



STATE OF WISCONSIN - VS - David B Gonzalez Benitez, Paulino Rivera

## **FACTS:**

Your complainant is a Court Officer with the City of Madison Police Department and for this complaint is relying on the written police report(s) submitted by City of Madison Police Officer(s) Cody Heche, Ben Steffen, Kyle Dabbs, Samuel Montiel Zamora, Bradley Frias, and Detective Lisa Fahrenbruch.

## **INITIAL INFORMATION**

Officer Heche reports on August 19, 2023, at approximately 1:43 AM, he was dispatched with other officers to Antler's Tavern located in the 2200-block of W Broadway, in the City of Madison, Dane County, Wisconsin, reference a disturbance. Call notes indicated that the caller observed two guys beating up another in the parking lot to the east side next to the apartment building approximately two minutes prior to calling police. Caller advised that one subject was wearing lighter camouflage pants and he saw arms flailing but no other descriptions of anybody. Caller advised this happened in the gravel parking lot.

## **ARRIVAL ON SCENE**

Officer Heche reports upon arrival on scene, he immediately pulled into the driveway to the west side in the 2200-block of W Broadway and drove around the north side of the building; at which point, Officer Heche drove with his take down lights activated southeast through the gravel parking lot area. Approximately 50 feet into the gravel parking lot, Officer Heche immediately observed what appeared to be a male subject, whose name forms the initials MLB (later ID'd via his Mexican Consular ID card), lying on his side facing away from him toward W Broadway. Officer Heche immediately approached MLB as the first officer to arrive on scene and checked the immediate area for anybody else.

As Officer Heche approached MLB, he rolled him to his back and immediately observed that he had significant injuries. Officer Heche observed that MLB's shirt was torn in several places in the upper chest area and that his shirt was raised to about the height of his belly button. Just below his belly button, Officer Heche immediately observed what appeared to be a laceration approximately an inch in diameter. As Officer Heche raised MLB's shirt, he observed approximately six other lacerations warranting him to cut off MLB's shirt. MLB was also wearing a camouflage backpack which was draped in front of his shirt and was also cut off of his person. As Officer Heche removed MLB's shirt, he observed that the most significant of the lacerations to his torso area were the ones that he immediately observed by his belly button and one near his front left armpit area. There was also a significant laceration on MLB's left pectoral area.

Officer Heche also immediately observed that MLB had significant facial injuries including swollen eyes, nose and mouth area. Officer Heche observed what appeared to be two pieces of MLB's teeth on the front of his chest area prior to cutting off his shirt as well as a significant amount of blood near MLB's head but approximately two feet away to his right. Officer Heche also observed what appeared to be a five to six inch laceration on MLB's left wrist which extended from the base of his hand up his arm.

## **AID RENDERED**

Officer Heche reports given the totality of the injuries, he immediately applied a tourniquet to MLB's left upper arm as his left wrist was actively bleeding more significantly than his other

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injuries. Prior to applying the tourniquet, Officer Heche observed that MLB had very labored slow breathing and a very faint radial pulse which he detected on MLB's right wrist, the one which was not injured. Officer Heche reports after applying the tourniquet to MLB at approximately 1:51 AM and notifying Dispatch that he needed immediate medical response, he then applied two different sets of sterilized gauze to the two most significant chest injuries. Officer Heche was able to apply pressure to two lacerations to MLB's chest which were actively bleeding with one hand while applying pressure to the laceration below MLB's belly button with the other hand. MLB's mouth was significantly swollen and Officer Heche observed what appeared to be blood inside his nose. There was a significant amount of blood on the entirety of MLB's torso, arms, and face.

### **TRANSPORT OF MLB TO UW HOSPITAL**

Officer Heche reports after MLB was loaded up into the ambulance, he advised other officers on scene to begin to gather information from the caller as he was anticipating following the paramedics to UW Hospital.

Officer Heche followed Medic 14 to UW Hospital, at which point, MLB was admitted into the emergency room. Shortly after being admitted into the emergency room, Officer Heche was advised that the operating room was being prepped for MLB, who was identified at this time via his Mexican Consular ID. At UW Hospital, Officer Heche was advised that MLB's condition was life-threatening, that he had a laceration to his liver, that he had other significant chest lacerations, that he needed to be intubated due to the swelling of his throat and face and that the laceration to his left wrist was significant enough to the point that it needed to be operated on. Officer Heche remained with MLB until approximately 5:33 AM, when he was advised by the charge nurse in the operating room that MLB was stable and he would most likely survive. Officer Heche was advised that MLB would remain intubated until he was able to be transferred to the Intensive Care Unit.

### **CONTACT WITH WITNESS - MJI**

Officer Steffen made contact with a witness, whose name forms the initials MJI, who he observed to be shaking visibly. MJI was short of breath and apologized for his shaking, citing the trauma of the disturbance as the cause. MJI stated he was the bartender at Antler's Tavern and he had closed the bar for the night at approximately 12:45 AM. MJI stated he was working to finish closing the bar. At approximately 1:40 AM, MJI stated he looked through the window on the east side door of the bar when he observed a group of people in the parking lot. MJI stated he looked at the group and after several seconds, he registered that what he was seeing was two males beating a third male subject who was on the ground. MJI stated he witnessed the assault for approximately one minute, and that he then retrieved his phone and began to record the assault in the parking lot. MJI stated his video was approximately two minutes long, and it captured the end of the assault and then the suspects walking away. MJI stated he was scared of the subjects in the parking lot, and he waited until they left to call 911. MJI stated it appeared as though the two subjects who were assaulting the third were rummaging through the victim's pockets.

Officer Steffen asked MJI to view the footage and MJI showed him the video on his phone. Officer Steffen observed a victim (MLB) lying on the ground in the gravel area to the east of the bar. Officer Steffen observed two other suspects standing over MLB. One of the suspects was standing near the head and shoulder area of MLB. The other was crouched down by MLB's torso and leg area. MLB was lying on his back with his head pointed toward W Broadway, and

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both suspects had their backs to MJJ who was recording from the inside of the bar. The suspect toward the head area of MLB appeared to be wearing a grey t-shirt and lighter color cargo shorts. This suspect was taller than the other suspect, and MJJ estimated that he was approximately 6'2" or 6'3". The suspect who was crouched down near MLB's mid-section was wearing a black shirt and light colored camouflage or plaid shorts. This suspect was shorter, MJJ estimated 5'10", and he was wearing a belt and black shoes.

In the video, Officer Steffen observed the suspect in the grey t-shirt lift his right hand over his head and bring it down with a closed fist in the area of MLB's head several times. The suspect in the black shirt was crouched and moving around on the body of MLB, but it was not clear if he had struck MLB in the video, but he was moving consistently contacting MLB. At the conclusion of the video, Officer Steffen observed both subjects walk eastbound through the gravel parking area and out of view northeast of the lot.

MJJ stated as he as cleaning the bar for the night, he has a habit of checking the exterior windows to ensure that his patrons had left, and there were not "stragglers" in the parking lot area. MJJ stated when he first observed the assault, the male in the grey shirt struck MLB approximately 15-20 times with a closed fist with both hands. MJJ stated he believed most of these strikes were to MLB's head, and he was not sure due to distance if MLB had been struck elsewhere on his body. MLB stated while he observed both the taller and shorter subject swing at MLB, the shorter of the two in the black shirt did not swing as noticeably or as much as his taller partner.

Officer Steffen asked MJJ if he recognized either suspect as being patrons of the Antler's Tavern and he stated he did not believe that any of the three subjects had been in attendance.

MJJ advised for the entirety of the disturbance, he observed MLB immobile on the ground with the two suspects consistently assaulting him. MJJ stated the suspects were "brutal too, just pounding on him." MJJ stated when fights have broken out in the parking lot in the past, he has run out to break up the fight. MJJ stated that this assault he was witnessing was different, and he was scared of what the two suspects would do to him if he were to intervene. MJJ stated it looked like "they were beating him to death." MJJ stated the assault appeared to be "nonstop brutality." While MJJ described the assault, he began to tear up, and Officer Steffen heard his voice become shaky several times.

#### **PO DABBS ARRIVAL ON SCENE/K9 TRACK**

Officer Dabbs reports on August 19, 2023, at approximately 2:01 AM, he was dispatched to assist with an active disturbance at Antler's Tavern in the 2200-block of W Broadway, in the City of Madison. Dispatch advised that a perimeter was being established to search for the suspects in a stabbing offense. Officer Dabbs reports at approximately 2:10 AM, he arrived on location at Hoboken at Broadway. Officer Dabbs joined with the K9 tracking team and began checking the area utilizing the police K9. After assisting with the K9 track, it was ultimately concluded and officers began checking the area.

#### **BLOOD TRAIL LOCATED/FOLLOWED**

Officer Dabbs reports Officer Witt along with his K9 partner were able to discover red droplets on the ground that appeared to be blood. The blood droplets were located in a direction of travel consistent with where the suspects had reportedly fled.

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Officers were able to utilize flashlights to illuminate the ground which quickly led to the discovery that several small droplets of blood were continuously leading down a path on the sidewalk and crossing the roadways. The blood trail went northbound on Hoboken ultimately leading eastbound on Lake Point. Officers continued following the blood trail which led to the front step entrance in the 1800-block of Lake Point Drive. Officer Dabbs noted that this was an apartment complex with what appeared to be multiple units inside. After observing several droplets at that front door, officers suspected that the person bleeding may have entered the building. Officers were able to make entry into that building where Officer Dabbs observed additional droplets of blood on the carpeted area leading upstairs. Officer Dabbs followed the trail up the stairs and was able to observe additional blood at the top landing in addition to what appeared to be smeared blood covering the handle of apartment number 7. Officer Dabbs knocked on the door to apartment number 7 multiple times announcing themselves as police officers asking the occupants to come to the door. Several minutes went by and the door was not answered and Officer Dabbs did not hear any voices coming from the inside.

### **CONSENT TO ENTER APARTMENT 7 (located in 1800-block of Lake Point)**

At approximately 2:32 AM, the door to apartment number 7 opened. The individual who opened the door was later identified verbally and confirmed via his WI driver's license as **David B. Gonzalez Benitez** ("GONZALEZ BENITEZ" hereinafter), a defendant. Officer Dabbs had his firearm drawn and held it at his side in a low ready position as the door opened. Once opened, Gonzalez Benitez had his hands in a visible location and Officer Dabbs was able to see into the apartment living room and observed a second adult male Hispanic (Gonzalez Benitez's son) who appeared to be laying on a bed. Officer Dabbs asked Gonzalez Benitez if officers could come in and he granted consent for officers to enter. Officer Dabbs entered the apartment along with multiple other officers. Officer Dabbs remained in the living room with Gonzalez Benitez and the second Hispanic male subject.

At the direction of Sgt. Lewein, who was the acting City of Madison supervisor, Gonzalez Benitez was detained at that time.

Officer Montiel Zamora spoke with Gonzalez Benitez who told him he did not know why he was in handcuffs. Officer Montiel Zamora explained he was being detained at the moment pending investigation.

Without prompting, Gonzalez Benitez decided to share with Officer Montiel Zamora that he was at the bar down the street and there was a violent person there but he had no idea what occurred. Gonzalez Benitez stated he did not know where his injuries came from, and he just felt some pressure on his back.

Officer Frias responded to the 1800-block of Lake Point Drive, Apt. 7, and assisted Officer Mawhinney with scene security. Officer Frias was then going to assist with the evidence search when Sgt. Schwarz advised he was in contact with a subject in the parking lot (in the 1800-block of Lake Point Drive).

### **ARREST AND ID OF DEFENDANT PAULINO RIVERA**

Sgt. Schwarz advised he was near a Toyota Tacoma truck, and there was a subject who was later identified verbally and confirmed via his WI driver's license as **Paulino Rivera** ("RIVERA" hereinafter), a defendant. Officer Frias exited the second-floor apartment and made his way to the rear parking lot, where he observed Sgt. Schwarz had a M/H subject, ID'd as Rivera, in

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handcuffs. Officer Frias observed Rivera to be wearing an orange hoodie sweatshirt, black and blue shorts, black crew socks, and black slide sandals. Rivera was also wearing a blue hat.

Officer Frias observed Sgt. Schwarz ask Rivera if he was injured, and he appeared to be primarily a Spanish speaker. Rivera indicated he had pain on his head, and when his blue ball cap was removed, Officer Frias observed that there was a laceration on the left side of his scalp, approximately 3 inches in length. Sgt. Schwarz requested EMS.

MFD Medic 5 arrived on scene and Rivera was verbally identified at this time. Rivera told paramedics he did not currently have pain on his head; however, he did when it happened. As paramedics were advising Rivera of the need to go to the hospital to have the wound cleaned and potentially stitched, he advised the paramedics that he was hit from behind. Rivera told paramedics that he was not currently in pain, and he did not have any blurry vision. Rivera advised he would go to the hospital and was transported to St. Mary's Hospital.

Rivera was placed in Emergency Room 12 and Rivera stated something to the effect that "they hit me on the head last night." The intake nurse asked Rivera if he knew who hit him and he stated something to the effect of "I don't know." Rivera stated he had pain in his head, but did not hurt anywhere else. The intake nurse asked if someone hit him or stabbed him and Rivera said, "A person, but I don't know that person." She then asked again if someone hit him or stabbed him and he stated he was hit from behind. Rivera stated he fell. Rivera then stated something to the effect of "I don't know exactly when it happened."

In addition to the laceration on Rivera's scalp, Officer Frias also observed a cut on his left biceps, which appeared to be a puncture wound. Officer Frias estimated Rivera to be approximately 5 feet 5 inches tall and 160 lbs. The ER staff cleaned and dressed Rivera's wounds. The physician's assistant advised that the laceration on his forehead was approximately 5.5 cm and required seven stitches. The wound on his left biceps was closed with medical tape. Rivera advised he was feeling dizzy. After Rivera's wounds were cleaned, Rivera was then discharged from the emergency room and transported to the City/County building.

### **OBSERVATION OF INJURIES ON GONZALEZ BENITEZ**

When Gonzalez Benitez was asked to stand up to be handcuffed, Officer Dabbs noted that the area he was seated on the couch appeared to have a red stain behind him. Officers were then able to look at Gonzalez Benitez's back noting that he observed to have a wound that was bleeding on his upper left portion of his shoulder. Officers were able to pull his shirt back to make a better observation noting that he had what appeared to be a puncture wound in that area. The wound was an open laceration that was actively bleeding.

### **EMS REQUEST/TRANSPORT**

Officer Dabbs reports based on the observation of injury to Gonzalez Benitez, officers requested the City of Madison Fire Department to their location. The City of Madison Fire arrived on scene and advised that Gonzalez Benitez needed to be transported for further medical treatment. Gonzalez-Benitez was transported to St. Mary's Hospital to receive medical treatment.

### **DEFENDANT GONZALEZ BENITEZ IDENTIFIED**

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Officer Dabbs reports during the initial contact with Gonzalez Benitez, he provided a verbal name of "David Gonzalez." Gonzalez Benitez also provided a false date of birth of 7/26/1979. This information was gathered on scene using a City of Madison officer who spoke Spanish. A record check was conducted of the name he initially provided which did not obtain a return.

Gonzalez Benitez also shared that he had prior law enforcement contact in Fond Du Lac County where he was issued a citation by law enforcement. Officers were able to check CCAP and located the contact in Fond Du Lac which provided the positive identity of David Gonzalez Benitez (a defendant) listing a date of birth of 6/26/1974.

### **MEDICAL CLEARANCE OBTAINED**

Officer Dabbs reports while Gonzalez Benitez was receiving medical care at St. Mary's Hospital, staff there advised that he received sutures to close the wound on his shoulder and a laceration to his hand. Gonzalez Benitez was adamant that he did not want any sutures and just wished to be bandaged up. St. Mary's Hospital bandaged his wounds and did not provide sutures as he requested. Gonzalez Benitez was cleared medically by the St. Mary's Hospital.

Officer Dabbs transported Gonzalez Benitez in his squad to the Central District Station. Once at the station, he was escorted into an interview room.

### **EMS REQUESTED/TRANSPORT TO MERITER**

While in the interview room, Gonzalez Benitez began actively bleeding from his wounds. Based on the observation of heavy blood coming from the injuries, officers again summoned City of Madison Fire Department. The City of Madison FD arrived on scene and advised the injury they observed they recommended a transport for sutures. They explained to Gonzalez Benitez that the injury would continue to bleed if it was not sutured. At that time, Gonzalez Benitez agreed to go to the hospital and receive additional medical treatment.

While at Meriter Hospital, officers remained on location as Gonzalez Benitez received medical treatment which included sutures to secure the wound that he had sustained to his left shoulder.

### **INTERVIEW OF RIVERA**

Officer Frias reports Rivera was escorted to an interview room and he attempted to get a statement from him at approximately 12:35 PM. When Officer Frias asked Rivera if he was now willing to answer questions or make a statement, he said, "No." Officer Frias did not ask Rivera any additional questions.

### **UNSOLICITED STATEMENTS BY RIVERA**

Officer Frias escorted Rivera to the Central District Intoximeter Room after advising Det. Buccellato that Rivera was not going to provide a statement at this time. While walking to the Intoximeter Room, Rivera made an unsolicited statement in which he asked something to the effect of "the guy that hit me, is he going to be okay?"

### **INTERVIEW WITH GONZALEZ BENITEZ**

Det. Fahrenbruch reports on August 19, 2023, at approximately 5:30 AM, she was briefed by officers at the Central Police District about what they had learned so far in this incident. Det. Fahrenbruch was told that when Rivera and Gonzalez Benitez were detained at the apartment

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on Lake Point and advised of Miranda, Rivera declined to give a statement but Gonzalez Benitez wanted to talk.

Gonzalez Benitez stated he lives at the apartment with his son and Rivera. Gonzalez Benitez stated his son was not at the bar with them earlier in the night and was not involved. Gonzalez Benitez stated he was at the bar with Rivera. Gonzalez Benitez stated he was talking to an American while Rivera was talking to another Hispanic male whom he did not know. Gonzalez Benitez stated he does not speak English but was cheering and toasting with the American, and consumed about 5 beers. Rivera and the male, whom Det. Fahrenbruch knows from this investigation to be MLB, were talking about mutual friends. Gonzalez Benitez stated he went outside to smoke and when he came back in, the bartender was kicking people out because it was closing time.

Gonzalez Benitez stated when he got outside he felt something hit him in the back, but he did not fall down. Gonzalez Benitez stated he continued to walk away. Gonzalez Benitez stated Rivera and MLB were arguing. MLB had on a cross-body type of bag and made a statement similar to "you guys are going to find out," at which point Rivera and MLB began fighting over the bag. Gonzalez Benitez stated he was grabbing Rivera to break up the fight, during this time Gonzalez Benitez fell over and hurt his hand. Gonzalez Benitez gestured on the table by rubbing the top of his right hand as Officer Rivera explained that was how he was injured.

Det. Fahrenbruch noted that Gonzalez Benitez's right hand appeared to be swollen as compared to the left hand, and there were lacerations to the index and middle fingers at the first knuckle.

Officer Rivera asked about the bar incident and what they were arguing over. Gonzalez Benitez said it was some sort of video call Rivera was making. Rivera was also showing MLB pictures of people asking MLB if he knew them. MLB made a statement similar to "nobody is going to make a fool out of me", and the fight started. This is when Gonzalez Benitez fell to the ground, injuring his hand. Gonzalez Benitez stated he began walking toward the apartment with Rivera following. Rivera turned around and went back toward MLB. Gonzalez Benitez said he kept walking to the apartment. When Rivera got to the apartment, there was a cut on his left arm and a folding knife in his right hand. Gonzalez Benitez didn't know where the knife came from or where it went. Gonzalez Benitez stated Rivera washed up and left. Rivera does have access to a vehicle. Gonzalez Benitez said when police arrived and were shining lights, he went outside and met with them. Gonzalez Benitez stated he did not know where Rivera may have gone.

Gonzalez Benitez stated he was wearing beige shorts and a gray shirt. He said Rivera was wearing a white shirt, brown hat, white plaid shorts, and white low top shoes. Gonzalez Benitez stated MLB was wearing a hat with the Mexican flag on it, black shirt, and a green cross-body bag. Gonzalez Benitez stated he has never seen MLB before and did not know his name.

At approximately 1:18 PM, Det. Fahrenbruch returned to the interview room to speak with Gonzalez Benitez some more. Det. Fahrenbruch told Gonzalez Benitez that Rivera had been located and treated for his injuries. Det. Fahrenbruch reiterated that officers had video which captured the fight and showed him the video on her cell phone. Gonzalez Benitez identified himself, Rivera, and MLB. Gonzalez Benitez pointed to an individual in tan shorts as himself, and Rivera in white plaid shorts. Det. Fahrenbruch told Gonzalez Benitez that he struck MLB



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several times and he stated he did not remember hitting him and claimed he was trying to pull MLB away. Gonzalez Benitez stated there may be hand movements of him trying to pull MLB away. Det. Fahrenbruch told him that was not what the video showed and he again stated he did not remember hitting MLB and that if he did hit MLB he would tell officers.

Officer Rivera and Det. Fahrenbruch told Gonzalez Benitez that MLB has very serious injuries. Gonzalez Benitez admitted that there were stab wounds, but his intention was to pull MLB away. Det. Fahrenbruch asked Gonzalez Benitez who had the knife and he initially stated MLB had it, then Rivera started fighting with MLB. He said when he heard the click, he was not sure if it was a knife or a gun, so he stepped away. As he was walking out of the bar, he heard Rivera and MLB arguing. He heard the clicking sound so he stepped away. He said Rivera and MLB began fighting so he tried to get Rivera away. At this point he noticed the knife and told Rivera to leave MLB alone so they both stepped off. He denied battering MLB. Det. Fahrenbruch told Gonzalez Benitez again that this is not what the video showed. Det. Fahrenbruch told him that MLB was not even fighting back. Gonzalez Benitez said he did not stab MLB. Det. Fahrenbruch told him that she did not think he stabbed MLB, and she thinks he beat him.

**\*\*THIS COMPLAINT IS BASED ON** the information and belief of your complainant, who is a Court Officer for the city of Madison Police Department, and who learned of the above offense from the reports of city of Madison Police Officer(s) Cody Heche, Ben Steffen, Samuel Montiel Zamora, Kyle Dabbs, Bradley Frias, and Detective Lisa Fahrenbruch, which report your complainant believes to be truthful and reliable inasmuch as they were prepared during the course of the officer(s) official duties.

Further, your complainant believes the information furnished by the witnesses to be truthful and reliable inasmuch as they are citizen informant(s) and witnessed the events described.

Your complainant believes the statements of the Defendant(s) to be truthful and reliable insofar as they are admissions against penal interest.

Subscribed and sworn to before me on  
08/22/23

Electronically Signed By:

Annie Jay

Assistant District Attorney

State Bar #: 1056404

Electronically Signed By:

DET TAYA DOLSEN

Complainant