STATE OF WISCONSIN **CIRCUIT COURT** **LA CROSSE COUNTY**

State of Wisconsin,

Plaintiff,

vs. **Case No. 25-CF-1080**

Matthew R. Sierra,

Defendant.

MATTHEW R. SIERRA'S NOTICE OF MOTION AND MOTION TO DISMISS CRIMINAL COMPLAINT

Matthew Sierra, appearing specially by his attorneys, Johns, Flaherty & Collins, S.C., by Attorney David Pierce, Jr., and reserving the right to challenge the court's jurisdiction, moves the court for an order dismissing this action. Mr. Sierra brings this motion pursuant to section 971.31(2) and (5) of the Wisconsin Statutes on the grounds that the court lacks jurisdiction over him because **the Criminal Complaint by which Mr. Sierra is charged is fatally defective**. Pursuant to Wis. Stat. § 971.31(5)(c), this Motion shall be heard at or before the time of the Preliminary Hearing on January 5, 2026 at 11:00am.

Specifically, **the Complaint fails to set forth essential facts from which it could be inferred that Mr. Sierra committed any act that caused death, a fire, or animal cruelty, and fails to state the essential facts constituting the offenses charged as required by law**, all in violation of the rights guaranteed by the 4th, 5th, and 14th Amendments to the United States Constitution; article I, sections 1, 8, and 11 of the Wisconsin Constitution; sections 968.01 and 968.02 of the Wisconsin Statutes; and *State v. Haugen*, 52 Wis. 2d 791, 191 N.W.2d 12 (1971), *State ex rel. Cullen v. Ceci*, 45 Wis. 2d 432, 173 N.W.2d 175 (1970), and *State ex rel. Evanow v. Seraphim*, 40 Wis. 2d 223, 161 N.W.2d 369 (1968).

Alternatively, the Court should dismiss the Complaint on principles of issue preclusion – a Court has already made a ruling on this issue, and the State is attempting to relitigate the issue with a repackaged set of the same facts.

The Complaint charges Matthew Sierra with two counts of first-degree intentional homicide, one count of arson, and one count of mistreatment of animals. On December 23, 2025, Circuit Court Judge Scott Horne dismissed the same four counts against Mr. Sierra in La Crosse County Case No. 25CF1060.[1] In granting the Defense's Motion to Dismiss, the Court ruled that the State needed to allege that Mr. Sierra intentionally caused the death of the victims:

> There are no other findings that are referenced from the autopsy that would bear on the manner of death; whether this was a death that could have occurred because of natural causes, accidental causes, whether it was an intentional crime, as is alleged in the charging portion of the complaint, or whether it could have been reckless, or whether it could be negligent.
> ***Those are basic issues which need to be addressed in some way in the criminal complaint***.

La Crosse County Case No. 25CF1060, *Oral Ruling on Motion to Dismiss*, pg. 16, lines 11-19 (Emphasis added). The Court concluded those necessary facts were missing:

> ***[T]he evidence that would answer basic questions*** about the body and inferences that might be drawn as to the cause or manner of death, cause or origin of the fire, ***is missing***."

Oral Ruling, pg. 17: 5-9 (emphasis added).

The new version of the Complaint does not address the "basic issues" outlined by Judge Horne. The Complaint does not include (1) factual allegations about cause of death or the cause of the fire; (2) facts supporting intent; or (3) facts excluding accident, recklessness, or negligence – the Court was explicit that these facts were necessary for probable cause to exist. The State did not add facts that alleged that Mr. Sierra committed an act to cause the harm specified in each Count. The current Complaint is no different from the first Complaint – the current Complaint just

1 For the Court's convenience, the Motion to Dismiss in 25CF1060 is attached as Exhibit A; the State's Response to the Motion to Dismiss is attached as Exhibit B; the Defense Reply is attached as Exhibit C, and the Transcript from the Oral Ruling is attached as Exhibit D.

includes more distractions. Either the State did not hear the Court's clear and express ruling prior to refiling the charges, or more likely, the State did hear what Judge Horne stated was necessary for a sufficient complaint and did not include the allegations because no such facts exist – because Matthew Sierra did not commit these crimes.

The new version of the Complaint mainly adds facts that further explores the State's motive and opportunity theories – facts that were already acknowledged by Judge Horne. The Court indicated that additional facts about motive and opportunity were not necessary: "It appears to me, though, that the complaint is simply premature. I think the evidence that places Mr. Sierra at the scene at important periods of time is fairly strong." *Oral Ruling,* 17:21-24. The Complaint is not 14 pages longer than the first version because there are now facts alleging causation – the Complaint is 14 pages longer because the State included additional facts about motive and opportunity in what appears to be an attempt to get a different judge to reach a different ruling than Judge Horne's ruling.

That said, the new version of the Complaint does include more references to the findings of the pathologist and fire marshal – but those findings do not help the State. In fact, those findings hurt the State's causation theory, which is probably why those facts were not included in the original Complaint. In a previous filing, the State even admitted it could not allege facts to support causation: "While the State may not allege specific facts about how the fire started or exactly how the defendant caused AP's death, the stated facts and inferences are strong enough to establish probable cause that he did in fact commit the crimes..." Exhibit B, *State's Response to Motion to Dismiss*, pg. 2. Despite not addressing Judge Horne's "basic questions," the State re-filed anyway, even though Judge Horne already made the finding that the Complaint was filed prematurely with the current set of facts. *Oral Ruling,* 17:21-24.

Lack of Facts Alleging Causation

Judge Horne granted the Motion to Dismiss because the State did not allege sufficient facts for the Court to conclude that Mr. Sierra started the fire or caused death:

> It may well be that the pathologist's findings and the fire marshal's findings may support the allegations, but I can't make that finding from the complaint as it stands today. And for that reason, I'm going to grant the motion to dismiss.

Oral Ruling, pg. 18:3-8.

While the new version of the Complaint includes references to the fire marshal and pathologist, Judge Horne did not just ask for inclusion of a reference to the fire marshal and pathologist's investigations – the ruling required that their respective findings "**support the allegations**." *Oral Ruling*, pg. 18:3-8. However, neither the fire marshal nor the pathologist made a finding that supports the State's conclusions, which is likely why the State did not include the pathologist's inconclusive findings until page 15 of the Complaint.

The State did not address the factual issues that Judge Horne outlined in his ruling dismissing the case – this Complaint ***does not allege that Mr. Sierra committed an act to cause the deaths or fire***. By Defense counsel's count, the Complaint references causation approximately eight times. However, the references to causation are not allegations or even inferences. Rather, the Complaint includes several thoughts and theories about causation – amazingly, several of the thoughts and theories about causation that are most prominently contained within the Complaint are from neighbors or former tenants of the duplex that appear to be based on gut feelings; it is unclear if the State is adopting those thoughts and theories as part of its allegations. Regardless, none of the thoughts or theories includes an allegation that would allow the Court to now conclude that Mr. Sierra committed an act to cause death or fire.

I. The Complaint does not allege that Matthew Sierra caused the fire to start.

After numerous interviews and expert review of the evidence, the consensus is apparently clear – the State cannot say how the fire started, exactly where the fire started, cannot say if it was an accident, cannot say if they ruled out negligence or recklessness, and most importantly, the State does not allege any facts that Mr. Sierra intentionally started a fire. The Complaint hypothesizes and then apparently rejects that the fire was caused by electrical issues. The Complaint hypothesizes and then apparently rejects a smoking accident. After exploring those two hypotheses, the Complaint finally includes the expert's conclusion – the investigators do not know what caused the fire or whether it was intentional, reckless, negligent, or accidental.

The Complaint includes three comments regarding the cause of the fire:

a. Comment 1: The fire may have been caused by electrical issues.

   i. "MM said ... she's been hearing the cause of the fire was electrical because the neighbor at 1717 Taylor Steet that is on the west side of the duplex to 1719 Taylor Street, made comments on the same WXOW Facebook page that they have had electrical issues in their apartment as well." *Criminal Complaint*, pg. 3.

   ii. "Officer Lange was also approached by a female named CE who previously lived at 1719 Taylor Street that told him there have been electrical issues there ... Inv. Raddant reviewed (Check Out Forms) and there didn't appear to be anything wrong with the electrical components and everything had passed inspections... [The inspections] consist of staff using an electricity reader to show there is current and document when lights and other items are working when turned on." *Criminal Complaint*, pg. 4.

   iii. There is nothing included in the Complaint that indicates the Fire Investigators/ Fire Marshal ruled out electrical issues as a cause.

The State included references from two separate and distinct witnesses that both attested to the existence of electrical issues in the duplex where the fire occurred. After including these two separate concerns, the State appears to take the position that the fire was not caused by an electrical issue simply because a Check Out Form was completed by Housing Authority staff after a previous

tenant moved out. Shockingly, there is no reference as to whether the Fire Investigator agreed with this determination. However, even if the Court inferred the fire was not caused by an electrical malfunction, ***the State still is not alleging any facts that Mr. Sierra started the fire.***

b. Comment 2: A neighbor says smoking was unlikely the cause.

i. "MM said she didn't think that her neighbor would have fallen asleep with a cigarette, and she was asked if her neighbor smoked and she said she never saw her smoke." *Criminal Complaint*, pg. 3.

ii. Similar to the comment about the electrical issue, there is nothing included in the Complaint that indicates the Fire Investigators/ Fire Marshal ruled out a smoking accident as a cause of the fire.

Again, it is unclear if the State is taking the position that the fire was not caused by smoking based on the neighbor (MM) saying that she did not see AP smoke. More importantly, though, there is no reference to whether the Fire Inspector ruled out smoking. Even if the arson investigators did rule out a smoking accident***, the State still is not alleging that Mr. Sierra started the fire.***

c. Comment 3: The State cannot say where or how the fire started, and there is no allegation that the fire was started intentionally.

i. "[A]rson investigators stated that given the extensive damage done to the bedroom, it will be highly unlikely to determine exactly where or how the fire was started, other than it was in AP's bedroom because that room was the only one heavily damaged by fire." *Criminal Complaint*, pg. 6.

The State cannot say how the fire started, where in the room the fire was started, or whether the fire was started intentionally or accidentally. The State apparently included comments about electrical malfunction and smoking to attempt to mollify Judge Horne's critique that the State had to allege some facts about the investigation. *Oral Ruling*, pg. 6: 1-5. However, those thoughts and theories cannot get past the Arson Investigator's conclusion – "it will be highly unlikely to determine exactly where or how the fire was started." *Criminal Complaint*, pg. 6. Just as significant

– the Arson Investigator does not even suggest that the fire was started intentionally. If the Arson investigator cannot conclude that the fire was started intentionally, it is absurd to find that the State can allege that the fire was started intentionally with no facts.

Conspicuously absent from the Complaint is any evidence being recovered from Mr. Sierra's person, his car, or his home that would support a conclusion that he caused a fire; the Complaint includes no claim of accelerants or evidence found on Mr. Sierra's clothing. The Complaint includes no references to cell phone searches that would indicate an attempt to start a fire without leaving a trace. The Court can and should infer that no such evidence exists, and the evidence does not exist because Mr. Sierra did not cause the fire.

II. The Complaint does not allege that Mr. Sierra caused AP's death – to the contrary, the Complaint excludes most causes of death commonly seen in domestic cases.

The Complaint does not allege that Mr. Sierra committed an act that caused the death of AP or her unborn child. When the Complaint finally references the pathologist's findings in page 15 of the Complaint, the findings indicate that there is no evidence of foul play causing death. The pathologist concluded that there were (1) no obvious signs of injury (except for postmortem fire injuries); (2) no gunshot wounds; (3) no stab wounds; (4) no injuries to the internal organs; (5) no signs of internal bleeding; (6) no cut marks on the wrists, arms, or neck; (7) no evidence to support strangulation or suffocation; and (8) no illicit substances in AP's system. While the Complaint included MM's unsupported conclusion that this likely was not a self-harm event, the pathologist apparently does not rule out self-harm based on the facts in the four corners of the Complaint.

The Complaint includes five comments regarding the cause of death for the victims:

a. Comment 1: The neighbor says self-harm was unlikely.

ii. "(MM) also didn't think that it was self-harm. MM said she could usually get a good idea of people who would come through the units, and she could

pick up on their behaviors and personalities." *Criminal Complaint*, pg. 3.

iii. *There is nothing included in the Complaint that indicates the pathologist ruled out self-harm as a cause of death.*

d. Comment 2: The absence of soot in AP's throat and lungs and low Carbon Monoxide levels in AP's blood indicate AP was deceased prior to the fire.

i. *This fact was included in the first version of the criminal complaint and considered by Judge Horne. Oral Ruling*, pg. 15:21-25.

e. Comment 3: The State does not know how AP died, but it does not appear to have been caused by violence.

i. "Dr. Stram stated it will be difficult to determine a cause of death because of the condition of the body. However, she stated ***there were no obvious signs of injury***, although the skin of the body was burned off in most sections of the body. There were ***no signs of gunshots or stab wounds or similar types of injuries to the internal organs***. There were ***no signs of internal bleeding***. There were ***no cut marks on the skin by the wrists arms or neck***." *Criminal Complaint*, pg. 15 (emphasis added).[2]

ii. There were no injuries that were consistent with suffocation or strangulation, but Dr. Stram apparently said "it doesn't mean it couldn't have taken place." *Criminal Complaint*, pg. 15.

iii. Noteworthy, the possibility of accident, negligence, self-harm, or recklessness is not referenced in comments attributed to the pathologist.

f. Comment 4: AP did not have illicit substances in her system.

i. Blood toxicology results indicated no illicit substances in AP's system.

ii. *This fact was included in the first version of the criminal complaint and considered by Judge Horne. Oral Ruling*, pg. 16: 1-2.

g. Comment 5: The animal may have been killed by gases caused by the fire's smoke.[3]

i. "[DCI Agent] Reblin stated there was an abundance of smoke and hot gases in the bathroom." *Criminal Complaint*, pg. 5.

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2 This finding by the pathologist does not appear in the original Complaint—an omission that is difficult to view as accidental.

3 The State appears to be alleging that the fire caused the death of the animal. Thus, if the State did not allege facts sufficient to support that Mr. Sierra caused the start of the fire, the State similarly has not alleged facts that Mr. Sierra caused the death to the animal.

ii. While the implication in the Complaint is that smoke from the fire caused the animal's death, there is nothing included in the Complaint that indicates a scientific explanation for the animal's cause of death.

The State has not alleged any facts that Mr. Sierra caused the deaths of the victims. In an apparent act of trying to hide facts from the Court and Defense, the State did not include findings from the pathologist that were contrary to the State's assertion in pleadings that implied that evidence existed that Mr. Sierra committed a violent murder and then burned the residence.[4] The State made these assertions while apparently knowing that the pathologist had ruled out many causes of death that one would anticipate. For the purposes of this Motion, the Court does not need to conclude that the State was intentionally deceptive – but the Defense is done ignoring clear omissions by the State and is done assuming innocent explanations for why important facts were not included in pleadings.

In a similar vein, the Court should consider the lack of information related to toxicology. While the Complaint does include a reference that there were no "illicit substances" in AP's toxicology, the Complaint is conspicuously silent about other potential toxicological results that could be indicative of cause of death. Per several versions of Black's Law Dictionary, an "illicit substance" is defined as an "unlawful" or prohibited drug. Thus, the Complaint is essentially alleging that no illegal drugs were found in AP's system. It is noteworthy that the Complaint's reference to toxicology omits any findings or reference to prescription opiates, depressants, or stimulants; other potential poisons; alcohols (ethanol or methanol); over-the-counter drugs; or other potential toxins. The pathologist does not rule out accidental poisoning or potential overdosing of non-illicit drugs. The Complaint simply does not give the Court sufficient facts to

4 "The inferences in this case are much stronger that the defendant ***got rid of AP*** and the unborn child because he wanted to terminate the pregnancy and then burned the evidence (emphasis added)." *State's Reply to Motion to Dismiss*, pg. 3.

conclude anything about the cause of AP and her unborn child's death. Most importantly, the Complaint does not does not say that Mr. Sierra did anything to cause the deaths.

Legal Analysis

I. No Causation Alleged: The Court should dismiss because the Complaint does not allege any facts to support causation.

The State must allege an "act" or "conduct" that supports the causation of the crime alleged. Wis JI-Criminal 901. The Causation element requires that the State "identify harm or consequence" to the victim that is caused by the defendant. *Id.* An actor causes death if his or her **conduct** is a substantial factor in bringing about the harm. *State v. Serebin*, 119 Wis.2d 837, 846-47, 350 N.W.2d 402 (Ct. App. 1978). In the comments to the jury instructions, there is a notation that causation must consider -- "Did the actor's **act** in fact cause the consequences? (emphasis added)." JIC 901.

The State needs to allege the essential elements of the crime in order to provide a sufficient factual basis to meet probable cause. *State v. Chagnon*, 2015 WI App 66, ¶ 7. In *Chagnon*, the Defendant was charged with 23 counts of capturing a representation of a minor when he was found in possession of many photos of young girls that had been obtained from publications. *Id.* ¶ 11. Chagnon moved to dismiss arguing that there were no facts alleged that Chagnon had committed one of the essential elements of the offense – the State had not alleged that Chagnon "captured the representations" of the photos in his possession. *Id.* ¶ 4. The Circuit Court denied the Motion to Dismiss, but the Court of Appeals overturned the Circuit Court and concluded, "we agree with Chagnon that the allegations of the complaint do not satisfy the statutory requirement that Chagnon "capture[d] a representation" of any of the girls." *Id*. ¶ 11.

The Complaint does not allege that Mr. Sierra committed an "act" or "conduct" that caused the harm in the respective counts. Like in *Chagnon*, the State does not allege facts to

support one of the essential elements. The State fails to include any allegation that Mr. Sierra committed an act causing a fire or causing death. The State even acknowledged as much in its earlier filing when it said "[T]he State may not allege specific facts about how the fire started or exactly how the defendant caused AP's death..." *State's Response to Motion to Dismiss*, pg. 2.

The Complaint does not allege that the deaths were not caused by accident, self-harm, or caused by a third-party. The State cannot make a claim of how or why the fire started. If the State cannot claim anything beyond conclusory conjecture, the State has not met even the low burden of probable cause. Instead, after Judge Horne gave the State time to re-file a Complaint with allegations that Mr. Sierra committed an act that caused the harm, the State doubled down on its already flawed Complaint and just included more facts to support its imperfect "motive" theory.[5]

II. Issue Preclusion: The Court should dismiss because the Complaint because the same issue has been previously decided.

Judge Horne's ruling in dismissing the previous complaint was exceptionally clear – "It may well be that the pathologist's findings and the fire marshal's findings may support the allegations, but I can't make that finding from the complaint as it stands today." *Oral Ruling*, pg. 18:3-6. Judge Horne rejected the notion that Mr. Sierra's presence at the scene alone was sufficient for probable cause:

> Reasonable inference can be drawn that Mr. Sierra was present at the residence contemporaneously with the start of the fire.
> As has been discussed, there's been no evidence presented of where or how the fire started, no evidence of where the body was found, the condition of the body, no description of the interior of the premises in any way.

5 For the purposes of this Motion, the Court does not need to make any findings related to the State's motive theory. However, it is worth noting that the Complaint's allegations about a dispute surrounding a potential abortion was in August – long prior to AP's death. In the several months following, the Complaint includes multiple references that AP and Mr. Sierra were engaged in consensual sexual relations in the week prior to AP's death, and AP had invited Mr. Sierra to her home for sex. The State is attempting to garner an emotional reaction by trying to tie these two separate and distinct events together; the claim is simply not based in reality.

Oral Ruling, pg. 13:3-10.

Apparently, the State simply disagrees with Judge Horne's ruling that the Complaint needs to contain facts alleging causation. The State indicated that it has no intention of including facts to allege causation – the State attempted to convince the Court that probable cause exists without a known cause of the fire or a known cause of death. *State's Response to Motion to Dismiss*, pg. 2. In re-filing the same charges with the same lack of causation alleged, the State is attempting to repackage the same set of facts to convince a different Judge to reach a different decision.

Issue preclusion forecloses relitigation of an issue that was previously litigated between the same parties. *Flooring Brokers, Inc. v. Florstar Sales, Inc.* 2010 WI App. 40, ¶ 6. Issue preclusion (commonly called collateral estoppel) is applicable in criminal cases only when double jeopardy is not. *State v. Henning*, 2004 WI 89, 273 Wis. 2d 352, 681 N.W.2d 871. Issue preclusion is designed to limit the re-litigation of issues that have been actually litigated in a previous action. *Michelle T. v. Crozier*, 173 Wis.2d 681, 687, 495 N.W.2d 327 (1993).

Issue preclusion requires courts to conduct a "fundamental fairness" analysis. *Id.* at 698. Under this analysis, courts consider an array of factors in deciding whether issue preclusion is equitable in a particular case, including:

> (1) could the party against whom preclusion is sought, as a matter of law, have obtained review of the judgment;
> (2) is the question one of law that involves two distinct claims or intervening contextual shifts in the law;
> (3) do significant differences in the quality or extensiveness of proceedings between the two courts warrant relitigation of the issue;
> (4) have the burdens of persuasion shifted such that the party seeking preclusion had a lower burden of persuasion in the first trial than in the second; or
> (5) are matters of public policy and individual circumstances involved that would render the application of collateral estoppel to be fundamentally unfair, including inadequate opportunity or incentive to obtain a full and fair adjudication in the initial action?

Id. at 689.

In this case, the Court should find that the State has brought the same lack of facts to a different Court and is asking this Court to ignore another Court's ruling when it dismissed 25CF1060. The factors as outlined in *Michelle T.* weigh in favor of the defense – as to factor 1, the State could have appealed Judge Horne's ruling if it believed Judge Horne was wrong as a matter of law; the State did not. As to factor 2, this question is one of law and there are not two distinct sets of facts between the original complaint and the current version of the complaint – again, one is much lengthier, but the length does not add facts supporting causation. As to factor 3, there is no difference between the quality or extensiveness of the proceedings at the Motion to Dismiss in 25CF1060 and the proceedings facing the Court in this case – the Parties are at the same decision point with a Motion to Dismiss prior to the Preliminary Hearing. As to factor 4, the burdens of persuasion have not shifted – we are still at the probable cause standard that Judge Horne said the State did not meet one week prior to this filing. *Oral Ruling*, pg. 19:18-19. Finally, applying issue preclusion would not be fundamentally unfair to the State – the State had an opportunity to respond to the original motion to dismiss (the State did respond), and the State was heard in oral argument. The State is perhaps the most experienced and sophisticated litigant in the State of Wisconsin circuit court system. The State has the power to arrest and the power to jail. The State has an entire staff of lawyers paid to handle appeals and handle sensitive cases. There is no scenario in which applying issue preclusion to the State in this circumstance would be fundamentally unfair.

In this case, the issue is the same – the Court ruled that the State did not allege sufficient facts supporting causation. Judge Horne ruled probable cause did not exist as a result. The State has alleged the same set of facts and some facts that fly in the face of its causation argument, but

it asks this Court for a different outcome. The Court should reject the State's request for the Court to overturn the substance of Judge Horne's decision in an improper collateral attack.

Conclusion

A terrible tragedy occurred, but the Court should not follow the State's lead and allow a criminal proceeding to move forward when the State cannot even allege what it thinks caused the tragedy. The Defense requests the Court grant the Defense Motion to Dismiss because the State has not alleged probable cause and the Court lacks subject matter jurisdiction as a result. Alternatively, the Defense requests the Court dismiss this case due to issue preclusion because this same issue was previously litigated in La Crosse County Case No. 25CF1060.

Respectfully submitted,

Dated this 30th day of December, 2025.

JOHNS, FLAHERTY & COLLINS, S.C.

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