

**EXHIBIT 3**

TO

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

STATE OF NORTH CAROLINA

In The General Court of Justice  
Superior Court Division

Durham County

SEARCH WARRANT

In the Matter of: 610 N. Buchanan  
Durham PD Report # 06-08310

Ryan McFadyen  
2C Edens Dormitory # 204  
Duke University Durham, NC

Date Issued: 3/27/06  
Time Issued: 5:00 PM  
 AM  XPM

Name of Applicant  
Investigator B.W. Himan

Name of Additional Affiant

Name of Additional Affiant

To any officer with authority and jurisdiction to conduct the search authorized by this Search Warrant:

I, the undersigned, find that there is probable cause to believe that the property and person described in the application on the reverse side and related to the commission of a crime is located as described in the application.

I certify that this Search WARRANT was received and executed as follows:

Date Received	3/27/06	Time Received	5:01 PM
Date Executed	3/27/06	Date & Time of Return	6:01 PM 3:15 PM

I made a search of  
2C Edens Dormitory Room 204  
Duke University Durham, NC  
as commanded.

- I seized the items listed on the attached inventory
- I did not seize any items.
- This warrant was not executed with in 48 hours of the date of issuance and I hereby return it not executed.

Signature of Officer Making Return  
Burt F... #7754  
Department or Agency of Officer  
DURHAM Police Department

RETURN OF SERVICE

You are commanded to search the premises, vehicle, person, and other place or item described in the application for the property and person in question. If the property and/or person are found, make the seizure and keep the property subject to Court Order and process the person according to law.

You are directed to execute this Search Warrant with in forty-eight (48) hours from the time indicated on this Warrant and make due return to the Clerk of the Issuing Court.

This Search Warrant is issued upon information furnished under oath by the person or persons shown.

Date: 27 March 2006

Signature: Ronald J. Stephens

Deputy CSC  Asst. CSC  Clerk of Superior Court  
 Magistrate  District Ct. Judge  Superior Ct. Judge

This Search Warrant was returned to me on the date and time shown below

Date: 28 MAR. 2006  
Time: 2:12 PM  
Signature: Ronald J. Stephens  
 Deputy CSC  Asst. CSC  Clerk of Superior Court

Search Warrant to be returned to 4th Street  
+ placed under date. Ronald J. Stephens, Justice

APPLICATION FOR SEARCH WARRANT

I, Inv Himan and Inv Clayton, with the Durham Police Department 505 W. Chapel Hill Street Durham, NC 27701

(Insert name and address; or, if law enforcement officer, name, rank and agency)

being duly sworn, request that the court issue a warrant to search the person, place, vehicle and other items described in this application, and to find and seize the property and person described in this application. There is probable cause to believe that

See Attached (Describe property to be seized; or if search warrant is to be used for searching a place)

(Check appropriate box(es) and fill in specified information)

X in the following premises, 2C Edens Dormitory Rm 204 Duke University Durham, NC Premises described on attachment titled "Locati (Give address and, if useful, describe premises)

See attached

(and) on the following person(s) (Give name(s) and, if useful, describe person(s))

(and) X in the following vehicle(s) See attached (Describe vehicle(s))

(and) X SEE ATTACHMENT PAGES 1-5 (Name and/or describe other places or items to be searched, if applicable)

The applicant swears to the following facts to establish probable cause for the issuance of a search warrant: The facts to establish probable cause for the issuance of this search warrant are set forth on the attached continuation page titled "Probable Cause Affidavit".

SWORN AND SUBSCRIBED TO BEFORE ME

Date 27 March 2006 Signature Ronald J. ... Signature of Applicant [Signature] #7754

Deputy CSC Asst. CSC Clerk of Superior Court Magistrate Judge

In addition to the affidavit included above, this application is supported by additional affidavit(s) attached, made by

In addition to the affidavit included above, this application is supported by sworn testimony, given by

This testimony has been (check appropriate box) reduced to writing tape recorded and I have filed each with the Clerk.

If a continuation is necessary, continue the statement on an attached sheet of paper with a notation saying "see attachment."

Date the continuation and include on it the signatures of applicant and issuing official.

ATTACHMENT FOR APPLICATION FOR SEARCH WARRANT

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

I, Inv. B.W. Himan, being duly sworn depose and say that I am a Sworn Law Enforcement Officer in the State of North Carolina and have been employed by the Durham Police Department, Durham, NC since 2003.

The Criminal Investigations Division has the responsibility of follow-up investigations of crimes committed by adults and juveniles involving crimes against persons and property. The primary objectives of this Division are to provide both investigative and general support to other Divisions of the Durham Police Department in the accomplishment of establishing departmental goals and objectives. The Violent Crimes and Property Crimes Units are a part of the District 2 Criminal Investigations Division, dedicated to investigations matters of people within the city of Durham, NC concerning persons .

I have been assigned to the Criminal Investigations Division as an Investigator in District 2. I am primarily assigned the duty of investigating property related crimes. I have been involved in numerous investigations to include domestic violence assaults, robberies, sexual assaults, and homicide investigations. I have received specialized training in Law Enforcement throughout my career. I have attended the following classes related to law enforcement:

Interview and Interrogation, Police Law Institute, Field Training Officers School, Street Drug Enforcement for Patrol Officers, and Child Death Investigation. These classes are in addition to hundreds of hours of In-Service Training with the Durham Police Department.

I respectfully request that the COURT issue a warrant to search the place, person, vehicles, and any other items or places described in this application; and to find and seize the property described in this application.

**Description of items to be seized**

1. Any clothing related to the suspect and the victim from the night of the attack
2. Any documentation identifying the suspects
3. Documentation showing residency of 2C Edens Dormitory #204 Duke University

  
MAGISTRATE / JUDGE

DATE: 7/27/06

 #7754  
AFFIANT

DATE: 7/27/06

ATTACHMENT FOR APPLICATION FOR SEARCH WARRANT


4. Property belonging to 27 y/o B/F victim to include but not limited to a white 6 inch shoe.
5. Still photographs, video footage and digital recordings of the party
6. Any cameras or video devices which could contain photographs or footage of the party on 03/13/2006 to 3/14/2006
7. United States Currency totaling \$340.00 or portions of said currency (all twenty dollar bills)
8. Copies of emails that have sentences punctuated with two periods.
9. A Duke Lacrosse team jersey displaying the number 41 and/or any other items identifying player 41.
10. Any electronic data processing and storage devices, computers and computer systems including central processing units; internal and peripheral storage devices such as fixed disks, external hard disks, floppy disk drives and diskettes, tape drives and tapes, cartridges, optical storage devices or other memory storage devices; peripheral input/output devices such as keyboards, printers, video display monitors, optical reader/write devices, and related communications devices such as modems; together with system documentation, operating logs and documentation, software and instruction manuals Any e-mail correspondence, other electronic communications, memos, or documents of any type referring to *First Degree Rape, Robbery, Kidnapping, First Degree Sexual Offense, Hate Crimes, Felony Strangulation, Assault on a female, Conspiracy to commit Murder.*
11. Any other items that may constitute a crime.

**Description of Crimes**

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) ), Conspiracy to Commit Murder (Common law Offense).

  
MAGISTRATE/JUDGE (Superior Court)

DATE: 27 March 2006

  
PLAINTIFF #7754

DATE: 3/27/06

ATTACHMENT FOR APPLICATION FOR SEARCH WARRANT

**Description of Premises to be Searched**

The residence to be searched is located at 2C Edens Dormitory Room 204 Duke University in Durham, North Carolina. From the Durham Police District 2 Substation located at 1058 W. Club Blvd, officers will turn left traveling south on Guess Rd which turns into North Buchanan. The Officers will continue south on N. Buchanan until they reach W. Chapel Hill Street. At Chapel Hill St, Officers will turn right (West bound). Chapel Hill St turns into Duke University Rd. Officers will travel west on Duke University Rd to the 2000 block and turn right (north bound) on Edens Dr. Officers will drive to the dead end where the picnic shelter is located. Officers will exit their vehicles and cross over a wood and iron bridge. As they cross the bridge, they will follow the sidewalk to the left. Edens Dormitory is directly in front from that point if following the sidewalk straight. As officers walk to the building they will see a wood frame door brown in color on the four story stone and concrete dormitory structure brown and slate in color. The door has a sign in black with white letters EDENS 2C molded on it. As officers enter the structure they will walk up the steps and go to the second story. At the top of the stairs, officers will go through a door on the left. Officers will walk down the hall and follow the hall to the right until they come to room 204. Room 204 has a plaque on the right side of the door frame with the letters 204 on it.


**Description of Vehicle to be Searched**

1998 GMC Yukon white in color, NJ license plate PWJ 21P, VIN -1GKEK13R4WJ733255. The vehicle should be parked in the blue zone parking lot of Duke University off of Wannamaker Dr. or in or around Edens Dormitory.


**IN THE MATTER OF: 610 N. Buchanan, Durham N.C.**

**Probable Cause Affidavit**

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

  
MAGISTRATE / JUDGE (Sup. Court Clerk)

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**Probable Cause Affidavit Continued**

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 breathe 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.

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 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.

It is the Affiant's 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. In

Ronald J. Adams  
MAGISTRATE/JUDGE

DATE: 27 March 2006

Bret A. Adams #7754  
AFFIANT

DATE: 3/27/06

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**Probable Cause Affidavit**

addition, further interviews showed that. The players also used numbers when calling for one and another across the room again to hide their identities.

On 3/7/2006 Sgt. Gottlieb was contacted by a confidential source. The source provided Sgt. Gottlieb a copy of an email sent by email address ryan.mcfadyen@duke.edu. The email dated March 14, 2006 at 1:58am stated:

To whom it may concern

tommrow night, after tonights show, ive decided to have some strippers over to edens 2c. all are welcome.. however there will be no nudity. i plan on killing the bitches as soon as the walk in and proceeding to cut their skin off while cumming in my duke issue spandex.. all in besides arch and tack please respond

41

The number 41 is the jersey number for Ryan McFadyen, a member of the Duke Lacrosse team.

The affiant requests that the State issue this search warrant to secure evidence related to the felonious assault and conspiracy thereafter the assault located at 610 N. Buchanan Blvd.

Ronald J. Stephens  
MAGISTRATE/JUDGE (Superior Court)  
DATE: 27 March 2006

[Signature] #7754  
AFFIANT  
DATE: 3/27/06