

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF WISCONSIN

3 -----
4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 -vs-

CASE NO.: 13-CR-234

7 DAMIAN PATRICK,

8 Defendant.
9 -----

10 EVIDENTIARY hearing in the above-entitled matter,
11 held before the Honorable Patricia A. Gorence, on the 4th day
12 of February, 2014, commencing at 2:06 p.m. and concluding at
13 2:50 p.m.

14
15 A P P E A R A N C E S

16 United States Department of Justice
17 Office of the U.S. Attorney
Ms. Bridget J. Domaszek
18 517 East Wisconsin Avenue, Room 530
Milwaukee, Wisconsin 53202
19 Appeared on behalf of the Plaintiff.

20 Federal Defender Services of Wisconsin, Inc.
Mr. Joseph A. Bugni
21 517 East Wisconsin Avenue, Room 182
Milwaukee, Wisconsin 53202
22 Appeared on behalf of the Defendant, also present.

23 Ms. Mary L. Murawski, Clerk.
24 Ms. Sheryl L. Stawski, RPR, Official Reporter.

25 * * * *

I N D E X

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WITNESS: DETECTIVE THOMAS MULTHAUF

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T R A N S C R I P T O F P R O C E E D I N G S

1
2 THE CLERK: Judge Gorence is present for the United
3 States of America versus Damian Patrick; Case Number 13-CR-234;
4 here for an evidentiary hearing on the motion to suppress.

5 May I have the appearances, please, for the
6 Government.

7 MS. DOMASZEK: Good afternoon, Your Honor.

8 Bridget Domaszek appears for the United States.

9 MR. BUGNI: Good afternoon, Your Honor.

10 Joe Bugni appearing for Damian Patrick.

11 THE COURT: Good afternoon, Ms. Domaszek and Mr. Bugni
12 and Mr. Patrick.

13 We're here today for an evidentiary hearing; but I
14 have the submissions submitted by the Government yesterday, the
15 police reports.

16 And I don't know what your position is on that, Mr.
17 Bugni, since initially I was to decide the motion based on the
18 police reports I had. And I just had some questions about
19 those reports.

20 MR. BUGNI: I believe the evidentiary hearing is still
21 necessary in this way: The police reports actually contradict
22 each other. We have Kowalski (phonetic) who says it was an
23 unknown source, meaning an anonymous source. And then now we
24 have an affidavit that says it was a reliable source.

25 THE COURT: What's the relevance of the tip at all if

1 there was a warrant?

2 If the fact, too, that there was an arrest warrant out
3 for Mr. Patrick, what difference does it make?

4 MR. BUGNI: Well, it makes a difference as to whether
5 or not you can stop him. You can't just stop everybody that
6 has a warrant out for them.

7 You have to know that that's the person. And the
8 reason that they know that's the person in the car is by the
9 tip.

10 THE COURT: I don't read the reports that way. I read
11 the reports that the officers were advised early in the --
12 here, what I'm seeing is that the -- Officer Multhauf was
13 advised --

14 MS. DOMASZEK: Well, Your Honor, as set forth in the
15 Government's filing from January 30th, which is the affidavit
16 of Detective Thomas Multhauf, when he arrived at 5909 North
17 Teutonia, he immediately identified the individual sitting in
18 the vehicle as Patrick because he had been provided with a
19 booking photo earlier that morning.

20 THE COURT: Because he had been verbally advised,
21 also.

22 MS. DOMASZEK: Correct.

23 THE COURT: That's why I'm having a problem.

24 MR. BUGNI: And at the point that he sees him, Patrick
25 is seized. The car is T'd.

1 MS. DOMASZEK: In a public place.

2 MR. BUGNI: You can't T cars in public places.

3 THE COURT: When you have an arrest warrant?

4 MR. BUGNI: You don't know that's him until after he's
5 seized.

6 THE COURT: I didn't read the reports that way but --

7 MS. DOMASZEK: There's no legal authority, Your Honor.
8 If I could just be heard.

9 There's no legal authority for that proposition. I
10 mean, when he's stopped in a public place, there's no
11 expectation of privacy. There's a warrant out for his arrest,
12 and he immediately identifies himself as Patrick.

13 That's all set forth in the affidavit that was filed
14 on January 30th.

15 So unless there's something I'm missing, there's no
16 material dispute of fact which is required by civil local or
17 criminal local rule 12.3.

18 MR. BUGNI: Which part do you want me to respond to,
19 Your Honor?

20 THE COURT: Whatever you'd like.

21 MR. BUGNI: First, at the point he's been T'd, he's
22 seized. His car is backed in -- or the car that he's put into,
23 okay. The police car pulls in front of them. All right.

24 No reasonable person could think at that point he can
25 leave because his access -- access is actually now stopped.

1 All right. He's been seized at that point. All right.

2 Now, that's a seizure. It's a seizure at that moment.
3 Now, if later on he says, hey, you know who that is? That's
4 Patrick. That tip was reliable. That's the guy that we're
5 looking for. That happened after he's been seized.

6 THE COURT: I don't think that the reports indicate
7 that, but let's go ahead with the hearing.

8 MS. DOMASZEK: Can I ask again -- Again, we have to
9 get back to the heart of the matter. These are legal issues
10 that Attorney Bugni is arguing, purely legal issues. What is
11 the relevant disputed fact?

12 MR. BUGNI: Sorry.

13 THE COURT: Go ahead.

14 MR. BUGNI: I know we're not supposed to address one
15 another. If the issue is, hey, this isn't -- if it's going to
16 be an anonymous source, and we're just going to decide it upon
17 the pure legal issue --

18 THE COURT: I don't see where the anonymous source has
19 much to do with it, Mr. Bugni.

20 The officer said in his affidavit -- and we can have
21 him on the stand and cross-examined to this issue -- but he
22 said, I was advised at roll call, or whatever they call that in
23 the morning, that there was a warrant out for Mr. Patrick's
24 arrest, probation warrant. And I was aware of that.

25 I then checked photographs so I knew what he looked

1 like and went out into the community, and I saw the car with
2 Mr. Patrick in it.

3 MR. BUGNI: After the car had been seized. Had he
4 pulled over the car --

5 THE COURT: You can ask those questions on --

6 MR. BUGNI: Okay.

7 THE COURT: But, regardless, if he saw him in the car
8 before he T'd the car --

9 MR. BUGNI: That's not how I read the affidavit.

10 THE COURT: That's why I said -- because I don't see a
11 reliance on the tip, at least from the report. So we'll go
12 through that.

13 MR. BUGNI: Okay.

14 MS. DOMASZEK: Just to make the record clear, even if
15 there was a reliance on the tip, the Government certainly
16 doesn't concede that there would be an evidentiary hearing
17 necessary just to establish whether there was reliance on the
18 tip.

19 So the Government calls its first witness, Detective
20 Thomas Multhauf.

21 MR. BUGNI: I'm just going to invoke the rule, Your
22 Honor, of exclusion.

23 THE COURT: Okay. There's a lot of rules in this
24 place.

25 (The witness was first duly sworn under oath.)

1 THE CLERK: Please state your full name and spell it
2 for the record.

3 THE WITNESS: Thomas Multhauf, T-H-O-M-A-S. Multhauf
4 is M-U-L-T-H-A-U-F.

5 D I R E C T E X A M I N A T I O N

6 BY MS. DOMASZEK:

7 Q Good afternoon, Mr. Multhauf.

8 A Good afternoon.

9 Q What do you do for a living?

10 A I'm employed by the City of Milwaukee as a detective.

11 Q Where are you currently assigned?

12 A To Central Investigations.

13 Q How long have you been assigned to the Central
14 Investigations Bureau?

15 A Since this January.

16 Q Prior to that, were you employed as a police officer?

17 A I was.

18 Q And where were you assigned?

19 A District 5.

20 Q Were you so employed on October 28th, 2013?

21 A Yes, I was.

22 Q Can you just explain for the Court and people here present
23 today where District 5 is; what the geographical boundaries
24 are.

25 A I've been there for about a year now; but the geographic

1 boundaries are approximately -- I believe to the south, it's
2 not an even line, but around Center Street. To the north, up
3 to approximately Hampton.

4 To the west, I believe it's around 31st Street or the
5 3100 block. And then to the east, I believe the Milwaukee
6 River -- is it the Milwaukee River -- Around Humboldt Avenue.

7 Q Okay. Thank you.

8 Have you received training in how to arrest
9 individuals?

10 A Yes.

11 Q And are you familiar with state and federal firearms laws?

12 A Yes.

13 Q Detective Multhauf, what time of day did you report for
14 work on October 28, 2013?

15 A Approximately 8:00 a.m.

16 Q Were you wearing a uniform?

17 A Yes, I was.

18 Q On October 28th, 2013, did you participate in the arrest of
19 Damian Patrick?

20 A I did.

21 Q Why was he arrested on that day?

22 A He had a warrant for a probation violation.

23 Q So you learned that he had a warrant out for his arrest?

24 A That is correct.

25 Q How did you learn this?

1 A We had a briefing that day. Early when I came in that
2 morning, we had a briefing.

3 We were working a case with the FBI. We were
4 reviewing a sweep of known wanted subjects.

5 We were provided with -- My team was provided with a
6 package with our targets -- the known wanted subjects, and a
7 copy of their warrants that they were wanted for, and a copy of
8 a booking photo of that subject.

9 Q Do you recall if you were handed a paper copy of the
10 warrant that morning?

11 A Yes, I was.

12 Q May I approach?

13 THE COURT: Yes, you may.

14 BY MS. DOMASZEK:

15 Q Detective Multhauf, I'm showing you what's been marked for
16 identification purposes as Exhibit A. What is this?

17 A This is -- When we run a subject, if they have a warrant,
18 it will pop up in our system as this.

19 Q So it's a copy of the warrant issued for Damian Patrick?

20 A It's the confirmation that we get that he has a warrant.

21 Q Is it a fair and accurate depiction of the written
22 confirmation that you requested and received on October 28th,
23 2013?

24 A Yes.

25 Q And is this different than the warrant that you were shown

1 during the briefing the morning of October 28th?

2 A No.

3 Q Review of this Exhibit A shows that it was issued on what
4 day?

5 A The warrant was issued on 7/27 of 2013.

6 Q Is this a fair and accurate depiction of -- I'm sorry, I
7 already asked you that.

8 Your Honor, I move to admit Exhibit A.

9 MR. BUGNI: No objection.

10 THE COURT: Be received.

11 BY MS. DOMASZEK:

12 Q Detective Multhauf, what did you intend to do when you
13 found Patrick and the other people who had the outstanding
14 warrants?

15 A Arrest them.

16 Q And did you intend to arrest them pursuant to these arrest
17 warrants?

18 A That is correct.

19 Q Detective Multhauf, where was Damian Patrick arrested on
20 October 28th, 2013?

21 A Behind the apartment building at 5909 North Teutonia.

22 Q And you said that 5909 North Teutonia is an apartment
23 building?

24 A Correct.

25 Q Do you know if it's a multi-unit or --

1 A I believe it is an 8-unit apartment building.

2 MS. DOMASZEK: Your Honor, may I approach?

3 THE COURT: Yes, you may.

4 BY MS. DOMASZEK:

5 Q Detective Multhauf, I'm showing you what's been marked for
6 identification purposes as Government's Exhibit C.

7 What is this?

8 A This is 5909 North Teutonia, the apartment building.

9 Q Is this a fair and accurate depiction of how it appeared on
10 October 28th, 2013?

11 A Yes, it is.

12 MS. DOMASZEK: Your Honor, I move to admit Exhibit C
13 into evidence.

14 MR. BUGNI: No objection.

15 THE COURT: It will be received.

16 BY MS. DOMASZEK:

17 Q Detective Multhauf, how did you come to arrive at this
18 location on October 28th, 2013?

19 A The team that I was part of, we were -- my partner and I,
20 Officer Ferguson, were the uniformed officers in the team.

21 The team also consisted of undercover FBI agents and
22 undercover Milwaukee police officers.

23 We received information from undercover officers that
24 they observed the defendant, Patrick, in a white vehicle with
25 Texas plates parked behind this residence.

1 Q Were you also informed that there was some electronic
2 information that had led to this location?

3 A Yes.

4 Q So between the two, you were informed, correct me if I'm
5 wrong, that Damian Patrick was at 5909 North Teutonia, correct?

6 A That is correct.

7 Q And prior to your arrival, did the undercover officers
8 positively identify Damian Patrick as the individual sitting in
9 this white vehicle?

10 A Yes, they did.

11 Q Let's refer back to Exhibit C, which is the front of 5909
12 North Teutonia.

13 Where was Damian Patrick relative to the front of this
14 building?

15 A He was in the rear of the building.

16 Q And what is in the rear of the building?

17 A There's a parking slab that's associated with the apartment
18 building.

19 Q And how would you describe that parking slab? Is it open
20 to the public or is it private?

21 A It's open to the public. There's a T-alley behind the
22 building that runs behind -- or in between these apartments and
23 the apartments behind them.

24 Q Detective Multhauf, when you arrived at 5909 North
25 Teutonia, did you go straight to the alley location behind it?

1 A I drove -- We were going southbound on Teutonia, so I drove
2 in front -- past the front of the building first. Then I took
3 a right on whatever street is just south of there and then
4 another right on the T-alley to go up -- back north in the
5 alley to where he was parked.

6 Q Was it light or dark when you responded to this location?

7 A It was light.

8 Q What did you see when you arrived in the alley behind 5909
9 North Teutonia?

10 A First, I observed the vehicle described by the undercover
11 officers. Then I pulled up to the vehicle.

12 I then saw Damian Patrick sitting on the passenger's
13 seat of that vehicle.

14 Q How was that vehicle positioned?

15 A It was backed into the parking spot so the back of his
16 vehicle would have been facing towards the back of the
17 apartment.

18 Q How would you describe your view into that white vehicle?

19 A It was looking through the front windshield.

20 Q How long did it take you to identify Mr. Patrick as one of
21 the individuals sitting in that vehicle?

22 A As soon as I saw him -- when I pulled up, there was
23 actually -- Well, approaching this there was a dumpster that
24 was positioned -- it would be to the south end of this parking
25 slab.

1 His vehicle was parked just to the north of this
2 dumpster, so it was obstructing the view of the vehicle until I
3 got to the vehicle.

4 Once I saw the vehicle, I stopped; and I saw him in
5 the passenger seat.

6 Q Was the vehicle parked, or was it moving?

7 A It was parked.

8 Q What did you do when you recognized Mr. Patrick as being
9 the individual sitting in the passenger seat of this white
10 vehicle?

11 A I exited my vehicle and went to the passenger's side,
12 ordered him to show me his hands, and opened up the car door,
13 and took him into custody.

14 Q And with respect to where your vehicle was --

15 First of all, were you in a squad car, or were you in
16 an unmarked vehicle?

17 A I was in an unmarked vehicle.

18 Q Did you park your vehicle before recognizing that it was
19 Mr. Patrick, or did you recognize him and then park?

20 A I suppose I would have probably stopped the vehicle maybe
21 seconds or moments before recognizing it was him.

22 Q And what did you do with respect to your vehicle after
23 recognizing it was him?

24 A I put it in park and exited the vehicle.

25 Q And how did you park with respect to Mr. Patrick's vehicle?

1 A He was -- like I said, he was facing -- The back of his
2 vehicle was facing the back of the apartment. So his -- The
3 front of his vehicle was facing towards the T-alley.

4 As I approached from the south -- Like I said, there
5 was a dumpster just south of him when I approached this way.
6 When I saw him, I stopped like this.

7 Q Okay. Who else --

8 THE COURT: Can you describe what the witness just
9 said for purposes of the record?

10 MS. DOMASZEK: Yes. Just for the sake of the record,
11 Your Honor, can we reflect that Detective Multhauf indicated
12 that he approached Mr. Patrick's vehicle at about a 90-degree
13 angle and then stopped when he recognized him.

14 MR. BUGNI: I object to that. I think the statement
15 was that he stopped before he had recognized him, and then he
16 parked after he recognized him. He put it in park.

17 THE COURT: I'm just trying to figure out where he
18 parked. All right.

19 MR. BUGNI: Perpendicular.

20 THE WITNESS: Could I describe it better?

21 THE COURT: I think what she was saying it was a
22 90-degree angle?

23 MR. BUGNI: Yes.

24 THE COURT: Okay. Is that --

25 MR. BUGNI: Correct.

1 THE COURT: Fine.

2 BY MS. DOMASZEK:

3 Q Is that correct, Detective Multhauf?

4 A Yes, the front passenger fender of my vehicle was closest
5 to the front bumper of his vehicle.

6 Q Okay.

7 A At a 90-degree angle.

8 Q Was Mr. Patrick alone in the vehicle?

9 A No. There was a subject in the driver's seat, as well.

10 Q What happened when you approached the vehicle?

11 A Well, I observed Patrick in the passenger side seat. He
12 was making some movements in the car because of my stopping
13 him; and it was possible that he had a weapon, so I drew my
14 firearm.

15 I directed him to show me his hands; show me his
16 hands; and approached the passenger side door and opened it.

17 Q And what happened after you opened the door?

18 A He put his hands up. He kind of leaned back in the car as
19 being somewhat surprised. I ordered get out; get out.

20 I took control of his -- his right arm and escorted
21 him out of the vehicle and placed him in custody.

22 Q When you "placed him in custody," do you mean he was
23 handcuffed?

24 A That is correct.

25 Q What, if anything, did you observe in the vehicle after

1 placing him in custody?

2 A Before the handcuffs were on him, actually when I was
3 pulling him out of the car, I observed a firearm between his --
4 where his front -- feet would be.

5 He was already stepping out of the car when I observed
6 the firearm.

7 Q Are you aware of whether Mr. Patrick had previously been
8 convicted of a felony prior to October 28th, 2013?

9 A Yes.

10 Q And based upon your training and experience as a police
11 officer, are you aware of whether felons may lawfully possess
12 firearms?

13 A They may not.

14 Q What did you do with the firearm that you observed in the
15 white vehicle?

16 A Both of the subjects were taken out of the vehicle, and we
17 secured -- officers stood by and secured the scene until a
18 photo car arrived to take photos of the firearm, and then it
19 was collected.

20 Q And what happened with Mr. Patrick?

21 A He was placed in custody and placed in the rear of our
22 squad.

23 Q Was Patrick's arrest captured on squad video or a recording
24 device of any other kind?

25 A No, it was not.

1 Q Detective Multhauf, you prepared a report pertaining to
2 Mr. Patrick's arrest on October 28th, 2013, correct?

3 A Correct.

4 MS. DOMASZEK: May I approach?

5 THE COURT: Yes.

6 BY MS. DOMASZEK:

7 Q Detective Multhauf, I'm showing you what's been marked for
8 identification purposes as Government's Exhibit B.

9 What is this?

10 A This is a Milwaukee police report.

11 Q Detective Multhauf, I would like to direct your attention
12 to the third line of the narrative of this report.

13 It indicates, quote, Patrick is wanted for a probation
14 violation, correct?

15 A Correct.

16 Q And then do you see later in the narrative which said that
17 a wanted check revealed a list of a warrant for Patrick?

18 A That is correct.

19 Q Detective Multhauf, did you -- does this alter your
20 testimony that you were aware of the warrant prior to arresting
21 Mr. Patrick on October 28th, 2013?

22 A No, it does not.

23 Q How can you explain the two mentions of the warrant both
24 before and after his arrest?

25 A When we write our ADRs, our arrest reports, it's required

1 that we basically word it -- if somebody is known to have a
2 warrant, that's the reason why we arrested them, but that we
3 actually ran a check through our console and had a confirmation
4 done of the warrant; so that's when they put together their
5 arrest package.

6 Q I'd like to discuss an affidavit that you filed on
7 January 30th of this year.

8 MS. DOMASZEK: May I approach, Your Honor?

9 THE COURT: Yes, ma'am. You don't need to ask me
10 every time, Ms. Domaszek. You may approach.

11 BY MS. DOMASZEK:

12 Q I'd like to direct your attention to Paragraph 8 of that
13 affidavit. You indicate there that it is your standard policy
14 to request confirmation of a warrant, correct?

15 A Correct.

16 Q And you testified earlier today that the warrant set forth
17 in Exhibit A was issued on July 27th, 2013, correct?

18 A Correct.

19 Q Is there a -- Is there a date in Paragraph 8 incorrect
20 inasmuch as it reflects that the warrant was issued on
21 October 27th, 2013?

22 A That is correct.

23 Q And can you explain where the October 27th date came from?

24 A The copy of the warrant that I was provided at the
25 briefing -- this is just what I believe -- it was printed out

1 the night before by the people putting together their -- the
2 packages that they were showing us at the briefing.

3 Q Which would be October 27th, 2013?

4 A Correct.

5 MS. DOMASZEK: Thank you. I have no further
6 questions.

7 THE COURT: Mr. Bugni.

8 MR. BUGNI: Sure.

9 C R O S S - E X A M I N A T I O N

10 BY MR. BUGNI:

11 Q At approximately what time did you receive this tip?

12 A I would say we were -- we were receiving information about
13 his whereabouts for approximately maybe an hour before we
14 actually made the arrest.

15 Q Who did you get this information from?

16 A From other officers.

17 Q Okay. And what did they say?

18 A They told us what area he was in, then described the
19 vehicle he was in, and then, finally, located the vehicle and
20 him, and told us that they observed him with the vehicle, and
21 told us the location where he was.

22 Q Did they watch him walk into that vehicle?

23 A I do know what they were -- I wasn't with them when they
24 were watching him.

25 Q What was the final piece of information that they provided

1 you with?

2 A That he was parked in a vehicle behind this location.

3 Q And how was this information provided to you? Over the
4 radio?

5 A It was -- It was provided to me from the mouth of other
6 officers. I believe they were communicating through cell
7 phones.

8 Q Who were the other officers that were communicating this to
9 you?

10 A The FBI agents that were there.

11 Q Okay. And they were with you in your squad car?

12 A No, they were in a different car.

13 Q Okay. So how were they communicating it to you? Talking
14 from one car to the other?

15 A We were parked next to each other.

16 Q And they were receiving this through cell phones?

17 A I believe so.

18 Q Okay. And --

19 A Possibly their radios, too. I'm not sure.

20 Q And then 12:10, that's when you were driving, correct?

21 A 12:10 was the stop.

22 Q Okay. And that's when you were provided the final piece of
23 information?

24 A We were provided that final piece of information just
25 moments before.

1 Q Okay. At 12:10?

2 A No.

3 Q You have marked -- I believe it's Exhibit B. Is this your
4 report?

5 A Yes.

6 Q On Monday -- It reads: On Monday, October 28th, 2013, at
7 12:10, we obtained information that a known wanted subject,
8 Damian Patrick, was inside such and such vehicle.

9 A Okay.

10 Q Is that report correct?

11 A Like I said, it was just moments before 12:10.

12 Q So it could be seconds, you mean?

13 A I'm not -- Yeah, it was moments before our stop.

14 Q And you approached -- You're driving on Teutonia,
15 correct --

16 A Correct.

17 Q -- when you get this information?

18 You go passed where Patrick is to turn south; is that
19 correct, from your testimony?

20 A No, I was traveling south.

21 Q Okay.

22 A I turned westbound on whatever --

23 Q Oriole Drive?

24 A That could be it.

25 Q Okay.

- 1 A And then north in the T-alley.
- 2 Q You then go into the alley. Do you see the vehicle right
3 away?
- 4 A No. It was obstructed by a dumpster.
- 5 Q Okay. When you get past the dumpster --
6 This vehicle has tinted windows, correct?
- 7 A The front windshield was not tinted.
- 8 Q But it has tinted windows on the rest of the vehicle?
- 9 A On the sides it may have. I'm not sure.
- 10 Q You couldn't see into the side window, correct?
- 11 A I could see -- I don't know how clearly -- but I could see
12 that -- you know, through the windows slightly.
- 13 Q Okay. But it's not until you get in front of the vehicle
14 that you see inside and notice it's Damian Patrick, correct?
- 15 A Correct.
- 16 Q And at that point your vehicle has actually stopped in
17 front of Patrick's vehicle?
- 18 A That is correct.
- 19 Q He wouldn't be able to leave if he wanted to drive away?
- 20 A No. I don't suppose he would be able to.
- 21 Q But the only access point has now been cut off, correct?
- 22 A Correct.
- 23 Q Okay. You then exit your car, correct?
- 24 A That is correct.
- 25 Q Order him to get out?

1 A Correct.

2 Q Okay. Gun drawn?

3 A Correct.

4 Q Okay. This all happens instantaneously?

5 A It's happening pretty quick.

6 Q This is a dangerous situation?

7 A Correct.

8 Q Okay. Approximately, how many officers respond to the
9 call?

10 A FBI agents and Milwaukee Police or just --

11 Q All law enforcement.

12 A I would say there's at least three vehicles of FBI agents,
13 and there's probably at least two agents per car.

14 There was one FBI car with a Milwaukee officer and an
15 FBI agent. There was a -- Two sergeants responded to the
16 scene. A paddy wagon responded to the scene. There was quite
17 a few.

18 Q So over ten, I assume?

19 A Yes.

20 Q Okay. Did you run a check to who the vehicle was
21 registered to?

22 A Yes. I believe it came back as a rental car.

23 MR. BUGNI: Okay. Can I have one moment, Your Honor?

24 THE COURT: Sure.

25 MR. BUGNI: No more questions, Your Honor.

1 THE COURT: Okay. Ms. Domaszek.

2 R E D I R E C T E X A M I N A T I O N

3 BY MS. DOMASZEK:

4 Q With respect to the vehicle check, did you personally run a
5 vehicle check on this white Chevy Malibu, or did somebody else
6 do it?

7 A Somebody else did, I believe.

8 Q Okay. And you believe that they told you that it was a
9 rental car?

10 A Yes.

11 MS. DOMASZEK: I have no further questions.

12 THE COURT: Okay.

13 MR. BUGNI: No cross.

14 THE COURT: All right. You may be excused, Detective
15 Multhauf.

16 MS. DOMASZEK: I'd like to call as my next witness
17 Officer Phillip Ferguson.

18 THE COURT: Okay.

19 THE WITNESS: Do you want these back?

20 THE COURT: Why don't you leave them there. Thanks.
21 Thank you, Detective.

22 (The witness was first duly sworn under oath.)

23 THE CLERK: Please state your full name and spell it
24 for the record.

25 THE WITNESS: Phillip Ferguson, P-H-I-L-L-I-P,

1 F-E-R-G-U-S-O N.

2 D I R E C T E X A M I N A T I O N

3 BY MS. DOMASZEK:

4 Q Good afternoon, Mr. Ferguson.

5 A Good afternoon.

6 Q What do you do for a living?

7 A Police officer.

8 Q Are you currently employed by the Milwaukee Police
9 Department?

10 A Yes.

11 Q How long have you been so employed?

12 A Seven years.

13 Q Where are you currently assigned?

14 A District 5.

15 Q Were you assigned as a police officer to District 5 on
16 October 28th, 2013?

17 A Yes.

18 Q Officer Ferguson, have you received training in how to
19 arrest individuals?

20 A Yes.

21 Q Are you familiar with state and federal firearms laws?

22 A Yes.

23 Q Officer Ferguson, what time did you report for work on
24 October 28th, 2013?

25 A At approximately 8:00 a.m.

1 Q Were you wearing a uniform?

2 A Yes.

3 Q On that day, did you participate in the arrest of Damian
4 Patrick?

5 A Yes, I did.

6 Q Why was Damian Patrick arrested on October 28th, 2013?

7 A Felony violation of probation and parole warrant.

8 Q So you learned at some point that there was a warrant out
9 for his arrest?

10 A Yes.

11 Q How did you learn this?

12 A During a briefing. Before we went out on the streets, we
13 were briefed on subjects that we were looking for that were
14 wanted in District 5.

15 Q And during that briefing, were you provided with some
16 documents pertaining to Mr. Patrick which would include his
17 warrant and his photo?

18 A Yes.

19 Q Before you, Officer Ferguson, is Government's Exhibit A.

20 Can you review to this to yourself.

21 A Yes.

22 Q What is this?

23 A An arrest warrant for violation of probation and parole.

24 Q Is it for Mr. Patrick?

25 A Yes.

1 Q Was this the information that you were provided with on
2 October 28th, 2013?

3 A Yes, ma'am.

4 Q Officer Ferguson, what did you intend to do when you found
5 Damian Patrick on October 28th, 2013?

6 A Arrest him.

7 Q And would you -- Was your plan to arrest him pursuant to
8 this arrest warrant?

9 A Yes.

10 Q Where was he -- Where was Mr. Patrick arrested on
11 October 28th, 2013?

12 A 5909 North Teutonia.

13 Q Officer Ferguson, you have before you Exhibit C.

14 Can you please review this.

15 A Yes.

16 Q What is that?

17 A Apartment complex, 5909 North Teutonia.

18 Q And Mr. Patrick wasn't arrested in front of that complex,
19 correct?

20 A No. In the alleyway.

21 Q I'm sorry, did you say that the alley behind it?

22 A The alley rear.

23 Q Okay. Officer Ferguson, how did you come to arrive at this
24 location?

25 A Received information -- information from law enforcement

1 that he was inside of a white Chevy Malibu.

2 Q What kind of information did you receive?

3 A Electronic information.

4 Q And did you also receive information that was -- that was
5 word of mouth from other officers?

6 A Yes.

7 Q Thank you.

8 A Yes.

9 Q When you responded to 5909 North Teutonia, or to the rear
10 alley, I should correct myself, what type of vehicle were you
11 driving?

12 A I was driving an unmarked squad car.

13 Q How would you describe this alley that was behind 5909
14 North Teutonia?

15 A A T-alley.

16 Q And is that alley a public right-of-way, or is it private?

17 A Public.

18 Q So anyone can enter this area?

19 A Yes.

20 Q When you arrived at 5909 North Teutonia, was it light or
21 dark out?

22 A Light.

23 Q What did you see when you first arrived in the alley?

24 A I saw that 2012 Chevy Malibu, white in color.

25 Q Was it parked or moving?

1 A It was parked.

2 Q How was it parked?

3 A Parked, backed in a parking spot.

4 Q And what was your view into the vehicle relative to your
5 position in responding to this 5909 North Teutonia?

6 A Right through the front windshield.

7 Q Who did you observe in the vehicle?

8 A Damian Patrick.

9 Q Where was he?

10 A Front passenger.

11 Q How long did it take you to recognize that the individual
12 in the front passenger seat was Damian Patrick?

13 A Right away.

14 Q How did you recognize him? Had you had prior interaction
15 with him?

16 A I viewed a booking photo prior to this incident.

17 Q Okay. And how long after you arrived -- or excuse me.

18 What did you do after you recognized the individual in
19 the Chevy Malibu as Damian Patrick?

20 A I approached the front passenger door first.

21 Q Okay. And how long after you arrived at 5909 North
22 Teutonia did this happen?

23 A Right away.

24 Q Instantaneously?

25 A Yes.

1 Q What happened after you approached the -- or let me ask you
2 this.

3 Why did you approach the passenger side of the
4 vehicle?

5 A Because I observed Damian sitting in the passenger's seat.

6 Q What did you intend to do at that point?

7 A To arrest him.

8 Q Did you, in fact, arrest him?

9 A I did not; but he was, in fact -- he was arrested.

10 Q What did you do after you approached the passenger door?

11 A When I approached the passenger door, I noticed that the
12 other squad that was responding didn't make it to the driver's
13 door as quickly as they probably should have; so I took the
14 driver's door instead.

15 Q And what did you do with respect to the driver?

16 A Asked him to show me his hands.

17 Q And did he comply?

18 A Yes.

19 Q Was he eventually arrested?

20 A Yes.

21 Q Are you aware of whether Detective Multhauf observed a
22 firearm in the vehicle?

23 A Yes.

24 Q Did you personally observe it?

25 A Yes.

1 Q Now, did you observe it before the arrest occurred or
2 afterwards?

3 A After.

4 Q Are you aware of whether Mr. Patrick had previously been
5 convicted of a felony prior to October 28th, 2013?

6 A Yes.

7 Q Are you aware of whether felons may lawfully possess
8 firearms?

9 A They can't.

10 Q Where was Patrick -- Mr. Patrick placed after he was
11 arrested?

12 A He was placed in the rear of our squad car.

13 Q And was Mr. Patrick's arrest captured on an audio or video
14 or some other type of recording device?

15 A No.

16 MS. DOMASZEK: I have no further questions.

17 THE COURT: Okay.

18 C R O S S - E X A M I N A T I O N

19 BY MR. BUGNI:

20 Q Were you driving?

21 A No.

22 Q You were the passenger?

23 A Yes.

24 Q Okay. And just to be clear, you testified that you
25 received this information about Damian Patrick I believe

1 electronic. What does that mean?

2 MS. DOMASZEK: Objection. Can we approach, Your
3 Honor?

4 THE COURT: Sure.

5 (A sidebar was held.)

6 MR. BUGNI: Do you want me to reask the question, Your
7 Honor?

8 THE COURT: That would be a good idea.

9 BY MR. BUGNI:

10 Q You testified that you received this information through
11 electronic information. What does that mean?

12 A Electronic information, tracking cell phone.

13 THE COURT: Okay. You got your answer.

14 MR. BUGNI: Okay. Sorry.

15 BY MR. BUGNI:

16 Q So you were tracking his cell phone?

17 A I was not, no.

18 Q Okay. So the information was tracked -- like you were --
19 Were you provided instantaneous information about where his
20 cell phone was?

21 A I was verbally advised of where his cell phone was by
22 another law enforcement officer.

23 Q Okay. All right. And that officer was the one that
24 communicated to you where Damian Patrick was?

25 A I'm not sure.

1 Q Well, who communicated to you where Damian Patrick was?

2 A A law enforcement officer.

3 Q Okay. And that law enforcement officer said what to you?

4 A That he was parked in the alley -- in the alley in a white
5 Chevy Malibu, 2012, in the rear of 5909 North Teutonia.

6 Q Had you been getting previous updates about this electronic
7 information?

8 THE COURT: Mr. Bugni, I think you're going a little
9 bit further than -- or at least addressing the Government's
10 concerns here. How much longer are you going in this line of
11 questioning?

12 MR. BUGNI: I was going to ask a couple more. I think
13 she's laid the predicate to clear the courtroom, if that's what
14 the concern is. I was just going to ask two or three
15 questions.

16 THE COURT: I don't think we need to clear the
17 courtroom. The question is, what kind of electronic
18 information? That was the question. I believe he answered it.

19 MR. BUGNI: Well, can I just ask two more clarifying
20 questions?

21 THE COURT: You can ask. And then wait before you
22 answer.

23 BY MR. BUGNI:

24 Q So the electronic information is the cell phone tracking,
25 correct?

1 A Yes.

2 Q And how was that information then communicated to you?

3 A Communicated to me by another part of the team. We're all
4 part of a team.

5 Q Okay. All right. How long after you get that information
6 that he's at this -- in this car do you stop the car?

7 How long is between you get the call Damian Patrick's
8 in this 2012 Malibu before you stop it?

9 A A minute, approximately.

10 Q Okay. All right. Thank you. One more question, sorry.

11 The windows of this vehicle, were they tinted, or
12 could you see through them?

13 A I can't recall. The front windshield was not tinted.

14 MR. BUGNI: Okay. Thank you very much.

15 THE COURT: Ms. Domaszek?

16 MS. DOMASZEK: I have no further questions.

17 THE COURT: Okay. Officer, you may be excused. Any
18 further witnesses, Ms. Domaszek?

19 MS. DOMASZEK: No. I have no further witnesses, Your
20 Honor.

21 MR. BUGNI: Your Honor, none, but if I could be heard.

22 THE COURT: Sure.

23 MR. BUGNI: I believe that the Government has laid the
24 appropriate foundation to show that the tip is reliable, and
25 that there was probable cause to both -- or reasonable

1 suspicion to seize Mr. Damian Patrick and then probable cause
2 to arrest him.

3 So I withdraw my motion to suppress at this point.

4 THE COURT: Okay. Any objections, Ms. Domaszek?

5 MS. DOMASZEK: No. No objection.

6 THE COURT: I believe that the information that was
7 presented at this proceeding supports your statement; the
8 officers were not relying on an anonymous tip, which was part
9 of the concern in your original motion, Mr. Bugni; and that
10 they were aware of the arrest warrant from the beginning, which
11 was one of my concerns for not addressing the motion on the
12 documents that were presented to me.

13 And I find that they had basis for stopping the
14 vehicle; and that the defendant was arrested based on a
15 probation warrant that the officers had learned about after a
16 briefing earlier that morning; and that they received
17 information as to the defendant's location based on information
18 from other law enforcement officers communicating with them.

19 So I believe the arrest was appropriate based on the
20 probation warrant; and that the weapon was in plain view when
21 the defendant was arrested. Okay.

22 Anything further from anybody?

23 MR. BUGNI: Nothing.

24 MS. DOMASZEK: Not from the Government. Thank you.

25 THE COURT: Only Exhibits A and C have been offered.

1 I'm not sure it has much relevance at this point. I just
2 wanted to let you know that, Ms. Domaszek.

3 MS. DOMASZEK: That is correct; it should be only
4 Exhibits A and C.

5 THE COURT: Then the Court will stand in recess.

6 (Proceedings concluded at 2:50 p.m.)

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1 STATE OF WISCONSIN)
2 MILWAUKEE COUNTY) SS:

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4
5 I, SHERYL L. STAWSKI, a Registered
6 Professional Reporter and Official Court Reporter, for the
7 United States District Court, Eastern District of Wisconsin, do
8 hereby certify that the above proceedings were reported by me
9 on the 4th day of February, 2014, and reduced to writing under
10 my personal direction and is a true, correct and complete
11 transcription of my computer-aided transcription of my
12 stenographic notes.

13
14 Dated at Milwaukee, Wisconsin, this 12th
15 day of May, 2014.

16 s/ Sheryl L. Stawski

17 Sheryl L. Stawski
18 Official Court Reporter
19 United States District Court
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