

| STATE OF WISCONSIN | CIRCUIT COURT | LA CROSSE COUNTY |
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STATE OF WISCONSIN

Plaintiff,

vs.

Matthew L Kinstler

La Crosse, WI 54601

DOB: 04/14/1970

Sex/Race: M/W

Eye Color: Brown

Hair Color: Brown

Height: 5 ft 11 in

Weight: 200 lbs

Alias:

Defendant.

DA Case No.: 2020LC001398

Assigned DA/ADA: Susan C Donskey

Agency Case No.: 10-20-17426

Court Case No.: 20CF289

ATN: 32000000454142

**CRIMINAL COMPLAINT**

**Deputy Cody Bernhardt, La Crosse County Sheriff's Department, being first duly sworn on oath says that on information and belief:**

**Count 1: FIRST DEGREE RECKLESS HOMICIDE**

The above-named defendant on or about Friday, May 01, 2020, at 223 Lang Drive - Menards, in the City of La Crosse, La Crosse County, Wisconsin, did recklessly cause the death of Russell W Paulson, under circumstances which show utter disregard for human life, contrary to sec. 940.02(1), 939.50(3)(b) Wis. Stats., a Class B Felony, and upon conviction may be sentenced to a term of imprisonment not to exceed sixty (60) years.

**and prays that the defendant be dealt with according to law; that the basis for complainant's charge of such offense is:**

**FACTUAL BASIS:**

Complainant is informed by official reports from the La Crosse Police Department:

On May 1, 2020 at 2:19 p.m. officers were dispatched to Menards, at 223 Lang Drive, in the City of La Crosse for a fight in progress.

Officer Harmel arrived on scene and observed a large crowd of people gathered in the parking lot near the front of the Menards store. First responders and Tri-State Ambulance arrived on scene. Officer Harmel observed first responders working on Russell Paulson and it appeared he was bleeding from his head. Officer Harmel spoke with Matthew Kinstler.

**CONTACT WITH MATTHEW KINSTLER:**

Matthew Kinstler identified himself with a Wisconsin driver's license. Matthew reported that he parked his vehicle near the front of the Menards store and went inside. Matthew said when he came back outside the store he was walking towards his vehicle and he observed a male almost hit his vehicle while parking. Matthew said the male then parked next to his vehicle. Matthew said he approached the male as he was

getting out of his vehicle and asked the male, "Why did you almost hit my car?" Matthew said the male got upset with him and came toward him. Matthew said the male then punched him two times on the left side of his face and then he came at him with his cane in attempt to strike him. Matthew said he grabbed the cane with both of his hands on each end and twisted the cane so the male would not hit him with it. Matthew said the cane must have hit the male in the head, causing his injuries. Matthew said it was all in self-defense, and the other male should be arrested.

Officer Harmel asked Matthew if he sustained any injuries from getting punched and he said he did on the left side of his face. Matthew said that on a pain scale of one to ten, his pain was only at a one because the guy was old and couldn't hit hard. At this point in the investigation, Russell Paulson's injuries did not appear to be life threatening, so Matthew Kinstler was arrested for substantial battery and disorderly conduct and was released on a signature bond under the COVID-19 conditions.

**OBSERVATIONS/INJURIES TO RUSSELL PAULSON:**

Russell Paulson was transported to Mayo Hospital by Tri-State Ambulance. Officer Harmel made contact with him. He also observed the wooden walking stick, which measured 51 ½ inches in length. Russell appeared to have several injuries he was bleeding from, including out of his left ear. Officer Harmel observed a large abrasion approximately 3 inches by 3 inches on Russell's forehead, which was also bleeding. He notes there also appeared to have a laceration on the bridge of Russell's nose. Russell was gagging and vomiting what appeared to be blood. Officer Harmel also observed a large bloody abrasion on Russell's left arm, just above the elbow and his right eye was becoming black and blue. Officer Harmel had difficulty communicating with Russell as he is hard of hearing. Russell had a CAT scan and stitches in his left ear and the bridge of his nose. Officer Harmel was told by Russell's treating physicians, Dr. Bingol and Dr. Franklin, that Russell had multiple skull fractures and had bleeding around his brain. They informed me that they were placing Russell Paulson on Hospice care and that he would likely not survive his injuries.

**CONTACT WITH RUSSELL PAULSON:**

Officer Harmel attempted several times to speak with Mr. Paulson. Mr. Paulson was unable to hear what he was saying and could not communicate with me. Russell's wife, Constance Paulson, arrived at the Emergency Room and sat down next to Russell. It appeared Russell knew his wife Constance was by his side. Constance asked Russell if it hurt. Russell shook his head "yes". Russell then stated, "I have bleeding in the head and broken bones." Officer Harmel asked Constance to ask Russell if he gave the suspect permission to injure him, to which he responded, "Did I give him permission to hit me? Hell no. Hell no."

**INTERVIEW WITH JAMES NGUYEN:**

On May 4, 2020 Det. Sgt. Fitzgerald met with James Nguyen at the La Crosse Police Department to re-interview him regarding what he had witnessed. Nguyen estimated he was approximately ten steps away from them when this incident occurred. Nguyen did not know the names of the subjects, so he referred to them as the old guy and the young guy during our conversation. Based on his descriptions, Fitzgerald took the old guy to be Russell Paulson and the young guy to be Matthew Kinstler. Nguyen observed and heard them arguing over somebody hitting a car. He observed Russell Paulson and his wife walking away from Matthew Kinstler stating, "We did not hit your car." Paulson took one step away from Kinstler, at which time Kinstler walked up and chest-bumped him. Paulson reacted by swinging or throwing a punch at Kinstler. Paulson's fist did not make contact with Kinstler as Kinstler had backed up to avoid being hit.

Kinstler reacted by grabbing the walking stick out of Paulson's hand and hit him over the top of the head with it. Nguyen did not believe that at any time Kinstler was in danger of being struck or injured. Nguyen demonstrated how he observed Kinstler swinging the stick, which was recorded with my body worn

camera. It was an overhand swing with both hands on the stick. Kinstler hit Paulson one time with the stick, at which time Nguyen immediately ran over and yelled, "What the [REDACTED] are you doing?" Kinstler tried to claim self-defense, which Nguyen said was not accurate. Nguyen told Kinstler that he hit that man for no reason.

**CONTACT WITH ANN STAATS:**

Officer Frandsen also spoke with Ann Staats, who was standing next to a blue vehicle parked next to the victim's vehicle. Ann indicated that she was inside the blue vehicle when the incident took place, which is directly behind where she was seated.

Ann said that she came to Menards with Matthew and Matthew was inside shopping while she stayed in the vehicle. Ann said that Russell and his wife pulled into the parking spot next to their vehicle and, in doing so, they pulled very, very close to Ann's vehicle. Ann said when Matthew got out of the store, she mentioned to him that the car that was parked next to them, which would be the Paulson vehicle, came very close to their vehicle, but she did not think that it struck their vehicle.

Ann said that Matthew then walked over towards where Russell and his wife were at and got into a verbal altercation with Russell. Ann said she did not see what took place, as she was seated facing forward and did not look behind her, but she did hear a lot of yelling and she heard Russell say to Matthew, "You've got a problem."

**CONTACT WITH KARL GOETHEL**

Captain Kloss later conducted an interview with Goethel who stated that he went to Menards around 2:30PM. He advised that it was crowded and began walking towards the entrance when he heard yelling in the parking lot. Goethel advised that he observed an elderly gentleman and another male in his 40's with a heavy-set build arguing. The younger subject then started walking closer to the elderly male subject. He overheard them talking about a scratch on the side of the vehicle. Next, the younger subject got very close to the elderly subject's face and was yelling at him. The younger subject then tipped off the elderly subject's black cowboy hat. The elderly subject then reached out with his right arm to slap the younger subject. Goethel described the elderly subject as "frail."

Goethel observed the younger subject in possession of a cedar type walking stick in his hand. He stated that the younger subject then struck the elderly subject with the stick causing him to fall to the ground. Goethel advised that he immediately saw blood on the ground upon the elderly subject falling.

Goethel stated that an Asian male came over to render aid to the elderly subject and a Menard's security guard arrived to stand with the younger subject. A female wearing purple pants also assisted in providing medical aid at this time. Goethel then went inside the store to shop and came back out to speak with Cpt. Dittman who was in the parking lot.

Goethel advised that when he first stopped walking, he observed the two subjects standing in between a black car #1 and #2 was a van. I asked Goethel to walk me thru what he saw step by step upon seeing the two subjects arguing. He stated that the elderly subject was facing the South and the younger subject was facing the North. The elderly subject was wearing a black cowboy hat and appeared "Frail" and had a white pallor to him, glasses, and estimated that he weighed 140-150 pounds. He estimated the elderly subject was between 5'08"-5'09". He thought he was wearing a dark colored coat with a western type shirt. The younger subject was in his mid-40's, heavy-set, potbellied, with an estimated weight of 230-240 pounds and stood about 6'00". Goethel noted that he was wearing a baseball hat as well. Captain Kloss

asked Goethel if he could hear what they were arguing about. He advised that from where he was standing, he could hear the two subjects yelling about "A ding to the car." He advised that the elderly male was talking about the ding to the car as they were yelling at each other. Goethel advised that the elderly male started yelling as the younger subject got closer to him. Goethel estimated that they were standing about five to six feet apart and observed the younger subject close that space and get within 3-4 inches of the elderly subject's face. Goethel said it caught his attention due to the lack of social distancing and the fact that the elderly subject was wearing a mask and the younger subject was not. When the distance was closed by the younger subject, he heard the younger subject yelling louder than the elderly subject. He was unable to hear exactly what they were saying at this point.

Goethel stated that people began to stop to see what was happening at this point. The younger subject then tipped the elderly subject's cowboy hat off his head. The elderly subject reached out with his right hand to slap the younger subject. Goethel wasn't sure if he struck the younger subject or not with his hand. He advised that the younger subject had a walking stick "that had some girth to it" and struck the elderly subject. He stated that the younger subject was holding the stick in his right hand and struck the elderly subject aside his head. He advised that the stick hit the left side of the elderly subject's head. Goethel observed one strike from the younger subject.

Goethel advised that the elderly subject immediately fell to the ground and "was out cold." The elderly subject fell into the lane of traffic and his face was facing to the East away from Goethel. The younger subject did nothing after the elderly subject fell. A young Asian male started yelling, "What did you do, you just him with that stick!" Goethel began to yell, "Call 911!" A Menards employee called the police department and a female with purple pants on attempted to use a towel to stop the bleeding from his head.

Goethel stated that the younger subject stood there and did nothing. Goethel explained that the Asian male subject checked on the elderly subject and then confronted the younger subject "why did you hit him with the stick?!" The younger subject did not say anything to the Asian male at that time.

Goethel stated that he is a 30 year veteran of the Durant Police Force and in his opinion, the younger male was the predominant aggressor. He stated the younger subject was aggressive with his voice, twice the size of the elderly subject, he approached the elderly subject, tipped his hat off, and after the elderly subject reached out to slap the younger subject, "hailed off with that club and nailed him." He stated, "99% the younger gentleman was the aggressor."

#### **CONTACT WITH MATTHEW KINSTLER:**

While on scene, Captain Dittman reports that he was standing near Matthew Kinstler when he made the unsolicited statement, "He punched me twice first and then took a swing at me with a stick." Matthew then said, "I grabbed the stick mid-air and I twisted the stick mid-air from hitting me in the face and I twisted the stick" and "While he was swinging the stick, I twisted the stick and caught it from hitting my face." While Matthew was describing this to Captain Dittman, he used his hands to show what he was describing and this was captured on the body-worn camera.

While we were standing there, EMTs from Tri-State Ambulance began to push a gurney carrying Russell Paulson past where Kinstler and Capt. Dittman were standing. Captain Dittman asked him to move away from that area and Matthew said, "It was self-defense. He took a swing at me. I grabbed the stick mid-air and I just twisted it and I hit him." He then said, "While he swung it, he put the force against the stick and I just grabbed it from hitting my face. Check the video. They got videos here."

On May 5, 2020 the La Crosse Police Department received a report from a local Alcoholic Anonymous group that one of their members had a confrontation with Mr. Kinstler who said he was "done with recovery" and was going to show up at the next meeting with a gun and "take care of business." The complainant indicated that Kinstler had made threats at other meetings and had been asked to leave.

**WITNESS, CASSIE MC CORMICK:**

On May 6, 2020, Sgt. Fitzgerald met Cassie McCormick at her residence. Cassie was present at Menards when this incident occurred. Cassie said she was in her car and observed two subjects arguing. Cassie assumed they were arguing about dogs, since they each had a dog and Cassie had her dog in her car.

She said the two men were in each other's face and the younger man tipped the hat off of the older man. The older man threw a punch but Cassie did not know if it connected. The younger man then took his cane and hit him over the head with it.

Cassie is a nurse and took towels from her car and applied pressure to the man's facial injuries. Cassie said another man in the parking lot said he was a doctor and assisted. The older man was unconscious for a short time and when he woke up he wanted to get up. Cassie and the doctor tried to get the man to stay still but he insisted. They had the old man's wife open the trunk and assisted him to the edge of the trunk to sit down. Cassie did not hear what either subject said during the argument but remembered the wife of the older man screaming and then the younger man claiming "he hit me first."

**CONTACT WITH CONNIE AND LANCE PAULSON:**

On May 6, 2020, Sgt. Fitzgerald and Cpt. Kloss met with Connie Paulson and her son, Lance Paulson. Connie advised that on Friday, May 1st, she had an appointment at 1:00PM at Mayo. After the appointment, they went to Walgreens to buy a small plastic fan. They didn't have any there so they went to Menards instead. Russell was driving their 2014 dark green Honda Accord. They arrived at Menards around 2:30PM. She was shown a Google map of the Menards parking lot. Connie thought they parked in the middle of the lot and circled it on the map. She was 70% certain she parked in that area. She indicated that it was a handicap spot. She advised that she wasn't completely sure where they parked because she wasn't driving. Connie remarked that the lot was full that day and the weather was beautiful. I asked Connie if the handicap sticker on the car was for Russell or her. She replied that it was for her.

She advised that they pulled into the handicap spot next to a small blue older SUV that was "beat up." The SUV was on Russell's side of the vehicle. Connie noticed that the front passenger door on the SUV was open and there was a female sitting sideways on her seat. The female immediately hollered at Connie and Russell. Both Connie and Russell didn't know what she said. They opened the door and Russell retrieved his walking stick from the backseat. Connie was walking to the trunk area of the vehicle when the female yelled, "Learn how to drive!" Connie noted that the female was holding a white dog on her lap and possibly had her legs outside the vehicle. Connie thought that the female may have been mentally handicapped because she didn't speak clearly.

I asked if Russell and her were startled from the female yelling. She said that they weren't bothered but didn't know what she wanted. The windows in their vehicle were rolled up. Connie added that Russell retrieved his walking stick by opening the rear driver's side door. Connie added that Russell utilized the walking stick to stay secure when he is walking. Russell began using the walking stick three and a half years ago after he had 6 vertebrae removed.

After the female made the comment, "Learn how to drive," Russell responded to her "I bet I have driven a lot more than you." Russell was standing next to the rear driver's side door of his vehicle. At that time, a male subject appeared "from nowhere" and "came at Russell." She described him as "wild eyed." The male stated, "You hit my car." Russell was still standing at the back of his vehicle at this time. Russell was wearing his cowboy hat as well.

Connie advised that the male subject must of came from Menards and walked in between the vehicles to approach them. She didn't notice if he was holding anything. The male subject got into Russell's face roughly 2 inches away and said "you hit my car." Russell replied, "No I didn't." Connie described the male subject again as "wild eyed" and fearful looking. The subject then used his right arm to punch Russell in each eye. Connie advised that the male subject provided two strikes to Russell's face. Next, Russell made a side step to get away from the subject. Connie advised that the male subject pushed Russell causing him to fall face first on the ground. Connie didn't remember where the subject placed his hands on him to push him. Connie stated that she began to scream hysterically. Next, the male subject took hold of Russell's walking stick and hit him with it. Connie didn't see where he hit Russell with the stick due to shouting for help and to call 911.

Russell fell into the traffic lane and didn't say anything. Connie thought that the male subject got the walking stick from Russell after he fell onto the ground. Connie noted that she saw the male subject throw the walking stick down on the ground and it ended up next to their car. I asked Connie how close she was to Russell during this altercation. She held out her arms and stated that it was about that close.

Connie advised that two men came to Russell's side to help him. The men were asking for something to "sop up the blood with." Connie opened the trunk to retrieve a towel and the two men helped Russell to sit on the rim of the trunk. A male subject approached and said, "I saw the whole thing, he didn't hit your car!" The subject was talking to the male subject who struck Russell. Connie advised that the subject's car had significant damage by the bumper and wide white streaks on the passenger side.

Connie remembered the subject who confronted Russell's attacker was an Asian male. She couldn't remember what the two men who helped Russel to his feet looked like. Connie advised that Russell had blood coming from his mouth, nose, and ear. Russell didn't communicate at all. Connie noted that his hearing aids were laying on the cement along with his glasses and hat.

Connie advised that the subject who struck Russell ran back behind two rows of cars. The Asian male had gone after the subject to keep him there. A Menards security guard arrived and stood next to the subject as well. Connie added that she observed the female get out of the passenger seat of the blue SUV and go towards the subject. She then returned to the vehicle and sat in the driver's seat trying to "look invisible." Connie had never seen the female or the male subject who struck Russell before. Russell was transported to Mayo Hospital for treatment. When Connie was able to see him again, he took her hand and stated, "This is really bad." Russell then lost consciousness. The doctor told Russell prior to Connie's arrival that he may not survive his injuries. Connie and Lance sat with Russell over the weekend as the medical staff placed Russell into hospice. Russell never regained consciousness during the weekend. On Monday morning, May 4th, Russell passed away.

## **2<sup>ND</sup> CONTACT WITH MATTHEW KINSTLER**

On May 4, 2020 Detective Sgt Fitzgerald and Detective Lt. Martin went to Matthew Kinstler's residence to follow up with him regarding the fight that occurred at Menards at 223 Lang Drive on 5/1/20. Martin told

Matthew he wanted to get his side of the story and asked him to come down to the police department for a formal statement. He said "I never touched the guy. He fell down." He said he didn't know why he was charged. He said again he never touched the guy and the guy just fell down. He again said the guy was swinging at him and just fell down. Martin informed him that he would give him a ride to the police department and back to get his formal statement. He reiterated I wanted to hear his side of the story as we had only heard others. Matthew responded by saying "Nobody else saw the whole thing".

Matthew agreed to go to the police station and while walking to the car, again said, "I never touched the guy." While walking, Matthew asked, "Why, did he die?" He asked this while being asked a different question about his employment. This didn't come up again until later during his interview. The officers made small talk on the ride to the police department and Matthew again stated, "I don't understand why I am being charged I never touched the guy I never took a swing at him or nothing". Matthew said, "He took a swing at me with a walking stick and I ducked and he fell over. I think he landed on his face."

Matthew said he was coming out of Menards with doggie treats and spider traps. He said there was a guy (Russell Paulson) with a walking stick yelling at his friend in the car with the dog. He said he didn't know at the time what the man was yelling about but his friend had texted him why and it was on his phone. He said it was something along the lines of "'I am going to get this something out of my truck and I'll hit you over the head with it' to my girlfriend because he had hit my car." He identified his girlfriend as not necessarily his girlfriend and provided her name as Ann Staats. He said Ann was accusing Russell Paulson of hitting his car. When he came out of the store he asked Russell if Russell hit his car. Matthew said, "Out of nowhere he immediately starts punching me in the face. He punches me in the face twice. He punches like a little girl. It hardly even hurt. Just maybe a one or a two." He said Russell definitely made a connection with his face.

Matthew then described Russell as taking the walking stick and swinging it at him. Matthew said, "I ducked and by the force of his swing he fell over and hit himself in the face on the pavement." He said he never touched him or took a swing at him whatsoever. Matthew said before he knew it he was immediately surrounded by police and people yelling at him and then he was banned from Menards. Matthew said that was all he knew and recapped by saying, "That's all I got to say, I never touched the guy, he punched me twice, he took a swing at me with a walking stick, missed, fell down and hit himself in the face on the pavement." I asked him about how Russell fell. "With the force of the swing with the stick he fell down." I asked Matthew if Russell hit himself with the stick. Matthew replied, "I don't know, I don't know I had my eyes closed, when he took a swing I ducked and closed my eyes. He said this started because Russell had hit his car while parking it. I asked him if his car was damaged to which he responded "the police never even looked". Matthew advised there was previous damage on his own car so in order to tell if his car was struck we would have to look at Russell's car. Matthew said he never had a chance to look at Russell's car.

#### *Location of the Incident*

I had Matthew then explain where this incident occurred in the lot. He provided the following information. Matthew said it was near the front entrance right next to a handicap stall. Matthew was parked in a normal spot and Russell was parked in a handicap spot. Matthew exited out the main exit at Menards and walked through the parking lot to his car. He did not get in his car when he arrived at it. He explained the cars were next to each other. He said he had to walk between the two cars. He was putting things into his vehicle and that was how he came in contact with Russell. He was shown a Google map overview. He initially pointed out where he believed the incident occurred in but was off a row and realized this when Det. Lt. Martin explained to him there were no handicap spots in the area he pointed to. He then correctly identified where he was parked and placed a circle in the spot on the map. Matthew put things in the passenger side and tried to walk around the back of his car to get in his car and while doing so "casually" asked Russell if he

hit his car and Russell punched him twice. Russell then took a swing at him with the cane and Matthew ducked. Matthew said with the force of the swing Russell either hit himself in the head with his own stick or he fell down and hit his face on the pavement. Matthew again said he never touched him and never took a swing whatsoever.

#### *Fear of Being Harmed*

Matthew was asked if he was afraid of being harmed by Russell and he said, "It happened so quick I didn't know what was going on." He confirmed the pain was about a 1 or 2 on the pain scale. He said he thought Russell was trying to harm him and he thought Russell was going to punch his girlfriend with a stick. Martin asked him if Russell threatened him and he said Russell never said a word to him. Matthew was asked if the stick swing was hard and he said, "I dodged it, I saw it coming, he's a really old guy I saw it coming so I ducked and I closed my eyes while I was ducked and I didn't see him go down." Matthew believed he was 80 or 90 years old and said, "He should be in a wheelchair." He indicated that he noticed Russell had issues walking and had trouble standing up. Matthew said the interaction was "seconds". He said he was walking by and asked if Russell hit his car and Russell immediately took a swing at him. He was asked to clarify if he meant one second, two seconds, thirty seconds... and Matthew said "one second. Really short. He was already to swing before I even talked to him."

#### *Russell Falling to the Ground*

Det. Lt. Martin asked how Russell landed on the ground and Matthew said after the swing he believed Russell fell on his nose based off the injuries he observed but said he didn't see it because he had his eyes closed to avoid the swing. Matthew said he was facing towards the store and Russell was facing towards Lang Drive during the altercation. He said Russell fell "out" and to the "north". Matthew demonstrated how Russell had the stick at Russell's right side and then swung across his body to the left and fell to the north. Matthew said after Russell fell, the cops showed up immediately as if they were already called. Matthew said after Russell fell, the police moved him away. He said instantly the police and ambulance were there and Menards employees and others were yelling at him. He was asked where the stick went after Russell fell and he said he did not know and said he never had possession of the stick or touched it unless he blocked it when asked. He wasn't sure if he blocked it or it missed him. He again said he never had the stick in his hand.

#### *Injuries to Matthew*

Matthew said, "his punches were a laugh in the face like he was hitting like a little girl." Matthew said he did not seek any medical attention and didn't have any real injuries. Detective Fitzgerald later took pictures of Matthews face as there were not any noticeable injuries.

#### *Information from Ann Staats*

Matthew did not see Russell hit his car but Ann Staats had told him. He said he had a text on his phone from Ann but he actually deleted it a couple hours ago. Detective Fitzgerald asked him how he knew his car was hit when he came out of the store. Matthew said, "He was yelling at, I heard him yell he was going to get his stick out of his trunk of the car and hit her. I heard him yell that. She told me he hit my car." He said she was in the front passenger seat when Ann verbally told him that. He again said he asked Russell about hitting his car and Russell immediately hit him in the face. He said there was a text from Ann saying something along the lines of him getting something out of his trunk of his car and hit her with it. He was asked why and Ann had told him because she was accusing him of hitting Matthew's car. Detective Fitzgerald asked where he got the stick from. Matthew started to say, "Out of the trunk" but then said "He already had the stick in his hand like he was waiting to hit somebody...."



*Mental Health*

Matthew advised he has mental health issues and physical issues. He sees a psychiatrist and is on medication. He said he is bi-polar and also has back pain. Later on the ride back home Matthew said he gets a shot once a month for his bi-polar issue.

*DNA Evidence and Matthews Weight and Height*

Detective Fitzgerald talked with Matthew about touch DNA. Matthew said he was not sure if he touched the stick as he had his eyes closed and he had ducked. Matthew was asked for his DNA. Two swabs were collected from Matthew by Detective Fitzgerald with Matthew's consent. He said, "there is none of my DNA on the stick at all. I never touched it. I don't think so."

I asked Matthew about his size. He said he is 5'11" and weighs about 230 lbs.

Matthew was also asked if he told anyone it was self-defense. He said he told the cops it was self-defense blocking the stick. He still denied hitting him and said he never took a swing. Matthew was informed about video surveillance at Menards and said he would like to see the footage.

Matthew said he wanted to go at this time and stood up. He said he was really depressed that Russell had died. He was then walked out of the police department to Detective Fitzgerald's vehicle and was transported him back to his house. When they arrived at Matthew's house, Det. Lt. Martin asked him to show any damage to his vehicle. He showed Martin old damage and did not think his vehicle was struck by Russell. He was released.

**AUTOPSY**

On May 5, 2020 Det. Lt. Martin accompanied Medical Examiner Tim Candahl to Rochester for the autopsy of Russell Paulson's body. The autopsy was performed by Dr. Reade Quinton. Det. Lt. Martin indicated in his report that Dr. Reade, Dr. Reade advised he would be ruling this a homicide with blunt force head trauma. He advised that there were two or more impacts to the head based on his findings in the autopsy.

**3rd CONTACT WITH MATTHEW KINSTLER***Arrest of Matthew*

On May 5, 2020 Detective Fitzgerald and Det. Lt. Martin went to arrest Matthew Kinstler for 1st Degree Reckless Homicide at his residence. Det. Lt. called Matthew and asked to have him meet me by his vehicle. He said he had a mark on his arm that he thought was from the incident and was told a picture would be taken when they met.

*Second Interview with Matthew*

Matthew was arrested and read his Miranda Rights. He agreed to waive them and signed the waiver of rights. It was explained to him why the officers wanted to talk to him again after talking with other witnesses. Matthew was noticeably shaking when he was given a bottle of water. Detective Fitzgerald took pictures of Matthew to include his arms where he thought he may have been struck. There were additional bruises near his elbow, on his bicep and even further up his arm. He said it was a rash. According to Det. Lt. Martin's report, the bruises didn't seem likely to be from one swing of a walking stick.

Det. Lt. asked Matthew to be open about what had occurred. He said he already told the police everything. He said, "I had my eyes closed when he attacked me most of the time." He repeated he told the police everything already and continued to say he had his eyes closed. He was informed of the additional witnesses that were talked to. He denied hitting Russell with his fist or the stick. He then asked about the video and said he wanted to see it. He denied telling anyone on scene that he hit Russell. He said "I never said a word to her." Det. Lt. Martin notes that Matthew used the female pronoun "her" but the officers

had not brought up a particular person/witness. It should be noted, however, that there was a female employee from Menards, Alyssa, who was on scene right after the incident and had heard Matthew say "yeah I [REDACTED] hit him".

Det. Lt. Martin said that Menards was really busy and there were people all over the parking lot coming and going and when people are yelling it draws attention. Matthew said he was not yelling. He said the only thing he said was asking him "Did you hit my car?" Det. Lt. Martin explained to him how he and Russell attracted witness's attention because there were loud voices, and they were in close proximity to each other when people are noticing others not social distancing. Matthew said, "I wasn't the one doing the yelling." Det. Lt. Martin explained any yelling draws attention. He again said, "I didn't do anything." Martin asked him if there was any reason he might not recall what occurred and he said, "No, it never happened". Detective Fitzgerald asked him what Russell did when he asked him if he hit his car. Matthew said, "He punched me" and said Russell never said anything to him then. Matthew said Russell didn't deny hitting his car but just immediately hit him. He was asked how far away he was from Russell when he was struck. Matthew said he was walking between the two cars to get in his car. He said he was within his reach. He was asked why he didn't go to the driver's side and he said he put things in the passenger seat. He said Ann told him "he hit my car". He explained he was between the cars at this time and this was where he was at when Russell struck him. He was asked what happened next and said, "He fell down and went to the hospital." He was asked if Russell fell backwards and Matthew said he didn't know because he had his eyes closed. Matthew said this was near the back of the car. Matthew again said he was punched twice with a closed fist by Russell.

#### *Explanation of Autopsy Findings to Matthew*

Det. Lt. Martin then explained what was learned from the autopsy and that showed some inconsistency with his story. He was told there were multiple impacts to his head. Matthew said, "It was nothing that I did." He was told the injuries were not consistent with falling, to which he replied again "nothing that I did." He then said, "When he swung at me he hit himself, the end of the stick hit him when he swung at me with his own force the stick hit himself in the head and then he fell on his face or something." Det. Lt. Martin told him he just contradicted himself saying that he had his eyes closed just a couple minutes earlier and didn't see what happened and now he is saying he saw this. He then said he "assumed he did" in reference to the stick hitting Russell in the head. Matthew gave a theory stating, "maybe he fell down before in the past." I explained to him the injuries were significant enough that had his theory occurred Russell would have been hospitalized and not been at Menards for this incident to occur. Matthew denied hitting Russell still.

Detective Fitzgerald asked him about a comment on Facebook where he said it was self-defense but if the guy dies it might be murder. He responded, "I don't know."

#### *Additional Information and possible threats*

Matthew denied over reacting and losing his temper. He was asked if he could have walked away but he said it happened to quick to walk away. He was asked if he needed to confront him and he said he didn't expect Russell to start punching him. He asked if he was spending the night in a cell.

Detective Fitzgerald asked him if he has been to any Rite Way meetings to which he denied going or talking to anyone at these meetings. He denied making comments about hurting people or about guns. When told if he made these comments with his phone we were going to find out. He responded, "I don't remember that." He was asked if he was forgetful and said no. He was asked if it never happened or if he didn't remember. He said he didn't remember. I asked him about posting on Facebook yesterday and he said he

didn't remember and we were able to show him evidence that he did. Matthew said he doesn't have a gun so I asked him if he still made those comments to which he replied, "I don't know." I asked him what the comments were and again he said, "I don't know." At this point he became even shorter with his answers. His breathing was heavy and you could visually see him taking larger breaths by his shoulders moving and chest rising. Det. Lt. Martin told him not remembering is just too convenient and he didn't believe him. He said, "I don't know what I said." Martin continued to ask him and he eventually said, "You already know what I said, I don't know what I said." He denied losing track of time or having memory lapses.

Matthew agreed to allow officers to go through his phone. Det. Lt. Martin went through his messages and photographed what I was able to find. In one message he stated "I'm [REDACTED]." There were no messages before or after this. When asked what he meant by this he said he meant he was in trouble. I asked him about the call history and message that were recently deleted. He said he deletes them "because they get long."

Det. Lt. Martin asked him if he has been staying away from the victim's residence and he said he has. Martin asked him if he was remorseful for what happened and he replied "I feel bad about it but I didn't do anything". He was asked what he could have done differently and he said he did not know. He kept saying I don't know. He was asked him how he felt when the incident occurred and he said he didn't know. He was asked about what he was thinking when the man was laying on the ground and he said he was going to call the police but they were already on their way. He said James Nguyen told him they were already on their way. He was unable to provide me with any emotions that he was experiencing at the time of the incident. He said he doesn't have issues identifying his emotions. He was asked if there was a variety of emotions to which he said probably. When asked what emotions he was feeling when he thought his car was hit he said he didn't have any emotions as his car has been hit before and it didn't matter anymore. When questioned about his feelings when he was hit by Russell he said he was just wondering why Russell was hitting him. He said he was shocked. Martin asked him what he was feeling when Russell swung the stick. He said he had his eyes closed. He said he was shocked when Russell hit the ground. He said he didn't know what Russell's wife was probably feeling and Martin said he wanted some answers for his wife. Matthew then said, "Are we still waiting or what" and then he asked to go to his cell.

Subscribed and sworn to before me on 05/11/20

Electronically Signed By:

Tim Gruenke

District Attorney

State Bar #: 1025046

Electronically Signed By:

Deputy Megan Hartman

Complainant