

State of Wisconsin

Circuit Court

Ozaukee County

STATE OF WISCONSIN

-VS-

BENJAMIN R STIBBE
730 HOMESTEAD TRAIL
GRAFTON, WI 53024
DOB: 05/13/1982
Sex/Race: M/W
Alias:

Plaintiff, DA Case No.: 2006OZ001657
Assigned DA/ADA: Sandy Williams
Agency Case No.: 06-1865, 06-1859
Court Case No.: 2006CF

ATN:

Defendant,

Criminal Complaint

The undersigned law enforcement officer being first duly sworn, states that:

Count 1: FIRST DEGREE RECKLESS HOMICIDE

The above-named defendant on and between December 11, 2002 and December 12, 2002, in the Village of Grafton, Ozaukee County, Wisconsin, did cause the death of LYNN A SMAXWILL, by the delivery or manufacture of a Schedule I or II controlled substance, to-wit: Cocaine and Heroin, in violation of sec. 961.41 Wis. Stats., which LYNN A SMAXWILL used, dying as a result of that use, contrary to sec. 940.02(2)(a), 939.50(3)(b) Wis. Stats., a Class B Felony, and upon conviction may be sentenced a term of imprisonment not to exceed sixty (60) years.

Count 2: FIRST DEGREE RECKLESS HOMICIDE

The above-named defendant on and between October 15, 2005 and October 16, 2005, in the Village of Grafton, Ozaukee County, Wisconsin, did cause the death of MATTHEW R KOBISKE, by the delivery or manufacture of a Schedule I or II controlled substance, to-wit: Heroin, in violation of sec. 961.41 Wis. Stats., which MATTHEW R KOBISKE used, dying as a result of that use, contrary to sec. 940.02(2)(a), 939.50(3)(c) Wis. Stats., a Class C Felony, and upon conviction may be fined not more than One Hundred Thousand Dollars (\$100,000), or imprisoned not more than forty (40) years, or both.

Count 3: FIRST DEGREE RECKLESS HOMICIDE

The above-named defendant on and between October 21, 2005 and October 22, 2005, in the Village of Grafton, Ozaukee County, Wisconsin, did cause the death of JAMES M HELM, by the delivery or manufacture of a Schedule I or II controlled substance, to-wit: Cocaine and Heroin, in violation of sec. 961.41 Wis. Stats., which JAMES M HELM used, dying as a result of that use, contrary to sec. 940.02(2)(a), 939.50(3)(c) Wis. Stats., a

Class C Felony, and upon conviction may be fined not more than One Hundred Thousand Dollars (\$100,000), or imprisoned not more than forty (40) years, or both.

PROBABLE CAUSE:

AS TO COUNT ONE: Complainant alleges that the Grafton Police Department went to a residence in the Village of Grafton, Ozaukee County, State of Wisconsin, at which time the rescue squad was also there. Located in a bedroom was a female body later identified as Lynn Smaxwill. She was non-breathing and non-responsive. She was taken to the hospital. Complainant alleges that Lynn A. Smaxwill is a human being. She was pronounced dead. An autopsy was performed by Dr. Jeffrey Jentzen of the Milwaukee County Medical Examiner's office on December 13, 2002. Pursuant to the autopsy, Dr. Jentzen made a diagnosis of the cause of death being mixed drug overdose (cocaine and heroin).

Complainant further alleges that Chris Stoller, an adult private citizen, was spoken to by law enforcement and Stoller stated that on the morning of December 12, 2002, he was at Lynn Smaxwill's residence downstairs in the basement sleeping when he was awoken by his brother A.S. A.S. told Chris that when A.S. had gone upstairs to wake up his mother, Lynn Smaxwill, that A.S. thought something was wrong with her at which time A.S. came down to get Chris Stoller. Chris Stoller stated he went upstairs with A.S. and checked for a pulse on Lynn Smaxwill but was unable to detect one. Chris Stoller went back downstairs and woke up Ben Stibbe who was sleeping in the basement as well. He stated that Ben Stibbe directed him to stay downstairs with A.S. and Ben Stibbe went upstairs. Chris Stoller then stated a short time later he had gone upstairs where he observed Ben Stibbe and Ben's mother, who had now arrived at the residence, cleaning up drug items and paraphernalia. At one point Ben Stibbe handed Chris Stoller three or four needles and told Stoller to take them out to the shed in back and hide them. Stoller stated that after they were cleaning up the police and rescue were finally called and that is when it was learned that Ms. Smaxwill was in fact dead.

Chris Stoller stated that on the previous day, December 11, 2002, Stoller was at Lynn Smaxwill's residence for his father's funeral and while at Lynn Smaxwill's residence, Ben Stibbe showed up. After about two hours of being at the residence, Ben Stibbe's mom came over, Teri Stibbe. Ben's mom had an argument with Ben about Ben Stibbe having stolen some Oxycotin pills from the Stibbe residence. Chris Stoller stated that was the reason Ben Stibbe was kicked out of his home and had gone to Lynn Smaxwill's house. Shortly after the argument between Ben Stibbe and Teri Stibbe, Lynn Smaxwill gave Chris Stoller her car keys and a TYME card along with a PIN number and told Chris Stoller that Ben Stibbe was going to Milwaukee and that Chris Stoller should drive him to Milwaukee. Chris Stoller stated that although it wasn't specifically stated, he knew that the ride to Milwaukee was for Ben Stibbe to purchase drugs; specifically, heroin, as he had known Ben Stibbe to be a heroin user and believed that is why they were going down to Milwaukee to get Stibbe heroin.

Complainant further alleges that Chris Stoller stated that as Stoller was driving to Milwaukee, Stibbe was giving him directions as to where to go. Stoller stated that when they reached the area of Teutonia and Capitol, Stibbe directed him to an area in an alley where Stoller had to park behind a garage at which time Ben Stibbe exited the vehicle. A short time later Ben Stibbe got back into the car. Ben Stibbe then gave Chris Stoller a cigarette cellophane wrapper containing a small amount of marijuana. Ben Stibbe told Chris Stoller that was payment for Stoller driving. On the way back Chris Stoller stated that there was a phone call between Ben Stibbe and Lynn Smaxwill about purchasing rock cocaine. Stoller stated that after the phone call, Stoller and Stibbe stopped at a TYME machine and Ben Stibbe directed Stoller to return to the same alley where Stoller parked the car. Stoller waited while Ben Stibbe got out and went to the drug house and then shortly Stibbe returned back to Stoller's vehicle. Stoller stated that they then went back towards Grafton at which time Stoller observed Ben Stibbe remove a heroin rig and shoot up in the car. Chris Stoller stated that he observed Ben Stibbe using the heroin from a small plastic zip-loc bag. Stoller stated in the car Stibbe had cooked the heroin in a spoon and then injected it into Stibbe's arm. Chris Stoller stated that upon returning to the Smaxwill residence, Chris Stoller gave Lynn Smaxwill her TYME card back at which time Lynn Smaxwill and Ben Stibbe went into Lynn Smaxwill's bedroom for approximately a half hour. After Ben Stibbe came out of Lynn Smaxwill's room, Chris Stoller went into Lynn's room and talked with her for awhile. Stoller stated that while he was talking to her she did have a line of heroin out and then snorted it. Stoller stated that he then left the bedroom and went downstairs and started watching movies with his brother, however, Ben and Lynn remained upstairs. Approximately 45 minutes to 60 minutes later Ben came back downstairs. Chris Stoller stated that Stoller smoked some pot and drank some beers when Ben came downstairs and Ben appeared to be extremely high on heroin. Then, eventually, both Stibbe and Stoller went to sleep and then were awoken by A.S. stating that Lynn Smaxwill wasn't responding.

Complainant further alleges that Detective Taylor spoke with Nicole Ninaus, an adult private citizen, who stated that she was familiar with Ben Stibbe and that sometime in mid-December of 2002, she had called Ben Stibbe and asked for Stibbe to purchase heroin for her. She stated that Stibbe picked her up and left Ozaukee County and went down to Milwaukee where they purchased heroin. She also stated that she recalled that particular time that Stibbe was able to purchase heroin for her because they got into a car accident while Ben Stibbe was driving. She stated she also remembered that particular event because Stibbe had stated to her that the evening before he had purchased heroin and brought it to a woman's house in Grafton and sold it to her. Ben Stibbe told Nicole Ninaus then that he injected the heroin with the woman and spent the night. Stibbe stated that the next morning the woman's son woke Ben up because his mother was not responding as she was dead. Ben Stibbe further stated that the police were called and they came to the house and questioned Ben but let him go. Ben Stibbe told Nicole he was very upset about this incident and worried that he may be charged with something.

Complainant further alleges that a review of a record from the Department of Transportation revealed that on December 13, 2005, Ben Stibbe did have an accident in

Milwaukee and that his passenger in the vehicle at the time of the accident was Nicole Ninaus.

AS TO COUNT TWO: Complainant alleges that on October 16, 2005, Debra Kobiske, an adult private citizen and the mother of Matthew Kobiske, arrived to her residence at approximately 12:30 p.m. and found her son at her residence in Grafton and noticed he was not breathing or responsive to her. The police and rescue were called and he was transported to the hospital where Matthew Kobiske was declared dead. Complainant further alleges that Matthew Kobiske is a human being. An autopsy was performed on Matthew Kobiske by Dr. Alexander a Medical Examiner with the Milwaukee County Medical Examiner's office on October 17, 2005, with Dr. Alexander, a forensic pathologist, final diagnosis for the cause of death of Matthew Kobiske being a mixed drug intoxication overdose (heroin, diazepam and codeine).

Complainant alleges that on October 17, 2005, Ben Stibbe was spoken to. Stibbe told law enforcement that he had just seen Matt Kobiske between 2:00 p.m. and 4:00 p.m. on October 15, 2005 at the Sendik's grocery store in Grafton. Stibbe stated that the next time he saw him was when unexpectedly Matt Kobiske showed up at Stibbe's residence in Grafton around 5:00 p.m. Stibbe stated that Matt Kobiske, while at the Stibbe residence in the Village of Grafton, was acting strange and actually hit the house to the point where he damaged his hand and Ben's mom actually bandaged Matt Kobiske's hand and then told Matt Kobiske he had to leave.

Complainant alleges that Detective Taylor spoke with Jonathon Selensky, who stated that he was with Ben Stibbe and Matt Kobiske the night Matt Kobiske died in October of 2005. Mr. Selensky stated that he, Mr. Selensky, had been using heroin at the time of Matt Kobiske's death and Selensky had been in contact with Ben Stibbe in order to acquire heroin. Selensky stated that he recalled in the late afternoon somewhere between 3:00 p.m. and 4:00 p.m. on October 15, 2005, Ben Stibbe and his mother arrived at the Selensky residence in Saukville and picked up Jonathon Selensky. Jonathon Selensky stated that Ben's mother was driving a red Ford Taurus. Selensky further stated that Ben Stibbe was sitting in the front passenger seat and Selensky sat in the rear passenger seat, directly behind Ben Stibbe. He stated that the three of them traveled to the Sendik's grocery store in Grafton where they picked up Matthew Kobiske. Selensky stated that Matthew Kobiske got into the vehicle and was sitting directly behind Ben Stibbe's mother. Selensky stated that they then drove down to Milwaukee for the purchase of heroin. He stated when they got to Milwaukee Ben Stibbe met the dealer and handed the dealer some money at which time Ben Stibbe received heroin. Jonathon Selensky stated that himself as well as Matt Kobiske had given Ben Stibbe money for the purchase of heroin. When Ben Stibbe returned into the vehicle from purchasing the heroin Stibbe gave his mother a packet of heroin and then gave Jonathon Selensky one and Matthew Kobiske one. Mr. Selensky stated it was common practice for Ben Stibbe to charge people for hooking them up and he gave as an example that if Jonathon Selensky were to purchase two dubs of heroin he would have to provide Ben Stibbe with enough money for three dubs and then Ben Stibbe would purchase the three dubs, giving Selensky the two, and keeping the one dub for himself as payment for the "hook-up".

Complainant further alleges that Selensky stated that the four of them then traveled back to the Stibbe residence in Grafton. He stated Mrs. Stibbe went upstairs in the living room and Matt Kobiske, Ben Stibbe and Jonathon Selensky went into the basement; at which time all three, Ben Stibbe, Matt Kobiske and Jonathon Selensky, ingested the heroin that Ben Stibbe had purchased from Milwaukee. Jonathon Selensky further stated that Matt Kobiske didn't use all of his heroin and had put it into a cigarette case. Selensky stated a short time later a person by the name of Ray Norene arrived at the residence and a short time after that Matt Kobiske appeared to be very upset saying that someone had stolen his heroin. Jonathan Selensky stated that Kobiske was very upset and agitated and had left the residence for a brief period of time. When Kobiske came back in, his hand was bloody and when asked, Kobiske indicated he had punched the residence because he was so upset about the stolen heroin. Selensky stated that a short time later Selensky was picked up from the Stibbe residence. Prior to Jonathon Selensky leaving, Selensky heard a discussion between Ray Norene and Stibbe and Kobiske about Ben Stibbe going back down to Milwaukee and purchasing more heroin for Norene and Kobiske.

Complainant further alleges that Ray Norene was spoken to and Ray Norene stated that he was in fact at the Stibbe residence on October 15, 2005. Also present for a short period of time was Jon Selensky and then after Norene got there Selensky left. Ben Stibbe was also present as well as Mrs. Stibbe. Mr. Norene stated that Matthew Kobiske was upset and had accused the people of stealing some of his heroin that had been purchased earlier by Ben Stibbe in Milwaukee. Ray Norene stated that Kobiske was so angry that at one point he had actually struck the residence with his hand to the point where Mrs. Stibbe bandaged his hand and then told Ben Stibbe that Matt Kobiske had to leave. Ray Norene stated that at that point Norene was the only one with a car and he did drive Matt Kobiske back to Kobiske's residence in Grafton. On the way to the residence Matt Kobiske was saying that he was very upset and Ray Norene tried to calm him down, driving around for a period of time and then dropping Matt Kobiske off at his residence somewhere between 10:00 p.m. and 11:30 p.m. Ray Norene stated that he did observe Mr. Kobiske walking into his residence and that was the last time he had seen Mr. Kobiske.

AS TO COUNT THREE: Complainant alleges that on October 22, 2005 at approximately 11:19 p.m., the Grafton Police Department was dispatched to 1307 Bridge Street for a 911 call regarding a male subject inside the house who was unresponsive and not breathing. Upon arrival Officer Ray of the Grafton Police Department did observe a person later identified as James M. Helm, a human being, in the living room area of the residence. Helm did appear to be unresponsive and had no response to other officer's attempts to have him respond. CPR was started and Mr. Helm was transported to St. Mary's Hospital. Dr. Knuth of the hospital did pronounce Mr. Helm dead at midnight on October 23, 2005. An autopsy was performed by Dr. Jeffrey Jentzen, a Medical Examiner of the Milwaukee County Medical Examiner's office on October 24, 2005, with Dr. Jentzen's final diagnosis for James Helm's death to be mixed drug toxicity (cocaine, heroin and Oxycodone).

Complainant further alleges that pursuant to follow-up investigation Rick Giese was spoken to at which time Rick Giese, an adult private citizen, stated the following. That Giese was at an establishment in the Village of Grafton where he ran into his friend Jim

Helm. Rick Giese stated that they were watching a Badger football game but Jim Helm wanted to leave. At that point Rick Giese and Jim Helm left the establishment heading for a bar in Saukville but turned around and went back to the Hutch tavern in Grafton. He stated that Jim Helm was talking about smoking crack cocaine and when they got back to the Hutch, Jim Helm asks Rick Giese to call his cousin Ben Stibbe to see if he could purchase some cocaine for them. Rick Giese states that he does make a phone call to his cousin, Ben Stibbe. Ben Stibbe agrees to make the arrangements for a drug purchase of crack. Giese and Helm leave with Giese driving Mr. Helm's Cadillac to the Stibbe residence in Grafton at which time Ben Stibbe gets into the vehicle. Rick Giese indicates that Jim Helm gives Ben Stibbe cash. Stibbe then directs Giese to drive to a place in Milwaukee which he believed to be around the area of 27th and Locust at which time Ben Stibbe meets up with a drug dealer and gives the drug dealer money. Ben Stibbe gets back into the vehicle, gives Jim Helm cocaine which, Giese states, Jim Helm starts smoking. As Rick Giese is driving, Ben Stibbe is in the back seat and Jim Helm is in the front seat. Rick Giese can hear Ben Stibbe speaking with Jim Helm talking about, "loading one up". He stated as they're driving close to Stibbe's house he observes Jim Helm turn to his left with his hands towards the back seat and does see Ben Stibbe with a needle. Giese then can hear a conversation between Ben Stibbe and Jim Helm in reference to finding a vein and then Rick Giese states he heard Ben Stibbe say to Jim Helm, "I got it" at which point Rick Giese glances over and sees Jim Helm's hand above the seat and Stibbe is holding the syringe. Giese stated Stibbe injected Helm but didn't know with what. At this time they are in front of the Stibbe residence and Helm gets out of the car to try and go to the bathroom but he falls down. Giese and Ben Stibbe then get Jim Helm back in the car but they place him in the backseat at which time Ben Stibbe then leaves and goes to his house.

Complainant further alleges that Rick Giese states that Giese then drives to another friend's house and picks up his friend, Dale Volkman, and hopes that Dale Volkman will be able to help get Jim Helm out of the vehicle. Giese states that they drive to Jim Helm's residence at which time Mr. Giese goes next door to where Jim Helm's cousin lives looking for someone to help get Jim Helm out of the car but no one is there. He stated that Volkman and Giese then go to the Bridge Inn tavern to see if anyone could help them there. He states that he does go back to Helm's residence and checks on him and at one point they actually make sure Jim Helm is on his side so in case he would vomit he wouldn't aspirate as Helm appears to be passed out. Giese and Volkman again go back to the Hutch but they don't find anyone to help. They then go back to Jim Helm's residence at which time Jim Helm's girlfriend, Charmaine Schmidt, runs out of the residence and starts yelling at Dale Volkman and Rick Giese and tells them to leave at which time Giese states he goes to his parents' residence down the street. Charmaine Schmidt states that she is able to get Jim Helm's cousin and they get Jim Helm into the residence and then call the police and rescue squad. The rescue squad transports Jim Helm to the hospital where he is pronounced dead.

Complainant further alleges that Jodi Bischoff, an adult private citizen, states that on November 28, 2005, she had a small gathering at her residence in Grafton. She stated

Ben Stibbe came over that night and told her that he, Ben Stibbe, had gotten crack and heroin for Giese and Helm the night Helm died.

Complainant further alleges that all the above stated events occurred in the County of Ozaukee, State of Wisconsin.

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

Complainant

Subscribed and sworn to before
me and approved for filing on
this _____ day of _____, 2006

Notary Public, Ozaukee County, Wisconsin
My Commission is Permanent
State Bar #1010553, 1000017, 1012502

State of Wisconsin

Circuit Court

Ozaukee County

STATE OF WISCONSIN

Plaintiff,

SUMMONS

-VS-

BENJAMIN R STIBBE
730 HOMESTEAD TRAIL
GRAFTON, WI 53024

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:

<u>THE CRIME(S) OF:</u>	<u>DATE OF VIOLATION:</u>	<u>CONTRARY TO WIS. STATUTE(S):</u>
First Degree Reckless Homicide	on and between December 11, 2002 and December 12, 2002	940.02(2)(a)
First Degree Reckless Homicide	on and between October 15, 2005 and October 16, 2005	940.02(2)(a)
First Degree Reckless Homicide	on and between October 21, 2005 and October 22, 2005	940.02(2)(a)

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

You, the defendant are therefore summoned to appear before the Circuit Court on the date and time indicated on the attached Notice of Hearing

(SEE NOTICE OF HEARING ATTACHED)

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

Enc.

Sandy A. Williams
District Attorney
State Bar No. 1010553