

STATE OF NORTH CAROLINA

File No.

06CRS 5581

Durham County

FILED

In The General Court Of Justice

District Superior Court Division

STATE VERSUS

Defendant

David Forker Evans

06 DEC 22 AM 11:37
DISMISSAL
NOTICE OF REINSTATEMENT
DURHAM COUNTY, C.S.C.

G.S. 15A-302(e), -931, -932, -1009

File Number	Count No.(s)	BY	Offense(s)
06CRS 5581	1	CPSB	First Degree Forcible Rape

DISMISSAL

NOTE: Recall all outstanding Orders For Arrest in a dismissed case.

The undersigned prosecutor enters a dismissal to the above charge(s) and assigns the following reasons:

- 1. No crime is charged.
- 2. There is insufficient evidence to warrant prosecution for the following reasons:
See attached page 2

3. Defendant has agreed to plead guilty to the following charges:

in exchange for a dismissal of the following charges:

4. Other: (specify)

A jury has not been impaneled nor has evidence been introduced. (If a jury has been impaneled, or if evidence has been introduced, modify this sentence accordingly.)

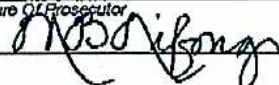
DISMISSAL WITH LEAVE

The undersigned prosecutor enters a dismissal with leave to the above charge(s) and assigns the following reasons:

- 1. The defendant failed to appear for a criminal proceeding at which the defendant's attendance was required and the prosecutor believes that the defendant cannot readily be found.
- 2. The defendant has been indicted and cannot readily be found to be served with an Order For Arrest.
- 3. The defendant has entered into a deferred prosecution agreement with the prosecutor in accordance with the provisions of Article 82 of G.S. Chapter 15A.
- 4. The defendant has been found by a court to be incapable of proceeding pursuant to Article 56 of G.S. Chapter 15A.
- 5. Other: (specify)

NOTE: This form must be completed and signed by the prosecutor when the dismissal occurs out of court. The better practice is for the prosecutor to complete and sign the form when the charges are orally dismissed in open court.

Also, in accordance with G.S. 15A-931(a1), unless the defendant or the defendant's attorney has been otherwise notified by the prosecutor, a written dismissal of the charges against the defendant must be served in the same manner prescribed for motions under G.S. 15A-951. If the record reflects that the defendant is in custody, the written dismissal shall also be served by the prosecutor on the chief officer of the custodial facility where the defendant is in custody.

Date 12-22-2006	Name Of Prosecutor (Type Or Print) M. B. Nifong	Signature Of Prosecutor 
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REINSTATEMENT

This case, having previously been dismissed with leave as indicated above, is now reinstated for trial.

Date	Name Of Prosecutor (Type Or Print)	Signature Of Prosecutor
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In an interview with DA Investigator Linwood Wilson on December 21, 2006, the victim in this case indicated that, while she initially believed that she had been vaginally penetrated by a male sex organ (penis), she can not at this time testify with certainty that a penis was the body part that penetrated her vagina. Since penetration of the vagina by a penis is one of the elements of this offense that the State must prove beyond a reasonable doubt, and since there is no scientific or other evidence independent of the victim's testimony that would corroborate specifically penetration by a penis, the State is unable to meet its burden of proof with respect to this offense.