

**CHITTENDEN UNIT FOR SPECIAL INVESTIGATIONS
AFFIDAVIT OF PROBABLE CAUSE**

STATE OF VERMONT

SUPERIOR COURT
CHITTENDEN UNIT

Criminal Division
Incident# 16BU021425

State of Vermont

vs.

Garang Ayang Defendant

Now comes Detective Nicholas Holden, affiant, being duly sworn and on oath deposes and says he has probable cause to believe that Garang Ayang (DOB 01/01/1979), has committed the crime of Sexual Assault in violation of Title 13V.S.A.3252 (11A).

1. On Saturday, July 23, 2016 at approximately 0416 hours, () called the Burlington Police Department to report a sexual assault. () reported to police dispatch that he was witnessing a sexual assault occurring between a male and a female on the sidewalk near 7 Monroe Street in Burlington, Vermont.
2. One of the responding officers, Lieutenant Duffy, arrived and observed the following:
 - *"When I arrived on scene I observed a car partially pulled into the driveway of 7 Monroe Street, with the rear of the car still in the street. Two people came running up to my car and pointed into the driveway area where I could see a black male and white female. The male was sitting up on a cement pad and the female was lying next to him. There were others in the driveway talking to the male.*
 - *As I approached them I noticed the male was trying to get the female to respond but I could only hear mumbles coming from her. I recognized the male from past police contact and one of the other responding officers later advised his name was Garang A Ayang. Other responding officers were also able to identify the female as J.P.*
 - *As I got closer I observed the female's pants to be pulled down to the knee area and her vagina was exposed. I pulled her blouse down to cover her vagina and asked if she knew the male. She mumbled she knew him from the street, but that was all the information she was able to provide. She appeared to be under the influence of alcohol or drugs. When other officers arrived on scene they removed the male from the immediate area. I also observed one of Ayang's shoes was off and at the base of J.P.'s feet; both of J.P.'s flip flops were also off and at the base of her feet.*

The gravel driveway appeared to be disturbed at the base of J.P.'s feet. There were several bags strewn about the area as well, all items were seized as evidence.

- *I continued attempting to get J.P. to respond but with no success. J.P. was wearing a pair of black pants made of a stretchy material. I told her I was going to pull them up and needed her to lift her butt so I could; I had to ask her several times before she was able to lift just a little. I touched her upper chest in an attempt to get her to respond to me. She awkwardly swatted away my hand in a defensive manner. I told her I was with the police department and she turned her head slightly towards me; this was the last response I observed from her. We requested the Burlington Fire Department to respond to assist with her care. I observed her to be breathing and continued to attempt to get her to respond with no success. I asked Ofc. Ellerman who had arrived on scene to take photographs while waiting for the Fire Department to arrive.*
 - *I observed blood on the female's left hand but could not see any injuries on the exposed parts of her body. I had officers look at the male to see if he had any injuries and none were immediately observed.*
 - *Once the Fire Department arrived on scene they did an initial assessment and then transported J.P. to the emergency room. Officer Jacob Seller rode in the ambulance to the ER to collect the female's clothing.*
 - *I made the following observations that lead to the arrest Ayang for sexual assault. The female was completely incapacitated and barely responsive the entire time while dealing with her. The witnesses observed the male to be on top of the female thrusting up and down and when they asked if everyone was okay she shook her head "no" and said it was not consensual. At least one of the witnesses observed the male to have an erect penis when he got off from the female and pulled up his pants.*
 - *The male was taken to the police department where all his clothing, except underwear and shorts were collected."*
3. Please see Lieutenant Duffy's supplemental affidavit which will be attached to this incident for further review.
 4. As the on Call Chittenden Unit for Special Investigations (CUSI) detective for that July 23, 2016, I was contacted by the Burlington Police Department and I responded to the Burlington Police Department. I was briefed by Lt. Duffy and advised the female who was identified as J.P (DOB 07/22/1988) was currently at the University of Vermont Medical Center but was incoherent. I was also informed the suspect had been identified as Garang Ayang (DOB 01/01/1979) and was currently in the holding cell of the Burlington Police Department. Lt. Duffy further advised that all three witnesses were willing to speak with me about the incident and were currently in the waiting area.
 5. I then spoke with witness _____ . I obtained a digitally recorded sworn audio statement from _____ ; during which he told me the following:

- advised he and his friends were just returning to a friend's house after performing in a concert. stated as () drove to the residence believed to be Monroe Street. While riding in the car, observed what he stated as an "act of *rape happening*" by another male. ; said he observed this incident taking place because the "headlights" from the car illuminated both the male and female who were lying on the ground. This was taking place on a cement pad next to a driveway off Monroe Street.
 - said for a second he observed what he described as "*pink thrusting*" but that after pulled the vehicle into driveway and continued to illuminate both the male and female he noticed that "pink thrusting" was the male moving in and out of the female as she lay on the ground.
 - advised that a asked the male "what are you doing?" said that the male then slowly got off the female during which time observed the males "*erect penis*" leave the area of the females vaginal area. advised he then observed the male pull his pants up as they were down near his ankles.
 - advised that immediately got out of the vehicle and told their friend to call the police. advised as approached the male and female asked the female if she was okay to which she stated "*non-consensual*". advised that the female was very difficult to understand but that he heard the female say "*non-consensual*" once 100% maybe twice. advised the male told and that "*we are fine, we are together*". said that based on what he was observing he knew that something "*was clearly wrong*"
 - advised that he and stood by and observed both the male and female as they waited for police. said that nobody ever touched the male because they were unsure if the male had a weapon.
 - advised that a continued to ask the female if she wanted to sit in the car to feel "*safe*" but that the female at this time was very difficult to understand and just remained on the ground.
 - advised the female just continue to lie on the ground while the male just stood there. advised a short time later Burlington Police arrived and took the male into custody.
6. Please listen to digitally recorded sworn audio statement which will be attached to this incident for further review.
7. I then spoke with witness (DOB). I obtained a digitally recorded sworn audio statement from during which he told me the following:
- advised he and his friends were just returning to a friend's house after performing in a concert. stated as drove to the residence believed to be Monroe

Street. observed a female *"proned on the ground and someone else on top of her and that it just didn't look right"*. advised he told his friend Gaudiana that it *"looked like someone was getting raped"*. stated that ma put on the brakes and pulled into the driveway where illuminated both the male and female laying on the ground. said that asked them *"are you alright"* and the male *"nodded with his head yes"* and the female *"nodded her head no"*

- advised the female just looked at them but *"couldn't really do anything"*. advised that told him to call *"911"*. advised while on the phone with 911 he observed the male sitting there next to the female with his *"erect penis"* exposed. also observed the females dress up and above her waist.
- stated that the male *"didn't seem very worried about us"* as both and walked towards him. advised a short time later police arrived.

8. Please listen to digitally recorded sworn audio statement which will be attached to this incident for further review.

9. I then spoke with witness (DOB) I obtained a digitally recorded sworn audio statement from during which he told me the following:

- stated he and his friends were just returning to a friend's house after performing in a concert and were attempting to find a parking space when both of his friends said *"pretty sure I just saw someone rapping somebody"*. said at first he didn't know how serious they were and slowed down his car and asked *"are you serious?"* and both and said *"yeah pretty sure"*.
- said he put his vehicle in reverse and pulled into a driveway and turned on his *"high beams"*. said that's when he noticed a male on top of a female. advised the female appeared to be unconscious and *"both the males and females genital were exposed"*.
- said that he put his head out the window and asked the male *"what's going on it seems very aggressive"* and the male responded *"nothing"*. He heard this after the two were separated said he then heard the female making a *"moaning sound"* and that the female appeared to be in a negative situation and that it was *"not consensual"*.
- said he told to call *"911"* and that felt he needed to do something because both the male and female were still engaging. said he exited the vehicle and aggressively walked towards the male. said that the female as he walked towards her said *"get him off of me"*. said he told the male *"get the fuck off of her"* and that the male did.
- said that as the male got off of the female he could see the males *"penis"* as it was exposed and, the male sat next to the female.

- _____ said he ignored what the male was doing in attempt to get the attention of the female “*who appeared to be fading in and out of conscious at this point*”. _____ advised he tried to get the female to speak with him and asked her “*do you wanna pull your pants up and wait in the car*”. _____ said the female just said “*get him off of me*”. _____ said at this time the male was no longer on the female.
- _____ said as he waited for the police he noted the female could not make it on her own and stated the female “*physically couldn’t*”. _____ said he wanted to help the female but was concerned about evidence and didn’t want to touch her.
- _____ said that he just stayed there and waited for the police to come and made sure that the male would not harm the female anymore. _____ when the Burlington Police arrived they took the male into custody.

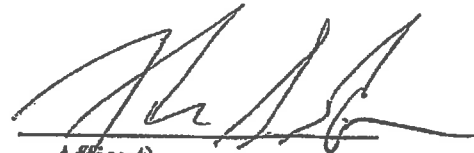
10. Please listen to _____ digitally recorded sworn audio statement which will be attached to this incident for further review.

11. I then went to the University of Vermont Medical Center and briefly spoke with J.P I obtained a digitally recorded sworn audio statement from J.P during which he told me the following

- J.P advised she was hanging with friends drinking when she met up with a few more friends. One of the male’s friends who she described as a black male possible immigrant with an accent.
- J.P said the next thing she remembers was being on her back in an “*alley*”. J.P said that she remembers saying “no” multiple times to the black male with an accent.
- J.P said she remembers being extremely impaired and that she never gave anyone consent to have sex with her. J.P several times stated that the sex was not consensual and that she kept trying to close her legs in order to prevent the “*sex*” from occurring.
- J.P said she remembers asking the male for a condom because she was trying to protect herself. J.P said suspect again was the black male with the accent.
- J.P advised she couldn’t remember but believes the males “*penis*” did penetrate her vagina. J.P said she was moving her legs around so much in attempt to protect herself but was sure that he never ejaculated.
- Do to J.P experiencing difficulty breathing and high blood pressure I was unable to complete the interview.

12. Although Ayang was not interviewed due to his alcohol level. It must be noted that while Sergeant Nadeau was assisting Ayang in holding, Ayang made the unsolicited statement that he had not sexual assaulted that female.

13. Based on the above. Ayang was logged for Sexual Assault.



Affiant)

Subscribed and sworn to before me on 7/23/16, at Burlington



Notary Public (expires 2/10/2019)