

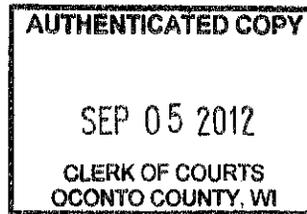
STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 12CF156

DANIEL LEE SCHMIDT,
Race/Gender: W/M,
DOB: 05/17/1983
N6309 Cattau Beach Drive
Shawano, WI 54166,



Defendant.

CRIMINAL COMPLAINT

Keith Johnson, Investigator with the Oconto County Sheriff's Department, being first duly sworn on oath, upon information and belief states the following:

COUNT 1: FIRST-DEGREE INTENTIONAL HOMICIDE OF KIMBERLY J. ROSE

Daniel L. Schmidt did, on May 19, 2009, in the town of Gillett and county of Oconto, Wisconsin, cause the death of Kimberly J. Rose, DOB 11/25/76, with intent to kill Kimberly Rose contrary to Wis. Stat. § 940.01(1)(a), a Class A felony, and upon conviction, shall be sentenced to life imprisonment pursuant to Wis. Stat. § 940.01(1)(a) and Wis. Stat. § 939.50(3)(a). Pursuant to Wis. Stat. § 973.01(3), if convicted, Schmidt shall be sentenced under Wis. Stat. § 973.014(1g). Pursuant to Wis. Stat. § 973.014(1g)(a), the Court shall make an extended supervision eligibility date determination of one of the following options:

- (1) Schmidt is eligible for release to extended supervision after serving twenty (20) years.

(2) Schmidt is eligible for release to extended supervision on a date set by the Court, but which may not be a date that occurs before the earliest possible date under subparagraph (1).

(3) Schmidt is not eligible for release to extended supervision.

COUNT 2: FIRST-DEGREE INTENTIONAL HOMICIDE OF LEONARD B. MARSH

Daniel L. Schmidt did, on May 19, 2009, in the township of Gillett and county of Oconto, Wisconsin, cause the death of Leonard B. Marsh, DOB 1/05/87, with intent to kill Leonard Marsh contrary to Wis. Stat. § 940.01(1)(a), a Class A felony, and upon conviction, shall be sentenced to life imprisonment pursuant to Wis. Stat. § 940.01(1)(a) and Wis. Stat. § 939.50(3)(a). Pursuant to Wis. Stat. § 973.01(3), if convicted, Schmidt shall be sentenced under Wis. Stat. § 973.014(1g). Pursuant to Wis. Stat. § 973.014(1g)(a), the Court shall make an extended supervision eligibility date determination of one of the following options:

(1) Schmidt is eligible for release to extended supervision after serving twenty (20) years.

(2) Schmidt is eligible for release to extended supervision on a date set by the Court, but which may not be a date that occurs before the earliest possible date under subparagraph (1).

(3) Schmidt is not eligible for release to extended supervision.

PROBABLE CAUSE STATEMENT

Your complainant Keith Johnson is an investigator with the Oconto County Sheriff's Department. Your complainant's statements contained herein are based upon Investigator Johnson's information and belief of the facts and circumstances found within the records and reports of the Oconto County Sheriff's Department, the records and reports of the Division of Criminal Investigation as well as the reports and analysis of the Wisconsin State Crime

Laboratory. Your complainant has relied upon such records and reports in the past and found them to be truthful and reliable. Upon such information and belief, your complainant states the following:

1. On May 19, 2009, Officers Boos and Thomson of the Oconto County Sheriff's Department were dispatched to 12000 Zastrow Road in the town of Gillett and the county of Oconto, Wisconsin in response to a 911 call. The call had been placed by Holly A. Kleczka, who stated that she had found a body at the Zastrow Road location. Kleczka stated that she is a friend of Kimberly Rose, who she knew to reside at that location. The two first became friends in 2008 during the time that they were both employed at TJ's Supper Club in Krakow, Wisconsin. Kleczka identified Rose as the victim. Rose had been living at this property since November of 2008. Kleczka stated to officers who responded to the residence that she had found Rose in the home on the floor of the bedroom with blood around her neck area. Officers then entered the dwelling and observed a female body lying in a bedroom, which they concluded to be Kimberly Rose. Rose appeared to have been shot in the face/head. This body was confirmed to be Kimberly Rose by Donna M. Marsh, the mother of the victim. As the police moved to secure the home another victim was found in another bedroom off of the living room. Donna Marsh also identified this body to be that of her son, Leonard B. Marsh. Investigation revealed that Leonard Marsh had been staying with his sister Rose at her home on Zastrow Road.

Condition of Rose

2. A forensic autopsy performed by Oconto County Medical Examiner Dr. Witeck on the body of Kimberly Rose indicated the cause of death to be a shotgun wound to the head, neck, and chest. The Examiner also noted that this was likely to have been a close range shooting given the soot and stippling on the posterior right upper arm as well as the right side of the face.

Condition of Marsh

3. A forensic autopsy performed by Dr. Witeck on the body of Leonard Marsh indicated the cause of death to be three shotgun wounds.

Window of Opportunity to Commit the Homicides

4. The bodies of Rose and Marsh were discovered by Kleczka immediately prior to her 911 call made at about 11:13 a.m., thus placing the time of death for both victims sometime between 10:20 a.m. and 11:13 a.m. Additionally, Joseph Fiala (a friend of Rose's) stated he received two text messages from Rose at a time he approximated to be 10:15 to 10:20 a.m. According to Fiala, Rose's first message read, "shot fired" or something similar, followed by "I need you."

5. On May 19, 2009, Daniel Schmidt (hereafter referred to as Schmidt) stated he woke up between 4:00 and 4:20 a.m. to go to work. He returned home at 9:15 a.m. after working the morning shift. Schmidt then reported to law enforcement that he left the family home at 9:30 a.m.

6. Schmidt stated that he thought it was about "twenty to 11:00" when he returned home from his first outing. At another point in the same interview Schmidt stated "he looked" and it was 10:40 a.m. Schmidt's statement to Investigator Janus that "he looked" can be taken to mean that he looked at a clock when he arrived home and noted the time. According to investigation done by the Oconto County Sheriff's Department as well as members of the Division of Criminal Investigation of the Department of Justice, Rose's residence located at 12000 Zastrow Road with a Cecil, Wisconsin mailing address is approximately fifteen miles from the Schmidts' residence located at N6309 Cattau Beach Drive in Shawano, Wisconsin and it takes 29 minutes to drive, obeying all traffic signs and speed limits.

Schmidt's Inconsistent Statements to Law Enforcement about his Whereabouts

7. When speaking with law enforcement, Schmidt explained that his reason for leaving the home was that he was going to Clintonville to get a calf "denutter" (an apparent term Schmidt uses to describe an instrument for castrating an animal) and realized on his way there that he would not be able to make it to Clintonville and back to pick up his daughter from school at 11:00 a.m., so he turned around and returned home. Schmidt stated that any time he visited Robert Koeller to borrow supplies, he called prior to going. This particular time, however, he did not. Schmidt reported that he told Stephanie that he was going to get the "denutter." Stephanie, however, informed law enforcement that Schmidt did not give any reason for leaving the house early; rather, she thought that he was going for a drive to clear his head. On the day Schmidt and Stephanie learned of the murders, Stephanie again questioned Schmidt about his whereabouts. At that time, he stated that he had "just gone for a ride." Schmidt did not make mention of having left to go get a "denutter" at that time.

Schmidt's Motives to Commit Homicide

8. Between October and November of 2008, unbeknownst to his wife, Schmidt initiated an affair with Rose. Schmidt told Investigator Dale Janus in an interview on May 21, 2009, that he had met Rose in July of 2008 while fishing and thereafter began a relationship with her. Schmidt stated that he had sex with Rose approximately six times throughout the course of their relationship. According to Schmidt it was in February of 2009 that Rose and Schmidt were last together as affair partners.

In April of 2009, Schmidt informed his wife, Stephanie, that he had been having an affair with Rose. Stephanie told investigators that she had suspected their affair since October of 2008 and had previously questioned Schmidt about his involvement with Rose, which Schmidt denied. Upon hearing confirmation of the affair, Stephanie assumed that Rose was pregnant and

confronted Rose in her home about the suspected pregnancy. Stephanie demanded that Rose take a pregnancy test, the results of which came back negative.

9. Schmidt and Stephanie argued about the affair on multiple occasions; however, on May 14, 2009, the Schmidts verbalized their desire to mend their marriage and work through their problems in marital counseling. Stephanie reported to law enforcement that during counseling, Schmidt seemed agitated by the affair and stated that he "just wanted to be done with her [Rose]." Stephanie further reported that Schmidt made comments to the effect that if Rose was out of the picture, "then they wouldn't have to deal with her and they could mend their [Stephanie and Schmidt's] relationship." During an argument about the affair, Stephanie reported that Schmidt commented he would shoot Rose and then himself. Although Schmidt initially denied these claims when speaking to law enforcement, he stated later that he may have made comments to Stephanie about killing himself because of his involvement in the affair, but Schmidt denied having made any statement about killing Rose.

10. On May 17, 2009, Rose sent Stephanie a text message with her mobile phone that included a photo attachment. Stephanie was unable to open the attachment, however, she assumed that the photo was of Schmidt and Rose. Following the text message, Stephanie drove to Rose's residence, where both Rose and Leonard Marsh were living, and confronted Rose. During this confrontation, Rose revealed that she kept a journal about her relationship with Schmidt, and that the picture she sent Stephanie was one of Schmidt. Stephanie demanded to see the journal, and Rose stated she would need to "dig it up." Rose then revealed that she and Schmidt had intercourse in Stephanie's car. Angered by this, Stephanie drove to Schmidt's workplace, confronted Schmidt, and Schmidt denied the allegation. At that time, Stephanie removed her wedding ring and told Schmidt that she was "done with him." Schmidt later stated

to law enforcement that he was annoyed with the fact that Stephanie kept reading text messages received from Rose, as he wanted to mend their marriage.

11. In mid-February, Rose loaned Schmidt money to purchase a motorcycle after Schmidt was unable to obtain a bank loan. Rose wrote Schmidt a \$3,000 check, which she later amended to \$1,000 at Schmidt's request. Schmidt agreed that he would pay Rose \$100 per month for ten months to repay her. At the time of Rose's death in May, Schmidt had made only \$275 in payments. Schmidt made statements to Stephanie regarding paying the money back so that he wouldn't have to be involved with Rose any longer. In lieu of making monetary payments, Rose allowed Schmidt to "make payments" with marijuana.

12. The motorcycle debt was the source of multiple conversations initiated by Rose to both Stephanie and Schmidt. In April of 2009, Stephanie confronted Rose about the affair, where it appears the urgency for repayment increased. It is reported that Stephanie threw approximately \$200-\$300 at Rose, stating, "I hope you're happy bitch." Consistent with the frustration between the parties, Donovan, Rose's son, reported that in April of 2009, he witnessed an altercation about money and/or drugs between his mother and Schmidt in which Schmidt struck Rose on the face. On May 17, 2009, Stephanie received a text message from Rose which stated, "tried to be nice about getting fucked, this one made it right in three days. Pay back is a bitch." Similar threats were made in regard to drug sales between Schmidt and Rose in which Rose stated if Schmidt didn't repay her, "there would be a price to pay."

Schmidt's Means to Commit the Homicide

13. Evidence collected is consistent with the use of a .20 gauge shotgun in the deaths of Rose and Marsh. According to a relative of Schmidt, Keith J. Schmidt, Schmidt was gifted a .20 gauge shotgun when Schmidt was about 15 or 16 years old by Keith. Stephanie also stated Schmidt possessed a .20 gauge and that it was kept in their garage. She was able to describe this

firearm as an open, single barrel shotgun with a wooden stock. Stephanie drew a rough sketch of the configuration of the firearm. That sketch is both consistent with a break-open single shot, but is also consistent with how Schmidt said he kept the .20 gauge in the garage before he supposedly sold it. Stephanie also noted that the gun Schmidt gave to law enforcement was not the same gun that Schmidt kept in the garage.

14. The ballistics evidence, as reported by ballistics expert, William Newhouse, including the wadding, slug, and slug fragments, found on and in the bodies of Rose and Marsh, is consistent with that of a .20 gauge shotgun. Schmidt denied in speaking with law enforcement- having possession of the above-mentioned .20 gauge shotgun at the time of the homicides, and instead states he had disposed himself of the gifted .20 gauge years before the homicide. Schmidt also stated that for a period of time prior to the homicides he had possession of a .410 shotgun which he borrowed from his friend Orlin Sanapaw. Newhouse, reports that the wadding, slugs, and slug fragments removed from and found in the bodies of Rose and Marsh are inconsistent with a .410 gauge shotgun.

Schmidt's Statements Indicative of Consciousness of Guilt

15. On May 21, 2009, Stephanie reported to Investigator Darren Laskowski that Schmidt discussed with her the disposal of his .20 gauge shotgun in the swamp behind their home. Stephanie responded to Schmidt by saying if the police had a warrant, they would find it anyway, at which point, to Stephanie's knowledge, the weapon was not discarded. Schmidt denied this allegation and stated that Stephanie must have misunderstood or misheard him.

16. In initial conversations with law enforcement Schmidt denied having or owning a gun. After being confronted by law enforcement about Stephanie's observations of a firearm in the garage, Schmidt admitted to possessing a .20 gauge shotgun at one time in his life. Schmidt denied possessing a .20 gauge shotgun during the time of the homicides. Schmidt, however, did

admit to law enforcement that .20 gauge shells may still be around the house or garage. He also reported that he recently found some in the home. When questioned about this, Schmidt stated that he was cleaning up around the garage area because his children were getting older, and "getting into things," and he did not want them to get a hold of any shells.

17. Orlin Sanapaw informed Special Agent Bradley Kust of the Division of Criminal Investigation that he had lent his .410 shotgun to Schmidt sometime during the spring of 2009. Sanapaw stated that Schmidt kept the firearm for a couple of months and then returned it to him some time before the homicides. A few weeks after the homicides, Sanapaw stated that Schmidt again asked him for his firearm so that he could provide a shotgun to law enforcement. Sanapaw complied with Schmidt's request and lent him his .410 gauge shotgun. After turning in Sanapaw's gun to law enforcement, Schmidt gave Sanapaw the receipt he had received from the Gillett Police Department. Sanapaw told investigators that Schmidt was "scared about the gun" because of the information Stephanie had given law enforcement. Sanapaw stated that Schmidt believed he needed something to turn over to the police.

18. After additional contacts with law enforcement and after turning in Sanapaw's .410 shotgun to authorities, Schmidt stated that Stephanie must have been confused about the gun that she saw in the garage. During his initial contact, Schmidt made no mention to police about possessing a .410 firearm at any time, even when confronted a second time about possessing any other weapons. Schmidt later stated that the shotgun Stephanie saw in the garage must have been the .410 shotgun which he had borrowed from Sanapaw.

Dated this 4th day of Sept., 2012.



KEITH JOHNSON

Investigator
Oconto County Sheriff's Department

Subscribed and sworn to before me and
Approved for filing this 4th day of
September, 2012.



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