

Court File No. CR-22-00000484

SUPERIOR COURT OF JUSTICE

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HIS MAJESTY THE KING

10

V.

JACK DENSMORE

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P R O C E E D I N G S A T T R I A L

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BEFORE THE HONOURABLE MR. JUSTICE J. KRAWCHENKO
on April 18, 2024 at HAMILTON, Ontario

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SECTION 486.4 OF THE CRIMINAL CODE OF CANADA, BY
ORDER MADE IN THE SUPERIOR COURT OF JUSTICE

APPEARANCES:

30

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Legend

[sic] indicates preceding word has been reproduced verbatim and is not a transcription error.

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(ph) indicates preceding word has been spelled phonetically

All spellings of names are transcribed as set out in the reporter's notes unless noted with a
(ph)

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TUESDAY, APRIL 18, 2024

MR. FAHMY: Good morning, Your Honour.

5

[REDACTED] PREVIOUSLY AFFIRMED

CROSS-EXAMINATION BY MR. FAHMY CONTINUED:

Q. Good morning, ma'am.

A. Good morning.

10

Q. All right. So, I actually just wanted to get – go back a little bit. You'd mentioned that – I believe in your – your trial evidence that there was some bruising to your breasts from the biting. Is that correct?

A. Yes, there were red marks on my breasts.

15

Q. Okay. And I believe that you had said that – you would agree that you characterized that injury as very red, swollen and for days after, right?

A. Yes, probably for about two days after, two...

Q. Okay.

20

A. ...to three days.

25

Q. And actually, that's, I believe, in your trial evidence, my friend had asked you about while the nurse was doing the exam, that she had inspected – you said to her that she – you'd said to him, that she had inspected your breasts for bruising, correct?

A. Yes.

30

Q. Okay. Okay. And I just want to go now back to kind of where we left off. We were in the bedroom, and the oral sex part is where we kind of left off, okay? And what I'd like to ask you is, I believe I recall you mentioning that you'd only sucked it, but you didn't kiss it, right?

A. Yes.

Q. Okay. But then at some point, right, after he'd returned — after — actually, sorry — after — at some point, his penis is no longer in your mouth, right?

A. Yes.

5 Q. Okay. And then you say — I'm going to suggest to you that then you get up, right?

A. Yes.

Q. Okay. And then that there is some kissing that happens, correct?

10 A. No.

Q. There's no kissing?

A. No.

Q. Okay. Then what happens?

15 A. Then I turned around, I pulled the straps up just to cover my breasts.

Q. Okay. So, was that after you'd stood up or while you were still in[sic] your knees?

A. When I stood up.

20 Q. Okay. And you put your straps on your dress back up?

A. Yes.

Q. Okay. And then?

A. Then I turned around and grabbed my t-shirt off the bed and put it on.

25 Q. Okay. So, you — you turned to face the bed?

A. Yes.

Q. And you grabbed your t-shirt...

A. Yes.

Q. ...to put it on?

30 A. Yes.

Q. Okay. And then?

A. Then I took two steps away from the bed, or a

couple steps.

Q. Away from the bed in which direction?

A. Towards the door.

Q. Okay. So, you had to walk – but isn't – okay.

5 Let's backtrack, okay? You say, at the very beginning of this evidence, okay, let's concentrate because you're saying that you – Mr. Densmore is in front of you, right, his penis was – you were giving him oral sex, and that stops at one point, right?

A. Yes.

10 Q. Okay. And then you get up in front of him, correct?

A. Yes.

Q. So, you're facing him?

A. Yes.

15 Q. Okay. And then you say you turn around, right?

A. Yes.

Q. And has Mr. Densmore moved?

A. No.

20 Q. Okay. So, he's directly behind you, and you've turned around and there – your – your face, your body is – is facing the bed now, and your back is towards him, correct?

A. I believe I didn't fully turn around. I just turned my upper body to grab the t-shirt.

25 Q. Okay. But you just said that you turned around and faced the bed.

A. I turned my upper body. I'll correct that.

Q. Okay. So, you – now you've turned half your body, okay, and you said you grabbed your t-shirt off the bed?

30 A. Yes.

Q. Okay. So, it's when you're getting up, right, and he's looking at you, you're saying that's when you put your

straps back on too, right?

A. Yes.

Q. Okay. And you didn't say anything to him?

A. No.

5 Q. Okay. And then you - you half turn now,
right?

A. Yes.

Q. And you went to get - grab your t-shirt that
was on the bed?

10 A. Yes.

Q. Okay. And did you bend down to get that t-
shirt?

A. I might have slightly bent my upper body,
but....

15 Q. Okay. And you bend down slightly, your upper
body, to grab the t-shirt. Which hand did you use?

A. My right hand.

Q. Okay. Is that because you're right-handed?

A. Yes.

20 Q. Okay. So, you go to grab the t-shirt with
your right hand. Okay. And your back now is towards Mr.
Densmore, you would agree?

A. Yes.

25 Q. Okay. So, now it's no longer half turned,
it's your full back, right?

A. Yes, most of...

Q. Okay.

A. ...my back, yes.

30 Q. And you're - and you're in a bent over
position...

A. Yes.

Q. ...right? Okay. And you haven't taken any

steps, right?

A. No.

Q. Okay. So, now, you haven't taken two steps or any steps, you're just turned where you were, and you say you 5 grabbed your shirt, and you bent over. So, you're - you're bent over, and your butt is out and your - and your - your hand is on the bed where your t-shirt is, right?

A. Yes.

Q. Okay. Okay. And Mr. Densmore is directly 10 behind you, correct?

A. Yes.

Q. Okay. And I'm going to suggest to you, right, that - well, I don't even know what to suggest to you anymore at this point. What happens next?

15 A. I retrieved my shirt, put it on...

Q. Okay.

A. ...and take a few steps away from the bed.

Q. All right. Let's break that down. So, you say, you grab your shirt, and then you put it on...

20 A. Yes.

Q. ...and your back is still towards Mr. Densmore?

A. No, I turned back...

Q. Okay.

25 A. ...to face him.

Q. So, you grabbed your shirt before you put it on, right?

A. Yes.

Q. You turned around, faced him to put it on?

30 A. I think I put it on while I was turning.

Q. Okay. So, you put it on while you're turning, okay, but now you're facing him, you're face-to-face, right?

A. My body positioning is towards him, yes. I don't remember looking at him.

Q. You don't remember looking at him?

A. No.

5 Q. But he's standing directly in front of you, right, because you haven't moved and he hasn't moved, right?

A. Yes.

10 Q. Okay. And then at this point, I'm going to suggest that that's where he kisses you on the lips. Would you agree?

A. No.

Q. He never kisses you on the lips?

A. No, not at that point.

15 Q. Not at that point?

A. No.

20 Q. Okay. And I'm going to suggest to you that you kiss him back?

A. No.

Q. Not at that point?

25 A. Not anymore, no.

Q. Not anymore?

A. No.

Q. So, your evidence today, right now, is that from that moment, he never kisses you on the lips?

25 A. He does kiss me again on the lips.

Q. When?

A. After I moved back closer to the bed.

30 Q. But you're already close to the bed, you haven't moved, he hasn't moved, right?

A. I had taken a few steps away from the bed.

Q. Okay. And so, now you've turned around, you're face-to-face, right?

A. Yes.

Q. Okay. And you've - you're putting your t-shirt on, or while you're putting your t-shirt on?

A. Yes.

5 Q. But it's on and now you're face-to-face?

A. Yes.

Q. Okay. And then?

A. I take a few steps away from the bed.

Q. Which - which direction?

10 A. Towards the door.

Q. Okay. But then you'd be going - you'd have to go through him if you're going straight.

A. I went around him.

Q. You went around him, left side or right side?

15 A. Right side.

Q. To his right or your right?

A. My right.

Q. Okay. So, you're going to - towards the door.

Two steps?

20 A. About that.

Q. Okay. And then?

A. I am scanning the room looking for my purse.

Q. While you're taking your two steps?

A. Yes.

25 Q. Okay. And then?

A. I don't see my purse, so I take two steps towards the bed.

Q. Okay. So, you take two steps around him, away from the bed, right?

30 A. Yes.

Q. So, if you're in front of him, one, two, you're either just beside him or just a little bit ahead of him,

correct?

A. Yes.

Q. And – and – and you said you scanned the room and you couldn't find your purse in that direction, right?

5 A. Yes.

Q. Okay. And then you just said you took two steps back towards the bed?

A. Yes.

Q. Okay. How'd you do that?

10 A. I turned around then to face the bed...

Q. Okay.

A. ...and walked towards it.

Q. And walked – so, you're back to where you started?

15 A. Yes.

Q. Okay. And now you're back in front of him with the bed in front of you, right?

A. I'm not in front of him. I'm more at the foot of the bed.

20 Q. At the foot of the bed. So, you're – you're – to his left a little bit?

A. Yes.

Q. Okay. And now you're at the foot of the bed?

A. Yes.

25 Q. Okay. And you're facing the bed?

A. I was facing...

Q. Well....

A. ...the head of the bed, yes.

Q. Okay. But you just – okay. So, now you're 30 facing the head of the bed?

A. Yes.

Q. Okay. Fine. And then?

A. Then he walked up to me and that's when he kissed me again.

Q. Okay. So, he walks up to you at that point, and that's one step, right, because he's right there?

5 A. About that, yes.

Q. Okay. So, you're not very far from each, right?

A. No.

Q. Okay. He takes one step, and you say now he's 10 kissing you and you'll agree you're kissing him back, right?

A. No.

Q. You're not kissing him back?

A. No.

Q. Is it possible that you were kissing him back?

15 A. No.

Q. No? Okay. And how long did that kissing go on for?

A. Not long, maybe two minutes.

Q. Two minutes. And the entire time, what are 20 you doing?

A. I'm standing with my hands to my side.

Q. You're standing like this, hands to your side while he's kissing you?

A. Yes.

25 Q. Okay. And is he - where's his hands?

A. He takes his hands and he - I had pulled my dress down back to where it originally was and....

Q. Okay, hang on, hang on. So, your - your dress was still hiked up?

30 A. No. When I stood up to put my straps back on, I pulled my dress back down.

Q. Okay. But - okay. But you just said that you

did that now with your hands at your side.

A. No, he pulled the skirt up.

Q. When?

A. When he was kissing me.

5 Q. Okay. So, he's kissing you, and his hands are lifting your skirt up while your face-to-face?

A. Yes.

10 Q. Okay. And then? And — and sorry, while he's doing that, right, that doesn't take very long, right, it takes maybe two, three seconds?

A. About that.

Q. Okay. So, what — what's going on the entire one minute and 57 seconds?

15 A. He does that and pulls my underwear slightly down, so it's about in line with the end of my dress and starts fingering me.

Q. What do you mean in line with the end of your dress?

20 A. Like, he pulls it down slightly, so where my dress ends, the band of my underwear is about the same level.

Q. Okay. And this is face-to-face while he's kissing you?

A. Yes.

25 Q. Okay. And he's touching — he's — he's now put your underwear down a little bit?

A. Yes.

Q. Okay. And now he's touching you, right?

A. Yes.

Q. Okay. And then?

30 A. And then he stops fingering me and kissing me and holds my waist and turns me to face the bed, so my back is now towards him, and pushes me face down.

Q. Okay. And you would agree that that entire sequence of events, in your evidence in-chief, happened directly after the incident or the little disagreement with the phone, right?

5 A. Yes.

Q. But then yesterday you said that that didn't happen right away, but that you continued with the oral sex after the phone, correct?

10 A. I don't remember. I remember it - or I don't remember continuing. I remember, in my opinion, it stopping.

Q. In your opinion. So, today your opinion, but yesterday your evidence, I'll suggest to you was, that you said that you continued to give oral sex after the phone incident, correct?

15 A. I said it was possible.

Q. You said it was possible?

A. Yes.

Q. Because in your evidence, the oral sex lasted for five to ten minutes, right?

20 A. Yes.

Q. But that you noticed the phone about a minute or two into the oral sex portion, correct?

A. Yes.

25 Q. So, I ask you again, your evidence then is that it's possible that you continue to give oral sex?

A. It could have been possible, but I don't remember doing that.

30 Q. Okay. And I'm going to suggest to you that when you say that he - first, you said that there was - you weren't kissing him back during that time?

A. Yes.

Q. Okay. And you first said that your hands were

on your side when you guys were facing each other and he started to kiss you, right?

A. Yes.

Q. Okay. And then that happens for, you said, a 5 minute or two?

A. Yes.

Q. Okay. And are your hands there the whole time?

A. Yes.

Q. Okay. And when he is lifting up your skirt, 10 your hands are still there?

A. Yes.

Q. And when he's bringing down your underwear, your hands are still there?

15 A. Yes.

Q. Okay. And when he turns you around, right, you're not resisting to turn, you're moving where his hands are moving you, right?

A. It was hard to resist.

20 Q. It was hard to resist? Because - why?

A. Because his hands were firmly on my side and I was still semi close to him against his body, so it was kind of a forced turn.

Q. Okay. All right. Forced turn to face the 25 bed, right?

A. Yes.

Q. Okay. And then his hands, I'm going to suggest to you, leave your hips. Would you agree with that?

A. They - one for sure left my hip, yes.

30 Q. Okay. And that's because he's using his other hand to bring his penis closer to your vagina, correct?

A. No, he was using his other hand to press my

back down flat onto the bed.

Q. Okay. So, now his hands are — one hand on your hip, one hand on your back, right?

A. Yes.

5 Q. Okay. And you're — you're — I'm going to ask you, you're absolutely sure about this sequence of events the way that it happened, right?

A. Yes.

Q. Okay. All right. And then....

10 THE COURT: Mr. Fahmy, could I just ask you to stay at the podium, please? I'm distracted by your movements....

MR. FAHMY: Oh....

THE COURT: ...back and forth.

15 MR. FAHMY: ...I — I don't want you to be distracted, Your Honour.

THE COURT: I'm trying to concentrate on the witness. I'm trying to concentrate on where you are and you're a moving target.

20 MR. FAHMY: No problem.

THE COURT: Thank you.

MR. FAHMY: Sorry.

MR. FAHMY: Q. And while he is — while he is kissing you, what's he saying or doing?

25 A. He's not saying anything.

Q. Not saying anything, and what are you saying?

A. I'm not saying anything.

Q. Okay. Like, when I mean say, is he making any noises, are you, is he, like — anything?

30 A. Not that I recall, no.

Q. Okay. And from your end, you're not saying anything?

A. No.

Q. Okay. And you're not making any noises or anything?

A. No.

5 Q. Okay. And then, while he is lifting up your — and — and sorry, when he's kissing you on the lips, right, you're saying that you're not kissing him back?

A. Yes.

Q. Okay. And is he kissing you anywhere else?

10 A. No.

Q. Are you sure it's not possible that he was trying to, like, kiss your neck or kiss your ear, anything like that?

A. No.

15 Q. Okay. All right. And then while he is lifting your skirt, does he say or make any noises?

A. No.

Q. And what about you?

A. No.

20 Q. Nothing? It's all silent, right?

A. Yes.

Q. Okay. And while he is taking your underwear down, are you — is he saying anything or making any noises?

A. No.

25 Q. And you're not either?

A. No.

Q. Okay. And while he has — and — and I'm going to suggest it's the one finger that he puts inside of you, right?

30 A. I don't remember how many fingers.

Q. Okay. Could have been one?

A. It could have been one, it could have been

more.

Q. It could have been more?

A. Yes.

Q. Oh, okay. And you would agree that that's –
5 forget that. Puts a – puts a finger, or could be more, right,
but for sure one, right?

A. Yes.

Q. Okay. And going to suggest to you that he
doesn't put it inside of you right away, but he does a little
10 massaging on the outside first. Do you agree?

A. I don't remember massaging.

Q. Okay, but it could have happened, he didn't
just jam it inside of you, he started from the outside first,
right?

15 A. I don't remember. He could have.

Q. Okay. And then he puts it inside of you,
right?

A. Yes.

Q. Okay. And again, that whole portion of him
20 massaging, putting it inside you, there's – he doesn't say
anything, you don't say anything, right?

A. Correct.

Q. No noises from him, no noises from you, right?

A. No.

25 Q. Okay. And your hands are, as you've said,
entire time by your side, right?

A. Yes.

Q. Okay. And then you say he turns you around,
right?

30 A. Yes.

Q. And he has one hand on your hip and one hand
on your – your back?

A. Correct.

Q. Okay. Where on your back?

A. Sort of the middle centre of my back.

Q. Middle centre of your back, okay. And where -
5 I'm going to suggest to you that you're on your elbows?

A. No, I was standing upright and then he pushed me to lie flat on the bed.

Q. Like, so, your - your body is flat, right...

A. Yes.

10 Q. ...on the bed. Okay. But where are your hands?

A. They were slightly away from my body.

Q. Okay.

15 A. Not directly beside me, but not in a, like a T position, like....

Q. So, not in a T, right?

A. Yes.

Q. But maybe like in a W?

20 A. Yes, kind of as if you were to be pushed forward and where your arms kind of would naturally fall.

Q. Okay. And you're saying he pushed you with one hand?

A. Yes, he forced me down.

Q. He forced you down?

25 A. Yes.

Q. Okay. So, he forced you to do that?

A. Yes.

Q. Okay. And you had your hands on the bed?

A. Yes.

30 Q. Okay. And you didn't get - you didn't get up?

A. No.

Q. You didn't push up?

A. No.

Q. Right?

A. No.

Q. No? Okay. And you didn't turn around and
5 tell him, hey, what are you doing?

A. No.

Q. Because nothing was said from you until - the
entire time that this is happening, correct?

A. Correct.

10 Q. And what's he saying or doing?

A. Nothing.

Q. Nothing. Okay. And then you say that he
enters inside of you with his penis, correct?

15 A. Yes. First, he lifted my - the rest of my
dress up and pulled my underwear down more though.

Q. Okay. So, he does that after you're in the
position where you're on the bed, right?

A. Yes.

20 Q. Okay. So, you would agree with me that at
that point, he has no hands on you anymore, right?

A. No, he's not holding me down.

Q. He's not holding you down, he has no hand on
your waist, right? He has no hand on your back, right?

A. Yes.

25 Q. Because he's using both of his hands, you
said, to lift up your skirt, correct?

A. Yes.

Q. Okay. And he's using both of his hands to
bring down your underwear, correct?

30 A. Yes.

Q. Okay. And you'll agree with me that even at
that point, you're not saying anything, right?

A. Yes.

Q. And you don't do anything, you don't move from that position?

A. No.

5 Q. No? Okay. And what's he saying or doing?

A. He's not speaking.

Q. Not - but is he making any noises, gestures, anything?

A. No.

10 Q. No. Okay. And how far up does he lift your dress up?

A. About below my breasts.

15 Q. No, no, no, below your - oh, so, it's like all the way up, all the way up to - like, when you say below your breasts, you - that's the front?

A. Yes. It would have been the same level on the back...

Q. Okay.

A. ...for - yeah.

20 Q. Can you - can you just kind of demonstrate where the - where - like, with your hand, if you can just show us where on your back, please.

A. Sure. Should I stand up?

Q. Please.

25 MR. SOSA: Your Honour, isn't this the same as what we dealt with the other day?

THE COURT: I get it. She said that it's below her breast and you could ask for a descriptive. We don't need to get into this type of display.

30 So just use words and ask her to describe where it is.

MR. FAHMY: I - I....

THE COURT: As I understand it, right now, and perhaps this will help, if it's below her breast, then it will be in the corresponding part on the other side...

5 MR. FAHMY: Her back.

THE COURT: ...of her back.

MR. FAHMY: That's what I wanted to ask.

THE COURT: Well, just ask the question. We don't...

10 MR. FAHMY: Well...

THE COURT: ...need a demonstration with her trying to reach behind it.

15 MR. FAHMY: I'm going to ask for the witness to be excused to make this point, Your Honour.

THE COURT: All right. Step out, please.

A. Thank you.

... WITNESS LEAVES THE COURTROOM.

THE COURT: Yes?

20 MR. FAHMY: The reason is that there is the sex assault nurse kit that has a demonstration of where they collected the semen sample from her back. So that's why I want to, because, like, from my understanding, right, that she never - first, she's never said this before, how far up it came. She never said it was ever up that high.

25 She only said that he just lifted it up to expose her butt, and that was it. So that's why it's important now, right, because I want to make sure, because in my - I was - you know, obviously when the nurse comes, make sure that we get that evidence and then make the submission that it would have - what she says doesn't make sense.

THE COURT: Okay, well, let's just stop there for just a second.

MR. FAHMY: Okay.

5

THE COURT: Her pointing somehow awkwardly to behind her back and getting up, I'm not sure how that assists the inquiry that you're trying to make, as opposed to her simply saying that, as I understood it, my dress was pulled up by Mr. Densmore using both hands to approximately below my breast. So I'm going to sort of imagine that there is fabric that needs to gather up in that area....

10

MR. FAHMY: Yes.

15

THE COURT: ...and that it would be like a tube around where it is. And that can be done with descriptive words to say, would it be correspondingly, you know, would it correspond to, would the dress correspond to directly behind where your breasts are? And you get the very same thing as opposed to this display, which is not helpful, and I think somewhat cumbersome, because I don't know whether or not it gives us an exact location, because to be accurate, I think you'd need, like, a mirror, a pointer, and, you know, like, how do we know, like, with exactitude as opposed to the general area?

20

MR. FAHMY: Sure.

25

THE COURT: Right?

30

MR. FAHMY: Sure. I'm okay, Your Honour, it's fine.

THE COURT: Okay, thank you.

MR. FAHMY: We can go on.

THE COURT: We'll bring - can we call her back, please?

CLERK REGISTRAR: Yes, Your Honour.

... WITNESS PAGED TO COURTROOM 608.

5

[REDACTED] RETAKES THE WITNESS STAND

MR. FAHMY: Q. All right. So, just to - when he's lifting up your skirt to where - your dress, sorry, to where you say it was, okay, and while he's doing that, you're 10 still on the bed, right?

A. Yes.

Q. In the same position, you haven't moved?

A. Yes.

Q. Okay. And then when - and it's a form fitting 15 dress, right?

A. Yes.

Q. So, it's not like it's a - it's a loose shirt, he can just flick it, right?

A. Yes.

Q. He's going side to side to kind of get it up, 20 right?

A. Yes.

Q. Okay. And how much of it is riding - you said where it was exposed on your back, where was it exposed from 25 your front?

A. In the - it was level with where it was in the back.

Q. Okay. So, I'm going to suggest to you, right, that if you're bent over, right, and the edge of the bed is 30 where your dress was, right, that you would have to lift yourself up a little bit for him to get the front part of the dress up to where you say it was, right?

A. No.

Q. No?

A. No.

Q. And you certainly didn't just press your body
5 against the bed to prevent him from lifting up your dress,
right?

A. No, I was just naturally pressed against the
bed.

Q. Naturally pressed.

10 A. I was naturally laying flat on the bed.

Q. Okay. Lifts up your dress to where you say he
did, and then – and then you say that he enters you with his
penis, correct?

A. Yes.

15 Q. Okay. And I'm going to suggest to you that at
first, he isn't – like – like, does he just jam it right in, how
does he do that?

A. Yes, he just put it in...

Q. Just...

20 A. ...fully.

Q. ...put it in fully?

A. Yes.

Q. First time?

A. Yes.

25 Q. Okay. I'm going to suggest to you, okay, that
at first, he was playing with his tip at the edge of your – or
at the outside of your vagina. Would you agree with that?

A. No.

Q. Okay. And that he put it in a little bit and
30 had to, like, adjust and move, and you guys were both trying to
get into, like a proper position in order for him to be able to
insert himself inside of you, correct?

A. No.

Q. Okay. So, your evidence then is — and you're — how tall are you, five-foot-five. Is that correct?

A. Yes.

5 Q. Okay. And how tall — and — and you're bent over as the — the way that you said you were, okay, right?

A. Yes.

Q. All right. And are you on your tippy toes?

A. I don't remember.

10 Q. Okay. But you could have been, right?

A. I could have been, yes.

Q. All right. Okay. And the reason why you had to be on your tippy toes was because you had to get up high enough in order for him to be able to enter inside of you from 15 behind, right?

A. No, I was able to lie flat on the bed without having to move up further on it.

20 Q. I'm not talking about moving up further on the bed, I'm talking about, you — you went on your tippy toes in order to get your butt higher so that you can be level with his penis?

A. No, I don't remember being on my tippy toes.

Q. But you — you just said that you were, that you could have been, right?

25 A. I could have been.

Q. Oh, okay. And I believe your evidence was — is that the penetration lasted for about 10 or 15 minutes?

A. About that.

Q. Okay. And from....

30 THE COURT: I just need you to stop for a second. I'm — I'm looking at my notes now, and this — the tippy toes business sort of caught me by surprise

because as I was making my notes, I thought that the evidence was that you were lying completely flat on the bed. Is that – did I get that wrong?

A. My upper body was on the bed, but my feet were
5 still on the side.

THE COURT: Thank you. So, just – just stop there for a second and let me correct my notes.

MR. FAHMY: Sure. Thank you.

10 THE COURT: Thank you. But just so I'm clear, the – the hands – the stuff that we talk – or the – the evidence that you gave about the hands, that's while you're – it's really waist down on the bed, is what we're talking about, that top portion of your body was on the bed?

15 A. Yes.

THE COURT: Thank you. So, just give me a second, please. Thank you for that. Sorry.

MR. FAHMY: No.

THE COURT: Please continue. Thank you.

20 MR. FAHMY: No, no. Thank you, Your Honour.

MR. FAHMY: Q. Now, the 10 or 15 minutes – sorry, and I – is he saying anything or gesturing or making any noises just before he's inserting himself inside of you?

A. Not just before, no.

25 Q. Okay. And neither are you?

A. No.

Q. Okay. And then when he is – goes inside of you, right, according to you, first time goes right in, right?

A. Yes.

30 Q. All the way in you said?

A. Yes.

Q. Okay. And anything said or noises from him or

from you?

A. Nothing was said, but he was slapping my butt.

Q. Slapping your butt?

A. Yes.

5 Q. Okay. And - okay. And - okay, but before he does that, okay, what are you saying or doing?

A. I'm not saying anything.

Q. You're not saying anything? You're not saying, spank me?

10 A. No.

Q. You never said to spank me?

A. No.

Q. And when he does that, what's your response?

A. I was surprised.

15 THE COURT: Could we clarify what, you've described two things as a compound question.

MR. FAHMY: Sorry, Your Honour.

THE COURT: There was the - there was the - the intercourse and the spanking.

20 MR. FAHMY: Yes.

THE COURT: Together...

MR. FAHMY: Let's....

THE COURT: ...and what is she - what is she actually answering?

25 MR. FAHMY: You're right. I'll - I'll backtrack.

MR. FAHMY: Q. So, during the penetration, right, you're not saying anything, correct?

A. Yes.

Q. The entire time, right?

A. Yes.

30 Q. You're not moaning?

A. No.

Q. You're not making any noises whatsoever?

A. No.

Q. You are not moving, right?

A. Yes.

5 Q. You're not moving at all?

A. No.

Q. You're still on your tippy toes though, right?

A. I'm on my stomach. I, again, don't recall if
I was on my tippy toes.

10 Q. Or not.

A. Or not.

Q. Okay. And – and you – you don't look back at
him?

A. No.

15 Q. Okay. And then from his end, while the
penetration is happening, he's not saying anything either,
right?

A. Correct.

Q. He's not moaning, right?

20 A. Not that I recall, no.

Q. No? Okay. But it's possible that he was?

A. It's possible.

Q. Okay. And you said that he spanked your
butt...

25 A. Correct.

Q. ...right? Okay. And you deny saying to him,
spank me, right?

A. Correct.

30 Q. All right. And I'm going to suggest to you,
ma'am, that – well – okay. So, after that, right, he pulls out,
right?

A. Yes.

Q. Okay. And at that point, you're still on - in the same position?

A. Yes.

Q. Okay. And then your evidence was, is that he comes on your back?

A. Correct.

Q. Okay. And he gives you - sorry, and then there's a - a paper towel that he gives you, right?

A. Yes.

Q. Okay. So, just before he comes on your back, okay, right?

A. Yes.

Q. And you felt that?

A. Yes.

Q. Okay. Did you say anything?

A. No.

Q. You haven't said anything, right?

A. No.

Q. Okay. And you didn't make any gesture or noises, correct?

A. Correct.

Q. And then - you're still on your stomach, bent over the bed when he shows up, grabs a paper towel and wipes your back, right?

A. He didn't wipe my back, but I was still on my stomach when he handed me the paper towel, yes.

Q. So, he handed you the paper towel, you're still on your stomach?

A. Yes.

Q. Okay. And then - and then you wiped yourself?

A. Yes.

Q. How did you do that?

A. I just took the piece of paper towel and stood up and wiped my lower back.

Q. And you're still facing the bed, you're not facing him?

5 A. He had walked over - the paper towel, I believe, was on the bedside table closest to the window.

Q. Okay.

10 A. So, he walked over there to grab it, and now is on the other side of the bed handing me the roll of paper towel.

Q. But you were still on your stomach when he handed it to you?

A. Yes.

15 Q. Okay. I'm going to suggest to you that he actually wiped you down and then gave you some more for you to take in case you needed to wipe your front area as well. Isn't that possible?

A. No.

Q. Not at all?

20 A. No.

Q. Okay. And then what happens next?

A. And then I asked where the washroom was and left the room.

Q. Why would you need to ask for the washroom?
25 He'd already showed you where it was before you got to his room.

A. He did. I guess that was my way of telling him I needed to use the washroom.

Q. Okay. And he said - what was his response?

A. It's down the hall.

30 Q. Okay. So, you'll agree with me that according to you, those are the first words spoken by you or him since you'd had that little exchange about the phone, correct?

A. I believe that he did say something when I was putting on my shirt. I don't remember what it was, but I remember kind of awkwardly laughing.

Q. Okay. So, now you remember that, right? But 5 you didn't remember it before, right?

A. I didn't remember - like I don't remember what he said. I remember not responding to him talking though.

Q. Well, you did. You said you laughed.

A. Yes.

10 Q. So, that was a response, right?

A. Okay, yes.

Q. Okay. And then your - your evidence was - is that you went to the bathroom, right?

A. Yes.

15 Q. And you close the door?

A. Yes.

Q. Okay. What did you do in the bathroom?

A. I used the washroom.

Q. Like the toilet?

20 A. Yes.

Q. Okay.

A. And I was - had started crying at that point.

Q. Were you on - still sitting on the toilet?

A. I had started crying immediately after I left 25 his bedroom.

Q. Immediately after you left his bedroom?

A. Yes.

Q. Okay. And so, you're crying after you leave the bedroom, and then you walk down the hall and it's, like, you 30 know, it's not that far, right?

A. Yes.

Q. Okay. You get into the washroom, you close

the door?

A. Yes.

Q. Okay. Is there a lock on the door?

A. Yes.

5 Q. You're sure about that?

A. I remember a lock, yes.

Q. Did you lock the door?

A. Yes.

Q. Okay. And then you sit on the toilet, you're
10 still crying, you do your business, and then what happens?

A. I take a couple of moments to collect myself
because I'm still crying before going back into the room.

Q. Okay. And – well, tell us about that. How
long does that take?

15 A. The crying, or the whole time I'm in the
bathroom?

Q. The whole time you're in the bathroom.

A. Probably about five minutes.

20 Q. Five minutes. Okay. And how long are you in
the bathroom for in total?

A. Sorry, I – I was taking that as your question.
I was in the bathroom for about five minutes.

Q. The whole time?

A. Yes.

25 Q. Okay. Because yesterday, you told us that you
were in the bathroom for 10 to 15 minutes. Do you agree with
that?

A. I – it's an estimate. Maybe 5 to 15 minutes
is a better timeframe.

30 Q. So, now it's 5 to 15 minutes. Okay. No
problem. All right. And I'm going to suggest to you that you
were not crying at that moment. Would you agree?

A. No.

Q. And that you only started crying after you left his house. Would you agree?

A. No.

5 Q. Okay. And before returning to his bedroom after you were crying, you said you wanted to, I guess get it together before you got back into his room, right?

A. Yes.

Q. Okay. And how did you do that?

10 A. I took some toilet paper and wiped the tears away from my face.

Q. Anything else?

A. I remember looking in the mirror...

Q. Okay.

15 A. ...and just adjusting my shirt and my hair.

Q. Okay.

A. And - yes.

Q. All right. And you clearly didn't - like, you didn't have to fix your makeup or anything?

20 A. I didn't even bring makeup with me to fix, so....

Q. Okay. But you were wearing makeup that day, right?

A. I - I was, yes.

25 Q. And you were even wearing fake eyelashes, correct?

A. I don't recall.

Q. Okay. But you could have been?

A. I could have been, yes.

30 Q. All right. And it's very difficult to, like, even wipe away tears when you've got that kind of eyelashes on, correct?

A. Not in my experience, no.

Q. It doesn't interfere with the glue that you put on?

A. It might weaken it, but you're still able to 5 cry with fake eyelashes on.

Q. I'm not - I'm not saying you're not able to cry. That wasn't the question, right? So, what I'm suggesting to you, right, is that when you do cry when you're wearing those fake eyelashes, as you've said, it weakens the glue, correct?

10 A. Yes.

Q. So, that means that they're more likely to fall off, right?

A. Yes.

Q. Okay. And I'm going to suggest to you that 15 they hadn't fallen off when you'd gotten back to his bedroom, right?

A. Yes.

Q. Okay. But they - they were - when you met up with C [REDACTED] and N [REDACTED] later that night, because you had been 20 crying further in your car, that they had fallen off, right?

A. I don't recall if my eyelashes were still on when I met up with C [REDACTED] and N [REDACTED]. They could have been off. They could have been.

Q. Because you were crying?

25 A. Yes.

Q. Okay. So - and you were also wearing the - like, eyeliner, correct?

A. I don't recall.

Q. Okay. But you could have been?

30 A. I could have been.

Q. All right. And you were wearing mascara as well?

A. I assume so.

Q. Right? Okay. And all you said was that you wiped away tears from your face with the toilet paper, correct?

A. Yes.

5 Q. Okay. But you would agree with me that if you were crying, that there would be mascara as well in the tear, right, running down your face?

A. Yes.

Q. Okay. And you didn't do that, right?

10 A. It wasn't there or I didn't clean it up?

Q. You didn't have to clean it up because you weren't crying in the bathroom, right?

A. No, I - I was crying in the bathroom.

15 Q. Okay. So, then when you're crying with the bathroom, all you said was that you wiped away a tear, right?

A. Yes.

Q. Was there any mascara in that tear?

A. Yes.

20 Q. Oh, so, now your mascara is running down your face, right? Both eyes were crying?

A. Yes.

Q. Okay. So, now you would agree that now you've got mascara marks going down your face, right?

A. Yes.

25 Q. And then you went back to his bedroom, right?

A. Yes.

Q. Okay. So, there's no attempt from your end to hold back the tears at all while you're in his bathroom, right?

A. Correct.

30 Q. In fact, you told my friend that you cried a lot while you were in the bathroom, correct?

A. Yes.

Q. Okay. But your fake eyelashes were still okay, right?

A. Yes.

Q. But there was mascara marks coming down your face that you couldn't wipe off with a paper - with the toilet paper, right?

A. Yes.

Q. Okay. And - and you said that you were dabbing your eyes with the paper - with the toilet paper before that, right?

A. Correct.

Q. Okay. And you didn't have any makeup to fix anything, right?

A. Correct.

Q. So, you'd smudged your makeup around your eyes, right?

A. Yes.

Q. Okay. And you had a good look in the mirror with all of this before you left to go to his bedroom, back to his bedroom, right?

A. Yes.

Q. Okay. And you would agree with me, right, that if there was - you could have used some soap and water and washed your whole face to kind of get rid of whatever mess was there, right?

A. I could have, yes.

Q. Okay. But clearly you didn't, right?

A. Yes.

Q. But that you would have done so if you were trying to really make an attempt to make sure that you didn't want to seem upset to him when you got back, right?

A. Yes.

Q. You come back inside the room, walk to the — you walk down the hall, you go back inside the room, right?

A. Yes.

Q. Okay. And — sorry, before — when you get back 5 in the room, where's Jack?

A. He's in the room.

Q. Where in the room?

A. He's standing up.

Q. Where?

10 A. By the bed.

Q. Where by the bed?

A. On the right side of the bed.

Q. Which was your side of the bed...

A. Yes.

15 Q. ...where you were? Okay. And he's standing, so he's kind of standing where you left him, right?

A. In a similar area, yes.

20 Q. Okay. Because — well, you — sorry, you said he went around the other side to grab the paper towel and then came back to where you were, right?

A. Yes.

Q. Okay. So, that's where he was, right?

A. Yes.

Q. And he — he had his pants back on?

25 A. Yes.

Q. Okay. And then — and then what happens?

A. He tells me that he has a long day tomorrow and that I should be leaving.

30 A. Okay. All right. And that's it? That's the only conversation that happens between the two of you at that point, right?

A. Yes.

Q. Okay. And for him to say that is like three seconds, right?

A. About so, yes.

Q. Okay. Hey, I got an early day tomorrow, you
5 should go?

A. Yes.

Q. And then did you respond?

A. I believe I said okay.

Q. Okay. Okay. And then he – and then what
10 happens?

A. I grabbed my bag, and he walks me to the front door to leave.

Q. Where was your bag?

A. It was on the dresser.

15 Q. On the dresser in front of the mirror?

A. Yes, just slightly to the left of the mirror.

Q. It's not a big room, right?

A. No.

20 Q. Okay. And – and where's your – and where's your – your shoes are downstairs, right?

A. Yes.

Q. Okay. So, you grab your bag, right, and then you go downstairs? Who's – who's going down the stairs first?

A. I don't remember.

25 Q. Okay. But you both go down the stairs, and then at the front – by the front door, right?

A. Yes.

Q. And you put your shoes on?

A. Yes.

30 Q. All right. And you grab your jacket?

A. Yes.

Q. Is it there?

A. I'm holding my jacket already.

Q. So, you had it upstairs?

A. Yes.

Q. Okay. Where was it when you left it upstairs?

5 A. I had put it on my purse, or beside it.

Q. Okay. So, it's right beside your purse, purse is there, your jacket's there, the mirror's right there, right?

A. Yes.

10 Q. Okay. So, you bring both down, you put on your shoes, you put on – do you – do you even put on your jacket or just keep holding it?

A. I don't remember.

Q. Okay. All right. And then he opens the door, and he gives you a kind hug, right?

15 A. As I've said previously, a side hug, yes.

Q. Well, yesterday you told us it was a kind hug.

A. I agreed with your description of a kind hug.

20 Q. No, I didn't even describe that. I asked you if – when I asked you if he gave you a kind hug when you first got there, you said no, it's when I left, he gave me the kind hug. That's what you said. Do not recall that evidence?

A. I don't recall giving those exact words, but I do remember saying that he gave me the side hug leaving.

25 Q. Yeah, yeah, you said that to my friend, but yesterday, that's what you said, you said a kind hug, right?

A. It's possible.

Q. Okay. And if it's possible that you did say that, I'm going to suggest to you that that indeed is what happened, right?

30 A. It could have, yes.

Q. Okay. And I'm going to suggest too that he gave you a kiss on the cheek. Do you agree with that?

A. No.

Q. He didn't kiss you on the cheek goodbye?

A. No.

Q. He didn't - did he say goodbye?

5 A. I believe yes, he said goodbye.

Q. All right. And you said?

A. Goodbye.

Q. All right. And in terms of the pace that you used to leave his bedroom and go down the stairs, I'm going to 10 suggest to you it was just normally walking down the stairs, right?

A. I think I was moving slightly faster than usual.

15 Q. Slightly faster than usual? What does that mean?

A. I wasn't running out the door.

Q. Weren't running out the door. Okay, but I'm going to suggest to you that in earlier statements that you gave or what you wrote you'd said, "I ran out the door". Do you 20 agree with that?

A. I may have.

Q. Okay. And you'd agree that Jack certainly never says, oh my gosh, are you crying, right?

A. No, he never says that.

25 Q. And I'm going to suggest to you that the reason why is because you had tried to make sure that before you left the washroom, that there was no evidence that you had been crying, right?

30 A. I did still have, like we discussed, my eyes were red and there was still smeared makeup.

Q. Yeah, but like not just smears like we're talking smears all around your eyes and running down your cheeks

both cheeks, right?

A. Yes

Q. Okay. Okay. All right, and then you....

MR. FAHMY: Is this an appropriate time to take a
5 morning break, Your Honour?

R E C E S S

U P O N R E S U M I N G:

10 MR. FAHMY: Q. Okay. So before we move on, you had, you'd mentioned that, I believe you said you're righthanded, right?

A. Yes.

15 Q. Okay, and then when you guys were on the bed and he's - and you say that you pushed his hand away the first time from putting it, you used your righthand, right?

A. To push my [sic] hand away? No, I used my left hand.

20 Q. And when you leave his house, you get into your car?

A. Yes.

Q. Okay, and you get out of his driveway?

A. I was parked on the side of the road.

25 Q. Okay. You get into your - you leave the side of the road and then you said you headed to a Walmart parking lot?

A. Yes.

Q. Okay. And that's where you started crying?

30 A. I was all, still crying once I left the house.

Q. Okay. And did you have tissues in the car?

A. No.

Q. Okay. And did you get tissues when you got to wherever you stopped?

A. Not that I remember, no.

Q. Okay, and I'd forgotten to ask you, but I'm 5 going to suggest to you that your nose was running as well when you were in the bathroom?

A. Yes.

Q. Okay. And when you get back in your car, you said you were in a parking lot for a bit?

10 A. Yes.

Q. Okay, and then you started messaging C [REDACTED] and N [REDACTED] ?

A. Yes.

Q. Okay. So, I'm going to suggest to you that 15 one of the first things you tell C [REDACTED] and N [REDACTED] is that about - is about what happened, right?

A. Yes.

Q. And one of the first things you tell her - them is he didn't force me. Do you agree with that?

20 A. I don't recall.

Q. All right. But if you had said that, that's very different than what you told us in that he forced you to turn around, right?

25 A. That - I feel like that question can't be answered with a simple yes or no.

Q. Well, you said that he forced you to turn around, right?

A. Yes.

30 Q. Before you had sex with him, penetration, right?

A. Yes.

Q. Okay. So you would agree at this point in

[REDACTED] your evidence was that he forced you, right?

A. Yes.

Q. Okay. Page 51 - actually, let's go up to just the end of page 50 there. So you see that this is the group chat that you're having with C [REDACTED] and N [REDACTED], right?

A. Yes.

Q. And that the last message there is "Wait, he's shy. Didn't expect that". We went over that yesterday, right?

A. Yes.

Q. Okay. So scroll down, and then there it is, at 9:46 p.m., you've messaged both of them saying, "He had sex and I didn't want to" and then you corrected it to say, "We had sex and I didn't want to", right?

A. Yes.

Q. Okay. And now I'm holding back tears, right?

A. Yes.

Q. Okay. So you would agree that at this point, you're not crying, you're just holding back tears, right?

A. I may have been alternating between crying and holding back tears.

Q. Okay. "He tried to film it", is your next message, right?

A. Yes.

Q. Moving down - wait, no - C [REDACTED] responds, right away, "Oh my God, did he pressure you?", right?

A. Yes.

Q. "WTF", which means what the fuck, right?

A. Yes.

Q. Okay. Why would he try to film you, right?

A. Yes.

Q. Okay. "Oh my God, are you okay?". And then you say, "I just left", right, 9:49, right?

A. Yes.

Q. "I can't drive, I'm crying", right?

A. Yes.

Q. Then she asks, then N [REDACTED] asks, "Where are
5 you, do you need to be picked up? My shift is almost over".
And then she also - and then C [REDACTED] asks again, "Did he force
you?" Right?

A. Yes.

Q. And then she threatens by saying, "I'll kill
10 him", right?

A. Yes.

Q. And then you say, "I think I can make it
home", right? Right?

A. Yes.

Q. Next one is, "He didn't force me, but he just
15 did it", right?

A. Yes.

Q. Okay. So, and that's in response to C [REDACTED]'s
question, "Did he force you?", right?

20 A. Yes.

Q. Okay. And this is, that message was sent at
9:52 p.m., right?

A. Umm....

Q. Oh, I'm sorry. It's - it's page 53, 9:52?

25 A. Yes.

Q. Okay. So just minutes after leaving his
house, right?

A. Yes. I don't recall the exact time I left the
house.

30 Q. Well, we know what time you left the house
because your message when you say you just left, was that 9:49
p.m.?

A. Yes.

Q. Okay. Okay. In fact, you would agree with me that your bigger concern, at that point in time, was the fact that you were concerned that he had a video of you. Do you agree with that?

A. I don't know if that was my biggest concern, but it was a concern, yes.

Q. Okay. Okay. You recall that message from [REDACTED] just before the date, where you told her you were - just 10 hours before meeting Jack - where you're going to go on a date with a YouTuber and she says, "Oh my God, is he going to film it?" and your response was, "Oh my God, I would die". You recall that?

A. Yes.

Q. Then you agree with me, right, that if you're concerned about any video that he has, the video that he would have is of you performing oral sex on him, right?

A. Yes.

Q. That's not a good video for him to have, 20 right?

A. Yes.

Q. Okay. And we heard about how you were, you know, you had a bit of anxiety, right? Before the date, right?

A. Yes.

Q. Okay. And he, at this point, I mean we covered it when you first started - when I first started asking you questions, but at this point, he basically unceremoniously told you, get out of my house, I've got an early morning, right?

A. Yes.

Q. Okay. And at that point, that is not a nice 30 thing for him to have done, right?

A. Correct.

Q. And you're upset about that, right?

A. I was upset about the assault, not about him asking me to leave.

Q. Oh, so you didn't care about him wanting you
5 to leave?

A. No, I wanted to leave at that point.

Q. No, no, no. You didn't care about the fact that he told you, oh, you should go because I have an early morning. That didn't affect you or bother you at all?

10 A. I agree that it maybe wasn't the most polite thing to say, but I didn't take offence by it.

Q. You didn't take offence by it?

A. No.

15 Q. Okay. All right. But if you're making - assessing the situation, he basically kicked you out of the house, right? And you think that he might now have a video of you, which is not a good video for him to have, right?

A. Correct.

20 Q. Okay. So your anxiety now is at a very high level, right?

A. Yes.

25 Q. Okay. In fact, him having that kind of a video with you was of such a concern to you at that time, that even though, as your evidence was, Jack had said "No worries", right?

A. Yes.

Q. And even though he assured you that he no longer had anything or didn't take anything, right?

A. Yes.

30 Q. Okay. You were still anxious about the fact that he could have lied about that, right?

A. Yes.

Q. And, in fact, you messaged C [REDACTED] and N [REDACTED] saying, "But he could be lying". Right?

A. I don't recall sending that text message, but I very much could have, yes.

5 Q. Okay. Okay. All right, let's go to page 56, okay, and that's you messaging C [REDACTED] and N [REDACTED], and you're saying, "And if he had any videos, and he said he didn't, but he could have lied". And that's at 9:53, correct?

A. Yes.

10 Q. And C [REDACTED] responds, "What the fuck", right?

A. Yes.

Q. And you say, "And then he just turned me over and just did it". You say, "What the fuck is wrong with him?" And then you say, "And then told me to leave", right?

15 A. Yes.

Q. Okay. So even minutes after leaving, right, that exchange of messages, you'll agree with me, shows you that you were upset about the fact that he told you to leave, right?

A. I was - it was an impolite thing to do, so...

20 Q. Okay.

A. ...yes.

Q. So, I'm going to show you now, in fact, when you told my friend that the people that you talked to about this being, C [REDACTED], N [REDACTED], your mom and her wife, and then your 25 stepmom and your dad, okay, that those are the people that you told, right, in the following few days after this incident, right?

A. Yes.

Q. You would agree with me that that's not true, 30 right?

A. Yes, I did send an email to my therapist as well.

Q. Okay. so you talked to your therapist about it as well, right?

A. Yes.

Q. Okay. And you also talked to a gentleman 5 named A [REDACTED] as well, correct?

A. I don't recall.

Q. You don't recall?

A. No.

Q. Okay. All right. Can we go to the bottom of 10 page 101? Okay, oh, just a little bit up. All right. So that's an email that you sent to M [REDACTED] and we can both agree that that's your therapist who you emailed, right?

A. Yes.

Q. And that's just a couple of hours after you'd 15 left Mr. Densmore's home, right?

A. Yes.

Q. And the subject is, "Something happened", right?

A. Yes.

Q. Okay. It's a quite a bit of a lengthy email, 20 but let's scroll down. And starting from the - no, no, go - next page, sorry. Yeah. So now we're on page 102. And then three lines, four lines up from "confused". And what about - right there - no, more. No. Okay. And the last thing you say 25 to her in that email is, "And what about" - sorry - you're asking her a bunch of questions, "am I being dramatic?", "Am I just making this all up?" "And what about if he actually took a video? If he did and that got out, that could ruin my entire life." That's what you wrote to her?

A. Yes.

Q. Okay. Because that's what you were thinking 30 about moments after, a couple of hours after this encounter with

Mr. Densmore, right?

A. In addition to other things.

Q. Sure, but that was a major concern for you, right?

5 A. Yes.

Q. Okay, and I'm going to suggest to you, that it was more of a concern to you then even proceeding with criminal charges against Jack. Would you agree with that?

A. No.

10 Q. Okay. In fact, I'm going to suggest to you that you were unsure if you wanted to press charges but you were deeply concerned if he had any videos or photos of you. Would you agree with that?

15 A. Directly after it happened, yes, that's how I felt.

Q. Okay, I'm saying few days after, so five, six seven, eight even?

A. Then, no, it became clear to me that I wanted to pursue the possibility of pressing charges.

20 Q. No, no, no, not the possibility, ma'am, not the - okay, the possibility of pursuing charges is now - when does that happen?

25 A. When I decided to go to the sexual assault nurse, I did so because I wanted there to be evidence of the assaults if I were to have pressed charges.

Q. Okay, and that was on August the 6th, right?

A. Yes.

30 Q. Okay. But even at August the 7th, I'm going to suggest to you that you were still unsure if you wanted to press charges, but you're deeply concerned if he has any photos or videos of you, correct?

A. I was still considering whether I wanted to

press charges, yes.

Q. Okay. So again, you would agree, right, that pressing charges and moving forward with criminal charges against my client was a secondary issue to your deep concern about whether he still had videos or photos of you at that point in time, correct?

A. I find it difficult to judge which was more of a concern for me as they were both equally concerning.

Q. Okay. So you would agree with me though, if 10 you had said that you're unsure if you want to press charges, that you're just unsure, right?

A. Yes.

Q. But that if you're concerned, that if you said, I'm concerned if he has photos or videos of me, that means 15 you're concerned, right?

A. Yes.

Q. And being concerned is more serious than being unsure, correct?

A. I don't think that's a simple yes or no 20 answer, in my opinion. May I explain further?

Q. Well, I want to first understand, if we're having trouble understanding words, then we have a bigger, more serious issue here. The question was, if you are unsure about something or concerned about something, which one, to you, is 25 more important?

A. I just find that it's kind of comparing apples and oranges, that question.

Q. Oh, Okay. Okay. Maybe we'll let the judge decide. Let's go to page 128, please. Okay, a little bit up, a 30 little bit up, more, more, more, more. Okay, all the way up to the top, sorry, 127. This is the online police report, correct?

A. Yes.

Q. And this was something that you filled out online on August the 7th at 5:01 p.m., correct? It's right there, "date", "time reported" at the corner there?

A. Yes, I do see that.

5 Q. Okay. So this is two days after this incident with Mr. Densmore, right?

A. Yes.

Q. Okay. Scroll down, please. All the way down. More. The last line, after you've given them your complaint 10 about what happened, the last thing you say is, "I am unsure if I want to press charges at this time but I am deeply concerned as to if he has any videos/photos of me". You see that there?

A. I do.

Q. Have I read it accurately?

15 A. Yes.

Q. Okay. Because that's what you wrote, right?

A. Yes.

Q. Okay. So, you're unsure if you want to press charges at this time, right?

20 A. Yes.

Q. But at this time, you're deeply concerned, if he has any photos or videos of you, right?

A. Yes.

Q. Okay.

25 MR. SOSA: Your Honour....

MR. FAHMY: Oh. Well....

30 MR. SOSA: I'm not objecting, I'm just simply sharing with the court that I'm seated directly beside Mr. Fahmy and it's very loud directly on my ears.

THE COURT: Continue. Just lower the volume, please.

MR. FAHMY: It's a big desk Your Honour. Shove over.

THE COURT: It is getting loud to [indiscernible]. So, just - let's just be mindful of...

5 MR. FAHMY: Okay.

THE COURT: ...tone and volume, and proceed, please. Thank you.

10 MR. FAHMY: Thank you, Your Honour. I'm sorry. Did she answer the question before my friend rose, I'm....

15 THE COURT: Why don't you ask it again?

MR. FAHMY: Sure.

MR. FAHMY: Q. At this time, you're deeply concerned if he has any photos or videos of you, correct?

15 A. Yes.

Q. Okay. Let's go to page 43, please. A little bit more down. More down, more down, more down. Sorry, I - right there. Okay, and that's a message exchange between you and A [REDACTED], right?

20 A. Yes.

Q. Okay. And you're - you agree with me that these messages are at August the 7th at 6:27 p.m., correct?

A. Yes.

25 Q. So this is just about an hour and a half after you filled your online police report, right?

A. Yes.

Q. Okay. And he asks you, "Was it Jack Denmo", correct?

A. Yes.

30 Q. And your response is, "And IDK", which is I don't know, right?

A. Yes.

Q. "And IDK if I will press charges, but he also may have taken videos or photos of me without me consent". My consent, right...

A. Yes.

5 Q. ...is what you meant to say? "And that's something I want looked into", right?

A. Yes.

10 Q. Okay. In fact, if we can go back to - well, the option - the option of pursuing criminal charges on Jack was something that you wanted on the table, when you saw the sexual assault nurse the following day, right?

A. Yes.

15 Q. And it was your understanding from her, that they would keep this evidence for about six months or something like that?

A. I forgot the exact timeframe, but there was a period of time they would keep the evidence, yes.

20 Q. Okay. And to your understanding then, that would have been your clock for them to keep the evidence in order to bring it to the police's attention?

A. Yes.

25 Q. Okay. And I'm going to suggest to you that before the following day, on August the 6th at 10:19 a.m., when [REDACTED] emails you that - and you'll agree that at 10:19 a.m. on August the 6th, that's before you go to the hospital because you went that evening, right?

A. Yes.

30 Q. Okay. So, it's actually [REDACTED] that tells you to go to the hospital, correct?

A. She suggests that if I feel comfortable, I have the choice to go to the hospital.

Q. Okay. And it's at that point that she tells

[REDACTED] you why to go to the hospital because they can keep the evidence in case you someday decide you want to press charges. Do you agree with that?

A. I - she did say that, I believe, yes.

5 Q. Yeah. So it's actually her suggestion in the morning to do that, not the sexual assault nurse, right?

A. Sorry, it was her suggestion to go to the police?

10 Q. No, to go to the hospital so that they can keep the evidence in case you wanted to go to the police. That was [REDACTED]'s suggestion that morning, not the nurses that evening, correct?

A. She did suggest that, but I had discussed going to the hospital already with my parents.

15 Q. Okay. Actually, I'm going to suggest to you that you hadn't done that yet, that it's actually [REDACTED] telling you at 10:19 a.m., "I know you feel bad but would you be able to tell one of your parents?" and then you respond at 12:18, "I don't know what to do. I want to tell my parents but 20 at the same time, I don't want to freak them out or worry them". Do you agree that that's actually what happened?

A. You're - or sorry - I agree. I must have been mistaken.

25 Q. Okay. So, at 10:19, the following morning, [REDACTED] is the one who's telling you, asking you, "[REDACTED], would you be willing to go to the hospital and tell them what happened?", right?

A. Yes.

30 Q. And she's the one that's telling you that they can keep the evidence in case someday you decide you want to press charges, right?

A. Yes.

Q. And she's also the one that says, "I know you feel bad, but would you be able to tell one of your parents you could use their support and help right now?", right?

A. Yes.

5 Q. And you respond a few hours later, still haven't spoken to your parents, right?

A. Yes.

Q. Okay. And go to page 101, please, at the August the 5th email. All right, and this is the email that you 10 send to [REDACTED] at 11:44 p.m., right?

A. Yes.

15 Q. Do you want to see that, actually? Actually, let me ask you some – let me ask you some questions first. You would agree that before you even sent her this email, that you debated whether to send it or not, correct?

A. Yes, I did.

Q. Okay. And I'm going to suggest to you that you had that debate by yourself, right?

A. Yes.

20 Q. Okay. And as part of that internal debate within yourself about why you would or would not send this, is because maybe you were being dramatic or stupid or overthinking or reading into something that didn't happen. Do you agree with that?

25 A. Agree that that's why I was debating to send the email?

Q. Yes.

30 A. I felt that way in the moment, I believe, because it was easier to convince myself that nothing happened than to accept the fact that I had been assaulted.

Q. Okay. That may have been one of your considerations, right? But another one of your considerations

was that maybe you were being dramatic, right?

A. I - yes.

Q. Okay. Maybe you were overthinking, right?

A. Yes.

5 Q. Or maybe you were reading into something that didn't happen, right?

A. Yes.

10 Q. And all of these things that we're talking about are in relation to what had just happened with Jack hours earlier, right?

A. Yes.

15 Q. In fact, besides all of those reasons, and the reason you stated, which was maybe it was easier to forget than to acknowledge. But another reason you'd mentioned about this internal debate of yours is that you brought this whole thing on yourself, right?

A. Yes.

Q. So there was some self-blame as well, right?

A. Yes.

20 Q. Okay. But - and then even hours after, just hours after that, and even with your messages to C [REDACTED] and N [REDACTED], there's the self-reflection of how the events went down and what you could have done differently, right?

A. Yes.

25 Q. You could have, you had this debate about what you could have said, right?

A. Yes.

Q. What you could have done, right?

A. Yes.

30 Q. How you, even the things that you did do, you could have done them differently, right?

A. Yes.

Q. Okay. Because you're making an assessment about what's going on and what just happened and what you could have done differently, right?

A. Yes. I was thinking with hindsight.

5 Q. Yes. With hindsight, okay? But even with that hindsight, you ask yourself whether you're being dramatic, right?

A. Yes.

10 Q. And whether, and I'm going to use exact words here, and if you don't agree, I'll show them to you, "Am I just making this all up", right?

A. Yes.

15 Q. Okay. And at another part in your correspondence with [REDACTED], you'd said that one of the reasons why, in your mind, you may have made this all up is because it was a means of seeking attention. Do you agree with that?

A. I can't recall if I said that in an email or not.

20 Q. Okay. But if you had - or in one of your sessions, would you agree with that?

A. I don't agree because I don't remember.

25 Q. Okay. All right. And even moments or a couple of hours after this interaction with Jack, you're even questioning the events by asking, "What just happened? I'm lost and confused", right?

A. Yes.

Q. Okay. And even at that moment, you're telling her because you are experiencing feelings of being worthless, feeling used, like a piece of garbage, right?

30 A. Yes.

Q. And you feel like a notch in his bedpost, right?

A. Yes.

Q. Okay. And the reason why you feel like a notch in his bedpost, I'm going to suggest to you, is because you'd just had sex with him and he told you to get out of his house basically, right? And that there was going to be no kind of follow up or second date, for example, right?

A. No.

Q. No? So why did you say you feel like a - wait, when you say notch in his bedpost, perhaps we should try to understand what we mean by that, okay? When you say a notch on his bedpost, you're referring to a guy with his bed that has, you know, a headboard, right?

A. Yes.

Q. And like, there's like the notches or like marks on the wood of that headboard, right?

A. Yes.

Q. That correspond to the number of women that this person has slept with, correct?

A. Yes.

Q. Okay. So you're describing that feeling by saying that that's how - you're describing how you're feeling by saying that you feel like you're a notch on his bedpost, right?

A. Yes.

Q. Like you're a conquest of his, right?

A. Yes.

Q. Okay. And certainly you didn't want to feel that way, right?

A. Yes.

Q. Okay. And I'm going to suggest to you again that the reason why you felt like that, and remember, we talked about this at the very beginning, is because right after you had sex, you came back to the bedroom, your evidence was that he

[REDACTED] just told you to, he has an early morning and it's, you got to, you got to go, right?

A. Well, that was impolite of him to say. I was already upset, prior to him saying that.

5 Q. Okay.

A. So when I say I felt like a notch in the bedpost, I mean how he treated me during the sexual encounters.

Q. So notch on the bedpost no longer means the number of women that somebody had slept with?

10 A. It felt like I was just another person that he had slept with, yes.

Q. Okay. But not the way he slept with you, it's just that he was - you were another person that he slept with, right?

15 A. Well, the way that he treated me made me feel like I wasn't respected...

Q. Yes.

A. ...as a woman.

20 Q. Yes, and you said that in your evidence that that's how you felt after he told you to leave after the sex. Do you deny that now?

A. No.

25 Q. Okay. All right. So after [REDACTED] - so you write that to [REDACTED] at 11:44, even hours after, not only are you unsure about whether you want to press charges, but you're now even unsure about whether you're making this up, reading into something that didn't happen, or that you're being dramatic, or that you're overthinking. Do you agree with that?

A. Yes.

30 Q. Okay. And when [REDACTED] emails you back that following morning, she says....

MR. FAHMY: Actually, let's pull that up, it's

page 101 at the top there please. One-o-one, if you can scroll down. Right there - no, no, no, right there.

MR. FAHMY: Q. So [REDACTED] is writing to you, 5 " [REDACTED], would you be willing to go to the hospital, tell them what happened? They can keep what evidence there is, in case you someday decide you want to press charges, but there will be no pressure to do so unless you want to". And then she says to you, "This was an assault, [REDACTED]. Nothing that you did or wore, 10 gives him permission to do what he did". You - I've read that correctly?

A. Yes.

Q. And that - those were her words to you, right?

A. Yes.

15 Q. She's telling you, this was an assault, right?

A. In her opinion, yes.

Q. Yes, in her opinion.

A. Yes.

Q. But she's giving you her opinion...

20 A. Yes.

Q. ...right? And she then confirms to you that you did not give consent, right?

A. Yes.

Q. Nor were you asked for your consent, right?

25 A. Yes.

Q. And then she says about telling one of your parents, right?

A. Yes.

MR. FAHMY: If we just go up a little bit.

30 MR. FAHMY: Right? You're responding to her at the beginning about, you don't know if you want to tell your parents, you don't want to freak them out. You know, you have

other concerns. But then you say, "I'm not really sure what to do, I just want to forget about the whole thing", right?

A. Yes.

Q. So even after she suggested to you to go to
5 the hospital, right?

A. Yes.

Q. To get the evidence in, right?

A. Yes.

Q. Okay. And she's confirmed to you that a
10 criminal act has happened against you, right?

A. Sorry, could you just go over the times? I'm not sure if this is the email I sent in response to her telling me it was an assault or this is what I said before now.

Q. Well, this is August the 6th at 12:18 p.m.

15 A. Okay.

Q. This is two hours after.

A. Okay.

Q. She sent her email at 10:19 a.m.

A. Okay.

20 Q. Okay. So the question remains, right, when you're saying, "I'm not really sure what to do", that's your very first response to her email that had suggested to you to go to the hospital, right?

A. Yes.

25 Q. Collect the evidence?

A. Yes.

Q. In case you want to go to the police, right?

A. Yes.

30 Q. Okay, and - oh, and she's confirmed to you that you've just been assaulted so criminal act has occurred against you, right?

A. Yes.

Q. And even though those four things, your response to her is that you're not really sure what to do, right?

A. Yes.

5 Q. Okay. So even at that point, you're not even sure if you want to go to the hospital, right?

A. Yes.

Q. You don't know if you want to have the evidence collected and kept, right?

10 A. Yes.

Q. You don't know if you want the possibility of pursuing charges, right?

A. I knew I had the possibility of pursuing that.

15 Q. That's not the question, ma'am. The question was that you weren't sure, not really sure what to do, and her response to the things that you could be doing, right?

A. Yes.

20 Q. And, again, that even though she's confirmed to you, in her opinion, that a criminal offence has happened, you're still not really sure what to do, right?

A. Yes.

25 Q. Okay. And – and then that's where the debate about you wanting to forget about the whole thing, which in your mind, is that if you don't talk about it, then it didn't really happen, right?

A. Yes.

30 Q. Okay. But even though, while you're talking about it, you're still concerned about whether it really happened, right?

A. Yes

Q. Okay. And, next page, your response is, "I don't think I want to press charges". Have I read that

correctly?

A. Yes.

Q. And because, "What if I am just blowing this whole thing out of proportion and just being dramatic", right?

5 A. Yes.

Q. So that debate is still happening. It happened before when you sent her your first email, right?

A. Yes.

Q. She's responded to you saying, no, no, no,
10 this is an assault, right?

A. Yes.

Q. You have the possibility of pursuing charges,
right?

A. Yes.

15 Q. And your response to that that is still, I don't think I want to press charges, because before you're still not even sure about what to do. But the reason why you don't want to press charges is because you're concerned that you're blowing this whole thing out of proportion, right?

20 A. Yes.

Q. And that you might just and – and that you're just being dramatic, right?

A. Yes.

Q. And then you go back to the other reason,
25 which is, maybe it's actually my fault, right?

A. Yes.

Q. And then you go into the things that you could have done differently, right? But then, again, you confirm to her twice now, "So I don't want to press charges or anything
30 because part of me feels like there are no boundaries to do that". Do you see that there?

A. Yes.

Q. Have I read that correctly?

A. Yes.

Q. "It's just me in my head being dramatic", right?

5 A. Yes.

Q. Okay. Because you knew, even at that time, that there are no boundaries. There's no way that you could do something like that in terms of pressing charges because you're blowing it out of proportion and that you're being dramatic, right?

10

A. I'm - I'm not sure what I meant by no boundaries.

Q. You - you don't know what you mean by no boundaries?

15 A. No.

Q. Boundaries means borders, right?

A. Yes.

Q. Confines?

A. Yes.

20 Q. Okay. So I'm going to suggest to you, if - you agree with that definition?

A. Yes.

Q. Okay. So you're saying there's no boundaries. There's no way that I could do something like that because that 25 would be outside of those boundaries because part of you feels that there's no boundaries to do that, which means charges, right?

A. I - I don't know why - I don't know my - why I used that word in the context of that sentence. I'm not sure 30 what I was trying to say.

Q. Let's work it together, okay? Boundaries, you would agree, means a confine or a border, right?

A. I agree.

Q. Okay. And I'm going to suggest to you, in this statement, right, that there is charges within boundaries and outside the boundaries where there would be no way for you 5 to do something like that, right?

A. Yes.

Q. Okay. And now what you're saying is that there's - because of what's happened and what you're thinking and all the reasons why, right, is that you've already confirmed 10 twice that you don't want to press charges and for the second reason is that part of you feels like it's not within the boundaries of charging somebody that you could do something like that to him, right?

A. Okay, yes.

15 Q. Okay. Because at the end of the day - all right, let's move on.

A. Your Honour, may I please have a break? A short one?

THE COURT: Certainly. Let's take five minutes.

20 Good?

A. Yes, thank you.

THE COURT: Five minutes.

R E C E S S

25

U P O N R E S U M I N G:

MR. FAHMY: Q. In terms of your mother, you had expressed to [REDACTED] that out of everyone, you were worried 30 that she will be very judgmental, right?

A. Yes.

Q. And telling you that you need to press charges

immediately, right?

A. Yes.

Q. Okay. And when you respond to [REDACTED] that day at 2:20, you've now talked to [REDACTED], your stepmom, and you've 5 made a plan to go to the hospital, right?

A. Yes.

Q. Okay. And I'm going to suggest to you that you also tell her that you, "...feel guilty that I inflicted this anger and hurt onto my parents and I feel like I'm just 10 being dramatic and seeking attention and making a big deal out of nothing, and I'm just wasting everyone's time and energy".

Do you recall saying that to - to [REDACTED]?

A. I don't recall saying it.

Q. Okay. Not in the email?

15 A. It's possible but I don't...

Q. Okay.

A. ...recall.

Q. I'll show you here.

MR. FAHMY: Page 100, please, at the bottom.

20 Right there. Keep going. Okay and then - okay.

MR. FAHMY: Q. Okay. Just, you see the - well - okay. Can you read out the highlighted portion?

25 A. "I feel guilty that I inflicted this anger and hurt onto my parents and I feel like I'm being dramatic and seeking attention and making a big deal out of nothing, and I'm just wasting everyone's time and energy".

Q. Okay.

30 MR. FAHMY: And can you just scroll up a little bit? Up, up, up.

MR. FAHMY: Q. Okay, and that's at August the 6th at 2:20, right?

A. Yes.

Q. Okay. Okay. And now we've added another reason which is that you're seeking attention, right?

A. Yes.

Q. Okay, and you're being honest here, right?

5 A. Yes.

Q. Okay. And making a big deal out of nothing, right?

A. Yes.

10 Q. Okay. And that you're wasting everyone's time and energy, right?

A. Yes.

Q. And the reason why it's a waste is because you could be making it all up, right?

15 A. Yes, I'm causing them emotions, that if this didn't happen they wouldn't be feeling.

Q. Say that again?

A. My - my parents, I....

Q. Okay.

20 A. They're - I - like, I'm wasting their time and energy.

Q. Well, not their time, everyone's time and energy?

25 A. Yeah. That's what I meant when I said everyone, like my parents, everyone I've told. I'm wasting their emotional effort, if this didn't happen.

Q. No, no. That - that - the way that you read it was, "I feel guilty that I inflicted this anger and hurt onto my parents", right?

A. Yes.

30 Q. And, "I feel like I'm just being dramatic", right?

A. Yes.

Q. "And seeking attention", right?

A. Yes.

Q. That's still talking about yourself?

A. Yes.

5 Q. "And making a big deal out of nothing", right?

A. Yes.

Q. That's still talking about yourself?

A. Yes.

10 Q. And I feel like - oh sorry - "And am just
wasting everyone's time and energy", right?

A. Yes.

Q. That's how you feel?

A. Yes.

15 Q. Okay. And then you also say, "I feel stupid
and like a bad person because of" - but I'm going to suggest you
meant to say if - "I really wanted him to stop, I could have
just done that, but I didn't". Do you agree that you wrote
that?

A. Yes.

20 Q. Okay. And then, and the reason why you wrote
that is because you knew that you could have made him stop,
right?

25 A. I believe that I was thinking of, with the
knowledge, the hindsight of what had happened, I was trying to
think of everything else I could have done to preventedsic it,
yes.

30 Q. No. Ma'am, your words are - the reason why
you feel stupid, and the reason why you feel like you're a bad
person is because, "If I really wanted him to stop, I could have
just done that, but I didn't", which means that you're talking
about what just happened, right?

A. I did say that, yes.

Q. Okay. But that's what you meant, right?

A. In that moment, yes.

Q. Okay. So, the following day, not even 24 hours, you've acknowledged to yourself and to your therapist 5 that if you really wanted him to stop, you could have just done that, but you didn't, right?

A. That was the thought I was having, yes.

Q. Not a thought. These are words that you've expressed to [REDACTED] ?

10 A. Yes.

Q. Is - okay. And that's because they're true, that if you really wanted him to stop, you could have just done that, right?

15 A. At the time I said that, I believe I was saying that because I was in denial of what had happened.

Q. Well, that's not, that's a reason...

A. Yes.

20 Q. ...but not the only reason, right? There was several other reasons including that you're being dramatic and that you're making it all up amongst others, right?

A. Yes.

Q. That you're overthinking it, right?

A. Yes.

25 Q. Okay. So let's be honest with each other here, okay? Being in denial, I - I agree with you, you've written as a reason, but when it comes to the debate that you're having, that internal debate, your conscience is what's happening on the inside, that that's just a reason of several reasons, right?

30 A. Yes.

Q. Okay. And when you say, if you really wanted him to stop, I could have just done that, but I didn't, it's

because it's true. You could have really made him stop, right?

A. I could have done something. I don't know what that thing is, but....

Q. That thing is stop. Let's - why - why are we 5 doing this, ma'am? You said you could've made him stop. Not you could've made him do something else. You could've made him stop is what you've said, because it's true. When - right?

A. I could've made him stop, but I don't know how I would've done that.

10 Q. Your words are, "I could have just done that". Does it matter how you knew that you could've done it? And in fact, you go on to say, "But I didn't", right?

A. Yes.

15 Q. Okay. So you agree with me, it's not about, you didn't know how. You knew how to make him stop, but you didn't, right?

A. In hindsight, I do see ways I could've made him stop. But in the time, I wasn't thinking that.

20 Q. This isn't about hindsight. Nowhere in there does it say that you're thinking about it in hindsight, about what you could've done. In hindsight, what you're saying is, I could have, if I really wanted him to stop, if you really wanted him to, I could've just done that. I could've done that, but I didn't. There was nothing preventing you, whether in ideas, 25 whether in force, you say plainly and clearly, at that time, "If I really wanted him to stop, I could've just done that, but I didn't", right?

A. Yes.

30 Q. Okay. And that's because you could have made him stop. Because why else would you write that?

A. Yes.

MR. SOSA: Your Honour, I just observed the

witness, and I wonder if perhaps this could be a time to, we can break for lunch and continue.

THE COURT: I might just - let's ask. Are you okay to continue going or do you want to take an earlier break, right now and come back.

5 A. I think I'd like to take an earlier break.

THE COURT: Okay, let's do that.

R E C E S S

10

U P O N R E S U M I N G:

15 MR. FAHMY: Q. Okay. So you messaged - or you emailed [REDACTED] at 2:20, and then you emailed her again at 3:41. And you, at that point, I'm going to suggest to you, this is August the 6th - sorry - we're still in August the 6th, and you had that conversation with your mom and C [REDACTED]. Do you recall having the conversation with your mom and C [REDACTED] the following day?

20

A. Yes.

Q. They were, I guess, travelling in New Brunswick at the time.

A. Yes.

25 Q. Okay. So this was a conversation over video chat, I'm assuming?

A. I can't remember if it was video chat or a phone call but, yes.

Q. Okay. But there was - it wasn't over text, it was either by video or by audio, right?

30

A. Yes.

Q. Okay. And in that conversation, they called Jack an asshole, right?

A. I don't remember.

Q. They didn't....

A. They could have.

Q. You don't - you don't recall they said to you
5 that he is an asshole?

A. I don't remember, no.

Q. Okay. Do you recall writing that to [REDACTED]
that that's what they had said about him?

A. I don't remember.

10 Q. Okay. Well, let's talk about that because, I
mean, that conversation did not go well for you at that time,
right?

A. With my mom and C [REDACTED]?

Q. Yes?

15 A. Yes.

Q. Okay. And it was difficult for you to have
that conversation with them?

A. Yes.

20 Q. And the reason for that is because they had
reinforced to you that you were, you bore some responsibility
for what happened the - the previous night, right?

A. Yes.

Q. And that was after you had told them what had
happened, right?

25 A. Yes.

Q. Okay. And, I'm sorry you had to go through
that, by the way.

A. Thank you.

30 Q. Yeah. But I'm going to also suggest to you
that on top of making you feel bad, they also put a pretty
daunting responsibility on your shoulders when they had
insinuated to you that you need to press charges against Jack,

because otherwise, if you don't, you are letting him do that to other girls, right?

A. Yes.

Q. That wasn't very fair of them to do that,
5 right?

A. No.

Q. Okay. And that kind of burden that they placed on you was because of their impression of who Jack was, right?

10 A. Yes, and - yes.

Q. Okay. And, you know, that's definitely something that you continued to talk about with [REDACTED], right?

A. Yes.

15 Q. And along with a bunch of other reasons, that conversation reinforced a belief that you already had that this was your fault, right?

A. Yes.

Q. And that you had done something wrong...

A. Yes.

20 Q. ...right? And I'm going to suggest to you that you wrote to [REDACTED], I quote, with now - so you'd said to [REDACTED] that your mom and C [REDACTED], and it's mostly your mom, not C [REDACTED], right? Or is it both?

A. It was both.

25 Q. Okay. So you'd written to [REDACTED], I quote - what - you're repeating what they're telling you. "I need to press charges because otherwise if I don't, I'm letting him do that to other girls", end quote. Do you agree that that's what you wrote?

30 A. I don't remember writing it, but if you're reading it...

Q. Okay. Okay.

A. ...I believe it.

Q. I'll show you. And then at the end, after you've said, "They basically just reinforced this belief I already have, that it's all my fault, I did something wrong, with now putting on top if it", I'm going to suggest you meant to say on top of it, right?

A. I assume so.

Q. "...on top of it, me now feeling guilty that if I don't take any legal type of action, I'm...", you put "...not responsible". "I'm not responsible for him doing this to other girls". But I'm going to suggest that what you meant to say was that I'm responsible for him doing this to other girls, right?

A. Yes.

Q. So let me show you that first. It's at page 104, please.

MR. FAHMY: It's just, yeah, that just if we can [indiscernible] zoom in so she can see the second, you know, there you go.

MR. FAHMY: Q. So you see there the third line down and "How I should know better by now and I need to press charges because otherwise if I don't, I'm letting him do that to other girls". You see that?

A. Yes.

Q. Have I read it correctly?

A. Yes.

Q. And then at the end, the last paragraph is, "They basically just reinforced disbelief I already have that it's all my fault and I did something wrong, with now putting on...", I'm going to say on top of it, right?

A. Yes.

Q. On "...top of it, me now feeling guilty that

[REDACTED] if I don't take any legal type of action, I'm responsible for him doing this to other girls". You'd agree that that's the more accurate way of saying it, right?

A. Yes.

5 Q. Okay. So at that point, right, you're expressing to [REDACTED] that you have real feelings of guilt if you don't take legal action, right?

A. That what my mom said...

Q. Well....

10 A. ...had made me feel guilty.

Q. No, no. Your mom said that at the top. You're - when you're looking at that email, you're saying your mom said, "I need to press charges because otherwise if I don't, I'm letting him do that to other girls", right?

15 A. Yes.

Q. Okay, so that's what she says.

A. Yes. [REDACTED]

Q. That's what you're telling [REDACTED] she told me, right?

20 A. Yes.

Q. Okay. Then at the bottom, right, you're talking about yourself, right?

A. Yes.

25 Q. And you're saying, "They basically just reinforced this belief I already have...", right?

A. Yes.

Q. "...that it's all my fault.", right?

A. Yes.

Q. "I did something wrong...", right?

30 A. Yes.

Q. Okay. "...with now putting on top of those feelings...", your feelings, right?

A. Yes.

Q. "...me now feeling guilty that if I don't take any legal type of action, I'm responsible for him doing this to other girls", right?

5 A. Yes.

Q. So now you agree that at this point, you have, you, feelings of guilt that they put on you, but you have them now, if you don't take legal action, right?

A. Yes.

10 Q. Okay. I'm sorry about that. I truly am.

Okay?

A. Thank you.

15 Q. It wasn't just your mom and C [REDACTED], right, about putting that pressure or giving their opinion that you need to press charges, right?

A. I don't remember.

Q. Okay. I mean, you really struggled with that, right?

A. With my mom and C [REDACTED]'s comment?

20 Q. No. With pressing charges, making a criminal case against Jack, right?

A. I thought about the decision very seriously, yes.

25 Q. Well it's not just that you thought about that decision, you struggled with it because you struggled whether to do it or not for all the various reasons we discussed earlier, right?

A. It was a difficult decision, yes.

30 Q. But for all the reasons we had discussed earlier, right?

A. Yes.

Q. And now we're adding another reason, which is

the feeling of guilt that you've already expressed you had at this point, right?

A. Yes.

Q. Okay. And we – we kind of showed you a message from him before but, A [REDACTED], who is A [REDACTED]? 

A. He was a co-worker at the time.

Q. Okay. And that's the way you'd describe your relationship with A [REDACTED]?

A. We were friends, yes, but primarily we just worked together.

Q. Okay. Was he a close friend?

A. Not super close, but he was close – the closest person I had at work, yes.

Q. Closest person you had. And how long have you had you known him at this point, in August of 2020?

A. Two months.

Q. Okay. All right. So, page 40, please. All right, and the first message that's not blocked out is from you to A [REDACTED] that says, "I would tell you but I don't know, once I tell, you can't like unknow. I'm not exactly sure what to say because I may press charges", and this is sent at August the 7th at just before 6:00 p.m., 5:58, right?

A. Yes.

Q. Okay. even though you'd already sent your online report to the police at 5:01, right, that same day?

A. Yes.

Q. Okay. So even after you sent your online report, you're telling A [REDACTED], I'm not sure if I'm going to press charges, right?

A. Yes.

Q. Okay. "I may press charges, I don't know though". And then he asks you, "Was it something with a boy?"

"Yes". And then he says, "Well, whatever it is, I'd press charges", right?

A. Yes.

Q. So - and that's at August the 7th at now 6:00
5 o'clock, right?

A. Yes.

Q. Okay. So now you've got A [REDACTED] telling you
to do that, right?

A. Yes.

10 Q. And now your mom and C [REDACTED] ...

A. Yes.

Q. ...right? And then on page 43, at the bottom
I think we did that message but I just want to go to it, go down
to the bottom please. Okay, he asks you, "Was it Jack Denmo?"
15 You say, "Yes" but before you say yes, again, you say, "I don't
know if I will press charges. But he also may have taken videos
or photos of me without my consent", right?

A. Yes.

20 Q. "And that's something I want looked into",
right?

A. Yes.

Q. So, again, at this time, right, you
definitely, you - you - with the police, right, you want them to
look into the photos and videos, right?

25 A. Yes.

Q. Okay. But then criminal charges, you're not
sure, right?

A. Yes, I wasn't sure if it would - if they would
even be able to press charges.

30 Q. You weren't sure if they would be even able to
press charges?

A. Well, when you fill out the police report and

[give your statement...]

Q. Mm-hmm.

A. ...after hearing the statement, they file the, or file the charges.

5 Q. That's unusual then, ma'am, because in your online report, that's exactly what you said to the police. Do you want to see it again?

A. Sorry, what did I say to the police?

Q. In your online report...

10 A. Yes.

Q. ...to the police, you say, "I don't know if I want to press charges"?

A. Yes.

15 Q. So, even at that point, an hour ago, you're even telling the police I don't want to press charges...

A. Yes.

Q. ...but I want the photos looked into?

A. I didn't know I was saying no to pressing charges.

20 Q. Nobody said you were saying no to pressing charges. But you haven't - you're - but you haven't authorized the - you're not saying to the police, I want to press charges?

A. Yes. I haven't said that.

25 Q. Sure. I - I don't want I don't want to press charges, right, but, because I'm not sure yet, right?

A. Yes.

Q. But I want you to look into the photos and videos, right?

A. Yes.

30 Q. You say the same thing to A [REDACTED] ?

A. Yes.

Q. Okay. And again, don't make me repeat it, but

I will, all the reasons that you mentioned to [REDACTED], right?

A. It....

Q. We can go into them.

A. No, I understand what you're referring to. I
5 just didn't understand what that was in reference to.

Q. Okay. Now, when I'm mentioning those reasons that you mentioned to [REDACTED], I'm now adding the feeling of guilt that you also have now, okay? You nodded your head?

A. Yes.

10 Q. Okay.

MR. FAHMY: Sorry page 44, the bottom. Right there, okay.

15 MR. FAHMY: Q. And then you're even telling A [REDACTED] at the message there at 6:39, "It's just hard because I struggle with feeling like maybe it's my fault or I'm just being dramatic or making a big deal out of it", right, you say those things?

A. Yes.

20 Q. Or I get mad at myself and think - "I get mad at myself, at think". Anything you want to correct on that, I don't know. Does it make any sense to you? Just that you get mad at yourself, I guess?

A. Yes.

25 Q. Okay. "Think I just, just like fought back or something. I don't know, it's just a shitty situation", right?

A. Yes.

Q. Okay.

MR. FAHMY: And then at page 46. Okay.

30 MR. FAHMY: Q. "On top of that, my mom and stepmom thought it was all me making a 'bad decision' and then told [O [REDACTED] mom] O [REDACTED]'s mom", right, "who then had a talk with O [REDACTED] about all the bad decisions I'm making", right?

A. Yes.

Q. Okay. So, now you'll agree that your mom and stepmom told C [REDACTED]'s mom that you were making bad decisions, right, or that it was a bad decision, right?

5 A. I - yes.

Q. Okay. I - okay. And on August the 7th, which was a Friday, you had your, I guess, like first in-person session with [REDACTED], right?

A. I don't recall.

10 Q. Okay, your email. Okay.

MR. FAHMY: Sorry, we should go back to the - so let's go back to the emails.

15 MR. FAHMY: Q. Actually, after you'd sent that email to [REDACTED] about what your mom and C [REDACTED] had said, [REDACTED] responds on August the 6th at 7:00 p.m. and, had reinforced to you that it's not your fault and that the only person responsible for the assault quote, "is him" referring to Jack. Do you agree that she wrote something like that?

A. She may have, I don't recall.

20 Q. Okay.

MR. FAHMY: We can - page 103, please. Okay.

August the 6th. No, no, go up. Yep.

25 MR. FAHMY: Q. Second line, "Remember [REDACTED], that no matter many decisions you regret or wish you had done differently, the only person responsible for the assault is him", right?

A. Yes.

Q. I've read that accurately?

A. Yes.

30 Q. So she said that to you?

MR. FAHMY: Wait, wait, wait. That's good.

MR. FAHMY: Q. And that, "There are lots of men

[REDACTED] who would never have done what he did. He is responsible for his actions not you", right?

A. Yes.

Q. Okay. And that's because of the way that
5 you've described what happened to her, right?

A. Yes.

Q. Okay. And you haven't had your session yet because it's August the 6th, because if you go up a little bit, more, up, up, up, right there, August the 7th at 6:28,
10 you're responding to her and saying that, "We're still set to talk today at 10. See you then", right?

A. Yes.

Q. Okay. So you have your first session with
[REDACTED], right, on August the 7th at 10:00 a.m., right?

15 A. Yes.

Q. And I'm going to suggest to you that even after that session, you have a conversation with C [REDACTED], right, where, you're talking about the session that you had with [REDACTED], and you're telling her that [REDACTED] had told you to
20 write down the details, right, about what happened?

A. I remember [REDACTED] saying that. I don't remember having that conversation with C [REDACTED].

Q. Okay. Page 31, please. Okay, so you're telling C [REDACTED], "Thank you, so am I. [REDACTED] told me to write
25 statement because over time, I will forget details and then I have concrete timeline and story, which he will never have thought to have done". Have I read that correctly?

A. Yes.

Q. And when you say, "...he will never have
30 thought to have done", you're referring to Jack, right?

A. Yes.

Q. So that's what [REDACTED] is telling you, right?

Jack would never think to do something like that, right?

A. Just that she - that he probably hasn't done that.

Q. No, that's - that's not what you say.

5 A. Yes.

Q. You're saying, which, well, let's - let's maybe backtrack a little bit. "[REDACTED] told me to write a statement", right?

A. Yes.

10 Q. And you end up doing that, right?

A. Yes. Okay. And the reason why she tells you to do that is because over time you will forget the details, right?

A. Yes.

15 Q. And then that way you have a concrete timeline and story, right?

A. Yes.

Q. And Jack will never have thought to have written down a statement, right?

20 A. Yes.

Q. Which would give him a concrete timeline and story, right?

A. Yes.

25 Q. And maybe that was your suggestion. Maybe you're telling C [REDACTED], [REDACTED] told me to do this, and Jack, from your own volition, Jack would never have thought to have done that. Is that possible, or was it [REDACTED], or was it both?

A. I don't recall.

30 Q. Okay.

A. And then - and, again, this is at 2:22 p.m. on August the 7th, and then, right after you tell C [REDACTED], "Also, I'm

going to the police", okay? And I don't know if this is the fourth or fifth time now you're saying this but, "Maybe not to press charges, but I want to tell them and report it and see if they could do anything about him possibly taking a video or picture of me", right?

5 A. Yes.

Q. Okay. So, again, the primary purpose for going to the police that you are sure you want them to do something about is to see if he took pictures or videos of you, 10 right?

A. Yes.

Q. And in your mind, you would agree, that that would entail them having to at least go to his house, talk to him perhaps, right?

15 A. Yes.

Q. And taking his phone?

A. Yes.

Q. Okay. And then making sure that there wasn't anything there that had you in a compromised picture or video, 20 right?

A. Yes.

Q. Because we agreed that was the only time you[sic] would have been able to do that?

A. Yes.

25 Q. Okay. And let's - oh, page 32. Okay, and C [REDACTED] responds, "That sounds like good advice about writing a timeline", right?

A. Yes.

Q. And then she says, "Like I said, if he's done 30 this to you, how many others", right?

A. Yes.

Q. So, C [REDACTED] and I'm assuming your mom, as well,

[have indicated to you that Jack has done this to many other girls, right?]

A. I don't recall them saying it, but they could have, yes.

5 Q. Okay. But she definitely messages - messaged you and - and said, "Like I said...", which means you said it before, right?

A. Yes.

Q. If he's done this to you, how many others,
10 right?

A. Yes.

Q. So she did say it before, right?

A. Yes, I just don't remember.

Q. Okay. And then the next message is, "He
15 should have to pay for what he's done", right?

A. Yes.

Q. So, again, they are - like you've not - now
it's not just the guilt of if he could do this to others, right,
but now we see from these messages, right, and they've told you
20 this before, that he's done this before to other girls, right?
Right? That's what....

A. That was their opinion, yes.

Q. That was their opinion to you, right?

A. Yes.

25 Q. Okay. So now, you've got the guilt of, if you
don't press charges, he can do this to somebody else. Now,
they're - I guess even before, they've also laid into you, he's
gotten away with it before, he can't get away with it again,
right?

30 A. They, obviously, didn't know for sure if he
had done something before but...

Q. I - I agree.

A. ...they were insinuating - yes.

Q. I obviously agree, but they couldn't possibly know, ma'am, that if you didn't report him, he was going to do it to other girls either, right?

5 A. Yes.

Q. Listen, I'm not - I don't want to talk bad about people, I'm not trying to - like - like I said, I'm sorry about what they did and how they reacted and all that stuff, okay? But you'll agree, right, that they had no way of knowing 10 whether he would do this in the future again, right?

A. Yes.

Q. Or if he had done it in the past, right?

A. Yes.

Q. But what is clear is that they've put the 15 burden on you for both; whether he's done it in the past or about to do it in the future, right?

A. Yes.

Q. Okay. Let's scroll down a little bit, okay. And then you respond, "Yeah, [REDACTED] said that he seemed very 20 calculated in the way he acted, like he had thought it out and that I'm not the first. She said he has..." I'm going to say he was, right?

A. Yes.

Q. "...very clever and used his age and [his] - 25 and power over me", right?

A. Yes.

Q. So now, you're telling C [REDACTED], even though you just finished telling us, C [REDACTED] couldn't have possibly known that Jack had done this before, or could do it again, or could 30 do anything in the future, right?

A. Yes.

Q. But you're confirming it to her by saying, my

therapist said the same thing. Your therapist - you're saying to them, my therapist told me I'm not the first, right?

A. Yes, in her opinion.

Q. In her opinion, right?

5 A. Yes.

Q. But that's what she is telling you, right?

A. Yes.

Q. So now it's not just coming from your mom or from C [REDACTED], but that same pressure and guilt now is coming from
10 [REDACTED], right?

A. I don't believe that she was saying it to apply pressure.

Q. I'm not saying that you believe that was the reason why. I didn't ask you if the reason why she said it was to apply pressure, okay? That's not - I didn't ask that, ma'am. What I'm suggesting to you, right, is that you've got your mom, you've got C [REDACTED], right? They're saying he's - if you don't do something legally, he can do it again, right?

A. Yes.

20 Q. And now we've got them saying he's done it before, right?

A. Yes.

Q. Can't let him get away with it. He'd just be doing it again, right?

25 A. Yes.

Q. And now the third person, you're validating C [REDACTED] and your mom by saying, even [REDACTED] agrees, because she's - you're validating their opinion, belief, right, that even [REDACTED] said, I'm not the first, right?

30 A. Yes.

Q. Okay. And again, right, we've just - you just said it moments ago that you now felt the pressure because they

were pressuring you about - not pressuring you but you, from them, you had your feeling of guilt. If you didn't go to the police, you would be responsible for other girls and now they'd laid on the responsibility for previous girls, right? Now, the 5 third person to chime in on that is [REDACTED], right?

A. Yes. 

Q. And I'm not saying you knew it at the time, right, because it could be subconsciously, right? But these are all things that are happening at the - like we're - this is 10 August the 7th, right?

A. Yes.

Q. Right? Okay. Now, I'm going to suggest to you that on August the 7th, the very first time you meet with [REDACTED] that she defines Jack as a predator. Would you agree 15 with that?

A. I don't recall her using that language.

Q. Okay. Do you recall - so - oh, no, leave that message up there, please. Sorry. Sorry, about that. She had indicated to you that Jack was skilled in making you make small 20 changes to their plans until you were in his apartment. Do you recall that?

A. Yes.

Q. Okay. And even though, after reviewing the evening with you, it is clear, that you attempted to make good 25 decisions and that he, Jack, was clearly a predator. Do you recall reviewing the evening with her?

A. I recall reviewing the evening, yes.

Q. Okay. And do you recall her validating your attempt to make good decisions?

30 A. Yes.

Q. And then I'm going to suggest that you recall that she was saying, you know, not only is this not your fault,

[REDACTED] but the guy is skilled in taking advantage of you and he's a predator, right?

A. I don't remember the word "predator" being used, but I remember everything else, yes.

5 Q. Okay. Let's, page 107. Okay. Just scroll down. And it's the third bullet point. So what I'm showing you actually is, these are your records, your medical, your therapeutic records from Dr. [REDACTED]. Can you just scroll down a little, like, scroll, I mean, zoom out, please. Okay.
10 So these are her, these are your records that she's made about sessions that she's had with you, and the session date is Friday, August the 7th, 2020 at 10:00 a.m. Okay. And then now you can zoom in, and there you see in the third bullet point, she's made notes about your session that you had on August the
15 7th at 10:00 a.m., and in reviewing the - I'm reading from the third bullet point, "We spent the session going over her experience and looking at potential stuck points where she blamed herself. In reviewing the evening, it is clear that [REDACTED]
attempted to make good decisions and that he was clearly a
20 predator, skilled in having her make small changes to their plans until she was in his apartment". Have I read that correctly?

A. Yes.

Q. Okay. And you would agree that, at least in
25 her note, she's using the word "predator", right?

A. Yes.

Q. But she was making it clear to you that he was a predator, because when you're telling [REDACTED], you're saying he's very skilled, he's very clever, right?

30 A. Yes.

Q. Okay. And if we can go back to page 32, at the, yeah - she also had mentioned to you that he used his age,

right?

A. Yes.

Q. And how is it that he used his age? How did she explain that to you?

5 A. I don't recall.

Q. Okay. "And power over me". "His age and power over me". I'm going to suggest to you that she said these things because she had labelled him a predator, right?

10 A. I - I don't know.

Q. Okay. But it's possible that she did?

... OBJECTION BY MR. SOSA.

... SUBMISSIONS BY MR. SOSA.

... SUBMISSIONS BY MR. FAHMY.

MR. FAHMY: Q. What I'd meant, and what I thought 15 I'd said, was that she used that word "predator", right?

A. Not to me, as far as I recall.

Q. But it's possible that she did, right?

A. It's possible.

20 Q. Okay. And the reason why, in her note, that she says that he is a predator is because, "Jack was skilled in making small changes to your plans until you were in his apartment", right?

A. Yes.

Q. Okay.

25 A. So in reviewing the evening with her, you made it seem to [REDACTED] that it was Jack that made these small changes in a very clever and skilled way until you were back at his apartment, right?

A. That's what she stated in her notes, yes.

30 Q. And what she stated in her notes is, as you've already said, you reviewed the evening with her, right?

A. Yes.

Q. So that's the way you made it seem to her, right?

A. That must have been her interpretation of it.

Q. Of what you'd said to her, though, right?

5 A. Yes.

Q. Okay. So you're not very truthful with [REDACTED], are you? Right?

A. No, I'm extremely truthful to her.

Q. Extremely truthful, right?

10 A. Yes.

Q. That's how you characterize what you're saying to her?

A. Yes.

15 MR. FAHMY: All right. Okay. Let's go to page 101, sorry, I'm not - lower, right there. Zoom, right in, please. More. Oh, right there.

MR. FAHMY: Q. That's your email to her on August the 5th, two hours after leaving Jack's house, right?

A. Yes.

20 Q. Sorry, "I debated whether to send this or not because maybe I'm just being dramatic or stupid or overthinking or reading into something that didn't happen or maybe it just brought this whole thing into myself. But I went on a date..." air quoted[sic], "...date tonight. We were supposed to go for 25 a hike than drinks. But when I showed up to his house, he said it was too late to go for a walk, so we started watching a movie". You wrote that?

A. Yes.

Q. Have I read it accurately?

30 A. Yes.

Q. And that's not what happened, is it?

A. Not all the details, no.

Q. But that's what you - sorry?

A. Those don't - that doesn't include all the details, no.

Q. Oh, okay. But that's what you told her happened, right?
5

A. Yes.

Q. Okay. And that's why she came to the conclusion, a couple of days later, that he was skilled in making you make small changes to your plans and just got you 10 inside his apartment, because she's repeating exactly how this version that you've stated to her, which you've accurately just now agreed is not the correct version of what happened, but she's repeated it again in her note two days later, right?

August the 7th, page 107, "Small changes to their plans until 15 she was in his apartment", right? That's what she says?

A. She does say that, yes.

Q. Okay. And that's from her review with you of the evening, right?

A. Yes.

Q. Okay. Because the way you made it seem in 20 that email is that you just showed up to his house, he told you, even though you were supposed to go for a hike, than drinks, but then he said it was too late to go for a walk, so we started watching a movie in his house, right?

A. Yes, I said that.
25

Q. Okay. So just hours, moments after this incident happens - just moments after this incident happens, you're already telling [REDACTED] an inaccurate version of how you ended up at Jack's house, right?

A. I'm not giving the full story, no.
30

Q. Okay.

THE COURT: Maybe now is a good time to take our

break. We'll come back at 20 after 3, please.

R E C E S S

5 U P O N R E S U M I N G:

MR. FAHMY: Q. All right. And I guess you would agree that you continued to see [REDACTED] on almost a - like on a basically a weekly basis between August the 7th and October the 10 2nd?

A. Yes.

Q. Okay. And on the - and when you have your interview with the police, that would be on September the 29th, 2020. Do you agree?

15 A. I don't recall the exact date, but that seems, right.

Q. Yes.

MR. FAHMY: Can we have that fact admitted by the Crown?

20 MR. SOSA: Your Honour, there's no issue with that.

MR. FAHMY: Q. Okay. So now we're all in agreement that it was actually September the 29th of 2020, okay?

A. Yes.

25 Q. All right. And on September the 25th, again, Friday, 10:00 a.m., you had another session with [REDACTED]. And at that session, I'm going to suggest to you that you'd informed her that your appointment with the detective to give your statement had been changed to next week, which would make it 30 September the 29th. Do you agree with that?

A. I may have, I don't recall.

Q. And then you guys took that opportunity to

review what you had written about the incident with Jack, right?

A. Yes.

Q. Okay. And she also suggested to you about, that one of the things that you could do when you have your interview is that you could - that you guys talked about what you could request, for example, having like a female present. Like a female officer doing the interview?

A. I don't recall that conversation, but it could have happened.

Q. Okay. But actually, because your interview had been previously scheduled on September the 11th, when you had met with her, you kind of, you expressed to [REDACTED] that you had, I guess, you were apprehensive about giving your statement to the detective at the end of September. Do you agree with that?

A. Yes.

Q. Okay. And that you were grateful to [REDACTED] for her recommendation to write down the events, right?

A. Yes.

Q. And that your plan was to read what you had written down to the detective, right?

A. Yes.

Q. And then she suggests the next session having you do that so that you can kind of do like a, you know, like a practice, right, and that you had agreed to this. Do you agree with that?

A. Yes.

Q. Okay. And then that's what happens, right, on the 25th of September?

A. Yes.

Q. Okay and then on October the 2nd, which is two days after your interview with the police, right, [REDACTED]'s

[REDACTED] asking you how it went, right? Right?

A. She may have been. I don't recall.

Q. Okay. And that you had mentioned that the experience was validating because there was - but that there was 5 a number of insensitive remarks that the detective had made during your interview. Do you recall telling her that?

A. I don't recall. I could have though.

Q. Okay. And do you recall telling her that - because you'd practiced basically reading your statement with 10 her, right?

A. Yes.

Q. Okay. And that's what your plan was to do when you got to the police station, right?

A. Yes.

15 Q. Okay and you'd mentioned to [REDACTED] after your interview - well I'm going to - I'm going to read it out and you tell me if this is accurate. Her note reads, "She had her written account but was not allowed to read it because it would not look good for the camera". Do you recall giving her 20 that information, that the - that you'd gone there with your written account, but you couldn't read it because it wouldn't look good for the camera?

A. I remember being told I wasn't allowed to read from my statement, but I don't recall the reasoning as to why.

25 Q. Okay. But it's possible that that's the reason that you gave to [REDACTED]?

A. It could have been.

Q. Okay. And this is like two days after the interview, right?

30 A. Yes.

Q. Okay. All right. And when you brought your written account, because it says you - "She had her written

account", I'm going to suggest to you that you had it on your laptop, right?

A. On my phone, yes.

Q. On your phone?

5 A. Yes.

Q. Okay. And you're sure about that, right?

A. I....

Q. Because that was - what - how you had your written account. It was on your phone?

10 A. Phone and, I guess, laptop. It was written in the Notes app.

Q. Okay. What did you bring to the police interview?

15 A. I know I brought my phone. I can't remember if I brought my laptop or not.

Q. Okay. And your evidence, I'm going to suggest to you that you, it's not that the officer said you couldn't read it, right?

20 A. No. He didn't say - yes, he said I could reference it. I couldn't read off of it.

Q. Couldn't read off of it. Okay. Are you sure he said that?

A. Yes.

25 Q. Okay. And I'm going to suggest to you that for almost the entirety of your interview with the police, you had your laptop open. Do you agree with that?

A. I may have. I don't recall.

30 Q. Okay. And if you had your laptop open, it was to, "My Story" that you had written in practice with [REDACTED], right?

A. Yes, it would have been.

Q. Okay.

5

MR. FAHMY: I may just have to get that as an agreed statement of fact later. I'm not going to make the court sit here through 50 minutes of watching her holding her laptop on her lap. But what we - okay, why don't we do it? Okay.

MR. FAHMY: Q. All right, so, here it is, 29th of September, at 11:29.

... WHEREUPON A VIDEO RECORDING IS PLAYED.

Q. This is the interview room where you had your interview, correct? Well, that's the interview room, and at 4:14, you're sitting directly across from Detective Buszkowski, right?

A. Yes.

Q. Okay. And actually the - like, this is just about two minutes into the interview because everybody starts to walk in, right? About two minutes, there you are, and there's a, I guess, a bag that you have there?

A. Yes.

Q. Okay. And at four - sorry - at 5:11, you're reaching for your bag?, right?

A. Yes.

Q. Okay.

... WHEREUPON A VIDEO RECORDING IS STOPPED.

Q. And I've just paused it here at 5:27. You've pulled out your laptop, you've opened it up, and you're putting it on your lap as you're having a conversation with the detective, right?

A. Yes.

THE COURT: Can I just stop you for a second? You're making a reference to 5:27, 5:27 in the runtime, because that's at the bottom of my screen.

MR. FAHMY: Yes.

THE COURT: So is it, that's the runtime of the...

MR. FAHMY: Of the video.

5

THE COURT: ...clip. Not 11:34:43, which is the actual...

MR. FAHMY: Time.

THE COURT: ...time of day?

10

MR. FAHMY: Yes. I meant the running time of the video.

THE COURT: Okay.

MR. FAHMY: I can refer to either now.

15

THE COURT: Let's use the one that's super big because...

MR. FAHMY: Sure.

THE COURT: ...I had to – if I had to search for it, I don't know if [indiscernible] saw it, so....

A. I didn't.

THE COURT: Let's – 11:34:43, there's a laptop.

20

MR. FAHMY: The only reason why I did that, Your Honour, is because in the transcript that I have it's referencing the runtime, not the video time, but I'm okay with that.

THE COURT: Well, let's use both, okay?

MR. FAHMY: Sure. Sure. Thank you, Your Honour.

25

MR. FAHMY: Q. So I just mentioned the runtime, which also corresponds to the time of day, being 11:34:43, right?

A. Yes.

30

Q. Okay. And this video runs for an hour, right, you see the end time there being 59 minutes and 59 seconds, right?

A. Yes.

Q. Okay. And I'm just kind of fast forwarding.
And I'm - what I'm doing is dragging the cursor, and at 47:19
runtime, you still have the laptop open, right?

A. Yes.

5 Q. Which corresponds to 12:16, right?

A. Yes.

Q. P.M., okay? And then at 47:47 you fold it
down, right?

A. Yes.

10 Q. And you put it next to you, right?

A. Yes.

Q. And that's at 12:17 p.m.?

A. Yes.

15 Q. Right? So, for almost an hour you've had that
laptop open in front of you, right?

A. Yes.

Q. And you'll agree with me that the interview is
probably another 10 minutes long, 12 minutes, 11 minutes to be
more precise?

20 A. Yes.

Q. All right. And, again, the only thing you had
open on your lap - on your laptop, was the story that you had
gone over with, that you'd written that you'd gone over with,
with [REDACTED], right?

25 A. Yes.

MR. SOSA: Your Honour, there's two parts to the
video, so Mr. Fahmy said...

MR. FAHMY: Oh.

30 MR. SOSA: ...there's only 10 minutes remaining in
the interview. So, just so that it's complete
from the court's record, there is a part two to
the video.

MR. FAHMY: Yep, and that goes on, if my friend will agree....

MR. SOSA: Eleven and a half.

MR. FAHMY: Well, no, because he leaves the room.
5 It goes on for seven – seven minutes, Your Honour.

MR. SOSA: That's agreed.

MR. FAHMY: It's 12:36, for the time, okay?

THE COURT: Is there an issue of whether or not
10 the laptop comes up or goes back again, or is
this...

MR. FAHMY: It doesn't, it's....

THE COURT: ...not relevant?

MR. FAHMY: It's not relevant.

THE COURT: Thank you.

15 MR. FAHMY: I can show you, it's in the bag, it's
not....

MR. SOSA: Yes, there's no issue.

MR. FAHMY: Q. Now, it's clear from the video
20 that the officer is letting you use your laptop?

A. Yes.

Q. Right? He's actually given it to you in order
for you to be able to tell him about what happened, right?

A. Yes.

25 Q. Okay. Now, so on August the 7th, after your
first session with [REDACTED], and your session started at 10:00
a.m., and it runs for an hour, right?

A. Yes.

Q. Just half an hour or so later, you're telling
[REDACTED] about that. Do you recall that?

30 A. I don't.

Q. Okay. Go to page 17, please. Okay, a little
bit up, up, sorry. Yeah. And that's [REDACTED] saying, "Yeah, I

[REDACTED] think that's great [REDACTED]. We support you 100 percent. It's another step to empowering yourself. Love it. [REDACTED] is kind of awesome", right?

A. Yes.

5 Q. And, "We can help you if you want, we are here tonight", right?

A. Yes.

Q. And this is at August the 7th at - sorry - I said 11:30, it's actually 1:30 because it's four hours. I 10 apologize for that. Sorry, no, I'm correct. My 24-hour time is right. It's - no, I'm wrong, it's 11:30, okay, because you take four hours off, it makes 15 to 11, okay?

MR. SOSA: Which page?

15 MR. FAHMY: Sixteen - seventeen. My apologies.

MR. FAHMY: Q. And then if you scroll down, your response to her is, "She really is, haha. She made me feel a lot better", right?

A. Yes

20 Q. "We walked through the whole process and the way I made decisions", right?

A. Yes.

Q. Okay. When you say, "The whole process and the way you made decisions", you're talking about that evening with Jack, right?

25 A. Yes.

Q. Okay. "And then she explained how she believes he...", being Jack, right?

A. Yes.

30 Q. "...had very much calculated his actions", right?

A. Yes.

Q. "And used his power", right?

A. Yes.

Q. "And the fact that I'm a people pleaser..."
right?

A. Yes.

5 Q. "...and a nice girl...", right?

A. Yes.

Q. "...to his advantage", being Jack's advantage,
right?

A. Yes.

10 Q. Okay. "And that I'm probably not the first
girl [that has] that this has happened to", right?

A. Yes.

Q. So now that's two people you're telling
[REDACTED] told you this about Jack, right?

15 A. Yes.

Q. That he's - so - and then she said, "Without
question, it is a sexual assault and a rape and that I am not at
fault for any of it", right?

A. Yes.

20 Q. "And there was no bad decision I made", right?

A. Yes.

Q. Okay. And - you didn't tell Jack you were a
people pleaser, did you?

A. No.

25 Q. Okay. And now [REDACTED], according to this, is
making another assumption about Jack, that he used - well, I
mean, you're saying that it's a fact that you're a people
pleaser, right?

A. I'm - I'm saying that I'm a people pleaser,
30 yes.

Q. Well, I mean, you're not saying it. You are,
because that's what [REDACTED] is saying to you. [REDACTED] is

saying to you, the fact that you are a people pleaser, right, is something that he used to his advantage, right?

A. That is what I'm saying in this, yes.

Q. Yeah. But we now established that, obviously,
5 he couldn't have known that, right?

A. Yes.

Q. Okay. And that is something that she has told you that, I guess, you do or you are, because that's a fact that you're stating, right?

10 A. I don't know if she's ever directly called me a people pleaser, like said that to me, you are a people pleaser. I don't know if she's said that.

15 Q. But you're saying that's what she said. So is it a habit that you just do, just saying things that people don't actually say to you?

A. She might have insinuated I was a people pleaser. I'm not sure if she used that direct word though.

Q. But you did?

A. I did, yes.

20 Q. Because that's what you meant to convey to [REDACTED], right?

A. Yes.

25 Q. Okay. And, again, you're conveying to [REDACTED] that [REDACTED] is in reinforcing to you, right, because we have her note, that he calculated his actions, right?

A. Yes.

Q. Okay. Because that's what [REDACTED] told you, right?

A. Yes.

30 Q. Okay. Because, again, she is trying, as she explains, right, that none of this is your fault, right?

A. Yes.

Q. Okay. That you didn't make any bad decisions, right?

A. Yes.

Q. And the reason why you use that as [indiscernible] is because yesterday, right, that was the issue 5 with mom and C [REDACTED], right?

A. Yes.

Q. Now, and which means that you talked to her about mom and C [REDACTED], right?

10 A. Yes.

Q. Okay. Even though you had that session, even though [REDACTED] has told you, without a question, sex assaults, you're not at fault on - just minutes before you're telling C [REDACTED] and N [REDACTED] that you're - that you are not sure if you 15 will press charges, but maybe they can look into, see if he took a photo or video. Do you agree with that?

A. Again, I don't remember sending that message, I could have though.

Q. Okay. Page 83. So you're saying, right, 20 11:31, "I think I'm going to talk to the police". And C [REDACTED] responds, "I think that's a good idea", right?

A. Yes.

Q. Okay. "Not sure if I will press charges, but maybe they can look into..." - I'm going to say - and "...see if 25 he took a photo or video of me", right?

A. Yes.

Q. And then hours later, right, this is at 9:04, you're telling your friends, I just reported him, right?

A. Yes.

30 Q. Okay, and that's the online report that we're talking about, right?

A. Yes.

Q. Okay. But even still, at this point, you're still not sure if you're going to press charges, but still hoping that the police can look into the photo video, right?

A. Yes.

5 Q. Okay. Now, And even before you talk to [REDACTED], you're still telling - so you've also, I'm going to suggest, you've also told C [REDACTED] and N [REDACTED] about that struggle you were having, about making a big deal out of nothing. Do you agree that you told them about that struggle?

10 A. I may have, I don't recall.

Q. Okay. All right? Page 75, please. The bottom, right there, "It'll be nice...." So this is on August the 6th in the evening at 5:51. "It would be nice to talk somebody who won't judge me but also I feel guilty, like I'm just making a big deal out of nothing, but also, I don't know if that's just my way of blocking out what happened because it's easier if I'm just in denial", right?

A. Yes.

20 Q. So even here you're expressing to your closest friends the day after, that the struggle is I'm - you have feelings of guilt, right?

A. Yes.

Q. Because maybe this is nothing and you're making a big deal out of it, right?

25 A. Yes.

Q. And maybe it's just a way of blocking out what happened because it's easier if you're in denial, right?

A. Yes.

30 Q. But it's a very real struggle that you're having, right?

A. Yes.

Q. Okay. And you don't know, you're saying, I

[REDACTED] don't know if it's because I'm in denial or it's better if that's the way to block it out, right?

A. Yes.

Q. Okay. But when you say you feel guilty that 5 you're making a big deal out of nothing, you say "like". You say, "...but also I feel guilty like I'm just making a big deal out of nothing", right?

A. Yes.

Q. But then when it comes to the other side, 10 you're not sure. You say, "I don't know if that's just my way of blocking it out", right?

A. Yes.

Q. Okay. Now, another feeling that you were having was the fact that you were angry at Jack, right?

15 A. I may have been, yes.

Q. I'm going to suggest to you that you were angry with him because you were upset that he got to basically live his life as if nothing happened.

A. Yes.

20 Q. Okay. And that was immediately following your encounter with him, right?

A. Yes.

Q. Okay. You met with Dr. [REDACTED] on August 25 the 7th, and that's the first time that you agreed that she may have called Jack a predator, right?

A. She may have, yes.

Q. Okay. And then you met with her again on August the 14th, right?

A. I may have, yes.

30 Q. Okay. And then you meet with her again on August the 21st, right?

A. I may have, yes.

Q. Okay. And at that meeting, right, I'm going to suggest to you - well, I'm going to read a note, and then if, and then and:

5 We talked about her feelings about men generally and then looked at whether all men fit that description. She could name others who did not. We talked about how she might be able to detect this. She feels her instincts are good, but she does not always attend to them. We also talked about the difficulty in using instincts when someone is a predator.
10 We agreed that her assailant appeared to be a predator.

Q. So I'm going to suggest to you, right, that when you're having that session with her, she's talking to you about how you need to be in tune with your instincts, right?

15 A. I don't recall, but from those notes, yes.

Q. You want to see the notes? We can up them up[sic], if you'd like. Sure.

20 MR. FAHMY: Just so that you can confirm I've said it accurately, it's page 110, the very last bullet point, please. Just then zoom in, please.

MR. FAHMY: Q. So you can - all right? Just take a second to read that last bullet point, and then you tell me if I've read it accurately, to you?

25 A. Yes. Yeah.

Q. Okay. So, I mean, maybe the first meeting, she called him a predator, you weren't sure. Second meeting, we don't know, nothing's said about that. But then by your third meeting, right, she is trying to make you understand that, you know, like, regardless of your own instincts, right, whether you're - even if they're good instincts, even if you might not be able to detect them - or sorry - not attend to them, was the word that she used, right? That no matter what, it's still

[REDACTED] difficult to use your instincts when someone is a predator, right?

A. That is what she said, yeah.

Q. Okay. But that's what she told you at that 5 session, right?

A. I don't recall what we discussed.

Q. And then when she says, "We agreed that her assailant appeared to be a predator", she's referring to you and her in an agreement that Jack is a predator, right?

10 A. That is what she's referring to, yes.

Q. Okay. And one of the reasons why she's saying that is because, in her opinion, he's done this before, right?

A. Yes.

15 Q. Okay. And that's how she's explaining to you, right? It's not your fault, even with your instincts, he's done it before because he's a predator, right?

A. I don't recall her explanation.

Q. You don't recall her explanation?

A. No.

20 Q. Okay. But you recall her saying that he's done this before, right?

A. Yes.

Q. Okay And you recall that she may have used the word "predator", right?

25 A. I - I - sorry - the wording of that question, I'm - just have a second to think about it. She - yes, she may or may not have called him a predator. I don't recall.

Q. Okay. And you agreed with her on this date that Jack appeared to be a predator. But again, you're not sure 30 if she used that exact word?

A. Yes, I'm not sure if she used that exact word, and I also don't remember the session that we had.

Q. Okay. Let's back it up maybe. Did she maybe use any kind of terms like predatory, that he had predatory behaviour, perhaps?

A. I don't know.

5 Q. It's possible?

A. It's possible.

Q. Okay. And if she's saying that he's a predator, she's obviously referring to you, she would be obviously referring to you as prey, right?

10 A. I assume.

Q. Yeah.

A. Don't - I don't know.

Q. You're his - he's the predator, you're the prey, right? At least according to this.

15 A. I don't know.

Q. It's possible, it's logical, right?

A. It's possible she made that assumption.

Q. Okay. But that's how she's making it to you. She's saying even as prey, your instincts aren't good enough to deal with this predator, basically, right?

A. She might have been. I don't - I don't know what she was trying to say.

20 Q. Okay. You don't know what she was trying to do, perhaps. Maybe that's true, I don't know. But it's starting to play into your mind, right? I mean, these are things that she is telling you, you're hearing it from her. You're hearing it from your mom and C [REDACTED], right?

A. Yes.

30 Q. Okay. So and you've kind of have a bubble, right, around you of people, right, that are reinforcing to you, right, how this is not your fault, right?

A. Yes.

Q. How you're a prey and he's a predator, right?

A. Potentially, yes.

Q. Yeah, and he's done it before, he's going to do it again, you've got to stop him, right?

5 A. Potentially, yes. Yes, my mom did say that, I needed to do it before it happened again.

Q. Yeah, I'm - all of those people...

A. Okay.

10 Q. ...right? Right? Your friends even are telling you, you know, you should press charges, right, you need to do something about it legally, right?

A. Yes.

15 Q. And even in that bubble, even in that bubble, even after going to the police on September the 29th, on October the 2nd, you meet with - sorry - on September the 25th, so just before you go to the police, right, you see, [REDACTED], and even then, you're still struggling with the feeling that you're making this all up, right?

20 A. I don't remember, again, what we discussed in the session.

Q. Okay. Page 112, please, and it's going to be the third bullet point, okay? Right there, okay. So this is the opportunity where you're reviewing the incident, right? You're reviewing what you're about to tell the police, right?

25 A. Yes.

Q. Okay. And then the next note that she writes from your session is that, "[REDACTED] struggles with feeling she is making this all up", right?

A. Yes.

30 Q. Okay. And that's because you still had, that struggle is real, right? Like we've already established that it's a real struggle, right?

A. Yes.

Q. Okay. And then even as late as September the 25th, right, you're still having that struggle, okay?

A. Yes.

5 Q. Right? Okay. And the - and that's what you're coming to her with, right?

A. Yes.

10 Q. And then she is trying to reinforce the other side, which is, no, no, something happened, you need to kind of focus on the other side, right?

A. She's trying to help me through those feelings, yes.

15 Q. Well, she's not really - okay. But you also agree, ma'am, right, that if she's the one that's trying to help you through those feelings, she's also saying some things that she couldn't possibly know about Jack, right?

A. She is make - giving her opinion, yes, and making an assumption.

20 Q. Making an assumption, right? An assumption that she couldn't possibly base on any facts, right?

A. Yes.

25 Q. So again, in that cloud, in that bubble, right, you're even getting facts to support your feelings, right, which aren't based on - which are based on false assumptions, right?

A. I wouldn't necessarily say they're false. Those were her beliefs.

30 Q. No, no, no, hang - the assumptions are false because they're not based on any facts, right? I'm not saying whether it's at - I'm not - like, that's not the question. The question was that the assumptions are false because they're not based on anything in reality, right?

A. I don't know what she was basing her opinion on.

Q. That's the point, you don't know, right? She never met Jack before. Did she tell you she met Jack?

5 A. No.

Q. Did she tell you she met a hundred of his victims or something?

A. No.

10 Q. Did she tell you that she has a time machine or a magic ball that tells her that Jack's going to do this a hundred times if you don't do something?

A. No.

15 Q. Okay. So it's not based on anything except the false assumption, right? There's, like, I could assume something based on some kind of fact, right?

A. Yes.

Q. Or I can have a false assumption based on nothing, right?

A. Yes.

20 Q. And that's what they had, right?

A. I, personally, don't consider it false, but I don't know the, again, the reasonings for her opinions or assumptions.

25 Q. But that's precisely the point, ma'am. There's no reason for it at all, because they couldn't possibly have a single reason for those opinions, for their beliefs, for their assumption, right?

A. I don't think I can answer that yes or no. I think that she would have to answer that question.

30 Q. Why is this hard for you? Why is this hard? You'd already said it a few times that she couldn't possibly have known, right? Am I - you going to make me repeat - I'll

repeat it. Did she know that he had victims in the past?

A. No.

Q. Okay. Did she have a magic ball that would tell her that he was going to have victims in the future.

5 A. No.

Q. Okay. Did she know that he knew that you were a people pleaser?

A. No.

Q. Okay. Did she know that he was clever?

10 A. No.

Q. Okay. But you'd said to other people that these are all the things that she said about Jack, right?

A. Yes, that was her interpretation.

Q. No, no, no. That's what she said about -
15 that's what you said she said about Jack, right?

A. Yes.

Q. Okay. And again, not based on anything,
right?

20 A. Again, I - I don't know what she was basing her opinions on.

Q. The word is nothing, right? Is that the word you're looking for?

A. Sorry, I'm confused.

25 Q. I asked you a question. The word is "nothing", is that....

THE COURT: The Crown has risen.

MR. FAHMY: Oh.

30 MR. SOSA: Your Honour, it's now reached the point where it's repetitive. The - the question's being asked several different variations, it's been answered. Mr. Fahmy has his answer.

THE COURT: I agree. Let's move on.

MR. FAHMY: Sure.

MR. FAHMY: Q. In fact, that struggle continued on September the 25th because not only were you struggling with making this all up, but when she was asking you, you clarified 5 that it wasn't a big deal, right?

A. I don't recall.

Q. And that you're making something out of nothing, right?

A. I don't recall.

Q. Okay. But you definitely, those three things you had when you first emailed her on August 5th, the 6th - 5th and 6th, right?

A. Yes.

Q. Okay. Page 112 again, second bullet point, 15 please or her third bullet point, okay. "[REDACTED] struggles with feelings she's making this all up, which, when questioned, she clarified that it wasn't a big deal She is making something out of nothing". Have I read that correctly?

A. Yes.

Q. Okay, so I'm going to suggest to you again 20 that even as of September the 25th, that struggle is the same struggle. We've been talking about the struggle that you've had since the moment after you've left his house, basically, right?

A. Yes.

Q. And it's still continuing on September the 25th, right?

A. Yes.

Q. Which is almost two months later, right?

A. Yes.

Q. Okay. And when you go to the police, you gave 30 your statement on the 29th of September, right?

A. I - I don't remember the exact date.

Q. Well, we've already agreed to that. So that was the date of your interview, okay?

A. Okay.

Q. And then on - do you recall, well, I mean, I'm 5 going to suggest to you that when you go there, right, well, even before, when you're making that appointment, with - and it's Buszkowski, right, the officer?

A. Yes.

Q. Okay. You're speaking with the officer before 10 you meet, right?

A. Yes.

Q. And I'm going to suggest to you that even before you meet to give - and you call him, right, or he calls you back or something like that, right, but you guys are on the 15 phone at some point, right?

A. I believe we had a phone call prior to me going in to give my statement, yes.

Q. Okay. And, but actually, you were expecting that phone call because you'd received a notification after you 20 filed your online report that it's been approved and that somebody is going to be reaching out, right?

A. I don't remember how that process works, but it could have.

Q. Okay. We'll get to that. You don't recall 25 messaging C [REDACTED] and N [REDACTED] about how that happened and how you were waiting to - or telling them that it got approved and that somebody is going to reach out to you?

A. No.

Q. Okay. We'll come back to that in a second, 30 but it's possible that it happened that way. That's how you figured it out?

A. Yes, that's possible.

Q. Okay. All right. And then we agreed that eventually you got on the phone with Buszkowski, right?

A. Yes.

Q. Okay. And even at that time, right, you were 5 still apprehensive about wanting to come in and giving an interview, right? And that your main concern, the first time you spoke with him was still about the fact that you wanted the police to look into any photos or videos that Jack may have, right?

10 A. I don't recall what our phone conversation was about.

Q. Okay. But it's possible that that's what the initial conversation was about?

A. It's possible.

15 Q. Okay. All right. And I'm going to suggest to you, right, that he responded to that by saying to you, well, you know, we can't just go and grab people's phones. Why don't you come in, give an interview, right, and then if we proceed to charge him criminally, then we can get a warrant and get a - 20 something along those lines. Do you agree with that?

A. I - I don't remember. He could have said that.

25 Q. Okay. But is that - is that - I'm not saying that, remember, I'm not asking you if those are the exact words, okay?

A. Yes, I understand.

Q. Right, you understood that?

A. Yes.

30 Q. All right, okay. But just the gist of the conversation after your - was that there was that gist in that conversation. Something about, we can't just go grab the phone, why don't you come in, give the interview, and then if you want

to proceed to charge, we can get this phone kind of a thing, right? But there's basically a process before you can go and get this phone, right?

A. I — I honestly do not remember ever having
5 that phone conversation.

Q. Okay.

A. So, I can't speak to that.

Q. All right. So, and you don't recall, well,
10 you said you don't — like, you know, it's possible that you mentioned the whole photos and videos, but you don't recall if there was any response to that?

A. I — I don't remember saying it, and I don't remember what a response would be.

Q. Okay, all right. And I'm going to suggest to
15 you, right, that even after your interview on the 29th, so the interview was done, right? And that you'd explain to the officer that you still didn't know how you wanted to proceed with the case and that you would inform him in the upcoming weeks, right?

20 A. I — I don't remember.

Q. Okay. But you'll agree with me that even after you gave your interview with the police, that you hadn't advised the police that you still wanted them to press charges, right?

25 A. I don't recall when I told the police I wanted to press charges.

Q. Okay. All right. And, in fact, the officer emailed you on — well, he left you a couple of voicemails, but he emails you on January the 12th, 2021, asking you if you still
30 wish to proceed with the investigation and the next steps required if she wished to proceed. Do you agree that you received an email like that?

A. Again, I don't remember.

Q. You don't remember? Okay. I'm going to suggest to you, ma'am, that it wasn't until January the 28th of 2021 that you spoke to Buszkowski, and that's when you told him that you wanted to pursue the criminal charges against Jack. Do you agree with that?

A. It could have been. I - I don't remember.

Q. Okay. So, okay.

MR. FAHMY: You know, Your Honour, if I could just have a five-minute break just to talk to my client and review something, because I'd hate to have to bring the witness back tomorrow. I may be done, I just wanted to consult.

THE COURT: All right. Are you still okay? We might go a little bit longer just to see whether we can end this for you today?

A. Yes, I'm okay with that.

... TIMING DISCUSSIONS - NOT REQUIRED.

20

R E C E S S

U P O N R E S U M I N G:

MR. FAHMY: Q. Ma'am, I'm going to just suggest to you that after the oral sex, that you had gone up, but that you had not put your clothes on before you said that - and when I say put your clothes on, it's your t-shirt, right, Because that's the only item of clothing that you put on?

A. Yes.

Q. Okay. So, I'm going to suggest to you that you did not put your t-shirt on, and that when you got up to do that, that that's when you said, Jack had lifted my dress up and

pulled my underwear down. Do you agree with that?

A. Sorry, could you repeat the question?

Q. Okay. I'm going to suggest to you, right, that, because at the end of the oral sex portion of your encounter, right, you say that you got up - I'm suggesting to you now, right, that you got up, but before you could put your clothes on, that that's when you say Jack lifted up your dress and pulled your underwear down. Do you agree with that?

A. That he did that or that's when it happened?

Q. That that's what happened?

A. Yes.

Q. Okay. And in fact, you reported that to the police when you say to them in your online report that you had got up to put my clothes on and leave and that was when he lifted my dress up, pulled my underwear down. Do you agree that that's what you wrote to the police in your online complaint?

A. I don't recall what I put in my online complaint. I do remember putting my t-shirt on though.

Q. But that's not - okay, and if you're - you'd agree that if your online complaint said, I got up to put my clothes on, that that means that you hadn't put on your clothes, right?

A. I may have just not gone into that amount of detail in the online statement.

Q. Oh, okay. Well, let's just take a look at it. Page 127. There it is, on the fifth line down. "I got up to put my clothes on and leave, and that was when he lifted my dress up, pulled my underwear down and put me face down on the bed". You wrote that?

A. Yes.

Q. Okay. And then my friend had asked you about whether or not my client had used a condom, right?

A. Yes.

Q. You said that he hadn't, right?

A. Yes.

Q. And you'd agree with me that you didn't ask
5 him to use one, right?

A. No, I did not ask because I didn't know we
were having - he was entering me until he had entered me.

Q. Well, actually, I believe you told your
friends that you didn't know how to ask him to use one, right?

10 A. I don't recall.

Q. Okay. And you never did ask him, right?

A. No.

Q. Okay. Okay, thank you very much.

15 MR. FAHMY: Those are all my questions, Your
Honour.

THE COURT: Re-examination?

MR. SOSA: Thank you, Your Honour.

RE-EXAMINATION BY MR. SOSA:

20 Q. Good afternoon, [REDACTED]. I will only have a
couple of questions for you, okay?

A. Okay.

25 Q. Earlier this afternoon, my friend displayed
the video interview that you had with police. Do you remember
that?

A. Yes.

Q. Okay. Before today, before this afternoon,
had you ever watched that video?

A. No.

30 Q. My friend asked you about why you mentioned to
Dr. [REDACTED] that you were not permitted to use your notes. Do
you remember that area of question?

A. Yes.

Q. Questioning, I should say?

A. Yes, I do.

Q. Okay. Are you able to recall what it was that
5 the officer said to you that caused you to say that to Ms.

[REDACTED] ?

A. I would be paraphrasing, or, but I just - I -
no, I don't remember why he just - why he didn't want me to read
my notes. I just remember him not wanting me to read directly
10 off the notes.

Q. Okay. Do you remember having that discussion
with the officer, Officer Buszkowski, though?

A. I do.

Q. Okay. Would it assist you in refreshing your
15 memory if you were to review the interview made with Officer
Buszkowski to answer that question that I've asked you?

A. Yes, it would.

Q. Would you like that opportunity now to review
that portion of your statement?

20 A. Yes, please.

MR. SOSA: Your Honour, if I could please share
that with the complainant, and I'll be referring
her to page four of her interview.

25 MR. SOSA: Q. So I'll just ask you, [REDACTED], to read
page four to yourself.

A. Okay.

Q. Is that enough time to review it?

A. Yes.

Q. Okay.

30 MR. SOSA: And so, Your Honour, just so I'm clear
for the record, I'm referring to the transcript
from the Crown's disclosure, page four.

MR. FAHMY: I'm only rising because I think in order to be fair, and me not having to object about this, that my friend should refer her to the previous page at the bottom third as well.

5 MR. SOSA: It's no harm, sure.

10 MR. SOSA: Q. [REDACTED], if you'd like to start then from page three and....

15 THE COURT: Take a look at it. This is all about providing you with an opportunity to, sort of, contextualize what's going on.

A. Okay.

20 THE COURT: So we're not taking things out of context. So read it and familiarize yourself with it.

25 A. Okay.

MR. SOSA: Q. You've read those pages?

A. Yes.

Q. Okay. Having read those pages, did it assist in refreshing your memory as to why you thought you were not permitted to refer to your notes?

20 A. I did.

Q. Okay. And can you tell us why you had that impression then?

25 A. I had that impression because although he said I can refer to my notes, he didn't want me to read from them because he wanted a pure firsthand account of what happened.

30 Q. All right. So let me take you to a different area. And this, I believe, was during the cross-examination from yesterday. Mr. Fahmy was discussing with you the words that Mr. Densmore used towards you, and he suggested to you that Mr. Densmore never used the word "slut". Do you remember discussing that yesterday?

A. Yes.

Q. And Mr. Fahmy suggested to you, in fact, when police asked you what was being said, that he had called you a good girl. Do you remember that?

5 A. Yes.

Q. Do you remember any other names or words that were shared with you at that time?

... OBJECTION BY MR. FAHMY.

... WITNESS EXITS THE COURTROOM.

10 ... SUBMISSIONS BY COUNSEL.

THE COURT: Okay, please proceed.

MR. SOSA: Thank you.

15 MR. SOSA: Q. So, [REDACTED], at - it was put to you in many different ways that, at times, you thought you had made this up. Do you remember having those - that line of questioning from Mr. Fahmy?

A. Yes.

20 Q. I'll give you the opportunity now, today, do you have any doubts whatsoever whether you've made any of this up.

A. No.

... OBJECTION BY MR. FAHMY.

25 THE COURT: That's fine. Have a seat. The - we're going to move on to another question, please.

MR. SOSA: Those are my questions, Your Honour.

30 THE COURT: Thank you so much for your patience and the back and forth. Your attendance is appreciated and you are now released, okay? Thank you.

We'll have a quick chat about our planning for

tomorrow, so you're free to go. You get to keep the water, too.

A. Okay. Thank you.

THE COURT: We will start again tomorrow at 10 o'clock. Yes. There was a bit of business about a request for transcripts from in-camera. I think it came from your office, Mr. Fahmy, that there was a transcript, an urgent request for a transcript for in-camera.

MR. FAHMY: I think I understand why that may have came.

THE COURT: That's off the table now?

MR. FAHMY: No. We'd only request - because I believe the witness had started her evidence or her cross-examination on the Tuesday after the 278.92 application, which wasn't. All we want is the cross. All we want - so....

THE COURT: Okay. So what I'm going to suggest is the protocol for that. It can be accomplished in one of two ways, the easy way and the hard way. One is a judge's order, the second one is a motion. And so if it is something that's required, then I'm going to suggest that between the two of you, you approve an order to deal with it and then you bring it with you tomorrow and then I'll take a look at it.

MR. FAHMY: No, Your Honour. I apologize if I made you misunderstand. I don't want anything to do with the in-camera proceeding at all. That part I have. I think it's the way perhaps Nicole from my office worded the request.

THE COURT: Okay.

MR. FAHMY: So I will re-request and make it clear to the audio department or whatever in the court that we only want the public record.

THE COURT: Okay, all right. We don't want any of the in-camera stuff.

THE COURT: All right. That's fine. So going forward, planning. So you've had your witnesses here, so we're prepared to proceed. And my comments yesterday still stand. We are not going to conclude this trial clearly tomorrow. I can offer you this information because we said we're going to put you over to an assignment court after this. And I found out from the court that my availability for another week, because we lost a week, no fault of the court or Crown, there was an event that needed to be addressed, right? So that happened. But that was one week. So to find another week, we would be looking, because I am seized, I can provide you with this date right now to think about. And if that doesn't work out, that's fine, because then you can try to see whether something else comes available, but we're talking the week of November 25th.

MR. SOSA: All five days?

THE COURT: Apparently. Now, I know that's a long time away, but that's the way it is. And, again, my suggestion would be that you take that, hopefully, reserving the right to come back at assignment court to speak to and see whether or not something sooner comes up. Because, as you know, things change rapidly.

MR. FAHMY: Yes.

5

THE COURT: A lengthy trial could resolve, and then time is available. So that's what I'm suggesting, is that you snag the 25th of November as a potential return date for one week, and that we also tomorrow, at the appropriate time, so we're not hanging people up mid-testimony, given that it might go to November, that at that time we put you over to an assignment court to see whether you can get something earlier. Okay?

10

MR. SOSA: All right.

15

THE COURT: Any other housekeeping matters before we break?

MR. SOSA: The - I know it's probably not easy to answer, but just so that I know whether to have one or two or three witnesses, what I intend to do next is to call the two friends. I intend to call C [REDACTED] next. I just wonder if there's any way that defence can give us an idea, just so that I don't have....

20

MR. FAHMY: We can have that chat outside, that's....

25

THE COURT: So, again, I'll leave that to the two of you to discuss now and tomorrow. And, again, I'm saying out of decency to the witnesses not to hang them up mid-testimony.

MR. SOSA: Right.

30

THE COURT: If we can wrap it up. If we can't use the full date because it doesn't correspond with how long a witness is going to take, well, we'll have to deal with that.

MR. SOSA: Okay.

THE COURT: But if we can cram in some smaller

ones in between, again, we'll try to use our time. I leave that with you. Any other housekeeping matters?

5

MR. FAHMY: No. I think we should definitely get that agreed statement of facts filed before the court tomorrow. Other than that, I don't have issues. So, other than that, I don't think we'll have anything else to discuss, at least from our defence.

10

MR. SOSA: No, that's all. Thank you, Your Honour.

THE COURT: Okay. Thank you all.

15

... WHEREUPON THE MATTER IS ADJOURNED.

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25

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126.
Certificate

FORM 3

ELECTRONIC CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))

Evidence Act

5

I, Janet Smith, certify that this document is a true and accurate transcript to the best of my skill and ability (and the quality of the copy of the recording and annotations therein) of the recording of Rex v. Jack Densmore in the Superior Court of Justice at HAMILTON, ON, taken from Recording No: 4799 608 20240418 095200 10 KRAWCHJ.dcr which has been certified in Form 1.

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September 3, 2024

Date



Signature of Authorized Person
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30

Court File No. CR-22-00000484

SUPERIOR COURT OF JUSTICE

5

HIS MAJESTY THE KING

10

v.

15

JACK DENSMORE

P R O C E E D I N G S A T T R I A L
I N C A M E R A

20

BEFORE THE HONOURABLE MR. JUSTICE J. KRAWCHENKO
on April 16, 2024 at HAMILTON, Ontario

25

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SECTION 486.4 OF THE CRIMINAL CODE OF CANADA, BY
ORDER MADE IN THE SUPERIOR COURT OF JUSTICE**

30

APPEARANCES:

B. Sosa

Counsel for the Crown

M. Fahmy

Counsel for Jack Densmore

(i)
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25 *[sic]* indicates preceding word has been reproduced verbatim and is not a transcription error.

(ph) indicates preceding word has been spelled phonetically

All spellings of names are transcribed as set out in the reporter's notes unless noted with a
(ph)

30 Transcript Ordered April 7, 2024
Transcript Completed September 10, 2024
Ordering Party Notified September 16, 2024

1.
Ruling
Krawchenko J.

TUESDAY, APRIL 16, 2024

R U L I N G

5 KRAWCHENKO J. (Orally):

This is a Stage Two ruling being delivered orally. Today's date is the 16th of April 2024. A Stage Two hearing was held in camera on 15 April 2024.

10 In addition to Crown and defence counsel, the complainant was represented by her counsel, Ms. Valeri. The records in issue do not reference the complainant's other sexual activity. Accordingly, they are inadmissible unless the content of said records are relevant to an issue at trial and have significant probative value that is not substantially outweighed by the danger of prejudice to the proper administration of justice. This is determined by taking into account the factors set out in 278.92(3).

15

20

As was stated in *R. v. R.M.R.*, 2019 BCSC 1093 CanLII, the requirement of significant probative value serves to exclude evidence of trifling relevance. Subsection 278.92(3) sets out a series of factors that a judge must consider in determining whether a record, falling within the ambit of 278.92(1), but that does not concern evidence of the complainant's other sexual activity is admissible.

25

30

In determining whether evidence is admissible

2.

Ruling

Krawchenko J.

under subsection (2), the judge shall take
into account:

5 (a) the interests of justice, including
the right of the accused to make a full
answer and defence;

10 (b) society's interest in encouraging the
reporting of sexual assault offences;

15 (c) society's interest in encouraging the
obtaining of treatment by complainants of
sexual offences;

20 (d) whether there is a reasonable prospect
that the evidence will assist in arriving
at a just determination in the case;

25 (e) the need to remove from the fact-
finding process any discriminatory belief
or bias;

(f) the risk that the evidence may unduly
arouse sentiments of prejudice, sympathy
or hostility in the jury;

30 (g) the potential prejudice to the
complainant's personal dignity and right
of privacy;

(h) the right of the complainant and of
every individual to personal security and

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to the full protection and benefit of the law; and

5 (i) any other factor that the judge considers relevant.

Section 278.94(4) of the *Criminal Code* further provides that:

10 At the conclusion of the hearing, the judge, shall determine whether the evidence, or any part of it, is admissible and shall provide reasons for that determination, and

15 (a) if not all of the evidence is to be admitted, the reasons must state the part of the evidence that is to be admitted;

20 (b) the reasons must state the factors referred to that affected the determination; and

25 (c) if all or any part of the evidence is to be admitted, the reasons must state the manner in which that evidence is expected to be relevant to an issue at trial.

There were three groupings of records referenced in this application, those being:

30 (1) portions of the complainant's cell phone extraction records, cell phone records.

- (2) Dr. [REDACTED]'s records; and
(3) prescription records.

I will deal with each grouping in turn. Before starting with my analysis, I would like to address the argument raised by defence, which in summary was, that given the fact that this court had previously ruled on the production of the subject records of the defence pursuant to Section 278.7, and further that in ordering production, the subject records had already been vetted and in certain cases redacted, that this previous exercise would have been sufficient and need not be repeated on this admissibility application.

That argument is very attractive on its face. The factors in both production and admissibility regimes warrant closer scrutiny. I have divided it up. It is not really clear in oral reasons, but I have a bit of a chart for myself. So I have production requirements, admissibility requirements.

Production requirements, produced if likely relevance to issue a trial. Admissibility requirements, inadmissible unless relevant to an issue at trial as per procedure. Under production requirements, production necessary in interest of justice and complainant witness right to privacy and personal security and equality are referenced. On the admissibility requirements section, significant probative value, not substantially

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Krawchenko J.

outweighed by the danger of prejudice to the proper administration of justice.

5

Now we get into the factors in each one of those sections. Under production factors, necessity of record for full answer and defence. On the admissibility factors, interest of justice, including right to make full answer and defence.

10

Under the production factors, probative value. Under the admissibility factors, not necessarily stated, but it is found in the admissibility requirements above.

15

Under production factors, the nature, extent of reasonable expectation of privacy, potential prejudice to personal dignity and rights to privacy. On the admissibility factors, potential prejudice to complainant's personal dignity and rights of privacy.

20

Going back to production factors, discriminatory belief or bias based. Same on the other side on admissibility factors.

25

Societal interest in reporting sex assault under production factors, same under admissibility factors. Societal interest in encouraging seeking treatment, same in both production factors and admissibility factors.

30

Effect on integrity to trial process on the

6.

Ruling
Krawchenko J.

production factors. Under admissibility factors, reasonable prospect that the evidence will assist in the just determination of a case.

5 Under admissibility factors, I am going to switch to that side right now, the right of complainants, et cetera, to personal security and full protection of benefit of the law, that is in the factors. Under production factors, it is not 10 found there, it is found in the requirements.

15 In summary, as can be seen in this comparison, the factors to be considered are very similar. The distinction is that in the admissibility regime, likely relevance is not enough. Here the evidence must be relevant to an issue. It must be significantly probative and not outweighed by danger, prejudice to proper administration of justice.

20 On the basis of this analysis, I do not agree with the proposition that the determination made at the production stage, that is the extent of the information provided in redacted or non-redacted 25 form, necessarily dictates the outcome at the admissibility stage.

Moving on, I now turn to the groupings of records. First, cell phone records. The cell phone records 30 as produced, with the exception of the personal notes found at 1110 as item 1, are all relevant. The messages that are admissible all relate to the

5

accused, the alleged sexual assault, details of the events leading up to and after the alleged offence and provide potential insight into the feelings and opinions the complainant had with regard to the accused in certain circumstances where same arose.

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With regards to the personal note mentioned, here the court finds there is minimal probative value to these personal notes and the admission of them into evidence would cause prejudice to the complainant's personal dignity and right to privacy, and that would be outweighed. The factors engaged under the grouping are the interest of justice, including the right of the accused to make full answer and defence, there being a real prospect that the evidence will assist in arriving at a just determination of this case. The relevance of the evidence to be admitted is that it touches directly upon the events that are subject matter of this trial and has limited impact on the complainant's personal dignity and right of privacy or personal security.

Turning now to the records of Dr. [REDACTED]. With regard to these records, neither the complainant nor Crown take real issue with the admissibility of the email exchanges between the complainant and Dr. [REDACTED]. The email messages are admissible. They all relate to the accused, the alleged sexual assault, details of the events leading up to and after the alleged offence and provide potential

8.
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insight into the feelings and opinions that the complainant had with regard to the accused in certain circumstances where same arose.

5 Additionally, the email responses relate to advice and opinions given by Dr. [REDACTED] to the complainant with regards to the events as described. The evidence contained therein does have the potential of assisting the court in arriving at a just determination in this case, 10 allowing the accused to make full answer and defence with its probative value outweighing any prejudicial effects.

15 In addition to the aforesaid email exchange, there are six notes created by Dr. [REDACTED] I'll reference them by the numbers assigned to them in disclosure:

20 Note 1814 - 7 August 2020:

25 With the exception of the complainant's address, I do not agree with the submission made by complainant's counsel in support of a full or partial redactions of point 3, 4, and 5. I find the entire note, other than her address, is admissible in the interest of justice, including the right of the accused to make full answer and defence.

30 Note 1827 - 14 August 2020:

I agree with the submissions made by complainant's counsel in support of the full redaction of this note, other than the date of the appointment.

5

Here, the notes do not assist in arriving at a just determination of the case, but rather simply affect the personal dignity and privacy of the complainant.

10

Note 1840 - 21 August 2020. With the exception of the complainant's address, the entire note is admissible in the interest of justice, including the right of the accused to make full answer and defence. The note addresses issues raised by defence of motivation to fabricate the conscious or unconscious collaboration between the complainant and her therapist in the early days after the alleged occurrence that may have coloured or tailored the ultimate description of the impugned events.

20

Note 1864 - 11 September 2020:

25

The second paragraph of the note, commencing with, and I quote, "█████ feels that she is doing...", shall be admitted with the fifth bullet, as previously disclosed, redacted, along with the complainant's address. The applicant's argument regarding the reference to sleep medication and psychiatrists in the redacted text are not probative of anything in the context of this note and impact on the personal dignity and privacy of the complainant. Issues relating to medication,

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drugs, will be addressed in other toxicological evidence.

5

Note 1895 - 25 September 2020 and note 1909 - 02 October 2020:

10

With the exception of the complainant's address on both notes, the balance in the disclosed redacted form shall be admissible in evidence. The information found therein is probative as it touches upon the central elements of this offence.

20

Prescription records:

15

Neither complainant nor Crown raised any issues with regard to the post prescription record information. The evidence found therein is probative and does not prejudice the complainant's personal dignity or rights of privacy to such a degree that would suggest that it not be admitted into evidence if needed.

25

30

In conclusion, for reasons noted earlier pursuant to Section 278.94(4) of the *Criminal Code*, I have now determined whether the evidence in issue in this application or any part of it is admissible. I have provided reasons for that determination and in cases of redaction have advised what part of the evidence is to be admitted. I have referenced the factors that affected the determination made and have indicated which way the evidence is expected to be relevant to an issue at trial.

THE COURT: I am going to provide Crown and defence with the reference material, the redactions that I made. It'll make sense once you have it in your hands...

5 MR. SOSA: Thank you.

10 THE COURT: ...it'll just - I took the liberty of redacting the things that I said I was going to redact. And with this ruling we will then take a brief adjournment and return to continue with cross examinations of the complainant. Again, as we've discussed yesterday, I'll leave it in your hands Mr. Fahmy to let everybody know. I think you said you needed about an hour but if it's going to be shorter, that's fine, okay? So you 15 will let the court know through the CSO and then I will be summoned and come back in to continue the trial.

MR. SOSA: Your Honour.

20 THE COURT: Yes?

25 MR. SOSA: ...just to be entirely clear because the issue was kind of left untouched this morning with respect to the complainant counsel and what, if anything, can be shared as a result of your ruling. Since that's not been addressed, counsel and I both agreed, based on Mr. Fahmy's comments that she would share the results of the ruling with the complainant. So do we just leave it at that then or is there any further comments that Mr. Fahmy would like to make? I just want to ensure that there's no allegations of any 30 impropriety once [REDACTED] takes a stand.

MR. FAHMY: Yes, that was my understanding, Your

Honour, is that complainant's counsel would be here to hear the decision but ultimately, it's the Crown who's got to make sure that defence abides by that decision in any event so there's no purpose in kind of disposing the records or what's been redacted or not. That was kind of Ms. Valeri's position and we all kind of had an agreement about that before we all left the building yesterday. So my friend has quite accurately portrayed that.

MS. VALERI: Yes.

THE COURT: So just so I understand, what is the plan?

MS. VALERI: Your Honour, because of the situation that Ms. [REDACTED] has given her direct evidence and given her cross, I think if she weren't in that position, I think I would be able to share with her Your Honour's decision, but given the situation that she's in, I don't want to just to avoid any suggestion that she may be prepared or anything of that nature. What I would like to be able to do, so she knows that I was here is go back with Mr. Sosa, tell her we received Your Honour's decision, that we are not sharing with her what that decision was but that she can expect that later today she'll be cross-examined and just leave it at that, that we received the decision. And, you know, after she gives her evidence, if she wants to talk about why that ruling was made, I can help explain that but while she's giving evidence we don't, we can't discuss that.

THE COURT: Fair?

MR. FAHMY: Yes.

THE COURT: Fair enough. That's the plan.

MS. VALERI: Thank you.

MR. SOSA: Great, thank you, Your Honour.

5 THE COURT: I'll see you when you let me know you need to.

MR. FAHMY: I think 11 will be sufficient, Your Honour.

THE COURT: Okay, 11 o'clock.

10 MR. FAHMY: Yes.

THE COURT: So we'll plan on 11.

MR. FAHMY: Thank you.

THE COURT: If earlier, that's fine.

15 MR. FAHMY: Actually, just, if I may, Your Honour, I've like already produced a very voluminous exhibits document for the court to use. I'm certainly going to put it on the screen to the witness. It would take some, it would take a long time to try to like get redactions and either reprint it or even do it on the page itself perhaps, I don't know, but I'm, you know, obviously I'm mindful of what is been redacted. I'm not going to rely on it or use it but if I could still use that. It's not going to be entered as an exhibit obviously, it's just, first, because I wanted to make sure that you had a judge's copy to kind of make your own notes as we kind of went along through the testing of her evidence and so on for my friend as well. So, but that will not have the redactions. Is that - is that - it's not meant for an exhibit or anything like that.

20
25
30

THE COURT: If it's not an exhibit and everybody has the corresponding ruled upon redactions.

MR. FAHMY: So....

5 MR. SOSA: If I understand correctly, it's essentially just as an aid for our own purposes to follow along.

THE COURT: Right.

10 MR. SOSA: It's not going to be part of the record. I don't see an issue.

THE COURT: Nor do I.

MR. SOSA: Right, okay.

MR. FAHMY: Thank you.

R E C E S S

15 U P O N R E S U M I N G:

THE COURT: I'm not going to need my computer for any of this, we'll be able to use the screens, yes?

20 MR. FAHMY: Yes.

THE COURT: Thank you.

MR. FAHMY: And so, Your Honour, I also provided a paper copy of that exhibits, just that so, it's a judge's work copy basically.

25 MR. SOSA: Your Honour, I just rise just because I'm not sure if Mr. Fahmy will address this; I might as well raise it. He had mentioned, Your Honour, that there may be some observers on Zoom. That's fine. My submission to the court on that, Your Honour, would be that before we call in Ms.

30 [REDACTED], that anyone who is joining us by Zoom be advised of the publication ban and I'd ask

that the court disable any ability for the observers to turn on your video or access the microphone to ensure there are no interruptions.

THE COURT: The standard warning as well.

5 MR. FAHMY: Yes, no issues with that, Your Honour.

THE COURT: All right.

MR. SOSA: Thank you.

10 CLERK REGISTRAR: You're not permitted to make any recording of the proceedings or take photos or screen captures of the proceedings. It is an offence under Section 136 of the *Courts of Justice Act* that may constitute contempt of court for anyone who copy, record, screenshot, photograph, publish or broadcast court hearing or any portion of it or otherwise disseminate such a record including on social media and or other internet sites without express permission of the court.

15 THE COURT: Could you repeat also the publication?

20 CLERK REGISTRAR: Yes, I'm just getting it right now. Pursuant to Section 486.4 of the *Criminal Code*, an order that no information that could identify the complainant or witness shall be published in any document or broadcast or transmitted in any way.

25 THE COURT: Thank you.

CLERK REGISTRAR: You're welcome.

30 MR. SOSA: And Your Honour, whenever Mr. Fahmy is prepared to proceed, Ms. [REDACTED] will be paged.

THE COURT: Ready to proceed?

MR. FAHMY: Yes, Your Honour.

THE COURT: I think the - oh, I thought the

complainant was being paged already.

MR. FAHMY: I apologize, Your Honour, I had no idea - I was ready.

5

[REDACTED] REMINDED OF AFFIRMATION

CROSS-EXAMINATION BY MR. FAHMY:

Q. Good morning.

A. Morning.

10 Q. So, my name is Mark. I'm Jack's lawyer. We're just going to go over some of your evidence and, you know, just generally about the things that happened on the day in question, August the 5th, 2020, all right. And, you know, well, first of all, my friend had asked you and you said that you'd moved universities, you're at Waterloo now, correct?

15 A. Laurier.

Q. Laurier, sorry. And what it is- what is it that you're doing there?

20 A. I'm doing a Bachelor of Science in Psychology with a minor in Biology and Criminology.

Q. Okay. Wow. Interesting. All right. And this is your last year, you were saying?

A. It is, yeah.

25 Q. Okay. Any interest in going to law school later?

A. No.

Q. Okay. All right. So and I just wanted to kind of go over- I just want to get to one thing. That moment when you came back from the bathroom and you're back in his room 30 and he tells you that he's got an early morning. And while you say he said that, you know, he has an early morning and that you should go. Do you remember saying that?

A. Yeah.

Q. Okay. And you remember how it felt?

A. Yes.

Q. Didn't feel good?

5 A. No.

Q. Okay. And there's a lot of reasons in your own mind, right, that you had gone through, even at that moment or immediately about why he would do or say something like that after you just had sex, right?

10 A. Umm, yes.

Q. Okay. And you'd agree with me that, you know, some of those reasons are because he's an asshole, right?

A. No.

15 Q. No? Okay, any- you kind of hesitated there, is there a reason why?

A. I wouldn't say those few - I wouldn't say I had those thoughts in my head.

Q. Not during?

A. At that time, no.

20 Q. And not immediately after or a few days after?

A. Maybe a few days after.

Q. Yeah.

A. But in that moment, I wasn't thinking....

25 Q. Okay. I want to talk about that moment and all your kind of reactions to that because I'm assuming, something like this you've thought about several times, right? You've thought about it for, maybe till now, I don't know, right? You got to- sorry. I understand what you're saying when you're nodding your head, yes, and madam reporter is saying thank you to me because what's happening is that she can't record you nodding your head.

30 A. Oh, my apologies. I didn't know if that was a

direct question or not.

Q. No need to apologize to me. Madam reporter is all good with that now.

A. Okay.

5 Q. All right. So you've definitely had occasion to think about that moment and all the reasons why he would do something like that, right?

A. Yes.

10 Q. And eventually, you came up to the fact or one of the things is that he was an asshole, right?

A. Yes.

Q. And that he had used and abused you basically, right?

A. In your words, yes.

15 Q. Well, what about in your words?

A. I wouldn't say he used and abused me but, yes.

Q. What would you say?

A. I guess, yeah, he- well, yes, he did it. He did assault me in my words, yeah.

20 Q. Okay. But before using that word "assault", I believe that your evidence at trial was that you had felt that he had made you feel that you were worthless?

A. Yes.

25 Q. Right? That - and - and I think you'd agree with me that, at some point, when you had an opportunity to write down your thoughts and feelings, you've mentioned that he had basically just used you for his own pleasure and entertainment?

A. Yes.

30 Q. Right? Okay. Anything else that I'm missing?

A. I don't think so.

Q. Okay. Now, can you think of and those are all

like- you'd agree that all of the reasons that I just stated to you, those are all reasons, bad reasons why he would do something like that?

A. Yes.

5 Q. Okay. Do you have, in your mind, any other reason why he would do something like that?

A. No.

Q. Not at all?

A. No.

10 Q. Okay. You- I'm going to suggest the reason.

I've spoken to my client, I have his side of the story. I'm sure he's going to sit where you are and tell the court. So I'm going to - I'm going to suggest something to you, okay?

A. Okay.

15 Q. You agree that throughout the time you were together that day, you'd mentioned he was a bit shy?

A. Yes.

Q. You'd mentioned, I believe you told your friends, hey, things are a little awkward between us?

20 A. Yes.

Q. Even told your friends he was shy?

A. Yeah.

Q. Like not like after, like, while you're at his house...

25 A. Mm-hmm.

Q. ...right? You've got to say "yes".

A. I don't recall.

Q. You don't recall?

A. Yeah.

30 Q. Okay. All right. I'll bring you back to that, all right? But is it possible that that's what you did that you....

A. Possible.

Q. Yeah. Okay. Now, back to the reason I'm going to suggest to you, ma'am,- don't worry about her, just focus with me. Don't worry about the reporter. This is 5 important. My client's life is on the line here, okay?

A. I'm focused.

Q. All right. I'm going to suggest to you that when you guys were having sex, he came a little quicker than you thought he would, then he thought he would, and that when you 10 kind of turned around, you gave him that look like, is that it? And that he- would you agree that you gave him that look first of all?

A. No.

Q. You don't agree with that? You don't think 15 that that's possible that that's what happened here, that he got embarrassed that the sex didn't last as long as you'd hoped for, you gave him a look like that's it?

A. No.

Q. Not at all?

20 A. No.

Q. Okay. And when you came back to the room, you didn't give him that look at all?

A. Could I please get clarification what you mean by a look, like a look...

25 Q. Like...

A. by conveying - conveying what, sorry?

Q. Conveying that that's it?

A. Then, no.

Q. Okay. All right. Okay. And even without 30 that look, even without you acknowledging it on your part, do you think that it's possible that that's what was going on for him at that moment?

A. It's possible that could have been going on for him.

Q. And you'd agree that, you know, he's kind of - actually, he's- after he comes, he's the one that takes the 5 paper towel and wipes your back first and then gives you some more paper towel, in case you needed it?

A. No.

Q. He didn't wipe your back?

A. No.

10 Q. Okay. All right. I'm going to ask you now about what it is that you were wearing...

A. Okay.

Q. ...that day, okay? And I mean, start off with something easy. Obviously, were - you were wearing shoes?

15 A. Yes.

Q. All right. And what kind of shoes were you wearing? Do you remember?

A. I believe there were sneakers.

20 Q. Sneakers, okay. And you'd mentioned that - and when you get to his house the first time, he gives you a tour of the house and I'm going to suggest you take your shoes off?

A. I believe so, yes.

25 Q. Yeah. He doesn't want you to- it's a clean house, as much as you can recall, right?

A. Yeah.

Q. Okay. And - and then when you leave to go to attempt to go for that hike, you put your shoes back on?

A. Yes.

30 Q. Okay. Hike doesn't work out. You go back to the house. You take your shoes off again?

A. Yes.

Q. Okay. And then when you leave, you put your shoes back on?

A. Yes.

Q. Okay. And is it those sneakers where you just kind of like kick them off or you got to like untie them, take them off. Do you remember?

A. I don't remember.

Q. Okay. And what about, if you recall, whether you had to like, sit down, take them off, when you were going in and out of the house?

A. No, I didn't have to sit down.

Q. Okay. Did you maybe bend down to like, unlace the tie in the knot, I guess. I'm assuming that, sorry, they're not Velcro?

A. Yeah, yeah.

Q. Okay.

A. They had — they had laces.

Q. All right, they got laces. But it's going to take you a second or two or whatever to, you know, take them off, put them back on, right?

A. Yes.

Q. Okay. And I believe you also mentioned that you were wearing- oh, sorry- and the shoes, I'm assuming, you would agree, actually, that you left them by the front door?

A. Yes.

Q. Okay. Jean jacket. You first come in, right, and it's August, so it's already, it's kind of hot, right?

A. Mm-hmm.

Q. Okay. But jean jacket, you said you were wearing?

A. Yes.

Q. Okay. When you first get to the house, I'm

going to suggest you, you take off your jacket and you hang it up, because there's like a little coat rack thing right by the door, right?

A. I don't believe I hung it up. I think I kept
5 it on me.

Q. You believe you kept it on?

A. Yes.

Q. Okay. All right. And then the- when you get back to the house, after not being able to go for a hike, at
10 that point, you put the jacket on the coat rack on the front entrance, right?

A. No, I believe I kept it with me the whole time.

Q. The whole time you were in his house?

15 A. Yes.

Q. Okay, like that means even going up to his room.

A. I don't believe I was wearing it, but I was carrying it.

20 Q. You were carrying it. Okay, so you took it off at some point...

A. Yes.

Q. ...the second time to come to his house?

A. At some point I took it off, yes.

25 Q. Okay. Well, where were you when you took it off?

A. I'm assuming at the house or in the car during the hike, or when we attempted to go on the hike.

30 Q. Okay. So you may have left your jacket in his car after, that's your evidence, and you may have left it somewhere in the house, right? So if it's in the house where do you recall perhaps you may have left it?

A. I would have taken it to the bedroom.

Q. You've taken it- so you could have taken it to the bedroom, or you could have left it in his car?

A. I didn't leave it in the car.

5 Q. But you just said that you might have left it in his car.

A. I might have taken it off in the car but I would have kept holding on to it.

10 Q. Oh, okay. So you might have taken it off in the car and then you were holding it, brought it into the house and then kept continuing to hold it all the way up to his bedroom?

A. Yes.

15 Q. When you're in his bedroom, what do you do with the jacket?

A. I put it on, I believe it was the chair with my purse.

Q. Okay. With your purse?

A. Mm-hmm.

20 Q. Okay. About your purse, what kind of a purse was it?

A. It was just a small like over the shoulder purse.

25 Q. Okay. Over the shoulder means that it had like a little strap, thin strap, I guess?

A. Yes.

Q. Okay. Small being like - like just bigger than a wallet, maybe. Something like that?

A. Yes.

30 Q. Okay. All right. And then you were wearing a t-shirt you'd said, right?

A. Yes.

Q. Okay. Do you remember- sorry, the - the- what kind of a t-shirt was it?

A. It was grey, a grey t-shirt...

Q. Okay.

5 A. ...and it had a wave on it?

Q. A wave?

A. Yes.

Q. Like a surf wave? Like what kind of a wave?

A. It was like a famous painting. I....

10 Q. By?

A. I can't remember the name.

Q. Okay. All right.

A. Cool waves.

15 Q. Okay. And is this a woman's t-shirt or men's t-shirt or....

A. A woman's t-shirt?

Q. Okay. All right. And like what size was that t-shirt?

A. Probably a smaller medium.

20 Q. Okay. And in terms of like, was it like a baggy t-shirt, or was it like a tight fitting t-shirt?

A. It wasn't form fitting.

Q. Okay.

A. It was a bit looser.

25 Q. A bit loose, okay. So it, you kind of had room, when you lifted up your arm, there'd be room underneath where the sleeve is?

A. Yes.

30 Q. Okay. And did it come all the way to your elbow, that t-shirt?

A. Yes, a little just over my shoulder.

Q. A little over....

A. Yeah.

Q. So it's like a little oversized...

A. Yes.

Q. ...t-shirt.

5 A. Yeah.

Q. Like it goes over your elbow- sorry. It goes over your elbow, right, a little bit?

A. I don't know that when all the way to my elbow, probably like mid....

10 Q. All right. I'm sorry, there's a screen in front of you.

A. Yeah. Mid-bicep.

Q. Do you mind standing - sorry?

A. Mid-bicep

15 Q. Oh, okay.

A. Yeah.

Q. So now it's up here?

A. Yeah.

Q. Okay. All right.

20 MR. FAHMY: So, just for the purposes of the record, the witness is motioning to half her- between her arm, or her shoulder and her elbow. Okay?

A. Yes.

25 Q. Fair enough? All right. And in terms of its length, I'm going to suggest to you that- and I guess you said you're also wearing a skirt underneath?

A. A dress, yeah.

30 Q. Or a dress underneath - sorry. And you would agree that the t-shirt and the dress were kind of at the same level or just a little bit, one was a little bit shorter than the other?

A. The shirt fell to probably my belly button

area....

Q. Oh.

A. ...and the dress went to about my knees.

Q. Okay. So the dress- I mean, the t-shirt is
5 only going to your belly button?

A. Yes.

Q. Okay. And then you're wearing a dress that
goes past that?

A. Yes.

10 Q. Okay, like the length of that dress goes past
that?

A. Yes.

15 Q. Okay. And – and, in terms of that dress, in
terms of its- you would agree that it was, you know, a tight
fitting, form-fitting dress, correct?

A. Yes.

20 Q. Okay, and it's a, like a tube dress, and
forgive me, I'm like, I'm such a guy/guy, like, I don't know how
to, like, so like, I'm not trying to like, you know, say
something or trying to trick you, I just don't know. But it's
like a tube dress. Am I saying that right?

A. It had thin straps around the shoulders
and....

Q. Yeah, and....

25 A. It was made out of like cotton.

Q. Okay.

A. Yeah.

30 Q. So it's made out of cotton, it's black, I
believe you said, right, and it had the straps on, you're
pointing, I guess, to your shoulder?

A. My shoulders, yes.

Q. So, it goes over your shoulder, connected to

the back?

A. Yes.

Q. Okay. And it's tight fitting, you said, or form-fitting, right?

5 A. Yes.

Q. Okay, and how do, like, you'd agree that in order to put that dress on, you'd put the whole dress kind of down on the floor, and you'd put your legs through and pull it up and put the straps over in order to put it on, right?

10 A. Yes, yeah, or over my head.

Q. Or over your head?

A. Yes.

Q. Okay, all right. And you agree that there wasn't like a zipper or anything at the back, right?

15 A. No.

Q. Okay, all right. And in terms of the length of that dress, you would agree with me that it was above the knee?

A. Yes.

20 Q. And I'm just suggesting to you that it was about like midway between like your hip and knee, like it was like kind of on your thigh area, right?

A. Yes.

25 Q. Okay, all right. And you would agree with me that you also were not wearing a bra that day?

A. Yes.

Q. Okay. Now, so just like I kind of took you to the after, let's take you back to the kind of before, okay? And, you know, there is generally some, I guess, excitement on 30 your part, you know, meeting up with Jack. Would you agree with that?

A. Yes.

Q. All right. And, I guess you'd also mentioned that you had both matched on Tinder?

A. Yes.

Q. Yeah. And, you know, in order to match on 5 Tinder, he would have to see your profile and swipe right. You got to say, "yes".

A. Yes.

Q. Okay.

A. Sorry. I didn't know if you were done with 10 the question.

Q. And then you'd have to see his profile and swipe right?

A. Yes.

Q. And then Tinder says, hey, match, and sends 15 you a notification, right?

A. Yes.

Q. And sends him a notification?

A. Yeah.

Q. All right. So, your evidence was that a 20 couple of days after that or a day after or something like that, he messages you on Instagram?

A. Yeah.

Q. All right. And, I'm going to suggest to you that the first message is- so I have some messages. I'll show 25 them to you. I'm not trying to, like, you know, hide anything from you. But before I do, like, just so, I mean, I don't really, I don't have Instagram, I don't really know how it like works exactly, but there is like you follow people on Instagram, right?

A. Yes.

Q. And then people can follow you back?

A. Yes.

Q. And by following somebody or them following you, they get access to certain content that you've uploaded yourself?

A. Yes.

5 Q. All right. And I mean, obviously, before you had met up, in August the 5th of 2020, you had followed him on Instagram?

A. No.

10 Q. He had - no?

A. Oh, sorry, before we met up, yes, yes. Sorry.

15 Q. Yeah. Okay. No, no, no worries. Did he follow you back?

A. Yes.

15 Q. Okay. And I guess when you're following somebody or they're following you, you can kind of like comment or "like" their kind of posts, correct?

A. Yes.

20 Q. All right. And you would agree with me that you had done that?

A. Liked and commented on his posts?

25 Q. Yeah?

A. I don't remember if I liked or commented on anything.

Q. No?

25 A. No.

Q. Okay. What about him? Do you remember if he liked or commented on anything?

A. No.

30 Q. He didn't, right?

A. I don't remember.

Q. Oh, okay. I mean, it was four years ago, so that's understandable. But again, you don't remember, but it

[REDACTED] could have happened, right, like....

A. It could have.

Q. Like usually when you add somebody on Instagram or you follow somebody, you kind of want to look at [REDACTED] their profile, look at stuff that they're doing and saying, right?

A. Yes.

Q. Okay. And- but earlier, when you were giving your evidence at trial, you said that Jack didn't share his age, [REDACTED] right?

A. Yes, he did.

Q. Okay. But you would agree with me, right, that on Tinder, your age is kind of a prominent feature on the profile, right?

A. Yes.

Q. Yeah. So I guess when you say he didn't share his age, you would agree with me that he actually did on Tinder, right?

A. Yes. He didn't explicitly tell me.

Q. Yeah.

A. Yeah.

Q. But the Instagram messages follow the fact that you both matched on Tinder?

A. Yes.

Q. So he knew how old you were and you knew how old he was?

A. Yes.

Q. And on Tinder, you can kind of set parameters like, you know, only show me people of a certain age, for [REDACTED] example, right?

A. Yes.

Q. Okay. And because the app matched you to

Jack, that means that that was an age range where you were kind of interested...

A. Yes.

Q. ...in meeting people, right?

5 A. Yes.

Q. Okay. And in terms of the messages, right, I mean, I think it starts off really funny. I'll post it up for you here, see if you can kind of recognize it.

10 MR. FAHMY: So this is going to be page two, Your Honour, of that exhibit book. All right, all right, so no, no just go back up there, okay.

MR. FAHMY: Q. So you see here that, it says at the top, you don't follow each other on Instagram, right?

A. Yes.

15 Q. But that's because you no longer follow each other on Instagram, right?

A. Yes.

20 Q. Okay. And actually, if we can just kind of scroll down a little bit, you recognize kind of the – the way that these messages kind of work?

A. Yes.

Q. All right. So on July the 24th, it says you replied to their story, right?

A. Yes.

25 Q. So you would now agree with me that you actually did reply to his story or something about him on that day?

A. I believe that's actually him messaging me.

30 Q. Oh, okay. All right. And then the – the blue is his messages, right, the ones on the right?

A. Yes.

Q. And the ones on the left are yours, obviously,

right?

A. Yeah.

Q. Okay, and he starts off by saying, "Totally just saw your cute mug on Tinder".

5 A. Yes.

Q. And then you respond, "Did you swipe right though is the real question", right? I mean you already knew but because he's, his response is "Allegedly", right?

A. Yes.

10 Q. And you're kind of being lighthearted, like you mentioned in your evidence about the back and forth between you on Instagram, right?

A. Yes.

15 Q. Okay. But then he says, "I'm making my slide on here though", right?

A. Yes.

Q. And then, you kind of laugh, "Hahaha, is that so?" What's it and then he says, "What's it look like", right, laughing, right? Okay. Now, moving on, he's kind of saying, what's it look like, and you're saying laugh out loud, right, "lol". "Okay, okay, I see you", right?

A. Yes.

20 Q. Now, I mean, at this point, what's going on through your mind?

25 A. I was just excited to talk to someone new.

Q. Right. Well, he's not just new. You mean, you kind of knew about him, right?

A. Yes.

30 Q. And you knew about him at least a year before this?

A. Yes.

Q. And I think elsewhere you mentioned somewhere

when you wrote it down that you know, he's a- he might take a little offence to this, that he's a semi-famous Youtuber guy, right?

A. Yes.

Q. And he has like hundreds of thousands of followers or whatever, right?

A. Yes.

Q. And just, in and around that time, I believe you told your friends, in a text message, O [REDACTED] and N [REDACTED], 10 that it was your dream to be on SNL, which is Saturday Night Live, right?

A. I don't recall.

Q. Okay. All right. But if I showed you that message, you would agree that that's something that you'd said, 15 right? Here, why don't I show you that? The computer's froze, sorry that.

MR. FAHMY: Page 47.

CLERK REGISTRAR: Forty-seven?

MR. FAHMY: Yeah, just zoom in maybe so she 20 can....

MR. FAHMY: Q. You can see that on your screen too, right?

A. I can, yes.

Q. All right. So, what I'm showing you are some 25 group messages between you, O [REDACTED] and N [REDACTED]. And this is actually sent by you on August the 5th of 2020...

A. Yes.

Q. ...which is the day of the date?

A. Yes.

Q. 30 And it says, "1905 UTC". But that, for your purposes, and there's not going to be any issues with this is that, it's really four hours behind in order to get Toronto time

or sorry, Eastern time.

A. Okay.

Q. So it's about 14:05, which would make it 2:05 p.m. in the afternoon.

5 A. Okay.

Q. Just so that you're not confused about how these times work. It's because these were extracted from your phone. I think you recall doing that with the police and whatever, right?

10 A. Yes.

Q. All right. And that's the - the UTC means universal time code or whatever, it's like....

A. Okay.

Q. Okay. So, just so that you understand that. 15 All right, and there it is, "I just realized my biggest dream in life is to intern at SNL, even though that will never happen because I don't have the skills or connections", right?

A. Yes.

Q. All right. So you're telling your friends 20 that this is like your biggest dream is to, you know, be on Saturday Night Live?

A. At the time, yes.

Q. At that time, of course, yes. I'm just saying 25 at that time, yeah, right? Okay. And we'll get back to that, but I want to go back now to the Instagram messages. We were on page three. Okay. Where am I here? Mm-hmm. And he says, you know, "It's been a minute. How you been?" Now, I mean, obviously it hasn't been a minute, but that's- you'd agree, that that's kind of like slang for like, hey, it's been a while?

30 A. Yes.

Q. All right. And you would agree with me that you took that to understand that he remembered you from that

encounter almost a year ago at that homecoming, right?

A. Okay.

Q. And actually, when you mentioned that you had, I mean, he didn't interview you himself, right?

5 A. No.

Q. But you had mentioned that a friend had told you, hey, you made it into his cut, like one of his YouTube videos that were like professionally edited, right?

A. Yes.

10 Q. Okay. And in fact, that homecoming, like the entire video is, whatever it is, an hour, hour and a half, whatever, however, whatever length it is. But when you go on YouTube there's like a cover screen for that video, right, and you're on the cover screen?

15 A. Yes.

Q. So anybody that wants to look at that video, the first thing they're going to- I mean it's not just you, right?

A. Yeah.

20 Q. It's like a whole bunch of people, Jack is kind of in the middle. It's like a bit of a cut and paste job, right?

A. Yeah.

25 Q. But you're there and you're prominent, you're kind of on the left side of him, right?

A. Yes.

Q. Okay. And he remembered you?

A. Yes.

30 Q. Okay. And you'd agree that that kind of made you feel special?

A. I don't know if "special" is the word I'd use, but it made me feel good.

Q. Okay. I'm going to insist on special and I'll tell you why. This guy meets thousands of people, right?

A. Yes.

Q. He- before this, he didn't know your name,
5 right?

A. Yes.

Q. Before this, he had- didn't have your number, didn't know anything about where you work or hadn't seen you anywhere for almost a year, right?

10 A. Yes.

Q. And it's not like he stopped making videos,
right?

A. Yes.

Q. He met probably thousands of people after
15 that, right?

A. Yes.

Q. Okay. But even after all that, and you knew that, obviously, because you knew who he was, right?

A. Yes.

20 Q. But even after all of that, he still remembered who you were?

A. Yes.

Q. I know you're impressive. I think you're impressive. I think he thought you were impressive. And I'm 25 going to suggest to you that you thought the same, that you kind of made a mark on him, right?

A. Yes.

Q. Okay. And that's what made you special.
That's what made you feel special, right?

30 A. That he remembered me, made me feel good, yes.

Q. Okay. But not just that he remembered you,
but because of all those other reasons, right? Like, for

example, and I know you hesitated and I apologize. If you want to say something, you can. Can - or....

A. Please continue.

Q. Okay. It's not like you went to the gas station, you met this- the cashier, then you go back, you know, 5 a week later and the guy's like, oh, hey, I remembered you from last week or from whatever. And that would make you feel good, right?

A. Yeah.

Q. Okay. But you would agree with me that that's 10 not the same feeling that you'd have in that hypothetical scenario that you'd had with Jack, right?

A. I disagree. I wouldn't say it made me feel any more special.

Q. Even though you knew all those things that- 15 about him and how he came to know you, you still don't think that it made you feel just a little bit better than good?

A. No.

Q. Okay. Even though your biggest dream at that 20 time was to go on SNL, not even to be on, just to intern, right? That's what you said in your message?

A. Yes.

Q. That's your biggest dream, right?

A. Yeah.

Q. And here's Jack, who you're now saying- has 25 hundreds of thousands of followers, he's famous, and out of all the people that he'd met before and after, had no way of knowing how to get a hold of you, but he found you, right?

A. Yes.

Q. Okay. And he even showed you, you said, when 30 he gave you the tour of the house, he gave you a tour of the house, right?

A. Yes.

Q. He gave you a tour of the basement where he makes all his YouTube videos, you said, right?

A. Yes.

5 Q. Okay. And you talked about it with him, right?

A. The YouTube videos?

Q. Yes.

A. Yes.

10 Q. And you talked about like the process, editing, right?

A. I don't recall what the specifics were of what we talked about.

15 Q. I'm not saying specifics though, but you'd agree that you talked to him about some of the process of how to make these videos?

A. I believe so.

20 Q. Yeah. That's fine. It's- this isn't, you know, you talked about the process, like, you know, oh, you were - you were interested in him doing that, right, as a profession?

A. Yes.

Q. Right? And the reason is because, at that time, you kind of wanted to get in the biz or whatever?

A. No.

25 Q. But you just said that your biggest dream was to be an intern at SNL.

A. I think I was being hyperbolic when I said that was my biggest dream.

30 Q. But you just told us that at that time it was your biggest dream. Now you're saying something else. Now you're saying it's just hyperbole?

A. It was a big dream of mine, yes. Would it be

my biggest dream? No.

Q. Okay. So then it's fair to say that you just kind of say things you don't mean or text things you don't mean, right?

5 A. No.

Q. Okay. Well, was it your biggest dream or was it not your biggest dream?

A. It was a dream, yes.

Q. But it wasn't the biggest dream anymore?

10 A. When I sent that message, it was something I wanted to do.

Q. On August the 5th?

A. Yes.

Q. 2020?

15 A. Yes.

Q. Okay. How about we just stick to that day, right?

A. Okay.

Q. That was your biggest dream that day?

20 A. Sure, yeah.

Q. Okay. And then you go to the basement, right?

A. Yes.

25 Q. And you're genuinely interested, like, not because you think, well, I'm sure you thought it was cool, right?

A. Yes.

Q. Had you ever been to like a studio before?

A. Yes.

Q. Which one?

30 A. I had visited the Saturday Night Live set before.

Q. Oh, okay. So, but- so you've been to the set?

A. Yes.

Q. How long ago did you - well, I mean, it was COVID then, so I'm assuming before 2020?

A. Yes.

5 Q. When did you go?

A. 2019.

Q. Okay. So you kind of caught the bug. I mean, you go somewhere, you'd agree that you kind of caught the bug back then, right?

10 A. I had been interested in it prior, yes.

Q. Even prior to that?

A. I've been interested in Saturday Night Live, yes.

15 Q. Okay. All right. But it- I mean, I don't mean you're interested, like you were- when you say interested, you don't mean like as a fan, like as just to watch the show, right?

A. No, that is what I mean.

20 Q. Okay. But what I'm asking you, though, is you're interested in being on the show, whether as an intern or maybe one day as a cast member, or something like that, right? That was your biggest dream on August the 5th of 2020, we agreed, right? And how long prior to that, did that dream start to kind of like pick up some steam?

25 A. I'd been a fan of the show as I watched it with my parents for years before that.

Q. Okay. We're not talking about a fan of the show anymore. I'm a - I'm a huge fan of the show. I like it. I love it. I'm sure there's lots of fans of the show. Talking 30 about going from fan to being a member of the show or an intern or working in production or editing or whatever in terms of getting, as an intern, you know, they might make you just get

coffee from the coffee shop down the street, right?

A. Yes.

Q. Okay. But you'd be doing it for Saturday Night Live.

5 A. Yes.

Q. And even your biggest dream to be an intern, lowest rung of the ladder in that business, you understood, right, that that's kind of your way to get your foot in the door. I mean, you'd agree that being an intern wasn't where 10 you'd want to stop at SNL, right?

A. I hadn't thought any farther.

Q. You hadn't thought any farther?

A. No.

15 Q. Okay, all right, sorry. All right, fair enough. So in terms of your interest in that, right, you would agree on August the 5th that it was your biggest dream and you would agree that when Jack was showing you the production and all that stuff in the basement, right, that you were showing a genuine interest because of that dream, right?

20 A. No. I was showing a genuine interest because I was trying to get to know him.

Q. Trying to get to know him.

A. Yes.

25 Q. But in your message you said that even though that'll never happen, because I don't have the talent or the connections, right?

A. Yes.

30 Q. Okay. And I'm going to suggest to you that, you know, when you say the talent, that's because you wanted to go beyond being an intern and actually being on the show, right?

A. Possibly.

Q. Okay. And when you say that you didn't have

the connections, it's because you were- you didn't go to any other - sorry- did you go to any other studio besides the SNL studio?

A. Not that I remember.

5 Q. Okay. Did you do like media marketing or did you try to do any of that kind of stuff at all?

A. No.

10 Q. No? Okay. So Jack is as close as it got to some kind of a way in into doing something online or doing something that like professionally produced, right?

A. I didn't see him in that way, as a connection to get to SNL.

Q. But you just messaged your friends that hours before you were going to meet up with him?

15 A. Yes.

Q. Why would you tell them, just before you're meeting up with Jack, the famous guy, the one who does professional videos, that your biggest dream in life is to be an SNL intern, but you don't think it'll- I don't think it'll ever happen because I don't have the talent or the connections?

A. I was just expressing how I felt at that time, completely unrelated to me seeing him later that day.

25 Q. So now you're saying that that message is unrelated to anything to do with him seeing - anything - anything to do with seeing him that day?

A. Yes.

Q. You sure about that?

A. Yes.

Q. Okay.

30 A. Yes.

Q. Brooklyn Nine-Nine, great show, right?

A. I haven't seen the whole series, but yeah.

Q. You haven't seen the whole series, but you don't need to see the whole series to say that it's a good show?

A. Yes.

Q. It's hilarious, right?

5 A. It's funny, yes.

Q. Okay, not only is it funny but a lot of the actors that are in Brooklyn Nine-Nine are also either on Saturday Night Live or used to be on Saturday Night Live, right?

10 A. I don't know. I'm not familiar with the cast of the show.

Q. Come on. Adam Sandberg?

A. Yes, I know who Adam Sandberg is.

Q. Okay, and he was on Saturday Night Live?

A. I believe so, yes.

15 Q. For years, right?

A. That might have been before my time watching it.

Q. Oh, come on. That wasn't that long ago. But he's the main character on Brooklyn Nine-Nine.

20 A. Yes.

Q. Right? And the reason why - and - and you guys watched Brooklyn Nine-Nine, right?

A. We started, yes.

25 Q. Yeah, and the reason why Jack put Brooklyn Nine-Nine on the TV is because you told him that like one of your favorite shows is Saturday Night Live, right?

A. I don't remember telling him that.

Q. You don't remember telling him that?

A. No.

30 Q. Okay. But do you agree with me that that's probably the reason why out of- I mean, it was on Netflix, right?

A. I believe so.

Q. Yeah. There's like hundreds, maybe thousands of shows, right?

A. Yes.

5 Q. Okay, and you don't- I'm going to suggest to you that the reason why he picked it - sorry- he's the one that picked it. I just want to confirm that, right?

A. Yes.

10 Q. Okay. And do you recall if he asked you what you wanted to watch?

A. I don't recall.

15 Q. No? Okay. And I guess your answer is, you don't remember if he asked you, hey Brooklyn Nine-Nine has a lot of the cast members from Saturday Night Live. You don't remember having that conversation?

A. No.

20 Q. Okay. And you never told them once, throughout the whole time you guys were together that day anything about Saturday Night Live?

A. Not that I remember.

25 Q. Okay. Even though you don't remember it, you could have, right?

A. Possibly.

Q. Okay. It kind of makes sense that, you know, 30 he put on Brooklyn Nine-Nine because you- Saturday Night Live is not on Netflix, right?

A. Yes.

Q. Okay. And so he was trying to get you like the next best thing, right, by putting on Brooklyn Nine-Nine, right?

A. He could have.

Q. Yeah, okay, that's fair enough. All right.

Back to these Instagram messages, okay? He's asking you, "How you been?" You're saying, "I'm not bad. How about you?", right, that's what that means, okay? And I got to say out loud the- what you mean, and if I say it incorrectly, just let me know.

5

A. Okay.

Q. And he says, "Good, what's up?" And you're saying, "Just at work. How about you?" Right?

10

A. Yes.

Q. Okay. Now, this is all on the same day of July the 24th and - 2020?

15

A. Yes.

Q. I - were - where- so where were you working at that time?

20

A. I was working at the Oakville Hospital.

Q. Working at the Oakville Hospital?

A. Yes.

Q. Okay. What were you doing there?

A. I was a COVID screener.

25

Q. A what?

A. COVID screener.

30

Q. Oh, okay. All right. And he responds, "Same. About to run some errands", right? And then you kind of take your conversation outside of the day-to-day by saying, "Okay, nice. Do you have any plans for this summer?" He says, "Yeah, a bunch. HBY"? H-B-Y, but he was probably trying to say H-B-U, which means how about you, right?

A. Yes.

35

Q. Okay. And then you say, "Literally nothing,

"lol". I'm trying to work a lot to save money because I'm planning on backpacking Europe next year. And he responds, "That's dope. I was headed to Italy in April and then COVID

happened". And you say, and then you respond, "Fuck, really? Italy is like the number one place I want to visit". Is that true back then?

A. Probably.

5 Q. How about, was it true that day?

A. Sorry?

Q. Was it true that day?

A. Yes.

10 Q. Okay. And then he responds with like a heart emoji saying that he loves that about – about what you just said, right?

A. Yes.

15 Q. Okay. And then he responds, "Haha. Yeah, so now just making plans locally". And then you say, "Yeah, literally the same". And he asks, "You're in Hamilton"? You say, "Oakville". And then he says, "I was there earlier td", which means today, right?

A. Yes.

20 Q. And he's got the googly eyes, right?

A. Yes.

Q. And that's kind of his way of being kind of funny by saying, oh, I was there today like, you know, I got eyes on you kind of a thing, right?

A. Maybe.

25 Q. Oh. What did you take it to mean?

A. I didn't really take it to mean anything.

Q. Oh, okay. But, I mean, you laughed. You say, "Haha, no way"...

A. Yes.

30 Q. ...right? And I guess that was kind of like your response to him saying what a coincidence, like, you know, we're – we were kind of in the same city at the same time,

right?

A. Yes.

Q. Okay. And there's a voice note. I can't - we've tried, we can't get it to - I don't know how but it, no longer available. But he says something to you and it's about 5 29 seconds - the recording is 29 seconds long, you don't know what he said or whatever but then you say, whatever he said, "Honestly, that sounds great. You definitely gotta let me know when you're free", right?

10 A. Yes.

Q. I'm going to suggest to you, even though I can't play it, but I know what he - I know what my client is going to say he said, but I'm going to suggest to you that he's sending you a voice note along the lines of, hey, there's this 15 place we can go take a hike and then we can go for drinks later. How does that, you know, love for you to join me, kind of a thing. It's an invitation, right?

A. Yes.

Q. Okay.

20 A. Yes.

Q. And you're enthusiastic about it...

A. Yes.

Q. ...right? You're saying, honestly, that's great. And then, you're asking him to let you know whenever 25 he's free?

A. Yes.

Q. And you got to let me know. It's not like - it's not ambivalent, you're - you really want this to happen, right?

30 A. Yes.

Q. Okay. Three days later, on the 27th, he messages you and says, "What days work for you this week?", and

then you respond by saying, "I work 6:00 a.m. to 6:00 p.m., and then it's a little blacked but I believe it says when - you work 6:00 a.m. to 6:00 p.m. Wednesday and Friday, but other than that I'm free. Is that about right?

5 A. Yes.

Q. Okay. And then he responds by saying - oh, there it is, "I work on 6:00 a.m. to 6:00 p.m. on Wednesday and Friday but other than that I'm free". And then the following day, he responds saying, "Hey, I can do Thursday or Friday".

10 A. Yes.

Q. Right? And then you respond by saying, "Thursday's good", right?

A. Yes.

Q. Okay. And then the following day, he responds by saying, "Cool". We'll do a hike and if we don't fall off a cliff and die, we'll get drinks after", right?

A. Yes.

Q. Okay. And - oops. And then you respond the same day saying, "Yeah, sounds good. Do you have a time in mind"? And then he says, "I'll be done work and showered by 7". And then moving on - sorry - it kind of goes into the next set of messages. But then, actually, on July the 30th, which is the following day, right?

A. Yes.

25 Q. You respond by saying, "Hey, I'm really sorry, but I don't think I could make it tonight. I haven't been feeling the best the past few days, and I woke up today, and I feel worse, so I think I need to go to the doctor. I'm sorry", right? And that's at 12:22...

30 A. Yes.

Q. ...on that day, right?

A. Yes.

Q. That's kind of the first time you lie to him, right? Because - right?

A. Yes, that I lied.

Q. Okay. Yeah.

5 A. Yes.

Q. Right? Well, I said the first time. Did you lie to him before that, too, or....

A. No, I just meant that was one time, yeah.

Q. Okay.

10 A. I lied that time.

Q. All right. Because your evidence is, is that you actually wanted to go see your grandmother that day?

A. Yes.

Q. Okay.

15 A. I just didn't want to get into the personal details with him.

Q. How's that a personal detail about other plans, instead of the plans you guys made?

A. Just pertaining to my grandmother.

20 Q. Okay. Visiting your grandmother. You - so your evidence is, is that telling him that I got to visit my grandmother is less personal than telling him I haven't been feeling the best the past few days. I woke up today. I feel worse. I think I need to go to the doctor. Isn't that more 25 personal than just saying, hey, I just got to go see my grandma today?

A. I don't know. I guess at that time, that's what I thought was best to say.

30 Q. Yeah, and that's fine. That's okay. People lie. People make up stuff to get out of things all the time, right?

A. Sure.

Q. It's - but that's what you told them, right?

A. Yes.

Q. Instead of telling him the truth?

A. Yes.

Q. All right. A little bit later, he says, "Hey, if you're sick, don't worry about it. Drinks on you next time though", right?

A. Yes.

Q. Okay. And you responded with a heart and a heart, like you basically liked or loved to that comment, right?

A. Yes.

Q. Okay. So, you know, even though you weren't actually sick, you were just going to go see your grandmother, he was genuinely concerned, right, and said hey, don't worry about it, right?

A. Yes.

Q. Okay. And then to add a little bit of you jest to the situation to kind of keep things, you know a little bit lighter. He says, hey, drinks on you next time though, right?

A. Yes.

Q. Okay. And then you respond with, "Okay, deal". Right?

A. Yes.

Q. So you - you agree. You say, listen buddy, fine, I'll get the drinks next time, right?

A. Yes.

Q. "Just let me know when you're free next and I'll be there", right?

A. Yes.

Q. Okay. And you would agree with me that there's no more cancellations?

A. Yes.

Q. That you actually, when you make a plan to meet with him, you actually go and meet with him?

A. Yes.

5 Q. Okay. And, I mean, you'd agree with me that up until this point, you're the one that's pushing to make this date happen, right?

A. I wouldn't say I was pushing.

Q. Okay. All right. What would you say?

10 A. I would say I was in agreement of going on a date.

Q. In an agreement? Okay. But let's just look at that last message because that's the last message you send before you guys actually pick a date and you commit to that 15 date, right?

A. Yes.

Q. Okay. So you're telling him the last message right there, "Okay, deal. Let me know when you're free next", right?

20 A. Yes.

Q. So you're asking him, whenever your schedule is free, right?

A. Yes.

Q. And that you're going to be there?

25 A. Yes.

Q. Let's go back up a little bit. I'm going to go right up to that page four, honestly. "Honestly, that sounds great. You definitely gotta let me know when you're free", that's what you say to him the first time about meeting up, 30 right?

A. Yes.

Q. So the first time you meet up, this is what

you say and we just heard what you said the last time before you actually met up, right?

A. Yes.

Q. Okay. So, again whatever he's proposed to do,
5 you're saying that sounds great and you definitely gotta let me know when you're free, right?

A. Yes.

Q. So all he's asking is what days work for you.
10 You tell him, you both pick a date, and then you ask - when it goes to the 29th. I'm just kind of scrolling down, page five, you're asking him, "What time?"

A. Yes.

Q. Right? Okay. And, you know, when you gave
15 your evidence at trial, you kind of told us that when we made plans, I didn't go because I had to see my grandmother, right?

A. Yes.

Q. So you didn't tell us about this little lie
that you told him, right?

A. I didn't remember that that's what I said.

20 Q. All right. But then you also said that he was being persistent?

A. Yes.

Q. You did say that, right?

A. Yes.

25 Q. But when you look at these messages, you think he was being persistent?

A. Persistent in wanting to go on a date.

Q. Okay.

A. He did want to go on the date.

30 Q. He did want to go on a date, is one thing.

A. Yes.

Q. But then persistence, you would agree, is

something else, right?

A. Yes.

Q. It's not like you ever told him no, and he persisted?

5 A. Yes.

Q. Okay. So you'd agree with me that when you say that he was persistent in wanting to go on this date, he wasn't persistent, right? And in fact, you were the one who was also saying definitely, we gotta do this. I'd love to do this.

10 Let me know when you're free. What time? Right?

A. Yes, I was looking forward to the date.

Q. Okay. And there was never a time when you were not looking forward to the date, except for the time, when you lied to him about being sick?

15 A. Yes.

Q. Or were you disappointed that you had to see your grandmother instead and made up an excuse?

A. No, I made the decision to see my grandmother.

Q. You made that decision?

20 A. Yes.

Q. Okay. So, you also mentioned that in the messages in your evidence at trial that he seemed confident and self-assured, right? You used...

A. Yes.

25 Q. ...those words, right? But then, like right after, you said, "He was quite personable, more relaxed than I expected, maybe a bit more shy".

A. Yes.

Q. Okay. So, how could he be self-assured and
30 quite confident but then shy?

A. I believe - I believe you can be both. He was just more quiet than I expected.

Q. On the messages? This is in the messages. Here, I'll bring it up for you. Okay, just about the messages, right?

A. Okay.

5 Q. Just the messages.

A. Okay.

Q. How would you describe, because my friend had asked you, how would you describe him in the messages; his tone, his....

10 A. How would I describe him in the messages?

Q. Yeah?

A. Yeah, he seemed, I think, confident and personable. I think I meant more shy as when we met in person.

15 Q. Okay. Okay, page 221. Okay. So, here, you'll see at the third line up, where it says, "Crown, B. Sosa"...

A. Hmm.

Q. ...that's Mr. Sosa here to my right.

A. Yes.

20 Q. He asked you and he said, "And in your conversations with him on Instagram, what did you learn about him?" And you say, "I learned that he seemed more very quite personable, more relaxed than I expected, maybe a bit more shy", right?

25 A. Yes.

Q. So, now you're saying that you didn't think that from the Instagram messages.

A. I - I think I got confused in that question. I was just speaking about...

30 Q. Okay.

A. ...my general opinions that I got on him when we met, not just through the Instagram messages.

Q. Okay. So, generally, your impression of him was that he was self-assured - oh, and the self-assured part here, again, sorry page 220, the bottom of the page right there. So this is about the light conversation, going back and forth, some flirting, nothing too deep or personal. When the Crown 5 asked you, "What was your impression of him?" You say, "He was very confident and self-assured".

A. Yes.

Q. Right?

10 A. Yes.

Q. Okay. So, your overall impression now of Jack, you're telling this court is he is quite personable, more relaxed, a bit more shy, confident and self-assured?

15 A. Yes. I was - I thought he was more shy after we met in person.

Q. Okay. And that kind of surprised you a little bit, right?

A. Yes.

Q. And you even told your friends?

20 A. Yes.

Q. And they were surprised too?

A. I can't recall if they were surprised or not.

Q. Okay. We'll go through that. All right, let's do that.

25 MR. FAHMY: Just before I do that, Your Honour, my friend just whispered over to me about maybe taking a break. I'd assumed that I was good until one, but I didn't know if the staff had taken a break or what. I apologize, I would certainly have stopped a bit quicker than an hour and 15. If everybody needs a break, I'm okay, and I'm good 30 to go until one. I'm in Your Honour's hands.

5

THE COURT: I think what we're going to do is we'll take just a quick break, 10 minutes, and then we'll come back and then we'll continue to one-ish and we'll where we go. So, yes, we're going to take a break. My comments that I had earlier, just again, conceptualize that you're sitting in that box until you're done.

[REDACTED] Yeah.

10

THE COURT: So, you're not to talk to anybody about what's going on. All right, we will come back in 10 minutes time.

R E C E S S

15

U P O N R E S U M I N G:

THE COURT: Can you recall the witness, please?

MR. FAHMY: Does Your Honour - is one o'clock okay or one....

20

... WITNESS PAGED TO COURTROOM 608.

25

MR. FAHMY: Sorry, Your Honour, I just realized that, because I put the page numbers at the top right of the page, and I believe some of the, like, there's been some redactions. So where there's black, you won't see the page number at the top.

MR. FAHMY: Q. I'm going to go to page 49 next.

30

Okay, [REDACTED] can you see those messages clearly or do you want them a little bit more zoomed in or....

A. Maybe just slightly zoomed in more.

Q. Okay, sure. How about that?

A. That's great, yeah.

Q. Okay, all right. So kind of where we left off was you said you didn't recall if you told your friends that he was being shy?

A. Yes.

5 Q. Are you okay?

A. Yes. Yes, I'm good.

Q. You look like you've been crying.

A. I'm okay.

Q. Are you sure?

10 A. Yes.

Q. Have you been crying?

A. Yes.

Q. Okay, do you need a minute?

A. No, I'm good.

15 Q. Okay. Anytime you need a minute, you can ask His Honour, okay?

A. Yes.

Q. All right. Is there something I've said or something that's upset you about what's happening?

20 A. It's just an upsetting process.

Q. Okay, all right. I mean, you've never testified before, right?

A. No.

25 Q. Okay. I mean, just, I guess you obviously know like His Honour is here if there's anything that I'm doing wrong or whatever, the - and the Crown can object. I'm just trying to be fair to you.

A. Yes.

Q. Okay? You - you - so far we're okay?

30 A. Yes. Yeah.

Q. All right. Okay. So here you are.

A. Yes.

Q. Okay. This is the group chat with Nicole and
- sorry - N [REDACTED] and C [REDACTED]?

A. Yes.

Q. Do you ever call them Nicole, it's just both
5 of them together?

A. No.

Q. All right. So here you are. And again, the
UTC says, "0035", which is in like our time 8:35 p.m., right?

A. Yes.

10 Q. And you're messaging them saying "I'm here".
And then shortly after, "I went inside", okay?

A. Yes.

Q. So at this point, you'd agree 8:35 and 35
seconds, you're inside of his house?

15 A. Yes.

Q. And then literally, as two seconds later, you
message them again saying, "It's awake are" but I'm going to
suggest to you that you're saying it's awkward?

20 A. I believe - I'm - I'm not sure what I was
trying to say.

Q. Okay, I'm just suggesting to you though...

A. Okay.

Q. ...that, that - when you do auto-correct,
right....

25 A. It's possible.

Q. Yeah.

A. I could have been saying, "awkward" yes.

30 Q. Okay. And right after that you're saying,
"He's kind of shy"?

A. Yes.

Q. Right? So you told your friends he's kind of
shy?

A. Yes.

Q. Okay. And then in caps, in bold, "Also very much 26"?

A. Yes.

5 Q. Okay. even though he hadn't told you his age, you knew he was 26, right?

A. Yes.

Q. And that's because of the Tinder, right? There's no secret, like nobody's - that's how you knew the - he
10 didn't tell you, right?

A. Yes.

Q. But you knew that through the Tinder app, right?

A. Yes, I...

15 Q. Okay.

A. ...believe so.

Q. And then C [REDACTED] - and - and, hold on, before we go down, you're sending - sorry - this is Amin(ph). She's helping me with this case, to kind of do all this stuff, take
20 notes, and she's doing great, but just so you know what's happening here, okay?

A. Okay.

Q. All right. And you're actually sending these messages while you're with him?

25 A. Yes.

Q. Right? Okay. And that's why it's kind of awkward, maybe. You're supposed to be like at his house, getting a tour, like do you recall where you were on the tour when you were able to send these messages?

30 A. No.

Q. Okay. Do you recall if he was getting something or looking at something or do you recall?

A. I don't remember.

Q. Okay. Do you remember if he was on his phone while he was in the house?

A. I don't remember.

Q. Okay. All right. All right, let's see what 5 your friends say. So, C [REDACTED], "lol, well, yeah". And then, "Wait, he's shy? Huh, didn't expect that", right?

A. Yes.

Q. So now you agree with me that, you know, even 10 your friends didn't expect him to be shy.

A. Yes.

Q. Okay.

A. And you didn't expect him to be shy?

Q. Yes.

A. Okay.

Q. But he was kind of shy?

A. Yes.

Q. Right? Okay. And - okay. Going back to the 20 Instagram messages, I believe - actually, just before, and like, you know, let's just get one thing kind of straightened out between us, okay?

A. Okay.

Q. My friend, when I say, "my friend", I mean Mr. Sosa, okay?

A. Yes.

Q. He kept asking you about a dinner, a dinner, hike and a dinner, dinner in a hike, right?

A. Yes.

Q. But you agree with me that it was always hike 30 and drinks, right?

A. No, we discussed drinks or dinner, yes.

Q. Sorry, drinks or dinner?

A. Or drinks and dinner. It was used kind of dinner/drinks.

Q. Okay. Where does the dinner word - where is dinner used?

5 A. I believe that we had said that to each other in the communication.

Q. Okay. But in your evidence, you said that you hadn't spoken over the phone, right? Because you didn't have each other's phone numbers?

10 A. No.

Q. And you would agree with me that you didn't communicate on any other kind of messaging app, right?

A. Yes.

15 Q. And you would agree with me that the only communication that you had was over Instagram, right?

A. Yes.

Q. Okay. And when we look....

MR. FAHMY: Let's go back to the Instagram.

20 That's page two. Start from there. So okay, keep going down. Keep going down. Keep going down.

Oh, wait. Keep going down. Sorry, sorry. Okay.

MR. FAHMY: Q. Do you know where that word "dinner" is used at all? I'm going to suggest to you, ma'am, that it's not anywhere in the Instagram messages.

25 A. Yes, I'm not seeing it in these messages.

Q. Okay.

A. It may have been in the voice memo.

Q. Oh, it may have been in the voice memo?

A. Yeah.

30 Q. Oh, okay. All right. But even still, that was at the very beginning, right?

A. Yes.

Q. And it's always drinks that keeps coming up in the next few communications, right?

A. I'm seeing drinks here, yes.

Q. Okay. And you would agree with me that it's not just one time about the plan for drinks. It's if we don't fall a cliff[sic], we'll get drinks?

A. Yes.

Q. Okay. And then when you cancel on him, right, he says, drinks on you next time?

10 A. Yes.

Q. Okay. And there's no - even after that voicemail, there's no mention of dinner from him or from you? Yes. Okay. So I'm just going to suggest to you that, you know, maybe you're just like, I guess your evidence is that you kind 15 of used them interchangeably dinner/drinks, right, that's what you tried to say?

A. Yes.

Q. Okay. But it's fair to say that from what we just saw in his own mind, right, or from what's been 20 communicated between the two of you, that it's really drinks and a - or hike and then drinks after, if you don't fall off a cliff, right?

A. Yes.

Q. Okay, all right. Thank you. And then, do you 25 recall at trial - do you recall that my friend asked you, "And did you discuss where the hike and dinner would be?", and then you said "No", and then he asks, "Was that eventually discussed at some point?" And then your response was, "When I got there at the day of, yes". "Okay". And then my friend asks, "Okay, so tell us then, when you say, when I got there, what are you referring to?" And you say, "When I got to his house the day of 30 the date". Do you recall those questions and that answers?

A. Yes.

Q. Okay.

A. And they're accurate?

Q. Yes.

A. Okay.

5 Q. But, actually, if we look at, I'm going to page 11, the very bottom, you'd asked him, "Like, what time?" He says, "8:00 p.m.", and you say, "Sure. Where?" And he says - gives the address, which is his home address, right?

10 A. Yes.

Q. Okay. And then you say, "Sounds good". And then you ask, "Still doing a hike?", right?

A. Yes.

15 Q. Okay. And we got to kind of go a bit down, and he says, "It's more of a glorified walk along the escarpment, but yeah", right?

A. Yes.

Q. And then you respond, "lol, okay, sounds good", right?

20 A. Yes.

Q. Okay. So, you'd agree with me, that actually he told you where you were going to go for the hike on the escarpment, right?

A. Yes.

25 Q. Okay. And, obviously, this was before you got to his house?

A. Yes.

Q. Okay. All right. And, I mean, you would agree with me that we can just scroll a little bit down, okay. 30 That's kind of the last messages between the two of you. That's noted at August the 5th, 6:38, right?

A. Yes.

Q. Okay. And, now that we've looked at all, well, not all of them, because there was some, we can and we will, but I'm going to ask you first; you'd agree with me that you never asked him where you would go for drinks?

5 A. No.

Q. Okay. Or dinner, for that matter, right?

A. No.

Q. Okay. And, even throughout your time together, when you got to his house, till the time you left, you 10 never asked him either of those questions, right?

A. No.

Q. Okay. All right. And, I believe, in your evidence, you'd said, the Crown had - like carrying on from that kind of question and answer from the two of you - the Crown had 15 asked you and said:

QUESTION: Okay, take us a few steps back.

How did you know where to go?

ANSWER: I had asked for the address.

20 QUESTION: And was there anything else discussed prior to you attending his address?

ANSWER: No, he had just said that we would meet at his house before going out.

25 And then do you recall those answers and those questions being asked to you at trial?

A. Yes.

Q. Okay. And those are accurate?

A. Yes.

30 Q. Okay. But when you look at the messages, so you - you get the time, right?

A. Yes.

Q. And then you ask them where to meet and he gives you an address.

A. Yes.

Q. And then you ask, "Sounds good. Still doing a hike?", and he says, "It's more of a glorified walk along the escarpment, but yeah", right?

A. Yes.

Q. Okay. So that's how you understood, right? That you'd go to [REDACTED]

10 A. Yes.

Q. And then you'd go out for the hike after?

A. Yes.

Q. Okay. All right. Now he sends you that address and it's kind of like, you can see that it's blue and 15 then he wrote "Hamilton" after, right?

A. Yes.

Q. Now, is that because it was a link that you can just kind of touch on your phone and it'll show you a map like, or like where it is?

20 A. I believe so, yes.

Q. Okay. All right. And you did that, right?

A. Yes.

Q. And then you - so you knew that it was his house? You - or you assumed, 'cause it was, the address popped 25 up, right?

A. Yes.

Q. And you actually send that link to your...

A. Yes.

Q. ...friends you'd said in your - in your 30 evidence, right? But he's the one that provided it for you?

A. Yes.

Q. Okay. All right. Now, well, where we stopped

looking at the Instagram messages was just right after you made
- where he'd said, "Drinks on you." "Okay, deal. Just let me
know [where] when you're free next, I'll be there". And that's
up page seven. And so that was July the 30th. He responds, you
know, the next day says, "Monday, Wednesday" and then you
respond the following day, I'm free Wednesday after six. The
following day, he sends you a text saying, "Good girl"...

A. Yes.

Q. ...right? Okay.

10 MR. SOSA: Your Honour?

THE COURT: Yes.

MR. SOSA: If I could please address a concern in
the absence of the witness.

THE COURT: Certainly. If you can just step out.

15 Yes, Mr. Sosa?

MR. SOSA: Thank you, Your Honour. So these
messages, we're all seeing them for the first
time today. I have not raised an issue thus far.
The messages that Mr. Fahmy just took to witness
20 to where it starts at 8:00 p.m. and
[indiscernible] were part of the waived records.
The other ones, Your Honour, I did not take issue
with because I did not want to raise getting into
whether there is a reasonable expectation of
privacy or not. I think they were appropriately
25 led by defence, Your Honour. But the next
section, which begins at, "Good girls see you
Wednesday, dress nice". Your Honour, it's the
Crown's position, these are obviously records and
in addition, do engage other sexual activity and
should, Your Honour, form, should have formed part
30 of Mr. Fahmy's application. The conversations are

records because this is obviously content that would have engaged her privacy rights, Your Honour, and the content of the messages are with respect to, in my view, my characterization, flirting, and therefore do touch on subjects that are properly the application of a 276.

MR. FAHMY: Thank you, Your Honour. So, for the benefit of my friend, obviously he wasn't Crown counsel on this case until very recently. Every single white page of those Instagram messages is from disclosure; 276 is not engaged because it's not other sexual activity, it's with respect to this incident, this allegation. This was never raised before. We've had a Form 17 judicial pretrial conference on these issues already. This was never raised, nor can it be. It's not - there's no legal premise for my friend to say that. And, I mean, I - I'd respectfully ask for Mr. Sosa to take a moment to consult with Ms. Huh to figure this out because this is just going to cause a huge delay to this trial.

There's no absolute reason to bring a 276 application. It has nothing to do with other sexual activity, it only pertains to this interaction. I'm in Your Honour's hands, but this is beyond the pale, Your Honour. If he's just seeing it for the first time, that's even more concerning because this has been in disclosure since 2021.

THE COURT: All right, well, we're going to take a beach [*sic*].

MR. SOSA: All right.

THE COURT: We will come back at quarter after two. That'll give you a lunch break, the standard lunch break, and an opportunity to consult with the Crown. I'll have to look through my notes as well, and then we will reconvene at 2:15 to hear his reply to that.

5 MR. FAHMY: Sure, Your Honour. But I'd like this to, because the last time we did this, I didn't hear from Mr. Sosa about a response to what Your Honour had asked or the question that was outstanding until you got back into the courtroom. I would like to know, in advance, before you come back, so that I could have some meaningful way to make submissions on this very serious issue that 10 my friend is raising in the middle of cross-examination.

15 THE COURT: All right. So again, these are issues that I don't need to give direction on. These are professional courtesies. Again, I can't dictate when he's going to have an opportunity to get an answer that comes to you. We will try to remain flexible. However, again, for trial efficiency, 20 as decent human beings to move people through the witness box so that they're not here forever, I think it behooves everybody to try to get an answer to the question and communicate that to each other so we can be efficient in dealing with 25 this when we come back. So we'll come back at quarter after two, thank you.

30 R E C E S S

U P O N R E S U M I N G:

5 MR. SOSA: Good afternoon, Your Honour. So, Your Honour, I had the opportunity over the lunch break to review the disclosure that was in possession of the Crown. I've also reviewed some correspondence. The Crown has never had these screenshots in their possession. They were not part of disclosure. Your Honour has the exhibit book in front of you, those are clearly screenshots from Mr. Densmore's phone. So the Crown would have never had them.

10

15 So I can confirm, Your Honour, those were not disclosed and they were also not part of the waived records that we provided the defence. And Your Honour did not produce those to either my friend or the Crown at any of the prior pre-trial motions. So my objection is still a live issue, Your Honour. It's my view that it's a record and that it may engage 276 as well. So whether we need to engage further, that would depend on a ruling from Your Honour. But that's the Crown's position.

20

25

MR. FAHMY: Well, my friend is not entirely accurate, Your Honour. So actually, the Crown did disclose a bunch of those messages. And I'll pop them on my screen right now so that there's no issues with that. They were part of the cell extraction. And, you know, he's not here and I don't like to talk badly about people that are not

here, but this is all because of Buszkowski, Your Honour. The issue is that they are right here. These are part of the chats from the - can I sit for this part, Your Honour?

5 THE COURT: Certainly.

MR. FAHMY: So you'll see here that these are some of the chats from the Instagram that I was referring to. It's the exact same ones with the correct timestamps, all of that, and even 10 including the portion about "That's another spanking". "Damn, I'll keep that in mind". "Okay, I think I'm here". These were disclosed to the defence. I think the issue is, is that when you 15 look at this portion of the disclosure that we received, again, it's chats, Instagram, previously disclosed, and it makes it look like all of them 20 were disclosed because of the way that these messages were being sent to participants, and then you only get some of those messages because they had been disclosed here, but not all of them. So 25 that's where the confusion lay, Your Honour, but my friend is not correct in saying that none of these messages have been disclosed. They have been disclosed, just weren't disclosed properly. That's my first position.

Second, is that this could very quickly be disposed of by way of a motion for directions. There's - I'd - I'd originally mentioned that 30 there was about two pages missing which were the beginning of the messages that I considered that the Crown did not have, and those I showed here

5 after, that are in the blue. There's about a couple of pages there because there's about two days of messages that have been missing that I, as I alerted the court, they're innocuous. They're about planning. I don't need even to bring a motion for directions. They don't engage any privacy interests and so on.

10 My position, if Your Honour, I don't know if we should be doing this in camera or not because - but....

THE COURT: Well, this was my question.

MR. FAHMY: Yes, I should have....

15 THE COURT: This is like - this is tiptoeing towards a 276, Stage One application potentially which does have to be done in the absence of the public, and I'll just address the public right now.

20 It is uncertain how far this is going to go in these submissions, and out of the abundance of caution, I am going to treat it as the commencement of a Stage One, so I'm going to ask that the public be excluded until we sort that out. Now, if it gets sorted out in short order, then, you know, we'll have somebody signal you that you can return to court, but I think that out of the abundance of caution, that's how we should proceed, so we'll go in camera now for this.

25

30 Thank you.

I N C A M E R A

5 THE COURT: Yes, thank you. So it's clear on the record as well. The video observers or the Zoom observers are now in a waiting room as well, so we are completely in camera.

10 MR. FAHMY: All right. So for the benefit of the court, Your Honour, I mean, in terms of how to move forward in trying to salvage what we've done so far, is that perhaps what we can do is do a very short, sharp motion for directions. There is, just on the face of it, there's no 276 engaged. The complainant herself....

15 THE COURT: Well, before - let's just talk about procedure before you go into argument and presuppose that's what we're going to do.

20 So you're suggesting that a workaround right now, because clearly two things happened; one, Mr. Sosa consulted with his office and came to a particular understanding of the state of affairs. Two, having that state of affairs and having discussed that with you, it didn't result in sort of a negotiated resolution of a workaround to say, 25 well, listen, given my concern and given what you're planning to do, perhaps we can do this instead. I take it that that is not on the table, so now I'm faced with either we'll start off with a motion to clarify?

30 MR. FAHMY: In fairness - in fairness, Your Honour, we haven't had a chance to talk. I got

his email. It was sent out 1:45. I hadn't seen it until just minutes before 2. I was hoping to speak with my friend. I'd asked him if he wanted to talk outside. He said, well, His Honour's coming down. So we haven't had that conversation.

5

THE COURT: Okay. So maybe I've just jumped the gun a little bit, because I think what I would like to do is suggest, because you know what you're doing and where you're planning to go. You know what he's doing and what he plans to do. Nothing here is mysterious, one. Two, it's a judge-alone trial. Three, we don't have a lot of time. Four, a 276 will derail this process just by its very nature. We will not finish on Friday. So those are the facts on the ground.

10

15

There are ways around it. Number one, the two of you talk and say, yeah, you know what, we've decided, I'm either going to do this or not do this. I'll concede this, not concede this. We're going to work around this way, and then you'll run it by me, and, as the final decision-maker, I'll say yay or nay, and that can be in the form of this motion for direction. If, after your conversation it's not there, there's no workaround that can then be, you know, sort of touted, then we have to consider, like, what is this motion really about? Is the motion for directions, is this 276 or not 276? You'll define that for me. I don't know at this particular moment. So that's kind of like the next step after that.

20

25

30

MR. FAHMY: Just while you're summarizing, I'm

even at the point of whether this is a record that the complainant has any privacy rights to at all. So whether it's - what I'm saying is that it's not 276, and it's not 278.92 either. That's my position, just so Your Honour kind of....

THE COURT: Well, anyways, I'm going to give you guys, let's say, five minutes to have a conversation about this.

MR. FAHMY: Okay.

THE COURT: To see whether you can come to some sort of resolution, because, like, what was coming to mind to me was to say, like, when Mr. Sosa rose, it was we're getting close to the, oh, I guess the spanking or something like that. I think that that's what raised his concerns to the point of raising this objection where we are today. Am I right? Like, I mean, it was getting there.

MR. SOSA: It was getting there, yes.

THE COURT: Okay, so maybe, maybe, after your discussion, there will be a determination on the import of that per se. Does it really....

MR. SOSA: Your Honour, may I just ask if you've reviewed the pages that are in issue?

THE COURT: No, because I - that - I don't - I don't know where we're going yet. So like, I saw that because it was, like, on the screen as I was going there, and when you rose, that's what I - that's what it telegraphed to me was we're talking about a spanking.

MR. FAHMY: And if I may, Your Honour, the moment he rose was, as you've seen, is the one that

they've already disclosed, which is why I misunderstood, and I certainly don't mean to, like, mislead the court in any way or anything like that, but you'll see from what was disclosed here is, you know, "That's another spanking".

"Okay, damn, I'll keep that in mind". "Okay, I think I'm here". Like, it was already there, so that's why I was like, hey, wait a - no, he's - he's the one that gave this to me. That's why.

THE COURT: Okay. Well, again, I'm just going to suggest that...

MR. FAHMY: Sure.

THE COURT: ...maybe, maybe it's not worth the candle, just saying, to go through this process. I mean, the process is here, and I'm saying this to the accused because this is his - this is his trial. Like, there's procedures, there's purpose behind the procedures. You've been through this enough times to see that. We have to cut a fine line, and this is a particular type of offence that has a specific type of treatment because of its very nature. But certain things are important and other things are not. So I leave that with you. I'm going to give you five minutes.

MR. SOSA: Your Honour, if I just have...

THE COURT: Sure.

MR. SOSA: ...a short moment more. My concern, Your Honour, is that, generally speaking, I can only agree with a waiver. So even if I was of the view we can concede, I'll need a waiver.

Otherwise, Your Honour, we'll have to rule whether there's a record or not because the Crown's

position is that this is a record and therefore subject to the regime. So even if I were to say yes....

THE COURT: Okay, let me just stop you there.
5 Like, I - I'm now going to have to go pull out my file because this went on, we've had a number of attendances and there were a number of rulings.
10 I'm going to have to go back and read because remember, well, you weren't here for this, but we had charts up on the screen with what was included, what was conceded, what went. We had the - I think we had the assistance of Ms. Valeri at a particular point in time and, you know, what was okay, what wasn't, rulings were made. Like,
15 I'm going to have to really dig deep.

MR. FAHMY: I hope not, Your Honour, and I don't think so. And if - if - I mean, like, this may be the Crown's position right now. Perhaps, you know, we can keep talking and they may be persuaded. I mean, that's our job. And perhaps we can move forward.
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THE COURT: Or the - another alternative, if I can suggest, is maybe there, this can be parked...

MR. FAHMY: For now.

25 THE COURT: ...for now...

MR. FAHMY: I understand.

THE COURT: ...and we move on to see whether or not that's important. Again, because until you're finished your cross-examination, you still have the ability to say, okay, well, yeah, we moved past that. I would like to now raise it.
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Just like 276s sometimes, when you have a ruling, based on what somebody said, all of a sudden, it's like, you know, people, their hands start flying up and saying, Your Honour, we've got to - we've go to do a redo here because what was good then isn't good now.

5 MR. FAHMY: Correct.

THE COURT: So, again, there's different, I think, routes to get us back on track. I'll give you 10 minutes.

10 MR. FAHMY: Okay.

THE COURT: I'll give you 10 minutes so that you can have like a thoughtful discussion about this and then I'll come back at that time.

15 ... COURT STOOD DOWN.

... COURT RECALLED.

MR. FAHMY: Are you still looking, or no? Are you still looking, or no?

MR. SOSA: Looking for what?

20 MR. FAHMY: At the messages.

MR. SOSA: No.

MR. FAHMY: What time did Ms. Valeri say she's available?

25 MR. SOSA: So, Your Honour, we discussed the potential for a waiver, Your Honour, but I think the concern now really is that counsel and I are just, we're not agreeing whether it's a record or not, and that's really the standstill.

MR. FAHMY: Well, Hang on, Your Honour. Okay, I mean, I think, I don't, I, first, I apologize. I didn't know you were sitting, Your Honour, I apologize. Second of all, is that regardless of

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the fact that I think my friend is being contentious for no reason and there's nothing to it or whatever, I think what he mentioned to me is that, and I had agreed with it earlier, which is that we get hold of Ms. Valeri and the quickest, shortest route to this, which I agree, is just a waiver from the complainant. Although, in my respectful submission, it's the Crown that should be getting the complainant's waiver, not her counsel.

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So I don't know why we need to wait for her counsel. It's always the Crown prerogative to get the waiver of the, of whatever personal or records that they think are of a personal nature. So that's the law. That's what should happen here. And I would suggest that you give my friend an opportunity to give her - to get her consent in an informed way so that she can waive her right to privacy on those records, however way he sees fit, I'm okay with that. He mentioned from a certain date for these messages. I'm happy for him to go and do that. If that's not successful, then unfortunately my position is that we can dispose of it the next quickest way, which is by way of a motion for directions for a ruling on, Your Honour, that these are not records and do it that way. And I'll be ready to do this tomorrow morning. If I - if I have to work all night, I'm getting these records in. I've also considered very carefully trying to move on without these records. Unfortunately, I will not be able to, in

terms of, I mean, the way the cross-examination has been set in the parameters that's been set. So that's what I suggest.

5 We don't need there's not - the complainant has no right to counsel if the Crown is seeking a waiver of her private records. So the corollary is that if there is a record that engages - they're her records too. I mean, they're - and I don't mean records in the sense that you should make a ruling 10 that they are records in quotes, but....

THE COURT: Her stuff.

15 MR. FAHMY: Her stuff, their messages. Yes. Thank you, Your Honour. And again, please excuse the way I kind of barged into court. I just didn't see you.

20 THE COURT: Okay. So let me just understand what the suggested plan is. We are now approaching three o'clock. A call has gone out to Ms. Valeri. Defence says it's the Crown prerogative just to go and approach the witness, which in active cross-examination poses a little bit of a problem, just conceptually, conceptually to be approaching a witness to say, well, listen, this is what we want 25 to be doing and to provide her an opportunity to make an informed decision. I think that's linked to, and maybe of assistance to have Ms. Valeri involved in that just to get rid of a potential problem, where if there was going to be this waiver that it can be simply explained by somebody 30 other than the Crown. I'm just saying potentially.

5 So either way, whether it's the Crown himself or somebody from the Crown's office goes and engages in this or it involves Ms. Valeri, I'm not going to comment which is the better way of doing it.

10 I've just pointed out that one has the benefit of being truly independent because it's that person's lawyer, as opposed to an agent of the Crown. So on to your point about informed consent, either way you slice it, that's going to take up the next 30 to 45 minutes to an hour, which then takes us to four o'clock, at which point, depending on the answer, if it's a waiver, then we start where we left off. If it's not a waiver, then we're doing the motion for directions, at which point, I don't think that there's enough time, unless we do it at 15 four o'clock and have the preliminary motion for directions at that particular time.

20 MR. FAHMY: I would ask to do that first thing tomorrow morning. I - I'd....

25 THE COURT: Okay.

MR. FAHMY: These are so important. I'm going to have to make sure they get in.

30 THE COURT: So, yes, you're - you're - I'm kind of feeling that too. Like, I mean, right now, by the time we try to work out the other thing, and I don't know whether or not that's even possible to get that today, that we would be coming back tomorrow to do a motion for directions and potentially go into...

MR. FAHMY: Cross.

THE COURT: ...a stage one, maybe some kind of

blend. I don't know. I'm sort of caught by surprise. You know that the ush[sic] is mid-trial, 276 applications are not to be normalized. It's - this is the problem. However, I think that all we can do is adjourn then to tomorrow morning.

5 MR. FAHMY: Well, can we - can we maybe just come back and let Your Honour know if - because it's either we're adjourning tomorrow for a motion or adjourning tomorrow to continue.

10 THE COURT: Oh, yes, okay. Well, why don't we, we'll come back at what, four o'clock?

15 MR. SOSA: So, Your Honour, I do agree that it would be best for all parties involved that Ms. Valeri be the one to seek the waiver. So I have connected with her. She's not available at this moment but is available to return to the courtroom - sorry - the courthouse by about 3:30.

THE COURT: Okay.

MR. SOSA: So....

20 THE COURT: Four o'clock? We come back and you guys give me...

MR. SOSA: If...

THE COURT: ...a report.

MR. SOSA: ...I think four should be okay.

25 THE COURT: Sure.

MR. SOSA: I just want to also make sure, on the record, which - which text I'm going to be sharing for the waiver. So I've identified these to Mr. Fahmy as the screenshots beginning August 3rd.

30 MR. FAHMY: Give them all, all the Instagram messages, okay? Make it easy. It's not a problem.

THE COURT: It just makes it easier.

MR. SOSA: I - okay.

MR. FAHMY: It doesn't matter.

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MR. SOSA: That is easier. I just wanted to be clear for the record.

THE COURT: Okay. All right.

MR. FAHMY: They're not - yes.

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THE COURT: So we'll convene at four o'clock. That's plenty of time to get that done, get yourself sorted out and make plans, and then at four o'clock we'll determine what's happening, whether or not we're coming back. I mean, if it is at 4 o'clock and the answer is there's a waiver, we can continue, we can use the last half hour.

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MR. FAHMY: I'm okay with that too.

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THE COURT: Yes. If it's not, then clearly, we're going to have to reconvene the next day. Okay.

MR. SOSA: Thank you.

THE COURT: So, four o'clock. As I said before, if this happens to be something that you have a resolution before four o'clock, send somebody to get me, don't just wait until four o'clock...

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MR. FAHMY: Of course.

THE COURT: ...and do nothing.

MR. FAHMY: Yes.

THE COURT: Time is not our friend.

MR. FAHMY: Yes.

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... COURT STOOD DOWN.

... COURT RECALLED.

THE COURT: Good afternoon.

MR. SOSA: Good afternoon, Your Honour.

MR. FAHMY: Good afternoon.

MS. VALERI: Good afternoon, Your Honour.

THE COURT: Good afternoon. Thank you for coming in. Ms. Valeri?

MS. VALERI: Thank you. Your Honour, sorry for my lack of dress, I just came over in a rush, so I didn't grab my robes. I can advise that I've spoken to the complainant. We are requesting that we adjourn for today, and we pick this up tomorrow morning. We've canvassed a waiver. I think it's very possible, Your Honour, but the complainant would like a little bit of time to think it through. It's been a heavy day, and it's sort of a significant decision to make in 20 or so minutes, so we're asking for tomorrow.

THE COURT: Well, in the circumstances, we are now 25 after almost 4, so even if there was a waiver produced at this very moment, we would have been adjourning to tomorrow morning. So, I mean, it is what it is. We'll come back tomorrow.

I'm going to suggest, again, we do another 9:45 to find out whether or not that happens, because that just gives us a little bit of wiggle room for planning today. Okay? So 9:45, adjourned to 9:45 tomorrow.

... WHEREUPON THE MATTER IS ADJOURNED.

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Certificate

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September 10, 2024

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