

STATE OF WISCONSIN,

Plaintiff,

Vs.

SAMUEL CURTIS JOHNSON III,

Defendant.

JUSTIFICATION FOR  
AMENDMENT OF CHARGES  
AND PROPOSED RESOLUTION

CASE NO: 11-CF-376

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NOW COMES the plaintiff, by and through its representative, Assistant District Attorney, Robert S. Repischak, and as for the plaintiff's need to amend the charge in this matter, and to provide a factual basis for doing so, the undersigned states as follows:

The original criminal charge levied against the defendant was based upon the following set of facts:

- That in or about January of 2011, T.S., the victim, advising her mother, Tracie Stier-Johnson, wife of defendant, that she was a victim of inappropriate sexual contacts by the defendant.
- That in or about February 2011, T.S.'s mother confronted defendant who eventually admitted to inappropriate contact.
- T.S. was interviewed by CAC and provided detailed information as to how, where and when the sexual contact occurred.
- Ms. Stier-Johnson was interviewed by Inv. Madrigal of the Racine County Sheriff's Department. During the recorded interview, Ms. Stier-Johnson confirmed the disclosure of T.S. and her confrontation of the defendant.
- Subsequent to being confronted, the defendant agreed to undergo "counseling". The counseling occurred at Psychological Counseling Services, Ltd., in Scottsdale, Arizona.

- During counseling, the defendant made a statement which triggered a mandatory report of child sexual abuse to the Racine County Human Services Department.
- Based upon the information gathered by the Racine County Sheriff's Department, the defendant was charged with one count of repeated sexual assault of a child.

It is the decision of the undersigned to amend the charge to one count of 4<sup>th</sup> degree sexual assault, in violation of Sec. 940.225(3m), Wis. Stats., and one count of disorderly conduct, in violation of Sec. 947.01, Wis. Stats.

The undersigned appreciates that such an amendment will draw inquiry from the court and the public as to why this is being recommended. In order to answer those potential inquiries, I recite the following events and circumstances which have severely hampered the State's ability to prosecute the defendant on the original charge.

**I. The Lack of Availability and Cooperation of T.S. and her Mother, a Material Witness**

**A. Legal Representation of T.S. and Mother.**

Early in the commencement of the investigation and/or criminal prosecution, Ms. Tracie Stier-Johnson retained legal counsel for herself. Ms. Stier-Johnson became less cooperative with the investigation and prosecution as the case proceeded. The intervention of legal counsel for Ms. Stier-Johnson made it difficult for the State to directly deal with Ms. Stier-Johnson. This was due to ethical rules prohibiting the State from having direct contact with another attorney's client, unless the attorney consents. Consent was not forthcoming. See SCR 20:4.2.

Ms. Stier-Johnson was not the only party to obtain legal counsel to put a buffer between her and the prosecution. Someone took it upon themselves to retain local legal counsel for T.S. As the court is aware, Ms. Kathleen Quinn was retained to represent T.S. in this matter. Again, as a result of this intervention, ethical rules made it almost impossible for the State to deal

directly with T.S. In fact, the undersigned has not had the opportunity to meet with T.S., one on one, face to face.

It is the undersigned's opinion, based upon my attempted endeavors and experience in prosecuting this case, that T.S. and her mother took full advantage of having a lawyer stand between themselves and the State. As the court is aware, T.S. went so far as to refuse to accept service of subpoenas by mail, and refused to authorize her local counsel to accept subpoenas on her behalf. A copy of an email sent by Ms. Quinn to the undersigned is attached hereto supporting that fact. This required the State to track down and personally serve T.S. This fact was made more difficult as the State learned that T.S. was no longer in Racine County, Wisconsin and had been moved to a family home in North Carolina. Ms. Stier-Johnson also appeared to have relocated to the state of North Carolina. Once there, they refused to voluntarily return to Wisconsin and assist the State in its prosecution efforts.

As the court is aware, T.S. and Ms. Stier-Johnson refused to voluntarily return to the State of Wisconsin to testify at the trial, on behalf of the State. As the first trial date neared, the undersigned was forced to employ the extradition of witnesses procedure set forth in Sec. 976.02(3), Wis. Stats. In doing so, the undersigned sought and obtained the assistance of the District Attorney's Office for Mecklenburg County, North Carolina. The request was to locate T.S. and her mother, serve them with subpoenas and procure their attendance at a hearing in North Carolina, so as to have a court in North Carolina serve them with an order to compel their return to Wisconsin to testify at the trial in Racine County.

The procedure required the undersigned to draft various required pleadings, obtain the signature of Judge Gasiorkiewicz on some of the pleadings and file the same with Mecklenburg County District Attorney's Office. This was initially done on or about February of 2012. The trial in this matter was slated for April 23, 2012. Once filed, it was then the responsibility of the Mecklenburg County DA's Office to (1) obtain the

presence of T.S. and Ms. Stier-Johnson, (2) to schedule the hearing on the State's request, (3) obtain a court order requiring them to return to Wisconsin and testify.

Subsequent to submitting the documentation to the Mecklenburg County DA's Office, the undersigned was advised that T.S. and Ms. Stier-Johnson retained counsel in North Carolina in an effort to fight the State's request to have them return and testify. Correspondences from said North Carolina attorney's are attached hereto. A hearing for T.S.'s appearance was scheduled in the matter but as a result of the April 23, 2012 trial not occurring, T.S. was not ordered to return to Wisconsin to testify.

The jury trial was then rescheduled for the week of January 6, 2014. In anticipation of the trial, the undersigned again drafted the required pleadings to compel T.S. and Ms. Stier-Johnson to return to Wisconsin and give testimony. In July 2013, the undersigned again sought the assistance of the Mecklenburg District Attorney's Office.

In response to the State's renewed effort to compel T.S. to return and testify, T.S.'s local attorney, Ms. Quinn, filed a motion to vacate Judge Gasiorkiewicz's certification for attendance of out of state witness on or about October 30, 2013. A hearing on the issue was conducted on November 4, 2013. Judge Gasiorkiewicz denied the motion.

Despite T.S.'s efforts to fight the State's request, on November 22, 2013 the North Carolina Court granted the State's request to compel T.S. to return to testify. A copy of the order is attached hereto.

However, T.S.'s attorneys were successful in convincing the North Carolina court to reconsider the order, since the trial would not have been able to proceed on January 6, 2014. This, as the court is aware, was due to the case's uncertain status in the State Supreme Court. A copy of the order denying the State's request is attached hereto.

The history of this case clearly shows that T.S. and her mother willingly and continuously obstructed the State's efforts to prosecute this

matter. By failing to cooperate in accepting the service of subpoenas, placing legal counsel between the State and themselves, and by refusing to return to Wisconsin to testify, T.S. and Ms. Stier-Johnson negated any chance that the State could successfully prosecute the defendant on the felony charge.

The undersigned has been contacted by Ms. Kathleen Quinn who has stated that T.S. wants this case to be dismissed. The State has declined that offer. Ms. Quinn, did state in the alternative, that T.S. would not object to a misdemeanor resolution. Given the state of this case, the undersigned has been forced to consider this option.

## II. Shiffra/Green Issue

The other issue that has hampered the State's ability to successfully prosecute the defendant on the felony charge is T.S.'s refusal to release her therapy records. As a result of the Shiffra/Green motion filed by the defense and the court's decision on the same, T.S. was ordered to authorize the release of records for an in camera review. As all parties are aware, the result of her refusal, she is prohibited from testifying at trial.

This legal issue was heavily litigated before this court, the Court of Appeals and the State Supreme Court. In an effort to address the issue and that of the admissibility of the defendant's therapy records, the State took the unusual step to procure the assistance of Professor Daniel Blinka, from the Marquette Law School. Professor Blinka is a well known expert in the area of evidentiary issues. The undersigned, although having experience with the Shiffra/Green issue and that of the admissibility of the defendant's confidential records, felt that Professor Blinka could provide additional insight into the evidentiary analysis of the issues at hand.

The parties are well aware of the decision of the Court of Appeals as well as the decisions of the Wisconsin Supreme Court. As a final result of those decisions, the State is prohibited from calling T.S. as a witness unless

she agrees to release her records. To date, she has steadfastly refused to do so.

The court should be aware that the State attempted to procure the records by seeking the consent of T.S.'s biological parents to gain access to the same. Both T.S.'s mother and her biological father, Frank Stier, refused to cooperate and refused to allow the records to be released.

The court and the undersigned have made a number of inquiries as to whether T.S. will cooperate in this matter, however, Ms. Quinn, advised the court on a number of occasions that her client would not abide by the court's order and would not authorize the release of the requested records.

As a result of T.S.'s continued refusal to comply with the order to release the records and the Supreme Court's decision, the State is barred from presenting T.S. as the victim and primary witness in this matter.

### **III. Inability to Obtain Arizona Counseling Records in a Timely Manner**

The records of T.S. are not the only records that have been at issue in this case. The defendant's records from his therapy in Scottsdale, Arizona are also potentially important. However, to date, those records have not been made available to the State.

The court is also well aware of the State's continued attempts to procure the defendant's therapy records from Psychological Counseling Services, Ltd., in Scottsdale, Arizona. The undersigned has utilized the same procedure for compelling the witness from Psychological Counseling Services, Ltd., as it did for T.S. The State also utilized the same procedure to obtain the physical records from the clinic as well.

The attempts to obtain the records and to compel the therapist to testify have been on-going. In February of 2012, the State sought to compel a therapist from the Arizona clinic, named Douglas Withrow, to testify and produce the requested records. The State drafted the required documents and obtained Judge Gasiorkiewicz's signature on the relevant documents.

The State utilized the assistance of the District Attorney's Office in Maricopa County, Arizona.

In response, Dr. Withrow, through legal counsel, asserted he was not the proper person to testify or produce the requested records. The clinic and Dr. Withrow refused to identify the staff member from Psychological Counseling Services, Ltd., to whom the subpoena should be served. On or about April 12, 2012, the undersigned was informed by the Maricopa County DA's office that Dr. Withrow would not be ordered to go to Wisconsin and testify and the records would not be released.

On or about July 19, 2013, the State again drafted the required documents, procured the required judicial signatures, and sent the documents to the Maricopa County District Attorney's Office to compel the release of records and the testimony of the appropriate staff member from Psychological Counseling Services, Ltd. On or about December 17, 2013, the undersigned was advised by the Maricopa County DA's Office that the court was not inclined to order the custodian of records to appear because no trial was set to commence on January 6, 2014. Again, this was due to the case being held in limbo in the state Supreme Court.

The undersigned did, however, convince the Maricopa County DA's Office to seek a court order requiring the custodian of records to appear for an in camera review to be conducted by Judge Gasiorkiewicz. On December 18, 2013, the undersigned was advised by Maricopa County DA's office that the attorney for the clinic advised that the witness (name still unknown) would be available to testify in Wisconsin from March 26, 2014 – April 2, 2014. A copy of the e-mail received by the undersigned is attached.

The State then requested that the custodian of records be compelled to come to Wisconsin with the records, for the purpose of an in camera review. A court date of March 26, 2014 was scheduled before Judge Gasiorkiewicz. The court in Arizona set an order to show cause hearing, on January 13, 2014 on the State's request to compel.

On February 13, 2014, the undersigned was advised that the Arizona court issued the subpoena and compelled the custodian of records to come to Wisconsin and to produce the records for an in camera review.

The undersigned was subsequently advised by the Maricopa County DA's Office that the defendant would appeal the Arizona court's decision. On March 10, 2014, the Arizona Court of Appeals issued a stay of proceedings pending a review of the defendant's petition for interlocutory appeal.

As of May 19, 2014, the issue of the defendant's Arizona records has not been decided by the Arizona Court of Appeals. As the current trial date is set for July 14, 2014, it is questionable whether or not the Arizona record issue will be resolved by then and whether the records will be turned over in time for trial.

It is difficult for the undersigned to gauge how important the contents of the Arizona records could be. Certainly, the fact that the clinic felt there was information sufficient to trigger a mandatory report makes the records intriguing. The undersigned also acknowledges that the contents of the records may alleviate the effects of the loss of T.S. as a witness. However, the records also may not contain enough information to counterbalance the loss of T.S. as a witness. In fact, since T.S. is the only source of information as to the location of the assaults, i.e. Racine County, the lack of that information in the records would make them virtually useless to the State. Therefore, if the undersigned waits for the eventual release of the Arizona records and they contain little useful information, there would be no incentive on the part of the defendant to resolve this case. The undersigned, taking all of the above circumstances and events into consideration, believes that it must act now to resolve this case in the manner proposed.



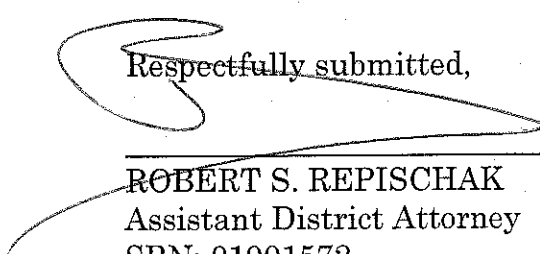
#### IV. Summation

The damage report is as follows:

1. State has lost the use of its victim and a material witness. This is due to the efforts of the victim, her mother, their attorneys, and the decisions by the Court of Appeals and State Supreme Court.
2. The State is currently without the counseling records from Arizona. As such, the State is deprived of any possible incriminating evidence or statements contained in those records.
3. Any hope of successfully prosecuting the defendant on the felony charge is virtually non-existent.
4. The position of T.S. is that the case should be dismissed. The State does not concur.
5. Despite expending great time and resources; procuring the assistance of Professor Daniel Blinka, the Mecklenburg County and Maricopa County District Attorney's Offices, the Wisconsin Attorney General's Office, and having appealed our cause to the Court of Appeals and Wisconsin Supreme Court, the state of the factual and legal affairs in this case leads the undersigned to conclude that the only viable option available to the State, other than dismissal, is a misdemeanor resolution.

Therefore, based upon the foregoing, the undersigned is proposing to amend the current charge to one count of fourth degree sexual assault and one count of disorderly conduct.

Respectfully submitted,

  
ROBERT S. REPISCHAK  
Assistant District Attorney  
SBN: 01001572

**Repischak, Robert**

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**From:** Attorney Kathleen M. Quinn [REDACTED]  
**Sent:** Tuesday, February 14, 2012 3:05 PM  
**To:** Repischak, Robert  
**Subject:** Re: State v. Curtis Johnson

Hey, Rob.

T.S. will not accept service by mail.

She does not authorize me to accept service for her.

-Kathleen M. Quinn

**From:** Repischak, Robert  
**Sent:** Tuesday, February 14, 2012 1:48 PM  
**To:** [REDACTED]  
**Subject:** State v. Curtis Johnson

I am looking for some guidance regarding subpoenas for your client. Can you please let me know if she will accept service via mail, or do I have to have local law enforcement serve her? Please let me know at your earliest convenience.

TIN FULTON WALKER & OWEN

A T T O R N E Y S

February 24, 2012

**VIA U.S. Mail and Facsimile (262) 636-3346**  
Racine County District Attorney's Office  
c/o Assistant District Attorney Robert S. Repischak  
730 Wisconsin Avenue  
Racine, WI 53403

Re: Taylor Stier  
*State of Wisconsin v. Samuel Curtis Johnson III*  
Case No.: 11 CF 376

Dear Mr. Repischak:

I represent Taylor Stier here in Mecklenburg County, North Carolina.

On behalf of Ms. Stier, I am writing to request that if your office seeks to obtain a material witness subpoena for her to appear at the above-captioned trial, please serve me a copy of the motion you file in Mecklenburg County Superior Court pursuant to the Uniform Act to Secure Attendance of Witnesses.

We also request notice of any hearing scheduled on such a motion.

Thank you for your attention.

Sincerely,

*C. Melissa Owen*  
C. Melissa Owen

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SHIRLEY L. FULTON\*  
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C. MELISSA OWEN  
JOHN GRESHAM  
S. LUKE LARGESS  
JACOB H. SUSSMAN\*\*  
MATTHEW G. PRUDEN  
W. ROB HERDY

cc: Hon. Richard D. Boner  
Chief Resident Superior Court Judge

\*OF COUNSEL  
\*\*ALSO ADMITTED IN NEW YORK

12 FEB 27 AM 8:16  
RACINE COUNTY, WI  
DISTRICT ATTORNEY'S OFFICE

**RUDOLF WIDENHOUSE & FIALKO**

February 24, 2012

**VIA U.S. Mail and Facsimile (262) 636-3346**

Racine County District Attorney's Office  
c/o Assistant District Attorney Robert S. Repischak  
730 Wisconsin Avenue  
Racine, WI 53403

Re: Tracie Stier-Johnson  
*State of Wisconsin v. Samuel Curtis Johnson III*  
Case No.: 11 CF 376

Dear Mr. Repischak:

I represent Tracie Stier-Johnson here in Mecklenburg County, North Carolina.

On behalf of Ms. Stier-Johnson, I am writing to request that if your office seeks to obtain a material witness subpoena for her to appear at the above-captioned trial, please serve me a copy of the motion you file in Mecklenburg County Superior Court pursuant to the Uniform Act to Secure Attendance of Witnesses.

We also request notice of any hearing scheduled on such a motion.

Thank you for your attention.

Sincerely,

*Christopher C Fialko*

Christopher C. Fialko

cc: Hon. Richard D. Boner  
Chief Resident Superior Court Judge

REC'D DISTRICT ATTORNEY'S OFFICE  
RACINE COUNTY, WI  
FEB 27 2012

12 FEB 27 AM 8:15

DISTRICT ATTORNEY

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

13 R 1845

In The Matter Of Proceedings  
To Compel The Attendance Of  
T.S. As A Witness  
In A Criminal Prosecution  
In The State of Wisconsin

NOV 22 2013

ORDER

CLERK OF SUPERIOR COURT  
MECKLENBURG COUNTY, NC

THIS CAUSE coming on to be heard and being heard by the undersigned Judge of the Superior Court of Mecklenburg County upon Motion of the State of North Carolina on behalf of the State of Wisconsin, it appears to the Court that:

1. T.S. is a material witness in the case of the State of Wisconsin vs. Samuel C. Johnson Case Number 11-CF-376, which is to commence Monday, January 6, 2014, in and for the Racine County Circuit Court, Racine, Wisconsin. The appearance of T.S. in said action will not cause undue burden.
2. T.S. appeared in response to a Summons issued by this Court.
3. T.S. has been informed by this Court that according to statute requirements, all travel arrangements and expenses as they pertain to said witness's testimony during trial will be paid by the State of Wisconsin.
4. T.S. has been informed by this Court of the protection from arrest service of civil and criminal process that arises pursuant to N.C.G.S. §15A-812.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that Taylor Stier appear and testify in the Racine County Circuit Court, located at 717 Wisconsin Avenue, Racine, Wisconsin 53403, on or about Monday, January 6<sup>th</sup> for approximately three (3) days, beginning at 8:30 a.m. on January 6, 2014, or until such time as the Court releases her.

This the 22<sup>nd</sup> day of November, 2013.

  
SUPERIOR COURT JUDGE PRESIDING

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
13R1845

FILED #38

In the Matter of Proceedings  
To Compel the Attendance of  
T.S. as a Witness in a Criminal  
Prosecution in the State of Wisconsin


)  
DEC 19 2013

)  
CLERK OF SUPERIOR COURT  
MECKLENBURG COUNTY, NC

)  
)  
)  
)  
ORDER

Upon consideration of the foregoing MOTION TO RECONSIDER, it is hereby  
ORDERED that the State's MOTION TO COMPEL ATTENDANCE OF T.S. AS A WITNESS  
is hereby DENIED without PREJUDICE.

Date: 12-1-13

  
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**Repischak, Robert**

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**From:** Pearson Ann [REDACTED]  
**Sent:** Wednesday, December 18, 2013 3:27 PM  
**To:** Repischak, Robert  
**Subject:** FW: PCS hearing this morning

I finally heard back from Brett Johnson. He said that the doctor's schedule is already filling up for February and it would be difficult to reschedule things. He is available to attend and testify in Wisconsin from March 26 to April 2; and April 6 to 16. He said he is specifically not available from March 8 to March 26. So, if you could fill in one of the dates when he says he is available and then e-mail the documents to me, I'll get things going on my end.

Thanks.

Ann M. Pearson, CP  
Appeals/Extraditions Paralegal  
Maricopa County Attorney's Office  
301 W. Jefferson, 2<sup>nd</sup> Floor  
Phoenix, AZ 85003  
Desk: 602-506-7615  
Fax: 602-506-7530

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