

NORTH CAROLINA

DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NOS. 06 CRS 4334-356

JUN -8 AM 9:20

DURHAM COUNTY, U.S.C.

STATE OF NORTH CAROLINA

BY

PSB

VS.

READE WILLIAM SELIGMANN,
Defendant.

AMENDMENT TO

MOTION TO SUPPRESS NON-TESTIMONIAL PHOTOGRAPHS

NOW COMES the Defendant, READE WILLIAM SELIGMANN, through his undersigned counsel, and respectfully moves this Honorable Court pursuant to N.C. Gen. Stat. §§ 15A-271 *et seq.*, -971, -972, -977, the Fourth, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States and Article I, §§ 19, 20 and 23 of the Constitution of North Carolina, and any other applicable law, and hereby amends and supplements his Motion to Suppress Non-Testimonial Photographs based upon documents provided to the Defendant through the discovery process which were unavailable to the Defendant at the time he filed his original Motion to Suppress Non-Testimonial Photographs on May 1, 2006. As grounds for this Motion, the Defendant shows the Court the following:

1. On May 1, 2006, the Defendant filed a Motion to Suppress Non-Testimonial Photographs. In this Motion the Defendant alleged that the Non-Testimonial Identification Order issued by Superior Court Judge Ronald L. Stephens was illegal in that it violated N.C. Gen. Stat. §15A-271 *et seq.* and unconstitutional in that it violated the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I, §§ 19, 20 & 23 of the North Carolina Constitution.

2. On May 18, 2006, the State of North Carolina provided the Defendant with 1278 pages of discovery, which included, among needless duplication and other things, statements of police officers, statements from Kim Pittman aka Kim Roberts, statements and medical records of [REDACTED]

3. These discovery materials reveal that the lead investigator possessed relevant impeaching information regarding the veracity of [REDACTED] story that she was sexually assaulted and this information was intentionally, deliberately and/or recklessly omitted from the investigator's probable cause affidavit. This affidavit provided the legal basis for Judge Ronald L. Stephens to make his decision to issue Non-Testimonial Identification Orders for forty-six Duke Lacrosse Players.



4. By intentionally, deliberately and/or recklessly omitting this relevant and impeaching information from the Application for the Non-Testimonial Identification Order, the State violated the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution, Article I, Sections 19 & 23 of the North Carolina Constitution. Had the omitted information been furnished to Judge Stephens, he would not have had probable cause to believe that a felony had been committed or reasonable suspicion to believe that the Defendant committed any criminal act. See *Franks v. Delaware*, 438 U.S. 154, 155-56, 171-72 (1978) (holding that defendant challenging the veracity of statements in a supporting affidavit is entitled to an evidentiary hearing to determine whether the warrant was issued in reliance on a deliberately or recklessly false affidavit); *U.S. v. DeLeon*, 979 F.2d 761, 764 (9th Cir. 1992) (finding preliminary showing made because affidavit omitted information showing lack of probable cause, even though officer other than officer-affiant was responsible for omissions); *U.S. v. Novation*, 271 F.3d 968, 987 (11th Cir. 2001) (preliminary showing made when officer misrepresented in affidavit past cooperation of informants); *United States v. Reivich*, 793 F.2d 957, 961 (8th Cir. 1986) (holding that *Franks* protects against omissions that are designed to mislead, or are made in reckless disregard whether they would mislead, the issuing judicial official); and *State v. Watkins*, 120 N.C. App. 804 (1995) (noting that *Franks* holds that misstatements and material omissions by government employees cannot legally support a determination of probable cause; and police cannot insulate one officer's deliberate misstatement merely by relaying it through an officer-affiant personally ignorant of its falsity).

5. Attached hereto and incorporated herein by reference is an Affidavit of counsel for the Defendant. Also attached is a sealed envelope containing the medical records furnished to the Defendant by the State pursuant to discovery. While the Defendant believes the complainant has waived any privacy rights she may have under any state or federal law, in an excess of caution the Defendant tenders them to the Court under seal and requests that the Court issue an order unsealing them.

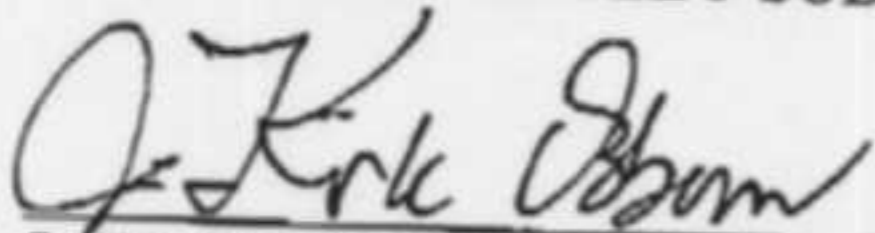
WHEREFORE the Defendant respectfully prays this Honorable Court issue an Order granting the following relief:

1. Suppressing and excluding the Photographs of the Defendant and any other evidence obtained through the State's use of the Non-Testimonial Identification Order;
2. Suppressing and excluding the fruits obtained from the State's use of the photographs of the Defendant, including, but not limited to, the following:
 - a. The Non-Testimonial Identification procedure incorporating these photographs;
 - b. The Identification of the Defendant by the complaining witness as a person who looked like one of the persons who assaulted her;
 - c. Any proposed in-court identification of the Defendant in that it would be the

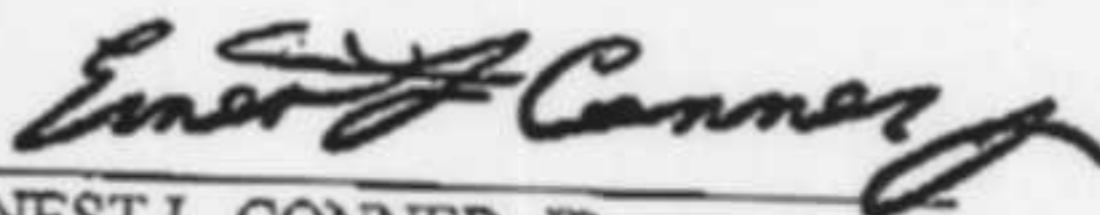
fruit of an illegal and unconstitutional search and seizure and the product of, and tainted by, the complaining witness viewing the Defendant's illegally and unconstitutionally obtained photograph;

3. Directing that the products and reports of the Non-Testimonial Identification procedures, and all copies thereof, be destroyed pursuant to N.C. Gen. Stat. §15A-280;
4. Unsealing the medical records of [REDACTED] which were filed under seal with this Amendment to the Motion to Suppress Non-Testimonial Identification Order: and
5. Any further relief the Court deems just and proper.

RESPECTFULLY SUBMITTED this the 7th day of June, 2006.



J. KIRK OSBORN
ATTORNEY FOR THE DEFENDANT
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600 Franklin Square
Chapel Hill, NC 27514
Tele: (919) 929-0987
Fax: (919) 929-2740



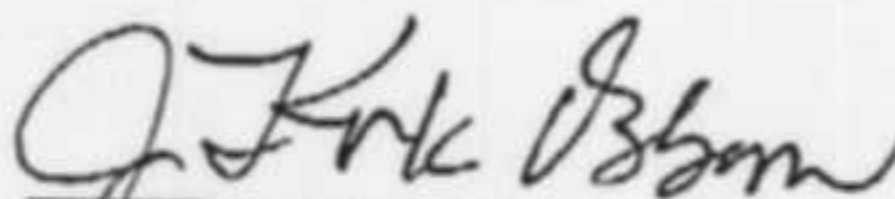
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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that the undersigned attorney this day served a copy of the foregoing Amendment to Motion to Suppress Non-Testimonial Photographs upon following person or to someone duly authorized to accept service for that person at the following address:

Michael B. Nifong, Esq.
District Attorney
Durham County Courthouse
Durham, NC 27701

This the 8th day of June, 2006.



J. KIRK OSBORN
ATTORNEY FOR THE DEFENDANT

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600 Franklin Square
Chapel Hill, NC 27514
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NORTH CAROLINA

DURHAM COUNTY

STATE OF NORTH CAROLINA

VS.

READE WILLIAM SELIGMANN,
Defendant.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NOS. 06 CRS 4334-356

AFFIDAVIT OF COUNSEL FOR THE DEFENDANT IN SUPPORT OF
MOTION TO SUPPRESS NON-TESTIMONIAL PHOTOGRAPHS

NOW COME the undersigned, after being duly sworn, and depose and say:

1. We are attorneys duly authorized to practice law in the State of North Carolina and are retained counsel for the Defendant in this matter.

2. The following facts are stated on information and belief obtained from supporting affidavits to previously filed motions, investigation and other documentary evidence obtained in this matter, including the 1278 pages of discovery provided to the Defendant by the State on May 18, 2006.

3. On March 23, 2006, Assistant District Attorney David Saacks applied for a non-testimonial identification order (Application) from resident Superior Court Judge Ronald L. Stephens. The Application was supported by a probable cause affidavit of Investigator Benjamin Himan. In his affidavit Investigator Himan omitted material facts, which if added would not have provided Judge Stephens with probable cause to believe that a felony had been committed or reasonable suspicion to believe that the Defendant committed any felony and, therefore, no legal basis to issue the Non-Testimonial Identification Order. There are significant items missing from discovery the State supplied the Defendant so it is difficult to determine the full extent of the omissions in Investigator Himan's affidavit. By way of illustration, but not by way of limitation, the following material information was omitted:

a. The probable cause affidavit implies that [redacted] reported she was sexually assaulted when officers were called to Kroger on Hillsborough Road on March 14, 2006 at 1:22 a.m. In fact, when Durham Police Department Sgt. J. C. Shelton arrived at the Kroger, he had to forcibly remove [redacted] from Kim Pittman's automobile. Sgt. Shelton then determined that she met the criteria for involuntary commitment (i.e., she suffered from a mental illness or substance abuse and was dangerous to herself or others) and directed another officer to take her to Durham Access to be committed. It wasn't until sometime after [redacted]

arrived at the Durham Access that she claimed that she was raped. See Statement of Sgt. J. C. Shelton, pp. 1-3 of attached Exhibits.

- b. The probable cause affidavit implies there is no question that [redacted] was sexually assaulted on March 14, 2006, at 610 N. Buchanan by three men. But three days before Investigator Himan signed his affidavit, March 20, 2006, at 10:10 a.m., Investigator Himan interviewed Kim Pittman, the only eyewitness to the events of March 14, 2006, at 610 N. Buchanan. Before Ms. Pittman was granted extremely favorable bond consideration by District Attorney Nifong personally on April 17, 2006, she told Investigator Himan [redacted] allegation that she was sexually assaulted was a "crock." Ms. Pittman stated that she was with [redacted] the whole time she was there except for a time period of less than five minutes. Investigator Himan omitted Ms. Pittman's statement that [redacted] claim of rape was a "crock." Instead Investigator Himan alleged that [redacted] "reported she was sexually assaulted for an approximate 30 minute period." See Kim Pittman statement summary by Investigator Himan, p. 4 of attached Exhibits.
- c. In his probable cause affidavit, Investigator Himan alleges that after the two girls left the house, they were persuaded to go back inside the house where they were separated. But the day before Investigator Himan signed his affidavit, March 22, 2006 between 12:40 p.m. to 4:00 p.m., Investigator Himan interviewed Ms. Pittman and obtained a written statement from her. Investigator Himan omitted from his probable cause affidavit that in this written statement, Ms. Pittman informs the investigators that [redacted] never went back in the house. The affidavit also omitted that once [redacted] got to Ms. Pittman's automobile, she stayed there; and that Ms. Pittman locked [redacted] in her car while Ms. Pittman went to the back of the house to look for personal belongings of [redacted]. See Handwritten Statement of Kim Pittman, pp. 5-11 of attached Exhibits and Investigator Himan's summary of his conversation with Kim Pittman on March 22, 2006, pp. 12-15 of attached Exhibits.
- d. In the probable cause affidavit, Investigator Himan omitted facts related to the mental condition of [redacted] when she was discovered by the Durham Police at approximately 1:27 a.m. at Kroger and omitted the several different stories [redacted] told as to what happened at 610 N. Buchanan. The following facts illustrate the seriousness of these omissions.
1. Sgt. J. C. Shelton of the Durham Police Department responded to a 911 call from Kim Pittman on March 14, 2006 @ 1:22:29 a.m. that a "[drunk female refused] to get out of dark colored Honda Accord in [parking lot]." Sgt. Shelton met Kim Pittman walking across the parking lot to his location and told him that she had picked up a female walking up the sidewalk along the Duke Wall in the 600 block of N. Buchanan. She said that she did not know

if the female was drunk or high, but that in any case, she did not appear that she could take care of herself. *See* Statement of Sgt. J. C. Shelton.

2. Sgt. Shelton reported he went to Ms. Pittman's car and tried to wake [REDACTED] but the female remained unresponsive. Sgt. Shelton then obtained ammonia from his vehicle and used it to try to wake [REDACTED]. When Sgt. Shelton administered the ammonia, he noted that [REDACTED] began mouth breathing, a sign to him that she was really not unconscious. *See* Statement of Sgt. J. C. Shelton.
 3. After being forcibly removed [REDACTED] from the car, she collapsed. Sgt. Shelton ordered that she be taken to Durham Access Center because he determined that [REDACTED] met the criteria for involuntary commitment; i.e. she suffered from mental illness or substance abuse and was a danger to herself or others. N.C. Gen. Stat. §122C-201 *et seq.* *See* Statement of Sgt. J. C. Shelton.
 4. Once [REDACTED] was at the Durham Access Center, Sgt. Shelton was advised she claimed that she had been raped. Sgt. Shelton ordered that she be taken to Duke University Hospital, where she arrived at 2:45 a.m. When Sgt. Shelton met [REDACTED] at Duke University Hospital, [REDACTED] told Sgt. Shelton, "no one forced her to have sex." Sgt. Shelton called his watch commander to notify him that [REDACTED] had recanted her earlier rape allegation. *See* Statement of Sgt. J. C. Shelton.
 5. A few minutes later, [REDACTED] told the S.A.N.E. (Sexual Assault Nurse Exam) doctor that she had been raped. Sgt. Shelton then went back to [REDACTED] and asked her whether she had or had not been raped. [REDACTED] told him she did not want to talk to him and started crying. As can be seen by Sgt. Shelton's report, Investigator Himan never informed the Court that [REDACTED] was intoxicated or faked intoxication, had stated several versions of the rape allegation, and had in fact recanted. *See* Statement of Sgt. J. C. Shelton.
- e. The probable cause affidavit of Investigator Himan alleged that a S.A.N.E nurse and a physician conducted an examination of [REDACTED] and that he had subpoenaed the medical records and interviews. The following facts from the medical records and interviews (filed under seal with this Amendment) were omitted by Investigator Himan:
1. The S.A.N.E. nurse was not certified but was "in training."
 2. While Investigator Himan alleged that [REDACTED] stated that she was

hit, kicked and strangled, he omitted that the examining physician for [REDACTED] at 3:14 a.m. found no neck, back, chest or abdominal tenderness. His probable cause affidavit also omitted that [REDACTED] told the S.A.N.E. nurse in training that she was not choked; that no condoms, fingers or foreign objects were used during the alleged sexual assault; and that the S.A.N.E. nurse in training noted that [REDACTED] head, neck, nose, throat, mouth, chest, breasts, abdomen, and upper and lower extremities all were normal even though [REDACTED] complained of "tenderness" over her body.

3. Investigator Himan's probable cause affidavit alleged that [REDACTED] claimed she was clawing at one of the suspect's arms in an attempt to breathe while being strangled and during this time the her nails broke off. His probable cause affidavit failed to inform the Court that this allegation was not contained in the summary of [REDACTED] statement prepared by Investigator Himan himself prior to seeking the Non-Testimonial Identification Order.
4. Investigator Himan informed the Court in his probable cause affidavit that the medical records and interviews obtained by a subpoena revealed the victim had signs, symptoms, and injuries consistent with being raped and sexually assaulted vaginally and anally. The S.A.N.E. nurse's physical examination of the pelvic area of [REDACTED] which included the Vulva, Vagina, Cervix, Fundus and Rectal areas, noted only "diffuse edema of the vaginal walls." The S.A.N.E. nurse's report contains no opinion or conclusion that [REDACTED] had signs, symptoms, and injuries consistent with being raped and sexually assaulted vaginally and anally.
5. Investigator Himan omitted from his affidavit that the only evidence of physical trauma the S.A.N.E. nurse in training could find on [REDACTED] was a scratch on her knee and a small laceration to her heel, both of which were non-bleeding.
6. Investigator Himan further failed to inform the Court that the two examining physicians for [REDACTED] reported that she only complained of a vaginal assault and made no claim of any other kind of assault. The probable cause affidavit also neglected to mention that an examining doctor found no evidence of other physical assault. In fact, one doctor noted during his examination of [REDACTED] between 3:14 a.m. and 3:40 a.m. that she denied being hit and that she claimed no neck, back, chest or abdomen tenderness. These facts are supported by the nurses examining [REDACTED] at 2:53 a.m. and 3:30 a.m. who each found the total absence of any objective signs or symptoms of pain.

7. Investigator Himan's inadequate probable cause affidavit failed to note any facts obtained by Investigator Himan on March 21, 2006, when [redacted] reported to the Durham Police Station with her "driver," Jarriel Johnson, to pick up her belongings. On this date, [redacted] told Investigator Himan that prior to going to 610 N. Buchanan, she earlier had a function at a hotel room with a couple where she preformed using a vibrator, which clearly could have cause signs or symptoms of vaginal penetration. Had Investigator Himan bothered to interview Jarriel Johnson at that time (a task the Durham Police Department did not accomplish until April 6, 2006), he would have discovered sooner that [redacted] was involved in some sexual manner with at least four different men the during the weekend from March 10 through 12, 2006. See Statement of Investigator Himan summarizing [redacted] statement to him on March 21, 2006, pp. 16 of the attached Exhibits and Statement of Jarriel Johnson on April 6, 2006, pp. 17-21 of attached Exhibits.

8. The probable cause affidavit of Investigator Himan omitted [redacted] conflicting stories regarding her use of alcohol and drugs and who she alleged took her money and belongings. The medical records show that [redacted] gave conflicting statements regarding her use of alcohol and drugs. She told one doctor she used no alcohol or drugs, while she told the S.A.N.E. nurse in training she had consumed 1 drink of alcohol and was currently taking Flexeril. She told a doctor the at UNC Hospital the next day, March 15, 2006, that "she was drunk and had had a lot of alcohol that night." She later told Investigator Himan first that she had consumed a 24 ounce bottle of beer and thereafter that she had consumed two twenty-two ounce Ice House beers. Finally she told the S.A.N.E. nurse in training that Kim Pittman assisted the players in her alleged sexual assault and that Kim Pittman stole all her "money and everything."

This the 7th day of June, 2006.

J. Kirk Osborn

J. KIRK OSBORN, AFFIANT

Sworn to and subscribed to before me
this the 7th day of June, 2006

Tania W. Osborn
NOTARY PUBLIC

My Commission Expires: 4/21/2010



NO. 661 P. 9

Ernest L. Conner, Jr.
ERNEST L. CONNER, JR., AFFIANT

Sworn to and subscribed to before me
this the 7th day of June, 2006.

J. R. U...
NOTARY PUBLIC

My Commission Expires: 4/21/2010



JUN. 8. 2006 2:33PM

ATTACHED EXHIBITS

(Page numbers are located on top right-hand corner)

1. Statement of Sgt. J. C. Shelton, dated April 9, 2006 1-3
2. Statement of Investigator Himan summarizing Statement of
Kim Pittman on March 20, 2006 @ 10:10 a.m. 4
3. Handwritten Statement of Kim Pittman dated March 22, 2006 5-11
4. Statement of Investigator Himan summarizing statement of
Kim Pittman on March 22, 2006 @ 12:40 p.m. 12-15
5. Statement of Investigator Himan of his encounter with [redacted]
[redacted] and Jarriel Johnson on March 21, 2006 @ 6:10 p.m. 16
6. Handwritten Statement of Jarriel Lanier Johnson dated April 6, 2006 17-21
7. Notification that the Medical Records and Interviews subpoenaed
by the State of North Carolina regarding the treatment of
[redacted] at Duke University Hospital on
March 14, 2006, used by the State of North Carolina to
obtain a Non-Testimonial Identification Order, and provided
to the Defendant by the State of North Carolina through
discovery on May 18, 2006 are enclosed in the following
SEALED ENVELOPE containing 23 pages 22

JUN. 9. 2006 9:22AM

* SUPPLEMENTAL *

Report Type: Crime Traffic Property Incident Arrest (Arrest) Miscellaneous Person

IR 06-8310

I was a few blocks away from 610 N. Buchanan when a disturbance call came out responded and was on scene first. I parked my patrol vehicle on the side street just north of 600 block and walked to the house. The narrative of the call stated that several males were yelling racial slurs at passers-by. When I approached the house, no one was outside or as visible leaving the house. Once other officers arrived, I knocked on the door of 610. There was no response. There was no covering over the front window and I could see into the house with no effort. I could see no people inside, there were beer cans and bottles, a bike, and several empty plastic cups strewn about, leading me to believe that there had been a party. There were also two or three flash bags on the front porch. I walked down the alley next to the house and did not see anyone appearing to have left the house. A young man was on the front porch of the house immediately to the south of 610. He stated that a by had just broken up and that it was ruddy, causing him to contemplate calling 911. I believe his name was Jason. After speaking with him and feeling confident that no one is at 610 N. Buchanan, we cleared the call.

A few minutes after clearing the call on N. Buchanan, a call came out at the Kroger on thorough Road of a woman refusing to get out of the complainant's car. Again, I was close to that location and was first on scene. I was met by the security guard at a black or dark-colored address. A female walked across the parking lot to my location and said that it was her car she told me that she had made the call at 610 N. Buchanan. She stated that she was driving up the street and that the female she had in the car was walking up the sidewalk by the Duke Wall in the 600 block of N. Buchanan. She said that a group of white males at 610 and they were yelling racial slurs across the street at the female. She said that she did not know if the female was drunk or high but that in any case, 'did not appear that she could take care of herself and she was afraid of what the white male might do to the woman. She said that she offered the woman a ride to a safe location but that the woman would not get out of her car. She further stated that she did not

NO. 665

Reporting Officer's Signature	Emp. No.	Supervisor's Signature	Emp. No.
Sgt. J. Glatton	4971		4971
Records Emp. Initial	Review Date	Emp. No.	79 Date

JUN. 9. 2006 9:22AM

* SUPPLEN. STAFF *

Report Type: Other Vehicle Property Arrest/Offense (Misdemeanor) Arrest/Offense (Felony) Bureau/Agency Program

woman. I cautioned her about picking up strangers. I drove to the female, who was in the passenger seat of the vehicle. She was wearing a red outfit, with no under garments and one white high-heel shoe. She was laughing and jostled her, speaking to her loudly, in an effort to be responsive. By this time, Officer Barfield had arrived. I got an ammonia spray bottle out of my patrol car. When I used it, the female began mouth-breathing, which is a sign that she is really unconscious. My experience is that unconscious people wake up rather quickly when ammonia capsules are used. I grabbed the female and attempted to pull her from the vehicle. She emergency brake with her left hand and would not come out of the car. At this time, I released the pressure and she collapsed to the ground. Officer Barfield was able to get her out of the car. Once she was on the ground, she collapsed to the ground. Officer Barfield said that she did not know what to do with the woman. She would not speak with us, we did not know her name or where she lived. She was not an option. She would not walk on her own, so 24 hour hold was placed. I determined that the Durham Access Center would be an appropriate place for her. Officer Stewart followed Officer Barfield to Durham Access to assist him if

needed from the call. After Officer Barfield had been at Durham Access for a while, he and stated the female said she had been raped at 602 N. Buchanan. I told him to go to Duke Hospital and that I would meet them there. Once at Duke, I spoke to the nurse, who was now cooperative. She told me that she worked as a stripper and had been hired through "Angels Escort Service" to dance with another female at a club. She said that she and "Nikki" danced together. I put on a shirt for her.

Emp. No.	4971	Records Emp Initial	Emp. No.	4971	Entry Date	N
Supervisor's Signature	[Signature]	Records Emp Initial	Emp. No.	4971	Entry Date	N

NO. 665

* SUPPLEMENTAL *

Report Type: Offense Vehicle Property Assault (Adult) Assault (Juvenile) Runaway/Abuse/Person

06-8310

men at the party. She said that they left and got into "Nikki's" car. At the time, she said that someone from the party wanted ~~to~~ them to come back into house. She said that "Nikki" wanted to go back inside, but that she did not. She said that she and "Nikki" got into an argument about going back inside. She said at that point some of the guys from the party pulled her from the vehicle and groped her. She said that no one forced her to have sex. She then mentioned that someone had taken money. I walked to the parking lot to call the Watch Commander and let him know that I had reported her rape allegation. Within a few minutes, I was told that she told the GNE doctor that she had been raped. I called the Watch Commander back and told him that she had changed her story back to being raped. I returned to the room where she was and asked her if she had or had not been raped. She told me she did not it to talk to me anymore and then started crying and saying something about me dragging her into the bathroom. I spoke with a Duke Police Lieutenant who is one of their officers who go by the house to see if they could determine who lived the house and confirm that the resident(s) was a student at Duke. The Watch Commander told me that C.I.D. had been notified. I left the hospital at that time. The Police still had not advised me if the resident of the house was a student.

001

WRAZ-TV FOX50

/09/2006 10:15 FAX 919 595 5028

	Local's Signature	Supervisor's Signature	Emp. No.	Emp. No.	Records Emp Initial	Emp. No.	Date
	Xi Shelton		457				W

3/20/06 0856HRS - CONTACTED ANGELS ESCORT SERVICE, SPOKE TO TAMMY ROSE IN REFERENCE TO THE CASE. SHE STATED THAT SHE DID NOT TAKE THE INITIAL CALL THAT IT WAS A REFERRAL, FROM MELISSA WHO ALSO HAS AN ESCORT SERVICE. SHE STATED THAT NIKI WHOSE REAL NAME IS KIM PITTMAN ALSO WORKS FOR MELISSA. SHE STATED SHE DID NOT KNOW HOW IT COULD HAPPEN AND THAT WHEN SHE TALKED TO MS. PITTMAN SHE STATED SHE DID NOT KNOW HOW OR WHEN IT COULD HAVE HAPPENED. SHE GAVE ME MS. PITMAN S NUMBER [REDACTED].

3/20/06 1010HRS - CONTACTED KIM PITMAN REFERENCE THIS CASE. SHE STATED THAT SHE DID DANCE AT 610 NORTH BUCHANAN, I ASKED HER IF SHE KNEW ANYTHING ABOUT WHY I WAS CALLING. SHE STATED THAT SHE WAS TOLD THAT SHE WOULD BE GETTING A CALL FROM THE POLICE ABOUT AN INCIDENT THAT TOOK PLACE. SHE STATED THAT SHE HEARD THAT MS. [REDACTED] WAS SEXUALLY ASSAULTED, WHICH SHE STATED IS A "CROCK" AND SHE STATED THAT SHE WAS WITH HER THE WHOLE TIME UNTIL SHE LEFT.

AND THE ONLY TIME SHE WAS ALONE WAS WHEN SHE WOULD NOT LEAVE AND THAT TIME PERIOD WAS LESS THAN FIVE MINUTES. WE MADE AN APPOINTMENT FOR HER TO MEET ME AT STATION 2 AND HAVE HER GIVE ME A STATEMENT REGARDING THE INCIDENT.

5

Kim Pittman -

Albany St
Durham, NC

1

I, Kim Pittman, was called by Melissa to do a Bachelor Party at 10:10 Buchanan St at 11 p.m. at night. I went to Priscilla's to purchase an outfit for the evening and proceeded to get ready for the night. I left 1602 Albany Street ~~in my car~~ and headed toward Buchanan where I arrived at about 11 p.m. I spoke to Dan F. and was told that this was not a bachelor party but a get together amongst friends. They told me that they were on a sports team and were all Grad Students at Duke.

I walked to the back of the house with Dan and Dave and entered the house thru a back door. There I recieved my \$400.00 payment (\$200 the for 2 hours) from Dan and waited for the second girl to arrive. As we waited, I met a

Kim M. Pittman 3/22/06
2:15 p.m.

6

2
few of the fellas in the house
and chit chatted for several
minutes. The guys were anxious and
asked me to call Melissa and
check on the second girl. We were
told that she was soon on her way.
At about 11:30 Precious arrived
and came to the back where we
met for the first time. It waited
outside and she went inside to
collect her money. She showed me
her payment (\$4000) and we went
straight to the bathroom where
my outfit was to change clothes.
Precious came w/ her dancing
gear on and did not need to change.

We conversed about our plan
for the dance. There was a knock
on the door and we were handed
two drinks of equal amounts. We
did sip the drinks but Precious'
cup fell into the sink. We finished
getting dressed and proceeded to
the living room, led by Ivan, to
do our show. There were about

Kimi H. Pittier 3/22/06 2:15 p.m

7

3

20-25 young guys there who were all sitting down. Precious and I began our show which, in my opinion, seemed to be going well. Precious ~~is~~ began showing signs of intoxication at this point. We continued w/ the performance until one of the boys brought out a broomstick and after asking if we had any tape, said he would use the broomstick on us.

That statement made me uncomfortable and I felt like I wanted to leave. I raised my voice to the group and said the show was over. The commotion riled Precious up and caused her to get irate. I went to the bathroom with Precious and I told her I wanted to leave. Precious felt we could get more money and that we shouldn't leave yet. She was uncontrollable at this point and was

Kenneth Pettin 3/22/06
2:15 P.M.

8

yelling at the boys who were knocking (H) on the door to leave us alone. I finally decided to leave the house. I left the bathroom, grabbed my bag and exited the house w/ my dancing gear on. I went to my car, wanting to leave, but not wanting to leave the girl in the house alone. I changed my clothes in the car where some of the boys were coming to my window asking me to talk to them. I was told by one of the guys that Precious ~~was~~ was passed out in the back and could I please do something with her. By this point, it seemed that the pills may have been ready for the evening to be over. I told them that if they could get her to my car, I would get her out of their hair. Within minutes, she was being helped out of the back yard and into my car. At this point, she did not have the bag that I saw her come with and I

Kim M. Pettin

3/22/06 2:15 p.m.

9

asked her if she had the most important thing her money. She told me yes but she did not ~~seem~~ seem coherent. She then told me that we should go back to the house because there was more money to be made there. I asked her again ~~if~~ where her things were and she said "Here" "I+5" here". But I did not see her thing so in my opinion, she was talking crazy. I made an attempt to get her things, I took my belongings, locked her in my car, and went back up to the house to try and retrieve her bag. I looked around w/ Dan and we didn't see anything so I said I've done all I could and went back to my car. I finally began leaving and the boys began yelling 'Niggers' to us. I called the police to report racial slurs. While in the car, I repeatedly asked Precious if she had her money. At this point, she was

Kim M. Pithin

3/22/04 2:15 p.m.

basically out of it. I tried to ask her where she lived but she would not tell me. I tried calling Melissa to get a hold of the driver that dropped her off but received no assistance from her. I decided to go to the 24 hr Grocery Store and seek the help of an off duty police officer. Only a security guard was there, so we proceeded to call 911. A couple of cars came out and they dragged her from my car after trying to wake her up with smelling salts. They tried to talk to her and ask questions but the only thing she would mutter was no. She obviously did not want to leave my car. The police said they would look out for her, take care of her, and that she was in no trouble at all. I then drove back to ~~Albany~~ Albany Street where my night was over. - forgot to mention that the first

Kim M. Puth 3/22/06
2:15 p.m.
7.05

Page 7 of 7

time Precious came to the car,
One left because she felt there
was more money to be made. It
was after then, that the boys
helped her to the car. She carried
her by throwing her arms over
their shoulder and assisting her
walking to the car - I can't remember
if only one boy helped or 2.

Kum M. Pethu 3/22/06 2:15 pm
The point in time where I went to get
Precious' things from the house, I walked
to the back of the house thru the side
of the house outside. I entered the
house from the outside from a back
door. I looked in the bathroom to retrieve
her things but could not find them. I
exited the house the same way I
came in, along the side of the house
to my car without finding any of her
items

Kum M. Pethu

3/22/06 4:00 p.m.

12

3/22/06 1325HRS - RECEIVED VOICE MAIL FROM ANDY PETERSON STATING PLAYERS FROM LACROSSE TEAM WOULD NOT BE MAKING THE MEETING.

3/22/06 - 1240HRS KIM PITTMAN CAME INTO TO TALK ABOUT THE INCIDENT. KIM STATED THAT SHE WAS CALLED FROM HER ESCORT SERVICE BY MELISSA TO DO A BACHELOR PARTY AT 610 BUCHANAN. SHE STATED SHE ARRIVED AT ABOUT 11:00 PM ON 3/13/06. SHE STATED THAT HER PRACTICE IS TO GET ID FROM THE PERSON WHO IS IN CHARGE OF THE PARTY. SHE STATED SHE TALKED TO DAN F. WHO SET UP THE PARTY. SHE CHECKED HIS ID AND SHE STATED SHE THOUGHT IT WAS A NEW YORK LICENSE THAT WAS DISPLAYED. SHE WAS THEN TOLD THAT IT WAS NOT A BACHELOR PARTY BUT A GET TOGETHER AMONGST FRIENDS. SHE STATED THAT THEY HAD TOLD HER THAT THEY WERE ON SPORTS TEAMS, TRACK, BASEBALL AND THEY ALL WERE GRAD STUDENTS. SHE STATED SHE WALKED TO THE BACK OF THE HOUSE WITH DAN AND DAVE AND ENTERED THE HOUSE THROUGH THEIR BACK DOOR. SHE STATED SHE WAS PAID \$400 FROM DAN AND WAITED FOR THE SECOND GIRL TO ARRIVE. SHE STATED THAT SHE MET A COUPLE OF THE GUYS AND TALKED TO THEM FOR A BIT. THE GUYS WERE ANXIOUS AND ASKED FOR HER TO CALL MELISSA BECAUSE THEY WERE ANXIOUS AND WANTED ME TO CHECK ON THE SECOND GIRL. WE WERE TOLD THAT SHE WAS SOON ON HER WAY. AT ABOUT 11:30 PRECIOUS ARRIVED AND CAME TO THE BACK WHERE THEY MET FOR THE FIRST TIME. SHE STATED SHE WAITED OUTSIDE SO "PRECIOUS" COULD GO

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INSIDE AND COLLECT HER MONEY SHE SHOWED ME HER PAYMENT \$400.00 AND WE WENT STRAIGHT TO THE BATHROOM WHERE MY OUT FIT WAS TO CHANGE CLOTHES. SHE STATED PRECIOUS CAME WITH HER DANCING CLOTHES ON AND DID NOT NEED TO CHANGE. SHE STATED SHE CONVERSED WITH PRECIOUS ABOUT HER PLANS FOR THEIR DANCE. THERE WAS A KNOCK ON THE DOOR AND WE WERE HANDED TWO DRINKS OF EQUAL AMOUNTS. SHE STATED SHE SIPPED THE DRINKS (RUM AND COKE SHE THINKS) BUT PRECIOUS CUP FELL INTO THE SINK DUMPING OUT THE CONTENTS, SHE THINKS THE VICTIM HAD A COUPLE DRINKS FROM HERS BUT SHE WAS NOT SURE. SHE FINISHED GETTING DRESSED AND PROCEEDED TO THE LIVING ROOM, LED BY DAN TO DO THEIR SHOW. SHE STATED THAT THERE WERE ABOUT 20- 25 YOUNG GUYS WHO WERE ALL SITTING DOWN. SHE STATED THE SHOW BEGAN AND SHE THOUGHT IT WAS GOING PRETTY WELL, SHE STATED PRECIOUS STARTED TO SEE SIGNS OF INTOXICATION AT THAT POINT. SHE STATED THEY CONTINUED WITH THE PERFORMANCE UNTIL ONE OF THE BOYS PULLED OUT A BROOMSTICK ON THEM AND STATED THAT HE WOULD USE IT ON THEM. THE STATEMENT MADE HER FEEL UNCOMFORTABLE. SHE STATED SHE RAISED HER VOICE THAT THE SHOW WAS OVER. THE COMMOTION AND YELLING MADE "PRECIOUS" GET IRATE. I WENT TO THE BATHROOM WITH PRECIOUS AND TOLD HER I WANTED TO LEAVE. PRECIOUS FELT WE COULD GET MORE MONEY AND THAT WE SHOULDN'T LEAVE YET. SHE WAS UNCONTROLLABLE AT THIS POINT AND WAS YELLING AT THE BOYS WHO WERE KNOCKING ON THE DOOR TO LEAVE THEM ALONE. KIM STATED SHE FINALLY

12/18

14

DECIDED TO LEAVE THE HOUSE. SHE LEFT THE BATHROOM GRABBED HER BAG AND EXITED THE HOUSE WITH HER DANCING GEAR ON. SHE WENT TO CAR WANTING TO LEAVE, BUT SHE DID NOT WANT TO LEAVE PRECIOUS IN THERE ALONE. SHE STATED SHE CHANGED HER CLOTHES IN THE CAR WHERE SOME OF THE BOYS WERE COMING TO HER WINDOW TALKING TO HER. SHE STATED SHE WAS TOLD BY ONE OF THE GUYS THAT PRECIOUS WAS PASSED OUT IN THE BACK AND THEY ASKED IF SHE COULD GO GET "PRECIOUS". SHE STATED AT THAT POINT IS SEEMED THAT THE GUYS MAY HAVE BEEN READY FOR THE NIGHT TO BE OVER. I TOLD THEM THAT IF THEY COULD GET HER TO MY CAR, SHE WOULD GET HER OUT OF THEIR HAIR.

WITH IN A FEW MINUTES, SHE WAS BEING HELPED OUT OF THE BACK YARD AND INTO MY CAR. SHE DID NOT HAVE THE BAG THAT SHE HAD COME WITH AND ASKED HER IF SHE HAD THE IMPORTANT THING THE MONEY. SHE TOLD HER YES BUT SHE DID NOT SEEM COHERENT. PRECIOUS THEN TOLD HER THAT THEY SHOULD GO BACK IN THE HOUSE BECAUSE THERE WAS MORE MONEY TO BE MADE. I ASKED HER AGAIN WHERE HER THINGS WERE AND SHE SAID "HERE", "IT'S HERE" BUT KIM DID NOT SEE ANY OF HER THINGS. I MADE AN ATTEMPT TO GET HER THINGS. SHE STATED SHE GOT HER THINGS AND LOCKED THE DOOR WITH PRECIOUS INSIDE. SHE WENT TO THE BACK OF THE HOUSE TO TRY TO RETRIEVE HER BAG. SHE STATED SHE LOOKED AROUND WITH DAN BUT WAS UNABLE TO FIND ANYTHING. SHE WENT BACK TO HER CAR AND THE BOYS STARTED YELLING "N" TO BOTH OF THE GIRLS. SHE CALLED THE POLICE TO

1219

15

REPORT RACIAL SLURS. SHE STATED SHE CALLED POLICE FROM A FRIENDS PHONE (919-) SHE STATED IT WAS A KIWI PHONE. WHILE IN THE CAR, KIM REPEATEDLY ASKED PRECIOUS IF SHE HAD THE MONEY. SHE STATED THAT "PRECIOUS" WAS OUT OF IT AND SHE TRIED TO ASK WHERE SHE LIVED BUT SHE WOULD NOT TELL ME. SHE TRIED CALLING MELISSA TO GET A HOLD OF THE DRIVER THAT DROPPED HER OFF BUT RECEIVED NO ASSISTANCE FROM HER. SHE DECIDED TO GO TO 24HR GROCERY STORE AND SEEK THE HELP OF AN OFF DUTY POLICE OFFICER, ONLY A SECURITY GUARD WAS THERE. SO THEY PROCEEDED TO CALL 911. SHE STATED THE POLICE ARRIVED AND WOKE HER UP WITH SMELLING SALTS, THEY ASKED HER QUESTIONS BUT WAS ONLY ABLE TO MUTTER "NO". IT APPEARED THAT "PRECIOUS" DID NOT WANT TO LEAVE HER CAR. THE POLICE STATED THAT SHE WAS IN NO TROUBLE THAT THEY WOULD TAKE CARE OF HER. SHE THEN STATES THAT SHE DROVE BACK ALBANY STREET. (SEE STATEMENT). THROUGH A WARRANT CHECK KIM PITTMAN WAS WANTED FOR A PROBATION VIOLATION AND HAD GONE BY HER PREVIOUS MARRIED NAME OF "KIM ROBERTS". SGT. GOTTLIEB AND INV. CLAYTON SERVED THE WARRANT.

3/22/06 1533HRS - SGT. STOTSENBERG CALLED, NO PLAYERS ARRIVED FOR MEETING.

3/22/06 1615HRS - WITH THE INFORMATION THAT WE RECEIVED IN REGARDING TO USING DIFFERENT NAMES, DIFFERENT TEAMS, STATING THAT THEY WERE ON THE BASE BALL AND TRACK TEAMS

1220

16

3/21/06 1810HRS - VICTIM ARRIVES WITH DRIVER JARRIEL JOHNSON DOB 6/6/ [REDACTED] SUNNYSTONEWAY RALEIGH, NC 27613.

VICTIM WAS INQUIRING ABOUT GETTING HER PROPERTY BACK. I ASKED HER QUESTIONS TRYING TO FOLLOW UP ON A BETTER DESCRIPTION OF THE SUSPECTS, SHE WAS UNABLE TO REMEMBER ANYTHING FURTHER ABOUT THE SUSPECTS. SHE STATED THAT BRIAN TAYLOR DROVE HER TO THE PARTY SHE DID HAVE SOME BEER BEFORE SHE CAME ABOUT A 24 OZ BOTTLE OF BEER. SHE STATED SHE DRANK THE BEER AT ABOUT 10:40 PM

SHE STATED THAT SHE WAS FINE AND HAS DRANK BEER BEFORE WITH NO PROBLEMS. SHE STATED THAT SHE HAD NOT HAD SEX A WEEK PRIOR TO THE INCIDENT AND THAT WAS WITH HER BOYFRIEND MATHEW MURCHISON, SHE STATED SHE HAD A FUNCTION AT HOTEL ROOM WITH A COUPLE MALE AND FEMALE. SHE STATED SHE DANCED FOR THEM AND USED A SMALL [REDACTED] (SEX TOY)

3/22/06 - 0830HRS RECEIVED A MESSAGE FROM SGT. GOTTLIEB AND ANDY PETERSON LAWYER WHO IS REPRESENTING SOME OF THE TEAM MEMBERS AND STATED THAT THEY WOULD BE UNABLE TO MAKE IT TO THE MEETING.

STATEMENT OF:

4/6/2006 (1)

JARRIEL LANIER JOHNSON DOB 6/6/

17

SUNNYSTONE WAY

RALEIGH, NC 27613

I was called by [redacted] on March 10, 2006 to drive her to Holiday Inn Express in Wakefield. I picked her up at her parents' house around 1:50p. She said her appointment was at 2p. We arrived at the hotel around 2:20p. After I dropped her off I returned home. About 2:50p I left to pick [redacted] up at the hotel. After we left the hotel we returned to her parents' home. There we stayed for a couple of hours until about 7p. At that time I asked her if we could go to my parents' house so I could shower. With my parents being there we decided to come back to ~~Durham~~ Durham. Once back in Durham we rode around for about half an hour, then we went to Forest Hill Park. We stayed there for about an hour or so. Then [redacted] asked me if I would take her to Hillsborough. We got to Platinum around 11 or 12 where she went in and I remained in the car. Around 2am I go inside to find her she asks me if we can stay for about another hour. She then asks me if we can stay just one more hour. We leave at 4:30 when the club closes. She then tells me that she has a job at the Millennium Hotel. We get there at 5:15 where she goes in and I remain in the car. At about 6:15 she returns and I

PRINT Jariel L. Johnson

SIGN Jariel L. Johnson

DATE 4/6/06

TIME 6:37pm

812

CONTINUED STATEMENT OF:

JARRIEL LANIER JOHNSON

(2)
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drive her back to her parents' home. We say goodbye and I head back to Raleigh. I arrive at my parents' home at 7am, and go to bed. Around 2pm that afternoon [redacted] calls me asking if I could drive her that night. I agree and ask what time, she says around 4p. As I ~~leave~~ get closer to her parents' home she calls me and says that Matt is coming over to bring her something, I told her that I would wait until she called me at the carwash on Fayetteville St. Around 5-5:30p she calls me and tells me that he's gone. About 5-10 mins later I arrive at her parents' house. Her daughter lets me in and sit - I sit there and play with her kids while [redacted] is getting ready. Once she is ready we leave and ride around for about half an hour. We then go over to Forest Hills Park and sit and talk. Around 8 or 9 she asks if we could go to Raleigh to find this guy she met. I say okay. We drive around Raleigh Down town Raleigh trying to find this guy. We have no luck so we decide to get a hotel room and wait to see if he calls. About this is about 9pm or so. We go to get something at a Chinese place over on Wake Forest Rd. Once we get our food we take it back to the hotel and eat. After eating we get into bed and watch TV. While watching TV we engage in sexual intercourse. Around 12 Am I leave. I tell her to call me in the morning so I could pick her up. At around 11 am [redacted] calls me asking me to pick her up.

PRINT Jarriel L. Johnson

SIGN Jarriel L. Johnson

Date 4/10/06

T 6:560

813

CONTINUED STATEMENT OF:

(3)

JARRIEL LANIER JOHNSON

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I arrive at the hotel around 11:30. I call [redacted] to see where she is and she tells me that she went for a walk. I drive up and down Lane St. trying to find her. She calls me back asking me to meet her at the hotel. When I arrive she is with an older gentleman that she says he wants to see her perform. I go back down and wait in my car until I see the man come out. After I see him leave I go to the room and help [redacted] gather her things. We then head over to my parents' house and hang out for about 20 min. I told [redacted] that I was going to wash my car and she suggest we go to one of the pay car washes. While there I began to wash my car while she talked on the phone. I then told her that I was taking her home. On the way to 540 she told me she needed to use the bathroom, and wanted me to pull over. Once I did she got out of the car and ~~she~~ started walking down Creedmoor Rd. I ~~pull~~ pulled my car over and got out to chase her down. She told me to leave her alone. I went back to my car and pulled up in front of her. Once again I ~~pull~~ pulled over and asked her to get in. She again told me to leave her alone. I went up ~~several~~ several yards and waited until she came towards me; again I asked her to get in the car. She then got in, we went back to my parents' house where we talked it out. We sat on the couch for a little while and then went to my bedroom. While there we talked and she knocked over her drink which ~~some~~ spilled on my phone. After that it was around 4:43p and I took [redacted].

PRINT Jariel L. Johnson

SIGN Jariel L. Johnson

Date: 4/14/06

Time: 7:14p

814

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back to her parents' house. Later on that night I noticed that my phone wasn't working properly. So I called [redacted] and told her that it was messed up. At that time she told me that she had a bachelor party to work that night, and asked if I could drive. I agreed. Later on that night I couldn't get my phone to work and called her to let her know that it's not working and I wouldn't be able to take her. She said that was okay and that Brian would take her. I told her to call me when she got home and she said okay. That was the [redacted] About 1A or 1:30 I received a call from Tammy asking if I was [redacted] driver that night, I told her no and she hung up. I tried calling Crystal for the next couple of days and didn't hear from her until Thursday.

Samuel Johnson

815

Samuel L. Johnson
 Samuel Johnson
 4/6/06 # 7240

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Continued Statement by Jarriel L. Johnson

Looking at my datebook on my cell phone I realized that the the dates that I engaged in sexual intercourse with [redacted] was off by a week. Our last encounter together was the Sunday prior to the [redacted]

Jarriel L. Johnson

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Jarriel L. Johnson

Jarriel L. Johnson

4/6/06 7:50p