

STATE OF INDIANA  
MARION COUNTY, ss:

IN THE MARION SUPERIOR  
CRIMINAL COURT 3  
CRIMINAL DIVISION, ROOM W242

STATE OF INDIANA )  
)  
vs. )  
)

Cause No: 49G03-1501-F3-001369

INFORMATION  
COUNT I  
RAPE

Joshua A. McNary  
B/Male  
DOB 4/10/1988

I.C. 35-42-4-1(a)(1)  
A LEVEL 3 FELONY

COUNT II  
CRIMINAL CONFINEMENT

I.C. 35-42-3-3(a)  
A LEVEL 5 FELONY

COUNT III  
BATTERY RESULTING IN BODILY  
INJURY

I.C. 35-42-2-1(b)(1)  
A CLASS A MISDEMEANOR

On this date, the undersigned came before the Prosecuting Attorney of the Nineteenth Judicial Circuit and, being duly sworn (or having affirmed), stated that in Marion County, Indiana

COUNT I

On or about December 1, 2014, Joshua A. McNary did knowingly or intentionally have sexual intercourse with [REDACTED], when such person was compelled by force to submit to sexual intercourse;

COUNT II

On or about December 1, 2014, Joshua A. McNary did knowingly or intentionally confine [REDACTED] without the consent of [REDACTED], said act resulting in bodily injury to [REDACTED], to-wit: abrasion(s) and/or redness and/or bleeding and/or pain;

COUNT III

On or about December 1, 2014, Joshua A. McNary did knowingly or intentionally touch [REDACTED] in a rude, insolent, or angry manner, resulting in bodily injury to the other person, specifically abrasion(s) and/or redness and/or bleeding and/or pain;

all of which is contrary to statute and against the peace and dignity of the State of Indiana.

I swear or affirm under penalty of perjury as specified by I.C. 35-44-2-1 that the foregoing representations are true.



\_\_\_\_\_  
Affiant

January 14, 2015

Date

**TERRY R. CURRY**  
Marion County Prosecutor  
19th Judicial Circuit

State's Witnesses:

- Det. Derek Cress, C6235, IMPD
- Ofc. George Myers, X1323, IMPD
- Ofc. Joseph Simmons, S4085, IMPD
- Sgt. Gregory Scott, S0389, IMPD
- Ofc. Matt Neuenschwander, 20408, IMPD
- Det. Vince Harper, H8652, IMPD
- Det. Jason Bocketing, 20180, IMPD
- Det. Nathan Schmidt, 21231, IMPD
- Det. Donna Ciesielski, C1154, IMPD
- Det. Laura Smith, S2491, IMPD



\_\_\_\_\_  
Deputy Prosecuting Attorney

- [REDACTED]
- Van Crafton
- Becky Navarro, SANE
- Sarah Hines, SANE
- [REDACTED]
- Beth Kleeman, SANE
- Emily Miller
- Adjavehouede Leopold

## Affidavit for Probable Cause

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State of Indiana, County of Marion SS:

Detective Derek Cress of the Indianapolis Metropolitan Police Department (IMPD), swears and affirms, and has good cause to believe from his investigation, the following facts and attending circumstances are true:

On December 1, 2014 at 5:52 AM, Officers George Myers and Joseph Simmons were dispatched to an Indianapolis residence in reference to a rape report. Upon arrival, Officers Myers and Simmons spoke to [REDACTED] white female age 29. [REDACTED] advised she was sexually assaulted by an unknown male approximately one hour earlier at an unknown location. She had accompanied co-workers to some downtown bars and later arrived at an unknown apartment with an unknown black male. She had a physical fight with the male before being sexually assaulted. She took the male's cellular telephone and left the apartment. She returned to her residence and later contacted the police for a report.

At 6:07 AM, Officer Myers requested assistance from the Sex Crimes Unit. Detective Cress was notified and made telephone contact with Officer Myers. After a brief telephone conversation, Detective Cress responded to Officer Myers' location for further investigation.

Upon arrival, Detective Cress spoke with [REDACTED] and learned the following:

[REDACTED] briefly described her sexual assault and became upset and very emotional. She believed the suspect possibly resides at the lofts above "The Pub" on Georgia Street. She agreed to participate with a sexual assault examination. She identified her clothing worn during and after the assault, which were on the floor of her living room and bedroom. She also explained how she physically assaulted the male suspect with her fingernails and took his cellular telephone from the residence. Officer Myers, an IMPD Evidence Technician, collected [REDACTED]'s bra, pants, and socks from the bedroom and living room floors of the residence. Detective Cress collected a white Samsung Galaxy S5 cellular telephone, which is believed to have belonged to the male suspect. Detective Cress then arranged for a forensic nurse to be available at the Eskenazi Hospital Center of Hope. Detective Cress transported [REDACTED] to the hospital.

[REDACTED] received a phone call from a co-worker, [REDACTED]. She said [REDACTED] and [REDACTED] had accompanied her to different bars this morning. Detective Cress spoke briefly with [REDACTED] about his recollection of the morning. [REDACTED] explained that he was with [REDACTED] and [REDACTED] throughout the morning as they visited a few bars. He recalled being at Tiki Bob's Bar, but did not remember many details. He was not able to recall seeing [REDACTED] with anyone specific during the morning. He believed she wanted to stay at the bar to dance, and he eventually left the bar. He commented about meeting with Detective Cress at a later date and time to discuss the investigation further.

██████████'s friend, ██████████ white female age 24, arrived at the hospital to speak with ██████████. ██████████ informed Detective Cress that she had several missed calls from ██████████ early this morning. She also had a two minute voicemail from ██████████. She allowed Detective Cress to listen to the voicemail. At one point during the message, a female can be heard crying and becoming emotionally distraught. Detective Cress asked ██████████ to save the voicemail for investigative purposes.

Detective Cress and Forensic Nurse Becky Navarro conducted an audio taped interview with ██████████ and learned the following:

On November 30, 2014 at 11:30 PM, ██████████ left her place of employment in Indianapolis. She accompanied some co-workers to three bars in the downtown area during the early morning hours of December 1st. She recalled being at Tiki Bob's Bar towards the end of the night. She took several "Snapchat" videos of herself along with her co-workers. One of the videos contained a young black male, whom she possibly thought was the suspect. Detective Cress viewed the videos and did observe one black male seated at the bar next to her. Another video appeared to be taken on top of a downtown building, which included some of the city skyline. ██████████ doesn't recall how or when she left Tiki Bob's Bar.

██████████ then found herself inside a "really nice" apartment. She was with an unknown black male. The male attempted to kiss her face and neck, but she turned away from him. She recalled being inside a bedroom with the male. He became "more aggressive" with her. She declined his advances and she believed this upset the male. A physical fight ensued between her and the male. She scratched the male's neck, face, back, and shoulder during the fight. The male yelled, "Bitch, slut, look what the fuck you did to me!" She pleaded with the male to allow her to leave the apartment. She believed the male slapped her on the left side of her face with his hand.

The male then forced ██████████ to have vaginal sexual intercourse with her on the bed. She told the male "no" and to stop on "multiple occasions" as she was unable to move. She strongly believed the sexual intercourse was "100%" against her will. She yelled, "Stop, no, do whatever, just let me leave!" The sex lasted for "quite a while." She did not think the male used any form of protection. This concerned her because she was not currently on any form of birth control.

██████████ spoke to the male after the sex ended. She told him she needed to leave because she had to be at work in the morning. He encouraged her to stay but she declined. She was unable to locate her cellular telephone and asked him to locate it so she could "set her alarm." He refused and told her he could set his alarm for her instead. She assumed the male may have hidden her phone. He eventually got up from the bed and went into the bathroom. She obtained her clothing, got dressed, and attempted to leave the apartment.

As ██████████ left, she grabbed the suspect's cellular telephone from a counter. She exited the apartment and realized she was on the 4th of 5th floor of the building. She declined

to use the elevator and walked down the stairs. She exited the building and began walking up Meridian Street. She believed the building was possibly the same building that houses The Pub on Georgia Street.

██████████ walked along Meridian Street and thought the male may have followed her but she was not sure. She eventually found her cellular telephone inside her purse and began making phone calls to various friends and co-workers. She eventually spoke with ██████████ who encouraged her to contact the police. She arrived at her apartment, removed some of her clothing, and got into bed. She contemplated calling the police and made more phone calls to friends. She eventually called the police to report the incident.

██████████ later realized that she was missing one gold heart shaped earring, a black hooded "HM" hooded sweatshirt, and a green "HM" jacket. She believed these items were left inside the male's residence.

██████████ advised that she did not remember the male's name. She believed she told him some personal aspects of her life, but she didn't recall any details regarding his background.

Detective Cress later spoke with Forensic Nurse Sarah Hines of the Eskenazi Hospital Center of Hope. Nurse Hines conducted ██████████'s sexual assault examination. Nurse Hines advised that ██████████ had injuries to her vagina and dried blood behind her ear. Nurse Hines located a pubic hair on ██████████'s body, which she believed did not belong to ██████████.

Detective Cress secured the Samsung phone at the IMPD Sex Crimes Office until it could be forensically examined.

On the evening of December 1, 2014, Detective Cress travelled to Tiki Bob's Bar, located in the 200 block of South Meridian Street. Detective Cress spoke to ██████████ white male, who identified himself as a partial owner of the establishment. ██████████ was aware of an incident involving ██████████. He was familiar with her bosses and co-workers. He recalled seeing ██████████ inside the bar that morning. He observed her dancing on the dance floor with two different black males. He described one black male with dreadlock style hair. He also mentioned the bar closed and the crowd left between 3:00-3:15 AM.

Jason allowed Detective Cress to view recorded surveillance video from the early morning hours of December 1<sup>st</sup>. The business has three interior cameras. One camera is affixed to the ceiling of the entrance to the building. The camera is "motion activated" and only works when there is movement at the entrance. The camera also "malfunctions" and does not provide a clear or concise recording from this location. The remaining two cameras are pointed directly at the bar cash registers. Based on viewing all the cameras and their footage, Detective Cress was unable to locate any valuable footage for this investigation.

Detective Cress went to [REDACTED]'s place of employment and spoke with her co-worker, David Luterman, white male. He acknowledged being with [REDACTED] at The Pub after they ended their work shift. He remained at The Pub, but recalled that [REDACTED] eventually left with [REDACTED] and [REDACTED].

Detective Cress presented a search warrant request to Commissioner Richard Hagermaier of the Marion County Superior Court 11, for the Samsung cellular telephone. Commissioner Hagermaier granted the search warrant request, under cause # 49G201412MC053403.

On December 2, 2014, Detective Cress transported the Samsung phone to the Indianapolis Metropolitan Police Department Computer and Digital Forensics Office. Detective Donna Ciesielski began a forensic examination of the phone. During the analysis, Detective Ciesielski observed the phone was named, "McNarly," and used T-Mobile cellular service. Detective Ciesielski checked the telephone's contacts list and located an entry titled, "Me." This entry included the name "Josh McNary" with the telephone number "(832) 768-XXXX." A screen shot of the phone's call log was also recovered. The remaining information was retained for further investigation.

Detective Cress conducted a background investigation and located Joshua Aaron McNary, black male, DOB 04/10/1988. A Texas Bureau of Motor Vehicles (BMV) driver's license photograph of Joshua McNary was obtained. A Twitter social media account assigned to Josh McNary, which contained photographs that matched the identified photograph, is titled "Josh@ McNarly." Detective Cress prepared a "six-pack" style of photo array containing Joshua McNary's BMV photo.

Detective Cress conducted a follow-up interview with [REDACTED] and learned the following:

[REDACTED] agreed to accompany Detective Cress in an attempt to locate her route as she left the male's apartment. She directed Detective Cress to the area of West Market Street and North Illinois Street. She recalled being in this area after exiting the building. She believed this area seemed familiar to her from that morning. After checking the area of 200 South Meridian Street and 30 East Georgia Street near The Pub, [REDACTED] now believed the male's apartment was located at West Market Street and North Illinois Street.

[REDACTED] also allowed Detective Cress to view her cellular phone video from the morning of the incident. The video appeared to be taken from the top of a downtown building. Detective Cress observed the Indiana State Capital Building, Hilton Hotel, and the Key Bank Building. All three of these buildings are within the vicinity of West Market Street and North Illinois Street. Detective Cress also observed the "Block Apartments" in this area, which has an address of 50 North Illinois Street. The apartment building has several levels which includes access to the roof of the building. Detective Cress believed the video was possibly taken from the roof of this building.

██████ was unable to verify the actual route taken from Tiki Bob's Bar to the male's apartment. She recalled walking with the male after leaving the bar. She remembered leaving the male's apartment and walking east toward Monument Circle, then north on Meridian Street.

Detective Cress showed the photo array containing Joshua McNary's photograph. She pointed to Joshua's photo and commented that he "looked familiar" but was unable to positively identify anyone from the photo array.

Detective Ciesielski notified Detective Cress about finding a contact for The Block Apartments, 50 North Illinois Street, in his cellular telephone contacts list.

Detective Cress conducted further investigation and obtained a 2014 address for Joshua McNary as 50 North Illinois Street, XXX, Indianapolis, Indiana 46204. Detective Cress also recovered a listed telephone number for Joshua McNary as (832)768-XXXX.

Detective Cress prepared three search warrant requests for Josh McNary's residence, Josh McNary's body for the purpose of evidence collection, and to obtain a buccal cell sample for DNA comparison/analysis. The requests were presented to Commissioner Richard Hagermaier of the Marion County Superior Court 11. Commissioner Hagermaier granted the search warrant requests under cause # 49G031412MC053582.

Detectives Derek Cress, Vince Harper, Jason Bocking, Matthew Neuenschwander, Gregory Scott, and Officer Laura Ann Smith proceeded to 50 North Illinois Street, Apartment XXX, to serve the search warrants.

Upon arrival, Detective Cress was eventually able to make contact with Joshua McNary. Detective Cress briefly explained to Joshua that there was an active investigation. Joshua replied, "I know why you're here." Detective Cress asked Joshua to accompany him to an IMPD office for further investigation. Joshua agreed and was allowed back into the apartment to retrieve clothing and footwear.

Upon entering the apartment, Detective Cress observed a set of white bedding, which included a comforter, sheets and pillowcases, on the floor of the living room area. The bedding was also positioned in front of a washer/dryer combination machine. Joshua pointed to the bedding. He said, "I preserved it for you because I knew you would be coming." Detective Cress informed Joshua that he would like to discuss the investigation further at the "his office" and not at this location. As Joshua sat down on a chair, he pointed to the couch. He stated, "That's her stuff right there." Detective Cress observed three clothing items, which were white, black, and green in color. Joshua agreed to be transported to the IMPD Sex Crimes Office for further investigation. Detectives Neuenschwander and Scott remained at the location to secure the apartment.

Detective Cress conducted an audio and video recorded interview with Joshua McNary. During the course of the interview, Detective Cress explained to Joshua his Miranda Rights from an IMPD Advice of Rights form. Joshua advised he understood his rights,

but eventually requested an attorney. The interview was concluded and Detective Cress informed Joshua of the three search warrants. Detective Cress notified forensic nurse Beth E. Kleeman at Eskenazi Hospital's Center of Hope in regards to conducting a suspect sexual assault examination for Joshua.

Detectives Jason Bockting and Nathan Schmidt transported Joshua to Eskenazi Hospital, where Nurse Kleeman performed the examination. Detective Cress observed during the exam and observed Joshua to have reddened abrasions and scratches to Joshua's neck, abdomen, shoulder, and back. Nurse Kleeman photographed Joshua's injuries and collected evidence from Joshua's body for the examination kit. Detective Schmidt later transported the examination kit to the IMPD Property Room. Detectives Cress and Bockting transported Joshua back to his apartment building located at 50 North Illinois Street. Detective Cress advised Joshua that he was "free to leave" but could not return to his apartment until the search warrant was completed at the apartment. Joshua was also told he would be notified when Detective Cress was completed.

Detective Cress requested assistance from the Indianapolis Marion County Crime Lab. Crime Scene Technicians Philip Brandyberry, Crystle McKinley-Hall, Donald Toth, and Christine Ondek responded to the apartment for photographs, handwritten diagrams, and evidence collection. During the course of the search of Joshua McNary's apartment, Detective Cress observed a white long sleeve women's shirt, a black hooded woman's sweatshirt, and a green woman's coat lying on the living room couch. The sweatshirt and coat appeared similar to [REDACTED]'s description of her clothing left behind at the apartment. Detective Cress observed an outdoor patio area attached to the apartment. The patio is on the roof of the apartment building, which allows views of the Indiana State Capital Building, Hilton Hotel, and the Key Bank Building. Detective Cress also located a gold heart shaped earring along the floor of the master bedroom. The earring appeared similar to [REDACTED]'s description of her earring which she had lost. The Crime Scene Technicians collected all of the items deemed as evidence and later transported them to the Crime Lab.

Detective Cress contacted Joshua by telephone and informed him of the completion of the search warrant. Joshua declined to respond to secure the apartment. Detective Cress contacted the apartment building emergency maintenance and the apartment was secured.

On December 3, 2014, Detective Cress met with Emily Miller, white female, who is the property manager for The Block Apartments, located at 50 North Illinois Street. Mrs. Miller allowed Detective Cress to view the apartment building video surveillance footage from December 1, 2014 from the hours of 2:30-06:30 AM. The cameras provide footage from the outer lobby, inside lobby, elevator hallway, and rear exit. Mrs. Miller also commented about a west exit door, which does not have a camera.

At 03:04 AM, Joshua McNary and [REDACTED] enter the front doors to the outer lobby. They converse momentarily and eventually enter the inside lobby doors. They embrace each other by placing their arms around their bodies. They continue to the



elevators, where they enter an elevator. Joshua is wearing a long-sleeve Henley shirt and pants. [REDACTED] is wearing a tank top, dark colored sweatshirt, dark pants, and shoes.

At 4:50 AM, Joshua McNary exits the elevator and walks through the inner lobby. He exits the doors, exits the building, and walks north, across the street. He is wearing a light colored short sleeved t-shirt, athletic shorts, and flip flops.

At 4:51 AM, Joshua appears to walk back across the street to the apartment building. He appears to drop his key and is accompanied by a white male. Joshua and the male enter the outer lobby, where Joshua drops his key again. He eventually activates the door and enters the inside lobby with the white male. They walk to the elevators, and enter an elevator. As the footage continues until 6:30 AM, Detective Cress does not locate Joshua, [REDACTED] or the white male exiting the building.

On December 4, 2014, Detective Cress received a voicemail from Attorney Ed Schragger. Mr. Schragger said he is currently representing Joshua McNary and requested a return phone call. Detective Cress attempted two return phone calls and left messages for Mr. Schragger.

Detective Cress contacted Kevin Hawk, a Department of Public Safety Camera Room Supervisor. Detective Cress provided Mr. Hawk with details regarding this investigation. Mr. Hawk began checking the IMPD camera system for any footage which could be beneficial to this investigation.

Detective Cress conducted a follow-up interview with [REDACTED] and learned the following:

Detective Cress inquired about the videos and photographs on [REDACTED]'s phone. She allowed Detective Cress to view some of the videos and photographs. One photograph appeared to have been taken from inside Joshua McNary's apartment based on Detective Cress' recollection of the interior of Joshua's apartment. After the photo was taken, she inscribed "This guy creeps me out, save me" and appears to have been posted at 3:13 AM. Detective Cress observed another video, which [REDACTED] believed was taken at Tiki Bob's Bar. The video concludes with a close-up of a black male, who Detective Cress believes is Joshua McNary, seated at the bar.

Detective Cress asked [REDACTED] if she would allow the IMPD Cyber Crimes Unit to forensically examine her Samsung Cellular Telephone for potential evidence. She agreed to allow Detective Cress to transport the phone to the Cyber Crimes Office for the forensic examination. [REDACTED] was presented with a consent to search form. She said she understood the document and was willing to cooperate with the investigation. The phone was later transported to Detective Ciesielski for further analysis.

Detective Cress reviewed the call log from Joshua McNary's phone. Detective Cress located phone calls from "Van Crafton" with a telephone number of (812) 801-XXXX. There were several calls were made on December 1, 2014 between the hours of 2:56 AM

and 3:36 PM. Detective Cress conducted a background investigation on Van Crafton and located photographs and other personal details from a public Twitter account for Van Crafton and a Casting 360 talent agency website. Van Crafton was described on the talent agency website as a white male, age 31, height of 6'1", weighing 180lbs. Detective Cress reviewed the apartment building video footage and believed the white male in the video matched the photographs of Van Crafton on his Twitter account and Casting 360 talent agency website.

On December 5, 2014, Detective Cress conducted a follow-up interview with [REDACTED] and learned the following:

On November 30<sup>th</sup>, [REDACTED] was working at her place of employment. She ended her shift at approximately 11:30 PM. She stayed at the location for a little while. She then accompanied some co-workers to The Pub. She identified her co-workers as [REDACTED] (last name unknown) and two twin female workers known as [REDACTED]

[REDACTED] had a mixed alcoholic drink and a shot of liquor. She stayed for approximately one hour and left the bar with [REDACTED] and [REDACTED]. They proceeded to the Blu Night Club. She had one shot of liquor before leaving with [REDACTED] and [REDACTED]. They proceeded to Tiki Bob's Bar. While at the bar, she drank a few alcoholic beverages and had a shot of liquor. She didn't recall purchasing any drinks, but thought other patrons must have purchased the drinks for her. She recalled standing near the bar and talking to [REDACTED] and [REDACTED]. She felt "out of place" because she was one of only two white females in the bar. However, she also wanted to stay longer at the bar in order to dance. She used the bathroom often and began "feeling very, very drunk."

At one point during the morning, [REDACTED] and [REDACTED] decided to leave the bar but [REDACTED] wanted to stay. [REDACTED] became "persistent" as he asked her to leave, but she continued to decline. She felt like staying at the bar to "dance and hang out with people." She began talking with a black male, whom she believed was the same male who sexually assaulted her later that morning. She recalled having a conversation with the male, but didn't know any further details of the conversation. She also didn't remember anything the male had told her about himself.

[REDACTED] used her phone to take photographs and video while she was inside Tiki Bob's Bar. She posted the photos and video to Snap Chat, a social media mobile application. She described this was very common for her to do when she is out socializing. She frequently takes photos and videos and posts them to social media sites. She made digital written entries on some of the photos. She remembered posting "I don't belong here."

[REDACTED] believed the bar began to close as she was still with the male. She doesn't recall leaving the bar, but realized she was at the male's apartment. The male spoke about being "new to downtown." She told him about her new job. She described being "fine for a while." However, the male became "upset." He attempted to kiss her neck and she "freaked out." She pushed the male away from her because she was "not ok with that."

The male was now "upset" with her. She was inside his room and was laying down. She thought about wanting to find her phone and how she would get home. She asked the male to use his phone, but he denied her request.

██████████ felt she "knew what he was about to do" as she was "about to pass out." She stated, "Please don't do this." She began "fighting him" and described feeling "out of it." She started "scratching" him and felt like the situation was "so sick." She commented, "He went screaming about something." She assumed it was because she wanted to leave. She thought, "I need to get out of here!" However, the male told her "no."

██████████ wanted to find her shirt and bag and proceeded to the living room. She believed the male was inside the bathroom at this point. She observed her leopard print bag and a phone, which she grabbed on her way out of the apartment. She ran out of the apartment. She figured the phone belonged to the male and knew it wasn't her phone. However, she eventually found her phone inside her bag. She began calling multiple people to ask for help. She spoke to a friend, who she identified as Austin, and he told her to "call the cops." She eventually reached her friend, ██████████, who had also told her to call the police. She then dialed 911 to report the incident.

Detective Cress asked ██████████ to expand on the details regarding the incident. She provided the following additional information:

██████████ thought there was an elevator which she and the male used to go "up" into the apartment building. However, she did not remember how she got to the apartment or if she was ever inside a lobby. She was then inside the living room of an apartment with the male. He spoke to her about showing her the apartment, specifically the "view." She was inclined to see the view because she enjoys the downtown skyline. There is a video on her phone, which she believed was taken from the patio of the male's apartment. She didn't remember taking the video, but viewed it after the police were notified. They continued to have a conversation as she noticed the apartment had a "lofty feel with maroon colors on the wall, and a television." She described herself as "being flirty" with the male. They both "kissed on the mouth" and was "touchy-feely" as they "flirted." He kissed her neck, which she still considered consensual. She said, "This wasn't a problem and it was not aggressive."

██████████ told the male she "needed to lay down" because she was "really drunk." She was laying on the male's bed and became "uncomfortable." The male started kissing her again. She wanted to just lay her head down, but the male proceeded to kiss her. She then realized she wasn't wearing any pants or underwear, but was still wearing her tank top and socks. She remembered the male being "bare chested" at this time. She eventually noticed her tank top came off and she observed her chest area without her bra. She was now "completely naked."

██████████ told the male she "was not ok with this." She stated, "No, I'm too drunk for this, I need to lay down, have to work, and I'm not ok with this." She put her arm out towards the male and told him, "No." She heard the male "sweet talking her." He said,

"It's fine." She felt the male was "trying to talk her into it." She wasn't able to describe the words or phrases he used, but she had a feeling he wanted to talk her into having sex with him.

█ began pushing the male's shoulders and neck with both of her hands. She believed she also pushed his face and back. She advised, "I did not have the strength." So, she began "scratching" him. She described being "in and out of consciousness" during the incident. However, she spoke "out loud" to him, telling him "no." She was "scratching" his back, side, neck, and face. She stated, "He's getting really, really pissed." She wasn't sure exactly what he said to her. However, she believed he called her a "stupid bitch." She described the male being on top of her during the incident. She only wanted to "lay down" and was only wanting to "go to sleep."

█ felt the initial contact with the male inside the living room consensual. She said, "I was ok with it, then I stopped it." She went to "lay down" and the "kissing" started again. She turned her head from him as she told him "no." She knew her clothes were on at the time, but there were "stages of undress" from that point on. She told him, "I don't want to do this." She felt "trapped underneath him." She stated, "I didn't have the strength to push him off."

█ advised the male had vaginal sexual intercourse with her in the bed. She observed his penis "penetrating" her vagina. She didn't believe he was using any form of protection and did not remember seeing a condom on his penis. She believed this is when she "scratched" and "fought" with him. She stated, "He scared me, intimidated me, and scared me." She "couldn't believe" what was happening at the time. She was on her back and the male was on top of her having vaginal sexual intercourse. There were no other sexual positions taken during the incident. She was not sure if the male ejaculated, but he eventually stopped having sex with her. He got up from the bed as she "laid there for a minute."

█ began looking for her clothing. She wasn't sure where the male went, but she knew he was "pissed." She recalled seeing his upper chest and shoulder. He angrily stated, "Look what you did to me!" He was "raising his voice" and she thought he would "do something" to her. She could not locate her phone and even "begged" for the male help her find it. The male refused to help and told her "no", despite her plea. Although the male was "pissed" at her for scratching him, the male insisted that she stay at the apartment. He commented, "You're gonna stay."

█ made it to the living room, where she got dressed and located her bag. She still could not find her phone. She did not know the male's whereabouts at this point. She saw a phone on the couch or table and grabbed it as she left the apartment. She wasn't sure if there were stairs as she left the apartment, but recalled "darting out" of the building. She eventually located her phone inside her bag. She did not use the other phone, which was possibly the male's phone. She "ran" to her home and doesn't recall much further details of the incident.

On the evening of December 5, 2014, Detective Cress spoke briefly with [REDACTED] by telephone. She had located an Uber transportation receipt for the morning of December 1<sup>st</sup> at approximately 4:46 AM. The receipt showed a driver had arrived near the 100 block of West Market Street and a fare of \$2.60 was charged to her credit card. This location is near the entry door to 50 North Illinois Street at The Block Apartments. The receipt also contained a photograph of a black male driver and listed his name as "Sewena." He was associated with "All N All Limo LLC." [REDACTED] did not recall using her Uber application on her phone to contact a taxi or driver. However, she believed this was activated from her phone and matches the time she left the male's apartment.

On December 8, 2014, Detective Cress made telephone contact with Van Crafton, white male age 31, who provided the following:

On December 1<sup>st</sup>, Van spent most of the day drinking alcoholic beverages in Indianapolis, but didn't remember much of what had occurred due to the "all day drinking fest." Van was with his friend Josh at Tiki Bob's Bar in Indianapolis during the early morning hours. He later woke up inside his vehicle near Josh's apartment. Josh was knocking on his car door to wake him up. He allowed him to come inside to sleep in his apartment. He entered the apartment with Josh and went straight to the couch to sleep. Josh went to his bedroom, which was downstairs. Van did not see anyone else at the apartment and believed it was between 3:00-4:00 AM.

Van woke up later and began talking to Josh about what had occurred. Josh asked, "What the hell happened last night?" Josh explained he had become separated from Van during their outing at Tiki Bob's Bar. Josh attempted to text Van, but was unable to reach him. Josh, "I brought a girl back last night." However, Josh was unable to recall how he got home but realized he had lost his phone. Van attempted to locate Josh's phone by calling the phone, which he believed was still on and active at the time.

Josh explained he didn't know anything about the girl he had brought back to the apartment, but he believed he knew where she worked. He also didn't have any contact information for her and didn't even remember what the girl looked like. He was "very concerned" about not being able to locate his phone. He mentioned how he went outside of the apartment to "look around." He eventually found a car sitting outside with the lights activated. He realized the car belonged to Van, so he approached and made contact with him.

On December 2<sup>nd</sup>, Van had telephone contact with Josh. He learned that Josh had obtained a new phone and had not located his original phone.

On December 7<sup>th</sup>, Van sent Josh a text message, but they did not discuss much any information about their December 1<sup>st</sup> morning at the apartment.

On December 8, 2014, Detective Cress received a phone call from Ed Schragar, who identified himself as an attorney representing Josh McNary. Mr. Schragar advised that

Josh would not be making any statements at this time, but would be cooperative if a warrant becomes active.

On December 9, 2014, Detective Cress spoke with Sewena from All N All Limo, LLC. He agreed to meet Detective Cress and provided the following:

Sewena identified himself as Adjavehouede Sewena Bille Leopold, black male. He did not recall the fare to the 100 block of West Market Street. He confirmed that [REDACTED]'s receipt was a valid receipt, but he did not recall anyone getting into his limo from the address. He acknowledged his photograph and name on the receipt, but could not recall any details from the fare.

Detective Cress also met with [REDACTED] and obtained a recording of [REDACTED]'s voicemail. The voicemail had been saved on Tabitha's phone.

On December 10, 2014, Detective Cress spoke to [REDACTED] by telephone. [REDACTED] recalled being out with [REDACTED] during the early morning hours of December 1<sup>st</sup>. He accompanied her and [REDACTED] to the Tiki Bob's Bar. He stayed at the bar for approximately one hour before leaving for his home. He remembered that [REDACTED] was "intoxicated" and she wanted to stay at the bar to "dance." He didn't recall anyone in particular speaking to her at the bar, other than a bartender.

Detective Cress spoke to [REDACTED] by telephone. [REDACTED] received a phone call from [REDACTED] on the morning of December 1<sup>st</sup> at approximately 5:00 AM. He said she was "freaking out." She described how she was at a "guy's apartment" and he "held her there." The male had her phone and he wouldn't let her go home. Josh believed she was "alluding" to the fact that she was "raped" by the guy. She had kept telling the guy "no." She described the guy as "so nice, but then he wouldn't let me go." She grabbed the guy's phone and left the apartment. He informed her to contact the police immediately.

On December 18, 2014, Detective Cress learned that T-Mobile cellular service does not retain text message content from its customer's cellular accounts.

On January 5, 2015, Detective Cress presented a search warrant request to Judge Christina Klineman of the Marion County Superior Court 17, for the purpose of obtaining Joshua McNary's other cellular telephone. Judge Klineman granted the search warrant request, under cause # 49G201501MC000505.

On the morning of January 6, 2015, Detective Cress requested assistance from the IMPD Violent Crimes Unit. That evening, Detective Scott Childers located Joshua McNary at 50 North Illinois Street, Apartment XXX. Joshua provided Detective Childers with his phone, as it was identified as a black and silver iPhone 6. Detective Childers notified Detective Cress and the phone was transported to the IMPD Property Room.

On January 7, 2015, Detective Cress transported Joshua McNary's cellular telephone from the IMPD Property Room to the IMPD Cyber Crimes Office. Detective Donna Ciesielski began to perform a forensic examination of the phone.

On January 12, 2015, Detective Ciesielski provided Detective Cress with the phone and the examination report.

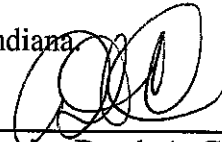
Detective Cress learned the following:

\*On December 2, 2014, Joshua took photographs of the bedding, which was later collected that same evening by Detective Cress and the Crime Lab, from the interior of his residence. The photos show blood stains and other soiled areas of the bedding.

\*On December 4, 2014, Joshua took photographs of his injuries on his shoulder and back.

\*Joshua also has multiple phone calls and text messages, or chats, with Van Crafton beginning on December 2, 2014 until December 8, 2014.

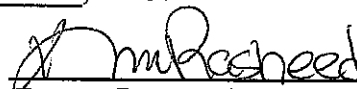
All the above events occurred in Indianapolis, Marion County, Indiana.



Detective Derek A. Cress

Subscribed and sworn before me, this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Judge, Marion County  
Superior Court



Deputy Prosecuting Attorney  
19<sup>th</sup> Judicial Circuit