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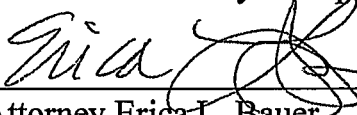
### **CERTIFICATION OF FORM OF APPENDIX**

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with Wis. Stat. § 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; and (3) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit courts' reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Signed and dated this 21<sup>st</sup> day of September, 2020.

  
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**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 9, 2021**

Sheila T. Reiff  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2019AP617-CR  
STATE OF WISCONSIN**

**Cir. Ct. No. 2015CF347**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**ZOHN WANG KUB YANG,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Outagamie County: MARK J. McGINNIS, Judge. *Affirmed.*

Before Stark, P.J., Hruz and Seidl, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Zohn Yang appeals a judgment of conviction. The sole issue on appeal is whether statements Yang made to police without having

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been advised of his constitutional rights should have been suppressed. We conclude the police were not required to advise Yang of his rights because Yang was not in custody when he was interrogated. We therefore affirm.

### BACKGROUND

¶2 The State charged Yang with attempted first-degree intentional homicide and aggravated battery based upon allegations that Yang deliberately struck a woman with his vehicle, resulting in the amputation of the woman's leg. The complaint was subsequently amended to include additional charges of strangulation, disorderly conduct, intimidation of a witness, criminal damage to property, and negligent handling of a weapon—all involving the same victim, but arising from events that occurred on different dates.

¶3 Prior to trial, Yang moved to suppress several incriminating statements he made during a police interview in a hospital room the morning following the vehicular assault. Yang alleged the police failed to advise him of his constitutional rights prior to interrogating him.

¶4 The circuit court made the following factual findings after holding a suppression hearing. Yang arrived at Theda Clark Hospital, where the victim had already been transported, sometime between 11:30 p.m. and midnight. Yang was not directed to the hospital by law enforcement, and he transported himself there voluntarily in the company of a pastor.

¶5 Prior to Yang's arrival, the hospital contacted the Neenah Police Department to initiate certain lockdown procedures based on information provided by the victim that she believed Yang had intentionally committed the offense and intended to harm her. Under the lockdown procedures, "not everybody was free to



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walk around the hospital at their will.” In particular, the hospital took measures to limit Yang’s movements so as to ensure that he was not allowed to visit with or see the victim. Law enforcement officers were involved in this effort by monitoring Yang in the waiting room area and restricting his contact with the victim’s family members. Two officers also accompanied Yang when he left the waiting room to go the restroom. Out of Yang’s presence, the officers discussed whether Yang would have an alternate way to escape from the bathroom and what they would do if he made such an attempt.

¶6 At some point in the early morning hours, Yang was admitted to the hospital for testing or observation related to complaints of chest pain. Between 2:30 a.m. and 4:30 a.m., investigator Daniel Running interviewed Yang in Yang’s hospital room, with the door closed. Running told Yang that he did not have to speak to him, but Running did not advise Yang of his right to counsel. During the interview, Running made no promises or threats to Yang, did not handcuff or physically restrain him, and did not place him under formal arrest or tell him that he could not leave the room or the hospital.

¶7 The hospital provided Yang with discharge papers between 4:30 a.m. and 4:45 a.m. The timing of his medical discharge was dictated by hospital personnel, not law enforcement. Shortly thereafter, Running left Yang’s hospital room. Sometime after 4:45 a.m., while Yang was still in the hospital room following his medical discharge, sergeant Wang Lee entered the room. Lee was wearing plain clothes, and Yang recognized Lee from their church. Lee identified himself as a police officer and advised Yang that he was not under arrest. Lee proceeded to question Yang in both English and Hmong. Lee’s interrogation of Yang was conducted in a conversational manner, free from threats

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or promises, and lasted about one hour. It was during Lee's interrogation that Yang made the incriminating statements he sought to suppress.

¶8 The circuit court concluded that Lee's questioning of Yang did not constitute a custodial interrogation because a reasonable person in Yang's position would have felt free to leave the hospital after being discharged and told that he was not under arrest. The police employed no other coercive or restrictive measures during the interrogation. The court denied the suppression motion and subsequently denied reconsideration. The matter then proceeded to trial, where Yang was convicted on all charges. Yang now appeals his conviction, challenging the court's suppression ruling.

### DISCUSSION

¶9 When reviewing a motion to suppress evidence, we will uphold the circuit court's findings of fact unless they are clearly erroneous. WIS. STAT. § 805.17(2) (2017-18); *State v. Harris*, 2017 WI 31, ¶9, 374 Wis. 2d 271, 892 N.W.2d 663. We will independently determine, however, whether the facts found by the court satisfy applicable constitutional provisions. *Id.*

¶10 Law enforcement officers are constitutionally required to inform suspects of their rights to remain silent and to have an attorney present during custodial interrogations. *Miranda v. Arizona*, 384 U.S. 436, 444-45 (1966). The *Miranda* safeguards are aimed at dispelling the compulsion inherent in a custodial setting and therefore do not apply unless a suspect is in custody. *State v. Bartelt*, 2018 WI 16, ¶30, 379 Wis. 2d 588, 906 N.W.2d 684. A suspect who is in custody at one point during a police encounter may no longer be in custody later in the same encounter if circumstances have changed. *State v. Kilgore*, 2016 WI App 47, ¶34, 370 Wis. 2d 198, 882 N.W.2d 493.

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¶11 A person is in custody for *Miranda* purposes when there has been a formal arrest or a restraint on movement to a degree associated with a formal arrest. See *Kilgore*, 370 Wis. 2d 198, ¶31. A court first looks at the totality of the circumstances to determine whether a reasonable person in the suspect's position would have felt free to terminate the interview and leave the scene. *Id.* When the totality of the circumstances demonstrates that a reasonable person in the suspect's position would not feel free to leave, a court should additionally consider whether the environment of the interview "presents the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*." *Howes v. Fields*, 565 U.S. 499, 509 (2012).

¶12 The totality of the circumstances surrounding an interrogation includes the degree of restraint; the purpose, place and length of the interrogation; and what has been communicated to the suspect by the police. *Kilgore*, 370 Wis. 2d 198, ¶19. Factors relevant to the degree of restraint are: whether the suspect is handcuffed, whether a weapon is drawn, whether a frisk is performed, the manner in which the suspect is restrained, whether the suspect is moved to another location, whether questioning took place in a police vehicle, and the number of officers involved. *Id.*

### 1. Findings of Fact

¶13 Yang challenges a number of factual findings made by the circuit court following the suppression hearing. First, Yang contends the court erroneously determined he consented to restricted movement by entering a hospital he knew was in lockdown, whereas the evidence showed Yang arrived at the hospital before the police. Second, Yang contends the court erroneously determined the lockdown applied to all persons entering the hospital, whereas the

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evidence showed only Yang's movements and the movements of others attempting to have contact with Yang, such as his pastor, were restricted. Third, Yang contends the court erroneously determined it was the hospital that took measures to restrict Yang's movements to protect the victim's safety while she was in the hospital's care, whereas the evidence showed it was the police who were restricting Yang's movements while they investigated whether the victim's injuries were caused intentionally or accidentally. In particular, the police would not allow Yang to leave the waiting room, except to go to the restroom with a police escort. Fourth, Yang contends the court erroneously determined that Yang was not free to leave the hospital prior to his discharge, whereas patients have a constitutional right to refuse medical care and leave a hospital at any point. Fifth, Yang contends the court erroneously determined the police did not direct Yang where to go or to stay in his room after his first interview with Running, whereas the evidence showed Running asked Yang if he needed anything and told Yang he would be right back as he left the room, indicating Running was not done speaking with Yang.

¶14 In addition, Yang challenges several statements and findings the circuit court made during the hearing on Yang's motion for reconsideration: Yang contends the court erroneously stated that no new evidence had been presented on reconsideration, when Yang had introduced Exhibit 17. That exhibit was a disc containing six new video clips showing contacts between Yang and law enforcement at the hospital prior to the interrogations conducted by Running and Lee. In one of those video clips, a law enforcement officer told Yang, "we can't let you go anywhere," and Yang should "sit tight" in the waiting room. Yang also takes issue with the court's statement that Yang was unaware of his pastor's whereabouts because Yang was aware that his pastor was not with him for hours.

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Finally, Yang contends the court erroneously found police did not direct or influence hospital staff to delay Yang's discharge. Instead, the evidence showed that a staff member's offer to delay Yang's discharge and allow Yang to be interviewed in his hospital room was made in response to a law enforcement officer's inquiry as to when Yang would be released and statement that there were too many people in the waiting room to conduct the interview there.

¶15 The State does not directly dispute Yang's contention that some of the circuit court's findings were clearly erroneous. Instead, it argues that none of the challenged findings were necessary to the court's ultimate determination that Yang was not in custody when Lee interviewed him. Therefore, for the purposes of this appeal, we will assume without deciding that law enforcement officers restricted Yang's movements, isolated him from others, and told Yang he was not free to leave while he was in the waiting room prior to his hospital admission for chest pain.

## 2. Custody Determination

¶16 As noted above, a suspect may be considered in custody at one point during a police encounter, while not in custody during another portion of the encounter. *Kilgore*, 370 Wis. 2d 198, ¶34. Our focus here is on the time period when Yang made incriminating statements during his interview with Lee.

¶17 The purpose of Lee's interview with Yang was to ascertain whether Yang had accidentally or intentionally struck the victim with his vehicle. The interview lasted about one hour and was conducted shortly after a two-hour interview with Running. Running had previously advised Yang that he was free to leave, and Running left Yang alone in the hospital room after Yang had been

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medically discharged. When Lee entered the room after Running had left, Lee again advised Yang that he was not under arrest and was free to leave.

¶18 During Lee's interview, Yang was not handcuffed or otherwise physically restrained, did not have a weapon pointed at him, and was not frisked. The police neither moved Yang to the hospital room where he was interrogated nor removed him from it, and the room was not an inherently coercive environment, such as a police station or squad car.

¶19 The totality of these circumstances weighs against a determination that Yang was under a degree of restraint comparable to a formal arrest when he made his statements to Lee. Even if Yang may not have felt free to leave the hospital waiting room area earlier, a reasonable person in Yang's position would have felt free to leave the hospital after two officers subsequently informed him that he was free to leave and after any medical need for him to be at the hospital had dissipated. We conclude the circuit court properly denied Yang's suppression motion and affirm the judgment of conviction.

*By the Court.*—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2017-18).

1 issue. I've had an opportunity to listen to and  
2 review testimony including the testimony of  
3 Investigator Daniel Running and Sergeant Wang Lee on  
4 November 23, 2015. Their testimony was part of the  
5 167 pages of transcript. On January 21, 2016, Ghou  
6 Xiong, Mai Her and Mai Lee, Mr. Yang, and Sergeant  
7 Wang Lee testified again, and their testimony was  
8 part of the 148 pages in transcript, and then just a  
9 few weeks ago on April 19, Officer Tripoli, Officer  
10 Trochinski and Officer VanSchuydel testified.

11 I've had the opportunity to review the 30-page  
12 transcript that was done by the State and not  
13 objected to by the defense that provided the  
14 discussion between Sergeant Lee, Mr. Yang, and  
15 Investigator Running to a small extent, again, one  
16 comment in it at Theda Clark hospital. I've reviewed  
17 all the exhibits, the photographs, and the other  
18 exhibits, and then just recently, I was provided an  
19 additional letter from Attorney Carroll dated April  
20 25 which included some Neenah Police Department  
21 documents, specifically, those were date stamped 570  
22 through 575. And based upon all of those things, I'm  
23 prepared to look at and make a decision with respect  
24 to the motion.

25 I want to start the legal analysis by trying to



1 define the issue as I understand it today, and I know  
2 there's been recent debate on it, but the first  
3 question that I think needs to be asked and then  
4 answered by me is was there a period of time when  
5 Mr. Yang was in custody for purposes of Miranda  
6 during the time that he was at Theda Clark Hospital.  
7 The defense has taken the position, and I think  
8 wisely, that based upon the circumstances and what  
9 transpired and then the fact that the pastor  
10 transported Mr. Yang to the hospital that there is no  
11 argument and no basis to argue that Mr. Yang was in  
12 custody for purposes of Miranda prior to his arrival  
13 at Theda Clark Hospital.

14 Now, the Wisconsin Supreme Court has over the  
15 years provided guidance and a framework for us to use  
16 when asked that question, and specifically the State  
17 v. Lonkoski, 2019-0-NK-0-S-K-1, 346 Wis.2nd 523  
18 provides in pertinent part on page 528 the following:  
19 A person is in custody if under the totality of the  
20 circumstances a reasonable person would not feel free  
21 to terminate the interview and leave the scene, and  
22 that was citing the Martin decision from 2012. The  
23 Lonkoski decision on page 528 goes on to say, a court  
24 must examine all of the circumstances surrounding the  
25 interrogation, but the ultimate inquiry is simply



1 whether there was a formal arrest or restraint on  
2 freedom of movement of the degree associated with a  
3 formal arrest. Several factors have been considered  
4 relevant to the totality of the circumstances such as  
5 the defendant's freedom to leave, the purpose, place,  
6 and length of the interrogation, and the degree of  
7 restraint.

8 That framework or analysis has I think been  
9 consistent over a number of years and then was  
10 applied by our Court of Appeals in decisions after  
11 that in *State v. Cabrera*, C-A-B-R-E-R-A, hyphen  
12 *Cabrera*; *State v. Undraitis*, U-N-D-R-A-I-S-I-T-I-S; *State*  
13 *v. Streicher*, S-T-R-E-I-C-H-E-R; *State v. Bolstad*,  
14 B-O-L-S-T-A-D; *State vs. Ezell*, E-Z-E-L-L-E. Those  
15 five decisions that I just indicated are all Court of  
16 Appeals' decisions that have been decided since the  
17 *Lonkoski* decision in 2013. Although some of them are  
18 unpublished, I think their purpose is just to suggest  
19 consistent with the published decision in the *State*  
20 *v. Ezell* decision that that standard and that  
21 analysis is the appropriate test.

22 In looking at the totality of circumstances and  
23 what transpired in this case, I believe the necessary  
24 facts are really not in dispute, and to the extent  
25 that they are in dispute, I think they can be

1 resolved as follows: Mr. Yang was transported after  
2 the accident to Theda Clark Hospital by his pastor.  
3 The medical call regarding the accident took place at  
4 10:23 p.m. The victim was transported by medical  
5 personnel to Theda Clark, and sometime between 11:30  
6 p.m. and midnight, Mr. Yang had arrived at Theda  
7 Clark Hospital. His arrival at Theda Clark Hospital  
8 was different than the normal arrival by people at a  
9 hospital setting in the sense that at that time the  
10 hospital was on what has been known as a lockdown,  
11 and the hospital took the initiative to contact the  
12 Neenah Police Department based upon that lockdown to  
13 follow the policies implemented by Theda Clark to be  
14 used at Theda Clark in a lockdown situation.

15 I'm not familiar with whether Mr. Yang was aware  
16 of or knew about the lockdown, but the facts are that  
17 it was a lockdown situation. The basis for the  
18 lockdown may be a little confusing, but I think it's  
19 clear from the time that the victim left the  
20 residence and was being transported to the hospital  
21 and was receiving medical care, she provided  
22 information to medical individuals that it was her  
23 opinion Mr. Yang committed this offense intentionally  
24 and intended to cause harm to her.

25 That, again, is unclear as to whether Mr. Yang



1 was aware of that communication. I don't think he  
2 was, but the Neenah Police Department was and the  
3 individuals at Theda Clark hospital were aware of, if  
4 not those specific facts, that there was going to be  
5 a lockdown and the individuals at the hospital needed  
6 to handle the admittance and discharge of individuals  
7 with or consistent with that procedure.

8 And that changes the Miranda analysis, and I  
9 expect everybody is aware of that when you spend so  
10 much time around it in the sense that not everybody  
11 was free to walk around the hospital at their will.  
12 There were limitations placed on the movement of  
13 individuals. There usually is in a hospital setting,  
14 but especially in a lockdown setting.

15 Mr. Yang has indicated he arrived at the  
16 hospital between 11:30 and midnight. He arrived  
17 there on his own free will. He arrived there without  
18 the assistance, advice, guidance, or suggestion of  
19 law enforcement, and he arrived and was transported  
20 without the supervision of law enforcement. There  
21 was no testimony to suggest that there was a law  
22 enforcement officer following him, there was a law  
23 enforcement officer monitoring their movements, or  
24 doing anything else up until the time that he arrived  
25 at Theda Clark Hospital with the pastor.

1           When Mr. Yang arrived at the hospital and under  
2           his own free will and without any suggestion by law  
3           enforcement, it's my understanding and my finding  
4           today that he entered the hospital freely,  
5           voluntarily, and with permission from the hospital to  
6           enter even though they were on lockdown status. I  
7           think it's clear also that the hospital was aware and  
8           the security at the hospital were aware that the  
9           victim in this case did not want Mr. Yang to be near  
10          her or around her based upon her belief that he had  
11          committed this offense intentionally.

12          The hospital as I think was clear from the  
13          testimony of the witnesses based upon the safety of  
14          the individuals took measures to make sure that the  
15          movement of Mr. Yang while he was at the hospital was  
16          limited. For example, he was not free to visit with  
17          or see the victim. That decision, again, was based  
18          upon information that the hospital received and  
19          consistent with their policies in this type of  
20          situation.

21          Mr. Yang at some point between midnight and  
22          prior to 4:45 had complained of pain or discomfort  
23          and based upon that was checked into the hospital for  
24          either testing or observation. It's clear to me that  
25          Mr. Yang, and I don't think it's disputed, that

1 Mr. Yang's complaints about his medical condition or  
2 him being checked in were not prompted by law  
3 enforcement or caused by law enforcement, but they  
4 were simply his concerns about his physical well  
5 being.

6 The medical people at the hospital provided  
7 medical care to Mr. Yang, and he was discharged from  
8 the hospital according to the testimony sometime  
9 between 4:30 a.m. and 4:45 a.m. At some point there  
10 was a specific time provided, and I think it was to  
11 that later time of closer to 4:45 a.m.

12 I think that fact is important also because  
13 during the time that Mr. Yang was at Theda Clark and  
14 had voluntarily checked himself in as a patient and  
15 prior to him being discharged, there would be  
16 limitations on his movement, limitations on his  
17 activities, and I think quite frankly questions about  
18 whether he would be free to get up and just walk out  
19 prior to the medical people being done with their  
20 observations or testing of him. Again, I think it's  
21 important to indicate that none of that was caused by  
22 law enforcement or attributed to any of the conduct  
23 or comments that law enforcement made.

24 There was a lot of testimony I thought from  
25 several different individuals about the waiting room



1 area and the rooms that were set up and who was free  
2 to go where. I think given the lockdown status, the  
3 information that the hospital had, the concerns on  
4 protecting the well being and safety of the victim as  
5 well as everybody else that there was nothing  
6 improper or unlawful or coercive that anyone  
7 including any of the law enforcement officers did at  
8 any time in terms of monitoring the hospital,  
9 monitoring the movements within the hospital, and  
10 trying to be sure that during this lockdown time that  
11 people would remain safe.

12 I think the testimony was pretty clear that the  
13 lockdown status limited the movements of everyone  
14 involved. There was testimony from Mai Lee or Mai  
15 Yang Lee that her movement in the hospital was  
16 limited in the sense that she testified that she  
17 tried to talk to or see Mr. Yang, and she was told by  
18 law enforcement that she was not allowed to go in  
19 there. She also testified that she was allowed along  
20 with Mai Her to visit with the victim prior to  
21 surgery. They were allowed based on determinations  
22 made by I think hospital or security at the hospital  
23 involving the lockdown, again, that it would be safe  
24 for them to move from the waiting room area in to see  
25 the victim and then to move to a waiting room and

1 around.

2 I thought it was important that during their  
3 testimony, they also indicated that as they were  
4 sitting with family members in the emergency room  
5 area waiting room that the door where Mr. Yang was  
6 was open and that they did have an ability to see  
7 him. It was I think also important during Mr. Yang's  
8 testimony there was a lot of conversation about  
9 asking for water, having to go to the bathroom, and  
10 he indicated that there were times when he went to  
11 the restroom where he testified that there were two  
12 female law enforcement officers that waited outside  
13 the bathroom door and then, you know, followed him or  
14 monitored his movements back into the room.

15 I think the important part of all this then  
16 takes place getting at 2:30. Investigator Running  
17 indicates that between 2:30 and 4:30, he met with  
18 Mr. Yang at the room where Mr. Yang was.  
19 Investigating Running is a law enforcement officer,  
20 and prior to him arriving at the hospital, he  
21 received information that the victim in this case  
22 thought that what Mr. Yang did may be intentional.  
23 Investigator Running testified that when he first met  
24 with Mr. Yang, he told Mr. Yang that he did not have  
25 to speak with him. He indicated that the door was

1 closed, that he did not make any promises or threats,  
2 that he asked Mr. Yang if he needed an interpreter.  
3 I'm sorry. He testified that he never asked for an  
4 interpreter but that he was communicating clearly  
5 with Mr. Yang consistent with what I think I've  
6 determined earlier today.

7 Investigator Running testified that he had  
8 conversation with Mr. Yang during those two hours and  
9 that Mr. Yang provided information to him. He  
10 indicated that Mr. Yang never refused to answer  
11 questions, and there's no dispute today that Mr. Yang  
12 was never handcuffed at any time, never physically  
13 restrained, never told that he couldn't go somewhere  
14 or do something.

15 Mr. Yang at no time was placed under formal  
16 arrest. Mr. Yang at no time asked to leave the  
17 hospital either prior to complaining of chest pains  
18 or during the time that he was admitted for those  
19 chest pains or after he was discharged. He never  
20 made any effort to leave the hospital, never asked  
21 anyone including any of the officers whether he could  
22 leave the hospital.

23 In any event, between 2:30 and 4:30, there was  
24 this conversation that went on and information  
25 provided by Mr. Yang to Investigator Running.



1 Investigator Running indicated that somewhere near  
2 the end of his contact with Mr. Yang prior to  
3 Sergeant Lee getting involved that Mr. Yang was given  
4 his discharge papers and that he went to the restroom  
5 and then back to that room that he was in.  
6 Investigator Running indicated that he was, that  
7 Mr. Yang was never directed by law enforcement, you  
8 know, where to go or where to stay.

9 The real issue in this case I believe is the  
10 communication between Sergeant Wang Lee and Mr. Yang  
11 that took place between 4:45 a.m. and 5:45 a.m.  
12 approximately. As indicated, that conversation has a  
13 transcript that I think provided part of the  
14 communication. Sergeant Lee testified that he is a  
15 detective with the Outagamie County Sheriff's  
16 Department; that in his capacity as a detective, the  
17 sheriff's department, he was called in to participate  
18 in the investigation of this incident; that he went  
19 to the emergency room at Theda Clark and met with  
20 Investigator Running. That was somewhere near Room  
21 No. 8 in the area of that emergency room. Sergeant  
22 Lee was wearing his plain clothes and that he had had  
23 contact with Mr. Yang based upon them participating  
24 in the same church and seeing him on Sundays. There  
25 was some discrepancy regarding the relationship

1 between Sergeant Lee and Mr. Yang, but the  
2 relationship seemed to be of two individuals that  
3 attended the church and recognized each other.

4 Sergeant Lee testified that his communication  
5 with Mr. Yang was in both English and Hmong. He  
6 estimated that 60 percent of the communication was in  
7 Hmong and 40 percent of the communication was in  
8 English.

9 As indicated, I've had an opportunity to review  
10 the exhibits and the transcripts regarding that  
11 approximate one-hour meeting. I don't think Sergeant  
12 Lee did anything coercive or improper. I read and  
13 reread these transcripts and looked at those  
14 exhibits, and I kept reading the defendant's briefs  
15 regarding coercive and sort of misconduct type of  
16 things, and I don't see it.

17 What I do see is a conversation between Sergeant  
18 Lee and Mr. Yang, and the battle I think in this case  
19 comes down to some statements that Mr. Yang made  
20 towards the end of that hour, specifically regarding  
21 the smashing of a computer because he was upset  
22 within the week or so of this incident and then also  
23 I think relaying Mr. Yang's thoughts about his wife  
24 apparently having an affair and how it was stabbing  
25 him in the heart; but ultimately on page 26 of the

1 transcript, Mr. Yang acknowledges that he was angry,  
2 and he was very angry, that his heart was about to  
3 stop, and that he knew that he wasn't on the brake  
4 and that he was on the gas.

5 And then on to page 27, Mr. Yang indicates to  
6 Sergeant Lee that he was scared, that she's going to  
7 change things around, she's going to bite me, and  
8 then, I have put it into drive because I was too  
9 upset. I was so upset that I -- and then it's  
10 unintelligible -- when I heard what was on the  
11 recorder, my heart just starting more, then a knife  
12 stabbing me. So then I was hurting, I was too angry,  
13 I couldn't take it. I couldn't endure it, so I said  
14 if this is how it is, then I will kill her and forge  
15 it. As for the other person, I will kill the other  
16 person, then kill yourself to end it, but then like I  
17 said, and then it goes on.

18 And I'm going to make the decision today that in  
19 looking at and taking into consideration the guidance  
20 provided by Lonkoski that, and considering the  
21 totality of the circumstances that at the time that  
22 Mr. Yang met with Sergeant Lee that he was not in  
23 custody for purposes of Miranda. I think that a  
24 reasonable person in his position after being  
25 discharged from the hospital still could have and



1       should have felt free to leave.

2       Mr. Yang as indicated was not free to go further  
3       into the hospital, he wasn't free to meet with the  
4       victim, but he was told that he wasn't under arrest.  
5       He was never threatened, he was never promised  
6       anything. The purpose, place, and length of the  
7       interrogation was also appropriate. The purpose of  
8       the interrogation was to get information. The  
9       interrogation, although it was from 4:45 in the  
10      morning to 5:45 in the morning, it really only lasted  
11      one hour. It was done in a very conversational way,  
12      free from threats or promises. It was done at a  
13      hospital. The hospital was two part. Number one,  
14      it's because that's where the victim was, and second,  
15      it's the place where Mr. Yang chose to go freely with  
16      his pastor, and then he freely chose to stay there  
17      and received medical attention and then in my opinion  
18      continued to stay there even after being discharged.

19      There were no physical restraints used, and I  
20      think that that's important as well. Mr. Yang, I  
21      think his testimony was consistent, that he was never  
22      threatened. In fact, Mr. Yang testified, and I  
23      thought it was interesting, that he thought he was  
24      talking with a friend from the church, not  
25      necessarily a police officer. And that sort of cuts

1 against his understanding or his argument today that  
2 this is a police officer who was using his or her  
3 position to put pressure on him and sort of  
4 inconsistent with his testimony on redirect  
5 examination when he indicates that he felt pressure,  
6 that he felt he had no choice, and that he needed to  
7 answer him as much as he can.

8 I believe Sergeant Lee, and I think the  
9 testimony is clear, that he represented himself as a  
10 police officer, that he was there as a police officer  
11 as did Investigator Running, and that they were there  
12 to try to get information regarding this accident.

13 So for all of those reasons, I'm going to deny  
14 the motion to suppress, and we're going to allow in  
15 all parts of the interview of Mr. Yang at all times  
16 based on the fact that prior to 6:26 a.m. he was not  
17 in police custody for purposes of Miranda. I could  
18 go on and on and cite different decisions that the  
19 Supreme Court in Wisconsin or U.S. Supreme Court has  
20 used, but I think it's not necessary to do that, and  
21 my analysis today incorporates the frame work that I  
22 indicated.

23 I also for purposes of just maybe completing the  
24 record, there's been a lot of banter back and forth  
25 about whether or not the defendant had raised or

1 then.

2 THE COURT: Okay. So we'll turn the lights  
3 back on and video is done. If you want to bring up  
4 Exhibit 17, Mr. Fredrickson, and we'll --

5 ATTORNEY FREDRICKSON: Did I have the  
6 sleeve?

7 ATTORNEY SCHNEIDER: It's right here.

8 THE COURT: Give it to the clerk.

9 Mr. Carroll, are you arguing this or is --

10 ATTORNEY CARROLL: I'm going to argue it,  
11 Your Honor.

12 THE COURT: Okay. So earlier I'd asked if  
13 there's anything more that you wanted to say or  
14 argue.

15 Here are my thoughts. I'm not going to go back  
16 and repeat everything that was said at the time of my  
17 decision, and with that being said, there obviously  
18 must be either some confusion or some jockeying about  
19 some of the issues that were brought up in the motion  
20 for reconsideration.

21 I did review Exhibit 14 in its entirety as well  
22 as all exhibits, and I'm pretty certain that what we  
23 just watched on Exhibit 17 was something that I had  
24 seen if it was part of Exhibit 14, and there was  
25 nothing that I watched on what was marked as Exhibit



1 17 which in my opinion was a new issue or a surprise  
2 or something that I thought changed the logic or my  
3 analyzing of the issue. Most of those individuals,  
4 the pastor, the two sister-in-laws, the officers all  
5 testified at the motion hearing too, so I had  
6 opportunities to watch them and listen to them during  
7 both direct and then cross-examination as it related  
8 to those issues, but go ahead, Mr. Carroll

9 ATTORNEY CARROLL: Yeah, Your Honor, I  
10 want to -- I know the Court in its ruling on page 11  
11 of the May 12 transcript points out that the facts  
12 really aren't in dispute in this case as far as this  
13 custody issue goes.

14 The reason that we brought the motion is that  
15 we, we believe -- first of all, we were in the City  
16 of Neenah for the medical treatment. We weren't in  
17 Little Chute, so we had Fox Valley Metro Police in,  
18 at the hospital. Officer Tripoli who works for Fox  
19 Valley Metro was instructed to follow the pastor and  
20 the defendant from the residence in Little Chute to  
21 the hospital, so right from the get-go, they knew  
22 that the pastor was his ride home, okay.

23 There are a total of eight officers from Fox  
24 Valley Metro that are in the Neenah Police  
25 Department. The Court made a finding that the

1 hospital was in lockdown which was somehow  
2 independent of what the police investigation. If you  
3 reviewed these clips, there's I believe one gentleman  
4 from the hospital that's actually even involved in  
5 this. The entire investigation is being directed by  
6 the Fox Valley Metro, and the Neenah Police are  
7 acting as guards. They're guarding the defendant.  
8 They're not preventing other people from seeing  
9 Pachia Lor. They're basically just preventing his  
10 movement, and that's clear from the video.

11 So your finding with all due respect of the  
12 hospital being in lockdown is really just a one-way  
13 restraint being placed on the defendant with the  
14 assistance of the hospital, if at all, and I didn't  
15 see one single hospital security guard throughout any  
16 of these tapes.

17 The first clip where, the first clips shows  
18 Tripoli immediately after the pastor arrived  
19 separating the pastor and putting him in the room, so  
20 there would be no reason at that point why he  
21 couldn't have sat with the pastor in the hallway. He  
22 clearly put him in a room by himself, and then the  
23 female guard from Neenah is there, Your Honor, and  
24 she testified that she wouldn't let him leave at the  
25 hearing. She's moving him away from the door in clip



1 number 2 and giving him water. They knew that the  
2 pastor was his ride home and they're telling him to  
3 leave. That's actually discussed with officer, the  
4 officer in the scene.

5 So at that point, they are separating him from  
6 the only means that he can leave the hospital. It's  
7 becoming more than just a lockdown where they're  
8 separating the victim and the suspect. They're  
9 actually preventing him, his means of leaving the  
10 hospital, Your Honor.

11 THE COURT: Let me just address that  
12 issue.

13 ATTORNEY CARROLL: Yeah.

14 THE COURT: Because I don't think I  
15 addressed that issue specifically in the sentencing  
16 or in that decision. I don't think it was argued,  
17 but first off, on that issue of, you know, telling  
18 the pastor to leave, doesn't the relevant  
19 determination is what does the defendant know or  
20 believe, right?

21 ATTORNEY CARROLL: Correct.

22 THE COURT: Okay. And so if the defendant  
23 isn't aware that that conversation is taking place  
24 and doesn't know where the pastor is or where the  
25 pastor went or that he was told to go home, does it

1 have any relevance on the issue of custody? Go  
2 ahead.

3 ATTORNEY CARROLL: He asked to see his  
4 pastor.

5 THE COURT: That's a different issue, but  
6 what --

7 ATTORNEY CARROLL: And they said --

8 THE COURT: What we just watched was a clip  
9 where the officer went 50 feet from the room where  
10 the defendant was, past the front desk to a couch  
11 over on the left, and I'm estimating 50 feet, might  
12 be 30, might be 60, and had a conversation which was  
13 rather soft, and I had trouble hearing it today. And  
14 the pastor was, you know, within a foot or two of the  
15 officer, and that was the conversation where they're  
16 giving an address and a telephone number, right?

17 ATTORNEY CARROLL: Correct.

18 THE COURT: Okay.

19 ATTORNEY CARROLL: Basically tell --

20 THE COURT: Don't you have to show that the  
21 defendant is aware of that and knew about that?

22 ATTORNEY CARROLL: I believe the defendant  
23 testified that he wanted his pastor to be there.

24 THE COURT: That's a different issue. The  
25 issue that you just argued is the officer telling him

1 to leave is somehow a factor in custody, and I think  
2 the issue is the defendant has to know that that  
3 happened, and the defendant didn't testify to that,  
4 he didn't testify I knew that my pastor was told to  
5 go home, but what I'd like you to do is analyze  
6 cause I think it can be said with each of those  
7 issues is we pick an issue and then we sort of twist  
8 it or spin it, and it all comes back to in my opinion  
9 it's, first of all, what does the defendant know and  
10 believe of a reasonable person in his shoes. And so  
11 my question to you, Mr. Carroll, is do you agree that  
12 that's the legal standard?

13 ATTORNEY CARROLL: Yes.

14 THE COURT: Okay. And is there any  
15 information in the record that the defendant,  
16 Mr. Yang, knew or had knowledge that that  
17 conversation took place?

18 ATTORNEY CARROLL: I think it's implicit in  
19 his statements that he wanted to see his pastor and  
20 wasn't permitted during the clips, that it's implicit  
21 that he was not being allowed to see his pastor.

22 THE COURT: Not being allowed him to see  
23 him is different than he was told to go home and now  
24 he's stranded there without a ride home.

25 ATTORNEY CARROLL: Yeah. I guess -- I



1 think that you could infer that if his --

2 THE COURT: Okay.

3 ATTORNEY CARROLL: I don't want to belabor  
4 those points, Your Honor. I just want to make them  
5 for the record.

6 THE COURT: I think for the record we need  
7 to stretch out exactly what's being said.

8 ATTORNEY CARROLL: Right.

9 THE COURT: So I'm making a finding today,  
10 for example, if I didn't make it before that Mr. Yang  
11 had no knowledge of that interaction between law  
12 enforcement and the pastor and didn't have any  
13 knowledge that the pastor had left or didn't know  
14 where the pastor was. The pastor might have been  
15 sitting on that couch, pastor might have been up in  
16 the room with Ms. Lor, might have been praying at the  
17 chapel at the hospital or anywhere else at all times  
18 unless you can tell me something is different.  
19 Any -- and do you have any information to suggest  
20 that it's different?

21 ATTORNEY CARROLL: Can Mr. Fredrickson  
22 comment on this, Your Honor?

23 THE COURT: Sure.

24 ATTORNEY FREDRICKSON: The only thing I can  
25 think of that's in the record at this point is that

1 throughout the night, Zohn continually asked for his  
2 pastor. He was told that he could not see his pastor  
3 after I believe it's eight hours. I believe that  
4 it's implicit that he would conclude that his pastor  
5 isn't going to be around or is no longer there  
6 because he's been denied for eight hours the right to  
7 see him.

8 THE COURT: Okay.

9 ATTORNEY FREDRICKSON: I think that that's  
10 all that's in the record at this point.

11 THE COURT: Okay. And then the second  
12 question on that topic that you just raised,  
13 Mr. Carroll, relating to that communication between  
14 the officer and the pastor is if he comes back to the  
15 common sense sort of analysis, and this is, I think I  
16 made findings on this but maybe I didn't. If  
17 Mr. Yang was allowed to leave that room that he was  
18 in, I'm convinced that he would have either stayed at  
19 the hospital or made efforts to go up to the area  
20 where Mrs. Lor was at or having surgery, that -- and  
21 maybe he would have tried to run out the door, I  
22 don't know, but he came to the hospital voluntarily  
23 meaning he came there to continue to gather  
24 information or provide support regarding Ms. Lor. He  
25 did that without any police involvement as I think I

1 found or police encouragement.

2 So I'm not convinced that even had he walked out  
3 of that room and had an option to turn left to go  
4 outside and go home or turn right to go up to watch  
5 Ms. Lor, I'm not convinced that he was stranded at  
6 the hospital. I think his intent was to be at the  
7 hospital, and prior to the time that he was a patient  
8 or even during the time that he was a patient, he was  
9 admitted in, or subsequent to being discharged, I  
10 think his mindset was to be at that hospital to  
11 provide support or care for Ms. Lor or for some other  
12 reason. Are you saying that's different, that he  
13 wanted to get --

14 ATTORNEY CARROLL: Your Honor, we're not  
15 disputing that he cared about what was going on with  
16 his wife, but the fact that the officers are  
17 directing his movements throughout the hospital means  
18 it's a factual analysis whether or not a reasonable  
19 person would think they were in custody. The fact  
20 that he wanted to see his wife without them being  
21 involved really doesn't tell you whether or not he's  
22 in custody. I mean, that's not the issue. The issue  
23 is what constraints were put on him, so with all due  
24 respect --

25 THE COURT: But let me just conclude that,



1 because I think the important part of that is where  
2 those things merge. His mindset in being at that  
3 hospital and in parts of that hospital to be in  
4 contact with Ms. Lor or to support Ms. Lor were in  
5 conflict with the lockdown that was put in place by  
6 the hospital, correct?

7 ATTORNEY CARROLL: Right, but one of the  
8 findings you made was that every, not everybody was  
9 free to walk around. That, that finding with all due  
10 respect is not correct, because the sisters were  
11 allowed to see Pachia based on their testimony after  
12 she got out of surgery, and he was not allowed to do  
13 that. So the only person who was not free to walk  
14 around was him.

15 THE COURT: I -- well, I think the video  
16 that you just showed us when the two sister-in-laws  
17 walked in, it was clear to me that they weren't free  
18 to walk around.

19 ATTORNEY CARROLL: At the beginning, that's  
20 true.

21 THE COURT: Right?

22 ATTORNEY CARROLL: Yeah.

23 THE COURT: And then I thought -- let me  
24 just go back through my notes -- but I thought at --  
25 well, let me just follow through with what you said,

1 Mr. Carroll. They walk in the door of a lockdown  
2 hospital, and I think they were treated that way.  
3 You could tell the officers were there, the  
4 sister-in-laws tried to make a call and in fact made  
5 a call. They got information, they continued  
6 communication with law enforcement and then somehow  
7 that video went off, but at some point they went up  
8 to the room or to the area where Ms. Lor was, and I  
9 believe Ms. Her, and it's M-A-I, H-E-R, testified on  
10 January 21 at the motion hearing. Her testimony was  
11 that when she arrived at the hospital, law  
12 enforcement officers told her that she could not  
13 contact the defendant. She then sat with other  
14 family members. She testified that she could see the  
15 door was open and that she stayed until 7:00 or 8:00  
16 in the morning. On cross-examination, she testified  
17 that she went to see Ms. Lor before the surgery. She  
18 stayed with her until Ms. Lor went into surgery.  
19 Then she stayed in another waiting room. That's the  
20 testimony that I have.

21 ATTORNEY CARROLL: Correct. Could  
22 Mr. Fredrickson speak to that, Your Honor?

23 THE COURT: Sure, but before I -- I mean,  
24 that's my notes from her testimony, and again, if I  
25 didn't specifically find this the day I made the



1 decision, it's just because of the multitude of  
2 testimony and issues; but I was of the opinion that  
3 because of the lockdown, movement by individuals in  
4 that hospital was limited, and eventually she was  
5 allowed up to that area because Ms. Lor approved it.  
6 That's what I understand; and I don't have that  
7 written down necessarily, but it's somewhere in the  
8 testimony I think that came out; and that was the  
9 intent of my finding.

10 ATTORNEY FREDRICKSON: There's just small  
11 things that I'm noticing that aren't being addressed  
12 and I think that are the critical to point out.

13 THE COURT: Okay.

14 ATTORNEY FREDRICKSON: First off, Mai. Her  
15 when she walked into the hospital, she didn't  
16 encounter any officers. It wasn't until she turned  
17 right to go into the room where Zohn was that she was  
18 met at the doorway and excluded from the room. In  
19 that video it shows the officer close the door behind  
20 her, so I don't know that's inconsistent with Mai's  
21 testimony that the door was open, but the video shows  
22 the door is closed behind the officer.

23 From that point Mai and her sister are directed  
24 to where the rest of the 10 to 15 family members are  
25 waiting, and I think what we're looking at here is

1 the effect of the officers to affect the thoughts and  
2 movements of Zohn Yang. There's no question in my  
3 mind that Zohn wanted to be by the rest of his family  
4 at this time, and it was because of the discussions  
5 with Officer Tripoli telling him he couldn't go  
6 there, the fact that the officers all guard the door  
7 when somebody else comes in, you saw two different  
8 people. You saw a religious man from the hospital  
9 come in and asked if he could talk. He was directed  
10 out of the room firmly.

11 Mai and her sister show up. Officer meets her  
12 at the door, walks her out of the room, closes the  
13 door behind her and then directs them to where the  
14 rest of the family is. That's where Zohn wanted to  
15 be at that time, but he was directed by eight  
16 officers when he came into the hospital into that  
17 other room.

18 So then we get to the issue of whether or not  
19 Mai was allowed to see her sister or whether or not  
20 there was a clearance order for that. It's my  
21 understanding none of that happened. My  
22 understanding is the rest of the family waited in the  
23 general waiting area like everybody else would have  
24 done. Zohn when he came was met with eight officers  
25 who were in constant contact with them throughout the

1 night, sat into a separate room, told he couldn't  
2 leave. When he asked to leave, he was guarded out of  
3 the room. They made sure that he couldn't escape.  
4 There was testimony from the Neenah officer that said  
5 she would have used force to stop him.

6 When we look at the fact of whether or not Zohn  
7 thought he would be free to move like the rest of his  
8 family, there's no doubt in my mind that he was not  
9 free to move the rest of the way, the rest of his  
10 family was, and we look at the order of the  
11 protection between Pachia and Zohn. However, we see  
12 a step beyond that in that Zohn isn't allowed to see  
13 any of his family in addition to Pachia. If the only  
14 order is to stop Pachia from seeing Zohn, then the  
15 police could have just stopped that by guarding  
16 Pachia's door or watching Zohn with the rest of his  
17 family. There's a clear intent to interrogate him at  
18 this point in my view.

19 THE COURT: Clear intent to intimidate.

20 That --

21 ATTORNEY FREDRICKSON: Interrogate.

22 THE COURT: I mean, interrogate. That  
23 seems ridiculous.

24 ATTORNEY FREDRICKSON: How is it?

25 THE COURT: They didn't interrogate during



1 that time, did they?

2 ATTORNEY FREDRICKSON: Neenah did ask him  
3 questions about the event, yes.

4 THE COURT: Okay.

5 ATTORNEY SCHNEIDER: I think Officer  
6 Trochinski's testimony was that she engaged in small  
7 talk with him. She didn't know any facts about what  
8 had happened --

9 ATTORNEY CARROLL: There was a report that  
10 wasn't provided to us after. It was provided after  
11 she testified that we provided to the Court where she  
12 actually took statements from, documented the  
13 statements that he made while in the room.

14 THE COURT: Okay. Ms. Schneider? Or I'm  
15 sorry? Mr. Carroll, you want to finish on --

16 ATTORNEY CARROLL: I just -- Your Honor,  
17 just a couple of points. You made a finding that he  
18 was not free to visit with or see the victim. That's  
19 true and it was because of the police, not the  
20 hospital. They delayed the discharge. The  
21 discussion with Mr. Running ended at 4:45 a.m. I  
22 believe it was, and up to that point nothing  
23 incriminating allegedly was said but he was still in  
24 the custody of the police being talked to. You can  
25 see in the video that he's hooked up to the machine.

1 Even though the hospital has told them, told the  
2 officers that we'll delay the discharge so that you  
3 can talk to him, so that I think that's another  
4 indication of custody.

5 You made a finding that prior to the med -- this  
6 is on page 15 -- prior to the medical people, line  
7 19, medical people being done with their observations  
8 or testing of him, I think it's important to indicate  
9 that none of that was caused by law enforcement or  
10 attributed to any of the comments that law  
11 enforcement made. They contributed directly in the  
12 video to extending his discharge, and once he is  
13 actually discharged after speaking to --

14 THE COURT: Let me just interrupt you,  
15 Mr. Carroll, so we're not twisting stuff. The video  
16 that I just watched regarding that issue involved  
17 communication between the officer and a male hospital  
18 person, and then towards the end of the video a  
19 female joins in in the conversation. And I believe  
20 she then made a comment which was not solicited by  
21 law enforcement, not encouraged by law enforcement  
22 and not directed or advised, and her comment, I just  
23 wrote it down again, it said, so we will wait until  
24 you're done and then discharge him, something to that  
25 effect.

1 ATTORNEY GARROLL: Right, exactly.

2 ATTORNEY FREDRICKSON: I believe the  
3 comment that was said was do you want me to wait to  
4 discharge him until you are done speaking to him.

5 THE COURT: Okay. Let's just twist it to  
6 say that that's what it is.

7 ATTORNEY FREDRICKSON: To which Running  
8 says yes.

9 THE COURT: Okay. And in order for my  
10 legal analysis would be did that, if that is in fact  
11 true, so the hospital person says do you want us to  
12 do this and the officer says yes, does that mean that  
13 the officer encouraged, advised, or directed the  
14 hospital to do something.

15 ATTORNEY FREDRICKSON: Taken in the context  
16 of that communication where he is asking the doctor  
17 at that point which I believe is Paul Doshier I  
18 believe it's his name, he asks him is there any  
19 elsewhere I can question him. He's informed that  
20 there's a family room. There's a brief discussion  
21 about the 20-some family members out there, and then  
22 he's inquiring as to whether or not there's anywhere  
23 else he can ask and asks specifically I believe if he  
24 can stay in that room which is agreed to. And then  
25 subsequently the nurse comes by, asks if he wants to



1 wait to discharge him to which Running says yes.

2 The police involvement here is asking whether or  
3 not he's being discharged, being told he is, and then  
4 negotiating with the doctor and the nurse to make  
5 sure that he stays in the room. Absent Detective  
6 Running's talk with the hospital staff there, he  
7 would have been discharged. He would have been given  
8 his paperwork, but because of his statements, because  
9 of that interaction, hospital staff was never able to  
10 actually relay the discharge. In fact, they were  
11 waiting until the police conduct ended to do so.

12 THE COURT: Okay. Why don't we put Exhibit  
13 17, we'll put that slide again. And I'm actually  
14 going to have the court reporter to the best of her  
15 ability make it as part of the record and put in the  
16 transcript the actual words that are being said.

17 ATTORNEY CARROLL: Can we let her do that  
18 on her, out of court? It's going to probably be  
19 pretty difficult.

20 THE COURT: Okay.

21 ATTORNEY FREDRICKSON: You're asking to  
22 play the effect that the video under Exhibit 17  
23 entitled effect on discharge, right?

24 THE COURT: I'm not exactly sure what it's  
25 titled, but it's, the where the communication that we

1 were just talking about.

2 ATTORNEY SCHNEIDER: Off the record.

3 THE COURT: I don't want her to touch it up  
4 later on, because then there's going to be a  
5 suggestion that I had something to do with it or that  
6 somebody else influenced it, but we're all trying to  
7 listen to what's being said and I think we may hear  
8 it different, but I actually thought it was pretty  
9 clear.

10 ATTORNEY FREDRICKSON: Do you mind if I  
11 skip to the part where we're talking about or do you  
12 want me to --

13 THE COURT: I think we just listen to the  
14 whole snippet since he said put it into context.

15 ATTORNEY FREDRICKSON: Okay. That makes  
16 sense.

17 (Video played.)

18 "Discharge the defendant being to surgery  
19 comes out. Okay. I don't know if this is the right  
20 one."

21 ATTORNEY FREDRICKSON: Yeah. This is --

22 "She's in surgery." (Inaudible.)

23 ATTORNEY FREDRICKSON: What he writes is  
24 kind of important too.

25 THE COURT: All right. Now getting to the



1 part where the officer is going out to the hospital  
2 people.

3 "Is he being discharged right now? Oh, okay.  
4 So I need to talk to him. Is there a room in the  
5 hospital 'cause I want to better, off just -- There's  
6 a family room? Okay. That's in the waiting area?  
7 Yeah. Okay, 'cause there's a good 20 family members  
8 sitting out there right now too. (Inaudible) Yeah,  
9 if you wouldn't mind. Yeah, that's fine.  
10 (Inaudible) Okay. If something comes up, just let  
11 me know and I can go to a different room. Okay. Do  
12 you want me just to wait until you're done and then I  
13 can discharge him from there? Yeah. That works.  
14 All right. Thank you. Are you trying to stick  
15 around or -- do you want me to stick around or not?  
16 If you don't mind 'cause I'm waiting for --"  
17 (Inaudible.)

18 THE COURT: That's enough of what I was  
19 trying to accomplish. We'll push --

20 ATTORNEY FREDRICKSON: Just two brief  
21 comments.

22 THE COURT: Well, first of all, I'm just  
23 going to clarify that I think what she indicated as  
24 she stood up is do you want us to wait until you're  
25 done and then discharge him then? And his answer

1 was, I think his answer was yes, if that works or  
2 something.

3 ATTORNEY FREDRICKSON: Yes.

4 THE COURT: Okay.

5 ATTORNEY SCHNEIDER: Just for the record,  
6 we played the snippet to an ending point of 01:58.

7 THE COURT: I agree. All right. So  
8 Mr. Fredrickson, you can have a seat, and then any  
9 other argument, Mr. Fredrickson or Mr. Carroll?

10 ATTORNEY FREDRICKSON: Just briefly, the  
11 two points that I had from the video. On the pad,  
12 you can see Doctor or Detective Runkling writing wants  
13 to see wife at the beginning of that communication  
14 and then at the end of this part where we stopped the  
15 video, he does tell Zohn that he's not discharged  
16 from the hospital, he's technically still a patient,  
17 and Zohn is still hooked up to the machines in the  
18 hospital.

19 THE COURT: So when he wrote down wants to  
20 see wife, had the officers all left the hospital at  
21 that time?

22 ATTORNEY FREDRICKSON: No. Actually he's  
23 telling another officer to stay right here.

24 THE COURT: No. I'm speaking, Mr.  
25 Fredrickson -- see, you're so argumentative that

1       you're not even listening to what my questions are.  
2       If the officers would have said he wants to see wife  
3       and they all leave, would he have been allowed to go  
4       up to see his wife?

5               ATTORNEY FREDRICKSON: No.

6               THE COURT: Because the hospital would not  
7       have allowed it.

8               ATTORNEY FREDRICKSON: But he would have  
9       been allowed to go by his family.

10              THE COURT: Okay, but his wants don't  
11       necessarily matter. They're not being limited  
12       exclusively by law enforcement.

13              ATTORNEY FREDRICKSON: I --

14              THE COURT: Right?

15              ATTORNEY FREDRICKSON: I think they are.

16              THE COURT: Okay. So he wants to go see,  
17       would he have been allowed to go see his wife  
18       according to the hospital people?

19              ATTORNEY FREDRICKSON: No, but if he wanted  
20       to go and see his family, the police officers are  
21       stopping him from doing that in my eyes.

22              THE COURT: Understood, and you've said  
23       that now three times, but his want that you just  
24       argued was to see his wife, not his family, right?

25              ATTORNEY FREDRICKSON: Right.



1 THE COURT: And that was limited by the  
2 hospital.

3 ATTORNEY FREDRICKSON: Correct.

4 THE COURT: So your client's wants at that  
5 time which really don't matter in terms of custody,  
6 but his want had nothing to do with the limitations  
7 put on by law enforcement. It was the hospital  
8 wouldn't have let him do it anyway based on safety of  
9 the patient, Ms. Lor.

10 ATTORNEY FREDRICKSON: I understand that as  
11 far as the wife, but as far as where he would have  
12 been otherwise, I think it's different.

13 THE COURT: Understood, but his writing is  
14 important.

15 ATTORNEY FREDRICKSON: I think it is.

16 THE COURT: Okay. Anything else,

17 Mr. Carroll or Mr. Fredrickson?

18 ATTORNEY CARROLL: Just one final point,  
19 Your Honor. On page 19, you made a finding that Yang  
20 was given his discharge papers and went to the  
21 restroom and back to the room that he was in.  
22 Investigator Running indicated that he was never  
23 directed by, Mr. Yang was never directed by law  
24 enforcement where to stay. One of those clips, I  
25 think it was number 6, he specifically says you're



1 coming with me and directs him into the other room,  
2 you're coming with us.

3 THE COURT: You mean that we just showed  
4 today?

5 ATTORNEY CARROLL: When the discharge was  
6 delayed, he said you're coming with us and brought  
7 him into the separate room, so he clearly was --

8 THE COURT: I don't think that was shown,  
9 and I don't -- Mr. Fredrickson, do you agree that  
10 wasn't shown?

11 ATTORNEY FREDRICKSON: I believe there is a  
12 video that he's talking about that was shown. I  
13 just -- I think there's a --

14 THE COURT: It's not part of Exhibit 17.

15 ATTORNEY FREDRICKSON: Yes. I think he's  
16 talking about the first video clip or one of the  
17 first video clips where the Neenan officer directs  
18 Zohn, he's sitting next to the room and then tells  
19 him to move across the room and into another chair.

20 THE COURT: Okay. That wasn't at the time  
21 of discharge.

22 ATTORNEY FREDRICKSON: And then at that  
23 time of discharge, there's a communication again  
24 between Detective Running and Zohn saying, hey,  
25 you've already been discharged, right, and then Zohn

1 looks around. And you can hear Detective Running go  
2 and talk to the nurse and check that he's been  
3 discharged at that point. Those are the observations  
4 I've made.

5 THE COURT: Okay. Did your client  
6 understand all those conversations in English with  
7 the officer? When the officer said to him you're  
8 discharged, since we're trying to understand his  
9 mindset, is his position on the defense because now  
10 he needs an interpreter 'cause he doesn't understand  
11 English, did he understand that or not?

12 ATTORNEY FREDRICKSON: Here's my  
13 understanding of Zohn's interpretation difficulties.  
14 I think that he does understand let's say 90 percent  
15 of what's going on. He can communicate effectively  
16 in English. He can understand effectively in  
17 English. However, I have seen him on the stand where  
18 he has not totally understood things. I think that  
19 the majority of what was said that day he does  
20 understand, yes.

21 THE COURT: Okay. So when the officer went  
22 in and said whatever it is that you just said the  
23 officer said, your position is that Mr. Yang actually  
24 understood that even though it was in English?

25 ATTORNEY FREDRICKSON: Yes.

1 THE COURT: Okay. And he understood, like,  
2 when the officer's writing down wants to see wife,  
3 your client was communicating in English pretty  
4 clearly what his wants were.

5 ATTORNEY FREDRICKSON: All of the  
6 communications with the Detective Running were in  
7 English.

8 THE COURT: And your client's position is  
9 not only was he communicating in English but he  
10 understood what was being said in English.

11 ATTORNEY FREDRICKSON: For the most part,  
12 like I said, about 90 percent of everything he does  
13 understand, yes.

14 THE COURT: Okay. All right. Mr. Carroll?

15 ATTORNEY CARROLL: That would be it, Your  
16 Honor.

17 THE COURT: Ms. Schneider?

18 ATTORNEY SCHNEIDER: I'll just be very  
19 brief. I think you look back at our response and  
20 some of the factors that I know the Court noted. The  
21 course of this setting, length of time, threats or  
22 promises. You look at the personal characteristics  
23 of the defendant.

24 I thought it was interesting, and I don't want  
25 to have to have us replay this, but the



1 sister-in-laws get there, their comment was we're  
2 here to see his wife, not we're here to see him or we  
3 want to go in and see him, and their whole next  
4 communications were about trying to find the kids  
5 that they thought were still at the hospital.  
6 There's a phone call. They then realize the kids are  
7 gone, have left to go back to get the girls who were  
8 at the house in Little Chute, but their focus wasn't  
9 we want to come and see him. We want to find his  
10 wife or we're here to see his wife. Is how they made  
11 their initial comments.

12 I would like them to -- and I don't need this --  
13 there are not eight officers from Fox Valley Metro in  
14 these videos, there are not eight officers from  
15 Neenah Police Department in these videos. I don't  
16 even think combined between Neenah and Metro there  
17 are. There's one individual in one of these videos  
18 who asks the officers for his name. He's a hospital  
19 security staff. He wears a sweater and much of the  
20 same garb that you would see on a police officer, but  
21 if we're going to qualify people as the right people,  
22 it's not eight officers.

23 I think your questions about him understanding  
24 English, we got to remember, he's someone who I think  
25 was in our National Guard and was active at the time.



1 I really doubt someone with some deficiencies in the  
2 language would be allowed to participate in that  
3 capacity. I also know from us submitting his  
4 UW-Platteville records, he asked for a foreign  
5 language waiver because he was fluent in Hmong but  
6 also fluent in English, so I don't think there's been  
7 a reason or a basis for the Court to make any changes  
8 in its original decision.

9 THE COURT: All right. Well, the motion  
10 for reconsideration raises several specific  
11 arguments, and as I indicated at the beginning of  
12 this issue today, the original motion to suppress  
13 involved hours and hours of testimony from a lot of  
14 witnesses, 16 different exhibits and videos and  
15 photographs which I attempted to analyze and make  
16 determinations on regarding credibility and other  
17 factual findings. And to the extent that my original  
18 decision did not include things specifically, I would  
19 hope that the entirety of the decision answered them,  
20 and I think it's important to understand a couple of  
21 things in this case.

22 First off, Mr. Yang went to the hospital  
23 voluntarily. He went on his own without any police  
24 force threat or coercion. Second, the hospital was  
25 put on lockdown as I understand it based on the

1 comments that Ms. Lor made as she was being  
2 transported to the hospital. That lockdown was done  
3 for safety reasons and was not related to any police  
4 or law enforcement involvement or coercion or  
5 thoughts.

6 There was testimony at the motion hearing that  
7 when lockdowns are put in place at Theda Clark  
8 Hospital, the Neenah Police Department gets involved.  
9 That makes sense. I think it's big picture. I think  
10 it's clear that everybody at that hospital during the  
11 lockdown was treated in accordance with whatever  
12 policies and procedures were used to not only enter  
13 the hospital but also to limit and monitor movements  
14 throughout the hospital, and all of that was done not  
15 with any intention of hurting Mr. Yang or taking away  
16 any constitutional rights or other arguments that he  
17 has because we know had he not voluntarily gone to  
18 the hospital, he wouldn't have been subject to the  
19 lockdown policies and procedures but it was his  
20 voluntary decision to go there that put him in place  
21 of that decision, but the lockdown and the policies  
22 and the procedures that limited the movement of  
23 individuals and the entry of individuals into that  
24 hospital was done to maximize the protection and the  
25 safety of all patients, specifically Ms. Lor who had

1 just been involved in a very serious incident and was  
2 at the hospital receiving serious treatment.

3 I think it's also important to remind ourselves  
4 or take into consideration when we're doing this that  
5 Ms. Lor made comments to hospital staff that she was  
6 of the opinion that Mr. Lor did this or that Mr. Yang  
7 did this intentionally. That was testified to,  
8 that's factual, and I think it's then fair to say  
9 that Mr. Lor or Mr. Yang is treated somewhat  
10 different than other individuals that would enter a  
11 lockdown place, not because of law enforcement's  
12 decision but because of the hospital's decision and  
13 policies and procedures to protect the safety of  
14 people.

15 Now, Ms. Schneider, I thought your comments were  
16 right on point as it relates to the sister-in-laws is  
17 that when, but more important and it was consistent  
18 with everything in the video, is when the pastor from  
19 the hospital came over to the room and wasn't allowed  
20 entry into the room, his movements were limited. The  
21 pastor's movements were limited. Why? Because there  
22 was a lockdown in place and there was an allegation  
23 or a suggestion by a victim that her husband tried to  
24 do something intentionally, and I think law  
25 enforcement officers were there, specifically that



1 lady from the Neenah Police Department and the other  
2 individuals in the video to assist Theda Clark  
3 hospital in monitoring that lockdown. So when the  
4 sister-in-laws came into the hospital, I think it's  
5 real clear just on the snippet that we watched on  
6 Exhibit 17 that their entry and movements were  
7 restricted from the moment they walked in. They  
8 were, they stood right in that main area for a few  
9 times, they made calls, and they had communication  
10 with officers.

11 At some subsequent point to the testimony of  
12 Ms. Her, she was allowed to go up to the area where  
13 Ms. Lor was before surgery, so -- somehow and I don't  
14 know the details of it and I don't care to guess --  
15 but at some point people made determinations,  
16 probably based upon the patient's interest that it  
17 was appropriate or best to allow the two  
18 sister-in-laws into the area where Ms. Lor was.  
19 Those decisions as I know, I don't know if they had  
20 anything to do with law enforcement or not, and quite  
21 frankly, I don't know if it matters other than to  
22 support this whole theory that things were being  
23 limited in the hospital.

24 There's no doubt that Mr. Yang was told to move  
25 from one couch to the next couch, was in that area,



1 and when he -- I think another important point is  
2 when he went to the bathroom and he shut the door in  
3 the video that was just shown, and again, I didn't  
4 touch on this when I made my original decision  
5 because I think to do so would have been an  
6 eight-hour decision, but then the officers talked  
7 about is there a method to escape, is that right,  
8 Mr. Fredrickson?

9 ATTORNEY FREDRICKSON: That's what they  
10 say, yes.

11 THE COURT: Okay. And that's supposed to  
12 be a big deal, and I sit there and think, well,  
13 Mr. Yang didn't hear that so it doesn't matter. Law  
14 enforcement officers can talk and strategize and  
15 theorize as it relates to custody in these issues,  
16 but I believe it's only those things that are  
17 communicated in the presence of that individual or  
18 that would have an impact on his mindset that  
19 mattered. So when he goes to the bathroom and the  
20 door is shut and there's no information that he was  
21 able to hear these communications, any talk about can  
22 he escape, is there a back doorway, is there any way  
23 out, if he does I'm going to tackle him and I'm  
24 making it up, all that stuff doesn't matter. He  
25 didn't hear it.

1 Did law enforcement, did they have concerns at  
2 that point about his ability to escape? His ability  
3 to move from one, from that bathroom area to a  
4 different area of the hospital, I would expect they  
5 did. Why? Because of what I just covered with the  
6 hospital policies and procedures as well as whatever  
7 else was going on, but none of that was heard by  
8 Mr. Yang, so I don't think it matters as it relates  
9 to the pending motion.

10 I think with all of that being said -- well, I  
11 think the last area that I need to address just out  
12 of fairness is that there's this suggestion that law  
13 enforcement officers had some impact on the decisions  
14 being made by hospital staff in terms of Mr. Yang's  
15 discharge time or how he was treated as a patient. I  
16 think the undisputed testimony was that at some point  
17 during the hospital stay, Mr. Yang admitted himself  
18 as a patient due to his own medical concerns, and  
19 when that decision was made, I believe I found but if  
20 I didn't say it I'll say it again, I don't think that  
21 had anything to do with law enforcement, coercion or  
22 force or threats. I think it was a decision that  
23 Mr. Yang made voluntarily, that he made on his own  
24 without any police force, and he did it because  
25 either he was taking or he was trying to create some

1 issue or he genuinely had concerns about his health.  
2 I don't know what his mindset was, but it was his  
3 decision. And when he makes that decision, he then  
4 became a patient of the hospital and then he's  
5 subject to certain rules that the hospital has  
6 including remaining a patient until he's discharged.

7 The comments that were suggested by that snippet  
8 of the video from the nurse that we talked about, in  
9 my opinion the officers did not give direction or  
10 encourage or advise the hospital in any way on how to  
11 treat Mr. Yang as a patient or on how long he would  
12 be a patient. I think if there's a suggestion that a  
13 hospital nurse or some hospital staff person was  
14 making medical decisions for Mr. Yang as an agent of  
15 law enforcement in an effort to prolong the hospital  
16 stay so that it avoided this appearance of custody, I  
17 think they're unfounded, and that includes all the  
18 videos that I watched, not just the snippet, but even  
19 if you take the snippet, it's clear that the officer  
20 communicates to the staff that the officer is  
21 interested in meeting with Mr. Yang and wants to use  
22 some area of the hospital, and the first mention I  
23 remember is the nurse saying do you want us to wait  
24 until done and then discharge him, and the officer  
25 said something to the effect of that's fine. So that



1 wasn't suggested or encouraged or directed by law  
2 enforcement. That was something that the staff  
3 asked. If we were watching the video today and the  
4 staff said we're going to discharge him now and law  
5 enforcement persuaded or threatened or forced them to  
6 do something different, I would maybe make a  
7 different factual finding, but that's not the case  
8 considering not only the video we watched but all of  
9 it.

10 So for all of those reasons, the motion for  
11 reconsideration is denied. I'm going to stand by the  
12 findings and decisions that I made back at the time  
13 that I made my original decision as well as the  
14 information that was presented in the subsequent  
15 briefs and filings and on the record here today.

16 Anything else, Ms. Schneider?

17 ATTORNEY SCHNEIDER: Just one other thing I  
18 thought of related to trial, and I think this has  
19 been my experience with this court and others. If  
20 the parties are going to use any items, any videos or  
21 photos or play anything, we should make sure we have  
22 a hard copy we can mark and move and use as an  
23 exhibit 'cause it's much better for the appeal record  
24 than playing things off of laptops that are on, like,  
25 the hard drive of the laptops 'cause my opinion then