

EXHIBIT 1

TO

DEFENDANT CITY OF DURHAM,
NORTH CAROLINA'S MOTION TO DISMISS
SECOND AMENDED COMPLAINT

STATE OF NORTH CAROLINA

File No.

DURHAM County

In The General Court Of Justice
District Superior Court Division

In Re: The Nontestimonial Identification Of

Name And/Or Description

See Attachment

Address

See Attachment

City, State, Zip

See Attachment

NONTESTIMONIAL IDENTIFICATION ORDER (ADULT SUSPECT)

G.S. Chapter 15A, Art. 14

Offense

See Attachment

To The Suspect Named Or Described Above:

You are ORDERED to appear at:

Date

03-23-2006

Time

4:00

AM PM

Location

Durham P.D. Forensics Unit, 213 Broadway St., Durham, NC

The undersigned finds that there is probable cause to believe that the offense named above, which is punishable as a felony or Class A1 or Class 1 misdemeanor, has been committed.

There are reasonable grounds to suspect that you committed the offense and that the results of the procedures ordered here will be of material aid in determining whether you committed the offense. The grounds to believe that an offense has been committed, to suspect that you committed it, and to believe that this Order will be of material aid in confirming or negating the suspicion, are stated in the attached application and affidavit. Your presence is required for the purpose of permitting nontestimonial identification procedures in order to aid in the investigation of the offense named above.

The methods to be used and the time required to conduct the nontestimonial procedures are as follows:

Procedures For Nontestimonial Identification

Photographic documentation and identification; DNA

Methods

Photographs of face, torso, and upper extremities; Cheek swabbings

Time Required

1

Hours

Minutes

During the period of your appearance you will not be subject to interrogation or asked to make any testimonial statement except that required for voice identification.

You may request the Court to modify the time and place for the identification procedure ordered including a request to hold the procedure at your residence, unless a line-up is ordered.

You are entitled to be represented by an attorney at the procedure, and if you cannot afford to retain an attorney, the state will appoint one if you so desire.

IF YOU FAIL TO APPEAR AS THIS ORDER DIRECTS, YOU MAY BE HELD IN CONTEMPT OF COURT.

This information was furnished under oath by the person(s) named below.

Name Of Prosecutor

David Saacks

Date

03-23-2006

Name Of Other Affiant

Inv. Benjamin Himan, D.P.D.

Signature

Ronald J. Stephens

District Court Judge

Superior Court Judge

A TRUE COPY CLERK OF SUPERIOR COURT DURHAM COUNTY

By

Assistant Deputy Clerk Superior Court

INSTRUCTION TO SERVING OFFICER

- 1. This Order must be served personally at least seventy-two (72) hours before the nontestimonial identification procedure.
- 2. I find, for the reasons stated by the prosecutor in the application for the nontestimonial identification order, that the order does not have to be served at least seventy-two (72) hours before the nontestimonial procedure. Therefore, the order must be served within the time indicated below.

Time In Which Order Must Be Served Prior To Procedure	
Immediately	
Date	
03-23-2006	
Signature	
<i>Ronald J. Shepherd</i>	
<input type="checkbox"/> District Court Judge	<input checked="" type="checkbox"/> Superior Court Judge

RETURN OF SERVICE

I certify that this Order was received and served as follows:

Date Served	Time Served	<input type="checkbox"/> AM <input type="checkbox"/> PM	Signature Of Suspect
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- By delivering to the named suspect personally a copy of the order.
- Suspect WAS NOT served for the following reason:

Date Received	Date Of Return	Name Of Law Enforcement Officer
City, County		Agency

MODIFICATION ORDER

The time and place of the suspect's appearance is changed as follows:

Date	
Signature	
<input type="checkbox"/> District Court Judge	<input type="checkbox"/> Superior Court Judge

A TRUE COPY
 CLERK OF SUPERIOR COURT
 DURHAM COUNTY
 By *[Signature]*
 Assistant Deputy Clerk Superior Court

STATE OF NORTH CAROLINA

File No.

DURHAM County

In The General Court Of Justice
 District Superior Court Division

In Re: The Nontestimonial Identification Order Of

APPLICATION FOR NONTESTIMONIAL IDENTIFICATION ORDER (ADULT SUSPECT)

G.S. Chapter 15A, Art. 14

Name And/Or Description

See Attachment

Address

See Attachment

City, State, Zip

See Attachment

Offense

See Attachment

The undersigned prosecutor applies for a nontestimonial identification order directing the person named or described above to appear as follows for the requested nontestimonial identification procedures:

Date

03/23/2006

Time

4:00

AM PM

Location

Durham PD Forensics Unit 213 Broadway St. Durham, NC

Requested Nontestimonial Identification Procedures

- 1 photographs of potential injuries sustained on the suspects during the alleged offenses located on their torso or upper extremities.
- 2 mug shot photographs for line-ups
- 3 swabbings of the mouth to provide DNA evidence for a link between the victim and suspects.

There is probable cause to believe that an offense punishable as a felony or a Class A1 or Class 1 misdemeanor has been committed and reasonable grounds to suspect that the person named or described above committed the offense. The results of the requested nontestimonial identification procedures will be of material aid in determining whether this person committed the offense.

The facts establishing the matters stated in the preceding paragraph are set forth in the affidavit on the reverse.

Date

03/23/2006

Signature Of Prosecutor

David Jacoby

Modification of Seventy-two (72) Hour Rule

The undersigned prosecutor, being first duly sworn, requests that the seventy-two (72) hour rule be modified for the following reason:

- a. delay will adversely affect the probative value of the evidence sought.
- b. it appears likely that the person named or described above may not appear for the nontestimonial identification procedure.

Facts Supporting Reason Checked Above For Modification Of Seventy-Two (72) Hour Rule

The injuries sustained by the suspects during the alleged rape and sexual assault will be lost if not immediately discovered and documented. Currently, the injuries would be 10 days old.

SWORN AND SUBSCRIBED TO BEFORE ME

NOTE: Prosecutor must be sworn only if he/she seeks a modification of the seventy-two (72) hour rule

Date

3/23/06

Date

3/23/06

Signature Of Judge

Thomas J. Stephens

Signature Of Prosecutor

David Jacoby

A TRUE COPY
CLERK OF SUPERIOR COURT
DURHAM COUNTY

By *[Signature]*
Assistant Deputy Clerk Superior Court

AFFIDAVIT FOR NONTESTIMONIAL IDENTIFICATION PROCEDURE

I, the undersigned affiant, being first duly sworn, say that:

1. I have probable cause to believe that an offense punishable as a felony or Class A1 or Class 1 misdemeanor was committed.

Offense See Attachment	County In Which Offense Committed Durham	Offense Date 03/13/2006
Facts Which Establish Probable Cause See attachment		

2. I have reasonable grounds to suspect that the person named or described on the reverse committed the offense.

Facts Which Establish Reasonable Grounds See attachment

3. The results of the nontestimonial identification procedures requested on the reverse will be of material aid in determining whether the person named or described on the reverse committed the offense.

Reasons Why Procedures Will Be Of Material Aid
<p>1 The photographs used for mug shots will give the availability of the suspect's current hair styles, complexion, and body mass for photographic line ups to identify the suspects.</p> <p>2 The photographs of the torso and upper extremities will give documentation of injuries consistent with the assault that will be lost if not immediately discovered and documented immediately.</p> <p>3 The DNA obtained through the mouth swabbings will prove a link between the suspects and victim in this case.</p>

SWORN AND SUBSCRIBED TO BEFORE ME	Date 3/23/06
Date 23 March 2006	Signature Of Affiant <i>[Signature]</i>
Signature <i>Ronald D. Stephens</i>	Name Of Affiant (Type Or Print) Benjamin Himar
<input type="checkbox"/> District Court Judge <input checked="" type="checkbox"/> Superior Court Judge	Title Or Position Investigator

A TRUE COPY
CLERK OF SUPERIOR COURT
DURHAM COUNTY

By *[Signature]*
Assistant Deputy Clerk Superior Court

STATE OF NORTH CAROLINA
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT/ SUPERIOR COURT DIVISION

ATTACHMENT FOR APPLICATION FOR NONTESTIMONIAL IDENTIFICATION ORDER

IN THE MATTER OF: 610 N. Buchanan Blvd. Durham, NC 27701

The undersigned prosecutor applies for a nontestimonial identification order directing the persons named or described below to appear as follows for the requested nontestimonial identification order.

I Name and Description of Subjects

Matthew Zash, W/M, 10-18-1983
610 N. Buchanan Durham, NC

Michael Spencer Young, W/M, 10-7-1986
Duke University Edens Hall 2C Room 205 Durham, NC

William Wolcott, W/M, 4-13-1983
3832 Hanover Ave Dallas, TX

Matthew Wilson, W/M, 12-29-1984
206 Oregon St. Apt. #N Durham, NC

Robert Wellington, W/M, 01-18-1986
HH Dorm Duke University Rm # 203 Durham, NC

Michael Ward, W/M, 5-1-1985
206 Oregon St. Apt. W Durham, NC

John Walsh, W/M, 8-20-1984
206 Oregon St Apt #S Durham, NC

Christopher Tkac, W/M, 9-15-1986
Giles Dorm #226 Duke University Durham, NC

Bret Thompson, W/M, 9-2-1983
1000 McQueen Dr Durham, NC

Daniel Theodoridis, W/M, 2/24/1987
Pegram Dorm # 313 Duke University Durham, NC

Robert Schroeder, W/M, 7-17-1986
Edens Hall #2C Rm. 203 Duke University Durham, NC

A TRUE COPY
CLERK OF SUPERIOR COURT
DURHAM COUNTY

By *[Signature]*
Assistant Deputy, Clerk Superior Court

[Signature]
JUDGE

DATE: 23 Mar. 2006

[Signature]
Assistant District Attorney

DATE: 3/23/06

DM 1-1

STATE OF NORTH CAROLINA
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT/ SUPERIOR COURT DIVISION

ATTACHMENT FOR APPLICATION FOR NONTESTIMONIAL IDENTIFICATION ORDER

I Name and Description of Subjects (continuation)

Kenneth J. Sauer, W/M, 2-11-1984
8 Davidson Ave East Rockaway, NY

Sam Payton, W/M, 4-29-1987
Pegram Dorm # 313 Duke University Durham, NC

Daniel Oppedisano, W/M, 12-24-1984
206 Oregon St Apt. F Durham, NC

Nicholas O'Hara, W/M, 9-28-1985
205 Oregon St Apt. C Durham, NC

Glenn Nick, W/M, 3-23-1984
75 Lincoln St Garden City NY

Ryan McFadyen, W/M, 5-11-1986
Edens Hall #2C Rm. 204 Duke University Durham, NC

Tony McDevitt, W/M, 9-26-1984
206 Oregon St. #S Durham, NC

Kevin Mayer, W/M, 5-19-1986
Edens Hall #2C Rm. 202 Duke University Durham, NC

Breck Archer, W/M, 1-20-1984
206 Oregon St Apt. N Durham, NC

Casey Carroll, W/M, 12-17-1984
206 Oregon St. Apt I Durham, NC

Mike Catalino, W/M, 6-24-1987
319 Bassett Dorm Duke University Durham, NC

Tom Clute, W/M, 10-26-1986
226 Giles Dorm Duke University Durham, NC

Kevin Coleman, W/M, 1-1-1984
194 Beechwood Rd. Ridgewood, NJ

A TRUE COPY
CLERK OF SUPERIOR COURT
DURHAM COUNTY

By [Signature]
Assistant Deputy Clerk Superior Court

[Signature]
JUDGE

DATE: 23 May 2006

[Signature]
Assistant District Attorney

DATE: 3/23/06

A M

STATE OF NORTH CAROLINA
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT/ SUPERIOR COURT DIVISION

ATTACHMENT FOR APPLICATION FOR NONTESTIMONIAL IDENTIFICATION ORDER

I Name and Description of Subjects (continuation)

Josh Coveleski, W/M, 7-26-1985
Edend Dorm #2C Rm. 302 Duke University Durham, NC

Ned Crotty, W/M, 9-26-1986
308 Aycock Dorm Duke University Durham, NC

Matt Danowski, W/M, 8-12-1985
206 Oregon St Apt. #W Durham, NC

Ed Douglas, W/M, 12-1-1983
221 Anderson Apt. L Durham, NC

Kyle Dowd, W/M, 11-6-1984
1000 McQueen Apt 10103 Durham, NC

David Evans, W/M, 4-7-1983
610 N. Buchanan Durham, NC

Collin Finnerty, W/M, 9-10-1986
Edens Hall 2C Rm. 203 Duke University Durham, NC

Dan Flannery, W/M, 3-16-1984
610 N. Buchanan Durham, NC

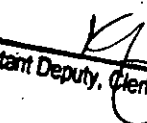
Gibbs Fogarty, W/M, 11-7-1986
308 Aycock Dorm Duke University Durham, NC

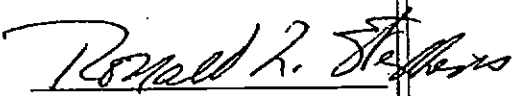
Zack Greer, W/M, 2-12-1986
Edens Hall 2C Rm. 202 Duke University Durham, NC

Erik Henkelman, W/M, 6-18-1983
623 University Pl. Swathmore, PA

Jay Jennison, W/M, 9-12-1985
Edens Hall 2C Rm. 301 Duke University Durham, NC

A TRUE COPY
CLERK OF SUPERIOR COURT
DURHAM COUNTY

By 
Assistant Deputy, Clerk Superior Court


JUDGE

DATE: 7/3/06


Assistant District Attorney

DATE: 3/23/06

0 A, 2/22/06

STATE OF NORTH CAROLINA
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT/ SUPERIOR COURT DIVISION

ATTACHMENT FOR APPLICATION FOR NONTESTIMONIAL IDENTIFICATION ORDER

I Name and Description of Subjects (continuation)

Ben Koesterer, W/M, 10-28-1985
Edens Hall 3B Rm. 401 Duke University Durham, NC

Fred Krom, W/M, 1-7-1985
206 Oregon St Apt. F Durham, NC

Peter Lamade, W/M, 4-22-1984
206 Oregon St. Apt. I Durham, NC

Chris Loftus, W/M, 6-28-1986
Edens Hall 2C Rm. 205 Duke University Durham, NC

Dan Loftus, W/M, 12-31-1984
205 Oregon St. Apt. C Durham, NC

John Bradley Ross, W/M, 8-10-1985
Edens 2C Rm. 204 Duke University Durham, NC

Reade William Seligmann, WM, 3-3-1986
Edens 2C Rm. 301 Duke University Durham, NC

Stephen Dearnley Schoffel, WM, 7-7-1986
Bassett Rm. 319 Duke University Durham, NC

Adam Scott Langley, WM, 7-19-1986
Edens 1A Rm. 414 Duke University Durham, NC

Edward Codrington Carrington VII (AKA "Bo"), WM, 6-23-1986
HH 203 Rm. 203 Duke University Durham, NC

II Offenses

First Degree Forcible Rape (N.C.G.S. 14-27.3), First Degree Kidnapping
(N.C.G.S.14-39), First Degree Forcible Sexual Offense (N.C.G.S. 14-27.4),
Common Law Robbery (N.C.G.S. 14-87.1), Felonious Strangulation (N.C.G.S.
14-32 4(b))

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CLERK OF SUPERIOR COURT
DURHAM COUNTY

By KJ
Assistant Deputy Clerk Superior Court

Ronald J. Stokes
JUDGE

DATE: 2/23/06

David Frank
Assistant District Attorney

DATE: 3/23/06

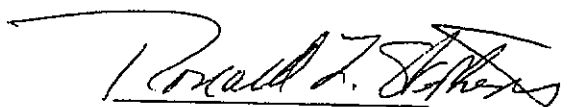
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ATTACHMENT FOR APPLICATION FOR NONTESTIMONIAL IDENTIFICATION ORDER

III Facts That Establish Probable Cause

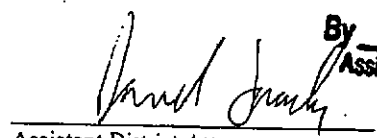
On 3/14/06 at 1:22am, Durham City Police Officers were called to the Kroger on Hillsborough Road. The victim, a 27 year old black female reported to the officers that she had been raped and sexually assaulted at 610 North Buchanan Blvd. The investigation revealed that the victim and a co-worker had an appointment to dance at 610 North Buchanan Blvd. The victim arrived at the residence and joined the other female dancer around 11:30pm on 3/13/2006. The victim reported that they began to perform their routine inside of the residence. After a few minutes, the males watching them began to get excited and aggressive. One male stated to the women "I'm gonna shove this up you" while holding a broom stick up in the air so they could see it. The victim and her fellow dancer decided to leave because they were concerned for their safety. After the two women exited the residence and got into a vehicle, they were approached by one of the suspects. He apologized and requested they go back inside and continue to dance. Shortly after going back into the dwelling the two women were separated. Two males, Adam and Matt pulled the victim into the bathroom. Someone closed the door to the bathroom where she was, and said "sweet heart you can't leave." The victim stated she tried to leave, but the three males (Adam, Bret, and Matt) forcefully held her legs and arms and raped and sexually assaulted her anally, vaginally and orally. The victim stated she was hit, kicked, and strangled during the assault. As she attempted to defend herself, she was overpowered. The victim reported she was sexually assaulted for an approximate 30 minute time period by the three males. During a search warrant at 610 N. Buchanan on 3-16-2006 the victim's four red polished fingernails were recovered inside the residence consistent to her version of the attack. She claimed she was clawing at one of the suspect's arms in an attempt to breath while being strangled. During that time the nails broke off. The victim's make up bag, cell phone, and identification were also located inside the residence during the search warrant. Finally, a pile of twenty dollar bills were recovered inside the residence totaling \$160.00 consistent with the victim claiming \$400.00 cash in all twenty dollar bills was taken from her purse immediately after the rape. The victim was treated and evaluated at Duke University Medical Center Emergency Room shortly after the attack took place. A Forensic Sexual Assault Nurse (SANE) and Physician conducted the examination. Medical records and interviews that were obtained by a subpoena revealed the victim had signs, symptoms, and injuries consistent with being raped and sexually assaulted vaginally and anally. Furthermore, the SANE nurse stated the injuries and her behavior were consistent with a traumatic experience.

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CLERK OF SUPERIOR COURT
DURHAM COUNTY



JUDGE

DATE: 23 MAR. 2006



Assistant District Attorney

DATE: 3/23/06

By 

Assistant Deputy Clerk Superior Court

Handwritten initials and scribbles

ATTACHMENT FOR APPLICATION FOR NONTESTIMONIAL IDENTIFICATION ORDER

IV Facts That Establish Reasonable Grounds

The victim stated she did not think the names the suspects were providing her were their own. She stated one male identified himself as Adam, but everyone at the party was calling him Dan. In addition, the witness/co-worker stated the men at the party told her they were members of the Duke Baseball and Track Team to hide the true identity of their sports affiliation – Duke Lacrosse Team Members. In a non-custodial interview with Daniel Flannery, resident of 610 N. Buchanan and Duke Lacrosse Team Captain; Mr. Flannery admitted using an alias to make the reservation to have the dancers attend the Lacrosse Team Party.

The State believes there is an exigent circumstance where if the suspect's injuries are not located immediately and preserved, the evidence will be lost forever. All of the parties named in this application with the exception of the last five were named by the three residents of 610 N. Buchanan as being present at the party. The three residents stated during the non-custodial interviews that their fellow Duke Lacrosse Team Members were the ones who attended this party. They knew everyone there, and stated there were no strangers who showed up at the event. Due to the fact that the residents of 610 N. Buchanan stated that all the attendees were their fellow Duke Lacrosse Team Members and that there were so many attendees, all of the white male Duke Lacrosse Team Members were listed since they were all aware of the party and could have been present.

It is the States belief the suspects used each others names to disguise their own identities and create an atmosphere where confusion would become a factor in this event should problems arise in the future where any actions or conduct would be questioned. The DNA evidence requested will immediately rule out any innocent persons, and show conclusive evidence as to who the suspect(s) are in the alleged violent attack upon this victim. Numerous persons who attended this party are seniors at Duke University and have permanent addresses outside of the State of North Carolina making it difficult if not impossible to collect the DNA evidence in the future when necessary.

A TRUE COPY
CLERK OF SUPERIOR COURT
DURHAM COUNTY

By [Signature]
Assistant Deputy, Clerk Superior Court

[Signature]
JUDGE

DATE: 23 Mar. 2006

[Signature]
Assistant District Attorney

DATE: 3/23/06

[Signature] 3/23/06