

FILED
05-02-2023
Clerk of Courts
Fond du Lac County WI
2023CF000380

STATE OF WISCONSIN CIRCUIT COURT FOND DU LAC COUNTY

STATE OF WISCONSIN Plaintiff, vs. BENJAMIN HAROLD AYER W8269 County Road Y Oakfield, WI 53065 DOB: 01/23/2003 Sex/Race: M/W Alias: Defendant.	DA Case No.: 2023FL001269 Assigned DA/ADA: Catherine Block Agency Case No.: 23-2803 Court Case No.: ATN: 20002304270020 <p style="text-align: center;">CRIMINAL COMPLAINT</p>	For Official Use
--	---	------------------

The undersigned law enforcement officer, of the Fond du Lac Police Department, being first duly sworn, states that:

Count 1: INJURY BY INTOXICATED USE OF A VEHICLE

The above-named defendant on or about Thursday, April 27, 2023, Fond du Lac County, Wisconsin, did cause great bodily harm to VICTIM 1, by the operation of a vehicle while under the influence of an intoxicant, contrary to sec. 940.25(1)(a), 939.50(3)(f) Wis. Stats., a Class F Felony, and upon conviction may be fined not more than Twenty Five Thousand Dollars (\$25,000), or imprisoned not more than twelve (12) years and six (6) months, or both.

And the Department shall revoke the defendant's operating privilege for two (2) years.

Count 2: FIRST DEGREE RECKLESSLY ENDANGERING SAFETY

The above-named defendant on or about Thursday, April 27, 2023, Fond du Lac County, Wisconsin, did recklessly endanger the safety of VICTIM 1, under circumstances which show utter disregard for human life, contrary to sec. 941.30(1), 939.50(3)(f) Wis. Stats., a Class F Felony, and upon conviction may be fined not more than Twenty Five Thousand Dollars (\$25,000), or imprisoned not more than twelve (12) years and six (6) months, or both.

Count 3: FIRST DEGREE RECKLESSLY ENDANGERING SAFETY

The above-named defendant on or about Thursday, April 27, 2023, Fond du Lac County, Wisconsin, did recklessly endanger the safety of VICTIM 2, under circumstances which show utter disregard for human life, contrary to sec. 941.30(1), 939.50(3)(f) Wis. Stats., a Class F Felony, and upon conviction may be fined not more than Twenty Five Thousand Dollars (\$25,000), or imprisoned not more than twelve (12) years and six (6) months, or both.

Count 4: FIRST DEGREE RECKLESSLY ENDANGERING SAFETY

The above-named defendant on or about Thursday, April 27, 2023, Fond du Lac County, Wisconsin, did recklessly endanger the safety of VICTIM 3, under circumstances which show utter disregard for human life, contrary to sec. 941.30(1), 939.50(3)(f) Wis. Stats., a Class F Felony, and upon conviction may be fined not more than Twenty Five Thousand Dollars (\$25,000), or imprisoned not more than twelve (12) years and six (6) months, or both.

Count 5: FIRST DEGREE RECKLESSLY ENDANGERING SAFETY

The above-named defendant on or about Thursday, April 27, 2023, Fond du Lac County, Wisconsin, did recklessly endanger the safety of VICTIM 4, under circumstances which show utter disregard for human life, contrary to sec. 941.30(1), 939.50(3)(f) Wis. Stats., a Class F Felony, and upon conviction may be fined not more

than Twenty Five Thousand Dollars (\$25,000), or imprisoned not more than twelve (12) years and six (6) months, or both.

Count 6: FIRST DEGREE RECKLESSLY ENDANGERING SAFETY

The above-named defendant on or about Thursday, April 27, 2023 at 12:19 PM, in the City of Fond du Lac, Fond du Lac County, Wisconsin, did recklessly endanger the safety of VICTIM 5, under circumstances which show utter disregard for human life, contrary to sec. 941.30(1), 939.50(3)(f) Wis. Stats., a Class F Felony, and upon conviction may be fined not more than Twenty Five Thousand Dollars (\$25,000), or imprisoned not more than twelve (12) years and six (6) months, or both.

Count 7: FIRST DEGREE RECKLESSLY ENDANGERING SAFETY

The above-named defendant on or about Thursday, April 27, 2023 at 12:19 PM, in the City of Fond du Lac, Fond du Lac County, Wisconsin, did recklessly endanger the safety of VICTIM 5's child, under circumstances which show utter disregard for human life, contrary to sec. 941.30(1), 939.50(3)(f) Wis. Stats., a Class F Felony, and upon conviction may be fined not more than Twenty Five Thousand Dollars (\$25,000), or imprisoned not more than twelve (12) years and six (6) months, or both.

Count 8: FIRST DEGREE RECKLESSLY ENDANGERING SAFETY

The above-named defendant on or about Thursday, April 27, 2023 at 12:19 PM, in the City of Fond du Lac, Fond du Lac County, Wisconsin, did recklessly endanger the safety of VICTIM 5's child, under circumstances which show utter disregard for human life, contrary to sec. 941.30(1), 939.50(3)(f) Wis. Stats., a Class F Felony, and upon conviction may be fined not more than Twenty Five Thousand Dollars (\$25,000), or imprisoned not more than twelve (12) years and six (6) months, or both.

Count 9: FIRST DEGREE RECKLESSLY ENDANGERING SAFETY

The above-named defendant on or about Thursday, April 27, 2023 at 12:19 PM, in the City of Fond du Lac, Fond du Lac County, Wisconsin, did recklessly endanger the safety of VICTIM 6, under circumstances which show utter disregard for human life, contrary to sec. 941.30(1), 939.50(3)(f) Wis. Stats., a Class F Felony, and upon conviction may be fined not more than Twenty Five Thousand Dollars (\$25,000), or imprisoned not more than twelve (12) years and six (6) months, or both.

Count 10: POSSESSION OF DRUG PARAPHERNALIA

The above-named defendant on or about Thursday, April 27, 2023, Fond du Lac County, Wisconsin, did knowingly possess drug paraphernalia with the primary intent to use a controlled substance, contrary to sec. 961.573(1) Wis. Stats., a Misdemeanor, and upon conviction may be fined not more than Five Hundred Dollars (\$500), or imprisoned for not more than thirty (30) days, or both.

And the Court may suspend the defendant's operating privileges for not less than six (6) months nor more than five (5) years. If the defendant's driving privileges are already suspended, any suspension imposed must be served consecutively.

Count 11: POSSESSION OF TETRAHYDROCANNABINOLS (THC)

The above-named defendant on or about Thursday, April 27, 2023, Fond du Lac County, Wisconsin, did knowingly possess a controlled substance, tetrahydrocannabinols (THC), contrary to sec. 961.41(3g)(e) Wis. Stats., a Misdemeanor, and upon conviction may be fined not more than One Thousand Dollars (\$1,000), or imprisoned for not more than six (6) months, or both.

And the Court may suspend the defendant's operating privileges for not less than six (6) months nor more than five (5) years. If the defendant's driving privileges are already suspended, any suspension imposed must be served consecutively.

Count 12: OPERATING WHILE INTOXICATED CAUSING INJURY - 1ST OFFENSE

The above-named defendant on or about Thursday, April 27, 2023 at 12:19 PM, in the City of Fond du Lac, Fond du Lac County, Wisconsin, did cause injury to VICTIMS 1-8 by the operation of a vehicle while under the influence of an intoxicant, contrary to sec. 346.63(2)(a)1, 346.65(3m) Wis. Stats., a Misdemeanor, and upon conviction shall be fined not less than Three Hundred Dollars (\$300) nor more than Two Thousand Dollars (\$2,000), and shall be imprisoned for not less than thirty (30) days nor more than one (1) year in the county jail.

And furthermore, invoking the provisions of Wisconsin Statute 343.31(3)(e), upon conviction, the department shall revoke the defendant's operating privilege for not less than one (1) year nor more than two (2) years. In addition, the defendant will be required to undertake an alcohol and drug abuse assessment, and follow through with treatment recommendations as a condition of reinstatement.

PROBABLE CAUSE:

Complainant bases this complaint upon the report and investigation of Officer DA NENG VANG of the Fond du Lac Police Department. Complainant and Officer DA NENG VANG are presumed reliable as sworn law enforcement officials.

Complainant reports that Officer DA NENG VANG reports that on Thursday, 04/27/2023 at 1219 hours, Officer DA NENG VANG of the Fond du Lac Police Department was working his assigned shift for the City of Fond du Lac, WI as a uniformed patrol police officer and operating a marked Fond du Lac police squad car. While working, Officer DA NENG VANG was dispatched to the Verizon, at 467 Rolling Meadows Dr., City and County of Fond du Lac, regarding an accident with injury, which later changed to an intoxicated driver. As Officer DA NENG VANG was responding to the location, dispatch did advise in the call that a vehicle had driven through the store. Dispatch also advised someone crashed into the building and **approximately six people were injured**. Dispatch advised **one of their persons inside the building was pinned** under the car.

While responding to the location, other officers had already arrived on scene and were assisting with the situation. The fire department had also arrived on scene as well.

Upon arrival at the location, Officer DA NENG VANG did observe that the vehicle had collided into the south wall of the Verizon building. The vehicle that collided with the wall was now inside the building. Officer DA NENG VANG did observe that this vehicle was a Hyundai sedan with a Wisconsin license plate of ACY2417. In front of this vehicle were firefighters and paramedics attempting to help the person who was pinned in front of the vehicle. While still inside the building Officer DA NENG VANG did make contact with one of the employees, but prior to getting information from this employee. Ofc. FINK of the Fond du Lac Police Department then informed Officer DA NENG VANG that the driver of the vehicle was impaired and that this was a possible intoxicated driver. Officer DA NENG VANG then made his way towards the driver of the vehicle. When Officer DA NENG VANG made contact with the driver of the vehicle, Officer DA NENG VANG did observe that the driver was a white male, wearing a white sweatshirt, black pants, and white shoes. Officer DA NENG VANG also did observe that the driver sustained injuries from the collision.

This driver was later **identified with a Wisconsin driver license as BENJAMIN H. AYER** (DOB: 01/23/2003). BENJAMIN sustained injuries to his head as there was redness to the left side of BENJAMIN's face. BENJAMIN's nose was bleeding. BENJAMIN was also trembling and his pinky on the right hand did have a laceration and was also bleeding. When Officer DA NENG VANG made contact with BENJAMIN, he was sitting on the sidewalk next to the building. Officer DA NENG VANG then isolated BENJAMIN from the scene and escorted him away from the building. As Officer DA NENG VANG was escorting BENJAMIN away from the building Officer DA NENG VANG did observe that BENJAMIN did struggle with walking as he was limping. Once BENJAMIN was away from the building, Officer DA NENG VANG did ask BENJAMIN what he is injuries were. As BENJAMIN was talking to Officer DA NENG VANG in regards to what his injuries were, Officer DA NENG VANG did notice that BENJAMIN's speech was slow and that he was apologetic in regards to the situation. While talking with BENJAMIN, Officer DA NENG VANG did observe that BENJAMIN's eyes were pinpoint pupil. At this point, BENJAMIN did state that his face was hurting, specifically to the right eye above the eyebrow, his hand was bleeding from the pinky and his legs were hurting, specifically on his ankles.

While still talking to **BENJAMIN**, he did admit to Ofc. FINK and Officer DA NENG VANG that he was **huffing air duster at Culver's prior to driving the vehicle** northbound onto Rolling Meadows Dr.

BENJAMIN was asked if he was on any medication, which BENJAMIN stated that he is a medication for his ADHD, anxiety, and depression. When asked if BENJAMIN had taken anything else other than the air duster, BENJAMIN stated that he had not taken anything else other than huffing the electronic air duster. At one point Ofc. FINK came back and informed Officer DA NENG VANG that there was a "Surf Onn" electronics duster compressed gas cleaner in the front seat area. Ofc. FINK also informed Officer DA NENG VANG that in the front seat area there was **a red and blue pipe which contained burnt plantlike material inside**. Ofc. FINK also informed that there was a **grinder with plant-like material inside that was consistent with marijuana**. Ofc. FINK also stated that when he found BENJAMIN's phone, it did send out an alert that indicated that BENJAMIN was in a crash. It should be noted BENJAMIN was the only occupant inside the vehicle. BENJAMIN did admit to owning the pipe and the grinder later at the hospital.

Officer DA NENG VANG hand cuffed BENJAMIN's hands to the front. At this point, BENJAMIN was held at the county jail for charges of 940.25(1)(A) - Injury by Intoxicated Use of Vehicle - Caused Great Bodily Harm, 941.30 – First degree recklessly endangering safety, 961.573(2) - Possession Drug Paraphernalia, and 961.41(3G)(E) - Possession THC. **BENJAMIN admitted to huffing the "Surf Onn" electronics duster compressed gas cleaner** prior to leaving the Culver's parking lot and operating a motor vehicle on a public roadway. As BENJAMIN was traveling northbound on Rolling Meadows Dr., BENJAMIN lost control of his vehicle and jumped the curb. The vehicle then went straight to the Verizon store and collided with the exterior wall. Inside the store were employees and customers. When the vehicle collided with the wall and pushed the south wall into the building, the wall and counter did collide with the employees and customers inside. During the process, **VICTIM 1 was pinned under the vehicle**. BENJAMIN was the only occupant inside the vehicle and later **admitted to owning the red and blue pipe and the grinder with the green plant-like material consistent to that of marijuana**. **Ofc. FINK did later weigh and test the plant-like material inside the grinder, which weighed 0.4 gram and tested positive for marijuana**.

On April 27, 2023 at approximately 1219 hours, Officer Sprangers was acting as Field Training Officer Ofc. Zauner. We were currently working on a retail theft complaint at Walmart and were outside when dispatch had dispatched other officers to Verizon on N. Rolling Meadows Dr. for a crash where somebody was possibly pulseless and not breathing. Officer Sprangers saw the south side of the building of Verizon had been driven through by a vehicle that was now inside the store with Wisconsin registration plate of ACY-2417. There was no one inside of it and there were multiple people inside the store. Officer Sprangers was directed to a female in front of the vehicle who Officer Sprangers was told had been hit and was not in the vehicle. She was breathing, but was not responsive to Officer Sprangers. She appeared to be wedged between the vehicle and debris and what was the counter area in the store. Officer Sprangers was able to locate on her a small wallet that contained her Wisconsin driver license of VICTIM 1 . Officer Barrett spoke with VICTIM 1 who informed Officer Barrett that she had a skull fracture avulsion, pelvis fracture, vertebra fracture, fractured bone in right hand, and a scalp hematoma.

Officer Sprangers then spoke with **VICTIM 3, who was identified with a Wisconsin driver license. He stated he was waiting in the store and was struck by the vehicle on his right side**. He said that he was grazed by it and it contacted his right knee and elbow. He said that both were swollen and red and that his left ankle also hurt, possibly from the jarred movement.

On 4/27/2023, at approximately 1224hrs, Ofc. Fink, responded to Verizon Wireless located at 467 N Rolling Meadows Dr in the City and County of Fond du Lac, WI for the report of vehicle that had crashed into the building and six people were hurt. Ofc. Fink ensured every critical patient was cared for and was eventually pointed to the driver, who was speaking with Ofc. Zauner.

On Thursday, April 27, 2023, Officer Clapper, was on uniformed patrol, operating marked patrol squad #14 in the City and County of Fond du Lac, Wisconsin. At approximately 1219 hours Officer Clapper was dispatched to Verizon Wireless, 467 North Rolling Meadows Drive in the City and County of Fond du Lac. Dispatch initially advised that a caller was heard screaming and said send the cops now.

Officer Clapper made contact with one of the patients who was verbally identified as **VICTIM 2. VICTIM 2 stated that he was a patron at Verizon Wireless when he was inside the store at the counter and someone said, "watch out" and all of a sudden a vehicle came through the glass wall of the store and hit him. VICTIM 2 stated that he was experiencing pain and injuries in his lower back and legs**. Paramedics eventually treated VICTIM 2.

Officer Clapper spoke with a store employee who Officer Clapper verbally identified as **VICTIM 4. VICTIM 4 stated that he had right leg pain and right arm pain. VICTIM 4 did show Officer Clapper a bruise and swelling on his right forearm.**

Officer Joseph Zauner made contact with an **VICTIM 5. Officer Joseph Zauner identified him through his Wisconsin driver's license. VICTIM 5 stated he was in the waiting area in front of the store in his vehicle with his 2 kids** when the vehicle came through the store. **VICTIM 5** and his kids were uninjured but the kids were crying and shaken up.

Officer Joseph Zauner made contact with a **VICTIM 6. Officer Joseph Zauner identified him through his Wisconsin driver's license. VICTIM 6 stated he was in the back part of the store and almost was struck by the car.** Officer Joseph Zauner asked **VICTIM 6** if he was injured and he stated he just cut his finger on the glass.

Additional charges possible as investigation continues pending information contained in requested medical records.

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

Subscribed and sworn to before me on 05/02/23

Electronically Signed By:

Curtis A. Borsheim

Assistant District Attorney

State Bar #: 1004536

Electronically Signed By:

Matthew Bobo

Complainant