



Durham County Superior Court
case file Nos. 06 CRS 4332-4336, 5582-5583

Summary of Conclusions

North Carolina Attorney General's Office
North Carolina Department of Justice

SPECIAL PROSECUTIONS SECTION

NORTH CAROLINA ATTORNEY GENERAL'S OFFICE, NORTH CAROLINA DEPARTMENT OF JUSTICE

On January 13, 2007, Attorney General Roy Cooper accepted the request of the Durham District Attorney to take over cases involving three individuals who were accused of sexually assaulting a woman at a party in March 2006.

In agreeing to accept the cases, he promised a new review of the evidence and additional investigation, and that “the path that these cases travel will be lighted by the law and the evidence alone.”

The charges against the three individuals arose out of allegations that an exotic dancer who had been hired to perform at the off-campus party during spring break 2006 had been the victim of a sexual assault by three members of the Duke University lacrosse team.

As a result, grand jury indictments were returned in April 2006 against Reade Seligmann and Collin Finnerty accusing them of first-degree rape, first-degree sexual offense and first-degree kidnapping. In May 2006, David Evans was indicted for these same offenses.

From the outset, all three of the named defendants strenuously maintained their innocence. In the ensuing months, numerous court proceedings were held regarding motions filed by defense counsel. In late December of 2006, Durham District Attorney Michael B. Nifong dismissed the charges of rape against all three defendants.

The same month, the North Carolina State Bar notified the Durham District Attorney that it was initiating a disciplinary hearing into his conduct related to certain aspects of his handling of these cases. As a result, on January 12, 2007, District Attorney Nifong requested the Attorney General's Office to take responsibility for the prosecution of all pending matters pursuant to the North Carolina General Statutes.

The resulting review focused only on the criminal charges of first-degree sex offense in violation of N.C.G.S. § 14-27.4 and first-degree kidnapping in violation of N.C.G.S. § 14-39. The special prosecutors reviewed the State's evidence compiled to date resulting from a party held at a house at 610 N. Buchanan Boulevard in Durham, North Carolina on March 13, 2006 and into the early morning of March 14, 2006.

After the transfer of the case files, the special prosecutors conducted new interviews with witnesses, collected new information and compared this evidence with previous statements and evidence.

The re-investigation led to the conclusion that there was no credible evidence to support the allegation that the crimes occurred. The new investigation revealed additional weaknesses in the State's cases based on the case files that had already been developed.

The State's cases rested primarily on a witness whose recollection of the facts of the allegations was imprecise and contradictory. This alone would have made it difficult for a prosecutor to prove the allegations. However with additional evidence uncovered in the new investigation, it was clear that there was no credible evidence that these crimes occurred at 610 N. Buchanan Blvd. in Durham that night.

Because of the lack of evidence and the additional affirmative proof that these crimes did not occur during this time, the Attorney General along with his special prosecutors, Senior Deputy Attorney General James J. Coman and Special Deputy Attorney General Mary D. Winstead, believed it was in the best interest of justice to declare these three individuals innocent of these charges.

The Attorney General and his special prosecutors based their decision on the totality of their review of the evidence. Primarily, their investigation found that:

- The accusing witness's testimony regarding the alleged assault would have been contradicted by other evidence in the case from numerous sources;
- The accusing witness's testimony regarding the alleged assault and the events leading up to and following the allegations would have been contradicted by significantly different versions of events she told over the past year;
- No testimony or physical evidence would have corroborated her testimony;
- The accused individuals were identified through questionable photographic procedures;
- Credible and verifiable evidence demonstrated that the accused individuals could not have participated in an attack during the time it was alleged to have occurred;
- The accusing witness's credibility would have been suspect based on previous encounters with law enforcement, her medical history and inconsistencies within her statements.

THE INVESTIGATIVE METHOD

The Attorney General's Office special prosecutors, together with agents from the State Bureau of Investigation (SBI) and assistance from the Durham Police Department, spent 12 weeks reviewing the case files, questioning witnesses, examining evidence and collecting information.

They reviewed more than 7,000 documents including the original police and prosecution investigative reports, cellular telephone records from witnesses and the accused individuals, state and private laboratory records, defense summaries, and records which remain under seal by court order.

They reviewed more than 600 photographs, including police non-testimonial photographs of Duke lacrosse players and 25 photographs and two videos of the accusing witness taken by individuals who were at 610 N. Buchanan Blvd at the time in question. They verified through expert witnesses and sworn affidavits that the metadata times reflected in the photographs and videos were accurate.

The special prosecutors and SBI agents interviewed 47 people, including 17 members of the Duke University lacrosse team, one of whom was the team's only non-white player, and two other students, all of whom attended the party. They interviewed medical personnel, police officers and attorneys for the indicted players. The special prosecutors asked Durham Police Department investigators and SBI agents to follow a number of investigative leads. The special prosecutors also consulted with SBI experts on DNA, toxicology, blood chemistry and other forensic evidence.

The special prosecutors also met with the prior prosecutor, his investigator, and Durham Police investigators and officers. They talked with the accusing witness on several occasions in person, and at other times by telephone. A dancer who was with the accusing witness during the night in question met with the special prosecutors. During that meeting she declined to be interviewed without a subpoena. Previously, she had given an initial statement to police and had made voluntary public statements to the media which were reviewed by the special prosecutors.

The special prosecutors interviewed the SANE (Sexual Assault Nurse Examiner) and law enforcement officers involved with the accusing witness on the night in question. They reviewed information from the emergency room physician, a comprehensive statement from the nurse at Durham Center Access, and reviewed the reports of law enforcement officers who had contact with the accusing witness that night. They visited the house at 610 N. Buchanan Blvd.

The Office of the Attorney General's review of this information helped to establish a sequence of events that occurred that night.

NARRATIVE OF A SEQUENCE OF EVENTS THAT OCCURRED AT 610 N. BUCHANAN BLVD. ON MARCH 13-14, 2006, BASED ON INTERVIEWS OF WITNESSES AND REVIEWS OF PHOTOGRAPHIC, VIDEO, DOCUMENTARY, MEDICAL AND SCIENTIFIC EVIDENCE

On March 13, 2006 a party hosted by three Duke University students took place at 610 N. Buchanan Blvd. in Durham, NC. The three students, Dan Flannery, David Evans and Matt Zash, were members of Duke's lacrosse team and residents of the house. Approximately 40 other students attended the party; most, but not all, were also team members.

Sometime in the afternoon on March 13, one of the party hosts, Dan Flannery, called an escort service. The host did not provide his real name nor did he tell the service that 40 people would be at the party. He asked for two white dancers to come to 610 N. Buchanan Blvd. at 11 p.m. to entertain for a small bachelor party at the house.

The escort service arranged for two dancers, the accusing witness and a woman who used the name "Nikki" for the escort service, to go to 610 N. Buchanan Blvd. at 11 p.m. The two dancers did not know each other. Neither was Caucasian.

"Nikki" arrived at the house by herself shortly after 11 p.m. She was met by Flannery and was there for at least 30 minutes waiting for the other dancer, who was the accusing witness, to arrive. She did not allege that anything inappropriate happened to her while she was waiting during this time.

Beginning at 11:10 p.m., Flannery called the escort service three times seeking to learn the whereabouts of the other dancer, who was the accusing witness. Prior to arriving at 610 N. Buchanan Blvd. the accusing witness received four incoming calls and made one outgoing call on her cellular telephone from 11:11 p.m. until 11:36 p.m. The outgoing call was placed at 11:25 p.m. and lasted seven minutes. The last incoming call that was received at 11:36 p.m. lasted three minutes.

At approximately 11:40 p.m., the accusing witness was dropped off by her driver at 610 N. Buchanan Blvd. The accusing witness was described as being unsteady on her feet from the time she arrived and throughout the rest of her time at the house. The driver drove to a nearby gas station and paid for a drink at approximately 11:43 p.m.

Each of the dancers was paid \$400 in cash. Flannery showed both dancers to a bathroom to get ready for their dancing. "Nikki" was in her street clothes and needed to change. The accusing witness had arrived in an outfit she wore to perform. The host informed the other party attendees that the dancers were not Caucasian and asked if they still wanted the women to perform. The consensus was to have them perform. The dancers, meanwhile, were not expecting a 40-person party, but instead, a small bachelor party. However, they consented to perform.

Sometime just before midnight, the two dancers entered the living room to begin their performance for the party attendees. While performing, the accusing witness appeared to be unsteady on her feet and fell to the ground. During the performance, there was sexual banter involving

the use of sex toys between “Nikki” and some of the party attendees. This culminated in one of the attendees holding up a broomstick and suggesting its use as a sexual object for the dancers. “Nikki” was angered by this comment and the performance abruptly ended. After 12:04 a.m., the dancers left the room and retreated to the back of the house.

They were followed by David Evans, Dan Flannery, and possibly others who tried to assuage their feelings about the broomstick comment while pointing out that the party attendees had paid \$800 for only a brief performance. The dancers returned to the bathroom where they had left their belongings. The two women remained in the bathroom alone together for a period of time.

At approximately 12:05 a.m., just after the dancing ended, Reade Seligmann, began using his cell phone and initiated a series of phone calls to his girlfriend and others. At 12:14 a.m., he called a taxi cab company to pick him up. He and another party attendee then walked around the corner and got into a cab at approximately 12:19 a.m. The cab driver took Seligmann and the other party attendee to an automatic teller machine, arriving at approximately 12:24 a.m. After Seligmann made a withdrawal, the cab driver took Seligmann and the other player to a take-out restaurant and then back to Seligmann’s dormitory. Seligmann entered his dormitory at 12:46 a.m.

There was a range of other activities going on by the party attendees during this time. In addition to Seligmann, Collin Finnerty and other attendees decided to leave after the dancing ended. Others stayed and expressed displeasure at having paid money for a short performance that was expected to have lasted for two hours, and wanted a refund or a continuation of the performance. Some party attendees were milling around both inside and outside the house.

The dancers eventually left the bathroom and went to the back yard together. Flannery went outside to talk with them. He urged them to come back into the house to continue the performance. He apologized for the comment that was made during the performance. The dancers went to “Nikki’s” car. David Evans and others came to the car and talked with them.

Inside the house, some of the party attendees continued to express their displeasure with the truncated performance. Some said they had been cheated. Two of the attendees, while using the bathroom, noticed that one of the dancers had left her cosmetics bag behind in the bathroom. Each separately took money out of the bag and were told by Flannery and Evans to return the money to the bag. During this time, more attendees were leaving the house to go elsewhere.

The dancers had a conversation at the car. Then they both re-entered the house through the back door. Once inside the house, other attendees apologized to the dancers for the earlier comments. The individual who earlier held up the broomstick then approached the dancers which caused “Nikki” to become angry again, and the dancers went back into the bathroom alone together and refused to come out.

Flannery tried again to coax the dancers out of the bathroom. Zash and Evans began to encourage everyone else to leave. During this time, Zash said he wanted everyone out of the house because he was concerned that excessive noise would prompt neighbors to complain to police. Flannery continued to talk to the dancers, who were alone together in the bathroom, in an attempt to get them to leave the house.

While the dancers were still at the house, Collin Finnerty walked to 1105 Urban Street, a nearby house rented by other Duke students. At 12:22 a.m. Finnerty made a 2-minute call to a fellow lacrosse player using his cell phone. At 12:27 a.m. another lacrosse player called Finnerty's cell phone looking for him. Finnerty told the player that he was at 1105 Urban St., and that player walked to the house and met Finnerty there.

Finnerty called Domino's Pizza at 12:30 a.m. and again at 12:33 a.m. Finnerty and three other players walked from 1105 Urban St. to Cosmic Cantina restaurant where they ordered food and paid at 12:56 a.m.

The dancers opened the bathroom door and left 610 N. Buchanan Blvd. for the second time through the back door sometime before 12:30 a.m. "Nikki" and Flannery together walked to her car parked on the street in front of the house. The accusing witness remained behind outside the house. With both dancers and most of the party attendees out of the house, Zash locked the door of the back porch of the house to prevent the accusing witness or anyone else from re-entering the house. The accusing witness began banging on the door to get in. Zash refused to open the door.

At 12:26 a.m., the accusing witness placed a telephone call to the escort service. Moments later, at 12:30 a.m., she was observed and photographed outside the house on the back porch steps, smiling and rummaging through Evans' shaving kit. Under her arm is her cosmetic bag containing an object that appears to be her cell phone.

Other party attendees outside the house at the same time observed her behavior. She was overheard talking incoherently, apparently to no one in particular. In a video recorded at 12:31:26 a.m., she is talking to one of the party attendees saying "I'm a cop" and making other comments which were difficult to understand. The video also shows the difficulty she was experiencing with her balance as she attempted to walk from the back porch down the stairs, as well as her attempt to engage in a disjointed conversation with party attendees who were nearby.

At 12:34 a.m., while Flannery and "Nikki" were in the front of 610 N. Buchanan Blvd. and the accusing witness was outside the house as previously described, Evans called his girlfriend and spoke with her for approximately 16 minutes.

At 12:37 a.m. the accusing witness was observed and photographed lying in a prone position on the back porch. Flannery was called by other attendees from the rear of the house and told that there was a problem. Flannery left “Nikki” and returned to the back of the house where he observed the accusing witness lying in the position described above. Flannery then assisted the accusing witness in walking from the back porch to “Nikki’s” car where she was placed in the front seat by Flannery. Both dancers were in the car at 12:42 a.m.

After the accusing witness was placed in “Nikki’s” car, “Nikki” yelled a sexually and racially based comment at a group of party attendees standing across the street near the wall to East Campus at the university. One or more of the party responded with racial epithets. After this exchange, “Nikki” drove away with the accusing witness in her car. At approximately 12:53 a.m., “Nikki” called 911 to report that a group of white men were yelling racial comments at passersby outside of North Buchanan Boulevard.

The two dancers arrived at a Kroger grocery store in Durham. The accusing witness refused to get out of “Nikki’s” car and appeared to be unconscious. “Nikki” went in to the Kroger store and requested a security guard to notify the Durham Police Department. At 1:22 a.m., such a call was received at the 911 center.

Sergeant J.C. Shelton of the Durham Police Department responded to the 911 call from the security guard. Shelton arrived at the grocery store at approximately 1:32 a.m. Shelton observed the accusing witness, still apparently unconscious, in the front seat of “Nikki’s” car. Shelton described the accusing witness as dressed in a flimsy outfit. He observed that the clothes were not torn.

“Nikki” advised Shelton that she did not know the identity of the woman in her car. She claimed that she was driving on North Buchanan Boulevard and heard some individuals in the vicinity of 610 N. Buchanan Blvd. yelling and making racial slurs toward the woman in her car. “Nikki” told Shelton that she picked the woman up because she was concerned about her safety and that the woman passed out in her car.

Shelton unsuccessfully tried to rouse the accusing witness. When she was unresponsive to his efforts, he held smelling salts near her nose and she began to breathe through her mouth. The accusing witness was removed from the car, but was unable to stand on her own. She refused to identify herself or say where she lived. Shelton then instructed one of the officers on his shift to take the accusing witness to the Durham Center Access, an organization that offers access to mental health, substance abuse, and developmental disabilities services.

It was at Durham Center Access that a nurse asked the accusing witness if she had been raped. The accusing witness answered in the affirmative. This was the first time she had indicated to anyone that she had been the victim of a sexual assault.

After this information was communicated to one of the officers present, he was instructed by Shelton to take the accusing witness to the Duke University Medical Center Emergency Room. After arriving at the emergency room, the accusing witness recanted the earlier statement that she had been sexually assaulted. While Shelton was communicating this information to the Watch Commander, he was advised that the accusing witness was changing her story and was again saying that she was sexually assaulted. At that point, the Watch Commander advised Shelton to treat the situation as a rape investigation. The ensuing investigation ultimately led to the indictments of Evans, Seligmann and Finnerty.

DEFICIENCIES IN THE PROCESS OF IDENTIFICATION OF ACCUSED INDIVIDUALS

As the investigation of the rape allegations went forward, the Durham Police Department investigators sought information from the accusing witness to identify her alleged assailants. The special prosecutors concluded that the process by which the accusing witness ultimately identified David Evans, Reade Seligmann and Collin Finnerty as her attackers was of questionable validity.

The first identifying information was provided to authorities on March 14, 2006, the day after the party, when she referred to her attackers as “Adam,” Brett” and “Matt.” In subsequent statements to the police on March 16, 2006 and April 6, 2006, she described various versions of how the assault occurred, but continued to refer to “Adam,” “Brett” and “Matt” as her assailants.

Two days later, on March 16, 2006, the Durham police showed the accusing witness four different photo arrays in an attempt to obtain identification evidence. The 24 photographs she was shown included only members of the Duke lacrosse team. After reviewing these photographs the accusing witness was only able to state that she was 70 percent certain that Reade Seligmann was at the party, although she could not recall where she saw him. She was unable to identify any player as one of her attackers.

Eight days after the party, on March 21, 2006, the accusing witness was shown another 12 photographs of lacrosse team members. After being shown this array twice, she was again unable to identify any photograph as that of one of her attackers. These 12 photographs included a picture of David Evans, which she also viewed twice and failed to identify.

In late March, 2006, the Durham police obtained Nontestimonial Identification (NTID) orders requiring each white member of the lacrosse team to submit DNA samples and allow photographs to be taken. The Durham police, at the direction of the District Attorney, converted these photographs into a PowerPoint presentation.

On April 4, 2006, the accusing witness was shown these new photographs of the players through a PowerPoint presentation. The accusing witness was advised that she would be viewing photos of individuals that the police had reason to believe attended the party.

Each photograph was projected individually, rather than simultaneously in a line-up format. She was shown photographs of only the 46 white lacrosse team members. When shown the photograph of Reade Seligmann, she stated she was 100 percent certain that he had forced her to perform oral sex, but that was all that he did. The photograph of Collin Finnerty was identified with 100 percent certainty as a player who had raped her vaginally and anally. When viewing the photograph of David Evans she identified him with “about 90 percent certainty.” She stated: “He looks like one of the guys who assaulted me . . . He looks just like him without the mustache.” In addition, the accusing witness identified at least one picture of a player from the PowerPoint presentation as being present at the party who further investigation revealed was not there.

The photographic arrays shown to the accusing witness on four different occasions were limited to members of the lacrosse team. "Fillers," or individuals not regarded as potential suspects, as recommended by Durham Police Department policy for identifying suspects, were never included.

It was not until the April 4, 2006, PowerPoint presentation of 46 team members, without "fillers," that the accusing witness first identified the three accused individuals as her attackers.

Almost nine months later, on December 21, 2006, the District Attorney's chief investigator on the cases arranged a meeting with the accusing witness. Contrary to the practice followed in prior meetings with the accusing witness, the investigator met with her without the presence of another officer to witness and corroborate the questions and answers.

Significantly, the chief investigator also showed her the photographs of lacrosse team members she had previously viewed on April 4, 2006 in the PowerPoint presentation. The chief investigator's interview of the accusing witness was not recorded and neither the chief investigator's notes nor his subsequent report revealed that the accusing witness was shown the photographs again, although he acknowledged to the special prosecutors in an interview that he had done so.

No explanation for this was contained in the chief investigator's report or notes. His report does reflect, without explanation, that the accusing witness, for the first time, began referring to the three individuals as David Evans, Reade Seligmann and Collin Finnerty, rather than "Adam," "Brett" and "Matt." The chief investigator's report also does not indicate whether the accusing witness was still able to identify the three individuals previously identified on April 4, 2006.

Showing the accusing witness these photographs which were the subject of a pending motion to suppress, along with her use of the proper names of those charged, provided the defense additional grounds to argue that the out of court and in court identifications should be suppressed, which would effectively have ended the case.

DNA EVIDENCE DOES NOT SUPPORT ANY OF THE CLAIMS BY THE ACCUSING WITNESS

Despite initially claiming that two individuals ejaculated in her and/or on her, testing by the SBI Crime Lab analysts of evidence collected in the rape kit failed to reveal the presence of semen or sperm. Additional testing by a private firm, DNA Security Inc., in Burlington, NC, found no DNA that matched any of the party attendees on the items in the rape kit.

As a result of Nontestimonial Identification Orders obtained by the Durham police in late March 2006, DNA samples were taken from each of the 46 white members of the lacrosse team. These samples, along with DNA samples obtained from the accusing witness, were transferred to the SBI Crime Lab for analysis. In early April 2006, these DNA samples, along with additional samples from two non-lacrosse party attendees, were further analyzed, using more specialized technology, by DNA Security Inc.

The special prosecutors, in February, 2007, began to review the documents reflecting the laboratory results of the testing done by the SBI and DNA Security, Inc. The Forensic Biology section of the SBI Crime Laboratory was also asked to assist in the review of the documentation and analysis which had been performed by DNA Security Inc. The SBI paneled a four-member team to review this documentation, which included standard operating procedures, quality manuals, validation studies, the firm's most recent quality assurance audit, analysts' curriculum vitae, and the analytical reports and results. The panel also met with the Director of DNA Security Inc. in order to ask questions and clarify details.

As a result of the information provided by the SBI, and the special prosecutors' own review of the laboratory documents, it was determined that the DNA evidence was reliable and supported the following primary conclusions:

- ✦ Testing of all rape kit materials obtained from the accusing witness on March 14, 2006 excluded all lacrosse players and party attendees.
- ✦ DNA from one or more men, who were not lacrosse team members or party attendees, was present on rape kit items.
- ✦ Testing of the accusing witness's false fingernails retrieved from the trash can in David Evans's bathroom excluded all lacrosse players and party attendees except David Evans. While analysts could not confirm the DNA matched Evans, he could not be excluded. However, the DNA evidence failed to confirm that a sexual assault occurred for several reasons:
 - First, statistically, the chance of randomly selecting an individual from the population that could be included in this sample would be approximately 1 in 1000.

- Second, a visual examination at the SBI lab of the recovered fingernails indicated that there was no skin or body tissue attached. The accusing witness had said the fingernails were ripped off during the attack.
 - Third, to the extent that Evans's DNA could not be excluded, the SBI experts confirmed that the DNA could easily have been transferred to the fingernails from other materials in the trash can.
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- ✦ No other physical evidence from any accused individual was found in the bathroom where the alleged assault was to have occurred.
 - ✦ A white towel found in the hallway outside one of the bathrooms contained no DNA from the accusing witness. She had stated she was wiped down after the assault with either a towel or a rag.

The Special Prosecutors therefore concluded that the results of the DNA testing did not support a prosecution of any of the three accused individuals.

CREDIBILITY ISSUES

The Special Prosecutors assessed whether the accusing witness's testimony at trial would have been credible.

With no evidence other than the accusing witness's word, a jury would have to conclude that her word was sufficient to prove guilt beyond a reasonable doubt.

At trial, a jury, in assessing credibility, is told that they should apply the same tests of truthfulness they use in ordinary affairs. The jury may consider the opportunity of the witness to see, hear, know and remember the things the witness testifies about, the manner and appearance of the witness, apparent understanding or fairness of the witness, and any interest, bias, or prejudice the witness might have. Finally, a jury would consider whether the testimony is reasonable and whether the witness's account is consistent with other believable evidence.

The Special Prosecutors found that applying these tests to the accusing witness's prospective testimony in conjunction with other evidence bearing on credibility, including materials under seal, revealed insurmountable credibility issues.

For example, the opportunity of the witness to see, hear, know and remember the events of March 13-14, 2006:

- ✦ Accounts of her behavior at the party demonstrate that she was significantly impaired. By her admission, the prosecuting witness drank two large beers in the hour or so before arriving at the party.
- ✦ Witnesses at the party stated she was stumbling and unsteady when she arrived at the party and throughout the night. Witnesses also stated that she fell to the ground during her dance performance.
- ✦ A video taken by a party guest just after she left the house for the last time shows her unable to walk without stumbling and in the audio, professing to be "a cop." Her speech, gait, and mannerisms demonstrate that she was impaired.
- ✦ Another photograph shows her lying unresponsive on the back porch.
- ✦ The special prosecutors witnessed similar behavior firsthand when meeting with the prosecuting witness on April 4, 2007. At this time she acknowledged having taken multiple prescription drugs.

The unlikelihood that her testimony would be consistent with other believable evidence:

- ✦ She denied to the special prosecutors that she had made statements attributed to her in medical reports both the night of the alleged attack and in the following days. She denied making statements attributed to her in police reports. Significantly, on several occasions, when confronted with evidence that contradicted her assertions, she changed her story.
- ✦ Her proposed testimony about critical events changed whenever it was demonstrated that what she was saying could not be accurate. An example: In her Dec. 21, 2006 interview with the District Attorney's investigator, which was her first substantive discussion of the allegations after the DNA tests showed no trace of DNA from the accused individuals, it was reported that she stated for the first time that she was uncertain as to whether she was penetrated by the male organ of any of her alleged attackers and therefore could not say that a rape occurred. Consequently, the rape charges were dismissed by the then-prosecutor.
- ✦ In that same interview it was also reported that she indicated that one of the attackers did not actively participate in the alleged assault but was merely in the room. However, in a meeting with the Special Prosecutors on March 29, 2007, her story changed again and included that individual as an active participant.

SPECIAL PROSECUTORS' MEETINGS WITH THE ACCUSING WITNESS

The special prosecutors met with the accusing witness a number of times and questioned her about inconsistencies that existed at the time the Attorney General's office accepted the case, as well as other inconsistencies that had arisen since then. This was apparently the first time these questions of inconsistencies had been asked formally.

In meetings with the special prosecutors, the accusing witness, when recounting the events of that night, changed her story on so many important issues as to give the impression that she was improvising as the interviews progressed, even when she was faced with irrefutable evidence that what she was saying was not credible. The accusing witness attempted to avoid the contradictions by changing her story, contradicting previous stories or alleging the evidence had been fabricated.

During the March 29, 2007 interview of the accusing witness by the special prosecutors and SBI investigators she made several new statements that she had never made before including:

1. She was not with "Nikki" when the 911 call regarding the racial comments outside 610 N. Buchanan Blvd. was made;
2. She and "Nikki" left 610 N. Buchanan Blvd. in "Nikki's" car at 11:50 p.m.;
3. She and "Nikki" rode around for an hour after leaving the house;
4. Evans and Seligmann threw her onto the back porch after the alleged assault;
5. Evans, Seligmann and Finnerty kicked her in the neck while she was on the back porch after the alleged assault;
6. Ten party attendees assaulted her in the back yard by pushing her around;
7. Evans and Finnerty put her in "Nikki's" car.

Verified and credible photographic, documentary and testimonial evidence contradicts each of these seven statements.

In addition to these new statements, the accusing witness made other statements to the special prosecutors during the interview on March 29, 2007 that raise doubts about her credibility concerning the events on the night in question.

For example, the accusing witness admitted she feigned unconsciousness during the early morning hours of March 14, 2006. She claimed she arrived at the party at 11:10 p.m. and dancing

started shortly thereafter. When shown credible photographic evidence to the contrary, she claimed that the pictures had been altered. She stated that they danced in a bedroom not the living room. When confronted with credible photographic evidence to the contrary, she claimed Duke paid someone to alter the photos. She routinely denied she made various earlier statements that were attributed to her by law enforcement officials. She denied that she had made statements attributed to her in medical reports both the night of the alleged attack and in the ensuing days. The accusing witness claimed that the photograph of her on the back porch at 610 N. Buchanan Blvd., time-stamped at 12:30 a.m. and in which she is smiling broadly, is a picture of her arriving at the party. When the special prosecutors pointed out that she was wearing only one shoe, she persisted in her position that the picture was taken when she arrived at the house.

In the same interview, the credibility of the accusing witness's ability to identify the alleged attackers was further called into doubt. When asked how she could recall with such certainty who allegedly attacked her she claimed she was good at remembering faces. When the special prosecutors brought Officer Gwen Sutton of the Durham Police Department into the interview room, the accusing witness claimed she did not know Officer Sutton and had not seen her before that day. Officer Sutton had spent more than five hours with the accusing witness during the early morning hours of March 14, 2006.

Similarly, when the special prosecutors asked her about her behavior during the party that suggested impairment, the accusing witness stated that she was dizzy and fuzzy when the two women began dancing that night. She said she was dizzy after the alleged assault, and that was why she was stumbling in the backyard. When asked how she could be certain of her identifications of her attackers, she said she was dizzy when the dancing started, she "woke up" in the bathroom, and then was dizzy afterward.

In a meeting with the special prosecutors on April 4, 2007 the accusing witness demonstrated unsteady gait, slurred speech and other mannerisms that were consistent with behaviors observed by numerous witnesses who were at the party the night in question and confirmed through a video taken that night. The special prosecutors confirmed that the accusing witness had taken Ambien, methadone, Paxil and amitriptyline, for which she had prescriptions, prior to meeting with the special prosecutors that day.

SELF CONTRADICTIONS BY THE ACCUSING WITNESS

The accusing witness gave numerous differing statements to law enforcement and medical personnel concerning the events on March 13-14, 2006. While witnesses often have inconsistencies in details when recounting events over time, the volume of inconsistent statements and the fact that many of these were substantial and were in regard to significant events rendered the truthfulness of the accusing witness in serious doubt.

For example, the accusing witness's stories about the alleged attack cannot be reconciled.

At the emergency room, she stated to the Sexual Assault Nurse Examiner (SANE) that she had been sexually assaulted by three people: Adam, Brett and Matt. Specifically, she stated that Matt put his "private" in her and did not use a condom. Adam then put his private part in her "butt." She did not state what Brett did, if anything, nor did she disclose any other sexual conduct.

Two days later, on March 16, 2006, when talking with investigators, she stated that Matt held her legs and was in front of her. Brett was behind her and put his private part in both her anus and vagina. She claimed that Brett ejaculated. She stated that Matt then went behind her and choked her and did the same thing as Brett. She said that Adam became excited and began to ejaculate and put his "private" in her mouth. Adam then dragged her to the car and he and "Nikki", the other dancer, wiped her off.

On April 6, 2006, in a handwritten statement, she stated that Matt raped her both vaginally and anally for a total of five minutes. Brett did the same for a total of seven minutes. She said Adam put his penis in her mouth and ejaculated. She stated that they threatened to kill her if she did not shut up. She said that all three were kicking her in the behind and back.

On December 21, 2006, for the first time, she referred to the attackers by the names Dave Evans, Reade Seligmann and Collin Finnerty. She could not say with any certainty that they penetrated her vagina with their penises. She stated that she felt a sharp pain in her vagina and anus. She stated that Seligmann did not participate in the attack but just observed. This was first interview about the events after DNA tests showed that no DNA from the defendants was found on the accusing witness.

On March 29, 2007, she stated to the special prosecutors that the players took off her underwear and lifted her into the air. Finnerty crouched below her in a squatting position and held her up. Evans got behind her. She felt a sharp pain in her vagina. She felt a sharp pain in her anus. Finnerty got up and went behind her. Seligmann got under her and held her up in the air. Evans was then in front of her. Evans told Seligmann who was crouched holding her up to relax and do her. Evans ejaculated in her mouth and she spit it on the floor. She indicated to the special prosecutors that all three individuals were active participants in the assault.

The accusing witness also made contradictory and inconsistent statements about whether an attack took place at all. Sometime around 1:30 a.m. on March 14, 2006, the accusing witness did not disclose that any sexual assault occurred to the first law enforcement officer she encountered that night, Sgt. J.C. Shelton. She was then taken to the Durham Center Access, where in response to a question by a nurse about whether she had been raped, she responded "yes." The accusing witness was then taken to the emergency room, where she told Shelton that she was "pulled from the car at 610 N. Buchanan and groped" but "no one forced" her to have sex. The accusing witness next told Officer Gwen Sutton at the hospital that she was penetrated by five guys and that "Brett" penetrated her vagina with his penis and hands.

Similarly, the accusing witness's statements about the duration of the alleged assault have been contradictory and could not be reconciled with verifiable credible evidence.

On March 16, 2006 the accusing witness claimed that the alleged assault lasted 30 minutes. On December 21, 2006, she claimed that the alleged assault lasted 10-15 minutes ending at midnight. On March 29, 2007 she stated to the special prosecutors that the alleged assault lasted 20-30 minutes.

Testimonial evidence supported by a receipt shows the accusing witness arriving at 610 N. Buchanan Blvd. approximately 11:40 p.m. March 13, 2006. Time-stamped photographic evidence disclosed that the accusing witness was performing at 610 N. Buchanan Blvd. beginning no later than midnight and ended the performance at approximately 12:04 a.m. Cell phone records which were verified by the special prosecutors and the SBI show that the accusing witness's cell phone was used at 12:26 a.m. to call an escort service with whom the accusing witness was associated. Time-stamped photographs and videos show the accusing witness outside the house beginning no later than 12:30 a.m. and outside the house until she was put in "Nikki's" car at 12:42 a.m.

Before midnight, all witnesses interviewed who had knowledge, including the accusing witness, stated that the accusing witness was with "Nikki" in a bathroom getting ready for the performance. After the performance ended at 12:04 a.m., all witnesses with knowledge stated that the dancers went back to the bathroom together and were alone for some time, left the house together and remained outside together for some time, came back to the house for some time and went back into the bathroom alone together for some time. It was evident to the special prosecutors that there was no opportunity for an attack to occur for even 10 minutes, much less the 20 or 30 minutes as alleged.

THE DETERMINATION TO DISMISS THE CHARGES

- ✦ The special prosecutors' investigation revealed multiple and significant inconsistencies and contradictions in the case, and no evidence to corroborate the accusing witness's versions of the events:
- ✦ No DNA evidence confirmed her stories. Any DNA evidence that might arguably support her stories is subject to a reasonable alternative explanation.
- ✦ No medical evidence confirmed her stories. The SANE based her opinion that the exam was consistent with what the accusing witness was reporting largely on the accusing witness's demeanor and complaints of pain rather than on objective evidence.
- ✦ No other witness confirmed her stories. No one at the house that night has come forward to support her stories and the other dancer has given conflicting accounts of the evening. In one account to ABC News, "Nikki" asserted that the accusing witness told her to put marks on her. Her varied accounts show her as a witness who would not be helpful to the prosecution.
- ✦ The accusing witness's accounts of the story changed significantly. Even in the face of facts that contradicted her stories, the accusing witness was unwilling to acknowledge in meetings with the special prosecutors that she might be mistaken about the identification of the defendants.

THE CONCLUSION

While prosecutors acknowledge that rape and sexual assault victims often have some inconsistencies in their accounts of a traumatic event, in this case, the inconsistencies were so significant and so contrary to the evidence that the State had no credible evidence that an attack occurred in that house that night.

Based on the significant inconsistencies between the evidence and the various accounts given by the accusing witness, the Attorney General and his prosecutors determined that the three individuals were innocent of the criminal charges and dismissed the cases April 11, 2007.