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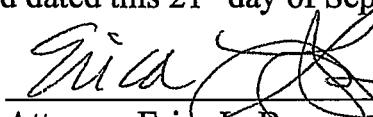
CERTIFICATION OF FORM OF APPENDIX

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 21st 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

Cir. Ct. No. 2015CF347

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ZOHN WANG KUB YANG,

DEFENDANT-APPELLANT.

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

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, Chou
6 Xiong, Mai Her, and Mai Lee, Mai Yang, and Sergeant
7 Wang Lee testified again, and their testimony was
8 part of the 148 pages transcript, and then just a
9 few weeks ago on April 11, 2019, Officer
10 Kochanski and Officer Vatschynski testified.
11 I've had the opportunity to review the 160-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, Mai Yang, and
15 Investigator Running to a small extent, again, no
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 Oettl 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 I've been told, that he was not in custody and then the fact that the pastor
10 transported Mr. Yang to the hospital, that there is no
11 encounter 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.

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. Tonkoski, 2010 WI 10, 319 Wis. 2d 529
18 provides, in part, here 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 all to the Martin decision from 2012. The
23 Tonkoski 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 decree 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 decree 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. (2004), CHAMBERS, hyphen
12 Carolina, State v. (undated), U-N-D-P-A-T-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 v. (2011), S-4-1-11, those
15 five decisions that I just indicated are all Court of
16 Appeals' decisions that have been decided since the
17 Monkski decision in 2013. Although some of them are
18 unpublished, I think the purpose is just to suggest
19 consistent with the published decision in the State
20 v. (2004) 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.

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

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

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

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

Mr. Yang has indicated he arrived at the hospital between 11:30 and midnight. He arrived there on his own free will. He arrived there without the assistance, advice, guidance, or suggestion of law enforcement, and he arrived and was transported without the supervision of law enforcement. There was no testimony to suggest that there was a law enforcement officer following him, there was a law enforcement officer monitoring their movements, or doing anything else up until the time that he arrived 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

closed, that he did not make any promises or threats,
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.

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
0 communication between Sergeant Wang Lee and Mr. Yang
1 that took place between 4:45 a.m. and 5:45 a.m.
2 approximately. As indicated, that conversation has a
3 transcript that I think provided part of the
4 communication. Sergeant Lee testified that he is a
5 detective with the Outagamie County Sheriff's
6 Department, that in his capacity as a detective, the
7 Sheriff's department, he was called in to participate
8 in the investigation of this incident, that he went
9 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 started 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 forget
15 it. As for the other person, I will kill the other
16 person, then kill yourself to end it, but then like
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 Lohoski 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 4:15 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 this 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.

I believe Sergeant Lee, and I think the
testimony is clear, that he represented himself as a
police officer, that he was there as a police officer,
as did Investigator Rummel, and that they were there
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 on 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 Tricoli 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

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 on 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. Lori, 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 soon 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 Honory, 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 is 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 Zonn 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 is 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.

When we look at the fact of whether or not John
thought he would be free to move like the rest of his
family, there's no doubt in my mind that he was not
free to move the rest of the way. The rest of his
family was, and we look at the order of the
protection between Pachia and John. However, we see
a step beyond that in that John isn't allowed to see
any of his family in addition to Pachia. If the only
order is to stop Pachia from seeing John, then the
police could have just stopped that by guarding
Pachia's door or watching John with the rest of his
family. There's a clear intent to interrogate him at
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.

ATTORNEY FREDRICKSON HOW TO

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 GARROLL: 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 GARROLL: 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 CARROLL: Right, exactly.

2

ATTORNEY FREDRICKSON: I believe the

3

comment that was said was do you want me to wait to
discharge him until you are done speaking to him.

4

THE COURT: Okay. Let's just twist it to

5

say that that's what it is.

6

ATTORNEY FREDRICKSON: To which Running

7

says yes.

8

THE COURT: Okay. And in order for my

9

legal analysis would be did that if that is in fact
true, so the hospital person says do you want us to
do this and the officer says yes, does that mean that
the officer encouraged, advised or directed the
hospital to do something.

10

ATTORNEY FREDRICKSON: Taken in the context

11

of that communication where he is asking the doctor

12

at that point which I believe is Paul Dosher I

13

believe it's his name, he asks him is there any

14

elsewhere I can question him. He's informed that

15

there's a family room. There's a brief discussion

16

about the 20-some family members out there, and then

17

he's inquiring as to whether or not there's anywhere

18

else he can ask and asks specifically I believe if he

19

can stay in that room which is agreed to. And then

20

subsequently the nurse comes by, asks if he wants to

21

45

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.

0 ATTORNEY FREDRICKSON: Do you mind if I
1 skip to the part where we're talking about or do you
2 want me to --

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

5 ATTORNEY FREDRICKSON Okay. That makes
6 sense.

7 (Video played.)

ATTORNEY FREDRICKSON yeah. This is

2 "She's in surgery" (Inaudible)

3 ATTORNEY FREDRICKSON: What he writes is
4 kind of important too.

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 here? 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 Bunting writing wants
13 to see wife at the beginning of that communication
14 and then at the end of this pass where we stopped the
15 video, he does tell Zorn that he's not discharged
16 from the hospital, he's technically still a patient,
17 and Zorn 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 see.

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 do 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. Ior.

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 I.

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 Neenah 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 or the defense because now
10 he needs an interpreter because he doesn't understand
11 English, did he understand that or not?

12 ATTORNEY FREDRICKSON: Here's my
13 understanding of John'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 CARRON: 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 no
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. Schuender, 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
0 with officers.

1 At some subsequent point to the testimony of
2 Ms. Her, she was allowed to go up to the area where
3 Ms. Lor was before surgery, so I somehow and I don't
4 know the details of it and I don't care to guess --
5 but at some point people made determinations
6 probably based upon the patient's interest that it
7 was appropriate or best to allow the two
8 sister-in-laws into the area where Ms. Lor was.
9 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 without 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 date or how he was treated as a patient.
16 I 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 faking 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
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 bindings 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