

Indictment No. 22-484

SUPERIOR COURT OF JUSTICE

5

HIS MAJESTY THE KING

v.

10

JACK DENSMORE

15

E X C E R P T O F P R O C E E D I N G S

BEFORE THE HONOURABLE JUSTICE JOHN KRAWCHENKO
on May 28 and May 29, 2024, at HAMILTON, Ontario

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OF THE *CRIMINAL CODE OF CANADA*
MADE IN THE SUPERIOR COURT OF JUSTICE

25

APPEARANCES:

30

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Counsel for the Crown

Mark Fahmy

Counsel for Jack Densmore

Table of Contents

SUPERIOR COURT OF JUSTICE**T A B L E O F C O N T E N T S**

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BROADCAST OR TRANSMITTED PURSUANT TO SECTIONS 486.4 and 278
OF THE *CRIMINAL CODE OF CANADA*
MADE IN THE SUPERIOR COURT OF JUSTICE

W I T N E S S E S

| 15 | <u>WITNESSES</u> | <u>Examination</u> <u>in-Chief</u> | <u>Cross-</u> <u>Examination</u> | <u>Re-</u> <u>Examination</u> |
|----|------------------|---------------------------------------|-------------------------------------|----------------------------------|
| | DENSMORE, Jack | 1 | 138 | 171 |

E X H I B I T S

| 20 | <u>EXHIBIT</u> | <u>ENTERED ON PAGE</u> |
|----|----------------|------------------------|
|----|----------------|------------------------|

| | | |
|----|---|-----|
| 13 | Screen shot of the thumbnail of the YouTube Video for McMaster Homecoming, 2019 | 75 |
| 25 | Formerly Exhibit Number 6 with Marking Indicators | 119 |
| 15 | Photo of Black Shelf | 119 |
| 16 | Text Record Originating from Phone of the Accused, I.E., - Instagram Messages | 149 |

Table of Contents

SUPERIOR COURT OF JUSTICE

T A B L E O F C O N T E N T S

INFORMATION CONTAINED HEREIN CANNOT BE PUBLISHED,
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LEGEND

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

(ph) Indicates preceding word has been spelled phonetically.

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TUESDAY, MAY 28, 2024

...DISCUSSIONS NOT REQUIRED

5 COURT CLERK: Court is now in session. Please be seated.

THE COURT: Are you ready to proceed?

MR. FAHMY: Yes, Your Honour.

THE COURT: Thank you.

10 MR. FAHMY: So, the defence is calling Mr. Jack Densmore to the stand, please, Your Honour.

THE COURT: Thank you.

15 COURT CLERK: Do you wish to take an oath on any Holy book or solemnly affirm, which would you prefer?

JACK DENSMORE: The Bible's fine.

COURT CLERK: State your full name, please?

JACK DENSMORE: Jack Makenzie Densmore.

20 COURT CLERK: And if you can slowly and loudly spell your first and last name, please.

JACK DENSMORE: J-A-C-K. Last name, D-E-N-S-M-O-R-E.

COURT CLERK: Thank you. Please have a seat.

25 JACK DENSMORE: SWORN

EXAMINATION-IN-CHIEF BY MR. FAHMY:

Q. Good afternoon, Mr. Densmore.

A. Good afternoon.

30 Q. So, just – just a couple of preliminary issues is that if there is something you don't hear clearly just ask me to repeat the question. If there's anything you're not understanding

just ask for clarification, whether that's for me or my friend who's going to cross-examine you after this. And just, you know, speak clearly...

A. Mm-hmm.

5 Q. ...and - and you can't nod or shake your head, no. You have to actually...

A. Verbalize.

Q. ...verbalize those words. Okay?

A. Okay. Yeah, that's fine.

10 Q. Okay. So, Mr. Densmore, can you tell the court how old you are.

A. 29, 29.

Q. Okay. And how old were you at the time of the offence on August the 5th, 2020?

A. 25, 26.

15 Q. Okay. And where did you grow up?

A. Hamilton.

Q. Okay. And what's your highest level of education?

A. College.

20 Q. And did you finish college?

A. Yeah.

Q. Do you have any degrees from college?

A. Yeah, I have two degrees.

25 Q. Okay.

A. One is in the trades, drilling and blasting from Fleming, and the other is business marketing from Mohawk.

Q. Okay. And Mohawk College in Hamilton?

A. Yeah.

30 Q. And Fleming College in, where?

A. Lindsay.

Q. Lindsay. Okay.

A. Yeah.

Q. And did you work after college...

A. Yeah.

Q. ...or while in college even?

5 A. Yeah. So, I've had jobs since I went to college,
two separate times I've had jobs in-between, during, and after.

Q. So, let's talk about your employment history.

10 A. Okay. So, the first time I finished college I
worked as a forest fire fighter for the government, for the Ontario
Ministry of Natural Resources.

Q. Okay. How long did you do that?

A. I did that for one season.

Q. And how long is one season usually?

15 A. It's about five to six months, depending on the
weather.

Q. Okay. And what'd you do after that?

A. So then after that, I worked in a chicken
factory.

Q. Where's that?

20 A. Out in Hagersville.

Q. Okay. And what was your job there?

A. I killed chickens.

Q. Okay. How long did you do that job for?

A. About a year-and-a-half.

25 Q. Okay. And this was while you were in college,
before college....

A. Yeah, it's while I was in college and then also,
like, the summertime, too.

Q. Okay. Did you do anything after that?

30 A. Yeah. After that I was also, while still in
college, a bartender, too.

Q. Okay. Which college is that?

A. Mohawk.

Q. Okay. So, that's for your second degree.

A. Yeah.

Q. Okay. And how long did you do that for?

A. Eight months.

Q. Okay. And then what'd you do after that?

A. After that I was starting my YouTube business.

Q. Okay.

A. And I also ran a property management business.

Q. Okay. So, how long were you doing that property
management business?

A. Did the property management for about a year-and-a-half.

Q. Okay. And what was that about?

A. So, basically, I would rent out a bunch of houses
to international students...

Q. Okay.

A. ...around Mohawk College.

Q. Okay. So, it's at, during that time is when you
started your YouTube business, basically?

A. Yeah, I started my YouTube business while I was
still a bartender in college.

Q. Okay.

A. And doing everything else. Yeah.

Q. All right. So, let's talk about your YouTube
business. How did you - how did you start that?

A. So, the first YouTube business I started, I was
doing sports highlights...

Q. Mm-hmm.

A. ...so, I would basically take, like, press
conference, trash talk from UFC fighters.

Q. Okay. Just let me stop you right there. I might

know what UFC fighters are, what does UFC stand for?

A. UFC is Ultimate Fighting Championship.

Q. Okay.

A. It's mixed martial arts, so...

Q. Okay.

A. ...boxing, jujitsu, wrestling.

Q. And they fight in a ring.

A. Yeah.

Q. Okay.

A. Fighting.

Q. It's its own kind of league.

A. Yeah.

Q. All right. Okay, go on.

A. So, I was doing sports highlights for that.

15 Basically, I would show up at press conferences, interviews, as well as, like, the highlight reel of the fighters, and then I'd combine all of it together.

Q. Okay. And how long did you do that for?

A. I did that for about two years.

Q. Okay. All right. And, I mean, what'd you do

20 after that?

A. So, after that I went full-time on my other channel on YouTube so, basically, while I was doing all these other jobs and this other YouTube business, I started a personal YouTube channel.

25 Q. Okay. And what was that called?

A. Life of Jack.

Q. Okay. And what did that, kind of, what kind of videos, sorry, this was on YouTube, right?

30 A. Yeah.

Q. So, you're posting videos that you've edited.

A. Mm-hmm. Yeah.

Q. Okay.

THE COURT: Sorry, was that Life of Jack, that's what it was called?

A. Yes.

5 THE COURT: Life of Jack. Thank you.

MR. FAHMY: Q. Okay. And, sorry, what was — what was the kind of videos you'd post on that?

A. So, I was doing vlogs, drunk interviews, and social experiments, that kind of thing.

10 Q. Okay. Drunk interviews. Does that mean that you were drunk interviewing people, or what — what does that mean, drunk interviews?

A. Well, sometimes, yeah, but mostly the people that I would interview.

15 Q. Okay.

A. Yeah. Nightclubs, nightclub interviews.

Q. Okay. So, you'd do these interviews outside of nightclubs?

20 A. Yeah, nightclubs, festivals. I also did a bunch of interviews that had nothing to do with drinking, but that's what the video, the most popular videos were.

Q. Okay. So, you kind of learned early on that the videos that had drunk people on it were the ones that garnered the most views?

25 A. A lot funnier, yeah.

Q. A lot....

A. Funnier.

Q. Yeah, but....

A. Yeah, they got — they got the most views, yeah.

30 Q. Yeah. So, sure, they were funnier, but they also generated more income for you...

A. Yes.

Q. ...in terms of your business.

A. That's right, yeah.

Q. Okay. Anything else that you did on that Life of Jack channel?

A. Yeah. So, I switched it over to the name Jack Denmo after about a year, and a lot of the videos involving interviews, there's a lot of vulgarity...

Q. Mm-hmm.

A. ...so, because of that they actually stopped earning money.

Q. Okay.

A. So, I had to pivot to do more content and I did pranks and so I made the switch to practical joke videos.

Q. Okay. And so, besides the prank videos, the vlogs, the interviews, and the practical jokes, did you do any other kinds of, like videos, like documentaries, or movies, or anything like that?

A. Yeah. So, I would also make, like, long-form content where I would combine pranks, but also interviews and sometimes if I was, for example, like I did the Pride Parade in Toronto, and I interviewed so many people that the video was, like, probably 30-, 35-minutes long, and people really liked those longer ones, so I started turning them into, kind of like, documentaries, movies I call them, but yeah.

Q. Okay. All right. And then you said at one point you changed the Life of Jack to Jack Denmo?

A. Yeah.

Q. Okay. And, sorry, you said you started focusing more on pranks and social experiments.

A. Yeah.

Q. And what else?

A. So, I would do interviews, still, as well, and

then occasionally I would make super-long form versions. So, the interviews were usually, like, 8 to 15 minutes...

Q. Okay.

A. ...but I would turn that into, like, a 45 minute
5 to an hour documentary if it was a big event, like a festival or a Hoco or something like that.

Q. Okay. Hoco, H-O-C-O, right?

A. Yeah.

Q. Okay. What does Hoco stand for?

10 A. Homecoming.

Q. Okay. So, tell the court what homecoming is.

A. So, homecoming is the football game that takes place at universities. I think it's the first homecoming game of the year.

15 Q. Like the home game.

A. The home game, yeah.

Q. Okay.

A. Yeah.

Q. Mm-hmm.

20 A. But a lot of people don't watch football and they want to celebrate, so instead of going to the game they just go to the streets.

Q. And what do they do?

A. And they — and they party on the streets pretty
25 much.

Q. Okay.

A. Yeah, at their houses too, you know.

Q. Okay.

A. Yeah.

30 Q. All right. And how many kinds of, so the number of videos that you had posted on your Jack Denmo, how many videos are we talking about, monthly?

A. Probably in total, over 300.

Q. Okay.

A. But a lot of them have been removed over the years, so probably right now, like 250, around there.

5 Q. Okay. And out of the 250 videos currently on, how many of those are homecoming videos?

A. Like 11 or 12, maybe.

10 Q. Okay. So, in terms of overall percentages it's not a very big part of your Jack Denmo, kind of, YouTube channel, right?

A. No.

Q. Okay. In terms of like the number of videos posted, right?

A. Yeah.

Q. Okay.

15 A. It'd be like a once-a-year kind of thing.

Q. Okay. And besides doing these kinds of videos that are currently on your page, is that all you want to do or what – what is it that you want to do?

20 A. With the Hoco videos?

Q. No, just generally in your career, is this....

A. Oh, well, I want to make real movies...

Q. Okay.

A. ...like Hollywood, actual TV shows, films.

25 Q. Okay. So, you've always had an interest in that?

A. Yeah.

Q. Okay. All right. And with respect to the homecoming, the – the drinking and partying on the streets...

A. Mm-hmm.

30 Q. ...is that something that you organize yourself?

A. No.

Q. Okay. So then, how do you know that they're

there or how do - how do you get there, basically?

A. Well, Hoco's been happening long before I was in college or university, but....

Q. Oh, so this is a yearly....

A. Yeah.

Q. Okay.

A. Yeah, and it doesn't just happen at the schools I've gone to. It's, like, all over Ontario, the east coast. BC, British Columbia doesn't really do it, but.

Q. Okay. And in - in the times that you attend these events...

A. Mm-hmm.

Q. ...are you supplying any alcohol to anybody?

A. No.

Q. Any, no?

A. No. Now me and my team, my camera guys, we have alcohol.

Q. Okay.

A. Yeah.

Q. So, just what you've brought for you to consume.

A. Yeah.

Q. Okay. But in terms of, like the general public, you're not there to, you don't give any alcohol to them?

A. No. They - they give me alcohol.

Q. They give you alcohol.

A. Yeah.

Q. Okay. And why would they do that?

A. Well, it's kind of an honour to them, I guess, that I get to drink alcohol they gave me, and also it probably will 30 get featured in the video...

Q. Okay.

A. ...'cause me - me drinking, people like that.

Q. Okay. All right. Okay. Now, I understand from [REDACTED]'s evidence that you actually met at the Hoco or the Homecoming for McMaster in 2019.

A. Yeah.

5 Q. Is that – is that what happened?

A. Yeah, I don't remember if I actually met her, but I could have briefly spoken to her.

10 Q. Sorry. Yeah, her – her evidence was, is that you'd met with her with – with, she had met one of your camera men or something and got interviewed, but it wasn't you, right?

A. Yeah, I didn't interview her.

15 Q. Okay. All right. And, but in terms of her showing up she was, her evidence is that she was included in the McMaster Homecoming video, and that's...

A. Yeah.

20 Q. ...that's correct?

A. Yeah, she's – she's in the video.

Q. All right. And she wasn't, you – you didn't have any contact with her that day, right?

25 A. No, unless I'd spoken to her briefly, I had no contact with her.

Q. Okay. All right. But in terms of contact, you didn't exchange any contact...

A. Oh.

25 Q. ...information or anything like that?

A. No. No, nothing.

Q. No. Okay. All right. But the actual YouTube video, her, and she acknowledged this, is that there's like a – like a thumbnail or a screen shot on YouTube, right?

30 A. Yeah.

Q. Okay. And you're, and she, her evidence was that you were, kind of, in the middle and she's, kind of, photoshopped

in, kind of, on the left side of the screen, right?

A. Yeah.

Q. Okay. Okay. And then, sorry, you wanted to say something about that or, no?

5 A. Yeah, she....

THE COURT: Whose evidence was that, sorry, or are you....

MR. FAHMY: It was her evidence.

THE COURT: Her evidence. Okay. Thank you.

10 MR. FAHMY: Yes. Yeah, I'm just, he's just agreeing with it, Your Honour.

A. Yeah.

15 MR. FAHMY: Q. So, tell me about how you and [REDACTED] first, I mean obviously the date happened on August the 5th, right?

A. Yeah.

20 Q. Okay. So, tell me about how you first interacted with her.

A. So, we matched on a dating app called Tinder.

Q. Okay. And, like her, you - you would agree with her evidence that you both had to, kind of, swipe right?

25 A. Yeah.

Q. Okay.

A. So, I saw her profile on there, and I swiped right to match with her...

25 Q. Okay.

A. ...I hoped to. You don't know if you're going to match or not.

Q. Okay.

30 A. And we matched.

Q. And the reason why you hoped to, or you didn't know is, what does the other person have to do?

A. So, if one person swipes right but the other

person doesn't, they don't match...

Q. Mm-hmm.

A. ...and then they cannot message each other.

Q. Okay.

A. But if both people swipe right and match...

Q. Okay.

A. ...it allows them to message each other.

Q. Yeah. Okay. And I guess you went and – and in terms of seeing her on Tinder, did you recognize her from before?

A. Yeah.

Q. Okay. And from where?

A. From McMaster Hoco.

Q. Okay. And did you contact her through Tinder?

A. No.

Q. Okay. How did you contact her?

A. I contacted her through Instagram.

Q. Okay. And in order to do that, what steps did you have to take first before you could do that?

A. So, on Instagram there's a search function...

Q. Mm-hmm.

A. ...where you can look up peoples' profiles or names. I searched [REDACTED] on Instagram, the same way it's spelled on Tinder...

Q. Okay.

A. ...and her profile showed up. We might have had, like, mutuals or something.

Q. Okay.

A. So, basically....

Q. Mutuals, sorry, mutuals...

A. Mm-hmm.

Q. ...I apologize. I know what that might mean but can you explain to the court?

A. Yeah. So, if you're following somebody on Instagram then it will show you also if you have friends that also follow them...

Q. Okay.

5 A. ...or if you don't follow somebody it will show, like, 'Hey,' as opposed to showing like a random [REDACTED] from Nebraska...

Q. Hmm.

10 A. ...it'll show the local ones, if you have mutuals with them.

Q. Okay.

A. So, her - her name showed up right at the top.

15 Q. Okay. All right. Okay. So, and - and I guess we, kind of, we already went through the Instagram messages with her, but just, and - and we might do that with you a little bit later, but just, generally...

A. Mm-hmm.

Q. ...how would you say that the - the conversation was going or what - what, how did that conversation, kind of, go?

20 A. So, I messaged her...

Q. Mm-hmm.

25 A. ...saying something along the lines of like, hey, I saw you on Tinder, and then she asked me if I swiped right and was, like, yeah obviously, you know I'm here. And then we kind of went back and forth, a general conversation, a lot of flirting...

Q. Okay.

30 A. ...and then I suggested we meet up and she was, like, yeah, I'm down.

Q. Okay. So, in terms of meeting up, what was your understanding of the eventual plan, or what you would be doing when you met up?

A. We'd be having a date and so it'd be a meet-up,

potentially a romantic, you know, not to, it's a, like a date. Like we — we were on a dating app...

Q. Mm-hmm.

A. ...and then I messaged her, and we talked about meeting up, and we were flirting...
5

Q. Yeah.

A. ...in a sexual nature.

Q. Yeah. No, I — I get that. I mean in terms of, like you know, we heard the evidence that it was, whether it was drinks and a hike, or dinner and a hike, what was your understanding 10 of what...

A. Oh.

Q. ...was supposed to happen?

A. Yeah, we were going to go for a hike and get 15 drinks.
15

Q. Okay. All right. And did you ever understand that there was going to be any kind of dinner involved and...

A. No.

Q. ...you meeting up with her?

A. No.
20

Q. Okay.

A. No.

Q. All right. And, I mean, from the messages and the evidence that came out there was plans to go out on a date, but 25 those initially fell through, right?

A. Yeah.

Q. Okay. And then you re-scheduled to — to have a date a few days after that, right?

A. Yeah, that's right.
30

Q. So, now let's talk about that day, August the 5th, 2020, okay? Do you recall at what time that she was supposed to meet up with you?

A. Supposed to meet up with me?

Q. Yes.

A. 8:00.

Q. 8 o'clock. So, that was the time that you had
5 arranged...

A. Yeah.

Q. ...for both of you to meet up?

A. Yeah, I let her know before I was free after 7:00
that night, and then we agreed on 8:00.

10 Q. Okay. All right. And did she show up at 8
o'clock?

A. No.

Q. No. Okay. So, did she notify you that she was
going to be late?

15 A. Yeah. She let me know a little bit earlier that
she was going to be a little bit late, and I joked with her, like,
okay, that's an extra spanking, but it's fine, you know, if you come
late, it's okay.

20 Q. Okay. And did she give you a time about when she
was, she said she was going to be late, did she tell you how late
she was going to be?

A. I don't recall if she said a specific time. She
just said late, maybe she said around 8:15.

25 Q. Okay. All right. We can, kind of, go through
the messages if we need to about that. Do you recall what time she
actually showed up?

A. Yeah, she showed up at 8:30 or maybe a couple
minutes after.

Q. Okay. And so, you were at home at the time?

A. Yeah.

Q. Yeah. Okay. And she drove to your house?

A. Yeah.

Q. Okay. So, how is that she and – and you invited, her evidence is that she came inside your house, right?

A. Yeah.

Q. Okay. And is that what happened?

A. Yeah.

Q. Okay. So, how did that happen?

A. So, she showed up and she notified me she was there.

Q. Okay.

A. So, I came down to the door, I opened the door...

Q. Okay.

A. ...I said, "Hi," we hugged, and I invited her to come inside.

Q. Okay. And her evidence was that when she came inside the house, that she had met one of your roommates, Chris, and that you had introduced them to each other, is that what happened?

A. No.

Q. Okay. What happened, then?

A. She did not meet Chris...

Q. Okay.

A. ...she met Zaid...

Q. Okay.

A. ...my, he's one of my roommates.

Q. Okay. So, you had two roommates, Zaid and Chris?

A. Zaid. Yeah, that's right.

Q. All right. And so, she had met Zaid?

THE COURT: Sorry, Zaid?

MR. FAHMY: Zaid, sorry, Zaid or....

A. It's Z-A-I-D.

THE COURT: Z-A-I-D, not....

A. Not Chris.

THE COURT: Not Chris. And the evidence is there

were, these were the two roommates, so there's you, Zaid, and Chris.

A. That's right.

THE COURT: Okay.

5 MR. FAHMY: Q. Do you recall if you ever introduced her to Chris that day?

A. No.

Q. No. Sorry, let me rephrase the question.

A. Oh.

10 Q. Did you introduce her to Chris that day?

A. Oh. No, no.

Q. Sorry, it – it was Zaid that was, you introduced her to, right?

A. Sorry?

15 Q. Zaid, I'm going to call him Zaid.

A. She met Zaid, she met Zaid.

Q. Not Chris?

A. Not Chris.

20 Q. Okay. Got it. Okay. And how – how can you be so sure about that, today?

A. Well, first of all they don't look anything alike.

Q. Okay.

25 A. But Zaid, himself, recalls meeting her. And Chris, I asked him about it and, like, did you meet this girl, I don't recall introducing you to her, and he's, like, no.

THE COURT: Your friend is about to rise.

MR. FAHMY: That's hearsay. It's fine, Your Honour.

30 THE COURT: And so, we're not going to go into that, please.

MR. FAHMY: Well, yeah, that's fine. It's not, anyways, I'll – I'll.

MR. FAHMY: Q. In terms of, what does Zaid look like and what does Chris look like?

A. Zaid's about, he's a big guy, he's, pretty, heavy.

Q. Okay.

5 A. And he's tanned, he has black hair and a black beard.

Q. Okay. And what about Chris?

A. Chris is black...

10 Q. Okay.

A. ...and bald - he wouldn't like me saying that - but he doesn't have any hair, and he has a black beard.

Q. Okay. All right. So, after the introduction to Zaid what did you guys do?

15 A. So, I gave her a quick tour of my house, just showed her around where everything is.

Q. Okay. So, let's talk about your house...

A. Mm-hmm.

20 Q. ...okay. And as soon as you walk into the front door, can you just, kind of, describe the layout to the court.

A. Yeah. So, sorry, if this desk was, it's a rectangular house. You walk in....

Q. Okay.

25 A. ...the living room is to the right, kitchen is to the left.

Q. Okay.

A. There's a stairway directly ahead that goes downstairs to the basement, and there's two rooms there, or sorry, three rooms. There's a laundry room, bathroom, and a YouTube studio, so it's a big room. That's where I have all my YouTube stuff.

Q. Okay.

A. Now, back to the main floor. There's the kitchen but between the kitchen and the entrance there's a small hallway.

Q. Okay.

A. And then that goes up to the third floor or, I
5 guess, the second floor...

Q. Mm-hmm.

A. ...and then to the left of that stairway, up the stairs there's a bathroom, and then there's a room right ahead, and then there's two other rooms to the right of that.

10 Q. Okay. And in terms of, like, the tour, did you, like, kind of show her the whole house first, and – and then go sit somewhere, or did you sit somewhere first, then show her the tour?

A. Yeah.

Q. Kind of tell us.

A. So, the entrance is basically in the living room.

15 Q. Okay.

A. So, like, here's the living room, it's right there. The kitchen is a little bit to the left and you, kind of, walk into the kitchen in order to go up the stairs 'cause it's like you're basically in the kitchen when connected to the stairs.

20 Q. Yeah.

A. So, I showed her the kitchen and the living room. I also showed her where the bathroom is upstairs and then I pointed out, I'm like, yeah, my room's up there, too.

25 Q. So, you can kind of see the upper floor from the main floor in terms of how you're pointing things out?

A. Yeah.

Q. Okay.

A. You could see the main floor, the downstairs,
30 it's very open.

Q. Okay. All right. And then her evidence was that you guys, kind of, go downstairs to the...

A. Yeah.

Q. ...YouTube studio, is that what happened?

A. We went downstairs to the basement where I have my YouTube studio.

5 Q. Okay. Do you recall the conversation that you guys were having in the YouTube, at the, in the, sorry, in the studio?

10 A. Yeah. So, we were talking about YouTube and that's where I keep all my equipment, so all my cameras, microphones, all that kind of stuff.

Q. Besides, that's where you keep it, did you, were you pointing that out to her, or...

A. Oh.

Q. ...why did you....

15 A. Yeah, so she was asking me a lot about, you know, what's the process of filming videos and, you know, I was showing her some of the stuff I use 'cause I have, like props. I have, like the microphones and all that, and she was asking me questions about YouTube, and how do you film videos, and stuff like that.

20 Q. Okay. And – and what about, like editing videos or anything like that?

25 A. Yeah. So, she asked me a bunch of questions about, like you know, what's the process of filming, how do you, you know, do you have to ask people in order to get them to, like, agree to be in the video, do you have an editor, do you do all of it yourself, do you have a team.

Q. Okay. I don't need to know the answers, but did you respond to her with answers to these questions?

A. Oh, yeah.

30 Q. Okay.

A. Yeah, I answered the questions for her.

Q. Okay. All right. And then besides the stuff

about the YouTube, do you recall generally the, about, like the flow of the conversation, whether it was still friendly, or flirtatious, or anything like that?

A. Yeah. No, it was, we were having a good time,
5 yeah.

Q. Okay. And, but how would you, kind of like, you know, describe that besides her showing an interest in what you do.

A. Well, she was very interested in the same thing that I was, like YouTube, so...

10 Q. Oh, she, herself?

A. ...yeah.

Q. Okay.

A. Well, she was. I mean the way she asked the questions, like she – she knew a decent amount about YouTube.

15 Q. Okay.

A. She wasn't not familiar with stuff, so she thought it was all really cool.

Q. Okay. All right. Okay. And then – and then what happens after that?

20 A. So, we spent a couple minutes there and then I'm, like, let's go for a hike and she's, like, yeah, sure, and then we went back upstairs, we put our shoes back on and got into my car and we left the house.

Q. Okay. And where – where is it that you're going?

25 A. So, I don't think there's actually a name for it, but I call it the 'Cliff.' It's a hiking trail right on the edge of the escarpment. When I looked it up on Google, I think it's the Chedoke Radial Trail.

30 Q. Okay. And how long of a car ride is that from your house to, kind of, where the parking lot is?

A. It's about 10 to 15 minutes, depending on traffic.

Q. All right. And during that drive did you guys have any conversation?

A. Yeah.

Q. Okay. Again, tell the court what your conversation was about.

A. So, it was a continuation of the conversation we were having in my basement, talking about YouTube, comedy, films. We talked about Saturday Night Live, she's a big fan of Saturday Night Live.

Q. Okay.

A. We talked about Hollywood and, kind of like, what I want to do outside of YouTube.

Q. Mm-hmm.

A. Because YouTube's, kind of like, the starting point, but my whole thing is going to Hollywood and making TV shows, movies, etcetera.

Q. Okay.

A. And, yeah, just talked about that stuff.

Q. Okay. And in terms of personal information, did she ask you, like about your family, or about school, or about anything else about your life, or?

A. Well, she knew I wasn't in school anymore.

Q. She, what?

A. She knew I wasn't in school anymore...

Q. Okay.

A. ...and so, I think she asked me, like what I - what I studied, but it had nothing to do with, like, YouTube stuff...

Q. Yeah.

A. ...so. I asked her too about, like what she was doing, what her plans were. It was - it was back and forth.

Q. Okay.

A. Yeah.

Q. All right. So, besides all that was there any kind of conversation that was, like flirtatious or joking or funny, any one of those...

5 A. Oh, yeah, yeah.

Q. ...or all of them?

A. Yeah.

Q. Okay. So, can you, kind of, describe some of that?

10 A. Oh, sure. I mean, I don't - I don't remember, like, exact jokes that I made, but we were - we were joking back and forth...

Q. About?

A. ...we were both bantering.

15 Q. Bantering.

A. Yeah.

Q. Okay. Anybody laughing, both of you?

A. Yeah, yeah. Both of us were laughing, sorry.

Q. Okay.

20 A. Yeah.

Q. And anything that, kind of, sticks out in your mind that was flirtatious at all from either party, or?

25 A. Well, not a specific line about, like anything flirtatious, I guess. Like we were talking about the hiking trail...

Q. Okay.

A. ...sort of making jokes about, like you know, I was saying she was, kind of, clumsy. I'd have to, like, to make sure she doesn't fall off the edge of the cliff, stuff like that.

30 Q. Okay. But besides that joke did you reassure that you'd take care of her or something, or what was that?

A. Well, yeah, yeah...

Q. Okay.

A. ...I'm not going to let her fall off a cliff.

Q. Okay.

A. Yeah.

5 Q. All right. Okay. But I mean it was a joke. It wasn't something that she could have taken seriously at all, right?

A. No.

Q. Okay.

A. No. We were, she knew I was joking...

10 Q. Okay.

A. ...and we talked to each other, yeah.

Q. Okay. And when you actually, so you - you get to the parking lot area at some point?

A. Yeah.

15 Q. Okay. And then what happens next?

A. So, we're pulling up towards the parking lot and it's noticeably darker than it was when she showed up at my house.

Q. Okay.

20 A. So, I said, hey, like we can go on a hike, but by the time we actually get out onto the trail it's going to be dark in, like, probably about 15 minutes...

Q. Okay.

A. ...so, we'd probably have to turn back anyways 'cause it's dark.

25 Q. Okay. And why didn't you just go out on a hike in the dark?

A. Well, I mean it's not exactly a great first date. Like you just met somebody and you're going on a hiking date in the dark, at nighttime?

30 Q. Yeah.

A. I mean, it's on the edge of a cliff.

Q. So, not a good idea.

A. No.

Q. All right.

A. I mean, I would have been down, if she still wanted to go on the hike then, you know. I left - I left it up to her if she wanted to.

5 Q. So, you propose that to her, and she agreed?

A. Yeah, I proposed it, sorry?

Q. Sorry. You propose it to her, not to go on the hike and she agreed.

10 A. Yeah.

Q. Okay. All right. So, that was a bad idea. Did you propose any other ideas?

A. I suggested we go back to my house, and we watch Netflix and chill.

15 Q. Okay. Now, when you said that, how did you say it, and what were you trying to...

A. I.

Q. ...the first time, well, how did you say it?

A. I said it playfully.

20 Q. Okay.

A. Yeah.

Q. All right. And did you suggest something to watch at that point in time?

A. I said, something funny.

25 Q. Okay.

A. Yeah.

Q. And what was her response to that?

A. Yeah. Yeah, she was, like down to watch Netflix, yeah.

30 Q. Okay. So, she was down to - to do, to watch the Netflix, right, but...

A. Yeah.

Q. ...did she, you said, yeah. Did she actually use any words, like what is, how was her response?

A. Oh, yeah, she was, like yeah, let's do that, yeah.

5 Q. Okay. So, she's saying, yeah, let's do that.

A. Yeah.

Q. Okay. All right. And so, did you just make a U-turn and turn around or what did you do?

10 A. So, Scenic Drive. We took the - the scenic route, it's right along the edge...

Q. Okay.

A. ...and then we continued up - I don't know the name of the road, but it goes back to Mohawk Road.

Q. Okay.

15 A. And then we went straight back on. We took Mohawk Road, I live just off Mohawk...

Q. Okay.

A. ...so, like a big loop.

20 Q. Okay. So, kind of the consolation was we won't go on the hike but, you know, I'll show you the scenic route, kind of thing, back home?

A. Yeah, I mean, the scenic route.

MR. FAHMY: Sorry?

25 MR. SOSA: Just to raise it now so that I can forewarn the court. It's an examination in-chief, it shouldn't be leading questions. Sounds to me, although here it may not be that contentious, that he just needs to be cautious that he's not proposing something to the witness to then agree with.

30 THE COURT: Thank you. With respect to the objection, I think your friend does have a point. There are certain things that I think that we've

5 saved some time on covering, sort of, less contentious issues, but as we approach this particular point in the narrative, I think now that we should switch gears back to the traditional form of examination in-chief, as opposed to the leading question technique because I think we've covered some of the stuff that really wasn't contentious. Your friend hasn't risen an objection, but now I think care should be taken in the nature of the questions posed.

10 MR. FAHMY: Thank you, Your Honour.

15 MR. FAHMY: Q. Okay. So, you take that route, and you go back to your house?

A. Yeah, that's right.

15 Q. Okay. So, more conversation happening in the car at that point?

A. Yeah.

Q. Okay. And what's the conversation about?

20 A. More or less a continuation of what we were talking about before, it's comedy...

Q. Okay.

A. ...movies.

Q. Okay. And how would you describe what you're thinking at that point in time with, you know, how things are going?

25 A. Things are going really good. Yeah.

Q. Okay. And what's your impression of how, what, how she's doing — how she's doing on the date?

A. Yeah. So, we're — we're bantering a lot more...

Q. Mm-hmm.

30 A. ...because we agreed on, like a lot of things that we're interested in. So, yeah, the conversation just flowed a lot better.

Q. Okay. All right. Okay. So, you get to your house and then what happens?

A. So, we get to my house, and we go inside.

Q. Mm-hmm.

5 A. And we take our shoes off, and I go to the kitchen with her, and I offer her a drink.

Q. Okay. And what does she say?

A. She says, "No, that's okay."

Q. Okay.

10 A. And then I - I take a drink for myself.

Q. Okay. And what did you take for yourself to drink?

A. A beer.

15 Q. Do you remember what kind?

A. It was an MGD, I think.

Q. An MGD beer, okay.

A. Yeah.

Q. Did you, like, drink it there or what did you do with the beer?

20 A. Well, I brought it with me, upstairs...

Q. Okay.

25 A. ...but I didn't really drink much of it, like one or two sips.

Q. Okay. All right. So, after you get the beer from the kitchen what happens next?

A. So, I ask her if she wants to go upstairs to watch TV in my room.

Q. Okay.

30 A. And she's like, yeah, sure.

Q. Okay. So....

THE COURT: Just slow it down a little bit.

MR. FAHMY: Sure, Your Honour, yes.

THE COURT: Thank you.

MR. FAHMY: Q. And do you recall who went up the stairs first, whether it was you or her?

A. I went up the stairs, first.

Q. Okay. And she followed you, obviously?

A. Yeah.

Q. Okay. So, you're going up the stairs, and you go to your room?

A. Yes.

Q. Okay. So...

A. Yeah.

Q. ...what do you do when you enter into your room?

A. So, we go upstairs to my room, I open the door, I go inside, and I emptied my pockets on my shelf, beside my bed.

Q. Okay.

A. And then she stands next to my bed, and I think she's waiting for me to tell her that, like, if she can sit on the bed.

Q. Okay. So, you opened the door to your room...

A. Yeah.

Q. ...on your way in.

A. Yes.

Q. Do you recall if, did it stay open at that point or do you...

A. Oh, I, sorry, I closed the door behind me.

Q. Okay, so you close the door behind you...

A. Yeah.

Q. ...after she walked in, obviously.

A. Yeah. Yeah.

Q. Okay. That's what you mean when you say you walked past, in terms of going to put your stuff on the thing there?

A. Yeah. Yeah.

Q. Okay. I just wanted to, kind of, be clear what we're talking about.

A. Mm-hmm.

Q. So, after you put your stuff on the, sorry, you
5 called it a...

A. Shelf.

Q. ...shelf.

A. Shelf, like bedside table.

Q. All right. Okay. And I'm just going to refer to
10 the exhibit, Your Honour.

THE COURT: Just so I have a clarification on the evidence. So, was the evidence that he leads the way, his bedroom door is closed, he opens it, he comes in, she follows in, now she's standing by the bed, and then he backtracks to put things on this shelf, and then closes the door, was that what?

A. No. So, we entered the room, and then she's walking behind me, and then she comes to beside me...

THE COURT: Right.

A. ...as I'm putting my stuff on the shelf.

THE COURT: Okay. So, there's....

MR. FAHMY: Q. No. Let me, yeah, I don't, so. You
— you, the door is closed when you get up to the stairs.

A. Yeah. So, the door's....

Q. You open the door.

A. I open the door.

Q. Do you walk through, or do you hold the door for her to walk through?

A. I — I walked through...

Q. Okay.

A. ...and then hold the door open more...

Q. Okay.

A. ...and then she comes in...

Q. Okay.

A. ...then she kind of goes past me...

Q. Yes.

A. ...entering the room...

Q. Okay.

A. ...and then I close the door...

Q. Okay.

A. ...and then I go to the shelf next to where she
is...

Q. Yeah.

A. ...and then I empty my pockets...

Q. Okay.

A. ...on the shelf.

Q. I think that's what His Honour wanted
clarification on.

A. Yep.

Q. Okay. I'm just going to show you Exhibit 5.

MR. SOSA: Can I just have a moment just to get my
copy as well?

MR. FAHMY: Yeah, sure.

MR. FAHMY: Q. Sorry, can you just, I mean we've
already identified that this is a picture of your bedroom.

A. Mm-hmm.

Q. Do you see the shelf where you put your stuff on?

A. Yeah.

Q. And where is that, sir?

A. The shelf.

Q. Okay. So, that's the only shelf that's visible,
that's why....

THE COURT: You're indicating a black shelf,
underneath the white mirror.

A. Yes, that's right.

THE COURT: Okay.

5 MR. FAHMY: Q. Okay. Actually, I think we should maybe just, kind of, get our bearings on. All right. I'm just going to show you, so I'm showing you Exhibit Number 1, do you see that there?

A. Yes.

Q. And just - just for the purposes of the record, is that how your room looked on August the 5th of 2020?

10 A. Yes.

Q. Okay. So, from this picture there's a dresser with a TV on top of it directly across from the bed?

A. Yeah.

Q. Okay. And then we also see the black shelf in the foreground, where right beside the bed or the white mirror is?

15 A. Yeah.

Q. Okay. Okay. I'm just going to show you Exhibit 2 which is, kind of, almost the same picture, just a little bit further out and I guess we've now, we can see, like the closet there.

20 A. Yes.

Q. That's, sorry, the two white doors, that's the closet...

A. Yeah.

25 Q. ...visible there?

A. That's the closet, yeah.

Q. Okay. And again, anything, is this how your room looked like on August the 5th of 2020?

30 A. Yeah. There's a - there's a couple things that might be on the shelves that weren't there, like the lotion, I don't know if that was there before...

Q. Okay.

A. ...but everything, the big furniture, everything's in the same place.

Q. Okay. And then the Exhibit Number 3. Now, we've got, kind of a - a shot of your room from the other side of the bed...

A. Mm-hmm.

Q. ...opposite the - the door, and again at this point, you know what, I mean again, okay, again any - any, is this how on August the 5th, your room looked like?

A. Yeah, more or less, yeah.

Q. Okay. But is, okay, I'm going to actually show you here now, Exhibit Number 4 'cause it's, kind of a clearer shot of the other side of your room from the opposite side of the bed.

A. Mm-hmm.

Q. Now, looking at this, like I'm not talking about the things that might be in the shelf...

A. Mm-hmm.

Q. ...like in the, sorry, the bookshelf that's right beside the door, but the bookshelf was there?

A. Yeah, yeah, the bookshelf was there.

Q. Whether the stuff, and there was stuff in the bookshelf, right?

A. Mm-hmm, yeah.

Q. Like it might not be in the same exact order as it was on that day?

A. Yeah, yeah.

Q. All right. And then there's a desk immediately adjacent to it?

A. Yep, that's right.

Q. Okay. And - and the lamp and the chair, that was all there on August....

A. I don't know if the lamp was there...

Q. Okay.

A. ...but, yeah, the desk was there.

Q. The chair, that - that is a chair that's there?

A. Yeah, that's a chair with a sweater on it, yeah.

5 Q. A sweater on it. Okay. All right. And then, I guess this is just Exhibit Number 5. Again, just from the, as - as a view, kind of from the TV facing the bed, right?

A. Yeah.

10 Q. And there's a - a little nightstand on the other side of your bed that has a lamp. That's not the black shelf with the white mirror?

A. Yeah, yeah, that's right, yeah.

Q. And that was there on August the 5th, 2020?

A. Yep.

15 MR. SOSA: I'm sorry, I didn't hear that, what was there?

MR. FAHMY: The night table and the lamp.

MR. SOSA: Both items.

A. Yes.

20 THE COURT: Closest to the window.

MR. SOSA: Thank you.

MR. FAHMY: Q. And then August, sorry, Exhibit
Number 6. This is a picture kind of from what angle, maybe you can
just tell the court?

25 A. This would be from the door.

Q. All right. And again, no changes. This is generally what it looked like...

A. Yeah.

Q. ...in terms of August the 5th?

30 A. Yeah.

Q. Okay. This is Exhibit 7, and can you just describe what the door is, that's there?

A. So, this is a view from the hallway into the room.

Q. All right. Okay. All right. And then we've got Exhibit Number 8. Can you just describe where that angle is from?

5 A. So, this is from the corner of the room, so between the shelf, the black shelf and the desk.

Q. Okay. All right. And then Exhibit Number 9.

A. So, this is me standing on the bed, taking a photo of it, trying to capture the whole room.

10 Q. Like a bird's eye view.

A. Yeah, like the ceiling view.

Q. All right. Ad then Exhibit Number 10, or sorry, any changes or anything that you notice that's markedly different from August the 5th, 2020?

15 A. No. No, it looks pretty much the same, yeah.

Q. And then Exhibit Number 10, can you describe what that picture is?

A. So, this is the hallway from my bedroom to the bathroom.

20 Q. Okay. I just want to show you. Okay. So, I'm just going to show you Exhibit Number 1, again. And now, the - the height of that black shelf...

A. Mm-hmm.

Q. ...do you know what that height is, sir?

25 A. Yeah, it's about 30 inches.

Q. Okay. And does the mattress, is the mattress taller than the height of the shelf?

A. Yes.

Q. Okay. And approximately how much taller is it?

30 A. Probably like 6 to 10 inches.

Q. Okay. All right. And does that accurately represent the height of the bed at the time of August the 5th of

2020?

A. Yeah, yeah.

Q. Okay. All right. Okay. So, now we kind of got the room, what it looked like, kind of out of the way. So, you can just refer to things in the room now, so that we all kind of have it fresh in our - in our minds. And, if I need to I'll - I'll refer back to an exhibit, or if you want to, you can refer back to an exhibit, okay?

A. Okay.

Q. All right. So, you close the door and then what happens?

A. So, I go around the bed and I sit on the opposite side...

Q. Okay.

A. ...so....

THE COURT: Just wait there for a moment. Close door, went around the bed, you said, on the opposite side?

A. No, no. So, I closed the door and then I emptied my pockets onto the black shelf, and then I walked around the - the end of the bed between the - the bed and the shelf with the TV on it, and then I went towards the - the window side of the bed.

THE COURT: Okay, again, just so I've got it right.

MR. FAHMY: Yes, please, Your Honour.

THE COURT: The door is shut...

A. Mm-hmm.

THE COURT: You approach the bed and black shelf, you empty your pockets, then you go around the foot of the bed and then on the window side.

A. Yes, that's right.

MR. FAHMY: Q. Okay.

THE COURT: Just a second, just a second. Thank

[redacted] you. Please proceed.

MR. FAHMY: Q. Okay. Now, in that picture the TV was off. At the time that you entered the room was the TV on or off.

A. The TV was on.

Q. Okay. And you get on the window-side of the bed.

A. Yes.

Q. And what's [redacted] doing?

A. [redacted] gets on the other side of the bed.

Q. Okay. All right. Anything said at this point?

A. So, I joked about how we had to hop up on the bed 'cause it's an unusually tall bed.

Q. Okay. And so, when you say you joked about how you both had to hop on the bed is that — is that because that's happened?

A. Yeah. I don't need to hop up technically, but she's a little shorter so she had to hop up a little bit.

Q. Yeah. Well, okay, I mean, we — we know she's five foot five, how tall are you?

A. Six' two.

Q. Okay. All right. Okay. So, you're both on the bed. Do you, what do you do or say next?

A. So, now that we're on the bed, I'm navigating to Netflix....

Q. Okay.

A. ...on the TV.

Q. Okay. Well, so I — I see you're using your hand as if you're holding....

A. Oh, sorry, like a remote.

Q. Okay.

A. A remote.

Q. All right.

A. Yeah.

Q. Okay. After you both hop on the bed...

A. Mm-hmm.

Q. ...how are you sitting and how was she sitting on
5 the bed?

A. So, we're both sitting up against the pillows,
against the wall...

Q. Okay.

A. ...so, the backside of the bed.

10 Q. The front side, the - the by the head of the bed
I guess, I don't know even what they call that.

A. The part of the bed that's touching the wall.

Q. Okay. So, you don't have a headboard there.

A. No.

15 Q. Yeah. Okay. And so, you're - you're propped up
against the, you said the pillows?

A. Yeah, so I have, I had more pillows than in that
picture.

Q. Okay. So, that's a difference then...

A. Yeah.

20 Q. ...that's okay.

A. So, we had the pillows up against the wall, and
then we sat on the pillows, or sorry, leaning against the pillows...

Q. Okay.

25 A. ...and the pillows were touching the wall.

Q. Okay. All right. So, again you're - you're,
kind of sitting in an upright 'L' position, is that fair, or?

A. Yeah. I mean, my head was touching the wall at
some point too, because I was leaning back. We were leaning up
30 against the wall, but we'd also sit up a little bit.

Q. Okay.

A. Yeah.

Q. All right. Okay. So, you said you had the remote and what do you do?

A. So, I go to Netflix and then we're talking about what to watch, we're kind of browsing on the Discovery feed of the Netflix.

5 Q. Okay.

A. And then I suggest we watch Brooklyn 99.

Q. Okay. Why do you make that suggestion?

A. Well, she said that she loved Saturday Night Live 10 and Brooklyn 99 has, like, several cast members from SNL on it.

10 Q. Okay. And, sorry, SNL is short for....

A. Yeah, sorry, Saturday Night Live.

Q. Okay.

A. Yeah.

15 Q. And who in particular is....

A. Okay. So, Andy Samberg, he was a host on SNL for a couple of years. He was in Lonely Island, he's the...

Q. He was, what?

A. ...he was in Lonely Island.

20 Q. What's - what's Lonely Island?

A. Loney Island was, like a sketch comedy group, they, like they made sketches, but they also did songs on Saturday Night Live. So, like, do you want me to name of the songs?

Q. Sure.

25 A. Okay. 'I'm on a boat,' 'Jizzed in my pants,' 'Dick in a box,' there's a couple others.

Q. Okay. All right. But - but those, all those songs and whatever, they were on Saturday Night Live?

A. Yeah. So, Andy Samberg, is the head of Lonely 30 Island, it's - it's a band...

Q. Mm-hmm.

A. ...and the band was from the sketches on SNL.

Q. Oh, okay.

A. Yeah.

Q. All right. And so, you suggested Brooklyn 99 and what was her response to that?

A. Yeah, she was like, yeah.

Q. Okay.

A. It's a great choice.

Q. All right. So, you scroll to it, you put the show on.

A. Yeah, I mean I still moved around to see if there was something else maybe but, like, Brooklyn 99 was perfect.

Q. Okay. And then you — you put the show on.

A. Yeah.

Q. Okay. And what happens?

A. So, we started watching the show. It's a show about incompetent police and there's a couple of comedians on it, like Terry Crews, Chelsea Peretti, Andy Samberg's the main character...

Q. Okay.

A. ...and so, we just watched the show, talked about what was happening on the show.

Q. Okay. And I, sorry, I forgot to ask. When you first get on the bed...

A. Mm-hmm.

Q. ...you're beside each other.

A. Yeah.

Q. Okay. How close are you in terms of your, I mean first of all what kind of a bed is that, is that a queen, king, double bed?

A. I don't know the exact type of bed. I know that it had, like a bunch of mattresses on it that was propping it up, but I guess it was a king, maybe a queen.

Q. Okay. All right. And when you first, kind of, both of you get on the bed, how close are you, or how far away are you from each other?

A. We're, pretty, close.

5 Q. Okay.

A. Yeah.

Q. What, pretty, close means what, though, Mr. Densmore?

A. Sorry. A couple of inches.

10 Q. Okay. And this is while the show gets started?

A. Yeah.

Q. Okay. Does that, anything change after that?

A. Yeah. So, we started to move a little bit closer to each other over the course of, like 5 to 10 minutes.

15 Q. Okay. And....

THE COURT: Sorry, I couldn't hear that. Over a course of....

MR. FAHMY: 5 or 10 minutes, Your Honour.

THE COURT: Thank you.

20 MR. FAHMY: Q. And you mentioned that you guys had talked about the show when something funny had happened, like was there any expressions happening while this was, while you were having....

25 A. Yeah. So, we were — we were laughing at the show.

Q. Okay. All right.

30 A. Yeah. And we were making jokes about the show, like what it'd be like if we were cops 'cause the show's about police and we were joking about, like oh, what would you do if you were a cop. Would you be a goof or, you know.

Q. Okay.

A. I don't know any specific things, but we talked

about what we would do if we were police.

Q. Okay. Now, in terms of anything flirtatious happening at this point either?

A. Yeah.

Q. Like?

A. Like we were bantering about the show and what we would do if we were on it, and we talked about, like arresting people, searching, handcuffs, and that kind of thing.

Q. Okay. But how is that flirtatious?

A. The tone. The tone that I was using, the tone that she was using.

Q. So, the tone in terms of....

A. Yeah, we - we were definitely, like slowing our voices down a little bit, be more...

Q. Okay.

A. ...a little slower with the delivery.

Q. Okay. And then, well, I guess her evidence is, is at that point there was some consensual kissing?

A. Yeah, yeah, we started kissing.

Q. Is that. Okay, so is that what happened?

A. Yeah. We - we were, we started kissing.

Q. All right. Why don't you tell the court about how that started, sir?

A. Okay.

THE COURT: Why don't we just take a break right now.

MR. FAHMY: Oh.

THE COURT: We'll take our afternoon break. We'll come back at quarter to four.

MR. FAHMY: Thank you.

THE COURT: Thank you.

COURT CLERK: Court is stood down 'til 3:45.

R E C E S S

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

5 COURT CLERK: Court is in session. Please be seated.

THE COURT: Thank you.

10 EXAMINATION-IN-CHIEF BY MR. FAHMY (continued):

Q. Okay. Mr. Densmore, so where we left off is
you're both on the bed and you'd agreed that there was some kissing,
and I'd asked you if you could tell the court how that, kind of,
kissing started.

A. Yeah, so we made eye contact and held eye
contact, and I looked at her lips, and she looked at mine, and then
we started kissing.

15 Q. Okay. And – and then what happens?

A. So, we started kissing and then we'd stop
kissing, like I would stop and then resume watching Netflix.

Q. Okay.

A. So, then we'd start kissing again. Same thing, I
would lean into kiss her, and then we would kiss.

20 Q. Okay. When you would lean in to her to kiss
her...

A. Mm-hmm.

Q. What would she do?

25 A. I would initiate the kissing.

Q. Okay. But what would she do?

A. She would kiss me back.

Q. Okay. Would she also have to lean in, as well,
or did she just....

30 A. Yeah, yeah. In order for us to, she leaned in
towards me.

Q. Okay. So, you kissed, then you stopped to

continue watching the show for a bit?

A. Yeah.

Q. Okay. And then you started kissing again?

A. Yeah. So, we - we did this a couple of times,
5 but then we started kissing longer and longer.

Q. So, is that longer and longer each time you
restarted kissing?

A. Yes.

Q. Okay. All right. And then, okay, and then -
10 then what happens?

A. So, we're kissing and do you want to, like
tongue, we're using more tongue.

Q. Okay. Yeah, let's, sorry. So, you kiss for the
first time. Was there, can you describe that in terms, so you said
it progressed...
15

A. Mm-hmm.

Q. ...each time you stopped and started again,
right?

A. Yeah.

Q. Okay.

A. So, it went from light kissing to, like heavy,
heavier kissing.
20

Q. Heavier kissing.

A. Yeah.

Q. Okay. All right.
25

A. Like tongue and.

Q. Tongue.

A. Tongue and mouth.
30

Q. Okay.

A. Yeah.

Q. All right. And then in terms of the heavier
kissing...
35

A. Mm-hmm.

Q. ...you said that there was tongue involved, so you guys both had, like you both had, felt each other's tongues?

A. Yeah.

Q. Okay.

A. Yes.

Q. So, both your mouths were open as well?

A. Yes.

Q. Okay.

A. Not — not entirely tongue, but.

Q. Yeah.

A. It's just kissing.

Q. I — I see you doing this with your hands. You just got to tell us.

A. Sorry, I....

Q. Like just try to go back to that moment and just tell us, it's okay. Don't feel any ways about it.

A. Okay.

Q. Just, you know, get into, like you know, tongue, lips, teeth, whatever.

A. Okay.

Q. And just, kind of, go ahead.

A. Okay. So, we're kissing each other, progressively more tongue...

Q. Okay.

A. ...for progressively longer.

Q. Okay.

A. And then eventually that became the sole focus. We're no longer watching Brooklyn 99...

Q. Okay. All right.

A. ...just — just kissing.

Q. All right. Okay. Now, besides her kissing you

back, did she show any other signs that she was enjoying or accepting this happening?

A. Yeah. So, we got, pretty, close. Like we both moved in a little bit closer so that it was easier to kiss each other.

5

Q. Okay.

A. And...

Q. Mm-hmm.

A. ...and we started touching each other with our hands, so my right hand I used to kind of touch her chin, her ear, 10 shoulder...

10

Q. Okay.

A. ...and then she would also lean in on me, kiss me and she put her - her hand on my body.

15

Q. Okay.

THE COURT: Hand on my?

A. My body. So, like my chest.

MR. FAHMY: Q. Okay. You're pointing to your chest, so she's now...

20

A. Yeah.

Q. ...your chest?

A. Yeah.

Q. Okay.

25

A. Yeah, and - and my neck too, she touched my neck as well.

as well.

Q. Okay. All right. And this is while you guys are kissing?

A. Yeah.

30

Q. Okay. All right. So, besides the touching was there anything, any words, any sounds, anything else happening?

A. I mean, some moaning, some noises.

Q. Okay.

A. Like, there was breathing, like, moaning, deep breathing...

Q. Okay.

A. ...I talked to her a little bit, and then she
5 responded.

Q. Okay. Like, when you say you talked to her a little bit, what - what is it that you'd said....

A. Calling her a good girl.

Q. Okay.

A. Whispering it in her ear.
10

Q. Okay. All right. And then, did you kiss anywhere else besides her lips?

A. Yeah.

Q. Okay.

A. So, I kissed her ear...
15

Q. Okay.

A. ...her neck...

Q. Okay.

A. ...kind of go in a triangle, lips, ear, neck.

Q. Okay. And - and how was she showing her, kind
20 of, approval or acceptance of all of this?

THE COURT: I think your friend has risen. He
doesn't have to rise. It's, I think that's
completely leading. You'll have to, you're
presupposing an answer...
25

MR. FAHMY: How was she, okay.

THE COURT: ...as to what you're saying...

MR. FAHMY: I'll rephrase.

THE COURT: ...so it's inappropriate and I'll ask
you to rephrase your question.
30

MR. FAHMY: Q. Was she showing any approval or
acceptance of this?

A. Yes.

Q. How?

THE COURT: Kind of a kissing cousin to that question.

5 MR. FAHMY: Well, that's, I - I apologize, Your Honour, but that's - that's entirely....

THE COURT: I'll disagree, and I'll tell you why.

MR. FAHMY: Okay.

10 THE COURT: Was there any indication or how was she reacting, if at all, that's a fair question. You've simply shifted gears...

MR. FAHMY: Oh, okay, I see.

THE COURT: ...a little bit to a suggested answer.

15 MR. FAHMY: I, okay. No problem, Your Honour.

THE COURT: All right. Thank you.

15 MR. FAHMY: Q. Okay. And what was her response to this kissing between the lips, neck, and ears, sir?

A. So, she was kissing my lips back...

Q. Okay.

20 A. ...using tongue...

Q. Okay.

A. ...and she was moaning...

Q. Okay.

25 A. ...and I would kiss her ear and her neck and...

Q. Okay.

30 A. ...and when I would say, "Good girl," she would say, "Yeah."

Q. Okay.

A. She'd make noises.

Q. Okay. Okay. And is there any continuation of the touching of each other at this point?

A. Yeah. Yeah.

Q. Okay.

A. So, I'm touching her neck, still. She's touching my - my chest...

Q. Okay.

A. ...she's rubbing it, up and down.

Q. Okay.

A. And she's - she's basically doing the same thing as me. Like she's touching my neck...

Q. Okay.

A. ...body, back and forth.

Q. Okay.

A. While we're - we're kissing and I'm kissing her neck and.

Q. Okay. So, it's all, kind of one fluid, kind of...

A. Yeah.

Q. ...motion. I know we're breaking it up, but this is, kind of what's happening at the same time?

A. Yeah.

Q. All right. Then what happens?

A. So, after that I ask her to take her shirt off, she's wearing a tee shirt.

Q. Okay.

A. She takes her tee shirt off, and then she's wearing a dress underneath, and then I start to touch her breast.

Q. Okay.

A. And then she's moaning as I'm doing this, and then I'm still kissing her as well, so I resume kissing her.

Q. Okay.

A. And then I'm touching her breast.

Q. Okay. So, let's just, let me ask you. So, you did not take her tee shirt off?

A. No.

Q. Okay. And, sorry, and then you're - you're saying at this point, now you are touching her breast?

A. Yeah.

Q. Okay. One breast, one or both?

5 A. So, I - I touched both, but I was mostly focusing on her right breast.

Q. Her right breast.

A. Yeah.

10 Q. Okay. All right. And - and then what happens next?

A. So, I'm still kissing her lips, but with my hand touching her - her breast.

Q. Okay.

15 A. And then I try to get access to her exposed breast.

Q. Okay.

A. So.

Q. Sorry, let me - let me just backtrack a bit.

20 When you're saying you're touching her breast is that, that's over her...

A. Yeah.

Q. ...dress?

A. Yeah, over the dress.

25 Q. So, that's, so when you're saying that you're trying to get access to her breast, you're talking about what?

A. So, the strap. So, I brought my hand to the strap on her right shoulder...

Q. Okay.

30 A. ...to bring it down.

Q. Okay.

A. And then she helped me, well, she lifted her arm

so that....

Q. Okay. Let me just stop you right there, just for the purposes of the record. As Mr. Densmore was saying, she was helping me by lifting up her arm. He made a motion with his elbow up, indicating as if the strap was coming out from her hand, is that correct?

A. Yeah. So, she helps me take the strap off her.

Q. Okay. All right. And did she do that with just the one strap or did you both....

A. At first, yeah.

Q. Sorry?

A. At first.

Q. At first. Okay, and then what happens?

A. So then, I started to kiss her breast with my mouth.

Q. The one that's exposed?

A. Yes.

Q. And that would be her left or right breast?

A. Her right breast.

Q. Okay.

A. The one closest to....

Q. Just - just hang on.

A. Sorry.

Q. Okay, and then what happens next?

A. And then I would kiss her breast, but also go back to her lips.

Q. Okay.

A. And then her ear.

Q. Okay.

A. And then, go on a bit of a....

Q. What, if anything, is she doing at this point, while you're doing this?

A. She's moaning and she's making noises.

Q. Okay. And is she doing anything to you with her hands or with anything?

A. Yeah. So, she's touching my neck on the back
5 of...

Q. Okay.

A. ...my, back of my neck, and she's also kind of touching my body, like we're - we're doing a couple different things at the same time.

10 Q. Okay. All right. And, okay, and then - then what happens? Sorry, so you said, at first you exposed the, her right breast by taking the strap off. Was there any, was the other side exposed at all?

A. No.

15 Q. Not yet?

A. No.

Q. Or not ever?

A. Not yet.

Q. Okay. So, what happens next?

20 A. So, we continued doing that for a little bit, but then she sat on top of me.

Q. Okay. Now, again, for the purposes of the record...

A. Mm-hmm.

25 Q. ...you made a swinging motion from your left side to your centre, correct?

A. Yeah. So, she was sitting next to me...

Q. Yeah.

A. ...and then she got on top of my groin.

30 Q. Okay. So, she got on top of your groin. Just describe how, when that happens, how you're positioned and how she's positioned.

A. So, I'm in the same position....

Q. Okay. Which is?

A. So, I'm sitting up against the pillows...

Q. Okay.

A. ...against the wall, but...

Q. Okay.

A. ...I'm sitting upright because we're - we're kissing and I'm kind of going between....

Q. So, just....

A. Sorry.

Q. No, no, no, that's, don't say sorry, I'm just, I've got to describe what you're doing, so.

A. Okay.

Q. You indicated that you kind of moved your head down towards your left side...

A. Yeah.

Q. ...which is to do, what?

A. To kiss her breast.

Q. Okay. All right and then?

A. So, she got on top of me...

Q. Okay.

A. ...and then she had her knees on either side of me.

Q. Okay.

A. So, her groin, her vagina was on my groin.

Q. Okay.

A. She's sitting on top of me.

Q. And she's facing you?

A. Yes.

Q. All right.

A. 'Cause she's, she mounted me.

Q. She.

A. Mounted me.

Q. Okay. All right. And then what happens next?

A. And as she's doing this, she brings her other strap down.

5 Q. Okay.

A. So, that both of her breasts are out.

Q. Okay.

A. And I'm kissing them.

10 Q. Okay. Now, as you're kissing both of her breasts, what is she doing?

A. So, she's straddling me.

Q. Okay. What does that mean?

A. So, she's rubbing her - her vagina on my - on my groin with her - with her body.

15 Q. Okay. So, is she, like is your, are you erect at this point?

A. Eventually, yeah.

Q. Okay. So, you're getting there...

A. Yeah.

20 Q. ...is basically.

A. Yeah, I'm getting there, yeah.

Q. Okay. But that's what she's doing while she's on top of you?

A. Yeah...

25 Q. Okay.

A. ...she's rubbing my - my penis.

Q. All right. Do you recall where her hands are at this point?

30 A. So, they were at her side, but then she also would bring them up and she'd pull my - my head...

Q. Okay.

A. ...into her breast.

Q. Okay. So, she's got. You - you just....

MR. SOSA: I just, sorry.

MR. FAHMY: Yeah.

5 MR. SOSA: Sorry, just in general, Your Honour, it's very difficult to hear the witness and so, if I could just ask the court to please ask that he speak a little bit louder.

THE COURT: All right. Well, thank you for that.

10 For me it's not bad because I'm two feet away, but I appreciate that, it is a little quiet. So, please raise your voice so everybody can hear your testimony.

A. Yes. Thank you. Sorry.

15 MR. FAHMY: Q. Here, you can come a bit closer to the....

15 A. Yeah, it's a little tight here.

Q. All right. So, just before that from my friend...

A. Mm-hmm.

20 Q. ...again, you motioned with your hand cupped around your neck when you were describing how she had her hand around your neck, correct?

A. Yes, that's right, yeah.

25 Q. All right. And you said that she was doing that to bring you closer to her breast or as you....

A. Yes. That's - that's I assumed what she was doing, yeah.

Q. Okay. But this is while you're kissing her breast...

30 A. Yeah.

Q. ...she's got her hand there.

A. That's right. Yeah.

Q. Okay. And did she put her hands anywhere else while this is happening?

A. Well, she put both of them on the back of my head.

Q. On the back of your head?

A. Yeah, like neck. Like she put both...

Q. Yeah.

A. ...you know, but then she would also bring them down to her side, too.

Q. Okay. Was she touching any other part of your body at this point, while you're doing this?

A. She's, kind of like, massaging me, sorry, massaging me.

Q. Okay. And - and you said massaging like you've indicated, like you had your hands going up and down along your....

A. Yeah, she, like ran her fingers down my side.

Q. Down your side.

A. Yeah, slowly, you know.

Q. All right. Okay. Did she ever touch your back at any point, or your shoulders at any point?

A. Yeah, yeah.

Q. Okay. So, how did she do that?

A. She would touch my neck sometimes, then she would also, kind of bring her fingers down my - my neck to my shoulders.

Q. Okay. All right.

A. I don't think she actually reached all the way down my back.

Q. No. I - I, so I just want to get, so I, just before you do that...

A. Mm-hmm.

Q. ...when you said I don't think she got her hands all the way down my neck, you indicated you - you had your hand

behind your back, pointing to your lower to mid-back, but earlier when you were describing how she had her hands on her, on your neck and shoulders...

A. Mm-hmm.

5 Q. ...it was kind of on the, I'm going to call this the - the trapezoids...

A. Yeah.

Q. ...right part of your - your body?

A. Yeah, it was - it was the traps, yeah.

10 Q. All right. Okay. And besides her doing that is she, what is she, is she saying or doing anything else?

A. Yeah. She's making noises, she's moaning.

Q. Okay.

15 A. I'm also kissing her, too, so I'm switching between her breasts to her lips and back.

Q. All right.

A. And I'm calling her names.

Q. Okay.

A. "Good girl," sorry.

20 Q. Okay. No, sorry, you're calling, you're saying?

A. "Good girl."

Q. Okay. All right. Okay. Now, we heard her evidence that you had started to bite her breasts, did you bite her breasts, sir?

25 A. No.

Q. Okay. And did she mention anything to you about her approval of what you were doing?

A. Yeah. She, when I said, "Good girl," she'd be like, "Yeah," and...

30 Q. Okay.

A. ...she would tell me that she likes it 'cause I'd ask, like, do you like that, you know, do you like that?

Q. Okay.

A. And she'd be....

Q. Okay. So, hold on. So, you would ask her, do you like this, do you like that...

A. Yeah.

Q. ...and her response to that was?

A. "Yeah."

Q. Okay. Now, was that only while you're kissing her breasts or does this happen before or after even?

A. Well, after I asked, like, yeah.

Q. I'm sure after you asked, she, you said she responded, right?

A. Yeah.

Q. Okay. But I'm talking about when you asked her do you like this or do you like that, right...

A. Mm-hmm.

Q. ...I guess I'm asking you, like did you ask her those questions before she got on top of you, or even after she got on top of you?

A. I didn't ask her, like, do you like that before she got on top of me...

Q. Okay.

A. ...but I was - I was, like whispering, "Good girl," in her ear and...

Q. Yeah.

A. ...you know like, not specifically, like do you like that when I kiss your breasts...

Q. Yeah, yeah.

A. ...you know, but like...

Q. No, you're...

A. ...do you like that, you know.

Q. Okay. So, you're doing something and then she's

responding and you're asking her if she likes that.

A. Yes.

Q. Okay. All right. And did she give you any direction about what she liked or...

A. Yeah.

Q. ...didn't?

A. Yeah.

Q. How - how did that happen and how could you describe that?

A. Well, she would moan when I was on her breasts, when she was on top of me, when I - when I was kissing her breasts...

Q. Okay.

A. ...she said, "Softer," at one point.

Q. Okay.

A. "Slower."

Q. Okay.

A. So, I would do what she told me to do.

Q. Okay. So, she's giving you directions as well?

A. Yeah, yeah.

Q. Okay. And what about from your end. How did, what did you say or do, at that point?

A. I was moaning too, and I was saying like, "Yeah."

Q. Okay.

A. I let her know that I liked it.

Q. You let her know?

A. I was - I was letting her know that I liked it.

Q. Okay.

A. Yeah.

Q. All right. Okay. And then what happens next?

A. So, I was erect, fully, and then I motioned her to get off, to get, like, get back to where she was, to sitting next

to me.

Q. Okay.

A. And my hand would have been on her and, kind of like, moved her a little bit to let her know, like, hey.

5 Q. So, again, you've got your hand out in front of you moving it, kind of in a...

A. Yeah.

Q. ...swinging, kind of motion.

A. Yeah. As - as I motioned her to get off of me...

10 Q. Yeah.

A. ...I also put my hand on her and nudged.

Q. Okay. So, you've got your hand out. Where - where is your hand at this point when you're doing the nudging?

A. So, on her waist.

Q. Or on her waist.

A. Yeah.

Q. Okay.

A. Yeah.

Q. All right. And then?

A. And then she got off of me...

20 Q. Okay.

A. ...so, she stopped straddling me...

Q. Mm-hmm.

A. ...and she got off and she got back to sitting
25 next to me.

Q. Okay. All right. And then what happens at that point?

A. So, I started kissing her again, she's kissing me back, and I'm also going back down to her breast, kissing her breast
30 as well...

Q. Okay.

A. ...and I started running my hand on her thigh.

Q. Okay. Let me just stop you there.

A. Okay.

Q. While this is happening now, the kissing and you touching her, what is she doing?

A. She's touching me back.

Q. Okay. How is she touching you back?

A. So, when I touched her thigh, she touched my thigh.

Q. Okay. And when you're kissing her...

A. Mm-hmm.

Q. ...is she kissing you back?

A. Yeah.

Q. Okay.

A. When I kissed her lips, yes.

Q. Sorry?

A. When I was kissing her lips, yeah.

Q. Yeah. Okay. And so, you said she's touching your thigh, you're touching her thigh, then what happens next?

A. So, we're still kissing lips, I'm still kissing her breast, and she starts rubbing my thigh as I'm rubbing her thigh...

Q. Okay.

A. ...and I start to move my hand towards her vagina.

Q. Okay.

A. Like, but she has a - she has a dress on.

Q. Okay. So, she's got her dress on, right?

A. Mm-hmm.

Q. So, and - and we heard her evidence that it was, like a black tube dress with the two straps. Is that the same dress that...

A. Yeah.

Q. ...is that the same you recall her wearing?

A. That's right, yeah, yeah.

Q. Okay. All right. So, and so, I - I saw you kind of make a motion on the court table there.

A. Mm-hmm.

Q. You kind of slid your hand across. Why did you do that, or what are you trying to describe?

A. So, she's sitting next to me...

Q. Yeah.

A. ...and I'm reaching with my right hand...

Q. Okay.

A. ...to get, I guess, on the outside of her - her dress is, it's like to the...

Q. Okay.

A. ...the thigh area.

Q. Okay. So, you're not going underneath the dress, you're going from....

A. No, not yet.

Q. Not yet. Okay.

A. No.

Q. So, you're going from the outside of the dress...

A. Yeah.

Q. ...to her groin area you were saying, earlier?

A. Yeah.

Q. Okay.

A. Yeah, so like, sorry.

Q. Sorry, go ahead, sir.

A. So, her inner thigh...

Q. Yeah.

A. ...just on the outsides, teasing her a little bit and...

Q. Okay.

A. ...she's also touching my groin.

Q. Okay. I can see you moving your hand along your
groin. I just....

A. Sorry.

5 Q. Which - which groin, which part of your, which,
first of all left or right groin?

A. Left.

Q. Left.

A. You mean....

10 Q. Yeah. Sorry, the one that you're touching right
now...

A. Yeah.

Q. ...that's your left groin.

A. She's touching my groin.

15 Q. Yes.

A. Yeah.

Q. Right, and then you're touching her groin, too,
basically, right?

A. Yeah. Well, the, no...

20 Q. 'Cause that's the inner thigh.

A. ...her, the, her inner thigh, around the edge of
the dress and then her - her thigh.

Q. Okay. All right. And, okay, and then - and then
what happens?

25 A. So, I was, she rubs my groin, then I start to rub
her a little more, just like she's rubbing my groin.

Q. Okay.

A. But then I - I take my hand back and I try to
take my penis out, so with one hand I undo my, sorry.

30 Q. No, it's fine. So, you're just....

A. Can I stand up, or?

Q. No. If - if, whatever you want, but just

describe what you're doing.

A. Okay. So, I'm sitting here...

Q. Yeah.

A. ...and we're - we're....

5 Q. No. Hold on. Let's get to the point where you said you're, you were trying to take your penis out, you said, right?

A. Yeah, so....

Q. Okay. And you were motioning along your waist...

10 A. Mm-hmm.

Q. ...in a, kind of, moving from your left to right.

A. Yeah, so, I - I take my right hand...

Q. Yeah.

A. ...to start to take my belt off...

Q. Okay.

A. ...and then my left hand is on her thigh.

Q. Okay.

A. So, I switched from my right hand to my left.

Q. Okay.

20 A. That way, while I take my belt off, I can still touch her.

Q. Okay. All right.

A. And we're kissing, still, at this point.

Q. Okay. All right. Okay. Then what happens?

25 A. So, I take my belt off, I'm having a little bit of a hard time, and then I do my zipper down....

Q. Okay. Sorry, when you say you take your belt off, is it that you took it right off, or you just unbuckled it?

A. Yeah, I unbuckled it, sorry.

30 Q. Okay.

A. Yeah.

Q. Okay. And then?

A. So, I unbuckled it...

Q. Yeah.

A. ...and then I undid the button...

Q. Okay.

A. ...on my jeans.

Q. Okay.

A. And then I undid the zipper and then I tried to, kind of shimmy my pants down a little bit, but it didn't really, they didn't really move that much.

Q. Okay. And all this while you're still continuing to...

A. Yeah.

Q. ...kiss her and touch her with your left hand?

A. Yeah.

Q. Okay. So, when you say that you tried to move a little bit, but you weren't very successful, was any part of your penis exposed at this point?

A. Yeah, so I got part of my penis exposed.

Q. Okay. And why - why didn't you just take off your pants at this point?

A. I was trying to kiss her and get my penis out at the same time...

Q. Okay.

A. ...while sitting down.

Q. Okay. So, once you do that, what, if anything, does she do?

A. So, she starts touching the penis that I - that I did get out, like I got the top-half out...

Q. Okay.

A. ...the top of my underwear and jeans...

Q. Right. Okay.

A. ...and she, you know.

Q. So, she touched it?

A. Yes, yeah, she touched my erect penis.

Q. How was she touching your erect penis?

A. With her hands and just, kind of gently...

Q. Okay. So....

A. ...rubbing it, she rubbed it.

Q. Okay. So, hang on. So, you - you made, kind of like a - a motion with your fingers like she's, kind of like, using her fingers to stroke it...

A. Yeah.

Q. ...from the top?

A. Yeah.

Q. Okay. And then you said that she was also, like rubbing it?

A. Yeah.

Q. You made a motion with your hand, like kind of, up and down.

A. Yeah, she was touching it...

Q. Okay.

A. ...and rubbing it.

Q. Okay. All right. And this is still while you're kissing her?

A. Yeah.

Q. Okay. And then, what, if anything, do you do?

A. So, with my right hand now, I lean forward so that I can reach underneath her dress to her vagina.

Q. Okay.

A. Like in between her legs. So, she moved her legs apart a little bit, so I could kind of reach in.

Q. Okay. So, she, kind of, she - she moved her legs apart so you can get access to underneath her dress?

A. Yeah.

Q. Okay. And then, okay, and what happens next?

A. And then I touched her — her vagina, her underwear.

Q. Okay. So, let's — let's, okay. Did you actually touch her vagina at this point?

A. Not yet.

Q. Okay. So, you touched her vagina on the outside, on her underwear at this point?

A. Yeah.

Q. Okay. And then, how are you doing that?

A. So, I had my right hand...

Q. Yeah.

A. ...it was in between her legs, under her dress and I was stroking the outside of her...

Q. Okay.

A. ...her underwear.

Q. Yeah.

A. But then, I was able to dig in a little further and get underneath her underwear...

Q. Okay.

A. ...with my fingers...

Q. Okay.

A. ...and then I started touching the outside of her vagina.

Q. Okay. And how would you describe the touching at this point, when you've gotten to the outside of her vagina, sir?

A. Slowly.

Q. Okay. And, what, if anything, is her reaction to any of this?

A. She's moaning.

Q. Okay. And she, is she still continuing to rub your penis?

A. Yeah.

Q. Okay. Sorry, stroke it, you said.

A. Well...

Q. Well, rub, stroke.

5 A. ...she has her fingers on it and she's moving them up and down.

Q. Okay. All right. Okay. And what else is - is, are you still continuing to kiss her as well, at this point?

10 A. Yeah. I'm still kissing her, but also kissing her breasts.

Q. Okay. Anywhere else that you were kissing?

A. Her - her neck.

Q. Okay.

15 A. And I was - I was still whispering shit in her ear, too.

15 Q. Okay. Like, I - I know you said, whispering shit...

A. Sorry.

20 Q. ...okay. What do you mean when you say that, sir?

A. "Good girl."

Q. Okay. Anything else that you were saying to her?

A. Yeah, "You like that."

Q. Okay.

25 A. "That's good."

Q. All right. And what's her response to you saying that?

A. She's moaning.

Q. Okay.

30 A. And she's touching me back.

Q. Okay.

A. And saying, "Yeah," and "Ooh," "Mmm" stuff like

that.

Q. Okay. All right. So, at any point in time while you are, sorry, and then you, did you take her underwear off at this point while you're touching her?

A. No.

Q. Okay. Was it easy to access her vagina from that position with her dress....

A. No.

Q. Sorry?

A. No.

Q. Okay. So, why wasn't it easy, what made it difficult?

A. Well, where we were sitting.

Q. Okay.

A. I was kind of hunched over and I was also kissing her at the same time. I was trying to do everything at the same time and I.

Q. Okay. All right.

A. Yeah.

Q. And – and you kind of have your wrist bent and your hand curved, right?

A. Mm-hmm.

Q. And you're, and you said, while you were saying that you were having a hard time 'cause of the way you were sitting.

A. Yeah.

Q. Okay. Could you get your fingers all the way inside of her vagina?

A. No.

Q. No?

A. No.

Q. Okay. Did you get your fingers inside of her vagina at this point?

A. Just a little bit, yeah...

Q. Okay.

A. ...just like the tips, couldn't get in.

Q. The tip of your finger?

A. Yes, that's right.

5 Q. Okay. All right. And - and when you - when you had your hand...

A. Mm-hmm.

Q. ...the tip of your finger inside of her vagina...

10 A. Mm-hmm.

Q. ...was your hand exposed from like, so, let me - let me kind of backtrack. You put your hand underneath her dress...

A. Yeah.

Q. ...to access her vagina, right?

15 A. Mm-hmm.

Q. And while you had the tip of your hand in there could, is your hand completely underneath her dress at this point?

A. Yeah, I can't see.

Q. Okay.

20 A. Yeah.

Q. All right. Did she, at any point, move your hand or touch your hand to push it away from her vagina?

A. No.

25 Q. Okay. And, okay. And then - I didn't notice the time. Okay. Your Honour, it's, okay, how about. Okay. So, you do that and then what happens next?

A. So, I tell her to get up off the bed.

Q. Okay.

30 MR. FAHMY: So, Your Honour, I notice that the time now is 4:24. This is probably a good time to break before we move on to the next, kind of, portion of the encounter.

THE COURT: I just want to get what he, "I told her to get up and....

A. "Get up off the bed." So, I said, "Here, get up," and then I motioned....

5 THE COURT: "Get up."

A. Yeah, "Get up."

MR. FAHMY: Q. And – and, sorry, and just for the record he's making a motion with his hand in an upwards swing.

A. Yeah.

10 Q. Right? And that's what you did when you said that to her?

A. Yeah, yeah. "Here, get up."

Q. Okay.

A. So, I – so, I removed my hand.

15 Q. Yeah, okay.

A. And then, "Here, get up," with my arm.

MR. SOSA: It was, "Here, get up?"

A. Yeah, "Here, get up."

MR. FAHMY: Q. Okay.

20 THE COURT: Okay. We will then stop at this particular point in the testimony. Do we need an order to seal the room, do you want to leave things behind, or are you going to take it with you?

MR. FAHMY: I, I'd like to leave my area....

25 MR. SOSA: If we could, Your Honour.

THE COURT: All right. Order of sealing the courtroom, other than cleaning staff with the usual order to be made.

COURT CLERK: Thank you, Your Honour.

30 THE COURT: Sir, just so you know, you're now, I want you to perceive yourself sitting in that box when you leave here, you're only going to be talking

about your evidence with anybody it would be as if you're here until you're finished. All right?

A. Yep.

THE COURT: Do you understand that?

A. Yes, Your Honour.

THE COURT: All right. So, we'll see everybody tomorrow at 10 o'clock.

E N D O F E X C E R P T O F P R O C E E D I N G S

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WEDNESDAY, MAY 29, 2024

COURT CLERK: This Superior Court of Justice is now in session. The Honourable Justice Krawchenko presiding. This is the trial continuation of Rex v. Densmore. Good morning, Your Honour. Thank you. You may be seated.

THE COURT: Thank you.

MR. SOSA: Good morning, Your Honour.

MR. FAHMY: Good morning, Your Honour.

THE COURT: Good morning.

MR. FAHMY: I'm just going to ask Mr. Densmore to attend at the witness box.

THE COURT: Thank you.

JACK DENSMORE: Good morning.

THE COURT: Good morning.

JACK DENSMORE: PREVIOUSLY SWORN

EXAMINATION-IN-CHIEF BY MR. FAHMY (Continued) :

Q. Okay. So, good morning, Mr. Densmore.

A. Good morning.

Q. So, just – just before we begin, I know that we had mentioned the, well, here, let me just show you this first and I'll hand a, I've already given a copy to my friend, Your Honour. Do you recognize that picture, sir?

A. Yes.

Q. Okay. And what is it a picture of?

A. This is the thumbnail image for McMaster Homecoming, 2019.

Q. Okay. And, clearly, that's you in the middle there.

A. Yeah, that's me.

Q. And do you see the complainant anywhere in that photo?

A. Yeah.

Q. All right. Can you point her out, please?

A. She's [REDACTED]

Q. Okay. [REDACTED]

[REDACTED] of the picture.

A. Yes.

Q. Okay.

A. Yeah.

MR. FAHMY: If this could then be marked Exhibit Number...

COURT CLERK: 13.

MR. FAHMY: ...13, please, Your Honour.

THE COURT: Exhibit Number 13. How do we characterize this? Is this just like a screen shot?

MR. FAHMY: Sure, yeah. It's a screen shot of the thumbnail of the YouTube video for McMaster homecoming 2019.

THE COURT: Okay. New Exhibit 13.

EXHIBIT NUMBER 13: Screen shot of the thumbnail of the YouTube Video for McMaster Homecoming, 2019 - produced and marked.

MR. FAHMY: Q. Okay. Now, we're going to - a brief indulgence.

...DISCUSSIONS NOT REQUIRED

MR. FAHMY: Okay. It's not working, so we'll just try to maybe do that at the break, and I can just move on for now, Your Honour.

MR. FAHMY: Q. Okay. So, just, kind of, before we

move on to the, with your evidence about what was happening. In
your evidence yesterday you'd mentioned something along the lines
that while she was on top of you that you said, I'd asked you if she
gave you any direction and you said that, Yeah, she would moan, I
5 would kiss her breasts." She said, "Softer, Slower, so I'd do what
she told me to do." I just want to ask you when, do you recall what
you were doing when she was saying the word, "Softer?"

A. I was kissing her breasts, and I was touching
them with my - my hands.

10 Q. Okay. And what about when she was saying,
"Slower?"

A. Again, kissing her breasts, touching her
nipples...

Q. Okay.

15 A. ...specifically, breasts.

Q. Okay. All right. Okay. So, kind of starting
where we left off yesterday. I want to now take your mind to the
point when you're with her in your bedroom, at the point where you
told her, "Here, get up."

20 A. Mm-hmm.

Q. Do you recall saying that?

A. Yeah.

Q. So, that's the - that's everything that happened,
we've talked about. Now, we're talking about, you say to her,
25 "Here, get up."

A. Yes.

Q. And you said you motioned with your hand, right?

A. Yeah.

Q. Okay. Then what happens?

30 A. So, she scooted up off the edge of the bed.

Q. Okay.

A. Off the side of the bed, to the left side, and

then I also scooted off around the edge of the bed...

Q. Mm-hmm.

A. ...following her, and she....

Q. Okay. Just let me stop you there because you
5 kind of made the hand motion when you said, "She scooted off the
bed," you kind of made a gesture with your hand, almost like a
upside down 'U' with your fingers. So, indicating that she kind of
got off the side of the bed that she was on, immediately?

A. Yes. So, we are sitting facing the television.

10 Q. Okay.

A. She's to my left...

Q. Yeah.

A. ...I'm on the right.

Q. Yeah.

15 A. And then she scoots off the bed. So, she moves
off of the left side of the bed.

Q. Okay.

A. And then I also am getting off of the bed.

Q. Okay. How do you get off the bed?

20 A. So, I get off on the outside....

Q. Okay. So, on the other side?

A. Yeah.

Q. Or on the front of the bed?

25 A. So, I get off on the left side of the bed, but
closer towards the end of the bed...

Q. Oh, okay.

A. ...so, like the outside....

Q. So, you get off on the same side.

A. Yeah.

30 Q. Okay.

A. I'm going like kind of around her.

Q. Okay.

A. Yeah.

Q. All right. Okay. So, she - she got off the bed first?

A. Yes.

5 Q. Okay. And, okay, why don't you just tell us about where you were, where she was, and what was happening at that point?

A. Okay. So, she gets off the bed...

Q. Mm-hmm.

10 A. ...onto the floor.

Q. Okay.

A. And then she gets down on her knees...

Q. Okay.

15 A. ...as I'm getting off of the bed.

Q. Okay.

A. And then, I'm now off the bed.

Q. Okay.

A. So, we're both on the floor.

Q. Okay.

20 A. I'm standing, she's on her knees...

Q. Okay.

A. ...and then I start to remove my pants...

Q. Okay.

25 A. ...so that my penis is exposed all the way.

Q. Okay.

A. It takes me a second, so I'm like, hold on a second and then I shimmy my pants down.

Q. Okay.

30 A. And then I stepped closer towards her.

Q. Okay.

A. And then she turns to face me.

Q. Okay. And did she, was she doing anything, was

she saying anything at this point?

A. She was fixing her hair...

Q. Okay.

A. ...and she was turning her body towards me, while
5 on her knees.

Q. Okay. Okay. And were you, you said you, so you
were able to take your legs out of your pants?

A. One of them, yeah.

Q. One of them.

A. Yeah, I got them down to my ankles and then one
10 of them so I could – so I could move a little bit...

Q. Okay.

A. ...more freely. Yeah.

Q. And – and then she was facing you, and how were
15 you facing her, how were you kind of standing in front of her?

A. So, I was standing in front of her, and she was
facing me, but I came a little bit around towards where she was
'cause when I got off, I took some space to get my pant off...

Q. Okay.

A. ...and then I stepped closer towards her.

Q. Okay. All right. And you said that your penis
is fully out now, right?

A. Yeah, now it's out.

Q. Exposed?

A. Yeah.

Q. Okay. Do you, are you wearing your shirt at this
point?

A. Yeah.

Q. Okay. Do you take it off at any point?

A. I don't think so.

Q. Okay. And then, then what happens?

A. So, she starts to touch my penis...

Q. Okay.

A. ...with her hand...

Q. Okay.

A. ...and then her lips, and she starts to suck on
it.

Q. Okay. And now her evidence was, is that she had,
that you had either pressed or forced your penis against her closed
mouth, did that happen?

A. No.

Q. Okay. So, she's doing that, and what are you
doing?

A. I'm moaning.

Q. Okay.

A. Letting her know I like it.

Q. Okay.

A. So, I'm saying, "Yeah," "Good girl," "That's
right," "Yeah."

Q. Okay. And what was her response to that?

A. Well, she was moaning, and she was continuing to
suck on my penis.

Q. Okay.

A. And she would adjust her speed, and she'd make
noises.

Q. Okay.

A. "Mm-hmm."

Q. So, you're - you're saying, "Mm-hmm," right...

A. Yeah.

Q. ...just for the purposes of the record...

A. Yeah.

Q. ...'cause I don't think everybody heard that.

A. Yeah. "Mm-hmm."

Q. Okay.

A. "Mmm."

Q. Okay. And you were looking at her?

A. Yes.

Q. Okay. Do you recall if, her evidence was, is
5 that she had her eyes closed for most of the time.

A. No.

Q. Would you agree with that?

A. No.

Q. Okay. And why not?

A. Because I could see her eyes.

10 Q. Okay. So, she was looking at you while doing
this?

A. She would look at my penis, she'd look at me.

Sometimes she would close her eyes a little bit.

15 Q. Okay.

A. But she would mix it up.

Q. Okay. All right. All right. So, now, in terms
of, like the position that you were in, in terms of in front of her.

A. Mm-hmm.

20 Q. Well, let me ask you this. Did she, besides
touching your penis, did she touch any other part of your body?

A. My balls.

Q. Okay. So, I guess, I think scrotum is the.

A. Sorry.

25 Q. I - I'm, just, you can say how you want it,
that's fine. I just, you just talk naturally.

A. Okay.

Q. All right. Okay. So, she was touching that.
Was she touching anything else?

30 A. Yeah. The sides of my waist.

Q. The sides of your waist.

A. Yeah.

- Q. Okay.
- A. Not the whole time, just like...
- Q. Yeah.
- A. ...she'd touch it and.
- 5 Q. That, that's all I want to know. I'm not talking about the whole time, just while she is performing oral sex...
- A. Mm-hmm.
- Q. ...what is she touching, and that's with her hands?
- 10 A. Yeah.
- Q. Okay. And that's your waist?
- A. Yeah. Yeah, she's mixing it up. She's using her hands...
- 15 Q. Okay.
- A. ...ball, testicles, and the side of my, yeah.
- Q. Did she push away from you at all?
- A. No.
- Q. Okay. Did she pull you in at all?
- A. A little bit, yeah.
- 20 Q. Okay. Okay. So, I mean obviously we heard her evidence that, you know, you took out your phone. Do you agree that you did that?
- A. Yes.
- 25 Q. Okay. But before you did that how long was, did you, before you took out — before you touched your phone, how long was she performing oral sex on you for?
- A. Three or four minutes.
- Q. Okay. Okay. So, what happens when you, first of all, when you're grabbing your phone where is it?
- 30 A. So, my phone's on the shelf.
- Q. The black shelf that we'd talked about...
- A. The black shelf, yeah.

Q. ...that's right beside your bed with the white mirror.

A. Yes.

Q. Okay. And when you grabbed it, did you have to change the position of your legs while you're standing in front of her?

A. No.

Q. Okay. What hand do you use to reach over to the shelf?

A. My right hand.

Q. Okay. And what do you do?

A. So, I reach over to the shelf, pick up my phone. As I pick it up, I can swipe to set it to the photo section of the phone. It's an option on iPhone, you can open the camera. As I do that...

Q. Sorry, you can, just so we're clear. You pick up the phone and you, just with your, you indicated 'cause we can't, we've got to verbalize what you did. You just swiped with your thumb while holding the phone, basically?

A. Yeah.

Q. Okay.

A. I could - could I demonstrate, would that....

Q. I think it's fine.

MR. SOSA: I understood.

THE COURT: Okay. I understand what it means.

MR. FAHMY: Okay. We're good.

MR. FAHMY: Q. Okay.

A. So, I have the phone...

Q. Mm-hmm.

A. ...switch it to the camera...

Q. Okay.

A. ...start recording, and then I bring it over my

penis and [REDACTED]'s head on my penis.

Q. Okay.

A. And she sees the camera, and she moves her head outside of the frame of the phone.

Q. Okay.

A. She moves her head back from my penis.

Q. Okay. And well, I mean, the way she did that, did her bed even touch the back of the – did her head touch the back of the bed?

A. No.

Q. Okay. So, there was, clearly, even when she removed your penis from her mouth, she still had room behind her.

A. Yeah.

Q. Okay.

MR. SOSA: Your Honour, this is, obviously, a very material area. There should be no suggestions from Mr. Fahmy.

MR. FAHMY: That's....

THE COURT: The objection, I think, relates to, and I paused as well. I have heard no evidence about anything other than this. I had the camera, I swiped it, the video goes on, it's above my penis and her head. She sees it, and she moves her head out of the frame. That's it. There's no, there was nothing that you then subsequently suggested about what state of affairs were in play at that time, and I think that's what your friend is talking about.

It was material, so care must be taken.

MR. FAHMY: Sure.

THE COURT: Thank you.

MR. FAHMY: Q. So, Jack, you'll recall that [REDACTED]'s evidence was, is that she had her back towards the bed?

A. Towards the bed?

Q. I mean - sorry - she had her back to the bed.

A. Like, touching the bed?

Q. I - I....

A. No. It was not touching the bed.

5 Q. Okay. All right. And, but in terms of where you are standing...

A. Mm-hmm.

10 Q. ...okay, well, I guess we should pull up the exhibit.

THE COURT: So, just so I got this right. It was, the question and answer was, her back is not to the bed.

A. Not to the bed.

15 MR. FAHMY: Q. It's not touching the bed.

A. Not touching the bed.

THE COURT: Not touching, yeah, sorry, I have that, not touching the bed.

MR. FAHMY: Yeah.

20 THE COURT: Her back is towards the bed, but not touching.

MR. FAHMY: Yes.

A. Yes.

25 MR. FAHMY: Okay. So, again, I'm going to get the exhibit, Your Honour. Just - just I want to make sure that this is clear.

THE COURT: While you're doing that, I would just like to take a two-minute break.

30 COURT CLERK: This Superior Court of Justice is stood down until further recalled.

...COURT STOOD DOWN.

...COURT RESUMES.

COURT CLERK: This Superior Court of Justice is now back in session. Good morning, Your Honour. Thank you. You may be seated.

THE COURT: Okay.

MR. FAHMY: So, we're still trying to figure out the tech issue, Your Honour, but what I am, I don't have extra copies, printed copies of the exhibit with me now, but what we can do is just have Mr. Densmore use the exhibit to identify kind of where the parties were and then, maybe after a break we can have that and have him mark it.

MR. FAHMY: Q. So, I'm just going to show you Exhibit 6. Okay? And Exhibit 6 kind of shows the view of your bedroom, kind of from the door?

A. Yes.

Q. Okay. And if you can just kind of identify where [REDACTED] is and where you are in relation to this photo, sir?

A. So, [REDACTED]'s here...

Q. Okay.

A. ...and I am here.

Q. Okay. All right.

THE COURT: Just as a quick question because that's kind of meaningless...

MR. FAHMY: Right.

THE COURT: ...to the Crown, and to me, and to anybody else. I'm just wondering whether or not, as a suggestion, it's already been made an exhibit...

MR. FAHMY: Right.

THE COURT: ...and it would be reflected in the

record, if he was to mark on the exhibit with an 'X' where she is and a 'Y' where he is, or does that cause any concern for the record itself.

5 MR. SOSA: I think that might be a concern for the record...

THE COURT: Okay.

MR. SOSA: ...since it's already been formally made an exhibit, unless we, I guess, just swap the other clean version for this version when Mr. Fahmy...

10 MR. FAHMY: Yeah, that's what I going to suggest.

MR. SOSA: ...brings it in.

15 THE COURT: All right. So, why don't we do that so that we don't waste time. A clean version of that Exhibit 6 will be compared by you and defence to ensure that it is the same thing, a colour version, we will then use this one marked. As soon as we've done the switch, we'll notionally call this our Exhibit Number 14. Once the switch is done then we'll have an official 14, the other one will become the new 6.

20 MR. SOSA: Yes.

THE COURT: But a replacement 6.

MR. SOSA: Right.

25 MR. FAHMY: And we also have Six A as well. Like, we have the actual...

THE COURT: The electronic.

MR. FAHMY: ...electronic version of this exhibit anyways, so. Okay.

THE COURT: All right.

30 MR. FAHMY: Q. Mr. Densmore, just like His Honour, kind of mentioned and, first, I just, like, before you do this just, perhaps, what you could do is just mark on the floor 'X' where she

is, 'Y' where you are, on the floor part because I don't want to get into 3D issues or whatever.

A. Just the floor.

Q. Yeah, just the floor. So, the 'X' will represent where her knees were, and the 'Y' would represent where your feet were. Okay? And my friend is nodding in agreement so that we don't have any issues with that.

A. Sure.

Q. Sorry, is it not coming out?

A. That's okay.

Q. Okay.

A. I can make it work.

Q. Okay. All right.

THE COURT: Thank you.

MR. SOSA: 'X' is who, again?

MR. FAHMY: Where she is.

THE COURT: 'X' is her knees, 'Y' is his feet.

MR. SOSA: All right. Thank you.

MR. FAHMY: And I think we should just hang on to this, and then we can mark it as Exhibit 13.

COURT CLERK: 14.

MR. FAHMY: 14, sorry. Thank you.

MR. FAHMY: Q. Okay. So, back to where we were.

She gets her, she leans her head back out of frame of your phone, which you are capturing video, right?

A. Yes.

Q. Okay. And then what happens, right after, what happens next?

A. So, I start to bring my phone away from her head and my penis.

Q. Okay. And then?

A. And then she asks me, "What are you doing?"

Q. Okay. Just, let's before you continue...

A. Mm-hmm.

Q. ...she moves her head back, you move your phone away...

5 A. Yes.

Q. ...and you indicated with your right hand, you moved it and you said, I moved my hand away, and you made a gesture with your hand, moving it across your body, away from your body to your right side, is that correct?

10 A. Yes, that's right, yeah.

Q. Okay. And why did you do that?

A. Well, she indicated with her body language that she did not want to be recorded.

Q. Okay. And then, and did you stop recording at that point?

15 A. Yes.

Q. Okay. And how long do you think you had been recording for?

A. Maybe five to ten seconds.

20 Q. Okay.

A. It might have taken me a second to hit the stop recording button.

Q. Okay. All right. And, okay, so, and so, you stop recording and then what happens?

25 A. So, she asks me, "What are you doing?"

Q. Okay.

A. And I said, "I'm recording a video."

Q. Okay.

A. And she says, "Oh, I don't want to be recorded."

30 Q. Okay.

THE COURT: Slow down.

A. Sorry. Sorry, Your Honour.

THE COURT: So, the question posed by the complainant, "What are you doing?" Did I get that right?

A. Yeah, "What are you doing?"

THE COURT: And your answer?

A. "I'm recording a video."

THE COURT: Thank you, please proceed.

MR. FAHMY: Q. Well, I believe you then said she responded by saying, what?

A. She said, "I don't want to be recorded."

Q. Okay. And what's your response to that?

A. I said, "I'm recording a consent video."

Q. Mm-hmm.

A. And she repeated herself saying, "I don't want to be recorded."

Q. Okay. And then, what did you say or do after that?

A. I said, "Yeah, no problem."

Q. Okay. Just hang on.

A. Sorry.

Q. What happens next?

A. And then she says, "Can you delete it?"

Q. Okay.

A. And I said, "Yeah, sure."

Q. Okay. And then what did you do?

A. And then I opened my phone. I went to the photo album...

Q. Okay.

A. ...this is where....

Q. Yep.

A. Sorry.

Q. No, I just, 'cause I saw you — you, again, you're

using hand gestures so...

A. Sorry.

Q. ...you kind of indicated that you went to your phone and then you, as if you were holding the phone...

A. Yes.

Q. ...looking at your cellphone, you...

A. So, I....

Q. ...hold on, but then you kind of turned your hand to - to, you kind of moved your hand to, as if to kind of show here, is that correct?

A. I opened - I opened, well, I had to unlock it again.

Q. Okay.

A. Because when you - when you swipe for a camera, the phone's not unlocked...

Q. Okay.

A. ...so, I had to unlock it...

Q. Okay.

A. ...which I just have to, you look at it and then the face recognition.

Q. Okay.

A. So then, I went to the photos app, the photos display is photos and videos...

Q. Okay.

A. ...and I scrolled down to the bottom where the most recent thing I would have taken a photo or video of was.

Q. Okay.

A. As I'm doing this, I'm showing her...

Q. All right.

A. ...so, my phone is being held so that she can see what I'm doing.

Q. Okay. All right. And what'd you do?

A. I went to the video...

Q. Mm-hmm.

A. ...I opened it up.

Q. Sorry, just to be clear, the video that you had
5 just taken?

A. Yes, that's right.

Q. Okay, and.

A. I went to the video I'd just taken...

Q. Mm-hmm.

10 A. ...I opened it and then in the bottom corner I
hit the delete button...

Q. Okay.

A. ...and then I went back to my photos and there's
an album called, 'Recently Deleted,'...

15 Q. Okay.

A. ...so, if you have an iPhone, when you delete
something it doesn't actually get deleted forever...

Q. Okay.

20 A. ...it's held in another photo, sorry, another
photo album called, 'Recently Deleted,'...

Q. Mm-hmm.

A. ...for 30 days...

Q. Mm-hmm.

25 A. ...but if you delete it from there, then it's
gone for good.

Q. Okay.

A. So, I opened this album up, went to the bottom of
that, deleted it a second time. So, permanently deleted it.

30 Q. Okay. And you're still showing her that you're
doing this?

A. Yes. And I'm, while I'm doing that, I'm
explaining to her, like, yeah, no problem, look here, boom, boom...

Q. Okay.

A. ...I'm talking to her.

Q. Okay. Well, let's - let's, so that we have your evidence on the record.

5 A. Yes.

Q. What is it exactly that you're saying as you're doing this?

A. Giving her a play-by-play.

Q. Okay. So, let's do it.

10 A. Here's the video.

Q. Mm-hmm.

A. ...look, here I am. Delete. Now I'm going to go to 'Recently Deleted, go down to the bottom. Here it is again, 'Delete,' boom, gone.

15 Q. All right. Then what happens next?

A. Once I do that, I take my phone, face down, drop it on my shelf, right back where it was.

Q. All right. While you saying this stuff to her, what's her reaction, is she saying anything?

20 A. She's nodding along, she's going, "Mm-hmm," "Mm-hmm." She's making, like she's watching, she's making sure that, like, yep delete there, "Mm-hmm," yep.

Q. Okay. Does she say anything?

A. She says, "Mm-hmm."

25 Q. Okay. Okay. So, your phone's back down. Now, her evidence is is that after you put your phone down, she gets up and puts her clothes on and starts looking for her purse, is that what happened?

A. No.

30 Q. Okay. So, what happens next?

A. So, after my phone is down, she leans back forward and starts to touch my penis again...

Q. Okay.

A. ...with her mouth.

Q. Okay. Now, we gotta get into the details here. So, she's touching it with her mouth. What is she doing with her mouth?

A. She's sucking on it...

Q. Okay.

A. ...she's licking it.

Q. Okay.

A. Yeah.

Q. All right. And, oh, actually, even at this point, did you force or press your penis against her mouth?

A. No.

Q. Okay. So, this was completely her kind of initiative to put it back in her mouth and to continue sucking...

A. Yes.

Q. ...your penis?

A. Yes.

Q. Okay. All right. And then, how long does that continue on for?

A. Another minute, maybe two minutes.

Q. Okay. And again, during that minute or two, while she is performing oral sex on you, is she saying anything or doing anything else?

A. Just making noises, like, "Mm-hmm," "Mmm."

Q. Okay. And what, if anything, are you doing or saying?

A. I'm saying, "Yeah," "Good Girl,"

Q. Okay.

A. "I like it."

Q. Okay.

A. Swearing a little bit, like, "Fuck," you know.

Q. Okay. So, after that minute or two, what happens next?

A. So, I removed my penis from her mouth.

Q. Oh, sorry, just - just before we, sorry, sir.

5 When you put your phone back on the shelf, did you move your feet at all from how you were standing in front of her?

A. No.

Q. Okay.

A. I'm still in the same position.

10 Q. Okay. Okay. Let's continue on. So, that happens for a minute or two, and then what happens next?

A. So, I removed my penis from her mouth.

Q. So, you did that?

A. Yes.

Q. Okay.

15 A. I pulled it back...

Q. Mm-hmm.

A. ...and then I said, "Stand up," like, "Here, stand up."

20 Q. Okay. And you say that, what does she do?

A. She stands up...

Q. Okay. And...

A. ...on her feet.

Q. On her feet?

25 A. Yeah.

Q. Okay. And I take it then at this point you're facing each other?

A. Yes.

Q. Okay. Well, what happens next?

30 A. So, I moved towards her and start kissing her...

Q. Right.

A. ...she kisses me back.

Q. Okay.

A. Our bodies are now pressed up against each other.

Q. Okay. So, your bodies are pressed against each other, like you're facing each other but your bodies are touching each other?

A. I'm hunched over a little bit...

Q. Okay.

A. ...'cause I'm taller.

Q. Okay.

A. Yes. We're, our heads are kissing each other, and our bodies are touching.

Q. Okay, and where's your hands, where's her hands?

A. I put my hands on her and started rubbing her body...

Q. Okay.

A. ...and with my right hand I started touching her vagina.

Q. Okay. This is while you're facing her?

A. Yes.

Q. Okay. And what is she doing at this point?

A. She's kissing me back and she's moaning.

Q. Okay. Is she - is she, what is she doing with her hands, is she touching you at all?

A. She touches my neck at a certain point, yeah.

Q. Okay. And.

A. She also touched my penis.

Q. Okay. Okay. And then, you said that you put your, you said you had your hand touching her vagina?

A. That's right, yes.

Q. Okay. And this is while you're facing her, still?

A. Yes.

Q. Okay. And she still has her panties on, her underwear on?

A. Yes.

Q. Okay. So, just kind of describe what's going on at this point.

A. So, my hand is under her dress...

Q. Okay.

A. ...and it's between her underwear and her skin, her vagina.

Q. Now, when you're doing that...

A. Mm-hmm.

Q. ...how are her legs positioned?

A. They're apart.

Q. Okay. Now, did she have them apart before you tried to touch her vagina?

A. She adjusted them so that my hand could comfortably fit.

Q. Okay. Okay. And then, and what happens next?

A. So, I'm kissing her lips, I'm also kissing her neck, and her breast, then going back and forth doing that, while also touching her vagina with my right hand.

Q. Okay. And I - I see you kind of, you, you're almost, every time you say you're touching her vagina you're kind of reaching low...

A. Yeah.

Q. ...with your shoulder to, why are you doing that?

A. My right hand, I had to lower it to reach her vagina.

Q. Okay. All right. And she's still wearing her dress at this point?

A. Yes.

Q. Okay. And while this is happening...

A. Mm-hmm.

Q. ...what, if anything, is she saying or doing?

A. Moaning, "Mmm," "Yeah."

Q. Okay. Now, you said that she was also kissing
5 you back.

A. Yes.

Q. And that she was touching your penis.

A. Yes.

Q. Okay. And what happens next?

10 A. So, we do that for a little bit, and then I ask
her to turn around. She does.

Q. All right. So, you asked her to turn around.

A. Yes.

Q. Okay. All right. And she does.

A. Yes.

15 Q. Okay. And then, what happens next?

A. So, I continue kissing her, but I'm kissing her
neck, so the back of her neck.

Q. Okay.

20 A. And I bring my hand, my right hand around to her
front, and continue to finger her vagina.

Q. Okay. Now from, okay, and what, if anything, is
she doing?

A. She's moaning, she's making noises...

25 Q. Okay.

A. ...and she puts her hands on the bed...

Q. Okay.

A. ...'cause we are facing towards the bed.

Q. Okay.

30 A. So, she puts her hands on the bed.

Q. Okay. So, you're, you've indicated kind of a
motion that your hands are kind of and - and you made a, you had

your hands out and made a forward leaning motion?

A. Yeah, her hands are on....

Q. Her hands...

A. Yes.

Q. ...yes, that's how she had her hands...

A. Yes.

Q. ...with both her hands out like that?

A. Yes.

Q. While you're behind her, kissing her neck, and
10 touching her vagina?

A. Yes.

Q. Okay. And how was her body positioned compared
to yours?

A. She was standing...

Q. Okay.

A. ...but she was leaning a little bit forward...

Q. Okay.

A. ...towards the bed.

Q. Okay. And is she touching your body at this
20 point?

A. Well, her hands are on the bed so, no.

Q. Like her hands are on the bed, but what about,
like...

A. Oh, her body.

Q. ...her body.

A. Yeah, yeah, yeah. Yeah, she was pressing her
body into my.

Q. Into?

A. My penis.

Q. Okay. What part of her body is she pressing into
30 your penis, sir?

A. Her back.

Q. Okay.

A. My penis is higher than her. It - it hits her back.

Q. Okay.

A. Her lower back.

Q. Her lower back.

A. Yeah.

Q. Okay. And is her, besides her back touching your penis, is there any other part of her body touching any other part of your body from, like your groin or your thighs or anything like that?

A. We were, pretty, close, and I was still touching with my lips, the back of her neck...

Q. Okay.

A. ...so, like my head would have been touching her neck...

Q. Okay.

A. ...so, we were, pretty, close together.

Q. Okay. All right. All right. And throughout that time is she approving of what's going on?

A. Yes.

Q. And how was doing that, sir?

A. She's moaning, I'm also saying the same things to her, "Good girl," "You like that," "Fuck," etcetera.

Q. Now, I recall at one point in her evidence she said that you called her a slut. Did you call her a slut, sir?

A. No.

Q. Okay. All right. And so, she's moaning and you're still behind her, right?

A. Yes.

Q. And you're, you said you were touching her vagina. I just want it to be clear for His Honour, how are you

[touching her vagina?

A. So, my hand is underneath her panties...

Q. Okay.

A. ...and my fingers are on the outside region and
5 some of my fingers, one of them is inside of her vagina...

Q. Okay.

A. ...slowly entering and exiting.

Q. Okay. All right. And then, so do you have your
hand from her, from behind or do you have your hand reaching around
10 from her front?

A. I'm reaching around.

Q. Okay.

A. I'm in the back and I'm reaching around the
front.

Q. Okay.

A. Yeah.

Q. All right. Okay. What happens next?

A. So, I continue fingering her and she asks me to
spank her.

20 Q. Okay. And so, she just said for you, she asked
you to do that?

A. Yes.

Q. Okay. And did you do that?

A. Yes.

25 Q. Okay. How did you do that?

A. I spanked her with my right hand, so I removed
it, and then I spanked her right ass cheek.

Q. All right.

A. Butt cheek, sorry.

30 Q. Her?

A. Butt cheek.

Q. Butt cheek, yes, sorry. Okay. Thank you. So,

was she still wearing her dress at this point?

A. Yes.

Q. Okay. So, how, like how'd you get to her butt cheek...

5 A. So, I could reach it underneath the dress.

Q. ...to spank it?

A. I could just hit like that.

Q. Okay. So, the way that her position was is that the bottom part of her butt was exposed?

10 A. No.

Q. No? Okay, then explain that.

A. So, I hit her from the outside...

Q. Oh.

15 A. ...I spanked her more than once, though.

Q. Okay.

A. And I lifted it to spank the second time.

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

THE COURT: Slow down.

MR. FAHMY: Mm-hmm.

20 THE COURT: Okay.

MR. FAHMY: Q. All right. The first time you spank her, did she show any approval?

A. Yeah.

Q. Okay. How did she do that, sir?

25 A. She said, "Yeah."

Q. Okay. The second time when you spanked her, did she show any approval?

A. Yes.

Q. How did she do that?

30 MR. SOSA: Your Honour. It's - it's the same type of objection. The question should be was, was there any sort of response, or something along those

lines. It shouldn't be framed....

THE COURT: As an approval.

MR. FAHMY: I'm sorry, Your Honour.

THE COURT: Just repose the question in more of a neutral fashion as to, was there any reaction to it, if so, what was it. I think that that's, I think what your friend is getting at.

MR. FAHMY: I respectfully disagree, Your Honour.

THE COURT: I don't really care whether you respectfully disagree...

MR. FAHMY: I — I never got a....

THE COURT: ...this is a ruling.

MR. FAHMY: Okay.

THE COURT: So, we can move on. Thank you.

MR. FAHMY: I just never got to make submissions, Your Honour on it, but.

THE COURT: Sir.

MR. FAHMY: But it's fine.

THE COURT: No, let me just finish. Certain objections require fulsome submissions. This is now, I think, the second or third time that we are coming upon the same type of objection. So, in order to just get to it, I do not need to hear your submissions because I've heard them before on the very same topic. So, I want to make it clear on the record that I'm not stomping on your rights as counsel to make full submissions and full answer in defence. This is not one of those types of objections. This is a very small procedural issue about reframing a question to get to the very same point. I'm not stopping you from exploring that, it's just the methodology.

MR. FAHMY: I understand, Your Honour.

THE COURT: Thank you.

MR. FAHMY: All right.

5 MR. FAHMY: Q. Okay. So, the second time you spanked her, what was her response?

A. "Yeah."

Q. Okay. And what, were you saying anything to her at this point?

A. Yeah.

10 Q. Okay. What were you saying to her?

A. I was saying, "Do you like that." "Bad girl."

Q. Okay. When you asked her, "Do you like that," did she respond to that?

A. Yes.

15 Q. What did she say?

A. "Yeah."

Q. Okay. And I think you said something, you were, well, you said, "Bad girl," as well, right?

A. Yes.

20 Q. Okay. Why did you call her a bad girl at this point?

A. When I spanked her?

Q. Yeah.

25 A. Because she indicated that she likes to be spanked, and when we talked earlier, she mentioned her interest in being spanked, and we were talking about good girl, bad girl.

Q. Okay. All right. And, I believe that the messages between you two, from that day, was that in order for you to give her another spanking, she'd have to refrain from being a 30 good girl, is that your recollection?

A. Yes.

Q. All right.

A. Something along those lines, yeah.

Q. Okay. All right. So, then what happens next?

A. So, I go back to fingering her.

Q. Okay. When you go back to fingering her, you go
5 back to fingering....

A. Right hand, with my right hand.

Q. Right hand. The same way, from the front?

A. Yep, that's right.

Q. Okay. All right. And then – and then what
10 happens next?

A. I remove her underwear...

Q. Okay.

A. ...with my right hand.

Q. Okay. Now, you only used the one hand to remove
15 her underwear?

A. I believe so, yeah.

Q. Okay. And you're removing it from the – the
front?

A. My hand's around the front to finger her, but I
20 brought it to the side, you have to kind of shimmy, shimmy down...

Q. Okay.

A. ...either side. You have to shimmy down either
side of the legs.

Q. Okay. And what, if anything, is she doing while
25 you're trying to do that?

A. She's still in the same position and she's making
noises...

Q. Okay.

A. ...when I'm fingering her.

Q. Okay, but I'm – I'm talking about when you start
30 to remove...

A. Oh.

Q. ...her underwear.

A. Yeah, she moves her legs a little bit...

Q. Okay.

A. ...and she gets them a little closer.

Q. Okay. Why - why does she do that?

A. So, that it's easier to get the underwear off.

Q. Okay. All right. Does she assist you in any way, besides that, in removing her underwear?

A. With, like her hands?

Q. Yeah.

A. No.

Q. Okay. Okay. So, now her underwear is off and then what happens, sorry, so she said, you said that she'd kind of put her legs together so that her underwear could come off more easily...

A. Yeah, so once...

Q. ...and can you, sorry, go ahead.

A. ...so, once underwear passes the butt they free fall, as long as the legs are close together.

Q. Okay.

A. So, they drop easily.

Q. Okay. So it is, but is that what was happening at that moment in time?

A. Yes. Yes.

Q. All right. So, you didn't, when you take off her underwear did you, you didn't have to go all the way down her - her thigh, her knees, her ankles, anything...

A. No.

Q. ...like that?

A. No.

Q. No? Okay. So, at what point does the underwear kind of drop to the, it sorry, it drops to the floor at some point?

A. Yeah, it was down to her ankles, so I assume it hit the floor at some point. Yeah.

Q. Okay. All right. Then what happens next?

A. After this I start to remove her dress...

Q. Okay.

A. ...with both my hands.

Q. Okay.

A. Then she helps me.

Q. All right. So, you guys are still kind of, 10 she's, you're still facing her back?

A. Yeah.

Q. Okay.

A. I'm still behind her, yes.

Q. And you indicated, when you said that you started 15 to remove her dress you kind of had both hands on kind of her, the sides of her dress?

A. Yes, that's right.

Q. Okay. So, can you just, and then you said that she helped you.

A. Yes.

Q. All right. So, can you just explain how you did it, and how she helped?

A. Yeah. So, she - she wiggled her body a little bit, but she also touched the sides of her dress to help me as we brought it down... 25

Q. Okay. So....

A. ...so then....

Q. Yeah, sorry, go ahead. So - so you're, you made a pulling down motion...

A. Yes.

Q. ...and - and she, and you, when you said that she did the same, you had your elbows out and, like...

A. My elbows out, sorry.

Q. ...just now on the stand...

A. Mm-hmm.

Q. ...when you said...

A. Yeah.

Q. ...she was helping me bring it down...

A. Yes.

Q. ...you had your elbows...

A. Oh, yeah.

Q. ...out...

A. Yes.

Q. ...and you went in a downwards motion.

A. Yes.

Q. Okay. All right.

A. To bring it past the butt cheeks.

Q. Okay. And so, what happens to her dress?

A. Once it passes the butt cheeks it - it drops...

Q. Okay.

A. ...to the floor.

Q. All right. Then what happens next?

A. So, she readjusts a little bit, like she steps
her foot out of the dress.

Q. Okay.

A. And at this point I continue to finger her, but I
reach my hand around to the front.

Q. Okay.

A. So, her hands are back on the bed, and now I'm
fingering her from the same position I was before, but now there's
nothing there.

Q. Okay. All right. And while you're doing this,
what, if anything, is she saying or doing?

A. I'm still kissing the back of her neck, on and

off, and she's moaning, heavy breathing...

Q. Okay.

A. ...making noises, you know, "Ahh."

Q. Okay. Okay. And - and what happens next?

5 A. So, I'm fingering her much deeper now. I'm reaching in further...

Q. Okay.

A. ...with my finger...

Q. Okay.

10 A. ...and then I'm starting to adjust my position to line up my penis with her vagina or trying to.

Q. Okay. And okay, and you're trying to adjust your position, right?

A. Yeah.

15 Q. What is she doing?

A. She's still in the same position as I try to kind of get underneath her...

Q. Okay.

20 A. ...with my penis, but she's propping her butt up a little bit towards me.

Q. Okay. All right. So, I guess her - her evidence was, is that you just put it right in and it went right in, your penis into her vagina...

A. No.

25 Q. ...is that what happened?

A. No.

Q. No. Okay. So, tell us about what's, what happened and what's going on?

30 A. So, I lowered myself and I attempted to put my penis in from the back...

Q. Okay.

A. ...and I couldn't really get it in.

Q. Okay. Now let's, let me just stop you there.

A. Okay.

Q. You said you were six' two.

A. Yeah.

Q. And she's five' five.

A. Yes.

Q. Okay. And the way that she's positioned is that she still has her hands on the bed.

A. Yes.

Q. Okay. And this is, and then you said you lowered yourself.

A. Yes.

Q. Okay, because you're trying to enter her vagina from, I'm just, I just gotta give it to His Honour 'cause we had some issues with that earlier...

A. Yeah, sorry.

Q. ...but you're basically entering into her with your penis from behind, right?

A. Yes.

Q. Okay.

A. So, I'm trying to come up underneath...

Q. Okay.

A. ...on an angle, so I spread my legs...

Q. Okay.

A. ...so that my body's a little bit lower, but I got a little bit in, but it didn't really feel comfortable. It wasn't - it wasn't a, really, good angle, like I'd get it in but then I couldn't move, so.

Q. Okay. So, then what happens next?

A. So, we adjusted a little bit. She went on her tippy toes and raised up, so it was easier for me to get in. I didn't have to go as low, and then I was able to get in a little bit

further...

Q. Okay.

A. ...and then she also lowered a little bit on the bed, she put her elbows.

5 Q. Okay. So, just, I gotta describe what you're doing when you said her elbows. Your hands or the arms are at a 90-degree angle, and her elbows and her arm are on the bed?

A. Yes.

10 Q. Okay. And at this point you're, and she, did you ask her to do that?

A. No.

Q. She did that on her own.

A. Yeah.

15 Q. Okay. And then what happens next?

A. So, I still can't get in, really, comfortably, so we have to adjust a little more. She lowers herself more onto the bed...

Q. Okay.

A. ...and she....

20 Q. Go ahead.

A. She gets on her tippy toes and she...

Q. Okay.

A. ...can I?

25 Q. Okay. Sorry, sir what do you want?

A. So, I wasn't sure if you wanted me to stop, I didn't know.

Q. Yeah, no, no, okay...

A. Sorry.

30 Q. ...so, 'cause when you said that she went...

A. Mm-hmm.

Q. ...all the way down, you made a gesture with your...

A. Oh, sorry, yeah.

Q. ...hand, going flat on a surface there, so can you just describe where her body is?

A. Okay. So, she's on her tippy toes...

Q. Yeah.

5 A. ...so, her ass is, her butt is sticking up, and her elbows are on the bed, and she's moving towards the bed to balance her body weight more.

Q. Okay. But are her elbows still on the bed...

10 A. Yes.

Q. ...at this point?

A. So, her elbows are on the bed, and then they eventually go to be spread out on the bed, as she gets her whole body...

15 Q. Okay.

A. ...onto the bed.

Q. All right. But she's no longer propped up on her...

A. No.

20 Q. ...'cause you said that she lowered herself further from her elbow position.

A. Yeah, we were - we were trying to find the sweet spot.

Q. Okay. All right. So, when she's on the bed...

25 A. Yes.

Q. ...her stomach is on the bed?

A. Yes, now it is.

Q. Because, sorry?

A. Now it is, yes.

30 Q. Now it is, okay.

A. Yes.

Q. And her chest is on the bed.

A. Yes.

Q. Okay. Her arms are now out on the bed, you'd made that motion.

A. Yeah, yes, her arms are now on the bed.

5 Q. And, sorry, just for the purposes of the record, his hands are spread out flat, palms flat, 90-degree angle, maybe 45 – I saw both Your Honour, I just want it to be clear for the record. Okay. And then her tippy toes are up, right?

A. Yes.

10 Q. Okay. And – and that's you described it as the sweet spot, and just kind of explain what that kind of means.

A. So, I could comfortably thrust and get it in without either of us being, like, uncomfortable or an unsustainable position. Like, I couldn't be hunched over the whole time, so I had to, you know.

15 Q. Okay. Now, again, did you – did you ask her to go down on the bed, and go on her tippy toes?

A. No.

20 Q. Okay. Did you ever hold her arms down on the bed...

A. No.

Q. ...while you were behind her, penetrating her?

A. No.

Q. Did you push her onto the bed?

25 A. No.

Q. Okay. Did you hold her down with your hands on her back...

A. My hands were on....

Q. ...while she was on the bed?

30 A. My hands were on her butt, but also around her lower back area...

Q. Okay.

A. ...on and off I would touch her and then move them a little bit.

Q. Okay. But was - was your, and again you're saying lower back, but you're kind of motioning lower back and....

5 A. Like the top of the butt.

Q. The top of the butt.

A. The waist.

Q. Okay, yeah. And - and, sorry, so you said you started to thrust, where are your hands?

10 A. On her butt.

Q. Okay. So, this is while you're doing that?

A. Yes.

Q. All right. Just a moment, sir. Oh, did you push her so that her stomach was on the bed?

15 A. No.

Q. Okay. Did you ever use your hands to keep her down on the bed in any way?

A. Like hold her down?

Q. Yes.

20 A. No.

Q. Okay. All right. And then what happens next?

A. So, now I'm thrusting...

Q. Okay.

A. ...a consistent speed where, having sex.

25 Q. Okay. Let me just stop you there for a moment.

Even up to, besides her trying to adjust for you to be able to enter into her vagina, is she doing or saying anything else to show, or is she doing or saying anything else?

30 A. She's making noises, like, "Mmm," Mm-hmm," "Yeah," breathing.

Q. Okay.

A. Breathing heavy.

Q. All right. And then as you're, sorry, so, now
you are in that sweet spot...

A. Yeah.

Q. ...you're thrusting. What, if anything, is she
5 saying?

A. Now she's saying, "Yeah," "Yeah."

Q. Okay.

A. "That's right," "Yeah."

Q. Okay. And besides words, did she make any other
10 kind of noises?

A. Yeah. She made some moans.

Q. Okay. All right. Okay, so what's - what's
happening. Oh, and, sorry, now you're, okay. So, what else is
happening at this point?

A. So, she asks me to spank her.

Q. Okay.

A. And I do.

Q. Okay.

A. Gently and she says, "Yeah," and I call her a,
20 "Bad girl," again.

Q. Okay.

A. And then I'm still thrusting...

Q. Okay.

A. ...and she's telling me, "Fuck me."

Q. Okay.

A. "Fuck me hard."

Q. Okay. And what, if anything, are you saying or
doing at this point?

A. I'm saying, "Yeah," "If you like that," "Good
30 girl," when I'm thrusting and spanking, "Bad girl."

Q. Okay. Okay. And then how long does that, kinda,
continue for?

A. Oh, that's about three minutes.

Q. Okay. And then what happens?

A. Then she says, "Fuck me daddy," "Fuck me with your big dick."

Q. Okay.

5 A. And I spank her again and then shortly after that she wanted me to come, ejaculate, sorry.

Q. That's okay, you can say that.

A. Yeah.

10 Q. Okay.

A. And I pull, and then I finish myself on her back, with my hand.

Q. Okay. And she's still in the same position that she is?

15 A. Yes.

Q. Okay. What happens next?

20 A. So, I take a couple seconds, kind of collect myself, and I say, "Stay still," and she's, she gets to her elbows a little bit, on the bed, and she kind of looks up, and then I walk over to my shelf, I grab paper towels, I rip off a piece, I wipe her back, wipe her side a little bit, her crack, her cheeks.

Q. Okay. Like her butt, basically.

A. Yeah.

25 Q. All right and...

A. Wipe.

Q. ...sorry?

A. Wipe off.

Q. You're wiping off, what?

30 A. My cum.

Q. Okay. And did you have any thoughts at all about your sexual performance at this point?

A. Yeah, it was a little shorter than usual, but it

is what it is.

Q. Okay. But besides it being, it is what it is, did it make you feel any certain way?

A. A little embarrassed, yeah.

5 Q. Okay. And so, just to be clear, you're the one that wiped your cum off of her back...

A. Yes.

Q. ...and butt?

A. Yes.

10 Q. Okay. And while she had her elbows up on the bed at this point?

A. Yeah.

Q. Okay.

15 A. She's still on her stomach, but she's sitting up just a little bit.

Q. Okay.

A. Yeah.

Q. All right. And then after you do that for her, then what happens, what do you do next or what does she do next?

20 A. So, I rip off more paper towels and I hand them to her.

Q. Okay.

A. She says, "Thank you," she smiles and then she stands up.

25 Q. Okay. And so, then what happens next?

A. So, then I start wiping my own penis...

Q. Okay.

A. ...with my own paper towel, so the two of us are both wiping ourselves off, standing up.

30 Q. And now you are, are you still in that same....

A. Yeah, she turns to face me.

Q. Okay. So, now you're facing each other doing

this?

A. Yes.

Q. Okay. All right. What's going on at this point between the two of you?

5 A. Not much, we're just wiping ourselves down, kind of looking at each other, and she's kinda looking at me awkwardly, a little bit, like she's giving me a look like, is that it, are we done?

Q. Okay.

10 A. And I think I maybe made, like a joke or something.

Q. Okay.

A. A little nervous.

Q. Okay.

15 A. But then we're both done wiping ourselves, so I – I take her, I'm like here give me that, I take her paper towel.

Q. Okay.

A. I take mine, put it in a ball, put it in the trash...

20 Q. Okay.

A. ...by the – by the door.

Q. Okay. And....

THE COURT: I think now might be a good time to take our morning break.

25 MR. FAHMY: Yeah. Sure, Your Honour.

THE COURT: We'll come back at 11:30.

COURT CLERK: This Superior Court of Justice is on morning recess until 11:30 a.m.

R E C E S S

30

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

COURT CLERK: This Superior Court of Justice is now back in session. Good morning, Your Honour. Thank you. You may be seated.

5 MR. FAHMY: So, let's deal with a quick housekeeping, Your Honour. I showed my friend, I've got a clean copy of Exhibit 6, so that the one that Mr. Densmore marked could be Exhibit 14, I believe.

COURT CLERK: Yes.

10 THE COURT: Thank you. We'll leave that in the hands of the registrar. So, the Exhibit 6 has now been swapped out, as we discussed earlier on the record. Thank you.

15 EXHIBIT NUMBER 14: Formerly Exhibit Number 6 with Marking Indicators - produced and marked.

15 EXAMINATION-IN-CHIEF BY MR. FAHMY (Continued) :

Q. Mr. Densmore, can you identify the picture that I've just put in front of you there?

20 A. Yeah, this is a photo of my black shelf with a measuring tape.

MR. FAHMY: Okay. If that could be marked as the next exhibit.

COURT CLERK: Exhibit Number 15.

THE COURT: Exhibit 15.

25 EXHIBIT NUMBER 15: Photo of Black Shelf - produced and marked.

MR. FAHMY: Q. Okay. So, I just want to take you back....

30 THE COURT: Did you want to reflect on the record what the measurement was?

MR. FAHMY: I apologize. Yes, Your Honour, sorry. So, before that, Your Honour.

MR. FAHMY: Q. That's the - the, so the measuring tape shows that the top of the black shelf is 30 inches, right, sir?

A. Yes.

Q: Okay. And that black shelf is the same black shelf in your previous, in the the previous exhibits that had the white mirror on it?

A. Yes.

Q. Okay.

MR. FAHMY: So, I guess, measurement....

THE COURT: All right. It's been identified.

MR. FAHMY: Okay. Thank you, Your Honour.

MR. FAHMY: Q. Okay. So, I just want to take you back now to kind of where we left off in what happened between you and the complainant that day. You'd said that you were kind of looking at each other, you wiped yourself off, and then you took the dirty paper towels and threw them in the trash.

A. Yes, that's right, yeah.

Q. Okay. So, then what happens after that?

A. So, I started to put my clothes back on.

Q. Okay.

A. So, my underwear, my - my jeans...

Q. Okay.

A. ...it's a little bit, I feel a little bit awkward.

Q. Okay, and why do you feel a little bit awkward?

A. Umm....

Q. Just say it sir, don't - don't worry about anybody else right now.

A. All right.

Q. Okay?

A. We didn't have sex for very long.

Q. Okay.

A. A little bit, I guess, you know, I felt awkward about it, I didn't feel very good about it.

Q. Is - is that because you wanted to have sex for longer or what was the purpose...

5 A. Yes.

Q. ...of.

MR. SOSA: Your Honour, it's the same type of, it should be rephrased.

THE COURT: Thank you. Just rephrase your question.

10 MR. FAHMY: Sure.

MR. FAHMY: Q. What about the length of time were you embarrassed about, sir?

A. It was only like three or four minutes...

15 Q. Okay.

A. ...it was, pretty, short.

Q. Okay. As opposed to longer?

A. As opposed to longer, yes.

Q. Okay.

A. Yeah.

20 Q. And while you're putting your underwear and jeans on, what is - what is she doing?

A. She starts to put on her clothes as well.

Q. Okay. And what happens after you both put your clothes back on?

25 A. So, once both of our clothes are back on, I'm trying to make small talk just because a little bit, I feel a little awkward, so I'm trying to make some jokes.

Q. Okay.

A. But she says she wants to go to the bathroom.

30 Q. Okay.

A. And I was like, yeah, sure. So, I opened the door for her and guided her. I said, down the hallway, she knew

where it was, but I just....

Q. You were just pointing it out to her...

A. Yeah.

Q. ...as well. I just, for the record you've
5 motioned kind of with your finger, indicating a direction.

A. Yes, that's right, yeah.

Q. And we know from the exhibits that the washroom's
at the other end of the hallway?

A. Yes.

10 Q. Okay. All right. And - and she goes, do you see
her go into the washroom?

A. Yeah. I see her walk, I assumed she opens the
door and goes in. Yeah, I see her go to the.

Q. Okay.

A. Yeah.

15 Q. And how, well, how long was she in the washroom
for?

A. Two minutes.

20 Q. Okay. And in terms of where the washroom is and
where you're still, and you're inside your room at this point?

A. Yeah.

Q. Okay. And how far away is the washroom from your
room?

A. Maybe like 10 to 15 feet.

25 Q. Okay. But in terms of the, okay, can you hear
anything that's going on while she's in the washroom?

A. Yeah.

Q. Okay. What do you hear?

A. I hear her pee.

30 Q. Okay.

A. And I hear the sink turn on and the toilet flush,
the sink turn on.

Q. Okay. And what are you doing while she's in the washroom?

A. So, I'm cleaning up my room a little bit, but there isn't - there isn't really much to clean up, so I'm done, pretty, much and I....

5 Q. What, so, if there's, whereabouts in the room then are you cleaning if there's not much to clean?

A. So, I just fix up my bed...

Q. Okay.

10 A. ...put - put the pillows and stuff back how it was, and then I go back to stand where I was so, kind of like by the shelf, by the door.

Q. Okay. Does she, so she's in the washroom for two minutes.

15 A. Maybe two minutes.

Q. Maybe two minutes.

A. Probably a little less, yeah.

Q. Okay. And then she returns back to your room?

A. Yes.

20 Q. Okay. What happens at that point?

A. So, she comes....

THE COURT: Could you just...

MR. FAHMY: Sorry.

25 THE COURT: ...move back, I'm sorry. So, it was the timing of all this. I was disturbed and I'll tell you why. I saw somebody in the body of the court with a cellphone up and doing a lot of movement.

Electronic devices are not allowed in here unless there's an exception to that. It was disturbing to me because I was trying to figure out why you're doing that, so please don't, unless there's an exception for you. I don't know and I don't want to

get into that right now. Okay.

UNIDENTIFIED PERSON: As far as I've understood there is an exception for me, I'm media.

THE COURT: Oh, you're media. Okay. I did not understand that. I'm sorry.

5 UNIDENTIFIED PERSON: [Indiscernible].

THE COURT: I didn't mean to embarrass you, it's just when I saw it, I wasn't sure who is who here, in this room.

10 UNIDENTIFIED PERSON: Apologies for the distraction.

THE COURT: So, I'll move it back. Okay. Thank you very much.

15 MR. FAHMY: Okay, and then I think Your Honour was....

THE COURT: Okay. So, let's back it up, please, to, the bathroom was about 10 or 15 feet away. He could hear her pee, flush the toilet. I think it was washing of hands, the sink turning on.

MR. FAHMY: Yeah.

20 THE COURT: That's where I, sort of, lost my concentration. Let's pick up from there.

MR. FAHMY: From there, sure.

25 MR. FAHMY: Q. So, while you're hearing all of the stuff, you are inside of your room?

A. Yes.

Q. And the time that she leaves your room to go to the washroom and then returns back, you'd indicated was two minutes, probably less?

30 A. Yeah.

Q. Okay.

A. Yeah.

Q. Now, when she comes back inside your room...

A. Mm-hmm.

Q. ...did she look like she had been crying?

A. No.

Q. Did she have any red eyes?

A. No.

Q. Did she have any mascara running down her face?

A. No.

Q. Did she have any puffy cheeks?

A. No.

Q. Okay. Did she look the same as when she left to
10 go to the washroom, the same way as she returned?

A. Yes.

Q. Okay. So, now she's back in the room...

A. Yes.

Q. ...what, if anything, happens at that point?

15 A. So, she comes back into the room, and I'm
standing up next to the shelf near the door.

Q. Sorry, the shelf being which shelf, the black
shelf or the....

20 A. The big, wooden shelf that's behind my door.

Q. Okay. And that's the one that in - in the
exhibits has, like the globe at the very top of it, I believe.

A. Yes, that's the one, yeah.

25 Q. Okay. So, that's, so you're kind of standing by
the door...

A. Mm-hmm, yeah.

Q. ...by that shelf, okay.

A. Yeah.

Q. And then, sorry, so, she comes in...

30 A. Yes.

Q. ...and then?

A. So, she comes in and then she looks at me, and

I'm - I'm standing, I'm, like, on my phone...

Q. Okay.

A. ...so, she pulls out her phone...

Q. Okay.

5 A. ...and then she's kind of, on her phone and then we're both just kind of standing there, and the TV's still playing, so I start to watch the TV a little bit, and as I'm standing there making small talk.

10 Q. Okay. Do you recall what kind of small talk there was at all?

A. No. I remember making her laugh.

Q. Okay.

A. I don't remember what I said, but I made her laugh with some jokes or something, I don't know.

15 Q. Okay. And then her evidence was along the lines of, you told her that you - you had an early morning and that she should get going, did you actually say that to her?

A. Yes.

Q. Okay. When did you say that to her?

20 A. So, after a couple of minutes of us standing there, it's maybe like two minutes...

Q. Okay.

A. ...I was like, yeah, I have to get up early in the morning, so you should probably get going.

25 Q. Okay.

A. Something like that, pretty - pretty, close to that.

Q. Okay. And what was her reaction to when you had said that?

30 A. Not good.

Q. Okay. Describe why you say that her reaction was not good.

A. Well, she went, she looked neutral, happy, you know, we're just chilling, and then she looks, like, annoyed...

Q. Okay.

A. ...like eye-browning (ph), you know, one of those looks, like okay, but then she....

Q. Hold - hold on...

A. Sorry.

Q. ...just for the purposes of the record, Mr. Densmore had kind of put his head down a little bit, raised his eyebrows and opened up his eyes a little bit in an annoying manner, I don't know to, how else we can describe that, Your Honour, but is that kind of how she, her - sorry, go ahead.

A. Sorry, so it was...

Q. Why don't you, mm-hmm...

A. More like an angrier look, like a....

Q. Okay. So, her - her - her...

A. Eyebrows.

Q. ...eyebrows were kind of...

A. Yeah.

Q. ...coming together in a 'V' shape...

A. Yeah, yes.

Q. ...so, she's, okay.

A. But then she quickly went back to neutral after that.

Q. Okay. And what were your thoughts while she did that?

A. Well, I knew she was annoyed but, like I don't think she was going to argue with me, like I don't want to go, you know.

Q. Yeah.

A. So, I think she went, like you know like, "Okay," you know.

Q. So, that, so she gave you that annoying look, and then she just said, "Okay," after?

A. Yeah, yeah.

Q. Okay.

A. Yeah, she was cool about it, you know.

Q. Okay. All right. And what happens after that?

A. So, she starts to kind of collect her things, but she already had her, all her stuff was like already together, so it didn't take long, but I - I kept making small talk, so...

Q. Okay.

A. ...we're still talking a little bit, just casual and she's being chill...

Q. All right.

A. ...like she's not talking angrily. She's just, like, casual.

Q. Okay. And is that, and so, is that because she's responding to your casual tone or banter or talking to her?

A. Yeah, yeah, I'm not trying to be rude. I'm trying to - I'm trying to be the opposite of rude. I'm trying to be, like, very polite.

Q. Okay.

A. Casual.

Q. Okay. And then eventually you leave the room?

A. Yeah. So, she's - she's, like, ready, she's, like, standing there with her stuff, like ready to be walked out and I was like, okay, I'll walk you out.

Q. Okay.

A. Yeah.

Q. And then what happens next?

A. So, she walked out ahead of me, like, I nodded to her, like, "Here," you know. I didn't, I never closed my door when she came back in my room...

Q. Okay.

A. ...so, the door was already open...

Q. Okay.

A. ...and she walked ahead of me, and we walked down
5 the...

THE COURT: Slow down.

A. Sorry.

THE COURT: Okay, go ahead.

MR. FAHMY: Q. You were saying, she walked ahead of
10 you.

A. Yeah. So, we walked through the hallway. We
were downstairs in maybe like five seconds, it's a very short
hallway, and then we were downstairs in the living room now, so the
entrance to my house is kind of within the living room...

Q. Okay.

A. ...and we're still making small talk, but her
tone changes a little bit, it's not as casual.

Q. Okay. How did it change if it's not casual?

A. Well, it was more like we were, like I was being
20 polite, but I was trying to be, like you know, jokey because that's,
kind of like the vibe of our date. It was...

Q. Yeah.

A. ...kind of bantery (ph) and she seemed kind of
annoyed.

Q. Okay. So, she wasn't, okay. And what happened,
25 so the living room is by the front door, you were saying?

A. Yeah.

Q. Okay.

A. They're basically connected.

Q. Okay. So, what happens when you guys are there,
30 after that?

A. So, she puts on her shoes...

Q. Okay.

A. ...and puts her jacket on.

Q. Okay.

A. And....

5 Q. So, let me just stop you there. So, you, she,
you said that she put her jacket on there?

A. I think so, yeah.

Q. Okay.

A. Yeah.

10 Q. And is that because she had taken it off there,
when you guys had come back to your house?

A. I don't remember...

Q. Okay.

15 A. ...when she, I don't remember where she put her
jacket.

Q. Okay, but she definitely put it on when she was
downstairs.

A. Yeah, yeah.

Q. Okay. And then what happens next?

20 A. So, we talked at the door I'm like, hey, okay,
see you later. I give her a hug...

Q. Okay.

A. ...give her a kiss on the cheek...

Q. Okay.

25 A. ...open the door, see you later, and then she
leaves.

Q. Okay. And how did - did she respond at all, or
say anything at all, to any of that?

A. She's like, yeah, okay, bye.

30 Q. Okay.

A. Pretty short.

Q. Okay.

A. Yeah.

Q. All right. And, okay. I just want to go back to the point, the moment in time when you had reached for your phone while she was performing oral sex on you. Why did you decide or make that decision at that point to record?

A. To prevent this.

Q. Okay. Can you, well, you can elaborate a little bit on that, we have His Honour's ruling on it, but just elaborate what you mean, to prevent this.

A. So, I was filming a consent video...

Q. Okay.

A. ...basically, a brief video while we're hooking up, where she says, "Yes, this is consensual," and then that's, pretty, much it.

Q. Okay. But would you have had to have asked her, first?

A. No.

Q. Okay. What do you mean, sorry, I - I don't understand. You wanted her to say....

A. So, I pulled the phone out...

Q. Yeah.

A. ...and started recording...

Q. Mm-hmm.

A. ...but then she moved her head back...

Q. Mm-hmm.

A. ...which made me think, okay, well, she doesn't want to be recorded...

Q. Mm-hmm.

A. ...so, I stopped recording.

Q. I - I understand that. I think what my, sorry, it's probably the, my question then is that, you said that you wanted to prevent this. How - how were you trying to prevent this?

A. So, when I hook up, in - in the past when I would hook up....

Q. Okay. Yes, go on.

A. Okay. In the past when I would hook up with girls, in particular girls that I didn't know very well, that were familiar with my videos or were in my videos, if I had a weird feeling about them, then I would record a consent video while we were having sex, and then I would...

Q. Okay.

A. ...yeah, that's it.

Q. Okay. And where did you kind of get that idea from?

A. So, over the years I've met a lot of college athletes, celebrities, dee-jays, musicians, and it's been something that's been brought up a couple of times, like this is something that you should probably do 'cause I was doing a lot of partying, and meeting a lot of women...

Q. Okay.

A. ...and, you know, it's something that's better to have it and not need it, than need it and not have it.

Q. Okay. And in terms of that point in time, like why her at that point?

A. Well, I didn't - I didn't, like anticipate that I was going to record a video.

Q. Okay.

A. It just kind of came to me...

Q. Okay.

A. ...and my phone was right there, so I figured, okay, this is a perfect time to do it.

Q. Okay.

THE COURT: Slow down.

MR. FAHMY: Q. And the, I mean, it's - it's, the

police, obviously, got a search warrant for your phone.

A. Mm-hmm, yes.

Q. And they searched your phone.

A. Yeah.

Q. And we couldn't get that video.

A. No.

Q. Okay. Again, that's because in your evidence you said that you'd deleted it immediately after you'd taken it.

A. I deleted it right in front of her.

Q. Now, I just wanted to, sorry, just besides, so
besides the - the phone, in your own mind is there anything that she is doing or saying that made you think that she was not consenting to the sexual activity while you were in your bedroom?

A. No.

Q. Okay. And just, sorry, about the advice you received about this making a - a consent video...

A. Mm-hmm.

Q. ...was there, like a guideline that you followed or...

A. No.

Q. ...anything, sorry?

A. No.

Q. Okay.

A. I was just winging it, pretty much.

Q. Okay. All right. And you obviously, did you consult any lawyer about that?

A. No.

Q. Okay. All right, sir.

MR. FAHMY: Just a brief indulgence, Your Honour, or actually, just a moment, Your Honour, I think I can do this right here.

MR. FAHMY: Q. Okay. All right. Now, I'm just

showing you some of the Instagram messages between you and the complainant, and....

THE COURT: Is there a particular tab number for my reference?

5 MR. FAHMY: It is, yes, Your Honour, sorry, it's Tab Number 1.

MR. FAHMY: Q. So, you'd - you'd made plans to meet up on August the 5th and on August the 3rd, you're confirming that and saying, see you Wednesday, dress nice. Do you see that there?

10 A. Yes.

Q. Okay. And, obviously, that's your message because we see her picture and responding and she says, I always dress nice, hun, right?

A. Yes, I'm on - I'm on the right.

15 Q. Okay. But that's what she's calling you, she's calling you hun.

A. Yes.

20 Q. All right. And then she goes on to, basically, say that she's going to dress to impress and then you're asking her, are you going to impress me, and she says, I don't even need to try - and I'm just paraphrasing, I'm not using the exact quotes for now.

A. Yep.

25 Q. And then you say, I want you to try, and she says, don't worry, I'll put in the effort, is that what I, that's correct, that's what I've read there?

A. Yes.

Q. It's accurate?

A. That's right, yeah.

30 Q. And then you ask her to wear a skirt. She says, and she wants to know why. You say, I like skirts. There's other, and then makes sense now, and then you're saying, there's other things, too, but and then she says, all makes sense now, and then,

sorry, you say there's other things, too. Says, about what, secrets and she's saying, okay, okay, keep me guessing. I'll whisper them in your ear. Says, okay, please do, and then you say, if you're good, right?

5 A. Yes.

Q. Okay.

A. Yeah.

Q. And then she responds, I'm always good.

A. Yes.

10 Q. Okay. And then you say, we'll see about that...

A. Yes.

Q. ...and she says, I'm right, DW, which is I'm right, don't worry, right?

A. Yes.

15 Q. Okay. And then you say, spanking if not.

A. Yes.

Q. Okay. And her response is, who, might just have to take a break from being good then. Do you see that?

A. Yes.

20 Q. Okay. And that was the messages that you were referring to in your evidence, earlier?

A. Yes.

Q. Okay, that she'd have to take a break from being good.

25 A. Yes.

Q. Okay. And then you ask her, what does that look like, and then she says, you'll just have to wait and find out, with a wink, right?

A. Right.

30 Q. Okay. And then, on August the 5th, the day of the date, you're giving her the time of 8:00 p.m.

A. Yes.

Q. She says, sure, where, and you give her your address?

A. Yes.

Q. Okay. And then she says, sounds good, still doing a hike, and your response is, it's more of a glorified walk along the escarpment, but, yeah, and she responds, okay, laugh out loud, okay, sounds good.

A. Yep.

Q. Okay. And then, at 6:38 she messages you and says, hey, I got off work a bit later, so I might be there closer 10 the 8:15. And then you respond, that's another spanking.

A. Yes.

Q. Okay. And her response is, damn, I'll keep that in mind, right?

A. Yeah.

Q. And then the next message is, okay, I think I'm here, right?

A. Yes.

Q. Okay. So, the okay, I think I'm here, that's the message that she indicates to you that she's outside your house?

A. Yeah.

Q. Okay.

A. Yeah.

Q. And then her response to you saying, that's another spanking is that, damn, I'll keep that in mind, right?

A. Yes, yeah.

Q. All right. And again, those were the messages that you were referring to, with respect to the spanking in your evidence, earlier, correct?

A. Yes.

Q. Okay. All right.

MR. FAHMY: Now, Your Honour, I'd like to just ask

for a very brief, five-minute break, just to make sure I've covered what I needed to.

THE COURT: After that, let's just project forward. If, I add that five minutes, you say you have no further questions of this witness, are we prepared to start then, in five minutes time, the cross-examination?

MR. SOSA: Your Honour, I could start with what I have, and then I'll get as far as I can. And if I — if I may, Your Honour, I'll likely request that we recess earlier than usual. That way I can reflect on everything else that I'm hearing for the first time, but I can get started.

THE COURT: Okay. We'll get started. I'm just saying I want to use our time up to the lunch hour, so we're only at twelve, so I'll give you a few minutes. We'll stand down for five minutes for you to just be sure that you've covered everything that you need to cover. If so, then we're going to start cross-examination, then we'll break at the usual time at 1 o'clock, and we'll come back at ten after two. Okay. Thank you.

COURT CLERK: This Superior Court of Justice is stood down for five minutes.

...COURT STOOD DOWN.

...COURT RESUMES.

COURT CLERK: This Superior Court of Justice is now back in session. Good afternoon, Your Honour. Thank you. You may be seated.

Jack Densmore - in-Ch
Jack Densmore - Cr-Ex.

MR. FAHMY: Thank you, Your Honour, and thank you, Mr. Densmore, those are all of my questions.

THE COURT: Thank you. Cross-examination.

5 MR. SOSA: Yes, thank you, Your Honour. If I could just, please, ask for some time just to await Mr. Bland's return, our articling student.

THE COURT: Oh, I'm sorry.

MR. SOSA: I just had to print something off.

THE COURT: Okay.

10 MR. SOSA: He should be back any moment.

THE COURT: All right. We'll just wait patiently.

MR. SOSA: Thank you, Your Honour.

CROSS-EXAMINATION BY MR. SOSA:

15 Q. Good afternoon.

A. Good afternoon.

Q. So, I just want to start off by covering off just some of the basics, okay? So, I know that in your examination in-chief, Mr. Fahmy asked you how old you were on August 5th of 2022, and you said, 25 or 26, do you remember giving that answer?

20 A. Yes.

Q. All right. Your birthday's June 3rd, 1994.

You'd agree you were 26 on August 5th, right?

A. 26, yeah.

25 Q. Okay. And if we take our minds back to August 5th, 2020, you'll recall that was only a few months into the Covid-19 pandemic, right?

A. Yes, yeah.

30 Q. And you'd agree there were a number of government restrictions in place at that time, right?

A. Yeah.

Q. Okay.

A. I don't remember the exact ones but, yes.

Q. Yeah, but generally, you agree...

A. Generally, yeah.

Q. ...Covid was going on, there were certain
5 restrictions with businesses and so on, right?

A. Yeah.

Q. All right. Now, if I understood your evidence
correctly, around August of 2020, you were now doing your YouTube
content full-time.

10 A. Yes.

Q. All right. You had a studio in your home?

A. Yeah, it's, yeah.

Q. And that's where you would do, I guess, the
editing, the production?

15 A. Yeah.

Q. All right.

A. And I do keep a lot of my stuff and I record
there, too...

Q. All right.

20 A. ...multi-purpose, yeah.

Q. And I know you mentioned, perhaps, some camera
men or, I think you may have used the term, team, but you did a lot
of the actual editing, right?

A. Yes.

25 Q. And do you recall back in August of 2020, whether
you were involved in any, sort of like, special project with your
YouTube channel?

A. No, just editing normal, like, the same thing I'm
usually doing, making videos.

30 Q. Okay.

A. Yeah.

Q. All right. So, there's nothing in particular or

special event that ties you to that August 2020 date, with respect to your work?

A. August 5th?

Q. Or in or around that date.

5 A. Like any – any specific videos I uploaded that week?

Q. No, no, whether you were working on anything in particular, or if this was just another ordinary month for you with your YouTube content.

10 A. Yeah, I was making videos, pranks. I think a week or two before I did a prank blowing air horns at a golf course. I don't know when that video came out, maybe that month, maybe after.

Q. All right.

15 A. But, yes, business as usual, yeah.

Q. Now, I just want to go, since we left off with the messages, I want to take us back to that, and I don't have the ability to put it on screen, but I do have printed copies.

20 MR. SOSA: So, Your Honour, I'm referring to Tab 1 for the testimonial that lays out, provided by Mr. Fahmy, but I'm going to provide an actual printed copy to review with Mr. Densmore.

THE COURT: Was this meant for me?

MR. SOSA: I think it was for the witness.

25 THE COURT: Oh, I'm sorry.

A. Thank you.

THE COURT: Thank you, so much.

30 MR. FAHMY: Just, not to say anything out of turn, Your Honour, but if, just if my friend could just refer to the page number at the top.

MR. SOSA: Sure.

MR. SOSA: Q. All right, sir. You've gone through

this already with your lawyer, but I'm going to go through it now with you as well, okay?

A. Yeah.

Q. Just so it's abundantly clear, these screen shots came from your phone, right?

A. Yes.

Q. All right. And it was while you were logged in to your personal Instagram account, right?

A. Yes.

Q. And what we see here, the very first entry, July 24th, 2020, is that you replied to [REDACTED]'s story, right?

A. Yes.

Q. And the first thing you say to her is that you totally just saw her cute mug on Tinder.

A. Yes.

Q. All right. And that's because you had just matched on Tinder, and as you explained, you located her and this is your first time making contact with her.

A. Yes.

Q. All right. There's a bit of conversation that follows and then you say to her, further down, "I'm making my slide on here, though," right?

A. Yeah, I said that, yeah.

Q. It's meaning you want to talk to her, potentially, see where it goes, right?

A. Sure, yes.

Q. Well, yes?

A. Yes.

Q. Okay. So, then when we turn to page three, there's a little more there. She says, "Okay, okay, I see you," and then your response, it's been a minute, "How you been?"

A. Yes.

Q. Right. So, you're letting her know, right away, that you remember her.

A. I'm implying that, yes.

Q. So, you, sorry, what, why do you say you are implying that?

A. It's been a minute. That's slang for like it's been a while...

Q. Right.

A. ...right? Since I'd last seen her.

Q. Right.

A. So, yes, yeah, I'm agreeing with you, yeah.

Q. Okay.

A. Yeah.

Q. I guess what I wanted to say was, I guess that you remembered her, right?

A. Yes.

Q. Okay.

A. Yeah.

Q. Okay. So, there's some more conversation about how your day goes. "Do you have any plans," and you tell her you're planning to go to Italy but then Covid happened, and then when we turn to page four, "You're in Hamilton," she's says, "Oakville." You say, "I was there, earlier TD," today, with the googly eyes, right?

A. Yes.

Q. What did you say in that voice note, the one directly after, "Ha, ha, no way?"

A. I don't remember.

Q. You don't remember at all?

A. No. Probably something along the lines of like, hey, we should meet up, go on a date, so hikes, drinks.

Q. Is that what you would have said or are you

remembering that now?

A. I don't remember exactly what I said, but I would have been setting up...

Q. All right.

A. ...a hang out, yeah.

MR. FAHMY: Sorry, setting up a?

A. A hang out. Us meeting out, yeah.

MR. SOSA: Okay. That's what you think it was about, but you can't actually remember.

A. That's correct, yes.

Q. Okay. And if we look at the date, that's July 24th, 2020, this is all the same day, right?

A. It should be, yeah.

Q. Okay. 29 seconds and you don't remember what you said?

A. Nope.

Q. Okay. So, I guess, based on what she responds with, what your assumption is that you may have been setting up something is probably fair and accurate, right?

A. Yes.

Q. All right. And then you say, it looks like three days go by where she says, "Let me know when you're free," and then you, on July 27th say, "What days work for you this week." That's what you said, right?

A. Yes.

Q. Okay. And she gives you her schedule. She says, "I work six to six on Wednesday and Friday, but other than that, I'm free." You let her know that you can do Thursday or Friday.

A. Yes.

Q. All right. She says, "Yeah, Thursday is good." That's the end for July 28th.

A. Yes.

Q. You respond the next day, July 29th, "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.

5 Q. All right. So, you've now solidified a plan, is that fair?

A. Yes.

10 Q. Okay. She says, "Sounds good. Do you have a time in mind. I'll be done work and showered by seven." And that was the end for July 29th. So, I'm turning over to the next page.

THE COURT: This page, now, does not have a number.

The one where you left off was page six.

15 MR. SOSA: Right, so we're now, the last page that had a page number was five, we're now at page six, and the second to last message says, "I'll be done work and showered by seven."

20 MR. SOSA: Q. So, we'll turn to the following page which would take us to then page seven, and you'll see there that [REDACTED], at the top, has now messaged you saying, "She can't make it tonight," all right?

A. Yes.

25 Q. All right. You respond later that same day, 3:50 p.m., "Hey, if you're sick DW about it. Drinks on you next time, though." She says, "Deal, just let me know when you're free next, I'll be there," that was July 30th.

A. Yes.

Q. All right. No conversation until you, on August 1st, at 4:41 p.m., message her, "Monday slash Wed."

A. Yes.

30 Q. You'd agree that's you offering those dates to hang out with her, right?

A. Yes.

Q. Okay. So, up until this point, sir, you'd agree that it was you who reached out to her, first, right?

A. Yes.

Q. And it was you who initiated meeting up also,
5 right?

A. Yes.

Q. And at each time you followed up to make sure you did, indeed, meet up, right?

A. Well, yes.

Q. Okay.

A. Yeah.

Q. Then, August 2nd, 10:54 p.m., [REDACTED] says, "I'm free Wednesday after six." You respond the following day at 9:35 p.m., with "Good girl."

A. Yes.

Q. Right. And then at, I guess it's better if we go to the following page, it follows clearer, "Good girl. See you Wednesday. Dress nice." She responds, "Mm-hmm, I always dress nice, huh." You say, "Is that so." She says, "Of course. Gotta dress to impress." You respond, "You going to impress me," and she says, "Don't even have to try." You say, "Mmm, I want you to try." Sir, you'd agree here that, again, you are making plans and telling her what she should wear.

A. I'm suggesting, yes.

Q. Okay. She responds with, "Don't worry, I'll put in the effort," and that continues on the following page, and you're asking her, "What you wearing RN?" right now.

A. Yes.

Q. Right. Why'd you ask that question?

A. I don't know.

Q. Flirting, right?

A. Well, yeah.

Q. Right. Correct.

A. Yeah.

Q. And then she says, "RN not so impressive. Shorts and a crop top," and you say, "Thought so."

5 A. Yes.

Q. She jokes back, "It's a look," and you say, "Wear a skirt."

A. Yes.

Q. She says, "Why a skirt," you say, "Why you think?"

10 MR. FAHMY: Well, just - just, if my friend's going to read her response, her response starts with "Hmm, I'll consider it," and then "Why a skirt," right?

THE COURT: Fair enough. I mean he's....

15 MR. SOSA: Your Honour, it's immaterial but, yes, if - if that's fine, that's fine. I'm going to be ultimately asking this to be an exhibit, we've all looked at it. It's, there's - there's no concern what the contents are, I'm making suggestions to the witness.

20 THE COURT: I think that the objection, just to be thorough is, if it's a suggestion based upon the general sense of the narrative, that's fair enough.

MR. SOSA: Right.

25 THE COURT: If it's, it was kind of combination of almost like a quasi-verbatim repeating of something like that, followed by a suggestion, that's where I think your friend's objection was rightly taken.

So, it's up to you how you want to do it.

30 MR. SOSA: Q. All right. So, sir, you say, "Wear a skirt," right?

A. Yes.

Q. All right. She say's, "Hmm, I'll consider it. Why a skirt?" And you say, "Why you think?" She says, "IDK," I don't know, "Tell me." You, again, say, "Cause I like skirts." You'd agree, sir, here you are once again telling her what to do with what to wear, sorry?

A. I'm suggesting that I like skirts, yes.

Q. And you tell her to wear a skirt, right?

A. Yes.

Q. The next page, "There's other things too, but." She says, "Hmm, but what?" You say, "Secrets." She responds, "Okay, okay, keep me guessing," and then you say, "I'll whisper them in your ear." "Okay, deal, please do," she says, and then you say, "If you're good." She says, "I'm always good." You say, "We'll see about that," and she says, "I'm right DW," don't worry. And then you say, "Spanking if not." That's you saying that, right?

A. Yeah, I said all of this.

Q. She had never mentioned anything about spanking up until that point, fair?

A. I don't think she did, no.

Q. Right. Well, it wasn't in the messages, right?

A. Yeah, so, no, I didn't see spanking there.

Q. But you brought up the spanking.

A. I brought up the spanking, yes.

Q. "Hmm," she says, "Might just have to take a break from being good then." And it follows on the next page, and then you say, "And what does that look like?" She says, "You'll just have to wait and find out," and the conversation ends there. That would have been the date of August 3rd. August 4th, this is 9:55 p.m., you initiate the conversation, and you say, "Did you pick an outfit?" You said that, right?

A. Yes.

Q. Okay. So, again, you want to make sure that she

is wearing what you've suggested, right?

A. I asked her if she'd picked an outfit.

Q. She responds about an hour later, 10:56 p.m., "I think so," and then you say, "Remember, we're going on a hike, first, so," and then she says, "Very true." That's the end of it for that day. The following day, August 5th, 12:13 p.m., you message first and you say, "8:00 p.m.," right?

A. Yes.

Q. Okay. So, you'd agree, you messaged first on this occasion as well.

A. On August 5th?

Q. Yes.

A. Yes.

Q. She says, "Sure. Where?" and then you give "███████████

███████████ Hamilton," which is your address, right?

A. Yes.

Q. She says, "Sounds good. Still doing a hike?" and we turn to the next page. "It's more of a glorified walk along the escarpment, but yeah." That's you, right?

A. Yes.

Q. "Okay," she responds "LOL. Okay. Sounds good." Some time goes by, it's now 6:38 p.m. She says, "Hey, I got off work a bit later, so I might be there closer to 8:15," and you say, "That's another spanking."

A. Yes.

Q. Again, you bring up the spanking.

A. Yes.

Q. Unprompted, right?

A. Yes. I brought up the spanking.

Q. Okay. And that's where that conversation ends.

MR. SOSA: So, Your Honour, I'd be asking that....

THE COURT: Well, your friend is raising an

objection because that conversation didn't end right there.

MR. SOSA: Sure. The exhibit's going in.

5 MR. SOSA: Q. Sir, you see there are two further messages after that.

A. The - the text messages end here, yes.

Q. Right.

A. After, yes.

10 Q. What's available, which came from your phone, ends there. "Damn I'll keep that in mind." "Okay, I think I'm here."

A. Yes.

Q. There's nothing more, right?

A. I don't believe so, no.

15 Q. Okay.

MR. SOSA: So, Your Honour, I'd be asking that to be made an exhibit. I've provided a copy already for Mr. Registrar, so that it can be formalized as an exhibit. I think we're at 15, are we?

20 COURT CLERK: 16.

MR. SOSA: 16, okay.

THE COURT: Exhibit 16. This is, I guess, Text Record Originating from Phone of the Accused, does that properly?

25 MR. SOSA: Instagram messages.

THE COURT: Accused, I.E., Instagram Messages with Complainant. So, that's the full description.

30 EXHIBIT NUMBER 16: Text Record Originating from Phone of the Accused, I.E., Instagram Messages with Complainant - produced and marked.

MR. FAHMY: Sorry, Your Honour, I'm just - just to be perfectly clear for the record, it's just the

pages in this exhibit that have the black background, those are the pages that were provided by my client, but the remainder of the pages actually came from the disclosure.

5 MR. SOSA: That's not - that's not what the witness said, Your Honour, and that's not the way it came out in disclosure, either.

THE COURT: Well, I mean....

10 MR. FAHMY: Well, I mean, it doesn't matter. I'm just....

THE COURT: Let's talk big picture.

MR. FAHMY: Yeah.

15 THE COURT: This, I think, I got was, these are exchange of communication between the accused, who's in the witness box, and the complainant, via Instagram that were, at some point situated on your phone and then printed and pulled out.

A. Yes.

THE COURT: Okay. There we go.

20 A. I still have them, too, if.

THE COURT: All right. Does that help everybody?

MR. FAHMY: Yes, thank you, Your Honour.

THE COURT: All right.

25 MR. SOSA: Q. All right. So, the last question there was, those were the last, that was the last, that was the end of that conversation and you said, yes, that was the end of that conversation when she said....

A. On Instagram.

Q. Yes, on Instagram.

30 A. Yeah.

Q. What other messages are there?

A. Between?

Q. You and [REDACTED]?

A. Me and [REDACTED]?

Q. You're saying, on Instagram. Are there others elsewhere?

A. On Instagram?

Q. No, sir, anywhere else?

A. Oh, no.

Q. No. Okay. So, that would be it?

A. These, yes.

Q. Not that day, not later that night, no messages?

A. No.

Q. The day after?

A. No.

Q. Did you ever speak to her again, after August 5th? No?

A. No.

Q. No, right?

A. No.

Q. Okay.

MR. SOSA: If I could ask that Exhibit 13 be provided to Mr. Densmore, please? And, Your Honour, that's the...

THE COURT: Screen shot.

MR. SOSA: ...screen shot of the thumbnail of the McMaster Homecoming 2019.

MR. SOSA: Q. All right. So, sir, this was, you identified this as the image that captures you there, in the middle, and then [REDACTED] [REDACTED] the image, but [REDACTED] on the [REDACTED] photo, right?

A. Yes.

Q. All right. This is edited, obviously, this isn't, like a live shot that is, like freeze-framed.

A. This is edited, yeah.

Q. Right. And so, you edited this.

A. I made this image, yes.

Q. Right. Okay. So, you selected the people around
5 you, specifically, the girls immediately beside you, right?

A. So, some of them were already beside me. Others,
guys and girls were photoshopped into the places they are.

Q. And [REDACTED] being one of the ones that were
photoshopped, right?

10 A. Yes, that's right, yeah.

Q. You, I just want to make this clear, did you meet
her at Homecoming 2019 for McMaster?

A. I don't think so, no. I met a lot of people that
day.

15 Q. But to the best of your recollection, you did not
meet her that day?

A. That's right, I did not. I don't think so, no.

Q. But you picked her out and put her right beside
you on this one, right?

20 A. Yes.

MR. SOSA: So, Your Honour, if I could ask, please,
that we break a little earlier than usual. Your
Honour, I did get started, but there was a lot I
heard for the first time in-chief, so if I could
take the opportunity to review that and then I'll be
25 continuing on.

MR. FAHMY: I have no objection to that, Your Honour.

THE COURT: All right. Just let me catch up. So,
what we'll do is, we'll break now, and we will come
back at 2:00.

30 MR. SOSA: Can I ask for 2:15, Your Honour?

THE COURT: Is this a market situation?

5
MR. SOSA: No, no, I mean, Your Honour, it's in Your Honour's hands.

10
THE COURT: Okay. I just, I'm just mindful of time crunches, right. So, that's why, instead of a usual hour, 10 for staff, I've thrown in an extra 10 minutes. Let's try for 2:00, please, so that we don't waste time. If there's a need for extra time then you can, please, communicate that through the trial coordinator's office, but I would like to start again at two.

15
MR. SOSA: Thank you. Oh, sorry, Your Honour, just remind the witness that he's now under cross.

20
THE COURT: Do we have the warning?

15
COURT CLERK: Yes. During the lunch break, because you are under cross-examination, you will not communicate to, or discuss with anyone the evidence you have given, not any of the questions you were asked either in direct examination or cross-examination.

20
A. Yes.

THE COURT: Thank you.

MR. SOSA: Thank you.

THE COURT: See you at two.

25
R E C E S S

25
U P O N R E S U M I N G:

30
COURT CLERK: This Superior Court of Justice is now back in session. Good afternoon, Your Honour.

Thank you. You may be seated.

THE COURT: Good afternoon.

CROSS-EXAMINATION BY MR. SOSA (continued):

Q. Good afternoon again, sir.

A. Good afternoon.

Q. So, we've all seen now, Exhibits 1 through 10,
5 the photos of your bedroom.

A. Yes.

Q. Okay. Are you able to share the approximate dimensions in feet, how big the room is?

A. I guess, 7 feet long and then 10, about 10 feet
10 wide.

Q. Are you still living there now?

A. Yeah.

Q. Okay. Sir, you agree that when [REDACTED] was in front of you, whether seated or on her knees, you reached for your phone, 15 you pressed record, all without her knowledge, right?

A. Yes.

Q. You were already recording her.

THE COURT: Can you just stop there? Thank you.

MR. SOSA: Q. Sir, you were already recording her, 20 in the midst of the sexual act, right?

A. Yes. As I started recording, as my hand left the shelf, and as it went above my penis and [REDACTED], yes.

Q. Right. So, the video would have captured a sexual act, correct?

A. Yes, that's right.

Q. Okay. And you did that on your own without asking her, first?

A. That's right.

Q. And if I heard your evidence correctly, you 30 thought that was acceptable, you thought that was okay, right?

A. Yes.

Q. So, and I'm referring only to 2020, August 5th,

2020. On that date...

A. Mm-hmm.

Q. ...you thought it was okay to record someone performing a sexual act on you without their permission.

A. In the context of recording a consent video, I began recording. I don't think it's appropriate if I recorded her without her knowing, like if I had a camera in the corner of my room or something like that, no. The purpose of recording was for a consent video, and that – that is what I was doing, so yes, that's, I'm okay with that, yes.

Q. You didn't ask her for a consent video, right?

A. No. She communicated to me by the way she moved her head that she did not want to be recorded, which is why I stopped recording and then I explained to her what I was doing, and she said, "I don't want to be recorded," and was like, yeah, that's fine.

Q. I – I think I'll have to ask the question again because I'm confused by your answer.

A. Okay.

Q. On August 5th, 2020...

A. Yes.

Q. ...you thought it was okay to record a person committing a sexual act on you, without their permission.

A. The intention was to get her permission, hence, why when she moved her head back, this, in my opinion, showed me that she was not okay with being recorded. So, I stopped recording and then I explained to her, I'm recording a video, I'm recording a consent video, and she said, "I don't want to be recorded."

Q. Okay. I understand your rationale. What I asked was whether you thought it was okay to do so without that person's permission, specifically, [REDACTED].

MR. FAHMY: I object, Your Honour. That's now the

fourth time my friend is asking the exact same question. I think his answer is very clear on that.

MR. SOSA: It hasn't been answered, Your Honour.

THE COURT: Thank you. I've heard the objection.

I'll allow the question to continue.

5 A. The context of me recording was to get a consent video, that is why I was recording. So, yes, I found it appropriate.

10 Q. Okay. Because you know that while she was engaged in whatever she was in engaged in at that time she didn't know, therefore, you didn't have her permission, fair?

A. For my phone coming out?

Q. Yes.

15 A. Yes. Once she saw it, she moved her head back to communicate to me she did not want to be recorded, and I stopped recording.

Q. Did you say to her, "I'm taking a consent video?"

A. Before?

Q. At the time?

20 A. As I was pulling my phone and she asked me, "What are you doing," I said, "I'm recording a video," and then she said, "I don't want to be recorded," and I said, "I'm filming a consent video," and she said, "I don't want to be recorded."

25 Q. You mentioned you were meeting a lot of people and you learned that you should get a consent video, as a result of that, right?

A. Sorry, can you rephrase that?

30 Q. Through the course of you, I mean, in your words, I'll give [indiscernible]. In your words you said, "There was a lot of partying, a lot of women."

A. Yes.

Q. Do you remember saying that to Mr. Fahmy?

A. Yes, there was a lot of partying and a lot of women.

Q. Right. And your practice became you wanted to get consent videos of the women you were with, or in particular, that's what informed you doing that on this occasion.

A. Yes, that's right.

MR. FAHMY: Objection, Your Honour. Now, like, and at this point I think your ruling from yesterday, the Crown is just, you know, I purposely avoided doing this and the Crown just, basically, not even back-doored, just front-doored right through this, so, what are we doing?

THE COURT: All right. With respect to the questioning, the witness in-chief discussed the, I guess, the origin of his, I guess that the, or how he came to believe something, right, about the videos. It was, I think in the context as I recall, about because, you know, he was meeting a lot of people, a lot of famous people, sports people, if I remember the evidence correctly, and that's what, sort of, informed his decision. That, I think, is where we left it and I think that is the context in which the Crown can cross-examine on that, within the context of the previous ruling.

MR. FAHMY: Yes, but my friend's question was, "This is your practice that you're doing." My question and his answer was only related to where he got the idea, the information to do something like that, in keeping with Your Honour's ruling, which I think you've outlined.

THE COURT: I accept that and that's I'm directing, but let's keep within the confines of that.

MR. SOSA: Yes, Your Honour.

MR. SOSA: Q. Your words were that if you had a weird feeling, then I would record a consent video, do you remember saying that to Mr. Fahmy?

A. Yes.

Q. You got a weird feeling from [REDACTED], right?

A. A little bit, yeah.

Q. Right. Just like you didn't care to ask her whether she wanted to be recorded, you also didn't care whether she wanted to be forced into oral sex, right?

A. What? Can you rephrase that? You're saying that I didn't care to ask her to record a video, and based on that, I didn't care to force her into oral sex?

Q. Right.

A. No.

Q. So, you understood?

A. No, no, there's a clear distinction. They're not related whatsoever.

Q. Sir, what triggered you pulling out your phone was when she was now in front of you, and what I'm going suggest to you, being forced to perform oral sex, right?

A. She was not being forced to perform oral sex. Not then, not ever, at no point.

Q. Why did you bring the phone out at that point, then?

A. Because I thought, in the moment, this would be a good time to record a consent video.

Q. Without asking her if she consented to being recorded, right?

A. The plan was to ask her if she consented on the video, but based on how her head moved, I took that as she doesn't want to be recorded, so I stopped the recording. So, I didn't get a

chance to ask her about a consent video because I wasn't going to argue with her, like, you know what I mean?

Q. Sir, when you brought out that phone...

A. Mm-hmm.

Q. ...she was upset, right?

A. No.

Q. So, your position, sir, is that when you recorded without her knowledge, she did not become upset.

A. That is right, she did not become upset.

Q. Even when she's telling you to delete the video...

A. Mm-hmm.

Q. ...she's not upset.

A. No, it was very chill.

Q. And that's the truth, sir?

A. Yes.

Q. What I'm suggesting to you, sir, is that she was definitely bothered by it, just like she testified. Do you agree or disagree?

A. I disagree.

Q. All right. And that's what created a clear stop in whatever was going on between you two, right?

A. I stopped recording and then I deleted the video in front of her because she asked me to.

Q. And that's when there was a clear break between the two of you, there were no sexual acts at that point.

A. There was no break. What do you mean, break?

Q. You can agree or disagree. I said there was a clear break in the sexual act.

A. Oh, you mean while I was, like, showing her the video as I deleted it? She was - she was not sucking my penis while I showed her the video of me deleting it.

Q. And that's the time that there was a clear break and there were no sexual activities going on, right?

A. There was no sexual activity going on while I showed her my phone, no.

5 Q. And I'm suggesting to you, sir...

A. Mm-hmm.

Q. ...you agree or disagree that she then got up.

A. No.

10 Q. So, you just recorded her without her knowledge, and now she went right back as if nothing happened?

A. She continued to suck my penis afterwards, yes.

Q. Sir, where did you have to be August 6th, 2020, in the morning?

A. I don't remember.

15 Q. Okay. Where were you the morning of August 5th, 2020?

A. At my house.

Q. Doing, what?

A. I don't recall.

20 Q. You don't recall anything from August 5th, 2020?

A. No. I recall August 5th, 2020, but I don't recall if I had something I had to work on specifically the next day, August 6th, is that what you're asking?

25 Q. That's exactly what I'm asking. What did you do August 6th, 2020?

A. I don't remember necessarily what I was doing. I was, I would have slept in my house, likely, so I would have woken up at my house, so I would have been at my house on August 6th.

30 Q. Right.

A. Mm-hmm.

Q. But you don't remember what you did.

A. On August 6th?

Q. That's right.

A. I could have worked, I could have filmed some videos, that's generally what I do. So, if I had to be up in the morning, if I had something going on that day, potentially, I don't remember.

5

Q. All right. And you also don't remember - correct me if I'm wrong - what you did August 5th, 2020, during the day.

A. What you mean during the day, like before our date?

10

Q. Yes.

A. I was working and I was preoccupied 'til later I the day.

Q. Where were you working?

A. I either would have been working at home or in Hamilton.

15

Q. Do you remember whether you were home or in Hamilton?

A. At some point I was home doing some work.

Q. Any other details you remember?

A. Besides that I was working at some point at home?

20

Q. Yes.

A. No.

Q. By all accounts on your testimony, sir, your night with [REDACTED] was just a normal, like, no - no, nothing out of the ordinary for you, is that fair?

25

A. Do you mean like.

Q. It wasn't problematic for you, let me put it that way.

30

A. That day?

Q. Yes.

A. No. Not really, no.

Q. So, by your own interpretation of the night, she

went home, you went to bed, and that was the end of it.

A. Yeah.

Q. And then you never followed up with her again.

A. That's right.

5 Q. After going through all the effort of locating her on Instagram, setting up a date, showing her around your home, you didn't follow up with her?

A. That's right.

Q. Why is that?

10 A. That's not much effort to do. I'm just saying, that's not much effort to do. Like our entire date was an hour and a half, maybe, you know, and we texted back and forth for a couple days before. But would I have gone on another date with her in the future, potentially, I was open to the idea.

15 Q. But you didn't show any interest after she left that night, right?

A. By show interest do you mean, like contact her?

Q. Right.

A. I did not contact her after, no.

20 Q. You provided us with a lot of details in your recollection of what happened with you and [REDACTED] with Mr. Fahmy, is that fair, is it fair for me to put it that way?

A. Sure, yeah.

Q. It is or is it not?

25 A. That's fair, yeah.

Q. And what I heard loud and clear was that a condom was not used, right?

A. That's correct, yeah.

30 Q. Sir, you'd agree with me that because this was your first meeting with [REDACTED], you didn't really know her, right?

A. I didn't know her that well, no.

Q. You wouldn't have really known what her general

disposition is, like what she's normally just doing, like when she's chilled out, to put it that way? Her general disposition, do you know what I mean by that?

A. She was very chill.

5 Q. Okay. So, your observation of her that day was she was very chill.

A. Yes. She was chill, yeah.

Q. But my question to you, sir, is you don't know what she's generally like, is that fair?

10 A. I hadn't spent any time with her before to determine if she's always chill or if she's sometimes chill. Yeah, that was my only reference point, really, besides the homecoming video.

15 Q. I'm suggesting to you, sir, that your plan, from the moment you reached out to [REDACTED] on Instagram, was to get her back to your place, is that fair?

MR. FAHMY: Objection, Your Honour. I - I can't that - that there's, is this - is this, is there now motive involved in - in the sexual offence act. I mean, what, what's the relevance of that?

20 THE COURT: Well, I'm going to allow the question.

He's asking us a plain question about what his motivation was. His answer will address that.

MR. FAHMY: Okay.

25 THE COURT: It's a suggestion. Go ahead.

MR. SOSA: Q. I'll repeat the question. I'm suggesting to you, you answer however you want.

A. Yeah.

30 Q. From the moment you reached out to [REDACTED], you wanted her back at your place.

A. The intention was to go on a date, and go on a hike and then get drinks, and if she wanted to, yes, she could come

to my house. But we met at my house, so I did tell her come to my house. So, yes.

Q. She arrived at 8:30, right?

A. Around there, yeah.

5 Q. And based on my recollection of the evidence, she testified that she was messaging her friends at 9:46 p.m., does that sound about the time that she left you?

A. Around then, yeah.

10 Q. So, you're with her for, at most, an hour and fifteen minutes.

A. Approximately, yes, yeah.

Q. And in an hour and fifteen minutes you were able to greet each other, right, at your place?

A. Greet, greet each other?

15 Q. Greet, yes, greet.

A. We greeted each other, yeah.

Q. Show her around your home.

A. Briefly, yeah.

Q. Right?

20 A. Yes, I briefly showed her areas of my home.

Q. You left your home, tried to find a hiking trail, right?

A. I knew where the hiking trail was, but we drove to it, yes.

25 Q. You drove back to your place, right?

A. Yes, that's right.

Q. Put on a TV show.

A. Yes, that's right.

30 Q. And then something happened between you and her, right, back in your room?

A. Something happened. You mean, like sex?

Q. Right.

A. Yeah.

Q. So, all those activities in, at most, an hour and fifteen minutes, I have that right?

A. Yes, that's right.

Q. [REDACTED] testified the kissing was consensual.

5 You've described it very similarly that it was consensual, you remember that.

A. I - I was consenting, yes.

10 Q. Where it takes a turn is when you started biting her nipples.

A. I did not bite her nipples.

Q. She pushed you...

A. That did not happen.

Q. ...you ignored her.

A. Sorry, go ahead.

15 Q. And you ignored her push.

A. That did not happen.

Q. It should have been obvious to you at that point, sir, I'm suggesting to you, that she was no longer consenting to what the two of you were doing.

20 A. She did not push me away, like you are implying, sir.

Q. What you did next was, then you forced your fingers into her vagina.

25 A. No.

Q. And you were aggressive throughout all of this.

A. No, I was not aggressive, and I did not force anything.

Q. She never pushed your hand away?

30 A. That's correct. She never pushed my hand anywhere.

Q. You weren't calling her names such as slut?

A. I did not call her slut, I called her other names.

Q. What other names?

A. Good girl, bad girl.

5 MR. SOSA: Can I see Exhibit 14, please? I'm just going to place Exhibit 14 in front of the witness.

MR. SOSA: Q. Sir, you'd agree, you placed yourself, pretty much in the middle of the room, right? You're 'Y' on that exhibit?

10 A. I wouldn't say that's the middle of the room, no.

Q. That's at least, by my estimation.

A. Oh, you mean like both of us, so like the middle of the whole room.

Q. I'm talking about you.

15 A. Do you think I'm in the middle of the room, here?

Q. Sir, where the 'Y' is, where you are.

A. Yes. I'm at the 'Y'...

Q. Yes.

20 A. ...and you're asking me if the 'Y' is the centre of the room?

Q. I said you've placed yourself at almost the centre of the room, is that fair?

A. I'm here, at the 'Y', yes. I'm here at the 'Y' if that's what you're asking.

25 Q. That is what I asked.

A. Yeah, I'm here at the 'Y', yeah.

Q. So, you went from off the bed all the way to almost the middle of the room?

30 A. I wouldn't quite say all the way, it's like two steps. I got off the bed here, sorry, I got off the bed here, came down here, took my pants down, and then stepped here.

Q. Sir, you're describing it that way...

A. Yes.

Q. ...to remove yourself away from the version that [REDACTED] gave, isn't that the truth?

A. Sorry, can you, sorry, can you say that again?

5 Q. You - you, if you let me finish the question then your answer might work better.

A. Sorry.

10 Q. You are intentionally placing yourself far from the bed so that it does not line up with the version [REDACTED] gave us, that she was directly beside the bed.

A. No. We were both nearby the bed.

Q. So, you're both near the bed there?

A. Yes. We're both next to the bed.

15 Q. Sir, you do not remember that night. You are not able to recall all those details that you gave us, sir. Do you agree or disagree?

A. Sorry, which details, what do you mean?

20 Q. From the moment that you start describing the kissing with [REDACTED] ...

A. Mm-hmm.

Q. ...until it ended with you ejaculating...

A. Yes.

Q. ...you don't actually remember all those details.

25 A. I do remember the majority of the details, yes, and I remember the important parts.

Q. This was another night for you, and you had no reason to reflect on what happened that night, sir.

30 A. You think that I don't remember somebody that I've hooked up, and had sex with, and went on a date with, is that what you're implying?

Q. Sir, I'm asking the question. I can repeat it.

A. Sure, yeah.

Q. But you don't ask me questions.

A. I'm sorry, I apologize.

MR. FAHMY: In all - in all fairness, Your Honour, I think Mr. Densmore's just trying to clarify what my friend is asking.

THE COURT: He'll just re-ask the question.

MR. SOSA: Q. My suggestion, sir, is there was no need for you to reflect on this night, do you agree or disagree?

A. I disagree.

Q. Why did you reflect on it then?

A. Afterwards, I started to actually think to myself, maybe I don't need to film a consent video. Maybe I'm just being paranoid. Maybe it's not necessary.

Q. And that's because you had a bad experience on this night, right?

A. That was not a bad experience.

Q. You knew she was not consenting to being forced to perform oral sex, sir.

A. That's not true. I did not force her to have oral sex. We had consensual sex, and when I pulled my phone out to record she communicated to me, with her body language, that she did not want to be recorded, so I stopped recording. I explained to her I was filming a video. She asked me to delete it and I did, and then we carried on with having sex.

Q. I'm suggesting to you, sir, that it didn't happen and what happened was, she got up to get dressed and get ready to leave. You then, went back to her and, again, forced to kiss her and to touch her vagina.

A. No.

Q. And you took no steps to make sure she was consenting.

A. Sorry, are you saying that in the context of, she

[didn't get up, if that's what you're trying to say. She stayed there, on the floor, and continued to suck my penis. I didn't ask her to, and she didn't ask me if she could suck my penis. She just started sucking my penis.]

5 Q. You also didn't take any steps to get her consent when you entered her from behind.

A. What do you mean by taking steps?

Q. I'm suggesting to you that you took no steps.

10 A. What does, sorry, I don't know what you mean by taking steps, like asking her, hey, can I put my penis into your vagina right now, at this second?

Q. You tell me. Was that a step you took?

A. I did not ask her if I could put my penis into her vagina...

15 Q. Right.

A. ...I was going based off of her body language, her moaning, and her saying that she liked it when I touched her.

20 Q. Sir, I'm suggesting to you that throughout most of your testimony when asked what she did to indicate to you that she was either agreeing or proving was moaning or 'Mm-hmm' do you remember that?

A. Yes, she was moaning, sorry, continue.

Q. It's fair, go ahead.

25 A. She was moaning and at times I'd be like, do you like that, she'd say, "Yeah. Yeah, I like that."

Q. So, sir, what I'm suggesting then is that you are just taking the answers she gave when she was consenting to the kissing and the massaging of the breasts, and then applying that to the rest of the activity.

30 A. I don't need to do that. I have the truth, man.

Q. Okay. So, do you agree or disagree then?

A. Disagree with that I'm taking statements that

she's already said?

Q. She provided....

A. I disagree, yeah. I'm not taking things she already said.

5 Q. And then when you tell us that she's telling you explicitly to spank her and to fuck her...

A. Yeah.

Q. ...you're making that up.

10 A. I'm not making that up, no. She said, "Spank me, Fuck me, Fuck me daddy," etcetera.

Q. And you remember all of that?

A. Yeah.

Q. And you also remember her going to the washroom and listening to her pee, you remember all of that?

15 A. Yeah, I didn't want to have to listen to her pee, but my walls and doors in my house are very thin. It's an old house and you can hear people pee.

Q. And you tell her you have an early morning, but today you can't tell us what you had to do in the early morning?

20 A. Yeah, I wanted her to leave, but I didn't want to say, hey, get out, that'd be rude. So, it's a polite way of saying, hey, I'd like you to leave. I'm implying that I have to go to bed soon because I have to get up early, so it would be better if you left. I'm not trying to be rude to somebody.

25 Q. Because you have now gotten what you had set out to get, right, was sex with [REDACTED].

A. I wanted to have sex with [REDACTED], yeah.

Q. With or without her consent, right?

30 A. No. Not with or without her consent. With her consent.

Q. And that's another reason why you never reached back out to her.

Jack Densmore - Cr-Ex.

Jack Densmore - Re-Ex.

A. Nope.

Q. And you knew she was crying, and you knew she was upset.

A. She was not crying, and she was not upset.

5 MR. SOSA: Just a brief moment, Your Honour. Thank you, those are my questions.

THE COURT: Re-examination.

RE-EXAMINATION BY MR. FAHMY:

10 Q. Mr. Densmore, my friend was asking you about your recollection of what had transpired between you and the complainant that night, and do you recall when you were first notified that there was going to be criminal charges?

A. Yes, I do recall.

15 Q. Okay. And when was that, sir?

A. February 2021.

Q. Okay. And you recall retaining counsel at that time or shortly thereafter?

A. Yes.

20 Q. Okay, and that was myself?

A. That's right, yeah.

Q. All right. And in and around that time, you produced, did you produce any kind of document with respect to a recollection of what had happened...

25 A. Yes.

Q. ...that night?

A. Yes.

MR. FAHMY: Thank you. Those are my only questions, Your Honour. Thank you.

30 THE COURT: Thank you. You can step down. Thank you, sir. Next defence witness, please.

MR. FAHMY: The defence rests, Your Honour. That's

the defence evidence.

THE COURT: Thank you.

E N D O F E X C E R P T O F P R O C E E D I N G S

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FORM 3
CERTIFICATE OF ELECTRONIC TRANSCRIPT (SUBSECTION 5(2))
Evidence Act

5 I, Marilyn Busch
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