

APPENDIX A

NOT DESIGNATED FOR PUBLICATION

No. 125,623

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

EFE CLINTON OSAGHAE,
Appellant.

MEMORANDUM OPINION

Appeal from Ellis District Court; GLENN R. BRAUN, judge. Submitted without oral argument. Opinion filed April 19, 2024. Affirmed.

Emily Brandt, of Kansas Appellate Defender Office, for appellant.

Ryan J. Ott, assistant solicitor general, and *Kris W. Kobach*, attorney general, for appellee.

Before HILL, P.J., SCHROEDER, J., and MARY E. CHRISTOPHER, S.J.

PER CURIAM: Efe Osaghae timely appeals, seeking relief from his 68-month term of imprisonment. Osaghae pled guilty to two counts of aggravated sexual battery and now claims the State improperly argued facts not in evidence at his sentencing hearing. Osaghae also claims the district court engaged in unconstitutional judicial fact-finding to enhance his postrelease supervision from a 60-month period to life. Upon an extensive review of the record, we find no error and affirm the district court.

FACTUAL AND PROCEDURAL BACKGROUND

In January 2020, the State charged Osaghae with one count each of rape, aggravated criminal sodomy, aggravated sexual battery, aggravated battery, and aggravated burglary for an incident that occurred in December 2019 against N.M. During a K.S.A. 60-455 hearing, the district court found the State's evidence that Osaghae committed a strikingly similar sexually violent incident against G.D. in December 2016 was more probative than prejudicial. Osaghae ultimately entered a plea agreement and pled guilty to two counts of aggravated sexual battery in violation of K.S.A. 2016 Supp. 21-5505(b)(1) and K.S.A. 2019 Supp. 21-5505(b)(1). In exchange for his plea, the State dismissed the remaining charges and agreed not to file new or additional charges stemming from allegations made by G.D. and three other women.

At the sentencing hearing, Osaghae offered a forensic psychological evaluation by Dr. Jarrod Steffan into evidence. Dr. Steffan's report noted Osaghae's risk of sexual recidivism under the Static-99R was average. Dr. Steffan also provided statistics related to the recidivism rates of sexual offenders who had the same recidivism score as Osaghae. At sentencing, given Osaghae's criminal history and his convictions, he landed on the sentencing grid as a border box. The district court denied Osaghae's request for probation and sentenced Osaghae to a total prison term of 68 months' imprisonment—34 months' imprisonment for each count—and lifetime postrelease supervision.

ANALYSIS

The State Improperly Argued Facts Not in Evidence at Osaghae's Sentencing Hearing

Osaghae argues the prosecutor, during sentencing, improperly commented on recidivism rates and the prosecution of sexual assaults. Osaghae contends the district

court relied on the prosecutor's unsupported statistics in declining to grant Osaghae probation as a border box finding and instead sentencing him to a term of imprisonment.

A prosecutor's comments made during voir dire, opening statement, or closing argument are reviewed by appellate courts even if the defendant failed to contemporaneously object. *State v. Sean*, 306 Kan. 963, 974, 399 P.3d 168 (2017). Prosecutorial error may also occur during a nonjury setting such as a sentencing hearing before a district judge. *State v. Blevins*, 313 Kan. 413, 437, 485 P.3d 1175 (2021); *State v. Wilson*, 309 Kan. 67, 77, 431 P.3d 841 (2018). Appellate courts use a two-step process—looking at error and prejudice—to evaluate claims of prosecutorial error:

"To determine whether prosecutorial error has occurred, the appellate court must decide whether the prosecutorial acts complained of fall outside the wide latitude afforded prosecutors to conduct the State's case and attempt to obtain a conviction in a manner that does not offend the defendant's constitutional right to a fair trial. If error is found, the appellate court must next determine whether the error prejudiced the defendant's due process rights to a fair trial." *State v. Sherman*, 305 Kan. 88, 109, 378 P.3d 1060 (2016).

"Prosecutors enjoy wide latitude in crafting closing arguments. This latitude allows a prosecutor to argue reasonable inferences that may be drawn from the admitted evidence, but it does not extend so far as to permit arguing facts that are not in evidence. [Citations omitted.]" *State v. Pribble*, 304 Kan. 824, 832, 375 P.3d 966 (2016). A prosecutor's statements should not be viewed in isolation but in the context in which the statements were made. *State v. Timley*, 311 Kan. 944, 949-50, 469 P.3d 54 (2020).

Osaghae alleges the prosecutor erred in arguing and relying on facts not in evidence at Osaghae's sentencing hearing. At sentencing, the prosecutor argued in part:

"The one thing I wanted to refer to specifically out of Dr. Steffan's report, I'm just going to read from it. . . . 'Mr. Osaghae's Static-99R total score of plus 3 placed his

risk of sexual recidivism in Level III, average risk. Sexual offenders who obtain the same score as Mr. Osaghae were prosecuted,' I think that word is important, 'prosecuted for sexual offenses at a rate of 6.5 percent and 10.1 percent . . . [respectively].'

"Here's why prosecuted is important. We know that sexual assault victims seldomly come forward. And we know that from the ones that come forward, very few are prosecuted. And from the ones that are prosecuted, very few are convicted. And even of the ones that are convicted, it's even less still that those people are held accountable and sent to prison.

"So we're talking about statistics of 6.5 and 10.1 percent over a follow-up period of 5 or 10 years, [respectively], that were prosecuted, I would imagine somehow, someway, that those numbers are actually much higher in terms of recidivism because persons who are prosecuted is going to be a smaller number than those who actually commit offenses."

Using the two-step process—looking at error and prejudice—the prosecutor exceeded the wide latitude afforded to make reasonable inferences and argued facts not in evidence. Without expert testimony, the methodology for determining recidivism rates is unclear as well as the extent the statistics account for victims who do not report sexual violence or simply decide not to testify, hindering prosecution. The State relies on *In re Care & Treatment of Williams*, 292 Kan. 96, 253 P.3d 327 (2011), for the assertion that "[i]t is well-known that sex crimes are underreported and not always successfully prosecuted even when they are reported." But *Williams* was a sufficiency of the evidence case determining whether Williams was a sexually violent predator. In *Williams*, two expert witnesses testified and criticized the reliability and accuracy of the risk assessment instruments—something the State should have done here to enter such facts into evidence at Osaghae's sentencing. See 292 Kan. at 109. While it may be common knowledge, particularly to a district judge, that sexual offenses are underreported, it was error for the prosecutor to argue facts not in evidence—being the recidivism statistics were higher than suggested. In fact, Osaghae responds the State incorrectly relied on *Williams* and "does little but repeat the facts not contained in evidence that were introduced by the prosecutor at sentencing."

Still, Osaghae's claim fails under the prejudice prong of the analysis as the prosecutor's statements were harmless and did not affect the outcome of Osaghae's sentencing. In addressing prejudice, appellate courts

"apply the constitutional harmlessness standard laid out in *Chapman v. California*, 386 U.S. 18, 87 S. Ct. 824, 17 L. Ed. 2d 705 (1967), which demands the State show beyond a reasonable doubt that the prosecutorial error did not affect the trial's outcome in light of the entire record. In other words, the question is whether there is no reasonable possibility that the error contributed to the [decision]." *State v. Flack*, 318 Kan. 79, 111, 541 P.3d 717 (2024).

The State claims Osaghae disregarded the district court's extensive discussion explaining its ruling. At sentencing, the district judge provided a lengthy explanation supporting Osaghae's sentences. The district judge stated this was a challenging case and, after reviewing the case file in some detail, explained:

- Society should be ashamed of the way sexual assault victims are treated;
- putting an individual in prison prevents the perpetration of the same kind of acts, at least for a period of time;
- the State and victims asked the district court to provide the maximum sentence;
- Osaghae could have received a 310-month standard sentence if he had been convicted of rape and aggravated criminal sodomy as alleged in the State's original complaint;
- Osaghae will be punished for the rest of his life as he will have to register as a sex offender for the next 25 years, his crimes cannot be expunged, and he will forever be a criminal history B;
- "This isn't a one-time, this is a two-time occurrence in our community. God only knows how many others occurred that victims don't come forward.";

- "[W]e know that very few sexual assaults get reported, and it's very understandable why.;"
- Osaghae only had one minor bond violation in two and a half years;
- the forensic psychological evaluation conducted six weeks before sentencing showed Osaghae did not take ownership of his actions, claiming the incident with N.M. was consensual;
- Osaghae failed to attend counseling related to alcohol consumption while on bond; and
- the court must decide in the defendant and victims' best interests.

The State lays out these points in its argument on appeal and establishes there is no reasonable possibility any prosecutorial error contributed to how the district court imposed Osaghae's sentences. While the district court seems to have accounted for the State's erroneous comments during the sentencing hearing, it also noted Osaghae benefited from his plea bargain, receiving a 68-month prison sentence instead of a potential prison sentence of over 300 months. The district court also explained Osaghae committed sexually violent crimes against two women and would be prevented from further perpetrating such crimes for a period of time if he was placed in prison. Osaghae also failed to take accountability for his actions until the time of sentencing when he asked for probation and failed to attend counseling while he was on bond. Further, the State correctly points out Osaghae's sentencing range fell in a border box, and he received presumptive sentences, which cannot be challenged on appeal. See K.S.A. 21-6804(f); K.S.A. 21-6820(c)(1).

Even though we are prohibited from reviewing a presumptive sentence on appeal, we still exercise jurisdiction over Osaghae's prosecutorial error claim. As noted above, our Supreme Court articulated a two-part test to review claims of prosecutorial error in *Sherman*. The *Sherman* court explained the test accounts for "any and all claims asserted by a criminal defendant that his or her Fourteenth Amendment [to the United States

Constitution] due process rights to a fair trial have been violated by any act or statement of the prosecutor." 305 Kan. at 108. Here, Osaghae frames his argument as a due process violation under the Fourteenth Amendment as the prosecutor's statements exceeded the wide latitude afforded to conduct the State's case.

We analyze this issue similar to that of a *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963) violation—a question of whether the defendant received a fair trial if the State willfully or inadvertently withheld material exculpatory evidence. Upon the finding of a *Brady* violation, "[t]he reversal of a conviction is required upon a "showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict."'" *State v. Francis*, 282 Kan. 120, 151, 145 P.3d 48 (2006). That is, even if the defendant subsequently received a presumptive sentence, upon the finding of a *Brady* violation, the panel would be required to reverse the defendant's conviction. Similarly, a claim of prosecutorial error, another question addressing whether the defendant received a fair trial, should be reviewed regardless of whether the sentence fell within the presumptive range. Thus, we have jurisdiction over Osaghae's prosecutorial error claim despite the fact the district court ordered presumptive sentences.

While the prosecutor erred in commenting on facts not in evidence during Osaghae's sentencing, Osaghae was not prejudiced by such error. Osaghae's sentencing range fell within a border box, and the district court had discretion to sentence Osaghae to a term of imprisonment or probation. The district court chose imprisonment within the presumptive range with consecutive terms. See K.S.A. 21-6804(e)(1); K.S.A. 21-6819(b).

The District Court Did Not Engage in Unconstitutional Judicial Fact-Finding to Enhance Osaghae's Postrelease Sentence

Osaghae argues the district court violated *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000), by engaging in unconstitutional judicial fact-finding to enhance his postrelease supervision to a term of life. Osaghae specifically argues the district court determined he was over the age of 18 when he committed his sexually violent crimes—a finding of fact—and consequently imposed lifetime postrelease supervision. Osaghae asks us to remand to the district court to impose a postrelease supervision term of 60 months. The State asserts the district court did not violate *Apprendi* by ordering lifetime postrelease supervision and any constitutional error was harmless.

Although Osaghae failed to raise the issue before the district court, the parties agree the issue is properly before us as it is purely a legal question that is determinative of the case and concerns fundamental rights. See *State v. Godfrey*, 301 Kan. 1041, 1043, 350 P.3d 1068 (2015). Our appellate courts have addressed similar constitutional claims for the first time on appeal on the basis the claim was a purely legal question based on undisputed facts. See *State v. Anthony*, 273 Kan. 726, 727, 45 P.3d 852 (2002); *State v. Conkling*, 63 Kan. App. 2d 841, 843, 540 P.3d 414 (2023). We will proceed to address the issue under the same exception.

In *Apprendi*, the United States Supreme Court determined "any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." 530 U.S. at 490. But, in *Blakely v. Washington*, 542 U.S. 296, 303, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004), the United States Supreme Court noted, for *Apprendi* purposes, a sentencing judge can consider "facts reflected in the jury verdict or admitted by the defendant." Whether a district court violated a defendant's constitutional rights under *Apprendi* at sentencing "raises a

question of law subject to unlimited review.'" *State v. Huey*, 306 Kan. 1005, 1009, 399 P.3d 211 (2017).

K.S.A. 22-3717(d)(1)(G)(i) states: "[P]ersons sentenced to imprisonment for a sexually violent crime on or after July 1, 2006, when the offender was 18 years of age or older, and who are released from prison, shall be released to a mandatory period of postrelease supervision for the duration of the person's natural life." K.S.A. 22-3717(d)(1)(G)(ii) states: "Persons sentenced to imprisonment for a sexually violent crime committed . . . when the offender was under 18 years of age, and who are released from prison, shall be released to a mandatory period of postrelease supervision for 60 months."

Osaghae contends his convictions did not require proof he was over the age of 18 when the crimes were committed and a judicial admission regarding his age does not equate to a guilty plea or elemental stipulation. The State responds Osaghae admitted his age under oath at sentencing as well as in multiple presentence documents. While Osaghae acknowledges other panels of this court have rejected similar arguments in unpublished opinions, he fails to cite the most recently published opinion stating the same: *Conkling*, 63 Kan. App. 2d at 844-45.

In *Conkling*, another panel of this court found Conkling's own admissions established he was over 18 years old. The panel noted Conkling admitted his age in his application for appointed defense counsel, in his signed petition to enter plea agreement, and under oath at the plea hearing. 63 Kan. App. 2d at 844-45. Similarly, Osaghae's admissions establish there is no *Apprendi* violation. Osaghae testified under oath he was 24 years old at the time of sentencing in August 2022. In addition to testifying, Osaghae admitted his forensic psychological evaluation into evidence at sentencing which stated his birth date was January 14, 1998. Osaghae's birth year was also listed in the State's original complaint, amended complaint, Osaghae's signed acknowledgment of rights and

entry of plea, his signed notice of duty to register, and his presentence investigation report.

The record is clear. By Osaghae's own admissions, he was over 18 years old when he committed his crimes, and he makes no attempt to show otherwise. The district court's finding Osaghae was over the age of 18 when he committed his crimes did not violate *Apprendi*. As such, it is unnecessary to reach the State's alternative argument of harmless error.

Affirmed.

APPENDIX B



KANSAS SENTENCING GUIDELINES JOURNAL ENTRY OF JUDGMENT
PLEASE USE FOR CRIMES COMMITTED ON JULY 1, 2018 - JUNE 30, 2019

SECTION I. CASE IDENTIFYING INFORMATION		1. Transaction No. 302631901193			
2. STATE v. Efe Clinton Osaghae		<input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	3. Court O.R.I. Number KSO26015J	4. K.B.I. Number KS33809201	
5. County Ellis	6. Court Case Number 2020-CR-05	7. Sentencing Judge Hon. Glenn R. Braun		8. Sentencing Date August 15, 2022	
9. Defense Counsel: <input type="checkbox"/> Appointed <input checked="" type="checkbox"/> Retained <input type="checkbox"/> Self <input type="checkbox"/> Waived Orally <input type="checkbox"/> Waived in Writing					
10. Type of Proceeding (Trial)		<input type="checkbox"/> Bench Trial (includes a plea on stipulated facts)	<input type="checkbox"/> Jury Trial	<input checked="" type="checkbox"/> Guilty Plea	<input type="checkbox"/> Nolo contendere Plea
11. Date of Conviction: April 8, 2022					
12. Pre-Trial Status of Offender <input type="checkbox"/> In Custody <input checked="" type="checkbox"/> Released on Bond <input type="checkbox"/> Other Release					
SECTION II. CRIMINAL HISTORY CLASSIFICATION					
1. Offender's Overall Criminal History Classification as Found by the Court: <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> E <input type="checkbox"/> F <input type="checkbox"/> G <input type="checkbox"/> H <input checked="" type="checkbox"/> I					
2. Objection to Criminal History? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, By: <input type="checkbox"/> Defendant or <input type="checkbox"/> State Court's Ruling on Objection: <input type="checkbox"/> Criminal history was amended <input type="checkbox"/> Criminal history was not amended					
SECTION III. CURRENT CONVICTION INFORMATION					
1. Name of PRIMARY Offense of Conviction: <u>Aggravated Sexual Battery</u>					
Count No.: <u>1</u>	Date of Offense: <u>December 8, 2019</u>		<input type="checkbox"/> Designated by court as domestic violence case based upon special finding (see #14 this section)		
2. If Drug Offense: (Indicate statute for controlled substance) <input type="checkbox"/> 65-4105 <input type="checkbox"/> 65-4107 <input type="checkbox"/> 65-4109 <input type="checkbox"/> 65-4111 <input type="checkbox"/> 65-4113					
Name of Drug: _____					
Amount of Drug (IF Distribution Offense): <input type="checkbox"/> w/in 1,000 ft of school					
3. K.S.A. Title, Section, Subsection(s): <u>21-5505(b)(1)/(c)(2)</u>					
<input type="checkbox"/> Attempt (K.S.A. 21-5301) <input type="checkbox"/> Conspiracy (K.S.A. 21-5302) <input type="checkbox"/> Solicitation (K.S.A. 21-5303)					
4. Grade of Offense: (Check one in each row.) <input checked="" type="checkbox"/> Felony, Severity Level 5 <input type="checkbox"/> Misdemeanor, Class _____ <input checked="" type="checkbox"/> Person <input type="checkbox"/> Nonperson					
5. Offense Category: <input checked="" type="checkbox"/> Nondrug <input type="checkbox"/> Drug <input type="checkbox"/> Off-grid <input type="checkbox"/> Nongrid					
6. Presumptive Sentencing Range: (Enter terms from appropriate grid.) Aggravated <u>34</u> Standard <u>32</u> Mitigated <u>31</u>					
Check applicable box(es) <input type="checkbox"/> Presumptive Prison <input type="checkbox"/> Presumptive Probation <input checked="" type="checkbox"/> Border Box <input type="checkbox"/> Mandatory Prison as per K.S.A. 21-5703 <input type="checkbox"/> Drug Treatment for up to 18 months. K.S.A. 21-6824 <input type="checkbox"/> Special Rule Applies (Complete Special Rules Supplemental Page and Attach)					
<p>THIS FORM MUST BE ACCOMPANIED BY A COPY OF THE PRESENCE/INVESTIGATION FORM PURSUANT TO K.S.A. 22-3439 AND A DOCUMENT CONTAINING INFORMATION REQUIRED BY K.S.A. 22-3426.</p> <p>PLEASE USE AN ADDITIONAL OFFENSES PAGE FOR ADDITIONAL OFFENSES OF CONVICTION.</p>					

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7. SPECIAL RULE APPLICABLE: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, enter the number(s) and brief description(s) corresponding to the applicable special rule. (Complete Special Rules Supplemental Page and Attach): _____	
8. SPECIAL FINDING that the crime was SEXUALLY MOTIVATED pursuant to the KS Offender Registration Act	
8a. Did the court make a special finding that the crime was sexually motivated?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
8b. IF YES to 8a, did the court find that the act involved non-forceable sexual conduct, the victim was at least 14 and the offender was no more than 4 years older than the victim? (K.S.A. 22-4902(c)(18))	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
8c. IF YES to 8a and NO to 8b, PLEASE COMPLETE OFFENDER REGISTRATION SUPPLEMENT AND ATTACH IT TO JOURNAL ENTRY.	
9. Was offender determined by the Court to be an AGGRAVATED HABITUAL SEX OFFENDER? (K.S.A. 21-6626) IF YES, PLEASE COMPLETE SEX OFFENSE SUPPLEMENT AND ATTACH IT TO JOURNAL ENTRY.	
10. Is offender being sentenced pursuant to K.S.A. 21-6627 where offender is 18 years of age or older and the victim is less than 14 years of age? IF YES, PLEASE COMPLETE SEX OFFENSE SUPPLEMENT AND ATTACH IT TO JOURNAL ENTRY.	
11. Downward departure (K.S.A. 21-6818(a)) for a crime of extreme sexual violence (K.S.A. 21-6815)? IF YES, PLEASE COMPLETE SEX OFFENSE SUPPLEMENT AND ATTACH IT TO JOURNAL ENTRY.	
12. Did offender, as determined by the court, commit the current crime with a deadly weapon? IF YES, PLEASE COMPLETE OFFENDER REGISTRATION SUPPLEMENT AND ATTACH IT TO JOURNAL ENTRY.	
13. Was offender convicted of a violation of K.S.A. 21-5703, Manufacture or attempted manufacture; K.S.A. 21-5705(a)(1), Cultivation, Distribution, Possession w/ intent to distribute opiates, opium or narcotic drugs or any stimulant in K.S.A. 65-4107(d)(1), (d)(3), (f)(1); or K.S.A. 21-5709(a). Possession of precursors w/ intent to manufacture? IF YES, PLEASE COMPLETE OFFENDER REGISTRATION SUPPLEMENT AND ATTACH IT TO JOURNAL ENTRY.	
14. Determination of domestic violence case designation	
14a. Did offender, as determined by the <u>trier of fact</u> , commit a domestic violence offense?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
14b. If YES to 14a above, did the court find that offender had no prior domestic violence conviction or diversion, AND that offender did not use the present domestic violence offense to coerce, control or punish the victim?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
14c. If YES to 14a and NO to 14b, PLEASE CHECK THE DOMESTIC VIOLENCE CASE DESIGNATION BOX.	<input type="checkbox"/> DV Case
15. U.S. Armed Forces Treatment Eligibility (K.S.A. 21-6630):	
15a. Did offender serve in the armed forces of the U.S. in a combat zone as certified by the Kansas Commission on Veteran Affairs?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
15b. Does offender suffer from injury and the injury is connected to service in a combat zone in the armed forces of the U.S.?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
15c. Does offender's current conviction place the offender in a presumptive probation grid box?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If YES to 15a through 15c, check box if court ordered treatment: <input type="checkbox"/> Inpatient <input type="checkbox"/> Outpatient <input type="checkbox"/> Gov't Provided Treatment	

SECTION IV. SENTENCE IMPOSED

1. Guideline Range Imposed: <input checked="" type="checkbox"/> Aggravated <input type="checkbox"/> Standard <input type="checkbox"/> Mitigated <input type="checkbox"/> Departure - COMPLETE SECTION V	
2. Prison Term: KDOC 34 months (including enhancement sentence) (Enter months above then check one of the following) <input checked="" type="checkbox"/> Prison sentence imposed or <input type="checkbox"/> Underlying with probation granted ** or Underlying with KDOC Drug Trtmnt Prog. (min. 120 days)	
<input type="checkbox"/> Enhancement Sentence- Drug with Firearm: <input type="checkbox"/> 6 months <input type="checkbox"/> 18 months (K.S.A. 21-6805(g)) Ballistic Resistant Material: <input type="checkbox"/> 30 months (K.S.A. 21-6804(l))	
<input type="checkbox"/> Off-grid Crime: <input type="checkbox"/> Life - Minimum 15 yrs. <input type="checkbox"/> Life - Minimum 20 yrs. <input type="checkbox"/> Hard 25 <input type="checkbox"/> Hard 40 <input type="checkbox"/> Hard 50 <input type="checkbox"/> Life without Parole <input type="checkbox"/> Death Penalty <input type="checkbox"/> Per K.S.A. 21-6620, 21-6623 or 21-6627, if guidelines sentence greater than mandatory minimum ____ months.	
3. Postrelease Supervision Term: <input type="checkbox"/> 12 months <input type="checkbox"/> 24 months <input type="checkbox"/> 36 months <input type="checkbox"/> 60 months (sex offense) - COMPLETE SECTION V <input checked="" type="checkbox"/> Lifetime Postrelease (K.S.A. 22-3717(d)(1)(G)(i)) <input type="checkbox"/> Lifetime Parole / Electronic Monitoring (K.S.A. 21-6604(r))	
4. Felony DUI: <input type="checkbox"/> 3 rd D.U.I. <input type="checkbox"/> 4 th & Subs. D.U.I. * No Probation or Postrelease allowed on or after July 1, 2011. Jail Sentence: ____ months ____ days <input type="checkbox"/> Release is authorized after jail service of ____ months ____ days ____ hours <input type="checkbox"/> Assigned to work release (K.S.A. 21-6604(a)(11)) or <input type="checkbox"/> House Arrest: ____ months ____ days ____ hours Post-Imprisonment Supervision (PIS) of 12 months supervised by: <input type="checkbox"/> Court Services <input type="checkbox"/> Community Corrections (check one) <input type="checkbox"/> Additional one month jail if child <18 in vehicle (K.S.A. 8-1567(c)) (include in total)	
5. Other Nongrid Felony and/or Misdemeanors: <input type="checkbox"/> 3 rd & Subs. Domestic Battery w/in 5 yrs. <input type="checkbox"/> Animal Cruelty <input type="checkbox"/> Jail Sentence Imposed: ____ months ____ days ____ hours <input type="checkbox"/> Probation Imposed (Complete # 6) <input type="checkbox"/> Probation granted after serving jail term. Jail Term: ____ months ____ days <input type="checkbox"/> Assigned to work release (K.S.A. 21-6604(a)(11)) or <input type="checkbox"/> House Arrest: ____ months ____ days ____ hours	

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6. Probation Term (If Granted): 12 months 18 months 24 months 36 months 60 months Drug Treatment for up to 18 months. K.S.A. 21-6824 Other: _____ Extended Period K.S.A. 21-6608(c)(5) for: _____ monthsProbation Supervision to: Court Services Community Corrections Unsupervised

County Jail Time Imposed AS A CONDITION OF PROBATION: _____ days

 Withheld authority of court services/community corrections to impose intermediate sanction pursuant to K.S.A. 21-6604(s) or (t)

Comments: _____

SECTION V. DEPARTURE INFORMATION

1. Type of Departure: (Check all that apply.)

 Downward Durational Upward Durational Downward Dispositional Upward Dispositional
 Postrelease Supervision (up to 60 months for sexually motivated offense) – K.S.A. 22-3717(d)(1)(D)(i)

2. Reasons Cited as Basis for Departure:

SECTION VI. OTHER CONDITIONS

1. General/Special Conditions of Probation (COMPLETE AND ATTACH ORDER OF PROBATION TO THIS JOURNAL ENTRY if needed)

2. Costs Ordered:

†Total Restitution (Please complete #3 below)	\$	Correctional Supv. Fee (Felony \$120; Misd. \$60)	\$
Court Costs (including surcharge)	\$ 193.00	BIDS Attorney Fee <input type="checkbox"/> Waived	\$ retained
* Fines to Human Trafficking Victim Assist. Fund	\$	BIDS Application Fee	\$ retained
*Total Fines (excluding Human Trafficking Victim Assist. Fund)	\$	Court-Appointed Attorney Fee	\$
DNA Database Fee (K.S.A. 21-2511 & 75-724.)	\$ 200.00	Community Corr. Fee (offenses after 1/4/07)	\$
Extradition Costs	\$	Booking/Fingerprint Fee	\$ 45.00
Domestic Violence Special Program Fee	\$	Reward Reimbursement	\$
Apprehension Fee (Escape/Agg. Escape)	\$	Children's Advocacy Center Assessment Fee	\$
Alcohol and/or Drug Eval. Fee (offenses before 7/1/11)	\$	Medical Costs/Expenses Reimbursement	\$
Witness Fee	\$	SB 123 Assessment Fee (\$175)	\$
KBI Lab Fee	\$	SB 123 Offender Reimbursement (at least \$125)	\$
Other Lab Fee	\$	Other: _____	\$
Domestic Violence Assessment/Recommendations	\$		TOTAL COSTS \$ 438.00

† Restitution shall be ordered as per K.S.A. 22-3424 if convicted of Human Trafficking (K.S.A. 21-5426), Agg. Human Trafficking (K.S.A. 21-5426) or Commercial Exploitation of a Child (K.S.A. 21-6422).* \$250 of DUI fine shall be sent to Community Corrections Supervision Fund.* Fines to Human Trafficking Assistance Fund: \$2500-5000 for Human Trafficking (K.S.A. 21-5426), Promoting the Sale of Sexual Relations (K.S.A. 21-6420) or Commercial Sexual Exploitation of a Child (K.S.A. 21-6422); no less than \$5000 for Agg. Human Trafficking (K.S.A. 21-5426); and one-half of \$1200-5000 for Buying Sexual Relations (K.S.A. 21-6421).

3. Restitution to be paid as follows:

Amount Name and Address

\$ _____	_____
\$ _____	_____
\$ _____	_____
\$ _____	_____
\$ _____	_____

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SECTION VII. RECAP OF SENTENCE

1. Sentence Imposed:

Total Prison Term (if sentence imposed is to prison): 68 monthsOff Grid Term + monthsTotal County Jail Term: Consecutive to Prison TermTotal Underlying Jail Term (if sentence imposed is probation): Total Underlying Prison Term (if sentence imposed is probation): For each count, the Court pronounced the complete sentence, including the maximum potential good time percentage. K.S.A. 21-6804(e)(2) and 21-6805(c)(2).2. Postrelease Supervision Term: 12 months 24 months 36 months 60 months Lifetime Postrelease (K.S.A. 22-3717(d)(1)(G)(i)) Lifetime Parole / Electronic Monitoring (K.S.A. 21-6604(r))3. DUI Post-Imprisonment Supervision (12 months) Court Services Community Corrections4. Probation Term Imposed (select one): 12 months 18 months 24 months 36 months 60 months Drug Treatment for up to 18 months. K.S.A. 21-6824 Extended Period K.S.A. 21-6608(c)(5) for: months Other:

5. Incarceration Credit: Enter dates (mm/dd/yy ONLY) and days of credit potentially for this case and check "A" if the days are awarded, or "N" if the days are not awarded by the court. (attach additional pages if necessary)

*Location-J	From: 12/8/19	To: 12/9/19	=	2 Days	<input checked="" type="checkbox"/> A	<input type="checkbox"/> N	*Location-	From:	To:	=	Days	<input type="checkbox"/> A	<input type="checkbox"/> N
*Location-J	From: 1/3/20	To: 1/10/20	=	8 Days	<input checked="" type="checkbox"/> A	<input type="checkbox"/> N	*Location-	From:	To:	=	Days	<input type="checkbox"/> A	<input type="checkbox"/> N
*Location-J	From: 8/8/22	To: 8/15/22	=	7 Days	<input type="checkbox"/> A	<input type="checkbox"/> N	*Location-	From:	To:	=	Days	<input type="checkbox"/> A	<input type="checkbox"/> N
*Location-	From:	To:	=	Days	<input type="checkbox"/> A	<input type="checkbox"/> N	*Location-	From:	To:	=	Days	<input type="checkbox"/> A	<input type="checkbox"/> N

* Enter appropriate letters to indicate the type of location where credit may have been earned:

J=Jail TL=Treatment (Locked) TU=Treatment (Unlocked) RL=Residential (Locked) RU=Residential (Unlocked) HA= House Arrest

Sentencing Date: 8/15/22 Total number of days of credit actually awarded 17= Sentencing Begins Date: 07/29/2022

6. Prior Case(s) to Which the Current Sentence is to Run Concurrent or Consecutive:

Case No.	<input type="checkbox"/>	Misd	<input type="checkbox"/>	Felony	County		Concurrent	<input type="checkbox"/>	or Consecutive	<input type="checkbox"/>
Case No.	<input type="checkbox"/>	Misd	<input type="checkbox"/>	Felony	County		Concurrent	<input type="checkbox"/>	or Consecutive	<input type="checkbox"/>
Case No.	<input type="checkbox"/>	Misd	<input type="checkbox"/>	Felony	County		Concurrent	<input type="checkbox"/>	or Consecutive	<input type="checkbox"/>
Case No.	<input type="checkbox"/>	Misd	<input type="checkbox"/>	Felony	County		Concurrent	<input type="checkbox"/>	or Consecutive	<input type="checkbox"/>

Others:

7. Miscellaneous Provisions:

- Defendant informed of right to appeal within 14 days of this date. K.S.A. 22-3608(c). (Required by case law)
- Defendant informed of potential rights of expungement. K.S.A. 21-6614c(h)
- Defendant informed of duty to register as an offender pursuant to the Kansas Offender Registration Act. K.S.A. 22-4905(b)(2).
(Please complete OFFENDER REGISTRATION SUPPLEMENT and attach it to the Journal Entry.)
- Defendant must submit specimens of blood or an oral or other biological sample, if not previously submitted, pursuant to K.S.A. 21-2511(c).
- Defendant must obtain psychological evaluation and shall complete the recommended treatment pursuant to K.S.A. 22-3717(d)(1)(D)(iv).
- Defendant has been processed, fingerprinted and palmprinted. K.S.A. 21-2501(b)
- Court remands Defendant to custody of Sheriff to begin serving sentence.
- Court remands Defendant to custody of Sheriff to await transportation to the custody of the Secretary of Corrections.
- Defendant to report to County Jail on the day of , 20 at o'clock a.m. p.m. to start serving sentence.
- House arrest is authorized for remaining days after Defendant completes mandatory hours in the County Jail.
- Work release recommended (if accepted, defendant is to abide by recommendations of the program).
- Defendant's financial resources and burden imposed by payment of a fine considered by the court pursuant to K.S.A. 21-6612(c).
- Defendant's financial resources and burden imposed by BIDS application and attorney fees considered by the court pursuant to K.S.A. 22-4513 and *State v. Robinson*, 281 Kan. 538, 132 P.3d 934 (2006).
- Defendant to undergo domestic violence assessment pursuant to K.S.A. 21-6604(p).
- Defendant advised of prohibition against firearms.
- With placement to ISP, Court authorizes Community Corrections access to the confidential information listed in K.S.A. 21-6813(c)
- Other Comments:

SECTION VII. RECAP OF SENTENCE CONTINUED

(PAGE 5)

8. Border Box Findings K.S.A. 21-6804(f): (Check if appropriate)

An appropriate treatment program exists which is likely to be more effective than the presumptive prison term in reducing the risk of offender recidivism; and
 the recommended treatment program is available and the offender can be admitted to the program within a reasonable period of time; or,
 the non-prison sanction will serve community safety interests by promoting offender reformation

9. If made, Motion for New Trial: Granted Denied10. If made, Motion for Judgment of Acquittal: Granted Denied11. If made, Motion for Arrest of Judgment: Granted Denied

12. Additional Comments: Defendant's Motion for Probation denied

SECTION VIII. SIGNATURES

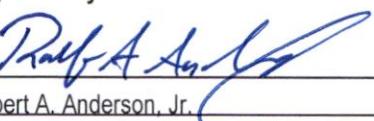
Judge's Signature:

Date: August 15, 2022

Signed:

Printed: Hon. Glenn R. Braun

2. Prosecuting Attorney:

Signed: 

Printed: Robert A. Anderson, Jr.

Supreme Court Number: 26495

Date: August 15, 2022

Address: Ellis County Attorney's Office

107 W. 12th Street

Hays, Kansas 67601

Phone No: (785) 628-9405

3. Defense Attorney:

Signed: 

Printed: Paul Oller

Supreme Court Number: 12649

Date: August 15, 2022Address: 113 W. 13th Street

Hays, Kansas 67601

Phone No: (785) 623-2966

Case No. 2022-CR-05

KSGA JOURNAL ENTRY OF JUDGMENT ADDITIONAL OFFENSES

COUNT 2

(Page 1 of 2)

1. Name of Additional Offense of Conviction: Aggravated Sexual Battery

Count No.: 2Date of Offense: December 16, 2016 Domestic Violence Offense (see #15 this section)2. If Drug Offense: (Indicate statute for controlled substance) 65-4105 65-4107 65-4109 65-4111 65-4113

Name of Drug:

Amount of Drug (IF Distribution Offense):

 w/in 1,000 ft of school3. Sentences Concurrent or Consecutive: Concurrent To Count(s): _____ Consecutive To Count(s): 1
If Consecutive, 34 months for this count4. K.S.A. Title, Section, Subsection(s): 21-5505(b)(1)/(c)(2) Attempt (K.S.A. 21-5301) Conspiracy (K.S.A. 21-5302) Solicitation (K.S.A. 21-5303)5. Grade of Offense: (Check one in each row.) Felony, Severity Level 5 Misdemeanor, Class: _____
 Person Nonperson6. Offense Category: Nondrug Grid Drug Grid Off-grid Nongrid

7. Presumptive Sentencing Range (Use Criminal History Classification "I" for non-primary convictions.):

(Enter the terms from the appropriate grid.) Aggravated 34 Standard 32 Mitigated 31(Check the appropriate box(es).) Presumptive Prison Presumptive Probation Border Box Mandatory Prison as per K.S.A. 21-5703 Drug Treatment for up to 18 months. K.S.A. 21-6824 Special Rule Applies (Complete Special Rule Supplemental Page and Attach)

8. SPECIAL RULES Enter the number(s) and brief description(s) corresponding to the applicable special rule, if any (Complete Special Rule Supplemental Page and Attach): _____

9. SPECIAL FINDING that the crime was **SEXUALLY MOTIVATED** pursuant to KS Offender Registration Act9a. Did the court make a special finding that the crime was sexually motivated? Yes No9b. IF YES to 9a, did the court find that the act involved non-forcible sexual conduct, the victim was at least 14 and the offender has no more than 4 years older than the victim? (K.S.A. 22-4902(c)(15)) Yes No9c. IF YES to 9a and NO to 9b, PLEASE COMPLETE OFFENDER REGISTRATION SUPPLEMENT AND ATTACH TO JOURNAL ENTRY. Yes No10. Was offender determined by the Court to be an **AGGRAVATED HABITUAL SEX OFFENDER**? (K.S.A. 21-6626)IF YES, PLEASE COMPLETE SEX OFFENSE SUPPLEMENT AND ATTACH TO JOURNAL ENTRY. Yes No11. Is offender being sentenced pursuant to K.S.A. 21-6627 where offender is 18 years of age or older and the victim is less than 14 years of age? Yes No

IF YES, PLEASE COMPLETE SEX OFFENSE SUPPLEMENT AND ATTACH TO JOURNAL ENTRY.

12. Downward departure (K.S.A. 21-6818(a)) for a crime of extreme sexual violence (K.S.A. 21-6815)?

IF YES, PLEASE COMPLETE SEX OFFENSE SUPPLEMENT AND ATTACH TO JOURNAL ENTRY. Yes No

13. Did offender, as determined by the court, commit the current crime with a deadly weapon?

IF YES, PLEASE COMPLETE OFFENDER REGISTRATION SUPPLEMENT AND ATTACH TO JOURNAL ENTRY. Yes No14. Was offender convicted of a violation of K.S.A. 21-5703, Manufacture or attempted manufacture, K.S.A. 21-5705(a)(1). Cultivation, Distribution, Possession w/ intent to distribute opiates, opium or narcotic drugs or any stimulant in K.S.A. 65-4107(d)(1), (d)(3), (f)(1), or 21-5709(a). Possession of precursors w/ intent to manufacture? Yes No

IF YES, PLEASE COMPLETE OFFENDER REGISTRATION SUPPLEMENT AND ATTACH TO JOURNAL ENTRY.

15. Determination of domestic violence case designation

15a. Did offender, as determined by the trier of fact, commit a domestic violence offense? Yes No15b. If YES to 15a above, did the court find that offender had no prior domestic violence conviction or diversion, AND that offender did not use the present domestic violence offense to coerce, control or punish the victim? Yes No15c. If YES to 15a and NO to 15b, PLEASE CHECK THE DOMESTIC VIOLENCE CASE DESIGNATION BOX. DV Case

16. U.S. Armed Forces Treatment Eligibility (K.S.A. 21-6630):

16a Did offender serve in the armed forces of the U.S. in a combat zone as certified by the Kansas Commission on Veteran Affairs? Yes No16b Does offender suffer from injury and the injury is connected to service in a combat zone in the armed forces of the U.S.? Yes No16c Does offender's current conviction place the offender in a presumptive probation grid box? Yes NoIf YES to 16a through 16c, check box if court ordered treatment: Inpatient Outpatient Gov't Provided Treatment

Case No. 2020-CR-05

KSGA JOURNAL ENTRY OF JUDGMENT ADDITIONAL OFFENSES CONTINUED COUNT _____ (PAGE 2 OF 2)

SENTENCE IMPOSED:

1. Guideline Range Imposed: Aggravated Standard Mitigated Departure – COMPLETE SECTION V
2. Prison Term: KDOC 34 months (including enhancement sentence)
(Enter months above then check one of the following) Prison sentence imposed or Underlying with probation granted
**or Underlying with KDOC Drug Trmnt Prog. (min. 120 days)
 Enhancement Sentence- Drug with Firearm: 6 months 18 months (K.S.A. 21-6805(g))
Ballistic Resistant Material: 30 months (K.S.A. 21-6804(t))
 Off-grid Crime:
 Life - Minimum 15 yrs. Life - Minimum 20 yrs. Hard 25 Hard 40 Hard 50
 Per K.S.A. 21-6620, 21-6623 or 21-6627, if guidelines sentence greater than mandatory minimum _____ months.
 Life Imprisonment without Parole Death Penalty
3. Postrelease Supervision Term: 12 months 24 months 36 months 60 months (sex offense) – COMPLETE SECTION V
 Lifetime Postrelease (K.S.A. 22-3717(d)(1)(G)(i)) Lifetime Parole / Electronic Monitoring (K.S.A. 21-6604(r))
4. Felony DUI: 3rd D.U.I. 4th & Subs. D.U.I.
* No Postrelease or Probation allowed on or after July 1, 2011
Jail Sentence: _____ months _____ days Release is authorized after jail service of _____ months _____ days _____ hours
 Assigned to work release (K.S.A. 21-6604(a)(11)) or House Arrest: _____ months _____ days _____ hours
Post-Imprisonment Supervision (PIS) of 12 months supervised by: Court Services Community Corrections (check one)
 Additional one month jail if child <18 in vehicle (K.S.A. 8-1567(c)) (include in total)
5. Other Nongrid Felony and/or Misdemeanors: 3rd & Subs. Domestic Battery w/in 5 yrs. Animal Cruelty
 Jail Sentence Imposed: _____ months _____ days _____ hours Probation Imposed (Complete # 6)
 Probation granted after serving jail term. Jail Term: _____ months _____ days
 Assigned to work release (K.S.A. 21-6604(a)(11)) or House Arrest: _____ months _____ days _____ hours
6. Probation Term Imposed (select one): 12 months 18 months 24 months 36 months 60 months
 Drug Treatment for up to 18 months. (K.S.A. 21-6824)
 Extended Period (K.S.A. 21-6608(c)(5)) for: _____ months
 Other:
Probation Supervision to: Court Services Community Corrections Unsupervised
County Jail Time Imposed AS A CONDITION OF PROBATION: _____ days
 Withheld authority of court services/community corrections to impose intermediate sanction pursuant to K.S.A. 21-6604(s) or (t)
- Comments:
7. Additional Comments:

Case No. 2020-CR-05

SEX OFFENSE SUPPLEMENT (If applicable, complete and attach to the Journal Entry.)

SECTION A. Aggravated Habitual Sex Offenders – K.S.A. 21-6626

Was offender determined by the Court to be an **AGGRAVATED HABITUAL SEX OFFENDER?** (K.S.A. 21-6626)
Imprisonment for life without the possibility of parole; not eligible for parole, probation, assignment to a community correctional services program, conditional release, postrelease supervision, or suspension, modification or reduction of sentence.

SECTION B. Child Sex Offenses – K.S.A. 21-6627

Is offender being sentenced pursuant to K.S.A. 21-6627 where offender is 18 years of age or older and the victim less than 14 years of age?

(CHECK ONLY ONE)

First Offense

Downward departure to guidelines, subject to provisions of K.S.A. 21-6818; lifetime postrelease supervision. State v. Ballard, 289 Kan. 1000 218 P.3d 432 (2009) (Complete Section V – Departure Information, page 3 of Journal Entry of Judgment.)
 Mandatory minimum of Hard 25 years (300 months) or _____ months pursuant to guidelines, given offender's criminal history, whichever is greater; lifetime parole. K.S.A. 22-3717(u).

Second Offense

Mandatory minimum of Hard 40 years (480 months) or _____ months pursuant to guidelines, given offender's criminal history, whichever is greater; lifetime parole. K.S.A. 22-3717(u).

Third Offense – see Section A. above, Aggravated Habitual Sex Offender – Life Imprisonment Without Parole.

SECTION C. Downward Departure K.S.A. 21-6818 for a Crime of Extreme Sexual Violence

(NO downward dispositional departure allowed)

Downward durational departure limited to 50% of middle of the sentencing range? Yes No

SECTION D. Sexually Violent Crime - K.S.A. 22-3717(d)(2)

Was offender convicted of a sexually violent crime, but was not sentenced pursuant to K.S.A. 21-6627?

Yes – Lifetime postrelease supervision (K.S.A. 22-3717(d)(1)(G))
 No – Postrelease supervision term as otherwise indicated by law

Comments:

(If applicable, complete both pages and attach to the Journal Entry.)

SECTION A. REGISTRATION REQUIREMENT - Check appropriate boxes to indicate the REASON for registration.

See K.S.A. 22-4902(a)

 Offender required by court order to register for an offense not otherwise required as provided by the Kansas Offender Registration Act

19 Enter age of victim (K.S.A. 22-4904(a)(4))

 Offender required to register due to **SEX OFFENDER** status as indicated by any of the following:**Conviction of any of the following crimes:**

- Sexual Battery – K.S.A. 21-5505(a)
- Any conviction for any comparable offense
- Any attempt, conspiracy or criminal solicitation of a comparable crime

Conviction of any of the following crimes when one of the parties involved is under 18 years of age:

<input type="checkbox"/> Adultery – K.S.A. 21-5511	<input type="checkbox"/> Criminal Sodomy - K.S.A. 21-5504(a)
<input type="checkbox"/> Promoting Prostitution – K.S.A. 21-6420	<input type="checkbox"/> Buying Sexual Relations – K.S.A. 21-6421
<input type="checkbox"/> Lewd and Lascivious Behavior – K.S.A. 21-5513	<input type="checkbox"/> Conviction for any comparable offense
<input type="checkbox"/> Any attempt, conspiracy or criminal solicitation of an offense defined in this section	

Conviction of any of the following sexually violent crimes or adjudication as a juvenile offender for an act which if committed by an adult would constitute a sexually violent crime, UNLESS the court finds on the record that the act involved non-forcible sexual conduct, the victim was at least 14 and the offender not more than 4 years older than victim:

<input type="checkbox"/> Indecent Liberties With a Child – K.S.A. 21-5506(a)	<input type="checkbox"/> Criminal Sodomy – K.S.A. 21-5504(a)(3),(a)(4)
<input type="checkbox"/> Rape – K.S.A. 21-5503	<input type="checkbox"/> Indecent Solicitation of a Child – K.S.A. 21-5508
<input type="checkbox"/> Agg. Indecent Liberties With a Child – K.S.A. 21-5506(b)	<input type="checkbox"/> Sexual Exploitation of a Child – K.S.A. 21-5510
<input type="checkbox"/> Agg. Criminal Sodomy – K.S.A. 21-5504(b)	<input type="checkbox"/> Commercial Sexual Exploitation of a Child – K.S.A. 21-6422
<input type="checkbox"/> Agg. Indecent Solicitation of a Child – K.S.A. 21-5508(b)	<input type="checkbox"/> Agg. Incest – K.S.A. 21-5604(b)(1)
<input checked="" type="checkbox"/> Agg. Sexual Battery – K.S.A. 21-5505(b)	<input type="checkbox"/> Unlawful Sexual Relations - K.S.A. 21-5512
<input type="checkbox"/> Electronic Solicitation – K.S.A. 21-5509	<input type="checkbox"/> Promoting the Sale of Sexual Relations - K.S.A. 21-6420
<input type="checkbox"/> Agg. Human Trafficking, if committed in whole or in part for the purpose of sexual gratification of the defendant or another - K.S.A. 21-5426(b)	
<input type="checkbox"/> Any conviction for any comparable offense	
<input type="checkbox"/> Any attempt, conspiracy or criminal solicitation of a sexually violent crime	
<input type="checkbox"/> Any act determined beyond a reasonable doubt to have been sexually motivated AND the act did <u>not</u> involve non-forcible sexual conduct between a victim at least 14 and offender no more than 4 years older than victim – K.S.A. 22-4902 (c)(15)	

 Offender required to register due to **VIOLENT OFFENDER** status (Indicated by conviction of any of the following crimes):

<input type="checkbox"/> Capital Murder – K.S.A. 21-5401	<input type="checkbox"/> Murder in the First Degree – K.S.A. 21-5402
<input type="checkbox"/> Murder in the Second Degree - K.S.A. 21-5403	<input type="checkbox"/> Voluntary Manslaughter - K.S.A. 21-5404
<input type="checkbox"/> Involuntary Manslaughter - K.S.A. 21-5405(a)(1), (a)(2) or (a)(4)	<input type="checkbox"/> Kidnapping - K.S.A. 21-5408(a)
<input type="checkbox"/> Agg. Kidnapping - K.S.A. 21-5408(b)	<input type="checkbox"/> Criminal Restraint - K.S.A. 21-5411
<input type="checkbox"/> Agg. Human Trafficking, if not committed in whole or in part for the purpose of sexual gratification of the defendant or another – K.S.A. 21-5426(b)	(except by parent, and only when victim is less than 18 years of age)
<input type="checkbox"/> Any conviction for any comparable offense	
<input type="checkbox"/> Any out of state conviction for an offense that under the laws of Kansas would be an offense listed in this section	
<input type="checkbox"/> Any attempt, conspiracy or criminal solicitation of an offense defined in this section	
<input type="checkbox"/> Any person felony with court finding on the record that such felony was committed with a DEADLY WEAPON (On or after July 1, 2006)	
<input type="checkbox"/> Any conviction for any comparable person felony, committed with a DEADLY WEAPON	
<input type="checkbox"/> Any attempt, conspiracy or criminal solicitation of a person felony committed with a DEADLY WEAPON	

 Offender required to register due to **DRUG OFFENDER** status (Indicated by conviction of any of the following crimes):

- Manufacture or attempted manufacture of any controlled substance – K.S.A. 21-5703
- Possession of precursors with intent to manufacture any controlled substance – K.S.A. 21-5709(a)
- Cultivation, Distribution, Possession with intent to distribute opiates, opium or narcotic drugs or any stimulant in K.S.A. 65-4107(d)(1), (d)(3), or (f)(1) – K.S.A. 21-5705(a)(1), ONLY
- Any conviction for any comparable offense
- Any attempt, conspiracy or criminal solicitation of an offense defined in this section

SECTION B. REGISTRATION TERMS - check appropriate boxes indicating REQUIRED TERM of registration

See K.S.A. 22-4906

Offender must register for 15 YEARS after the date of parole, discharge or release, whichever date is most recent, or, if offender is not confined, 15 YEARS from the date of conviction due to conviction of any of the following crimes:

<input type="checkbox"/> Capital Murder - K.S.A. 21-5401	<input type="checkbox"/> Murder in the First Degree – K.S.A. 21-5402
<input type="checkbox"/> Murder in the Second Degree – K.S.A. 21-5403	<input type="checkbox"/> Voluntary Manslaughter – K.S.A. 21-5404
<input type="checkbox"/> Involuntary Manslaughter – K.S.A. 21-5405(a)(1), (a)(2) or (a)(4)	<input type="checkbox"/> Sexual Battery- K.S.A. 21-5505(a)
<input type="checkbox"/> Promoting the Sale of Sexual Relations - K.S.A. 21-6420	
<input type="checkbox"/> Criminal Restraint – K.S.A. 21-5411 (except by parent, and only when victim is <u>less than 18 years of age</u>)	
<input type="checkbox"/> Any act determined beyond a reasonable doubt to have been <u>sexually motivated</u> AND the act did <u>not</u> involve non-forcible sexual conduct between a victim at least 14 and offender no more than 4 years older than victim – K.S.A. 22-4902(a)(15)	
<input type="checkbox"/> Any conviction of a person felony w/ court finding on the record that such felony was committed with a DEADLY WEAPON- K.S.A. 22-4902(e)(2)	
<input type="checkbox"/> An offense not otherwise required, as provided by the Kansas Offender Registration Act, K.S.A. 22-4902(a)(5)	
<input type="checkbox"/> Manufacture or attempted manufacture of any <u>controlled substance</u> – K.S.A. 21-5703	
<input type="checkbox"/> Possession of precursors with intent to manufacture any <u>controlled substance</u> – K.S.A. 21-5709(a)	
<input type="checkbox"/> Cultivation, Distribution, Possession with intent to distribute <u>opiates, opium or narcotic drugs or any stimulant</u> in K.S.A. 65-4107(d)(1), (d)(3), or (f)(1) K.S.A. 21-5705(a)(1) <u>ONLY</u>	
<input type="checkbox"/> Any of the following crimes when one of the parties is <u>less than 18 years of age</u> :	
<input type="checkbox"/> Adultery - K.S.A. 21-5511	<input type="checkbox"/> Buying Sexual Relations – K.S.A. 21-6421
<input type="checkbox"/> Lewd and Lascivious Behavior – K.S.A. 21-5513	
<input type="checkbox"/> Any attempt, conspiracy or criminal solicitation of an offense defined in this section	

Offender must register for 25 YEARS after the date of parole, discharge or release, whichever date is most recent, or, if offender is not confined, 25 YEARS from the date of conviction due to conviction of any of the following crimes:

<input type="checkbox"/> Indecent Solicitation of a Child – K.S.A. 21-5508	<input type="checkbox"/> Electronic Solicitation – K.S.A. 21-5509
<input type="checkbox"/> Agg. Incest – K.S.A. 21-5604(b)(1)	<input type="checkbox"/> Indecent Liberties With a Child – K.S.A. 21-5506(a)
<input type="checkbox"/> Unlawful Sexual Relations – K.S.A. 21-5512	<input checked="" type="checkbox"/> Agg. Sexual Battery – K.S.A. 21-5505(b)
<input type="checkbox"/> Sexual Exploitation of a Child – K.S.A. 21-5510, <u>if the victim is at least 14 years of age but less than 18 years of age</u>	
<input type="checkbox"/> Promoting Prostitution – K.S.A. 21-6420, <u>if the victim is at least 14 years of age but less than 18 years of age</u>	
<input type="checkbox"/> Criminal Sodomy - K.S.A. 21-5504(a) <u>when one of the parties involved is less than 18 years of age</u>	
<input type="checkbox"/> Any attempt, conspiracy or criminal solicitation of an offense defined in this section	

Offender is subject to LIFETIME registration due to any of the following:

<input type="checkbox"/> 2 nd or Subsequent conviction of an offense requiring registration	
<input type="checkbox"/> Conviction of any of the following crimes:	
<input type="checkbox"/> Rape – K.S.A. 21-5503	
<input type="checkbox"/> Agg. Kidnapping – K.S.A. 21-5408(b)	
<input type="checkbox"/> Kidnapping – K.S.A. 21-5408(a)	
<input type="checkbox"/> Agg. Criminal Sodomy – K.S.A. 21-5504(b)	
<input type="checkbox"/> Criminal Sodomy – K.S.A. 21-5504(a)(3) or (a)(4)	
<input type="checkbox"/> Agg. Indecent Liberties With a Child – K.S.A. 21-5506(b)	
<input type="checkbox"/> Agg. Indecent Solicitation of a Child – K.S.A. 21-5508(b)	
<input type="checkbox"/> Agg. Human Trafficking – K.S.A. 21-5426(b)	
<input type="checkbox"/> Sexual Exploitation of a Child – K.S.A. 21-5510, <u>if the victim is less than 14 years of age</u>	
<input type="checkbox"/> Commercial Sexual Exploitation of a Child – K.S.A. 21-6422	
<input type="checkbox"/> Promoting Prostitution – K.S.A. 21-6420, <u>if the victim is less than 14 years of age</u>	
<input type="checkbox"/> Any attempt, conspiracy or criminal solicitation of an offense defined in this section	
<input type="checkbox"/> Duration determined by diversionary agreement, probation order or juvenile sentencing order: ____ years ____ months (K.S.A. 22-4906(i))	

APPENDIX C

IN THE SUPREME COURT OF THE STATE OF KANSAS

ORDER

The court denies all petitions for review filed in the following cases and notes any responses and replies.

- No. 121,770, *State of Kansas v. Daniel Roman Munoz*
- No. 124,328, *State of Kansas v. Erick W. Ogwangi*
- No. 124,884, *State of Kansas v. Steven Matthew Speakman*
- No. 125,191, *State of Kansas v. Joseph P. Whiteker*
- No. 125,463, *State of Kansas v. Travis D. Smith*
- No. 125,486, *State of Kansas v. Clinton D. Decaire*
- No. 125,488, *State of Kansas v. Dustin Stoughton Sullivan*
- No. 125,623, *State of Kansas v. Efe Clinton Osaghae*
- No. 125,701, *State of Kansas v. Quentin Derrel Blackman*
- No. 125,751, *Corbin J. Breitenbach v. State of Kansas*
- No. 125,752, *State of Kansas v. Deandrew V. Dixon*

Dated this 30th day of August 2024.

FOR THE COURT



MARLA LUCKERT
Chief Justice

APPENDIX D

IN THE DISTRICT COURT OF ELLIS COUNTY, KANSAS

STATE OF KANSAS,

Plaintiff

vs.

No. 2020-CR-05

EFE CLINTON OSAGHAE,

Defendant.

PLEA AGREEMENT

COMES NOW, the parties in the above captioned case, the State of Kansas by and through Robert Anderson Jr, Ellis County Attorney, defendant Efe Clinton Osaghae and retained counsel for defendant Paul Oller, Attorney.

The parties, by this written agreement, have reached a plea agreement in the above captioned case – this agreement is also meant to dispose of all unfiled or unresolved matters that have occurred concerning the Defendant prior to the execution of this agreement.

The State agrees to amend the complaint in this matter to reflect only two counts, both of which shall be charges for "Aggravated Sexual Battery" in violation of K.S.A. 21-5505(b)(1)/(c)(2), both being severity level 5 person felonies. Count one will concern N.M. and count two will concern G.D.

The Defendant agrees to plead, specifically, "GUILTY" to both counts. All other counts and/or unfiled reports or allegations concerning any criminal activity occurring in Ellis County, Kansas, alleged against the defendant, and having occurred prior to the execution of this document shall not be prosecuted pursuant to this plea agreement. Specifically, the State will not file any new or additional charges stemming from allegations made by N.M.; G.D.; S.Z.; or A.V. The State is not aware of any other reports, unfiled cases, or outstanding allegations of criminal conduct concerning the Defendant – the intent of this provision is for the Defendant to know that he need not fear any future prosecution in Ellis County, Kansas for acts that occurred prior to execution of this document.

At sentencing, it is anticipated the Defendant's criminal history score will be an "I" history placing him in the 5-I box for both counts. If accurate, the sentencing court could sentence the defendant to 34, 32, or 31 months for each count (both offenses falling within a "border box"). The State will be requesting that the Court sentence the Defendant to 68-months with the Kansas Department of Corrections and that any motion for dispositional departure or durational departure be denied. The Defendant is free to request any lawful sentence and/or departure.

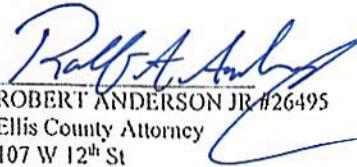
The parties acknowledge that N.M. and G.D. have been consulted with concerning this plea agreement. The State asserts that N.M. is not completely satisfied with this agreement. The parties acknowledge that N.M. and G.D. will be entitled to appear and address the Court at sentencing.

Regardless of disposition, the Defendant acknowledges that pleading to two counts of "Aggravated Sexual Battery" will elevate his criminal history score to "B" for life and that he will be required to register as a sex-offender.

The parties agree that following the plea hearing, items seized as evidence from N.M. (bedding, a childhood blanket, and tapestry) may be released from evidence and returned to N.M. (an "Order Releasing Evidence" shall be drafted and filed by the State following the plea hearing).

STATE VS. EFE OSAGHAE
CASE NO. 2020-CR-05
PLEA AGREEMENT, PG. 2 OF 2

Agreed this 7th day of ^{April} March, 2022.


ROBERT ANDERSON JR #26495
Ellis County Attorney
107 W 12th St
Hays, KS 67601


PAUL OLLER #12649
Attorney for Defendant
113 W 13th
Hays, KS 67601


EFE CLINTON OSAGHAE
Defendant

ELECTRONICALLY FILED
2022 Apr 07 PM 2:55
CLERK OF THE ELLIS COUNTY DISTRICT COURT
CASE NUMBER: 2020-CR-000005

IN THE DISTRICT COURT OF ELLIS COUNTY, KANSAS

STATE OF KANSAS,

Plaintiff

vs.

No. 20CR-05
Division No. 2

EFE CLINTON OSAGHAE,
YOB 1998 SSN XXX-XX-0330

Defendant.

AMENDED COMPLAINT

(Pursuant to K.S.A. Chapter 21 & 22)

Robert A. Anderson, Jr., Ellis County Attorney, of lawful age, being first duly sworn on oath, for a Complaint against the above shown defendant, alleges and states:

COUNT ONE

That on or about the 8th of December, 2019, the above named defendant, EFE CLINTON OSAGHAE, then and there being in Ellis County, Kansas did unlawfully, feloniously and knowingly touch a person 16 or more years of age, to-wit: N.M. (YOB: 2000) who did not consent to the touching, with the intent to arouse or satisfy the sexual desires of the offender when the victim is overcome by force or fear, to-wit: defendant forced N.M.'s hand around his penis and forced her to stimulate his penis, in violation of K.S.A. 2018 Supp. 21-5505(b)(1)/(c)(2), **Aggravated Sexual Battery**, a level 5 person felony, with offender registration for twenty-five years pursuant to K.S.A. 22-4901, et seq.

COUNT TWO

That on or about the 3rd day of December, 2016, the above named defendant, EFE CLINTON OSAGHAE, then and there being in Ellis County, Kansas did unlawfully, feloniously and knowingly touch a person 16 or more years of age, to-wit: G.D. (YOB: 1995), who did not consent to the touching, with the intent to arouse or satisfy the sexual desires of the offender when the victim is overcome by force or fear, to-wit: defendant, while pinning G.D. to her bed, fondled G.D.'s breasts and vaginal area, in violation of K.S.A. 2016 Supp. 21-5505(b)(1)/(c)(2), **Aggravated Sexual Battery**, a level 5 person felony, with offender registration for twenty-five years pursuant to K.S.A. 22-4901, et seq.

WITNESS my hand in Hays, Ellis County, Kansas, this 7th day of April, 2022



COMPLAINANT

Witnesses: N.M. (YOB: 2000), G.D. (YOB: 1995) Lilly Brae Duncan, SANE Nurse, Hays Medical Center Staff, and Kelly Bradshaw

Warrant issued-appearance bond to be required \$_____.

SUBSCRIBED AND SWORN to before me this 7th day of April, 2022


NOTARY PUBLIC



APPENDIX E

1 IN THE DISTRICT COURT OF ELLIS COUNTY, KANSAS

2 STATE OF KANSAS,)
3 Plaintiff,)
4 V.) CASE NO: 2020-CR-05
5 EFE C. OSAGHAE,) APPELLATE: 125623
6 Defendant.)

TRANSCRIPT OF ENTRY OF GUILTY PLEA HEARING

HELD APRIL 8, 2022

10 Transcript of the proceedings had before the
11 Honorable Glenn R. Braun, District Judge of the 23rd
12 Judicial District of the State of Kansas on April 8,
13 2022. (Digitally recorded.)

APPEARANCES

18 **For the State:** ROBERT A. ANDERSON, JR
19 Ellis County Attorney
20 Ellis County Courthouse
107 West 12th Street
Hays, Kansas 67601

21 **For the Defendant:** PAUL OLLER
22 Oller Law Office
23 113 West 13th Street
P.O. Box 851
Hays, Kansas 67601

4 MR. ANDERSON: Thank you, Your Honor.

5 May it please the Court. The State of Kansas
6 appears by the Ellis County Attorney, Robert
7 Anderson, Jr.

16 MR. ANDERSON: Yes, Your Honor.

17 MR. OLLER: Yes, Your Honor.

21 MR. ANDERSON: Yes, Your Honor. That was
22 filed yesterday, and I believe the defendant has a
23 copy of that amended complaint at table.

24 MR. OLLER: Your Honor, I have received a
25 copy of the amended complaint charging Mr. Osaghae

1 with two counts of aggravated sexual battery. One
2 is an amendment from the charge that was originally
3 -- or the complaint that was originally filed in
4 this case. And then it adds in a second count
5 concerning the allegations that were made as a part
6 of the 60-455 hearing that the Court I think is
7 aware of.

8 The plea agreement basically resolves both of
9 those incidents in a -- in this matter, Your Honor.

10 THE COURT: Mr. Osaghae, have you
11 received a copy of the amended complaint?

12 THE DEFENDANT: Yes, I have, Your Honor.

13 THE COURT: And have you gone over that
14 document with Mr. Oller?

15 THE DEFENDANT: Yes, I have, Your Honor.

16 THE COURT: Do you understand it?

17 THE DEFENDANT: Yes, I do, Your Honor.

18 THE COURT: Mr. Osaghae, as to Count One,
19 and Count Two, both being identical charges of
20 aggravated sexual battery, severity level five
21 person felonies; what pleas do you enter?

22 THE DEFENDANT: Guilty.

23 THE COURT: All right. You hesitated
24 there, and you and I are going to have a
25 conversation here for a while, and whenever I see

1 hesitation, it's my duty to make sure that you
2 understand the plea you are making. All right?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Now, are you sure as to what
5 you want to do today?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Okay. Mr. Osaghae, you
8 appear to be soft-spoken. I know you are nervous,
9 I can see that, and I understand that. This is a
10 very serious matter. I'm going to ask you to speak
11 up just a little bit. The microphone here is very
12 good, but I want to make sure that we get your
13 answers, because we're recording this, and as a
14 result it's our official record. So we need to
15 make sure we have a good record. Okay?

16 THE DEFENDANT: Yeah.

17 THE COURT: A little louder, please.

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Very good. Thank you.

20 Now, Mr. Osaghae, I mentioned that I have
21 this acknowledgement of rights form. It's a rather
22 lengthy document that sets out some of the rights
23 you are surrendering by entering a plea. Do you
24 remember going over that document with Mr. Oller?

25 THE DEFENDANT: Yes, we did, Your Honor.

1 THE COURT: Did you understand it at the
2 time you did it?

3 THE DEFENDANT: Yes, I did, Your Honor.

4 THE COURT: Even though you've done that,
5 you and I need to have this conversation on the
6 record so the Court can be assured the pleas of
7 guilty you just entered were voluntarily and
8 understandably made. Are you ready to do that?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: All right. You and I have
11 already talked about I need audible responses with
12 enough volume that we clearly pick it up on the
13 record.

14 And in addition, Mr. Osaghae, if at any time
15 you do not understand something, or you have a
16 question, will you agree to stop me and either ask
17 Mr. Oller or I to answer that question for you?

18 THE DEFENDANT: Yes.

19 THE COURT: All right.

20 You understand you do not have to enter pleas
21 of guilty. You could have a trial on the original
22 charges. The trial would be to a jury of 12
23 persons, and their verdict would have to be
24 unanimous before you could be convicted of any
25 offense.

1 Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: You have the right to an
4 attorney at all stages of the proceedings including
5 the trial, and if at any point in time you could
6 not afford an attorney, the Court would appoint one
7 to represent you.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: The State has the burden of
11 proof to demonstrate your guilt beyond a reasonable
12 doubt at trial. That burden must be met as to each
13 element of any crime you are charged with before
14 you could be convicted of that crime.

15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: You are presumed innocent at
18 all stages of the proceedings including the trial,
19 and it's always the State's burden to prove you
20 guilty beyond a reasonable doubt. You do not have
21 to prove you were not guilty. You do not have to
22 introduce any evidence.

23 Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: Even though you are not

1 required to produce evidence at trial, you have the
2 right to do so, and if you requested, the court
3 would issue subpoenas, those are court orders,
4 requiring witnesses you select to appear to come
5 testify on your behalf. By pleading guilty to
6 these two charges, and if those pleas are accepted,
7 you will be waiving your right to present a
8 defense.

9 Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: If you had a trial in this
12 case you would have the right to face all witnesses
13 called by the State and to have your attorney
14 cross-examine those witnesses about any matter they
15 testify about. This is your constitutional right
16 known as the right to confrontation of witnesses.
17 By pleading guilty to those two charges, and if
18 those pleas are accepted, you will be waiving that
19 constitutional right.

20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: If you had a trial in this
23 case, you would decide whether to testify.
24 Mr. Oller would give you his advice as to what he
25 believes is in your best interest, but the final

1 decision as to whether you testify rests solely
2 with you. If you went to trial after you chose to
3 testify, the county attorney could cross-examine
4 you about any matter you testified about. If you
5 chose not to testify, and if you asked me to do so,
6 I would instruct the jury -- do you need a break,
7 Mr. Osaghae? Are you okay?

8 MR. OLLER: Your Honor, let me -- if I
9 may, let me give you a little background.

10 I've -- I met with Mr. Osaghae a couple weeks
11 ago. We spent a considerable period of time
12 talking about trial, plea options. Some of the
13 emotion that Mr. Osaghae is showing here today has
14 to do with a realization that with this plea, his
15 life is dramatically changed.

16 He was very successful at Fort Hays in
17 computer science. He had an internship with Koch
18 the summer prior to -- or the summer following that
19 was taken away from him, and he has found it very
20 difficult, although he graduated from Fort Hays,
21 he's found it very difficult to find employment.
22 He is currently employed.

23 But some of this is a sense of -- a sense of
24 realization that life is going to be more difficult
25 for him. And there's also a sense of this that is

1 frankly just shame that he has been put -- Efe is
2 Nigerian, and part of his culture, part of his
3 heritage, part of his family is that -- is that he
4 should not be in this -- he feels a great deal of
5 shame for even being here.

6 So it is not a matter of this is not the
7 right thing to do, it is just that this is an
8 emotionally difficult thing for him to do, partly
9 because of a realization of the consequences of
10 registration, of the conviction, and part of it
11 simply has to do with feeling shame.

12 Is that fair, Efe?

13 THE DEFENDANT: Yes, it is.

14 THE COURT: Okay. And, Mr. Osaghae,
15 that's perfectly understandable and the Court
16 appreciates that this, as I said, is a difficult
17 thing for you to go through. But my responsibility
18 as the judge is to make sure the plea today is
19 voluntarily and understandingly made. And if your
20 emotions are such that you need a break, you need
21 to catch your breath, you need a moment to compose
22 yourself, all you have to do is let me know. Okay?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: All right. So are you ready
25 to proceed?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Okay. But you will not -- I
3 want you to know, there is no negative consequence
4 if you say, "Judge, I need a break. I just need to
5 step out and catch my breath or walk around and
6 stretch, whatever." It's not going to affect
7 anything I do in this case.

8 You understand that?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Okay. So you want to go
11 forward?

12 THE DEFENDANT: Yes, Your Honor.

18 And if you chose to testify, the county
19 attorney could cross-examine you, and if you chose
20 not to testify, and you asked me to do so, I would
21 instruct the jury that they could not consider your
22 failure to testify in any way in arriving at their
23 verdict in the case.

24 This is your constitutional right known as
25 the right against self-incrimination. By pleading

1 guilty today, you have incriminated yourself, and
2 if the Court accepts those pleas, you've waived
3 that constitutional right.

4 Do you understand that?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: All right. If you had a
7 trial in this case and you were not satisfied with
8 the verdict, you would have the right to appeal to
9 the Kansas Appellate Courts. If you needed the
10 help of a lawyer, and you qualified, the Court
11 could appoint counsel to assist you with the
12 appeal. By pleading guilty today you are waiving
13 most of your appeal rights.

14 Do you understand that?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: All right. If your plea is
17 accepted, as I've told you, the Court will find you
18 guilty. The next thing that will occur in your
19 case will be sentencing. Your sentence will be
20 determined by two factors, one that we know for
21 certain, the level of the offenses you pled to.
22 These are level five felonies. The other, while
23 we're not certain about, is reflected in your plea
24 agreement, and that's called your criminal history.

25 The plea agreement indicates that the

1 attorneys think you are an I history, the lowest
2 history there is. But since we don't know that for
3 certain, you and I need to review the full range of
4 sentences that may apply in this case.

5 The record will reflect that Mr. Oller has
6 put in front of you a copy of the Kansas Sentencing
7 Grid. And there's two grids on that colored chart.
8 It's the top one that applies to you, because this
9 is not a drug case. And if you will follow along
10 with me, you will note that with a level five
11 felony, depending upon your criminal history, you
12 could be sentenced to as little as 31 months or
13 potentially as much as 136 months in the
14 penitentiary, and you could be fined for each count
15 up to \$300,000. But I will tell you the Court
16 rarely gives fines; however, the possibility
17 exists.

18 Do you understand that?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Now because this is a plea
21 agreement, I want to review one other thing.

22 Your original charges in this case, Count One
23 was rape, a level one felony, and Count Two was
24 aggravated criminal sodomy, also a level one. So
25 just as a comparison, if you will go up on the

1 chart, you will note for a level one felony, you
2 could be sentenced to as little as 147 months and
3 potentially as much as 653 months in the
4 penitentiary.

5 Do you see that?

6 THE DEFENDANT: Yes, I do, Your Honor.

7 THE COURT: And again, the fine would be
8 up to \$300,000.

9 So through the efforts of your attorney and
10 the negotiations that occurred, your -- if your I
11 criminal history is correct, you would be looking
12 at 34, 32 or 31 months.

13 Do you see that?

14 THE DEFENDANT: Yes, I do.

15 THE COURT: And if you were convicted of
16 the original charges, you would be looking at 165,
17 155 or 147 months.

18 Do you see that?

19 THE DEFENDANT: Yes.

20 THE COURT: So, through the negotiations,
21 your attorney has reduced your potential prison
22 sentence -- you are good at math I take it, right?

23 THE DEFENDANT: Relatively.

24 THE COURT: All right. So tell me what
25 it's been reduced by, what factor, from 150 -- just

1 using the middle number, which is what generally
2 the courts use, 155 to 32. That's five times,
3 isn't it? You take five times 32 you get what?
4 160. All right? And it could have been 155. So.

5 He, through his efforts on your behalf, he
6 has reduced this potential sentence by five times.
7 Understood?

8 THE DEFENDANT: Understood.

9 THE COURT: And that's what you factored
10 in in agreeing to enter these pleas today, isn't
11 it?

12 THE DEFENDANT: Yes.

13 THE COURT: In other words, you said, "If
14 I go to trial and I'm convicted of the original
15 charges, I would be looking at 155 months, and if
16 the judge made them consecutive, I could be in
17 prison 310 months." Right? Mr. Oller explained
18 that to you. Right?

19 THE DEFENDANT: Yes, he did.

20 THE COURT: And now, the most the Court
21 could do is sentence you to 64 months. 300 to 64,
22 again, five times less. Right?

23 THE DEFENDANT: Yes.

24 THE COURT: And, Mr. Osaghae, that's one
25 of the things you used in determining to enter the

1 plea today, correct?

2 THE DEFENDANT: Correct.

3 THE COURT: All right. The court
4 services office will determine your criminal
5 history and include it in a report called a
6 Presentence Investigative Report. A copy of that
7 will be furnished to you, Mr. Oller, the county
8 attorney and to the Court.

9 Mr. Osaghae, when you get that report you
10 will need to go to page 10. Look at that
11 carefully, because that's where your criminal
12 history will be. And there may be nothing on
13 there, it may be blank. I don't know.

14 But you need to look at it carefully, because
15 if you see any mistakes or errors, you must let
16 Mr. Oller know prior to your sentencing because he
17 will either need to get it corrected or file a
18 written objection.

19 Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: All right. Any requests for
22 restitution or any unusual fees or costs in this
23 case, Mr. Anderson?

24 MR. ANDERSON: Your Honor, I think this
25 would be a good time to state for the record and

1 for the Court that the victim, or actually both
2 victims in this matter, if the Court does accept
3 the plea and find him guilty, have been notified of
4 today's hearing. They were emailed and a letter
5 was sent on 3/28/22 and that does apply to both NM
6 and GD.

7 In review of the file, it does not appear
8 that any sexual assault nurse examination occurred.
9 There could be a request for restitution. I have
10 not received a victim impact statement, but I do
11 know that NM as a result of the events that
12 occurred to her, received a cut to the roof of her
13 mouth that became infected, and she ended up in the
14 hospital, all of those things.

15 She's not indicated to the State that she
16 would request restitution at this time. If she
17 does, obviously the State will get that, whatever
18 that request amount is to the defense counsel, and
19 we will determine whether or not we need to have an
20 additional hearing.

21 Additionally, I don't see any KBI lab fee or
22 any other unusual costs.

23 THE COURT: All right. Mr. Osaghae,
24 we've mentioned this plea agreement. The Court
25 reviewed it prior to coming in today. It's a

1 two-page document. The second page contains your
2 signature, Mr. Oller's, and Mr. Anderson's. The
3 first page contains the content of the plea.

4 That means the three of you have entered into
5 a binding written account. But what you have to
6 remember is this: It's not binding on the Court.
7 As long as I stay within the law and the guidelines
8 that you and I talked about, I can sentence you
9 even if it's different than what you bargained for.

10 Do you understand that?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: All right. Mr. Osaghae, I'm
13 required to ask you, it's not because you are from
14 Nigeria, I ask every single defendant, because it's
15 required by law. You can read and write the
16 English language, correct?

17 THE DEFENDANT: Yes.

18 THE COURT: With the assistance of
19 Mr. Oller, have you been able to understand all the
20 proceedings and pleadings up to this point?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: All right.

23 Have you ever previously been diagnosed with
24 an alcohol or drug problem?

25 THE DEFENDANT: No, Your Honor.

1 THE COURT: Have you been diagnosed with
2 a mental illness or mental disease?

3 THE DEFENDANT: No, Your Honor.

4 THE COURT: Is there anything you can
5 think of, anything at all, that would be impairing
6 your judgment today about entering this plea or
7 affecting your ability to understand the plea you
8 entered today?

9 THE DEFENDANT: No, Your Honor.

10 THE COURT: Got a clear head about what
11 you are doing?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And have you understood
14 everything up to this point?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Have you had enough time to
17 talk to Mr. Oller about the case?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Has he been able to answer
20 most of your questions?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Are you generally satisfied
23 with his services?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Have you been threatened with

1 anything other than possible conviction of the
2 original charges that you and I talked about to get
3 you to enter your plea today?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: Have you been promised
6 anything more than what is in the plea agreement to
7 get you to enter your plea?

8 THE DEFENDANT: No, Your Honor.

9 THE COURT: As you sit here today, do you
10 believe the two guilty pleas you entered were
11 voluntary acts on your part?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Do you have any questions
14 about those pleas before I accept them?

15 THE DEFENDANT: No, Your Honor.

16 THE COURT: Do you still want me to
17 accept the pleas?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: All right. Before I can do
20 that, I have to have a factual basis.

21 Generally, I ask you to provide that since
22 you pled guilty. However, in these kinds of cases,
23 most defendants have a very difficult time putting
24 on the record the necessary facts, so I'm going to
25 ask Mr. Anderson to put those of record at this

1 time.

2 MR. ANDERSON: Your Honor, in this matter
3 there was a contested preliminary hearing held in
4 which NM did testify. I believe her testimony
5 would suffice to establish facts sufficient to
6 support the conviction for Count One.

7 Additionally, as the Court is aware, because
8 I know the Court was the judge during this hearing,
9 the State had filed a 60-455D motion in which GD
10 testified at that hearing, and I believe her
11 testimony would provide sufficient evidence to find
12 the defendant guilty of Count Two.

13 THE COURT: And the Court will note that
14 it did hear the preliminary hearing and recalls the
15 testimony of the two young ladies and agrees that
16 it would be sufficient to -- a factual basis for
17 the pleas to Count One and Two of the amended
18 complaint.

19 Mr. Oller, would you agree?

20 MR. OLLER: Yes, Your Honor. I believe
21 that the --

22 THE COURT: If believed by a jury.

23 MR. OLLER: Yeah. We -- there was --
24 this was a case where there was a question of
25 consent, at least in the allegations concerning MN.

1 And we agree that if believed by a jury that that
2 is -- if they believed NM, that they would find
3 Mr. Osaghae guilty of aggravated sexual battery or
4 worse.

5 THE COURT: And, Mr. Osaghae, you had
6 discussed, as Mr. Oller pointed out, with him
7 extensively this plea; is that correct?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: And Mr. Oller went over with
10 you the evidence at the preliminary hearing, and
11 that if this case went to a jury, and they believed
12 the two victims, that you could be convicted of far
13 serious offenses than what you pled to; is that
14 correct?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: And you heard the testimony
17 of those two ladies, did you not?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: And you know that if a jury
20 believed them over whatever defense you put on,
21 that you could be convicted of more serious
22 offenses. Correct?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And you factored all of that
25 into your decision to enter a plea today, correct?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Very good.

5 MR. OLLER: No, Your Honor.

15 MR. ANDERSON: Yes, Your Honor.

1 Registration Act, I am obligated to read to you as
2 follows: "You have been convicted of offenses
3 requiring registration as provided by the Kansas
4 Offender Registration Act. You have three business
5 days to report to the registering law enforcement
6 agency in the county of the conviction and the
7 registering law enforcement agency in any place
8 where you reside, maintain employment, or attend
9 school.

10 "You must complete the registration form with
11 all information and any updated information
12 required for registration as provided in K.S.A.
13 22-4907 and amendments thereto."

14 The registration requirement for this offense
15 is for the next 25 years. Do you understand that?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: All right. And, Mr. Osaghae,
18 what that means is Mr. Oller will direct you, you
19 need to go to the sheriff's office at the
20 conclusion of the hearing today and fill out the
21 form.

22 I believe you are residing in the Kansas City
23 area; is that correct?

24 THE DEFENDANT: St. Louis, Missouri.

25 THE COURT: St. Louis?

1 THE DEFENDANT: St. Louis, Missouri, yes.

6 Do you understand that?

7 THE DEFENDANT: Yes, Your Honor.

10 THE DEFENDANT: Yes, Your Honor.

14 Do you understand that?

15 | THE DEFENDANT: Yes, Your Honor.

18 Do you understand that?

19 THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. Very good.

21 Okay, Mr. Oller, did you get the longer

22 version of the registration?
23 MR. OLLER: I do have a copy of the

24 longer version. Mr. Osaghae and I went through
25 that. He has signed it, Your Honor. I would like

1 to get two copies of this before I go downstairs so
2 I can give one to Roberta and have one for
3 Mr. Osaghae.

4 THE COURT: Okay. All right.

5 Mr. Anderson, you indicated there was a
6 question of a motion regarding some evidence.

7 MR. ANDERSON: Yes, Your Honor. And this
8 is covered in the plea agreement.

9 The State would move that the Court order
10 release and return of evidence to wit: Bedding, a
11 childhood blanket and tapestry all belonging to NM.
12 The items were seized during the investigation of
13 this case, and now they are no longer needed for
14 trial.

15 MR. OLLER: No objection.

16 THE COURT: The Court is not going to
17 grant it at this time for this reason: The Court
18 is going to withhold granting it until after
19 sentencing. As both of you are aware, I'm not
20 saying -- if Mr. Osaghae would fire Mr. Oller, hire
21 new counsel, file a motion to withdraw his plea,
22 there's a different standard that applies either
23 presentencing and post sentencing. Another judge
24 may hear this and a judge may grant it and the
25 evidence would already be out of the State's

1 possession and could potentially affect the
2 prosecution.

3 So the Court will defer or delay ruling and
4 will grant it once sentencing is concluded.

5 Understood?

6 MR. ANDERSON: Yes, Your Honor.

7 MR. OLLER: And I -- for the record, I
8 have evaluated that evidence that Mr. Anderson is
9 requested. I don't think it has any evidentiary
10 value in this case, because there's nothing on
11 there or in there.

12 But I understand the Court's position.

13 THE COURT: I just don't want to create
14 an issue down the road that's unnecessary. We've
15 had it this long and another 30 days or 40 days
16 won't make that big of a difference, so.

17 Now, Mr. Osaghae, you have a couple things
18 you need to do. Number One, Ms. Arias, who is with
19 the court services office, is present in the
20 courtroom here today. She needs to meet with you
21 to get the presentence report form filled out to
22 get her started.

23 Then you need to go on the sheriff's
24 department, and Mr. Oller I'm sure will accompany
25 you over there and get you registered. Understood?

1 THE DEFENDANT: Understood.

2 THE COURT: All right. Anything else
3 before we go off the record?

4 MR. ANDERSON: Nothing from the State,
5 Your Honor.

6 MR. OLLER: No, Your Honor.

7 THE COURT: Very good.

8 We will be adjourned.

9 (A recess was taken.)

15 ADMINISTRATIVE ASSISTANT: Which is why I
16 wanted to know if you wanted to use one of the days
17 that we had set aside for the trial.

18 MR. OLLER: I can't get my stuff done
19 before then.

20 ADMINISTRATIVE ASSISTANT: Cannot?

21 MR. OLLER: That was -- I mean that's end
22 of May, and I think it's of benefit to the Court to
23 get a sex offender risk assessment. So I will be
24 having my client do that. I will be contacting --
25 one of the conditions of Mr. Osaghae's bond was to

1 be that he was to be in St. Louis, not back here
2 unless he was here for court. There is a Clinical
3 Associates in Kansas City who does sex offender
4 registration, and I think Clinical Associates ran
5 the sex offender treatment program for Northwest
6 Kansas Community Corrections.

7 My other option is to have Mr. Steven,
8 Dr. Steven, who I think the Court was aware of --

9 THE COURT: Right.

10 MR. OLLER: -- do that evaluation. But I
11 just -- I haven't gotten that arranged in part
12 because probably either of those will bring him
13 back to the state of Kansas other than for court.

14 THE COURT: All right. The Court will
15 allow as a condition of bond the defendant to go
16 get a sexual offender evaluation, even if it's in
17 the state of Kansas. He can travel for that
18 purpose.

19 MR. OLLER: And for scheduling purposes,
20 will the Court be open to having whoever does that
21 evaluation testify by Zoom?

22 THE COURT: Yes. The Court will allow
23 that.

24 MR. OLLER: Okay. I wanted to clear
25 that.

8 However, I don't want to stretch this out too
9 long either, Mr. Oller. I know you've got some
10 lengthy jury trials coming up in the near future,
11 so let's -- let's do this: If we haven't heard
12 from you in 30 days, you'll hear from me.

13 MR. OLLER: Yeah. I'll -- that's -- I
14 will definitely get this scheduled and then figure
15 out when we can get the sentencing done, and all of
16 that of course is in flux today, so.

1 want to delay it too long either. So, just stay in
2 touch with us and let us know how things are
3 progressing.

4 MR. OLLER: I will do that. Thanks.

5 THE COURT: All right. Mr. Anderson?

17 Okay. Now we'll be adjourned. Thank you.

18 MR. OLLER: Thank you.

* * * *

CERTIFICATE

2 STATE OF KANSAS)
3 COUNTY OF ELLIS))
) ss.

5 I, Lynelle Gottschalk, Certified Court
6 Reporter for the State of Kansas and the regularly
7 appointed, qualified and acting official reporter for
8 the 23rd Judicial District of the State of Kansas, do
9 hereby certify that, as such official reporter, I have
10 prepared the foregoing transcript from the official
recording made at the time of the hearing, as indicated
by the files and records of this court in Case Number
2020-CR-05, State of Kansas, Plaintiff, vs. Efe C.
Osaghae, Defendant, heard on April 8, 2022, before the
Honorable Glenn R. Braun, Judge of the 23rd Judicial
District.

11 I further certify that at the request of
12 Corrine E. Gunning, Appellate Defender Office, a
13 transcript was typed and that the foregoing transcript
consisting of 31 typewritten pages is a true and
correct transcript, all to the best of my knowledge and
ability.

15 SIGNED, OFFICIALLY SEALED, AND EFILED WITH THE
CLERK OF THE DISTRICT COURT OF ELLIS COUNTY, KANSAS
this 17th day of January, 2023.

/s/ Lynelle Gottschalk
Certified Court Reporter
Kansas Supreme Court No. 1337

APPENDIX F

1 IN THE DISTRICT COURT OF ELLIS COUNTY, KANSAS

2 STATE OF KANSAS,)
3 Plaintiff,)
4 V.) CASE NO: 2020-CR-5
5 EFE CLINTON OSAGHAE,)
6 Defendant.)

TRANSCRIPT OF PRELIMINARY HEARING HELD JULY 15, 2020

9 Transcript of the proceedings had before the
10 Honorable Glenn R. Braun, District Judge of the 23rd
11 Judicial District of the State of Kansas on July 15,
12 2020.

APPEARANCES

17 **For the State:** THOMAS J. DREES
18 Ellis County Attorney
19 Ellis County Courthouse
107 West 12th Street
Hays, Kansas 67601

20 For the Defendant: PAUL OLLER
21 Oller Law Office
22 113 West 13th Street
P.O. Box 851
Hays, Kansas 67601

1 **I N D E X**

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1 THE COURT: The court will call State of
2 Kansas versus Efe Osaghae. Case number 20-CR-5.

3 Could we have announcement of appearances.

4 MR. DREES: May it please the court. The
5 State appears by Thomas J. Drees, Ellis County
6 Attorney.

7 MR. OLLER: Your Honor, Efe Osaghae
8 appears in person and with counsel Paul Oller.

12 MR. OLLER: Your Honor, I understand
13 there's going to be two witnesses today. I would
14 ask that there be sequestration. I don't know who
15 Mr. Drees is going to call first.

16 THE COURT: Mr. Drees, you will have to
17 sequester your witnesses.

18 And who are the witnesses that you have
19 today?

20 MR. DREES: Your Honor, we will start
21 with Officer Kelly Bradshaw, and then we'll call
22 Natalie.

1 remain outside the courtroom while the testimony is
2 obtained from the officer. And if we recess or
3 take a break, you are not allowed to communicate
4 with the other witness regarding their testimony.
5 Do you understand that? You can't say "What did
6 they ask you?" or "What did they say?" You are not
7 allowed to do that. That's part of the
8 sequestration rule.

9 Do you understand that? All right. Very
10 good. Thank you.

11 Mr. Oller, any other preliminary matters from
12 defense?

13 MR. OLLER: No, Your Honor.

14 THE COURT: Mr. Drees, anything that you
15 need to address prior to presentation of evidence?

16 MR. DREES: No, Your Honor.

17 THE COURT: All right. Mr. Drees, you
18 may call your first witness.

19 MR. DREES: Call Kelly Bradshaw.

20 **KELLY BRADSHAW**

21 called as a witness on behalf of the
22 State, having first been duly sworn, testified
23 as follows:

24 THE COURT: Mr. Drees, you may examine.

25 MR. DREES: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. DREES:

3 Q Please state your name for the court.

4 A Kelly Bradshaw.

5 Q Your occupation?

6 A Police officer.

7 Q What training and experience do you have to hold
8 that position?

9 A I was trained with the 245th Basic Training
10 Academy at the Kansas Law Enforcement Training
11 Center, graduating in June of 2017. I have
12 maintained my certification through Kansas C Post
13 since then, including training on investigations
14 and criminal proceedings.

15 Q So you've been a certified officer some three
16 years now?

17 A Yes.

18 Q Okay. And back on December 8th of 2019, you were
19 working for the Fort Hays State University Police
20 Department?

21 A Correct.

22 Q As you are now?

23 A Correct.

24 Q And you ended up having contact with Natalie
25 Miller?

1 A Yes.

2 Q Can you tell me how that came about?

3 A I was dispatched in the early morning on
4 December 8th to a report of a sex offense that had
5 occurred in Heather Hall on the university campus.
6 I responded along with a co-officer and was met at
7 the door of the alleged crime scene by Ms. Miller.

8 Q And where is Heather Hall at?

9 A Heather Hall is at the intersection of Custer
10 Drive and Dwight Drive. It is within the city --
11 it's within the university, Fort Hays State
12 University, which is within the city of Hays, in
13 Ellis County.

14 Q All in the state of Kansas?

15 A All in the state of Kansas.

16 Q So about what time of day did you go to Heather
17 Hall?

18 A Approximately 5:50 in the morning.

19 Q And you said you were met by?

20 A I was met by Ms. Natalie Miller at the door to her
21 suite, which is 224. Also present was Ms. Lilly
22 Duncan, her roommate, who was in the main apartment
23 area.

24 Q And what did you do then?

25 A After identifying who I was speaking with, I asked

1 for a brief narrative of what had happened.

2 Ms. Miller reported that she had been walked home
3 by an acquaintance from Chuck's bar. They had
4 entered her apartment; this acquaintance had gone
5 into her room.

6 While she was attempting to get this
7 acquaintance to leave her room, he had attacked her
8 in such a manner that resulted in him forcing
9 sexual contact, and her telling him to stop,
10 requesting him to leave, and he did not immediately
11 leave.

12 I did not learn a lot more after that. The
13 rest was conducted in an interview. I did learn
14 that he had gone and spoke to the roommate briefly
15 before leaving the apartment.

16 Q Okay. And the Natalie Miller you are talking
17 about, is that the same individual who was seated
18 on the front row with you when the hearing started?

19 A Correct.

20 Q Same person who is sequestered right now?

21 A Correct.

22 Q Okay. So after that initial conversation with
23 Natalie Miller, what did you do?

24 A I -- she had requested that a friend come over so
25 we waited for a minute for the friend to show up

1 who was there for support. She, Ms. Miller, and
2 her roommate, gave permission for my coworker to
3 collect applicable evidence, if there was any,
4 while I conducted an interview back at the
5 department in the recorded interview room of
6 Ms. Miller, Ms. Duncan and the friend Ethan Rohr.

7 Q So then you went to the university police --

8 A Yes.

9 Q -- department, and had a formal interview with
10 Natalie?

11 A Correct.

12 Q Tell me what she told you.

13 A She told me that she had been at Chuck's bar until
14 it closed, at which time when she was leaving she
15 was approached by an unknown male who was asking
16 her odd questions like "What's my name?" She was
17 disturbed by this male's behavior, thought he was
18 possibly a threat.

19 She observed an acquaintance standing outside
20 the bar, who she identified as Efe Osaghae who she
21 knew through the student government association.
22 She approached this acquaintance, asking, kind of
23 explained that she was being approached by this
24 unknown male, asked for him to escort her back to
25 safety, back on the rest of campus. He agreed.

1 They walked back in the direction of the
2 dorms south through campus. During the walk,
3 Mr. Osaghae made a comment about "I live in Stadium
4 Place apartments, do you want to come over to my
5 place?" Ms. Miller said no, she was going back to
6 her apartment.

7 She continued approaching Heather Hall.
8 Ms. Miller keyed the door to the Heather Hall as
9 Mr. Osaghae doesn't have a key to that building.
10 When they entered, it enters into a main lobby
11 area. Mr. Osaghae made a comment of "Oh, my
12 friends live down this hallway on the first floor."
13 Ms. Miller continued up to the second floor where
14 her residence is. Mr. Osaghae continued to follow.

15 They went down the hallway to where
16 Ms. Miller's room is, her suite that she lives in,
17 and the door to that suite is not locked, so
18 Mr. Osaghae just entered the apartment without
19 requesting permission or anything. Ms. Miller
20 spoke to him briefly in there. He was making
21 comments asking whose room is whose. She
22 identified which of the rooms, because they have
23 names on the doors for several of the rooms, and
24 Mr. Osaghae allegedly made a comment of "Is your
25 room messy or clean" and went into her room without

1 permission, her individual bedroom off of the
2 living room.

3 Once in there, he took his shoes off, sat on
4 her bed. She stood and was attempting to persuade
5 him to leave by making commentary of "I have to
6 work really early in the morning." Mr. Osaghae
7 then allegedly grabs her, pulls her onto the bed,
8 grabs her around the arms, pins her on the bed kind
9 of beneath him, and begins attempting to forcibly
10 kiss her, grabbing her face in the process.

11 She reported a bruising on the inside of her
12 mouth and her mouth was very swollen when I was
13 conducting this interview. Her lips were very
14 swollen. She said one of them was split.

15 Q So did you observe damage to her lips?

16 A I did. At the time.

17 Q And what about inside the mouth?

18 A Later on in the interview she made a comment that
19 sometime during the assault Mr. Osaghae had pushed
20 a thumb or a finger into her mouth, and it had
21 taken a chunk out of the roof of her mouth. This
22 was observed. There was an injury on her hard
23 palate from some kind of sharp thing striking her
24 hard palate and removing a piece of flesh.

25 Q And you observed that?

1 A Yes.

2 Q Okay. So she told you that the defendant pulled
3 her onto the bed, and then what happened?

4 A She reported that after attempting to kiss her,
5 grabbing onto her face, Mr. Osaghae attempted to
6 remove her clothing. He was able to remove her
7 shirt and caused injury to her breasts. She was
8 not sure how that had happened. Throughout this
9 experience, she was saying "No. Stop. Please
10 leave," and he was not stopping. He would
11 continue.

12 She, in a later interview, reported that she
13 had said, "I don't want to have sex with you," and
14 he said, "I'm not trying to have sex with you.
15 What makes you think I'm trying to have sex with
16 you," while still removing her clothing and
17 interacting with her in a sexual manner.

18 Mr. Osaghae used Ms. Miller's hand to
19 stimulate himself in a sexual manner. He grabbed
20 onto her wrist and controlled her hand to force her
21 hand to grip his erect penis after it was exposed,
22 and then forced her hand up and down to stimulate
23 himself.

24 Ms. Miller also reported that Mr. Osaghae had
25 grabbed a handful of her hair and used it to

1 control her head. He used it to bring her head
2 down to his erect penis, and her lips contacted the
3 tip of his penis. She reported that he was talking
4 to her throughout this, asking her questions in an
5 attempt, she believed, in an attempt to make her
6 open her mouth, but she did not.

7 Ms. Miller was rolled onto her side at some
8 point, and Mr. Osaghae was behind her. He managed
9 to slide her pants and underwear down a little bit
10 and then digitally penetrated her vagina with his
11 finger. Ms. Miller reported she was fighting
12 against this and kind of checked out because she
13 believed she was powerless to overpower him. She
14 was overcome by force throughout this.

15 At some point during the assault, Mr. Osaghae
16 placed his hand or hands around her throat.

17 Ms. Miller reported that during this she
18 experienced pressure on the blood vessels in her
19 neck, caused her head to hurt, and she was -- her
20 functioning was restricted because of this.

21 She reported that the entire incident lasted,
22 she thought, ten minutes, but she had also kind of
23 checked out or blacked out briefly in the middle of
24 it where she had had no memory or -- not no memory,
25 where she was unaware of kind of what was going on

1 with her. And after some time, she was crying,
2 begging him to stop.

3 Eventually, he asked which room her roommate,
4 Lilly Duncan, lived in. She said B. And
5 Mr. Osaghae gathered his clothing and things and
6 left her room. She locked her door and waited,
7 attempting to hear him leave the apartment. She
8 was afraid for her safety at that point.

9 Q Okay. What did you do then?

10 A After offering what services I could, such as
11 medical exams and Options, domestic violence
12 services for victims, I broke contact with her. I
13 offered them a ride back to their apartment, and
14 they decided to walk. I then began researching
15 Mr. Osaghae in an attempt to interview him.

16 Q Were you able to locate him?

17 A I was.

18 Q When was that?

19 A That was later in the morning, I believe about
20 6:30.

21 Q On that same morning?

22 A On that same morning of the 8th. Correct.

23 Q Okay. And how did you end up having contact with
24 Efe Osaghae at about 6:30 that morning?

25 A I went to his Stadium Place apartment, which is

1 also on campus in Ellis County, in Hays. After
2 knocking, I was met by one of his roommates. I
3 asked if Efe was home and he said he was, he
4 thought he was sleeping. Myself and the other
5 officer were invited into the apartment while this
6 roommate attempted to contact Mr. Osaghae, and he,
7 the roommate, entered into Mr. Osaghae's room.
8 From where I was standing in the living room, the
9 light -- when he turned the light on, I could see
10 somebody laying in the bed in the room, so I
11 believed that Mr. Osaghae was there.

12 They spoke briefly, and the roommate came
13 back out and said, "I am having trouble waking him
14 up, feel free to go wake him up yourself." So I
15 went to the doorway to that room in the apartment,
16 stuck my head in, observing somebody laying in bed,
17 called out the name Efe, and a male sat up, looked
18 at me. I recognized him from his student roster
19 picture as the student identified through the
20 database as Efe Osaghae.

21 I identified myself as law enforcement by
22 name and agency and asked him to step out and speak
23 with me. He motioned that he needed to put some
24 clothes so, so I stepped back from the door. He
25 put clothes on, met myself out in the living room.

1 I explained that, after reidentifying himself since
2 he was more awake at that point, I explained that I
3 needed to talk to him and requested that he come in
4 for an interview. He asked, "Do you mean like
5 now?" And I said, "Yes, I mean now." And he
6 gathered some shoes and things, and I escorted him
7 back to the university police department for an
8 interview at approximately 7:00.

9 Q Okay. And that took place at the university
10 police department?

11 A Correct.

12 Q The interview? Okay. And how did you go about
13 doing the interview?

14 A Once I started the audio and video recording
15 equipment, I went into the interview room. I
16 presented Mr. Osaghae with a written form of the
17 Miranda warning, showed him that I had an identical
18 copy, explained the procedure that I would be
19 reading the advisories, asking if he understood
20 them. Once he understood the procedure, I read
21 through the Miranda warning. Mr. Osaghae indicated
22 he understood all of his rights. I then read the
23 waiver of rights where -- asking if Mr. Osaghae was
24 willing to speak with me without a lawyer or
25 attorney present. He indicated that he was. I

1 asked if he was willing to sign the form, and he
2 was. So he signed the form approximately 7:04 a.m.
3 on the 8th.

4 I then proceeded to have an interview with
5 him over the -- and I explained to him that there
6 was an incident in Heather Hall and asked him
7 for --

8 Q Okay, let me stop you right there. The person you
9 identified as Efe Osaghae, is he present here
10 today?

11 A He is.

12 Q Where is he located?

13 A He's located at the defendant table.

14 Q Okay.

15 A In the suit with the gray tie.

16 Q Okay.

17 MR. DREES: Ask the record to reflect
18 that she's identified the defendant.

19 THE COURT: So noted.

20 Q (By Mr. Drees) So you started your interview?

21 A I did.

22 Q Tell me about the interview.

23 A I began by asking Mr. Osaghae for a report of his
24 evening. He said that he had been at Chuck's and
25 he had walked a friend home. They had talked

1 briefly, and he had gone back to his apartment.

2 And that was basically his narrative of the entire
3 evening. I explained that I needed something with
4 more detail.

5 He began the same narrative again, not really
6 supplying the extra details. So I began asking.
7 He said he walked a friend home. So I asked who
8 was the friend. He identified Natalie. I asked if
9 he knew what Natalie's last name was. He thought
10 about it for a minute and said he thought it was
11 Miller, and that they knew each other through
12 student government association.

13 I then continued interviewing him, and
14 Mr. Osaghae would not provide extra information
15 unless directly asked. So his second version of
16 the interview was that he had walked Ms. Miller
17 home. They had talked for a bit at her place, and
18 then he had gone home. After specific questioning
19 on my part, his narrative became they had walked
20 home from Chuck's, they had talked for a bit, began
21 making out and then he had gone home.

22 Eventually, I broached the topic of whether
23 he talked to anyone else in the apartment. He said
24 "Yes, I talked to Lilly," who was identified as
25 Lilly Duncan, the roommate.

1 After substantially more iterations of -- a
2 few more iterations of me asking specific questions
3 and his narrative including that information, we
4 got to a narrative where he had walked Ms. Miller
5 home from Chuck's to her place in Heather Hall.
6 They had talked briefly, began making out, kissing.
7 She had willingly gotten on the bed with him,
8 gotten on top of him. They had taken clothes off.
9 He was not sure -- he knew he had taken his clothes
10 off, he thought she had taken her own clothes off.
11 He claimed that he had done nothing to be perceived
12 as taking her clothing off.

13 She -- he had touched Ms. Miller's breasts.
14 She had willingly touched his penis in a sexual
15 manner. She had willingly performed oral sex on
16 him, and after a while, she had made the comment
17 that she needed to sleep before work, at which time
18 he had gathered his items, stopped in, said hi or
19 some other small conversation with Ms. Lilly
20 Duncan, and then left the apartment and had gone
21 home to sleep off his intoxication. And that was
22 the final version.

23 When I asked him if his first narrative was
24 correct or his last narrative was correct, because
25 they didn't match, he said the last narrative he

1 had given was correct. And then he provided it as
2 a written statement.

3 Q Now, you had testified earlier that you had
4 observed Natalie Miller with the bruising to the
5 lips and the, some kind of gouge in the palate in
6 the upper part of the mouth?

7 A Uh-huh. Correct.

8 Q Did you observe any other injuries on her?

9 A I did not observe any injuries other than that at
10 the time of the interview.

11 Q Okay. Was there a later time when you viewed
12 photographs?

13 A I did.

14 Q And when was that?

15 A I received photographs later that night from -- or
16 that same day, excuse me, from Ms. Miller. I then
17 received follow-up photographs that had been taken
18 by an officer or sergeant with the Olathe Police
19 Department after Ms. Miller returned home. This
20 was approximately two days later.

21 And included in those photographs was
22 follow-up on her face where her lip was
23 significantly less swollen. There was photographs
24 of her arms where there had been reports of
25 bruising, and then there was also photographs of

1 her chest where she had scratches or abrasions
2 across both nipples.

I also had photographs that I received after Ms. Miller -- after I received those follow-up photographs, I had contacted Ms. Miller, and she provided some extra photos that she had taken that day which included immediate -- immediately after the incident, photos of her chest which showed the abrasions more distinctly.

10 THE COURT: What?

11 THE WITNESS: Distinctly.

12 THE COURT: Distinctly. Thank you.

13 THE WITNESS: Excuse me.

14 Q (By Mr. Drees) So now you've interviewed Natalie
15 Miller. You've interviewed Efe Osaghae. What did
16 you do after that?

17 A I placed Efe Osaghae under arrest for aggravated
18 sexual battery, transported him to the Ellis County
19 Detention Center, and completed an arrest affidavit
20 for those charges.

21 After the next -- later that week, on
22 Thursday, I conducted a follow-up interview of
23 Ms. Miller, and before that I had gotten the
24 photographs from her home police department.

25 Q What was the purpose for the follow-up interview?

1 A The follow-up interview was to get another
2 complete perspective on the incident. Trauma tends
3 to interfere with people's ability to recall
4 information, so trauma-informed investigations on
5 sexual assault, typically you allow the victim two
6 to three sleep cycles and the brain can better
7 understand and process information. So you conduct
8 an initial interview, and then two days or so later
9 you conduct a follow-up interview, and a lot of
10 times the timeline or details are a lot more clear
11 because the trauma is not quite so overwhelming at
12 that point.

13 Additionally, we had the option to have
14 Options victim advocates for that interview.

15 Q And this was then, you said, Thursday, about four
16 days afterwards?

17 A That is correct.

18 Q Okay. And who all was present at that interview?

19 A Ms. Natalie Miller, the victim, and two Options
20 advocates, Ms. Journey Elder and Ms. Annabelle
21 Seader.

22 Q Okay. And where did that interview take place?

23 A The Fort Hays State University Police Department
24 in the recorded interview room.

25 Q And did you learn anything substantially different

1 during that second interview from the first
2 interview?

3 A I learned further details on some of the crimes.
4 Ms. Miller had not initially reported the digital
5 penetration of her vagina, because she did not want
6 to accept that it had happened is what she said,
7 and she did not want to admit it in front of the
8 roommate who was there for support during her
9 interview.

10 I was able to clarify some of the acts, some
11 of the crimes that had occurred, details on the
12 attempted sodomy, details on the aggravated sexual
13 battery. I also learned in that interview of the
14 strangulation.

15 Ms. Miller was able to provide more detail on
16 all of the events but her overall perspective on
17 the evening was quite similar.

18 Q Okay. So you learned about the digital
19 penetration?

20 A Correct.

21 Q Was there anything different regarding the alleged
22 sodomy regarding the forcing of her mouth to his
23 penis?

24 A When Ms. Miller initially reported it, she said
25 that she had been able to pull her head away and no

1 contact had actually been made. Again, when I
2 asked her why this had changed, she said she didn't
3 want to accept that it happened and didn't want to
4 admit it in front of the friend. So during the
5 follow-up interview when it was just her,
6 Ms. Miller and the advocates, she reported that
7 there had been contact between her lips and
8 Mr. Osaghae's penis.

9 Q Did the information regarding her ability to keep
10 her mouth closed change?

11 A She reported that she'd been able to keep her
12 mouth closed, but that Mr. Osaghae had been asking
13 her direct questions during that time in an
14 attempt, I believe an attempt to manipulate her and
15 make her open her mouth.

16 Q Still maintain that the penis, although touching
17 her lips, did not go into her mouth?

18 A Correct.

19 Q Okay. Any additional information on the -- his
20 forcing her to grab his penis?

21 A She clarified that on the initial it had just been
22 contact between her hand and his penis. The
23 follow-up interview, she reported that he had ahold
24 of her wrist initially and then had used his hand
25 to shape her hand around his penis and used his

1 hand to force her penis -- her hand up and down his
2 penis in a sexual manner, while saying comments of
3 "Don't think about this."
4 Q "Don't think about this?"
5 A That's what she reported he said during the
6 stimulation with her hand was "Don't think about
7 this."
8 Q And you said there was some additional information
9 regarding the choking or the strangulations?
10 A Correct. She had reported the strangulations had
11 affected her blood flow and made her head hurt is
12 how she initially said it. And she said she felt
13 the pressure on the sides of her neck where the
14 vascular neck was restrained, and that it occurred
15 sometime -- she had no idea where that was in the
16 timeline of things, other than it was within the
17 assault at some point.
18 Q So you were able to gather some additional details
19 but the -- her statement as to what happened was
20 consistent?
21 A Correct.
22 Q What did you do after that?
23 A After that, again, offered her medical services,
24 especially considering the strangulation. That can
25 have long-lasting effects.

1 After I broke contact with Ms. Miller the
2 second time, I began interviewing other follow-up
3 interviews, a follow-up interview with Lilly
4 Duncan, the roommate who was on scene at the time;
5 another roommate who had come by, Ms. Joyia
6 Jancola. I had a -- I had an interview with a
7 Jackie or Jacqueline Tarango because Ms. Miller had
8 mentioned she had heard of -- Ms. Tarango and
9 Mr. Osaghae.

10 Q And don't tell me what they told you, they are not
11 here today.

12 A Correct. Okay.

13 Q So you did some follow-up interviews?

14 A Yes.

15 Q Now on that Thursday when you reinterviewed
16 Natalie, did you also observe her?

17 A I did.

18 Q And how did her lips and mouth appear?

19 A Her lips were substantially less swollen than they
20 were before. Her mouth, she still complained of
21 pain and the wound was still present. It was not
22 healing at that point but -- and her lips, she had
23 a split on one of her lips where it had split open
24 from the swelling and everything. But they were
25 substantially smaller when I saw them the second

1 time.

2 Q Okay. You were still able to see the wound on the
3 palate in the mouth?

4 A Correct.

5 Q And then after your follow-up interviews, did you
6 do anything else?

7 A I did follow-up interviews. At some point I did
8 another affidavit and complaint against Mr. Osaghae
9 due to bond being revoked, I believe.

I contacted -- I learned later on in the investigation that Ms. Miller had sought medical care after the follow-up interview, specifically for -- she -- so the interview was on Thursday, that Friday she began feeling ill after she returned home. She spent the weekend allegedly bedridden, was quite ill. On the 16th of December, she went to a walk-in clinic where they did some preliminary testing on her, diagnosed her with a urinary tract infection, and they did follow-up blood work.

21 She was later admitted into Truman Medical
22 Center for care, because she had not been able to
23 eat for several days because of her mouth and
24 throat being so swollen. She also was unable to
25 take her medication for the UTI because she could

1 not swallow medication.

2 She then returned to the walk-in clinic two
3 days later to have the mouth abscess checked on
4 because it still was not healing properly.

5 Q Okay.

6 MR. DREES: I don't have any other
7 questions, Your Honor.

8 THE COURT: Cross.

9 **CROSS-EXAMINATION**

10 **BY MR. OLLER:**

11 Q Officer, you have worked for Fort Hays since June,
12 2017.

13 A Correct.

14 Q Prior to that, what did you do?

15 A I was a -- I worked for the Larned Juvenile
16 Correctional Facility in the juvenile prison in
17 Larned as a corrections officer.

18 Q Okay. And prior to that?

19 A Prior to that, I worked for High Plains Mental
20 Health Center in their Westside Alternative School
21 as a recovery specialist.

22 Q What is a recovery specialist?

23 A I had a caseload of several children. I was
24 assigned to a classroom. In this case I was
25 assigned to the middle school classroom, although

1 it went a little lower than standard middle school.
2 I had a handful of children who were on my caseload
3 who I was in charge of part of their care and
4 treatment plan. So we would do education and
5 resource development and skills development in an
6 attempt to return them to regular school
7 situations.

8 Q So the recovery didn't necessarily have to do with
9 drugs or alcohol?

10 A No.

11 Q Really you were a case manager?

12 A Yes. I designed psychosocial rehabilitation
13 groups.

14 Q What training, other than the law enforcement
15 school, do you have?

16 A I received a bachelor of science degree in
17 psychology at Fort Hays State University graduating
18 in 2014.

19 Q Okay.

20 A And then job training.

21 Q So from Fort Hays then you went to Westside?

22 A Correct.

23 Q And then High Plains and then into law
24 enforcement; is that right?

25 A Westside and High Plains are one entity, and then

1 corrections and law enforcement.

2 Q Got it.

3 Ma'am, so you were called in the early
4 morning hours. Is this a Saturday morning or a
5 Sunday morning?

6 A This is a Sunday morning.

7 Q Okay. And had you -- had you determined or did
8 you talk to Ms. Miller or Ms. Duncan about where
9 they had been the night before?

10 A I had learned that, preliminarily, somewhere in
11 the interview, I had learned that Ms. Miller had
12 been at Chuck's bar for that evening and Ms. Duncan
13 was sleeping at the apartment.

14 Q Did you talk to anybody -- Well, did Ms. Miller
15 tell you whether she had gone anyplace prior to
16 going to Chuck's bar?

17 A Not in the initial two interviews. That was
18 learned at a later interview and confirmed by
19 Ms. Miller during a phone interview in February, I
20 believe.

21 Q Okay. And had she been other places before
22 Chuck's?

23 A She had.

24 Q Do you know where that was?

25 A She had gone to a friend's house, Mr. Aaron Voss.

1 She had been there briefly. And then she had gone
2 to two different houses for like, one was a
3 Christmas party and one was just a house party
4 before going to Chuck's.

5 Q Did she say whether she had been drinking at any
6 of these places?

7 A She did admit to drinking at the second house
8 party, which was over on 11th Street prior to
9 midnight that night.

10 Q Did she talk about drinking at Chuck's?

11 A She was a minor and did not drink at Chuck's. She
12 did not ever say that she -- she did not say that
13 she drank at Chuck's.

14 Q She admitted to drinking at the second house party
15 but not at Chuck's?

16 A Correct.

17 Q Okay. And as I understand it, she said that she
18 was leaving Chuck's. Was this at closing time?

19 A Correct.

20 Q Do you know what time that was?

21 A It's approximately 1:45 to 2:00 depending on when
22 they push the crowd out.

23 Q What time, do you know what time -- did she say
24 what time that she met up with Mr. Osaghae?

25 A She said outside the parking lot immediately after

1 leaving.

2 Q So you presumed that to be somewhere around that

3 1:45 or 2:00?

4 A Correct.

5 Q And did you determine what time she returned back

6 to her apartment at Heather Hall?

7 A No. Not specifically.

8 Q Okay. Tell me this: You have been to Heather

9 Hall I assume more than once?

10 A Correct.

11 Q And in order to get into Heather Hall, there is a

12 locked door that you got to go through?

13 A Correct.

14 Q And are there cameras that are at Heather Hall?

15 A There were not at the time.

16 Q Has that changed?

17 A They are putting in cameras at the moment.

18 Q Okay. Is the locking mechanism at Heather Hall

19 such that it identifies when people come and go?

20 A No. It's a standard key.

21 Q Were you able to determine either from Ms. Miller

22 or from Ms. Duncan what time Ms. Miller came back

23 to that apartment?

24 A No. Neither of them confirmed an exact time.

25 Q Did you ask?

1 A I believe I asked -- I did not ask for a specific
2 time.

3 Q Okay. So you don't know whether this was at 1:50,
4 2:00, 2:10?

5 A Based on everyone I talked to, their estimates
6 were somewhere immediately after bar close prior to
7 2:30, because that's when I had a report -- I had
8 one party alleging that they were back home by
9 2:30.

10 Q Who reported that?

11 A Mr. Osaghae reported that he believed he was at
12 his apartment by about 2:30.

13 Q Do you have any reason to dispute that?

14 A No.

15 Q So all of these instances that you have
16 investigated, you are presuming took place between
17 that 1:45 and potentially 2:20, 2:30; is that
18 right?

19 A Correct.

20 Q Let's talk about your interviews. How many
21 interviews did you do with Ms. Miller?

22 A I did two in-person interviews, one phone
23 interview, and some follow-up phone calls.

24 Q Now, you seem to -- there were actually three
25 interviews, were there not?

1 A Well, if you are including the on-scene and the
2 recorded interview, correct.

3 Q So there was an interview that was done at the
4 apartment; is that correct?

5 A Yes.

6 Q And Lilly Duncan and Natalie Miller were present?

7 A Correct.

8 Q That was the only people that were present?

9 A Correct.

10 Q And they told you a story about what happened?

11 A Correct.

12 Q Is that correct? Was that interview recorded?

13 A No.

14 Q Okay. However, even though it wasn't recorded,
15 you made notes, detailed notes, about what was in
16 that interview; is that correct?

17 A Correct.

18 Q And in that initial conversation, Natalie doesn't
19 talk about oral sex, she doesn't talk about digital
20 penetration, she doesn't talk about bruises. She
21 talks about Mr. Osaghae being in the room, he was
22 masturbating, she told him to leave, and he left.

23 Q Is that what she told you?

24 A That's a version of it, yes.

25 Q Well, is it an accurate version?

1 A She reported on the initial interview at the scene
2 that he had grabbed onto her, was attempting to
3 kiss her, did kiss her. That's when she reported
4 that he had grabbed her face, causing injuries to
5 her lips. She reported on scene that he was
6 attempting to take her clothing off and then -- and
7 phrased it as attempting to have sex with her. She
8 then said that he eventually switched to
9 masturbating, and she was directing him to leave at
10 that point.

11 Q And that is all that -- that is all she told you
12 at that time, right?

13 A Yeah. It was very brief.

14 Q How long did that interview last?

15 A I don't know the exact time. I believe -- may I
16 review my report to see if I have when I left that
17 apartment?

18 Q Sure.

19 A Transported Miller, Ms. Miller, Ms. Duncan and
20 Mr. Rohr at approximately 0540, so it would have
21 been between 0509 and 0540.

22 Q So you were with them for about 30 minutes?

23 A Correct.

24 Q Now, in that 30-minute period of time, is it --
25 did Mr. Rohr then show up at some point in time?

1 A He did.

2 Q Do you have in your notes what time he showed up?

3 A I don't have that specifically listed. He showed

4 up shortly -- we were waiting on him at the end.

5 So he showed up shortly before the 5:40 when we

6 left.

7 Q Do you know how he got to be there?

8 A He was contacted by Ms. Duncan and requested that

9 he be there.

10 Q And do you know what the relationship between

11 Mr. Rohr and Ms. Duncan was at that time?

12 A They reported to me that they had met the previous

13 year as hallmates in another dorm. They had kept

14 in contact. He, Mr. Rohr, knew Ms. Miller because

15 they were coworkers, and Mr. Rohr reported that

16 he'd been contacted -- I asked him why he had been

17 the one that they would contact, and he reported

18 that he thought he was the only local male friend

19 of Ms. Duncan.

20 Q And so he was allowed to participate in this

21 interview process; is that correct?

22 A Correct.

23 Q And what was the purpose of allowing him to

24 participate?

25 A When I was requesting they come over for an

1 interview, I had spoke to Ms. Duncan and Ms. Miller
2 individually and asked if they would be comfortable
3 being interviewed on their own or if they wanted
4 the other one present, and they both requested the
5 other one present. Mr. Rohr just kind of tagged
6 along. I failed to ask him to leave their presence
7 for the interview and neither one of them asked to
8 do it in private.

9 Q So he didn't have a particular role, he just was
10 there?

11 A Yes. At that time.

12 Q Were you present when he was called by Ms. Duncan?

13 A No.

14 Q So you had that interview, and then you had the
15 interview that was at the Law Enforcement Center on
16 the campus; is that correct?

17 A Correct.

18 Q And that -- where is that located?

19 A That is located in the basement of Custer Hall,
20 Room 112. Custer Hall is a short distance from
21 Heather Hall. It's 420 Custer Drive, Hays, Ellis
22 County.

23 Q Was that interview recorded?

24 A Every interview in that room is recorded, yes.

25 Q And how is it recorded?

1 A We have a camera and audio recording. It's a
2 single camera that records to a DVD recorder.
3 Q And have you reviewed the recording from that
4 interview?
5 A I have.
6 Q Okay. And have you provided a copy of that
7 interview to Mr. Drees?
8 A I have.
9 Q Is there any reason why you cannot provide a copy
10 of that interview to my office?
11 A I can provide that, not -- I don't have it with
12 me. I would have to go back and make a copy of it.
13 Q Did you review that interview prior to coming and
14 testifying here today?
15 A About a week ago, yes. While reviewing all the
16 other videos?
17 Q And prior to coming here and testifying, what else
18 did you do in preparation?
19 A I was still gathering documents. We had struggled
20 to get the documents from Truman Medical Center
21 because of the COVID pandemic so I was focused on
22 getting those. And I reviewed the narratives,
23 videos, statements of people as best I could.
24 Q Your report I think is quite long.
25 A It is.

1 Q It is, I think, 21 pages; is that right?

2 A Something like that, yes.

3 Q Does it detail everything that you did in this

4 case?

5 A I believe so. To the best of my knowledge.

6 Q The direction of your investigation in this case,

7 was it -- were you told things to do or people to

8 interview by anybody at Fort Hays State University?

9 A I had briefed with my administration, my chief Ed

10 Howell, and my Lieutenant Cliff Denny, and we

11 discussed people that would need to be contacted,

12 yes.

13 Q Did anybody from student affairs ever talk to you

14 about what your -- about this investigation?

15 A I was never spoken to other than when I went to

16 serve a search warrant.

17 Q Okay. Not at -- and I guess I want to clarify. I

18 am speaking about both at the time of the

19 investigation in this case and at any time

20 thereafter?

21 A Correct. I didn't speak to anybody other than

22 when I was in their office for the search warrant

23 for this, and I was not interviewed or anything.

24 It was procedural conversation.

25 Q And you have not been interviewed by student

1 affairs nor have you been directed by student
2 affairs concerning this case?

3 A Correct.

4 Q So I'm going to -- I guess I'm going to break
5 these down, with your permission, into -- there's
6 two interviews on the Sunday in which you were
7 first contacted, correct? Interview at the
8 apartment or the dorm?

9 A Uh-huh.

10 Q Is that right?

11 A Correct.

12 Q And then there's another interview, and that
13 interview was not recorded. The second interview
14 was recorded and you will provide a copy of that.

15 Then the third interview, you did a third
16 interview you said on the Thursday after the
17 Sunday; is that correct?

18 A Correct.

19 Q And that interview, was that down at the campus?

20 A Correct.

21 Q But in order -- when you contacted Ms. Miller, she
22 wasn't on campus at that point in time; is that
23 correct?

24 A Correct.

25 Q She had already gone to Olathe and you had -- and

1 you knew that because you had had contact with the
2 Olathe Police Department?

3 A Correct.

4 Q And did you -- did you know -- well, do you know
5 when she went to Truman Medical Center?

6 A She went to Truman Medical Center on December 16th
7 is the record that I have.

8 Q Okay. So that was after your, what I will call
9 the third interview?

10 A Correct.

11 Q And the third interview that took place, there was
12 different information or additional information
13 that was given from the second interview which was
14 different from the first interview; is that true?

15 A There was additional information in the third
16 interview as you are referring to them. And there
17 was different and additional information between
18 the on-scene initial interview and the recorded
19 interview, the second interview as you are
20 referring to it.

21 Q And in the third interview, a different group of
22 people were present for that interview; is that
23 correct?

24 A Correct.

25 Q And there was Ms. Miller and she had an advocate

1 from Options?

2 A Two advocates.

3 Q Two advocates from Options and Ms. Miller by that
4 time?

5 A Correct.

6 Q Were you able to determine at what point in time
7 Options became involved in this case?

8 A I did not have that -- I had offered them the
9 first day, and she had said she would think about
10 it. I don't know when they were contacted.

11 Q Did you talk to either of the people from Options
12 and ask when those services became available or
13 when she took advantage of those services?

14 A I did not.

15 Q Do you know after she went to Olathe, when she
16 came back to campus in December?

17 A She came back on Thursday for that interview and
18 for a final that she needed to do, because it was
19 finals week for campus.

20 Q And by the time you did that third interview, you
21 had already arrested Mr. Osaghae?

22 A Correct.

23 Q Okay. And at that time you had arrested him on an
24 agg sex battery case as the primary charge?

25 A Correct.

1 Q So after this third interview, you had more
2 interviews with Ms. Miller; is that right?

3 A I had phone interviews from there on out, yes.

4 Q Okay. How many phone interviews did you have?

5 A I had one -- one interview. And then I had
6 several phone calls confirming that she had taken
7 photographs and requesting them, or confirming that
8 she had received her subpoena and answering
9 questions about the preliminary hearing. None of
10 those really supplied any information other than
11 procedural info like is she going to be here for
12 the prelim.

13 Q Let's talk about the first phone interview in
14 February. What was the purpose of that interview?

15 A It was -- there was two purposes. One was to
16 confirm she had received her subpoena and that she
17 understood it. And the other was to confirm or
18 clarify information I had received in several of
19 the interviews between my last interview with her
20 and that phone call.

21 Q Was there information that was received in the
22 phone interview that was different than what you
23 had received in the third interview?

24 A No.

25 Q Was the phone interview recorded?

1 A Yes.

2 Q Do you have a copy of the recording of that phone
3 interview?

4 A I don't have one with me, but I have all of those.

5 Q Have you provided it to Mr. Drees?

6 A Yes.

7 MR. DREES: Your Honor, at this time I'm
8 going to make the record clear. I don't have any
9 digital recordings from Fort Hays at all. I've
10 checked my file. I just have the written report.
11 I have no audio.

12 THE WITNESS: I --

13 MR. DREES: So we'll have to get with
14 Fort Hays and get the audio.

15 THE COURT: All right.

16 Q (By Mr. Oller) The follow-up phone calls that you
17 have identified as being procedural in nature, were
18 each of those interviews or were those cell phone
19 calls recorded?

20 A Yes.

21 Q Is that your practice at Fort Hays?

22 A If I'm -- if it's anything for a criminal
23 investigation, we record the phone calls, yes.

24 Q Okay. And I assume you keep copies of those and
25 those can be provided to counsel?

1 A They can.

2 Q When you interviewed Natalie on the first and the
3 second -- well, I should say, the second and the
4 third times, did you take photographs of Natalie?

5 A I did not take photographs.

6 Q Okay. So you didn't -- you didn't take any
7 photographs?

8 A No.

9 Q And did you identify ligature marks or
10 strangulations marks or redness around the neck?

11 A I did not, no.

12 Q If you had noticed something like that, that would
13 have been part of your report, wouldn't it?

14 A Yes.

15 Q And you are aware of what ligature marks are?

16 A Correct.

17 Q Did you receive any photographs from Natalie or
18 from any other person that showed ligature marks or
19 bruising up and around the neck?

20 A Not around the neck, no.

21 Q The only bruising you saw was on -- and I think
22 you pointed to your left arm. Do you know whether
23 it was the left arm?

24 A It -- she reported it was on both arms. I don't
25 know on the photos which arm you can see bruising

1 on if either.

2 Q The -- and you had identified scratching on the
3 breasts?

4 A Correct.

5 Q So you interviewed Mr. Osaghae as part of your
6 investigation in this case?

7 A Correct.

8 Q And you have indicated that he changed his story
9 you said maybe two or three times; is that correct?

10 A Several times, yes.

11 Q And you seem to indicate that that was of concern
12 to you?

13 A It was.

14 Q Okay. Was Natalie's changing of her story
15 concerning to you?

16 A It is on one level. It's also an identified
17 feature of traumatic experience recollection.
18 That's a very known thing with -- when doing a
19 trauma-informed investigation is the report can
20 modify as you go through it.

21 Q Where did you receive that piece of information?

22 A Through Trauma Informed Sexual Assault
23 Investigations, which was a multiday course that I
24 was a student in that was hosted on the university
25 campus, conducted by a member of the KBI, I

1 believe.

2 Q When was that?

3 A That was I believe August -- I can get you the
4 exact date. I have the certificate of completion
5 from it. I believe that was August of 2018 though.

6 Q So about a year before this, a year and a few
7 months?

8 A Yes.

9 Q And can you provide to Mr. Drees and myself a copy
10 of all of your training --

11 A I can.

12 Q -- that you've had? Do you keep a file of that or
13 does the university keep a file of all the training
14 that you've had?

15 A Yes.

16 Q You had follow-up interviews -- well, you had
17 ancillary or interviews with a number of other
18 people; is that correct?

19 A I did.

20 Q Do you have a copy of your report in front of you?

21 A I do.

22 Q And I am just looking, there's a Journey Elder
23 that you interviewed?

24 A No. I did not interview her. She's an Options
25 advocate.

1 Q Okay. Joyia?

2 A Jancola.

3 Q Is that the one that you had referred to earlier?

4 A She's -- yes, I referred to her earlier.

5 Q Okay. Mr. Rohr, you talked about. Did you

6 interview him independently, or was he simply a

7 part of this file because he was present during

8 your second interview of Natalie?

9 A I interviewed him independently.

10 Q Okay. Ms. Seader?

11 A Options advocate.

12 Q Ms. Tarango?

13 A I don't understand the question. I'm sorry.

14 Q You interviewed Ms. Tarango?

15 A Yes.

16 Q And what was the purpose of that interview?

17 A I had received information from Ms. Miller that

18 Ms. Tarango knew of prior incidents that might be

19 criminal in nature that I needed to investigate.

20 Q Ms. Vanderree?

21 A One of the other potential victims from those

22 prior interviews -- or prior incidents.

23 Q Mr. Voss?

24 A -- I interviewed him. He was a friend of

25 Ms. Miller's who was out with her at the house

1 parties prior to being at Chuck's.

2 Q Ms. Zilligen?

3 A Another alleged victim from Ms. Tarango.

4 Q Were you giving -- given any information or did
5 you ask Mr. Osaghae people who he was with?

6 A I believe he reported he was with members of the
7 soccer team, but I don't have names specifically.

8 Q Did you interview anybody that he gave you?

9 A I attempted to interview a male who was reported
10 as seeing them leave, Mr. Osaghae and Ms. Miller,
11 leave the Chuck's area. I was never able to make
12 contact with him.

13 Q Okay. Were you ever given information that these
14 two were walking hand in hand, holding hands while
15 they were walking back to her dorm?

16 A I had heard that, and that was the person I
17 attempted to contact was supposedly the person who
18 had seen that.

19 Q And when did you -- and how many times have you
20 tried to contact that person?

21 A I contacted -- I attempted to contact him several
22 times via phone. He is a German student, I
23 believe. And I was not even able to tell if he was
24 in the country or not.

25 Q You've -- when was the last time you tried to

1 contact him?

2 A I don't have the exact day, I'm sorry.

3 Q Is there a log or a record that you keep other
4 than the report that you wrote? Is there any other
5 log that would show your activities regarding this
6 case?

7 A There's -- there is a log on the phones in the
8 department that I would have been using to make
9 calls. I don't know how far back that log
10 maintains the record. It's a communal phone, so
11 there's a lot of calls made out of it. So I don't
12 know if it has a cutoff.

13 MR. OLLER: I have no other questions,
14 Your Honor.

15 THE COURT: Mr. Drees, any follow-up?

16 MR. DREES: No, Your Honor.

17 THE COURT: May this witness be excused?

18 MR. DREES: Yes.

19 MR. OLLER: Yes, Your Honor.

20 THE COURT: Thank you, Officer. You are
21 free to go.

22 Counsel want to keep going or do you want to
23 take a short recess before the next witness?

24 MR. OLLER: No, I think we should press
25 ahead if you are okay, Judge.

1 THE COURT: Absolutely. Just making sure
2 that you are both okay.

3 Next witness, Mr. Drees.

4 MR. DREES: Natalie Miller. I think she
5 went back to my conference room. I will go get
6 her.

7 THE COURT: All right.

NATALIE MILLER

12 THE COURT: Ms. Miller, you've probably
13 never testified before, correct?

14 THE WITNESS: Correct.

21 So I'm going to ask you to move that
22 microphone a little closer to you, and then pull it
23 down a little bit. And as you speak, try to direct
24 your voice to that microphone so that we'll be sure
25 to pick it up and the defendant and his attorney,

1 as well as the prosecutor and I, can clearly hear
2 you. Okay?

3 THE WITNESS: Okay.

4 THE COURT: All right. If at any time
5 you need a break, all right, do not hesitate to ask
6 me. Say, "Judge, can we just take a short break so
7 I can catch my breath or get my bearings?" and we
8 will accommodate you. Okay?

9 THE WITNESS: Okay.

10 THE COURT: Very good. All right.

11 Mr. Drees will now ask you some questions.

12 **DIRECT EXAMINATION**

13 **BY MR. DREES:**

14 Q Please state your name for the court.

15 A Natalie Miller.

16 Q How old are you, Natalie?

17 A 20.

18 Q And Natalie, back in December of 2019, where were
19 you living?

20 A Heather Hall on campus.

21 Q Were you a student at Fort Hays?

22 A Yes.

23 Q And back on December 8th of 2019, that's a Sunday
24 morning?

25 A Yes.

1 Q Where were you that night? Let's back up to
2 Saturday. Tell me where you were Saturday. Let's
3 start about 8:00 p.m.

4 A 8:00 p.m., I was with friends at their house not
5 too far off campus. That's where I was at at
6 8:00 p.m.

7 Q Okay. And what were you doing Saturday night?

8 A Saturday night we eventually went over to Chuck's
9 at like around 11:00 p.m. we were there.

10 Q Okay. And Chuck's is a bar?

11 A Yes.

12 Q And that's located near campus?

13 A Right across the street from campus.

14 Q Across the street from campus?

15 A Yes.

16 Q Okay. So you were in Chuck's bar. Were you
17 drinking at any of these houses prior to going to
18 Chuck's?

19 A I had two drinks maximum. That's it. I was not
20 -- I was together. Myself. I was not intoxicated,
21 you know.

22 Q Okay.

23 A In any way.

24 Q You had a couple drinks, but you do not believe
25 you were intoxicated?

1 A Yes.

2 Q So you got to Chuck's bar, 11:00, 11:30?

3 A Yes.

4 Q And what did you do at Chuck's bar?

5 A I was just there with friends. It was the week

6 before finals. We were just there to -- it was

7 what everybody was doing so we all went there.

8 Q Okay. And did you stay until closing?

9 A Yes, I did.

10 Q What time did Chuck's close that night, or that

11 early morning I should say?

12 A Does Chuck's close at 2:00 p.m. -- 2:00 a.m.?

13 3:00 a.m.? I think -- I can't remember which one

14 Chuck's closes at. It's whenever bars normally

15 close.

16 Q Okay. So you stayed until closing?

17 A Yeah, I know that. And right before close, I was

18 talking with some members of the men's soccer team

19 about Germany. And that's when all the lights

20 turned on, and I walked upstairs to leave.

21 Q Okay. And when you were --

22 THE COURT: So you were talking to the

23 soccer team about Germany?

24 THE WITNESS: Yeah. I was talking to the

25 German exchange who play soccer on the team.

1 Q (By Mr. Drees) So you were talking to a student
2 from Germany who was on the soccer team?

3 A Yes.

4 Q Okay. And was there anyone else around at that
5 time?

6 A There was a guy who I do not know the name of
7 talking to me, and he proceeded to keep talking to
8 me. I just kind of -- it was engaged in the
9 conversation about Germany, so I often wasn't like
10 referring to him. But he followed me upstairs as
11 well, that individual. I don't know his name, but
12 yeah.

13 Q So you had somebody you thought following you?

14 A Yes. He proceeded to like follow me outside and
15 continued to engage, try to engage in conversation
16 with me. But I like clearly didn't want to, but he
17 like kept like following me out that way.

18 Q Were you with anybody else at that time?

19 A At that time, no. Because it's a big crowd
20 leaving, so I had parted ways with like the soccer
21 player. He caught up with his friends. And so I
22 was just kind of left with this guy in the mix of
23 everything. And I don't know where my friends were
24 that I came with at that moment.

25 Q So what did you do?

1 A Well, I crossed the street, and then this guy was
2 still with me. And I was headed towards campus,
3 towards Jellison Bridge, and is when I saw Efe and
4 the group of soccer players I was just talking to
5 ahead of me. And this guy was still ahead of me
6 talking to me.

7 Q And Efe is Efe who?

8 A The -- do I -- the --

9 Q Do you know his last name?

10 A I don't know how to say it probably. But Osaghae?
11 Something like that.

12 Q The Efe you are referring to is here?

13 A Yes.

14 Q Where is he at?

15 A (No audible answer.)

16 Q At the table to your right?

17 A Yes.

18 Q Okay.

19 MR. DREES: I would ask the record to
20 reflect that she's identified the defendant.

21 THE COURT: So noted.

22 Q (By Mr. Drees) So you saw the defendant and what
23 did you do?

24 A I have had no previous conversations with Efe in
25 any regard really, but he's from student government

1 and that's an organization that I'm part of, so
2 since this guy wouldn't stop talking to me, I made
3 the decision to approach that group, because, one,
4 I had just been talking to the exchange student in
5 the group, and I knew Efe from student government.
6 So I decided to approach them and that's what I
7 did.

8 Q Okay. So Efe, or the defendant, was there, and
9 you say a group of other soccer players?

10 A Yes.

11 Q Do you know about how many in the group?

12 A Probably like four or five soccer -- five -- yeah,
13 about five soccer players, and then there was one
14 other woman in the mix I'm sure.

15 Q And then what happened?

16 A I approached Efe, and I said -- because I told the
17 guy, I was, I told him "those are my friends," to
18 try to ward him off, "I'm going to go talk to them
19 real quick." And so I approached them and I said
20 "This guy won't stop talking to me and following
21 me. Is it all right if I like walk with you guys
22 towards campus" essentially.

23 Q Okay. And then what happened?

24 A And then I was just listening to the conversation.
25 My hand was like by my side. Efe grabbed it to

1 like hold my hand, but I withdrew it immediately,
2 and just kind of brushed it off like nothing
3 happened. That's what I chose to do.

4 Q Then what happened?

5 A And then that's when a car pulled up, and I cannot
6 recall the dialect between the car and the group of
7 soccer players, but eventually some of them chose
8 to go in that car in exchange of something like
9 "We'll meet you back at the place" where they
10 lived, and they lived in the same complex I do,
11 like right next door to me. And then it was just
12 me, Efe, and then the exchange, the German exchange
13 soccer player and a girl left.

14 Q So there were only four of you left?

15 A Yep.

16 Q How about this third party guy who had been
17 hanging around?

18 A He was still behind. He was still like ten feet
19 behind. Because I believe he lives on campus. So
20 we were all going like across Jellison Bridge.
21 This is right before that, so he was still there.

22 Q Okay. So you left Chuck's, and you had already
23 been across the street. You headed for Jellison
24 Bridge?

25 A Uh-huh.

1 Q Then what happened?

2 A And then right before Jellison Bridge, and then
3 where it splits to the road, that's when the soccer
4 player and that girl parted ways to do their own
5 thing, and I was left to like go towards the dorms
6 with Efe and that guy who was still behind. And
7 then we walked towards the dorms.

8 Q Okay. Did you -- you then walked over to Heather
9 Hall?

10 A Right before -- right where McMindes is, so right
11 before Heather Hall and the other dorms, Efe asked
12 me if I wanted to come over and I told him no. I
13 said "I don't want to." And then he mentioned
14 something about him coming over, and I said no.
15 But he came, like walked to Heather Hall as well.
16 I expected him to part ways but he went that way.
17 And I assumed it was because they had a brief
18 conversation about going back to the -- where the
19 soccer players live next door to me. I assumed
20 that's where he was headed.

21 Q So you got to Heather Hall?

22 A Yes.

23 Q Yourself, Efe was with you?

24 A Uh-huh.

25 Q What about this third guy?

1 A At that point he -- I think he lives in McMindes.
2 So he was -- he made his way to McMindes.
3 Q Okay. And then what happened?
4 A I got to the doors, and I unlocked them since he
5 does not live there. I hold the key to the -- it's
6 the doors to the building. So I unlocked them to
7 go into the building. And I could care less of
8 what he did. I proceeded to my path to my room.
9 He just happened to like walk with. And I assumed
10 that was because his, or that his friends or
11 roommates live right next door. I assumed that's
12 why.
13 Q So you walked up to your -- and these are kind of
14 apartment suites in Heather Hall?
15 A Yes, they are.
16 Q And describe them for me.
17 A So there's a main -- the inside or how they look
18 outside?
19 Q There's a hallway and then you go into?
20 A You go into like --
21 Q A suite?
22 A Yeah. It's like a living area. There's a half
23 kitchen and then two bathrooms and then four rooms
24 like right when you walk in.
25 Q And they have their own doorway?

1 A Yes, they do.

2 Q And does that doorway lock?

3 A Yes, they do.

4 Q And so you approached your suite?

5 A Yeah. I approached the outer door to my suite and

6 we leave the door unlocked. And I had the key in

7 my hand and he opened the door and went in.

8 Q "He" being?

9 A Efe.

10 Q Okay. Did you invite him in?

11 A No. I did not ask him to come in.

12 Q Did you tell him not to come in?

13 A Before I had the chance to the door was open. So

14 I did not welcome him in or tell him to come in at

15 any point though.

16 Q Then what happened?

17 A And then he like started talking about like the

18 inside, and I was just kind of shocked that that

19 had happened, that he had just walked in, because I

20 thought I made it clear that I did not want him

21 over. I just -- when he asked originally. But I

22 thought I could like -- this is just like "Okay,

23 this happened, but I can get him back out of my

24 dorm. This isn't a big deal, I can just tell him

25 to leave."

1 But there was names on all of our doors, and
2 mine's the only room without a name on the door to
3 my room, and so he mentioned something like that
4 and walked directly towards the door before I had
5 time to like really get to him or like catch up.

6 Q Did you say anything to him?

7 A At that point I don't recall.

8 Q Okay. So what happened then?

9 A He opened the door and walked immediately to my
10 bed and laid in it, like fully out. And I was fed
11 up at that point, and I stood at the foot of my bed
12 and asked him to leave. And I told him I had work
13 in the morning like really early, and I wanted to
14 get to bed. And I asked him to leave multiple
15 times.

16 Q Did he get up and leave?

17 A No, he did not.

18 Q What happened?

19 A He started talking about -- he tried to make small
20 talk to divert me from what was actually happening,
21 I believe. I would like bring it back like, "I
22 don't want you here, please leave." And he kept
23 trying to divert the conversation. And that's when
24 he like started insinuating something to like
25 happen between us and I was like no. He was like

1 "Come lay down or just relax," and I said "No, no."
2 And that's when he -- I was standing at the
3 foot of the bed, like my arms crossed like "please
4 leave" and that's when he like approached, like, me
5 towards the end of the bed.
6 Q Okay. So you were standing at the end of the bed
7 with your arms crossed telling him to leave?
8 A Yes.
9 Q And what happened?
10 A That moment, I ended up on the bed, and by that --
11 grabbed me, was on like -- and so I was now on to
12 the bed. And at that moment.
13 Q I'm sorry. You were speaking very soft.
14 A Sorry.
15 Q I didn't understand that. You were standing at
16 the end of the bed telling him to leave?
17 A Yes.
18 Q Okay. How did you end up on the bed?
19 A He grabbed me and put me on the bed.
20 Q The defendant grabbed you?
21 A Yes.
22 Q How did he grab you?
23 A His hands on my biceps like that.
24 Q So did he sit up in bed?
25 A Yes. He approached me. Like he sat -- he was

1 already sitting up with his legs out, and then
2 moved to the end of the bed where I was.
3 Q Okay. And so he grabbed your biceps and did what?
4 A I ended up laying on my back. So however you
5 maneuver someone like that.
6 Q Then what happened?
7 A And then I still said no. And that's when he
8 kissed me and it was aggressive. And I kept trying
9 to make excuses, hoping it would stop. And so when
10 that didn't happen, I started to like mentally
11 check out. Because I thought I could like -- it
12 didn't come across my mind to scream or fight. I
13 don't -- well, I was pinned, so I couldn't, but
14 that just didn't happen. Instead I like chose to
15 like just step back into my own head and kind of
16 went numb. And so the kissing proceeded to happen,
17 never back, but yeah.
18 Q Were you still telling him to leave?
19 A Yes.
20 Q And was there any communication about kissing?
21 A No.
22 Q Okay. You were telling him "No. Leave"?
23 A Yes.
24 Q Then what happened?
25 A And then I was not wearing a bra underneath my

1 shirt, and so my shirt was able to just easily be
2 like lifted up. And so it was like pulled up.

3 Q Did you pull your shirt up?

4 A No.

5 Q The defendant pulled your shirt up?

6 A Yes.

7 MR. OLLER: Your Honor, I'm going to
8 object at this point in time to leading. I allowed
9 it to a certain extent, but I would like to hear
10 her testimony.

11 THE COURT: Well, it's not really
12 leading. Just -- but allow her to answer a little
13 bit more in the narrative, please.

14 MR. DREES: Yes, Your Honor.

15 Q (By Mr. Drees) So then what happened?

16 A At this point I was mentally checked out. I felt
17 like an observer from the outside. All I know, I
18 was in a lot of pain because he did like proceed to
19 like do what he thought was pleasurable for like
20 maybe himself, I don't know. And basically, like,
21 left abrasions almost across, like, my nipple on
22 both sides. And so that continued.

23 And then it transferred to like at one point
24 his hand went in my mouth and he like clawed
25 upwards, and it left, it took a chunk out of my

1 mouth. And so it was across. And that chunk
2 actually led to an infection, and I was
3 hospitalized for that infection just from that.

4 And then it also led to like choking, but not
5 to where I lost like my breath or anything. But
6 his hands were around my neck. So that happened.

7 And then -- and then my, like, pants, like he
8 put his hand in my pants. They weren't taken off.
9 And that's when he like -- sorry.

10 Q It's okay. You are not going to offend the judge,
11 believe me.

12 A Okay.

13 Q Go ahead and tell the judge what happened.

14 A And then that's when he, like, he, like, stuck a
15 finger in and it was brief. I actually -- well, I
16 was really, like, checked out at that point, but
17 yeah.

18 Q Now, you said he put a finger in. Put a finger in
19 what?

20 A My vagina.

21 Q Okay. Did his finger insert into your vagina?

22 A Yes.

23 Q You did not consent to that?

24 A No.

25 Q What were you doing?

1 A Like lying there. I don't know, I was in a --
2 just might have been pinned down with one arm. I
3 don't -- I was not present like in my head at that
4 point, so.

5 Q And then what happened?

6 A And then -- and then he, like, took his pants off
7 and, like, took my hand and put it on, like, his
8 penis and started, like, guiding it, but I took it
9 off when he no longer had like my hand. And then
10 he, like, took my, like, head and, like, forced it
11 down to, like, his penis and tried to, like, get me
12 to give him, like, a blow job.

13 Q Was he able to do that?

14 A No.

15 Q Did you open your mouth?

16 A No.

17 Q Did any part of your mouth touch the defendant?

18 A It might have, like, touched against, but never,
19 like, engaged in it like that.

20 Q Where was the defendant's penis in relationship to
21 your mouth?

22 A It was --

23 MR. OLLER: Objection. Asked and
24 answered.

25 THE COURT: Overruled.

1 Q (By Mr. Drees) Go ahead and answer.

2 A It was against, like against my mouth. Like right
3 at the opening of my mouth.

4 Q And was he pushing your head against his penis?

5 A Yes.

6 Q Okay. Did part of the penis go between your lips?

7 A Yeah. I think it, like, entered just, like,
8 enough because of the force.

9 Q But you kept your teeth closed? Your mouth
10 closed?

11 A Yes.

12 Q Then what happened?

13 A At that point the refusal I think was, like, too
14 much; or, like, me not, like, engaging enough
15 wasn't enough. I think he, like, grew tired or
16 something of -- because, yeah, he just, like,
17 stopped. Because I asked him -- I think he just
18 got tired of me not complying and got fed up and
19 grabbed his stuff and walked out of my room, pretty
20 sure.

21 Q Did you have any conversation with him?

22 A I might have asked him to leave again, but I don't
23 recall.

24 Q Okay. You had mentioned, you were describing him
25 grabbing your hand and then your hand touching him?

1 A Uh-huh.

2 Q You need to give a little more detail, please.

3 Describe for the court what was happening at that

4 point.

5 A He grabbed my wrist and, like, kind of the top of

6 my hand and guided it, like, placed it, I guess

7 down.

8 Q He placed your hand where?

9 A On his penis.

10 Q And then what?

11 A And then, like, proceeded, like, have it stroke

12 himself I guess with my hand. And then that -- I

13 was able to, like, pull that back, like, but yeah.

14 Q So what did he do with your hand?

15 A Like do -- just, like -- like -- like pleasured

16 himself with my hand.

17 Q How did he pleasure himself?

18 A Like had my hand and wrapped it around his penis.

19 Q And the motion you are making, you are using one

20 hand to grab the other hand?

21 A Yeah.

22 Q And close it. Was he doing that to you?

23 A Yes.

24 Q So he was forcing your fingers closed where?

25 A On his penis.

1 Q On his penis?

2 A Yes.

3 Q And then what?

4 A And then, like, proceed to, like, guide it up and

5 down.

6 Q And then he moved your hand up and down on his

7 penis?

8 A Yeah. And then stopped as if to have me continue,

9 but I didn't. I took it away.

10 Q You took your hand away?

11 A Yes.

12 Q Okay. Now, you were describing the defendant

13 putting his hands around your throat?

14 A Yes.

15 Q Did he apply pressure to your throat?

16 A Yes, but not in the way where I couldn't breathe

17 anymore. Like, I wasn't fighting for breath.

18 Maybe it was restricted somewhat, but it wasn't to

19 where I was, like, suffocating necessarily.

20 Q What about your blood supply?

21 A Yeah, that was pinched or like --

22 THE COURT: Did you say pinched?

23 THE WITNESS: Yeah.

24 Q (By Mr. Drees) So he was restricting the blood on

25 the side?

1 A Yeah. More so than the throat.

2 Q Okay. And how were you feeling?

3 A That was the least of my worries in regards to

4 everything else he was doing. But I don't recall

5 exactly how I felt, if it made me feel lightheaded

6 or anything. It might have eventually led to that,

7 but I -- it was for, like, a certain period of

8 time. It wasn't withheld for a long time that he

9 had my neck.

10 Q Approximately how long did he apply pressure to

11 the sides of your neck?

12 A For, like, a minute. It wasn't -- but it was,

13 like, in between adjusting grip and stuff. He

14 didn't necessarily have it, like, tight the whole

15 time. Like, might have let go for a second and

16 reapplied pressure. It was a consistent hold but

17 not like the force was varying. So it wasn't

18 enough to, like, make me go lightheaded or

19 anything.

20 Q Okay.

21 A But it was still, like, restricting the blood

22 flow.

23 Q Now, you've described some injuries. You said

24 that there was injuries to your breast,

25 particularly your nipples?

1 A Yeah.

2 Q What were those injuries?

3 A They were, like, it was, like, straight across.

4 It was like a diagonal bruise, like a bruising.

5 And it almost looked like -- it was purple and,

6 like, a bruise, but then there was also, like, red

7 where it looked, like, almost skin was broken open

8 but not really, but as well as bruises and a

9 horizontal line on both.

10 Q And you said he forcibly kissed you?

11 A Yeah.

12 Q Did you suffer any injuries from that?

13 A My lips were purple around, and then my lower lip

14 was like big, like, really big, and it felt, like,

15 really raw. It kind of felt like open. It was a

16 little open, like barely bleeding.

17 Q And you had described an injury to your mouth?

18 A Yes.

19 Q And in your testimony you said that you had to be

20 hospitalized for that?

21 A Yes.

22 Q How did that come about?

23 A So the scratch, he took a chunk out of my mouth

24 and it left a gash. And right after -- like, so

25 then the days after, my health started to plummet,

1 like it started to decrease, and then by that
2 Friday, I felt gravely ill. And the opening on my
3 mouth had swollen three times the size, and it was
4 massive and I couldn't eat or drink. And then my
5 health decreased even more, and I started running a
6 fever, and I, like, couldn't move. I was very
7 weak.

8 And then when I was brought to the hospital,
9 I went first to the walk-in clinic to see if they
10 could help me, and they couldn't. They referred me
11 to the emergency department. So I went to the
12 emergency room, and they told me that what had
13 happened essentially is that there was most likely
14 an infection caused by what had scratched me --
15 like, I didn't tell them why -- and then they said
16 that probably, like, somehow made its way to my
17 kidneys, or something was also wrong with my
18 kidneys. And they had a trace of a UTI issue that
19 could have resulted from that. Or -- yeah.

20 Q Okay. I want to back up just a little bit. You
21 stated that after you had crossed the street from
22 Chuck's -- I'm assuming did you go across Seventh
23 Street, or did you cross Park Street to the
24 university?

25 A I went straight across the street to Chuck's, and

1 I just went straight. So I was on the side of the
2 visitor parking lot. That's what I was walking by.
3 And I walked by the Catholic Church.
4 Q Campus Center?
5 A Yeah.
6 Q Okay.
7 A And it was on that side of the road.
8 Q Okay. When you separated to where it was just the
9 four of you, yourself, the defendant, a German
10 soccer player, and a girl?
11 A Yeah.
12 Q Do you know who that girl was?
13 A I do not.
14 Q Okay. So there were the four of you walking back
15 to the dorm?
16 A Yes.
17 Q At any time were you holding hands with the
18 defendant?
19 A No. The one time he tried that I quickly took
20 away my hand was when the whole group was there,
21 but I never once did, no.
22 Q Okay.
23 MR. DREES: I don't have any other
24 questions, Your Honor.
25 THE COURT: All right. Before we have

1 cross, we've been at it about an hour and
2 40 minutes, so I'm going to -- we're going to take
3 a short recess. About ten minutes.

4 MR. OLLER: Yeah, I won't be long. But
5 we can take whatever time you want.

6 THE COURT: As you've heard me say,
7 Mr. Oller, if I had all the time from the words
8 "just briefly, Your Honor."

9 MR. OLLER: I know.

10 THE COURT: I know I would live a long
11 life.

12 So we're still going to take about a
13 ten-minute recess. We're going to resume about,
14 according to this clock here, about 3:20. So we
15 will be in recess.

16 When we return, Ms. Miller, you will need to
17 be back up on the witness stand again. Okay?

18 THE WITNESS: Okay.

19 THE COURT: We'll be in recess.

20 (A recess was taken.)

21 THE COURT: This is a resumption of State
22 versus Osaghae. The record should reflect that the
23 defendant and counsel are present.

24 We were ready for the cross-examination of
25 Ms. Miller. Mr. Oller?

CROSS-EXAMINATION

BY MR. OLLER:

3 Q Ms. Miller, are you currently a student at Fort
4 Hays?

5 | A I need clarification. As far as for fall 2020?

6 Q Are you currently a student, an enrolled student,
7 at Fort Hays State University?

8 A For this fall, no.

9 Q Okay. And did you attend Fort Hays during the
10 spring semester?

11 A I went online, yes.

12 Q Okay. On this Saturday evening, you said that you
13 were at some house parties?

14 A Yes.

15 Q Yes?

16 A One.

17 Q One house party?

18 A Yes.

19 Q And what time did you go to that house party?

20 A Prior to when I went to Chuck's. I spent my night
21 there prior to going, so it was probably 9:00 p.m.
22 I'm unsure. 9:00 to 10:00 is when -- 9:00. But
23 that's all I did prior that night.

24 Q Prior to that time, where were you?

25 A Saturday? I could have been working at the

1 airport. I am unsure.

2 Q Okay.

3 A Normal college, like, just hanging out with

4 friends.

5 Q Okay. Well, I mean I don't know what your habits

6 are as far as going out and those kind of things.

7 Sometimes people take time to prep, they have

8 friends over, those kind of things. That's not who

9 you are?

10 A No. I seldom go out as is.

11 Q Okay. And so you think, as best you can

12 recollect, that it might have been 9:00 or 10:00

13 that you went to this house party? Is that -- is

14 that your -- what you are telling me?

15 A Yes, it was nighttime I was there.

16 Q Okay.

17 A But yeah, it was probably 9:30.

18 Q And who did you go with?

19 A Their names?

20 Q Yeah.

21 A Andrew Voss.

22 Q What was that?

23 A Andrew Voss.

24 Q Andrew Voss?

25 A Voss. V-o-s-s. Andrew.

1 Q And who else? You said that there were a couple
2 friends that you went with?

3 A As far as -- well, it was Denise Lasherblanca's
4 (phonetic spelling) house. I'm pretty sure that's
5 how you say her last name. It was her house, so
6 that's who I then walked over to Chuck's with. I
7 walked with her and Andrew Voss. I know for
8 certain them two. I think one person was also,
9 like, tagging along, but they -- we left and they
10 were like trying to catch up to us.

11 Q Do you know who else was at this party, this house
12 party other than Andrew?

13 THE COURT: Is it Andrew or Angie?

14 THE WITNESS: Andrew.

15 THE COURT: Andrew?

16 THE WITNESS: A-n-d-r-e-w.

17 THE COURT: Okay.

18 A There were plenty of people, but I didn't -- I
19 can't list you all of them. But.

20 Q (By Mr. Oller) Can you list any of them?

21 A Yeah. Dennard Hutchinson. All of Denise's
22 roommates, like Clarissa, Jessica.

23 Q Clarissa and Jessica. What are their names?

24 A Their last names -- they are on student -- Jessica
25 is on student government with me. I cannot

1 remember her last name at this current moment. But
2 I've been to their house before. All her roommates
3 were there.

4 Q Okay. Were these people -- were the people that
5 were at this house party generally the people that
6 were in student government?

7 A Some of them were. It just happens that, like,
8 they are in student government as well. They are
9 their own separate group of friends and that's who
10 was there. It wasn't per se student government
11 people.

12 Q Right. It wasn't a student government party?

13 A No. The only student government people that were
14 there were Denise and her roommate, and her
15 roommate joined just because Denise did. So it
16 wasn't student government-involved or related.
17 There were other people there.

18 Q And before that time, you don't remember whether
19 you were working or not earlier that Saturday
20 evening?

21 A That's -- it was a casual Saturday prior to that,
22 the evening. So nothing out of the norm. I could
23 have been working the flight. There's an afternoon
24 flight. Very well could have been working it,
25 probably was working it.

7 THE WITNESS: Okay.

8 THE COURT: Great. Thank you.

9 Q (By Mr. Oller) And your testimony is that you had
10 one, maybe possibly two drinks at this party,
11 right?

12 A Yes.

13 Q Now, you knew Efe from student government, didn't
14 you?

15 A Yes. He joined two weeks prior.

16 Q And you had seen him in the student government
17 center, right?

18 A I saw him at the meetings, the two that he was a
19 part of. He sat in the back of the room where
20 typically new members do. I sat in the front.
21 That's all. I can tell you just about where
22 everyone sat, but.

23 Q Do you remember having any conversations with him
24 in any of these student government meetings?

25 A Nope.

1 Q Do you -- and your role in student government was
2 what?

3 A I was the chair of the legislative and political
4 action committee.

5 Q Okay.

6 A And a senator.

7 Q Okay. You were a senator and chair of the
8 political action committee?

9 A Yes.

10 Q And Efe was also a senator; is that correct?

11 A Yes.

12 Q And you get those positions through election, is
13 that right?

14 A Yes.

15 Q Okay. In addition to student government, were you
16 a student athlete?

17 A Yes. The year prior.

18 Q Okay.

19 A My freshman year.

20 Q And would that have been -- what year in school
21 would you have been a student athlete?

22 A Second -- student athlete? First year. This was
23 my second year.

24 Q So, student athletes are typically assigned
25 together in residential circumstances, are they

1 not?

2 A Not typically, no.

3 Q What was your -- what was your sport?

4 A Track.

5 Q Okay. And were there many members of the track

6 team that were also in your dorm in your freshman

7 year?

8 A I lived in a community specifically for athletes.

9 That's the only sort of housing for athletes for,

10 like, freshman. There were two other track people

11 on my floor.

12 Q Okay. So there is designated housing for

13 athletes; is that right?

14 A In the broad sense, yes, but this was specifically

15 for freshman athletes.

16 Q Right.

17 A There's no other type of housing, but yeah.

18 Q I guess I wasn't specific enough. I'm talking

19 about in your freshman year, you are typically

20 surrounded by other athletes, right?

21 A If you get into this, like, this floor. It's only

22 so many people get in.

23 Q Okay.

24 A It's like 20ish people. It's not like every

25 athlete. It's the freshman get put here.

1 Q And in your freshman year, you formed some
2 friendships and associations with many of the
3 soccer players; is that right?
4 A My freshman year?
5 Q Yeah.
6 A Like the women soccer team, yes.
7 Q How about the men's soccer team?
8 A No. I knew no one on the men's soccer team my
9 freshman year.
10 Q At what point in time did you begin friendships
11 with people who were on the men's soccer team?
12 A I have never had, like, a friendship with members
13 of the men's soccer team. I just knew them from
14 like Instagram maybe. I knew friends who were
15 friends with them. So maybe if a friend went up to
16 go say hi, I would be standing there. But I never
17 had, like, a friendship with any member of the
18 soccer team. Acquaintances at best.
19 Q Okay. You said that there were a number of the
20 soccer players that were at Chuck's bar on this
21 Saturday night, Saturday night going into Sunday
22 morning, early Sunday morning?
23 A Yes.
24 Q Do you see any of those people here today who were
25 there?

1 A That were there? As far as, like, soccer team
2 members?

3 Q Yeah.

4 A One might look familiar. Not the people that were
5 directly in the party, I don't think.

6 Q What about wrestlers? Did you associate with any
7 of the wrestlers at Fort Hays?

8 A Yes. There were a number on my athletes -- like,
9 the freshman athletes' learning community that are
10 here today.

11 Q The -- who were the soccer players that you were
12 partying with in Chuck's?

13 A I was not partying with them.

14 Q Okay.

15 A I would like to clarify.

16 Q Bad word. Bad choice of words. Who were the
17 people that you were talking to at Chuck's?

18 A I only talked to one directly and that was Moe,
19 the German exchange soccer.

20 Q And he's from Germany, right?

21 A Yes.

22 Q And you've lived in Germany; is that right?

23 A I've visited Germany.

24 Q Did you ever tell Efe that you couldn't wait to
25 get back to Germany and that you hated being at

1 Fort Hays State University?

2 A I don't recall telling him that.

3 | Q Is that your sentiment?

4 | A I --

5 MR. DREES: I'm going to object as to
6 relevance.

7 THE COURT: Mr. Oller?

13 Q (By Mr. Oller) Do you recall having a
14 conversation with Efe while you were walking back
15 to the dorm, and while you were in his room, in
16 which you said you weren't going to return to Fort
17 Hays because you wanted to go back to Germany and
18 you hated Fort Hays?

19 A I was not in his room, but.

20 Q In your room.

21 A I was in my room, yes. I made small talk, tried
22 to pass the time from the walk. So it very well
23 could have come up. Because, yeah, that's
24 something I talk about quite often is Germany.

25 Q So when you got to Heather Hall, you had the key

1 to Heather Hall, right?

2 A Yes.

3 Q And you opened the door?

4 A Yes.

5 Q And when you opened the door, did you open the

6 door or did Efe open the door?

7 A To Heather Hall?

8 Q To Heather Hall itself.

9 A I did, because I had the key.

10 Q And then did you invite him in?

11 A No.

12 Q Who -- did you hold the door for him?

13 A If that's -- if that's a way to invite someone in,

14 then I held -- I don't know, I'm a kind person, I

15 would like to consider, so I probably did hold the

16 door for him, because I had the idea that he wasn't

17 going to be coming with me. If that's what you are

18 alluding to.

19 Q Did you tell him at the front door before you

20 opened it up, "Thanks for walking with me, have a

21 good night, you are not invited in to Heather

22 Hall?"

23 A Again, I assumed he was going to his friend's, so

24 I just kept the conversation short and ended it.

25 It was silence rather.

1 Q Who were his friends?

2 A It was his friends. I'm pretty sure Moe lives in

3 one of the places, someone by the name of Nate.

4 Alonzo maybe.

5 Q So Heather Hall is a coed --

6 A Yes.

7 Q -- residential. And so you -- he got access there

8 and then he followed you upstairs, right?

9 A Yes.

10 Q At that point in time did you tell him "You can't

11 come with me"?

12 A His friends lived next door, so, again.

13 Q So I guess the question is no, you didn't ever

14 tell him that?

15 A No.

16 Q Okay. When you got to the, to the suite, you say

17 that the suite was not ever locked; is that right?

18 A No.

19 Q Did -- and you claim that he walked in ahead of

20 you?

21 A Yeah. Because I went to get my key to unlock it,

22 but it was unlocked. We do keep it unlocked

23 because Joyia, my roommate, was gone that -- she

24 was gone. She was at the arts building. So since

25 all of us weren't home, it's unlocked.

1 Q It is unlocked or locked?

2 A Unlocked, because if one of us, like, can't get

3 in.

4 Q And there are four, do you have four suite mates?

5 A I have three suite mates assigned from myself. So

6 there's four of us.

7 Q Okay. There was four of you that lived in that

8 area?

9 A Yes.

10 Q And you take -- and I guess I want to know what

11 happened, because you said you got your key out,

12 but then you didn't need your key because you could

13 walk directly into the suite?

14 A Yeah.

15 Q So when you walked into the suite, did you tell

16 him you need to leave?

17 A Again, I --

18 Q Yes or no.

19 A No.

20 Q No?

21 A Not at that moment, no. When he got in my room,

22 yes.

23 Q Okay. Did you know who was home when you got

24 there at 2:00?

25 A I could assume who was home.

1 Q Okay. Did you go to any of those people and say
2 "Hey, this guy is in my room and I don't want him
3 here?"

4 A I messaged in our group chat, yes. I messaged in
5 our group chat that he was there, and I needed -- I
6 wanted him gone.

7 Q Okay. And did you provide a copy of that message
8 to the officer?

9 A It was on Snapchat so it deleted.

10 Q Who did that all go to?

11 A That went to my three roommates, Lilly, Joyia and
12 Kat.

13 Q Do you know who was home that evening?

14 A Well, when, like, after it all, I know that Lilly
15 was home. Like I said, I could assume who was home
16 and who was not.

17 Q Do you remember Julia or Kat home?

18 A Joyia and Kat were not home, no.

19 Q All right. So the only people that were in that
20 suite were Lilly and yourself?

21 A Yes.

22 Q Did you -- have you talked to Julia or Cat about
23 this case?

24 A In what timeline? Yeah, immediately after.

25 Q Okay. What time did you get home from the bar?

1 A Right after the bar closed, so.

2 Q What time was that? I -- I know that you say

3 right after, but right after doesn't give me a lot

4 of time period.

5 A So if Chuck's closed at 2:00, it was 2:00 a.m.

6 I'm pretty sure Chuck's closes at 2:00. So it was

7 2:00 a.m.

8 Q So other than you say meeting with these people,

9 you had this guy that was following you out of

10 Chuck's, right?

11 A Yes.

12 Q So you went over and you say you talked to a group

13 of people?

14 A Yes.

15 Q Including a number of the soccer members?

16 A Yes.

17 Q And you said Efe was with them?

18 A Yes.

19 Q And how many were there in that group originally?

20 A In that group, five soccer players and then there

21 was that female.

22 Q You didn't know any of those people?

23 A I knew Moe. Well, like, know, I could recognize

24 their faces and small talk to Moe. But it was like

25 Moe, Efe, Nate and Alonzo were there. And then

1 like maybe -- and then one other guy.

2 Q Nate and Alonzo?

3 A Yes.

4 Q Do you know Nate and Alonzo's last names?

5 A I don't.

6 Q And you said one other guy?

7 A I don't know his name.

8 Q Okay.

9 A But.

10 Q You don't know his name, but there was another
11 one?

12 A Yeah.

13 Q Besides --

14 A It was, like, another one, yeah. One or -- I'm
15 pretty sure just one.

16 Q And a woman was there in addition to the one, two,
17 three, four, five?

18 A Yeah. From what I recall it was, like, that
19 group. It was, like, the group.

20 Q You said that in your testimony that you kept, I
21 think the quote was, "checking in and out"; is that
22 right?

23 A Yeah.

24 Q What does that mean?

25 A Just like disassociation essentially from what's

1 happening.

2 Q Is this something that happens often in your life?

3 A No.

4 Q Has it happened before?

5 A No.

6 Q You said you weren't drinking very much, maybe at

7 the most two drinks?

8 A Yes.

9 Q What were you drinking?

10 A That night it was probably like two beers.

11 Q You say "probably."

12 A Yeah. So it was either, like, a beer and, like, a

13 shot of tequila or two beers. It was one of those,

14 because that's all they had at the house.

15 Q It couldn't be two beers and a shot?

16 A No.

17 Q Did the officer ever ask you what you were

18 drinking or how much?

19 A Yes.

20 Q Did you tell her the truth?

21 A Yeah. It was something along the lines of beer

22 and tequila.

23 Q So you think now that it might have been beer and

24 tequila?

25 A I meant that as in a statement of those were the

1 two options, so that is what I provided the
2 officer, because she asked what I was drinking.
3 Q But you don't remember what you were drinking?
4 A Those were the two options at the house. So it
5 was one of those two.
6 Q And again, you don't remember what you drank?
7 A Specifically the combination, no.
8 Q And is it your testimony here that you did not
9 have anything to drink at Chuck's?
10 A I'm -- no.
11 Q And let me ask you this: You didn't have any
12 alcoholic drinks at Chuck's, is that what you are
13 telling us?
14 A Like order from the bar? No. I didn't have any
15 drinks at Chuck's.
16 Q Did you have any nonalcoholic drinks at Chuck's?
17 A No.
18 Q Just for the record, I'm not making any
19 implication. You weren't using any drugs of any
20 sort or any prescription medications or
21 over-the-counter that would have affected your
22 judgment that night?
23 A No.
24 Q Do you feel like you were pretty clearheaded?
25 A Yes.

1 Q What time did Efe leave your room?

2 A Exactly? 3:00, 3:30.

3 Q So he was there for an hour and a half?

4 A I don't -- I don't know. By the time we got --

5 well, we had the walk to the dorms, so that was

6 probably --

7 Q How long does it take to walk from Chuck's to

8 Heather Hall?

9 A Well, by the time we shuffled all out, I mean they

10 close the lights off at 2:00, so yeah, it could

11 take just anywhere from, like, 15, so.

12 Q I mean the officer testified that Chuck's could

13 close as early as 1:45. Do you have any reason to

14 dispute that?

15 A No. I don't know their protocol. I didn't check

16 my phone for the time.

17 Q Okay. The -- you walked immediately, and you are

18 walking pretty briskly until you got to the Johnson

19 Bridge, were you not?

20 A The Jellison Bridge.

21 Q You called it the Johnson bridge, I think, didn't

22 you?

23 A It's the Jellison Bridge.

24 Q The what?

25 A Jellison.

1 Q The Jellison Bridge. Is that the little walkway
2 that goes over the stream?

3 A Yes.

4 Q Okay. Jellison Bridge. So you are walking
5 quickly before you met up with Efe and the crowd
6 right before the bridge?

7 A It wasn't a long way to walk.

8 Q Right.

9 A It was across the street that I was briskly
10 walking.

11 Q You walked across the street?

12 A Yeah.

13 Q And you had to walk through a parking lot, right?

14 A It's the sidewalk next to a parking lot.

15 Q Okay. So you didn't walk through the parking lot,
16 you went around to the sidewalk?

17 A I went directly to the sidewalk.

18 Q And you go across another street to get to the
19 Catholic Campus Center, right?

20 A Yeah.

21 Q And that's where you meet up with Efe and the
22 gang?

23 A No. I met up with them like in the middle of the
24 sidewalk in between the two streets.

25 Q The first street or the second street?

1 A In between the first and the second. The stretch
2 that -- the sidewalk next to the parking lot, it
3 was in there.

4 Q Okay. So you -- I mean you basically walked
5 across the street and you met up with them?

6 A Yeah. I immediately tried to ditch this guy,
7 because he was still coming, trucking along.

8 Q And then you say that the whole group of you then
9 walked across the Jellison Bridge or did --

10 A No. The group -- it was a group. So everyone was
11 like talking and walking slowly, and these two
12 people -- so there was a whole dialect happening,
13 and I was just standing there for it. And at that
14 point, about when we reached like the second street
15 is when this car drove up and they got aboard it,
16 got in and boarded the car. And then pause for a
17 moment for that to happen, and then we continued to
18 walk towards the bridge, and that's when the two --

19 Q So there were four of you walking across the
20 Jellison Bridge?

21 A No. They -- I said that. The soccer player and
22 the girl went this way, towards the street. And
23 then Efe and I went across the bridge.

24 Q Okay. So by the time you are walking across
25 Jellison Bridge, it's just you and Efe?

1 A Yes.

2 Q Okay. And did you stop and -- anywhere along the

3 way? Were you walking --

4 A No.

5 Q Were you walking at a normal pace?

6 A Yeah.

7 Q You weren't running?

8 A No.

9 Q But you weren't at a crawl pace?

10 A It was just like a stroll. Just like walking

11 home.

12 Q Right. And so how long would it have taken you?

13 Have you walked that before?

14 A Yes.

15 Q How long does it take to walk that?

16 A Well --

17 Q Back to your dorm from Chuck's?

18 MR. DREES: I'm going to object as to

19 asked and answered.

20 THE COURT: Overruled.

21 Q (By Mr. Oller) Do you know how many minutes it

22 takes you to get from Chuck's bar to Heather Hall?

23 A Uninterrupted and on my way to class? I'm late?

24 Q Yeah. Uninterrupted, not late, just a casual

25 stroll.

1 A 10 to 15 minutes. I don't know.

2 Q How long?

3 A Ten minutes.

4 Q Ten minutes.

5 A If I'm late to class and I'm on my way.

6 Q And then there wasn't anything that interrupted

7 your travels from the front door of Heather Hall

8 all the way to your room, correct?

9 A No. There were no other people in the lobby.

10 Q So you say that Efe left maybe at 3:30, but you

11 really don't know?

12 A No. The timeline was the least of my concerns,

13 what time it was.

14 Q Well, he called you, didn't he?

15 A Who called me?

16 Q Efe called you?

17 A He does not have my phone number. He did not call

18 me.

19 Q Efe called -- were you aware that Efe called

20 Lilly?

21 A Yes, because -- if I recall correctly, Lilly

22 called -- because he wouldn't stop banging on our

23 door.

24 Q Banged on her door, and then he called and

25 eventually, she called him back and said he thought

1 he left his wallet in her room?

2 A Yes.

3 Q But he didn't leave his wallet in her room, he

4 left it in your room, correct?

5 A I don't know the conversation they had on the

6 phone.

7 Q Did Efe -- was Efe's wallet in your room?

8 A Yes.

9 Q Okay. And did you then give that wallet back to

10 Efe?

11 A Lilly slid it under the door because we were not

12 letting him in.

13 Q So -- and you are talking about the door that is

14 -- separates the suite from the hallway, correct?

15 A Yes. I know the door was unlocked when we

16 approached it, because we immediately locked it.

17 She immediately locked it when he left.

18 Q Okay. So Lilly's phone would say what time he was

19 outside the door waiting for his wallet?

20 A If it's on Snapchat, I'm sure that's the method

21 she used to call him, I'm pretty sure, so if that

22 can be traced back to the time.

23 Q And you didn't keep any of those Snapchats?

24 A That is not my phone. I don't have the records

25 for the call.

1 Q What did you do after he left?

2 A Me and Lilly -- because he went into her room, so

3 we were just, like, "What just happened?"

4 Q So you and Lilly had a conversation?

5 A Yes.

6 Q And how long did you and Lilly talk?

7 A Briefly because Joyia, when I messaged that I,

8 like, needed help in the group chat, she -- it took

9 her a while to notice it, but she went directly

10 back to our room and came through the door and --

11 because she was worried for us.

12 Q Okay. So Julia -- is it Julia?

13 A Joyia. J-o-y-i-a.

14 Q Joyia then comes back to the suite, and she joins

15 the conversation with you and Lilly?

16 A Yes.

17 Q How long did that conversation take place?

18 A Five, ten minutes. It was brief because Joyia

19 told me to call the cops, and Lilly called her mom

20 and Lilly's mom told me to call the cops. So I

21 called the cops.

22 Q Okay. So that's when the police were summoned?

23 A Yes.

24 Q At 5:00ish?

25 A Yes. It might have --

1 Q And you had an interview with the police?

2 A Yes.

3 Q Actually, you had two interviews with the police

4 that day, right?

5 A Two interviews?

6 Q They came and talked to you at your dorm, right?

7 A Yes. And then I came with them.

8 Q And then you went with them to the police station?

9 A Yes.

10 Q And then you left campus the next day; is that

11 correct?

12 A Yes.

13 Q Went back home?

14 A Yes.

15 Q You returned again on Thursday?

16 A Yes, because I had to work Friday. Something of

17 that sort.

18 Q Is that -- is that the reason why you came back to

19 campus?

20 A To collect all my belongings was also the reason.

21 Q Okay. You were -- it was the end of semester,

22 right?

23 A Yes.

24 Q You had the finals to take that Friday, didn't

25 you?

1 A I had finals to take all that week.

2 Q Okay. Did you take all your finals?

3 A I took none of them.

4 Q Did you go to work on Friday?

5 A I was really ill from my health declining from the
6 injury, so I told my boss what had happened, and he
7 let me go home. Or he let me just drive to Kansas
8 City, I didn't even have to come in.

9 Q Who was your boss?

10 A Niko McCall. M-c-C-a-l-l. Niko, N-i-k-o. That's
11 his name, Niko McCall at SkyWest, at the Hays
12 Regional Airport.

13 Q Okay. Then, as I understand, you were
14 hospitalized the week after that; is that right?

15 A Yeah. My health went straight down that weekend
16 and then Monday or -- yeah, Monday or Tuesday is
17 when like the walk-in was open so I went, and then
18 they told me to go to the emergency room.

19 MR. OLLER: I have no other questions.

20 THE COURT: Mr. Drees, any follow-up?

21 MR. DREES: No.

22 THE COURT: All right. Ms. Miller, you
23 are done. You can stand down. Thank you.

24 MR. DREES: The State doesn't have any
25 additional witnesses for prelim.

1 THE COURT: The State rests?

2 MR. DREES: The State rests.

5 MR. OLLER: Not for preliminary hearing,
6 Your Honor.

9 MR. DREES: Only if the court is inviting
10 closing. I would ask the court to bind over.

11 THE COURT: Mr. Oller, any remarks?

12 MR. OLLER: I've explained to Mr. Osaghae
13 the burden of proof in a preliminary hearing and
14 what this hearing is about, so.

21 Do we want to do arraignment at this time,
22 Mr. Oller, or at a later date?

1 THE COURT: Very good.

2 MR. OLLER: And are we doing those by
3 Zoom? Or can we do it by Zoom.

4 THE COURT: You may.

5 MR. OLLER: Mr. Osaghae is now back in
6 St. Louis.

7 THE COURT: Okay.

8 MR. OLLER: With his aunt.

14 MR. OLLER: I will.

20 THE DEFENDANT: No, Your Honor.

25 THE DEFENDANT: Yes, Your Honor.

6 MR. OLLER: I will do that.

12 MR. DREES: I can give him my copy.

17 Mr. Osaghae, when we do the arraignment by
18 Zoom, be sure that you have a copy of the complaint
19 with you. All right?

20 THE DEFENDANT: Yes.

21 MR. DREES: And it is the one
22 file-stamped January 8, 2020.

23 THE COURT: All right.

4 MR. DREES: Just to clarify a point, Your
5 Honor. During the recess, Officer Kelly Bradshaw
6 and I went down. A fellow officer had delivered
7 some materials this past Monday to my office. It
8 never got past Rhonda's desk to Kat's. We've
9 brought it up, showed it to Mr. Oller. We'll be
10 making copies of it. It does include a whole bunch
11 of multimedia that we're copying for Mr. Oller.

1 and that is we're in the middle of another
2 evidentiary hearing and up surfaces an audio or
3 video that's never been delivered.

4 So let's be -- this is a serious case.

5 MR. DREES: Yes.

6 THE COURT: It requires that the
7 attorneys be vigilant in making sure that all of
8 this material is copied and made available. All
9 right? And as Mr. Drees knows, Mr. Oller has
10 witnessed, the court can be quite accommodating,
11 but when it comes to these kind of things, I can
12 become very frustrated quite easily and nobody
13 likes an unhappy judge.

14 MR. OLLER: In that regard, and I don't
15 know, I know Mr. Drees had sent out either a
16 subpoena or Inquisition at some point in time
17 regarding the files and records of the Fort Hays
18 State University student affairs office. There was
19 a companion proceeding that took place at student
20 affairs concerning this incident. I have not
21 received anything from that. I am not sure whether
22 Mr. Drees has received anything from that or not.
23 But I will make sure that I get with him to see
24 what has been discovered and what hasn't.

25 THE COURT: There's been some reference

1 today to some potential other incidents involving
2 the defendant. Is any of that intended to be
3 discovered or used, Mr. Drees?

4 MR. DREES: I'm not aware of it at this
5 time, Your Honor. But again, a large chunk of
6 material came in which I have not had a chance to
7 review yet.

8 THE COURT: Well, I clearly heard Officer
9 Bradshaw testify that she interviewed other
10 individuals concerning other possible allegations,
11 and if we're going to run into that type of
12 evidence, and if it's in possession of the
13 University, let's make sure that we don't wait
14 until the last minute to get it.

15 MR. DREES: Right.

16 THE COURT: Mr. Oller is going to have an
17 interest in making sure that he has opportunity to
18 do his own discovery regarding that.

19 MR. OLLER: Yeah. We're -- we were aware
20 of a couple of the other instances that -- and I
21 don't -- I don't perceive they will become issues
22 in this case.

23 THE COURT: All right.

24 MR. OLLER: But there's also a potential
25 for a 60-455. When this case was originally filed,

1 Mr. Drees had at least made some preliminary
2 inquiry as to whether there were going to be
3 additional charges, and I assume by the complaint
4 that that has not come to fruition, so.

5 THE COURT: Well, in looking at the
6 charges, I'm not sure whether the county attorney
7 may be amending at least one of those charges. I'm
8 not sure. But if that's done, make sure it's not
9 presented the day of the arraignment, because we
10 want to make sure Mr. Osaghae has a copy of the
11 amended complaint in advance of arraignment.

12 MR. DREES: Okay.

13 MR. OLLER: Okay. Thank you, Judge.

14 THE COURT: Thank you. With that, we
15 will be adjourned.

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CERTIFICATE

2 STATE OF KANSAS)
3 COUNTY OF ELLIS)
) SS.

5 I, Lynelle Gottschalk, Certified Court
6 Reporter for the State of Kansas and the regularly
7 appointed, qualified and acting official reporter for
8 the 23rd Judicial District of the State of Kansas, do
9 hereby certify that, as such official reporter, I have
10 prepared the foregoing transcript from the official
tape recording made at the time of the trial, as
indicated by the files and records of this court in
Case No. 2020-CR-5, State of Kansas, Plaintiff, vs. Efe
Clinton Osaghae, Defendant, heard on July 15, 2020,
before the Honorable Glenn R. Braun, Judge of the 23rd
Judicial District.

11 I further certify that at the request of Paul
12 Oller, attorney for the Defendant, a transcript was
13 typed and that the foregoing transcript consisting of
109 typewritten pages is a true and correct transcript,
all to the best of my knowledge and ability.

14 SIGNED, OFFICIALLY SEALED, AND DELIVERED TO
15 MR. PAUL OLLER, ATTORNEY FOR DEFENDANT, this 15th day
of September, 2020.

/s/ Lynelle Gottschalk
Certified Court Reporter
Kansas Supreme Court No. 1337

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APPENDIX G

1 pain, and also the more I will not change. The
2 first step is acknowledging the problem.

3 As soon as I received the report last week
4 from Paul, from Paul Oller, with Dr. Steffan's
5 report, I saw the recommendation, I read the whole
6 report. I saw his recommendations, and I got a
7 list of three different counseling centers to help
8 with me, and I called immediately.

9 If I got -- I wish I would have had a list
10 earlier. I wish I wasn't in denial for so long
11 and putting the victims in pain. But I know I
12 want to make it right. I know the first step is
13 taking accountability for my actions and taking
14 necessary steps to fix it rather than being in
15 denial and helping the victims.

16 I am taking necessary steps, and I will
17 continue to use every step that I learn along the
18 way not just for myself, but also to educate my
19 friends and family to make sure this type of
20 behavior isn't done by myself or with them as
21 well.

22 And truly, I'm sorry for everything that I
23 did with the victims.

24 Thank you, Your Honor.

25 THE COURT: All right. Mr. Osaghae,

1 please stand.

2 Mr. Osaghae, for the primary offense of
3 aggravated sexual battery, a severity level five
4 felony, crime history score of I, the Court will
5 sentence you to the aggravated sentence of
6 34 months with the secretary of corrections.

7 For the underlying offense, also of
8 aggravated sexual battery, a severity level five
9 criminal history score again of I, the Court will
10 sentence you to the aggravated sentence of
11 34 months with the secretary of corrections.

12 Those two sentences to run consecutive for a
13 total of 48 months in the penitentiary.

14 The Court will note that you have a lifetime
15 post release supervision. For the benefit of the
16 victims, it basically means it's lifetime parole
17 depending upon what the Court does regarding the
18 request for probation.

19 The Court believes that you have received a
20 tremendous benefit as a result of the plea
21 negotiations in this case. As pointed out you
22 could have received for just Counts One and Two of
23 the original charge, 310 months in the
24 penitentiary, 22 years.

25 There is an important component of

1 sentencing, and that is the idea of punishment,
2 and the idea of what message is sent to society.

3 I can join in society in saying boys will be boys
4 and it's locker room talk. And I could do that.

5 I could sentence you to the penitentiary and know
6 that quite frankly, it won't send much of a
7 message to society either.

8 But, it does send a message to these victims
9 who have been ignored by that society, by that
10 university that they entrusted themselves to, at
11 least Ms. Defore. Ms. Miller likewise probably
12 didn't go into that in her statement, but I'm sure
13 would echo many of the comments of Ms. Defore.

14 While you have tremendous support from your
15 coaches, your friends, and most importantly your
16 family, the Court believes that punishment is also
17 an element that must be considered. Therefore,
18 probation in this case would not be in society's
19 best interest, would not be in your best interest,
20 and the Court will not grant probation. You will
21 serve the term.

22 You will be entitled to earn up to 15 percent
23 good time credit. You will be ordered to pay the
24 Court costs of \$193; DNA database fee of \$200; and
25 correctional supervision -- I'm sorry, and booking

1 and fingerprint fee of \$45.

2 As pointed out, these are not expungeable
3 offenses; therefore it's not available to you.

4 These are your first convictions of any kind.
5 Because they are felonies, you can no longer
6 carry, own, or possess a firearm. If I do so, you
7 are in violation of both state and federal law,
8 and there's substantial penalties associated with
9 that.

10 In addition, in the state of Kansas you are
11 not entitled to register to vote, to vote, to hold
12 public office, or to serve on a jury. That
13 disability will continue throughout your
14 incarceration, and quite frankly, for a period of
15 time thereafter.

16 Mr. Anderson, anything else additional needed
17 for the journal entry?

18 MR. ANDERSON: Nothing that I can think
19 of, Your Honor.

20 THE COURT: Mr. Oller, anything else you
21 can think of?

22 MR. OLLER: No, Your Honor.

23 THE COURT: All right. With that, we
24 will be adjourned.

25 MR. ANDERSON: He's to be remanded?