

08-03-2018

STATE OF WISCONSIN	CIRCUIT COURT	RACINE COUNTY	Clerk of Circuit Court
) Preliminary Hearing			Racine County
THE STATE OF WISCONSIN,)	2016CF001498	
)		
VS.)	<u>T R A N S C R I P T</u>	
)		
TYRAN T. PINKINS,)		
DEFENDANT.)	CASE NO. 16-CF-1498	
)		

The above-entitled matter came duly on for hearing before Court Commissioner Alice Rudebusch on the 14th day of December, 2016 in the Racine County Courthouse, City of Racine, State of Wisconsin.

APPEARANCES

FOR THE STATE:

Erica Motsch
Assistant District Attorney
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FOR THE DEFENDANT:

Joshua Hargrove
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MARK W. GARVIN, CVR-CM-M
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1 (The court was called to order on December 14, 2016.)

2 **The Court:** State versus Tyran Pinkins.

3 Appearances.

4 **Ms. Motsch:** Erika Motsch for the State on
5 behalf of Rebecca Sommers.

6 **Mr. Hargrove:** Mr. Pipkins does appear in person
7 and in custody represented by Counsel Joshua Hargrove.

8 **The Court:** We're here for the hearing. Are
9 the parties ready?

10 **Mr. Hargrove:** We are ready to proceed.

11 **The Court:** Your first witness.

12 **Ms. Motsch:** Your Honor, Officer Diederich will
13 be taking the stand.

14 **JOSHUA DIEDERICH, BEING FIRST DULY SWORN, TESTIFIED AS**

15 **FOLLOWS ON DIRECT EXAMINATION BY MS. MOTSCH:**

16 **Q.** Officer, can you please state your name and spell
17 it for the record, please?

18 **A.** Officer Joshua Diederich, D-I-E-D-E-R-I-C-H.

19 **Q.** How are you employed, Officer?

20 **A.** The City of Racine Police Department.

21 **Q.** How long have you been employed with the City of
22 Racine Police Department?

23 **A.** It will be four years in January.

24 **Q.** Were you employed at that capacity -- in that
25 capacity on October 6, 2016, at approximately 6:54 PM?

1 **A.** Yes.

2 **Q.** On that date and at that time, did you respond to
3 a location in the City of Racine that was approximately at
4 State Street and Lake Avenue?

5 **A.** Yes, I did.

6 **Q.** Is that in the County of Racine, State of
7 Wisconsin?

8 **A.** Yes.

9 **Q.** At that time when you responded to the location,
10 what were you wearing?

11 **A.** Full department uniform which I am in right now.

12 **Q.** Were you driving a marked squad?

13 **A.** Yes, I was.

14 **Q.** When you arrived at that location, did you have
15 your emergency lights activated?

16 **A.** Just my rear lights because I was in a lane of
17 traffic.

18 **Q.** Any sirens?

19 **A.** No.

20 **Q.** When you arrived at that location, what happened?

21 **A.** I was flagged down by an unidentified male party
22 who was on the turn lane median in front of Jimmy John's.
23 I flipped my squad around and he said that there was a man
24 down over there, pointing to where I later located Mr.
25 Pinkins and I said I see somebody standing and he said no,

1 there's somebody else like on the ground. So I drove over
2 there and called out to dispatch.

3 Q. When you went and made contact with the person
4 that the unidentified individual was referring to, is that
5 person in the courtroom today?

6 A. Yes, they are.

7 Q. Can you identify that person by where he is
8 seated and what he is wearing?

9 A. He's seated to my right in front of me wearing a
10 orange county short sleeved shirt and dark underneath the
11 shirt.

12 Q. Ultimately was that person identified as Tyran T.
13 Pinkins, date of birth March 16, 1985?

14 A. Yes.

15 * * *

16 Ms. Motsch: Your Honor, may the record please
17 reflect the identification of the defendant.

18 The Court: He described Mr. Pinkins.

19 * * *

20 Q. When you arrived and had approached Mr. Pinkins,
21 what happened?

22 A. He was on the ground shaking which I believed to
23 be having a seizure. He had vomit around his face and on
24 his clothing.

25 Q. Did you try to assist Mr. Pinkins?

1 **A.** I did. I called dispatch and said I think I have
2 a party having a seizure. Send me a rescue squad and send
3 me a cover. A friend or associate of his who later I
4 identified -- don't recall his name. It's in my report.
5 He also said that I think that he's having a seizure.

6 So I said sir, are you all right? Are you okay?
7 I got no response. I said I have an ambulance, a rescue
8 coming. I need to make sure you're all right.

9 **Q.** Did you identify yourself as an officer directly
10 to Mr. Pinkins?

11 **A.** I don't recall. It is recorded. So I - if I
12 did, it would be on there.

13 **Q.** Recorded on a body camera?

14 **A.** It's an MVRE mike. It's attached to our squad
15 video. We don't have body cameras.

16 **Q.** So an audio recording potentially exists along
17 with the squad camera; correct?

18 **A.** Yes.

19 **Q.** When you approached Mr. Pinkins and you were
20 talking to him, were his eyes open?

21 **A.** Yes.

22 **Q.** Did you believe he could see you?

23 **A.** Yes, absolutely.

24 **Q.** Do you think it would be obvious -- Was it
25 obvious that you were wearing your uniform and it wasn't

1 covered with a coat or anything like that?

2 **A.** Correct. It was obvious; no coat, no jacket.

3 **Q.** Did you try to touch Mr. Pinkins?

4 **A.** Yes. I believe I said like sir, just stay down
5 because he was like trying to gather his belongings and
6 stuff. He was no longer shaking, conscious and breathing,
7 and he was trying to get up and I said no, sir, just stay
8 down. I need to make sure you're okay. Rescue is coming.

9 So I like lightly put my hands on him but he
10 still continued to get up and I wasn't trying to get into
11 any sort of struggle with him. I was just simply there to
12 assist him.

13 **Q.** So what happened after you put your hands on him?

14 **A.** He continued to gather his stuff, and I felt at
15 that point I was a community caretaker. The way he was --
16 He was like stumbling. I didn't want him to fall or walk
17 into traffic, and it was unknown if he was assaulted or
18 injured.

19 I had no idea if he was having a medical
20 emergency. It was an overdose, something like that. So I
21 put my hand on his shoulder, was walking down the sidewalk,
22 still tried to talk to him and speak to the other party.

23 I asked the other party, you know, do you know
24 him? Does he speak because I have no idea? I've never met
25 him before, wasn't sure. Obviously this isn't normal. So

1 I put --

2 Q. Let's break that down a little bit. So as you're
3 trying to gain information about him, do you have -- are
4 you touching him at that point?

5 A. Yes. I believe my hand was like on his right
6 shoulder because I felt that I needed to like hold him up
7 to keep him from falling over, and I wasn't going to let
8 him walk into traffic.

9 Q. So what happened after you're talking to him; the
10 person who's also standing there and Mr. Pinkins?

11 A. After a short period of time, Mr. Pinkins grabbed
12 the light pole at State and Lake Avenue and was just kind
13 of leaning against it.

14 I was still talking to him, talking to the other
15 party, and I'm asking him -- He's almost falling over. So
16 I'm like sir, sit down. I need to you sit down, trying to
17 like help him, put both my hands like on his shoulders and
18 then at this point he's kind of like -- I don't know if
19 he's stumbling or falling forward, but then -- So I grabbed
20 him to try to help him sit down by his jackets, and then he
21 pulled away and fell because he was either off balance or,
22 like I said, because of the condition he was in.

23 He tried to run at that point. He landed on his
24 back, and then I called on the radio again that I needed a
25 squad to come; 1039, lights and sirens.

1 Q. Did he ever touch you during that time?

2 A. Did he ever touch me; did you say?

3 Q. Right. At that point, did he ever try to hit you,
4 strike you, anything at that point?

5 A. He was on his back kicking his feet, and then at
6 some point I got struck in the head multiple times and
7 kicked in the right calf, yes.

8 Q. So he struck you in the head; do you know how
9 many times? You said multiple?

10 A. I think two to three.

11 Q. When he struck you in the head, did it hurt?

12 A. Yes.

13 Q. How long did that pain last?

14 A. A few days later whenever I would like chew or
15 talk, my jaw still hurt. So probably three to four days.

16 Q. You said you were kicked as well?

17 A. Yes.

18 Q. You said he kicked you in your calf?

19 A. Yes.

20 Q. Did that hurt?

21 A. Yes.

22 Q. How long did that hurt?

23 A. Maybe a day or two. I had a pretty large bruise.

24 Q. You had a large bruise there?

25 A. Yes. It was discovered after I left the

1 hospital. I was writing this report in the very early
2 morning hours but it was observed by Officer McCloski and
3 Sergeant Ketting.

4 Q. You had a visible injury from the injury to your
5 calf. Any to your head that was visible?

6 A. Photographs were taken. I believe there was
7 slight redness but no bruising at that time.

8 Q. Did you receive medical treatment as a result of
9 the defendant striking you?

10 A. Yes, I did.

11 Q. Were you diagnosed with anything; a concussion or
12 anything of that nature?

13 A. Not a concussion, no.

14 Q. Did you consent to the defendant striking you?

15 A. No, I did not.

16 Q. At any time did another person get between you
17 and this defendant, meaning not another officer but another
18 citizen?

19 A. Yes.

20 Q. Did that citizen ever strike you?

21 A. Did he ever strike me?

22 Q. Yes.

23 A. No, he did not.

24 Q. Did you have any other contact with any other
25 person on the scene?

1 **A.** No.

2 **Q.** Were you able to see Mr. Pinkins when he struck
3 you in the head?

4 **A.** Yes.

5 **Q.** Were you able to see Mr. Pinkins when he kicked
6 you in your calf?

7 **A.** Yes.

8 **Ms. Motsch:** No further questions.

9 **The Court:** Cross.

10 **Mr. Hargrove:** Thank you.

11 **CROSS-EXAMINATION BY MR. HARGROVE:**

12 **Q.** Officer Diederich, you said on direct that at
13 about 18:54 hours on October 6th you were flagged down by an
14 unidentified male?

15 **A.** Yes.

16 **Q.** The unidentified male told you that there was
17 another male, Mr. Pinkins, that he believed to be having a
18 seizure; is that what happened?

19 **A.** No. He just said something like there's a man
20 down over there and pointed in that direction.

21 **Q.** Then you walked in that direction?

22 **A.** No. I spun my squad around and then I said --
23 Well, he said yes, sir. So initially I saw him waving
24 frantically, saw that, spun my squad around, rolled down my
25 window and said yes, sir, and he said there's a man down

1 over there. I'm like I see a man standing. He's like no,
2 there's another man down on the ground. So then I drove my
3 squad over there, parked maybe fifteen, twenty feet away.

4 Q. Then you approached Mr. Pinkins?

5 A. Yes.

6 Q. You stated on direct that when you approached him
7 he was lying on the ground shaking?

8 A. Yes.

9 Q. And there was saliva coming out of his mouth?

10 A. It was vomit around his mouth --

11 Q. Vomit around.

12 A. -- and on his clothing.

13 Q. How long did this last?

14 A. I'd estimate probably fifteen, twenty seconds.

15 Q. Then you stated that he began to try to get up
16 and gather his belongings?

17 A. Yes.

18 Q. You said you were asking him if he was all right,
19 but there was no response?

20 A. Correct.

21 Q. Then you stated you lightly put your hands on
22 him?

23 A. Yes.

24 Q. That was to assist him with gaining his balance?

25 A. I was actually -- I told him like stay down.

1 Sir, could you please relax? Stay down. I was hoping he
2 would sit down so I could have rescue evaluate him.

3 Q. He continued to try to get up?

4 A. Yes.

5 Q. And gather his belongings?

6 A. Yes.

7 Q. Then you stated on the record that's when you
8 placed both of your hands on him?

9 A. I had one hand for sure to basically prevent him
10 from falling. I think a moment, probably a minute or two
11 later, it's on video that I have both my hands on his
12 shoulders when I encouraged him to sit down because at this
13 point he's holding onto the traffic signal and kind of
14 stumbling, falling.

15 So then I encouraged him to sit down and put both
16 my hands on his shoulders, upper back area.

17 Q. Just so I can specify this, he's attempting to
18 stand up and maintain his balance with the traffic signal
19 post?

20 A. Yes.

21 Q. And you have both your hands on his shoulder?

22 A. Yes.

23 Q. When you said you were attempting to get him to
24 sit down, does that mean you're putting pressure on his
25 shoulders for him to sit down?

1 **A.** Yes, I think it's a good way to describe it,
2 pressure.

3 **Q.** So he's attempting to get up, and you're
4 attempting to get him to sit down?

5 **A.** No. He already was up. He's just holding onto
6 it.

7 **Q.** Okay.

8 **A.** And he's going around the pole.

9 **Q.** You were attempting to get him to sit where
10 exactly?

11 **A.** Right on the curb there.

12 **Q.** So to sit down on the curb?

13 **A.** Yes.

14 **Q.** This is from him in the standing up position?

15 **A.** Yes.

16 **Q.** Then you stated on direct that you were speaking
17 to him, but there was no response?

18 **A.** Yes.

19 **Q.** I think you stated on direct that obviously this
20 isn't normal; what did you mean by that?

21 **A.** Well, the look on his face from the beginning.
22 So I come upon him. He's covered in vomit. He has vomit
23 on his face, and he's like staring through me. It's a very
24 odd look, and at no point in time did he answer any one of
25 my questions even to say, you know, I'm okay, nothing.

1 After all those questions and his friend said he
2 knows him, he couldn't offer me any information and also
3 said he thought he was having a seizure.

4 So I think it was a medical emergency and didn't
5 believe that he's okay to just walk away and stumble into
6 traffic.

7 **Q.** Then you stated on direct that then he began to
8 attempt to leave?

9 **A.** He was -- Yes. He was like pulling -- I guess as
10 I'm trying to encourage him to sit down, I don't know if he
11 was leaving or off balance but he was like pulling away,
12 leaning forward and whether or not he lost his balance but
13 he ended up going onto the ground, falling onto his back.

14 **Q.** So despite your encouragement, he never sat down?

15 **A.** Correct.

16 **Q.** Then he begins in some way to lose his balance
17 and falls down?

18 **A.** Yes.

19 **Q.** He falls on his back?

20 **A.** Yes.

21 **Q.** You stated on direct he was kicking while he was
22 on his back?

23 **A.** Yes.

24 **Q.** Where were you when he was on his back kicking?

25 **A.** Out of range so I wouldn't get kicked trying to

1 circle him so I could stabilize him on the ground.

2 Q. At the point where he's kicking on his back, he
3 still hasn't responded to you; correct?

4 A. Correct. He's never answered anything. The only
5 word which -- and I thought he just said fuck you or fuck
6 you bitch or something to that effect when he was on his
7 back.

8 Q. Then at what point do you come into contact with
9 him again?

10 A. So I didn't want to get kicked. So he got up and
11 began moving southbound through the grass there. So then a
12 second or two later I would have had contact with him.

13 Q. So he got up on his own?

14 A. Yes.

15 Q. Then he began moving away from you?

16 A. Yes.

17 Q. Then what did you do?

18 A. I grabbed onto his, I guess, shoulder, back area.

19 Q. And did what?

20 A. Well, at this point, he -- I think -- I don't
21 know what shoulder, I believe his right. He swung around,
22 and I was caught in the left temple area.

23 Q. So you grabbed, you said, his shoulder area and
24 then he swung around?

25 A. Yes.

1 **Q.** You said -- And that's when you were hit in the
2 temple area you're saying?

3 **A.** Yes.

4 **Q.** Then what happened at that point?

5 **A.** He was swinging wilder with both his left and
6 right hand, closed fist. At some point, we go to the
7 ground. I'm trying to stabilize him on the ground, tell
8 him to stop resisting. He's still kicking me and punching.

9 So I was trying to deliver knees strikes which
10 weren't effective or did not land. So I used a strong hand
11 strike multiple times which, and most of this is seen on
12 the video, to gain some sort of control.

13 **Q.** I'm going to stop you there. Could you just
14 specify what are knee strikes?

15 **A.** Knee strikes?

16 **Q.** Yes.

17 **A.** That's defense and arrest tactic that's taught by
18 the State and in academy.

19 **Q.** I mean, specifically what is a knee strike?

20 **A.** Oh, a knee strike?

21 **Q.** Yes.

22 **A.** Striking somebody with your knee.

23 **Q.** So like kneeling him? You're saying you were
24 forcefully kneeling him?

25 **A.** Yes.

1 Q. This was while he was on the ground?

2 A. Yes.

3 Q. Would you describe this conduct as frantic?

4 * * *

5 Ms. Motsch: Objection. Relevance.

6 The Court: Overruled. You can answer.

7 * * *

8 A. No, I would not.

9 Q. How would you describe it?

10 A. Violent, combative, resistant.

11 Q. At this point did he ever respond to your verbal

12 command?

13 * * *

14 Ms. Motsch: Objection. Asked and answered.

15 Mr. Hargrove: No, I said --

16 The Court: Sustained.

17 * * *

18 Q. While this was occurring, were you giving any

19 verbal commands?

20 A. Yes. I believe I was saying stop resisting.

21 Q. Did he respond to those verbal commands?

22 A. No.

23 Mr. Hargrove: No further questions.

24 The Court: Anything else?

25 Ms. Motsch: No redirect.

1 **The Court:** You can step down. You're all
2 done.
3 (The witness was excused.)
4 **The Court:** Are there any other witnesses?
5 **Ms. Motsch:** No other witnesses, Your Honor.
6 **The Court:** Mr. Hargrove.
7 **Mr. Hargrove:** No witnesses, Your Honor.
8 **Ms. Motsch:** The State would motion for bind
9 over, Commissioner.
10 **Mr. Hargrove:** We would object. I do have
11 argument for the record.
12 **The Court:** Sure. What's your argument?
13 **Mr. Hargrove:** Definitely. Thank you, Your
14 Honor.
15 I believe based on case law and the statute, the
16 specific crime that they're alleging would imply some sort
17 of intention.
18 Based on the officer's testimony, he stated there
19 was never a response. He stared right through him. He
20 thought it was odd. He believes this was not normal.
21 There's no testimony to give that any of his
22 actions were intentional, and I believe at a preliminary
23 hearing these types of causes, it has to be -- there has to
24 be probable cause or an inference given that it's
25 intentional to cause harm.

1 According to this officer's testimony, my client
2 had no wherewithal the entire time until he started placing
3 pressure on him and that is when they began this
4 altercation but I've heard no testimony that stated
5 anything was intentional.

6 **Ms. Motsch:** Judge, I believe -- I'm sorry,
7 Commissioner, I believe that given the officer's testimony,
8 one could find intent by this defendant.

9 The officer did testify that this defendant was
10 potentially out of sorts or staring through him but at the
11 same time I believe through his actions that you can show
12 intent. We can't see into the mind of this defendant, but
13 he intentionally struck him in the face and kicked in him
14 in the leg.

15 Additionally, though, he may have been
16 intoxicated or under the influence or not in his right mind
17 but one can still form the intent at that point to hit
18 somebody and strike somebody.

19 In light of that, the State does believe they've
20 proved their case for probable cause.

21 **The Court:** All right. Well, at this stage of
22 the proceedings, it's just probable cause. So based on the
23 testimony I've heard, we've heard no testimony at all about
24 the length or the duration or the extensiveness of the
25 medical issue afflicting Mr. Pinkins.

1 All the officer wanted him to do was sit down and
2 wait for medical attention to arrive, and he ended up being
3 struck and kicked several times. Based on that testimony,
4 I'm making a finding of probable cause, and I'm going to
5 bind him over to stand trial on the charges.

6 **Mr. Hargrove:** We'll ask for a motion date on the
7 bind over, Your Honor. So if we could just get a date?

8 **The Court:** No. How it works is you have to
9 file a motion to dismiss, and then the judge gives you a
10 hearing date.

11 **Mr. Hargrove:** Yes, so --

12 **The Court:** So once you file that, you get a
13 hearing date.

14 **Mr. Hargrove:** I understand, Your Honor.

15 **The Court:** If you want to --

16 **Mr. Hargrove:** Commissioner, what I'm saying is
17 that we don't want to proceed with the arraignment. So if
18 we could --

19 **The Court:** Okay. Then we'll give you an
20 arraignment.

21 **Mr. Hargrove:** -- put it off and I'll file the
22 motion and then get a date.

23 **The Court:** Okay. So get me an arraignment.
24 The information's has been filed. Did you want an
25 arraignment, I don't know, after the holidays?

1 **Mr. Hargrove:** Yes. We probably should do that
2 because I'll be filing a motion on it anyway. So we want
3 to --

4 **The Court:** Do you want to put it on for
5 January 4th?

6 **Mr. Hargrove:** I'm not sure that first week of
7 January actually --

8 **The Court:** January 11th?

9 **Mr. Hargrove:** I could definitely do that this
10 week, yes.

11 **The Court:** At 8:30 for an arraignment.

12 **Mr. Hargrove:** Thank you.

13 **The Court:** We are adjourned.

14 * * * THE END * * *

THE STATE OF WISCONSIN,

VS.

TYRAN T. PINKINS,

DEFENDANT.

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) T R A N S C R I P T
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) CASE NO. 16-CF-1498
)

This is to certify that the transcript in the above-entitled case was requested of Mark W. Garvin, CVR-CM-M, on August 2, 2018, and the transcript was eFiled on August 3, 2018.

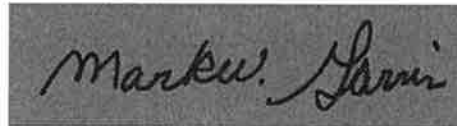
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I, Mark W. Garvin, Official Court Reporter, before whom the foregoing proceeding was taken, do hereby certify that said hearing is a true, correct and verbatim transcript of said proceeding.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was heard, and further, that I am not a relative or employee of any counsel employed by the parties thereto, and am not financially or otherwise interested in the outcome of this action.

This 2nd day of August, 2018.



Mark W. Garvin, CVR-CM-M