

No.

IN THE

SUPREME COURT OF THE UNITED STATES

KYLE PHILLIPS,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

**On Petition for Writ of Certiorari
to the Florida First District Court of Appeal**

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

MICHAEL UFFERMAN
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COUNSEL FOR THE PETITIONER

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FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D18-3556

KYLE PHILLIPS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Leon County,
James C. Hankinson, Judge.

February 11, 2020

PER CURIAM.

AFFIRMED.

ROWE, OSTERHAUS, and WINOKUR, JJ., concur.

*Not final until disposition of any timely and
authorized motion under Fla. R. App. P. 9.330 or
9.331.*

Michael Ufferman of Michael Ufferman Law Firm, P.A., Tallahassee, for Appellant.

Ashley Moody, Attorney General; Jennifer J. Moore and Damaris E. Reynolds, Assistant Attorneys General, Tallahassee, for Appellee.

DISTRICT COURT OF APPEAL, FIRST DISTRICT
2000 Drayton Drive
Tallahassee, Florida 32399-0950
Telephone No. (850)488-6151

March 10, 2020

CASE NO.: 1D18-3556
L.T. No.: 2016-CF-3747

Kyle Phillips

v.

State of Florida

Appellant / Petitioner(s),

Appellee / Respondent(s)

BY ORDER OF THE COURT:

Appellant's motion docketed February 26, 2020, for rehearing and issuance of a written opinion is denied.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

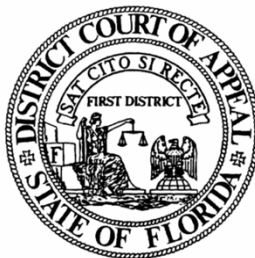
Served:

Hon. Ashley Moody, AG
Jennifer J. Moore, AAG

Damaris E. Reynolds, AAG
Michael Ufferman

th


KRISTINA SAMUELS, CLERK



In the Circuit Court, Second Judicial Circuit,
in and for Leon County, Florida

Division: **Felony**

State of Florida
v.

KYLE PHILLIPS
Defendant

Case No. **2016 CF 003747 A**

Recorded In the Official Records
of Leon County

____ Probation
____ Community Control Violator
____ Retrial
____ Resentence

JUDGMENT

The Defendant, **KYLE PHILLIPS**,
represented by, **JA KEMISAR**,
represented by, **S. SUGAN**,
being personally before this court,
attorney of record, and the state
and having
been tried and found guilty by jury/court of the following crime(s)
entered a plea of guilty to the following crime(s)
entered a plea of nolo contendere to the following crime(s)
admitted a violation of probation to the following crime(s)
ON 5-31-18

Count	Crime	Offense Statute Number(s)	Degree of Crime	Case Number	OBTS Number
1	SEXUAL BATTERY	794.011 (5)	F2	16CF3747	
2	EXTORTION	836.05	F2	16CF3747	

and no cause being shown why the defendant should not be adjudicated guilty, **IT IS ORDERED** that the defendant is hereby **ADJUDICATED GUILTY** as to all counts or as to count(s) _____.

and being a qualified offender pursuant to § 943.325, the defendant shall be required to submit DNA samples as required by law.

and good cause being shown; **IT IS ORDERED** that **ADJUDICATION OF GUILT BE WITHHELD** as to all counts or as to count(s) _____.

Filed in open court **08/20/2018**

State of Florida











v.

KYLE PHILLIPS
Defendant

Case Number **2016 CF 003747 A**

Address:

FINGERPRINTS OF DEFENDANT

1. Right Thumb	2. Right Index	3. Right Middle	4. Right Ring	5. Right Little
				
6. Left Thumb	7. Left Index	8. Left Middle	9. Left Ring	10. Left Little
				

Fingerprints taken by: Det JAMES GRANGER LEON COUNTY S.O. Det. [Signature]
Name Title

I CERTIFY that these are the fingerprints of the defendant, **KYLE PHILLIPS**, and that they were placed hereon by the defendant in my presence in open court this date.

DONE AND ORDERED in open court in Leon County, Florida, on Aug 20, 2018.

James E. Hausman
Circuit Judge

SENTENCE(As to Count 1-2)

The defendant, being personally before this court, accompanied by the defendant's attorney of record, A Kontopis, and having been given an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law; and no cause being shown

(Check one if applicable)

- ☐ the Court places the defendant on probation / community control for a period of _____ months / years under the supervision of the Dept. of Corrections, the conditions of which are set forth in a separate order.
- ☒ the Court having previously on 5-31-18, deferred imposition of sentence until this date.
- ☐ the Court having previously entered a judgment in this case on _____ now resents the defendant
- ☐ the Court having placed the defendant on probation / community control and having subsequently revoked the defendant's probation/community control.

It Is The Sentence Of The Court that:

- ☐ The defendant pay a fine of \$ _____, pursuant to section 775.083, F.S., plus \$ _____ as the 5% surcharge required by section 938.04, F.S.
- ☒ The defendant is committed to the custody of the Department of Corrections.
- ☐ The defendant is directed to the custody of the Sheriff of _____ County, Florida.
- ☐ The defendant is sentenced as a youthful offender in accordance with section 958.04, F.S..

To Be Imprisoned (Check one; unmarked sections are inapplicable):

- ☒ For a term of natural life.
- ☐ For a term of 20 months / ~~years~~.
- ☐ Said SENTENCE SUSPENDED for a period of _____ subject to the conditions set forth in this order.

If "split" sentence, complete the appropriate paragraph.

- ☒ Followed by a period of 10 YRS SEX OFFENDER on probation/community control under the supervision of the Department of Corrections according to the terms and conditions set forth in a separate order entered herein.
- ☐ However, after serving a period of _____ imprisonment in _____, the balance of the sentence shall be suspended and the defendant be placed on probation/community control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a separate order entered herein.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

SPECIAL PROVISIONS(As to Count 1-2)

By appropriate notation, the following provisions apply to the sentence imposed in this count:

Firearm	_____	It is further ordered that the _____ minimum imprisonment provision of section 775.087, F.S., is hereby imposed for the sentence specified in this count.
Drug Trafficking	_____	It is further ordered that the _____ years mandatory minimum imprisonment provision of section 893.135(1), F.S., and fine in the amount of \$ _____ is hereby imposed in this count.
Controlled Substance w/in 1,000' of School, Public Park, Comm.Center or Rec. Facility	_____	It is further ordered that the 3-year minimum imprisonment provision pursuant to 893.13(1)(c), F.S., is hereby imposed for the sentence specified in this count.
Habitual Felony Offender	_____	The defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(a), F.S.. The requisite findings by the court are set forth in a separate order or stated on the record in open court.
Controlled Substance, Manufacture of Metham-Phetamine/Phencyclidine	_____	It is further ordered that the _____ minimum mandatory provision of section 893.13(1)(g), F.S. is hereby imposed for the sentence specified in this count.
Habitual Violent Felony Offender	_____	The defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(b), F.S.. A minimum term of _____ year(s) must be served prior to release. The requisite findings of the court are set forth in a separate order or stated on the record in open court.
Prison Releasee Reoffender	_____	The defendant is adjudicated a prison releasee reoffender and has been sentenced to serve 100 percent of the court-imposed sentence in accordance with section 775.082(8)(b).
Law Enforcement Protection Act	_____	It is further ordered that the defendant shall serve a minimum of _____ years before release in accordance with section 775.0823, F.S..
Capital Offense	_____	It is further ordered that the defendant shall be ineligible for Parole in accordance with the provisions of section 775.082(1), F.S..
Short-Barreled Rifle, Shotgun, Machine Gun	_____	It is further ordered that the 5-year minimum provision of section 790.221(2), is hereby imposed for the sentence specified in this count.
Continuing Criminal Enterprise	_____	It is further ordered that the 25-year minimum sentence provision of section 893.20, F.S., is hereby imposed for the sentence specified in this count.

Dangerous Sexual Felony
Offender _____

It is further ordered that the minimum imprisonment provision of section 794.0115(2)(e), F.S. is hereby imposed for the sentence specified in this count. The defendant shall be imprisoned for a minimum of _____ years; or, _____ for a term of life.

Personal ID Information _____

It is further order that the _____ minimum mandatory provision of section 817.568 F.S., is hereby imposed for the sentence specified in this count.

Taking a Law Enforcement
Officer's Firearm _____

It is further ordered that the 3-year mandatory minimum imprisonment provision of section 775.0875 (1), F.S., is hereby imposed for the sentence specified in this Count. (Offenses committed before January 1, 1994).

Sexual Offender/Sexual Predator Determinations:

Sexual Predator _____

The defendant is adjudicated a sexual predator as set forth in section 775.21, F.S.

Sexual Offender ☒ _____

The defendant meets the criteria for a sexual offender as set forth in section 943.0435 (1)(a)1a,b,c, or d.

Age of Victim _____

The victim was _____ years of age at the time of the offense

Age of Defendant _____

The defendant was _____ years of age at the time of the offense

Relationship to Victim _____

The defendant is not the victim's parent or guardian

Sexual Activity [F.S. 800.04 (4)] _____

The offense _____ did _____ did not involve sexual activity.

Use of Force or Coercion
[F.S. 800.04 (4)] _____

The sexual activity described herein _____ did _____ did not involve the use of force or coercion.

Unclothed Genitals
[F.S. 800.04 (5)] _____

The molestation _____ did _____ did not involve unclothed genitals or the the genital area.

Other Provisions
(e.g., see Ch. 775, F.S.) _____

Defendant KYLE PHILLIPS

Case Number 2016 CF 003747 A

Other Provisions as to count(s) 1-2:

Retention of Jurisdiction _____

The court retains jurisdiction over the defendant pursuant to section 947.16(4), F.S. (2002).

Jail Credit ✓

It is further ordered that the defendant shall be allowed a total of 83 days as credit for time incarcerated before imposition of this sentence.

CREDIT FOR TIME SERVED IN RESENTENCING AFTER VIOLATION OF PROBATION OR COMMUNITY CONTROL

(Check as applicable)

IT IS FURTHER ORDERED that the defendant be allowed _____ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served and unforfeited gain time previously awarded on count(s) _____. (Offenses committed before October 1, 1989).

IT IS FURTHER ORDERED that the defendant be allowed _____ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served on count(s) _____. (Offenses committed between October 1, 1989 and December 31, 1993).

_____ The Court deems the unforfeited gain time previously awarded on the above case/count forfeited under section 948.06(7).

_____ The Court allows unforfeited gain time previously awarded in this case/count. (Gain time may be subject to forfeiture by the Department of Corrections under section 944.28(1)).

IT IS FURTHER ORDERED that the defendant be allowed _____ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served only pursuant to section 921.0017, Florida Statutes, on count(s) _____. (Offenses committed between January 1, 1994 and May 29, 1997).

IT IS FURTHER ORDERED that the defendant be allowed _____ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served only pursuant to section 921.0017, Florida Statutes on count(s) _____. (Offenses committed after May 30, 1997).

Consecutive/Concurrent
as to Other Counts

✓

It is further ordered that the sentence imposed as to count(s) 2 shall run (check one) _____ consecutive to ✓ concurrent with the sentence set forth in count 1 of this case.

Consecutive/Concurrent
as to Other Convictions

It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run (check one)

.....

_____ consecutive to _____ concurrent with the following

(check one)

_____ any active sentence being served

_____ specific sentences _____

In the event the above sentence is to the Department of Corrections, the Sheriff of Leon County, Florida, is hereby ordered and directed to deliver the defendant to the Department of Corrections at the facility designated by the Department together with a copy of this judgment and sentence and any other documents specified by Florida Statutes.

The defendant in open court was advised of the right to appeal from this sentence by filing notice of appeal within 30 days from this date with the clerk of this court and the defendant's right to the assistance of counsel in taking the appeal at the expense of the State on showing of indigency.

In imposing the above sentence, the court further recommends _____

DOWNWARD DEPARTURE; NO CONTACT WITH VICTIM,
VICTIM'S HOME OR WORK; MENTAL HEALTH
EVALUATION AND COUNSELING AS RECOMMENDED-
SIGN UP WITHIN 30 DAYS OF RELEASE;
COURT RECOMMENDS DOC HOUSE NEAR AS
CLOSE TO BROWARD COUNTY AS POSSIBLE

Defendant KYLE PHILLIPS

Case Number 2016 CF 003747 A

JUDGMENT FOR FINES, COSTS, FEES AND SURCHARGES

IT IS THE JUDGMENT AND ORDER OF THE COURT THAT DEFENDANT IS LIABLE FOR AND SHALL PAY THE FOLLOWING:

1. \$ 1950.00 as a fine pursuant to §775.083, F.S.
2. \$ 97.50 as the 5% surcharge required by §938.04, F.S..
3. \$20.00 as a court cost pursuant to §938.06, F.S. (Crime Stopper Trust Fund).
4. \$3.00 as a court cost pursuant to §938.01(1) F.S. (Criminal Justice Trust Fund).
5. \$50.00 pursuant to §938.03, F.S. (Crimes Compensation Trust Fund).
6. \$225.00 (felony) / ~~\$60.00 (misd.)~~ pursuant to §938.05, F.S. (Local Government Criminal Justice Trust Fund).
7. \$2.00 as a court cost pursuant to § 938.15, F.S. (County Criminal Justice Education).
8. \$2.00 as a court cost pursuant to §938.15, F.S. (City Criminal Justice Education).
9. \$50.00 (felony) / ~~\$20.00 (misd.)~~ as a court cost pursuant to §775.083(2) F.S. (County Crime Prevention).
10. \$65.00 as a court cost pursuant to § 939.185, F.S. (County Additional Court Cost). **County, FL, Code § 7-24**
11. \$3.00 as a court costs pursuant to § 938.19 F.S. (Teen Court Assessment). **Leon County, FL, Code § 7-28**
12. ☐ \$50.00 as an application fee pursuant to §27.52(1)(b), F.S. (Indigent Criminal Defense Trust Fund) if the Defendant applied for a Public Defender and the fee has not been paid in full. The first \$50.00 collected by the clerk shall be applied toward satisfaction of this fee.
13. ☐ If checked, the Defendant shall pay \$135.00 as costs pursuant to §938.07, F.S. (Driving or Boating Under The Influence).
14. ☐ If checked, the Defendant shall pay \$15.00 as costs pursuant to §938.13, F.S. (Misd. Drug Alcohol Assessment)
15. ☐ If checked, the Defendant shall pay \$5.00 as an additional fine pursuant to §316.061(1) F.S. (Leaving the Scene)
16. ☒ If checked, the defendant shall pay the following as additional statutorily mandated surcharges:
 - ☒ \$201.00 as a surcharge and condition of supervision pursuant to §938.08, F.S. (Domestic Violence Trust Fund).
 - ☐ \$151.00 as a surcharge and condition of supervision pursuant to §938.085, F.S. (Rape Crisis Program Trust Fund).
 - ☐ \$151.00 as costs pursuant to §938.10, F.S. (Children & Family Services Child Advocacy Trust Fund).
17. ☒ \$100.00 (mandatory), or the higher of documented costs of \$_____ for prosecution pursuant to §938.27(8), F.S., payable to the Leon County Clerk's Office. To be paid pursuant to the terms of the Clerk's collection program. ☐ or **Reduced to a Civil Judgment.**
18. ☐ **IF CHECKED**, \$100.00 (mandatory) or the higher costs of \$_____ for indigent legal assistance pursuant to §938.29(1), F.S.
☐ **Or Reduced to a Civil Judgment.**

☐ **IF CHECKED, THE DEFENDANT IS ORDERED TO PAY THE FOLLOWING DISCRETIONARY COSTS:**

19. \$_____ as additional fine pursuant to §775.0835(1), F.S.. (Optional Fine for the Crimes Compensation Trust Fund).
20. ☐ \$100.00 FDLE Operating Trust Fund fee, pursuant to §943.25. **If checked Reduced to a Civil Judgment**
21. ☐ If checked, the Defendant shall pay \$7.00 as costs pursuant to §318.18(14) F.S. (Replacement of Fine Revenue Fund)
(Applies to Chapter 316 Violation only.)
22. ☐ If checked, the Defendant shall pay \$30.00 as costs pursuant to §318.18 (13)(a) (Court Facilities Fund)
23. ☐ If checked, the Defendant shall pay \$3.00 as costs pursuant to §318.18 (17) (State Law Enforcement Radio System)
24. ☐ A sum of \$_____ for the cost of collecting the DNA sample required by s. 943.325, Florida Statutes.
☐ **If checked, discretionary fines are reduced to judgment, for which let execution issue.**
25. ☐ **\$1,001 Criminal Use of Personal ID (817.568(12))**

\$ 1974.50 **TOTAL Fine, if any, and Statutorily Mandated Costs, Fees and Surcharges**

\$_____	Court Costs Reduced to Civil Judgment	\$_____	Application Fee Reduced to Civil Judgment
\$_____	Court Costs/Fines Deferred	\$_____	Fine Reduced to Civil Judgment

Defendant KYLE PHILLIPS

Case Number 2016 CF 003747 A

IT IS FURTHER ORDERED AS FOLLOWS:

The defendant should follow the instruction sheet provided by the Clerk concerning the payment plans offered by the Leon County Clerk's Office.

DONE AND ORDERED in open court on: Aug 20, 2018.

James C. Hausen
CIRCUIT JUDGE

Defendant KYLE PHILLIPS

Case Number 2016 CF 003747 A

I hereby certify that a true and correct copy of the judgment/order has been served by Electronic Mail on this 24 day of Aug, 2017.

☐ State @ SAO2_leon@leoncountyfl.gov

☐ Public Defender @ service.leon@flpd2.com

Or

☒ Defense Counsel @ EFILING@JANSONLAWOFFICE.COM

GWEN MARSHALL, CLERK

By [Signature]
Deputy Clerk

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA.

CASE NO. 2016 CF 3747

SPN 247976

STATE OF FLORIDA

vs.

Kyle Phillips,

Defendant.

NOTICE OF INTENT TO INTRODUCE SIMILAR FACT EVIDENCE

COMES NOW the State of Florida, by and through the undersigned Assistant State Attorney, and hereby notifies the Defendant, Kyle Phillips, that the State of Florida, pursuant to Section 90.404(2)(b), Florida Statutes, intends to introduce the following evidence of other criminal offenses or bad acts in the above-styled case.

Based upon the Williams Rule established by Williams v. State, 110 So.2d 654 (Fla. 1959), cert. denied, 361 U.S. 847 (1959), and codified in Section 90.404(2), Florida Statutes, the State seeks to admit this evidence to prove a material fact in issue, including but not limited to: motive, opportunity, plan, intent, state of mind, knowledge, identity, modus operandi, absence of mistake of accident, and any other relevant purposes allowed by law.

The evidence sought to be introduced will show that the Defendant tried to extort an ex- girlfriend, [REDACTED] ("[REDACTED]"), with nude photos of [REDACTED] and also harassed her after seeing her out at a bar after they broke up by following her, cursing at her, and calling her derogatory names.

Respectfully submitted this 8 day of February, 2018.

JACK CAMPBELL
STATE ATTORNEY

Sarah K. Dugan
Assistant State Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to R. Timothy Jansen, by e-service to efiling@jansenanddavis.com this day of February 8, 2018.

/s/Sarah K. Dugan

Assistant State Attorney

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA

CASE NO.: 2016-CF-3747

STATE OF FLORIDA

VS.

KYLE PHILLIPS,

Defendant.

_____/

VOLUME I

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PROCEEDINGS:	JURY TRIAL
BEFORE:	THE HONORABLE JAMES C. HANKINSON
DATE:	May 30, 2018
TIME:	Commencing at: 8:30 A.M. Concluding at: 11:45 A.M.
LOCATION:	Leon County Courthouse Tallahassee, Florida
REPORTED BY:	SUSAN BRYANT, RMR, CRR Notary Public in and for the State of Florida at Large

SUSAN BRYANT, RMR, CRR
Official Court Reporter
Leon County Courthouse, Room 341
Tallahassee, FL 32301

SUSAN BRYANT, RMR, CRR, OFFICIAL COURT REPORTER

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APPEARANCES

REPRESENTING THE STATE:

SARAH KATHRYN DUGAN, ASSISTANT STATE ATTORNEY
OFFICE OF THE STATE ATTORNEY
LEON COUNTY COURTHOUSE
TALLAHASSEE, FLORIDA 32301

REPRESENTING THE DEFENDANT:

R. TIMOTHY JANSEN, ESQUIRE
ADAM KOMISAR, ESQUIRE
JANSEN & DAVIS, P.A.
1206 N. DUVAL STREET
TALLAHASSEE, FLORIDA 32301

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PROCEEDINGS

(The following took place outside the
presence of the jurors:)

THE BAILIFF: All rise. Court is now in session,
the Honorable Judge James C. Hankinson presiding.

THE COURT: Be seated, please, folks. We're in
State of Florida versus Phillips, Case No. 2016-3747.
Let the record reflect the Defendant is present with his
attorney.

Any outstanding motions or issues from the State?

MS. DUGAN: I have some Motions in Limine, Judge,
but I was wondering if we might swear the witnesses in
before we get into the Motions in Limine this morning.
That way, they can be outside the courtroom.

THE COURT: I would rather they be inside the
courtroom if we are doing Motions in Limine.

MS. DUGAN: Yes, sir. May we have a quick sidebar,
then? Okay. Can I -- can I excuse one witness?

THE COURT: Well, if -- if we've got to ask them not
to get into something, it seems to me it's beneficial for
the witnesses to hear what we're going to get into or not
get into.

MS. DUGAN: Yes, sir. The victim's father was
subpoenaed by the defense, and he doesn't have very much
knowledge about the case, so I was just hoping he

1 wouldn't be in here during Motions in Limine.

2 THE COURT: I'm not going to exclude any witness.
3 If you want any witnesses to step out, that's up to you.
4 But, anyway, let's hear your motion.

5 MS. DUGAN: For my first Motion in Limine, in
6 deposition, the victim's mother was deposed by defense.
7 She said that at some point before her daughter went
8 to -- after her daughter called the police but before her
9 daughter went in for a police interview, she contacted
10 Jack Campbell and told him about the allegations because
11 she was afraid they wouldn't be taken seriously.

12 Jack -- she said that Jack told her it sounded like
13 an extortion case. He seemed concerned, and he referred
14 her to TPD. The defense plans to get into this at trial.

15 I would object to any of the mom's interactions with
16 Jack being elicited at trial. It's all hearsay. None of
17 it's relevant to this case.

18 would you like me to move on to the next one? Or...

19 THE COURT: Yeah, go ahead.

20 MS. DUGAN: Okay. Also, the defense asked about
21 some text messages where the victim's mom tells her to
22 delete incriminating info before she gives her phone to
23 law enforcement. In the depo they both say that they are
24 talking about her doing drugs or buying drugs, and they
25 didn't -- they didn't want her to get in trouble for that

1 4 the police were just trying to get the text messages
2 from the Defendant. To corroborate this, in the
3 celebrite we have the victim, you know, texting a friend
4 and asking him, "Can you help me delete texts to drug
5 dealers off my phone so that when I give the phone to
6 police for them to get the texts from Kyle?"

7 You know, I think that, you know, them asking about
8 this, deleting this information in trial which, you know,
9 normally, I would think, you know, deleting incriminating
10 info, that would definitely be relevant at trial. But,
11 you know, from these texts we know that she's talking
12 about deleting texts to these drug dealers. And so if
13 they bring up the fact that she might have deleted items
14 from her phone, you know, they are basically opening the
15 door to get into this, you know, improper character
16 evidence. And so I would ask that that be excluded from
17 trial.

18 THE COURT: What exactly are you asking me to
19 exclude?

20 MS. DUGAN: Them asking her whether she's deleted
21 information from her phone, because her answer will be
22 yes -- I mean, I'm sorry, if she wanted to delete
23 information from her phone, because the answer will be
24 yes. And then that leaves me no choice but to go back up
25 and say, "What did you want deleted from your phone

1 before you gave it to police?" "I wanted text messages
2 to drug dealers deleted because it's not relevant to
3 this. I didn't want to get in trouble for it."

4 So basically they are opening the door to this
5 improper character evidence that would not normally come
6 up.

7 THE COURT: Okay. Next?

8 MS. DUGAN: Just a simple Rape Shield Motion in
9 Limine about -- it's going to come into evidence that she
10 cheated on the Defendant with someone else. It's going
11 to come into evidence that she did have an STD in the
12 past that she gave to the Defendant. But as far as her
13 having sex with other people, you know, after the sexual
14 battery happened, "You must not have been too upset about
15 it because this or this happened," I would ask for that
16 to be excluded.

17 THE COURT: Okay.

18 MS. DUGAN: And then my last one is just -- I think
19 it was referenced in their Motion in Limine about her
20 paying people to do homework for her. I think that, you
21 know, if they want to get into the fact that, you know,
22 she went to the victim's advocate's office; she was able
23 to move tests back; she was able to withdraw from
24 classes; this gave her some type of benefit; that's all
25 fair game, but they have that anyway.

1 She's going to admit to doing all that anyway. I
2 think that, you know, going into the additional fact that
3 she has paid someone to do homework for her before is
4 just improper character evidence.

5 THE COURT: Okay.

6 MS. DUGAN: That's all.

7 THE COURT: Defense?

8 MR. KOMISAR: Yes, Your Honor.

9 THE COURT: Let me -- let me just say, I'm not
10 overly excited about a bunch of Motions in Limine. I
11 think by and large trials have to be ruled upon as they
12 go. But -- so any rulings I make will be preliminary
13 rulings; they're not final rulings. They simply require
14 the party -- the granting of one simply requires the
15 party to bring it to the Court's attention before putting
16 it before the jury. Go ahead, Mr. Komisar.

17 MR. KOMISAR: Yes, Your Honor. In regards to the
18 information with Mr. Campbell, it's undisputed that the
19 victim has personal knowledge that her mother was in text
20 message communication with the elected State Attorney
21 before law enforcement was involved, and her mother
22 arranged for her to meet with a particular TPD officer.

23 what's unique about this case is the massive amount
24 of information that is undisputed because we have the
25 victim's text log. She was texting with her mother about

1 the communications between her mother and Mr. Campbell,
2 and that's how she has personal knowledge it existed.

3 THE COURT: The question is: why is that relevant?

4 MR. KOMISAR: Because it shows why law enforcement
5 made moves in this case and why they handled the
6 investigation the way they did.

7 The only information we would like to bring up would
8 be the mother's communication with Mr. Campbell between
9 October 10th, when the assault was alleged to have
10 happened, and six weeks later when she goes to the
11 police, and then the police finally making the decision
12 to arrest.

13 We would prefer to know exactly what was said and
14 not have to just leave it out there that there was
15 communication. But when we requested those texts from
16 the State, they informed us Mr. Campbell deleted them,
17 and the mother deleted them as well. And they were texts
18 about how the case was to be handled in this circuit.

19 Our position was they were public records. But the
20 state has told us there's nothing responsive to our
21 discovery request.

22 Additionally, the victim, when talking to her
23 friends about how the police were handling her case, she
24 had oftentimes expressed concern that there was not going
25 to be a criminal case. And her mother told her via text

1 message, "It's great the State is mad about it, they must
2 move forward with it."

3 Additionally, the victim expressed to her friend
4 that her mother was going to, with the police, "work
5 some," quote, "mom magic, but don't tell anyone." So we
6 think that's all relevant to how we got to where we are
7 today.

8 THE COURT: I'm going to grant the Motion in Limine.
9 The State Attorney's decision to move forward with the
10 case is not relevant.

11 Go to the text messages.

12 MR. KOMISAR: The deleting of the information, the
13 ones -- it's clear throughout that as soon as she learned
14 that law enforcement needed to download her phone, she
15 started working with an attorney, with her mother, and
16 with a friend to try and delete information off her
17 phone.

18 There is no basis in evidence for the State's
19 assertion that nothing was deleted. We don't know if
20 something was deleted or not. We actually can see in
21 certain areas that she was trying to delete the text
22 messages about purchasing the Adderall, which goes into
23 their motion about drug use.

24 We're not trying to bring up anything about the
25 cocaine or marijuana use that's disclosed, as we note in

1 our motion. If marijuana is brought up, we feel that --
2 about the Defendant, we feel that it was a door opening
3 for us by the victim. The drug use, we feel, is relevant
4 because it is the theory of defense in this case --

5 THE COURT: Drug usage is not one of the things
6 Ms. Dugan has gotten into at this point in time. Let's
7 deal with the four she's raised. All right.

8 MR. KOMISAR: We believe that deleting the text is
9 relevant because it shows the victim's state of mind, her
10 attempts to potentially obstruct justice; and there is no
11 way for us to know whether texts were deleted or not.

12 The victim has agreed that she canceled her meeting
13 with TPD to have her cell phone downloaded so she could
14 take a chance to attempt to delete texts. And it appears
15 from the Cellebrite that she was trying to delete texts
16 about purchasing the study drug during the time period
17 of -- directly following this incident.

18 THE COURT: So is there going to be testimony that
19 there were text messages between Mr. Phillips and the
20 alleged victim --

21 MR. KOMISAR: Yes.

22 THE COURT: -- Ms. M.?

23 MR. KOMISAR: Yes, that's a large part of the
24 State's case is introducing these text messages.

25 THE COURT: Okay. I'll deny the State's motion.

1 Let's go to the Rape Shield.

2 MR. KOMISAR: We would -- we think that the State is
3 correct, and I believe the text they're going to
4 introduce starts with the Defendant accusing the victim
5 of cheating on him, having sex with someone else; so we
6 do agree that that sexual partner is inextricably
7 intertwined.

8 The one thing we would note is at this time we don't
9 intend to bring up the fact that someone keyed the
10 victim's car during the time period after the assault,
11 prior to her reporting to law enforcement. The victim
12 agreed at deposition she did not report to law
13 enforcement until her car was keyed.

14 We would just note that if the State does open the
15 door to the car being keyed, which we don't intend to at
16 this time, the victim did disclose 24 hours to the car
17 being keyed, based on her text messages, to other
18 individuals that she had to tell about a sexually
19 transmitted issue.

20 And the day after her car was keyed, the victim sent
21 a text asking if a third male would have keyed her car.
22 So our position is that sexual partners -- we're not
23 going to go into it other than the Defendant and the
24 individual directly before the Defendant, which, should
25 the State's witnesses bring out the victim's car being

1 keyed, that would create an inference the Defendant did
2 it, and we would want to rebut that inference with the
3 information from the victim's phone about the three
4 individuals that, 24 hours prior to her car being keyed,
5 she disclosed to.

6 THE COURT: Those are exactly the kind of things why
7 I said Motions in Limine are preliminary matters.

8 MR. KOMISAR: Yes, Your Honor.

9 THE COURT: And things change during the course of
10 the trial. I'll grant the State's Motion in Limine as to
11 the Rape Shield objection.

12 About the homework situation?

13 MR. KOMISAR: The homework situation, Your Honor, we
14 addressed that in our Motion in Limine as well. It
15 clearly goes to our theory of defense, if this occurred a
16 year before or a year after. It would not be relevant.
17 This attempt to have the homework paid for occurred
18 directly during this time period.

19 Our whole theory of defense is the lengths that this
20 victim would go to improve her grades. It's undisputed.
21 During her deposition, she was a very good student. She
22 started being a very bad student prior to the assault
23 with the Defendant; and that she took certain actions
24 afterward to get grades changed and do other things, and
25 her willingness to be dishonest in that particular

1 instance.

2 As we noted in our Motion, we directly asked her:

3 "Question: You lied to your parents about obtaining
4 money to pay?" She responded: "Yes."

5 "Question: So that's you being dishonest with your
6 parents to improve your grades?"

7 "Answer: Yes."

8 "Would you be dishonest with anyone else?"

9 "Probably, I guess."

10 we think that goes directly towards her credibility
11 as a witness as to what she was willing to do to assist,
12 and we think the case law shows that when we have a
13 theory of defense, we should be allowed to go down that
14 path if there's anything tenable that could show that
15 it's relevant.

16 THE COURT: I grant the State's Motion in Limine as
17 to the homework issue.

18 Now, you had some Motions in Limine of your own?

19 MR. KOMISAR: There was an injunction *ex parte* filed
20 in this case. There's been no findings made. We moved
21 that none of the State's witnesses reference the
22 injunction. The injunction itself was a --

23 THE COURT: Is the State opposed to that?

24 MS. DUGAN: I don't plan to get into it, sir.

25 THE COURT: Okay. I grant the Motion in Limine as

1 to the injunction.

2 MR. KOMISAR: We also filed, Your Honor, a motion --
3 we're not aware what the State's theory is, whether they
4 are going to argue that consent was never given --

5 THE COURT: If that's your second Motion in
6 Limine --

7 MR. KOMISAR: Yes, Your Honor.

8 THE COURT: I deny your second Motion in Limine.
9 what else do you have?

10 MR. KOMISAR: One moment, Your Honor. The State
11 listed during jury selection a witness, Loubert.

12 THE COURT: Would you spell that?

13 MS. DUGAN: L-o-u-b-e-r-t.

14 THE COURT: Do that again.

15 MS. DUGAN: L-o-u-b-e-r-t.

16 THE COURT: Okay.

17 MR. KOMISAR: Her only relevance would be to a past
18 injunction, which we would also move is irrelevant, so we
19 would object to any reference to a past injunction with
20 Loubert. And that is separate to the Williams Rule. The
21 State --

22 THE COURT: I'll deal -- I'll deal with that when
23 they decide they're going to get into that.

24 MR. KOMISAR: All right. That's all I have then.

25 THE COURT: All right.

1 MR. KOMISAR: Other than our Williams Rule.

2 THE COURT: What's that?

3 MR. KOMISAR: Other than our Williams Rule Motion.

4 THE COURT: Is the State planning to get into some
5 kind of Williams Rule evidence?

6 MS. DUGAN: I have one 15-minute possible Williams
7 Rule witness.

8 THE COURT: Here is my ruling on Williams Rule:
9 It's not to be mentioned or admitted until the State has
10 finished their case in chief. If you at that point think
11 there is similar fact evidence that's admissible, Ms.
12 Dugan, bring that to my attention before you rest. If
13 necessary, I'll take a proffer and I'll rule on it at
14 that point in time. So, essentially, I'm granting a
15 preliminary Motion in Limine if there's any similar fact
16 evidence.

17 MR. KOMISAR: Thank you, Your Honor.

18 If I could, just so I don't cause any problems, and
19 the State can correct me if I'm wrong, the Court has
20 excluded any evidence of paying for the grades or
21 homework help. But the Court is allowing evidence as far
22 as the drug use. The Court is excluding any other sexual
23 partners. And the Court is excluding the communications
24 with the State Attorney?

25 THE COURT: I'm not sure. I was not on your same

1 wavelength with you when you started, Mr. Komisar. I
2 think -- let's not get -- I'm not going to try to repeat
3 what I've -- what I've done okay.

4 I'll go from my notes. I granted the State's Motion
5 in Limine as to the mother's contact with the State
6 Attorney.

7 I denied their Motion in Limine as to deleting text
8 messages.

9 I granted their Rape Shield request.

10 I granted their paying for people to do homework.

11 I granted your motion as to injunction. And I grant
12 as to any similar fact evidence.

13 MR. KOMISAR: Thank you, Your Honor.

14 THE COURT: Does that leave anything else?

15 MS. DUGAN: I just was planning to do one thing a
16 little different than what I've done in past trials, so I
17 wanted to let the Court know what my plan is.

18 There are, I would say, about 15 pages of text
19 messages that pretty much outline part of the extortion
20 case in this -- in this case.

21 Usually, I -- with relevant text messages, I have
22 the investigator read through them. But I think the more
23 efficient thing in this case, because I have so many
24 questions about the texts, would be to read through them
25 with the victim.

1 I was planning to read the Defendant's statements
2 and have the victim read her own statements. That way we
3 can go through them as quickly as possible. And I have a
4 copy of each text message packet for each juror and for
5 the Court and for the defense. So that's what I was
6 planning to do with those, how I was planning to publish
7 those. I wanted to let the Court know.

8 THE COURT: Okay. All right. Anything else?

9 MS. DUGAN: No, sir.

10 THE COURT: Does the defense want the instruction of
11 the right to remain silent to be given as part of the
12 preliminary instruction?

13 MR. JANSEN: Yes, Your Honor.

14 THE COURT: Okay. There are standard procedures on
15 the desk. If you're not familiar with them, I would ask
16 that you review those.

17 I've gotten a witness list from the State. Does the
18 defense have a witness and evidence list? If you don't,
19 it can be handwritten.

20 MR. JANSEN: We'll handwrite it, Your Honor.

21 THE COURT: We're going to take a break before we
22 start with the jury. Just -- just handwrite it for me,
23 please, sir.

24 Has the State marked their evidence?

25 MS. DUGAN: Yes, sir.

1 THE COURT: And it's been shown to the defense?

2 MS. DUGAN: Yes, sir.

3 THE COURT: The defense has seen the marked
4 evidence?

5 MR. KOMISAR: Yes, Your Honor.

6 THE COURT: All right. We don't need to make a big
7 charade of showing it to the other side. Y'all know
8 what's been marked. If you change anything, Ms. Dugan,
9 bring that to the defense's attention.

10 I sent y'all a draft set of jury instructions last
11 night or yesterday. I assume both sides received those?

12 MR. KOMISAR: Yes, sir.

13 MS. DUGAN: Yes.

14 THE COURT: Okay. I've seen the proposal from the
15 defense. We'll discuss that later. I'm not going to get
16 into that at this point in time.

17 Anybody aware of anything else unusual you're going
18 to be seeking in the way of jury instruction?

19 MS. DUGAN: No, sir.

20 MR. KOMISAR: No, sir.

21 THE COURT: We have multiple attorneys involved. I
22 guess -- I don't know. Is Mr. Rogers going to be with
23 you?

24 MS. DUGAN: He is not. He was just here yesterday.

25 THE COURT: All right. Anyway, we have multiple

1 attorneys for the defense. The way I want to do it is
2 whichever attorney is handling that particular part of
3 the trial should be the person to make objections and
4 legal arguments.

5 So, in other words, if Mr. Jansen is handling the
6 cross examination, he should be the one to make any
7 objections during the direct. I don't want to get into
8 back and forth between the attorneys.

9 MR. KOMISAR: Yes, sir, Your Honor.

10 THE COURT: Is that clear enough?

11 MS. DUGAN: Yes, sir.

12 MR. KOMISAR: Yes. We understand.

13 THE COURT: Either side wish to invoke the Rule of
14 Sequestration?

15 MR. JANSEN: Yes, sir.

16 THE COURT: Let's have all the potential witnesses
17 please stand. The Rule of Sequestration has been
18 invoked. That means you need to remain outside the
19 courtroom except while you're testifying. While you're
20 waiting to testify and until you've been excused, you're
21 not to discuss the case among yourselves or with any
22 other person.

23 Important exception to that is you are free to talk
24 to the attorneys for either side, just not in the
25 presence of any other witnesses.

1 Admonish counsel if there are any witnesses not
2 present, it's your obligation to make the witnesses aware
3 of the Court's ruling. Let's go ahead and swear the
4 witnesses, please.

5 THE CLERK: Please raise your right hands.

6 (The witnesses were duly sworn.)

7 THE COURT: All right. Y'all may step out.
8 Anything else from either side?

9 MS. DUGAN: No, sir.

10 MR. JANSEN: Judge, we have one witness, Mr. Caplan,
11 Investigator Caplan, and I don't believe I saw him this
12 morning. He may be here this afternoon, Your Honor.

13 MS. DUGAN: I talked to him last night. He had
14 something going on this morning, but I told him as long
15 as he was here by late morning, that would probably be
16 fine both of with us.

17 MR. JANSEN: Okay.

18 THE COURT: I advise y'all, if you have some witness
19 that's not here, it's your obligation to make him aware
20 of the ruling, but I don't require that all witnesses be
21 here. Is that what your question was?

22 MR. JANSEN: Yes, Judge. I didn't see him when you
23 were swearing the witnesses in.

24 THE COURT: Y'all can just remind me, though, if
25 someone wasn't sworn. Help me keep up with that. I'm

1 assuming we've sworn the bulk of the witnesses.

2 MR. JANSEN: Yes, Your Honor.

3 THE COURT: Anything else?

4 MS. DUGAN: No, sir.

5 THE COURT: We got all the jurors?

6 THE CLERK: Yes, sir.

7 THE COURT: All right. We'll take 10 minutes and
8 we'll start with the jury.

9 (Recess.)

10 THE BAILIFF: All rise. Court is back in session.

11 THE COURT: Be seated, please. Let's have the jury,
12 please.

13 THE BAILIFF: All rise for the jury.

14 (The jury entered the courtroom, and the following
15 took place in open court:)

16 THE COURT: All right. If y'all would face the
17 clerk and be sworn, please.

18 (The jury was duly sworn.)

19 THE COURT: All right. Have a seat. Good morning,
20 folks. Thank you for being back here this morning. We
21 do appreciate it.

22 You have now been selected and sworn as the jury to
23 try the case of State of Florida versus Kyle Phillips.
24 As we've already discussed, this is a criminal case.
25 Mr. Phillips is charged with sexual battery and

1 extortion.

2 Later during the course of the trial, I will explain
3 to you the exact elements of those two offenses. The
4 charging document or the Information that the State files
5 that I referred to earlier is not to be considered by you
6 as any proof of guilt.

7 It's my job to decide the law and to explain the law
8 to you. It's your job to decide the facts and to apply
9 the facts to the law. Thus, we have totally separate
10 jobs, and that's one of the fundamental principles of our
11 system of justice. I decide the law. You decide the
12 facts. You apply the facts to the law.

13 I know all of you have probably seen trials on TV,
14 but you may not see one from beginning to end, so it may
15 be helpful to go through the sequence of events in the
16 trial.

17 At the beginning of the trial, the attorneys will
18 have an opportunity, if they wish, to make an opening
19 statement. The opening statement gives the attorneys a
20 chance to tell you what evidence they believe will be
21 presented during the trial. What the lawyers say is not
22 evidence, and you're not to consider it as such.

23 Following the opening statements, witnesses will be
24 called to testify under oath. I've already sworn most of
25 the witnesses. They will be examined and cross examined

1 by the attorneys. Documents and other exhibits also may
2 be produced as evidence.

3 After the evidence has been presented, I will
4 instruct you on the law. The attorneys will then have an
5 opportunity to make their closing arguments. Following
6 the closing arguments and some brief comments by me,
7 you'll retire to consider your verdict.

8 You should not form any definite or fixed opinion on
9 the merits of the case until you have heard all the
10 evidence, the instructions on the law, and the argument
11 of the attorneys. Until that time, you are not to
12 discuss the case among yourselves.

13 Your verdict must be based solely on the lack -- on
14 the evidence or lack of evidence and the law that I will
15 explain to you.

16 I now instruct you not to communicate with anyone,
17 including your fellow jurors, about this case. No
18 communication includes no e-mailing, text messaging,
19 tweeting, blogging, or any other form of communication.
20 You cannot do research about the case or look up
21 information about the case. If you become aware of any
22 violation of any of these rules, please notify the Court
23 personnel.

24 During the course of the trial, we will take
25 recesses, and you'll be allowed to separate and go about

1 your personal affairs. During the recesses, you must not
2 discuss the case with anyone nor permit anyone to say
3 anything to you or in your presence about the case. If
4 anyone attempts to say anything to you or in your
5 presence about the case, tell them that you're on the
6 jury and ask them to stop. If they persist, leave them
7 at once and immediately report the matter to the bailiff,
8 who will advise me.

9 The case must be tried by you only on the evidence
10 presented during the trial, in your presence and in the
11 presence of the Defendant, the attorneys, and myself.

12 As I've indicated, jurors must not conduct any
13 investigation of their own. This includes reading a
14 newspaper, watching television, or using the computer,
15 cell phone, the Internet, any electronic device or any
16 other means at all to get information related to the case
17 or the people and places involved in the case. This
18 applies whether you're at the courthouse, at home, or
19 anywhere else.

20 You must not visit places mentioned in the trial or
21 use the Internet to look at maps or pictures to see any
22 place discussed during the trial.

23 I know this is a little counterintuitive. We get
24 used to every time we have a question, we hop on our
25 phone or computer and look up something. Obviously, we

1 can't try a case in that way because we would have no
2 idea what you're looking at.

3 In every criminal proceeding a defendant has the
4 absolute right to remain silent. At no time is it the
5 duty of a defendant to prove his innocence. From the
6 exercise of a defendant's right to remain silent, a jury
7 is not permitted to draw any inference of guilt; and the
8 fact that the Defendant did not take the witness stand
9 must not influence your verdict in any manner whatsoever.

10 The attorneys are trained in the rules of evidence
11 and trial procedure, and it is their duty to make all
12 objections they feel are proper.

13 When an objection is made, you should not speculate
14 upon the reason why it is made. Likewise, when an
15 objection is sustained or upheld by me, you must not
16 speculate on what might have occurred had the objection
17 not been sustained nor what a witness might have said had
18 he or she been permitted to answer.

19 If you would like to take notes during the trial,
20 you may do so; on the other hand, you're not required to,
21 that's entirely up to you. We've provided you with a
22 notepad and a pen for your use if you wish to take notes.
23 Any notes that you take will be for your personal use.
24 However, you should not take them with you from the
25 courtroom until you start your deliberations.

1 During recesses, if you'll just leave your notes in
2 your seat, the bailiff will ensure they are not tampered
3 with by anyone.

4 After you've completed your deliberations, the
5 bailiff will destroy your notes. No one will ever read
6 your notes. If you take notes, do not get so involved in
7 note taking that you become distracted from the
8 proceedings.

9 You may wonder what I mean by that. We've had a
10 rare instance where some juror decides to kind of be like
11 the court reporter and try to take down everything that's
12 said. An important part of your job is to observe the
13 witnesses, decide whether you think they are accurate
14 historians or not. Don't get so buried in note taking
15 that you lose that function.

16 Your notes should be used only as aids to your
17 memory. Whether or not you take notes, you should rely
18 on your memory of the evidence, and you should not be
19 unduly influenced by the notes of other jurors. Notes
20 are not entitled to any greater weight than each juror's
21 memory of the evidence.

22 During the trial, you will be permitted to ask
23 questions of witnesses in case you missed something, you
24 did not understand something, or you need to clarify a
25 pertinent issue. The rules of the evidence apply

1 regardless of whether a question is asked by the
2 attorneys, by me, or by you. Therefore, there may be a
3 legal reason why I cannot ask the question.

4 If I do not ask your question, you must not hold
5 that against any of the parties and please do not take it
6 personally.

7 Subject to that understanding, this is how we will
8 proceed: when the attorneys have finished asking their
9 questions, if you have a question, just raise your hand,
10 indicate you have a question. I try to remember to stop
11 and ask each time, but occasionally I'll forget. Just
12 raise your hand. I'll give you time to write your
13 question down on a clean piece of paper. The bailiff
14 will collect your question. I will then confer privately
15 with the attorneys.

16 If I determine that it is a legally appropriate
17 question, I will ask your question, and the attorneys may
18 ask follow-up questions.

19 If your question is not asked, you must not discuss
20 it with the other jurors or hold it against either party.

21 The questioning of witnesses is the primary
22 responsibility of the attorneys. You are not obligated
23 to ask any questions nor encouraged to ask large numbers
24 of questions. However, if it will help your
25 understanding of the case, you may do so.

1 As I indicated, the next thing to occur is the
2 attorneys will be given an opportunity to make their
3 opening statements. As I've also said, what the
4 attorneys say is not evidence, and you should not
5 consider it as such. However, I do encourage you to give
6 them your careful attention.

7 The opening statements are intended to give you an
8 understanding of the evidence that the attorneys expect
9 to present and the issues in the case.

10 we'll start with the State of Florida. Ms. Dugan.

11 **OPENING STATEMENT**

12 MS. DUGAN: Please the Court and counsel. Good
13 morning, everybody. Thank y'all for being here today.
14 Again, my name is Sarah Katherine Dugan. I represent the
15 State of Florida in this case.

16 This morning y'all are going to meet a young woman
17 whose name is B.M. Ms. M. and the Defendant in our case,
18 Kyle Phillips, dated for about six months back in 2016,
19 and they broke up in early October of that year.

20 At the time Ms. B.M. was -- I'm sorry, Ms. M. was 19
21 years old, and the Defendant was 24. After they broke
22 up, the Defendant found out that when they were together,
23 Ms. M. had cheated on him. And as soon as he found out
24 about this, which was about October 8th of 2016, the
25 Defendant began texting Ms. M. And he began telling her

1 he knew what she had done and calling her names, calling
2 her a slut, calling her a whore.

3 Ms. M. apologized to him but said, you know, "Leave
4 me alone." Their breakup wasn't about this other guy.
5 "We were going to break up anyway." Things just weren't
6 working out.

7 The Defendant, though, was furious. He was furious
8 that Ms. M. had cheated on him when they were together,
9 and he set out to try to humiliate her any way that he
10 could.

11 First, he posted on her social media that she had
12 given him an STD, and he called her a slut on social
13 media. Then he texted her and told her that he would
14 tell everybody he meets that she had given him an STD;
15 that she had cheated on him; and he reminded her, "Hey, I
16 also have these naked pictures of you and this sex video
17 from when we were together. It's on my phone, and
18 anybody will be able to see it."

19 Ms. M. was obviously very upset about this. She
20 told him, you know, "It's against the law to post naked
21 pictures of me or a sex video of me. You can't post
22 stuff like that."

23 And he says, "well, I won't post them, but I'll show
24 them, and I just won't be able to help it if people
25 happen to look through my phone and see a bunch of naked

1 pictures and video of you."

2 Ms. M. then goes from, you know, being standoffish
3 to the Defendant at first when he's texting her, to
4 literally being willing to do whatever it takes to get
5 these photos deleted.

6 First, she begins begging him to delete them. Then,
7 you know, once he tells her, you know, she has one chance
8 to get these photos deleted, and that's to come talk to
9 him in person right now. You know, she tells him, "I'm
10 not coming over right now. It's 1 a.m. I've got a test
11 tomorrow. I don't want to see you."

12 So, you know, at that point she starts calling him.
13 She calls him 10 or 15 times to try to -- "If you want to
14 talk to me, here, let's talk. But I'm not coming over
15 right now."

16 And he doesn't answer her phone calls, and he
17 reiterates the only way that they'll be deleted is if she
18 comes over and talks to him in person. If she doesn't,
19 then, oh, well, she lost her chance. And he tells her he
20 already showed a couple of people.

21 Needless to say, Ms. M. goes over to see the
22 Defendant that night to get those pictures deleted. Once
23 they get to his house, they get in an argument. It's
24 emotional. They're both upset.

25 Ms. M. is doing everything she can to try to appease

1 the Defendant so he will stop harassing her with these
2 naked photos.

3 The Defendant at one point suggests that he just
4 stay at her house because -- I mean, I'm sorry, she just
5 stay at his house because at that point it's like 5 or 6
6 a.m. She does, thinking that, you know, maybe now he's
7 not as mad as he was before. If I just continue to do
8 whatever he wants, he will delete these pictures; he'll
9 leave me alone.

10 As soon as they get into bed, he starts trying to
11 have sex with her. She's telling him no. She's saying,
12 "I don't want to."

13 And he eventually says to her, "Look, if you want
14 things to be resolved between us, if you want me to
15 accept you and things to be okay, then you'll let me do
16 this."

17 And so she stopped saying no. She doesn't fight him
18 off. She lets him take off her pants, and they start to
19 have sex. And she thinks, you know, okay, this means
20 that if I let him do this, then the harassment will stop;
21 he'll stop posting these ugly things about me on the
22 Internet; he'll stop texting me, calling me names, and
23 stop hanging these photos over my head.

24 So she does it. And at first, the sex is normal.
25 It's not too weird for her. I mean, because they had

1 just broken up really recently. But then Ms. M. says the
2 Defendant's tone changed, and it wasn't just normal sex
3 anymore. It went from normal to being very weird and
4 disturbing.

5 She says she was laying stomach down on the bed, and
6 he was on top of her. And he asked her, "Is this what it
7 felt like when you cheated on me?"

8 And then he started laughing at her, calling her
9 names, calling her a whore, calling her a slut. He's
10 laying on top of her. Her stomach is down, and his
11 weight is on her so she can't get away, and she's yelling
12 at him, you know, "Get off me. Get off me." And he
13 won't.

14 He continues to penetrate her for about a full
15 minute after she first starts saying, "Get off me," to
16 the time when he finally gets off.

17 And once he got off of her, you know, she is crying.
18 He's still laughing at her and calling her names. She
19 puts on her clothes. She runs out to the car. The
20 Defendant follows her out there. He's still laughing at
21 her. He follows to her car, calling these names, saying,
22 "I can't believe you just let me do that. You're a
23 whore. Thanks for the ride," and takes out his phone.
24 And when she gets into her car, he puts the phone up to
25 the glass and is showing her these photos. "Look, you

1 whore, look," taunting her with them.

2 And it was then that Ms. M. realized, you know,
3 everything the Defendant had done that day from posting
4 her social media, calling her names, coercing her to come
5 over to his house to get these pictures deleted, coercing
6 her into having sex by promising things will be resolved,
7 "I'll accept you." Then finally, you know, this
8 disgusting treatment of her during sex where he's calling
9 her names; he's pinning her down; he's not getting off of
10 her. All of that was done to try to get revenge on her
11 for cheating on him and to embarrass her and humiliate
12 her and make her feel like she was nothing.

13 Please listen closely to all the evidence that you
14 see and hear today; and at the end of this case, you're
15 not going to have any reasonable doubts that the
16 Defendant is guilty as charged. Thank you.

17 THE COURT: Defense?

18 **OPENING STATEMENT**

19 MR. JANSEN: Your Honor, Counsel, good morning.
20 Timothy Jansen. Again, along with Adam Komisar, we're
21 going to be representing Mr. Phillips, Kyle Phillips in
22 this case.

23 The opening argu- -- the opening, it's not an
24 argument, it's supposed to give you a roadmap. You've
25 heard the State's opening, and this is our view of what

1 we believe the evidence is going to show in this case.

2 You have two college kids. Kyle Phillips was a
3 college kid and B.M. were both in college at FSU. They
4 met in March 2016 at a bar called Pot's. Ms. M. took a
5 liking to Mr. Phillips immediately, and that evening
6 refused to go anywhere but with him that night. And they
7 went home and they talked for hours and hours. And that
8 relationship started -- the relationship started in a
9 bar, it started with alcohol, and Ms. M. was quite
10 smitten with Mr. Phillips.

11 They dated. They lived together for a few weeks.
12 Their relationship was boyfriend-and-girlfriend. And
13 you're going to hear that it was a very romantic, sexual
14 relationship they had, normal for college kids at this
15 point.

16 The relationship was -- was fine on 10/2, everything
17 was fine; and then all of a sudden, 10/3 of '16, 10/3 of
18 '16, out of the blue, Mr. Phillips is -- she says she
19 wants a breakup.

20 But the evidence is going to show it really wasn't a
21 breakup. He couldn't understand it. He was in love with
22 her. He was heartbroken. He was smitten by her. And he
23 couldn't understand why the relationship had broken down.

24 On 10/3, he lashes out. He is heartbroken, and he
25 does lash out. He said some things like, "You wasted my

1 time. I should have known. I should have never trusted
2 you. How could you do this to me? why are you breaking
3 up with me? what's the problem?"

4 Now, she says they're broken up. But on 10/3, after
5 they're allegedly broken up, she drives over to his
6 apartment. She comes into the apartment, and they engage
7 in sexual activity, consensual sexual activity. And
8 then -- you're going to hear it's very physical, in a
9 consensual way.

10 But she comes over on 10/3 and engages in sexual
11 activity with him. After that sexual activity, he's
12 trying to get back -- she's leading him on that their --
13 their relationship is back on. And then she said, "well,
14 I want my property." He wants his property. And they go
15 on and on. And she even texted a friend, "I can't
16 believe I went over to Kyle's and had breakup sex."

17 So while there's a breakup, there's no stop in
18 sexual activity on 10/3. So he wants his property back.
19 She has some of his property.

20 So now on 10/4, he still hasn't gotten his property.
21 He's asking her for the property. And on 10/4, he's
22 again trying to get the relationship back. He said,
23 "what's wrong? we had a good thing going. why do you
24 want to do the this? we have such good things going."

25 On 10/4, she comes over to the apartment again, and

1 they again engage in sexual activity, consensual sexual
2 activity, oral sex and sex on 10/4.

3 Again, on that day, she then tells a friend she
4 can't believe we did it. "I did it again. Please don't
5 let me go over there."

6 And he again thinks, okay, we're back to a
7 relationship, and there was some bad texts. He was
8 reaching out again. And at this point, after the second
9 time she comes back and has sex, the text messages start
10 to get more friendly between the two of them. It's like
11 a dating relationship again. "Can we meet? How are you
12 doing? What's your day?"

13 Then on 10/5, he clearly believes the relationship
14 is -- is back to normal. He sends her these little
15 sexual innuendos and invites her and says, "You come
16 here, and I'll perform oral sex on you." And her
17 response was, "Horny, LOL, I'll be right over. It has to
18 be quick."

19 So on 10/5, she again travels to his same home and
20 they engage in consensual sexual activity. At that time
21 she was supposed to -- he was supposed to give a kennel
22 and she was supposed to him give him his check.
23 Afterwards he texts that, "You forgot to give me my work
24 check."

25 So this is the third time since this so-called

1 breakup that they've engaged in consensual sexual
2 activities where she's traveled to his house, and they've
3 engaged in sexual activity. He -- it's not just sex. He
4 is emotionally in love with her. He loves her, and he
5 can't understand why the relationship isn't back to
6 normal, and he thinks it is at this point.

7 So on 10/6 or 10/7, he says, "Hey, I know you're
8 going to your parents' for the weekend, but why don't you
9 come over and we can have sex before you go to your
10 parents."

11 And you're going to hear some -- some language, it's
12 very descriptive, sexual language. But -- and she texts
13 her friends, "I can't believe I keep doing this."

14 And so then she admits that what she's doing is
15 wrong. And she can see what he's doing, but she kept
16 going over there and kept him on this emotional yo-yo.
17 And 10/8 is when he finds out, apparently from a friend
18 of hers, that Ms. M. had cheated on him with a certain
19 fraternity guy.

20 And so after these three consensual sexual
21 encounters, he realizes again that he's been played the
22 fool again. And so what does he do? He lashes out
23 again. He's emotional. He's telling her -- and he's
24 calling her every name you can call somebody, derogatory.
25 No question about it. He's calling her -- the words are

1 in -- slut, whore, whatever you want to call -- he's
2 calling her. He's lashing out because he's hurting.

3 well, this day she said she was too tired to come
4 over. And then he finds out about this fraternity guy
5 that she cheated on him with. And so now we're at 10/9.
6 She mentions some pictures. She brings up some pictures,
7 and I guess maybe posted some picture, and he posted
8 something on the Internet about her giving him an STD.
9 He's lashing out. He's hurting. He was emotionally
10 drawn in. He got drawn back in with her, and then he
11 finds out again she was untrustworthy.

12 So she wants to get these so-called pictures. Now,
13 throughout the text messages and conversations, he never
14 threatened to post them or send them to anyone. And she
15 is saying, "You can't have them." And legally she gave
16 them to him. And the evidence is he wasn't going to do
17 anything with them. He wasn't going to post them.

18 He told her repeatedly in multiple texts during this
19 time, "I'm never going to post them. I'm never going to
20 send them, and I'm not threatening you with them." But,
21 nevertheless, she wanted them.

22 So he then says, "well, I want closure. I want you
23 to talk to me, and I want you to apologize for your
24 actions. I want you to clarify what you did to me." And
25 so he goes, "I want to talk to you in person."

1 Now, he's out somewhere, and she's -- I don't know
2 what she was doing, but she wanted to get the pictures
3 deleted. And he says, "I don't need to delete them.
4 They were my pictures." But he never said he was going
5 to post them. So there's on and off about, "You come get
6 me." "No, I'm not going to come get you." "If you want
7 to do it, you come tonight. We can talk tonight. I want
8 closure. I want you to explain what you've done to me."

9 And so eventually she says, "Okay, I'll come to
10 you." And then in the middle of her coming to him, he
11 says, "No, don't come, I'm going to take Uber."

12 Well, then she goes, "No, no, I'm already on my
13 way." So eventually she picks him up, I think around
14 2:04 or maybe before that. But between 2:04 and 2:42
15 a.m. on October 10th of 2016, she calls him 11 times.

16 He doesn't respond. He doesn't answer. She picks
17 him up downtown. She gets in the car, and they're
18 arguing, and he gets out of the car. He jumps out of the
19 car on Ocala Street.

20 And she is driving with him while he's walking. And
21 he can walk to his house at this point. And she
22 convinces him to get back in the car. He gets back into
23 the car. He gets his phone out, and then he -- he opens
24 it, and it's on Tinder, which you're going to hear is a
25 dating app. She gets mad and says, "Well, how are you --

1 why can you blame me when you're on Tinder?"

2 At that point he opens his phone and deletes all the
3 pictures. He deletes them all. And she drives to the
4 house, and he gets out, and he leaves her in the car. He
5 locks the door, doesn't invite her in, and he turns the
6 lights out. She stands on the door for 20, 25 minutes
7 banging on the door, banging on the door to come in. He
8 eventually opens the door.

9 Now, he had already deleted the pictures in the car.
10 They get in, and they have a conversation. While they
11 are in the apartment, the same apartment she has gone to
12 three times after they've broken up and engaged in sexual
13 activity, he did not open his phone, use his phone.
14 There were no texts between them, and there was no
15 discussion about sex whatsoever. He didn't bring it up.
16 She didn't bring it up.

17 There was no conversation about the pictures. They
18 spent an hour or two talking about their relationship,
19 things that had gone on, his emotional -- why he was so
20 emotionally involved. She shouldn't have done what she
21 did. She shouldn't have cheated on him. She shouldn't
22 have led him on. When she broke up, she shouldn't have
23 come -- and so they reconciled.

24 After a couple of hours, she's sitting on his lap.
25 They reconciled. And she says, "I really don't want to

1 drive home. It's too late."

2 And he says, "well, you can go sleep on the couch,
3 or you can go sleep on a Futon, wherever you want to
4 sleep, but you're not sleeping with me."

5 So what does she do? She walks into his bedroom,
6 undresses, takes her clothes off, gets into the bed,
7 takes his clothes off, and gets on him, and then he
8 performs oral sex on her. Then they continued to have
9 sex. And she, we believe, is going to admit, after he
10 ejaculated and finished, he made a comment, and she got
11 upset. And after he finished, he was -- he had sex and
12 he ejaculated, he made a comment, and then she indicated
13 that she had had sex with another guy that same day, and
14 he got mad.

15 Now, he believes he was used a fourth time. And so
16 he lashes out at her again, calls her every name in the
17 book. "How can we be having unprotected sex when you're
18 having sex with all these other guys? How can you do
19 this?"

20 And he, you're going to hear, makes some comments to
21 her. And she gets her clothes, and she leaves, and he
22 sends some texts, and he's heartbroken. And she sends a
23 text at six-something, right after she leaves, after he
24 makes his derogatory comment, trying to lash out at her
25 for being what he considered unfaithful, her response

1 was, "It's only sex." That was her response.

2 And you're going to hear it wasn't only sex to him.
3 You're going to hear that he met with the Tallahassee
4 Police Department on 11/29, voluntarily gave an interview
5 to Investigator Caplan, that he was unaware of any
6 investigation; that he turned over his phone to the
7 officer and let the officer look in his phone. And
8 you're going to hear that there was no pictures found on
9 the phone.

10 You're going to hear Ms. M. -- now, that was on
11 10/10 of '16. Ms. M. goes to the police on 11/16/16.
12 She had earlier had a scheduled meeting on 11/3, but that
13 was continued.

14 You're going to hear that her and her mother -- her
15 mother hired an attorney to inquire about deleting
16 certain things off of her phone before they met with the
17 police. So they moved the meeting from 11/3 to about
18 11/16. And when she met with the police, she never
19 mentions that she was -- and her mom -- considering or
20 trying or considering deleting things before she gave it
21 to the police.

22 Her allegation at the time was an -- an extortion
23 claim. And during her interview with the police, she
24 indicated that she went to the Title IX office the day
25 after, on 10/11, or 10/10, that same morning, because it

1 was the same morning. She tells Officer Caplan that she
2 went to the Title IX and reported this incident.

3 And you're going to hear that there was no such
4 reporting to Title IX the next day. But you are going to
5 hear that she went to the victim advocate office, and she
6 was trying to get some tests rescheduled, trying to
7 withdraw from classes because her grades were plummeting,
8 and that she wasn't studying.

9 You're going to hear that Ms. M. was partying for
10 two weeks, which was a time period before 10/9. She was
11 partying and not doing her schoolwork. Her grades were
12 failing and that she needed to come up with a reason why
13 she needed to get her classes scheduled and withdrawn
14 from class.

15 She admitted to Officer Caplan that the sex was
16 consensual. She never mentioned to the officer about
17 oral sex on 10/10. And I don't believe the evidence is
18 going to show that she told Officer Caplan that she
19 voluntarily went to his home on 10/3, 10/4, and 10/5 and
20 engaged in the same sexual conduct she engaged on 10/10.

21 She basically told Officer Caplan they had broken up
22 on 10/3 -- or 10/2.

23 You're going to hear that when she went to FSU to
24 talk to the victim advocate's office, she never claimed
25 that there was nonconsensual sex. The day after she goes

1 there, she never claims, "I had to have sex," or, "I had
2 sex," never even mentioned sex at the victim's advocate's
3 office the next day. Never mentioned that.

4 You're going to hear some of the things that she was
5 texting some of her friends, that she couldn't believe --
6 and you're going to hear while she was having sex with
7 him on the 10th, she was like -- and said some
8 derogatory -- not derogatory. She said, "No one can F me
9 like you do, Kyle. You know how to F me, Kyle. I just
10 can't say no to sex."

11 Those are the things she was saying on 10/10 to my
12 client, who believed it was the same as 10/3, 10/4, 10/5,
13 and it was the same as the relationship prior to the 10/3
14 so-called breakup.

15 She's given some inconsistent statements for you to
16 consider. She was concerned that she was going to lose
17 her Bright Futures. She was concerned that she needed to
18 withdraw from classes. And you're going to hear that she
19 waited 38 days to make this so-called allegation up.

20 So, ladies and gentlemen, what the evidence is going
21 to show is that there may have been a word breakup on
22 10/3, but that technically there was no break up on 10/3
23 because there was consensual sexual activity 10/3, 10/4,
24 10/5, and 10/10; that she admitted to Caplan it was
25 consensual. Our client believed it was consensual.

1 As far as the extortion, you're going to hear he
2 never threatened to post or send these texts or these
3 pictures to anyone. There is no evidence that anybody
4 ever saw the texts. He never said -- he never used the
5 word "sex" in any of his text messages. He never
6 mentioned sex. And he only said he wanted to talk. He
7 wanted to talk in person, for her to explain herself and
8 give an apology.

9 She picked him up. He locked her out. He got out
10 of the car. She went in. And two hours later, she
11 walked into his bedroom, undressed, and engaged in the
12 same sex she had on three previous occasions.

13 Ladies and gentlemen, we believe the evidence is
14 going to show that he did not commit any sexual battery.
15 He believed the consent was -- the sex was consensual;
16 that he never threatened her in any way; he never
17 extorted her in any way; but that he was an emotional
18 yo-yo that was up and down with this girl who he was in
19 love with, and that she was giving sex, having sex when
20 she wanted it and she did it. And at the end of the
21 case, you're going to find that the State is unable to
22 prove that he violated sexual battery, or that he
23 committed any type of extortion whatsoever. And I thank
24 you for your time.

25 THE COURT: Call your first witness, Ms. Dugan.

1 MS. DUGAN: State calls Mike Dilmore.

2 whereupon,

3 MIKE DILMORE

4 was called as a witness, having been previously duly sworn,
5 was examined and testified as follows:

6 THE COURT: You can have a seat. Slide up to the
7 microphone, please, sir.

8 As I indicated, I swore most of the witnesses before
9 y'all came in. We may have one or two that weren't here.
10 we'll swear them. These witnesses were sworn.

11 You may proceed, Ms. Dugan.

12 MS. DUGAN: Thank you, Judge.

13 DIRECT EXAMINATION

14 BY MS. DUGAN:

15 Q Can you tell us your name and spell it for our court
16 reporter, please.

17 A My name is Investigator Mike Dilmore with
18 Tallahassee Police Department, and D-i-l-m-o-r-e.

19 Q Thank you.

20 what do you do at Tallahassee Police Department?

21 A I'm an investigator and I do digital forensics. I
22 go through computers and cell phones to find evidence.

23 Q Okay. And how long have you been in that job at
24 TPD?

25 A In digital forensics since 2011, and I've been at

1 TPD since 2000.

2 Q Okay. In the -- in the digital forensics
3 department, you mentioned that a lot of times you go through
4 cell phones. Is part of your job extracting data off those
5 cell phones in criminal cases?

6 A Yes, ma'am.

7 Q And what's the process or the document that's
8 created when you do that?

9 A It depends on the software or hardware that I use.
10 The main software and hardware that I use for cell phones is
11 called Cellebrite. It consists of two parts. One is an
12 actual machine that we can attach phones to. And then there's
13 a software portion as well. In this case I just used the
14 software portion.

15 Q Okay. And how do you perform a Cellebrite? Can you
16 talk to us about that?

17 A Sure. In this case, the one that I did was an
18 iPhone. And so I connected the iPhone to my computer and then
19 used the software to extract the information from the computer
20 into the software, and it decoded all of the information from
21 the phone, contacts, call-outs, text messages, things like
22 that.

23 Q And did you perform a Cellebrite in this case on
24 B.M.'s phone?

25 A I did.

1 Q Okay. That was back in 2016?

2 A Correct.

3 Q How many pages, total, was her Cellebrite?

4 A The PDF version was about 9,500 pages.

5 Q Okay. So pretty much all the communication she had
6 ever had on that cell phone?

7 A Correct.

8 Q And that included a long period of communication
9 between her and the Defendant throughout their relationship?

10 A Correct.

11 Q I want to show you what's been premarked State's
12 Exhibit 1, 2, 5 and previously shown to the defense.

13 THE COURT: One, 2, and 5?

14 MS. DUGAN: Yes, sir.

15 THE COURT: Okay.

16 BY MS. DUGAN:

17 Q I'll just give them to you one by one.

18 what is State's 1?

19 A This is the SMS messages between Ms. M. and
20 Mr. Phillips.

21 Q Okay. Does that cover the communication between
22 them from October 8th, 2016 to October 10th, 2016?

23 A It does.

24 Q All right. And turning your attention to State's
25 Exhibit 2, what is State's Exhibit 2?

1 A This is a communication between Ms. M.'s phone and
2 the phone of a person in her contact list named Luke Hazen.

3 Q Okay. And does that cover the communication between
4 Luke Hazen's phone and B.M.'s phone on October, I believe
5 the -- is it the 9th or the 10th there?

6 A It's the 10th, actually.

7 Q It's the 10th? On October 10, 2016?

8 A It does.

9 Q Okay. And those text messages that begin with -- on
10 Luke Hazen's phone --

11 A Right.

12 Q -- does the first one say, "This is Kyle"?

13 A It does.

14 Q Okay. Now, going on to State's Exhibit 5, looking
15 at State's Exhibit 5, what is State's Exhibit 5?

16 A This is a portion of the call log from Ms. M.'s
17 phone.

18 Q And does that cover her call log on October 10th of
19 2016?

20 A It does.

21 Q Are all of those in the same or substantially the
22 same condition as when you he extracted them from her cell
23 phone?

24 A Yes, ma'am.

25 Q And I mean all three exhibits when I say that.

1 A They are.

2 MS. DUGAN: All right. At this time, Judge, I would
3 move into evidence State's 1 and 2 as admissions of the
4 Defendant and also the call log, State's Exhibit 5.

5 THE COURT: Any objection?

6 MR. JANSEN: No objection, Your Honor.

7 THE COURT: They'll be -- 1, 2, and 5 will be
8 admitted.

9 (State's Exhibit Nos. 1, 2, and 5 received in
10 evidence.)

11 MS. DUGAN: Thank you. Permission to publish?

12 THE COURT: You may.

13 Let me say to the jury, you may or may not see
14 exhibits here in the courtroom during the course of the
15 trial that -- you probably will, but you may not see them
16 in-depth. You will have these things with you during
17 your deliberations to study more carefully, so don't be
18 worried that you haven't had a chance to see them
19 sufficiently.

20 BY MS. DUGAN:

21 Q Investigator Dilmore, speaking of that, we're not
22 going to read through the text messages, we'll do that with a
23 later witness. But I just want to have you go through and
24 tell us what each column means. Show us how to read these
25 Cellebrite reports.

1 A Sure.

2 Q All right. So looking at the first page of State's
3 Exhibit 1, what is SMS Messages? What does that -- what does
4 that mean?

5 THE COURT: Can you see them all right, or do you
6 need us to turn the lights down? Are you okay? Okay.
7 All right, go ahead.

8 THE WITNESS: All right. SMS stands for Short
9 Message Service. It's basically your -- your typical
10 short word text message. It doesn't include pictures or
11 anything like that.

12 BY MS. DUGAN:

13 Q Okay. And in this packet that we have, do we have
14 5,500 text messages here?

15 A Not in this particular packet, no.

16 Q Okay. 5,500 text messages would be the total number
17 of text messages she had in her phone with everybody?

18 A No. Actually, there was quite a bit more than that.
19 I believe that was the number between Ms. M. and Mr. Phillips.

20 Q Okay. Throughout the course of their relationship?

21 A Correct.

22 Q All right. So moving down from here, this
23 communication between them starts on, excuse me, on
24 October 8th, 2016?

25 A It does.

1 Q And what can you tell us about the time here? What
2 does this mean?

3 A Okay. And -- and I looked at this -- when this was
4 printed, the -- the reader version actually put the wrong time
5 set. At the time, that date and time was actually -4, UTC-4
6 instead of -5. So the actual time for those would be one hour
7 more. So the first one would be 9:00 p.m., 9:13 p.m. as
8 opposed to 8:13 p.m.

9 Q So all the -- in all of these messages that we see,
10 all of these times are one hour slow?

11 A Correct.

12 Q Okay. So this would actually be 9:13 p.m.?

13 A Correct.

14 Q You UTC-5, is that kind of like, almost like a time
15 zone? Or...

16 A It's similar. It's a conversion. And here in -- in
17 Leon County or in Tallahassee, we could either be -4 or -5
18 from UTC depending on the time of the year. In 2016, we
19 didn't go to -5 until November 6th.

20 Q Okay.

21 A So...

22 Q So looking at the "From," who is this first text
23 message, highlighted in yellow, who is this from?

24 A It says that phone number and then it says Kyle
25 Phillips, a message which was entered into Ms. M.'s phone.

1 Q So this was the name that was in her contact list?

2 A That's correct.

3 Q All right. And we went over time and date. For
4 "Folder Inbox," what does that mean?

5 A Right. Similar to your e-mail, you have an inbox
6 and outbox. Basically, it means that it was either sent or
7 received. The inbox means it was received.

8 Q Okay. And then the "Message" is the actual content
9 of the message?

10 A That is correct.

11 Q Okay. So this message would be from Kyle Phillips
12 and would be incoming to her phone, into her inbox?

13 A Correct.

14 Q Okay. What color are all of the messages that are
15 sent by Kyle Phillips in this packet that we have?

16 A They are yellow.

17 Q So all of the Defendant's statements are yellow?

18 A All the ones from Kyle Phillips, yes.

19 Q Are yellow.

20 A Yellow.

21 Q Okay. Looking down at our first pink message, when
22 it says to Kyle Phillips and that number, what does that mean?

23 A That means it's a sent message. It was sent to that
24 number from that device.

25 Q Okay. And then date and time, is that the same

1 manner of reading it like before?

2 A Correct.

3 Q And "Sent," can you tell us what that means?

4 A Again, that's a message that was sent from this
5 device to another device.

6 Q And the content here under "Message," who would this
7 message be from?

8 A Ms. M.

9 Q Okay. So what color are all her messages in the
10 Cellebrite report?

11 A Well, in this Excel spreadsheet, they are pink.

12 Q They are pink. Okay. So in the Cellebrite that you
13 pull, everything is in black and white; but to make it easier
14 to read --

15 A Correct.

16 Q -- you've converted it to this Excel format?

17 A Correct.

18 Q Thank you. Okay. So all of her statements to Kyle
19 Phillips are pink?

20 A Correct.

21 Q Okay. I want to move on to the text messages from
22 Luke Hazen's phone, to and from Ms. Phillips [sic], the
23 communication between them. In the "From" column here, who
24 does this indicate that this text message is from?

25 A Luke Hazen. And, again, that's the information that

1 was entered into her phone.

2 Q So that's the contact in her phone?

3 A Correct.

4 Q And then under "Body," is this the content?

5 A It is.

6 Q Can you tell us about the "Timestamp" and the
7 "Timestamp-Time"?

8 A Right. The "Timestamp-Date" and "Timestamp-Time"
9 both basically give you the date and time it was either sent
10 or received.

11 Q Okay. So this would be on 10/9/16. And, again,
12 this is UTC-5, so this would actually --

13 A It should be -4, so it would actually be
14 October 10th at 12:50 a.m.

15 Q Okay. So this message would have been sent at
16 12:50 a.m.?

17 A Correct.

18 Q One hour ahead of this?

19 A Correct.

20 Q Okay. And all of the communication from Luke
21 Hazen's phone to B.M.'s phone, which color is that?

22 A From -- from Luke Hazen's phone to Ms. M.'s phone is
23 yellow.

24 Q Okay. And then all of the statements that are from
25 B.M.'s phone to Luke Hazen's phone, all of her statements,

1 what color are those?

2 A Those are pink.

3 Q Okay. And we read all the rest of this document the
4 same way?

5 A Yes, ma'am.

6 Q Okay. Finally, I want to bring your attention to
7 State's Exhibit 5, the call log. You said that this was
8 communication on her phone on October 10th of 2016?

9 A Correct.

10 Q All right. So what can you tell us about how we
11 read this call log?

12 A Well, the first column is just a number that -- that
13 my software gives. When it finds a call, it gives it a number
14 until it has all of them.

15 The second column there, where it says "Outgoing"
16 are calls from that device to another phone. The "To" shows
17 you the number that was called; or if the person was in their
18 contact list, it will also have the name that was in the
19 contact list.

20 The next column is the date and time that that call
21 was made. The following column is the duration of the call.
22 And then the last column, I believe that just states where the
23 call either originated from or to.

24 Q And "Intact," what does that mean?

25 A That last column over there will usually either say

1 "Intact" or "Deleted." If it says it's intact, that means
2 it's on the phone, and we can actually thumb through the phone
3 and still see that in the call log there. If it just says
4 "Deleted," that means that it had been deleted at some point,
5 and then my software was able to recover it.

6 Q Okay. So looking at these calls -- oops. These are
7 all outgoing calls, excuse me, from B.M.'s phone to whoever
8 the contact says?

9 A Correct.

10 Q I want to ask you specifically about this number --

11 A Yes, ma'am.

12 Q -- (850)891-4387. Who is -- who does that number
13 belong to?

14 A That number belongs to the Tallahassee Police
15 Department. That's our duty office phone number.

16 Q What is the duty office?

17 A When you walk into the Police Department, in the
18 lobby, there's a giant desk there with an officer sitting at
19 it. That's our duty officer, and that's the phone that's
20 sitting on their desk.

21 Q Okay. And duty officers get calls pretty much all
22 day, every day --

23 A They do.

24 Q -- with complaints?

25 Okay. Can you tell us about the time on this? Is

1 the time one hour slow on the call log like it is with the
2 texts?

3 A No. No, that one is correct. That date,
4 October 10th of 2016, we were still at UTC-4.

5 Q Okay. So if it says a call to Phillip -- Kyle
6 Phillips at 2:17 a.m., she called him at 2:17 a.m.?

7 A Correct.

8 Q Okay.

9 MS. DUGAN: No further questions. Thank you.

10 THE COURT: Cross?

11 CROSS EXAMINATION

12 BY MR. JANSEN:

13 Q Mr. Dilmore, this Exhibit 1 --

14 THE COURT: Get in one place if you would, please,
15 Mr. Jansen --

16 MR. JANSEN: I was trying to find the podium, Your
17 Honor.

18 THE COURT: -- for the court reporter.

19 MR. JANSEN: They moved it on me.

20 THE COURT: Okay.

21 BY MR. JANSEN:

22 Q This Exhibit 1, it says 5,556 text messages; is that
23 right?

24 A Yes. Yes, sir.

25 Q That's not contained in Exhibit 1, right?

1 A That is correct.

2 Q And so do you know approximately how many texts are
3 contained in Exhibit 1?

4 A Give me one moment, and I can tell you.

5 Q Oh, okay.

6 A If I can get my computer to wake up. And I
7 apologize for the delay. There we go. The back and forth
8 covers 342 messages.

9 Q Three hundred forty-two.
10 Now, you, sir, Cellebrite Ms. M.'s phone?

11 A That's correct.

12 Q And you did it properly?

13 A Yes, sir.

14 Q And do you know what day you did that?

15 A December 7th, 2016.

16 Q December 7th. And so it's -- do you know what date
17 the text messages started on?

18 A Which text --

19 Q On her phone, do you remember what day you were able
20 to Cellebrite, how far back you --

21 A The earliest text message? If you can give me a
22 moment. It looks like some of them went back to July of 2014.

23 Q Okay. So is it fair to say, sir, that your
24 Cellebrite would have covered the dates of 10/3, 4, 5, 6, 7 of
25 2016?

1 A Yes, sir.

2 Q But they are not contained in this exhibit?

3 A Not in that exhibit, no, sir.

4 Q And this document purports to show that phone
5 delivered that message?

6 A where it says "Party"?

7 Q Yes.

8 A Yes, sir. where it says "From" or "To," yes, sir,
9 that's correct.

10 Q Okay.

11 MR. JANSEN: No further questions, Your Honor.

12 THE COURT: Redirect?

13 MS. DUGAN: No, sir.

14 THE COURT: Any juror have a question of this
15 witness on this topic? All right. If not, you can step
16 down.

17 THE WITNESS: Thank you, sir.

18 THE COURT: Do we need to keep him further?

19 MR. JANSEN: Yes, Your Honor.

20 MS. DUGAN: We would both like him to be retained,
21 but he can go about his business.

22 THE COURT: Be on call?

23 THE WITNESS: Yes, Your Honor.

24 THE COURT: This might be a good time to take a
25 break. Are you on your witness list?

1 MS. DUGAN: Yes, sir.

2 THE COURT: All right. We'll take 10 minutes. Just
3 leave your notes where they are. We'll step out.

4 (The jury was escorted from the courtroom, and the
5 following took place outside their presence:)

6 THE COURT: Either side need anything?

7 MS. DUGAN: No, sir.

8 MR. JANSEN: No, sir.

9 THE COURT: All right. We'll be in recess.

10 (Recess.)

11 THE BAILIFF: All rise. Court is back in session.

12 MR. TORRES: Get the jury, please.

13 MS. DUGAN: Judge, I'll be asking to clear the
14 courtroom for this witness.

15 THE COURT: People that don't have a relationship
16 with the Defendant or the victim need to step out, or any
17 press people. If there's any dispute of who qualifies,
18 let me know, we'll resolve any disputes.

19 MS. DUGAN: What about Mr. -- I am sorry --

20 MR. TORRES: Torres.

21 MR. JANSEN: He represented him on the --

22 THE COURT: You can step out. Who is the gentleman
23 in the back?

24 MS. DUGAN: That's her brother.

25 THE COURT: Okay. You're fine. You can stay.

1 MS. DUGAN: He wants to go.

2 THE COURT: Okay. All right.

3 Let's have the jury, please.

4 THE BAILIFF: All rise for the jury.

5 (The jury returned to the courtroom, and the
6 following took place in open court:)

7 THE COURT: Everybody be seated. Call your next
8 witness.

9 MS. DUGAN: State calls B.M.

10 THE COURT: Have a seat. Slide up to the
11 microphone, please.

12 She was earlier sworn; was she not?

13 MS. DUGAN: Yes, sir.

14 THE COURT: All right.

15 whereupon,

16 B.M.

17 was called as a witness, having been previously duly sworn,
18 was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MS. DUGAN:

21 Q Good morning, Ms. M.

22 A Good morning.

23 Q will you tell us your name and spell it for the
24 court reporter, please?

25 A B.M. (Name spelled as requested.)

SUSAN BRYANT, RMR, CRR, OFFICIAL COURT REPORTER

1 THE COURT: That microphones moves if you need to
2 pull it a little closer to you.

3 BY MS. DUGAN:

4 Q Yeah. I know you're a little soft-spoken, so today
5 you need to talk like you're speaking to somebody in the very
6 back of the room. Okay?

7 A Okay.

8 Q Thank you.

9 Ms. M., what is your date of birth?

10 A May 10th, 1997.

11 Q Okay. How old are you today?

12 A Twenty-one.

13 Q How old were you in October of 2016?

14 A Nineteen.

15 Q And where did you live at the time?

16 A 1000 High Road.

17 Q Is that here in Tallahassee?

18 A Yes, ma'am.

19 Q Have you always lived here in Tallahassee?

20 A Uh-huh.

21 Q Were you born here?

22 A Yes.

23 Q Were you in school at the time, in October 2016?

24 A Yes.

25 Q And what was your major?

1 A Business, not affiliated yet. I hadn't picked a
2 major, just within the business school.

3 Q Okay. What year in school were you then?

4 A A sophomore.

5 Q And what year in school are you now?

6 A I'm going to be going into my senior year.

7 Q Do you have any plans of what to do with your
8 business degree?

9 A I don't know yet.

10 Q Okay. Still trying to figure it out?

11 Are you currently working?

12 A Yeah.

13 Q Do you waitress?

14 A I hostess.

15 Q Okay, host. And how do you know Kyle Phillips?

16 A We dated for about six months in 2016.

17 Q Do you know about what month you started dating?

18 A I believe it was, like, February of that year,
19 January, somewhere in the spring.

20 Q Okay. And do you see him here in the courtroom
21 today?

22 A Yes.

23 Q Can you let me know what color shirt he is wearing?

24 A I believe it's gray.

25 Q Okay. And he's -- is he in -- at the end of the

1 table?

2 A Yes, in a gray suit.

3 Q Okay. So how old was he in 2016?

4 A I believe he was 24.

5 MS. DUGAN: And the record will reflect the witness
6 has identified the Defendant.

7 BY MS. DUGAN:

8 Q When or about when did y'all break up?

9 A October 2016.

10 Q Are we talking early, mid, or late October?

11 A Early October.

12 Q And who broke up with who?

13 A I broke up with him.

14 Q So let's talk about the reason that we're here
15 today. All right?

16 So after you and the Defendant broke up, did he
17 start sending you some text messages?

18 A Yes.

19 Q And how would you describe those text messages to
20 us? What was the nature of them?

21 A Well, before he found out I was -- I cheated on him,
22 they were kind of back and forth between us being on okay
23 terms and not-so-good terms, so just kind of back and forth.

24 Q Okay. So before he found out you cheated on him,
25 y'all were kind of back and forth, sometimes on okay terms,

1 sometimes not?

2 A Yes.

3 Q Had you broken up with him by the time that he found
4 out that you cheated on him?

5 A Yes.

6 Q Okay. Let's talk about once he found out that you
7 had cheated on him. And when I say "cheated on him," I'm
8 talking about during the relationship, right, not after you
9 broke up with him.

10 A Yes. The day before I broke up with him.

11 Q Okay. So how did he feel about that, the fact that
12 you cheated on him?

13 A Extremely guilty.

14 Q I'm sorry. How did he feel about that?

15 A Oh, him?

16 Q Yeah.

17 A Incredibly angry. was sending me abusive,
18 disgusting, vulgar text messages. I tried to block him
19 several times, and the insults just kept coming one way or
20 another. He posted things on my Instagram, like, slut-shaming
21 me, calling me a whore and unkind things like that. Just very
22 abusive language.

23 Q Okay. At some point did he mention some pictures he
24 had of you?

25 A Yes.

1 Q what did he say about them?

2 A He said, "I have -- anyone can see these pictures of
3 you. Anyone can see these videos of you sucking my dick. If
4 someone happens to see them on my phone, it's not my fault.
5 Anyone who wants to look through my phone and see them, can."

6 And then it took a turn for the worse. He told
7 me -- I blocked him, and then I received a text from his
8 friend's phone saying that, you know, if I wanted all these
9 things to not be seen by people, to go away, I needed to go
10 talk to him. I had one chance to talk to him in person.

11 THE COURT: Slow down just a second.

12 Ask another question, please, Ms. Dugan. I think
13 we're going to go through these, aren't we?

14 MS. DUGAN: Yes, sir.

15 THE COURT: We don't need to go through them in
16 great detail twice. Okay?

17 MS. DUGAN: Okay.

18 BY MS. DUGAN:

19 Q So you mentioned that you received some messages
20 from a friend's phone. I guess, ultimately, did he give you
21 an ultimatum?

22 A Yes.

23 Q And what was the ultimatum?

24 A He said, "This is your one chance to come and talk
25 to me to get these pictures removed from my phone."

1 Q Did you want to go talk to him that night?

2 A No. It was late and I was extremely uncomfortable
3 and afraid of him at that point, because of the abusive
4 language and due to the fact that it was late at night and I
5 didn't know, you know, what state of mind he might be in at
6 that point. So, no, I did not -- I did not want to go. I
7 begged him to not make me go get him.

8 Q what did you feel like your choices were?

9 A Either the shame of just everyone being able to see
10 those things of me or just that I had to go and meet with him.

11 Q what were you doing that night when he was sending
12 you these messages? I guess, what were you -- what were you
13 doing besides texting him back?

14 A I was trying to study for an exam I had the next
15 day.

16 Q So you were at home at your -- at your apartment
17 studying?

18 A Yes.

19 Q All right. I'm going to show you what's already
20 been moved into evidence as State's Exhibit 1. Are these text
21 messages between you and Kyle Phillips from October 8th, 2016
22 to October 10th, 2016?

23 A Yes.

24 Q And you have had a chance to look at these before
25 court today, right?

1 A Yes.

2 Q Okay. Are all of the Defendant's statements,
3 everything he's saying to you, are those in yellow?

4 A Yes.

5 Q And everything that you're saying back to him, is
6 that in pink?

7 A Yes.

8 Q All right. Now I want to show you what's been
9 marked and shown to defense as 3A and 3B. What are 3A and 3B?

10 A These were old pictures that were -- already had
11 been uploaded, already on my Instagram, and they were the
12 pictures that he went through and started commenting those --
13 saying things like, "Ho, slut," stuff like that. "Gave me
14 chlamydia."

15 Q Did these appear to be true and accurate depictions
16 of what his comments looked like on your Instagram when it was
17 on your phone?

18 A Yes.

19 MS. DUGAN: At this time I would move 3A and 3B into
20 evidence.

21 THE COURT: Any objection?

22 MR. JANSEN: No, Your Honor.

23 THE COURT: They will be admitted.

24 (State's Exhibit Nos. 3A and 3B received in
25 evidence.)

1 MS. DUGAN: Permission to publish 3A and 3B?

2 THE COURT: You may.

3 BY MS. DUGAN:

4 Q well, actually -- okay, Ms. M., so what I want to do
5 is kind of go in chronological order here.

6 MS. DUGAN: Judge, I would ask permission to publish
7 State's Exhibit 1, the messages, by reading them out loud
8 to the jury, passing each juror, the Court, and defense a
9 copy as a demonstrative.

10 THE COURT: Any objection?

11 MR. KOMISAR: Only that we request there be no
12 inflection or anything added by either party if they are
13 going to be read.

14 MS. DUGAN: Absolutely.

15 THE COURT: I guess Ms. M. is going to be reading
16 her own text messages, so I'm not going to try to limit
17 how she reads them.

18 MR. KOMISAR: I was referencing the Defendant.

19 THE COURT: All right. I agree with that. You're
20 going to read what's purported to be the Defendant's, Ms.
21 Dugan?

22 MS. DUGAN: Yes, sir.

23 THE COURT: All right. well, just straight read
24 them.

25 MS. DUGAN: Yes, sir.

1 BY MS. DUGAN:

2 Q All right. So Ms. M., we're going to start on Page
3 1. We're going to try to all stay on the same page together,
4 and I'm going to start reading from Kyle Phillips' first text
5 to you, and I want you to pick up where your first text
6 starts. Okay?

7 A Okay.

8 Q "Yo, you fucked a Pike? You cunt. You stupid cunt.
9 You are trash. You shit. That night. I know everything.
10 You cunt. You are literally trash. I knew it. You stupid
11 ho. Trash."

12 A "What on earth? You're nuts. Stop texting me."

13 Q "Lmao." What does "l-m-a-o" mean to you?

14 A Laugh my ass off.

15 Q "Lmao. You are ugly af."

16 And what does "af" mean to you?

17 A As fuck.

18 Q "You are ugly as fuck. Di Marie told me. I hate
19 you so much. You dumb fuck. You little slut."

20 A "Leave me alone. Get out of my life."

21 THE COURT: Read it literally, please, ma'am.

22 BY MS. DUGAN:

23 Q You need to read literally what you say. I know it
24 might be --

25 A I'm sorry.

1 Q That's okay.

2 A "Leave me the fuck alone. Get out of my life.
3 You're insane. Don't ever contact me again."

4 Q "Fuck you. Slut. I don't deserve this --" no, I'm
5 sorry. "I doesn't deserve this."

6 A "Stop harassing me."

7 Q "Seriously? what did I do to you? Answer for
8 yourself, whore. Do you know how this feels? Do you know how
9 this feels?"

10 A "I was breaking up with you no matter what. I made
11 a mistake, yes. You hooked up with a girl when we started."

12 Q "Wow, you must be proud. You're empty. Wow."

13 A "I'm not at all."

14 Q "You must be proud. I hate what you've done to me.
15 I hate this feeling. I have no confidence now."

16 A "I'm sorry it happened, but the way you're acting is
17 honestly scary. I don't even feel safe knowing you live down
18 the road."

19 Q "I-d-g-a-f," and what does "i-d-g-a-f" mean to you?

20 A I don't give a fuck.

21 Q "I don't give a fuck. Stop flipping this."

22 A "You just posted on my Instagram that I gave you
23 chlamydia."

24 Q All right. So I want to stop right there. And
25 before we read on, I want to publish 3A and 3B to the jury.

1 Now, you just told him that he just posted to your
2 Instagram that he [sic] gave you chlamydia?

3 A Yes.

4 Q And 3A, was this the Instagram picture you were
5 telling us about?

6 A Yes.

7 Q Okay. So going down, what -- what comments are you
8 talking about in that text message to him?

9 A The degrading ones saying "ho" and specifically the
10 "Gave me chlamydia. Disgusting."

11 Q So he said, "This is when you fucked that Pike.
12 Slut. You gave me chlamydia. Disgusting."

13 A Yes.

14 Q And this is a photo on your Instagram account of you
15 and your friends?

16 A Yes.

17 Q What is Riddick (phonetic) the Potato?

18 A That's his dog's Instagram.

19 Q So he was posting on his dog's Instagram?

20 A Yes. I believe I had blocked him at that point from
21 most social media.

22 Q You had blocked his social media from contacting
23 you?

24 A Yes.

25 Q What does that mean?

1 A If you block someone, then they can't contact you,
2 and it won't come through to you, and you won't see it.

3 Q Had you blocked his dog's Instagram?

4 A No. I didn't think about it.

5 Q I want to ask you about this date down here,
6 September 30th. What does that date refer to?

7 A That's the date the picture was originally posted.

8 Q So you posted this picture on September 30th, but he
9 wrote that comment or these comments at the same time that you
10 are sending that text to him that he just posted this?

11 A Yes.

12 Q Okay. I want to ask you about this photo in Exhibit
13 3B. Is this the other photo you were telling us about?

14 A Yes. I believe there were more. I just might not
15 have saved them. But those are the two that I for sure know.

16 Q Those are the two that you saved?

17 A Yes.

18 Q Who is this in the photo with you?

19 A Kyle Phillips.

20 Q All right. So this is a picture that you posted on
21 September 25th?

22 A Yes.

23 Q And can you show us which comment that you were
24 referring to in your text messages to him?

25 A "Don't miss this at all, hashtag, slut."

1 Q And so he posted that at the same time that he's
2 sending you these messages?

3 A Yes.

4 Q And he's posting those within a day or a few hours
5 of finding out you cheated on him?

6 A Yes.

7 Q All right. I want to pick up on the third page
8 where we left off at the top.

9 "Then you came and fucked me," question mark. "Then
10 you came and fucked me," question mark.

11 "I'm telling everyone I meet who knows you that if
12 you gave me something. You're just disgusting. I'm telling
13 everyone I meet who knows you that."

14 A "Our relationship has been over for a while for me.
15 I didn't want to be with you."

16 Q "I was only with you for sex. Your face straight
17 turns me off. Jeff, Luke, Chris all made fun of me for dating
18 you. Your average number from people is a 4."

19 what did you take that to mean?

20 A That he was calling me ugly.

21 Q what is a 4 in an average number? what does that
22 mean?

23 A A 4 out of 10, so below average.

24 Q Okay. Go ahead.

25 A "No one who knows me cares what you say. I don't

1 care what you say. I don't miss you at all, and I don't care
2 if I ever talk to you again. My only mistake was letting you
3 guilt me. I'm sorry I did that to you. It was really wrong,
4 and I get you're mad, but you can't act like this. I'm sorry
5 I sent that last message too. I deserve your anger, but this
6 is private and --"

7 MS. DUGAN: Judge, can we have a quick sidebar,
8 please?

9 THE COURT: Okay.

10 (Sidebar as follows:)

11 MS. DUGAN: So I think when I sent the copies to be
12 made, they copied the wrong one. I have one that
13 includes -- there's a few words left off. What I might
14 do is, since all the copies are made, is put a right one
15 in evidence to go back to the jury, and then have her
16 read from the Cellebrite the remainder of this text. Is
17 that all right with everybody?

18 MR. JANSEN: If --

19 MR. KOMISAR: As long as you can go through and just
20 on the Cellebrite make sure you've marked the ones she
21 was not supposed to read.

22 MS. DUGAN: Yeah, yeah. I'm just going to ask her
23 to read that one.

24 THE COURT: Okay.

25 (The sidebar concluded, and the following took place

1 in open court:)

2 THE COURT: So what the attorneys are saying is in
3 the copies that they -- that you have, there are a few
4 things that are missing that they need to add in.
5 They'll read those and give you a copy that's complete.
6 Apparently, the wrong set got copied or something of that
7 nature. I don't think it's a whole lot, is it?

8 MS. DUGAN: No, sir.

9 BY MS. DUGAN:

10 Q Okay. I ask you to read the remainder of this one.
11 The remainder of that one.

12 A What was the first one?

13 Q This one.

14 A Okay.

15 MS. DUGAN: Can I borrow your pen, please?

16 THE COURT REPORTER: Sure.

17 BY MS. DUGAN:

18 Q So it looks like the copies that we have cut that --
19 the next two messages off a little abruptly. I'm going to
20 have you read the rest of the messages from the actual
21 celebrite, and then we'll supplement the jury with a correct
22 one to go to the jury deliberation room.

23 Can you read the text again starting from, "No one
24 who knows me cares what you say," and read the rest of it?

25 A "No one who knows me cares what you say. I don't

1 care what you say. I don't miss you at all, and I don't care
2 if I ever talk to you again. My only mistake was letting you
3 guilt me into dating your pathetic ass when I met you. Bye."

4 Q Okay. And then can you read the next message in its
5 entirety? That was one that was cut off as well.

6 A "I'm sorry I did that to you. It was really wrong,
7 and I get you're mad, but you can't act like this. I'm sorry
8 I sent that last message too. I deserve your anger, but this
9 is private, and you made it into something public, and that's
10 not okay."

11 Q "Fuck you and your apology. You don't mean it.
12 You've said enough. You have no idea how hurt I am. I can
13 make this as public as I want. I've never -- I've never had
14 someone hurt -- I've never had somebody I care about hurt me
15 so much."

16 And then this one, this next one, I think is the
17 last one that's -- this one -- I'm sorry, Judge, could we have
18 a little break, and I'll have corrected copies for everyone?
19 I just didn't -- I can have it done in 10 minutes.

20 THE COURT: Is it just one -- is this the last one
21 that there's an addition to?

22 MS. DUGAN: Just a second. I think there might be
23 two or three more.

24 THE COURT: I think we're following okay. Just go
25 on.

1 MS. DUGAN: Okay.

2 (Discussion off the record.)

3 THE COURT: How long would it take you to get it
4 corrected, Ms. Dugan?

5 MS. DUGAN: I'm sorry?

6 THE COURT: How long would it take you to get it
7 corrected?

8 MS. DUGAN: Ten minutes.

9 THE COURT: Let's take 10 minutes. Let the jury
10 step out, please.

11 (The jury was escorted from the courtroom, and the
12 following took place outside their presence:)

13 (Recess.)

14 (The following took place outside the presence of
15 the jury:)

16 THE BAILIFF: Court is back in session.

17 THE COURT: Be seated, please, folks. Are we going
18 to change out the exhibit?

19 MS. DUGAN: Unfortunately, I wasn't able to get
20 color copies made in this short period of time. But what
21 I did was I got a black-and-white version of the text
22 messages as a whole. And so when we get to one that's
23 too long -- which, I think there's only a few left -- I'm
24 just going to take it to the projector and enlarge it.
25 That way she can read it and the jury can read it.

1 There was also an issue that Mr. Komisar wanted to
2 take up.

3 MR. KOMISAR: I didn't want to ask a question to
4 cause a problem or violate the motion. I let the State
5 know that our recollection of what the witness just
6 testified to was that there was -- she felt her option
7 was to go over to Mr. Phillips' that night where there
8 would be the naked photos -- or naked photos out there.
9 I wanted to ask her: Are you saying that there aren't
10 other naked photos of you out there? The State felt that
11 violated the Court's Motion in Limine. We just wanted to
12 a get a ruling on that.

13 MS. DUGAN: I think the other text messages that Mr.
14 Komisar is referring -- or pictures that he's referring
15 to are pictures she might have sent to past boyfriends,
16 and that's not what she was referring to.

17 She was saying she didn't want these photos out
18 there, not necessarily that a past boyfriend doesn't ever
19 have one. And I think that would violate our Rape
20 shield.

21 THE COURT: Are you contending it's something that
22 would have gone to Mr. Phillips?

23 MR. KOMISAR: No. I'm contending that she left the
24 jury with the impression that her mental state on
25 October 10th was if she didn't go over to Mr. Phillips'

1 house, that there would be naked photos of her out in the
2 world; and there are, according to her testimony, other
3 naked photos of her out in the world.

4 THE COURT: I'll sustain the State's objection to
5 that.

6 Let's have the jury in, please.

7 THE BAILIFF: Jury is in the courtroom.

8 (The jury returned to the courtroom, and the
9 following took place in open court:)

10 THE COURT: Everybody be seated.

11 BY MS. DUGAN:

12 Q All right. Ms. M., I want to go back to the first
13 message that you read that was too long and the end of it was
14 left out on the color copy. And that would be -- that would
15 be text number 292. So on the third page. Okay?

16 A (Nodding head affirmatively.)

17 Q I want to show you that same text message on a
18 black-and-white copy, that way everyone can read the same
19 thing.

20 Can you read text message 292 right here? That
21 starts with, "No one who knows me --"

22 A "No one who knows me cares what you say. I don't
23 care what you say. I don't miss you at all, and I don't care
24 if I ever talk to you again. My only mistake was letting you
25 guilt me into dating your pathetic ass when I met you. Bye."

1 Q And then please read the next one, which is your
2 next statement.

3 A "I'm sorry I did that to you. It was really wrong,
4 and I get you're mad, but you can't act like this. I'm sorry
5 I sent that last message too. I deserve your anger, but this
6 is private, and you made it into something public, and that's
7 not okay."

8 Q All right. And I'm just going to stand here and
9 read the next message from him.

10 Starting at 290, "Fuck you and your apology. You
11 didn't mean it. You've said enough. You have no idea how
12 hurt I am. I can make this as public as I want. I've
13 never -- never had somebody I care about hurt me so much."

14 And then looking at this next one, which would be
15 287, text message 287, can you read that one for the jury?

16 A Yes. "I didn't want to hurt you more, that's why I
17 didn't tell you. I was --" could you zoom it in more? I'm
18 sorry.

19 "I was planning on ending things the next morning,
20 and it happened. I'm sorry. I've made bad choices. I think
21 we need to just forget about each other."

22 Q All right. Moving back to our color copy, number
23 286.

24 "Shut up, B.M., you're a liar. You came over the
25 next day and fucked me. You already said it, you don't care

1 at all. I should have known you were just a ho just by the
2 way we met. I have no respect for you, and I don't believe
3 anything you're saying."

4 A "I should have stopped you. It doesn't matter. We
5 need to just forget about this and move on."

6 Q "You broke me down, congrats. You're the winner.
7 You're forgotten, ho."

8 A "Don't contact me again. I don't want you saying
9 anything about you -- about me. I don't even want you to act
10 like you know me."

11 Q "Too bad. I'll tell everyone I meet about this."

12 A "Get over it."

13 Q "I'm over you. Look at you."

14 A "Then why are you harassing me?"

15 Q "Your apology is shit. You texted me."

16 A "Why are you posting on my Instagram as your dog? I
17 just want you to leave me alone."

18 Q "Because you fucked a disgusting fray guy and fucked
19 me three times."

20 A "I fucked up, but being vindictive is only going to
21 hurt both of us."

22 Q "Good. Because I'm already hurt."

23 A "We were broken up."

24 Q "L-O-L." what does that mean?

25 A Laugh out loud.

1 Q "I'm over this."

2 A "I'm sorry, I really am, but this has to stop. I
3 want you to leave me alone. It's what's best for both of us."

4 Q All right. So my next one looks long. I'm going to
5 go to the black-and-white copy.

6 Looking at number 259: "I will always tell people
7 about this, about the STD. Anyone can look through my phone
8 and see your tits and you sucking my dick. I won't bother
9 you. So don't -- I will always tell people about this, about
10 the STD, and anyone can look through my phone and see your
11 tits and you sucking my dick. I won't bother you. So don't
12 send anymore fake apologies. You are disgusting. You deserve
13 no love from me, no respect."

14 A "You hooked up with a rando when we met. You're not
15 guiltless. I didn't know. I didn't give it to you knowingly.
16 You can't show that to people, that's harassment. Would you
17 stoop so low?"

18 Q So had you -- had you actually given him an STD in
19 the past?

20 A It was before we were dating, when we first met,
21 yes.

22 Q Did you know that you had it at the time?

23 A No. As soon as I got tested, I told him.

24 Q And after you told him, you guys stayed together,
25 regardless, for several months?

1 A Yes.

2 Q okay.

3 when you say, "You hooked up with a rando when we
4 met, you're not guiltless," what are you talking about?

5 A After we had met each other for maybe a week or two
6 and we were spending time together, he told me later that he
7 took someone home from a bar and slept with her. This was
8 before we were dating.

9 Q okay. So did you read "would you stoop so low?"

10 A Read it again?

11 Q okay. So after, "would you stoop so low," he says,
12 "I can't post them, period."

13 A "what is wrong with you?"

14 Q what is he replying to? "I can't post them," what
15 is he replying to?

16 A The naked pictures, I believe, or...

17 MR. KOMISAR: Objection, speculation.

18 THE COURT: Sustained.

19 BY MS. DUGAN:

20 Q okay. Right before that had you said, "You can't
21 show them to people, that's harassment"?

22 A Yes. Are you asking what I meant when I said that?
23 Or...

24 Q Yeah. What did you mean when you said that?

25 A Give me one second, I'm really nervous.

1 Q I'm looking at number 255.

2 A Yes. I was talking about the comment he made to me
3 before about people looking through his phone and seeing my
4 tits and me sucking his dick is what I was referring to --

5 Q Okay. So when you --

6 A -- on the previous page.

7 Q Okay. When you said, "You can't show them," he then
8 said, "I can't post them."

9 A Yes.

10 Q what did you say next?

11 A "what is wrong with you?"

12 Q "R-o-f-l," what does that mean?

13 A Rolling on the floor laughing.

14 Q "I'm low?" Sorry. "Rolling on the floor laughing.
15 I'm low? what is wrong with you? Sociopath."

16 A "I made a mistake, a huge mistake."

17 Q "Stop texting me. I never cheated on you, and I
18 never would have. I treated you like a princess. Sorry I got
19 stressed about all the BS I was going through, and thanks for
20 the -- and thanks for the icing on the cake."

21 A "would you actually show someone that? what kind of
22 sick person does that to get back at someone?"

23 Q "Oh, my God. Listen to yourself. Seriously, B.M."

24 A "You've always had this vindictive person in you,
25 and I didn't want to stay with you because of this."

1 Q "I would have been the most protective, loyal, and
2 loving person you'd ever have. You shit on me, and you're
3 calling me the fucked-up person. Your loss."

4 A "You're threatening to show pictures and videos of
5 me that were for you only."

6 Q "I'll quote you, 'Get over it.'"

7 A "I should have known you were like this."

8 Q "I should have," excuse me, "I should have known you
9 would cheat on me. Stop flipping this."

10 A "You're threatening me with naked pictures of me."

11 Q "No, I'm not. I'm more than allowed to have them."

12 A "Yes, you are. You just said you would show
13 people."

14 Q "I'm not stopping anyone from looking through my
15 phone. I'll never post them or send them. Get over yourself.
16 Go hit up Peter."

17 A "Don't show anyone. I'm serious, that's
18 harassment."

19 Q "No, it's not."

20 A "I don't know why I did what I did, but it wasn't to
21 hurt you and I -- sorry -- I wasn't intentionally going out of
22 my way to hurt you. I made --" I believe that text was cut
23 off as well.

24 Q Okay. So looking at number --

25 A 222.

1 Q -- 222.

2 A "I don't know -- I don't know why I did what I did,
3 but it wasn't to hurt you. I wasn't intention- --" sorry, I
4 can barely see that part. "I wasn't intentionally going out
5 of my way to hurt you. I made a horrible mistake, and I'm
6 sorry, but you can't do this. Please, please just leave me
7 alone, that's all I want. I want this to be over."

8 Q "You have the power to block me, moron. Sorry you
9 put -- sorry you put pictures and video on my phone. Sorry
10 you cheated and fucked me after. You were shitting on a girl
11 for doing the same thing."

12 A "I just texted Luke's phone the same thing, but you
13 need to stop this. I want you to delete those pictures or
14 keep them to --"

15 Q Okay. Actually, before we talk about that text, you
16 said you just texted Luke's phone something. Why were you
17 texting Luke's phone?

18 A After he said, "You have the power to block me," I
19 did block him. So I texted Luke's phone because after I
20 blocked him, he began texting me from his friend Luke's phone.

21 Q Okay.

22 MS. DUGAN: And at this point, I have what's already
23 been moved into evidence as State's Exhibit 2 to publish.

24 THE COURT: You may.

25

1 BY MS. DUGAN:

2 Q All right. So starting from the first text here,
3 this message from Luke Hazen's phone -- well, first of all,
4 who is Luke Hazen?

5 A A friends of Kyle's.

6 Q Okay. And after you blocked Kyle, this was the
7 message that you received?

8 A Yes.

9 Q Okay. What -- starting from the first message:
10 "This is Kyle. If you come over and look me in the eye and
11 tell me all of your bullshit instead of all this gay-ass
12 texting, then I might let you go through my phone and delete
13 everything."

14 A "It's 1 a.m."

15 Q "I don't give a fuck."

16 A "I don't really understand what you're trying to do
17 right now." RN, which stands for "right now."

18 Q "You got one chance at this."

19 A "I'm not coming over. It's 1 a.m. and I have exams
20 I'm studying for. IDK," which is I don't know, "why you want
21 me to -- why you want to see me anyways."

22 Q "Okay. Your choice. I have already showed all of
23 607."

24 what is 607?

25 A That was Luke's apartment.

1 Q Okay. Like, that was the apartment number?

2 A Yes. So I assume he was referring to the people who
3 lived at the apartment.

4 Q Did Luke live there with other guys?

5 A I don't know. I never went to Luke's apartment.

6 Q Okay. But you knew 607 to be Luke's apartment?

7 A Yes.

8 Q Then what is there next to it?

9 A An emoji of money, eyes, with the money coming out
10 of the mouth.

11 Q Okay. So when he said that, what did you take that
12 to mean, that he had already showed all of 607?

13 A That, you know, this wasn't just an empty threat,
14 that this was -- you know, he was trying to get back at me in
15 any way he could. He really wanted to shame me by showing
16 people these things.

17 Q What did you say next after he said that?

18 A I said, "Leave me alone, you psycho."

19 Q "Luke sent that."

20 A "I'm looking this shit up, and it's illegal to show
21 other people pictures of you without your permission."

22 Q "N-v-m." What does that mean?

23 A Nevermind.

24 Q "Nevermind. I was giving you a chance to show you
25 aren't a bitch. Like, holy shit."

1 A "This is harassment. You can't tell me I have to
2 come over or you'll show illicit videos or pictures of me."

3 Q "You're the psycho. You're like Lex."

4 A "It's 1 a.m. You're probably fucked up. I'm not
5 coming over."

6 Q Now, is Lex -- I don't want to go into who she is,
7 but is she somebody in Luke Hazen's life or in Kyle Phillips'
8 life?

9 A She knew both of them.

10 Q Okay. Would -- is she more so in Kyle Phillips'
11 life than Luke Hazen's life?

12 A Yes. They lived together.

13 Q Okay. Go ahead from that.

14 A "I'm not coming over."

15 THE COURT: I think it's your turn, Ms. Dugan.

16 BY MS. DUGAN:

17 Q "I'm a little high. I'm reading. You're crazy."

18 A "I will give you one more chance to be civil and
19 delete those pictures. I don't want this to escalate
20 further."

21 Q Okay. And then at that point, you sent the same
22 message we saw looking at our color copy of you and Kyle
23 Phillips' text message?

24 A Yes.

25 Q You sent the same message on number 219 to Kyle

1 Phillips' phone?

2 A It's cut off.

3 Q Okay. All right. Looking at 219, can you read that
4 for us?

5 A "I just texted Luke's phone the same thing, but you
6 need to stop this. I want you to delete those pictures or
7 keep them to yourself. This doesn't need to escalate
8 further."

9 Q So at that point if you're able to text Kyle
10 Phillips again, did you unblock him?

11 A Yes.

12 Q Okay. Why did you unblock him after you blocked him
13 and then he started texting you from Luke Hazen's phone?

14 A I felt like I had no choice but to keep talking to
15 him to try and get these pictures gone, or at least just get
16 him to stop showing them to people.

17 It was just incredibly embarrassing. I felt
18 extremely desperate; so that's why I unblocked him, because,
19 obviously, he wasn't going to leave me alone.

20 Q "I offered to --" okay, I'm going back to the ones
21 between you and Kyle on 218.

22 "I offered to talk in person because we have always
23 been nice in person. I was drunk as fuck last night. IDC."

24 What's "I-D-C"?

25 A I don't care.

1 Q "I don't care anymore. You also have my shit, but
2 I'm writing it off."

3 A "I will give it to Luke, but this needs to stop.
4 Did you actually show those to anyone?"

5 Q when you say you'd give it to Luke, what are you
6 talking about?

7 A His belongings.

8 Q "Leave me alone. why did you unblock me?"

9 A "Because this needs to stop. I'm not taking it.
10 I'm not letting you threaten me."

11 Q "I offered to let you delete them," dot, dot, dot.
12 You're nuts."

13 A "I'm not coming over at 1 a.m."

14 Q "Oh, well."

15 A "I want this to end. why won't you just stop? I
16 want you to say you're deleting those pictures and you aren't
17 showing them to anyone, and I want it to be true. You have a
18 fucking sister. How could you treat someone like this?"

19 Q "You cheated on me with a disgusting frat guy and
20 fucked me again. I told my sister. I told my mom. They hate
21 you as much as me. I don't have to promise you a goddamned
22 thing. I can keep whatever is on my phone."

23 A "It's illegal to share someone's -- to share
24 pictures without someone's consent. It doesn't matter if it's
25 online."

1 Q "I told you I wouldn't send or post them straight
2 up."

3 A "But show them around, which accomplishes the same
4 thing. Saying I have to come over and delete them tonight, or
5 you're showing them around is a threat and harassment."

6 Q "I can't help who looks through my phone. My
7 friends do it all the time. I don't openly share them. I
8 offered to let you delete them."

9 A "You need to leave me alone. I don't want anything
10 to do with you. But if you keep saying these things, I'm not
11 taking it."

12 Q "You unblocked me," dot, dot, dot.

13 A "You need to delete them and stop talking like
14 this."

15 Q "You are psycho."

16 A "Because you threatened me."

17 Q "What the hell? I felt bad and offered to let you
18 delete them personally."

19 A "I'm not coming over in the middle of the night. I
20 will do it tomorrow."

21 Q "I doesn't -- I doesn't threaten shit. I know the
22 laws." And then he says "didn't."

23 A "You said come over and delete them, or I'm showing
24 them around."

25 Q "I said come over and talk. I told you Luke sent

1 that."

2 A You said I had one chance to come delete those
3 pictures. That sounds like a threat to m-w," meaning me.

4 Q "We aren't communicating over the phone at all. we
5 talk well in person."

6 A "So I advise you to let me delete them tomorrow."

7 Q "I'm a little high and feel nice, but I won't be
8 tomorrow, so I don't have to let you delete anything."

9 A "So what you're saying, I have to come right now.
10 Fine. I'll come do it. I'm done with this. where are you?"

11 Q "I said talk. I said explain yourself."

12 A "I want those pictures deleted, then maybe we'll
13 talk. where are you?"

14 Q "You're not just deleting shit and leaving. I want
15 closure. I'm at Luke's."

16 A "It's 2 a.m. why can't I tomorrow? I don't want to
17 drive that far this late."

18 Q "Because I don't want to see you and let you ruin my
19 day. I have HW in class."

20 A "So do I. Just delete those pictures."

21 Q "I don't want to give you the time of day. No.
22 B.M., I don't have to."

23 A "So you're refusing to delete them, saying I have to
24 come over at 2 a.m. or you won't. Nice. That will look good
25 on you."

1 Q "what do you mean?"

2 A "If you wanted me to talk to you, all you had to do
3 was ask, not threaten me. I'm not driving at 2 a.m. It's not
4 safe. You can come here if you want, but you're not allowed
5 inside."

6 Q "So what? I was angry, and you fucked me over,
7 and --"

8 A "You're threatening me with nude pictures."

9 Q "I didn't threaten shit."

10 A "That's illegal. Yes, you did."

11 Q "I'm allowed to have the pictures. I can have them
12 on my phone. You gave me consent."

13 A "How does, quote, 'You have one chance to come over
14 and delete these. Everyone in the apartment already saw
15 them,' end quote, sound?"

16 Q Let me see if there was anymore to that one.

17 A I don't believe that was a direct quote. I just had
18 put the quotations in the text message.

19 Q Okay. Looking at number 140. what does the very
20 end of that say?

21 A "Sound to you."

22 Q Okay. So that was the end of that message?

23 A Yes. Do you want me to read it again?

24 Q Okay. "I told you Luke sent that. Call him and ask
25 him. He sent a fucking emoji."

1 A "Really? Because you identified yourself. I'm not
2 playing. You're freaking me out."

3 Q when you said, "You identified yourself," what are
4 you talking about?

5 A when he said, "This is Kyle," at the beginning, and
6 said, "If you come over and look me in the eye and tell me all
7 your bullshit instead of all of this gay-ass texting, then I
8 might let you go through my phone and delete everything." The
9 first text message from Luke's phone on this page.

10 Q All right. will you read the next one, 136?

11 A "I'm not playing. You're freaking me out."

12 Q "You're nuts. I'm hiring a lawyer. Like really?"

13 A "why are you hiring a lawyer?"

14 Q "I offered to let you delete them. I offered to let
15 you talk. Because I'm over toys."

16 A "Because you fucked up and think I'll get you in
17 trouble."

18 Q "This. Rolling on the floor laughing. No."

19 A "I won't, I just want you to delete them."

20 Q "Because I'm suing you."

21 A "For what?"

22 Q "I'm over girls like you."

23 A "Leave me alone."

24 Q "You really don't want to delete the pictures?"

25 A "You're excavating [sic] this further. All I want

1 is the pictures deleted."

2 Q "I was trying to be nice."

3 A "Escalating. Bullshit."

4 Q "Question mark. I legit said come over and say
5 sorry in person."

6 A "So what? If I come now, you'll stop? At 2 a.m."

7 Q "No, not after how you responded to all of this.
8 Just block me again. Jesus."

9 A "why did you say you were going to show them around
10 if not to start a problem? You always start problems."

11 Q "I hate texting."

12 A "Hate talking too? what do you want me to do? I
13 want this to stop. I want you to leave me alone. what will
14 it take for you to leave me alone?"

15 Q "what do you want?"

16 A "why won't you answer the phone? That's better than
17 texting. we've always been civil over the phone too. Do you
18 want to talk to me or not?"

19 Q Just a second. So at that point, what are you
20 trying to do?

21 A I'm trying to call and speak with him over the phone
22 instead of texting.

23 Q I want to you show you what's already been admitted
24 into evidence as State's 5.

25 All right. So at -- on October 10th, 2016, at 2:04,

1 2:08, 2:09, 2:11, 2:12, 2:17, 2:21, 2:31, 2:35, 2:39, and
2 2:42 a.m., who did you call 11 times?

3 A Kyle Phillips.

4 Q And did he answer any of those calls?

5 A No.

6 Q What were you hoping to accomplish by calling him?

7 A I wanted to placate him and make it -- if he wanted
8 to talk to me so badly instead of texting, I -- I thought it
9 would be safer for me just to call him, if that's what he
10 really wanted, and he refused.

11 Q So you would rather talk to him on the phone than go
12 over to his house?

13 A Yes.

14 Q I want to ask you about these couple of calls before
15 you started calling him. You called 911 twice around
16 1:15 a.m.?

17 A Yes.

18 Q Was there, like, another emergency, or were you
19 calling about this?

20 A About this.

21 Q Why were you calling 911?

22 A I thought what he was doing was illegal, and I felt
23 like I was trapped. I didn't know what to do.

24 Q And then what number did you call right here that
25 you spoke to for 15 minutes?

1 A I believe that's -- is that the TPD number or what?
2 I don't know what number that is.

3 Q well, did you end up speaking to TPD that night
4 after you called 911?

5 A I believe so.

6 Q Okay. Do you remember who you talked to?

7 A No. Just an officer.

8 Q And what did you tell them?

9 A I told them that he had been posting things on
10 social media, trying to defame me in any way possible; that he
11 had pictures of me; and he basically told me, "well, why don't
12 you just delete everything?" And then, you know, "what's the
13 problem?" And he just didn't take me seriously or try to help
14 me at all.

15 Q what do you mean -- what does -- "delete
16 everything," what did you take that to mean?

17 A He told me if -- if he's bothering you on social
18 media, then why don't you just delete all social media and not
19 use it anymore.

20 Q Even if he didn't post these pictures on social
21 media, would deleting your social media keep him from showing
22 people?

23 A No. It wasn't -- yes, I didn't want him to contact
24 me; but my fear was that, you know, he has these things about
25 me, and he's just using them against me, and I have no idea

1 what he's doing with these pictures. I don't know what he's
2 saying about me on social media. There's just so many
3 different ways to get things out now that I just -- I had no
4 idea what was -- what he was doing.

5 Q Okay. I want to go back to our packet. What was
6 the last text that you read? "Do you want to talk to me or
7 not?"

8 A Yes.

9 Q "Not anymore. I shouldn't have felt bad."

10 A "Will you please just not show them to anyone. I'm
11 literally begging you. I want you to leave me alone."

12 Q "You're horrible."

13 A "Look at yourself. Answer the phone. Please. I
14 don't want to have to worry that you're showing people
15 pictures and videos of me. Why won't you just answer so we
16 can end this bullshit?"

17 Q Were you talking about answering your calls?

18 A Yes.

19 Q "Yeah, I did look at myself. I tried -- I tried to
20 offer to let you apologize in person and delete the pictures
21 in person, even after you cheated."

22 A "I didn't want to come over at 1."

23 Q "You're crazy."

24 A "Why won't you just you call me?"

25 Q "Now it's 2:15," dot, dot, dot.

1 A "I thought you would stop. Just answer the phone.
2 seriously, I want this to end."

3 Q "No. I'm stuck at Luke's and have to figure a way
4 home."

5 A "If I drive you home and talk to you, will you stop?
6 Please."

7 Q "why did you unblock me just to threaten me?"

8 A "I'm not threatening you," question mark. "I just
9 offered to drive you home. will you let me do that? I hate
10 fighting. I'm trying so hard right now to appease you. I
11 guess that's a no."

12 Q "Fine. No."

13 A "which one is it? what do you want from me,
14 seriously? I will talk to you if that's what you want. why
15 couldn't you have asked me to come talk to you earlier?"

16 Q "I wasn't high."

17 A "Do you want me to come get you or not?"

18 Q "I don't want to talk in the car."

19 A "Just get high and talk to me tomorrow then. I'm
20 going to bed."

21 Q "No, I'm not smoking. Just pick me up."

22 A "Fine."

23 Q "I don't want to talk in the car. I don't want to
24 be that close to you. It's weird."

25 A "Then what do you want me to do? why can't we just

1 talk on the phone?"

2 Q "No."

3 A "I'm going to bed then. I don't know what else to
4 do."

5 Q "I said pick me up."

6 A "what? And stay and talk to you? I have so much to
7 do tomorrow, I'm not staying up that late."

8 Q "I offered to talk an hour and a half ago," dot,
9 dot, dot. "I'm tired now too."

10 A "Yeah. Well, I don't want to, but I feel like I
11 have no choice."

12 Q "Just pick me up. We don't have to talk at all,"
13 dot, dot, dot.

14 A "I'm going to bed. I'm done."

15 Q "You said you'd pick me up. W-T-F." Is that: what
16 the fuck?

17 A Yes. "Jesus. Fuck. I'm on the way."

18 Q "Wow. I'll call an Uber."

19 A "I'm on the way to get you. Do you want me to get
20 you or not? Is this going to resolve anything?"

21 Q "I don't know. Just come. You call me crazy."

22 A "Okay. Head down. I'll be there soon. Which
23 side?"

24 Q "Pot's." What's Pot's?

25 A It's a bar across the street from Onyx Apartments.

1 Q Okay. Go ahead.

2 A "okay."

3 Q "It's cold. I'll wait up here."

4 A "I'll be there in like five. It's not cold."

5 Q "Question mark."

6 A "I'm almost there. Come out. I'm here. I'm next
7 to Pot's."

8 Q what did you take that question mark to mean?

9 A I don't know.

10 Q Okay. At that point were you saying you were on
11 your way?

12 A Yes.

13 Q "I'm coming down."

14 A "okay."

15 Q "I think this was a mistake."

16 A "well, I'm here, so ate [sic] you coming or not?"

17 Q All right. So I want to stop right there before we
18 go any farther. I want to talk about what happened once you
19 picked him up, and then we'll finish with the messages.

20 All right. So at that point you drove to pick him
21 up from Potbelly's?

22 A Yes.

23 Q All right. would you have done that if he hadn't
24 said that was your one chance to have these pictures deleted?

25 A No.

1 Q What were you afraid would happen if you didn't go
2 over there to pick him up or go over there to talk to him that
3 night?

4 A This would just keep going, and he would just keep
5 showing people or doing whatever he wanted to get back at me.

6 Q Where did the Defendant live in October of 2016?

7 A On Botany Drive.

8 Q Is that here in Leon County?

9 A Yes.

10 Q All right. I want to talk about what happened once
11 y'all got to his house. Can you just kind of walk us through
12 that?

13 A Yes. When we got to the house, I don't know exactly
14 who was standing where, but he went in, in front of me real
15 quick and slammed the door in my face.

16 At this point I'm, like, I don't know what he wants
17 from me. I just want these stupid pictures gone. So I knock
18 on the door for him to let me in to talk. And he opens the
19 door and goes, "Oh, well, I just took a video of you banging
20 on my door at 2 in the morning," or whenever it was, "just so
21 you know."

22 And so we go in the house, and we were both arguing,
23 like, very emotionally. There were -- you know, it would go
24 back and forth between very emotional, to him having a lot of
25 anger towards me. We both were crying. It was just -- I was

1 trying to apologize in the hopes that, you know, maybe he
2 would get whatever closure he wanted, and then he would just
3 leave me alone and stop with this torture, this distress that
4 was constantly around me.

5 And I don't even know how long we talked. I think
6 it was an hour or two, maybe longer. So at this point it's,
7 like, really late, and he was -- like, we had both calmed down
8 a little bit. And he said, "well, why don't you just -- you
9 just sleep here. It's late."

10 And, you know, at that point I thought maybe things
11 had calmed down enough that he was going to be civil towards
12 me. And so I said, "Okay. Like I don't -- I really don't
13 want to drive this late. I'm exhausted."

14 we had been crying. And as soon as I get in the
15 bed, he starts to try and take my pants off, telling me things
16 like, "Don't you want me to accept the person you are? Don't
17 you want me to -- to be okay with you?"

18 And I said no repeatedly. I said it wasn't right.
19 I didn't want to do it and that I was uncomfortable. And he
20 kept trying to take my pants off.

21 So when he said things like, "I want to accept you,
22 like, this will make me accept you," I thought, you know,
23 maybe if I just make him happy, he'll leave me alone. So I
24 just -- I eventually just let him take my pants off, and he
25 started to have sex with me.

1 And at first, I was like, you know, this is -- it's
2 just sex, it's okay. Like, he's going to leave you alone
3 after this. This is what he wants to make himself feel better
4 about whatever -- whatever closure he wants. Like, this will
5 be it, and he'll leave me alone.

6 And part of the way through -- at this point, I was
7 on my stomach. He starts talking to me like a dog, saying,
8 "Is this what it felt like when you fucked that Pike? Is this
9 what you like?" And, "Look at you. You're a whore."

10 And I said, "Get the fuck off me." And I started
11 sobbing, and he laughed. And he laughed at me, and he stayed
12 inside of me for a minute or two and laughed.

13 Q Okay. I want to go back and just ask you a couple
14 of questions, okay? And they'll probably just be yes or no
15 questions. If you need a second --

16 A I'm fine.

17 Q Okay. At that point, when y'all are at his house,
18 y'all are -- y'all are in an argument, things are emotional,
19 and then he starts trying to have sex with you, at that point,
20 had you seen him delete this pictures?

21 MR. KOMISAR: Objection, leading.

22 THE COURT: Overruled.

23 THE WITNESS: No.

24 BY MS. DUGAN:

25 Q So he had never deleted any pictures in front of

1 you?

2 A No.

3 Q During the argument you said you were apologizing.
4 what do you mean by that?

5 A I -- I just figured all of this anger and everything
6 was because of me cheating on him. And I felt terrible, and I
7 understood the anger, but I just -- I wanted to just get him
8 to let it go and leave me alone.

9 Q when you say apologizing, I guess my question is:
10 were you apologizing and trying to get back with him, or were
11 you apologizing and trying to, like, explain -- explain your
12 actions?

13 A I was trying to explain my actions. I wasn't trying
14 to get back with him.

15 Q Did any part of you want to get back with him or
16 have sex with him that night?

17 A No.

18 Q Did you even want to see him that night?

19 A No.

20 Q I'm going to ask you a few specific questions about
21 what happened when y'all started to have sex. What do you
22 remember, if anything, about him saying something about this
23 would resolve the situation? What can you tell us about that?

24 A He just -- he just kept saying, like, "Don't you
25 want me to accept you?" And, "Don't you want us to be okay

1 with each other?"

2 Q And what did you take that to mean?

3 A I took it to mean that if I wanted the -- the
4 threatening me with the pictures, the posting comments on my
5 social media, everything, all the anger, all of it, I thought,
6 you know, if he -- he just wants me to have sex with him and
7 then, you know, maybe this will -- he'll stop. He'll get what
8 he wanted.

9 Q So you thought him being okay with you would be
10 y'all being civil, him not harassing you anymore?

11 A Yes.

12 Q If it weren't for him telling you everything would
13 be resolved and okay -- or, I'm sorry, in your words,
14 everything would be okay with you guys, and he would accept
15 you if you had sex with him, would you have done it?

16 A If he hadn't said that?

17 Q Right.

18 A No.

19 Q Did you think that if you kept saying no and refused
20 and left, that he would just drop this whole thing and stop
21 harassing you with the pictures?

22 A No.

23 Q I want to talk about once this tone changed. How
24 would you describe his demeanor once he started saying the
25 things about, "was this what -- was this what it was like when

1 you were cheating on me?"

2 A Aggressive and mocking. Demeaning towards me.

3 Q Did you tell him to get off you one time or multiple
4 times?

5 A I said, "Get the fuck off me," multiple times.

6 Q You said it was about a minute or two, once you
7 started saying that, to when he got off?

8 A Yes.

9 Q Okay. You said he was laughing. What -- what kind
10 of laughter are we talking about? Are we talking about, like,
11 snickering? Are we talking about loud laughing? What are we
12 talking about?

13 A Loud. Like, loud. Obnoxious.

14 Q When he was on top of you, you said you were on your
15 stomach. What position was he in?

16 A I believe his -- he was in me, so his legs must have
17 been on my legs, but his body weight was on my backside.

18 Q Okay. So his body was laying on top of your body?
19 His legs were on your --

20 A He was sitting on top of me, yes.

21 Q And his penis was in your vagina?

22 A Yes.

23 Q And that's from the time y'all started having sex,
24 even after you said, "Get off me," until he finally got off a
25 minute or two later?

1 A Yes. He was on top of me and stayed inside of me
2 after I said, "Get the fuck off me."

3 Q what was your demeanor at that time?

4 A I was sobbing because I realized what was really
5 happening, it wasn't sex. It wasn't -- he wasn't getting --
6 you know, he wasn't going to be better towards me. This was
7 him -- he -- when I cheated on him, I guess maybe I took
8 something from him, and he wanted to -- to get his dominance
9 back over me and win whatever he was trying to win. And at
10 that moment when I started sobbing and told him to get the
11 fuck off, he laughed because he knew he had won, and he had
12 done what he wanted to do.

13 Q what did you do once he finally got off of you?

14 A I got up and got dressed and I left. He followed me
15 to my car. And I shut the door in his face, and he held up
16 his phone, and it was either a video of me performing a sexual
17 act or a picture of me, and he was waving it in my face and
18 then in the window as I was trying to leave.

19 Q what was -- what, if anything, was he saying? How
20 was he acting during that time when he followed you out to
21 your car?

22 A He was laughing and saying things like, "I can't
23 believe you just let me do that to you, you just -- you just
24 let me treat you like that." And calling me a whore and
25 things like that. Laughing. Still mocking.

1 Q All right. I want to show you the end of the
2 packet. And we're just talking about -- all right. So this
3 text that we see, number 13, from Kyle Phillips in yellow,
4 "Thanks for the ride. The pictures are gone. Thanks for
5 letting me lift you up, baby girl." When he said, "Thanks for
6 the ride, thanks for letting me lift you up, baby girl," what
7 was he talking about? Or what did you take that he was
8 talking about?

9 MR. KOMISAR: Objection, speculation.

10 THE COURT: Overruled.

11 THE WITNESS: Just, you know, thanks so much for
12 picking me up and letting me do that to you. You know...

13 BY MS. DUGAN:

14 Q "That" meaning sex?

15 A It brought him so much pleasure. Yeah.

16 Q When he says, "The pictures are gone," did you
17 believe that?

18 A Absolutely not.

19 Q Okay. And when did you receive that text?

20 A After I left.

21 Q Okay. So that text was sent from him to you after
22 the sex and after you left?

23 A After I got in my car, yes.

24 Q What is this little emoji we're seeing?

25 A Crying so hard I'm laughing.

- 1 Q So it's an emoji with a big smiling face and tears?
- 2 A Yes.
- 3 Q what did you say?
- 4 A "I don't care."
- 5 Q what were you saying you didn't care about?
- 6 A The way he made me feel and the things he did to me.
- 7 Q Is that true?
- 8 A No.
- 9 Q why did you say it?
- 10 A Because he did that to me not because he wanted to
- 11 have sex with me, but because he wanted to dominate me and
- 12 make me feel like a dog, like trash, because he thought I was
- 13 a whore and I deserved to feel that way. And I didn't want
- 14 him to think that he had demeaned me or made me feel that way.
- 15 I wanted him to think I was strong and that it didn't bother
- 16 me.
- 17 Q So you were acting like you didn't care?
- 18 A Yes.
- 19 Q I'm sorry, can you read your next one that's on the
- 20 next page?
- 21 A "You're the psychopath. All you did was not make me
- 22 feel guilty anymore, so good job."
- 23 Q what did you not feel guilty anymore about?
- 24 A Cheating on him and hurting him.
- 25 Q "Oh, you care."

1 what are these emojis? Are these the same type you
2 were telling me about before?

3 A The same, open mouth, laughing, tears coming out of
4 the eyes.

5 "No, I don't."

6 Q "I can't believe you let me do it. You're
7 hilarious. Laugh my ass off."

8 A "It was just sex."

9 Q why did you send that?

10 A Again, I didn't want him to think that what had
11 happened had affected me. I wanted him to think that, you
12 know, it was my idea, and I wasn't going to let him feel like
13 he had beaten me.

14 Q was it just sex to you?

15 A Absolutely not.

16 Q "Oh, I know."

17 A "No one will ever love someone like you. Leave me
18 alone. Don't ever come near me. You're truly fucked up in
19 the head."

20 Q I'm showing you what has been premarked and shown to
21 defense as State's 4.

22 what is State's 4?

23 A It's text -- it's a screen shot of texts from Kyle,
24 between me and Kyle from that same night.

25 Q Same thing on the next page, Page 2 of State's 4?

1 A Yes.

2 Q Are -- so these are actual screen shots from your
3 phone?

4 A Yes.

5 Q And do they show the emojis as we would see them on
6 your phone?

7 A Yes.

8 Q Is that in -- from what you see there, is it in the
9 same or substantially the same condition as when you received
10 it that night and replied?

11 A Yes.

12 MS. DUGAN: At this time I would move State's 4 into
13 evidence.

14 THE COURT: Any objection?

15 MR. KOMISAR: No, Your Honor.

16 THE COURT: It will be admitted.

17 (State's Exhibit No. 4 received in evidence.)

18 BY MS. DUGAN:

19 Q All right. And so 6:12 a.m., that's the time that
20 you're receiving this?

21 A Yes.

22 Q Okay. Looking at these emojis he's sending, these
23 are the emojis you were telling us about?

24 A Yes.

25 Q And the same ones here? Oops.

1 A Yes.

2 Q And this is a smile with tears?

3 A Yes.

4 Q That's the one you know to be laughing so hard
5 you're crying?

6 A Yes.

7 MS. DUGAN: Just a second.

8 (Pause.)

9 BY MS. DUGAN:

10 Q All right. So moving on from October 10th, after
11 that date, were you still concerned that these pictures might
12 get out? Did you think that they were still in his phone?

13 A Yes.

14 Q Did you ever tell anybody what happened that night?

15 A Yes.

16 Q Who was the first person you told?

17 A My friend Ryan.

18 Q Okay. And when did you tell him?

19 A I texted him. I don't know if it was that --

20 Did you say what did I tell him?

21 Q When? When?

22 A It might have been that night or the next day, I'm
23 not sure.

24 Q Okay. So either the night -- the night that it
25 happened, meaning, if this was at 6 a.m., October 10th, by

1 that night?

2 A Yes, that -- I -- I believe it was that day.

3 Q Okay. What about anybody else? Did you tell
4 anybody at school?

5 A Yes.

6 Q Tell us about that.

7 A The next day I received a Snapchat from Luke
8 quoting --

9 Q I'm talking about the day of this incident, if you
10 went to an office at school --

11 A Yes.

12 Q -- and told somebody?

13 A Yes. After I received a Snapchat from Luke, yes, I
14 went to the victim advocate at FSU; and I told her that my
15 ex-boyfriend had been posting defaming things about me on
16 social media and trying to contact me any way he could with,
17 you know, derogatory language and whatnot.

18 And I told her that he had told me that -- he --
19 well, what I believed him to be meaning was that if he -- if I
20 didn't have sex with him, that the pictures, the harassment,
21 and all of that wasn't going to go away. And I know from her
22 report, it doesn't say that in there; but I did tell her that
23 when I went.

24 Q Okay. So you went to the victim advocate's at your
25 school?

1 A Yes.

2 Q And why did you go there?

3 A I was trying to study for my exam, and I just -- I
4 couldn't do it. I couldn't read. I would read the same line
5 over and over again. I -- I couldn't retain any of the
6 information and focus on anything.

7 Q Did you --

8 A And I was -- I didn't know what to do. I was
9 desperate.

10 Q Did you have a test the same day that it happened,
11 like, later that day on October 10th?

12 A Yes.

13 Q Did you need her to try to -- or their office to try
14 to help you take that exam later --

15 A Yes.

16 Q -- instead of that same day?

17 A Uh-huh.

18 Q How did your -- I guess at some point you -- you
19 told police in the next few weeks after this happened?

20 A Yes.

21 Q Okay. You were telling us about a Snapchat. Can
22 you tell us about that?

23 A Look Snapchatted me and said --

24 MR. KOMISAR: Objection, hearsay.

25 THE COURT: Let's go sidebar, please.

1 (Sidebar as follows:)

2 THE COURT: Ms. Dugan.

3 MS. DUGAN: One of the reasons she went to the
4 victim advocate was because she got this other contact
5 the next day, the Snapchat. In the Snapchat his friend
6 says something that only Kyle Phillips would know.

7 He says, "If you want me to accept you, if you want
8 us to be okay," in quotation marks in the Snapchat; so,
9 you know, she believed that it was the Defendant making
10 that statement, which caused her to go the victim
11 advocate.

12 I guess -- I would guess I would be seeking to admit
13 it as an admission. But, truthfully, I wasn't even
14 really going to go into it, I was just asking her why she
15 went to the VA's office when she brought it up, but I can
16 move past it.

17 THE COURT: Yeah, unless you have some evidence that
18 it's actually from this Defendant, not from this Luke
19 Hazen -- I know the connection on the others, but we seem
20 to have moved past that.

21 MS. DUGAN: Yes, sir.

22 THE COURT: I'll sustain the objection at this
23 point.

24 (The sidebar concluded, and the following took place
25 in open court:)

1 BY MS. DUGAN:

2 Q All right. So did you -- how did this affect your
3 schoolwork over the next several weeks?

4 A I just -- I -- I couldn't -- like I said earlier, I
5 would try to study and do homework, and I would read the same
6 lines over and over again, not retaining anything. I couldn't
7 focus. I felt, like, nervous and anxious all the time, and
8 I -- I just -- I couldn't do it at all.

9 Q Did you end up having to withdraw from a class or, I
10 think, two classes?

11 A Two classes.

12 Q Okay. Tell us what happened with that.

13 A I withdrew. And because they were classes that I
14 took with my scholarship covering them, my parents had to
15 repay my Bright Futures for those classes, and then I took
16 them later after that.

17 Q Okay. So you ended up retaking the classes after
18 that semester?

19 A Yes.

20 Q What did you end up making in them, if you remember?

21 A I believe I made a B-plus and -- maybe two B-pluses.
22 I'm not sure.

23 Q Okay. Did you end up, like, making any money from
24 Bright Futures or anything like that?

25 A No. We had to pay them.

1 Q So your family had to pay Bright Futures back for
2 those two class credits?

3 A Yes.

4 Q When you went to talk to police, at that point, what
5 was your concern regarding the pictures?

6 A That he -- I'm sorry, I'm not sure what you're
7 asking.

8 Q Maybe I didn't --
9 were you -- were you or were you not still concerned
10 about the photos when you went to talk to the police?

11 A Yes.

12 Q Okay. So you believed that they were still out
13 there?

14 A Yes.

15 MS. DUGAN: That's all I have. Thank you.

16 THE COURT: Y'all want to take a lunch break now or
17 get into cross at this point?

18 MR. KOMISAR: We defer to the Court. The State,
19 however they'd like to do it.

20 THE COURT: We've been going an hour and 15 minutes,
21 we're probably due for a break anyway. So let's take a
22 lunch break right now.

23 Just leave your notes where they are. Don't discuss
24 the case among yourselves. Let's be back and ready to go
25 at 1:15. There is a snack bar on the second floor. One

1 juror wrote me and said nobody let him know that, so I'm
2 letting you know that.

3 Anyway, have a good lunch. Make sure that you come
4 back here to the third floor. Don't go downstairs where
5 you went this morning. All right. Make sure they know
6 where to come back to, Deputy.

7 THE BAILIFF: Yes, sir.

8 (The jury was escorted from the courtroom, and the
9 following took place outside their presence:)

10 THE COURT: Either side need anything?

11 MS. DUGAN: No, sir.

12 MR. KOMISAR: No, sir.

13 THE COURT: All right. We'll be in recess until
14 1:15. I'm sorry, let's come back for a second. I saw
15 them bring you some copies of --

16 MS. DUGAN: They are a little late. These are the
17 corrected copies.

18 THE COURT: Are you going to substitute corrected
19 copies?

20 MS. DUGAN: Yes, sir. I'll have one that goes back
21 into evidence; or, I guess, maybe switch them out in case
22 they have any questions about the text during cross.

23 THE COURT: Why don't you let the defense look at
24 them and make sure they are okay with them. If so, let's
25 substitute a corrected copy. We don't need to do that

1 this instant. But over the lunch, let them look at them,
2 make sure that's the proper, corrected copy.

3 MS. DUGAN: Yes, sir.

4 THE COURT: All right. we'll be in recess.

5 (Lunch recess.)

6 (The transcript continues in Volume II.)

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CERTIFICATE

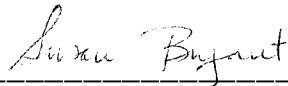
STATE OF FLORIDA:

COUNTY OF LEON:

I, SUSAN BRYANT, Registered Merit Reporter, do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages are a true and correct record of the aforesaid proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

DATED this 6th day of September 2018.



SUSAN BRYANT, RMR, CRR
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SUSAN BRYANT, RMR, CRR, OFFICIAL COURT REPORTER

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA

CASE NO.: 2016-CF-3747

STATE OF FLORIDA

VS.

KYLE PHILLIPS,

Defendant.

_____/

VOLUME II

(Pages 126 - 308)

PROCEEDINGS:	JURY TRIAL
BEFORE:	THE HONORABLE JAMES C. HANKINSON
DATE:	May 30, 2018
TIME:	Commencing at: 1:15 P.M. Concluding at: 5:30 P.M.
LOCATION:	Leon County Courthouse Tallahassee, Florida
REPORTED BY:	SUSAN BRYANT, RMR, CRR Notary Public in and for the State of Florida at Large

SUSAN BRYANT, RMR, CRR
Official Court Reporter
Leon County Courthouse, Room 341
Tallahassee, FL 32301

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PROCEEDINGS

(The following took place outside the
presence of the jury:)

THE BAILIFF: All rise. Court is back in session.

THE COURT: Be seated, please.

Did we get sorted out on our exhibits?

MS. DUGAN: Yes, sir. I have new copies. I haven't
looked at every single page of every single one; but from
the ones that I did look at, they look to be intact. I
have given one to the defense.

THE COURT: The one I'm most worried about is the
one we're putting into evidence.

MS. DUGAN: Yes, sir.

THE COURT: Which would be State's Exhibit 1?

MS. DUGAN: Yes, sir.

THE COURT: Has the defense looked at that and okay
that that's a complete version of what was supposed to be
Defense -- I mean, State's Exhibit 1?

MR. KOMISAR: Yes, Your Honor.

THE COURT: Let's have the jury, please.

Y'all were supposed to do that at lunch, not
supposed to be doing it now.

MS. DUGAN: Do you want me to repass the new ones
out?

THE COURT: No.

1 MS. DUGAN: No?

2 THE COURT: Let's have the jury.

3 THE BAILIFF: All rise for the jury.

4 (The jury returned to the courtroom, and the
5 following took place in open court:)

6 THE COURT: Everybody be seated, please.

7 You may inquire, Mr. Komisar.

8 MR. KOMISAR: Thank you.

9 CROSS EXAMINATION

10 BY MR. KOMISAR:

11 Q Good afternoon, Ms. M.

12 A Good afternoon.

13 Q Is it correct you and Mr. Phillips dated for about
14 six months?

15 A Yes.

16 Q You guys texted consistently throughout the
17 six-month relationship?

18 A Yes.

19 Q At the time did you guys ever text sexually with
20 each other about future plans or anything along those lines?

21 A I'm not sure.

22 Q Did you guys ever use text messages as a way to plan
23 liaisons for sexual activity?

24 A Yes.

25 Q You both were pretty open sexually with each other

1 and spoke about sex with each other?

2 A Somewhat, yes.

3 Q There was no -- prior to the incident on October
4 10th that we're here about today, there was no physical abuse
5 in the relationship?

6 A No.

7 Q Is the colloquialism "hooking up" something that
8 college students use to describe when they have sexual
9 relations with people?

10 A Yes. I -- yes.

11 THE COURT: The courtroom is closed, Mr. Knowles.

12 Mr. Knowles, the courtroom is closed.

13 BY MR. KOMISAR:

14 Q what day did you break up with Mr. Phillips?

15 A I believe it was around the 2nd.

16 Q Did you send a text to your sorority's group message
17 on October 2nd, "I just broke up with my boyfriend. I'm such
18 a mess. Do you think I'll get in trouble if I turn it in
19 tomorrow?"

20 A Yes.

21 Q was that talking about a homework assignment?

22 A No. It was a basket for my little.

23 Q So this is October 2nd, and you're sharing with your
24 friends that you're such a mess because you just broke up?

25 A Yes.

1 Q Okay. And this was prior to any communications
2 between you and Mr. Phillips about nude photographs?

3 A I believe so.

4 Q This was prior to him discovering that you had
5 cheated on him?

6 A Yes.

7 Q And this was prior to any inappropriate or nasty
8 text messages from him to you?

9 A I don't know if he had texted me at the point I
10 received that text message, or I sent that text message.

11 Q Do you have a friend named Kristin in your sorority
12 that you would text with during this time period?

13 A Yes, I do.

14 Q Do you recall texting her on October 2nd that you
15 had just broken up with Kyle, Mr. Phillips?

16 A I don't recall.

17 Q would it refresh your recollection if I showed you
18 your text messages from that day?

19 A Yes.

20 MR. KOMISAR: If I may approach the witness?

21 THE COURT: You may.

22 BY MR. KOMISAR:

23 Q what I have handed the witness and the State is an
24 excerpt packet of some of the text messages. The numbers are
25 in chronological order. To refresh your recollection, if you

1 could take a look at Page 3656.

2 A Okay.

3 Q Did you text your friend on October 2nd that you had
4 just broken up with Mr. Phillips?

5 A I'm trying to -- it doesn't say who it was said to.
6 It just says that I sent a text message that said I just broke
7 up with Kyle.

8 Q And is the person who responded to that Kristin?

9 A Yes.

10 Q Okay. So that was a text that was sent to Kristin?

11 A I -- yes.

12 Q Following up in that conversation, did you tell
13 Kristin, "I just did not like him enough. He was kind of mean
14 sometimes, so I was planning on doing it, then ended up
15 shacking with this amazing guy"?

16 A Yes.

17 Q And the shacking we're talking about is the Peter
18 individual that the state talked to you about on direct?

19 A Yes.

20 Q Do you have a friend name Cattie Hansen (phonetic)
21 that you texted with during this time period?

22 A Yes.

23 Q If I could refer you to Page 2243. Did you text
24 with Cattie Hansen (ph) on October 3rd?

25 A Yes.

1 MS. DUGAN: Judge, I'm going to object to the form
2 of these questions being hearsay. I think it's different
3 to -- if we could sidebar.

4 THE COURT: Okay.

5 (Sidebar as follows:)

6 MS. DUGAN: Excuse me. I just didn't want to make a
7 speaking -- the form of these questions is hearsay. He
8 is saying: Did you say this on this date to this person?
9 She's not denying that she broke up with him, that they
10 had consensual sex after.

11 If he asked her something like: Did you have
12 consensual sex with him after you broke up on
13 October 3rd? And she said: No, I did not, then at that
14 point, I think he can impeach her with the text messages.
15 But just forming every question as hearsay is
16 objectionable.

17 THE COURT: Why is it not hearsay, Mr. Komisar?

18 MR. KOMISAR: Because I've not asked the witness and
19 I don't intend to ask the witness what anyone told her.
20 All I asked --

21 THE COURT: What she says is also hearsay.

22 MR. KOMISAR: It's not being offered for the truth,
23 it's being offered to show that during the time period
24 between the breakup and the incident, this is what she
25 was telling people, that she was expressing to people,

1 her feelings, and these directly -- is impeachment,
2 contradict the feelings she testified she was having on
3 direct.

4 THE COURT: I don't see it to be contradictory.
5 I'll sustain the objection.

6 (The sidebar concluded, and the following took place
7 in open court:)

8 BY MR. KOMISAR:

9 Q On October 3rd, 2016, did you go over to Kyle's
10 house to talk to him?

11 A Can I see the text messages?

12 THE COURT: Put the text messages away. We're not
13 talking about the text messages. Just listen to his
14 question. Let me have the -- what he handed to you. It
15 seems to be distracting you.

16 THE WITNESS: Well, it's just easier for me to see
17 the text messages between --

18 THE COURT: He's not asking about a text message.
19 The question was: Did you go over to his house --

20 THE WITNESS: Yes, sir.

21 THE COURT: -- on October 3rd?

22 THE WITNESS: I believe so. Again, it was so -- I
23 believe it was the 3rd, yes.

24 BY MR. KOMISAR:

25 Q Was the purpose of you going to Mr. Phillips' house

1 on October 3rd to talk?

2 A I believe so.

3 Q And you ended up having sex with him on October 3rd
4 when you went to his house to talk to him?

5 A Yes.

6 Q During this time period, you were feeling bad that
7 you had broken Mr. Phillips' heart, and you were concerned
8 that something was wrong with you because of the way you
9 treated him; is that true?

10 A Yes. Well, not with how I treated him, but because
11 I cheated on him.

12 Q And you at that time felt that you had broken
13 Mr. Phillips' heart on October 3rd?

14 A Yes.

15 Q And you were aware on October 3rd that Mr. Phillips
16 was hurt?

17 A Yes.

18 Q The sex on October 3rd, was that consensual?

19 A Yes.

20 Q Did that sex on October 3rd start with him
21 performing oral sex on you?

22 A I don't remember.

23 Q The sexual battery that we're here about, October
24 10th, did that start with him performing oral sex on you?

25 A I don't recall.

1 Q Was the sex on October 3rd casual sex between the
2 two of you because you felt comfortable with him at that time?

3 A Yes.

4 Q Was Mr. Phillips attempting to reconcile with you
5 during that time period, the relationship?

6 A I don't know. I think he wanted to get back with
7 me, but every time we had sex, he said it was helping him to
8 get over me.

9 Q When you had sex with him on the 3rd, had you told
10 Mr. Phillips about having sex with Peter on the 1st?

11 A No.

12 Q Isn't it true that during this time period you felt
13 bad for having sex with Mr. Phillips because you felt it could
14 have given him the wrong impression about the relationship?

15 A Yes.

16 Q During this time period, Mr. Phillips, throughout
17 his communications with you, was trying to get back together
18 with you? At times?

19 A On and off.

20 Q Why -- during this time period did you have some
21 property of Mr. Phillips' that he was trying to get back?

22 A Yes.

23 Q Why didn't you just give him back the property?

24 A I had tried to give it to his roommate instead of
25 him because I didn't want it to be an additional catalyst to

1 all the fighting and stuff.

2 Q well, on October 3rd he didn't know you had cheated,
3 so there hadn't been any fighting yet, had there?

4 A It had been back and forth between being somewhat
5 okay and not.

6 Q Did you again go to Mr. Phillips' house on
7 October 5th to engage in consensual sex with him?

8 A I believe so.

9 Q Did this liaison start when Mr. Phillips contacted
10 you via text message that day?

11 A I'm not sure.

12 Q Do you recall whether the October 5th, 2016, sex was
13 initially arranged between the two of you via text messages?

14 A I believe it was.

15 Q Do you recall the content of those text messages?

16 A I believe he was talking about performing oral sex,
17 yes.

18 Q when you learned that Mr. Phillips had -- did
19 Mr. Phillips describe to you how he would perform oral sex on
20 you if you met with him on October 5th?

21 A Yes.

22 Q In response to learning that, you got in your car
23 and you drove to Mr. Phillips' house?

24 A Yes.

25 Q And you engaged in that consensual oral sex which

1 then led to vaginal sex?

2 A Yes.

3 Q Was the oral sex that Mr. Phillips described to you
4 on October 5th that led you to drive to his house that day the
5 same sex acts that the October 10th incident started with?

6 A I don't know. It may have started with that. I
7 don't recall the --

8 Q Have you described the sexual activity on the 3rd
9 and the 5th as casual, non-romantic sex with Mr. Phillips?

10 A Yes.

11 Q Did you have sex with Mr. Phillips on October 4th?

12 A I don't recall.

13 Q Is it possible you had sex with Mr. Phillips on
14 October 4th?

15 A It's possible. I -- I know we did a couple of
16 times, but I don't -- I don't specifically remember which
17 dates it occurred on.

18 Q But you have a specific recollection that
19 October 5th was a liaison arranged via the text messages?

20 A I believe so, if...

21 Q And your immediate reaction to Mr. Phillips' texting
22 you about the oral sex was to drop your schoolwork you were
23 working on and drive to his home?

24 A I don't know if I was doing schoolwork at the time.
25 I don't remember.

1 Q would it refresh your recollection if you saw your
2 text messages from that day?

3 A Yes.

4 THE COURT: Do you have a reference you want to --

5 MR. KOMISAR: If I could -- there's a page in the
6 packet, 7696.

7 THE COURT: All right. I don't see any numbers like
8 that. There's 2442 through 7703.

9 MR. KOMISAR: You're correct, Your Honor. I
10 actually had a -- those text messages are between Ms. M.
11 and other individuals. I've got a packet here between
12 her and the -- if I can approach.

13 THE COURT: Has this been marked for identification?

14 MR. KOMISAR: It has not, Your Honor.

15 THE COURT: Let's mark it for identification so
16 we'll know what's being shown to somebody. Defense
17 Exhibit 1?

18 MR. KOMISAR: We've already marked one document as
19 1?

20 THE COURT: What do you want to mark it?

21 MR. KOMISAR: That would be 2.

22 THE COURT: All right. We'll need a stamp, Defense
23 Exhibit 2.

24 MR. KOMISAR: If I could have this marked as -- this
25 will be 3.

1 If I may approach the witness?

2 THE COURT: You may.

3 BY MR. KOMISAR:

4 Q 7696.

5 A Yes. It appears as if I was doing homework at the
6 time.

7 Q And Mr. Phillips contacted you, described oral sex
8 he would perform. You dropped the schoolwork, you drove to
9 his house.

10 A Yes.

11 Q You actually got to his house before he was even
12 there to meet you?

13 A Give me one second to scan -- scan this.

14 Yes, it appears I did meet him there.

15 Q Did you share what occurred on October 5th between
16 you and Mr. Phillips and your friend Cattie Hansen (phonetic)?

17 A I believe so.

18 Q Do you recall if you ever -- did you discuss with
19 Ms. Hansen (ph) whether you should continue to have sex with
20 Mr. Phillips?

21 A Yes.

22 Q Okay. And you guys kind of debated as to whether
23 somebody should keep having sex with their ex after they break
24 up?

25 A Yes.

1 Q Did you ask Ms. Hansen (ph) what if you just had sex
2 and left?

3 MS. DUGAN: I would object to hearsay.

4 THE COURT: Overrule the objection to this question.

5 BY MR. KOMISAR:

6 Q Did you ask Ms. Hansen (ph) -- one of your ideas was
7 just having sex with him and leaving?

8 A I don't recall. Do you have a page I can look at?

9 Q would it refresh your --

10 THE COURT: Ma'am, just answer his questions and
11 then be quiet. Okay?

12 THE WITNESS: I -- I don't remember.

13 THE COURT: If you don't remember, that's fine.
14 Tell him you don't remember.

15 THE WITNESS: I don't remember.

16 BY MR. KOMISAR:

17 Q You don't remember whether you told Ms. Hansen --

18 THE COURT: I'll sustain the objection at this
19 point. Move on, Mr. Komisar.

20 BY MR. KOMISAR:

21 Q would it refresh your recollection if you reviewed
22 your text with Ms. Hansen?

23 THE COURT: I said move on, Mr. Komisar. New
24 question. I sustained the hearsay objection.

25

1 BY MR. KOMISAR:

2 Q On October 6th was Mr. Phillips still being rude to
3 you?

4 A I believe so. Again, it was on and off. I don't
5 recall exactly -- I believe it was the 7th when he discovered
6 I cheated on him. Or maybe it was the 9th. I'm not entirely
7 sure. But it was on and off before that as -- you know --

8 Q Isn't it true that on October 6th, 2016,
9 Mr. Phillips was not being rude to you and had stopped being
10 rude to you?

11 A I don't know. It's possible it was on that date.
12 Again, it was back and forth.

13 Q Did you ever express to anyone that he had not been
14 rude to you on October 6th?

15 A Perhaps. At one point I did, yes. I don't know if
16 it was October 6th.

17 Q At that time were you at all considering getting
18 back together with him?

19 A No.

20 Q Isn't it true that you've described "okay terms" as
21 the relationship between you on October 6th, that you were on
22 "okay terms"?

23 A I believe so. At one point in time, yes.

24 Q And October 6th you were not feeling harassed?

25 A At one point maybe not, no.

1 Q Did Mr. Phillips do anything on October 7th that
2 expressed to you he wanted to get back together?

3 A I don't recall.

4 Q would it refresh your recollection if you saw the
5 text between yourself and Mr. Phillips on October 7th?

6 A Yes. What was your question again, please?

7 Q If you could take a look at State's Exhibit 3 for
8 identification purposes to refresh your recollection, Page
9 7700.

10 A Yes. And what was the question again?

11 Q Did you feel, on October 7th, that Mr. Phillips was
12 trying to get back with you by being nice and sending sweet
13 text messages?

14 A Possibly, yes.

15 Q would you agree that it would be upsetting to
16 someone to learn that their girlfriend broke up with them
17 after having sex with someone else and then continued to have
18 sex with them without disclosing that fact?

19 A Yes.

20 Q You had hickeys -- or what is a hickey? When you
21 say the word "hickey," what do you take that to mean?

22 A It's a bruise from someone using their teeth on your
23 skin or sucking -- I don't know. It's a bruise.

24 Q Did you have any hickeys from Mr. Phillips prior to
25 the incident on October 10th?

1 A Yes.

2 Q where did those come from and when were they
3 present?

4 A One of the times we had consensual sex. I cannot
5 tell you exactly which day.

6 Q were you concerned about those on October 9th, 2016?

7 A I believe so.

8 Q what does "shacked" mean?

9 A To sleep with, usually have intercourse with
10 someone.

11 Q How many people did you share with that you had had
12 the relations with Mr. Phillips after the breakup?

13 A I don't know.

14 Q On October 9th did you feel that you had been
15 shacking with him too much and that you needed to chill?

16 A That text was not referring to him; but, yes, I was
17 trying to stop doing that.

18 Q You would agree that on October 5th, Mr. Phillips
19 said nothing threatening; all he did was describe what he
20 intended to do if you came over, and that caused you to come
21 over?

22 MS. DUGAN: Asked and answered.

23 THE WITNESS: I -- I don't recall --

24 THE COURT: Sustained.

25 THE WITNESS: -- all the texts from that day. I

1 don't know.

2 BY MR. KOMISAR:

3 Q would it refresh your recollection if you saw them?

4 THE COURT: I sustained the objection.

5 BY MR. KOMISAR:

6 Q On October 9th, isn't it true that you felt that you
7 had done something wrong by breaking up with Mr. Phillips and
8 then hooking up with him?

9 A Yes.

10 Q Mr. Phillips never told you via text message that he
11 was going to post or send any photograph or video to anyone,
12 correct?

13 A No, just show them.

14 Q Mr. Phillips never communicated to you in person or
15 over the phone that he was going to post or send any
16 photograph or video to anyone, correct?

17 A Correct.

18 Q During the time period of October 7th through
19 October 9th, would it be fair to categorize your conversations
20 with Mr. Phillips as him being infatuated with the cheating
21 and the breakup?

22 A I believe so.

23 Q The text that the State has put in evidence from
24 October 9th, there is no mention of you having sex with
25 Mr. Phillips or coming to his home to have sex with

1 Mr. Phillips, is there?

2 A On the 9th?

3 Q Yes. Or the 10th.

4 THE COURT: I'm not sure I understand your question,
5 Mr. Komisar --

6 THE WITNESS: I don't either.

7 THE COURT: -- would you restate it, please.

8 BY MR. KOMISAR:

9 Q The texts that you read back and forth with the
10 Assistant State Attorney today --

11 A Yes.

12 Q -- none of that references that he's seeking sex, is
13 he? Or do they?

14 A No.

15 Q And at repeated times he's making clear he's seeking
16 to talk to you?

17 A Yes.

18 Q When you accused him in those text messages of that
19 he had threatened to show photos, and he corrected you and
20 said that his goal was to talk --

21 A Yes.

22 Q -- when he told you that you guys always talked
23 better in person, that was true throughout the whole course of
24 the relationship?

25 A Yes. I think that's how, communicating with most

1 people.

2 Q Your communications with Mr. Phillips leading up to
3 you going and picking him up on October 10th, isn't it true
4 that was Mr. Phillips trying to exchange talking for deleting
5 the photos, not exchanging sex for deleting the photos?

6 A Yes, in the text.

7 Q Isn't it true that during the car ride to
8 Mr. Phillips' house after you picked him up, there was no talk
9 about sex in that car ride?

10 A No.

11 Q So my statement is correct, that there was no talk?

12 A It is correct, there was no talk of sex in the car.

13 Q Did anyone get out of the car during that car ride?

14 A I don't recall.

15 Q Was anyone else in the car other than you and
16 Mr. Phillips?

17 A No, no one other than me and Mr. Phillips.

18 Q And your testimony today is that you don't recall
19 whether he got out of the car?

20 A No.

21 Q Would it refresh your recollection if I showed you a
22 copy of your deposition?

23 A Sure.

24 MR. KOMISAR: If I can approach the witness?

25 THE COURT: You may.

1 BY MR. KOMISAR:

2 Q If you could take a look at Page 52.

3 THE COURT: Just read it to yourself. Let us know
4 after you've read it.

5 Is there a particular line you want her to read, Mr.
6 Komisar?

7 MR. KOMISAR: Line 21 to 23.

8 THE COURT: Page 52, is that what you said?
9 Fifty-two.

10 MR. KOMISAR: Yeah, Page 52, Line 21.

11 THE COURT: All right. Have you had a chance to
12 read it?

13 THE WITNESS: Yes.

14 BY MR. KOMISAR:

15 Q Did Mr. Phillips -- do you recall whether
16 Mr. Phillips got out of the car during the car ride back to
17 his home?

18 A Yes. I -- I think he might have opened the door and
19 threatened to get out. I -- I -- but he ended up getting --
20 shutting the door again.

21 Q Do you recall what the communication between the two
22 of you was? Why would somebody -- why did he try and get out
23 of the car?

24 A I believe I might -- he was on Tinder in front of me
25 intentionally, and I made a comment to him about it. That

1 could be it, but I don't recall if those two events were at
2 the same time.

3 Q what's Tinder?

4 A It's a hookup app. It's for meeting up with people.

5 Q Did you knock or bang on Mr. Phillips' door after he
6 locked you out of the apartment or home?

7 A I don't know how hard I knocked on the door. I was
8 pretty desperate.

9 Q Do you know how long?

10 A No.

11 Q Isn't it true that before you actually picked
12 Mr. Phillips up that evening, he told you it wasn't a good
13 idea?

14 A Yes. I was already on the way at that point, I
15 believe. But, again, I didn't feel as if I had a choice
16 because of the nude pictures.

17 Q Is it possible you guys talked for multiple hours
18 before anything sexual occurred in the house?

19 A Anything -- what happened in the house? I'm sorry.

20 Q Before anything sexual occurred in the house that
21 evening.

22 A Yes. We did talk.

23 Q Could you approximate how long you guys talked?

24 A Probably a couple of hours maybe. I'm not sure. It
25 seemed long, but I -- I honestly can't tell you.

1 Q whose idea was it for you to spend the night?

2 A I believe it was his, but I -- I didn't want to
3 drive anyways, so we might have agreed on it. I don't know.

4 Q So do you know whether it was his idea or -- you
5 say, "I believe." was it his idea or your idea to spend the
6 night?

7 A I don't know.

8 Q So you don't know?

9 A We both agreed.

10 Q It's possible that it was your idea?

11 A It's possible. I don't remember.

12 Q The talk in the house, it was very emotional, both
13 parties, you and Mr. Phillips were both crying?

14 A Yes.

15 Q Do you know how that conversation came to a close?

16 A It -- it seemed as if things had kind of calmed down
17 between the two of us.

18 Q And during some of that conversation, Mr. Phillips
19 was expressing that he would consider getting back together
20 with you?

21 A I don't recall. Perhaps. I -- I don't know.

22 Q You would describe the conversation at the house as
23 civil?

24 A No. It was pretty erratic. It went from both of us
25 being emotional to him at one point saying, "If I see you in a

1 bar with a guy, I'm going to fuck you up."

2 MR. KOMISAR: Objection. Your Honor, can we go
3 sidebar?

4 THE COURT: Yes.

5 (Sidebar as follows:)

6 THE COURT: Yes, sir.

7 MR. KOMISAR: My understanding is the State did not
8 draw out that statement from Mr. Phillips because the
9 parties agreed that if the State only went to trial on
10 these counts, that that statement was not relevant.

11 My question to the witness: Was the conversation
12 civil? And because in the transcript she described it as
13 civil to the Tallahassee Police Department. And then the
14 witness stated that he made a threat that he would,
15 quote, fuck him up or fuck her up if he saw her at a bar.

16 THE COURT: I mean, it was responsive to what you
17 asked her, so I --

18 MS. DUGAN: That threat was also told to the TPD as
19 well in the same transcript.

20 THE COURT: I'm not worried about that, but she was
21 responsive to your question, answering your question. I
22 don't see that you have a complaint to make at this
23 point. I guess you're going to need to be more careful
24 with your questioning.

25 (The sidebar concluded, and the following took place

1 in open court:)

2 BY MR. KOMISAR:

3 Q Did you tell the Tallahassee --

4 THE COURT: Hold it. Wait. Get to the microphone.

5 The court reporter needs to hear what you say. Go ahead.

6 BY MR. KOMISAR:

7 Q Have you described the conversation in the house as
8 civil to anyone before?

9 A Again, it was civil in parts. It was just all over
10 the place.

11 Q Who went into Mr. Phillips' bedroom first?

12 A I don't know.

13 Q Is it possible you went into his bedroom first?

14 A I don't know.

15 Q Who got into Mr. Phillips' bed first?

16 A I don't know.

17 Q Is it possible you got into Mr. Phillips' bed first?

18 A I don't know.

19 Q Prior to you going into the bedroom, things had been
20 resolved in your mind, correct?

21 A Somewhat, yes.

22 Q Both of you were okay and calmed down before anybody
23 went into the bedroom?

24 A Yes.

25 Q When you say Mr. Phillips first brought up sexual

1 activity in the bedroom, your emotions at that time were very
2 conflicted; that would be fair to say?

3 A Yes.

4 Q Prior to anything occurring that you did not want to
5 occur, why didn't you just leave?

6 A It was late, and it was an emotional conversation.
7 I thought that, you know, when he calmed down that it would
8 be -- he would just let me sleep there.

9 Q Did your glasses have anything to do about why you
10 didn't leave?

11 A Yes. I don't like to drive at night without my
12 glasses, especially after crying for hours.

13 Q But you had no problem driving to the Onyx
14 Apartments to pick Mr. Phillips up at 2 a.m. and driving him
15 to your home without your glasses?

16 A This was -- again, the conversation was long and
17 emotional.

18 Q But there was nothing stopping you; you were sober,
19 you could have easily driven your car away?

20 A Yes.

21 Q You could have called for a cab or an Uber?

22 A Yes.

23 Q You could have called a friend? You could have
24 called the police?

25 A Well, not a friend, but, yes, not at 5 a.m.

1 Q You could have called the police?

2 A Yes.

3 Q When you and Mr. Phillips first started having sex,
4 you thought it was okay?

5 A I wouldn't say that, no.

6 Q Do you know if you've ever said that in the past?

7 A Can I elaborate on your last question?

8 Q Yes.

9 A When I said no, I meant the nature of why I was
10 doing it. I didn't -- I was not okay with it; but once we
11 began, I tried to tell myself this is okay and that it would
12 help.

13 Q And that's when Mr. Phillips started performing oral
14 sex on you?

15 A I'm not sure. He might have.

16 Q And it's your testimony that you allowed
17 Mr. Phillips to take your pants off at some point?

18 A Yes. I didn't stop him.

19 Q Prior to that sexual activity, Mr. Phillips had not
20 referenced sex in exchange for photographs?

21 A Before him trying to take my pants off?

22 Q Yes.

23 A I don't know if he literally said photographs; but
24 in my mind, when he said, "Do you want me to accept you," all
25 of the things I said in my testimony earlier --

1 Q So that's what you were thinking, but had he ever
2 communicated to you a statement that this sex had anything to
3 do with the photographs?

4 A I don't know if he specifically said that.

5 Q Is it possible he didn't say that?

6 THE COURT: That's convoluted, Mr. Komisar. Move
7 on, please.

8 BY MR. KOMISAR:

9 Q Did you -- when you eventually reported to the
10 Tallahassee Police Department, that was over a month after
11 October 10th, correct?

12 A Yes, I believe so.

13 Q And you sat down and gave an interview with the
14 investigator?

15 A Yes.

16 Q And you described to him what occurred on
17 October 10th?

18 A Yes.

19 Q Did you tell that investigator about the oral sex?

20 A I don't know.

21 Q Did you tell that investigator that you consented?

22 A Yes. May I elaborate? I -- when I said "consent"
23 in the interview, I meant when he tried to take my pants off,
24 I didn't physically hit him or stop him.

25 Q who took your shirt off?

1 A I don't know.

2 Q Is it possible you took your shirt off?

3 A I don't know.

4 Q Were you ever in a top position on top of
5 Mr. Phillips during the sex on October 10th?

6 A It's possible.

7 Q Prior to going into his bedroom, were you sitting in
8 Mr. Phillips' lap on October 10th?

9 A I don't -- I don't recall.

10 Q Is it true that the sex did not feel weird to you
11 because you had just broken up?

12 A At first I did not -- I felt like I didn't have a
13 choice, so no. But at first I convinced myself that it would
14 be okay, because he had told me earlier that it was helping
15 him to get over me or whatever. But, no, I was uncomfortable
16 from the beginning. I think I even said to him, "I'm
17 uncomfortable, I don't want to."

18 Q The State drew out from you on direct that at some
19 point during the sexual activity you told Mr. Phillips to get
20 the fuck off you?

21 A Yes.

22 Q Prior to you saying that, had he already ejaculated?

23 A Yes.

24 Q How long are you saying Mr. Phillips continued to
25 have sex after he ejaculated before getting off of you?

1 A I don't recall. He stayed inside of me after he
2 ejaculated.

3 Q So prior to you saying, "Get off of me," his penis
4 was already inside of your vagina?

5 A Yes.

6 Q There had already been penetration and union at that
7 time?

8 A Yes.

9 Q After you told him, "Get off of me," did he withdraw
10 his penis and reenter it or reunion it?

11 MS. DUGAN: I object to relevance.

12 THE COURT: Overruled.

13 THE WITNESS: No. He just stayed inside of me.

14 BY MR. KOMISAR:

15 Q So there was no penetration of vagina or union of
16 vagina, new, after you told him to get off of you?

17 A I don't think so. I don't know. I just know he was
18 inside of me.

19 Q And when he left, he never reentered?

20 A I don't think so.

21 Q It's your testimony that his tone changed right when
22 he ejaculated?

23 A No. At -- at some point after he ejaculated. I
24 don't know if it was immediately afterwards.

25 Q And it's your testimony that it was two minutes that

1 he continued having sex with you after he ejaculated?

2 A Approximately a minute or two.

3 Q It's your testimony that at some point during the
4 sex he brought up the cheating and asked if this was how you
5 had sex with other people?

6 A He said, "Is this what it felt like when you fucked
7 Peter?" Yes.

8 Q How did you respond to that?

9 A I started crying.

10 Q Is that when you said, "Get the fuck off me"?

11 A Yes.

12 Q So he made that comment after he had ejaculated?

13 A Yes.

14 Q Isn't it true that when he initially started trying
15 to have sexual activity, you went along with it?

16 A Yes, because I felt like I didn't have a choice.

17 Q Was there any -- and I'm going to use a
18 colloquialism -- dirty talk or sexual talk between the two of
19 you during this time period?

20 A Prior to the -- the name calling? What are you
21 referring to?

22 Q Yeah, during the sexual activity on October 10th
23 prior to you telling him to get off?

24 A I don't know.

25 Q The day after this incident, you went and met with

1 the victim advocate at FSU or spoke to them on the phone?

2 A Yes.

3 Q You did not mention anything about a sexual battery
4 or a rape to the victim advocate, did you, when you talked to
5 them on October 10th?

6 A I didn't call it -- I didn't call it that. I -- I
7 believe -- again, this isn't on paper, so I don't know. I
8 believe I told her that I felt like I had no choice and that I
9 had to have sex with him because of the nude pictures.

10 Q So your testimony today is that you mentioned sex,
11 not just harassment or defamation to the --

12 A No, I -- I talked about that, too.

13 Q Your testimony is today that you talked about sex
14 with the FSU victim advocate office on October 10th?

15 A I didn't go into it, no. I said briefly that I --
16 he had had -- we had had whatever. I didn't say he raped me.
17 I -- but -- and I said -- I said that I felt like I didn't
18 have a choice in doing it.

19 Q So your testimony today is that you told the FSU
20 victim advocate office on October 10th about sexual activity
21 between you and Mr. Phillips?

22 A I went in the -- yes.

23 Q You met -- who did you meet with that you told this
24 to?

25 A It was -- I don't remember her name. She was only

1 there for a little bit.

2 Q when you told her there had been sex without your
3 consent, what did she do at that point?

4 A I didn't go into that with her. I didn't want to
5 talk about it.

6 Q So you did not report to the FSU victim advocate
7 that day that there had been sex without your consent?

8 A No.

9 Q On October 10th you decided that you would tell your
10 mom about the cheating and the relationship and how it ended
11 with Mr. Phillips?

12 A I believe so.

13 Q You didn't tell her anything at that point about sex
14 without consent?

15 A I don't think so.

16 Q How were your grades prior to this incident on
17 October 10th?

18 A They weren't great. I don't know exactly what
19 grades I had in my other classes, but I know in my accounting
20 class I was struggling.

21 Q And you had taken one exam at that point --

22 A Yes.

23 Q -- and you had failed that, and you shared that with
24 your friend?

25 A well, a 60, yes. I don't know if that's technically

1 failing, but yes.

2 Q The days 10/11, 10/12, the remainder of that week,
3 did you study? Did you party? What did you do during those
4 days?

5 A I went out and drank.

6 Q Had you been doing that in the weeks leading up to
7 that as well?

8 A Probably.

9 Q And that was --

10 A Not in the same manner, but yes.

11 Q You were on two scholarships at the time, and you
12 ended up being able to maintain them through the help the
13 victim advocate office gave you?

14 A Yes.

15 Q And you did, on December 5th of 2016, report to the
16 victim advocate office that something sexual happened?

17 A No. I told them that he had been charged with
18 sexual battery. I didn't go into it with them.

19 Q Do you know how much money it was that you were --
20 those scholarships were worth that you were able to maintain
21 due to the victim advocate allowing you to withdraw from the
22 class?

23 A No.

24 Q What was the date, if you recall, of the test that
25 you had failed in that course?

1 A I have no idea.

2 Q And that was a weed-out course for your -- the major
3 that you wanted to get into, that's a course that you have to
4 do well in to continue in the college you were in?

5 A You have to pass, yes.

6 Q On October 13th, in your mind, was your mental state
7 that Mr. Phillips hadn't done anything illegal, so there was
8 nothing you can do?

9 A I don't know. I -- I didn't know the laws, but I
10 believe I said it earlier in my text messages that I thought
11 that him trying to force me to talk to him was illegal, with
12 the pictures. I -- I don't know. Again, when I spoke to the
13 police, prior, they weren't very helpful.

14 Q So it's your testimony today that your mental state
15 on October 13th was not that Mr. Phillips had toed the line,
16 not actually done anything illegal, and that there was nothing
17 you could do, but you were looking for something illegal that
18 you could get him on?

19 A I don't know.

20 Q Would it refresh your recollection if you reviewed
21 your text messages from October 13th?

22 A No. Can you just repeat your question?

23 Q On October 13th, did you feel that Mr. Phillips had
24 apparently not done anything illegal, so there was nothing you
25 could get him on, but you were going to look for something?

1 A Yes.

2 Q During this time period, you actually met with a
3 family law lawyer to discuss these photographs?

4 A I believe so.

5 Q That would be Trudy Richardson?

6 A Yes.

7 Q And when you met with her, she represented you, but
8 your mother was always in the room?

9 A We just went to her for advice, but yes. She
10 never --

11 Q You never talked to Ms. Richardson alone?

12 A I don't think so.

13 Q And your mother and Ms. Richardson advised you to
14 delete things from your cell phone before law enforcement
15 downloaded it?

16 A I never spoke to Trudy about that. My mom told me
17 to take off anything that was related to drugs or anything
18 like that, that would be bad.

19 Q During the time period between this incident and you
20 reporting it to law enforcement, about 38 days; is that
21 correct, or approximate?

22 A Yes.

23 Q And you were struggling in school during that time
24 period?

25 A Yes.

1 Q You were willing to purchase narcotics to help you
2 study?

3 A Yes.

4 Q And you did do that?

5 A I don't know if it was during that time period, but
6 yes.

7 Q As you were doing that, you were aware that that was
8 against the law?

9 A Yes.

10 Q When you were advised by your mother to delete
11 things from your phone, you actually had a pending meeting
12 with TPD to have your phone downloaded at that time?

13 A Yes.

14 Q And you canceled that meeting so you could look more
15 into deleting items from your phone, and you rescheduled that
16 meeting?

17 A I don't know if it was entirely because of that. I
18 think I also just -- I was reluctant about it just because it
19 was embarrassing. I -- I don't know when that --

20 Q Let me ask that question a different way. You
21 canceled -- is it true you canceled a meeting with the
22 Tallahassee Police Department so you could delete texts from
23 your phone before giving it to them?

24 A I was going to try, yes.

25 Q Is it fair to say that your mother was more active

1 in getting Tallahassee Police involved in this issue than you
2 were?

3 A I don't -- I guess so.

4 Q On October 14th, 2016, four days after this
5 incident, you were on a five-day bender. What is a "five-day
6 bender"?

7 A Drinking for five days.

8 Q And so that would actually include the day before
9 this incident occurred?

10 A Right. I don't -- I don't think that number was
11 entirely accurate, but I wasn't drinking the day I -- on the
12 10th.

13 Q On October 4th, prior to any negative interaction
14 with Mr. Phillips, you skipped doing an assignment, your
15 biggest assignment of the year, so you could go do something
16 else?

17 A I don't remember.

18 Q When you met with the victim advocate on October
19 10th, whether you reported harassment or sexual issues, you
20 learned from them that they were going to be able to help you
21 with your grade and your classes and your test schedules?

22 A Well, they don't -- they don't change your grades.
23 They just -- you can make stuff up, it's stuff like that.
24 They don't change your grades.

25 Q And if you -- when you go to make it up, if for some

1 other reason you just want to withdraw from the class and do
2 it over, you have that option?

3 A Yes.

4 Q You learned about that on October 10th?

5 A I -- I don't know. I guess so.

6 Q And then on October 11th you expressed to your
7 friends that, "Fuck homework. I'm going to go have a Loko
8 night"?

9 A Yes.

10 Q Okay. What's a "Loko night"?

11 A I believe -- I believe I was referring to Four Loko,
12 the alcoholic beverage.

13 Q And that's one day after the incident we're here
14 about today?

15 A Yes. If it was the 11th, yes.

16 Q On the day, October 18th, 2016, isn't true that you
17 had actually skipped two weeks of your class at that point,
18 which would include the week since the allegations we're here
19 about today and the week prior?

20 A I don't recall. I think I said that. I don't -- I
21 don't know how much class I missed in total.

22 Q So you have a recollection of sharing with people
23 that you had skipped two weeks?

24 A Yes.

25 Q And if you expressed that on the 18th, that would go

1 back well prior to the breakup? Or to the breakup?

2 A Yes.

3 Q That would include the time period when the
4 consensual sex was happening?

5 A Yes.

6 Q Your mindset on October 18th was that you got off by
7 going to the victim advocate because of the issues with Kyle,
8 but you just goofed off the whole time?

9 A Yes, because I was stressed out.

10 Q During the time period between this incident and you
11 going to the police, how much of this Adderall study drug were
12 you taking?

13 A I don't -- maybe a few -- once or twice. I don't
14 know. It wasn't like a regular thing I did, like, everyday or
15 anything like that.

16 Q What is -- what is being "cracked out for days"?

17 A That was referring to a year prior to the incident.

18 Q If you expressed on November 7th that you were going
19 to be "cracked out for days," you would be talking about
20 something that occurred to you earlier?

21 A I -- I don't -- the conversation you're talking
22 about, I know I mentioned at one point that I had taken
23 Adderall before and not slept for three days. So I don't know
24 if the "cracked out for days" was referring to that or not. I
25 just know that came up in the conversation, and that was from

1 a year prior.

2 Q And on November 7th, before going to the Tallahassee
3 Police Department and reporting the nonconsensual sex, you and
4 your mother were already discussing what classes you were
5 going to drop and what classes you were going to keep and how
6 you could try and help your financial situation?

7 A I think so, yes. Not help my financial situation.
8 Just retain the scholarships I had already earned.

9 Q And your mom was, fair to say, maybe pestering you
10 to make sure you get it done and follow up with these
11 officers?

12 A Yes.

13 Q You would describe your own academic semester that
14 year as going from a straight A-B student to a "fuck head"?

15 A Yes.

16 Q There were actually exams that you didn't even know
17 about until the next day? Or that you --

18 A That happened one time.

19 Q You testified you were reluctant to go to the
20 Tallahassee Police Department and report the sex crime?

21 A Yes. It was embarrassing.

22 Q Could it also be that you had already reported some
23 things to FSU, you were already getting your relief
24 financially and through your grades --

25 THE COURT: Just ask one question at a time, please,

1 Mr. Komisar.

2 MR. KOMISAR: Yes, Your Honor. If I could have a
3 moment.

4 THE COURT: Okay.

5 (Pause.)

6 BY MR. KOMISAR:

7 Q when I asked you earlier about 12/6, going to the
8 victim advocate and reporting that something sexual had
9 occurred, is it true that you did it for the first time that
10 day?

11 A Again, I believe -- or what date are you talking
12 about? Can you repeat yourself?

13 Q On December 6th, 2016, you went to the victim
14 advocate office again or had a phone call with them.

15 A Right. Are you discussing the report that said the
16 victim said it had turned sexual?

17 Q Yes.

18 A Yes. I told her he was charged with sexual battery
19 or whatever.

20 Q why -- how would you know that if he wasn't actually
21 arrested for 10 more days, until December 16th? How would you
22 be able to tell the victim advocate --

23 A I don't --

24 Q -- he was arrested?

25 A I don't know. I maybe -- I don't know. Or I may

1 have been talking -- that may have been after I spoke with
2 Caplan, so I had a better idea. I don't know.

3 Q Isn't it true that during the time period before you
4 went and reported to the police, you were taking Adderall
5 daily to counteract the effects of using marijuana?

6 A I don't think so, not daily.

7 Q How many times a week?

8 A Not that often. I don't know.

9 Q Was it ever used to counteract the effects of using
10 marijuana?

11 A I don't know. Perhaps.

12 MR. KOMISAR: Nothing further, Your Honor.

13 THE COURT: Redirect?

14 MS. DUGAN: Yes, sir.

15 REDIRECT EXAMINATION

16 BY MS. DUGAN:

17 Q Did you make all this up so you can get out of
18 accounting?

19 A No.

20 Q And you said you ended up getting a B-plus in
21 accounting when you retook it?

22 A Yes.

23 Q And you had to pay Bright Futures back for
24 withdrawing from accounting?

25 A Yes. And the other class.

1 Q All right. Let's talk about this deleting things.
2 You wanted -- or you wanted to try that to see if you could
3 figure out how to permanently delete some things from your
4 cell phone before you gave it to police, right?

5 A Yes.

6 Q And that was stuff involving -- you were 19 at the
7 time?

8 A Yes. Drugs and alcohol.

9 Q Involving drinking. Smoking pot?

10 A Yes.

11 Q Adderall? That type of thing?

12 A Yes.

13 Q Okay. And, I mean, were you afraid that if those
14 were on your phone, you were going to get in trouble?

15 A Yes.

16 Q Okay. Are we talking about any time during this
17 October 8th through October 10th, or are we talking about in
18 general those being on your phone?

19 A Just in general.

20 Q Were you ever able to figure out how to delete
21 anything from your phone permanently?

22 A No.

23 Q You've obviously been given, through depo and
24 through here today, a bunch of text messages to review by the
25 defense. In those text messages -- are there texts messages

1 about you drinking and, you know, buying Adderall and doing
2 all those things?

3 A On which days?

4 Q Have you -- or have you reviewed texts that say
5 stuff like that, that you sent?

6 A Yes.

7 Q So those were still on your phone when you gave it
8 to the police, and they have them?

9 A Yes. Yeah. I even saw them print it out --

10 Q And are there also texts where you're trying to
11 figure out with your friend how to delete texts that you send
12 to people you buy Adderall from?

13 A Yes.

14 Q And those have been shown to you by the defense?
15 Not -- not today but at some point --

16 A Yes.

17 Q -- during the course of this case?

18 A Wait. Which -- which text messages?

19 Q A text where you were sending it to your friend,
20 y'all are trying to figure out how to delete this text --

21 A Yes.

22 Q -- where you're buying Adderall.

23 Okay. So what made you, I guess, end up just giving
24 your phone to police despite not being able to delete those?

25 A I was told as long as there wasn't a dead body or a

1 kilo of cocaine, that I would be okay.

2 Q Okay. So the police pretty much said, we're not
3 worried about a text where you might be buying Adderall at
4 some point --

5 A Yes.

6 Q -- in September of 2016, or something like that?

7 A Yes.

8 Q Okay. All right. So I want to talk to you a little
9 bit about going to the victim advocate's.

10 why was it difficult for you to go into detail with
11 them or your mom, you know, explicitly about what kyle did to
12 you involving sex? why is that difficult?

13 A It's extremely embarrassing, especially with a
14 stranger. I mean, not my mom, but, like, the victim advocate,
15 that wasn't something I wanted to talk about, especially not
16 immediately the next day.

17 Q Right. Is this comfortable for you today to sit
18 here and talk to all of us about it?

19 A No.

20 Q You talked a little bit about how you drank,
21 obviously, previously to this incident with the Defendant in
22 your life. But that didn't compare to the type of drinking
23 that you did after he did these things to you. Tell us about
24 that.

25 A I mean, I would just try to block myself out so I

1 wouldn't have to think about anything, as often as possible.

2 Q Did that contribute to your grades dropping?

3 A Yes.

4 Q Okay. And this incident with the Defendant was the
5 cause of that?

6 A Yes.

7 Q When you went to meet with Investigator Caplan, you
8 said the word "consent." But you explained yourself, didn't
9 you?

10 A Yes.

11 Q At that time, did you know what the exact laws were
12 for what he did to you?

13 A No. I just thought because I didn't, like,
14 physically fight him, that I just allowed him to do it, that
15 it was -- that would be considered consent, but I didn't know.

16 Q Did you tell Investigator Caplan, though, that you
17 felt like you had to have -- to let him have sex with you so
18 that this harassment would stop?

19 A Yes.

20 MR. KOMISAR: Objection, leading.

21 THE COURT: It's already answered. The objection is
22 not timely.

23 BY MS. DUGAN:

24 Q What did you say to your friend -- or on cross
25 examination the defense brought up that you said you didn't

1 know if he actually did anything illegal that they could get
2 him into trouble for or that he could be in trouble for. That
3 was sent sometime in October. Was that sent before you talked
4 to police?

5 A Yes.

6 Q Okay. The day --

7 A Or with -- are you referring to my interview or
8 talking to police in general?

9 Q No, talking to police in your interview.

10 A That was prior to my interview.

11 Q Okay. And -- but after, I guess, you called the
12 duty desk that night, and they didn't seem to take you too
13 seriously?

14 A Right.

15 Q Okay. So you did tell, though, your friend Ryan the
16 day this happened -- you went through with him what happened
17 and said, "I think he raped me."

18 MR. KOMISAR: Objection, hearsay.

19 THE COURT: Overruled.

20 THE WITNESS: Yes, I did say that.

21 BY MS. DUGAN:

22 Q This property of his that you had, prior to
23 October 8th, you -- did you tell him you wanted to just drop
24 it off outside of his house, and he --

25 A Yes.

1 Q -- didn't want you to?

2 A Yes.

3 Q They asked you about a lot of dates that happened
4 before October 8th. But, bottom line, you broke up with him
5 at some point that week, and y'all had consensual sex after
6 you were broken up?

7 A Yes.

8 Q Okay. Once he found out you cheated on him, is that
9 where these text messages start that we read together today?

10 A Yes.

11 Q Okay. And once he found out you were cheating --
12 he -- I'm sorry. Once he found out that you had cheated on
13 him, did his manner towards you change?

14 A Yes.

15 Q After that was the sex consensual or not consensual?

16 A It was not. I went along with it because I felt
17 like I didn't have a choice.

18 Q The defense brought up that your mom was more active
19 with helping you talk to TPD. Were you reluctant to -- did
20 she help you set up an appointment with an actual
21 investigator?

22 A Yes.

23 Q Were you reluctant to talk to them at all after
24 speaking to a duty desk person that night?

25 A Absolutely.

1 Q what -- were you -- did you think that they were
2 going to take you seriously? Did you have doubts about that
3 because of that conversation you had?

4 A Yes.

5 Q when you say you were reluctant to talk to them
6 because it was embarrassing, does that mean that then or now
7 you don't want the Defendant to be held accountable for his
8 actions?

9 A No.

10 Q Bottom line, would you have gone to talk to him that
11 night unless he had threatened to show these pictures of you?

12 A No.

13 Q would you have had sex with him unless he had told
14 you that that's how you would make everything okay?

15 A No, I would not have.

16 Q And did he stay inside of you for a minute or two
17 after you told him to get off of you?

18 A Yes.

19 MS. DUGAN: That's all.

20 THE COURT: Any juror have a question of this
21 witness? If so, would you raise your hand? All right.
22 You can step down.

23 Let's take 10 minutes.

24 THE WITNESS: Do I leave this here?

25 THE COURT: You can step down. Just leave

1 everything there. Jury step out for 10 minutes. Either
2 side need anything?

3 MS. DUGAN: No, sir.

4 MR. JANSEN: Subject to recall.

5 THE COURT: What's that?

6 MR. JANSEN: Subject to recall.

7 THE COURT: All right. Needs to remain under
8 subpoena?

9 MR. JANSEN: Yes, sir.

10 THE COURT: We'll take ten minutes.

11 (Recess.)

12 THE BAILIFF: All rise. Court is back in session.

13 THE COURT: Let's have the jury, please.

14 MS. DUGAN: And, Judge, just for scheduling
15 purposes, I have one more quick witness, and then I'm
16 going to be resting. So I did want to, you know, bring
17 up before I rest the possible Williams Rule witness.

18 THE COURT: Possible what?

19 MS. DUGAN: Williams Rule witness.

20 THE COURT: Okay.

21 THE BAILIFF: Jury is in the courtroom.

22 (The jury returned to the courtroom, and the
23 following took place in open court:)

24 THE COURT: You may call your next witness, Ms.
25 Dugan.

1 MS. DUGAN: State calls Luke Hazen.

2 THE COURT: Were you sworn earlier today?

3 THE WITNESS: Yes.

4 MS. DUGAN: He was.

5 THE COURT: Okay. Have a seat.

6 whereupon,

7 LUKE HAZEN

8 was called as a witness, having been previously duly sworn,

9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MS. DUGAN:

12 Q Hi, Mr. Hazen. Will you give us your full name and
13 spell it for the court reporter, please?

14 A Luke Hazen. L-u-k-e. H-a-z-e-n.

15 Q Thank you. And is your phone number (734)536-2724?

16 A Yeah, that's correct.

17 Q Okay. And how do you know the Defendant in our
18 case, Kyle Phillips?

19 A Kyle was a random roommate of mine when I was at
20 Campus Circle back in, let's see, January of 2016.

21 Q Okay. And did you live here in Tallahassee in
22 October of 2016?

23 A Yes, I did.

24 Q Did you and the Defendant hang out, you know, at
25 that time?

1 A Yeah. We pretty much hung out every day.

2 Q Okay. And at the time did you live in Apartment 607
3 at Onyx building?

4 A Yes.

5 Q Did Kyle Phillips sometimes use your phone?

6 A Yes.

7 Q All right. Did I, previously to you coming into
8 court today, I show you a series of text messages between your
9 phone and B.M.?

10 A Yes.

11 Q Okay. And I'm going to show what has been premarked
12 as State's Exhibit 27. These text messages that I showed you
13 here in yellow, did you send those messages?

14 A No.

15 Q Did you --

16 A But I just want to touch on the 607 one.

17 Q Okay.

18 A There was never a picture that we saw. There was
19 just never a picture. So -- but saying that he showed all of
20 607, we never saw any picture or anything.

21 Q Okay. So let me get this straight. You're saying
22 that you didn't send these -- these text messages, including
23 the one that says, "Okay, your choice. I already showed all
24 of 607," you did not send that? But as a member of 607 you're
25 saying that you never actually saw a naked photo?

1 A Yeah, there was never a -- a photo that we saw.

2 Q Okay. But you didn't send the text message?

3 A Not to my recollection.

4 Q Well, do you know whether -- would you have sent her
5 a text message that said you're showing naked photos of her to
6 all of 607?

7 A I never saw any photos, so I would say no.

8 Q Okay. Did you send a text that said, "This is
9 kyle"?

10 A No.

11 Q I mean, I'm -- I'm just looking at -- did you send
12 these or not?

13 A No. I didn't say, "This is Kyle," no.

14 Q Okay. Did you send any of the others?

15 A No. I was -- I was just wanting to kind of touch on
16 the, "I already showed all of 607," we just never saw a
17 picture or anything. So...

18 Q Okay.

19 A I just wanted to say that.

20 Q So you didn't see a text, but you also didn't see a
21 picture?

22 A Right.

23 Q Okay. That's all. Thank you.

24 THE COURT: Cross?

25 Hold on a second. They may have a question.

1 THE WITNESS: Oh, okay.

2 CROSS EXAMINATION

3 BY MR. KOMISAR:

4 Q Mr. Phillips never offered to show you a nude
5 photograph or anything of Ms. M.?

6 A No.

7 Q Did anyone else, any of your other friends in 607
8 ever offer one?

9 A No.

10 Q Do you have any knowledge of Mr. M. [sic] ever
11 showing the photographs or whatever they may be to anyone
12 else?

13 A No.

14 Q who else would be the people in 607?

15 A It was just my other roommate Alex, but I don't
16 think he was there at the time.

17 Q So to your knowledge, Mr. Phillips never offered or
18 showed photographs or videos to anyone?

19 A No. And if he did, I wouldn't want to see them
20 anyway, so...

21 MR. KOMISAR: Thank you.

22 THE COURT: Redirect?

23 MS. DUGAN: No, sir.

24 THE COURT: Any juror have a question of this
25 witness?

1 All right. You can step down.

2 Do we need to keep him any further?

3 MR. KOMISAR: No, Your Honor.

4 MS. DUGAN: No, sir.

5 THE COURT: You're excused. Thank you for being
6 here.

7 Call your next witness.

8 MS. DUGAN: At this time the State would rest.

9 THE COURT: Except for the one issue we were talking
10 about. Let's go to sidebar.

11 (Sidebar as follows:)

12 THE COURT: So give me a proffer of what it is you
13 would expect to show with this next witness. Give me a
14 name of the witness first, the proffer.

15 MS. DUGAN: Her name is [REDACTED] She is the
16 ex-girlfriend of the Defendant. After she and the
17 Defendant broke up, the Defendant sent her a naked photo
18 of her on social media and said, "If you don't give me my
19 stuff back, then," you know, "these pictures -- I'm going
20 to keep these pictures. These pictures won't be
21 deleted." She --

22 THE COURT: Keep your voice down just a little bit.

23 MS. DUGAN: Sorry. So it's his intent, it's his MO
24 that he's basically -- these girls, after he breaks up
25 with them, he's using the naked photos that they gave him

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1 during the relationship to use as leverage for whatever
2 he wants, whether it's to get his stuff back, for them to
3 come talk to him in person, for them to have sex with
4 him, that was his intent with B.M. that night. And
5 that's what he does through the course of these
6 relationships with these girls.

7 THE COURT: And your theory of legal admissibility
8 would be what?

9 MS. DUGAN: I'm not sure I understand.

10 THE COURT: Well, I mean, under similar fact
11 evidence there's certain, specific things --

12 MS. DUGAN: Right. This is -- this is an
13 ex-girlfriend that he's --

14 THE COURT: A legal theory. I heard what you said
15 factually.

16 MS. DUGAN: Right. That it corroborates the
17 victim's testimony and shows his intent, his plan, his
18 modus operandi.

19 THE COURT: Who's going to respond?

20 MR. KOMISAR: There is -- and I think the State will
21 agree, that there's no evidence that that was offering to
22 someone to delete photographs in exchange for getting
23 property back.

24 There has to be some fact in dispute. And the fact
25 that he said these things is not in dispute, so is he

1 denying these texts? Then maybe they'd say, look, he
2 sends texts like that. But there's nothing in --

3 THE COURT: Maybe I need to hear -- hear the
4 testimony. All right.

5 (The sidebar concluded, and the following took place
6 in open court:)

7 THE COURT: I hate that y'all just got here, but I'm
8 going to need to make a legal decision, so I'm going to
9 need to let y'all step out. Sorry. I have to earn my
10 money every once in a while.

11 Get your witness, please, Ms. Dugan.

12 (The jury was escorted from the courtroom, and the
13 following took place outside their presence:)

14 THE COURT: Let the record reflect the jury is
15 outside the courtroom. This is a proffer. Come on up
16 here, please, ma'am. Were you sworn earlier?

17 MS. DUGAN: She was not.

18 THE COURT: Place her under oath.

19 Whereupon,

20 [REDACTED] [E.S.]

21 was called as a witness, having been first duly sworn, was
22 examined and testified as follows:

23 THE COURT: State your name for the record.

24 THE WITNESS: [REDACTED].

25 THE COURT: Spell your last name, please.

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1 THE WITNESS: [REDACTED].

2 THE COURT: All right. Let's get to the basics, Ms.
3 Dugan, a pretty -- pretty streamlined proffer.

4 MS. DUGAN: Okay.

5 DIRECT EXAMINATION (PROFFER)

6 BY MS. DUGAN:

7 Q Okay. Did you date Kyle Phillips?

8 A Yes.

9 Q When did you break up?

10 A July 31st, 2015.

11 Q What happened after you broke up involving a nude
12 photo or nude photos of you?

13 A Like two months after that I got a message from
14 Messenger, and it was my picture. And it said, "If you will
15 give me my stuff back, I'll delete these."

16 THE COURT: Say that again.

17 THE WITNESS: "If you give me my stuff back, I'll
18 delete these."

19 BY MS. DUGAN:

20 Q So, if you give my stuff back, then I'll delete
21 these pictures?

22 A Yes.

23 Q Okay. Did you kind of view that as an ultimatum?

24 A Yes.

25 Q What did you think would happen if you didn't give

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1 him his stuff back?

2 A That he would post the pictures somewhere.

3 THE COURT: I couldn't hear you.

4 THE WITNESS: That he would post the pictures
5 somewhere.

6 BY MS. DUGAN:

7 Q Okay. And he sent that to you over social media?

8 A Yes.

9 Q Thank you.

10 THE COURT: Cross? And just -- we don't need to do
11 everybody, but just enough so I can rule on the proffer.

12 MR. JANSEN: Yes, Your Honor.

13 CROSS EXAMINATION (PROFFER)

14 BY MR. JANSEN:

15 Q MS. [REDACTED] you -- you went to an injunction hearing
16 and testified, correct?

17 A Yes.

18 Q And you testified in that hearing under oath,
19 correct?

20 A Yes.

21 Q And under oath you told the judge that he never
22 threatened you at all to post these pictures?

23 A Correct. He didn't say that he would post them.

24 Q He never made any threat, right?

25 A Correct.

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1 Q All he said was he's going to keep the pictures?

2 A Correct.

3 Q You never saw him ever post anything of you, any
4 picture?

5 A Not that I know of.

6 Q And -- and this was basically a property -- he
7 wanted to get property back that was his?

8 A Correct.

9 Q And you still had it, or you didn't return it?

10 A Correct.

11 Q Okay.

12 MR. JANSEN: That's all I have.

13 THE COURT: Redirect?

14 MS. DUGAN: No, sir.

15 THE COURT: What is the nature of the photo that you
16 were sent? Was it -- was it a nude photo? Or...

17 THE WITNESS: Yes.

18 THE COURT: And tell me one more time what it is you
19 remember him saying.

20 THE WITNESS: "If you give me my stuff back, I will
21 delete this and all the others that I have." He had
22 multiple.

23 THE COURT: Do it one more time. "If you give
24 me --"

25 THE WITNESS: "If you give me my stuff back, I will

1 delete these pictures and all the other ones that I
2 have."

3 THE COURT: You can step down, ma'am. Just -- you
4 can have a seat in the audience if you want.

5 All right. All right. Further argument?
6 who -- Mr. Komisar, are you addressing this?

7 MR. KOMISAR: Yes, Your Honor.

8 Our position would be as we laid out in the Motion.
9 There's -- first of all, they gave us the laundry list,
10 so we don't know what their -- I guess they said "MO" at
11 sidebar. But there's got to be some fact in dispute, not
12 just piling on more bad character. And the Defendant is
13 not disputing, there's been no allegation that these
14 texts weren't sent.

15 And what we've got here is an offer to delete
16 something that was lawfully owned in exchange for
17 property.

18 what we have in this other case is very upset
19 emotions where it's being alleged that he attempted to
20 get consent to sex for offering to delete something.

21 If they needed to prove that this was the individual
22 involved, his past similar behavior could be relevant.
23 But we don't see there being an actual fact in dispute
24 between the parties that this helps prove one way or the
25 other.

1 At the same time, we would object under 403 that
2 it's prejudicial, and it will cause the jury to judge him
3 not based on his behavior with this individual but based
4 on his behavior with Ms. [REDACTED] as well. So we'd rest on
5 that and the other objections we made in our Motion.

6 THE COURT: Ms. Dugan?

7 MS. DUGAN: I believe the fact in dispute is that,
8 oh, no, there's no ultimatum; he's just saying, "I have
9 these pictures and I also want you to come talk to me and
10 apologize to me."

11 He's using these pictures with Ms. [REDACTED] and with
12 this victim as leverage against them to get whatever he
13 wants, whether it's for them to come over and talk, get
14 his stuff back, have sex, whatever it is, he's using
15 these texts -- I'm sorry, these photos as leverage
16 against them and giving them ultimatums based on them.

17 And any time -- I mean, you're using a nude photo of
18 a girl and giving her an ultimatum. Despite what you
19 say, "I'll delete this," the ultimatum is: I'm going to
20 post it. He's sending it to her on social media. "If
21 you don't [sic] give me my stuff back, I'll delete this."

22 (Pause.)

23 THE COURT: All right. I'm going to allow the
24 testimony. Let's discuss the limiting instruction. What
25 would the state propose in terms of what I should tell

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1 the jury the purpose of this is?

2 MS. DUGAN: I don't have it in front of me, but I
3 think there's a proposed instruction for closing, so
4 maybe something similar to that, that he's not on trial
5 for this.

6 THE COURT: Proposed -- 2.4 is other crimes.
7 Truthfully, I'm not sure that it amounts to a crime, but
8 we will treat it as if it does.

9 well, let me first start, does the defense want a
10 limiting instruction?

11 MR. KOMISAR: Yes, Your Honor. We requested in our
12 Motion that one be given at the time the evidence is
13 presented and during the final jury charge.

14 THE COURT: So back to my question, Ms. Dugan.

15 MS. DUGAN: The Defendant is on trial for the -- for
16 the testimony that you've already heard. In certain --
17 in certain cases testimony of similar fact can be
18 allowed.

19 THE COURT: I mean, I have an instruction. It's the
20 specific issue that it's admissible for that, I'm trying
21 to get an answer from you on, and I haven't gotten one
22 yet.

23 MS. DUGAN: That's fine, then. The typical one is
24 fine.

25 THE COURT: The -- the standard instruction deals

1 with motive, opportunity, intent, preparation, plan,
2 knowledge, identity, the absence of mistake or an
3 accident, or there is a -- other relevant factor is the
4 second option.

5 It seems -- truthfully, it seems to me that what --
6 what it's really going to is towards the idea of malice,
7 which is an element of the extortion, to suggest this is
8 what has happened with this victim; that the -- that the
9 Defendant's intent -- so I guess malice and intent are
10 similar theories, so it would seem to me it goes to
11 intent or malice. But I'll let y'all be heard on what --
12 what other -- what other theory you have.

13 MS. DUGAN: I think it's relative to intent. As I
14 said before, MO or plan; and then also, you know, if
15 they're just saying there was no malice in this case,
16 this was all a big misunderstanding, then absence of
17 mistake as well.

18 THE COURT: Defense? I understand you object to it
19 in general, in total.

20 MR. KOMISAR: Yes.

21 THE COURT: But in terms of what I say in the
22 limiting instruction, you can be heard.

23 MR. KOMISAR: We would like the limiting instruction
24 to refer to it as an act, not a wrong or a crime. Other
25 than that, the specific purpose it's being offered for

1 would have to be whatever the State proffers. That is
2 what we raised the issue about, the laundry list. All we
3 request is that it be referred to as an act.

4 THE COURT: So take out crimes or wrongs?

5 MR. KOMISAR: Just it's an act.

6 THE COURT: Okay. So I would propose the
7 instruction -- this is 2.4, slightly modified:

8 The evidence you're about to receive concerning
9 other acts allegedly committed by the Defendant will be
10 considered by you for the limited purpose of proving
11 intent, malice, or absence of mistake; and you shall
12 consider it only as it relates to those issues.

13 And on the second paragraph, I assume you would like
14 a similar modification. I would read it:

15 However, the Defendant is not on trial for an act
16 that is not included in the Information. So, again, I've
17 taken out crimes or wrongs.

18 Any specific objection to that instruction?

19 MR. KOMISAR: No, Your Honor. We would move that if
20 the State is going to go broader beyond what was
21 proffered, I think both parties should not reference that
22 there was an injunction hearing or filing. I think what
23 was proffered would be the extent, that these acts
24 occurred --

25 THE COURT: I mean, that's going to be kind of up to

1 y'all whether you're going to cross examine on that
2 topic.

3 MR. KOMISAR: Yeah. Mr. Jansen is not going to open
4 the door, so we request that it not be directed --

5 THE COURT: Okay. All right. All right. Are we
6 ready for the jury?

7 MS. DUGAN: Yes, sir.

8 THE COURT: All right. Let's have the jury.

9 THE BAILIFF: Jury is in the courtroom.

10 (The jury returned to the courtroom, and the
11 following took place in open court:)

12 THE COURT: All right. Everybody be seated.

13 That's the last witness that the State is going to
14 present on the charges before the Court. They are about
15 to call one more witness, and I need to give you a legal
16 instruction before that witness testifies.

17 The evidence you are about to receive concerning
18 other acts allegedly committed by the Defendant will be
19 considered by you for the limited purpose of proving
20 intent, malice, or absence of mistake; and you shall
21 consider it only as it relates to those issues. However,
22 the Defendant is not on trial for an act that is not
23 included in the information.

24 You may call your next witness, Ms. Dugan.

25 MS. DUGAN: State calls [REDACTED]

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1 THE COURT: All right. Come forward, please, ma'am.
2 whereupon,

3 [REDACTED] [E.S.]
4 was called as a witness, having been previously duly sworn,
5 was examined and testified as follows:

6 THE COURT: Have a seat. Slide up to the
7 microphone, please.

8 DIRECT EXAMINATION

9 BY MS. DUGAN:

10 Q Good afternoon, Ms. [REDACTED]. Will you spell your name
11 for us and state your whole name for the court reporter.

12 A It's [REDACTED]
13 [REDACTED].

14 THE COURT: Get a little closer to the microphone.
15 It will move. If you can't move your chair, pull it to
16 you. Okay. Speak to that little a bit closer, please.

17 THE WITNESS: Okay.

18 THE COURT: Okay. All right. Go ahead, Ms. Dugan.

19 BY MS. DUGAN:

20 Q How do you know the Defendant in this case, Kyle
21 Phillips?

22 A We dated in 2014 and '15 for about a year.

23 Q Okay. Did you break up with him?

24 A It was a mutual understanding that we weren't going
25 to continue our relationship.

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1 Q Well, after you guys broke up, what happened
2 involving some photos of you?

3 A About two months after we broke up, he sent me a
4 picture of myself over Facebook Messenger and said, "I will
5 delete these and the others if you give me my stuff back."

6 Q What was the -- what did the photo look like? What
7 was the nature of the photo?

8 A It was a picture of me in the mirror, topless.

9 Q And when he said this photo and others like it, did
10 you give -- did he have other nude photos of you from your
11 relationship?

12 A Yes.

13 Q What belongings did you have of his?

14 A I had a tapestry, a mug, some hats, and, like, a
15 shirt. Nothing completely important in my perspective.

16 Q What were you afraid would happen if you didn't give
17 him his stuff back?

18 A That he would post the pics.

19 MR. JANSEN: Objection.

20 THE COURT: I'm sorry?

21 MR. JANSEN: Objection.

22 THE COURT: Overruled.

23 BY MS. DUGAN:

24 Q You said that he would post the pictures?

25 A Uh-huh. (Nodding head affirmatively.)

1 Q And those pictures were sent to you on Facebook?

2 A Yes,

3 MS. DUGAN: That's all.

4 THE COURT: Cross?

5 CROSS EXAMINATION

6 BY MR. JANSEN:

7 Q So, Ms. [REDACTED], he never threatened to post the
8 picture, did he?

9 A Correct.

10 Q All he said was he had the picture?

11 A Correct.

12 Q And he said he wanted his property back --

13 A Correct.

14 Q -- that you had?

15 A Uh-huh.

16 Q And he said if you return it, it will be deleted?

17 A Yes.

18 MR. JANSEN: One moment, Your Honor.

19 (Pause.)

20 BY MR. JANSEN:

21 Q Did you contact him --

22 A No.

23 Q -- about the photos?

24 A The only correspondence I had with him was right
25 after he picked up the rest of his belongings from my

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1 apartment in July. And I called him and said, "Can you please
2 delete them?" And he said, "No, it's my property. It's on my
3 phone, so I can do what I want with them."

4 And then I didn't try anymore. And then after
5 months went by, this happened, this instance that we're
6 speaking about. So, no, I never contacted him again after
7 that situation for him to delete the pictures.

8 Q And during any conversation he never threatened to
9 post them, did he?

10 A Correct.

11 Q Thank you.

12 THE COURT: Redirect?

13 MS. DUGAN: No, sir.

14 THE COURT: All right. Any juror have a question of
15 this witness?

16 All right. You can step down. Do we need to keep
17 her any further?

18 MS. DUGAN: No, sir.

19 THE COURT: All right. You're excused. Thank you
20 for being here.

21 Call your next witness.

22 MS. DUGAN: At this time the State rests.

23 THE COURT: All right. Let's go sidebar, please.

24 (Sidebar as follows:)

25 THE COURT: I don't want to send the jury out right

1 now. Make your Judgment of Acquittal in brief. I'll let
2 you argue it further if you want later. But...

3 MR. KOMISAR: We would move at this time again to
4 renew our motion regarding the theory the State is
5 allowed to argue that there's no penetration after that
6 consent. We would argue that the light most favorable
7 for the defense, there's no evidence that the sex
8 occurred completely without consent.

9 As far as the extortion count, there has been no
10 testimony that there was a communication that referenced
11 sex. The Information in this case charges extortion to
12 obtain sex, not extortion to talk, not extortion for a
13 ride, or anything like that. So the law requires that
14 the extortion communication be directed to the individual
15 for the purpose of obtaining that item.

16 The testimony has been undisputed that while a
17 person might feel a certain way, the extortion law is
18 objective, not subjective. It requires a complaint -- or
19 the complainant to receive a communication that is the
20 threat, and there was none.

21 It's undisputed that in this case there was talk
22 about deletions, but there was never a threat to injure
23 reputation, publish. This potential victim may have felt
24 that way, but that threat was never communicated under
25 the strict reading of the extortion law.

1 THE COURT: Are you prepared for me to rule, or do
2 you want to be heard further later? I'm going to deny
3 the Motion for Judgment of Acquittal.

4 There is a jury question issue that you have raised
5 we'll have to resolve before we instruct the jury, but we
6 don't need to resolve that at this point in time.

7 The type of malice, I understand that is a disputed
8 issue, and the DCA is -- anyway, we'll address that
9 later. You ready to call a witness?

10 MR. KOMISAR: Yes, sir.

11 THE COURT: Okay.

12 (The sidebar concluded, and the following took place
13 in open court:)

14 THE COURT: You may call your first witness.

15 MR. KOMISAR: The defense would call Heather Pearce.

16 THE COURT: Come on up here, please, ma'am. Were
17 you sworn earlier?

18 THE WITNESS: No.

19 THE COURT: If you'll face the clerk and be sworn,
20 please.

21 whereupon,

22 HEATHER PEARCE

23 was called as a witness, having been first duly sworn, was
24 examined and testified as follows:

25 THE COURT: Slide up to that microphone, please,

1 ma'am.

2 DIRECT EXAMINATION

3 BY MR. KOMISAR:

4 Q Good afternoon, ma'am. Can you state your name and
5 spell it for the court reporter.

6 A Heather Pearce. H-e-a-t-h-e-r, P-e-a-r-c-e.

7 Q And how are you employed?

8 A Florida State University.

9 Q what is your position?

10 A Director of the Victim Advocate Program.

11 Q And what was your position back in 2016?

12 A The same.

13 Q Okay. what is the Victim Advocate Program at FSU?

14 A It's a 24-hour crisis intervention program that
15 provides services to victims of crime in our community.

16 Q When a student contacts the victim advocate office
17 and makes a complaint, does the victim advocate office open a
18 file?

19 A Yes, we do.

20 Q And you have access to those files?

21 A Yes.

22 Q And as the director, you're the custodian of files?

23 A Yes, sir.

24 Q And you guys keep those files in your normal course
25 of business?

1 A Yes.

2 Q Are you aware whether a file exists involving B.M.?

3 A Yes, sir.

4 MR. KOMISAR: May I approach the witness, Your
5 Honor?

6 THE COURT: You may. And keep your voice up just a
7 little bit, please, Ms. Pearce. You're awful quiet. I'm
8 a little hard of hearing. All right.

9 BY MR. KOMISAR:

10 Q I'm showing you what's been marked as Defense
11 Exhibit 1 for identification purposes at this time.

12 Do you recognize that document?

13 A Yes, sir.

14 Q What is that document?

15 A It's the contact sheet where we open a case when a
16 client comes in.

17 Q And that's the contact sheet for B.M.?

18 A Yes.

19 Q And that's the sheet that was created on October
20 10th of 2016?

21 A Yes.

22 Q Is that in the same or similar condition as to the
23 one that you located in your file?

24 A Yes.

25 MR. KOMISAR: Your Honor, at this time we move

1 what's been previously marked as Defense Exhibit 1 for
2 identification purposes into evidence as Defense 1.

3 THE COURT: Any objection?

4 MS. DUGAN: No objection.

5 THE COURT: It will be admitted.

6 (Defendant's Exhibit No. 1 received in evidence.)

7 MR. KOMISAR: Permission to publish?

8 THE COURT: How do you wish to do it?

9 MR. KOMISAR: The overhead.

10 THE COURT: Okay.

11 BY MR. KOMISAR:

12 Q On the top of this form there is a section called
13 "Type of Victimization." What is SB?

14 A Sexual battery.

15 Q What is SA?

16 A Sexual assault.

17 Q What is SM?

18 A Sexual misconduct.

19 Q Are any of those circled or checked?

20 A No.

21 Q According to this document, Ms. M. came to your
22 office on October 10th?

23 A Yes.

24 Q According to this document, was anything sexual
25 reported or any nonconsensual sex? Or was what was reported

1 negative messages and name calling?

2 A It would be sexual harassment, that's the category
3 it would have fallen under.

4 Q The Summary of Incident, that's where the person
5 from the victim advocate office documents what the person who
6 came to them tells them?

7 A In summary, yes.

8 Q In this Summary of Incident is there any mention of
9 sexual battery or sex occurring without someone's consent?

10 A Not in that paragraph, no.

11 Q Okay. Having reviewed the entire file before you
12 came to court, is there anything from October 10th in your
13 file that shows that Ms. M. reported any sexual activity
14 without her consent to your office on October 10th?

15 A You're referring to sexual contact?

16 Q Yes.

17 A No.

18 Q what was reported was harassment, social media,
19 and --

20 A sexual exploitation.

21 Q Okay. That would be photos?

22 A (Nodding head affirmatively.)

23 Q And you went through your file looking for that,
24 correct, before you came here today?

25 A I just read the file. I wasn't looking for

1 anything.

2 Q Now, on December 5th, is there a section in
3 December 5th where your office had further contact with Ms.
4 M., and at that point she stated that the harassment had
5 turned sexual?

6 A Yes, it was in December. I don't remember the exact
7 date.

8 Q But it was not reported to your office on
9 October 10th?

10 A Not what's written here.

11 Q Okay. If somebody comes to your office and reports
12 that sexual activity occurred without their consent, that's
13 something your office documents?

14 A Typically, yes.

15 Q Okay. Any idea -- that's your training for
16 individuals that get to take these reports, they're trained
17 that that's something they would document?

18 A It would be documented, but there's no victimization
19 here, so the whole section is not even complete.

20 Q I'm taking the paragraph description that's called
21 Summary of Reported Incident. If someone reports to your
22 office that they had sex without their consent or that they
23 were sexually battered, your office would document that;
24 that's what you do?

25 A Typically, yes.

1 Q It wasn't noted in this case?

2 A No.

3 Q And you did locate a place in your file where later
4 in December it said, "Now turned sexual"?

5 A Yes.

6 Q Okay. Had earlier parts of your file included
7 allegations of sex without consent, your file wouldn't later
8 in December say it's "now turned." "Now turned" means this is
9 new information?

10 A Correct.

11 Q Okay.

12 MR. KOMISAR: That's all I have.

13 Excuse me, Your Honor, if I may --

14 THE COURT: What did you say?

15 MR. KOMISAR: If I may --

16 (Pause.)

17 BY MR. KOMISAR:

18 Q In this case, your office, based on your review of
19 the file, moved some exams and classes for Ms. M.?

20 A Correct. I'm not sure of the time frame of that,
21 but we worked with her for academic support.

22 Q And after changing some times and getting some
23 extensions, you later worked to allow her to withdraw her
24 classes without any negative academic consequences?

25 A Yes.

1 Q You also worked with her to be able to maintain
2 financial aid?

3 A Yes.

4 Q If Ms. M. reported to your office on October 10th
5 that sexual battery or sex without consent had occurred, do
6 you have any idea why it would not have been documented by
7 your office?

8 A The only thing I can think of -- and I can't judge
9 why this person didn't write it there -- was that they were
10 just summarizing, and we are -- we obviously know we don't
11 have privilege, so these -- these cases can be subpoenaed as
12 they were.

13 Q As far as the subpoena, are you aware whether when
14 Ms. M. was notified --

15 MS. DUGAN: Objection to speculation.

16 THE COURT: I don't know what the question is.
17 Don't answer it until I have a chance to hear the
18 question, please.

19 BY MR. KOMISAR:

20 Q Do you have any personal knowledge about whether,
21 when that document was subpoenaed, Ms. M. in this case
22 objected or did not want FSU to release it?

23 THE COURT: That's not relevant. Move on.

24 MR. KOMISAR: That's all I have.

25 THE COURT: All right.

1 CROSS EXAMINATION

2 BY MS. DUGAN:

3 Q Is it common for victims of sexual abuse to feel
4 embarrassed about reporting it?

5 A Very.

6 Q Is it common for victims of sexual abuse to feel
7 reluctant about telling the details of what happened?

8 MR. KOMISAR: Objection, opinion.

9 THE COURT: Overruled.

10 THE WITNESS: Yeah, it's very common.

11 BY MS. DUGAN:

12 Q Is it common for the victim advocate's office to
13 provided academic support for victims of crimes who are
14 students at FSU?

15 A Yes. We do it daily.

16 Q You said at the top of that form no type of case was
17 checked, and it should have been, but it wasn't?

18 A Correct.

19 Q Okay. And that paragraph not only mentions name
20 calling, it also mentions being threatened, being harassed
21 with the nude photos, her being afraid they're going to be
22 posted, her feeling intimidated by the Defendant?

23 A Correct.

24 Q who is the victim advocate that -- that did the --
25 that wrote the paragraph?

1 A Jessica Isham (phonetic). She was an MSW intern.

2 Q Okay. So she was an intern for your office?

3 A Yes.

4 Q And I think you called it a summary. That's not a
5 word-for-word recitation of what the victim said?

6 A Correct.

7 Q That's not something the victim wrote herself?

8 A No.

9 Q That's a summary from what Ms. Isham (ph) remembers
10 that Ms. M. said to her?

11 A Yes.

12 Q And you mentioned that what is said to victim
13 advocates, y'all aren't like a psychiatrist's office; you're
14 there for academic support, things aren't privileged?

15 A Correct.

16 Q Okay. And your employees and your interns know that
17 what is said to them isn't privileged?

18 A Yeah.

19 Q Can you imagine a scenario where the intern might
20 not --

21 MR. KOMISAR: Objection, speculation.

22 THE COURT: Sustained.

23 MS. DUGAN: Okay.

24 BY MS. DUGAN:

25 Q would putting information about sex in a paragraph

1 like that be subject to anyone, you know, getting it with a
2 subpoena?

3 A Yes.

4 Q Okay. Can an intern be wanting to protect someone's
5 privacy?

6 MR. KOMISAR: Objection, speculation.

7 THE COURT: Sustained.

8 MS. DUGAN: That's all. Thank you.

9 THE COURT: Redirect?

10 REDIRECT EXAMINATION

11 BY MR. KOMISAR:

12 Q Do you have any personal knowledge of any time an
13 FSU student has reported to the FSU victim advocate office
14 that sex occurred without their consent, and the FSU victim
15 advocate office failed to document that report?

16 A Not off the top of my head, no.

17 Q In your time there, about how many reports do you
18 think you take or that you have supervised the taking of?

19 A The office?

20 Q Yes.

21 THE COURT: What time frame are you taking about,
22 Mr. Komisar?

23 BY MR. KOMISAR:

24 Q During your employment there.

25 A Over a thousand.

1 Q And is it fair to say a good number of those may
2 have dealt with sexual issues without consent?

3 A The majority are sexual misconduct but not rape in
4 particular.

5 Q So of those thousand, are you ever aware of someone
6 reporting to the FSU victim advocate that there's harassment
7 going on and sex without consent, but they only document the
8 harassment?

9 A Not specific cases, no.

10 Q If Ms. M. testified that she reported to your office
11 on December 10th, 2016, that sex occurred without her consent,
12 is there any document in your office that supports that
13 allegation?

14 THE COURT: I'm not sure about your date, Mr.
15 Komisar, that you used. What date did you say?

16 BY MR. KOMISAR:

17 Q On December -- I'm sorry. October 10th, 2016, did
18 she report to your office on that day that there had been sex
19 the night before without consent, anything in your file review
20 before you came to court that supports her allegation that she
21 told your office that?

22 A No.

23 Q Thank you.

24 THE COURT: Any juror have a question of this
25 witness? All right. If not, you may step down.

1 Do we need to keep her any further?

2 MR. KOMISAR: No, Your Honor.

3 MS. DUGAN: No, Your Honor.

4 THE COURT: All right. You're excused.

5 Call your next witness.

6 MR. KOMISAR: If we could approach sidebar, Your
7 Honor. It's --

8 THE COURT: Okay.

9 (Sidebar as follows:)

10 MR. KOMISAR: Our next witness was going to be the
11 FSU compliance officer, Robyn Jackson, for the sole
12 question about whether Ms. M. objected to that document
13 being released, based on the Court's other ruling --

14 THE COURT: Why do you think that's relevant?

15 MR. KOMISAR: It goes to her motive. She's now come
16 into court and testified inconsistent with what she
17 reported to them. Basically, she has perjured herself
18 about what she reported that day, and it's relevant to
19 show that when she learned what she reported to them was
20 going to be released, she objected to it being released.
21 They did not want us to find out that her testimony was
22 inconsistent with what she told FSU.

23 THE COURT: Ms. Dugan?

24 MS. DUGAN: I would object to relevance.

25 THE COURT: I mean, do we know whether she did that

1 based upon advice of counsel?

2 MR. KOMISAR: She testified in her depo she never
3 actually had an attorney.

4 THE COURT: She said she consulted Ms. Richardson.
5 I -- I don't see any relevance, so I'm -- I'm going to
6 sustain this -- I assume the State is objecting?

7 MS. DUGAN: Yes, sir.

8 THE COURT: I will sustain their objection.

9 MS. DUGAN: While we're up here, are you guys going
10 to call Ms. M.?

11 MR. KOMISAR: It depends. We don't really know. If
12 you do a rebuttal case or not. We're not sure at this
13 point.

14 MS. DUGAN: Okay.

15 THE COURT: All right.

16 MR. KOMISAR: We have another witness.

17 THE COURT: You want to excuse Ms. Jackson?

18 MR. KOMISAR: Yes, I will, Your Honor.

19 (The sidebar concluded, and the following took place
20 in open court:)

21 THE COURT: Get your next witness.

22 MR. KOMISAR: Mr. Jansen is calling the next
23 witness.

24 MR. JANSEN: Kyle Phillips, Your Honor.

25 THE COURT: I didn't realize you were going to call

1 Mr. Phillips. We're probably about due for a break
2 before we do that. Let's take 10 minutes. I know y'all
3 have had a break, but we haven't. We've got to take 10
4 minutes, and we'll start with this testimony. All right.

5 Either side need anything?

6 MS. DUGAN: No, sir.

7 MR. JANSEN: No, sir.

8 THE COURT: Okay, 10 minutes.

9 (Recess.)

10 THE BAILIFF: All rise. Court is back in session.

11 THE COURT: Let's have the jury, please.

12 THE BAILIFF: Jury is in the courtroom.

13 (The jury returned to the courtroom, and the
14 following took place in open court:)

15 THE COURT: Everybody be seated. Call your next
16 witness, Mr. Jansen.

17 MR. JANSEN: We call Kyle Phillips, Your Honor.

18 THE COURT: All right. Come forward, please,
19 Mr. Phillips. Place him under oath, please.

20 whereupon,

21 KYLE PHILLIPS

22 was called as a witness, having been first duly sworn, was
23 examined and testified as follows:

24 THE COURT: You may proceed.

25 MR. JANSEN: Thank you, Your Honor.

1 DIRECT EXAMINATION

2 BY MR. JANSEN:

3 Q Mr. Phillips, can you give us your full name, to the
4 jury?

5 A Kyle Phillips.

6 Q And, Mr. Phillips, where did you go to high -- where
7 are you from?

8 A Well, I was born in California. I'm a military
9 brat, but I went to high school in Plant City, Florida, during
10 high school.

11 Q And what year did you graduate?

12 A 2010.

13 Q And after graduation from high school, what did you
14 do then?

15 A I went to a local community college, ACC, I took
16 classes there; and I joined the ROTC program, which was in
17 junction with USF's program. So I -- I was there for about
18 three years and then transferred to FSU to join the program
19 here.

20 Q The ROTC program?

21 A Yes, sir.

22 Q Was it your intent to join the military?

23 A It was.

24 Q And what happened with that?

25 A I injured myself, and I couldn't keep up with the

1 physical standards. I couldn't run anymore.

2 Q Okay. Is that because of a leg injury?

3 A Yes.

4 Q All right. And when did you arrive at FSU?

5 A Fall of 2013.

6 Q And did you have a major that you were going to
7 study?

8 A International affairs.

9 Q All right. And were you taking a full load at that
10 point?

11 A Yes.

12 Q All right. And at that time do you remember where
13 you were living?

14 A University Club on Dixie Drive.

15 Q Okay. Now, did you continue your schooling, or did
16 you take a semester off somewhere?

17 A I took a semester off after I hurt myself because I
18 was a little disillusioned to not being in the program and my
19 major. So I took the spring of, I believe, 2015 off. I can't
20 really remember the dates. It's been so long now, and I don't
21 really think about it.

22 Q So did you return to Tallahassee January 16th --

23 A Yes.

24 Q -- 2016?

25 A When I moved in with Luke Hazen, which was January

1 of '16, that's when I returned.

2 Q And where did you live? where were you and Luke
3 living at?

4 A Campus Circle.

5 Q Okay. was it just you two roommates?

6 A Yeah.

7 Q All right. And Luke, you didn't know him before
8 that?

9 A (Shaking head negatively.) No.

10 Q And was Luke also a college student?

11 A Yes.

12 Q All right. Now, tell us, B.M. do you know Ms. M.?

13 A Yes.

14 Q And how do you know Ms. M.?

15 A We met at Pot's. We had mutual friends, and she
16 ended up liking me and wanting to go home with me.

17 Q And tell me about your first meeting with Ms. M.

18 A well, she was very drunk and kind of belligerent
19 with her friends, wouldn't go home with anybody else but me.

20 I didn't really feel comfortable with taking her
21 home, but she was pretty adamant about it. I took her back to
22 the apartment -- I was still with Luke -- and she slept in my
23 bed, and me and Luke stayed up all night playing FIFA until
24 she woke up in the morning.

25 Q All right. was there any sexual encounter on that

1 evening?

2 A Not in the evening. But later in the afternoon of
3 the next day, we ended up having sex.

4 Q All right. Now, did you start dating her?

5 A Yes.

6 Q And when did you start dating her?

7 A Pretty much immediately. We hung out. She
8 continued to want to hang out with me.

9 Q And did she become a girlfriend?

10 A Yes.

11 Q And did you care for her a great deal?

12 A Yes.

13 Q All right. And while you were dating, did you ever
14 move in with her for a short time period?

15 A Yes. Near the end of the relationship, I lived with
16 her for probably two to three weeks.

17 Q Okay. And do you know her mother, Karen Murphy?

18 A Yes.

19 Q And how do you know her?

20 A Well, I would go over -- they're -- they're local
21 so, you know, I would go over to her parents' house for dinner
22 every so often.

23 Q And did her mother help you get a summer job?

24 A Yes.

25 Q And where was that at?

1 A First Property Services.

2 Q And what kind of job was that?

3 A It was kind of between, like, a -- not necessarily a
4 property manager, but not necessarily a maintenance guy
5 either. It was a bit of in-between. I did all the odd jobs
6 and deliveries.

7 Q Okay. And how long do you think you lived with
8 Ms. M.?

9 A A few weeks.

10 Q Okay. And what happened? Was there a breakup? Do
11 you remember when this breakup took place?

12 A Roughly. Once I moved back into my house is when
13 she broke up with me, the same day.

14 Q Does October 2nd, 2016 sound accurate?

15 A Yeah.

16 Q All right. And did she ever tell you why she broke
17 up with you?

18 A No. She wouldn't really give a reason. And she was
19 a little wishy-washy about it. And she was really emotional
20 as she did it.

21 Q And would you say you were in love with her?

22 A Yes, at the time.

23 Q And how did you take the breakup?

24 A I took it really hard.

25 Q All right. Were you emotionally and -- involved?

1 A Yes. I spent almost every day with this girl and
2 lived with her for a little while, and so we were attached.

3 Q All right. And when you -- when she broke up with
4 you, did she have your debit card?

5 A Yes.

6 Q Do you recall that incident?

7 A Yes.

8 Q And do you recall having to text her to get food
9 because she had your debit card at that point?

10 A Yes.

11 Q Did you become somewhat dependent on her at that
12 point?

13 A To an extent.

14 Q Okay. Now, did she ever tell you why she broke up?

15 A No.

16 Q All right. And 10/2, do you recall communicating
17 with her by text messaging?

18 A Yes.

19 Q All right. And did you communicate with her by
20 phone also at times?

21 A Yes.

22 Q And how would you describe your communication with
23 her on the text messaging?

24 A As she said, it was a little back and forth. I
25 mean, it wasn't toxic when -- initially. Obviously, I wanted

1 to get back with her. I wanted to speak with her. Then there
2 was the issue of me having some of her belongings at my place
3 and her having some of my belongings.

4 Q All right. At some point, is it fair to say to the
5 jury that you lashed out and said some derogatory things to
6 her?

7 A Initially, when she first broke up with me, I did
8 lash out. I think I called her some names, accused her of
9 cheating. Without the texts in front of me, I mean, I can't
10 remember specifics. But it wasn't extremely toxic, not like
11 later in the week.

12 Q And would it be fair to say that you said some mean
13 things to her?

14 A Yes.

15 Q And you called -- called her some really bad words?

16 A Yes. I -- I mean, I was pretty hurt.

17 Q And tell the -- tell the jury, why did you do that?

18 A I mean, I cared about her a lot, and I was really
19 confused why she was breaking up with me. She had continued
20 to come back over and have sex with me, and then say that she
21 wanted to get back together and then leave, and then call me
22 and say she didn't want to get back together. And this is --
23 you know, throughout the week, it was the same thing every
24 day. I mean, it was very confusing.

25 Q All right. And you were here and you saw some of

1 the text messages that were up there, correct?

2 A Yes.

3 Q Some of them were not very nice?

4 A Right. On the 8th, yeah, those were pretty bad.

5 Q Okay. So I want to take your attention to October
6 the 3rd. After you broke up, you were living in a separate
7 location?

8 A Yes.

9 Q All right. And where was that house? Where was
10 that located?

11 A 1912 Botany Drive.

12 Q Okay. And you lived there for quite a while?

13 A Yes.

14 Q All right. And did you ever -- do you recall
15 telling her that you were depressed --

16 A Yes.

17 Q -- in your texts?

18 A I remember in person. I don't necessarily remember
19 if it was in texts. I'm sure it was.

20 Q Were you trying to reconcile with her?

21 A Yes.

22 Q On 10/3 did you want to get back with her?

23 A Yes.

24 Q And were you trying to make attempts to do that?

25 A Yes. Not -- not too much, though. I mean, I

1 didn't -- I -- I asked that day, and she said she would think
2 about it, I think is what she said on that day.

3 Q Did you try to get her to talk to you?

4 A Yes.

5 Q And what was her response?

6 A She came -- she came over and spoke with me.

7 Q All right. And when she came over on the 3rd, on
8 that same day did you have some mean texts?

9 A I think then I might have.

10 Q Do you recall telling you [sic], "I really hate you
11 for doing this now. I cared about you so much. This was just
12 a waste of time." Do you ever recall saying something like
13 that?

14 A Yes.

15 Q And did you ever accuse her of having sex with other
16 dudes?

17 A At one point I did, but I really didn't know, and I
18 didn't think she was that kind of girl to have done that at
19 the time. So it was more of me just being immature and
20 lashing out.

21 Q And so did she eventually come to your home on
22 October 3rd?

23 A Yes.

24 Q All right. And tell the jury how she -- how did
25 that happen? Did you call her? Did she say, "I'll come

1 over"? what happened?

2 A I don't necessarily remember what it was that got
3 her to finally come over. I know I asked her to come over. I
4 don't know if that was the day where it was -- we were being
5 sexual over text messages and that's what got her to come
6 over. But I believe I just wanted to talk to her on the 3rd,
7 and we ended up having sex. It was -- I mean, it was
8 consensual. It wasn't weird.

9 Q Let's walk about -- let's walk through that. On
10 October 3rd she comes to your home. You are supposedly broken
11 up; is that correct?

12 A Yes.

13 Q And so she comes into the house -- were you living
14 by yourself at this point?

15 A Yes.

16 Q All right. And how is it that you end up having sex
17 with her after you had broken up?

18 A Well, I mean, she wanted to have sex. She was a
19 pretty sexual girl.

20 Q Tell the jury what she did and what you both did
21 that day.

22 A Well --

23 MS. DUGAN: I would object to relevance.

24 THE COURT: Overruled.

25 THE WITNESS: I think, you know, we did a lot of

1 oral sex. I think that's how it started that time.

2 After that, we continued to have sex. We may have talked
3 a little bit, I don't necessarily remember. I think that
4 day we took a shower together.

5 BY MR. JANSEN:

6 Q All right.

7 A But I don't think we spent the whole day together.

8 Q All right. And then after the romantic interlude,
9 how did it end? What happened? How did you leave it between
10 the two of you?

11 A It was -- it was fine. There was no hard feelings.

12 Q All right. And she left, I take it?

13 A Yes.

14 Q And then when was the next time you heard from her?

15 A It was either that evening over texts or the next
16 day.

17 Q And did -- was there texts the next day that were
18 mean and mean-spirited again?

19 A I think I was hurt because on the 3rd she had said
20 that she wanted to get back together, had sex with me, and
21 then said she didn't want to get back together after she left,
22 and so I was hurt again.

23 And so I think I repeated, you know, more of the
24 kind of texts along the lines of, you know, "I can't believe
25 you're doing this to me, you know, at this time when I'm so

1 stressed out."

2 I had had my car broken into. Among other things, I
3 didn't have electricity or water in my house yet.

4 Q And did you ever tell her at this point, on the 3rd,
5 "Go back to being the 3 a.m. slam piece"? Do you remember
6 saying that?

7 A I remember saying that.

8 Q Why would you say that to this girl that you
9 supposedly were in love with and just had had sex with?

10 A Well, I was hurt that she was going back and forth
11 about whether she would be with me or not and then coming over
12 and continuing to have sex with me.

13 Q Okay. And let me ask you this: Did you tell her it
14 was wrong for her to come over and have sex with you after you
15 had broken up again and lead you on?

16 A Yes.

17 Q And how did she respond to you?

18 A I -- I remember her apologizing a couple of times.
19 But, I mean, it continued to happen. And, you know, I'm at
20 fault for going along with it, too; but I liked her a lot, so
21 whenever I thought there was a chance of reconciliation, I
22 would go for it.

23 Q So you still at this point, on the 4th, still wanted
24 to get back with her?

25 A Yeah. I remember having that feeling, not as

1 strongly because I could tell, you know, it was getting old,
2 you know, the back-and-forth was getting old.

3 Q So if there are text messages where you said, "I'm
4 over you. I'm done with you. You were a waste of my time,"
5 that wasn't your true feelings?

6 A No. I mean, I was, you know, just lashing out
7 because I was -- I was hurt.

8 Q And why -- why do you -- is that your way of -- I
9 don't know. Why would you lash out at someone you so-called
10 love?

11 A Probably just because of the pain. You know, it was
12 sudden, it was very sudden, the breakup. I didn't really
13 speak to a whole lot of people, so she was really one of my
14 only friends along with Luke. And at that point me and Luke
15 weren't living together. So, I mean, I -- I didn't have
16 anybody to talk to ever.

17 Q All right. Now, at this point, did you both have
18 property you were trying to exchange back and forth?

19 A Right. And that was kind of a nightmare. She was
20 never really willing to meet up and bring my stuff over. But
21 she would come over, and I remember asking her to bring some
22 of the things over, but she would come over and still not have
23 some of my things.

24 Q All right. So on the 4th, eventually, does she come
25 to Botany Place again?

1 A Yes.

2 Q And she comes over to your house?

3 A (Nodding head affirmatively.)

4 Q And tell us what happens on October 4th.

5 A well, we had sex again.

6 Q And I take it this was consensual sex?

7 A Yes.

8 Q whose idea was it, hers, yours, or both of you?

9 A It was probably mine initially, but she didn't fight
10 it at all, and she was definitely for it.

11 Q All right. Did you ever talk dirty during sex?

12 A Pretty much every time we had sex.

13 Q I know it's not pleasurable to hear this kind of
14 thing, but what kind of things would you say during sex with
15 her? what kind of things would she say?

16 A She would say things like, "I love the way you fuck
17 me."

18 MS. DUGAN: I object to hearsay.

19 THE COURT: Overruled.

20 THE WITNESS: I would say things like, "whose pussy
21 is that?" You know, those -- that's what's coming to
22 mind now, but stuff along those lines.

23 BY MR. JANSEN:

24 Q Is this what they commonly call talking dirty during
25 sex?

1 A Yes.

2 Q was this normal for you two in your relationship?

3 A Definitely.

4 Q On both ends, both sides?

5 A Oh, yeah.

6 Q Was there an issue about a microwave?

7 A Yes. Initially, it wasn't an issue. I had bought
8 some furniture from her family, and she told me that the -- I
9 bought a futon in particular, and she told me that the -- I
10 could have the microwave because she was moving into an
11 apartment that already had a microwave, and they had no need
12 for one, that they had already bought. So as I bought the
13 futon, they just kind of threw that in.

14 Q Do you recall ever telling her in the texts that you
15 were excited about football season, going to the games with
16 her, spending time with her and being with her?

17 A Definitely. And, like I said, I spent every day
18 with her, so I didn't have anybody else to really do that
19 with.

20 Q Okay. So after you engage in sexual activity, was
21 this in the same bed? Do you have one bedroom in that house?

22 A There were three bedrooms.

23 Q The room on October 3rd and 4th, is it the same
24 room?

25 A Yes.

1 Q Same type of sex?

2 A Yes.

3 Q Was oral sex involved?

4 A Pretty much every time.

5 Q Is that how it normally started?

6 A Yes.

7 Q So after she leaves on October 4th, when is the next
8 conversation you had with her?

9 A Well, on the 5th, because we ended up having sex
10 again on the 5th. But I think that at this point I was kind
11 of losing hope in reconciliation to an extent, and it was
12 clearly becoming more sexual. I mean -- yeah.

13 Q Is that when you sent text messages that were very
14 descriptive to her?

15 A Yeah. Uh-huh.

16 Q And can you -- do you remember what you sent to her?

17 A I described, like, going down on her. I mean,
18 that's what I remember.

19 Q And do you remember her responding?

20 A Oh, yeah. I mean, she was all for it.

21 Q Do you remember her -- her saying, "Horny, LOL, I'll
22 be right over"?

23 A Immediately, yeah.

24 Q And that was on October 5th?

25 A Yes.

1 Q And did she tell you you had to do it really quick?

2 A Yes.

3 Q And did she come over?

4 A Yes.

5 Q And the same house?

6 A Yes.

7 Q And did you engage in the same sexual relationship
8 as times we have described before?

9 A Yes.

10 Q And then she left after that?

11 A Yes.

12 Q And do you recall when she came, you sent her a text
13 saying, "You forgot to give me my check"?

14 A Right.

15 Q What was that all -- what was the check about?

16 A Well, she had a check that belonged to me, and she
17 was saying that she wanted a kennel. I had a new dog at the
18 time, and her family lent me a kennel to use from when I
19 wasn't home to keep the dog in the kennel. And she had made a
20 big deal about wanting the kennel back.

21 And when she had come over, I think I even mentioned
22 to her, "Take the kennel with you." I don't remember what
23 vehicle she drove; but if she drove her truck, then she would
24 have been able to move it. But she left it.

25 But, I mean, the check wasn't the only thing that

1 she had. She had a few other things that belonged to me that
2 I wanted her to bring back that she failed to.

3 Q All right. And then on the 6th, did you try again
4 to maybe hook up with her for sex?

5 A Yeah.

6 Q And she was going to go to her parents' home?

7 A Yes. Over the weekend.

8 Q Do you remember, you wanted her to come over?

9 A Yes.

10 Q And did that ever end up -- did she ever end up
11 coming over?

12 A She did come over, but she agreed to it. She
13 eventually -- she fell asleep or something, so we just didn't
14 meet up that night.

15 Q All right. And then at some point did you find out
16 about this Pike fraternity guy?

17 A Yeah. I was at Luke's apartment, and some mutual --
18 me, Luke, and then mutual friends of B.M. and us were there
19 drinking, and we got pretty drunk. And one of the girls let
20 slip that B.M. had been sleeping with another guy. She
21 thought that I knew the whole time. And that's what -- that's
22 when all the nasty texts started.

23 Q And was his name Pete?

24 A Peter or Pete.

25 Q Peter or Pete. And was he in a Pike fraternity?

1 A Right.

2 Q And I take it you're not in a fraternity?

3 A No.

4 Q And she was in a sorority; is that right?

5 A Yes.

6 Q Do you know what sorority it was?

7 A Alpha Phi.

8 Q Okay. And so then, I guess, the texts you have with
9 her get rather nasty?

10 A Yeah. I was pretty intoxicated; and looking back, I
11 regret those texts. I mean, obviously, in hindsight that
12 doesn't look good on me. But I was, again, very hurt,
13 especially after being led on for the -- after being broken up
14 with and led on that there might be a chance of
15 reconciliation, to find out that she had just been sleeping
16 with other people, it sucked.

17 Q And were you -- were you able to easily walk away
18 from B.M. at this time?

19 A On the 7th?

20 Q Yes. Or the 8th.

21 A No, I wouldn't say so. I mean, I had -- I still had
22 pretty hard feelings for her. But, I mean, she still had some
23 of my belongings, too; and I think, otherwise, I probably
24 would have just ignored it.

25 Q Did you ever have conversations where you were

1 saying, "How could you come sleep with me"?

2 A Right.

3 Q "And lead me on while you're doing this other guy?"

4 A well, when we first started hooking up, she had
5 given me chlamydia. And after we broke up, one of the
6 stipulations to us still having sex was, I told her, "It's
7 fine we're breaking up; but if you're going to start hooking
8 up with other people, please just tell me because I don't want
9 to catch another STD," especially, Florida State has got a
10 reputation for it, especially Pikes at Florida State to have
11 STDs. So as soon as I heard that she had slept with a Pike,
12 my first thought was, great, I'm going to have another STD.

13 Q And when you had sex with her, was it normally
14 unprotected sex?

15 A Yes.

16 Q Now, apparently, on -- we're moving up to 10/10.
17 And I -- I know you've seen these texts because the State --
18 you had a chance to review them.

19 on 10/10, who brings up the issue of these pictures,
20 was it you or her?

21 A well, earlier in the relationship, after we had
22 broken up, she had mentioned a few times just -- I mean, it
23 wasn't a big deal at the time -- that she wanted the pictures
24 gone. But I brought up the pictures initially. And I
25 remember I had shot out, you know, a couple of things because

1 I was angry, like, "I'm going to tell everybody you cheated on
2 me. I'm not going to delete any of these pictures," you know,
3 things to that effect. I don't remember the exact text.

4 Q All right. So the State played -- or showed a
5 picture of B.M. with two of her friends, and it looks like it
6 might have been a -- I guess that's -- I don't know if that's
7 Instant Messenger or Facebook. What is that?

8 A Instagram --

9 Q Instagram.

10 A -- with the comments.

11 Q And so you saw the photo, right?

12 A (Nodding head affirmatively.)

13 Q And it says "Riddick the Potato." Who is Riddick
14 the Potato?

15 A He's my dog.

16 Q Okay. So you recall this text, this was -- this was
17 when, "You F'd a Pike. Slut. Gave me chlamydia.
18 Disgusting."

19 A Yes. I was hurt, so I was lashing out, per usual.

20 Q And when do you remember doing that?

21 A I think that was on a -- on the -- on a Sunday, I
22 believe. I remember being at a soccer game, and I think that
23 might have been on a Sunday.

24 Q So this is after you found out about the Pike?

25 A Yes.

1 Q That's why there is a Pike reference?

2 A Right.

3 Q Okay. And then I guess there's another picture of
4 you and her, an older picture; is that another one?

5 A Yeah.

6 Q And it's a picture of you two. This is State's
7 Exhibit 3B for the record. And that's a picture of you and
8 her with your -- your tongue out or something?

9 A Right. I was making a silly face.

10 Q And what was the reason for that also?

11 A Well, again, I was hurt, and I was just lashing out
12 in whatever way I could.

13 Q Wouldn't it have been easier just to walk away from
14 this girl and leave and say, "Okay, I know what you are, I'm
15 not going to have anymore communication with you"?

16 A Definitely.

17 Q You still had some issues with property, correct?

18 A Right.

19 Q And did she still have your check?

20 A Right.

21 Q And what was the check for?

22 A It was -- it was a loan. It was only about \$60, but
23 the real issue was I had some collectors' knives that were
24 pretty expensive, and I wanted those back, and I knew that
25 they had -- her and her family had those knives.

1 Q Okay. And she had the knives?

2 A Yes.

3 Q All right. So let's get to the pictures. These
4 pictures, they were given to you or allowed to be taken by
5 her, correct?

6 A She took some of them.

7 Q Oh, she took some of them herself?

8 A Yes.

9 Q How did she do that?

10 A Well, she took --

11 Q Oh, she sent pictures of herself?

12 A She would send them, and she would use my phone
13 sometimes. And other times I would take them, and she would
14 be posing.

15 Q Okay. And she said -- you tell her multiple times,
16 correct, you're not going to post them or send them anywhere?

17 A Right. Yeah. I never would have.

18 Q And why would you not do that?

19 A It's illegal.

20 Q Okay. And did you believe having the pictures was
21 not illegal?

22 A Right.

23 Q Okay. Now, at some point your conversation get so
24 muddled, she blocks you?

25 A Right.

1 Q All right. And then are you with Kyle [sic] at this
2 point?

3 A Luke?

4 Q I'm sorry. With Luke at this point?

5 A Right.

6 Q And had you been drinking?

7 A On the 9th?

8 Q Yeah.

9 A No.

10 Q But you were mad?

11 A Yeah, I was mad.

12 Q All right. And then you wanted to talk to her; is
13 that correct?

14 A Yes.

15 Q What was the purpose of you meeting her to talk?

16 A Well, I felt bad because of how nasty I had been
17 over texts, and I kind of wanted closure because, I mean, you
18 know, I didn't want to end it on me just calling her all those
19 names.

20 I wanted closure. I wanted apologies, and I wanted
21 to go our separate ways and just have an amicable breakup. I
22 mean, we're going to share the same campus, we go to a lot of
23 the same bars. You know, I wanted it squashed.

24 Q Did you believe at this point there was any chance
25 of getting back with her?

1 A No, not really. I remember there being some talk of
2 that that night when we had later gotten to my house. But --
3 and it was back and forth. She considered it at some points.
4 I considered it at some points, but I think at that point we
5 had both agreed that it's better we weren't together.

6 Q So when you told her to, "Come see me, come get the
7 pictures, come get them now," what was your purpose?

8 A Well, I wanted to let her delete them personally. I
9 wanted her to apologize to me in person. And, I mean, that
10 was really the extent of my motive.

11 Q And during your conversation, you end up telling
12 her, "why did you unblock me?"

13 A Yes.

14 Q And I guess you were getting frustrated; is that
15 fair to say?

16 A Right.

17 Q Did you ever, to your knowledge, ever, in any text
18 tell her that you wanted sex to delete these pictures?

19 A Not in text or person.

20 Q Would you ever do that?

21 A No.

22 Q And multiple times she claims you were threatening
23 her; do you remember that?

24 A Yes.

25 Q And did you ever respond to her when she said that?

1 A Yes. I told her I wasn't threatening her.

2 Q Okay. And at some point does she try to call you?

3 A Yes. She called me about 11 times. I -- and at
4 this point it was clear that it probably wasn't going to be a
5 good interaction, so I was a little wishy-washy as to whether
6 or not I even wanted to meet with her.

7 I mean, I still -- part of me wanted to see her just
8 because I still cared about her and I still wanted some
9 resolution. But, you know, she started making threats about
10 the police, and I just was -- and she -- it seemed like she
11 was trying to walk me down the path of -- of she was saying
12 things like, "So I have to come over and have sex with you in
13 order for you to delete the pictures?"

14 And I never said that, and I corrected her when she
15 sent that message. So I could tell that it was getting to the
16 point where I needed to be away from her, but I had
17 eventually, you know, picked up the phone. But that's the
18 reason why I wasn't answering.

19 Q All right. And at some point, you both were arguing
20 about whether she's going to pick you up or not; is that
21 right?

22 A Right.

23 Q And at times you did not want her to pick you up?

24 A No.

25 Q Why was that?

1 A Well, like, for the reasons I just stated. I just
2 didn't want more conflict at that point. I mean, I think it
3 was pretty clear, once you look at those part of the texts,
4 like, I was kind of trying to disengage from, you know, the --
5 the name calling, the toxicity.

6 Q And does she eventually pick you up?

7 A Yes.

8 Q And you get in the car?

9 A Yes.

10 Q Do you have any idea what time that was?

11 A It had to have been 2:00, 2:10.

12 Q Okay. And what happens when you get in the car?

13 A Well, I got in the car, and I did not say a word to
14 her for most of the ride. And I pulled out my phone and
15 turned it on, and the first thing I had up was Tinder. And
16 when she saw that, she made a comment along the lines of, "Oh,
17 Tinder, very classy."

18 And that kind of got me riled up; and I was, like,
19 "well, who are you to call classy after cheating on me and
20 coming over and having sex with me," you know, and all that.
21 So that got her angry.

22 Q Did she threaten you in the car?

23 A Yes. She -- she -- we started arguing, and then she
24 started saying that she was going to fuck my life up, I mean,
25 a lot of things along those lines. And, I mean, it was almost

1 like she was just -- she was erratic.

2 She pulled over the car at one point, told me to get
3 out. I got out immediately, and I was on Ocala at this point.
4 And so I was close enough to Botany Drive to just walk. It
5 was about a mile away, and so I start walking. She was
6 coasting next to me, apologizing, begging me to get back in
7 the car.

8 So I got back in the car. And it was at this point
9 where I -- I still had my phone out and, you know, we had been
10 arguing. She brought up the picture, and I deleted all the
11 pictures. We got to my house --

12 Q Let me ask you this: Were you sitting in the front
13 seat?

14 A Yeah, front passenger.

15 Q And when you deleted -- walk me through opening the
16 phone and show me the -- what movements you made.

17 A I was holding it. She was -- I mean, she was
18 looking -- she -- she was looking and seeing what I was doing.
19 I was deleting all the pictures. I mean, there was probably
20 10, 12 pictures.

21 Q Okay. Okay. And when you get to the home, what
22 happens?

23 A I got out of the car immediately. I didn't give her
24 a chance to say anything. As soon as it was in park, I opened
25 the door, closed it. I walked straight inside and then closed

1 and locked my door.

2 Q And why did you do that?

3 A Well, I mean, the whole point of us meeting up in
4 the first place was to apologize. We did speak much better to
5 each other, much nicer, much kinder in person than we did in
6 texts. You know, it's easy to say nasty things over texts
7 because you don't have the person in front of you. But --

8 Q Did she apologize in the car?

9 A She was apologizing the whole time.

10 Q Okay.

11 A So -- but it was still just toxic, and especially --
12 it was as clear that being in person wasn't going to help
13 anything, so I closed and locked the door. And she was
14 banging on my -- on my door and shouting my name for -- I
15 mean, I didn't time it, but 30 minutes, maybe more.

16 Q And what time is it at this point?

17 A I mean, it's probably closer to 3:00.

18 Q So you didn't carry her in the house and say, "Okay,
19 you're going to have sex, and I'm going to delete these
20 pictures"?

21 A (Shaking head negatively.)

22 Q You locked her out of the house?

23 A Right.

24 Q And she could have easily driven right home,
25 correct?

1 A That's what -- I wanted her to.

2 Q And she had a phone with her?

3 A Yes.

4 Q And she had seen you do what you did with the phone?

5 A Yes.

6 Q All right. So then you eventually let her in the
7 house; is that correct?

8 A Yes.

9 Q And what happens when she gets in the house?

10 A well, the reason why I let her in the house was
11 because I thought she was going to wake the neighbors; and I
12 didn't want, like, some, you know, huge scene. I didn't want
13 my neighbors to see her out screaming and banging on the front
14 door, so I let her in. And, I mean, we had a pretty good
15 conversation.

16 It wasn't -- it wasn't an angry conversation inside.
17 we talked for hours, and she pretty much explained herself.
18 And I told her what I thought she did was wrong. And, I mean,
19 she was apologizing at one point.

20 we sat on the couch, and I think I -- and then she
21 came and sat on my lap, and I was -- I said something along
22 the lines of, "I don't know why you would text me that you're
23 scared of me," like we're -- you know, I've not -- I never did
24 anything aggressive towards her.

25 So, you know, this continued for -- I mean, it had

1 to have been two hours, two and a half hours, however long it
2 took to go from 2 a.m. to -- so probably an hour and a half.

3 Q while you were in the house, did you ever bring up
4 the word sex?

5 A No.

6 Q Did you ever bring up the photos?

7 A No.

8 Q Did you ever have your phone open showing her photos
9 in the house?

10 A No. I didn't even touch my phone after I got
11 inside. I think it sat on the counter the whole time.

12 Q Did she appear to be under influence of any drugs or
13 alcohol when she came?

14 A No.

15 Q And she mentioned something about her glasses.

16 A I don't remember her having glasses on.

17 Q When she picked you up, was she wearing glasses?

18 A No, I don't think so.

19 Q I didn't notice her wearing glasses today.

20 A Right. I don't -- I think maybe once or twice in
21 the entire relationship I saw her wearing glasses.

22 Q All right. So did you get to a point where you both
23 came to an agreement or conciliation?

24 A Yeah. It got to a point where anything that we were
25 going to say would just be redundant, you know, we'd be -- we

1 would be talking in circles. So I think it was about 5 a.m.
2 at this time, 5:30, something along those lines, and I asked
3 what she was going to do. And she said, "well, what do you
4 want me to do?"

5 And I said, "well, I would like you to leave." And
6 she said that she was too tired. She never mentioned the
7 glasses. I don't remember her mentioning the glasses. But
8 she said she was too tired; she had tests in the morning; it
9 was unsafe for her drive, so I said she could stay there if
10 she wanted.

11 Q So what happens next?

12 A well, she went straight to my room. And, I mean, I
13 had a couch that she could have slept on. I think I had an
14 air mattress, but she went to my room. And when I followed
15 her into the room, she had already gotten in the bed and
16 started taking her clothes off. And when I came up to her,
17 she started taking my shirt off.

18 Q And did you have any conversation at all when you
19 went into the bedroom about sex or pictures?

20 A No.

21 Q Was it -- is this the unwritten communication?

22 A well, I think at one point she said, before we
23 started having sex, "You have to go down on me."

24 Q Okay. Is that -- well, I'm not -- did she normally
25 ask for that, or is that something you normally do?

1 A I mean, she wouldn't normally ask, but it's
2 definitely something I would normally do.

3 Q And did that happen?

4 A Yes.

5 Q And did you perform sex?

6 A Yes.

7 Q And did she say anything while -- during sex, any
8 dirty talk?

9 A We had a little bit of dirty talk. After I had
10 ejaculated, I said, "whose pussy is that?" And this kind of
11 pissed her off. She's the one who changed at this point.

12 She said, "No, it's mine." And, I mean, we had
13 already been done at that point. And I remember looking down
14 at her, standing up; and she told me that she had slept with
15 someone else that day and that she had been sleeping with
16 other people the entire week that we had been hooking up.

17 Q So when you engaged in sexual intercourse, were
18 you -- was that one position? Multiple positions?

19 A Multiple positions. We switched.

20 Q And at some point when you say "ejaculated," that
21 meant you climaxed; is that correct?

22 A Yes.

23 Q And at no point did she ever tell you to stop before
24 you climaxed?

25 A No.

1 Q And she was engaged, physically participating also?

2 A Yes.

3 Q Did she give you any indication that she didn't want
4 to participate in sex?

5 A No.

6 Q And after you ejaculated, you were already inside
7 her; is that correct?

8 A Yes.

9 Q And then you made a comment?

10 A Yes.

11 Q And then she told you to get off her?

12 A Yes.

13 Q Did you get off her?

14 A Immediately, yes.

15 Q And then what did she say then after you made that
16 comment?

17 A She told me that she had slept with someone hours
18 before coming over and picking me up, and that she had slept
19 with people throughout the week when she was hooking up with
20 me.

21 Q And what happened when she told you that?

22 A I mean, at that point it was clear to me that there
23 is zero reconciliation. I mean, I was again angry and hurt.
24 I mean, I -- I was -- I was laughing at this point.

25 I was like, "You need to get the hell out of my

1 house." She didn't leave immediately. She wanted to sit
2 there and, like, cuddle my dog and said that she loved my dog.
3 And she was apologizing, and she was crying a little bit. But
4 then I was -- I was nasty. I was, like, "No. Get the fuck
5 out of my house." You know, I was making comments.

6 And then we started just shooting insults back and
7 forth at each other. She said at one point, you know, "well,
8 I loved fucking the other guy better than you anyways."

9 She was saying over and over again, "It was just
10 sex. It was just sex." And I know she was saying that to try
11 and hurt me because she knew that I had feelings for her and
12 that it wasn't just sex for me.

13 Q And so she eventually leaves?

14 A Yes.

15 Q And when she left, what did you do at that point?

16 A I did follow her out.

17 Q Yeah.

18 A But I stopped at the front door. I didn't go up to
19 her window. And she was screaming that she was going to fuck
20 my life up for this. She didn't want me to tell anybody about
21 it.

22 And I show -- I did show her my phone, but I showed
23 her the video of her banging on my door because she was making
24 threats that she was going to fuck my life up. I was like,
25 "You came here. You were banging on my door. I didn't -- I

1 didn't want you to come in initially at all."

2 Q And then I guess you sent her a text?

3 A Yes. I sent multiple texts.

4 Q And one said, "Thank you for the ride," something
5 like that nature?

6 A Right.

7 Q Do you recall that?

8 A Yes. And I know that the defense -- or the
9 prosecution has tried to make that sexual, but I meant that
10 literally, thank you for ride home.

11 Q And then you called her baby?

12 A Yes.

13 Q And then I guess she responded?

14 A Right.

15 Q And she responded by, "It's just sex"?

16 A Right. And I was -- I was again lashing out
17 because -- you know, and made the laughing emojis because I
18 think she said that she felt like a dog, but I was the one who
19 felt like a dog.

20 I wasn't sleeping with other people while I was
21 still sleeping with her. So I was trying -- I was trying to
22 hurt her feelings the way she hurt mine.

23 Q And in these conversations, you're -- you're taking
24 the responsibility for the hateful texts you sent?

25 A Definitely.

1 Q Is there -- but there is one text that you claimed
2 you didn't send?

3 A Right.

4 Q And do you recall which one that was?

5 A The -- the text -- when me and Luke were chilling in
6 his apartment and I was texting off his phone, we were kind of
7 handing it back and forth. We weren't really taking the
8 situation seriously. We were being assholes about it. And he
9 had typed out that text, "Everybody in 607 has already seen
10 them," or, you know, whatever the exact wording was.

11 Q Yeah.

12 A And he showed it to me. I told him not to send that
13 because I knew, you know, that's -- that's not going to do any
14 good for me. And he sent it anyways.

15 I mean, to his credit, I don't think he really
16 understood, you know, the seriousness of it.

17 Q So then you recall saying, "Luke sent that"?

18 A Right, immediately.

19 Q And of all the texts that you've taken
20 responsibility, that's the only one you said Luke sent?

21 A Right.

22 Q Why would you -- is that because Luke did send that
23 one?

24 A Yes.

25 Q But you take all responsibility for all the other

1 ones?

2 A Of course.

3 Q Good, bad, and the ugly?

4 A Yes.

5 Q Now, at some point did you sit down and talk to an
6 Investigator Caplan?

7 A Yes.

8 Q And that was November 29th --

9 A Yes.

10 Q -- do you recall?

11 And he read you what's called Miranda?

12 A Right.

13 Q And you didn't have a lawyer at that point?

14 A No.

15 Q And he asked you questions about Ms. M.?

16 A Yes.

17 Q And he asked you about this night in question,
18 correct?

19 A Yes.

20 Q You answered all his questions?

21 A Yes. I was open with him. Anything he asked me, I
22 openly responded. I was being truthful. At one point he
23 asked to look through my phone for the pictures. I -- I was
24 in -- I let him look through the phone. I mean, the -- the --
25 what's it's called? The Cloud? The text messages, the

1 conversations, multiple text conversations, people that aren't
2 in -- had nothing to do with B.M. Really, any -- any place in
3 the phone that could have a photo, I let him look.

4 Q And to your knowledge, he didn't find any photos?

5 A He didn't find anything.

6 Q At this point you didn't even know there was an
7 investigation about this matter?

8 A No.

9 MR. JANSEN: Could I have a moment, Your Honor?

10 THE COURT: You may.

11 (Pause.)

12 BY MR. JANSEN:

13 Q So I want to go back to October 3rd, 4th, and 5th.
14 Those sexual activities, was that activity exactly the same as
15 it was on 10/10?

16 A As far as --

17 Q Sexual?

18 A -- the actual sex?

19 Q Right.

20 A Yeah.

21 Q And that you went down on her?

22 A Yes.

23 Q All right. And the dirty talking was something that
24 was pretty consistent with your relationship?

25 A I mean, since day one, that's just how we did it.

1 Q And tell the jury why you would -- you had sex with
2 this girl, you're laughing at her and you call her a whore and
3 slut. Tell them why you did that.

4 A On the 10th?

5 Q Yes.

6 A Well, I was hurt. I mean, she told me that -- I was
7 hurt and disgusted. She told me that she slept with someone
8 hours before she came over and slept with me and told me that,
9 throughout the week that she had been coming over and sleeping
10 with me, she was doing the same thing. I mean, it's
11 disgusting.

12 Q Now, you're still currently a student at FSU,
13 correct?

14 A Yes.

15 Q And Florida State has never charged you with any
16 violation of the conduct code; is that correct?

17 A Yeah. Yes, that's correct.

18 Q And were you shocked to hear the allegations from
19 Mr. Caplan or questions?

20 A I was blown away.

21 Q And did you describe the events like you did today?

22 A Yes.

23 MR. JANSEN: No further questions.

24 THE COURT: Cross?

25 CROSS EXAMINATION

1 BY MS. DUGAN:

2 Q You would agree that you may have been mean to her
3 the week of -- the first week of October after she broke up
4 with you, but it was nowhere near to the level of October 8th
5 once you found out she cheated on you?

6 A Yes. October 8th, I had been drinking with friends,
7 so I was -- the drinking kind of pushed the name calling a
8 little further.

9 Q And didn't you tell her that week after she broke up
10 with you, but before you found out she cheated on you, that
11 having sex with her was actually helping you get over her?

12 A I don't remember saying that.

13 Q Would it refresh your recollection to see a copy of
14 the text message?

15 A Sure.

16 MR. JANSEN: Page number, Your Honor?

17 MS. DUGAN: Just a second.

18 BY MS. DUGAN:

19 Q For the record, I'm looking at Page 7669, text
20 22468. Right here.

21 A (Witness reading document.)

22 well, I think that having sex definitely helps
23 relieve stress.

24 Q Okay. You also said, though, that having sex with
25 her was only helping you get over her, didn't you?

1 A Right. And I think that as -- as -- that we
2 progressed. Every day that we had sex, I got nicer and nicer.
3 The only thing that kind of made everything worse was finding
4 out that she had cheated on me.

5 Q You did acknowledge earlier with your attorney to
6 the jury that you had sent her a text that week after she
7 broke up with you but before she cheated on you, that you were
8 glad y'all were broken up, you'd rather be single anyway,
9 those types of things?

10 A I think that was more out of --

11 Q Is that a yes?

12 A Yes.

13 Q Okay. As far as her having your stuff, isn't it
14 true that at one point she wanted to just drop your stuff off
15 outside of your house, and you didn't want her to do that?

16 A Well, she wanted to leave my antique violin on the
17 front door in a neighborhood that I didn't really trust, so I
18 was --

19 Q So that's a yes?

20 A Yes. But I was against it.

21 Q So she wanted, though, to bring your stuff over to
22 you when you weren't home?

23 A Right.

24 MR. JANSEN: Your Honor, he should be allowed to
25 answer the question.

1 THE COURT: He can answer the question. You have
2 redirect if you need to explain or let him explain.

3 BY MS. DUGAN:

4 Q So you just talk dirty during sex? It's normal that
5 you call her a slut and a whore during sex; that's your
6 testimony?

7 A Yeah.

8 Q On October 8th you said you regret those texts that
9 you sent her -- this is after you found out she cheated on
10 you -- because they don't look good on you. Isn't that what
11 you testified to?

12 A Well, they were mean; and, yeah, of course, in
13 hindsight, I didn't want to be mean.

14 Q Right. But I'm saying when your counsel was asking
15 you questions, you said that you regretted it because it
16 didn't look good on you?

17 A Right. It made me look mean.

18 Q The texts that we saw from October 8th to
19 October 10th, those were a complete record of your
20 conversation with her, right? There's nothing that we didn't
21 see that was in text message form?

22 A I don't know.

23 Q Do you remember sending or receiving any texts that
24 weren't in that packet?

25 A I mean, I don't -- didn't even remember some of the

1 texts that you were listing off. Like, I mean, I -- I don't
2 remember all the texts that I sent that day.

3 Q Okay. But is that a no, that the pink and yellow
4 packet we went through with the jury, there's nothing there
5 that we're not seeing as far as you know?

6 A As far I know. I don't know.

7 Q Okay. Well, that was my question, as far as you
8 know.

9 Isn't it true, though, that by the time the police
10 looked at your phone, you didn't have text messages from B.M.
11 in your phone; you had deleted them all?

12 A Right. Her father had called me the day after and
13 asked me to.

14 Q And you had deleted them all?

15 A Right. I followed his direction.

16 Q And he called you when? The day after --

17 A The alleged assault.

18 Q And he asked you to delete text messages, or did he
19 ask you to delete pictures?

20 A Both.

21 Q Okay. And you're saying that he asked you to delete
22 both of them, and that's why you didn't have any texts on your
23 phone when the police looked at it?

24 A Yes.

25 Q You're saying that, today that the text from Luke's

1 phone saying, "It's your choice. I already showed all of
2 607," was not you?

3 A No, I did not send that text.

4 Q Okay. But 607 was Luke's apartment at the time?

5 A Yes.

6 Q And you said you got -- you were sitting there with
7 Luke, passing the phone and back forth, writing text messages?

8 A Right.

9 Q So what other text messages did he write?

10 A well, I think at that point I had -- really didn't
11 know what to say, and I was kind of losing interest in the
12 conversation. So I had given him the phone, and he had typed
13 that out and showed it to me before he had sent it. I told
14 him not to send it, but he had sent it --

15 Q Isn't that true that that's the only text message
16 out of all of the text messages that we've seen that you're
17 saying he sent?

18 A Yeah.

19 Q And wouldn't you say that it's the one that is close
20 to breaking what you thought was the law?

21 A I mean, I suppose so.

22 Q Okay. And at the time -- 10 minutes before that you
23 said, "This is Kyle," didn't you?

24 A Yes.

25 Q And six minutes after that you reference your old

1 roommate Lex?

2 A Yes. Can I have a copy of the text in front of me?

3 THE COURT: If you want to show it to him, you can.

4 If you don't want to, that's up to you.

5 THE WITNESS: Thank you.

6 which text?

7 MS. DUGAN: You already answered that.

8 THE COURT: Go ahead. Ask a new question.

9 BY MS. DUGAN:

10 Q And you were high the night that this all happened,
11 right? On October 10th?

12 A I remember I had, like, hit -- hit a joint once.

13 Q Okay. But you texted that you were high --

14 A Yes.

15 Q -- that's how you characterized it.

16 A Right.

17 Q The police approached you, and they asked you about
18 this case, about how the conversation went with B.M. on
19 October 10th at your house. You said that you kicked her out
20 of your house. She was banging on your door at 4 a.m., and
21 you let her in. Y'all spoke for a little bit --

22 MR. JANSEN: Objection, Your Honor.

23 THE COURT: Go sidebar.

24 (Sidebar as follows:)

25 MR. JANSEN: Judge --

1 THE COURT: What's the nature of the objection?

2 MR. JANSEN: This is a hearsay, objection, Judge.

3 She's trying to get in the same way -- we couldn't get --

4 THE COURT: It's different for your client.

5 Unfortunately, it's an admission against your client, so

6 it's admissible. Is that your only objection?

7 MR. JANSEN: Well, Judge, we haven't seen the --

8 what report are you --

9 MS. DUGAN: His interview with police that you have
10 an audio and transcript of.

11 MR. JANSEN: Well, then, we would object to simple
12 portions of it, just -- the entirety -- the entire
13 statement should then be admissible if she's going to
14 pick and choose portions --

15 THE COURT: It is admissible, but they are not
16 required to admit it, so I'll overrule that objection.
17 we can proceed.

18 (The sidebar concluded, and the following took place
19 in open court:)

20 MR. JANSEN: The page number?

21 MS. DUGAN: No, I don't have -- oh, sure, actually.

22 BY MS. DUGAN:

23 Q So when you were first --

24 THE COURT: Have you got the page number?

25 MS. DUGAN: Sure. And I'm not impeaching at this

1 point. I'm -- Page 7, Line 21 through '5; and Page 8,
2 Line 1 through 3.

3 BY MS. DUGAN:

4 Q when you first spoke to police, you didn't mention
5 anything about the photos, did you?

6 A No.

7 Q You -- when they asked how the conversation went at
8 your house, you said, "I kicked her out of my house. She was
9 banging on my door at 4 a.m., and I let her in. We spoke for
10 a little bit. It didn't go well, and she ended up being
11 kicked out." That's what you said happened that night.

12 A I suppose. I don't really remember that
13 conversation too well.

14 Q Okay. Do you need to see a copy of your transcript?

15 A Sure. What page number?

16 Q Page 7, Line 21 through 5; Page 8, Line 1 through 3.

17 A Right. Well, I'd say that is accurate, just really
18 condensed.

19 Q Okay. And when police asked you whether B.M. --
20 whether you had told B.M. you had deleted the photo -- or, I'm
21 sorry.

22 when police asked you whether you told B.M. if --
23 that you would delete the photos if she came and talked to
24 you, you told them that you didn't remember, didn't you?

25 A Right.

1 Q You didn't offer any of this other explanation that
2 we've heard today?

3 A No.

4 Q In fact, you told police that all you said to B.M.
5 that night was that if she came over and apologized to you,
6 then you could be friends?

7 A I don't remember saying that.

8 Q Would it refresh your recollection to look at your
9 interview?

10 A I mean, I can read the words, but I honestly don't
11 remember saying that.

12 Q Okay. Well, it's Page 25, Line 19 through 25.

13 Didn't you say that if you -- if B.M. came to your
14 house --

15 A If --

16 Q -- you told her --

17 THE COURT: Wait a minute. Ask the question, Ms.
18 Dugan. Let her ask the question, please.

19 BY MS. DUGAN:

20 Q You told police that all you said to B.M. was that
21 if she came over and apologized to you, then you could be
22 friends?

23 A Yeah, friends. But I don't think I meant friends in
24 the way where I'd want to hang out with her every day.

25 Q Okay. I'm just asking you what you said to the

1 police. Is that true?

2 A we can be amicable. we can be friends.

3 Q And when police straight-up asked you why did B.M.
4 come over to your house that night, you said you didn't
5 remember, didn't you?

6 A Right.

7 Q And today you're saying that you weren't ever
8 actually going to post the photos?

9 A No, never.

10 Q You said that you know that's illegal, and in the
11 text you said you know the laws, right?

12 A Yes.

13 Q You didn't think, though, there was any law against
14 just showing them to people?

15 A I didn't show them to anybody.

16 Q Okay. But you -- that wasn't my question.

17 You didn't think there was a law against just
18 showing to them to people?

19 A well, I think that it is illegal to walk up -- if I
20 were just walking up to random people and just saying, "Hey,
21 look what I've got," I'm sure that's illegal.

22 Q what if they weren't random? what if they're people
23 that you know? Your friends? All of 607?

24 A well, I'm sure that's just as illegal.

25 Q Okay. But that night you were just saying to her

1 you couldn't post them, that was the only thing that was
2 illegal about what you were doing?

3 A Right. But I also said that I didn't send that
4 message, and Luke said that nobody saw anything.

5 Q You did tell her that the only way to get them
6 deleted was to come over and talk to you, didn't you?

7 A Yes.

8 Q When she said no, you said, "Oh, well"?

9 A Right.

10 Q And when she said, "I want you to promise me that
11 you're deleting these pictures and aren't going to show them
12 to anybody, and I want it to be true," you told her, "I don't
13 have to promise you a goddamn thing," didn't you?

14 A I don't have to -- I didn't have to delete them.

15 Q She just wanted a promise that you wouldn't show
16 them, and you wouldn't do that?

17 A Well, I didn't want to get cheated on.

18 Q You never said, "This isn't true what Luke said. I
19 would never show them," you never said that.

20 A I didn't.

21 Q She wanted a promise that you wouldn't, and you said
22 you didn't have to promise her a goddamn thing, didn't you?

23 A I didn't have to delete the pictures.

24 Q And you wanted her to come over to your house that
25 night, didn't you?

1 A I wanted her to apologize to me.

2 Q Right. But not by phone; you wanted her to come
3 over to your house?

4 A Right.

5 Q You didn't want to talk to her on the phone?

6 A No.

7 Q You knew that taunting her with these photos would
8 do the trick, didn't you?

9 A I wasn't taunting her with the photos.

10 Q You weren't taunting her?

11 A No.

12 Q You also told her there's no way that you could keep
13 people from looking through your phone and seeing video of her
14 going down on you and seeing naked pictures of her; there
15 would be just no way for you to keep people from looking at
16 these pictures.

17 A we'll, I didn't have a password on my phone.

18 Q So there are ways to keep people from looking at
19 pictures on your phone.

20 A well, my phone had been stolen before. I deleted
21 the pictures, as she asked, right in front of her. Caplan
22 looked through my phone. There were no pictures.

23 Q They were deleted by the time law enforcement looked
24 at your phone.

25 A Because I deleted them.

1 Q Okay. And you were trying to make her afraid that
2 you were going to show people these photos.

3 A No. She kept bringing up the photos in the
4 conversation, and I kept bringing up wanting to speak to her.

5 Q well, when she said, "You can't show them to
6 people," you said, "No, I can't post them." And then you
7 wrote on the -- that you were rolling on the floor laughing.

8 A well, I never said that I was showing them to
9 people.

10 Q well, you said that anyone could see them, right?

11 A If they looked through my phone.

12 Q There was no way to keep people from looking through
13 your phone; and that if she wanted them deleted, she had to
14 come over and talk to you. Didn't you say all those things?

15 A well, they're my property. If she wanted them
16 deleted, then she could come over and delete them, that's what
17 I told her.

18 Q You wanted her to do something she didn't want to do
19 in order for you to not -- for these pictures not to be shown
20 to anybody.

21 A well, I didn't want to her to have sex with me in
22 order for her to delete them.

23 Q Okay. But you did want her do the first things?

24 A Come over and apologize?

25 Q Come over and talk you.

1 A I wanted her to apologize, yes.

2 Q Okay. On October 10th, when you guys were arguing,
3 you called her -- and this is at your house before sex -- you
4 called her a whore to her face, right?

5 A I think I did, yes. I told her what she did. I
6 don't think I called her a whore. I told her what she did --
7 I think I called her a slut, and I said that sleeping with
8 other people -- no, no, because the whole stipulation of me
9 sleeping with her as long as she wasn't sleeping with anybody
10 else would be fine, we could go our separate ways.

11 Q All right --

12 A That's why --

13 Q -- I want to turn your attention to Page 11, Line 4
14 through 11, of your interview. In your interview didn't you
15 tell police that that night when y'all were arguing at your
16 house, you called her a whore?

17 A Yes. I mean, whore, slut.

18 Q And then after the argument, she wanted to have sex
19 with you?

20 A Yes.

21 Q She is the one who asked for sex?

22 A Yes.

23 Q And this is after you told her she was a whore, she
24 still wanted to have sex with you; is that your testimony?

25 A It wasn't immediately after that. We had calmed

1 down, and we had some good conversation as well.

2 Q Okay. That was the same -- within the same time
3 period that she's at your house?

4 A However many hours that we spoke.

5 Q And you didn't come on to her, she came on to you?

6 A Yes.

7 Q Despite you being the one who wanted to reconcile
8 with her?

9 A Yeah. I wanted her to apologize to me.

10 Q well, weren't you the one that was so hung up on
11 her?

12 A Yeah. Yeah.

13 Q And despite her coming on to you, not the other way
14 around, you texted after sex and said, "I can't believe you
15 let me do it," didn't you?

16 A Yes. And, actually, in the interview, I had
17 mentioned that as well, I couldn't believe that she let me
18 have sex with her right after she came over -- right after and
19 hours before having sex with someone else, it's disgusting.

20 Q It's nice to have 18 months to think about how
21 you're going to explain all these texts you sent, isn't it?

22 MR. JANSEN: Objection, Your Honor.

23 THE COURT: Let's not get argumentative, please, Ms.
24 Dugan.

25

1 BY MS. DUGAN:

2 Q During sex you said that you were behind her in a
3 doggie-style position?

4 A Yes.

5 Q And after you ejaculated, she told you to get off of
6 her, and then she got up and walked out?

7 A No. She started playing with my dog, like I said.

8 Q Okay. I want to refer you to your interview, Page
9 15, Line 7 through 10. Isn't it true that's what you told
10 police, that after you ejaculated --

11 THE COURT: Give him one second.

12 MS. DUGAN: Yes, sir.

13 THE WITNESS: (Nodding head affirmatively.)

14 BY MS. DUGAN:

15 Q She got up and walked out?

16 A I mean, I didn't go into super detail like I did
17 just now; but, I mean, I even think I said it was like 10
18 seconds.

19 Q How many pages is your interview?

20 A Forty-eight.

21 Q Forty-eight pages? I mean, that's your time to talk
22 to police about what happened, right? And you left out a lot
23 of detail. You only gave --

24 MR. JANSEN: Objection, Your Honor. Sidebar?

25 THE COURT: I overrule the objection. Move on. We

1 don't have to have a sidebar.

2 BY MS. DUGAN:

3 Q There was a minute between -- when I say a minute, I
4 mean 60 seconds -- between when you ejaculated and when she
5 told you to get off?

6 A No.

7 Q No?

8 A No.

9 Q I want to refer you to your interview, Page 15, Line
10 15 through 20.

11 A I mean, I see it, but I had a concussion while I had
12 gotten this interview done.

13 Q Okay. well, I want to ask you what you said in your
14 interview, that's my question, not whether you were concussed
15 at the time.

16 A well, I don't remember most of this conversation.

17 Q Okay. well, I'm telling you to look at Page 15,
18 Line 15 through 20, and asking you whether those are the words
19 on the page that you said?

20 A Yes. I said like a minute.

21 Q So you said there was like a minute between the time
22 you ejaculated and when she told you to get off; that's what
23 you originally told police, wasn't it?

24 A I think I said 10 seconds afterwards, after saying
25 that. I mean --

1 Q well, where's 10 seconds? Can you find that for me
2 in the transcript anywhere?

3 when you talked to police, you told police that
4 there was a minute between when you ejaculated and when she
5 told you to get off; isn't that true?

6 A I think that I was just throwing out a number, maybe
7 exaggerating.

8 THE COURT: I think the question is: Is that what
9 you said, sir?

10 BY MS. DUGAN:

11 Q It's a yes or a no.

12 A Yes, that's what I said.

13 Q And your penis was inside her during that minute?

14 A I don't remember.

15 Q well, if you had already ejaculated and hadn't
16 gotten off of her yet, wouldn't it be inside of her?

17 A I wasn't inside of her for a minute. I mean, this
18 interview, in -- in my opinion, shouldn't even be in this
19 court case.

20 Q Isn't it true that in your interview with police you
21 said during that minute you weren't or not calling her names
22 or anything, during that minute, she sat there and she said,
23 "I don't know if this is right."

24 A She did say that at one point.

25 Q Okay. And that was during the minute that you're

1 still inside of her after you ejaculated and before she says
2 to get off?

3 A I didn't stay inside of her for a minute.

4 Q All right. I want to refer to you Page 15, Line 25;
5 and 16, 1 through 3.

6 Do you agree that you said during that minute when
7 you were still inside of her, after you ejaculated, before she
8 says to get off, she sat there and said, "I don't know if this
9 is right"?

10 A Where -- where are you saying this is? At Page 15?

11 Q Page 15, 15 through 20; then 25; and then 16, 1
12 through 3.

13 A I don't see it here.

14 MS. DUGAN: At this point, Judge, I would ask to
15 read these portions into the record.

16 THE COURT: There has not been a predicate laid for
17 that.

18 BY MS. DUGAN:

19 Q Okay. Whatever you see here that you told police,
20 would that have been the truth at that time?

21 A I don't know. I don't remember the conversation
22 because I had a concussion.

23 Q Okay. I'm asking about what you said in the
24 interview, though. He said from the time that you ejaculated
25 to the point that she said, "Hey, get off me," you said, "A

1 minute." Caplan said, "A minute?" You said, "Yeah."

2 And then Caplan said, "Okay, so you ejaculate and
3 then did she say -- after you ejaculated, did she say, 'Hey,
4 I'm done,' and then a minute later you guys go your separate
5 ways?" And you said, "No. She sat there and she said, 'I
6 don't know if this is right.' I asked her what she wanted me
7 to do. She asked me to get off of her. I got off of her, and
8 she walked out."

9 A I don't remember having that conversation.

10 Q Do you remember the rest of the stuff in this
11 interview?

12 A I mean, that was a rough night. I remember, you
13 know, I remember him starting to ask about B.M.

14 Q Do you remember telling Investigator Caplan that
15 B.M. was never crying or visibly upset any time during sex?

16 A No, I don't remember telling him that.

17 Q So on Page 16, Line 12 through 17 -- I'm sorry, Page
18 16, Line 5 through 8: "At any point in time with you and B.M.
19 during the sexual interaction, do you remember if she was
20 crying or visibly upset?" You said, "No."

21 A I don't remember anything from that conversation,
22 really, because I had a fractured skull. I'm healed now. I
23 still have a hard time remembering, but what I've said is the
24 truth.

25 Q So you have a perfect memory of what happened on

1 October 10th?

2 A No.

3 Q Despite being high and afterwards having a
4 concussion when you talked to police. Now you can perfectly
5 recount everything that happened then but not at the police
6 interview?

7 A Well, I smoked it about, I don't know, 11, midnight,
8 and the alleged assault happened hours later. I wasn't high
9 anymore.

10 Q You told police that when she left your house, she
11 was mad at you, and you have no idea why. Didn't you say
12 that?

13 A Well, I was confused. I had a concussion.

14 Q Okay. So on Page 16, Line 12 through 17 you said,
15 "She was mad at me. She ripped up one of my paychecks."

16 A Yes, that happened.

17 Q And yet you were the one who kicked her out?

18 A Yes, I kicked her out of my house.

19 Q You didn't mention to police anything about her
20 saying this new story about, "I enjoyed having sex with the
21 other guys more than you," and you getting mad and kicking her
22 out, you didn't say any of that in this interview. You just
23 said you kicked her out. You didn't give any explanation why.
24 You didn't say she said any of that stuff you told us today.

25 A Right.

1 Q And you remember not saying that, I guess?

2 A I don't remember saying, really, anything in that --
3 that interview. I remember saying -- I mean, I honestly --
4 if -- if you put it back in front of me, I can read through
5 it, and I can tell you what parts I remember and what parts I
6 don't.

7 Q Selective memory?

8 A I mean, a fractured a skull is an injury, and I'm
9 not --

10 Q Basically, you're telling us that everything she
11 testified to today happened the way she said as in -- except
12 for the fact that she came on to you?

13 A No.

14 Q Well, you're -- you do agree that there was a minute
15 between when you ejaculated and --

16 MR. JANSEN: Objection, Your Honor, asked and
17 answered.

18 THE COURT: Overruled.

19 BY MS. DUGAN:

20 Q You do agree that there was a minute between when
21 you ejaculated and when you got off of her?

22 A I said like a minute. I think I was exaggerating.
23 I wouldn't have stayed in her after coming. I mean, I feel
24 like I would have been done.

25 Q But you told police a minute.

1 A I said like a minute. A minute -- some people
2 compare a moment to a minute. Give me a minute. You know,
3 it's --

4 Q And so your testimony is that this was consensual
5 sex?

6 A Of course.

7 Q Despite you sending emojis to her where you're
8 laughing so hard you're crying?

9 A well, I was trying to hurt her feelings for the
10 things that she was saying to me as she was leaving.

11 Q Sure. You loved humiliating her, didn't you?

12 A After that. I felt humiliated. She said she felt
13 like a dog. I feel like I was the one who should have felt
14 like a dog. She lied to me about sleeping with other people.
15 And she came -- and I ended up getting another STD because of
16 it. It was disgusting.

17 Q well, speaking of this STD, you got an STD from her
18 when y'all were first together?

19 A Yes.

20 Q You waited six months and posted it on Instagram
21 once you found out she cheated on you?

22 A No. The reason why I posted that is because I
23 assumed that I would get another STD. Again, that was out of
24 lashing out, making an assumption which ended up being true.

25 Q And so you posted on her Instagram not even knowing

1 whether she gave you one or not?

2 A Yes. But I think at that time I was experiencing
3 symptoms --

4 Q I didn't ask another question.

5 MS. DUGAN: Could we have a quick sidebar, Judge?

6 THE COURT: Yes.

7 (Sidebar as follows:)

8 MS. DUGAN: He mentioned that he talked to B.M.'s
9 father, and B.M.'s father told him to delete all the
10 texts and the photos.

11 He also told B.M.'s father, when she was asking --
12 she was asking -- and B.M.'s father was asking him to do
13 those things, he was laughing at him and said, you know,
14 "No. With these girls, me and my attorneys always win."

15 And I think that he's, you know, opened the door to
16 that because he talked about the fact that B.M.'s father
17 called him and asked him to delete the texts and the
18 messages, and that's not how the conversation went.

19 THE COURT: That was pretty convoluted. What is it
20 you're wanting to ask him?

21 MS. DUGAN: He didn't actually delete the photos.
22 He said, "No." And he said, "I always win with these
23 girls." That was his response to Mr. Murphy.

24 So I think that that's impeachment of him. I just
25 wanted to -- because it mentioned other girls, meaning

1 her and [REDACTED] I wanted to ask the Court first.

2 THE COURT: I'm still not quite following what you
3 think. What -- what -- let me see what it is you're --
4 you've got something written down there?

5 MS. DUGAN: Isn't it true that B.M.'s father had --
6 with these girls you and your attorney always win? He
7 told -- when B.M.'s father said, "You need to delete
8 these photos." He said, "I don't have to do anything.
9 With these girls, me and my attorneys always win."

10 THE COURT: Let's let the jury step out. Let the
11 jury step out. Take a break.

12 (The jury was escorted from the courtroom, and the
13 following took place outside their presence:)

14 THE COURT: All right. Ask your question. This is
15 a proffer. The jury is outside the courtroom.

16 PROFFERED EXAMINATION

17 BY MS. DUGAN:

18 Q You testified in your direct that when B.M.'s dad
19 called you to delete those photos, you did delete the photos?

20 A I told him that they were already deleted.

21 Q They were already deleted.

22 Isn't it true, though, that you were pretty much
23 mocking him, and you told him, "with these girls, me and my
24 attorneys always win," that you didn't have to do anything?

25 A No, I didn't say that. I said I was used to dealing

SUSAN BRYANT, RMR, CRR, OFFICIAL COURT REPORTER

1 with girls like B.M. And what I meant by that was liars. I
2 said that word for word.

3 MS. DUGAN: That's all.

4 THE COURT: Defense want to be heard?

5 MR. JANSEN: Yes, Your Honor. She asked him a
6 question: "why did you delete the photos?" He said,
7 "Because her father asked me to."

8 She invites the question, he responds. Now she
9 wants to bring in hearsay through the father, through her
10 own question, when he was merely answering the question,
11 why he deleted the photos.

12 THE WITNESS: About the text --

13 THE COURT: Be quiet, Mr. Phillips. why don't you
14 go sit down right there?

15 (Witness leaving witness stand.)

16 THE COURT: So you didn't get into deleting of
17 photos --

18 MR. JANSEN: No, Your Honor.

19 THE COURT: -- in the conversation with her father?

20 MR. JANSEN: Never.

21 THE COURT: Okay. Yeah. I don't think -- do you
22 have a different recollection, Ms. Dugan? Frankly, I
23 don't really recall.

24 MS. DUGAN: The Defendant was the person who brought
25 up the father. I think I said you had already deleted

1 these by the time police looked through your phone,
2 hadn't you? And he said, "Yes, I deleted them after
3 B.M.'s dad called me."

4 THE COURT: You can't make it admissible by going
5 into it on cross. So I had -- I had forgotten the
6 sequence of events. I will sustain the objection to
7 that. Why don't we take a few minutes? Take about five.

8 (Brief recess.)

9 THE BAILIFF: All rise.

10 THE COURT: Let's have the jury, please.

11 MR. JANSEN: Judge, the one issue that we wanted to
12 go sidebar was the prosecutor told the witness 48 pages,
13 and 36 of those pages, Judge, went to that other bar
14 fight, accident, that we all agreed was not admissible,
15 the battery charge.

16 THE COURT: I'm not sure what you want me to do with
17 that, Mr. Jansen. You have redirect? Do what you want.

18 Let's have the jury, please.

19 THE BAILIFF: Jury is in the courtroom.

20 (The jury returned to the courtroom, and the
21 following took place in open court:)

22 THE COURT: Everybody be seated, please. Retake the
23 stand, Mr. Phillips.

24 Anything further from the State?

25 MS. DUGAN: No, sir.

1 THE COURT: All right. Redirect?

2 REDIRECT EXAMINATION

3 BY MR. JANSEN:

4 Q Mr. Phillips, on November 29th when you interviewed
5 with Investigator Caplan, did you -- did you even know there
6 was an investigation at all --

7 A No.

8 Q -- involving this issue?

9 A No.

10 Q And you hadn't talked to any attorney; is that
11 correct?

12 A No.

13 Q And I know Ms. -- the prosecutor asked you some
14 questions. Did you recall telling Mr. Caplan, "No, because if
15 she had told me to get off her, I would have gotten off her.
16 And she did at one point tell me to get off of her, and I got
17 off of her immediately." Do you remember telling Caplan that?

18 A I think that was near the end of the interview, and
19 yes.

20 Q So at the end of the interview you told him that,
21 and that was certainly 18 months before this -- you testifying
22 today?

23 A Right.

24 Q You told him that you got off her immediately?

25 A Right.

1 Q And did you also tell Caplan that she ripped up one
2 of your paychecks?

3 A Yes.

4 Q And that was after she left; is that correct?

5 A Yes.

6 Q And that was after she told you she had sex with
7 some other person?

8 A Yes.

9 Q And then you had a -- she left in a -- in a huff?

10 A Yes.

11 Q And when she walked out of the room, when did she go
12 pet your dog?

13 A She was still in the room at that time.

14 Q All right. Now, at one point you mentioned that you
15 ejaculated. When you ejaculated, did you -- is that
16 finishing?

17 A Yes.

18 Q Okay. And when you ejaculated, did you pull out of
19 her after you ejaculated?

20 A Yes.

21 Q So when you said you were on her for a minute, when
22 you said "on her," does that mean "on her" and not "in her"?

23 A I guess, yes.

24 Q And when you ejaculate, does your penis normally get
25 smaller and go limp?

1 A Right. Yeah. It became flaccid.

2 Q Did you also tell Caplan that, "She cheated on me.
3 I texted her. She came over, and I deleted all the photos in
4 front of her. I did everything she wanted." Do you remember
5 telling Caplan that?

6 A Yes.

7 Q You told Caplan that night that you deleted
8 everything in front of her?

9 A Yes, and then allowed him to look through my phone.

10 Q And then you never heard her testify to that during
11 this trial, did you?

12 A No.

13 Q About you showing her and deleting everything?

14 A Right.

15 Q Now, you testified that she gave you an STD early in
16 your relationship.

17 A Yes.

18 Q And you stayed with her?

19 A Right.

20 Q why?

21 A well, we were monogamous at the time. I mean, you
22 can forgive someone, and she didn't know that she had given it
23 to me.

24 Q And so why were you concerned -- were you concerned
25 about getting STD again when she told you she had sex with

1 this other person?

2 A Yes. If you continue to get chlamydia, then you can
3 end up becoming sterile, so I didn't want to get it again.

4 Q And did you, in fact, get it again after this
5 occasion?

6 A Yes.

7 Q And isn't it also true that when you interviewed
8 with Investigator Caplan, you told Investigator Caplan that
9 Luke sent that text, it wasn't from you?

10 A Yes.

11 Q You recall that?

12 A I don't recall that part of the conversation, but I
13 read it, and I -- I've remained consistent.

14 Q Okay. "At one point I told her that I had said that
15 the photos of her, and my buddy --"

16 MS. DUGAN: I would object to hearsay, him reading
17 the interview.

18 MR. JANSEN: I'm asking him a question, Your Honor.

19 THE COURT: Overruled.

20 BY MR. JANSEN:

21 Q "I had told her that I had said that I had photos of
22 her, and my buddy sent a text off my phone. As soon as he
23 sent those texts, I texted her, like, that was Luke, that
24 wasn't me, you know, whatever his apartment was, his number
25 was."

1 A Well, I think it's pretty clear I was confused
2 during the interview because I said my phone, but it was
3 actually Luke's phone that the text was sent from that I said
4 that Luke had sent.

5 Q And you -- and then you said, "I immediately, not
6 even a second later, said that it was Luke that sent that
7 text."

8 A Yes.

9 Q You didn't delete any photos from your phone after
10 the event, before the police interviewed you, did you?

11 A No.

12 Q Did you even know there was an allegation or a
13 complaint 38 days later?

14 A I had no idea.

15 Q Do you recall telling Caplan back then, "She took
16 off my shirt and she took off her clothes, that's it, that's
17 what I remember"?

18 A Yes.

19 MS. DUGAN: And what page and line?

20 MR. JANSEN: I'm on Page 12, Line 16, 17, and 18.

21 BY MR. JANSEN:

22 Q And then you say, "That's all I remember." So you
23 recalled her taking off your shirt, she took off her clothes?

24 A Yes.

25 Q And you told him that on November 29th?

1 A (Nodding head affirmatively.) Yes.

2 THE COURT: He didn't answer your question, so --

3 BY MR. JANSEN:

4 Q And at one point you told Caplan, "She wanted it,
5 that's what she wanted"?

6 A Yes.

7 Q He also asked and you also responded to his
8 question, "At any point did you make any reference to the
9 photos you had of her?" Your answer was, "Not in person, no."
10 So you told him back then, you never mentioned the
11 photos in person, to Caplan?

12 A Yes.

13 Q And then I think toward the end, he said, "So
14 there's nothing in there to indicate that during the sexual
15 encounter she said stop, and it continued for a minute or two,
16 and you said nothing."

17 A Yes.

18 Q So when she said stop, you stopped?

19 A Of course.

20 Q But you did stop after you had ejaculated?

21 A Yes.

22 Q Now, the prosecutor asked you about, is it illegal
23 for you to possess those pictures.

24 A No.

25 Q It's not illegal for you to possess those pictures,

1 is it?

2 A No.

3 Q Did anybody tell you that it was?

4 A No.

5 Q Didn't Caplan tell you it wasn't illegal for you to
6 possess those pictures?

7 A If it's in that interview, yes.

8 Q Did you in any way force B.M. into sexual
9 intercourse that night, October 10th?

10 A Definitely not.

11 Q Was it a mutual, consensual act?

12 A Yes, it was.

13 Q Did she do anything to not imply or give you consent
14 to have sex with her?

15 A No.

16 Q And after you finished, she said stop?

17 A Yes.

18 Q And you stopped?

19 A Yes.

20 Q And did you in any way try to get her to come over
21 to have sex? with these photos?

22 A No.

23 Q It was deleted before she came in the house?

24 A Yes.

25 Q Did you ever mention the photos in the house?

1 A No.

2 MR. JANSEN: Nothing further, Your Honor.

3 THE COURT: All right. Any juror have a question of
4 this witness? All right, you can step down.

5 Call your next witness.

6 MR. JANSEN: Defense rests, Your Honor.

7 THE COURT: Any rebuttal?

8 MS. DUGAN: No, sir.

9 THE COURT: Let my see the lawyers sidebar, please.

10 (Sidebar as follows:)

11 THE COURT: So y'all want to send the jury home for
12 the night, and we'll work on jury instructions? Or do
13 you want to try to finish it tonight?

14 MR. JANSEN: I'm good with coming back tomorrow,
15 Judge.

16 MS. DUGAN: That's fine.

17 THE COURT: We've still got some work to do, but --
18 okay. I think --

19 All right. I'm going to send the jury home. All
20 right.

21 (The sidebar concluded, and the following took place
22 in open court:)

23 THE COURT: All right. So you have heard all the
24 testimony you're going to hear. Next I need to meet with
25 the lawyers and work out the legal instructions.

1 We considered trying to finish it tonight, but it
2 would probably be 7:30 before you got the case, and I
3 don't want you to be deliberating on this at that point
4 in time, it's too late.

5 So we're going to send you home for the evening.
6 I'm going to meet with the lawyers, get the legal
7 instructions worked out. I'm going to meet with them at
8 8:00. I want y'all to be here at 8:30.

9 I do have another trial that's going to be starting
10 when y'all go out to deliberate, so kind of need to keep
11 it moving. So please be back here, you know, promptly so
12 we can get started at 8:30.

13 Don't discuss the case with anyone. Don't let
14 anyone discuss the case with you. Don't do any
15 investigation of your own.

16 Come back up here where you came at lunchtime when
17 you come back in the morning. Don't go back downstairs.
18 Go into the reception area. Don't hang out in here.
19 Some of the family and parties and so forth, the
20 attorneys will be hanging out here, so try to stay
21 separate from them, and they'll get you back into the
22 jury room as quickly as we can.

23 So, anyway, questions? Anybody have a question of
24 what is expected of you? Just leave your notes where
25 they are. We'll take care of those. We'll see you

1 tomorrow morning, 8:30. Everybody clear where you're
2 coming? Make sure they understand.

3 (The jury was escorted from the courtroom, and the
4 following took place outside their presence:)

5 THE COURT: Everybody be seated. Did we ever get
6 straightened out on State's Exhibit 1, a full copy?

7 MS. DUGAN: Yes, sir.

8 THE COURT: Are we going to substitute that for what
9 was placed in evidence?

10 MS. DUGAN: Yes, sir. I think it's over here.

11 THE COURT: What's that?

12 MS. DUGAN: Did you already do it?

13 THE CLERK: Yes.

14 THE COURT: Defense okay with that?

15 MR. KOMISAR: Yes, Your Honor.

16 THE COURT: Okay. So we'll remove what was
17 originally placed into evidence as State's Exhibit 1 and
18 substitute the new version. So the only items of
19 evidence are State's 1 through 5.

20 Were there any defense exhibits admitted?

21 MR. JANSEN: Yes, Your Honor.

22 THE COURT: State's Exhibit 1.

23 MR. JANSEN: Defense Exhibit --

24 THE COURT: And what is that? What is that, Madam
25 Clerk?

1 THE CLERK: It was the FSU victim advocate --

2 MR. JANSEN: Victim rights.

3 THE COURT: The file from -- the victim's advocate
4 file? And it's everybody's understanding that's the only
5 defense exhibit? There were some others marked for
6 identification, but they were never placed into evidence.
7 Are we in agreement on that?

8 MR. JANSEN: Yes, Your Honor.

9 THE COURT: All right. I want to talk jury
10 instructions. I don't know that -- how much y'all have
11 read them. Are we ready to do it, or you need a few
12 minutes before we start with that?

13 MR. KOMISAR: The defense is ready.

14 MS. DUGAN: I looked over what you sent, Judge.

15 THE COURT: What's that?

16 MS. DUGAN: I looked over what you sent.

17 THE COURT: All right. Let's take them out. And I
18 have made a few changes; but they're pretty simple, so we
19 can -- we can just -- I can just tell you about that.

20 (Pause.)

21 THE COURT: All right. Let's start out on the
22 sexual battery. Any objection to the instruction on
23 sexual battery?

24 MR. KOMISAR: No, Your Honor.

25 THE COURT: You want to be heard on an instruction

1 on implied consent, Mr. Komisar?

2 MR. KOMISAR: Yes, Your Honor. I think we could
3 rely on the written motion that we filed. We're
4 requesting the statement, quote, Consent may be actual or
5 implied, end quote.

6 We're also requesting that second quote, The state
7 has the burden of proving lack of consent beyond a
8 reasonable doubt, end quote.

9 We think we've met the *Brickley* test, that it is
10 supported by the evidence in this case. The alleged
11 victim testified she did not remember who took whose
12 clothes off and that it was possible she took her own
13 clothes off. The Defendant directly testified that is
14 what occurred and that she did so as getting into his
15 bed.

16 Florida has clearly recognized that consent may be
17 actual or implied. This is a direct quote from a case.
18 We think it's an accurate statement of the law.

19 THE COURT: State?

20 MS. DUGAN: Throughout the entire victim's testimony
21 she said that, you know, her consent, if you want to call
22 it that, was coerced, so I don't think that they have met
23 that burden.

24 THE COURT: Well, I think the argument is whether
25 she implied consent by her actions. Okay. We are

1 looking at the Supreme Court case that was given to me,
2 *Ralston*. It says the "... trial court was not required
3 to give a specific instruction upon 'implied consent'..."
4 That's the only case that I can find that deals with a
5 sexual battery other than the special circumstances
6 sexual battery which is a little different circumstance.
7 You have found anywhere it's strictly a sexual battery
8 charge?

9 MR. KOMISAR: I did not, Your Honor. But what I
10 would note is that *Ralston*, it was a very different
11 position. They said the court was not required to give
12 the instruction.

13 In that case the jury asked a question while
14 deliberating directly about it, and at that point the
15 defense attorney asked for it. We're asking for it up
16 front.

17 THE COURT: Okay. I'm not going to -- I'm going to
18 deny the request to give an additional instruction on
19 that. That doesn't mean you're prohibited from arguing
20 that. But I think to get into something like that starts
21 to invade the jury's determination as to applying the
22 facts to the law. I think that's up to them to make
23 those kind of applications, and it's really an
24 application issue, it's not a legal description issue.
25 So I deny that request.

1 Any other requests or objections as to the sexual
2 battery instruction?

3 MR. KOMISAR: Yes. Our Motion requests the State
4 has the burden of proving lack of consent beyond a
5 reasonable doubt.

6 THE COURT: Well, that's -- that's in -- that's an
7 element. I'm not going to give an additional
8 instruction. That's Element 2. The State is required to
9 prove all the elements beyond a reasonable doubt. I
10 think that would just be saying it twice. I'm not going
11 to say it twice.

12 All right. Anything else?

13 MR. KOMISAR: Not on the sexual battery.

14 THE COURT: Okay. Is the State okay with it?

15 MS. DUGAN: Yes, sir.

16 THE COURT: Is the defense seeking the lesser
17 battery instruction?

18 MR. KOMISAR: Yes, Your Honor.

19 THE COURT: The State want to be heard on that?

20 MS. DUGAN: No, sir.

21 THE COURT: Any objection to the definition of
22 battery that I gave?

23 MR. KOMISAR: No, Your Honor.

24 MS. DUGAN: No, sir.

25 THE COURT: All right. Let's talk about extortion.

1 Let's kind of separate -- I know there's an issue on the
2 malicious definition. Beyond that -- before we get to
3 that, anybody have a problem with what I've set out?

4 MS. DUGAN: No, sir.

5 MR. KOMISAR: No, Your Honor. We do have one
6 request for a special instruction on that.

7 THE COURT: Okay. What is that?

8 MR. KOMISAR: The comment from the standard
9 extortion, it's 8.23, there's a comment section after
10 they discuss the different definitions of malicious, and
11 it cites to a First DCA case, *Duan*, 970 So.2d 903, which
12 notes, quote, Threats to cause mental or psychological
13 damage are prohibited under this statute.

14 The testimony from the victim has been pretty clear
15 in this case that while she admits there was never a
16 threat to publish, the State continually drew out from
17 her that she was at risk of this fear that she needed to
18 comply because of what could have happened.

19 They drew out lots of testimony about mental
20 anguish. And it could be reasonably inferred by a jury
21 that he was threatening to cause her mental anguish by
22 possessing these photos, because the State threw out to
23 the victim that she was always at a risk that they would
24 be published. There's a First DCA case that --

25 THE COURT: Give me that cite again.

1 MR. KOMISAR: *Duan*.

2 THE COURT: Spell that.

3 MR. KOMISAR: D-a -- no, I'm sorry, D-u-a-n versus
4 State, 970 So.2d 903. It's a First DCA case from --

5 THE COURT: What is it you want me to say?

6 MR. KOMISAR: Threats to cause mental or
7 psychological damage are prohibited under this -- it says
8 statute in the comment, but we could say offense -- are
9 not a basis to convict.

10 THE COURT: Read that again.

11 MR. KOMISAR: Threats to cause mental or
12 psychological damage are not a basis to convict the
13 Defendant of this charge.

14 THE COURT: Ms. Dugan?

15 MS. DUGAN: So the comment would read that it's not
16 necessary for me to prove that he actually intended to do
17 any harm or had the ability to carry it out?

18 THE COURT: I'm not -- I'm not following you at all,
19 Ms. Dugan.

20 MS. DUGAN: I'm just reading the -- I'm trying to
21 get straight what they're proposing as the special
22 instruction.

23 THE COURT: It's -- what he's asked me to say is:
24 Threats to cause mental or psychological damage are not a
25 basis for this charge.

1 MS. DUGAN: So what the comment says is -- that's
2 not what the comment says on the jury instructions. The
3 comment says: It is not necessary for the State to prove
4 actual intent to do harm nor the ability to carry out the
5 threat. Threats to cause mental or psychological damage
6 are prohibited under this statute --

7 THE COURT: If you think I'm following all that, you
8 think I'm a lot smarter than I am.

9 MS. DUGAN: If he wants to give the entire comment
10 that's there, I am fine with it.

11 THE COURT: Let me find the jury instructions there.
12 I'm sorry, I've got them right here.

13 well, I would assume the defense doesn't want the
14 whole comment.

15 MR. KOMISAR: No, Your Honor. We don't think the
16 whole comment would be supported by the facts of this
17 case. It's the State that drew out what -- we would
18 argue there was no purpose in drawing out the testimony
19 that if the photos weren't deleted, the victim would
20 always be in fear that he was going to put them out one
21 day.

22 THE COURT: I'm not going to give part of it and not
23 give the other part. Do you want it all, or you don't
24 want it?

25 MR. KOMISAR: One moment, Your Honor.

1 THE COURT: Truthfully, it seems to me that first
2 sentence is contrary to -- or malicious instruction, but
3 that's what they contend it said.

4 MR. KOMISAR: If the Court is only willing to
5 consider it with it being complete, we would not request
6 it.

7 THE COURT: Okay. well, I'll read that case
8 tonight, but I assume they've accurately stated what it
9 says. If that's accurate as to what it -- is said, I
10 would either -- it would need to be reworded just
11 slightly, but I would give the whole thing or not give it
12 at all.

13 I would probably say, the second sentence, would add
14 in a: However, threats to cause mental or physical
15 damage are prohibited under the statute -- are -- are
16 not -- not a basis for this charge is what you said; but
17 I wouldn't give it without the first line if that's what
18 the case says.

19 You'd prefer not to have it at all than to have the
20 whole thing?

21 MR. KOMISAR: Yes, Your Honor. We would like a
22 chance to look at the case as well to see if it was two
23 separate holdings.

24 THE COURT: Okay. we'll do that tonight.

25 All right. Let's talk about maliciously. we've got

1 a split between the Second and Fourth DCA defining it one
2 way, and the Fifth defining it another.

3 You can be heard, Mr. Komisar.

4 MR. KOMISAR: We're requesting the one from the
5 Second and the Fourth that malicious means intentional
6 and without any lawful justification.

7 we think that there's been a lot of talk in this
8 case about what was legal and illegal, and that's the one
9 that we'd request; also, the one that has been held by
10 two District Court of Appeals as compared to one.

11 THE COURT: Well, I think that's probably the one
12 the State would prefer, too, I would assume.

13 MS. DUGAN: That's fine.

14 THE COURT: All right. So that's what you want,
15 maliciously means intentionally and without lawful
16 justification?

17 MR. KOMISAR: Yes, Your Honor.

18 MS. DUGAN: That's fine.

19 THE COURT: All right. Other than that, any
20 objection to the extortion instruction?

21 MR. KOMISAR: No, Your Honor.

22 THE COURT: I don't find there are any lessers.
23 Anybody think there are some lesser included to that?

24 MR. KOMISAR: No, your Honor.

25 THE COURT: State?

1 MS. DUGAN: No, sir.

2 THE COURT: That's where I stuck in the similar fact
3 instruction. I don't know whether y'all have a different
4 opinion on where it should go, but I know you requested
5 it. I thought right before the Plea of Not Guilty would
6 be the appropriate place.

7 I just had to change the tense a little bit. But if
8 you want, I'll read what I have: The evidence received
9 concerning other acts allegedly committed by the
10 Defendant is to be considered by you for the limited
11 purposes of proving intent, malice, or absence of
12 mistake, and you shall consider it only as it relates to
13 those issues. However, the Defendant is not on trial for
14 any act that is not included in the Information. That's
15 largely the instruction I gave before, just --

16 MR. KOMISAR: We have no objection to that or the
17 location in the instruction.

18 THE COURT: Ms. Dugan?

19 MS. DUGAN: That's fine.

20 THE COURT: Anything else on the charges before we
21 move to the standard instructions?

22 MR. KOMISAR: No, Your Honor.

23 MS. DUGAN: No, sir.

24 THE COURT: Plea of Not Guilty, Reasonable Doubt is
25 just the standard instruction.

1 weighing the Evidence, 1 through 5 are given in all
2 cases; 6 through 10 are optional.

3 I'll hear from the defense first as to which you
4 want of 6 through 10.

5 MR. KOMISAR: We would think 6 would be applicable.
6 We would prefer it.

7 I don't see a basis for 7.

8 I think witnesses were impeached in this case, so 8
9 would be appropriate.

10 I don't think 9 applies. No one was impeached with
11 crimes, and I don't think either party laid a predicate
12 for reputation evidence, so that wouldn't apply either.

13 THE COURT: State?

14 MS. DUGAN: I agree.

15 THE COURT: Okay. You can stay seated, Mr. Komisar.
16 I'm sorry I didn't tell you that.

17 Let's work through it paragraph by paragraph after
18 that because some of these are optional paragraphs.

19 The first one is given in all cases. Does the
20 defense want the law enforcement witness instruction? We
21 had one law enforcement witness, although I'm not sure
22 his credibility is greatly in dispute.

23 MR. KOMISAR: Due to his technical actions, we don't
24 need that.

25 THE COURT: All right. Is the State okay taking

1 that out?

2 MS. DUGAN: Yes, sir.

3 THE COURT: We didn't have an expert witness.

4 Anybody have a problem if we take out the expert witness
5 paragraph?

6 MR. KOMISAR: No, Your Honor.

7 THE COURT: Ms. Dugan?

8 MS. DUGAN: No, sir.

9 THE COURT: So I will strike that.

10 The next paragraph relates to accomplices,
11 corroborating witnesses. We didn't have that.

12 The next paragraph would be the testimony of a
13 child. We did not have that, so I'll strike that.

14 The Defendant did become a witness, so I'll give
15 that paragraph. And then I like to give the next
16 paragraph about a lawyer talking to a witness. And then
17 the final one is given in all cases.

18 Anybody have any issue with any of that?

19 MR. KOMISAR: No objection.

20 MS. DUGAN: No, sir.

21 THE COURT: All right. Strike the Defendant Not
22 Testifying because he did testify.

23 Rules for Deliberation, I don't think we had any
24 juror questions, did we? Anybody remember any juror
25 questions?

1 MR. KOMISAR: No, Your Honor.

2 MS. DUGAN: No, sir.

3 THE COURT: I'm going to strike Paragraph 7,
4 renumber 8 to 7. Other than that, it's the standard.
5 Cautionary Instruction is the standard. Single
6 Defendant, Multiple Counts; Verdict, all standard
7 instructions. Submitting Case to the Jury, largely
8 standard.

9 Anybody have any issues with any of those?

10 MR. KOMISAR: No, Your Honor.

11 MS. DUGAN: No, sir.

12 THE COURT: Verdict Form is pretty straightforward.
13 Anybody found any error in the Verdict Form?

14 MS. DUGAN: No, sir.

15 MR. KOMISAR: I was just making sure tomorrow was
16 still May, so no objection.

17 MR. JANSEN: Thursday.

18 THE COURT: It is. All right. So we have the two
19 requests that I have denied as to implied consent.
20 That's the only thing that was denied, right?

21 MR. KOMISAR: We requested a specific burden of
22 proof instruction.

23 THE COURT: Okay. All right. So other than that,
24 no objection to the instructions?

25 MR. KOMISAR: No, Your Honor.

1 MS. DUGAN: No, sir.

2 THE COURT: All right. Anything else anybody wants
3 to raise?

4 MS. DUGAN: No, sir.

5 MR. KOMISAR: No, Your Honor.

6 THE COURT: What I would like to do is I will go
7 finish these right now. I'll e-mail them to you. Please
8 review them tonight. Let's plan to meet at 8:00. I want
9 to be able to start with the jury at 8:30, so I want to
10 make sure we have -- have it done so we can get
11 everything copied and collated in time to start with the
12 jury at 8:30.

13 Mr. Komisar, if you would give me an e-mail before
14 you leave. I know I have Ms. Dugan's. I don't want any
15 response, legal response; but I would like to just an "I
16 received it" acknowledgment so I can make sure everybody
17 got the proposals. I'll send it to whoever you want me
18 to send it to.

19 MR. KOMISAR: One issue I just thought of, Your
20 Honor. I think I do need to at this time renew our
21 Motions for Judgment of Acquittal on both issues. We
22 would rely on the arguments previously made.

23 THE COURT: Okay. My ruling would be the same, I
24 deny the Motion for Judgment of Acquittal.

25 Any other issues?

1 MS. DUGAN: No, sir.

2 MR. KOMISAR: No, sir.

3 THE COURT: See y'all at 8:00.

4 MS. DUGAN: Thank you.

5 (The proceedings adjourned at 5:30 p.m.)

6 (The transcript continues in Volume III.)

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CERTIFICATE

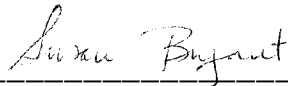
STATE OF FLORIDA:

COUNTY OF LEON:

I, SUSAN BRYANT, Registered Merit Reporter, do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages are a true and correct record of the aforesaid proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

DATED this 6th day of September 2018.



SUSAN BRYANT, RMR, CRR
OFFICIAL COURT REPORTER
LEON COUNTY COURTHOUSE
TALLAHASSEE, FLORIDA 32301

SUSAN BRYANT, RMR, CRR, OFFICIAL COURT REPORTER

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1 frivolous where particularly any time the State's uses
2 what we refer to as Williams rule evidence that's always
3 subject to some debate.

4 I'm not terribly concerned with the jury
5 instructions issue that they've raised. But, of course,
6 something could be argued on appeal.

7 I do think that the bond now has to be more
8 significant than it was previously for a couple of
9 reasons. He has now been sentenced to prison as a
10 result of this which certainly, I think, changes his
11 thinking in terms of appearing before a Court. And I
12 would also have to say I need to consider the things the
13 defense has now raised - that he suffers from a mental
14 illness that needs treatment. Although that may be --
15 that was a basis to depart, it's also a basis for me to
16 be somewhat concerned about his release post trial.

17 I'm going to set a bond at \$30,000. Included, he
18 will be on supervised pretrial release. The release
19 will include active GPS and home detention at 2112
20 Durant, Valrico, Florida with his -- in his parents'
21 home. I do give the pretrial release persons authority
22 to allow him to work. But he's to establish a work
23 schedule. If he's not working on attending some type of
24 therapeutic session, he's to be home.

25 He needs to provide pretrial release with an