

STATE OF WISCONSIN

-VS-

FILED Plaintiff,

DA Case No.: 2015WB000639
Assigned DA/ADA: Thomas H. Frost
Agency Case No.: RM15-02926
Court Case No.:

Russell L Wilson
W5326 Klein St
Sarona, WI 54870

DEC - 4 2015

Karen Nord
CLERK OF COURT
WASHBURN COUNTY
SHELL LAKE, WI 54877

15 CF 163

SUMMONS

THE STATE OF WISCONSIN TO SAID DEFENDANT:

A complaint, a copy of which is attached, having been made accusing the defendant of committing the crime(s) of:

THE CRIME(S) OF:

DATE OF VIOLATION:
11/10/2015

CONTRARY TO WIS. STATUTE(S):
948.025(1)(e)

Repeated Sexual Assault of a Child

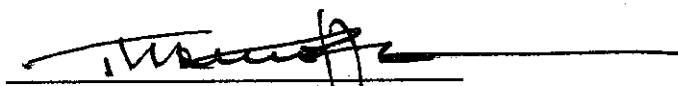
The original of such complaint has been filed in the office of the Clerk of Courts for Washburn County.

You, the defendant, are therefore summoned to appear before the Circuit Court – Criminal Division of Washburn County, at the Washburn County Courthouse, 10 Fourth Avenue, Shell Lake, WI 54871 on:

DATE/TIME: 12/07/2015 at 10:00 AM

And in case of your failure to appear, a warrant for your arrest may be issued.

Date: 12/4/15


Thomas H. Frost, District Attorney
State Bar No.: 1070451

Enc.

Date Mailed: 12/4/15

Please contact the State Public Defender's Office at **715-635-3770** to determine your eligibility for a Public Defender. If you do not qualify for a State Public Defender, you may petition the court for a court appointed attorney by contacting the Clerk of Court's Office at **715-468-4677**.

STATE OF WISCONSIN

-VS-

Russell L Wilson
W5326 Klein St
Sarona, WI 54870
DOB: 11/29/1966
Sex/Race: M/W
Eye Color: Brown
Hair Color: Black
Height: 5 ft 7 in
Weight: 160 lbs
Alias:

Plaintiff,

DA Case No.: 2015WB000639
Assigned DA/ADA: Thomas H. Frost
Agency Case No.: RM15-02926
Court Case No.:

ATN:

15 OF 163

FILED

DEC - 4 2015

Karen Nord
CLERK OF COURT
WASHBURN COUNTY
SHELL LAKE, WI 5487

Criminal Complaint

Defendant,

Shelly J. Kay of the Washburn County District Attorney's Office, on information and belief, being first duly sworn, states that:

Count 1: REPEATED SEXUAL ASSAULT OF A CHILD

The above-named defendant on or before Tuesday, November 10, 2015, in the Town of Sarona, Washburn County, Wisconsin, did commit repeated sexual assaults involving the same child, A.N.B., DOB 11/11/1999 where at least three of the assaults were violations of sec. 948.02(1) or (2) Wis. Stats., contrary to sec. 948.025(1)(e), 939.50(3)(c) Wis. Stats., a Class C Felony, and upon conviction may be fined not more than One Hundred Thousand Dollars (\$100,000), or imprisoned not more than forty (40) years, or both.

PROBABLE CAUSE:

A copy of the report of Deputy William Shafer of the Washburn County Sheriff's Department is attached and incorporated as if set forth more fully herein.

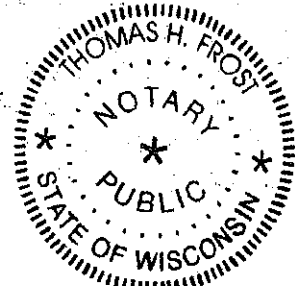
Based on the foregoing, the complainant believes this complaint to be true and correct.

Subscribed and sworn to before me, and approved for filing on:

Dated: December 04, 2015

Shelly J. Kay
Shelly J. Kay, Complainant

Thomas H. Frost
District Attorney Thomas H. Frost
State Bar No.: 1070451



INCIDENT REPORT NARRATIVE

AGENCY NAME: WASHBURN COUNTY SHERIFFS OFFICE	ORI #: WI0660000	REPORT DATE: 11/30/2015 9:52:54 AM	CASE NUMBER: RM15-02926
---	---------------------	---------------------------------------	----------------------------

Deputy Shafer's Report
RM15-02926

On November 30, 2015, at approximately 9:04 A.M. Deputy William Shafer received a call from Washburn County Health and Human Services Social Worker Hope Larsen. Social Worker Larsen advised Deputy Shafer that she received a call from the Shell Lake School District Guidance Counselor advising that she received information that RUSSELL L. WILSON DOB: 11/29/1966, W5326 Klein St., Sarona WI., 54870 has been sexually assaulting A [REDACTED] N. B [REDACTED] DOB: 11/11/1999, W5326 Klein St., Sarona WI., 54870. Deputy Shafer requested Social Worker Larsen to go to the Shell Lake High School and transport Ms. Benson to the Washburn County Sheriff's Office conference room for an interview.

A [REDACTED] B [REDACTED] INTERVIEW

At approximately 10:19 A.M. on this date Deputy Shafer met in the Washburn County Sheriff's Office conference room with Social Worker Larsen, Social Worker Julia Emch, and Ms. B [REDACTED]. Deputy Shafer notes that Ms. B [REDACTED] was able to determine the difference between the truth and a lie to Social Worker Larsen. Social Worker Larsen was primary for the interview, along with Deputy Shafer, and Social Worker Emch was an alternate. This interview was audio and video recorded, see attached.

Ms. B [REDACTED] advised that she lives with her mother, identified as MARGIE L. STRICKLAND DOB: 10/27/1963, W5326 Klein St., Sarona WI., 54870, her daddy, later identified as RUSSELL L. WILSON DOB: 11/29/1966, W5326 Klein St., Sarona WI., 54870, Smokey the cat, three dogs, a friend, later identified as ASHLEY N. TIELBUR DOB: 9/24/1990, W5326 Klein St., Sarona WI., 54870 (715)651-8206, and Ms. Tielbur's son, J [REDACTED] C. T [REDACTED] DOB: 2/13/2007, W5326 Klein St., Sarona WI., 54870.

Ms. B [REDACTED] advised that her mother works part time at Bud's Tool Rental in Rice Lake, Wisconsin. Mr. Wilson works part time on the farm. Ms. B [REDACTED] stated that her biological father, DAVID BENSON, passed away a few weeks ago. Ms. B [REDACTED] advised that her friend, Ms. Tielbur, works at Holiday in Spooner, Wisconsin, and J [REDACTED], who is 8 years old, attends Shell Lake Elementary School.

Social Worker Larsen provided Ms. B [REDACTED] two sheets with drawings on them, one being a picture of a boy and one being a picture of a girl. Ms. B [REDACTED] did identify all the body parts on the boy and the girl drawing. On the boy's private area Ms. B [REDACTED] called the boy private area a penis. On the girls private area Ms. B [REDACTED] identified the body parts as a vagina. On the picture of the boy's breast area Ms. B [REDACTED] called it the nipple. On the girls picture Ms. B [REDACTED] called the area the boobs.

Social worker Larsen asked Ms. B [REDACTED] if she knew why we were they and Ms. B [REDACTED] said because of having sex with dad. Social Worker Larsen asked Ms. B [REDACTED] if she remembered when this first happened. Ms. B [REDACTED] advised that it first happened before her birthday, a few weeks ago, and stated "he made me do it 'doggy style'". Ms. B [REDACTED] explained "doggy style" as having her hands on the bed, bent over, with her feet on the floor. Ms. B [REDACTED] stated that "doggy style" happened in the house in her parent's bedroom, with Mr. Wilson. Mr. Wilson advised Ms. B [REDACTED] "not to tell mom, and if you do, I will be mad at you". Ms. B [REDACTED] advised that when her mother got home, she told her mother. Ms. Strickland advised Ms. B [REDACTED] that if Mr. Wilson keeps it up she was going to turn him in.

Ms. B [REDACTED] stated that the next time she could remember having sexual intercourse with Mr. Wilson was during the summer time in their new house in Sarona, Wisconsin. Ms. B [REDACTED] advised that she was located on the couch reading a book. Mr. Wilson stated that he wanted sex. Ms. B [REDACTED] stated that she wanted to read a book. Mr. Wilson again stated that he wanted sex. At that time they both walked into the bedroom and had sexual intercourse on the bed in the "doggy style" position. Ms. B [REDACTED] advised that she did tell her mother about this incident.

Ms. B [REDACTED] also made a comment of a previous incident where Mr. Wilson used Ms. B [REDACTED]'s feet and placed her feet around Mr. Wilson's penis. The date of this occurrence is unclear but was described to happen in the house in Sarona, Wisconsin.

The third time that Ms. B [REDACTED] remembered this happening was this morning, November 30, 2015, at approximately 6:30 A.M. when Ms. B [REDACTED] was getting ready for school. Ms. B [REDACTED] remembers her mother, Ms. Strickland, being in the shower which is located in another room but attached to the parent's bedroom. Ms. B [REDACTED] advised that she was putting her boots on and Mr. Wilson came to her and said, "Sex". At that time Ms. B [REDACTED] and Mr. Wilson went into the bedroom and had "doggy style" sex. Ms. B [REDACTED] stated that she told her mother and her mother advised Ms. B [REDACTED] to tell the school counselor at school. Ms. B [REDACTED] also stated that Mr. Wilson advised her that they were going to have it again tonight.

Ms. B [REDACTED] stated that she was currently wearing the same clothes and underwear from after the incident occurred that morning. Ms. B [REDACTED] stated that her "butt" was wiped off with a white pair of long underwear that was located in the laundry basket in her parent's bedroom.

SHAFER, WILLIAM OFFICER	WSM ID	CONFIDENTIAL	DATE
----------------------------	-----------	---------------------	------

INCIDENT REPORT NARRATIVE

AGENCY NAME: WASHBURN COUNTY SHERIFFS OFFICE	ORI #: WI0660000	REPORT DATE: 11/30/2015 9:52:54 AM	CASE NUMBER: RM15-02926
---	---------------------	---------------------------------------	----------------------------

Deputy Shafer's Report

Ms. B. [REDACTED] was questioned as to how often this happens. Ms. B. [REDACTED] advised that it happens almost every night. Ms. B. [REDACTED] was questioned about who knows of the incidents. Ms. B. [REDACTED] replied that her mother knows, and the guidance counselor at school.

Ms. B. [REDACTED] advised that she has been having her menstrual cycle for approximately a few years. Ms. B. [REDACTED] also stated that she is on the birth control shot, later identified as the Depo-Provera shot. Ms. B. [REDACTED] advised that she is on the shot because she has sex with her dad.

Deputy Shafer concluded the interview with Ms. B. [REDACTED] at approximately 10:52 A.M. on this date.

MARGIE STRICKLAND INTERVIEW

On this same date Deputy Shafer conducted an interview in the Washburn County Sheriff's Office conference room with Ms. Strickland. Social Worker Larsen was primary for the interview, along with Deputy Shafer, and Social Worker Emch was an alternate. This interview was audio and video recorded, see attached.

Ms. Strickland advised that these incidents have been going on for five weeks, to the best of her knowledge, being located in Ms. Strickland's bed. Ms. Strickland advised that she has caught them a couple of times and started marking it with an "X" on a calendar. Ms. Strickland advised that when she caught her daughter, Ms. B. [REDACTED], and Mr. Wilson, Ms. B. [REDACTED] would be located on her back and Mr. Wilson would be on top of her. Ms. Strickland recalls the incident in this position as taking place on November 2, 2015.

Ms. Strickland clearly explained the marking of a small "X" on the calendar indicated that she caught Ms. B. [REDACTED] and Mr. Wilson together or her daughter would tell her that she had sex with Mr. Wilson. Ms. Strickland advised that the calendar is a 2015-2016 pocket calendar with a picture on it and that it was the size of a checkbook.

Ms. Strickland advised that she caught Ms. B. [REDACTED] and Mr. Wilson together last week in the same position. Ms. Strickland stated that she heard Ms. B. [REDACTED] state "No daddy, no daddy, it hurts". Ms. Strickland stated that she tried to stop it but Mr. Wilson threatened her and said that if Ms. Strickland said anything that she would go to jail.

Ms. Strickland advised that she has had side conversations with Mr. Wilson about sex with her daughter. Ms. Strickland advised Mr. Wilson no more of this. Mr. Wilson replied, "I will do whatever I want and if you contact the police you will go to jail too".

Ms. Strickland advised that her daughter and Mr. Wilson do not use protection. Ms. Strickland stated that she put Ms. B. [REDACTED] on the Depo-Provera shot due to the fact that she knew what they were doing, just in case. Ms. Strickland stated that Ms. B. [REDACTED] started the shot in September, 2015 and that she gets the shots every three months. Ms. Strickland stated that she started the shot three months ago because she suspected that Ms. B. [REDACTED] and Mr. Wilson were having sex. Ms. Strickland stated that she thought this due to the fact that Mr. Wilson did not want to have sex with her. Ms. Strickland advised that Ms. B. [REDACTED] has been having her menstrual cycle since the age of 11.

Ms. Strickland advised that Mr. Wilson attempted suicide approximately two to three weeks ago because he did not take his medications. Ms. Strickland advised Mr. Wilson used a hunting knife and verbalized to Ms. Strickland that he was going to cut his wrists. When Mr. Wilson heard that Law Enforcement was called he ran toward the woods with the knife. See Washburn County Sheriff's Office case number RM15-02473.

Ms. Strickland advised that Mr. Wilson takes Prozac for Anxiety, and Aspirin a day for his heart, and takes medication for his stomach, but Ms. Strickland did not recall the name of that medicine. Ms. Strickland advised that Mr. Wilson receives a monthly disability check in the amount \$725.00.

Deputy Shafer advised Ms. Strickland that he would be going to the residence to speak with Mr. Wilson. Deputy Shafer asked Ms. Strickland if there was anything inside of the residence that Deputy Shafer should be aware of, such as firearms. Ms. Strickland stated that the only weapons in the house are pellet guns and that Mr. Wilson also had knives.

Ms. Strickland advised that Mr. Wilson got Ms. B. [REDACTED] a cell phone, cell phone number (715)205-1226. Ms. Strickland stated that she was not aware of Mr. Wilson contacting Ms. B. [REDACTED].

Ms. Strickland advised that on this morning she told her daughter, "If you want this to stop" and then Ms. B. [REDACTED] replied, "I want it to stop Mom". Ms. Strickland advised that she started the shower in that bathroom connected to her bedroom and she heard Ms.

SHAFER, WILLIAM	WSHAF	
OFFICER	ID	DATE
CONFIDENTIAL		

INCIDENT REPORT NARRATIVE

AGENCY NAME: WASHBURN COUNTY SHERIFFS OFFICE	ORI #: WI0660000	REPORT DATE: 11/30/2015 9:52:54 AM	CASE NUMBER: RM15-02926
---	---------------------	---------------------------------------	----------------------------

Deputy Shafer's Report

B [REDACTED] state, "Are you almost done daddy it hurts".

Ms. Strickland was questioned about Ms. Tielbur's involvement. Ms. Strickland advised that Ms. Tielbur knows everything because she tells her. Ms. Strickland stated that she could remember a time when Ms. B [REDACTED] yelled from the upstairs to the downstairs, where Mr. Wilson was located, so that Ms. Tielbur could hear her, and stated, "Do you want sex daddy?" Mr. Wilson nodded. Ms. Strickland stated that Ms. B [REDACTED] went downstairs and had sex with Mr. Wilson. Ms. Strickland stated that Ms. Benson and Mr. Wilson have sex a couple of times a week.

Ms. Strickland was asked, "What do you think should happen to Mr. Wilson?" Ms. Strickland stated that he should go to jail for it, at least for a couple of months. Ms. Strickland stated that Ms. B [REDACTED] was 15 years old when this started. Ms. Strickland was then asked what the relationship was going to be with Mr. Wilson after today. Ms. Strickland stated that she is done with Mr. Wilson.

Ms. Strickland advised that her relationship has gotten worse with Mr. Wilson, that Mr. Wilson does not have sex with her anymore. Ms. Strickland stated that Mr. Wilson does not "goof around" with her anymore. Ms. Strickland stated that Mr. Wilson has been this way since this started. Deputy Shafer asked Ms. Strickland when the last time that she had sexual intercourse with Mr. Wilson was. Ms. Strickland stated that it was approximately four months ago.

Deputy Shafer then asked Ms. Strickland why she didn't say anything about these incidents. Ms. Strickland replied, "Because he threatened me". Deputy Shafer asked Ms. Strickland why she told today. Ms. Strickland stated that she told today "Because I am sick of it and because it is making A [REDACTED] sore".

Ms. Strickland was questioned if Ms. B [REDACTED] has any other siblings. Ms. Strickland advised that Ms. B [REDACTED] has a half sister in Cameron, Wisconsin by the name of C [REDACTED] (715)790-0841.

Deputy Shafer advised Ms. Strickland that based on the information received by Ms. B [REDACTED] and Ms. Strickland that he would be referring charge 948.02(3) to the Washburn County District Attorney's Office for failing to act and having knowledge of Ms. B [REDACTED] having sexual intercourse with Mr. Wilson, as well as the knowledge of Ms. B [REDACTED] having sexual intercourse with Mr. Wilson and placing her on birth control to prevent pregnancy. Ms. Strickland asked Deputy Shafer if she would be going to jail. Deputy Shafer advised Ms. Strickland that he would only be referring the charges at this time. Ms. Strickland advised that she understood.

Deputy Shafer completed the interview with Ms. Strickland at approximately 12:21 P.M. on this date.

ASHLEY TIELBUR INTERVIEW

On this date at approximately 12:33 P.M., Deputy Shafer conducted an interview in the Washburn County Sheriff's Office conference room with Ms. Tielbur. Social Worker Larsen was primary for the interview, along with Deputy Shafer, and Social Worker Emch was an alternate. This interview was audio and video recorded, see attached.

Ms. Tielbur advised that she moved into the residence at W5326 Klein Street, Sarona WI, 54870 with her son J [REDACTED] T [REDACTED] couple of months ago. Approximately two weeks after she moved in Ms. Strickland advised Ms. Tielbur, "I don't know what to do." Ms. Tielbur advised that she couldn't do anything but that Ms. B [REDACTED] should go to the school counselor.

Ms. Tielbur further explained that for the past two weeks Ms. B [REDACTED] had been coming to her about the incidents. Ms. Tielbur told Ms. B [REDACTED] that this was not ok, and that this was her dad.

Ms. Tielbur was questioned when this started with Ms. B [REDACTED] and Mr. Wilson. Ms. Tielbur advised that she did not know when this started. Ms. Tielbur advised that she has known for approximately one month.

Ms. Tielbur stated, "Russ has tried to get into my pants", stating to her, "Will you have sex with me? Ma is getting old." Ms. Tielbur advised that she told Mr. Wilson no because they were like family to her.

On today's date Ms. Tielbur stated that she came downstairs at approximately 6:30 A.M. to 6:40 A.M. and observed Ms. Strickland crying. Ms. Strickland advised Ms. Tielbur, "He did it again".

Ms. Tielbur was questioned if she knew if any of the incidents between Mr. Wilson and Ms. B [REDACTED] were filmed or photographed. Ms. Tielbur stated that it was never talked about.

Ms. Tielbur was questioned how she felt about the fact that Washburn County Health and Human Services, as well as the Washburn County Sheriff's Office, was involved now. Ms. Tielbur stated that she was afraid to go home.

SHAFER, WILLIAM	WSHAF	
OFFICER	ID	DATE

CONFIDENTIAL

INCIDENT REPORT NARRATIVE

AGENCY NAME: WASHBURN COUNTY SHERIFFS OFFICE	ORI #: WI0660000	REPORT DATE: 11/30/2015 9:52:54 AM	CASE NUMBER: RM15-02926
---	---------------------	---------------------------------------	----------------------------

Deputy Shafer's Report

Ms. Tielbur advised that if anything happens to Mr. Wilson, he would kill himself. Ms. Tielbur advised that Mr. Wilson has said before that he has been to prison before and will kill himself before going to jail or prison again.

Deputy Shafer asked Ms. Tielbur if there was anything else that he should know about. Ms. Tielbur stated that about one month ago Ms. B. said, "Oh great dad wants to have sex again". Ms. Tielbur also advised that Ms. B. is a freshman at the Shell Lake High School and she heard that Ms. B. told a teacher about the incidents, but the teacher did not believe her.

Deputy Shafer concluded the interview at approximately 12:54 P.M. Ms. Tielbur did provide a written statement, see attached.

SEARCH WARRANT REQUEST

On this date at approximately 1:30 P.M. Deputy Shafer provided a Search Warrant and an Affidavit for a Search Warrant to Washburn County Circuit Court Judge Eugene Harrington for review. Judge Harrington granted the Search Warrant, see attached Search Warrant and Affidavit.

EXECUTION OF SEARCH WARRANT

On this date at approximately 2:45 P.M. Deputy Shafer, Investigator Tyler Walsh, Investigator William Fisher, and Deputy Brian Jilek executed a Search Warrant at W5326 Klein St., Sarona, WI., 54870.

Upon arrival to the residence Deputy Shafer was advised by Investigator Walsh that he observed a subject inside of the garage, which was located to the west of the residence on the property. At that time Deputy Shafer and Deputy Jilek approached the male subject. The male subject was later identified as Mr. Wilson.

Deputy Shafer observed Deputy Jilek advise Mr. Wilson that he was under arrest for Sexual Assault. As Deputies were searching Mr. Wilson's person, Mr. Wilson advised, "You might as well shoot me". Deputy Shafer observed Deputy Jilek secure Mr. Wilson with the use of belly chains and handcuffs, checking for proper fit and double locking them for safety.

Deputy Shafer advised Mr. Wilson that he had a Search Warrant for his residence. Deputy Shafer asked Mr. Wilson if anyone was inside of the residence. Mr. Wilson stated no.

Deputy Shafer observed Deputy Jilek place Mr. Wilson in the rear seat of Deputy Jilek's squad vehicle with the safety belt in place. At that time, Mr. Wilson stated he wanted a lawyer. Deputy Jilek cleared the residence and transported Mr. Wilson to the Washburn County Jail.

Deputy Shafer, Investigator Walsh, and Investigator Fisher conducted a search of the residence, finding no other persons inside. Deputy Shafer placed a copy of the Search Warrant on the dining room table.

Deputy Shafer first observed the planner belonging to Ms. Strickland in the living room on a wooden table next to a recliner chair. The daily planner was a 2015-2016 daily planner. The planner was photographed, see attached photos. Deputy Shafer placed the item of evidentiary value into a paper evidence bag.

Deputy Shafer and Investigator Fisher entered Ms. Strickland and Mr. Wilson's bedroom. Deputy Shafer located a white colored pair of long underwear found in a clothes hamper near the bottom of the bed. The white colored long underwear was photographed, see attached photos. Deputy Shafer placed the item of evidentiary value into a paper evidence bag.

Deputy Shafer observed a pair of black colored boxer briefs located on top of what appeared to be a sex toy, pink in color, approximately six inches in length, and Equate brand personal lubricant. These items were all photographed, see attached photos. Deputy Shafer placed the pair of black colored boxer briefs of evidentiary value into a separate paper evidence bag. Deputy Shafer placed the pink colored sex toy of evidentiary value into a separate paper evidence bag. Deputy Shafer placed the Equate brand personal lubricant of evidentiary value into a paper evidence bag.

Deputy Shafer observed the top layer of blankets on the bed to be a Realtree pattern camouflage comforter. This item was photographed, see attached photos. Deputy Shafer collected this item as evidence and placed the comforter into a brown paper evidence bag.

All evidence was placed into Deputy Shafer's squad vehicle and transported to the Washburn County Sheriff's Office. Deputy Shafer placed all evidentiary clothing items in the Washburn County evidence room for drying purposes.

SHAFER, WILLIAM	WSHAF	
OFFICER	ID	DATE

CONFIDENTIAL

INCIDENT REPORT NARRATIVE

AGENCY NAME: WASHBURN COUNTY SHERIFFS OFFICE	ORI #: WI0660000	REPORT DATE: 11/30/2015 9:52:54 AM	CASE NUMBER: RM15-02926
---	---------------------	---------------------------------------	----------------------------

Deputy Shafer's Report

Deputy Shafer learned that during Mr. Wilson's transport to the Washburn County Jail he did injure himself inside of Deputy Jilek's squad vehicle. Deputy Shafer waited for Deputy Jilek to clear Shell Lake Hospital and arrive at the Washburn County Jail with Mr. Wilson. At that time Deputy Shafer took custody of Mr. Wilson's white colored underwear and secured them in the Washburn County evidence room for drying.

On this date at approximately 5:15 P.M. Deputy Shafer met with Washburn County SART Liaison Cara Murden. Ms. Murden provided Deputy Shafer with the SANE Examination Kit, which was labeled with Ms. B. being the victim. Ms. Murden also provided Ms. B.'s clothing items. These items were collected together into a brown paper evidence bag. Deputy Shafer placed all items in the Washburn County evidence room.

On December 1, 2015 Deputy Shafer received an email from Ms. Murden containing three photos of Ms. B.'s vagina taken during the examination by Nurse Skye, see attached photos.

On this date Ms. Murden assisted Deputy Shafer with the processing of evidence for this case by going through the clothing items belonging to Ms. B. that were collected on the day prior and noting each item with descriptors. At that time Deputy Shafer observed brown colored discharge in the front part of the pink colored panties belonging to Ms. B.

SECOND INTERVIEW WITH MARGIE STRICKLAND

On December 1, 2015, at approximately 10:47 A.M. Deputy Shafer met with Ms. Strickland in the Washburn County Sheriff's Office conference room. At this time Deputy Shafer read Ms. Strickland her Constitutional Rights. Ms. Strickland agreed to waive her Rights. Ms. Strickland signed the Constitutional Rights waiver form, see attached form.

Prior to Ms. Strickland coming into the Sheriff's Office on this date Deputy Shafer noted in Ms. Strickland's planner that there were 92 "X" marks within the planner. Deputy Shafer observed "X" marks from August 1, 2015 through August 9, 2015. Deputy Shafer also noted "X" marks on September 1, 2015 through September 27, 2015. Deputy Shafer noted "X" marks on October 1, 2015 through October 27, 2015. Deputy Shafer noted "X" marks on November 1, 2015 through November 29, 2015.

Deputy Shafer questioned Ms. Strickland about the "X" marks in the calendar meaning Ms. Strickland caught Ms. B. and Mr. Wilson in the acts fighter, or Ms. B. told Ms. Strickland about the incidents. Deputy Shafer asked Ms. Strickland if that was correct. Ms. Strickland stated that only the small "X" marks reflected that an incident took place between Ms. B. and Mr. Wilson. Deputy Shafer asked Ms. Strickland when she believed that the incidents started. Ms. Strickland stated that she believed the incidents started in September, 2015.

Deputy Shafer advised Ms. Strickland that he did not observe any small "X" marks in the planner. "X" marks were noted to have began after Ms. B.'s father passed away on August 7, 2015. Deputy Shafer provided the planner with "X" marks within in it to Ms. Strickland.

Ms. Strickland noted August 8, 2015 and stated that she knew Ms. B. and Mr. Wilson had sexual intercourse on that date. Deputy Shafer asked Ms. Strickland how she knew this. Ms. Strickland indicated that she caught them in her bedroom. Ms. Strickland advised Deputy Shafer that she thinks Ms. B. was on her back and that Mr. Wilson was on top of her. Ms. Strickland believes that the incident on this date happened at night due to the fact that she was taking a shower and could hear a painful moan and her daughter stating that it hurt. Ms. Strickland advised that she then came out of the shower and observed that they were done. Deputy Shafer asked how Ms. Strickland knew they were done. Ms. Strickland advised because, "He was cleaning up his dick", later clarified as Mr. Wilson's penis. Ms. Strickland also advised that she observed Ms. B. cleaning her vagina. Ms. Strickland stated that she could not remember any more at that time. Ms. Strickland noted to Deputy Shafer that there was no small "X" mark on that date, but that she knew it happened on that date because it was the day after her ex-husband's death.

Ms. Strickland observed the month of September, 2015 and advised Deputy Shafer that an incident happened in the middle of the month and she knew this because no one had any doctor's appointments the week of September 14, 2015 through September 18, 2015. Deputy Shafer observed Ms. Strickland point at that week and stated that it happed one of those days. Deputy Shafer notes that he did not observe any small "X" marks in the month of September, 2015.

Ms. Strickland then looked at October, 2015 and advised that she believed that an incident happened on October 10, 2015. Ms. Strickland advised that she knew this because she had a doctor's appointment at 3:40 P.M. on October 9, 2015. Ms. Strickland advised that she came back from Spooner from getting milk and bread and everyone was gone. Ms. Strickland advised that she searched the residence and found Ms. B. and Mr. Wilson in her bedroom. Ms. Strickland advised that she observed Ms. B. on her back and Mr. Wilson was on top of her. Ms. Strickland advised Deputy Shafer that she yelled, "What are ya li

SHAFER, WILLIAM	WSHAF	
OFFICER	ID	DATE

CONFIDENTIAL

INCIDENT REPORT NARRATIVE

AGENCY NAME: WASHBURN COUNTY SHERIFFS OFFICE	ORI #: WI066000	REPORT DATE: 11/30/2015 9:52:54 AM	CASE NUMBER: RM15-02926
---	--------------------	---------------------------------------	----------------------------

Deputy Shafer's Report

doing?" Ms. B█████ replied to Ms. Strickland, "It hurts mommy, make him quit". Ms. Strickland advised that she told Mr. Wilson to quit, "You gotta quit". Mr. Wilson advised Ms. Strickland, "You turn me in and I will make your life a living hell". Ms. Strickland advised that Mr. Wilson then got off of Ms. B█████. Ms. Strickland advised that Ms. B█████ got a wash rag and cleaned herself up. Ms. B█████ was crying at that time. Ms. B█████ advised Ms. Strickland, "Mommy make him quit". Ms. Strickland advised Ms. B█████ that "The only way to make him quit is to call the cops and then he would make our life a living hell".

Deputy Shafer asked Ms. Strickland how it made her feel knowing about these incidents and not reporting them. Ms. Strickland advised, "It hurts. I want to punch him but he is bigger and stronger than me".

Ms. Strickland advised of another incident on October 25, 2015. Ms. Strickland stated that she knew the incident was on this date because she had a dentist appointment on October 15, 2015. Ms. Strickland advised that she was outside cleaning out her van and Ms. B█████ came out to her location and stated, "Daddy did it again". Deputy Shafer asked Ms. Strickland what Ms. B█████ was referring to. Ms. Strickland advised that Ms. B█████ was referring to sex.

Deputy Shafer did not observe any small "X" marks in the month of October.

Ms. Strickland advised Deputy Shafer of an incident on November 4, 2015. Ms. Strickland stated that she knew this date due to the fact that there was no school because of parent teacher conferences. Ms. Strickland advised that Ms. B█████ told Ms. Strickland of this incident. Ms. Strickland advised that she also remembers this date because it was the day after seeing PATTY in Barron, Wisconsin on November 3, 2015.

Deputy Shafer notes that he did not observe any small "X" marks in the month of November, 2015.

Deputy Shafer questioned Ms. Strickland about the small "X" marks in her calendar and why he did not observe any. Ms. Strickland started to tear up and stated, "I thought I did".

Deputy Shafer asked Ms. Strickland if there was anything else he should know about. Ms. Strickland stated that she kept telling him "No, no, no, no" but that he never listened.

Deputy Shafer concluded the interview at approximately 11:11 A.M. on this date. This interview was audio and video recorded, see attached.

On this date, Deputy Shafer provided Ms. Strickland with her Realtree Camouflage comforter. Ms. Strickland took it into her possession and thanked Deputy Shafer.

RETURN OF SEARCH WARRANT

Deputy Shafer provided the Return of Search Warrant to the Washburn County Clerk of Courts on December 1, 2015, see attached copy of Return of Search Warrant.

OTHER INFORMATION

Deputy Shafer was received medical records from the SANE Examination that conducted at the Lakeview Medical Center from Ms. Murden on December 1, 2015; see attached medical records.

Deputy Shafer has no further information at this time.

William Shafer, 814

Deputy William Shafer
Washburn County Sheriff's Office

SHAFER, WILLIAM OFFICER	CONFIDENTIAL	WSHAF ID	DATE _____
----------------------------	---------------------	-------------	------------

STATE OF WISCONSIN

CIRCUIT COURT

WASHBURN COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 2015CF00163

RUSSEL L. WILSON,

Defendant.

WILSON'S POST-CONVICTION MOTION TO WITHDRAW PLEA

Defendant Russell L. Wilson moves the court to vacate his conviction, withdraw his guilty plea, and place this matter on the trial calendar. Wis. Stat. § 809.30. The charging documents, the court, and Wilson's attorney all told Wilson, incorrectly, that he was subject to the sentence enhancer found in Wis. Stat. § 939.618(2)(b), which would have increased the maximum sentence in his case from 25 years initial confinement and 15 years extended supervision to "life imprisonment without the possibility of parole or extended supervision." The section 939.618(2)(b) enhancer only applies when the underlying conviction is for violation of Wis. Stat. § 940.225(1), and Wilson was convicted of violating Wis. Stat. s. 948.025(1)(e). Because "the maximum sentence communicated to [Wilson]" was "substantially higher ... than the actual allowable sentence," and Wilson was unaware of the actual maximum, Wilson is entitled to

withdraw his plea. *State v. Cross*, 2010 WI 70, ¶ 38, 326 Wis. 2d 492, 512, 786 N.W.2d 64, 74. More specifically, Wilson has met his initial burden to withdraw his plea under *State v. Bangert*, 131 Wis.2d 246, 389 N.W.2d 12 (1986), and asks the court to schedule a *Bangert* hearing wherein the state would have the burden of proving “by clear and convincing evidence that the defendant's plea was knowing, voluntary, and intelligent despite the deficiencies in the plea hearing.” *Cross*, 2010 WI 70, ¶¶ 19-20.

BACKGROUND

1. On December 4, 2015, the Washburn County District Attorney’s Office filed a complaint charging Wilson with violating Wis. Stat. § 948.025(1)(e), a class C felony that carried a maximum potential punishment of 40 years imprisonment, comprised of 25 years initial confinement and 15 years extended supervision. The complaint does not charge Wilson with any sentence enhancer.

2. At the conclusion of a preliminary hearing held on December 14, 2015, the court found probable cause and bound Wilson over for trial. (December 14, 2015 Tr. at 7). The court then arraigned Wilson, using the Information filed by the State that day. The court recounted that Wilson faced potential punishment of 40 years imprisonment, and then made the following statement:

I think there's also a penalty enhancer here because of the -- if the state proves a repeater status, there's life imprisonment under 940.225(1), and I also think there's a minimum mandatory 25 years confinement. That's not reflected in the Information.

(*Id.* at 8). Wilson then waived the reading of the Information and pleaded not guilty. (*Id.*)

3. The Information filed that day charged Wilson with violating Wis. Stat. s. 948.025(1)(e), and correctly noted that the maximum potential punishment was 40 years imprisonment. The information then states that under Wis. Stat. § 939.618(2)(b), “because that (*sic*) the defendant was convicted of a previous violation of s. 940.225(1) or for a comparable crime under federal law or the law of any state, 1st Degree Sexual Assault of Child, which conviction remains of record and unreversed,, (*sic*) the maximum term of imprisonment for the violation of s. 940.225(1) is life imprisonment without the possibility of parole or extended supervision.”

4. On October 13, 2016, Wilson pleaded guilty as charged. The plea questionnaire signed by Wilson stated that the maximum penalty was life without extended supervision. The court likewise advised Wilson twice during his plea colloquy that the maximum possible sentence was life without parole or extended supervision. (October 13, 2016 Tr. at 36, 39).

5. Wilson believed his attorney, the state, and the court that the maximum possible sentence was life without parole or extended supervision. He was not aware that true maximum potential punishment was anything less.

6. Wilson was sentenced on December 21, 2016. The state noted at the outset that the plea bargain required the state to recommend no more than 15 years of initial confinement. (December 21, 2016 Tr. at 7). The court sentenced Wilson to 20 years initial confinement and 20 years extended supervision. (*Id.* at 19).

7. The Department of Corrections subsequently sent the court a letter noting that the section 939.618(2)(b) enhancer does not apply to Wilson’s conviction under

section 948.025(1)(e), and that the maximum amount of extended supervision that could be imposed on Wilson was 15 years. (May 26, 2017 DOC letter). In response, the court commuted the excess extended supervision. (June 13, 2017 Amended Judgment of Conviction).

ARGUMENT

8. From his arraignment to his plea, Wilson was incorrectly told the maximum potential punishment was life imprisonment without the possibility of parole or extended supervision. However, the maximum penalty was 25 years initial confinement and 15 years extended supervision. Wilson's plea was thus not "knowing, intelligent, and voluntary," and he is entitled to withdraw it. *Cross*, 2010 WI 70, ¶ 41.

9. The state alleged in the Information, and the court stated before accepting Wilson's plea, that the sentence enhancer found at Wis. Stat. § 939.618(2)(b) applied. The statute provides that:

If a person has one or more prior convictions for a violation of s. 940.225(1) or for a comparable crime under federal law or the law of any state and subsequently is convicted of a violation of s. 940.225(1), *the maximum term of imprisonment for the violation of s. 940.225(1)* is life imprisonment without the possibility of parole or extended supervision.

Wis. Stat. § 939.618 (2)(b) (emphasis supplied).

10. Section 939.618(2)(b) is clearly inapplicable to Wilson. His conviction in this case is not for a violation of section 940.225(1), but for a violation of section 948.025(1)(e). Accordingly, the charged repeater does not apply, and the maximum potential punishment was 40 years – comprised of 25 years initial confinement and 15 years of extended supervision – not life without parole or extended supervision.

11. The federal Due Process clause requires guilty pleas to be entered knowingly, voluntarily, and intelligently. *Cross*, 2010 WI 70, ¶ 16. To meet this requirement, the legislature, in Wis. Stat. § 971.08, and the Wisconsin Supreme Court, in *State v. Bangert*, 131 Wis.2d 246, 389 N.W.2d 12 (1986) and its progeny, have set out a list of topics for the trial court to cover with the defendant before accepting a guilty or no contest plea.

12. The supreme court in *Cross* summarized the process for determining whether a defendant may withdraw his or her plea for the court's failure to fulfill its duties at a plea colloquy.

If the circuit court fails at one of these duties (also called a "*Bangert* violation"), the defendant may be entitled to withdraw his plea. A defendant establishes that the circuit court failed at one of its duties by filing a motion (a "*Bangert* motion") that: (1) makes a prima facie showing of a violation of § 971.08(1) or other court-mandated duties; and (2) alleges that "the defendant did not know or understand the information that should have been provided at the plea hearing." A defendant attempting to make this prima facie showing must point to deficiencies in the plea hearing transcript; conclusory allegations are not sufficient.

Upon making this showing, the defendant is entitled to an evidentiary hearing (known as a "*Bangert* hearing") at which the State must prove by clear and convincing evidence that the defendant's plea was knowing, voluntary, and intelligent despite the deficiencies in the plea hearing. If the State cannot meet its burden, the defendant is entitled to withdraw his plea as a matter of right. However, if a defendant seeking to withdraw his guilty plea cannot show that the circuit court failed in its duties during the plea hearing, or if the State meets its burden of proving the plea was knowing, voluntary, and intelligent, withdrawal of the plea is left to the discretion of the circuit court and will not be disturbed unless the defendant demonstrates a manifest injustice will result from the court's refusal to allow the plea to be withdrawn.

Cross, 2010 WI 70, ¶¶ 19-20 (citations omitted).

13. Relevant here is that section 971.08(1)(a) requires the court to “determine that the plea is made ... with understanding of ... the potential punishment if convicted.” and that *Bangert* requires the court to “[e]stablish the defendant’s understanding of the ... range of punishments [the charged crime] carries.” 131 Wis.2d 246 at 261-262.

14. The *Cross* court explained that when the defendant is misadvised that the maximum sentence is higher than the actual legal maximum, the defendant must show that the “sentence communicated to the defendant is ... substantially higher ... that that authorized by law[.]” 2010 WI 70, ¶ 38. In *Cross*, the communicated maximum sentence – 25 years of initial confinement and 15 year of extended supervision—was not “substantially higher” than the actual maximum of 20 years of initial confinement and 10 years extended supervision. *Id.*, ¶ 41.

15. “Life without the possibility of parole or extended supervision” is “substantially higher” than 25 years of initial confinement. With a 25-year sentence, even the 49-year-old Wilson could serve his time with the hope that he would someday be free again. Indeed, Wilson would even be eligible for a sentence adjustment after serving 85% of his initial confinement. Wis. Stat. § 973.195. On the other hand, a sentence of “life without the possibility of parole or extended supervision” would guarantee that Wilson would die in prison.

16. Wilson has thus met the requirements for a *Bangert* hearing, where the state must show “by clear and convincing evidence that the defendant's plea was knowing, voluntary, and intelligent despite the deficiencies in the plea hearing.” *Cross*, 2010 WI 70, ¶¶ 19-20 (citations omitted).

CONCLUSION

For the reasons stated above, Wilson has met his prima facie burden to withdraw his guilty plea. Wilson thus requests that the court schedule a *Bangert* hearing.

Dated this 23rd day of May 2018.

Electronically signed by Thomas B. Aquino

THOMAS B. AQUINO
Assistant State Public Defender
State Bar # 1066516

P.O. Box 7862
Madison, WI 53707-7862
(608) 266-1971
aquinot@opd.wi.gov

Attorney for Defendant

cc: District Attorney Angeline E. Winton (*by electronic filing*)
Mr. Russell L. Wilson (*by first class mail*)

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III
CASE NO.: 2017XX000285-CR

STATE OF WISCONSIN,

Plaintiff,

v.

Washburn County
Case No.: 15-CF-163

RUSSELL L. WILSON,

Defendant.

**MOTION FOR RULE 809.30(2) EXTENSION TO FILE A NOTICE
OF APPEAL OR POSTCONVICTION MOTION**

Defendant Russell L. Wilson respectfully requests an extension of the time to file a notice of appeal or motion for postconviction relief in this matter by 30 days, to May 23, 2018. Wis. Stat. §§ 809.82(2)(b) and 809.30(2)(h). Wilson states that the following grounds constitute good cause for the extension.

1. On October 13, 2016, Mr. Wilson pled guilty to repeated acts of sexual assault of the same child, Wis. Stat. § 948.025(1)(e). On December 21, 2016, the court sentenced Mr. Wilson to 20 years of initial confinement followed by 20 years of extended supervision. After notification from the Department of Corrections that the maximum term of

extended supervision was 15 years, the court commuted the term of extended supervision to 15 years in an Amended Judgment of Conviction dated June 13, 2017.

2. In the meantime, on May 19, 2017, this court granted Mr. Wilson's motion for an extension of the time to file a notice of intent to pursue postconviction relief. The Officer of the State Public Defender appointed undersigned as postconviction counsel.

3. Mr. Wilson is also a defendant in a pending criminal matter, Washburn County Case No. 2016-CF-00125, arising from Mr. Wilson's alleged actions while in Washburn County Jail awaiting trial in this matter. Mr. Wilson's counsel in 2016-CF-125 has filed a motion concerning the state's use of a jailhouse informant while this case was pending. Undersigned counsel has determined that Mr. Wilson should include in his postconviction motion a claim related to the issue being litigated in 2016-CF-125.

4. At the time of Mr. Wilson's prior extension motion, an evidentiary hearing on the motion in 2016-CF-125 had been scheduled for April 13, 2018. The hearing has subsequently been rescheduled for June 7, 2018.

5. Counsel is a staff attorney with SPD's appellate office, and carries a caseload of approximately 50 cases at various stages of the postconviction process. Counsel notes that he filed a petition for review in *State v. Lumpkin*, 2016-AP-2145, on April 16, 2018, and is in briefing in five other court of appeals cases: *State v. Bahr*, 2017-AP-1806; *State v.*

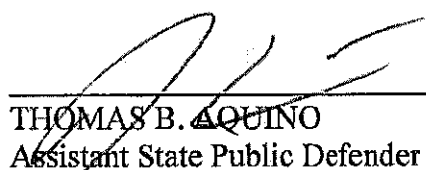
Brown, 2017-AP-2199; *State v. German*, 2018-AP-78; *State v. Lanier*, 2017-AP-1649; and *State v. Zika*, 2018-AP-132.

6. In addition, counsel was out of the office on vacation from March 26 to March 30, 2018.

7. Mr. Wilson requests that this Court enter an order extending for 30 days, to May 23, 2018, the time to file a postconviction motion.

Dated this 23rd day of April, 2018.

Respectfully submitted,



THOMAS B. AQUINO
Assistant State Public Defender
State Bar No. 1066516

Office of the State Public Defender
Post Office Box 7862
Madison, WI 53707-7862
(608) 266-1971
aquinot@opd.wi.gov

Attorney for Defendant

cc: Ms. Shannon Anderson
Clerk of Circuit Court
P.O. Box 339
Shell Lake, WI 54871

Ms. Angeline E. Winton
District Attorney
P.O. Box 344
Shell Lake, WI 54871

Mr. Clayton Kawski
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Mr. Russell L. Wilson, # 267556
Waupun Correctional Institution
P.O. Box 351
Waupun, WI 53963-0351