

STATE OF WISCONSIN

-vs-

Mark M Benson
3211 Dekoven Drive
Oconomowoc, WI 53066
DOB: 12/26/1952
Sex/Race: M/W
Eye Color: Blue
Hair Color: Brown
Height: 6 ft 0 in
Weight: 200 lbs
Alias:

Plaintiff,

DA Case No.: 2008WK004004
Assigned DA/ADA: Kevin M. Osborne
Agency Case No.: 08OCWD1970
Court Case No.:
ATN:

Defendant,

Criminal Complaint

Detective Cristian Harnisch of the City of Oconomowoc Police Department, being first duly sworn on oath, upon information and belief, states that:

Count 1: HOMICIDE BY INTOXICATED USE OF A VEHICLE

The above-named defendant on or about Friday, April 25, 2008, in the City of Oconomowoc, Waukesha County, Wisconsin, did cause the death of Courtney A.B. dob: 11/05/1997, by the operation of a vehicle while under the influence of an intoxicant, and has one or more prior convictions, suspensions, or revocations, as counted under s. 343.307 (2), contrary to sec. 940.09(1)(a), 939.50(3)(c) Wis. Stats., a Class C Felony, and upon conviction may be fined not more than One Hundred Thousand Dollars (\$100,000), or imprisoned not more than forty (40) years, or both.

And the department shall revoke the defendant's operating privilege for five (5) years pursuant to 343.31(3)(c) Wis. Stats.

Count 2: HOMICIDE BY INTOXICATED USE OF A VEHICLE

The above-named defendant on or about Friday, April 25, 2008, in the City of Oconomowoc, Waukesha County, Wisconsin, did cause the death of Jennifer Bukosky, by the operation of a vehicle while under the influence of an intoxicant, and has one or more prior convictions, suspensions, or revocations, as counted under s. 343.307 (2), contrary to sec. 940.09(1)(a), 939.50(3)(c) Wis. Stats., a Class C Felony, and upon conviction may be fined not more than One Hundred Thousand Dollars (\$100,000), or imprisoned not more than forty (40) years, or both.

And the department shall revoke the defendant's operating privilege for five (5) years pursuant to 343.31(3)(c) Wis. Stats.

Count 3: HOMICIDE-INTOX.USE/VEHICLE-UNBORN CHILD - REPEAT OFFENDER

The above-named defendant on or about Friday, April 25, 2008, in the City of Oconomowoc, Waukesha County, Wisconsin, did cause the death of an unborn child by the operation or handling of

4/26/2008

a vehicle while under the influence of an intoxicant and in addition has one or more prior convictions, suspensions, or revocations, as counted under s. 343.307 (2), contrary to sec. 940.09(1)(c), 939.50(3)(c) Wis. Stats., a Class C Felony, and upon conviction may be fined not more than One Hundred Thousand Dollars (\$100,000), or imprisoned not more than forty (40) years, or both.

And the department shall revoke the defendant's operating privilege for five (5) years pursuant to 343.31(3)(c) Wis. Stats.

Count 4: OPERATING WHILE INTOXICATED CAUSING INJURY

The above-named defendant on or about Friday, April 25, 2008, in the City of Oconomowoc, Waukesha County, Wisconsin, did cause injury to another person, to-wit: Deborah R.G., dob: 09/05/1997, by operation of a vehicle while under the influence of an intoxicant or of a drug to a degree which rendered him incapable of safely driving, contrary to sec. 346.63(2)(a)1, 346.65(3m) Wis. Stats., a Misdemeanor, and upon conviction shall be fined not less than Three Hundred Dollars (\$300) nor more than Two Thousand Dollars (\$2,000), and may be imprisoned for not less than thirty (30) days nor more than one (1) year in the county jail.

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

Count 5: OPERATING WHILE INTOXICATED CAUSING INJURY

The above-named defendant on or about Friday, April 25, 2008, in the City of Oconomowoc, Waukesha County, Wisconsin, did cause injury to another person, to-wit: Zachary B.B., dob: 04/07/1996, by operation of a vehicle while under the influence of an intoxicant or of a drug to a degree which rendered him incapable of safely driving, contrary to sec. 346.63(2)(a)1, 346.65(3m) Wis. Stats., a Misdemeanor, and upon conviction shall be fined not less than Three Hundred Dollars (\$300) nor more than Two Thousand Dollars (\$2,000), and may be imprisoned for not less than thirty (30) days nor more than one (1) year in the county jail.

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

Count 6: OAR - 1ST OFFENSE (REVOCATION DUE TO OWI/PAC)

The above-named defendant on or about Friday, April 25, 2008, in the City of Oconomowoc, Waukesha County, Wisconsin, while being a person whose operating privileges had been revoked pursuant to the Laws of the State of Wisconsin did operate a motor vehicle on a highway during such revocation or thereafter, and the defendant knew or had reason to believe his operating privilege had been revoked and the revocation resulted from an offense that may be counted under 343.307(2), contrary to sec. 343.44(1)(b), 343.44(2)(b) Wis. Stats., a Misdemeanor, and upon conviction shall be fined not more than Twenty Five Hundred Dollars (\$2,500), or imprisoned for not more than one (1) year in the county jail, or both.

And the Court may suspend the defendant's operating privilege not more than six (6) months.

PROBABLE CAUSE:

And prays that the defendant be dealt with according to law; that the basis for complainant's charge of such offense is based upon your complainant's personal investigation and review of the reports of various fellow officers with whom he has worked in the past and knows to be truthful and reliable and whose names are set forth in the body of this criminal complaint.

Your complainant has been assigned to investigate a fatal traffic accident that occurred on April 25, 2008 on northbound Hwy 67/Summit Avenue at the intersection of that road and Pabst Road in the City of Oconomowoc, Waukesha County, Wisconsin.

Your complainant is aware that police were dispatched to the scene at 3:39 p.m. A witness to the accident was identified as Caitlin Walters. Walters indicates she and her friend Brianne Conway were driving northbound on Summit Avenue when a man in an SUV Escalade was speeding "extremely fast." As a result she and her friend changed lanes to avoid him because they didn't want to be in front of him. She stated they moved to the right hand lane and about five seconds later the SUV ran into the back of a black Honda Civic. She indicated that the Escalade did not "bother" to slow down before smashing into the black Civic.

The two vehicles involved in the accident were identified as a 2001 black Honda Accord driven by Jennifer Bukosky and a 2005 black Cadillac Escalade driven by Mark Benson. City of Oconomowoc Police Officer Dawn Schraufnagel, arrived on the scene shortly thereafter and found that there were four occupants in the Honda Accord. All four were at that point unconscious and trapped in the vehicle. Due to the impact and damage done there was no way to access the occupants of that vehicle until the fire department came and was able to extricate them by cutting the vehicle apart.

Once that was accomplished Patrice Poungin of the Waukesha County Medical Examiner's Office did pronounce Jennifer Bukosky, dob: 04/26/1968, dead at the scene. It was also indicated by City of Oconomowoc Officer Adam Skerbish, who knew Bukosky from his employment as a school liaison officer for Oconomowoc High School, that Ms. Bukosky was over six months pregnant and due to deliver a baby in June of 2008. It was also indicated that Bukosky's unborn fetus was deceased as a result of the accident and either direct injuries to the fetus or the death of the mother. Ultimately the other three individual in the car were identified as children.

One of these was identified as Zachary B.B., dob: 04/07/1996. Zachary was transported to Oconomowoc Memorial Hospital for injuries which included neck and back pain and was treated and released.

A second individual in the vehicle was identified as Deborah R.G., dob: 09/05/1997. Deborah was subsequently transported to Children's Hospital in Milwaukee where she was noted to have a broken femur as well as facial trauma and suspected broken jaw and remained in Children's Hospital in serious condition.

The third child in the car was identified as Courtney A.B. dob: 11/05/1997. Courtney was noted to have severe facial injuries, cranial injuries, and severe compression injuries to her chest. As a result of those injuries Courtney was determined to be brain dead and removed from life support the morning of April 26, 2008 and as a result of her injuries passed away later that day.

Sergeant Mark Schrang's report indicates that when he arrived on the scene he spoke to Zachary who was alert and able to give information. Zachary indicated that he is the son of Jennifer and the

brother of Courtney and that Debbie is a friend of Courtney's. He stated he was in the back seat on the right side, his sister was on the left, and Debbie was in the middle; while his mother Jennifer was driving.

Matt Johnson of the Wisconsin State Patrol Technical Reconstruction Unit also came to the scene. His observations on the scene indicated to him that the Honda Accord was struck from behind by the Cadillac Escalade just after the light had turned green and before the Accord had started to move. He also obtained the air bag module from the Cadillac Escalade, which captures data about the vehicle any time the bag is deployed, and the module indicated that the Escalade was traveling 50 mph at the time of impact (in what was noted to be a posted 45 mph zone) and the module further indicated that the vehicle had not had any braking within eight seconds of the time of impact.

Detective Harnisch of the City of Oconomowoc Police Department did subsequently take a more detailed statement from Benson. Benson had at that point been transported to Oconomowoc Memorial Hospital for a blood draw. The defendant did consent to that blood draw, though the results of that test have not yet been obtained.

Harnisch began to question Benson about the accident. Benson stated he was not injured in the accident. He did however show the inside of his left arm which was red and discolored and later indicated that he actually believed that was caused by the air bag but that he was not injured in any way that would prohibit him from participating in the interview.

Benson stated that he was a doctor and had been an orthopedic surgeon but that he retired in 2002 because he had gone blind when his corneas became infected. He stated that after treatment his vision was now 20-25 in the right eye, 20-50 in the left.

As to the accident, Benson stated that he was on the way to Dave's Pharmacy to pick up six Cialis and six Viagra. He states he uses Dave's Pharmacy because Dave is aware of his history of sometimes taking too many pills. He states he was headed toward Dave's and following several cars and "all of a sudden there was a car right in front of me stopped dead and I hit the breaks and clobbered her and I was three lengths behind her . . . it was a black sedan." He stated he had been using his hands free phone and he was 99% sure that just before the accident he was trying to call Dave's to check on his prescription, though he did not think the call had gone through at the time of impact. He also stated that he is the owner of the Escalade and that it had no mechanical problems and that the breaks worked fine. He stated his vehicle "runs like a top."

Benson further acknowledged that he did not have a valid driver's license at that time, though he only indicated that it was expired and he needed to get it renewed, but that he had forgot to do so; though your complainant is aware it was actually revoked for 30 months on April, 23, 2008 when he was convicted of a third offense operating while under the influence charge in Waukesha County Circuit Court Case #2007CT001737.

Your complainant has also reviewed the report of certified Drug Recognition Expert (DRE) and Town of Oconomowoc Police Officer Rob Wiercyski. Wiercyski's reports indicate that he was requested to come to Oconomowoc Memorial Hospital to evaluate the defendant. He states he arrived at approximately 6:26 p.m. He states that prior to any testing that he did with Benson that Benson had submitted to a preliminary breath test that showed no alcohol in Benson's system.

Prior to Wiercyski speaking to Benson, Harnisch did advise Wiercyski that in the vehicle the defendant was driving they found an empty prescription bottle of Ambien and a empty prescription

bottle for Alprazolam/Xanax and an empty bottle of Mike's Hard Lemonade. It was also found that the defendant had filled one prescription for Xanax and one of Ambien that very day. Each was for 30 pills and he now had 25 pills of each left on his person. In conversations with Benson he stated that he had taken a 20 mg Oxycodone in the morning. He also stated he had taken two Xanax that morning and about 30 minutes later he took two Ambien. He then took another two Xanax and another two Ambien at what he believed was 9:30 or 10:00 in the morning. When asked why he only had 25 pills in each bottle instead of 30 he stated it was possible he may have accidentally taken 3 pills instead of 2. When asked if he was following the directions on his prescription he stated no and that his doctor stated it was okay to take them like he did if he was having a panic attack. He admitted that he knew his prescriptions cause impairment, but thought that they were fast acting or of short duration. He also claimed that he did not believe he was impaired at that moment, but acknowledged that he had three prior convictions for OWI. He stated his most recent arrest for OWI was in July of 2007.

In making contact with Benson, Wiercyski noted that Benson's face was flush and his eyes appeared watery and droopy. His speech was slurred and at times appeared soft and slow.

He was then given a number of tests for impairment the first which was the Romberg balance test. In this test the subject is asked to close his eyes and stand for 30 seconds. Benson is asked to stop at what he thinks is 30 seconds and in doing this test the subject opened his eyes and stopped at 20 seconds. He stated that he believed it was 30 seconds and he counted by ones to himself and stopped at 30. He was also noted to sway one inch front to back during the test.

He was then given a walk and turn test and on the front nine steps he missed heel to toe on steps two and three and actually stepped on his other foot. He took nine steps and was swaying and raising his arms for balance. He made an improper turn and started to lose his balance and stopped. After a couple of seconds he stopped and returned nine steps. He then stepped off the line on step one and then stepped on his other foot again on step four. He stared straight ahead the whole time and again was raising his arms for balance and was walking very slowly and methodically.

He was then asked to perform the one leg stand, once raising each foot. On his left foot he was able to count to 29-1000 before he stopped and put his foot down. During this test he was swaying while trying to balance and was also raising his arms. He was then instructed again and stated he had no questions and stared straight ahead while counting and got to the count of 1-1000 and lost his balance on his other foot and placed his foot down and stopped. He then tried again, got to the count of six before he lost his balance and set his foot down. Again he was swaying and using his arms for balance.

The next was the finger to nose test. Altogether he was asked to attempt this test six times, three times with each hand and only on one of the attempts was he able to touch the tip of his nose.

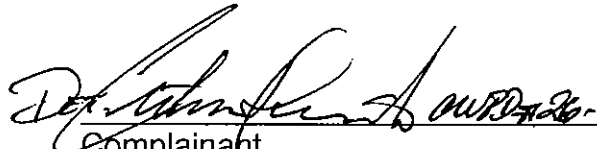
He was then asked to perform the Horizontal Gaze Nystagmus test and nystagmus was noted at maximum deviation and prior to 45 degrees. He also had a lack of smooth pursuit. Altogether six out of six clues for intoxication were noted. A number of other clinical indicators of impairment were tested and after that was done Wiercyski, who is a certified drug recognition expert did form the opinion that Mark Benson was under the influence of a central nervous system depressant and was unable to safely operate a motor vehicle.

Schrang's reports note that after the DRE exam Benson was placed under arrest and transported to the City of Oconomowoc Police Department. At the police department Benson asked to call his wife

and while he did so Schrang over heard him speaking to her about how the accident occurred. Among the statements Benson made to his wife was that he was braking because he thought the car in front of him was stopping abruptly and that he was making a lane change. He also stated he was on his phone and on his way to pick up a prescription and something else when the accident occurred. He also stated that he had taken two Alprazolam at 8:00 a.m. and again at 11:00 a.m. The person on the phone appeared to question this because he then said that was what the doctor told him to take. He told the person on the phone that he loved them and would sign over all his property to them and sell his guns and it was not going to be worth it and he would get a public defender. He also spoke with someone who appeared to be his daughter and told her he love her and wished her the best in school, told her to change her name so she would not be associated with him for what he had done.

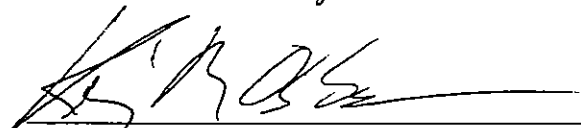
Your complainant is further aware from his use of both Department of Transportation records, as well as those of the Wisconsin Consolidated Court Automation Program (CCAP,) both of which your complainant has used in the past and found to be truthful and reliable, that the above-named defendant was previously convicted of operating a motor vehicle while under the influence of intoxicants or having a prohibited alcohol concentration three times, to-wit: prior dates of violation: 10/23/93, and 12/27/02 and 7/22/07; prior dates of conviction: 1/12/96, 5/21/03 and 4/23/08. Additionally, at the time of his conviction for the third offense OWI on April 23, 2008, his driver's license was revoked for 30 months effective that day.

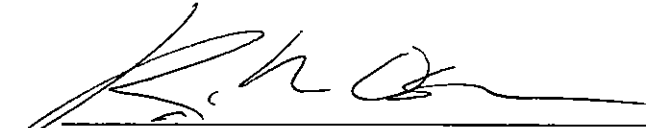
Based on the foregoing, the complainant believes this complaint to be true and correct.


Complainant

Subscribed and sworn to before me
this 20th day of April, 2008

APPROVED FOR FILING:


Assistant District Attorney


Assistant District Attorney
State Bar # 1012489

KMO/ap