the vehicle.
- Exhibit no. 657014-clear glass cylindrical smoking pipe with a bulb containing a white residue inside of it under the bench seat in the middle of the vehicle. It is believed that this smoking pipe is used to ingest illicit drugs.
- Exhibit no. 657015-one .22 caliber round located under the bench seat on the passenger side of the vehicle.
- Exhibit no. 657016-brown Timberland zip pouch containing Exhibit nos. 657017, 657018 and 657019. This Timberland pouch was located by officers inside of the vehicle.
- Exhibit no. 657017-1.88 grams of a clear, white, cloudy, rock-like substance that tested as methamphetamine. This was determined to be methamphetamine based on positive Marquis and Methamphetamine/MDA Reagent Tests. These tests were administered in the same manner as the substance that had previously tested as methamphetamine and yielded similar results. It was also weighed in the container it was found in.
- Exhibit no. 657018-glass container containing Exhibit no. 657017 found within Exhibit no. 657016.

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- Exhibit no. 657019-clear glass cylindrical smoking pipe with a bulb at the end of it containing a white residue found within Exhibit no. 657016. Based on officers' training and experience, this type of pipe is used to ingest illicit drugs.

It should be noted that officers attempted to obtain surveillance footage from the Blackstone Restaurant, but no manager was able to be contacted and nobody on the premises was able to access the surveillance footage for officers. Officers left a business card with the report number on it requesting that it be reserved if needed for evidentiary purposes.

This concluded my involvement in this matter. Please see other officers' details and supplementary attachments for further information.

End of narrative

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

TRANSCRIPT OF EVIDENTIARY HEARING
BEFORE THE HONORABLE WILLIAM C. GRIESBACH
UNITED STATES DISTRICT JUDGE

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produced by computer aided transcription.

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1 TRANSRIPT OF PROCEEDINGS

2 THE CLERK: Court calls case number 20-CR-234,
3 United States of America versus John Yang, for an evidentiary
4 hearing on the motion to suppress physical evidence. May I
13:35 have the appearances, please?

5 MR. FUNNELL: Good afternoon, Your Honor. Tim
6 Funnell for the Government.

7 THE COURT: Good afternoon.

8 MR. STEBBINS: Mr. Yang is appearing in person in
9 custody, along with Attorney Scott Stebbins. Good afternoon.
13:35

11 THE COURT: Good afternoon. Okay. This is scheduled
12 today for a hearing on a motion to suppress. This is a
13 warrantless search, I take?

14 MR. FUNNELL: Correct.

15 THE COURT: So the Government has the burden of
16 proof. Mr. Funnell, are you ready to proceed?
13:35

17 MR. FUNNELL: Yes, Your Honor.

18 THE COURT: Did you want to make an opening
19 statement, let me know what I'm going to hear, or did you just
20 want to go with the evidence?
13:35

21 MR. FUNNELL: Sure. I can give the Court a brief
22 overview. I have two witnesses, two officers from the
23 Green Bay Police Department: Ben Harvath, H-A-R-V-A-T-H, and
24 Garth Russell, R-U-S-S-E-L-L. Officer Harvath will testify
13:36 25 first, followed by Officer Russell.

13:36 1 I have three exhibits that have been marked. Exhibit 1,
2 there's a copy by the clerk's desk, it is a map of the area of
3 Green Bay that -- where this traffic stop and arrest occurred.
4 And then Exhibits 2 and 3 are squad car videos from the two
13:36 5 officers' squad cars, Exhibit 2 being from Officer Harvath and
6 Exhibit 3 from Officer Russell's.

7 The length of Exhibit 2, Officer Harvath's video, is
8 slightly longer because he was the officer who followed the
9 truck for a short distance and made the traffic stop. That one
13:36 10 is seven minutes and 59 seconds. The other one is six minutes,
11 22 seconds, and the Court will see that when they pull in, when
12 the officers position their squad cars in the parking lot of
13 the Blackstone where the traffic stop occurred, Blackstone
14 Family Restaurant, that the squad cars are positioned very
13:37 15 closely together, so the camera angles are very similar.
16 However, the audio is different because the audio picks up from
17 each respective officers' microphone, and because one officer
18 approaches the driver's side and another one is on the
19 passenger side, it's beneficial to play both of them because of
13:37 20 the audio difference. So I'm not trying to duplicate the
21 video, it's simply picking up more audio.

22 And what -- what the Court will see when Officer Harvath's
23 video picks up is that he has already seen the Dodge Ram pickup
24 truck that's in question, it's -- it's mobile at the time his
13:37 25 video picks up, he made some observations that caused him to be

13:38 1 suspicious about the vehicle, about the truck. He then decides
2 that he's going to pull it over. While he's following it,
3 he'll testify that he observes what he believed to be a rolling
4 stop, an incomplete stop at a stop sign, which was one of the
13:38 5 bases for the stop.

6 He then decides to pull the vehicle over, it pulls into
7 Blackstone Restaurant of its own accord. He interacts with
8 primarily the driver, Officer Russell then responds as well and
9 interacts primarily with the middle seat and the window seat
13:38 10 passenger of the truck. Mr. Yang was the window seat passenger
11 closest to Officer Russell.

12 And so the basis for the stop, number one, is a traffic
13 violation; and number two, the totality of the circumstances,
14 reasonable articulable suspicion of drug activity based on what
13:39 15 the officers had seen not only on that night, but also
16 information that had been relayed to them previously, and then
17 their conversations with the occupants of the truck reinforced
18 to them that there was reasonable suspicion.

19 You'll see that as they're speaking to the occupants,
20 another SUV squad pulls in, that's a canine that had been
21 called to the scene, because it was going to do a walk-around.
22 It's the Government's position that the traffic stop itself was
23 not prolonged at all, that Officer Harvath was diligently
24 pursuing the traffic violation aspect of the stop, at the same
13:39 25 time Officer Russell is interacting with the occupants.

13:40 1 So we believe we have a solid basis for the stop, that it
2 wasn't prolonged, and what -- what happens immediately upon
3 Officer Russell asking Mr. Yang to exit the truck, you'll see
4 that even before he's able to start a pat-down, there is an
13:40 5 exchange, both verbal and nonverbal, that quickly escalates
6 into a struggle, and from there the struggle, both officers get
7 involved with Mr. Yang, goes down to the ground, he has a gun
8 in his waistband that the officers believe he's reaching for,
9 they end up tasering him and arresting him at gunpoint. So
13:40 10 that's essentially an overview of the evidence.

11 THE COURT: Okay. Do you want to add in anything,
12 Mr. Stebbins, or wait till the evidence is in?

13 MR. STEBBINS: Your Honor, I would just add that as
14 far as the exhibits I have previously been provided copies of
13:41 15 those exhibits. I do not -- I do not disagree with Attorney
16 Funnell's description of them. The main basis for my motion,
17 or our motion to suppress the evidence, is that we, I guess,
18 disagree that the evidence will show that law enforcement did
19 have the appropriate reasonable suspicion to conduct the
13:41 20 traffic stop. Not so much arguing that it was extended, given
21 the nature of what occurred, but primarily attacking the nature
22 of the traffic stop itself.

23 THE COURT: Okay. So the rolling stop argument or --

24 MR. STEBBINS: Both aspects, the rolling stop and the
13:41 25 level of suspicion regarding drug activity in the area, yes.

13:41 1 THE COURT: Okay. Go ahead, Mr. Funnell. You can
2 proceed.

3 MR. FUNNELL: Thank you, Your Honor. The Government
4 calls Officer Benjamin Harvath.

13:41 5 MR. STEBBINS: Your Honor, I would ask for a
6 sequestration of the witnesses.

7 THE COURT: This is granted then. Mr. Funnell, make
8 sure the witnesses understand what that means.

9 MR. FUNNELL: Yes, Your Honor.

13:42 10 THE COURT: Raise your right hand, please, and the
11 clerk will administer the oath.

12 BENJAMIN HARVATH, called as a witness herein, after
13 having been first duly sworn, was examined and testified as
14 follows:

13:42 15 THE WITNESS: I do.

16 THE CLERK: Please state and spell your first and
17 last name for the record.

18 THE WITNESS: First name is Benjamin, last name is
19 Harvath, H-A-R-V, as in Victor, A-T-H.

13:42 20 THE COURT: Thank you, Officer Harvath. You can be
21 seated in the witness stand. And you can take your mask off
22 when you're seated.

23 THE WITNESS: Okay. Thank you.

24 THE COURT: Go ahead and proceed.

13:42 25 MR. FUNNELL: Thank you.

13:42 1 THE COURT: Oh, wait a minute. I think -- oh, you've
2 spelled -- Go ahead and proceed, Mr. Funnell.

3 DIRECT EXAMINATION

4 BY MR. FUNNELL:

13:42 5 Q. Officer Harvath, you're a Green Bay police officer; is
6 that right?

7 A. That's correct.

8 Q. How long have you been a police officer?

9 A. Since October of 2016.

13:43 10 Q. Has that always been with Green Bay?

11 A. Yes.

12 Q. What -- What are your duties as a patrol officer with
13 Green Bay? Do you work a particular shift?

14 A. Yup. I'm assigned to night shift patrol, which goes from
15 roughly 10:00 p.m. until 7:00 a.m. I'm assigned to the near
16 west side, which is known as the Bravo district, and in that
17 role I respond to calls for service and patrol the area looking
18 for suspicious circumstances, law violations, or welfare
19 checks, really anything that could be of use to police
20 services.

21 Q. When you were going through training to become a police
22 officer, was drug interdiction part of that training?

23 A. Yes, it was.

24 Q. Have you had occasion to use that training during your
25 time as a patrol officer?

13:43 1 A. Yes, I have.

2 Q. Do you rely on reports that are passed on to you by other
3 officers regarding your district in particular?

4 A. Yes.

13:44 5 Q. I'm going to ask you some questions about the events of
6 November 23rd of 2020 in the early morning hours. Were you
7 working a shift that day?

8 A. Yes, I was.

9 Q. About five days before that, had you received some
13:44 10 information from a fellow officer?

11 A. Yes, I did.

12 Q. About a particular location in your district?

13 A. Yes. It was an E-mail from Officer Krueger regarding the
14 800 block of Kellogg Street.

13:44 15 Q. You're familiar with Officer Krueger?

16 A. Yes, I am.

17 Q. And how is that?

18 A. He used to be a power shift officer, so he'd work from the
19 hours of roughly 7:00 p.m. until 3:30 a.m., and I would work
13:44 20 with him where our shifts overlap there. He was also one of my
21 field training officers, so when I first got hired, you go
22 through a field training process, City of Green Bay consists of
23 four steps. He was my step two field training officer, so I
24 was with him for approximately one month in training.

13:45 25 Q. And was that in regard to the district that you're

13:45 1 patrolling now, the one that you referenced earlier?

2 A. The 800 block of Kellogg Street is in Bravo district, yes.

3 Q. There's an exhibit up there in front of you, Exhibit 1.

4 Do you see that?

13:45 5 A. Yes, I do.

6 Q. Do you recognize Exhibit 1?

7 A. Yes.

8 Q. What is it?

9 A. It is -- looks like a map that highlights various
13:45 10 locations to include 826 Kellogg Street, the Dousman Express
11 Convenience Center, the Blackstone, and then roughly describes
12 a path of travel of the vehicle subject to the stop in this
13 case.

14 Q. Okay. There is a -- cardinal directions, north, south,
13:45 15 east, west, is that correct, on the right side of Exhibit 1?

16 A. Yes.

17 Q. So even though the streets that we're going to be talking
18 about don't line up perfectly, north, south, east, west, we'll
19 just generally refer to those as eastbound, westbound,
13:46 20 et cetera, okay?

21 A. Sounds good.

22 Q. You -- You mentioned the Blackstone, which is shown over
23 on the left-hand side of Exhibit 1. What is the Blackstone?

24 A. It is a diner -- Or it's called the Blackstone Family
13:46 25 Restaurant, so it's a diner type restaurant that's open 24

13:46 1 hours a day.

2 Q. There -- There's an arrow leading from North Ashland
3 Avenue to the words "the Blackstone" on Exhibit 1. Do you see
4 that?

13:46 5 A. Yes, I do.

6 Q. Is that roughly where an entry in a parking lot for the
7 Blackstone?

8 A. Yes.

9 Q. You also mentioned the Express Convenience Center. Does
13:46 10 that front on Dousman?

11 A. Yes, it does. You can gain access to it from Maple Avenue
12 or from Dousman Street.

13 Q. And I may have asked you this, I may not have. You've had
14 a chance to look at this before court today; is that right?

13:46 15 A. Yes, that's correct.

16 Q. Does it accurately show this area of -- did you say
17 district six?

18 A. Bravo district. Or B.

19 Q. Bravo district.

13:47 20 A. Yes.

21 Q. Does it accurately show as far as the streets and what it
22 depicts here?

23 A. Yes, it does.

24 Q. You mentioned 826 Kellogg Street. What's the significance
13:47 25 of that?

13:47 1 A. That was an address that Officer Krueger, the
2 aforementioned E-mail that Officer Krueger sent me. This was
3 the address subject to that E-mail and that he had information
4 wherein he suspected there to be drug activity to include drug
13:47 5 trafficking coming from that address.

6 Q. Did he provide specific information about what was
7 suspected at 826 Kellogg Street?

8 A. Without reviewing the E-mail, it's hard to recall. I
9 believe he used specific names and I believe he indicated that
13:47 10 he thought there was possibly methamphetamine and heroin use or
11 users going there to get those drugs.

12 Q. Did he indicate that there had been a number of complaints
13 about in and out traffic at that particular residence?

14 MR. STEBBINS: Your Honor, I would object.

13:48 15 THE WITNESS: Yes.

16 MR. STEBBINS: It calls for hearsay evidence.

17 THE COURT: I'm going to take it it's offered not for
18 the truth but for what the officer was aware of.

19 MR. FUNNELL: Right, Your Honor, and also the rules
13:48 20 of evidence at suppression hearings are relaxed.

21 THE COURT: Overruled.

22 MR. FUNNELL: Go ahead.

23 THE WITNESS: Sorry. Can you go again with the
24 question?

13:48 1 BY MR. FUNNELL:

2 Q. Did he -- Did Officer Krueger indicate that there was
3 reports and he had actually responded to reports of in and out
4 traffic at suspicious times and multiple times at 826 Kellogg
13:48 5 Street?

6 A. Yes, he did.

7 Q. What did that indicate to you?

8 A. To me based on the E-mail that he gave me, he suspected
9 that there was drug activity and possibly drug trafficking
10 going on at that address. He sent it to me because he has now
11 become a day shift officer, so his core hours are 6:00 a.m.
12 until 2:30 p.m. He gave me this information to act on it to
13 keep an eye on it during my shift since he doesn't work during
14 the hours that I work. And to look for anything that might
13:49 15 corroborate what he thought to be going on at that address.

16 Q. And that was approximately five days before the shift in
17 question here being November 23rd, he sent that E-mail, he sent
18 it about five days before that?

19 A. Yes.

20 Q. In your training and experience, if there's a particular
21 residence on a block where there is suspected drug activity,
22 would you expect to see people pulling up right outside that
23 residence and going in and out?

24 A. No.

13:49 25 Q. Why not?

13:49 1 A. In my experience and training, they often will either park
2 around the block or down the block so as to not draw attention
3 to the actual address that they're going to. Because if you
4 were to see short term traffic of people pulling up to a
13:50 5 residence walking into the residence and then shortly
6 thereafter walking out of the residence and into a car and
7 leaving, that would alert neighbors and would be easier for law
8 enforcement to detect that activity at that particular address.
9 Q. Am I correct that Officer Krueger also took at least one
13:50 10 complaint from a neighbor of 826 Kellogg regarding the in and
11 out activity there?
12 A. Yes, I believe he did.
13 Q. All right. Let's talk about your shift then on
14 November 23rd and specifically around 1:30 in the morning.
13:50 15 Were you patrolling in the area of 826 Kellogg Street?
16 A. Yes, I was.
17 Q. What did you see?
18 A. I was coming eastbound on Kellogg Street, and as I was
19 approaching the intersection of Ashland Avenue, I observed a
20 dark color pickup truck parked on the north side of Kellogg
21 Street facing westbound. As I drove by, there were no lights
22 on in the vehicle, but I believe that I saw two people inside
23 of the vehicle, and I could see exhaust coming from the exhaust
24 pipe, so told me that the truck was running.
13:51 25 Q. Let me stop you there a second. This was about 1:30 in

13:51 1 the morning?

2 A. Yes, that's correct.

3 Q. What were the weather conditions?

4 A. From what I could remember I don't think there was any
13:51 5 precipitation, but I do know that it was below freezing, I
6 believe, it was around or below freezing, so it was cold out,
7 relatively speaking.

8 Q. Obviously dark outside?

9 A. Yes, pitch black.

10 Q. Was there a lot of traffic going on or was that truck the
11 only one that drew your attention?

12 A. No, there's little traffic on Kellogg -- This area of
13 Kellogg Street is strictly a residential neighborhood, and I
14 didn't see any other vehicles running or in the area that drew
13:52 15 my attention, no.

16 Q. Apart from the specific information that you'd been given
17 by Officer Krueger, did you generally have an awareness of drug
18 activity in this particular area?

19 A. Yes.

13:52 20 Q. Can you describe that for me, please?

21 A. Yes. There's actually a house on the other side, the
22 northeast corner of Ashland and Kellogg Street that has, via
23 interdepartmental information, believed to be trafficking drugs
24 also. Myself and other officers on my shift had made -- have
13:52 25 made stops of vehicles at that particular address also that

1 have resulted in drug related charges, paraphernalia, or simple
2 possession, things like that.

3 So this area of Bravo district is one that is known to me
4 and other officers to be of heightened drug activity, and so it
13:53 probably gets patrolled more so than other areas that don't
6 have as many complaints or concerns of that nature.

7 Q. All right. You've indicated where you first saw the
8 pickup truck, and you said it was stationary when you saw it,
9 correct?

10 A. Yes, correct.

11 Q. Is that roughly where that number one is on Exhibit 1?

12 A. Yes.

13 Q. So it would've been on the left or westbound side of North
14 Ashland?

15 A. Correct. It was west of Ashland Avenue. Yes.

16 Q. Okay. And you were traveling in what direction when you
17 first saw it?

18 A. I was coming from the west traveling eastbound.

19 Q. All right. What was your -- Did you go past it and what
13:53 did you observe when -- as you were going past it?

21 A. I drove past the truck, and initially observed the two
22 people inside of the truck and then put together that the truck
23 was running with the exhaust visible from the exhaust pipe.

24 I continued to travel eastbound on Kellogg Street, and
13:54 then at the intersection of Kellogg and North Maple Avenue, I

13:54 1 performed a U-turn to go back and get the registration
2 information of the vehicle and to continue to observe it to see
3 if any of its behavior changed.

4 Q. Were you in contact with any other officers as you were
13:54 5 doing this?

6 A. I'm not sure if it was on the first pass or the second
7 pass, but yes, I had my car radio turned to a different channel
8 so that I could communicate with Officer Russell, who was -- he
9 is my district partner, somebody I work with four nights out of
13:54 10 the five nights of my work week, and I was in communication
11 with him, yes.

12 Q. Did you have any conversation with Officer Russell about a
13 pickup truck like this?

14 A. I don't think it would've been at this point in time, but
13:54 15 later on in the series of events, yes, I did.

16 Q. Okay. Going back to your observations as -- as you went
17 past it, then you said you made a U-turn?

18 A. Yes, I made a U-turn at Kellogg and North Maple Avenue.

19 Q. Did you see anybody outside the truck?

13:55 20 A. I can't remember off the top of my head if I -- again, if
21 I saw somebody walking eastbound from the west of the vehicle,
22 on my first pass, but I know for certain that the second pass I
23 had made after I had completed the U-turn I went by, obtained
24 the registration information on the vehicle, and then off to
13:55 25 the west on the north side of the street I saw somebody walking

13:55 1 eastbound towards the area where the truck was parked.

2 Q. So if I understand you correctly, you're saying that where
3 this number one is on Exhibit 1, that you went past the truck
4 as you were traveling eastbound?

13:55 5 A. Correct.

6 Q. You made a U-turn, and then you came past the truck again
7 as you were traveling westbound?

8 A. Yes.

9 Q. And it was -- And you're saying that you were certain
10 when you made the pass the second time that you saw somebody
11 walking?

12 A. Yes.

13 Q. And where I've got 826 Kellogg Street on Exhibit 1, was
14 the person walking from that direction?

13:56 15 A. Yes, they were well west of the vehicle. I would -- If
16 memory serves me correctly, when I remember first seeing them,
17 they were at least two to three houses west of where the
18 vehicle was stopped.

19 Q. Did that strike you as odd?

13:56 20 A. Yes.

21 Q. Why is that?

22 A. Well, because it was cold out. There isn't a lot of foot
23 traffic in that area in general, in the summer months there's
24 probably more, but as you mentioned earlier, it was November
13:56 25 and it was at or below freezing. And it could be a coincidence

13:56 1 that this truck is parked running near the intersection of
2 Ashland Avenue and Kellogg Street, but the person seemed to be
3 walking in the same direction as the truck, and it led me to
4 believe that they could potentially be associated or related
13:57 5 and that the person walking was walking to the truck.

6 What was suspicious about where it was parked is if I were
7 to go pick up an occupant to give them a ride or something of
8 that nature, I would just drive right to the person since it's
9 so cold out rather than make them walk more than a block down
13:57 10 the road.

11 Q. Could you see as you drove by that second time where that
12 pedestrian went?

13 A. Went in terms of --

14 Q. Did they go to the truck?

13:57 15 A. I continued to go westbound, and I kept -- or I kept
16 monitoring both the truck and the occupant. I did so and it
17 was at this point I think that I radioed to Officer Russell and
18 I think Officer Raeger (phonetic) was also on our radio
19 channel. And I knew he was in our area, so I asked him to go
20 check on Ashland what they observed with regards to the truck
21 and the person, because at this point I had already driven by
22 the truck twice, so I didn't want to totally alert them that I
23 was surveilling them. So I kept traveling westbound and I
24 monitored both the pedestrian on foot and the truck through my
13:58 25 mirrors, and I was asking other officers to assist me in making

13:58 1 additional observations as to what would happen next between
2 the passenger and the truck.

3 Q. Okay. So you didn't, at that time, you didn't see if the
4 pedestrian made it to the truck or went to the truck?

13:58 5 A. I did not see the pedestrian get in the truck, no.

6 Q. Did you see -- Did you get a good look at the pedestrian?

7 A. It was dark. He appeared to be a shorter male with a
8 huskier build was pretty much the best I can do with regards to
9 any sort of physical description of the person that I saw
13:58 10 walking at that time.

11 Q. Later on, you know, fast forward and a traffic stop
12 occurred involving that truck; is that right?

13 A. Yes.

14 Q. And did you initiate that stop?

13:59 15 A. Yes, I did.

16 Q. Did you at that time recognize anybody in the truck as
17 having been the pedestrian that you saw?

18 A. The person in the truck that was closest to the passenger
19 door of the truck, it was a bench seat, so there was the
20 driver, a middle passenger, and a passenger closest to the
21 passenger side door. The person -- The passenger of the truck
22 that was closest to the passenger side door matched the rough
23 description that I obtained when I drove by the truck for the
24 second time westbound on Kellogg Street.

13:59 25 Q. And did you identify that person by name at the time of

13:59 1 the traffic stop?

2 A. Officer Russell obtained a verbal identification of the
3 passenger, yes.

4 Q. And who was that?

13:59 5 A. John Yang.

6 Q. Is Mr. Yang in court today?

7 A. Yes, he is.

8 Q. Can you tell me where he's sitting and what he's wearing,
9 please?

10 A. He's sitting directly in front of you at the table, he's
11 wearing all orange.

12 MR. FUNNELL: May the record reflect he has
13 identified the defendant, Your Honor?

14 THE COURT: Yes, the record shall so reflect.

14:00 15 BY MR. FUNNELL:

16 Q. Going back to the situation where you passed the truck the
17 second time, you're looking in your mirrors, talking to other
18 officers, what did you do next?

19 A. I continued to travel westbound on Kellogg Street at or
20 below the speed limit to try and extend the amount of time that
21 I could observe what was going on.

22 Q. Did you go back and relocate the truck?

23 A. I did. But I had other officers that I was communicating
24 with had indicated that they were in the area, and Officer
14:00 25 Russell informed me that he thought he had the vehicle. I

14:00 1 hadn't given him a very good description of the vehicle that I
2 was watching, I just told him that I was looking at a vehicle
3 near the intersection of Kellogg Street and Ashland Avenue.

14:00 4 So as I'm observing what's going on behind me in my
5 mirrors, I see him turn eastbound on Kellogg Street after a
6 vehicle that had all of its lights on did the same thing. And
7 he was communicating to me that he thought he had the vehicle I
8 was talking about. I told him that he did not have the vehicle
9 that I was talking about, because I could still see that it was
14:01 10 parked there, and momentarily -- or shortly thereafter the
11 vehicle that I was watching, the truck that was parked facing
12 westbound, its headlights activated and it started traveling
13 westbound also.

14:01 14 Q. The truck that was the one that you were initially
15 directed to and that you've just described, what was the make
16 and model?

17 A. It was a Dodge Ram, and it was darker colored. I want to
18 say it was purple, but it might've been some shade of purple,
19 blue, black, somewhere in there.

14:01 20 Q. All right. So if I understand you correctly, Officer
21 Russell was trying to find the Dodge Ram, but he did not locate
22 it initially, you could still see it; is that right?

23 A. Yeah. And he did not know that I was looking at a Dodge
24 Ram at that point in time. I just told him that I was looking
14:02 25 at something, and I wanted to get it out over the radio

14:02 1 quickly, just to get someone in that area, and he was mistaken
2 and he was directing his attention toward some other vehicle
3 that was unrelated to this incident.

14:02 4 Q. So did you say the Dodge Ram, the lights came on and it
5 became mobile?

6 A. Yes.

7 Q. What direction did it go?

8 A. It was traveling westbound on Kellogg Street also.

9 Q. All right. So looking at Exhibit 1, from the box that's
14:02 10 marked number one, there's an arrow to the left of that. Do
11 you see that?

12 A. Yes, I do.

13 Q. Does that indicate the direction of travel of the Dodge
14 Ram?

14:02 15 A. Yes.

16 Q. From there there's an arrow southbound on North Oakland.
17 What does that signify?

18 A. The vehicle, after it activated its lights and became
19 mobile, it turned southbound on North Oakland Avenue.

14:02 20 Q. And what are you doing at that time?

21 A. I was still traveling westbound, albeit slowly, on Kellogg
22 Street because I did not want to appear to be giving that
23 vehicle any extra attention, I did not want to apply my brakes
24 as that could be a dead giveaway, because there was no traffic
14:03 25 on the streets, so if I were to apply my brakes, the occupants

14:03 1 in the vehicle might become suspicious that I was observing
2 them. So I continued to travel westbound slowly to make it
3 appear as if I was going about my tour of duty. After the
4 vehicle turned southbound and went out of view on Oakland
14:03 5 Avenue, I performed a U-turn and went to go reacquire the
6 vehicle.

7 Q. What street did you travel on to look for the vehicle?

8 A. I did my U-turn on Kellogg Street, west of Oakland Avenue
9 and then started traveling back eastbound on Kellogg Street,
14:03 10 and I turned southbound on Oakland Avenue from Kellogg Street.

11 Q. So where the Dodge Ram had taken a left, from Kellogg onto
12 Oakland, you took a right from Kellogg onto Oakland?

13 A. That's correct.

14 Q. And there is another box on Exhibit 1 that's says number
15 two. Do you see that?

16 A. Yes, I do.

17 Q. What does that indicate?

18 A. That is the intersection of North Oakland Avenue and
19 Dousman Street.

20 Q. Is there a stop sign there?

21 A. Yes, there is.

22 Q. Did you get behind the vehicle -- Or were you behind the
23 vehicle as it approached that stop sign?

24 A. I got behind the vehicle as it was approaching the stop
14:04 25 sign. As I was rounding or as I was negotiating the right turn

14:04 1 onto Oakland Avenue, I was able to see the vehicle approaching
2 the intersection of North Oakland Avenue and Dousman Street,
3 yes, so I could observe it the entire time from when it was
4 approaching the intersection until it had gone through the
14:04 5 intersection.

6 Q. You had a clear view of -- There were no other vehicles
7 in between you and the Dodge Ram; is that right?

8 A. That's correct.

9 Q. You could see when its brake lights came on?

14:05 10 A. Yes.

11 Q. And did you know at that time that there was a stop sign
12 there regulating traffic?

13 A. Yes.

14 Q. Did the vehicle, did the Dodge Ram come to a complete
14:05 15 stop?

16 A. No, it did not.

17 Q. Did it go straight, turn left, turn right?

18 A. It appeared as if it was going to go straight and then it
19 activated its left turn signal and turned eastbound onto
14:05 20 Dousman Street as it was going through the intersection.

21 Q. Why do you say that it appeared it was going to be going
22 straight?

23 A. Because after it had applied its brakes and seemed to come
24 to a slow roll, it seemed to be going through the intersection,
14:05 25 and then this is merely speculation by me, but I had fully

14:05 1 negotiated the right turn onto North Oakland Avenue, and it
2 would've seen my headlights in its rearview mirror, and so it
3 was at this point that I thought they had decided to turn left
4 in an attempt to deviate from their original path of travel so
14:06 5 that I couldn't observe it further.

6 Q. Did you continue southbound on Oakland to speed up and
7 more or less catch up to the truck?

8 A. Yes, I did.

9 Q. Did you also then turn left onto Dousman?

14:06 10 A. Yes, I did.

11 Q. Were you in contact with other officers at this time?

12 A. Yes, I was. So after it was established that Officer
13 Russell had the wrong vehicle and that this vehicle was mobile
14 and that I was actively trying to close the distance between
15 the subject vehicle and my vehicle, I was communicating with
16 Officer Russell and he had asked me is it a dark colored Dodge
17 Ram, the truck that I was talking to him about, and I told him
18 yes, it was.

19 Q. Did he indicate why that was significant to him?

14:06 20 A. It was significant to me because I hadn't given him the
21 description of the truck prior to this point in time. I said
22 yes, it was a Dodge Ram. And he said he believed he had seen
23 that vehicle at the Dousman Express earlier that night and he
24 observed suspicious activity surrounding it while he observed
14:07 25 it at the Dousman Express.

14:07 1 Q. All right. As far as the stop, or lack thereof, at North
2 Oakland and Dousman, were you -- were you able to see that the
3 vehicle did not come to a complete stop such that you decided
4 to make a traffic stop?

14:07 5 A. Yes.

6 Q. And when did you attempt to make that traffic stop?

7 A. I caught up to the vehicle when I turned southbound onto
8 to North Ashland Avenue from Dousman Street. It had gotten
9 south of Hubbard Street, and as I caught up to it and closed
14:07 10 the distance, it signaled, I believe, like it was going to turn
11 into Blackstone, and it was at this point that I activated my
12 emergency lights to initiate the traffic stop.

13 Q. So going back to Exhibit 1 after the Dodge Ram had taken a
14 left on Dousman, there's an arrow indicating southbound on
15 North Ashland. Did the -- Is that the direction that the
16 Dodge Ram and you took as well?

17 A. Yes.

18 Q. And then there's an arrow going into the Blackstone. It
19 doesn't look like the arrow makes it all the way to the
14:08 20 intersection?

21 A. No, it does not.

22 Q. Can you describe where the entry is there relative to the
23 intersection?

24 A. Yes. There's a -- a entryway to the -- or sorry, the
14:08 25 Blackstone Family Restaurant parking lot that is just north of

14:08 1 West Walnut Street on North Ashland Avenue. Excuse me. That
2 you can access the parking lot from.

3 Q. When did you first turn on your squad lights?

4 A. I believe the vehicle was still on Ashland Avenue and then
5 it had pulled into the parking lot and proceeded all the way to
6 a parking spot on the west side of the parking lot in
7 Blackstone's parking lot.

8 Q. All right. I'm going to show you a video, Exhibit 2,
9 which is a squad car video. Have you seen Exhibit 2, the squad
14:09 10 car video, from your squad that -- during that shift?

11 A. Yes, I have seen the video. Yes.

12 Q. Does it accurately show the events that we've just been
13 discussing here?

14 A. Yes, it does.

15 Q. Does it pick up as you're turning onto North Oakland such
16 that we're able to see the brake lights of the truck at the
17 stop sign in question?

18 A. That's correct. So the way the camera works is I have
19 been trained and made it a habit to, if I observe a traffic
20 violation in order to try and preserve the evidence, I will
21 activate the camera to capture the violation. What happens
22 after you hit the record button is I believe a preset amount of
23 time, I think it's 30 seconds before I actually hit the button,
24 is when the video will start.

14:10 25 MR. FUNNELL: Your Honor, I'd like to start

14:10 1 Exhibit 2. There will be -- There will be a few times when I
2 stop it, but I'd like to move the admission of Exhibit 2 now
3 and start playing it for the Court.

4 MR. STEBBINS: I have no objection to that, Your
14:10 5 Honor.

6 THE COURT: Exhibit 2 is received. It may be shown.
7 (Exhibit No. 2 was received into evidence.)

8 (The video was played.)

9 MR. FUNNELL: Okay. I'm stopping the video down in
14:10 10 the right-hand corner, 1:30 and 37 seconds.

11 BY MR. FUNNELL:

12 Q. It appears you just took a right on the video; is that
13 right?

14 A. Yup, that's correct.

15 Q. And what -- what street would you have just turned onto?

16 A. That would be North Oakland Avenue.

17 Q. All right. Now it's hard to tell, because it's a little
18 blurry here, but there appear to be some brake lights in the
19 video ahead of you; is that correct?

14:11 20 A. Yes, that's correct.

21 Q. Is that the truck?

22 A. Yes, it is.

23 Q. All right. I'm going to continue playing it.

24 (The video was played.)

14:11 25 MR. FUNNELL: All right. I've just stopped it at

14:11 1 1:30 and 46 seconds.

2 BY MR. FUNNELL:

3 Q. It appears that the Dodge Ram just took a left; is that
4 correct?

14:11 5 A. Yes.

6 Q. Onto what street?

7 A. That is Dousman Street.

8 Q. And is that the stop sign that we were just talking about?

9 A. Yes, it is.

14:11 10 Q. So that's the -- what you're saying is a rolling stop, an
11 incomplete stop?

12 A. Yes.

13 Q. And that was a basis for the traffic stop?

14 A. Yes.

14:12 15 Q. All right. I'm going to continue playing.

16 (The video was played.)

17 MR. FUNNELL: All right. I'm going to stop it at
18 1:31 and 12 seconds.

19 BY MR. FUNNELL:

14:12 20 Q. You've just taken another right. What did you turn onto?

21 A. That is North Ashland Avenue.

22 Q. Is that the truck ahead of you?

23 A. Yes, it is.

24 Q. And we just had some audio for the first time, and is that
14:12 25 you indicating that you're going to make a stop on the truck?

14:12 1 A. Yes.

2 Q. Okay. I'll continue playing.

3 (The video was played.)

4 MR. FUNNELL: All right. I'm stopping it at 1:31 and

14:13 5 46 seconds.

6 BY MR. FUNNELL:

7 Q. Are we now in -- in position where your squad stays and

8 the truck stays at the Blackstone?

9 A. Yes.

14:13 10 Q. All right. I'm going to continue playing.

11 (The video was played.)

12 MR. FUNNELL: All right. I'm going to stop it at

13 1:32 and 34 seconds.

14 BY MR. FUNNELL:

15 Q. It appears that Officer Russell just arrived on scene and

16 is walking up to the passenger side; is that correct?

17 A. Yes, that's correct.

18 Q. And you were now at the driver's side?

19 A. Yes.

14:14 20 Q. I'll continue playing.

21 (The video was played.)

22 MR. FUNNELL: All right. I've just stopped it at

23 1:34 and 16 seconds.

24 BY MR. FUNNELL:

14:16 25 Q. Correct me if I'm wrong, it sounded like you were speaking

14:16 1 to somebody other than the driver just at that moment?

2 A. Yes. That's correct.

3 Q. Who were you speaking to?

4 A. The passenger closest to the passenger door of the truck.

14:16 5 Q. That would be Mr. Yang?

6 A. Yes.

7 Q. Why were you speaking to Mr. Yang?

8 A. Based on what I could hear of his interaction with Officer

9 Russell, he was challenging that there was no reason for the

14:16 10 stop, so I explained to him what the reason for the stop was.

11 Q. Okay. I'm going to continue playing.

12 (The video was played.)

13 MR. FUNNELL: I'm stopping it at 1:34 and 50 seconds.

14 BY MR. FUNNELL:

14:17 15 Q. You just asked if another unit was available; is that

16 right?

17 A. Yes, that's correct.

18 Q. Who were you asking for?

19 A. I asked for a king unit, which is a canine unit. They go

14:17 20 by king because that's just their call sign on the radio.

21 Q. And why were you asking for a canine unit?

22 A. Based on the totality of the circumstances, kind of a lot

23 of the stuff that we had already talked about, and then the

24 dialogue that I had had with the driver led me to become

14:18 25 suspicious that there was contraband inside of the vehicle, and

14:18 1 so I called for a king unit to do an external sniff of the
2 vehicle.

3 Q. What was it about your conversation with the driver that
4 caused you suspicion?

14:18 5 A. He confirmed that he had been at the Dousman Express and
6 Officer Russell, who I worked with as I mentioned before often,
7 said that he observed the vehicle to be suspicious then. All
8 of the circumstances we've talked about leading up to this
9 point were suspicious, to include the male walking from an area
14:18 10 that was suspected to be a drug address, and then in talking
11 with the driver, and I kind of called him out on some of his
12 answers directly on the video there.

13 He wouldn't deny the presence of guns or drugs inside of
14 the car. He would say that he didn't have it, but he would not
14:19 15 flat out deny that there were any drugs or guns in his car.
16 And based on my training and experience this is something that
17 people will do to try and mitigate their level of
18 responsibility for possible contraband inside of a vehicle.
19 It's not a hard, fast rule, it's just something that in my
20 experience as a police officer people will say that tries to
21 alleviate them from any blame for what may or may not be found
22 ultimately in the car.

23 Q. You're beginning to walk around at this point in the
24 video, the back of the truck, to the other officer; is that
14:19 25 correct?

14:19 1 A. Yes.

2 Q. Why were you doing that?

3 A. Officer Russell was verbally identifying the middle

4 passenger and Mr. Yang, and so I had the driver's physical

14:19 5 driver's license, and since I was the one that conducted the

6 traffic stop, I'm the primary officer of this stop, so

7 typically the primary officer if they're able will go and so

8 two officers aren't on the radio with dispatch indexing parties

9 in the car or on a call. They only have to deal with one

14:20 10 officer. I was going to get the information that he was

11 gathering about the identities of the other two passengers from

12 Officer Russell.

13 Q. And is that standard in a traffic stop to gather the

14 identities of the different passengers?

14:20 15 A. Yes.

16 Q. Or at least it's not unusual?

17 A. No, it's not unusual at all.

18 Q. What was the name of the driver?

19 A. I believe his name was Adam Zimdars or Zidmars (phonetic).

14:20 20 Q. And Zimdars, would that be Z-I-M-D-A-R-S?

21 A. I believe so, yes.

22 Q. All right. And so you're going around to get the

23 information on the other two from Officer Russell?

24 A. Yes.

14:20 25 Q. After you do that, what -- what is your intent? What's

14:20 1 your plan regarding the traffic stop?

2 A. So you hear me call for the king unit or the canine unit
3 to respond to this location, I asked if he's available. He
4 said he is available. He works in Charlie district, which is
14:21 5 just, excuse me, just across the river.

6 I am going to get the names from Officer Russell, I'm
7 going to return in my squad car, I'm going to index the people
8 to make sure there are no wants or warrants or anything like
9 that, including the driver to see if they have a valid driver's
14:21 10 license, and review their driving records and possible criminal
11 records, and then decide what enforcement action to take on the
12 stop violation or any possible status offenses that they might
13 be committing relative to their license status.

14 Q. I'm going to continue the video in a second here, but am I
15 correct that you after you get the information from Officer
16 Russell, you go back to your squad, right?

17 A. Yes.

18 Q. You call some information in to dispatch?

19 A. Yes.

14:21 20 Q. Were they having difficulty getting full information back
21 to you?

22 A. Yes. They informed me that they were only getting
23 Department of Transportation returns back, so records from the
24 Department of Transportation, they were not getting warrant
14:22 25 information, they were not getting information from the

14:22 1 criminal history database that we use, and there's a fourth one
2 that I'm neglecting to remember right now, but they weren't
3 getting returns from that source of information either.

4 Q. Okay. I'm going to continue playing the video.

14:22 5 (The video was played.)

6 MR. FUNNELL: Stopping it at 1:35:22.

7 BY MR. FUNNELL:

8 Q. Sounds like you just told Officer Russell king unit; is
9 that right?

14:23 10 A. Yes.

11 Q. What were you telling him?

12 A. I told him the king unit is 76, and 1076 is a 10 code that
13 we use over the radio to indicate that something is en route to
14 our location.

14:23 15 Q. So you --

16 A. Sorry. Go ahead.

17 Q. I was just going to say, so you're telling him the canine
18 is on its way?

19 A. Yes.

14:23 20 Q. Okay. At this point you requested the canine, and you
21 told him that, all in the course of your ordinary traffic stop
22 duties; is that right?

23 A. Yes.

24 Q. In other words that didn't take you any longer period of
14:23 25 time to do that?

14:23 1 A. No.

2 Q. I'm going to continue playing.

3 (The video was played.)

4 MR. FUNNELL: Stopping it at 1:37 and 14 seconds.

14:25 5 BY MR. FUNNELL:

6 Q. An SUV, looks like maybe a Ford Explorer squad, is pulling
7 in; is that right?

8 A. Yes.

9 Q. Who is that?

14:25 10 A. That is Officer Reitz (phonetic), he is the canine unit I
11 requested.

12 Q. And I'm going to continue playing.

13 (The video was played.)

14 MR. FUNNELL: All right. I'm going to stop it at
15 1:37 and 41 seconds.

14:26 16 BY MR. FUNNELL:

17 Q. The passenger door was just opened, I believe by Officer
18 Russell; is that correct?

19 A. Yes, that's what it looks like to me.

20 Q. All right. At this point has the canine officer gotten
21 the canine out of the canine unit?

22 A. No, I don't believe so.

23 Q. All right. As you're sitting in the squad car, have you
24 received any return information yet to process your traffic
25 stop?

14:26 1 A. I don't believe so, no.

2 Q. We didn't hear anything come back from the dispatcher; is

3 that right?

4 A. No, now that you mention it, we didn't, so, no, I didn't

14:27 5 get the information back at this point.

6 Q. Okay. So you weren't able to complete the traffic stop at

7 this point based on a lack of information; is that fair to say?

8 A. Yes.

9 Q. What do you do, I'm going to play it, but tell us what you

14:27 10 do next and so then I'll just play it more or less

11 continuously.

12 A. Yeah. So given that our criminal history returns, things

13 of that nature are down, I don't remember exactly what I was

14 doing at this point, I was either possibly trying to enter Adam

14:27 15 Zimdar's information myself because it will auto populate into

16 any citation or written warning that I were to issue him or I

17 might've been accessing our police department database that

18 would have some information on criminal history, Wisconsin

19 Circuit Court Access Program, which has prior arrests,

20 information possibly as work-arounds to the fact that I'm not

21 going to get anything back from my indexing those parties.

22 What Officer Russell is doing and what we've been

23 instructed to do by our canine handlers when we request

24 external sniffs of vehicles, they ask that we have all the

14:28 25 parties inside of the vehicle exit the vehicle before they

14:28 1 conduct their canine sniff. It's a safety thing. And that is
2 just the standard operating procedure that we've come to know
3 when requesting a canine for a sniff.

4 Q. All right. So do you get out of your squad car and go
14:28 5 back to the truck at this point?

6 A. Yes. I don't know if my door has popped just yet, but I
7 see Officer Russell open the door and I'm going to go assist
8 him with having the parties exit the vehicle.

9 Q. All right. I'm going to continue playing.

14:28 10 (The video was played.)

11 BY MR. FUNNELL:

12 Q. All right. I just concluded Exhibit 2, and obviously
13 there was a struggle at the end and somebody was, I'll just
14 say, screaming. Who was it that was screaming?

14:29 15 A. John Yang.

16 Q. Had you -- I saw that somebody got a taser out. Was that
17 you?

18 A. Yes, that was me.

19 Q. Did you administer the taser to Mr. Yang?

14:29 20 A. Yes, I did.

21 Q. Can you describe for the Court what you saw and what you
22 were doing as you went back to the passenger side to assist
23 Officer Russell leading to the tasering?

24 Q. Yes. So I saw Officer Russell open the door, I saw the
14:30 25 passenger get out, and then typically you'll have the passenger

14:30 1 turn away from the officer. You'll have the person bring their
2 hands behind their back. It's officer's discretion at this
3 point whether or not handcuffs are applied. It's all
4 circumstances dependent.

14:30 5 But almost always you'll have the person bring their hands
6 to their back so you can perform an external pat-down to verify
7 that they don't have any weapons on them while they're going to
8 be in close proximity to officers during the sniff of the
9 traffic stop.

14:30 10 When I -- What I saw was the passenger exit the vehicle,
11 and I saw movements that indicated to me that the passenger was
12 not being cooperative, it looked to me like the passenger kept
13 trying to pull his hands or pull away from Officer Russell, so
14 immediately I wanted to try and intervene as quickly as
14:30 15 possible to get that person under control as quickly as
16 possible so we could go and carry out the rest of the traffic
17 stop as is.

18 As I ran up to Officer Russell, the subject was very
19 resistive, pulling away from officers, and he actually tried to
20 run to the front of the car. I grabbed him on one side because
21 as we're trained you want to try and grab somebody kind of by
22 their wrist and their upper arm area to attempt decentralize
23 them to bring them to the ground so they can be detained.

24 He ran towards the front of the car, but the door was
25 open, so he kind of was walled off by the door. And so he kind

14:31 1 of turned around and tried to run split between both of us, and
2 that's where I tried to grab him and force his momentum forward
3 so that his own momentum and the added momentum of me pushing
4 him forward caused him to lose his balance and to fall to the
14:31 5 ground so that we could detain him.

6 He lost his balance, Officer Russell was able to bring him
7 to the ground, and Officer Russell's trying to control his
8 hands because I'm assuming he saw the same thing I saw. The
9 subject, John Yang, was trying to put his hand -- dig his hand
14:32 10 towards the front of his waistband, and I know the waistband to
11 be an area based on my training and experience where people on
12 the street will have weapons there, and so I did not want him
13 to access a weapon, given the fact that he was already
14 resistive, so that's when you hear me say "stop reaching", and
14:32 15 telling him to stop reaching into his pants.

16 I'm trying to grab his hands, excuse me, and put them away
17 from the front of his pants. He had gotten to his feet, and
18 when he got to his feet, I escalated the force that I was going
19 to use, so I had already accessed my taser, and I deployed the
14:32 20 taser in an attempt to control him, decentralize him, assist in
21 taking him in detaining him, and it appeared to be effective,
22 he went to the ground, and we went forward with detaining him
23 by placing him into handcuffs.

24 Q. Did you become aware that he had a gun on him?

14:33 25 A. Officer Russell at one point in the struggle informed me

14:33 1 that he had a gun on him and that he had seized a gun that had
2 fallen from his waistband area, yes.

3 Q. After you go out of frame there on Exhibit 2, at the end
4 of the Exhibit 2 video that I just played, were you able to
14:33 5 successfully arrest Mr. Yang, put him in handcuffs?

6 A. Yes.

7 Q. Were you able to put him in a squad car?

8 A. Yes. I don't remember if it was me specifically that put
9 him in a squad car. By the time he was brought to his feet,
14:33 10 there were a lot of officers on scene, and I believe it
11 might've been another officer that had escorted him to the back
12 of the squad car. What squad car he was in I don't recall.

13 Q. Do you recall seeing any drugs in the area of the
14 struggle?

14:34 15 A. Yes. There was a bag of a green leafy plant-like
16 substance that later tested to be marijuana that was found near
17 the rear of the truck, and even when you reviewed the video it
18 looks like it kind of falls from the struggle, and then I was
19 searching his person, incident to the arrest, and Officer Olson
20 had discovered a bag of a white crystal rock-like substance in
21 one of his pockets that at the time was believed to be and was
22 later tested to be methamphetamine.

23 Q. I take it that the marijuana and the methamphetamine,
24 those were both seized outside the truck; is that right?

14:34 25 A. Yes, that's correct.

14:34 1 Q. And the firearm was seized outside the truck?

2 A. Yes, that's correct.

3 Q. In the video that we just saw, I saw another officer other
4 than you and Officer Russell approach the passenger side to
14:35 5 more or less control what those two people were doing during
6 the struggle; is that fair to say?

7 A. Yes, that was Officer Reitz, the canine officer. Yes.

8 Q. I didn't actually see his canine, his dog in the video.
9 Is that right?

14:35 10 A. No, you did not.

11 Q. Is that because there was no canine sniff here, it never
12 happened?

13 A. No, the canine was still in his car.

14 Q. Okay. Was the truck searched at the scene?

14:35 15 A. Yes, it was.

16 Q. Was that based on all the information that you've
17 testified to as well as the drugs and the gun?

18 A. Correct, yes.

19 Q. Were any other drugs or contraband found inside the truck
14:36 20 during the search?

21 A. Yes. I believe there was methamphetamine, more
22 methamphetamine found inside of the vehicle along with drug
23 paraphernalia by other officers.

24 MR. FUNNELL: I have no further questions, Your
14:36 25 Honor.

14:36 1 THE COURT: Mr. Stebbins?

2 MR. STEBBINS: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. STEBBINS:

14:36 5 Q. Officer Harvath, in the video we just watched, you gave
6 Mr. Yang essentially three reasons for the traffic stop, you
7 thought he went -- the vehicle went through an intersection
8 without stopping, you believe the registration lamp was
9 defective, and you saw him walking down the street towards the
14:36 10 truck when it was parked on Ashland; is that correct?

11 A. That's accurate, yup.

12 Q. Let's start with, I guess, for sake of going back to the
13 video, let's start with the perceived failing to stop at the
14 intersection of it was Dousman and Oakland; is that correct?

14:37 15 A. Yes.

16 Q. And that was after you had performed your second U-turn
17 and you were catching up to the vehicle that you observed this?

18 A. Yes, second U-turn.

19 Q. So you had essentially just turned south onto Oakland when
14:37 20 you observed this traffic -- or perceived traffic infraction?

21 A. Correct, yes.

22 Q. And that vehicle was essentially already at the other end
23 of Oakland preparing to turn onto Dousman?

24 A. It was traveling towards the other -- It was traveling
14:37 25 towards Dousman Street, yes.

14:37 1 Q. You were essentially a full -- that full block behind the
2 vehicle?
3 A. Roughly, yes.
4 Q. How do you know it was traveling?
14:37 5 A. Because as I'm so -- So the camera shows what it shows.
6 As I'm traveling eastbound on Kellogg Street, I'm able to see
7 the vehicle traveling towards the intersection. As I'm still
8 traveling eastbound on Kellogg Street and as I'm turning
9 southbound onto North Oakland Avenue.
14:38 10 Q. Okay. So you're -- So you're indicating that it's --
11 while it's not on the -- you couldn't tell from the video that
12 it's moving, but you're saying you observed it as you were
13 completing the turn?
14 A. That's not what I said. I told you what I observed as I
14:38 15 was driving the squad car first eastbound on Kellogg Street and
16 then southbound on Oakland Avenue.
17 Q. Could you tell me again what you observed to know that the
18 vehicle was still moving and not already stopped at the
19 intersection?
14:38 20 A. Sure. So I'm going eastbound on Kellogg Street. As I'm
21 approaching the intersection, you can see I'm doing it slowly
22 because I don't want them to see me turn after them right away,
23 I know that they're going to possibly be approaching that
24 intersection, and that there's a stop sign there.
14:38 25 So as the vehicle is traveling southbound and as I'm

14:38 1 coming eastbound on Kellogg Street, I'm able to see it not from
2 how I'm directly behind it, but I'm basically here, and I can
3 see that the vehicle is traveling away from me, because it's
4 still moving towards the intersection, and I continue to see it
14:39 5 traveling away from me as I negotiate the right-hand turn.

6 Q. So it's still traveling towards the intersection, how
7 many -- how far away do you think the vehicle was from the
8 intersection as you were making these observations?

9 A. I'm not sure. I would say that it was probably, when I
14:39 10 first initially saw it, it was probably two or three houses
11 maybe away from the intersection. That's me estimating.

12 Q. Okay. And just to be clear, two or three houses away from
13 Dousman Street?

14 A. Correct. Yes.

14:39 15 MR. STEBBINS: Attorney Funnell, can we play the
16 video again?

17 MR. FUNNELL: Sure.

18 MR. STEBBINS: And can you, I guess, pause it when he
19 catches up -- or turns onto Oakland?

14:40 20 (The video was played.)

21 MR. FUNNELL: Did you want me to stop it there?

22 MR. STEBBINS: That's fine. I can't see the clock on
23 the screen. Can you indicate what time you stopped it at?

24 MR. FUNNELL: 1:30 and 37 seconds.

25

14:40 1 BY MR. STEBBINS:

2 Q. Okay. So again, Officer Harvath, this is you turning onto
3 Oakland and that's the vehicle you're pursuing up ahead, you
4 think two or three houses from the intersection of Dousman?

14:40 5 A. When I first observed it on Kellogg Street, I believe it
6 was about two or three houses away from Dousman. There I would
7 say it's much closer to Dousman than when I first observed it.

8 That is when the camera first observed it, not me.

9 Q. So it was two or three houses away as you were turning --
14:40 10 or while you were still on Kellogg, so it very well could be at
11 the intersection at this point?

12 A. It's definitely closer to the intersection than when I
13 first observed it, yes.

14 Q. And I know it's kind of hard to see, but you're able to
15 perceive and looking at this video the color of the lights
16 essentially illuminated from the rear of the vehicle?

17 A. The brake lamps, yes.

18 Q. And you can tell -- can you describe what you see?

19 A. They are illuminated.

14:41 20 Q. And the brake lamps are illuminated?

21 A. Yes, which indicates that the brakes are being applied to
22 the vehicle.

23 Q. Okay. Can we play the video, please, until the vehicle
24 turns left onto -- completes the turn?

14:41 25 (The video was played.)

14:41 1 MR. FUNNELL: We are now at 1:30 and 45 seconds.

2 BY MR. STEBBINS:

3 Q. In reviewing that video, you can clearly see the brake
4 lights come off the vehicle as it again moves to the
14:41 5 intersection?

6 A. Yes, the brake lights come off. Yes.

7 Q. So essentially the entire time that you're observing the
8 vehicle as it's on Oakland once you're behind it, the brake
9 lights are illuminated consistently?

14:42 10 A. The brake lights are illuminated from when -- during the
11 time that they're illuminated, you can see on the camera, yeah.

12 Q. Which would be essentially the entire time you were on
13 Oakland?

14 A. I guess it depends when you want to establish that I was
15 on Oakland. I don't know if when I'm starting the -- to go
16 into the right turn and clear the intersection I'm on Oakland,
17 but I mean the brake lights are on the entire time that you see
18 them there, yes.

19 Q. They don't turn off and then turn back on or turn off and
20 then turn back on consistent with someone continuously applying
21 the brakes off and on?

22 A. No, they don't do that.

23 Q. So the illumination of the brake lights is consistent with
24 someone engaging the brakes?

14:42 25 A. Yes, I believe that the driver was engaging the brakes at

14:42 1 that time.

2 Q. And also in the video you do see the left turn signal come
3 on at one point, correct?

4 A. At one point, yes.

14:43 5 MR. STEBBINS: Can we play the portion the video one
6 more time?

7 MR. FUNNELL: I'm sorry. What would you like me to
8 do?

9 MR. STEBBINS: Just -- Just the observations on
14:43 10 Oakland through the turn. What we just --

11 MR. FUNNELL: So go back and replay what I just
12 played?

13 MR. STEBBINS: Yes, please.

14 MR. FUNNELL: Where would you like me to stop it?

14:43 15 MR. STEBBINS: Same spot.

16 (The video was played.)

17 MR. FUNNELL: We're at 1:30 and 45 seconds.

18 BY MR. STEBBINS:

19 Q. So, again, that video essentially shows the vehicle with
20 its brake lights engaged, then the brake lights disengage, the
21 turn signal comes on, and the vehicle goes through the
22 intersection?

23 A. More or less, yes.

24 Q. Okay. You said the second reason -- or one of the other
14:44 25 reasons for the traffic stop was that you believe the vehicle's

14:44 1 registration lamp was defective?

2 A. Correct.

3 MR. STEBBINS: Attorney Funnell, could we go forward
4 in the video to -- Or you can play it consistently through
14:44 5 here, what I'm interested in is when the truck turns right into
6 the Blackstone.

7 (The video was played.)

8 MR. STEBBINS: You could actually pause it for a
9 moment.

14:45 10 MR. FUNNELL: Okay.

11 BY MR. STEBBINS:

12 Q. Officer Harvath, the vehicle's about to turn into the
13 Blackstone, correct?

14 A. Correct.

14:45 15 Q. I would direct your attention when you're watching this to
16 keep your eyes on the area where the registration lamp of the
17 vehicle would be.

18 A. Okay.

19 MR. STEBBINS: Go ahead. Thank you.

14:45 20 (The video was played.)

21 MR. STEBBINS: Can you pause it? What time are we
22 at?

23 MR. FUNNELL: 1:31 and 31 seconds.

24 BY MR. STEBBINS:

14:45 25 Q. So at this point in the video the vehicle appears to be

14:45 1 just outside the direct aim of your headlights; is that
2 correct?

3 A. Yes.

4 Q. Do you see the license plate being illuminated?

14:45 5 A. Yes, it looks like the light bulb on the driver's side is
6 illuminating the plate.

7 Q. Okay.

8 MR. STEBBINS: I'm done with the video. Thank you.

9 BY MR. STEBBINS:

14:46 10 Q. Going back to the beginning of your testimony, you
11 indicated that it is essentially a high crime -- high drug
12 trafficking area?

13 A. Yes.

14 Q. And you had received specific information at 826 Kellogg
15 Street was a house of interest?

16 A. From Officer Krueger, yes.

17 Q. Okay. Had you personally made any observations of 826
18 Kellogg?

19 A. Not that I can recall at this point. I know that we --
20 like I said before, in addition to direct E-mails from
21 officers, we'll get a lot of interdepartmental information via
22 crime updates or drug tips, things of that nature, so to say
23 that I wasn't aware that this address was not in any other form
24 of information that I had received pertaining to drug
14:46 25 information of this nature, I can't recall at this time.

14:46 1 Q. Okay. Do you still have Exhibit 1 in front of you?

2 A. I do, yes.

3 Q. And again, that -- the arrow labeled 826 Kellogg Street,
4 that is what you know to be the actual location of 826 Kellogg
14:47 5 Street?

6 A. Roughly, yes.

7 Q. And when you first observed Mr. Yang, he is walking on the
8 north side of Kellogg in between Oakland and Ashland?

9 A. Correct.

14:47 10 Q. So entirely separate block than that of 826 Kellogg
11 Street?

12 A. That is a separate block, yes.

13 Q. Are you aware of approximately how many houses are in
14 between 826 Kellogg Street and where you observed Mr. Yang?

14:47 15 A. I am not.

16 Q. He could've come from any one of those houses?

17 A. Theoretically, yes.

18 Q. He could've come from Oakland Avenue?

19 A. Yes.

14:47 20 Q. North or South Oakland Avenue essentially?

21 A. Oakland doesn't become South Oakland until it intersects
22 with Walnut or Shawano, so but yes, I know what you're saying.
23 He could've come from the north or the south of Kellogg Street
24 on Oakland.

14:47 25 Q. Okay. Or he could've come from Kellogg essentially and

14:47 1 crossed the street onto the north side?

2 A. He could've, yes.

3 Q. To further illustrate it, he could've come from Elmore and

4 then gone onto Oakland and then onto Ashland?

14:48 5 A. I suppose so, yes.

6 Q. Or Kellogg, not Ashland. And the vehicle you see running

7 again is on the -- at the intersection of Ashland and Kellogg,

8 correct?

9 A. It's near the intersection of Ashland and Kellogg, yes.

14:48 10 Q. With it being parked on Ashland?

11 A. It was parked on Kellogg facing westbound.

12 Q. Okay. Now, you indicated that you observed the vehicle to

13 be occupied?

14 A. Yes.

14:48 15 Q. I think you said you thought -- Did you know how many

16 people were in the vehicle at that point?

17 A. Two people is what I thought I observed.

18 Q. And you observed exhaust?

19 A. Yes.

14:48 20 Q. Indicating to you that the vehicle was running?

21 A. Yes.

22 Q. You said it was cold, correct?

23 A. Yes.

24 Q. And so if one wanted the heat to be operating in a vehicle

14:48 25 that would need to be running?

14:48 1 A. Yes.

2 Q. And also this is approximately 1:30 in the morning?

3 A. Yes.

4 Q. So from your common experience is that a time where many

14:49 5 people are sleeping or otherwise not wanting to be disturbed in

6 their house?

7 A. Is this a time of day when people typically sleep, is that

8 your question?

9 Q. Yes.

14:49 10 A. Yes.

11 Q. Under those circumstances it wouldn't be that uncommon

12 then to have a vehicle running with the headlights not on?

13 A. Are you asking me?

14 Q. Yes.

14:49 15 A. I thought it was more suspicious that the headlights were

16 off and that it was parked on the side of the road running,

17 that is to say, I would expect the lights to be on more often

18 than not.

19 Q. What was Mr. Yang wearing when you first observed him?

14:49 20 A. I did not get a specific clothes -- clothing description.

21 I believe the description that I provided to Attorney Funnell

22 was that it was a shorter male that was more stocky and that's

23 really all that I had.

24 Q. Okay. So nothing specific about him other than his

14:50 25 existence to cause suspicion?

14:50 1 A. And the fact that he was the only one out walking and that
2 he was walking towards a running vehicle that had no lights on
3 in an area that I believed to be a prior drug activity, yes,
4 those were some of the circumstances coming into play that made
14:50 5 me suspicious of him.

6 Q. So essentially because of this neighborhood, you would be
7 suspicious, it sounds like, of anybody walking at this point
8 given that there was a vehicle running?

9 A. No, I don't think that's fair to say.

14:50 10 Q. You had testified earlier that in your training and
11 experience you know users or sellers of drugs not to meet up at
12 the dealer's house, essentially; is that --

13 A. Essentially, yes.

14 Q. Could you tell us again what exactly you testified to in
14:51 15 that regard? Not verbatim, but what's --

16 A. Yeah. Essentially there is a tactic used by people
17 involved in the buying and selling of drugs wherein it's an
18 understanding of do not park in the direct vicinity of a drug
19 trafficking house or a place where drugs are being used because
20 it'll draw attention to that address, and subsequent possible
21 police attention. So what people will do is they will park a
22 block or several blocks down the road, they will park around
23 the corner, they will park in alleyways, they will park in
24 areas that don't obviously associate a vehicle with an address
14:51 25 where the suspicious activity or illegal activity, I should

14:51 1 say, is going on.

2 Q. Drug transactions also you have observed -- or I'm
3 assuming you've observed drug transactions occur at someone's
4 specific house?

14:52 5 A. Do I observe the transaction occur at their house? Really
6 never, because it's usually always inside of the house.

7 Q. Right. But law enforcement, and presumably you through
8 your training and experience, has observed or monitored
9 specific houses for short term trafficking?

14:52 10 A. Yes, that's correct.

11 Q. And what you're looking for is people coming to that house
12 and not being there for a very long period of time as that's
13 somewhat indicative of drug transactions potentially occurring?

14 A. Yes. Potentially.

14:52 15 Q. So it's not always that drug transactions occur away from
16 the residence?

17 A. I'm not implying that the transaction occurred away from
18 the residence here. I'm implying -- or I'm concluding that the
19 vehicle is parked far away from the residence so it's not
20 associated with whatever residence that it's at in this
21 scenario that I have when I'm thinking of it at the time.

22 Q. This is 1:30 in the morning; I believe you testified that
23 Blackstone is a 24-hour restaurant?

24 A. Yes.

14:53 25 Q. Are you aware that any of the other restaurants or bars in

14:53 1 the area were open at that point in time?

2 A. I'm -- On that particular night, I guess it depends. I
3 know that bar close on -- this is a Sunday night into a Monday
4 morning would be around 2:00 a.m., so theoretically all of the
14:53 5 bars could've been open, it depends when the owner of -- or
6 whoever's managing the bar decides to close. So I don't know
7 what other businesses were open or were not open at the time.

8 Q. Okay.

9 MR. STEBBINS: One moment, please, Your Honor.

14:54 10 (There was a discussion off the record between the
11 defendant and his counsel.)

12 MR. STEBBINS: No further questions. Thank you.

13 THE COURT: Any redirect, Mr. Funnell?

14 MR. FUNNELL: Just very briefly, Your Honor.

14:54 15 REDIRECT EXAMINATION

16 BY MR. FUNNELL:

17 Q. In the video the driver identified the owner of the
18 vehicle as Michael B. Therian (phonetic); is that correct?

19 A. Yeah, initially he described him as Michael B., and then I
20 didn't know how you would spell the last name, and then he came
21 back and said Michael B. Therian.

22 Q. Were you ever able to establish who the registered owner
23 of the vehicle was?

24 A. After everything that had happened happened, I don't
14:54 25 believe so, no.

14:54 1 MR. FUNNELL: May I approach, Your Honor?

2 THE COURT: You may.

3 THE WITNESS: Oh, sorry, I know what you're asking.

4 BY MR. FUNNELL:

14:54 5 Q. Going to show you what's been marked Exhibit 5. Do you
6 recognize Exhibit 5?

7 A. Yes, I do.

8 Q. What is Exhibit 5?

14:55 9 A. It is a copy of my narrative that was completed for this
10 incident.

11 Q. I'd like you to read through that and see if that
12 refreshes your memory as to whether you were able to identify
13 the registered owner of the vehicle.

14 A. It does.

14:55 15 Q. Who did you identify as a registered owner?

16 A. The registered owner of the vehicle was listed as David
17 Laughrin, David M. Laughrin.

18 Q. Can you spell that, please?

19 A. Yeah. David, D-A-V-I-D, Laughrin, L-A-U-G-H-R-I-N.

14:55 20 Q. So none of the people in the vehicle were the registered
21 owner, correct?

22 A. Correct.

23 Q. And Michael B. Therian was not the registered owner; is
24 that correct?

14:55 25 A. No, he was --

14:55 1 MR. STEBBINS: Your Honor, I'm going to object to
2 this line of questioning just in the sense that it's outside
3 the scope of my cross-examination.

4 THE COURT: Overruled.

14:56 5 THE WITNESS: No, he was not.

6 MR. FUNNELL: That's all. Thank you.

7 THE COURT: You may step down.

8 MR. FUNNELL: Government calls Officer Garth Russell.

9 THE COURT: We can wipe down the witness stand.

14:56 10 MR. FUNNELL: Oh, I'm sorry.

11 THE COURT: It's a habit. We don't have many
12 hearings. And maybe overabundance of caution, but that's what
13 we're doing.

14 Officer Russell, would you then raise your right hand?

14:57 15 The clerk will then administer the oath.

16 GARTH RUSSELL, called as a witness herein, after
17 having been first duly sworn, was examined and testified as
18 follows:

19 THE WITNESS: I swear.

14:57 20 THE CLERK: Please state your name, first and last
21 name for the record.

22 THE WITNESS: Garth Russell.

23 THE CLERK: Can you spell it, please?

24 THE WITNESS: Garth, G-A-R-T-H, Russell,

14:57 25 R-U-S-S-E-L-L.

14:57 1 THE COURT: Okay. Thank you, Officer. You can have
2 a seat. Mr. Funnell, you may proceed. You may proceed.
3 MR. FUNNELL: Thank you.
4 DIRECT EXAMINATION
14:57 5 Q. Officer Russell, you work for the Green Bay Police
6 Department?
7 A. Yes, I do.
8 Q. How long have you been a police officer?
9 A. Approximately four years.
14:57 10 Q. Has that always been with Green Bay?
11 A. For the four years, yes, in Green Bay but I have police
12 experience other -- elsewhere.
13 Q. What was that?
14 A. I served as a military police officer in the United States
14:57 15 Army.
16 Q. Did you have training as an M.P. in drug interdiction?
17 A. Yes.
18 Q. Did you also have that in your officer training for -- to
19 be a Green Bay police officer?
14:58 20 A. Yes, I did.
21 Q. Have you had occasion to use that training both as a
22 military policeman and as a Green Bay police officer?
23 A. Yes, I have.
24 Q. You've made drug arrests; is that correct?
14:58 25 A. That is correct.

14:58 1 Q. Are you assigned to a particular area of Green Bay?
2 A. Yes, I am.
3 Q. What's that?
4 A. I'm assigned to what's known as the Bravo district.
14:58 5 Q. Exhibit 1 is up there in front of you; is that right?
6 A. That is correct.
7 Q. Do you recognize Exhibit 1?
8 A. Yes, I do.
9 Q. What is it?
14:58 10 A. It's a map that is showing a portion of the Bravo district
11 in which I work.
12 Q. Do you know Officer Harvath who just testified?
13 A. Yes, I do.
14 Q. And are you familiar with an Officer Krueger, who used to
14:59 15 work that shift in that same district?
16 A. Yes.
17 Q. Going to direct your attention to November 23rd of 2020.
18 Were you working as a police officer in that district?
19 A. Yes, I was.
14:59 20 Q. Which shift?
21 A. The night shift.
22 Q. During your time on the night shift, had you seen a
23 vehicle at the Express Convenience Center that's indicated on
24 Exhibit 1 that caused you to be suspicious?
14:59 25 A. Yes, I did.

14:59 1 Q. Can you tell us what it is that you observed and why it is
2 that you were suspicious of that vehicle?

3 A. As I was driving by the Express, there was a Dodge Ram in
4 the parking lot near one of the pumps. There were
15:00 5 approximately three males standing outside the vehicle. I saw
6 one of the males manipulating a chainsaw.

7 Q. About what time of your shift was this?

8 A. I'm not sure of the exact time, but this would've been
9 after 1:00, one o'clock in the morning, so later on in the --
15:00 10 in my shift.

11 Q. Okay.

12 A. Not certain of the exact time, though.

13 Q. Okay. Please proceed.

14 A. So I saw one of the gentlemen manipulating a chainsaw, and
15:00 15 then as I was driving by looking, there was a gentleman looking
16 at me, and we made eye contact. And I kept driving by, and the
17 individual kept staring at my vehicle, and as if they were
18 looking to make sure my vehicle disappeared. Once I
19 disappeared from view, I don't know what happened after that,
20 but the person stared at my vehicle the entire time as I was
21 passing by the Express.

22 Q. The individual that was watching your vehicle, did it
23 appear to you that the person was watching you more so than
24 normal?

15:01 25 A. Yes, it did.

15:01 1 Q. Did you get a good look at that person?
2 A. Yes, I did.
3 Q. And did you encounter that person later on in your shift?
4 A. Yes, I did.
15:01 5 Q. Is that person in the courtroom today?
6 A. Yes, he is.
7 Q. Can you tell me where he's sitting what he is wearing,
8 please?
9 A. He's sitting to my 11 o'clock, he's wearing an orange
15:01 10 jumpsuit.
11 MR. FUNNELL: May the record reflect he has
12 identified the defendant, Your Honor.
13 THE COURT: Yes, the record will so reflect.
14 BY MR. FUNNELL:
15 Q. Did you identify the defendant by name later on, not at
16 the time that you were going past the Dousman Express, but
17 later on did you identify him by name?
18 A. Yes, I did.
19 Q. What was his name?
15:01 20 A. His name was John Yang.
21 Q. All right. So when Mr. Yang was watching you, you're
22 driving your squad; is that right?
23 A. Yes, I was.
24 Q. Is your squad marked or unmarked?
15:02 25 A. At the time it was unmarked.

15:02 1 Q. Did you go right past -- on Dousman right past the
2 Express?

3 A. Yes, I did.

4 Q. Did you make contact with any of those gentlemen?

15:02 5 A. I did not at the time.

6 Q. What did you do?

7 A. I went up the street, I turned around, and I came back to
8 the Dousman Express and the vehicle was gone.

9 Q. Did you continue on with your shift or did you look for
15:02 10 the vehicle?

11 A. I'd spent some time looking to see where the vehicle went,
12 but then I couldn't find it.

13 Q. Later on did you have contact with Officer Harvath over
14 the radio about a similar vehicle?

15:02 15 A. Yes, I did.

16 Q. Can you describe that, please?

17 A. Officer Harvath brought my attention to a vehicle that was
18 on Kellogg near the intersection of Ashland and Kellogg, if I
19 can recall. So I asked him if the vehicle was a Dodge Ram, by
15:03 20 chance, and he --

21 Q. Let me ask you this.

22 A. Sorry.

23 Q. Before your shift on November 23rd, had you received
24 information about any specific residences in the area of the
15:03 25 intersection that he told you about?

15:03 1 A. Yes.

2 Q. What was that?

3 A. Officer Krueger, whose transition from the evening shift
4 to the day shift stated that he suspected some activity at 826
15:03 5 Kellogg Street.

6 Q. Did he provide that to you in an E-mail?

7 A. He provided it to me and Officer Harvath in an E-mail.

8 Q. Was Officer Krueger specific about what the suspicion was
9 and what had been observed?

15:03 10 A. Officer Krueger stated something along the lines of drug
11 activity taking place at the address.

12 Q. Was he talking about things happening in the early morning
13 hours, late night, early morning hours?

14 A. He never -- I don't recall if he specified late night
15 hours or anything like that, I just remember from memory that
16 the E-mail said something along the lines of drug activity at
17 826 Kellogg.

18 Q. And he had responded there personally?

19 A. I am not -- I cannot recall if he responded there
15:04 20 personally or not.

21 Q. Do you know this particular area that's shown on
22 Exhibit 1, would you characterize that as an area of high drug
23 activity during your shift?

24 A. Yes.

15:04 25 Q. Why is that?

15:04 1 A. So at the intersection of Kellogg and Ashland to the
2 northeast, on that particular intersection, there's a house,
3 402 North Ashland Avenue, that there is drug dealing going on.
4 In the 700 block of Elmore, we have also received -- seven to
15:05 5 800 block of Elmore, we received information that there are
6 several houses there that are involved in drug activity. In
7 the 500 block of Elmore, Officer Harvath and I and several
8 other officers are watching a house that we suspect of drug
9 activity.

15:05 10 At the Dousman Express shown in the exhibit, I have
11 arrested persons coming out of there with drugs, I have
12 received complaints from the clerks that people are dealing
13 drugs in the back of the building, and as well as the -- in the
14 parking lot. I have also picked up a needle cap from a syringe
15 by one of the slot machines and I showed it to the clerk and I
16 made him aware, this is the type of stuff happening in your
17 store, and I have also picked up empty gem baggies with what I
18 believe is drug residue in them from the parking lot as well.

19 Q. I'm going to fast forward to, on Exhibit 1 here there is a
20 Blackstone Restaurant that's shown down by number three. Do
21 you see that?

22 A. Yes, I do.

23 Q. Did you respond to assist Officer Harvath in a traffic
24 stop there at the Blackstone during your shift on
15:06 25 November 23rd?

15:06 1 A. Yes, I did.

2 Q. And had you been in radio contact with him prior to
3 responding to his location?

4 A. Yes, I -- Yes, I was.

15:06 5 Q. Based on your radio conversations with him, did he
6 describe a vehicle that you thought fit the description of the
7 one that you saw at the Dousman Express earlier?

8 A. Yes, he did.

15:06 9 Q. I'm going to show you what's been marked Exhibit 3, which
10 is a squad car video. You've seen that before today; is that
11 correct?

12 A. Yes, I have.

13 Q. Does it accurately show the audio and video from your
14 squad car after you pulled into the Blackstone and parked and
15 then interacted with the occupants of the Dodge Ram?

16 A. If you're referring to this video, you'd have to show me
17 this video, but the video I watched I'm assuming it's going to
18 be the same. It corresponds with everything you just said.

19 Q. All right.

15:07 20 MR. FUNNELL: Your Honor, with the Court's permission
21 I'll play Exhibit 3 for the witness.

22 THE COURT: I take it there's no objection?

23 MR. STEBBINS: That's correct, Your Honor.

24 THE COURT: So I'll receive and you can play it.

15:07 25 (Exhibit No. 3 was received into evidence.)

15:07 1 (The video was played.)

2 MR. FUNNELL: I'm going to stop it at 1:32:51.

3 BY MR. FUNNELL:

4 Q. You have now pulled into the Blackstone, you approached
15:08 5 the Dodge Ram on the passenger side; is that right?

6 A. That is correct.

7 Q. Who is it that's sitting closest to the passenger window
8 in the Ram that you're speaking to?

9 A. Mr. Yang.

15:08 10 MR. FUNNELL: I'm going to continue playing the
11 video.

12 (The video was played.)

13 MR. FUNNELL: I'm going to stop it at 1:33 and 33
14 seconds.

15:09 15 BY MR. FUNNELL:

16 Q. You were asking questions about the Dousman Express. What
17 answers were you getting, it sounded like you were confused or
18 that they were saying that they were there or not there? Can
19 you explain that, please?

15:09 20 A. I was getting confusing answers, and I believe if memory
21 serves correctly that Mr. Yang was indicating that he was not
22 at the Dousman Express.

23 MR. FUNNELL: I'm going to continue playing it.

24 (The video was played.)

15:11 25 MR. FUNNELL: I'm going to stop it at 1:34 and 55

15:11 1 seconds.

2 BY MR. FUNNELL:

3 Q. There's been at least one time, maybe more, where you
4 talked to somebody in the car about staying where they're at
15:11 5 and keeping their hands in a particular place. Can you explain
6 what was going on there?

7 A. At the time when I was -- when I was at the vehicle, I
8 couldn't -- Mr. Yang put his hands down where I couldn't see
9 'em, and he also appeared to be -- he was becoming nervous. So
15:11 10 when you heard me say "Partner, stay right there", I was
11 actually referring to Officer Harvath to stay on the driver's
12 side because I wanted him to also get a full view inside the
13 vehicle as before we proceeded with what we needed to do.

14 I didn't want to be up there by myself, and I wanted him
15 to see whether anybody's going to suddenly do something or
16 whatever the case may be. So it was an officer safety thing
17 where I was trying to tell Officer Harvath that he needed to
18 stay by the -- by the driver's side door.

19 Q. Now, is it fair to say that sometimes when you interact
20 with motorists, they become nervous because you're a police
21 officer and they're in a traffic stop; is that fair to say?

22 A. That is fair to say.

23 Q. Did Mr. Yang's nervousness appear to be more than normal?

24 A. Yes, it did.

15:12 25 Q. And why is that?

15:12 1 A. Mr. Yang seemed to not know what to do with his hands, he
2 kept putting his hands down where I couldn't see them, by the
3 dashboard despite the fact that I told him, hey, put your hands
4 where I can see them. You'll hear me say that I think one or
15:12 5 two more times, hey, put your hands where I can see them. Just
6 his whole demeanor made me suspect that something other than
7 the traffic stop was going on.

8 Q. Was the area of his waistband, was that sufficiently
9 illuminated? Could you see so that your concerns were
15:12 10 unfounded, or were you still unable to see what might've been
11 where he was putting his hands?

12 A. I was unable to see what might've been where he was
13 putting his hands.

14 Q. Was the window down?

15:13 15 A. The window was down.

16 Q. Okay. But the door is still shut at this point?

17 A. Yes, it is.

18 Q. You indicated, I believe on the video, that neither one of
19 them were wearing their seatbelt; is that right?

15:13 20 A. That is correct.

21 Q. Who were you talking about?

22 A. I was talking about Mr. Yang wasn't wearing his seatbelt,
23 and the middle passenger, I believe his name is Justin, was not
24 wearing his seatbelt also.

15:13 25 Q. Mr. Taylor, I believe?

15:13 1 A. Yes.

2 Q. All right. At this point in the video, 1:34:55, where I
3 paused it, Officer Harvath is walking around to you; is that
4 right?

15:13 5 A. That is correct.

6 Q. I'm going to keep playing.

7 (The video was played.)

8 MR. FUNNELL: I'm stopping it at 1:35:23.

9 BY MR. FUNNELL:

15:14 10 Q. Did Officer Harvath just tell you "king unit"?

11 A. Yes.

12 Q. Was what does that mean?

13 A. A canine unit.

14 Q. And why was that significant to you?

15:14 15 A. Because he was letting me know that the -- a canine was
16 en route to conduct a sniff of the vehicle.

17 Q. Is there any particular procedure that you use when --
18 before a canine does an exterior sniff of a vehicle?

19 A. It depends. Sometimes we speak with the occupants until
15:14 20 the canine arrives, and once a canine arrives, we have
21 everybody step out of the vehicle.

22 Q. What did you do in this instance?

23 A. I continued talking to the individuals by asking them,
24 first, what Officer Harvath stated he saw, and what they were
15:15 25 doing at the Dousman Express.

15:15 1 Q. Did -- Does the canine eventually arrive on scene here?
2 Do we see it come into view?

3 A. Yes.

15:15 4 Q. Is there actually a canine sniff that -- that occurs on
5 the exterior of the vehicle?

6 A. No.

7 Q. I'm going to continue playing it.

8 (The video was played.)

15:17 9 MR. FUNNELL: I'm going to stop it at 1:37 and 18
10 seconds.

11 BY MR. FUNNELL:

12 Q. It sounds like you're talking to all three of them, is
13 that fair to say?

15:17 14 A. I was speaking with the driver at that point to -- because
15 the driver was saying -- I was asking first of all the
16 chainsaw, and about what went on near Ashland and Kellogg.

17 Q. Okay. So there's two locations that you're asking them
18 about, number one is where you had seen them earlier at the
19 Dousman Express, correct?

15:17 20 A. That is correct.

21 Q. And that's where you say you saw that one of them taking a
22 chainsaw out?

23 A. One of them manipulating the chainsaw.

15:17 24 Q. The chainsaw, was it in the back of the truck, in, you
25 know, in the bed, cap area, or was it in the passenger

15:17 1 compartment?

2 A. I can't say for certain whether it's the exact same
3 chainsaw that he had in his hand, but I saw a chainsaw in the
4 bed of the vehicle as I walked up to approach the vehicle. It
15:18 5 was in the bed where that cab thing was.

6 Q. All right. But when you saw him earlier at the Dousman
7 Express, where did you see them with the chainsaw?

8 A. All three men were standing outside near the vehicle, and
9 one had the chainsaw in his hand.

15:18 10 Q. Near the back of the truck?

11 A. I cannot recall if it was near the back of the truck, it
12 was somewhere beside the vehicle, but I can't say for certain
13 if it was behind it.

14 Q. Okay. So now jump ahead to you're asking them about the
15 area near Kellogg and Ashland, right?

16 A. That is correct.

17 Q. Okay. And you're trying to determine who got dropped off
18 and who had been walking up to the vehicle; is that fair to
19 say?

15:18 20 A. That is fair to say.

21 Q. Were you getting different or confusing information? Can
22 you explain that to us? Because it's hard to tell from the
23 video who you're speaking to.

24 A. So I was asking the driver who he had dropped off or
15:19 25 picked up. The driver indicated that first he dropped off --

15:19 1 or he picked up -- or he made room for the chainsaw to have
2 Justin get in the vehicle, and then at some point he stated
3 something along the lines of dropping Justin off at Ashland and
4 Kellogg. And then again Justin somehow gets picked up from
15:19 5 Ashland and Kellogg, and all the while he was pointing at
6 Justin, and then finally it was -- it came to light that he
7 didn't pick up Justin, it was Mr. Yang, so I was getting
8 confusing information that I tried to clarify.

9 Q. Okay. So that's the conversation you're having as Officer
15:19 10 Harvath, who's now out of view, he's back at his squad calling
11 in the identities for the traffic stop?

12 A. Correct.

13 Q. All right. I'm going to continue playing it.

14 (The video was played.)

15:20 15 MR. FUNNELL: I'm going to stop it at 1:37:53.

16 BY MR. FUNNELL:

17 Q. You've now had Mr. Yang get out of the Dodge Ram; is that
18 right?

19 A. That is correct.

15:20 20 Q. Before you opened the door and had him get out, I heard
21 you telling somebody to keep their hands where you can see
22 them; is that right?

23 A. That is correct.

24 Q. Who were you talking to?

15:20 25 A. At that point I was talking to the driver, Adam.

15:21 1 Q. All right. Did you see as you were opening the door and
2 having Mr. Yang get out, did you see any change in Mr. Yang's
3 demeanor?

4 A. Yes. As a matter of fact, I noted how it seemed as if his
15:21 5 face became pale, like he knew that something was about to
6 happen, I'm not sure, or he thought that I was going to
7 discover something, but his behavior became pale like he was
8 frightened about what he thought was going to happen. So there
9 was a whole change in his body language, his whole body just
15:21 10 went like -- like this, and I could see -- tell in his face
11 that he just became real pale.

12 Q. Correct me if I'm wrong, but it looks like you just tried
13 to indicate that he sort of, what, slumped as he -- as he went
14 pale before he got out?

15:21 15 A. Yes. I could see like the -- his shoulders kind of
16 dropped a little bit, and his face became pale.

17 Q. As he got out, I see that you are immediately having some
18 sort of a, I'll just call it a tense sort of exchange with him.
19 Can you tell us what was going on there?

15:22 20 A. I grabbed onto both his hands, and at this point I could
21 hear him saying, yes, sir; yes, sir, and I said no, just keep
22 your hands where I can see 'em. Just keep your hands where I
23 can see 'em.

24 Q. Excuse me. Let me stop you. Why did you grab both of his
15:22 25 hands?

15:22 1 A. Because I didn't want him reaching near his waistband at
2 all.

3 Q. And is that based on what you had seen up to that point?

4 A. Yes.

15:22 5 Q. Articulate that for us. Why were you concerned about
6 where his hands were?

7 A. From the moment of the traffic stop began, like I said, he
8 displayed nervousness. He was putting his hands down where I
9 couldn't see them out of view, and he kept on -- I had to tell
15:22 10 him one or two times, put your hands where I can see them.
11 Once I opened the door, again, I noticed the change in his
12 behavior, and if memory serves me correctly, it looked like he
13 was about to reach for his waistband, so I grabbed his hands
14 and I wanted to conduct a pat-down of him.

15:23 15 Q. Were you concerned that he might have a weapon?

16 A. At that point I didn't know exactly what he was doing. At
17 that point.

18 Q. Could you see his waistband area clearly enough to find
19 out -- or to see that he did not have a weapon?

15:23 20 A. No, I could not.

21 Q. Did he say anything as he was getting out?

22 A. He said -- He kept saying yes, sir; yes, sir; yes, sir,
23 and then at one point when I turned him around to stabilize him
24 against the truck, I heard, I'm sorry.

15:23 25 Q. He said I'm sorry?

15:23 1 A. Yes.

2 Q. Was he saying that to you or to people inside the truck?

3 A. I have no idea who he was saying that to.

4 Q. Did that seem unusual to you?

15:23 5 A. Very unusual.

6 Q. As -- As this struggle started, were you able to actually

7 complete any sort of a pat-down on him?

8 A. No, I was not.

9 Q. Why not?

15:23 10 A. Because of the struggle and at one point when Officer

11 Harvath ran over there to assist me, he pulled away from us and

12 attempted to flee to the west, but the door was open, so he had

13 nowhere to go.

14 Q. All right. I'm going to continue playing it then at --

15 15 I'm going to back up and then play it continuously all the way

16 through. So I'm backing it up to 1:37:34.

17 (The video was played.)

18 BY MR. FUNNELL:

19 Q. All right. I played the rest of the video. Is that you

20 20 indicating that he's got a gun?

21 A. Yes. Yes.

22 Q. Can you describe what it is that you saw and what you did

23 that -- before you said he's got a gun?

24 A. So when you saw me put my hands around Mr. Yang's waist, I

25 25 was attempting to decentralize him because he was trying to

15:25 1 flee from us. Now, when I decentralized him, he started
2 struggling and he immediately started reaching with both hands
3 for his waistband. I tried to wrap my hand around his neck and
4 I tried to wrap my legs around his body to prevent him from
15:25 5 reaching, and I said to him, stop reaching, stop reaching.
6 This did nothing. He kept on reaching intently for his
7 waistband. And at that point I felt like he was trying to
8 act -- this was the point I was like, oh, my goodness, he's
9 trying to get a gun because of his intent in going to his
15:26 10 waistband.

11 At some point in time, he slipped from my grasp and he
12 manages to stand up, and as soon as he stands up, I see a
13 silver gun fall out of his waistband to the ground. So I kind
14 of release my grasp on him and to make sure that gun wasn't
15 accessible by him, I eventually grab the gun, put it in my back
16 pocket, and drew my service pistol.

17 Q. And all that's going on as you're trying to control him
18 and subdue him; is that right?

19 A. That is correct.

15:26 20 Q. Apart from the gun, did some other items fall out on the
21 ground during the struggle?

22 A. I later discovered that a baggie of a green leafy
23 substance that later tested positive for marijuana fell out of
24 his pocket when he was running from the truck to where I tried
15:27 25 to tackle him.

15:27 1 Q. And you found that after the arrest was over and he was in
2 custody?
3 A. That is correct.
4 Q. Did you find a sort of a little bag that -- that that and
15:27 5 some other items were in?
6 A. I am -- I cannot recall. I'd have to refer to my details
7 to see if that is the case or not. I can't recall at this
8 time.
9 MR. FUNNELL: May I approach, Your Honor?
15:27 10 THE COURT: Yes, you may.
11 BY MR. FUNNELL:
12 Q. I'm going to show you what's been marked Exhibit 4. Do
13 you recognize Exhibit 4?
14 A. Yes.
15 Q. What is it?
16 A. This is my narrative concerning today's incident.
17 Q. And I'd like you to look at page six of Exhibit 4. Do you
18 see the paragraph that starts out, other officers?
19 A. Yes.
15:28 20 Q. Can you read that to yourself and see if that refreshes
21 your memory as to what was found outside of the truck after --
22 after the arrest was over?
23 A. Yup.
24 Q. Let me know when you're done. Yes?
15:29 25 A. Yes, I'm finished.

15:29 1 Q. Okay. What is it that was found in the area of the
2 struggle after Mr. -- after Mr. Yang was taken into custody?

15:29 3 A. So on the ground, like I indicated, the baggie of
4 marijuana that I thought fell out of his pocket was found, and
5 then I was alerted that a broken meth pipe, a white
6 crystal-like substance that was found in a Ziploc bag was found
7 on Mr. Yang, and also a black pouch with a digital scale with
8 numerous empty gem baggies with two of 'em having white residue
9 was found on him as well.

15:29 10 Q. Did you say gem baggie as in G-E-M?

11 A. Yes.

12 Q. What's a gem baggie?

13 A. A gem baggie is a very small Ziploc bag that, based on my
14 training and experience, is commonly used to house drugs.

15:30 15 Q. And all of that was found outside the truck before the
16 truck was searched; is that right?

17 A. Yes.

18 Q. And there was no canine sniff of the truck; is that
19 correct?

15:30 20 A. That is correct.

21 MR. FUNNELL: I'd move the exhibit -- admission of
22 Exhibit 3, Your Honor, if that hasn't already been done. I
23 have no further questions.

24 THE COURT: You mean exhibit -- Well, three is
15:30 25 received. Did you want four or no?

15:30 1 MR. FUNNELL: No, not four. Just one, two, and
2 three, I believe I've moved.

3 THE COURT: Yeah. Okay. Three is received.

4 (Exhibit No. 1 was received into evidence.)

15:30 5 MR. FUNNELL: Thank you.

6 THE COURT: Mr. Stebbins?

7 MR. STEBBINS: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. STEBBINS:

15:30 10 Q. Officer Russell, tell us again what your first observation
11 of the Dodge Ram truck was this night.

12 A. My initial observation was the Dodge Ram was in the
13 parking lot of the Dousman Express. There were three people
14 outside the vehicle, one of the parties was manipulating a
15 chainsaw.

16 Q. And I believe you said it was parked at a pump?

17 A. It appeared that he was parked at a pump.

18 Q. So a pretty normal area to be parked at a gas station?

19 A. Correct.

15:31 20 Q. What do you mean by manipulating when you say he was
21 manipulating the chainsaw?

22 A. The person had the chainsaw in their hand, it appeared
23 that they had both hands on the chainsaw.

24 Q. It wasn't running or being operated?

15:31 25 A. I couldn't tell if it was running or not.

15:31 1 Q. Okay. And I believe you said you saw only one person with
2 the chainsaw?

3 A. That is correct.

4 Q. And later, I know in the video we heard you talking with
15:31 5 the occupants of the vehicle. You did have a conversation, I
6 believe it was with Adam. Is Adam the one that claimed
7 ownership of the chainsaw?

8 A. Yes, he did.

9 Q. And what did he tell you the reason for having the
15:31 10 chainsaw was?

11 A. He stated something along the lines of a tree trimming
12 business, and then at one point he stated that the chainsaw was
13 removed from the front -- or from one of the seats within the
14 vehicle to make room for somebody.

15:32 15 Q. You indicated that Mr. Yang stared at your vehicle for a
16 suspicious length of time. Is that essentially what you --
17 what you indicated?

18 A. Yes.

19 Q. But you also said that your squad was an unmarked squad?

15:32 20 A. Yes, I did.

21 Q. So it wasn't readily apparent to be a police vehicle?

22 A. Even though it's an unmarked squad, it has two spotlights
23 on it, well, one on the passenger side and one on the driver's
24 side. So if a keen observer were to look really hard, they'd
15:32 25 know that it's a police car. Or they could suspect that it's a

15:32 1 police car. They couldn't know for certain.

2 Q. Based on your observations, you didn't, you know, turn on
3 your squad lights and intervene?

4 A. I did not.

15:32 5 Q. You didn't call out with a suspicious situation?

6 A. I did not.

7 Q. When you observed the occupants of the vehicle, I believe
8 you had indicated you couldn't see Mr. Yang's hands at various
9 times, correct?

15:33 10 A. When -- On my -- When I approached with Officer Harvath,
11 is that what you're saying?

12 Q. Just in general. I believe you testified you had
13 difficulty observing the interior of the vehicle and where
14 Mr. Yang's hands were.

15:33 15 A. Yes. On the second time I saw the vehicle, and when I was
16 assisting Officer Harvath, at some points during the
17 interaction up there, I could not see Mr. Yang's hands, and I
18 had to tell him to put 'em where I could see 'em.

19 Q. Was that because it was dark?

15:33 20 A. Well, that's also for officer safety issue as well.

21 Q. But, I mean, what was the reason you couldn't see his
22 hands?

23 A. I couldn't see his hands because I couldn't see far down
24 enough where -- where his waistband was.

15:33 25 Q. Okay.

15:34 1 (There was a discussion off the record between the
2 defendant and his counsel.)

3 BY MR. STEBBINS:

4 Q. When you observed Mr. Yang at the gas station, what was he
15:34 5 wearing?

6 A. He was wearing the same outfit that you saw on the video,
7 the black -- black sweatshirt and the gray pants.

8 Q. Did you observe that of him at the gas station?

9 A. Yes.

15:34 10 (There was a discussion off the record between the
11 defendant and his counsel.)

12 MR. STEBBINS: Thank you. I have no further
13 questions.

14 THE COURT: Any redirect, Mr. Funnell?

15:35 15 MR. FUNNELL: No, Your Honor. Thank you.

16 THE COURT: Thank you, Officer Russell. You may step
17 down. Any further evidence from the Government?

18 MR. FUNNELL: No, Your Honor.

19 THE COURT: Mr. Stebbins, any evidence from --

15:35 20 MR. STEBBINS: No, Your Honor.

21 THE COURT: Okay. One, two, and three are received.

22 Is that the question? Yeah.

23 MR. FUNNELL: Yes.

24 THE COURT: Exhibits 1, 2, and 3, I thought I
15:35 25 received them all, but one, two, and three are received.

15:35 1 MR. FUNNELL: Thank you.

2 THE COURT: Okay. How would you like to proceed? Do
3 you wish to make an argument now? Do you want to submit
4 something? Mr. Stebbins? There was no brief submitted with
15:35 5 your motion. Did you want to brief the issue, give me some
6 cases?

7 MR. STEBBINS: I think so, Judge, yes. I would
8 appreciate that.

9 THE COURT: This is, you know, it's a pretty narrow
10 issue. I think I just need to look at the case on stops and,
11 you know, assess the facts and seeing a summary of your -- your
12 position would help.

13 Mr. Funnell, it's really, it's a warrantless search, you
14 have the burden. Do you want to go first, submit something,
15:36 15 Mr. Stebbins will respond and you can reply if you wish?

16 MR. FUNNELL: Sure. That would be fine, Your Honor.
17 Thank you.

18 THE COURT: How about a -- what's our trial date and
19 pre-trial date in this case?

15:36 20 MR. STEBBINS: I don't think we --

21 MR. FUNNELL: I don't have that information, Your
22 Honor.

23 MR. STEBBINS: I don't believe we have one scheduled.

24 THE COURT: We don't have a trial scheduled? We
15:36 25 should. Did we take it off? Is that what we did?

15:37 1 MR. STEBBINS: I believe so, Judge, because this is
2 the case where due to difficulties communicating with Mr. Yang
3 when he was at the Brown County Jail, I had to request multiple
4 extensions of the motion filing.

15:37 5 THE COURT: Okay. So, Mr. Funnell, what kind of time
6 do you want?

7 MR. FUNNELL: I would say two weeks, 10 days,
8 something like that.

9 THE COURT: Okay. Two weeks, two weeks, and then a
10 week for reply. Okay. And then I'll -- with the decision
11 we'll set it on for further proceedings.

12 Okay. Anything else to address right now?

13 MR. FUNNELL: No, thank you, Your Honor.

14 THE COURT: The motion, obviously, being pending
15 tolls the trial time, so we're okay there.

16 All right then. This matter is concluded. Thank you all.

17 MR. STEBBINS: Thank you, Your Honor.

18 MR. FUNNELL: Thank you.

19 (At 3:38 p.m. the hearing ended.)

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15:38 1 C E R T I F I C A T E

2
3 I, THOMAS A. MALKIEWICZ, RPR, RMR,
4 CRR, an Official Court Reporter for the United States
15:38 District Court for the Eastern District of Wisconsin, do hereby
5 certify that the foregoing is a true and correct transcript
6 of all the proceedings had and testimony taken in
7 the above-entitled matter as the same are contained
8 in my original machine shorthand notes on the said
15:38 trial or proceeding.

11
12 Dated this 9th day of March, 2021.
13 Milwaukee, Wisconsin.

14
15
16 Thomas A. Malkiewicz, RPR, RMR, CRR
17 United States Official Court Reporter
18 517 East Wisconsin Avenue, Room 236
Milwaukee, WI 53202

19 Thomas_Malkiewicz@wied.uscourts.gov

20
21
22 ELECTRONICALLY SIGNED BY THOMAS A. MALKIEWICZ
23 Official U.S. Reporter, RPR, RMR, CRR

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

TRANSCRIPT OF CHANGE OF PLEA HEARING
BEFORE THE HONORABLE WILLIAM C. GRIESBACH
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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(ED-WI)
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U.S. PROBATION:

MS. JENNIFER RUFENACHT

U.S. Official Court Reporter: THOMAS A. MALKIEWICZ, RMR, CRR
Proceedings recorded by computerized stenography, transcript
produced by computer aided transcription.

1 TRANSCRIPT OF PROCEEDINGS

2 (Transcribed From Audio Recording)

3 THE CLERK: The Court calls case number 20-CR-234,
4 United States of America versus John Yang for a change of plea
5 hearing.

6 May I have the appearances, please?

7 MR. HUMBLE: Dan Humble for the Government. Good
8 morning, Your Honor.

9 THE COURT: Good morning.

10 MR. STEBBINS: Mr. Yang is appearing in person in
11 custody along with attorney Scott Stebbins. Good morning.

12 THE COURT: Good morning.

13 MS. RUFENACHT: Good morning, Your Honor. Jennifer
14 Rufenacht on behalf of pre-trial services.

15 THE COURT: Okay. Good morning all.

16 Let me first say, although there's still a mask mandate
17 that exists to some extent in federal buildings, we're distant
18 from each other, we have Plexiglas, if you're comfortable, most
19 of us are vaccinated, if you're comfortable, you may take your
20 mask off, but you don't have to. As long as you're distanced,
21 and we're not likely to infect each other. Assuming there's
22 still a virus around to infect ourselves with.

23 So I have before me the written plea agreement. It
24 appears that Mr. Yang is going to enter a plea of guilty to two
25 counts, the first is knowingly and intentionally possessing

1 with intent to distribute five grams or more of actual
2 methamphetamine, the second is possession of a firearm in
3 furtherance of a drug trafficking crime. Each of those carries
4 a mandatory five years in prison as I understand and have to be
5 consecutive, so the minimum sentence here is 10 years.

6 As I read the plea agreement, the -- the Government agrees
7 to recommend the mandatory 10 years but is free to argue that
8 the sentence should be consecutive to the defendant's state
9 revocation sentence. Defense free to argue that it should be
10 concurrent. But it's not a conditional plea, there was a
11 motion to suppress here?

12 MR. HUMBLE: It is a conditional plea, Your Honor.

13 THE COURT: It is a conditional plea.

14 MR. HUMBLE: Paragraph 32 basically details the fact
15 that he is allowed to appeal the motion to suppress physical
16 evidence from July 13th of 2021.

17 THE COURT: Okay.

18 MR. HUMBLE: But there is a waiver with regard to his
19 other rights.

20 THE COURT: Knowingly, voluntarily waives his right
21 to appeal, further waives his right to challenge any
22 conviction. I read that as an appeal waiver. Is there an
23 exception for that?

24 MR. HUMBLE: It says, I think about the fifth line
25 down, Your Honor, except for the issues presented in the motion

1 to suppress physical evidence.

2 THE COURT: Okay. Okay. Right. So that -- he does
3 reserve the right to appeal that issue. Other than that,
4 there's an appeal waiver, though, for other issues with the
5 normal exceptions of punishment in excess of statutory maximum,
6 the ineffective assistance of counsel, plea is involuntary,
7 improper constitutional considerations.

8 MR. HUMBLE: That's correct.

9 THE COURT: Anything else unique and specific to this
10 plea agreement?

11 MR. HUMBLE: Just that the Government will refrain
12 from filing an 851 information. That was part of the agreement
13 as well.

14 THE COURT: And that 851 information would've
15 subjected Mr. Yang to an additional five years?

16 MR. HUMBLE: Correct.

17 THE COURT: So instead of 15 years, he's looking at a
18 mandatory minimum 10, he reserves his right to appeal the
19 Court's decision denying his motion to suppress.

20 MR. HUMBLE: That's correct.

21 THE COURT: But he's waiving other appeal rights.
22 Okay. Mr. Stebbins, anything to add?

23 MR. STEBBINS: No. I agree with that.

24 THE COURT: Okay. And what about guidelines? What
25 does it look like the guidelines are here?

1 MR. HUMBLE: Honestly, it's controlled by the
2 mandatory minimum, so it would've just been below the 120, now
3 it's 120.

4 THE COURT: Okay. All right. Mr. Stebbins, then I
5 take it you've gone over this plea agreement, the applicable
6 law, the guidelines with your client; is that a fair statement?

7 MR. STEBBINS: Yes, it is, Your Honor.

8 THE COURT: Are you satisfied from your conversations
9 with your client that should he proceed to enter a plea of
10 guilty to these charges today that those will be knowing and
11 voluntary decisions on his part?

12 MR. STEBBINS: Yes, Your Honor.

13 THE COURT: Mr. Yang, you've heard what your attorney
14 has said. Is it your intention now to waive your rights and
15 enter a -- pleas of guilty to these two charges?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Okay. Would you please then stand and
18 raise your right hand? The clerk is going to administer the
19 oath before I ask you any further questions.

20 THE CLERK: Do you solemnly swear the testimony you
21 are about to give will be the truth, the whole truth, and
22 nothing but the truth, so help you God?

23 THE DEFENDANT: Yes, ma'am.

24 THE CLERK: Thank you.

25 THE COURT: And, Mr. Yang, unless there's a

1 unusual -- you have unusual problems, I'm going to ask that you
2 remove your mask while you testify. That will help us get a
3 good record. And speak into the microphone, and it will also
4 help me to make sure I can -- I can determine -- you know, make
5 sure it's clear to me that you're -- you understand. Okay?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Now, let me first tell you the rules that
8 govern these proceedings in federal court require that anyone
9 who enters a plea of guilty first has to be placed under oath.
10 The reason we place you under oath is to create a legal
11 obligation for you to tell the truth. So you should understand
12 now that you're under oath you're subject to penalties for
13 perjury or false swearing if you fail to tell the truth. Do
14 you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: The other thing you should understand
17 right at the outset is you don't have to enter a plea of guilty
18 to these charges, or to any charges. You could go to trial on
19 the charges in the indictment. Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay. The purpose of today's hearing is
22 to make sure that if you do enter a plea of guilty it's the
23 result of a knowing and a voluntary decision on your part. In
24 other words it's not your attorney's decision, it's certainly
25 not the Government's decision or my decision, it has to be

1 yours. Do you understand that as well?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: For the record then tell me your name.

4 THE DEFENDANT: John Yang.

5 THE COURT: How old are you, Mr. Yang?

6 THE DEFENDANT: 32.

7 THE COURT: Where did you grow up?

8 THE DEFENDANT: Green Bay.

9 THE COURT: Were you born and raised here?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And so you're a U.S. citizen?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And how far did you go in school?

14 THE DEFENDANT: College, sir.

15 THE COURT: So you graduated from high school here in
16 Green Bay?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: What high school did you go to?

19 THE DEFENDANT: West High School, sir.

20 THE COURT: And you had some college. Did you
21 graduate from college?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: What college did you go to?

24 THE DEFENDANT: NWTC.

25 THE COURT: And what kind of degree did you get?

1 THE DEFENDANT: CNC, sir.
2 THE COURT: CN --
3 THE DEFENDANT: CNC.
4 THE COURT: Certified --
5 THE DEFENDANT: Certified -- It's --
6 THE COURT: Machine technician?
7 THE DEFENDANT: It's computer numeric controls.
8 THE COURT: Oh, computer -- what controls?
9 THE DEFENDANT: Numeric controls.
10 THE COURT: Numeric?
11 THE DEFENDANT: Yeah.
12 THE COURT: Okay. And have you had employment in
13 that field?
14 THE DEFENDANT: Yes, sir.
15 THE COURT: What have you done?
16 THE DEFENDANT: Sir, I ran a lathe, sir, and a mill,
17 sir.
18 THE COURT: And where was that?
19 THE DEFENDANT: That was at Velocity Machine.
20 THE COURT: Here in Green Bay?
21 THE DEFENDANT: In Bellevue, sir.
22 THE COURT: How long did you do that?
23 THE DEFENDANT: For almost half a year, sir.
24 THE COURT: Okay. Have you had other kinds of
25 employment as an adult?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: What kind? Tell me what you've done.

3 THE DEFENDANT: I worked at Walman's Optical making
4 glasses lenses.

5 THE COURT: Sure.

6 THE DEFENDANT: I worked at American Foods.

7 THE COURT: What did you do at American Foods?

8 THE DEFENDANT: The cooler.

9 THE COURT: Pardon?

10 THE DEFENDANT: The cooler.

11 THE COURT: Cooler? Okay. Have you ever been
12 diagnosed as any kind of mental -- having any kind of mental
13 illness or developmental disability?

14 THE DEFENDANT: No, sir.

15 THE COURT: As you sit here today, are you under the
16 influence of anything, and by anything I mean alcohol,
17 medication, drugs, anything at all that would interfere with
18 your ability to understand these proceedings or to make a
19 decision?

20 THE DEFENDANT: No, sir.

21 THE COURT: Are you married?

22 THE DEFENDANT: No, sir.

23 THE COURT: Do you have children?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And how many children do you have?

1 THE DEFENDANT: One, sir.

2 THE COURT: And how old is your child?

3 THE DEFENDANT: 12, sir.

4 THE COURT: And have -- at different points in that
5 child's life have you been a custodial parent for the child or
6 have you simply paid child support?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: You've been a custodial parent?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: So you've been able to care for yourself,
11 to hold a good job, and to care for children?

12 THE DEFENDANT: At one time, sir.

13 THE COURT: Okay. Did you read over the plea
14 agreement before you signed it?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And that is your signature on it?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Did you talk with your attorney about it?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Did you have enough time to talk with
21 your attorney about the plea agreement and your case in
22 general?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Did he answer whatever questions you may
25 have had about those things?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And are you satisfied with the
3 representation he has provided you up until now?

4 THE DEFENDANT: I'm unsure here.

5 THE COURT: Okay. It's not his fault that the motion
6 was denied.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: If I -- If I tell you that --

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay. And you're -- you're going to be
11 able to appeal that, so if I made an error, the Court of
12 Appeals can certainly correct that. But it's -- you can't
13 blame your attorney, he did a good job on the motion, and he
14 he's preserved the issue for you.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: So other than that, other than the result
17 there, are you happy with his -- reasonably happy, I mean --

18 THE DEFENDANT: Yes.

19 THE COURT: Have you had difficulty getting ahold of
20 him because of COVID sometimes or -- because of the limitations
21 in the jail?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. But he's -- despite that he's been
24 able -- you've been able to ask him the questions you need to
25 ask and get answers?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: They're not always great answers, you'd
3 like a different answer, I imagine, as to what the plea
4 agreement is?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Is that a fair statement? Okay. Well,
7 we'll go over some of the provisions of the plea agreement to
8 make sure the record we're making today reflects the fact that
9 you understand the plea agreement, okay? I'm going to begin
10 with the elements or the pieces that make up the crimes you're
11 pleading guilty to. If you want to read along, they're listed
12 in paragraph 10. That's on page five of the plea agreement.
13 And, Mr. Yang, I emphasize the elements of the plea agreement
14 because I forgot to ask you, Mr. Yang, how old are you?

15 THE DEFENDANT: 32, sir.

16 THE COURT: 32. Maybe I did ask you, but I forgot
17 the answer. Okay. I emphasize the elements because this tells
18 you exactly what the Government would have to prove in order
19 for you to be found guilty if the case were to go to trial,
20 okay?

21 So for the first count, count one, the charge of
22 possession with intent, that would require the Government to
23 prove the following elements: First, that you knowingly
24 possessed methamphetamine.

25 Second, that you intended to distribute the

1 methamphetamine to another person.

2 Third, that you knew the substance was some kind of
3 controlled substance, in other words you don't have to know it
4 was actually the chemical makeup of methamphetamine or the
5 controlled name for it, but you have to know that this was one
6 of the kinds of illegal drugs -- or drugs that is illegal to
7 possess, okay.

8 In addition the Government would have to prove that
9 there -- the substance intended to be distributed was
10 five grams or more of actual methamphetamine, a schedule two
11 controlled substance, in order for the -- the Government would
12 have to prove the last thing -- fourth element, you might call
13 it, in order for the enhanced penalties to apply.

14 By enhanced penalties what I mean is you're facing on this
15 count as, we'll get to in the next series of questions, a
16 mandatory minimum five years, a maximum of 40 years for this
17 offense, and a higher fine than otherwise would apply if there
18 wasn't that mandatory -- five grams of -- of actual
19 methamphetamine.

20 And actual methamphetamine is methamphetamine that is at
21 least 80 percent pure; is that right, Mr. Humble?

22 MR. HUMBLE: Yes, sir.

23 THE COURT: You understand those things?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: The next offense, the charge of

1 possession of a firearm in furtherance of a drug trafficking
2 crime, that would require the Government to prove these
3 elements: First, that you committed the crime of possession
4 with intent to distribute methamphetamine, which is a drug
5 trafficking crime prosecutable in courts in the United States.

6 And, second, that you knowingly possessed a firearm.

7 And, third, that your possession of the firearm was in
8 furtherance of the crime of possession with intent to
9 distribute controlled substances, in other words it was in
10 furtherance of or would've assisted in the crime of -- could've
11 assisted or would've assisted in the crime of possession with
12 intent to distribute. Do you understand that as well?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And in the jury instruction on
15 furtherance of a drug trafficking crime, Mr. Humble, do you
16 have that in front of you, or Mr. Stebbins?

17 MR. HUMBLE: I don't, Your Honor, have it in front of
18 me.

19 MR. STEBBINS: I do not either.

20 MR. HUMBLE: Actually, I can -- if you give me one
21 second, I can -- Actually, I don't have it. I just have the
22 elements in a different form.

23 THE COURT: Okay. Essentially it requires that the
24 firearm was available for use in enforcing or protecting the
25 drugs or money and paying for the drugs. Is that a fair

1 statement, Mr. Humble?

2 MR. HUMBLE: Yes. And to facilitate the overall
3 general drug trade.

4 THE COURT: Okay. Do you understand those things,
5 Mr. Yang?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. Again, the Government would have
8 to prove each of those elements for you to be found guilty of
9 that offense, and the Government would have to prove those
10 things beyond a reasonable doubt. Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: The penalties for these offenses are
13 listed in paragraph six on page four. As I said, the maximum
14 penalty for count one is 40 years, the maximum fine is
15 \$5 million. Count two, the maximum penalty is life. Count one
16 carries a mandatory minimum sentence of five years in prison,
17 count two carries a mandatory five years in prison, and it has
18 to be consecutive to any other sentence.

19 And each count then carries a mandatory special assessment
20 of a hundred dollars, as to count one there's at least four
21 years of supervised release and a maximum of lifetime on
22 supervised release. Count two carries a maximum of three years
23 on supervised release, and supervised release in the federal
24 system is like extended supervision in the state system. A
25 person sentenced to prison upon release is subject to

1 supervision by the court and subject to conditions imposed by
2 the court. If the person violates those conditions, they could
3 be revoked and returned to prison. Do you understand those
4 things?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Now, if you proceed to enter a plea of
7 guilty to this charge today, and if I accept that plea, I'm
8 going to find you guilty today, there's going to be no trial.
9 Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: The next hearing we have would be the
12 sentencing hearing. The first thing I would do at the
13 sentencing hearing is I would determine what the sentence range
14 is under the United States Sentencing Guidelines for someone in
15 your position. Some of the provisions of the plea agreement
16 talk about the sentencing guidelines and how they apply in your
17 case. Have you discussed the guidelines with your attorney?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: So you understand that I'll determine the
20 offense severity score and then I'll look at the criminal
21 history category you have, and that will point me to a sentence
22 range stated in months in which your sentence would fall. Is
23 that your understanding of how it works?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And essentially what the guidelines are

1 going to say in this case is that the guideline is going to be
2 around the mandatory minimum, the 10 years, which is the five
3 years plus five years called for by the -- by the offenses. Is
4 that your understanding?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You should understand I'm not bound by
7 the Government's recommendation, I'm not bound by the
8 guidelines, I'm free to impose a sentence above the guidelines
9 or over the Government's recommendation as long as I can give
10 good reasons for whatever sentence I impose. Do you understand
11 that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: I have no authority, however, to impose a
14 lower sentence than the mandatory minimum 10 years. Do you
15 understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: I can make that sentence concurrent with
18 the sentence you're -- you're serving now, and I can actually
19 reduce the -- it by a portion of that time that you've already
20 served in custody. This is the argument that I'll hear over
21 whether or not, possibly whether or not, and what sentence is
22 he now serving?

23 MR. STEBBINS: It's a revocation case for a similar
24 type charge out of Brown County. I believe he received five
25 years of initial confinement with some extended supervision,

1 but he does have some credit towards that sentence. He is
2 currently serving it in the county jail, though.

3 THE COURT: Okay. And so he's been in custody since
4 the -- the facts giving rise to this case, which were on
5 November 23rd of last year?

6 MR. STEBBINS: That's correct.

7 THE COURT: Okay. So the question is whether he'll
8 get credit for that time from November 23rd, whether I reduce
9 the 10 years by whatever that amount is at the time of
10 sentencing. But that's the only reduction I can make from the
11 10 years, Mr. Yang. Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Now, if you proceed to enter a plea of
14 guilty and I accept that plea, again, you're going to be giving
15 up or waiving your right to a jury trial and the rights that go
16 with it. Do you know what a jury trial is?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Did you have a jury trial in your Brown
19 County case, or did you enter a plea in that case?

20 THE DEFENDANT: I entered a plea on that case, sir.

21 THE COURT: Is that the only other conviction you
22 have?

23 THE DEFENDANT: No, sir.

24 THE COURT: Okay. Have you ever gone to trial?

25 THE DEFENDANT: No, sir.

1 THE COURT: But you have a general idea of what a
2 trial is, just from being in court and being an observer in our
3 culture; is that a fair statement?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Can you tell me in your own words what a
6 jury trial is?

7 THE DEFENDANT: Sir, it's when a group of people that
8 convict you if you're guilty or not, sir.

9 THE COURT: Yeah. The jury decides whether the
10 Government has proven your guilt beyond a reasonable doubt, but
11 in general a jury trial is the procedure that we use to resolve
12 cases when the parties don't reach agreement. In a case like
13 this, we summons in close to 50 people, and from that larger
14 number we will qualify a certain number to serve as jurors by
15 asking them questions to make sure they can be fair and
16 impartial.

17 Once the required number of jurors is qualified, we pass a
18 list with their names on it back and forth between the
19 attorneys, and they take strikes to get down to this 12 that we
20 then seat in the jury box.

21 The Government then proceeds to try to prove its case by
22 calling witnesses who testify from the witness stand under
23 oath.

24 Throughout a trial you are present in court with your
25 attorney, including during the selection process. Through your

1 attorney you can cross-examine those witnesses, you can --
2 that's what we call your right to confront the witnesses
3 against you, you have them testify in front of you, and subject
4 to cross-examination.

5 After the Government has introduced the evidence it has,
6 you may put on a defense. You don't have to because the
7 Government has the burden of proof, and if it fails to meet its
8 burden, then you won't be found guilty anyhow, but if you
9 choose to you can call your own witnesses.

10 If there are witnesses who have relevant testimony that
11 don't want to come to court, you can get a court order or a
12 subpoena that compels them to come so you can present that
13 testimony.

14 You'd also have the right to testify in your own behalf,
15 tell your side of the story; on the other hand you don't have
16 to testify, and if you elected not to testify, I would instruct
17 the jury that's your right, they can't hold it against you or
18 treat it as evidence in any way.

19 After all the evidence is in then I'd instruct the jury on
20 the elements of the offense but I'd tell them that you're
21 presumed to be not guilty and they may not return a verdict of
22 guilty unless all 12 unanimously agree that the Government has
23 proven your guilt beyond a reasonable doubt.

24 Any questions about those rights?

25 THE DEFENDANT: No, sir.

1 THE COURT: In addition to those rights, you're
2 giving up your right to appeal or seek post conviction relief
3 in this case, subject to certain exceptions. The main
4 exception is you have the right to appeal, still have the right
5 to appeal my decision denying the motion to suppress the
6 physical evidence that was filed in this case on January 13th
7 of 2021. But other than that, you're giving up your right to
8 appeal or seek post conviction relief, and that includes any
9 claim that the statutes or sentencing guidelines under which
10 you're convicted or sentenced are unconstitutional, it includes
11 the claim that the conduct to which you've admitted does not
12 fall within the scope of the statutes or the sentencing
13 guidelines.

14 That waiver, however, does not extend to an appeal or post
15 conviction motion based upon any punishment in excess of the
16 statutory maximum. It does not cover a -- if I relied upon a
17 constitutionally impermissible factor, such as race, religion,
18 or sex, or if your attorney provided ineffective assistance of
19 counsel. That's a term of art; it means that your attorney's
20 advice in connection with the negotiation of the plea agreement
21 or sentencing or his -- his advocacy for you was almost as bad
22 as having no attorney at all.

23 And, lastly, it would not apply to a claim that the plea
24 agreement was entered into involuntarily. But other than those
25 exceptions, five exceptions, really, you're giving up your

1 right to appeal or seek post conviction relief from your
2 conviction or sentence. Do you understand that, Mr. Yang?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Has anyone made any promises to you other
5 than the promises that are set forth in writing in the plea
6 agreement to get you to waive your rights and enter a plea of
7 guilty?

8 THE DEFENDANT: No, sir.

9 THE COURT: Has anyone made any threats against you
10 or anyone else to get you to do so?

11 THE DEFENDANT: No, sir.

12 THE COURT: Are you pleading guilty to these
13 offenses, Mr. Yang, then because you are guilty of these
14 offenses?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. Any other area of inquiry I should
17 go into before I ask Mr. Yang for his plea, Mr. Humble?

18 MR. HUMBLE: No, Your Honor.

19 THE COURT: Mr. Stebbins?

20 MR. STEBBINS: No, Your Honor.

21 THE COURT: Mr. Yang, then I want you to tell me out
22 loud and for the record, what is your plea to the charge of
23 count one, the possession with intent to distribute five grams
24 or more of actual methamphetamine?

25 THE DEFENDANT: Guilty, sir.

1 THE COURT: And count two, the charge of knowingly
2 possessing a firearm in furtherance of a drug trafficking
3 crime?

4 THE DEFENDANT: Guilty, sir.

5 THE COURT: In order to accept your plea, I also need
6 to make sure that the plea is entered knowingly and -- I mean,
7 I also need to make sure there's a factual basis for the plea.
8 Government has offered a summary of the evidence set forth in
9 paragraph five on pages two and three. Do you have any
10 objection to my relying upon the Government's summary of
11 evidence here for purpose of accepting your plea?

12 THE DEFENDANT: No, sir.

13 THE COURT: Very well. I then will accept the pleas
14 of guilty, I find that Mr. Yang understands the elements of the
15 offenses, the maximum penalties, the mandatory minimums; he
16 understands the application of the sentencing guidelines. He
17 also understands the rights he's giving up by entering a plea
18 of guilty, he's freely and voluntarily waived those rights,
19 likewise freely and voluntarily entered his pleas of guilty,
20 and there is a factual basis set forth on the record that
21 supports the pleas.

22 So upon my acceptance of the pleas I find the defendant,
23 John Yang, guilty of possession with intent to distribute
24 five grams or more of actual methamphetamine as charged in
25 count one and possession of a firearm in furtherance of the

1 drug trafficking crime as charged in count two, the indictment.
2 He stands then convicted of those offenses on this 15th day of
3 June, 2021, and we'll schedule this matter for sentencing.

4 Been asked to place it on the calendar the week of
5 September 13th, 2021. How about the 13th of September at 1:30
6 in the afternoon?

7 MR. HUMBLE: That's fine with the Government.

8 MR. STEBBINS: Same with me, Your Honor.

9 THE COURT: Okay. Anything further today then?

10 MR. HUMBLE: No, Your Honor.

11 THE COURT: All right. Then this matter's concluded.
12 Is Mr. Yang in custody of the state then? He's at the Brown
13 County Jail for now?

14 MR. STEBBINS: Ozaukee.

15 THE COURT: Ozaukee.

16 THE BAILIFF: He was returned to Ozaukee today, sir,
17 he was at Brown County overnight for this court hearing.

18 THE COURT: Right. And has he been designated for a
19 state prison?

20 MR. HUMBLE: My understanding is that he's --
21 Ozaukee's contracted with the Wisconsin state prison system --
22 state prison system, and he's serving his prison sentence at
23 Ozaukee right now.

24 THE COURT: Is this -- Is this COVID stuff that
25 they're not moving people into regular prisons?

1 MR. HUMBLE: No, it start -- it was before COVID that
2 they started doing that.

3 THE COURT: But is Ozaukee more than a county jail?

4 MR. HUMBLE: No.

5 THE COURT: Okay. Thank you.

6 (At 9:56 a.m. the hearing ended.)

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1 C E R T I F I C A T E
2

3 I, THOMAS A. MALKIEWICZ, RPR, RMR,
4 CRR, an Official Court Reporter for the United States
5 District Court for the Eastern District of Wisconsin, do hereby
6 certify that the foregoing is a true and correct transcription
7 of the audio file provided in the aforementioned matter to the
8 best of my skill and ability.

9
10
11 Dated this 15th day of October, 2021.

12 Milwaukee, Wisconsin.

13
14
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21 ELECTRONICALLY SIGNED BY THOMAS A. MALKIEWICZ
22 Official U.S. Reporter, RPR, RMR, CRR