

AFFIDAVIT OF PROBABLE CAUSE

I. Introduction

Andrea Constand (hereinafter "the victim") was employed as the Director of Operations for Temple University's women's basketball team between December 2001 and March 31, 2004 and, in that capacity, was introduced to Bill Cosby. In the months following their introduction, Cosby contacted the victim's Temple University office to discuss business-related matters. Eventually, the victim and Cosby exchanged personal phone numbers and developed what the victim believed to be a sincere friendship. Further, she considered Cosby, thirty-seven years her senior, to be a mentor, and described instances in which he invited her to his home for dinner, invited her to restaurants, invited her to events, introduced her to various people, and provided her with guidance and career advice.

The victim told investigators she had no interest whatsoever in a romantic relationship with Cosby, but described two separate incidents in which Cosby made sexual advances towards her. The first incident occurred several months after their initial meeting, when Cosby invited the victim to his home for dinner prepared by his private chef. When she arrived, she sat and spoke with Cosby near a fire. After about twenty minutes, the chef served her dinner, which she ate by herself, and she drank some red wine. After dinner, she and Cosby were sitting on the sofa when, without warning, Cosby reached over and touched her pants, her waist, and her inner thigh. With that, she dismissed herself to go to

the bathroom and gathered her things to leave. Before her departure, Cosby gave her a bottle of perfume and thanked her for little gifts she had brought him. The victim was embarrassed by this encounter. She never thought he would hit on her, especially since Cosby is much older than her father.

In the other incident, the victim went for a social visit to Cosby's Cheltenham home. She had consumed a couple glasses of wine and was talking to him when "out of the blue" Cosby unbuttoned her pants and began touching her. The victim leaned forward to stop him, at which point Cosby got up and went into his kitchen. The victim left ten minutes later with neither of them saying a word about what had just happened.

Despite these advances by Cosby, the victim trusted him and continued to accept his invitations to social and professional functions. For example, the victim attended a dinner at his home with a group of his friends and persons working in the Philadelphia restaurant community. She also attended a dinner at his Cheltenham home for a meeting with "academic people," including the President of Swarthmore College and professors from the University of Pennsylvania. She went to Cosby's New York City home to meet with one of Cosby's influential entertainment industry contacts. The victim also told police that she met Cosby two other times, albeit briefly, at his home and once at a casino in Connecticut. She reported that nothing inappropriate occurred during these events, all of which occurred before mid-February 2004.

II. Aggravated Indecent Assault at Cosby's Cheltenham Home

On January 22, 2005, in a written statement, the victim told police that sometime between mid-January and mid-February of 2004, Cosby called her on her personal cell phone and invited her to his home at 8210 New Second Street, Cheltenham, Montgomery County, Pennsylvania. During the call, Cosby told her they were going to talk about the victim's future career plans. Cosby added that no one else would be present and that she should dress in comfortable clothing.

The victim arrived at the residence at about 8:45 PM. Cosby, dressed in a sweat suit, greeted her at the front door and let her in. Once inside, the two sat at a table near the front door and spoke about her future career plans. The victim told Cosby she felt "drained," and "emotionally occupied," and that she had been missing sleep. During the conversation, Cosby told her that he wanted her to relax.

Within the next ten to fifteen minutes, Cosby went upstairs and the victim went to the bathroom. The victim told police that when Cosby returned from upstairs, he had three blue pills in his hand. Cosby urged her to take the pills, saying to her, "[t]hese will make you feel good. The blue things will take the edge off." The victim asked if the pills were herbal and Cosby replied, "Yes. Down them. Put 'em down. Put them in your mouth," as he motioned for her to put the three blue pills into her mouth. Cosby placed the pills in the victim's hand and directed her to "take the water." She told Cosby she trusted him and then used the water to swallow the pills.

Cosby then told the victim to "taste the wine." When she resisted, and told him that she hadn't eaten anything that day, Cosby again directed her to "just taste the wine." In response, the victim took a couple sips of wine. The victim told investigators that after she ingested the pills, she and Cosby continued to talk at the table. However, within about twenty to thirty minutes of ingesting the pills, water, and wine, she began experiencing blurred vision and difficulty speaking. When she told Cosby how she was feeling, he instructed her to lie down and he assisted her to the couch. Cosby told her that he was "going to let [her] relax."

The victim described to the police the wide range of physical symptoms she experienced during this time. She said that she lost all strength in her legs, which felt "rubbery" and "like jelly." She could not see clearly because everything had become "blurry" and "dizzy." She felt "nauseous." She could not keep her eyes open, was not aware of any sounds, had no sense of time, and was "in and out."

Cosby did not sit on the sofa with her, but instead positioned himself behind her. Despite her impaired physical and mental condition, the victim was aware that Cosby was fondling her breasts, put his hands into her pants, and penetrated her vagina with his fingers. Cosby also took the victim's right hand and placed it onto his erect penis. The victim told investigators that she did not consent to any of these acts, and was unable to move or speak during the assault. She described her condition as "frozen" and "paralyzed."

The victim awoke in the Cosby home at about 4:00 AM the next morning.

She discovered that her sweater was bunched up, and that her bra was undone and had been moved above her breasts. She said that when she got up and walked towards the door she saw Cosby, dressed in a robe, standing at the bottom of the staircase. Cosby gave her a muffin, walked to the front door, opened it, and said, "Alright." The victim told investigators she left the residence without saying anything.

III. Victim's Return to Canada and Disclosure

Within three months of the assault, in March of 2004, the victim left the Philadelphia area and returned to her parents' home in Canada. Thereafter, the victim's mother, Gianna Constand, noticed changes in her daughter. She said there was a change in her daughter's personality and that she had isolated herself from her friends. Mrs. Constand also told investigators that her daughter had sleep disturbances that included nightmares and instances in which she would scream in her sleep. Mrs. Constand attempted to find out from her daughter what was wrong with her but the victim simply did not answer.

Eventually, on the morning of Thursday, January 13, 2005, the victim told her mother that Cosby had sexually assaulted her. Shocked and devastated upon hearing details of the sexual assault of her daughter, Mrs. Constand called Cosby on the telephone to confront him. Mrs. Constand, who had spoken to Cosby on the telephone multiple times in the past, failed to reach him on this occasion and instead left a voicemail message. The Constans reported the

incident to the Durham Regional Police Service in Ontario, Canada.

IV. Mrs. Constand's Conversations with Cosby

On January 16, 2005, Cosby returned Mrs. Constand's call. During the two-and-a-half-hour conversation that ensued, she pointedly asked Cosby what he had done to her daughter and what he had given to her. In response to the latter question, he told her that he would "have to look at the prescription bottle." He told Mrs. Constand that he could not read the label because of an eye condition, but that he would write down the name of the medication on a piece of paper and mail it to her.

Although Cosby did not identify the drug he gave to the victim, during the same conversation he admitted fondling the victim's breasts, digitally penetrating her vagina, and placing the victim's hand on his penis for sexual gratification. Through these admissions to Mrs. Constand, Cosby directly corroborated the victim's report concerning these actions. In the same call, Cosby apologized and offered to cover any expenses associated with therapy.

Mrs. Constand reported to investigators that Cosby called her again, the next day, on January 17, 2005, and that she recorded this call. During the conversation, Cosby asked if the victim was still pursuing her interests in broadcasting and expressed his interest in assisting the victim financially with any educational goals. At one point, Mrs. Constand asked Cosby if he was going to send her "that piece of paper with the name of that stuff or not" to which he responded, "[w]e can talk about what you asked for later." Cosby was evasive on

the subject of the identification of the pills and quickly redirected their conversation to travel plans for Mrs. Constand and the victim. Cosby asked Mrs. Constand if "they", meaning her and the victim, would be willing to travel "to a city so that [they could] have a meeting?"

According to Mrs. Constand, on the next day, January 18, 2005, a representative of Cosby contacted the victim and attempted to arrange the meeting, which Cosby requested the day before. The representative explained that Cosby would pay to fly the victim and her mother to Florida. Mrs. Constand and the victim did not accept this offer. Cosby's representative provided a statement to investigators on February 4, 2005 in which he confirmed that Cosby had directed him to contact Mrs. Constand to arrange for her, and the victim's, travel to Florida. He also revealed that he had made similar arrangements for other women on Cosby's behalf.

V. Criminal Investigation and Cosby's Statement to Police

On January 14, 2005, a representative of the Durham Regional Police Service forwarded the victim's report of this incident to the Philadelphia Police Department Special Victim's Unit. When Philadelphia Police learned that Cosby's home, the incident location, was actually in Cheltenham Township in Montgomery County, they contacted the Cheltenham Township Police Department and forwarded to them a copy of the victim's initial report. Thereafter, the Cheltenham Township Police Department and the Montgomery County Detective Bureau commenced a joint investigation.

On January 26, 2005, Cheltenham Township Police Chief John Norris, Cheltenham Police Detective Richard Schaffer and Montgomery County Detective Lieutenant Richard Peffall interviewed Cosby in the presence of Cosby's legal counsel.

Cosby described for the investigators his version of what took place at his home on the evening in question. He stated that he had no intention of having the victim spend the night at his house. He said that upon the victim's arrival at his home, the two had a conversation about issues she was having and her resulting tension and inability to sleep. He admitted going to his room and coming down with pills for her to take. He told the investigators the pills were over-the-counter Benadryl and that he gave her one whole pill and one-half pill. When investigators asked Cosby about his personal usage of the pills, he told them he typically took two whole pills and acknowledged they would make him drowsy and go to sleep right away. He added that he would not take the pills and go out and perform. Cosby told investigators that these Benadryl pills were in a pop-out pack and that he carried them with him. Cosby admitted that he did not tell the victim, on that night or anytime thereafter, the true identity of the pills.

Cosby said that after the victim took the pills, they began to pet (touching and kissing) and then he touched her bare breast and her private parts (genitalia). Cosby said the victim never told him to stop, never pushed him away, never told him her vision was blurred and never said she felt paralyzed or affected by the Benadryl. In short, Cosby described the incident as a

consensual sexual encounter. Cosby said that he went to bed after the incident and woke sometime later in the morning to find the victim awake. He said they talked, he gave her a blueberry muffin and some tea, and then she left.

Cosby then went on to tell the police about his history with the victim. He acknowledged that the victim viewed him as a mentor and that he encouraged that type of relationship. However, contrary to the victim's description of their prior relationship, Cosby said it could be characterized as both social and romantic. He told the investigators that prior to this January 2004 incident, there were several instances in which the two "petted and kissed." He said he never had intercourse with the victim because he "like[d] the petting the touching." When directly asked if he ever had sexual intercourse with the victim, Cosby gave the unusual answer, "never asleep or awake."

Investigators also asked Cosby about the content of his telephone conversations with Mrs. Constand after she learned of this incident. Cosby said that he told Mrs. Constand "I think I gave [the victim] some pills." He also confirmed that when Mrs. Constand asked him the name of the pills he gave the victim, he told her that he would send the name of the drug to her on a piece of paper. Cosby said he told Mrs. Constand he touched the victim's breasts and vagina, but "guarantee[d] her that there was no penile penetration."

Cosby also told investigators what Mrs. Constand said during that first telephone conversation about the impact of the incident on the Constands. According to Cosby, Mrs. Constand said to him that "it is something a mother never hopes will happen to their daughter and that she did not know how long it

would take the victim, and her, to heal." Cosby told investigators he apologized twice and asked Mrs. Constand twice what she wanted him to do. According to Cosby, she said there was nothing he could do and that his apology was enough. Cosby told investigators that he called back again later and offered to "pick up the tab" for the victim to attend graduate school. Cosby also stated that he attempted to arrange for them to meet him in Florida at a hotel so they could "iron out whatever these problems happen to be."

VI. District Attorney Review

The initial investigation into this incident was reviewed by former District Attorney Bruce L. Castor, Jr. and resulted in the issuance of a February 17, 2005 Press Release, which announced that no criminal charges were forthcoming. Castor made it clear, however, in the Press Release, that he would "reconsider th[is] decision should the need arise."

VII. Civil Action Against Cosby for Battery and Assault

On March 8, 2005, the victim, assisted by private counsel, Bebe H. Kivitz, Esq., Ann C. Lebowitz, Esq., and Dolores M. Troiani, Esq., initiated a civil claim in the United States District Court for the Eastern District of Pennsylvania. The civil cause of action asserted against Cosby claimed battery, sexual assault, intentional infliction of emotional distress, and other related claims with regard to the incident previously investigated by the District Attorney's Office. The civil case was settled on July 13, 2006.

VIII. Reopening of Criminal Investigation

As the result of an Order issued by the federal judge overseeing the victim's civil case against Cosby, portions of depositions he gave in the suit were made public for the first time in July of 2015. The release of these depositions generated a great deal of publicity, as well as a number of public claims by women who alleged Cosby had assaulted them under circumstances similar to those reported by the victim. These events prompted the Montgomery County District Attorney's Office, now led by District Attorney Risa Vetri Ferman, to review the statute of limitations regarding potential criminal offenses committed by Cosby against the victim. District Attorney Ferman determined that under Pennsylvania law, prosecution for Aggravated Indecent Assault must be commenced within twelve years after the offense is committed. As such, the statute of limitations had not yet expired, and the investigation was reopened on July 10, 2015.

As a part of the reopened investigation, a formal written request was made by District Attorney Risa Vetri Ferman upon Dolores Troiani, Esq. for copies of her files related to the civil action, including depositions. In addition, investigators re-interviewed certain witnesses who had given statements in 2005. During a re-interview of Mrs. Constand, she told investigators that in her initial confrontation of Cosby by telephone, she said to him "you are a very sick man." According to Mrs. Constand, Cosby agreed with that accusation and repeatedly

apologized. He went on to tell her that he "wanted to call [the victim] and see how she was and he wanted to meet and make arrangements in Florida to discuss an arrangement that was going to make everybody happy." Cosby also asked her whether she had called the police.

Investigators also re-interviewed the victim because she had not requested that the criminal investigation be re-opened. She told investigators she would cooperate if asked to do so.

IX. Civil Depositions

Upon review of the civil depositions requested of Dolores Troiani, Esquire, investigators determined that the victim testified under oath in her civil case on September 27 and 28, 2005. As part of her sworn account of the incident, the victim testified concerning the details of the sexual assault. She said, in pertinent part, that upon feeling the effects of the pills, she told Cosby what was happening to her and he moved her to the couch. After some time, she felt her body being jostled and felt Cosby's hand inside her vagina. She also testified that Cosby placed her hand upon his penis.

Investigators determined that Cosby's depositions took place on September 28, 2005, September 29, 2005, March 28, 2006, and March 29, 2006. In testimony under oath, Cosby testified that he developed a romantic interest in Constand the very first time he saw her at the Temple basketball game and that he found her good looking. He testified that before he acted upon that interest, he needed to develop a friendship with her.

Concerning the incident at issue, he acknowledged inviting the victim to his Cheltenham home. He said that after some initial conversation, he went upstairs and got pills, "brought them down," and "offered them to [the victim]." Cosby testified that he gave the victim three halved pills, which he described as "three friends to make [her] relax." This is contrary to his statement to police, in which Cosby said he gave her "one whole and then one...half." Cosby, in his deposition, said he gave the pills to the victim because he believed, "they might help take some of the stress away." He testified, as reported to the police, that after the administration of the pills, he lifted the victim's bra so their skin could touch, got behind the victim "in a spooning position," and, while in that position, he went "inside of her pants" and digitally penetrated the victim's vagina.

During Cosby's September 29, 2005 deposition he acknowledged that he had, in the past, obtained seven prescriptions in his own name for Quaaludes that he never took, nor ever intended to take, himself. During this line of questioning, the following exchange took place between Dolores Troiani, Esq. and Cosby:

Troiani: When you got the Quaaludes, was it in your mind that you were going to use these Quaaludes for young women that you wanted to have sex with?

Cosby: Yes.

(*Constand v. Cosby*, 9/29/2005 Deposition, p. 71)

Cosby's attorney then objected to this question and stated, "Restrict it to the Jane Does." (*Constand v. Cosby*, 9/29/2005 Deposition, p. 71-72) Before being asked another question, Cosby changed his answer to, "I misunderstood. Woman, meaning [her], and not women." (*Constand v. Cosby*, 9/29/2005

Deposition, p. 72)

Cosby then specifically testified about an occasion in which he met a woman backstage, gave her Quaaludes and then had sex with her. Further, when asked why he didn't ever take Quaaludes himself, he responded that he gets sleepy. He stated that he knew that Quaaludes are a depressant and recognized that Quaaludes were, at the time, the drug of choice young people were using to party. He said, "there were times he wanted to have them just in case." (*Constand v. Cosby*, 9/29/2005 Deposition, p. 70) Cosby admitted that he knew at the time it was illegal for him to give Quaaludes to another person. (*Constand v. Cosby*, 9/29/2005 Deposition, p. 66)

X. Conclusion

Following their initial meeting at Temple University, Cosby developed a romantic interest in the victim, an interest she did not share. In his pursuit of the victim, Cosby promoted his role as mentor and someone who could offer her life and career guidance. He invited her to a number of social and professional events at his home and elsewhere. According to the victim, on two of these occasions, Cosby attempted to touch her inappropriately. Each time, she immediately shut down his advances, refusing any sexual relationship with Cosby.

Between mid-January and mid-February 2004, Cosby invited the victim to his home in Cheltenham, Montgomery County, for the purported purpose of speaking to her about her future career plans. This was consistent with the role

of mentor that he had fostered since meeting the victim. Upon her arrival at his home, Cosby and the victim sat and spoke for about 10-15 minutes, at which time the victim went to the bathroom.

It is undisputed that Cosby left the area where they were and returned shortly with blue pills. The victim said there were three pills. Cosby told police that he gave her one whole pill and one half-pill. Later, in his deposition, Cosby testified that he gave her three halves. When the victim asked if they were herbal, Cosby said, "yes." Cosby told police she did not ask about the pills, but admits he never told her what they were. According to the victim, Cosby told her they would make her feel good and "take the edge off." Cosby also said they were "three friends to help make her relax." Unfortunately, the victim trusted Cosby. At his urging, she swallowed the pills with water. Even if the pills were Benadryl, as Cosby alleged, he acknowledged that the drug makes him drowsy and puts him to sleep "right away."

Cosby also successfully urged the victim to "taste the wine," even though she told him she had not had much to eat. Investigators know that alcohol is frequently used as a precursor to sexual assault. Alcohol can be used to incapacitate victims by itself or in combination with over-the-counter and/or illicit drugs. Based upon the facts described herein, we have concluded that when Cosby set out the glass of wine and then, despite the victim's objections, urged her to drink, he did so believing her ingestion of the wine would contribute to her incapacity. That the victim's incapacity was his intended result is made even clearer by his use of both alcohol and drugs.

Cosby knew that his two prior sexual advances were blocked by the much younger, athletic victim. He knew that further attempts at sexual conduct would likewise be unsuccessful unless he was able to prevent her from resisting. He knew the victim could become sedated, and likely rendered incapable of resistance, by her ingestion of wine and Benadryl, or wine and another substance, known only to Cosby, with similar effects.

According to the victim, within twenty to thirty minutes of ingesting the pills, water, and wine, she experienced blurred vision and difficulty speaking, which she related to Cosby. She further said her legs felt "rubbery" and "like jelly," and everything was "blurry" and "dizzy." Also, she could not keep her eyes open and was nauseous. While in this vulnerable state, Cosby moved her to a nearby couch.

It is undisputed that Cosby fondled her breasts, put his skin next to hers and digitally penetrated her vagina. The victim subsequently reported Cosby's sexual assault to the police, including his digital penetration. She also testified about the assault and penetration during her deposition. At no time did the victim provide her consent. She could not move or speak and was, in her words, "frozen" and "paralyzed." It is clear that what the victim was led to believe was an herbal remedy had directly contributed to her impaired condition. Because she was fluctuating in and out of consciousness, the victim was legally incapable of consenting to Cosby's actions.

The following language by the Pennsylvania Supreme Court regarding consent unequivocally supports the above proposition: "[b]ecause the evidence

supports the findings that the victim was intermittently unconscious throughout the assault and was at all relevant times in such impaired physical and mental condition so as to be unable to knowingly consent, her submission to [sexual fondling and penetration] was involuntary." *Commonwealth v. Erney*, 698 A.2d 56, 59 (Pa. 1997). Likewise, the evidence here demonstrates that the victim's substantially impaired condition prevented her ability to consent, or even defend herself from Cosby's sexual assault.

In further support of our conclusion that Cosby planned to sexually assault the victim once she was sedated and rendered incapacitated, we considered, among other things, Cosby's deposition testimony concerning prescription Quaaludes. Constrained by the topical parameters of the deposition, he testified that on one prior occasion, he gave a woman Quaaludes in anticipation of having sex with her. Due to the fact that Cosby obtained seven separate prescriptions for Quaaludes that he did not personally ingest, nor ever intended to personally ingest, we believe it is likely he gave the drugs to other persons, including other women he planned to have sex with. This conclusion is supported by the fact that many women have recently come forward to publicly accuse Cosby of drugging and sexually assaulting them.

Concerning the night of this incident in early 2004, investigators are mindful of the fact that only Cosby knows what substances he gave the victim. Only Cosby knows whether the pills were indeed, Benadryl, as he alleged, or a prescription or illicit drug with even greater potential to render someone incapacitated. Only Cosby knew that the drug he gave the victim could impair

her ability to perceive, diminish her ability to remember, or render her useless as a witness against him.

One of the most significant factors investigators have considered is Cosby's evasive and conflicting identifications of the drug he gave the victim. According to the victim, she asked what the drug was and he told her it was herbal. Cosby denies this exchange ever took place. It is undisputed that Cosby told the victim's mother that he gave her some sort of prescription but that he could not recall what it was. He told her that he could not read the label on the bottle because of his poor eyesight. Cosby told Mrs. Constand he would write the name of the drug on a piece of paper and mail it to her, but he never did. Finally, Cosby told the police he gave the victim Benadryl, which is an over-the-counter medicine not dispensed in a prescription bottle as Cosby told Mrs. Constand. Cosby's deliberate efforts to conceal the nature of the pills he supplied to his unsuspecting victim are inconsistent with innocent behavior and demonstrate his consciousness of guilt.

Further indicative of Cosby's consciousness of guilt is the fact that, when confronted by Mrs. Constand over the telephone, he apologized to both her and the victim, while offering significant financial assistance. Cosby not only offered to pay for the victim's therapy, but also her graduate school tuition and expenses for travel to Florida. Investigators recognize that individuals who are falsely accused of sexual assault generally do not unilaterally offer generous financial assistance, and apologies, to their accuser and their accuser's family. To the contrary, such conduct is consistent with offenders who are seeking to make

amends for wrongful behavior and prevent involvement by law enforcement.

Finally, investigators identified two statements which they believe provide unusually compelling insight regarding Cosby's sexual relationships with women, including his assaultive behavior towards the victim. While speaking with Mrs. Constand, Cosby made sure that she understood there was no "penile penetration" involved. Presumably, Cosby considers lack of intercourse as a means to diminish his culpability and lessen the gravity of his sexual offenses. Secondly, during his statement to police, Cosby was asked whether he ever had sexual intercourse with Constand. He responded "never asleep or awake," inferring that either could be possible as a reasonable answer.

Upon examination of all the evidence, we believe there is probable cause that on the night of this incident in mid-January to mid-February of 2004, Cosby sought to incapacitate the victim by providing her with his "three friends" and some wine. He wanted to ensure that she would not rebuff his sexual advances as before, and he succeeded in doing so. As the victim lie on his couch, sedated and under the influence of the unknown substance he supplied and identified as an herbal, Cosby fondled her and digitally penetrated her vagina. Contrary to his assertion that she consented to this conduct, she could not do so. She was rendered unable to speak or even move, and left capable only to perceive aspects of this Aggravated Indecent Assault.

Based upon the foregoing, we respectfully request a warrant of arrest be issued for William H. Cosby, Jr., DOB: 7/12/1937, with violation of Pennsylvania Crimes Code Section 3125, Aggravated Indecent Assault,

particularly the subsections enumerated in the attached Criminal Complaint.

Richard Schaffer #981
Sergeant Richard Schaffer #981
Cheltenham Township Police Dept.

James Reape
Detective James Reape #32
Montgomery County Detectives

Michael Shade
Detective Michael Shade #16
Montgomery County Detectives

Elizabeth Comdough
Sworn to and subscribed before
me this 29th day of December, 2015.