

STATE OF WISCONSIN

CIRCUIT COURT

SHEBOYGAN COUNTY

STATE OF WISCONSIN

CRIMINAL COMPLAINT

-VS-

Mark A Ustby
3022 W National Avenue Apt 7
Milwaukee, WI 53215
DOB: 06/29/1980
Sex/Race: M/W
Alias:

DA Case No.: 2013SB003205
Assigned DA/ADA: Samantha R Prah
Agency Case No.: S13-14350
Court Case No.: 2013CF

Defendant.

Sgt. Eugene Wielgosh, Sheboygan County Sheriff Department, being first duly sworn on oath deposes and says on information and belief:

Count 1: THEFT - MOVABLE PROPERTY (> \$10,000)

The above-named defendant on or about January, 2013 through August 2013, Sheboygan County, Wisconsin, did intentionally take and carry away movable property of Random Lake High School, having a value greater than \$10,000, without consent, and with intent to permanently deprive the owner of possession of the property, contrary to sec. 943.20(1)(a) and (3)(c), 939.50(3)(g) Wis. Stats.

Upon conviction for this offense, a Class G Felony, the defendant may be fined not more than Twenty Five Thousand Dollars (\$25,000), or imprisoned not more than ten (10) years, or both.

Count 2: THEFT - MOVABLE PROPERTY (> \$10,000)

The above-named defendant on or about the Summer of 2012 through July, 2013, Sheboygan County, Wisconsin, did intentionally retain possession of movable property of Bertram Wireless, having a value greater than \$10,000, without consent, and with intent to permanently deprive the owner of possession of the property, contrary to sec. 943.20(1)(a) and (3)(c), 939.50(3)(g) Wis. Stats.

Upon conviction for this offense, a Class G Felony, the defendant may be fined not more than Twenty Five Thousand Dollars (\$25,000), or imprisoned not more than ten (10) years, or both.

The basis of complainant's charge of such offense is: Official reports prepared by Detective Brian Judd of the Sheboygan County Sheriff Department, which reports indicate that on August 29, 2013, Deputy Johnston was dispatched to the Random Lake School District

Officer, located at 605 Random Lake Road, in the Village of Random Lake, County of Sheboygan, State of Wisconsin.

Upon arrival, Deputy Johnston made contact with Thomas Malmstadt, DOB 01/10/62, who is the Superintendent of Schools at the Random Lake School District. Superintendent Malmstadt stated that a former employee by the name of Mark Ustby, DOB 06/29/80, hereafter referred to as the Defendant, has been acting "weird" lately. Superintendent Malmstadt said that other teachers in the school have made comments to him about this. Superintendent Malmstadt said that the Defendant has been withdrawn and has been complaining of migraines, appears to be more depressed than normal, and the behavior has been escalating within the last couple of months. Superintendent Malmstadt also said that the Defendant has been having money problems and has filed for bankruptcy and his wages have been garnished.

Superintendent Malmstadt told Deputy Johnston that on August 28, 2013, the Defendant had left the school and was seen by a custodian walking out with a couple of boxes. Superintendent Malmstadt said when he returned to his desk and checked his email, he found an email from the Defendant, resigning. He said he was surprised by the Defendant's resignation as he did not see it coming. He thought the job was getting to the Defendant because of the number of computers and other technology that he has to deal with, as he is in charge of all the technology in the school. Superintendent Malmstadt said the number of computers that he had to take care of has been increasing drastically since they are now issuing students computer tablets instead of textbooks.

Superintendent Malmstadt said that after receiving this email, he went to the Defendant's office and noticed that all of the computer tablets seemed to be missing. He said the room was quite a mess but he was concerned because he could not see any of the computer tablets that were to be issued to the students. He said he returned to his office and sent the Defendant several text messages and did not receive a response. Superintendent Malmstadt said that the computer tablets were supposed to be distributed to the classrooms on August 29, 2013 and the Defendant was supposed to have all of the computer tablets ready to go by then.

Superintendent Malmstadt said that on August 29, 2013, he again tried to call the Defendant on the phone and finally he answered. He asked the Defendant where the computer tablets were located and he said they should be in his office. He said he told the Defendant that they were not in his office and the Defendant said he did not know where they were.

Superintendent Malmstadt said that all of the Asus computer tablets were brand new and they had just been purchased this year and were going to be issued for the first time to middle school students. Additionally, Superintendent Malmstadt said that there were many iPad II tablets also missing, which had been issued to elementary school students last year and had been turned in by the students to the Defendant. Superintendent Malmstadt said that all of these computer tablets were supposed to be in the Defendant's office as he was supposed to get them ready for the new school year.

Deputy Johnston then made contact with Robert C. Federspiel, DOB 11/18/58, who is the custodian at Random Lake Schools. Robert explained that he saw the Defendant leaving school in the early afternoon hours and he was carrying two cardboard boxes, both being closed. Robert asked the Defendant if he would like a cart to move the boxes and the Defendant stated no, he could carry them.

On August 30, 2013, Deputy Johnston followed up with Superintendent Malmstadt. Superintendent Malmstadt said that one Apple iMac 20-inch, 2.16 GHZ Intel Core II Duo II, GB Ram 500, GB HDD computer had also been stolen, valued at approximately \$379.99. Superintendent Malmstadt was able to go through all of the purchase orders and ascertain approximately how many Asus computer tablets had been stolen. When Detective Judd interviewed the Defendant, he admitted that he had taken approximately 260 of the Asus tablets from the school. Therefore, the estimated low-end value of the Asus computers taken by the Defendant is \$73,177.00. The breakdown of the cost for the Asus computer tablets are as follows:

- 250 computer tablets that are the Asus MeMO Pad Smart Tablet were purchased for \$281.45 each. There was also a shipping charge of \$150.40, making the total, \$70,517.90.
- The second group of 50 Asus MeMO Pad Smart Tablets were purchased at \$299.99 per computer, with a shipping charge of \$47.82, making the total \$15,047.32.

Deputy Johnston then spoke with Superintendent Malmstadt about the iPads. He said that some of the iPad IIs were still at the school and some had been issued to teachers as well. Superintendent Malmstadt provided Deputy Johnston with a spreadsheet with all of the missing iPad IIs.

It should be noted that when Detective Judd later spoke with the Defendant, he admitted that he had taken an estimated 150 to 200 iPads, but was not sure of the total and just stated that whatever

the school said was missing, he had taken. When Deputy Johnston spoke with Superintendent Malmstadt, he estimated the value of the iPad II computer tablets to be approximately \$399.00 apiece. Therefore, the low-end estimated value of the iPad IIs that were taken by the Defendant is \$59,850.00.

When Detective Judd interviewed the Defendant, the Defendant told him that he was responsible for the theft of iPads and Asus devices from Random Lake School District. The Defendant said that in early 2013, he began taking iPads and selling them on Craigslist. He stated he stopped selling the iPads in mid-summer, end of June/early July. He said in late July when he received the shipment of Asus tablets, he did the same thing, that being selling them on Craigslist. He said he sold them for the same price as the iPads, that being approximately \$100.00 to \$120.00 apiece, and listed them as new or slightly used. He said that no one assisted him in the selling of these devices and he did it on his own. He also stated that no one gave him permission to take the tablets. He said he used this money to support two or three individuals who were much worse off than him and could not get a job. He also admitted to taking the iMac laptop and said he sold it to an individual but would not disclose the name. Detective Judd asked him if he knew what the value of the tablets were and he thought it was around \$70,000.00 total for the Asus tablets and he knew the value of the iPads was approximately \$380.00 apiece times whatever he would have sold.

On August 30, 2013, Deputy Johnston received a call from James R. Bertram, DOB 10/10/71. James is the owner of Bertram Wireless located at 300 Industrial Drive, in the Village of Random Lake, County of Sheboygan. James explained that he has done some work at the Random Lake Schools reference wireless communications. James said that during the course of this work, he and his company had been in contact with the Defendant and has had conversations with him. James said that he told the Defendant that if the school ever needed anything, that the Defendant should contact him and they would see what they can do. James said that for the past approximately year and a half, the Defendant has contacted him on several occasions, explaining they would need some iPad IIs. James said he would then get the funds and purchase iPad IIs and donate them to the school. James said he believes the last order was for ten iPad IIs. James stated he would raise the money and then go out and purchase the iPad IIs for the school. He said he would donate these items because it was for the children. James also believed that the last time the Defendant had contacted him, he had told him they were in need of ten iPad IIs and he then donated ten iPad IIs to the school. James said he had a conversation with Superintendent

Malmstadt since Bertram Wireless was checking the security on their computer systems. James had asked Superintendent Malmstadt if the donated iPad IIs had also been taken. Superintendent Malmstadt was not aware of any iPad IIs being donated to the school. He said he had not authorized any donations and was not aware that the Defendant was asking James for these donations. James wanted to make sure that officers were aware of the situation to look into it further.

On September 3, 2013, Deputy Johnston spoke with Superintendent Malmstadt. Superintendent Malmstadt said he was not aware of any donations made by James Bertram of Bertram Wireless.

Deputy Johnston then made contact with James again and James had estimated that there were close to 50 iPads that were donated to the school through the Defendant. It is upon information and belief of your complainant that James did not give the Defendant permission to take the iPads personally, but the permission was for them to be used by the school.

When Detective Judd interviewed the Defendant regarding the iPads taken from James Bertram and Bertram Wireless, the Defendant eventually admitted that he had acquired multiple tablets from Bertram Wireless and he stated he would just say that the school needed more tablets, which were the iPads, and the Defendant would drive his personal vehicle over there and pick the tablets up. The Defendant stated that none of them ever made it back to the school and he would just sell them. Detective Judd informed the Defendant that James Bertram believed this year there would have been at least 50 iPads that were provided to the school, which were requested by the Defendant. The Defendant stated that that would be a fair number. The Defendant stated that James started donating them or giving them to the school in the summer of 2012. Detective Judd asked the Defendant if at any point the school asked for these iPads from James or if he would just request them from James. The Defendant stated he would just request them and then take them and sell them and the school would not have known about these iPads.

Detective Judd then spoke with James and he estimated the value of the iPads at \$395.00. At the time of dictation of this complaint, he had accounted for a total of 38 iPad IIs that were given to the

Defendant that were supposed to be donated to the school, for a total cost of \$15,010.00.

Subscribed and sworn to before me
this 5th day of September, 2013
and approved for filing:

Assistant District Attorney
Sheboygan County, Wisconsin

Complainant