

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 12

BROWN COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 09-CM-1162

KYLE M. FAY,  
Race/Gender: W/M  
D.O.B. 10/26/1990

**F I L E D**  
JUN 25 2009

Defendant.

CLERK OF COURTS  
BROWN COUNTY, WI

**CRIMINAL COMPLAINT**

**COUNT ONE**

On or about and between August 21, 2008, and August 22, 2008, in the city of Green Bay, Brown County, Wisconsin, the defendant Kyle M. Fay did as a party to a crime, contrary to Section 939.05, 2007-2008 Wisconsin Statutes, have sexual intercourse with a child, Victim #1, who was not his spouse and who had attained the age of 16 years, contrary to Section 948.09, 2007-2008 Wisconsin Statutes, a Class A Misdemeanor, and upon conviction may be fined not more than Ten Thousand Dollars (\$10,000), or imprisoned not more than nine (9) months, or both.

**COUNT TWO**

On or about and between August 21, 2008, and August 22, 2008, in the city of Green Bay, Brown County, Wisconsin, the defendant Kyle M. Fay did cause bodily harm to Victim #1, by an act done with intent to cause bodily harm to that person, without that person's consent, contrary to Section 940.19(1), 2007-2008 Wisconsin Statutes, a Class A Misdemeanor, and upon

conviction may be fined not more than Ten Thousand Dollars (\$10,000), or imprisoned not more than nine (9) months, or both.

### **COUNT THREE**

On or about and between August 21, 2008, and August 22, 2008, in the city of Green Bay, Brown County, Wisconsin, the defendant Kyle M. Fay did have sexual intercourse with a child, Victim #2, who was not his spouse and who had attained the age of 16 years, contrary to Section 948.09, 2007-2008 Wisconsin Statutes, a Class A Misdemeanor, and upon conviction may be fined not more than Ten Thousand Dollars (\$10,000), or imprisoned not more than nine (9) months, or both.

### **COUNT FOUR**

On or about and between August 21, 2008, and August 22, 2008, in the city of Green Bay, Brown County, Wisconsin, the defendant Kyle M. Fay did cause bodily harm to Victim #2, by an act done with intent to cause bodily harm to that person, without that person's consent, contrary to Section 940.19(1), 2007-2008 Wisconsin Statutes, a Class A Misdemeanor, and upon conviction may be fined not more than Ten Thousand Dollars (\$10,000), or imprisoned not more than nine (9) months, or both.

### **FACTUAL BASIS**

Complainant states that he is an Assistant Attorney General employed by the Wisconsin Department of Justice and bases this complaint on his personal information and belief derived from his investigation and observations into this matter, as well as the reports and statements of law enforcement officers and citizens, whom he believes to be truthful and reliable.

On September 15, 2008, Officer Rod DuBois with the Green Bay Police Department whom your complainant believes to be truthful and reliable, interviewed a female age 16,

hereinafter referred to as Victim #1, whose identity and age he was able to confirm through Wisconsin Department of Transportation Drivers License records which he has used in the past and found to be accurate and reliable. Victim #1 stated that during the month of August, 2008, she was 16 years old, and that she was at a party at the residence of Michael T. Philbin, W/M, D.O.B. 12/28/1990, located near South West High School in the city of Green Bay, Brown County, Wisconsin with her friend, Victim #2. Victim #1 stated that there was alcohol at the party that she was drinking and became extremely intoxicated. Victim #1 stated that she became intoxicated to the point of vomiting and had passed out on a couch in the living room of the home. Victim #1 stated that because she was vomiting she had been moved to the floor of the living room. Victim #1 stated that she later awoke and found two "guys" kneeling next to her, asking her to engage in a sex act. Victim #1 stated that she said "no" and remembered throwing up again. Victim #1 stated that Michael T. Philbin then performed an act of sexual intercourse on her against her will and causing her pain, without consent. Victim #1 stated that while this was occurring Kyle M. Fay, W/M, D.O.B. 10/26/1990, was holding her in order to assist Philbin in the nonconsensual act of sexual intercourse on her. Victim #1 stated that Philbin had her pinned to the ground with his legs over her arms so that she could not push him off of her.

Victim #1 stated that shortly after Philbin stopped this act of sexual intercourse, while she was lying on her stomach, that Philbin and Fay both were trying to pull her sweat pants type shorts down and were grabbing at her bare buttocks. Victim #1 stated that she was then pushed on to her back again and Fay then pinned her to the ground with his legs straddling her arms so that she could not move and then performed an act of nonconsensual sexual intercourse on her which also caused her pain without her consent. Victim #1 stated that Philbin walked away for a short time but was next to Fay while he was assaulting her. Victim #1 stated that after Fay

assaulted her that she was confused and crying, still intoxicated, passed out again and did not wake up again until morning.

On September 15, 2008, Officer DuBois interviewed a second female age 16, hereinafter referred to as Victim #2, whose identity and age he was able to confirm through Wisconsin Department of Transportation Drivers License records which he has used in the past and found to be accurate and reliable. Victim #2 stated that during the month of August, 2008, she was 16 years old, and that she was at a party at the residence of Michael T. Philbin located near South West High School in the city of Green Bay, Brown County, Wisconsin with her friend Victim #1. Victim #2 stated that after she was at the party for a little while she drove her vehicle with Kyle Fay so that Kyle Fay could purchase alcohol. Victim #2 stated that she received a citation from the city of Green Bay Police Department shortly after Kyle Fay purchased the alcohol for minor transporting intoxicants. Victim #2 stated that after she returned to the party she was drinking alcohol and became intoxicated. Victim #2 stated that she was throwing up and Michael T. Philbin helped her to a bathroom in the upstairs of the residence. Victim #2 stated that Philbin helped her to the master bedroom and that she passed out on the bed. Victim #2 stated that while she was passing out, Philbin was undressing her and performed an act of sexual intercourse on her without her consent.

Victim #2 stated that the next thing she remembers is waking up in the bed and that someone else was on top of her performing an act of sexual intercourse on her without her consent and that she believed this person was Kyle Fay. Victim #2 stated that she attends High School with both Fay and Philbin. Victim #2 stated that she felt pain after Fay had performed sexual intercourse on her without her consent.

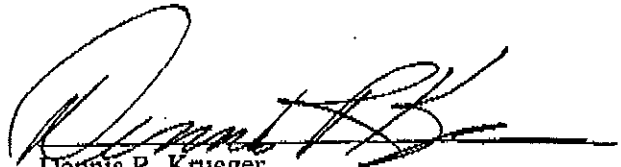
Officer DuBois was able to obtain a copy of the citation issued to Victim #2 from the city of Green Bay Police Department records with which he is familiar pursuant to his duties with the city of Green Bay Police Department and believes to be accurate and reliable. Officer DuBois reports that the citation was issued to Victim #2 on August 21, 2008, at approximately 11:34 p.m.

Officer DuBois interviewed Michael T. Philbin, on September 15, 2008, who made statements against his penal interests. Philbin admitted that there was a party at his residence in the city of Green Bay during the month of August 2008. Philbin stated that he knew Victim #1 and Victim #2 by only their first names. Officer DuBois was able to verify that the names he knew the victims by matched the first names of Victim #1 and Victim #2. Philbin stated that both girls were very drunk, were too drunk to leave and stayed at his residence. Philbin stated that he engaged in an act of sexual intercourse with Victim #2, but Officer DuBois noted that the act Philbin described was different than the act Victim #2 described. Philbin stated that Victim #2 became sick, and began throwing up, and that he later put her in his parents' bed and put a towel by her head in case she threw up. Philbin stated later that night he and Kyle Fay went by Victim #1 and he observed Kyle Fay engaged in an act of sexual intercourse with Victim #1, which Officer DuBois noted was the same act that Victim #1 described Fay performed on her. Philbin indicated that he had sexual intercourse with Victim #1 after he observed Kyle Fay engaged in an act of sexual intercourse with Victim #1. Officer DuBois noted that the act that Philbin described was the same act of sexual intercourse that Victim #1 described that Philbin did to her.

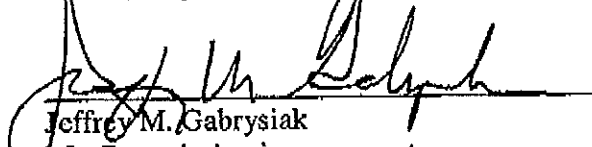
Philbin also stated that he knew that Kyle Fay went in the bedroom and had sex with Victim #2 because Kyle Fay told Philbin a few days later he had sex with Victim #2. Philbin

said that he knew that a condom was found in his parents' bedroom because his parents found out and "we got yelled at."

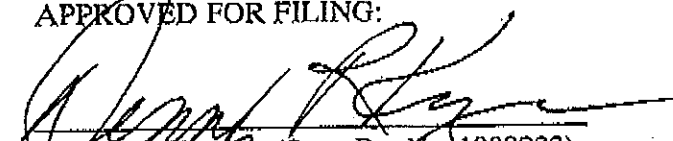
Dated this 24 day of June, 2009.

  
Dennis R. Krueger  
Assistant Attorney General  
Wisconsin Department of Justice

Subscribed and sworn to before me  
this 24 day of June, 2009.

  
Jeffrey M. Gabrysiak  
My Commission is permanent.

APPROVED FOR FILING:

  
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