NORTH CAROLINA GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

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STATE OF NORTH CAROLINA	)	
	)	BUNCOMBE COUNTY
versus	)	
	)	18 CRS 92442
KAGAN FRANSWARD WILLIAMS	)	21 CRS 331

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October 25, 2021, Session

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Friday, October 29, 2021

Honorable Jacqueline D. Grant, Judge Presiding

Jury Trial

APPEARANCES:

For the State:
Amy L. Broughton, Assistant District Attorney
P.O. Box 7158
Asheville, NC 28802

For the Defendant:
J. Michael Edney, Attorney-at-Law
132 3rd Avenue East, Suite B
Hendersonville, NC 28792

Shari Rogers, RMR, CRR, CRC
Official Court Reporter - Division V Rover
Post Office Box 2208
Weaverville, North Carolina 28787
shari.j.rogers@nccourts.org

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(*Proceedings commencing at 9:43 a.m.*)

THE COURT: So has the defense made a decision of whether they intend to put on any evidence?

MR. EDNEY: Before we get to that judge, I want to hand up one thing.

THE COURT: Okay. Okay.

MR. EDNEY: And with that, Judge, we will not be offering evidence, and my client has chosen not to testify.

THE COURT: Okay. Let me just do a --

MS. BROUGHTON: And, Your Honor, with respect to that, obviously I can't stop the defense from filing anything, but I just wanted the Court to know I don't know if it will affect the colloquy that the Court is about to have with the defendant.

The State will be objecting to any jury instructions that arise from that highly untimely filed notification.

THE COURT: Okay. All right.

Okay, Mr. Williams, your attorney has indicated that you have chosen not to testify in this case, which is absolutely your right. The decision to testify is a decision for you to make. So I just need for you to confirm on the record and understand you have the right to testify, it's completely up to you.

Do you -- is it correct and accurate that you do

not wish to testify in this case?

THE DEFENDANT: Yes, ma'am.

THE COURT: Thank you. You can have a seat.

MR. EDNEY: Thank you, Your Honor.

THE COURT: Okay. So what we're going to do is bring in the jury so you can indicate that you don't intend to put on any evidence, and then I'm going to advise them that we have to do the charge conference and we're going to send them back out. We'll do the charge conference, and then you will do your -- once we finish that, we'll bring the jury in and you'll do your closing arguments. Okay.

All right. So if the jurors are here, you can have them brought in.

(Whereupon, the jury entered the courtroom at 9:47 a.m.)

THE COURT: Good morning, members of the jury, and happy Friday. I hope everyone had a good evening.

Does the defendant wish to put on any evidence?

MR. EDNEY: If Your Honor please, we will not be presenting evidence. The defense would rest.

THE COURT: Members of the jury, all of the evidence has now been presented. It will soon be your duty to decide from the evidence what the facts are and to apply the law that I will give you at the -- well, after we finish the charge conference. And you will apply the law to the

facts as you determine them to be in arriving at your verdict in this case.

Prior to the arguments of the lawyers and the final instructions of the Court on the law that will follow the lawyers' arguments, I'm required to confer with the lawyers about the law involved in this case. For this purpose, you're going to be excused to the jury room while we conduct what we call a charge conference; after which we will proceed with the conclusion of this case.

Do not yet allow your minds to be made up in this case, because you have not yet heard the arguments of the lawyers or the instructions of the Court. Again, I caution you not to discuss the case with each other or anyone else, or permit anyone to discuss it in your presence, or to speak with anyone involved in the case at this time.

So we're going to return you to the jury room while we conduct the charge conference. And then when we finish, we'll bring you back in here and we will do the closing arguments of the lawyers, okay.

(Whereupon, the jury exited the courtroom at 9:51 a.m.)

THE COURT: Okay. With regards to the defense intent asserting intoxication as a defense, I will hear any arguments of including that in the jury instructions.

I think the State had an objection.

MS. BROUGHTON: Yes, Your Honor. What the defense has handed up is an affirmative defense. Affirmative defenses are governed by 15A-905. In this particular case, it's 15A-905(c)(1). In that particular case, the defendant is required to give notice to the State of the intent to offer at trial the defense of alibi, duress, entrapment, insanity, mental infirmity, diminished capacity, self-defense, accident, automatism, and involuntary intoxication, or voluntary intoxication.

Notice of this defense, as described in the subdivision, is inadmissible against the defendant. Notice of this defense must be given within 20 days, 20 working days after the case is set for trial pursuant to G.S. 7A-49.4, or such later time as set by the Court.

Now, if you go down a little bit further to subsection (1)(b), as only to the defenses of duress, entrapment, insanity, automatism, or involuntary intoxication, notice by the defendant shall contain specific information as to the nature and extent of the defense.

So this is -- not only has this notice been provided well after 20 days since the case has been set for trial -- understanding that Mr. Edney came into it after that deadline has passed -- it's still been long after Mr. Edney came into the case.

In addition, the Court granted on Monday, October

25th, the date that this trial started, the State's motion for reciprocal discovery, which in paragraph 2(e) specifically addressed the issue of affirmative defenses.

And, finally, this wasn't filed until after the State rested, so the State has no opportunity to address this in any timely manner.

So I believe that in light of the fact that the defendant has not complied with any form of timely filing, it's not entitled to any jury instruction concerning intoxication of any form.

THE COURT: What's the defendant's argument for including it and failing to give notice before the State rested?

MR. EDNEY: If Your Honor please, first and foremost, under the State and Federal Constitution and due process, whatever, we're entitled to present a defense.

The statute was quoted accurately by the prosecutor, and the first day of trial Your Honor granted their order and ordered me to comply. Did not set any time frame or timetable, but presumably it's comply as quickly as you can.

As the prosecutor said, I've not been in the case that long. So at arraignment, I was not aware or comfortable in asserting that affirmative defense at that time, because I didn't know that there would be sufficient

evidence to support it.

The State's evidence has provided substantial evidence of my client's impairment to the degree that I think we are entitled to that defense, and, therefore, that instruction in the jury instructions.

I think it's in the Court's discretion based on I think it's 910, 15A-910, failure to comply --

THE COURT: 15A-9 --

MR. EDNEY: 15A-910, Regulation of Discovery, Failure to Comply. It gives the Court different options as to what you could do: Order the party to permit the discovery or inspection. Grant a continuance or a recess. Prohibit the party from introducing the evidence not disclosed. Declare a mistrial. Dismiss the charge, with or without prejudice. Or enter other appropriate orders.

So I think the Court has discretion to address it however you need to.

Given that it is not us offering evidence on this, other than we'll rely on the State's evidence, I don't see how they could be prejudiced for failure -- the law is the law. If those facts exists, that is the law, and the jury should be allowed to consider it.

MS. BROUGHTON: Your Honor, obviously, the State took a sufficient time to find an expert witness in this case. What defense counsel is getting at is, if the Court

has scrolled through his proposed jury instructions, he's looking for a specific intent instruction, which is supported by this. I mean, the day of jury instructions is when we're getting this notification.

I mean, I do agree that the Court may have some authority to address how to deal with this, but what the defense is trying to do is not present evidence, but get the benefit of this defense that the State had no notice of in terms of that being raised in the jury instructions at 9:45 at night, the night before jury instructions. The State has no opportunity to speak to any other experts about how intoxication would address the situation.

I agree that we all saw that they were drinking. But, you know, I know I had spoken to Mr. Edney and there was a possibility that he was going to call a witness that the defendant had been pulled over like at 4:00 a.m. that same day, but did not receive a DUI. And he hasn't put in any evidence to show that he wasn't intoxicated either, and the State has no way of refuting that. Gets all the benefit of the specific instructions, specific intent instruction, voluntary intoxication instruction without having to take any of the hits on losing first argument or being subject to cross-examination. It would be highly irregular for the defendant to receive this instruction at this time.

MR. EDNEY: If I could note one point. The

prosecutor talked about subsection (b) of 905 as far as what the notice should include, contains specific information. That's only involuntary intoxication, not voluntary intoxication.

MS. BROUGHTON: That's accurate, Your Honor.

If I could call the Court's attention to State versus Jones. This is 260 NC App. 104. It's a 2017 case. I'm kind of working as I'm talking --

THE COURT: I'm reviewing cases as well.

MS. BROUGHTON: What it says is, "The sanction for failure to give notice of a defense of self-defense," which is obviously also an affirmative defense, "is normally exclusion of evidence upon the State's objection, or refusal to give a jury instruction on self-defense." And that's referring to State versus Pender, 2018 NC App. 233, which is a 2012 case.

"If at any time during the course of the proceedings, the Court determines that a party has failed to comply with the discovery statutes, the Court can exercise contempt powers," which would prohibit him from introducing evidence which is obviously not the case. "Which several remedies available under G.S. 910 should be applied in a particular case, it's within the Court's sound discretion."

But I think -- I understand that it's discretionary, but given that the normal remedy would be

exclusion, I think the Court has authority to do that. And departing from that would actually be -- would actually depart from the norm as opposed to doing what the State is asking, which would be comporting with the normal due process. I mean, defense counsel has only about three things they have to supply.

THE COURT: Yes.

MR. EDNEY: And I would point out this case is anything but normal.

THE COURT: I've already reviewed State versus Jones and five other cases. I'm just going through them right now. That's what I'm doing.

(*Pause from 10:28 a.m. until 10:31 a.m.*)

THE COURT: I have a few more questions for you. So at the very beginning of this case, and as we were talking when I was confirming what the charges were, I inquired about any affirmative defenses, and you said no, the defendant did not intend to assert any affirmative defenses.

MR. EDNEY: Yes, ma'am, that is correct. I said that.

THE COURT: Now, with regards to the issue of intoxication, and I think you represented that you didn't know there was sufficient information until you heard the testimony in this case to confirm that that was -- that

there would be sufficient evidence of intoxication to assert that defense. But let me ask you, I'm assuming the State turned over to you all discovery that included the statements of Ms. Pendragon that talked about -- included intoxication. And then, of course, you've had access to your client.

So is it your position that based on all the discovery that was produced, that wasn't sufficient to give the defense an indication that an affirmative defense of voluntary intoxication was a potential defense?

MR. EDNEY: The discovery obviously talked about them going to a bar, drinking, coming back. So obviously I knew both had been drinking and alcohol consumption was there.

The defense is more than just being -- drinking or being tipsy. It's got to be -- it's got to be substantial. The young lady testified about these whiskey pickle drinks. I do not remember that in discovery anywhere, and I think there's a substantial difference with them going to a bar drinking beer and going drinking liquor. So that's going through my mind.

THE COURT: And for the State, for Ms. Broughton, my question is with regards to the discovery that was provided, is there anything in the statements that reflects the -- Ms. Pendragon's testimony about the level of

intoxication of the -- Mr. Williams?

MS. BROUGHTON: In her initial statement to Officer Miller on page 4, she stated that the defendant was too intoxicated to drive home. And I would remind Your Honor that was the whole predicate for him staying at her house was that he was too drunk to drive home, so he has known about this.

Again, on page 1 of Detective Butterfield's report, third paragraph, she talks about how he was -- she offered him to stay at her house. Mr. Williams was drunk, which is why she offered him to stay at her house. And then, again, he mentions buying drinks all night.

I think there's sufficient information. You don't have to use the defense just by asserting it. And I think that there was ample time to use it. The defendant's own words in State's Exhibit 1-F, "alcohol ain't help."

It would be the State's position that he's had sufficient notification to provide the bare minimum, which would be notice of a defense.

THE COURT: And who was the discovery turned over to the defendant? I understand there were previous attorneys, but did the State turn over discovery specifically to Mr. Edney?

MS. BROUGHTON: September 21st, which was one day after I received informal notification that he was in the

case. I got that from Mr. Dow, and then contacted Mr. Edney. I'm not even entirely sure a formal notice of appearance was ever filed.

THE COURT: I don't see one in the file.

Okay, so the Court is going to deny the defendant's request for an instruction on the defense of voluntary intoxication, and for several reasons, and of course it is within Statute 15A-910.

In looking at this, the discovery was turned over to Mr. Edney on September 21st of 2021 before he actually entered an appearance in this case, and it includes statements that the defendant was too drunk to drive home, which is why Ms. Pendragon offered him to stay at her house.

Also at the beginning of this case, when reviewing with the attorneys the charges and whether there was any affirmative defenses that the defendant intended to offer, the response from defense counsel was there were none. And at that time -- plus, you've had access to your client to discuss the case. You didn't have to use it, but you could have expressed an intent we may use affirmative defense of voluntary intoxication.

To give absolutely no notice of it until after the State rests their case and right when you're ready to rest your case is prejudicial to the jury -- I mean, to the State, because it doesn't give them an opportunity to

present witnesses or to present evidence potentially rebutting the defense of there's sufficient voluntary intoxication. So the Court is going to deny that request.

Now, going to the proposed jury instructions that I would propose to give.

MR. EDNEY: If Your Honor please before that, I e-mailed Your Honor and the prosecutor what I proposed. I want to put that in the file as being what we had offered, if I may.

THE COURT: Yes.

(*Pause from 10:41 a.m. until 11:26 a.m.*)

THE COURT: Okay, I'm going to e-mail this to you. I'll have Shannon print out a copy. But let me just go through, here's what I have as the instructions.

101.05, function of the jury. 101.10, burden of proof and reasonable doubt. 101.30, effect of the defendant's decision not to testify. 101.15, credibility of witness. 101.20, weight of the evidence. 104.05, circumstantial evidence. 104.20, testimony of interested witness. 104.50, photographs as illustrative evidence. And then -- did we introduce anything as substantive evidence versus illustrative?

MS. BROUGHTON: I don't think we actually made that distinction to be honest with Your Honor.

THE COURT: Okay. So I've included both. Were

some of them introduced as illustrative as opposed to substantive, or were they all introduced as one or the other?

MS. BROUGHTON: No.

THE COURT: Okay, we'll just include both.

MS. BROUGHTON: Okay.

THE COURT: And then 104.95, opinion testimony by a lay witness. 104.94, testimony of expert witness. 105.20, impeachment or corroboration by prior statement. 208.61, assault inflicting physical injury by strangulation, the one that's the felony charge.

And then 207.11A, attempted first-degree forcible rape -- actually, I'm doing the second-degree.

And then after the 207, attempted second-degree forcible rape, I have 101.35, which are the concluding instructions.

So let me print out a copy so you can review, and let me know if you see any corrections that need to be made.

And also that new rule, and I need to double check when it goes into effect -- was it October or December? Which is the alternates are no longer excused. They sit by until the jury actually completes its deliberations.

MS. BROUGHTON: Your Honor, I would ask the Court to consider 104.10, motive; 120.10, intent, and 120.20, definition of assault, if intent and the definition of

assault are not in the substantive instructions.

THE COURT: Okay, I'm sorry, Ms. Broughton, you said motive, and what was the other; definition of assault?

MS. BROUGHTON: And 120.10 is intent, and I think that Mr. Edney might have mentioned that on his list as well. They may actually be rolled into the substantive instructions, but I think intent is one of the ones that is particularly important.

THE COURT: Yes, I have that included under the instruction of 281.61, assault inflicting serious physical injury by strangulation. I start out by defining strangulation, assault, and intent.

MS. BROUGHTON: Thank you, Your Honor.

THE COURT: And was there anything else you want?

MS. BROUGHTON: No, ma'am.

THE COURT: If counsel will approach and I'll hand you a copy. Read through it and let me know if there are any changes that need to be made.

(*Pause from 11:52 a.m. until 12:02 p.m.*)

THE COURT: Are there any changes requested, additions, deletions to the proposed jury instructions?

MS. BROUGHTON: This is super nitpicky, and the Court may be doing this as we do our closing, but for example, there are a number of little superscripts that don't correlate to anything. But other than that, the State

has no requested additions, deletions, or corrections.

THE COURT: Unfortunately under the new jury -- that the Superior Court Judges received, so it sort of fills this package that you can put in and there's a cleanup. The problem is it won't let you save the cleanup. You have to save your own document. You save it over into Word. It doesn't allow you to get rid of the footnotes and anything you want to delete so -- so it's just for us.

If the jury was to request a copy of the instructions, we can take a look at it, but I don't think those scripts would make a difference. But I don't intend to give the instructions to them to take back with them to the jury room. We would just merely -- will read them to them.

MS. BROUGHTON: Yes, ma'am.

THE COURT: Okay.

MR. EDNEY: If Your Honor please, 104.50A, the substantive evidence of photographs. You said photographs, but should you not also put the videos that were shown?

THE COURT: Okay. And videos. All right, I will add that and make that change.

Just to let you know, so the rule about alternate jurors went into effect this month on October 1st, which is that your alternate jurors stay until the jury reaches a verdict, but they don't deliberate with them. And then if a

juror becomes sick or whatever, has to be replaced, then that first alternate goes in with deliberations, and the jury has to begin their deliberations anew. So that's the -- so we have to figure out a way -- a place to put the two alternates to hang out separate from the 12 as they are deliberating.

MR. EDNEY: And for the record, in case we lose and have to appeal it, we object to following that process, find it not to be relevant unless that becomes into effect, but --

THE COURT: What do you mean?

MR. EDNEY: -- to set the stage. I mean, there would be no prejudice if we don't have to use an alternate, but if we actually do have to use one, we would argue it would be prejudice, even though you tell them to start anew. In reality, they are not going to be able to do, and that denies us our right under the Federal and State Constitution to an impartial jury of 12.

THE COURT: So you're objecting to the statute?

MR. EDNEY: Yes, I'm objecting to the statute.

THE COURT: This is the law, not me. Okay.

MS. BROUGHTON: Your Honor, it's 12:06. Does it make more sense just to send them to lunch and then to reconvene at 1:30 or 1:00?

THE COURT: Yeah, so it does. So what we're going

to do is -- but I need to bring the jurors in to let them know what the plan is and --

MR. EDNEY: One more thing about the instructions, if I may.

THE COURT: Okay.

MR. EDNEY: Do you do just the general intent instruction? I'm asking that you include the definitions of specific and general intent, the paragraph below that.

THE COURT: I'm sorry? What intent specific instruction are you requesting? What are you talking about?

MR. EDNEY: The definition of intent.

THE COURT: Hmm-hmm.

MR. EDNEY: It says, "Intent is a mental attitude," and that paragraph is fine. But then the paragraph under the notes, "If further definition of general intent or specific intent is required, you may consider giving the following additional instruction. Specific intent is a mental purpose, aim, or design to accomplish a specific harm or result. General intent is a mental purpose, aim, or design to perform an act, even though the actor does not necessarily desire the consequence of that result."

THE COURT: You're asking that that be given?

MR. EDNEY: Yes, ma'am. The attempted rape is a specific intent crime. The assault is a general intent

crime.

THE COURT: Okay.

MS. BROUGHTON: Your Honor, I would just respectfully disagree and object. I mean, it appears that first the defendant intended to engage in vaginal intercourse. That is general intent, sort of defined. It's not like possession with intent to deprive or something like that. There is no -- you're only intending to commit the act. You're not intending to commit the act with some other specific purpose.

So I would argue to the Court that adding an additional instruction would be incredibly confusing.

THE COURT: So the defense is requesting that in the strangulation, that the definition of general intent be added, and for under the attempted second-degree rape, that specific intent be -- that definition be added. Am I understanding that's the defendant's request?

MR. EDNEY: I think on the assault by strangulation, you can just do the one intent paragraph.

THE COURT: Okay.

MR. EDNEY: But then under the attempted, do that, and then add the definition of specific within that.

THE COURT: Okay.

MR. EDNEY: Since it would apply to that charge, not the other.

THE COURT: Any other requests?

MS. BROUGHTON: No, ma'am.

Your Honor, I withdraw my objection to the specific intent instruction. According to State versus Robinson, 97 NC App. 597, which is a 1990 case, it appears that the Court said the elements of attempted second-degree rape are that the defendant had the specific intent to rape the victim, and that the defendant committed an act that goes beyond mere preparation.

THE COURT: Does the defendant have any other changes, requests?

MR. EDNEY: Under the attempted rape instruction, you've got an (A) and a (B). And I think Your Honor said you are using (B) -- or (A), I think. The (B) one says, "This instruction is valid for offenses committed on or after December 1, 2017. For offenses occurring before December 1, 2015, use 207.11. For offenses occurring between December 1, 2015, and December 1, 2017, use 207.11(A)." So I just bring that to your attention.

THE COURT: I'm sorry, what were you just -- I have --

MS. BROUGHTON: I also show 207.11(B), offenses on or after December 1st of 2017.

MR. EDNEY: And, Judge, I'm using the Fastcase, and it says, "2020 edition," so I don't know if there's a

2021 edition or not.

THE COURT: We just got the latest one last week. So what are you referring to again?

MR. EDNEY: May I approach, Your Honor?

THE COURT: Yes.

(Sidebar held.)

MR. EDNEY: Other than that, I don't have anything else.

THE COURT: Okay. Okay, that one I will take a look at and compare the language over lunch and see if we can -- see if I can get rid of the scripts and footnotes.

So we're going to bring the jury back in here, tell them that we're going to allow them to go to lunch, and that when they return -- and since it's 12:18, we'll just let them come back at the normal time of 2:00, that we're going to go straight -- have the closing arguments, then the charge, and then we're going to let them begin deliberations.

So if you can bring the jury in.

(Whereupon, the jury entered the courtroom at 12:20 p.m.)

THE COURT: Members of the jury, thank you for your patience. We have just completed the charge conference, which again is where the Court and the lawyers go over the law that's going to be given to you to apply to

this case.

What we're going to do, so that we don't break any of this up, we're going to go ahead and take our lunch recess. When you -- please be back in the jury room at two o'clock. You're going to be brought back in here. We're going immediately into closing arguments. Then I'm going to give you the law that you're going to apply, and then you're going to start your deliberations.

So we figured it's easier to keep it together as opposed to starting arguments, then stopping, lunch, and then coming back and breaking it all up.

So we're going to recess for lunch at this time. And then please be back in the jury room at two o'clock, and you're going to be brought back up here so we can start with closing arguments.

Hope you have a good lunch. Please remember the instructions not to discuss the case or form any opinions until you start your deliberations.

(Whereupon, the jury exited the courtroom at 12:22 p.m.)

THE COURT: Madam Bailiff, if you'll let us know when they have cleared the floor and we will recess.

(Whereupon, a luncheon recess was held from 12:25 p.m. until 2:07 p.m.)

THE COURT: Okay, if counsel will approach. I'll

give you the revised instructions for the attempted second-degree.

Any objections to the instructions of the attempted second-degree forcible rape?

MS. BROUGHTON: Nothing from the State, Your Honor.

MR. EDNEY: That's fine.

THE COURT: All right. And is the defendant taking open and last or just the last?

MR. EDNEY: We'll take last.

THE COURT: Okay. All right.

MR. EDNEY: At the end of all the evidence, make a motion to dismiss based on everything previously stated, and specifically asking Your Honor to consider that my client's voluntary intoxication was not disproven by the State, so it should be dismissed on that ground as well.

THE COURT: All right. Taking the defense motions under consideration, and based on the evidence, the Court will deny the defendant's motions.

And at this time, if everyone is ready, you all have everything you need in order to do your closing? Is there anything you need to move ahead of time?

MS. BROUGHTON: Madam Clerk, can you switch it to HDMI Pros PC.

THE COURT: All right. If you'll have the jury

brought in now.

MS. BROUGHTON: I figure I'll leave it there so you can see also instead of dragging it over.

THE COURT: Okay.

(Whereupon, the jury entered the courtroom at 2:21 p.m.)

THE COURT: Members of the jury, it is now time for the final arguments of the lawyers. At the conclusion of these arguments, I will instruct you on the law in this case, and you will be taken to the jury room to begin your deliberations.

The final arguments of the lawyers are not evidence, but are given to assist you in evaluating the evidence. The lawyers are permitted in their final statements to argue, to characterize the evidence, and to attempt to persuade you to a particular verdict.

It is improper for a lawyer in a final argument to become abusive, to inject personal experiences, to express a personal belief as to the truth or falsity of the evidence, or to make arguments on the basis of matters outside the record, except for matters concerning which the Court has taken judicial notice. A lawyer may, however, on the basis of the lawyer's analysis of the evidence argue any position or conclusion with respect to a matter in issue.

If in the course of making a final argument a

lawyer attempts to restate a portion of the evidence and your recollection of the evidence differs from that of the lawyer, you are in recalling and remembering the evidence to be guided exclusively by your own recollection of the evidence.

At this time, the State will give their closing argument.

MS. BROUGHTON: Madam Clerk, HDMI Pros PC, please.

It's a sad fact, but a fact nonetheless, that a victim is going to be second-guessed no matter what they say.

If Sylvan Pendragon had sat on that witness stand and repeated a statement verbatim, she would be accused of fabricating and memorizing her story. In fact, she was asked, "Did you get a chance to review your statement before you testified?" She hadn't. She testified to you the way she remembered the incident happening.

Conversely, since there were human nature style differences in the statements that she made, counsel is going to spend a lot of time pointing out all the different statements that Sylvan Pendragon made.

And remember, we talked about this during jury selection. Different people who are asking questions were asking for different reasons.

For example, we have Officer Miller, who is at

that point still an officer in training. He was just taking an initial report. He wasn't there to investigate. He didn't ask any follow-up questions. He was just trying to figure out what was going on so that he could take his report. And Sylvan Pendragon told him that the defendant was making sexual advances. She said she wasn't interested.

At that point, she remembered that he tried to kiss her three or four times, and she remembered that the defendant started hitting her and leaving bruises to her face, cut lip. She remembered that the defendant threw her to the floor choking her unconscious. She fought her way up to the stairs to her roommate.

It is not the victim's job to understand why the questions are being asked or what the questioner is asking for. A patrol officer came in, asked for a brief statement about what happened, and that's what she gave.

She gave a subsequent statement to Erica Thiel, the forensic nurse. Now remember, the forensic nurse is trying to figure out what parts of the body need to be investigated, because she would take swabs in cases of sexual assaults to send off to a lab. So she needs to know what part of your body was attacked. So that is the way that her questions were guided. And in that case, Sylvan Pendragon told her that this case started -- started because she did not want to have sex with the defendant.

And you can actually ask to see these exhibits when it is time for you to deliberate.

Ms. Pendragon told Erica Thiel, "This whole thing started because I didn't want to have sex with him. He kissed me and I told him to stop. He had been drinking a lot and was really drunk. He had bought me my favorite beer. We were sitting close together on the couch. I told him he could sleep on the couch so he could get some rest before he had to drive back to Greensboro. He got super angry and took a plastic toy slide that's in our living room and threw it at our Christmas tree. And then he threw me on the ground and started to strangle me. He strangled me like two or three times. One time I passed out and came to as he threw me up against a wall. I saw stars and him coming towards me saying something, but I couldn't hear him and I couldn't move. I was screaming 'help' and my roommate Whitney's name, but she couldn't hear me. She sleeps with a fan and some soothing sound noise machines for her baby."

"I kept trying to go up the stairs, but he kept dragging me down the stairs. He dragged me down the stairs like three times. He said he wanted money for the drinks he had bought me, and my rent money was on the table."

"At one point he picked it up and threw it at the door, which doesn't make sense. I can't really hear out of my left ear anymore, and my vision is getting blurry. I

have perfect vision. I thought he was going to kill me. He kicked me and punched me. I finally made it to my room mate's room and got her up, and he came in there, which I thought was really inappropriate."

"She somehow got him out of the house. I don't think he wanted" -- excuse me, "I don't think he wanted her baby to wake up and see anything he was doing. My nose was bleeding, but I cleaned my face up, but my lip kept bleeding." So that's to the forensic nurse.

She also had to give a statement to Scott Ramming, the E.R. doc. Now, Dr. Ramming told us that he was looking for clinically significant injuries, which he described as life-threatening.

So at that point, his concern is whether or not this is somebody who is going to go into some sort of arrest, and he told -- excuse me, she told him that she was punched, kicked, choked until she was unconscious. That's what was important to Dr. Ramming.

Sylvan spoke to Detective Butterfield, but not until about ten months later, September of 2019. Remember she wasn't sure if she even wanted to proceed with this whole thing. And you can understand why. She sat here on this witness stand for four hours and got asked what she was wearing in 2021. What could she possibly have been wearing to provoke an attack? She was asked that. Does your

apartment have a pool. You were here for those questions. Why would anybody who had been assaulted want to put themselves through that?

So she thought about it, and she finally decided that she did want to proceed, and she spoke to Detective Butterfield. And she, again, ten months later explained that the whole thing started because the defendant wanted to have sex with her. She didn't. And if he wasn't going to have sex, then he wanted money. And at that point, he attacked her. Dragged her down the stairs. Punched her in the jaw. Strangled her. She couldn't breathe.

It was her recollection at that time that he tried to take her pants off. Tried to take her shirt up. Grabbed -- she grabbed a table leg. Her head hit the wall. She fell on top of the toys. She thought she was going to die.

And, of course, we have her final statement, which was her testimony given in this courtroom, which is three years after the incident, including a very hectic 18 months with COVID-19. She told us very explicitly that the defendant wanted pussy or money. He wanted to fuck. He pushed her down on the floor. He choked her. She lost consciousness. He held her hands down. He tried to remove her leggins.

Now, over a period of four hours, like I said,

counsel tried to get the victim of an attempted rape, who lost consciousness, to explain what happened in unrealistic minute-by-minute detail.

Imagine you've been in a car accident. Imagine somebody has tried to attack you. Would you be able to remember three years later in minute-to-minute detail what happened?

Now all of that said, I recognize that there are differences. She remembered early on that he tried to kiss her a couple times. She remembered early on that he attempted to lift her shirt up and expose her breasts. When she testified, she didn't remember that.

So, clearly, this is a person who's telling you what she remembers. She's not trying to pile on, trying to get the defendant. The vast majority of issues she was crystal clear about are consistent and have been clear since December of 2018.

First, the assault started because the defendant wanted to have sex with her. She did not want to have sex with him.

Second, when he was rebuffed, he attacked her. And during the course of the attack, he tried to remove her pants. That has always been consistent. He hit her in the face. Consistent for three years. He strangled her. Consistent for three years. Dragged her down the stairs.

Consistent for three years.

Now, this is an interesting situation, but because we're in the age that we're in, we can actually track the movements of the parties on a nearly hour-by-hour basis because of the number of photographs that they took.

So let's take a look at this case. And again, you can look at all these photographs, because I know that the TV situation is not perfect.

Sometime between about 10:00 and 12:00 p.m. on December 2nd, this is how they looked. Took this picture in a mirror. You can see the defendant holding the camera, December 2nd, 2018.

We know that he drove in from Greensboro. We know that he stopped at her house. That's how they looked. Happy. She's wearing a unicorn onesie. And she is conspicuously not injured.

Sometime between 11:00 and 2:00, they were drinking at the bar Dalton Distillery. The defendant is buying drinks. Again, they're both happy. They are both having fun. And you can see there are no injuries to her neck. Nothing to her face. So we already know by midnight at the bar she's fine. And she's also with the defendant. And this is where they do their Nickelback/Pickleback. You can see even though she moves her head around, there's no injuries. And she's, fortunately for me, lifting her head

up there and the camera is underneath, so you can get a really good view of her neck.

So that's they're at the bar. So then sometime between 2:00 and 3:00, the bar closes and they drive home. This is a timestamped screen grab of the next Snapchat video you're going to see, December 3rd, 2:24 a.m.

So we can see that at 2:24 a.m., she still does not have any injuries, and everybody is getting along. So that screen grab that you saw, this is the video that you see. Again, here's her neck, conspicuously free of any injuries, and the only person that she's with is the defendant.

(*Video played.*)

Just an hour later, maybe a little bit more than an hour later, we have another Snapchat video. This is the screen grab from that Snapchat video 3:49. So sometime between 2:24, when they're in the car, haven't even made it home yet. She's laughing. Her neck is fine. 3:49, an hour later, she's already starting to exhibit bruises on her neck. And there they are. So we have the early signs of the bruises at that point.

Now, just -- and there she is again. By that time she's got blood on her lip. Her left eye starting to swell a little bit. You can see the early signs of petechia. 3:49, she's already showing bruises.

5:02 a.m., she receives a text message from the defendant, "I'm sorry but you really tried me." What do you take from that, "you really tried me"? How about you had it coming. "You really tried the shit out me after I been nothing but genuine. Alcohol ain't help. Honesty would be a plus sometimes. I don't know how, but I'll make it up to you whenever you ready to let me. Whenever." You can read this closeup if you request this from the judge.

So that's 5:02. So at this point we've moved from the evening to 5:02 in the morning. By 7:15, Sylvan Pendragon is at the hospital, and she now has significant bruising to her neck. You see the blood. This is a terrible shot. You can actually look at the pictures. That's how she looks, and this is how her neck looks. This is the same neck that you saw three or four times throughout the night, perfect, white, no problems whatsoever.

What we are most concerned about here is what happened between here, 2:24, and here, 3:49. That's why you're here. We have to figure out what happened in that hour, and I think that you know because of the evidence that's overwhelming that he attacked her and he strangled her.

Now, as I said before, Sylvan was very consistent with respect to the most important parts of her -- on the attack. She said that she was strangled. The evidence is

overwhelming that she was strangled.

Again, we have the photos that show a near perfect handprint on her neck. And some of the evidence that you can consider actually -- well, you're supposed to consider all the evidence that you receive in this court, but actually happened through -- in realtime.

Anybody watch the defendant take notes? He's right-handed. Her injury is on the left-hand side. So if I were to reach out with you -- my right hand and try to choke you with my dominant hand, your primary injuries are going to be on the left side. You can actually take a really good look at that incredible handprint on her neck. It's pretty perfect actually.

And our expert explained that it's not a perfect traced hand, because she was struggling. So the hand actually slid along the neck creating those areas of sheering. So the places where he really got to hold down are the darkest, and the places where his hand slid, she's moving around and trying to get away, you see a little bit less bruising there.

She said she was strangled. We have the photos. Dr. Ramming told you that when he makes a diagnosis, his diagnosis is based in part on what the victim says, but it's also based on the evidence, and this is the evidence that he saw, and the diagnosis that he made was manual

strangulation.

You also heard from the expert. That was Jacqueline Maillet. She teaches this stuff to doctors, police officers, other nurses what does strangulation look like, and it was her opinion that there was nothing inconsistent about what she saw that would lead her to believe that this was not strangulation.

She also was able to explain to us that the spaces in between the handprints, those are what are called issues of sparing, they were spared from the pressure. She also explained to us about petechia, which are those little red dots that appear on your face after there's been a buildup of pressure because the blood has nowhere else to go, so it starts trying to come out your face.

So she told you she was strangled. You have that evidence. She told you -- Sylvan told you that her hands were held down. Well, take a look at these medical pictures. This is a faraway of a wrist and a closeup. There's a perfect blue line right along her wrist as though somebody was holding down and pressing. So that's the evidence that supports her statement that her hands were held down.

She told you that she was dragged down the stairs. She has rug burns on her knees, left knee, right knee. Little bit of scratching there. And we were also told that

this underneath her chin, this in particular right here, was either a lot of petechia all mushed together or it was rug burns. So this, again, supports her statement to what she told you.

Nurses and doctors noted symptoms that are consistent with strangulation: Vision changes, hearing loss. Sylvan Pendragon told you that she fell down into the toy box. Whitney Hill said, "Yeah, my son's toy box was turned over."

Sylvan Pendragon told you that she tried to grab the coffee table. Whitney told you it too was in disarray. The salient points of Sylvan Pendragon's statement have been utterly corroborated by the evidence.

The fact that she couldn't remember if she was kissed first or if her shirt was moved up, or how about well, was she unconscious before she hit the wall, or was she unconscious on the ground? How can an unconscious person know what's going on? It's an unfair request to make of somebody going through a traumatic event.

Nothing that Sylvan Pendragon told you has been controverted in any way. There have been additions, deletions, but nothing to say she wasn't strangled.

Also, when you consider her testimony, remember they were friends. Up until 2:24 that morning, they're laughing, drinking. She doesn't have anything against him.

She didn't have anything against him until he attacked her. She told you she was here under subpoena. She clearly did not want to be here. She was clearly upset by all of this, and she was tearful pretty much the entire time. She was struggling to hold it together. I think you guys could see that.

So the judge is going to give you two -- excuse me, a full set of jury instructions. And those are going to include instructions with regard to the two charges that the defendant is facing.

So the judge is going to tell you that with regard to assault by strangulation, you have to find first that the defendant assaulted the victim by intentionally and without justification or excuse strangled the victim. We have no evidence that he was justified. There's nothing to say that she attacked him first. All we know is that he wanted to have sex with her, she didn't want to have sex. That's clearly not a justification. So that's the first thing you have to find.

Second, you have to find that the defendant inflicted physical injury upon the victim. I don't think there's anybody who doubts that there was physical injury here. Quite frankly, this is the easier of your two decisions to make.

The second issue that you have to find is whether

or not the defendant is guilty of attempted second-degree rape. Ms. Pendragon was clear that an actual sexual assault didn't happen. She fought like a badger, and she was able to extricate herself from that situation, and it is fortunate that we are only here on an issue of attempt.

So you have to find two things to find the defendant guilty of attempted second-degree forcible rape.

The first, you have to find that the defendant intended to engage in vaginal intercourse with the alleged victim by force and against the victim's will, and vaginal intercourse is penetration of the female sex organ.

So how do you know that was the defendant's intent? Well, first, there was a lot of discussion about who's going to get fucked, and is it going to be for pussy or money. You know what's on the defendant's mind. He bought her drinks. She was making puppy dog eyes at him.

You see in a text message, even after the incident happens he says, "You really tried the shit out of me after I've been nothing genuine. Honesty would be a plus sometimes." Those are the words of somebody who feels he's been misled, "honesty would be a plus." I thought that we were going to have sex, and then you decided not to at the last minute. You have to follow through on what you said was going to happen. So this is somebody who clearly thought that they were entitled to have sex with the victim

in this particular case, so he says he wants to have sex with her. Afterwards, he clearly references that's what happens.

Then you have to wonder why did he try to pull her pants down so many times? You know, that's really the clear act that you have here, you're trying to pull her pants down repeatedly. She remembers that he tried to kiss her. She pushes him away. All of those are the acts of somebody who is trying to have sex.

Now, in the courtroom it's easy to sort of compartmentalize. Well, we have the assault by strangulation here, and then we have the attempted rape here. The reality is all of this is happening together. The assault by strangulation was in service of his attempts to rape her. He was holding her down by her neck as he was trying to pull her pants down.

Holding somebody by their neck is the ultimate measure of control, because you're taking away their ability to breathe. And if she loses consciousness, well, isn't that more the better, so then she really can't move.

The assault by strangulation was clearly happening, was in service of his attempt to rape her, which he said he wanted. He wanted to have sex that night. He bought her those drinks. That was prepayment for sex, and when she pulled back and said she didn't want to have sex

with him, he attacked her. Tried to pull her pants down. She tried to escape. Pulled her back down the stairs, giving her those rug burns.

So first you have to find that he intended to engage in vaginal intercourse. Well, it's clear what his intent was. He bought her those drinks. You know, they were talking to each other, and he asked her could we have sex.

Second, you have to find that at the time he had this intent, he performed an act which was calculated and designed to bring about vaginal intercourse. Well, pulling down someone's pants is sort of the ultimate act in furtherance of having sex, because pulling down your pants is required in this situation where she's wearing tight leggins.

So you have to consider everything as it works together. None of these things can be compartmentalized. He's holding down her arms while he's trying to pull her pants down. She said he's going back and forth in some situations, and other times he's trying to use his legs. He's doing everything he can to get her out of those leggins. She's fighting back. She's scooting down. The pants are scooting back up. She recalls that her shirt went up at one point. There's no other reason for him to attack her but for the fact that she wasn't willing to have sex

with him.

You see the pictures. They were laughing. And was this a robbery? That doesn't make sense. So it was either sex or money. Well, if he really wanted money, he would have taken the money that she threw when she threw her wallet, but he didn't do that, because this isn't about money, this is about sex. He wanted it. She didn't, so he decided he was going to take it.

I told you at the beginning of this trial that this case is about entitlement. The defendant feels that he was entitled to sex. "Honesty would be a plus sometimes." You told me that we were going to do it. I bought you those drinks, I'm entitled to have sex, and when she said, "No," he attacked her.

You can ask to review all the evidence in this case. I know you've seen it a bunch of times, but you still can ask to see all the pictures, the medical records, anything that has been admitted into evidence once you go back to start your deliberations, and I would encourage you to do that. Because now is the time, after the judge gives you the instructions, where you'll make your decision. And I'm asking you to tell the defendant that he was not entitled to have sex with Sylvan Pendragon on October [sic] 3rd of 2018. I'm asking you to find that he is guilty beyond a reasonable doubt of both assault by strangulation

and attempted second-degree rape. Thank you.

THE COURT: The jury is now with the defendant.

MR. EDNEY: That's where I'll start. Thank you. You've spent a good bit of time with us, and we're grateful and we appreciate the fact that you guys had to listen and watched and are doing what's got to be done every day in courtrooms around this country.

Okay. I was going to start with, like, the meaning of life and big global topics, but we're in Asheville, so you do that, but I thought that would also drive you crazy, so I better limit it to more about why you all are here, and you're here because the Constitution and our Bill of Rights.

This is -- on the right, you can see it's the Preamble from the Bill of Rights. It says, "The conventions of a number of the states having, at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added; and as extending the ground of public confidence in the Government will best insure the beneficent ends of its institution."

Basically, I'm not a historian or a teacher or anything else, but you have the Constitution. Then they do the Bill of Rights. Add to that, that's why they call them the amendments. The Sixth Amendment says that, in part, "In

all criminal prosecutions, the accused shall enjoy the right to a speedy trial" -- "speedy and public trial by an impartial jury."

So that's why you're here. We have been accused. We're entitled to an impartial jury, and the reason for all of that is to prevent the government from abusing its power. That's basically what the whole Constitution, Bill of Rights was about is we're creating a specific government in a powerhouse, and the folks back then had just gotten rid of the British and all that sort of stuff. They wanted individual rights, those rights given to us by our Creator, and they did not want government coming in and taking over everything.

So you've probably -- you hear the argument about the Second Amendment, and I'm not going to get into that debate, but one argument on one side says the Second Amendment allows citizens to keep and bear arms to protect themselves from the government. This right to a jury trial is along those same lines.

The government tends to grow and grow and gain more power, and the only way the Founders found to protect themselves and everyone was put the people in the way of the government. So any time you have anybody accused of a crime, State Court, Federal Court, whatever, before the government can impose prison, death or whatever on them, 12

normal plain folks have to listen to the evidence. And having been told that the burden of proof is on the State, the government, you folks listen to the evidence, determine whether or not the State has proven each and every element and aspect of their case beyond a reasonable doubt to each of you individually.

I'll get a little off topic. When we finish, when I finish, the judge will tell you the law. The 12 will go into the jury room. Those 12 will elect a foreperson to lead their deliberations. Then you will do -- you'll start going through the case talking about it and whatnot.

You cannot return a verdict in a case until all 12 agree on something. So if it's 6/6, 10/2, whatever, each of you is a jury of one in a room of -- with 11 other people. Each of you has the exact same amount of power as the other. The foreperson has got no more power than anybody else. Each of you have the absolute right to have your opinion totally respected. Each of you have the obligation to totally respect the other folks' opinion. You don't have to agree.

The judge is going to tell you that it's now your duty to decide from the evidence what the facts are. That assumes and presumes that that is even possible, especially in a case like this where you've got so many different stories about different things. I think it's going to be

extremely difficult, if not impossible, for all 12 of you to agree on what the actual facts of the case are. And quite frankly, that's okay. If you don't agree, if you cannot come up with a unanimous verdict on whatever, you don't have to. The judge is not going to make you. They're not going to put anybody in jail for not doing it. The system has got ways to deal with it, but all you really need to know and understand is you need to do your best to come to an agreement, but sometimes your best doesn't work and you don't have a verdict in a case.

If you don't come to an agreement, if -- again, the burden of proof is on the State. If they have not presented enough evidence to you for you to actually come up with what the facts are, they have not met their burden of proof. It's not your job to assume this or that. It's not your job to do their job and say, "Well, I'm sure this really happened but."

It's your job to protect my client and everybody else, your family and friends, from an abuse by the government by requiring them to do their job. And if they can't, then the judge -- and part of the instructions will talk about the lack of evidence is a basis to find someone not guilty. And, again, and it all goes back to they are the government, and if they can't do it, they had their day in court.

So when you sit here and you have listened to the folks, you've made notes, you'll go back, you'll start talking about the witnesses, and you'll talk about the credibility of the witness, and what weight you would give that witness's testimony. The judge will basically say you can believe some, all, or none of any particular witness's testimony. So the witness -- Whitney Hill. Yeah, I believe this, this, and this. I'm not so sure about this, and there's no way about that. That's basically the normal. That's life. Because what you're doing is you're using your reason and common sense. You don't give that up when you walk in here.

Sort of like you're going to buy a used car, and you'll talk to a used car salesman. I hope you're not going to believe everything he tells you, and I hope you're not going to agree on the first price that comes out of his mouth.

When you go to the grocery store and you see some bananas that have got some color to them other than yellow, you're not going to buy those, unless you're going to take them home and make something real quick. Everyday reason and common sense, and that's what we're asking you to use when you listen to these people.

I think clearly the lifestyles lived are not necessarily what we -- at least that's in Henderson

County -- but are generally used to. I don't know a lot of folks who get up and go out at 11:00 or twelve o'clock at night. Most folks I know are coming home and going to bed about that time. But, you know, to each his own, and I'm not going to judge that other than to say those are the type things that you need look at and consider when you're thinking about this.

The timing of all -- of everything involved in this case I think is something I want you to pay really close attention to.

One quick example: The DA talked about her being at the hospital at 7:20, 7:15. Well, yes, she was there, but she had actually gotten there, according to the records, at 6:34. So details like that matter, because you've got to try to make heads or tails out of what this young lady said. And again, it's going to be difficult, because she said to one person 2:00 a.m., someone else 3:00 something, someone else 4:00 something.

The DA wants you to rely on these screenshots because they're time stamped. I guess my question is - there was no evidence about it - what does a time stamp mean on any particular person's phone? I know on my phone, I can say it's Greenwich Mean Time or something, and my time is totally different. You have different things, and at least one of the pictures that the DA talks about is their 1-E. I

don't have it up on here. It's the one that the DA said happened about an hour after whatever, this event.

The problem with that -- with that argument is this is the one that has the yellowing around the marks, and the medical folks said the yellowing is evidence of some healing and the blood stuff de-coagulating, whatever that word was. So it had to be several days or a week or so later. We were just given a blind picture and told to believe it was an hour later.

That's some of the circumstances that you look at and think about when you are weighing the credibility of somebody's testimony: Is what they're saying matching up with a provable fact, medical fact. I think most -- I think it's common sense, most of us know that a bruise goes through stages, and yellow is one of the later ones. So, again, that's what I want you to listen to and look at and pay attention to.

I'm not going to go through all these papers, I promise.

Another thing I want you to look at and think about and consider is a copy of State's 12, when they talk about the little measuring thing. Again, what they didn't tell you was this is two or three times reality. One centimeter is somewhere around half of what you see here. So this has been blown up. Now they do that for -- you

know, we're not on TV, but for the dramatic effect so you can see things. But it also distorts the extent of the potential injuries, because it makes them look worse. So remember your ruler.

Now, I was attacked for talking to Ms. Pendragon for a substantial amount of time. I would hope that if I was representing you, you would want me to do my job.

And while punishment is not particularly your -- in your purview, you need to know that these are serious charges, and my client is looking at substantial time in prison if he's convicted. So I'm not asking for sympathy or anything else, but just understand the stakes are important in a number of regards, that being one of them.

So Ms. Pendragon speaks to this Officer Martin at the -- he's the -- I think it's Martin -- Miller, I'm sorry. He's the one -- the uniformed officer, the young guy who goes and takes a report.

In his report, he noted a Marissa Rose Moore as a witness. He also testified that there were two people there. He didn't know the name of one, but the other one was this Zoe Chestnut. There's nothing in here about whether he talked to them, got interviews from them, but his testimony and his paperwork say that she had at least two people there with her, and that information -- at least the

Ms. Moore thing was passed on to Butterfield. I don't know that the Chestnut information was, because I don't remember seeing or hearing anything about it.

Ms. Pendragon told you all that she checked in under that Marissa Moore name. Let me stop a minute. When I say she said this from the witness stand, that's my memory, my recollection, my notes. If you folks remember it any differently, go with what you remember, okay. I'm far from perfect, and as you learned, I don't hear great sometimes. But I think pretty clearly she said that she checked in under that name because she was afraid or something along those lines. Again, the documentation disproves that. This Moore lady was listed as a witness in the officer's paperwork, not anywhere on the hospital paperwork. And the officer didn't say anything or was not aware that she was trying to use a different name. So under conflicting things, that's one of the first ones. And I'm not going to go through and point out all of them. I would be here several days.

But my momma taught me that tell the truth because you can't forget what lie you told if you keep telling the truth. You won't be consistent. If you're not telling the truth, at some point you're not going to remember what the last story was you gave, and you're going to start crossing things up, and little things can get crossed up, which are

evidence and proof that there's more to the story. So the big things may not necessarily be true.

These people seem to have known each other for a very, very long time. Whitney knew Sylvan since she was 12 or 13. Sylvan knew my client since she was 13 or 14, or 12 or 13. Those dates change as well. I mean, again, those were little things, but when little things add up, it's sort of like where there's smoke, there's fire.

Whitney didn't see anything violent, either earlier or then. When she spoke with the DA, she told the DA on the phone about a black eye, but when she gets up here, she doesn't remember that. So I guess it's proof that they didn't -- the DA didn't do anything to try to get these witnesses to say the same thing, because if they did, they didn't do a very good job of it.

Whitney did say there was dried blood on her mouth, but it doesn't make sense for dried blood to be on her mouth at the very end of when -- or when this thing is still going on, if it's true.

She says that Ms. Pendragon wanted to go to the hospital. We have other places where she did not necessarily want to go to the hospital. Another little thing, but it adds up.

Pendragon thought she was going to work the next day and didn't go to work. Whitney, who worked with her,

said no, we were off the next day.

When Whitney talked to the DA, she said Sylvan was on the fence about getting medical help. Then, when she testified, she testified she wanted to get medical help. So, again, it's back and forth on this stuff.

So Miller was the first officer there. She told him that Kagan was at her house having some drinks. Now, I don't know what she meant by that, if she's talking about like earlier in the day when they were there taking pictures. When they got back to the house, if you recall, they had stopped to get pizza on the way, and Pendragon didn't remember whether they even got around to eating pizza. So I don't know.

She did say that Kagan was too intoxicated to drive home, you know, roughly four o'clock in the morning. So the first person to -- or first official person to talk to her and say, "What's going on? I'm here to help. I'm in a uniform. I'm a good guy," she says, "4:00 a.m." She tells him he hit her several times before placing both hands around her throat choking her to unconsciousness.

So I kind of jumped around. The alleged attempted rape. If she's laying there unconscious, if he intends to rape her, why doesn't he? At that point she's not fighting. She's not resisting. I think that clearly goes to a lack of intent, because he was given the opportunity to do so,

according to her, and did not do that. The judge's legal instructions will say "attempt," because he was stopped or prevented from doing something. She never stopped or prevented him from doing that, according to her. Even in a couple different versions, she was incapacitated and not in a position to stop him.

So based on Miller's interview with her, he turns in a report and this assault warrant is taken out December of 2018.

And I'll note this: She could not sign documents to release her medical records, although she could sign the intake and release forms for the hospital so the hospital could get paid.

When she was testifying, she testified she didn't know why Kagan was coming to Asheville, and then in some other reports she talks about him being a rapper and having some event coming up.

So they went to Adam Dalton's Distillery on Biltmore Avenue. Apparently they were there -- they got there 11:00 or 12:00 and stayed until they closed and were drinking whiskey and pickle juice. She said she had two shots and a mixed drink over a couple hours, I guess. Saw or talked to a couple of the regulars at the bar, so I assume she must have been a regular at that bar to know them, or to call them regulars anyway.

So she says that he drove to the bar and drove back. That's kind of important.

(*Video played.*)

So how is he driving from the passenger side of the car, unless it's one of them fancy British jobs. Or maybe he was much more intoxicated than her and she took the responsible thing and she drove him home or back to her place. And maybe she didn't have a license -- well, she said she didn't have a license, so maybe that's why she didn't want to admit to driving. And that gets into one technical legal thing.

The judge will tell you on the attempted rape, attempt is a specific intent crime as opposed to a general intent crime. Basically it's one of the few things -- a specific intent crime, you have to have your wherewithal enough to create that specific intent. So voluntary intoxication, getting drunk or being drunk is a defense to specific --

MS. BROUGHTON: Objection, Your Honor.

THE COURT: Sustained.

MR. EDNEY: So the State has got to prove to you that he had the ability to have -- to make specific intent.

Something else important about the bar and them going home. She admitted to having a confrontation with a lady in the parking lot, who, I guess, stole her old

boyfriend. She said it wasn't physical, but it was something -- it was something that made her when they left the bar, the girl had left ahead of them, made her basically follow that girl to where she thought that girl was going, and she had some conflict or confrontation at that location.

We weren't in the car, so we don't know what it was, but something happened between her and some other person on the way home. Could that explain some of these injuries? Is it possible that that can explain some of these injuries? Is it -- does it create some doubt that these injuries were caused there. Because they have got to prove it didn't beyond a reasonable doubt. So if there's any doubt other than totally impossible, that is more than a reasonable doubt that these injuries could have occurred somewhere else.

She said they left the bar about 2:00 or 2:15, but didn't get home until 3:00 or 3:15. So that's an hour in there, and they apparently went and got pizza, but what else happened between there? This other girl's house, the pizza place, and bar, and the house.

We go back and forth about whether he kissed her or whether he didn't kiss her. And again, it's a little thing, but it also opens up a different thing, because at one point she said they were at opposite ends of the couch. So are you kissing from opposite ends? I mean, I understand

it's been three years, but if you're going to come in here -- I guess towards the end she did start saying I don't recall, I don't remember, I don't remember. Now, either she got tired of questions, or she didn't remember, or she didn't want to give us the answer.

She said in one of her statements that being choked never blacked her out, but she blacked out when he pushed her against the wall or threw her against the wall. Again, a blackout episode, opportunity to do something to her.

And the DA has made a lot of noise about the photographs and whatnot. But you have Dr. Scott Ramming, the medical doctor at the hospital. Well-seasoned, been there a long time. Looked for things, had tests done to make sure that -- it's like she said, her arm was broken. He looked, had the x-rays done and made sure there were no broken arms. Although she told the detective she had two broken arms later and she would bring the medical records, but she never did. So, obviously, she never had broken arms.

The medical doctor was concerned about injury to the blood vessel. I was looking for the fancy word for it where if you damage a blood vessel, it can basically come apart and start bleeding, and especially if it's one of the big ones, it's going to kill you.

So he had that ultrasound done. So the ultrasound showed no evidence of vascular injury. Carotid arteries showed normal color and Spectral Doppler appearance. No hematoma. No abnormal fluid collection or neck mass.

So whatever happened to her neck, it was not long enough, strong enough, sufficient to injure the vessels, which according to these other folks are what causes somebody to faint or pass out if you put enough pressure on it to stop the blood flow. So there wasn't enough of anything to cause that damage.

The other thing that unfortunately happened in real strangulation cases, people's thumbs generally go to the voice box and cause damage to it, a lot of times break it. In her case, there was no damage to the voice box at all. And in fact, the medical doctor said her voice was normal.

Now, you've got the nurses who specialize in domestic violence and assault, and that's a good thing and all that, but they're not medical doctors. They don't have the complete training, and they are looking, like a cop basically, to build a case. So they're only looking for something that supports their position.

Going all the way back to the OJ stuff, the officer makes a decision of what he believes the truth is, and then the entire investigation is based on supporting his

initial idea. So they will intentionally or unintentionally overlook anything that doesn't support where they're trying to go. That's why in scientific stuff, you have peer review and you have duplication, all that stuff. In cop investigations, you guys are the peer review, because they don't do it themselves.

In State's Exhibit 1-C, that's the one where the prosecutor tries to point to a 3:49 a.m. time stamp. The problem is with this piece of paper, there's no way to know where, who, when, or how this was created. It's not associated with anybody's account name, account number, telephone number. Ms. Pendragon said it was hers, but saying something and proving something are two different things.

When she registered at Mission Hospital, she told the registration folks that the event occurred at 4:20 a.m. And if it's -- if it was 4:20, and she was there at 6:30, that was two hours difference. Also begs the question if you're really hurt, injured, you call 911, because obviously she could get out, social media, phone, whatever, you call the police, you call the fire department. You don't go on Snapchat and hope somebody you know is online and ask them to come get you and take you. That's just unrealistic.

The medical report also includes a consult from a nurse Renee Collette. The prosecutor, I guess, forgot to

mention, because Ms. Pendragon told her everything happened at 4:15 when he went crazy and told this nurse that she was not sexually assaulted, that he punched her, she thought something popped. But nothing at all about sexual.

And you get a medical doctor who is doing an objective evaluation. Clinically sober. Does smell of alcohol. Dried blood on lips. No active bleeding. No evidence of significant dental trauma. No evident facial injury. So you've got a medical doctor sitting there looking at you and he says no facial injury. Nothing wrong with her pupils. He says there is bruising, left neck. I'm assuming he's talking about left. But no swelling. Trachea is okay. And her voice is normal.

Now, this expert domestic violence lady that they brought in was going -- was trying to testify on the report of this Emily whatever her name was. She didn't actually go back and look at what the medical doctor did in his notes. So when she's trying to tell you that she was hoarse, you know, and therefore that's proof, and I called her on it. She said, "Oh, well, hoarse takes time," it can -- "you're not going to be hoarse right away, whatever." And then we mentioned that the evaluation where she was normal and this other one were a couple hours apart. She didn't have an answer for that. And I love nurses and nurse practitioners, but they're not medical doctors.

Her skin was warm and dry, and her neurological stuff was 15 out of 15. So it's not like she has an excuse for anything she was saying up there, because apparently everything was working okay and normal.

So the medical doctor sends her home on Tylenol and ice. And I don't want to downplay that she had gotten hurt, but whatever these injuries were, they were somewhat superficial, and she was discharged in stable condition.

And this doctor had no concern about the carotid artery or anything that might develop later. Otherwise, he would not have said go to your primary care only if you need to.

Temperature, pulse rate, all that stuff was normal. He didn't do blood work. He didn't think they needed to do blood work.

And then this Erica Thiel is the other lady. She does her interview at 9:24. And remember, she's got some girlfriend in there with her, at least some or part of the time. So between when the real doctor talks to her and the nurse talks to her, there's no indication who was in there and who was talking, or if they were doing Snapchat or whatever, but we go from earlier statements now to being strangled three or more times, and we have two hands from the front.

The question, "Was he wearing a ring?" She said,

"Yeah." There's no indication that anything was done or followed up with that, if it means anything.

They tried to say that scratching herself was some evidence or proof, but they didn't do the fingernail scrapings to, again, provide documentation or proof so you're not left with a bold statement and nothing else.

So this nurse examiner makes a note about a blurry peripheral vision, but apparently doesn't do anything about it or follow up with anybody. Doesn't tell the doctor. She told this person that he kissed me. I told him stop. He had been drinking a lot and was really drunk.

He bought me my favorite beer, but she told you that she was drinking the whiskey pickle juice stuff. Here, we were sitting close on the couch. Then we were sitting away from each other on the couch.

And one time I passed out and came to as he threw me against the wall. Said he wanted money for the drinks, but somewhere else he wanted money for the gas, and when I showed her where she had sent him ten dollars, she said, "Well, yeah, maybe I did."

Said her nose was bleeding, but there's nothing showing any nose bleeds. I cleaned up my face, but my lip kept bleeding. No evidence of that.

There's the consent form with her signature on it. And there's another consent form with her signature on it.

Seems that maybe she just didn't want to cooperate with the officer.

The medical doctor in his manual diagnosis, and then in the -- he said the decoder did all this other stuff, but neither one have anything about sexual assault. And you would think that there would be.

In her initial report to Miller, she talks about -- well, she said it was when her roommate woke up and that's when Kagan left. So ultimately, Miller turns it over to Butterfield. He has some trouble getting up with her, but he finally does, and she says for reasons other than being afraid or threatened death, she just doesn't -- she doesn't want to pursue it. And I think probably she didn't want to pursue it because there were -- a lot more would come out if she wanted to or tried to.

So they close the case in sometime in 2019 -- no. They get the medical records from Mission so they got information in the medical records, all that by the end of November 2019. And then basically it sits and it sits. She's not interested in pursuing it. She's told the State that she doesn't want to pursue it. And then the detective actually leaves Asheville and goes to Henderson County and officially closes on the computer the file.

Then, I guess, we get a call out of the blue --

MS. BROUGHTON: Objection, Your Honor.

THE COURT: Overruled.

MR. EDNEY: That I'm working with his ex-girlfriend and now I want to pursue it. In any scenario, that sounds like a bad dream starting to -- the ex is sticking their nose where it don't belong, stirring stuff up. We don't know how that ended, but it sounds like maybe she was scorned or something and was looking for some payback and used Ms. Pendragon as her tool to do that. That's when we get back on board and get things moving. By that time, Kagan has moved on with his life. His child is born.

MS. BROUGHTON: Objection. There's no evidence as to any of this.

THE COURT: Sustained.

MR. EDNEY: He's moved on with his life. And if you'll recall the statement that one reason she didn't want to have anything to do with him is because he had a baby on the way.

So as to the attempted rape charge, multiple opportunities to rape her, if he wanted to, when she was disabled. At one point, according to her, her shirt and bra were up and her breasts were exposed. He didn't attempt to do anything with that. She says she was basically beat and thrown around the apartment for 35 minutes, and not one broken bone. No injuries to her face per the doctor.

So what has the State proven? They have proven she's had some injuries, but have they proven beyond a reasonable doubt where they came from? Both of these charges are important, but the attempted charge -- do we have the verdict sheet done?

THE COURT: Yes, we do.

MR. EDNEY: After the judge finishes telling you what the law is, you'll go back in your room and pick your foreperson. Once you've done that, the judge will send in these two documents. They're called the verdict sheets. They are for each case.

This is the 18 CRS 92442 case, and your options will be, "We, the jury, as our unanimous verdict find the defendant" either "guilty of assault by strangulation or not guilty." And I point out unanimous, because all 12 of you have to agree on every single bit of it.

The other one is 21 CRS 331. And that's, "We, the jury, as our unanimous verdict find the defendant guilty of attempted second-degree forcible rape, or not guilty." Again unanimous.

This is from 2018 when everything started. The investigation was completed -- all the documentation evidence was completed by the end of 2019. And then we get the new more serious charge.

MS. BROUGHTON: Objection, Your Honor. I request

his argument be admonished with respect to this issue.

THE COURT: Sustained.

MR. EDNEY: I just ask you folks to use your reason and common sense. Think about -- you're going to hear about motives. Think about whose motives are for what and do the right thing. Thank you.

THE COURT: Members of the jury, all of the evidence has been presented. It is now your duty to decide from this evidence what the facts are. You must then apply the law which I'm about to give you to those facts.

It is absolutely necessary that you understand and apply the law as I give it to you and not as you think it is or as you might like it to be. This is important because justice requires that everyone tried for the same crime be treated in the same way and have the same law applied.

The defendant has entered a plea of not guilty. The fact that the defendant has been charged is no evidence of guilt. Under our system of justice, when a defendant pleads not guilty, the defendant is not required to prove the defendant's innocence. The defendant is presumed to be innocent.

The State must prove to you that the defendant is guilty beyond a reasonable doubt. A reasonable doubt is a doubt based on reason and common sense arising out of some or all of the evidence that has been presented, or lack or

insufficiency of the evidence, as the case may be.

Proof beyond a reasonable doubt is proof that fully satisfies or entirely convinces you of the defendant's guilt.

The defendant in this case has not testified. The law gives the defendant this privilege. This same law also assures the defendant that this decision not to testify creates no presumption against the defendant. Therefore, the silence of the defendant is not to influence your decision in any way.

You are the sole judges of the believability of witnesses. You must decide for yourselves whether to believe the testimony of any witness. You may believe all, any part, or none of a witness testimony.

In deciding whether to believe a witness, you should use the same tests of truthfulness that you use in your everyday lives. Among other things, these tests may include the opportunity of the witness to see, hear, know, or remember the facts or occurrences about which the witness testified; the manner and appearance of the witness; any interest, bias, prejudice, or partiality the witness may have; the apparent understanding and fairness of the witness; and whether the testimony is reasonable, and whether the testimony is consistent with other believable evidence in the case.

You are the sole judges of the weight to be given any evidence. If you decide that certain evidence is believable, you must then determine the importance of that evidence in light of all other believable evidence in the case.

There are two types of evidence from which you may find the truth as to the facts of a case. That's direct evidence and circumstantial evidence. Direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain or group of facts and circumstances indicating the guilt or innocence of a defendant. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence.

You should weigh all the evidence in the case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

Proof of motive for the crime is permissible and often valuable, but never essential for conviction. If you are convinced beyond a reasonable doubt that the defendant committed the crime, the presence or absence of motive is immaterial. Motive may be shown by facts surrounding the

act if they support a reasonable inference of motive. When thus proved, motive becomes a circumstance to be considered by you. The absence of motive is equally a circumstance to be considered on the side of innocence.

You may find that a witness is interested in the outcome of this trial. You may take the witness's interest into account in deciding whether to believe the witness. If you believe the testimony of the witness in whole or in part, you should treat what you believe the same as any other believable evidence.

Photographs and videos were introduced into evidence in this case for the purpose of illustrating and explaining the testimony of a witness. Other photographs and videos were considered for substantive purposes. These photographs and videos may be considered by you as evidence of facts it illustrates or shows.

Evidence has been received from a witness in the form of an opinion. You may only consider the opinion of a witness that is rationally based on the perception of the witness and helpful to a clear understanding of the witness's testimony, or the determination of a fact in issue.

In this case, you have heard evidence from a witness who testified as an expert witness. An expert witness is permitted to testify in the form of an opinion in

a field where the witness purports to have specialized skill or knowledge. As I have previously instructed you, you are the sole judges of the credibility of each witness and the weight to be given to the testimony of each witness.

In making this determination as to the testimony of an expert witness, you should consider, in addition to the other tests of credibility and weight, the witness's training, qualifications, and experience, or lack thereof; the reasons, if any, given for the opinion; whether the opinion is supported by facts that you find from the evidence; whether the opinion is reasonable, and whether it is consistent with other believable evidence in the case.

You should consider the opinion of an expert witness, but you are not bound by it. In other words, you're not required to accept an expert witness's opinion to the exclusion of the facts and circumstances disclosed by other testimony.

Evidence has been received tending to show that at an earlier time a witness made a statement which may conflict or be consistent with the testimony of a witness at trial. You must not consider such earlier statement as evidence of the truth of what was said at that earlier time, because it was not made under oath at this trial.

If you believe the earlier statement was made and that it conflicts with or is consistent with the testimony

of the witness at trial, you may consider this and all other facts and circumstances bearing upon the witness's truthfulness in deciding whether you will believe or disbelieve the witness's testimony.

The defendant has been charged with assault inflicting physical injury by strangulation. For you to find the defendant guilty of this offense, the State must prove two things beyond a reasonable doubt:

First, that the defendant assaulted the victim by intentionally, and without justification or excuse, strangling the victim.

Second, that the defendant inflicted physical injury upon the victim.

Strangulation is defined as a form of asphyxia characterized by closure of the blood vessels and/or air passages of the neck as a result of external pressure on the neck brought about by hanging, ligature, or the manual assertion of pressure.

An assault is an intentional application of force, however slight, directly or indirectly to the body of another person without that person's consent.

Intent is a mental attitude seldom provable by direct evidence. It must ordinarily be proved by circumstances from which it may be inferred. You arrive at the intent of a person by such just and reasonable

deductions from the circumstances proven as a reasonably prudent person would ordinarily draw therefrom.

If you find by the evidence beyond a reasonable doubt that on or about the alleged date of December 3rd, 2018, the defendant intentionally assaulted the alleged victim, inflicting physical injury by strangulation, nothing else appearing, it would be your duty to return a verdict of guilty. If you do not so find or have a reasonable doubt as to one or both of these things, it would be your duty to return a verdict of not guilty.

The defendant has also been charged with attempted second-degree forcible rape. Under the law and the evidence in this case, it is your duty to return one of the following verdicts: Guilty of attempted second-degree forcible rape, or not guilty.

For you to find the defendant guilty of attempted second-degree forcible rape, the State must prove two things beyond a reasonable doubt.

First, that the defendant intended to engage in vaginal intercourse with the alleged victim by force without the alleged victim's consent and against the alleged victim's will. Consent induced by fear is not consent at law. Vaginal intercourse is penetration, however slight, of the female sex organ by the male sex organ.

Intent is a mental attitude seldom provable by

direct evidence. It must ordinarily be proved by circumstances from which it may be inferred. You arrive at the intent of a person by such just and reasonable deductions from the circumstances proven as a reasonably prudent person would ordinarily draw therefrom. Specific intent is a mental purpose, aim, or design to accomplish a specific harm or result.

The second thing the State must prove beyond a reasonable doubt is that at the time the defendant had this intent, the defendant performed an act which was calculated and designed to bring about vaginal intercourse by force and against the will of the alleged victim, and which came so close to bringing it about, that in the ordinary and likely course of things, the defendant would have completed such intercourse had the defendant not been stopped or prevented from completing his apparent course of action. Mere preparation or planning is not enough to constitute such an act. But the act need not necessarily be the last act required to complete the offense.

If you find from the evidence beyond a reasonable doubt that on or about December 3rd, 2018, the defendant intended to have vaginal intercourse with the alleged victim by force and against the alleged victim's will, and that the defendant performed acts which were calculated and designed to bring about vaginal intercourse by force and against the

alleged victim's will, and would have resulted in such intercourse had the defendant not been stopped or prevented from completing his apparent course of action, it would be your duty to return a verdict of guilty of attempted second-degree forcible rape. If you do not so find or have a reasonable doubt as to one or both of these things, it would be your duty to return a verdict of not guilty.

Members of the jury, you have heard the evidence and the arguments of counsel. If your recollection of the evidence differs from that of the attorneys, you are to rely solely upon your recollection. Your duty is to remember the evidence, whether called to your attention or not. You should consider all the evidence, the arguments, contentions, and positions urged by the attorneys, and any other contention that arises from the evidence.

The law requires me as the presiding judge to be impartial. You should not infer from anything I have done or said that the evidence is to be believed or disbelieved, that a fact has been proved or what your findings ought to be. It is your duty to find the facts and to render a verdict reflecting the truth.

All 12 of you must agree to your verdict. You cannot reach a verdict by majority vote.

When you have agreed upon a unanimous verdict as to each of the charges -- to both of these charges, your

foreperson should so indicate on the verdict form. After reaching the jury room, your first order of business is to select your foreperson. You will not begin your deliberations until the bailiff delivers to you the two verdict forms. Once you receive the two verdict forms, you can begin your deliberations.

Your foreperson should lead the deliberations. When you have unanimously agreed upon a verdict as to both charges and are ready to announce them, your foreperson should record your verdicts on the verdict form, sign the verdict form and date the verdict form and notify the bailiff that you are ready to pronounce your verdict.

Now, when we -- when you go back in the jury room, the two alternates will be held in a separate room, and you'll be here. In case anyone from the jury was to get sick or something was to happen, then we would put in an alternate who would consider -- would participate in the deliberations. So for now, because we have all 12, we'll hold you two separately from the 12.

And then once the verdict -- you have signed the verdict sheet, your foreperson has signed it, date it, and we'll bring you back in here to render your verdict. And the alternates will come in at that time so you can also hear the verdict. Okay.

So at this time, the bailiff is going to take you

to the jury room so you can select your foreperson. And once that's done, the bailiff will give you the verdict sheet, at which time you can begin your deliberations.

You can take your packet with you and your notes. And if you need to take a restroom break before you get started, please feel free do so, but please do not begin deliberations until all 12 of you are in the jury room.

(Whereupon, the jury exited the courtroom at 4:14 p.m.)

THE COURT: Now, are there any -- before the jury begins their deliberations, are there any requests for corrections or additions to the jury instructions?

MS. BROUGHTON: Nothing from the State, Your Honor.

MR. EDNEY: None for the defense, Your Honor.

THE COURT: All right. Then we will be at ease, and we'll see and wait for the jury to render a verdict.

(*Deliberations begin at 4:15 p.m.*)

(Whereupon, a verdict was reached at 5:06 p.m.)

THE COURT: Okay, are we all ready to bring the jury in and to render their verdicts?

If you'll bring them in.

(Whereupon, the jury entered the courtroom at 5:09 p.m.)

THE COURT: Okay, would the foreperson of the jury please stand. And state your name for the record.

JURY FOREPERSON: Bradley Rice.

THE COURT: It's my understanding that the jury has reached a verdict on both charges; is that correct?

JURY FOREPERSON: That's correct, Your Honor.

THE COURT: All right. If you will hand the verdict sheet to the bailiff. The bailiff will bring it to me.

Okay, Madam Clerk, would you take the verdict.

COURT CLERK: Members of the jury, please stand.

Members of the jury, have you agreed upon your verdict?

THE JURY: Yes.

COURT CLERK: In file number 21 CRS 331, State of North Carolina versus Kagan Fransward Williams, you, the jury for your unanimous verdict find the defendant guilty of attempted second-degree forcible rape. Is this your verdict so say you all?

THE JURY: Yes.

COURT CLERK: In file number 18 CRS 92442, State of North Carolina versus Kagan Fransward Williams, you, the jury as your unanimous verdict find the defendant guilty of assault by strangulation. Is this your verdict so say you all?

THE JURY: Yes.

COURT CLERK: Thank you. You may be seated.

THE COURT: Is there anything further from the State for these jurors?

MS. BROUGHTON: No, Your Honor. Thank you for their service.

THE COURT: Is there anything further from the defendant with these jurors?

MR. EDNEY: No, Your Honor.

THE COURT: Members of the jury, this concludes your work in this case and you are now discharged as jurors.

As a juror, you're now permitted to discuss the evidence and all aspects of this case, including your verdict and your deliberation with other persons, but you are not required to do so.

It is in the public interest that there be the utmost freedom of debate in the jury room and that each juror be permitted to express their views without fear or incurring public scorn or the anger of any of the parties. Therefore, you should always be careful about what you say if you decide to talk about your verdict. You should make no statement or answer any question unless you are sure that your statement or answer is complete and correct.

It is only fair that you should make no statement that you would not be willing to make under oath in the

presence of the Court, your fellow jurors, the witnesses, the parties, and their counsel.

I want to thank you for your service on this jury, and our court system would not work without our citizens being willing to serve as jurors, so I just want to thank you -- thank you for being diligent, attentive, and for your work in this case.

You are free to go right now, and if you need a note or anything for your employer, I don't know -- yes, Ms. Diane is back there, our jury clerk is there and can assist you.

Again, I just want to thank you for what you have done and your service, and at least you know for two years you won't have to do jury service again. So with that, I hope you have a nice evening and a very nice weekend. Thank you.

(Whereupon, the jury exited the courtroom at 5:13 p.m.)

THE COURT: Okay, the jury has rendered its verdict. Are there any motions?

Are the parties ready to proceed with sentencing?

MS. BROUGHTON: The State is ready, Your Honor.

MR. EDNEY: Your Honor, we would ask that we be allowed to come back Monday so I can work on substantial mitigating factors.

THE COURT: Okay. Does the State have any objection to doing sentencing on Monday?

MS. BROUGHTON: Not the official sentencing. The State would respectfully request -- I believe the defendant has to be taken into custody regardless of the sentence. That he be taken into custody, and we do the formal sentencing on Monday.

THE COURT: Yes, we'll do the formal sentencing --

MR. EDNEY: Your Honor, I don't think there's any law that says he has to be taken into custody. This has been going since 2018. He's made every court appearance.

I understand things are a little different, but I see no reason why he wouldn't be allowed to get his affairs somewhat in order, see his child, and come in Monday. We'll do it at eleven o'clock instead of 10:00 so the prosecutor doesn't have to rush.

THE COURT: Okay. Yeah, we're going to -- he doesn't have to be taken into custody today. So we're going to do sentencing on Monday, and we will start court -- is ten o'clock -- does that give you enough time?

MS. BROUGHTON: Oh, yes, ma'am. It ends at 9:00. I teach at Mars Hill.

THE COURT: Okay. So we will convene at ten o'clock on Monday for sentencing. And at that time, you can hand up any mitigation or anything else you would like the

Court to consider prior to the Court entering sentence.

MR. EDNEY: But you're not requiring him to go in custody?

THE COURT: I'm not going to require him to go into custody.

MR. EDNEY: Thank you.

THE COURT: Just make sure he shows up.

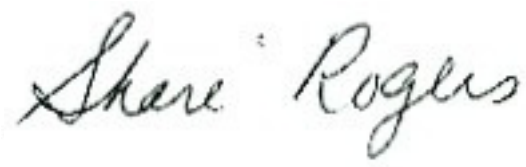
All right. Okay, if there is nothing further, then we will recess court until Monday at ten o'clock.

(*Court recessed at 5:16 p.m. and reconvened at 10:00 a.m. on Monday, November 1, 2021.*)

CERTIFICATION OF TRANSCRIPT

This is to certify that the foregoing transcript of proceedings taken at the October 25, 2021, Session of Buncombe County Superior Court is a true and accurate transcript of the proceedings as reported by me and transcribed by me or under my supervision. I further certify that I am not related to any party or attorney, nor do I have any interest whatsoever in the outcome of this action.

This, the 10th day of January, 2022.



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SHARI J. ROGERS, RMR, CRR, CRC
Official Court Reporter - Division V Rover
Post Office Box 2208
Weaverville, North Carolina 28787
828-768-4494
Shari.J.Rogers@nccourts.org