

State of Minnesota

County of Stearns
Complaint

STEARNS COUNTY
CLERK OF DISTRICT COURT
ADMINISTRATION
FILED ON

District Court

DOMESTIC ASSAULT
AMENDED COMPLAINT
TAB CHARGE PREVIOUSLY FILED

2010 SEP 10 A Cr 22	DATE FILED	PROSECUTOR FILE NO.	COURT FILE NO.
9-10-10		CR=2010-1456	CR-10-7881

STATE OF MINNESOTA,

PLAINTIFF,

SUMMONS

SERIOUS FELONY

VS.

NAME: First, Middle, Last
Andrew Patrick Schwan
 20970 Arbor Lane
 Detroit Lakes, MN 56501

DEFENDANT

Date of Birth
 06/04/1977

TJP:gml 9-10-10 dc

Ct	Statute Type	Offense Date	Statute Number & Description	Offense Level	MOC	GOC	Controlling Agencies	Control Numbers
1	Charge Penalty	12/28/09	609.345 Subd. 1(e) Criminal Sexual Conduct-4th Degree-16-17-Actor>48m old/Position of Authority 609.345 Subd. 2Criminal Sexual Conduct-4th Degree-Penalty	SF	L7A55	N	MN0730400	10006237
2	Charge Penalty	12/28/09	609.43 Subd. 2 Misconduct Public Officer/Employee-Exceed Authority 609.43Misconduct of Public Officer or Employee	GM	Y2090	N	MN0730400	10006237
3	Charge Penalty	12/28/09	340A.503 Subd. 2(1) Liquor-Purchase/Sell/Barter/Furnish/Give to u/21yr 340A.702 Subd. (8)Liquor-Sell To/Induce Under 21 to Purchase	GM	I2050	N	MN0730400	10006237
4	Charge Penalty	12/28/09	609.685 Subd. 2(a) Furnish Tobacco/Tobacco Related Device-to u/18 Yr-M 609.685 Subd. 2(b)Purchase Tobacco/Tobacco Device by Person Under 18 using False ID	M	I2050	N	MN0730400	10006237

Complaint

Complainant, Maryf Slivnik, is a Community Service Officer for the St. Cloud Police Department, and makes this Complaint and states that there is probable cause to believe that the Defendant committed the following offense(s). The Complainant states that the following facts establish PROBABLE CAUSE:

On February 8, 2010, St. Cloud police officers began an investigation into allegations of a sexual assault that had occurred in the early morning hours on December 29, 2009, at the Holiday Inn & Suites located in the City of St. Cloud, County of Stearns, State of Minnesota.

The officers learned that Child A, DOB: 7-14-92, (fully identified in the police reports), and Child B, DOB: 11-11-92; (fully identified in the police reports), were both juniors at Lake Park Audubon High School and were on the girls' basketball team. The basketball team had a tournament in Upsala, Minnesota, on December 28th and 29th, 2009. Andrew Patrick Schwan, DOB: 6-04-77, the defendant herein, and Darrin Alan Myhre, DOB: 9-30-81, were, at all times relevant to this complaint, formally employed pursuant to written contracts, as school teachers by Lake Park Audubon School District 2889 and were also employed as coaches for the girls' high school basketball team. Schwan was the head basketball coach and Myhre was the assistant basketball coach.

The players, coaches, and some parents stayed overnight at the Holiday Inn & Suites on December 28th. The players' curfew was 11:00 p.m. There was a Vikings game on TV that evening and Child A called the third team coach and received permission to extend their curfew to 11:30 p.m. Child A and Child B were staying in rooms that were next door to each other.

After curfew, Schwan and Myhre went to the girls' rooms to check on them and both coaches appeared to be under the influence of alcohol. Schwan left shortly thereafter. Child A and Child B wanted to get a pop out of the machine, but they only had \$20 bills and no change. They asked Myhre for permission to go to the front desk to get change. Myhre told them that he would go to the front desk and get change for them. Myhre took the \$20 bills and gave the girls his room key as collateral. Schwan and Myhre were staying in the same hotel room. After giving the girls their change, Myhre followed them to the pop machine. As they were walking past the swimming pool, Myhre dared the girls to jump into the pool. He then offered to pay them money if they would jump into the pool. Both Child A and Child B jumped into the pool. After Child A got out of the pool, she checked her cell phone and saw that there was a text message from Schwan which said, "what's in it for me?"

Child A and Child B returned to their rooms. When asked by their other roommates why they were soaking wet, the girls said Myhre had dared them to jump into the pool. While in the room, Child A received more text messages from Schwan, asking her what her plans were for the night. Child A read the text messages out loud to her roommates. Child A received a text message from Schwan, asking her to bring his room key to them. Child A and Child B went to the coaches' room to return their key. The girls observed Myhre and Schwan sitting on the floor outside of their room. They girls stood in the hallway talking to Schwan and Myhre. The girls then left to return to their rooms. As they were walking down the hallway to go back to their rooms, Myhre yelled, "Schwan wants to talk to you." The girls returned and walked into the coaches' hotel room. Myhre followed the girls into the room and locked the door. Child A and Child B observed several empty beer cans and two Windsor bottles, one of which was completely empty.

While inside the room, the coaches wanted to play a question-answer game. The coaches asked the girls several sexual questions. Schwan laid down on his bed and told the girls to also sit down. Child A sat on Schwan's bed. Schwan tried to put his feet under Child A's buttocks. Schwan asked Child A to go outside with him so he could smoke a cigarette. Once Schwan and Child A left the room, Myhre tackled Child B onto the bed. Child B was laying on her back and Myhre held her arms down and had his knees on top of her legs. Child B said Myhre was acting like it was a joke, but Child B felt uncomfortable and she wiggled her hands away and got up.

While Schwan and Child A were outside, they sat inside Schwan's vehicle where he allowed Child A to have a drag off of his cigarette. Schwan had not brought his hotel room key with him outside and so they were unable to get back into the hotel. Phone contact was made and Child B came outside and let them back into the hotel. As they were walking back to the hotel room, Child B was walking up the stairwell first with Child A behind her. Schwan was walking behind Child A, who was wearing athletic shorts. Schwan put his hand under Child A's shorts and attempted to touch her genital area. Child A sped up and continued up the stairs. As she ran up the next flight of stairs, Schwan attempted again to put his hand up the bottom of her shorts to touch her genital area. Child B did not see Schwan touch Child A, but Child B said something startled Child A while on the stairs and she saw Child A "jump".

When they got back into the hotel room, both Schwan and Myhre encouraged the girls to drink alcohol. They told Child A and Child B they would pay them if they took a shot of alcohol. Child B eventually took a shot of Windsor. The coaches continued to ask them sexual questions. The girls wanted to return to their rooms, but the coaches did not want them too. Schwan said, "I'm getting naked" and undressed to his boxers and climbed under the bed covers. Schwan told Child A to "Get under the covers if you're freezing." Child A got under the covers with Schwan. He then began touching her stomach and tried several times to lift her shirt and put his hand under her shirt. Schwan touched Child A's breasts with his hand under her shirt but over her bra. Schwan touched Child A on her genital area with his hand, both over her clothing and under her clothing. Child A repeatedly pushed his hands away. Child A said Schwan got mad at her because she wouldn't do anything with him. He said, "whatever," and then went to sleep. Child A also fell asleep.

Child B said that after she took a shot of alcohol, the coaches wanted her to take a second one. The coaches did not want the girls to return to their rooms. They wanted the girls to stay in their hotel with them. Myhre laid on his bed and Child B laid beside him facing away from him. Myhre was rubbing his feet against her legs and put his hand on her waist. Myhre put his hand under her shirt and touched her breasts over

her sports bra. Myhre tried to put his hand down Child B's shorts. Child B moved away from him and Myhre was unable to put his hands down her shorts. Myhre said, "no one has to know" and then went to sleep. Child B woke up Child A and they returned to their rooms.

Your complainant has reason to believe and does believe that all of the above information is true and correct.

The above facts constitute your complainant's basis for believing that the above-named defendant, on or about the 29th day of December, 2009, in the City of St. Cloud, County of Stearns, State of Minnesota, committed the following described offenses:

Count 1

Charge: Criminal Sexual Conduct-4th Degree-16-17-Actor>48m old/Position of Authority
In Violation of: 609.345 Subd. 1(e)
Penalty: 10 years imprisonment and/or \$20,000 fine.

That the defendant, Andrew Patrick Schwan, did wrongfully, unlawfully, and intentionally, and feloniously engage in sexual contact with another person who was at least 16 years of age but less than 18 years of age and was more than 48 months older than the complainant and, while in a position of authority over the complainant, to-wit: By touching Child A, DOB: 7-14-92, on her breast and genital area with his hand.

Count 2

Charge: Misconduct Public Officer/Employee-Exceed Authority
In Violation of: 609.43 Subd. 2
Penalty: 1 year imprisonment and/or \$3,000 fine.

That the defendant, Andrew Patrick Schwan, as a public officer or employee, in the capacity of such officer or employee, did an act knowing that it was in excess of his lawful authority or knowing that the act was forbidden by law to be done in that capacity.

Count 3

Charge: Liquor-Purchase/Sell/Barter/Furnish/Give to u/21yr
In Violation of: 340A.503 Subd. 2(1)
Penalty: 1 year imprisonment and/or \$3,000 fine.

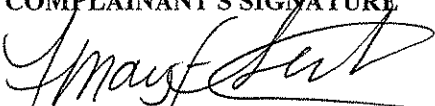
That the defendant, Andrew Patrick Schwan, did wrongfully, unlawfully, and intentionally sell, barter, furnish, or give alcoholic beverages to a person under 21 years of age; to-wit: Child B, DOB: 11-11-92.

Count 4

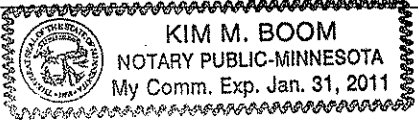
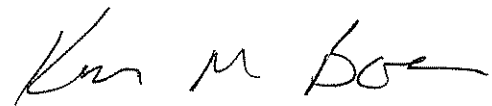
Charge: Furnish Tobacco/Tobacco Related Device-to u/18 Yr-M
In Violation of: 609.685 Subd. 2(a)
Penalty: 90 days imprisonment and/or \$1,000 fine.

That the defendant, Andrew Patrick Schwan, did wrongfully, unlawfully, and intentionally furnish tobacco to a person under the age of 18, to-wit: Child A, DOB: 7-14-92.

THEREFORE, Complainant requests that said Defendant, subject to bail or conditioned of release be:
 (1) arrested or that other lawful steps be taken to obtain Defendant's appearance in court; or
 (2) detained, if already in custody, pending further proceedings; and that said Defendant otherwise be dealt with according to law.

COMPLAINANT'S NAME: Mary F Slivnik St. Cloud Police Department	COMPLAINANT'S SIGNATURE 
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This COMPLAINT was subscribed and sworn to before the undersigned this 10 day of September, 2010.

NAME:  KIM M. BOOM NOTARY PUBLIC-MINNESOTA My Comm. Exp. Jan. 31, 2011 Title:	Signature: 
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Being duly authorized to prosecute the offense(s) charged, I hereby approve this Complaint

DATE: September 10, 2010	PROSECUTING ATTORNEY'S SIGNATURE 
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PROSECUTING ATTORNEY: NAME/TITLE Theresa J. Patock Assistant County Attorney Attorney Registration #: 0264908	PROSECUTING ATTORNEY: ADDRESS/TELEPHONE Administration Center, Room 448 705 Courthouse Square St. Cloud, MN 56303 320-656-3880
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