

MS. SULLIVAN: May I proceed, Your Honor,.

THE COURT: You may.

WHEREUPON,

WAS CALLED AS A WITNESS BY AND ON BEHALF OF THE COMMONWEALTH AND,  
AFTER HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS  
FOLLOWS:

DIRECT EXAMINATION

BY MS. SULLIVAN:

Q Ma'am, would you state your name for the Court,  
please.

A My name's [REDACTED]

Q And could you spell your last name for the court  
reporter.

A [REDACTED]

Q And how old are you?

A Twenty-five.

Q I'm going to direct your attention to the evening  
of Saturday, May 12, 2007. Did you go out with friends that  
evening, in Washington, D.C.?

A Yes.

Q And do you recall what time you all gathered, you

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and your friends, and where you were at the start of the night?

A We gathered at my friend Grace and Erin, their house, at, you know, 8:00, 8:30, and we headed to go into D.C. around 10:00.

Q All right. And beginning, when you arrived at Grace and Erin's around 8:30, what, if anything, did you have to drink at their house?

A We had made some sangria, and so I had two glasses of sangria, and then I took two shots of brandy with my friend Pat.

Q And at what time did you go to D.C.?

A I believe we were supposed to arrive at the sushi bar at 10:45.

Q And was there an occasion going on, that you were going to meet at that time?

A Yes. One of my friends, Matt's work colleague's birthday party. So we were going to meet them all there.

Q And were meeting there at 10:45 at night?

A Yes.

Q Okay.

A Yes.

Q And do you recall the name of that sushi bar?

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A No. It's on P Street.

Q What, if anything, were you all doing at the sushi bar?

A It's pretty rowdy. We went in and there had a table and there were probably ten people there, and so they had saki, and so we just did "saki bombs," ordering drinks and doing karaoke.

Q And can you explain what a "saki bomb" is.

A It was my first time drinking saki, and it's, I guess, Japanese liquor or something, and so you have a glass, and they fill it with a little bit of beer, and then you put a shot glass of saki, you drop it in it, and then you, you know, "shoot it."

Q And approximately how many saki bombs did you all do?

A Matt and Pat and I, we all did between ten and fifteen.

Q And do you remember approximately what time you left the sushi bar?

A I think it was around like 12:30, or so.

Q And where did you go from there?

A Matt knew a place across the street, like, you

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know, a dance bar, or some place that -- I don't remember the name of it, at all. But we went in, you know.

Q And did you have anything to drink, an alcoholic beverage there?

A Yes. I had Matt get me a Jack and diet Coke.

Q And that has Jack Daniels in it?

A Yes.

Q Was that something called the Pasha Cafe?

A Yes.

Q Where did you go after that?

A After that, I didn't know why we were leaving, the guys wanted to leave, and I was fine staying, but they wanted to leave. So we started walking. We went to -- Fuddruckers is where we ended up.

Q Did you eat anything at Fuddruckers?

A I took two bites of Pat's chili; but that's it.

Q And where did you go from there?

A Next door to a "techno club" called Five.

Q And is that an "after hours" club?

A Yes. I think. Yes.

Q Can you describe for the Court how you felt at the time you went to this Club Five.

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A Yes. I was extremely intoxicated. I shouldn't -- yes. I was very, very drunk.

Q All right. Now you mentioned your friends, Pat and Justin and Matt were at Fuddruckers. What happened with Pat and Justin as you left Fuddruckers and were going to Five?

A Yes. Well, Pat and Matt were walking in front of us and Justin and I fell behind, and so by the time that Justin and I got to Fuddruckers, Matt had already walked next door and went into Five. So I was just there with Justin and Pat, and they decided they were going to cab home. They're like, we're done, you know, too much to drink, too drunk, we're just gonna go home. And I didn't want to.

Q And can you describe, you described how you were feeling, that you were very intoxicated. Can you describe your ability to walk, and how you were doing.

A Yes. On the way between the first bar, you know, not -- the second bar, I guess, then, after the saki, Japanese place, we went to that one place. On the way to Fuddruckers, the guy was walking -- Justin was -- Pat and Matt were much further and Justin was just a few feet in front of me, and then I was running to catch up with him and twisted my ankle pretty badly.

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Justin came back to help me, cause I had been drinking so much. You know, I just get a little, "mouthy," like I'm fine, I can do it myself.

But I couldn't walk, so, I mean Justin sat down with me, you know, twirled my ankle a little bit, tried to see how it was feeling, and then I needed his help to walk, so that's how we got so far behind everyone was -- I mean, he pretty much carried me to Fuddruckers.

Q Okay. Now after Pat and Justin got a cab, you went into Club Five?

A Yes.

Q And that's still in Washington, D.C., in that same area?

A Yes. It's on the same street.

Q Do you remember about what time you arrived there?

A I think between like -- I'm sorry. I think it's between like, you know, 2:00 and 3:00. Maybe even one thirty. I'm not sure. It just really was --

Q It was late?

A It was very late and I wasn't --

Q And do you remember whether or not you had anything to drink in Club Five?

A Yes. I know, I know I had something to drink.

Q Do you remember what, or who got it for you?

A No. And I even know that I was so -- that I had drank so much at the time. I remember thinking I should get a water, but I know that I had a cocktail, which I'm sure was Captain and diet or Jack and diet. And I had taken out some cash at the ATM before I went into Five, so --

Q Did you see Matt in Club Five?

A I did. I did. Because he didn't know I was coming in. I had texted him I was coming in but he didn't respond, so -- but Pat and Justin -- I asked them if they were sure that he had walked in there, and they were like, "yeah." I didn't want to go in by myself.

Q So you saw him there?

A So I saw him.

Q What was he doing?

A He was dancing; you know.

Q Do you remember all the events while you were in Club Five? Or how is your memory?

A No. No. I mean, it's very like bits and pieces put together. You know, I remember looking for Matt, and then I found him, and then I don't know why I wandered away, and then I

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went all the way up to the roof. You know, I'd never been up on the roof of five, I didn't know they had a roof, you know, and I was just wandering around.

Q Now at the point when it came, that you were leaving Club Five, did you encounter a couple of men?

A Yes.

Q And can you describe what you recall about any conversation you had with them?

A Yes. Extremely loud, and I was -- I had decided I -- it was time to leave, and so I was looking for Matt, you know, to either let's leave together or get a ride or something. And so I encountered two men. It was just, you know, "Hey, what's up?" you know, that type of thing, and then I don't know if I said, you know, I'm looking for my friend, Matt, or do -- I don't know how it came up. But they were like, "Matt? We know Matt." So I was like, "Oh, you know Matt?" And so that was just--it was a quick association. You know, I thought, they're good people. You know, so it was -- and that was done, once I thought they knew Matt.

I'm like, "Where did you see him?" They're like, "Oh, he's up there at the front." And I was like -- with my ankle, I wasn't wandering back up to the front, you know, and --

Q And when you say "the front," you mean the front



of the dance floor?

A Yes. The front of the dance floor.

Q Was it crowded in there?

A Yes.

Q All right. So did you leave, then, without matt?

A Yes.

Q Okay. And describe -- now you said your recollection is that you met these two people inside of Club Five?

A Yes. Almost by the bar area.

Q Okay. And did you walk out with them?

A Yes.

Q Okay. And what, if anything, do you remember about your conversation was you walked out with them?

A Just friendly banter. I mean, just talking about the night, you know. Then I don't remember a lot of the details. Telling them about, obviously, my ankle. I mean, I was limping and --

Q You were still limping?

A Yes. By the time I got on the street -- I took off my shoes at some point.

Q Do you remember any conversation with them about what you'd been doing that night, or what you'd been drinking?

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A Yes. I told them I went to the saki place, I'd never been to a sushi slash karaoke bar. I mean, I thought it was pretty much -- and just that, you know, my friends were in Adams Morgan -- that's Grace and Erin, because they had come with us, and they had left the sushi/saki place because they didn't like it, and so they went to Adams Morgan and they wanted me to meet up with them there.

Q So when you left Club Five, were you thinking of meeting them there?

A Yes. I was thinking either that, or go home.

Q How was your ability to walk when you left Club Five?

A It was pretty bad. I mean, I held on to both of them; most of the way they helped me. I had no ability to walk for two reasons. Like I mean my ankle was twisted, but then also, I mean, I was falling over drunk. So I mean, I was --

Q Leaning--

A Yes. Yes. Staggering.

Q You said they were walking with you. They walked you to their car?

A Yes.

Q What conversation did you have with them about

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where you were going?

A I know I told them about my friends in Adams Morgan and that I should meet up with them, and then I also know that, you know, I'd left my car at Grace and Erin's house so -- actually, I didn't. I left it downtown but I wanted to go back to Grace and Erin's house to sleep.

So, you know, I was telling them, you know -- Alexandria, you know, drop me off.

Q Did they give -- did they offer to give you a ride?

A Yes; yes. Oh, absolutely; yes.

Q Now at this point when you met them -- you had never met these people before?

A No.

Q Were they "hitting on you," or coming on to you in any way?

A No; no. They were very much -- I mean, even, you know, helping me to walk because of my ankle, and drinking. They were very "hands off" at the same time, if you can understand that, like they were very friendly and respectful. I didn't feel like they're "hitting on me." You know, like a personal space type thing.

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Q All right. How did they appear as far as their dress and --

A Very clean-cut. You know. I mean, they were dressed, you know, handsome -- I mean, jackets -- a jacket on and a T-shirt, you know, nice jeans. I mean, just really very clean-cut and nice.

Q And you believed that they knew your friend, Matt?

A Yes.

Q Did you have any fears about going with them at that point in your state?

A No.

Q Do you remember anything about the car?

A It was just four doors, a luxury car. I mean, just really nice car. I just remember -- I mean, I was drinking to the point where I -- I just remember it was a really shiny car.

Q All right. Anything about the interior?

A Yes. It was like leather seats, black leather.

Q Okay. Where did you get into the car? Which part?

A Shotgun. The passenger side.

Q Passenger side front?

A Yes.

Q And who got in the driver's side?

A The taller gentleman.

Q Do you see the person you're referring to as "the taller one"? Do you see him here, in the courtroom?

A Yes.

Q Would you point him out for the Court, please.

A Silver jacket -- gray jacket. Pinstripe.

Q And the purple tie?

A Yes.

Q Will the record reflect the witness has identified

Mr. **Smith**

THE COURT: All right.

BY MS. SULLIVAN:

Q And the second gentleman who was with him, where did he get in the car?

A The back seat, pretty much towards the middle but more behind me.

Q All right. And do you see him in the courtroom today?

A Yes.

Q Would you point him out, please.

Will the record reflect Mr. **Doe**

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THE COURT: All right.

MS. SULLIVAN: Thank you.

BY MS. SULLIVAN:

Q How did you feel when you got into the car?

A Relieved to be sitting down, you know, but I was -  
- I mean, just really -- I'd been drinking all night.

Q Where did you go?

A We ended up going to get some pita sandwiches --  
somewhere.

Q And do you remember where you were to get the pita  
sandwiches?

A It took me a while to remember where we had gone.  
I remember the Georgetown lights, you know, along that main drag  
in Georgetown, so I think that -- because I was leaning my head on  
the car window, listening to music, laughing, talking, you know.  
But I think it was in Georgetown, whereabouts -- where we ended up  
-- I mean, they picked the place, so -- and I was like "Fine with  
me."

Q Did you get out of the car and go in with them to  
the pita place?

A Yes.

Q Do you remember -- describe what went on inside,

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if you remember.

A            Friendly. It'd seemed like they'd been there before. They knew the guys behind the counter. You know, I mean, it's a late-night pita sandwich joint. You know. I sat down and -- I mean, I just sat down. I just had been drinking a lot. So we got our sandwiches, you know, paid the check, you know; just friendly.

Q            Did you all get the food to go?

A            Yes.

Q            Do you remember who paid for the food?

A            I did.

Q            Now when you got back in the car, you got the food to go, where were--was there a conversation about where you were going?

Q            Yes. They, I mean they just said their place was just around the corner, it's closer than, you know, my friend's house, you know, and I should just go there.

Q            Did you agree?

A            Yes. Yes.

Q            When you got to wherever they took you, their home, what do you remember about it, beginning with where the car was parked?

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A           We drove in, parked in a parking garage, like a --  
a level, cement parking garage, and then went upstairs. The  
hallways were very -- it's like the cement floor, hallways with  
doors --

Q           Like an open air hallway --

A           Yes.

Q           -- with cement floors?

A           Yes. Cement floors. You know, just very much  
like that modern simplistic look. And they were like almost on a  
-- -if I recall, I think a corner, you know, like there was four  
doors in their little corner of the hallway, and -- you walk in,  
and it's a great apartment. So I mean, you walk in to the left,  
there's the living room, and then the kitchen's off to the further  
left. And there's a balcony, you can see the balcony, and then  
right there is the bathroom and the bedroom.

Q           Okay. Did it appear to be a one bedroom?

A           Yes. From what I could see, it was a one bedroom.

Q           What did you do when you got inside the apartment?

A           I sat on the couch, you know, we got -- were gonna  
eat our sandwiches. So we all sat down, started watching TV, and  
then everyone ate sandwiches.

Q           You ate your sandwich?

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A Yes.

Q Was there anything to drink?

A Yes. The one gentleman got out champagne. So we had a flute of champagne, we'd cheer, you know, like "Cheers."

Q Did you drink any of the champagne?

A Just a sip or two.

Q Do you remember which of the gentlemen opened the champagne?

A I don't recall.

Q Were there lights on in the living room?

A There was a light on in the kitchen. There wasn't any lights on in the living room.

Q Okay. But the TV was on?

A Yes.

Q And what do you remember about the television?

A We were watching this Jay Z -- documentary, or this big thing on Jay Z and his music.

Q Okay. What happened after you had the sip of champagne and had something to eat?

A I know at one point I went out to smoke on the balcony. I came back in, I -- and there -- they have like a sectional sofa in the living room and so I just -- and I was in

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the corner, like where it meets the corner, and --

Q And so is it like L-shaped, you mean?

A Yes; yes; thank you.

Q And so you were in the corner?

A Yes.

Q And what were you -- what was your intent? What were you going to do at that point?

A Go to sleep; go to sleep.

Q Did you ever get sick from all the drinking?

A No; no. And so -- and just even that one sip of champagne, I was like fast asleep. So --

Q You were sitting in the L. And then what happened?

A Mister -- they watched TV for a bit, and I was about -- I mean, I was watching out of one eye, just trying to go to sleep, and then Mr. Doe kind of -- he was on one corner and he came in closer to, I mean, kiss me, I guess, you know, and --

Q Did you kiss him back?

A Yes. I did, with the intent, and just thinking, you know, my mind thought was, if I just give him a kiss, then he'll let me go to sleep. You know. I mean --

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Q Did you say anything, or do anything?

A I didn't really say anything at that particular moment. You know, before he kissed me, I didn't say anything.

Q Okay. Then what happened?

A And then, you know, I kind a pushed him off a little bit, you know, just -- I don't want to do this, I just want to go to sleep. So -- but then he continued to kiss me.

Q Then what happened?

A Then Mister -- I couldn't even tell you how long we were -- how long like that lasted, you know, right there, in that little situation, but I mean -- and then Mr. Smith

Q Did you know them by their names that night?

A No.

Q Okay.

A No.

Q And did they ever ask you your name, that you recall?

A I think we -- I remember a conversation at some point in the car, on the street, because they had accents, and so I asked -- and I remember telling them I'm very proud of my last name, it's French. So I remember talking about French accents.

Q And they had accents?

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A Yes.

Q So you said next, something Mr. Smith did?

A Yes. They -- I mean, like he started to come in as well, and I was just very confused for a second. You know, I -- there definitely -- it was just a shot in the back of my brain of just, you know, what's going on? I was confused.

Q What did he do, when you say he moved closer?

A He picked me up and they -- they both did. You know, I just remember being kissed and being picked up, you know, like literally off the ground, and carried into the bedroom.

Q Can you describe, at that point, your physical condition. How did you feel when you were being picked up?

A Like a rag doll. I had nothing -- nothing left to give.

Q And you said they took you into the bedroom?

A Yes.

Q And do you recall there just being one bedroom that you saw in there?

A Yes.

Q What happened next, that you remember?

A I was put on the bed and then I just remember being very disoriented, and not being able to speak a lot. You

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know, I mean the one -- Mr. Doe, I know, took off my pants, and Mr. Smith sat on my chest, and so --

Q Do you remember whether your clothes were on wrong? Your top?

A No. They took off my top and my bra. My shirt. I was wearing a black button-down, and I remember the buttons coming unbuttoned, you know, and my bra just snaps in the front. So I remember that happening, and I remember the like swish of my pants getting pulled off. I don't even remember the, you know, button being unbuttoned or the zipper. It was just -- my body was like numb. I mean, you know.

Q Now when you're describing your body was numb and you don't remember clearly, was that because of the alcohol?

A Yes.

Q But as far as you know, you were conscious at that point?

A Yes.

Q All right. You were on the bed.

A Yes.

Q Were you on your back?

A Yes.

Q Okay. And where were the others?

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A Mr. Doe was down between my legs and then Mr.

Smith was sitting on my chest.

Q He was sitting on your chest?

A Yes.

Q And what happened then?

A Mr. Doe stuck his fingers in my vagina and Mr. Smith -- I mean, he sat on top of me for oral sex.

Q And what did he do, when you say for oral sex?

A He put his penis in my mouth.

Q What, if anything, did you do to prevent him from doing it?

A When I realized what was happening, you know, I -- I tried to spit a little bit. You know, I was trying to think, I mean like there's not really a whole lot of escape routes for that, you know, so I didn't know exactly what to do. I thought about -- so I tried to spit and I turned my head, you know, back and forth. You know, I was trying --

Q Was he -- despite you doing that, was he successful in inserting his penis in your mouth?

A Yes.

Q While all this was happening, the one between your legs, and the other on your chest, did you ever say anything to

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them?

A Yes.

Q What did you say?

A The few things I was able to get out, I said that I was Catholic, I said that I was a virgin, I said no several times, I asked, you know, after Mr. Doe had inserted his penis -- you know -- I mean, had sex, I was like is anyone even using a condom. Like I would like defense. You know, I told them I'd get pregnant, you know, because I was a virgin, you know, just --

Q Why were you telling them these things?

A To scare them into stopping.

Q Do you remember how many times you said no?

A I mean, at least half a dozen. It was very hard to verbalize.

Q Why was it hard to verbalize?

A Because I had been drinking so much, and then I really haven't -- I mean, like I drank so much, I couldn't -- I couldn't function. And I didn't -- also, at the same time, I was just very scared of -- I was just very scared and very afraid.

Q Now you mentioned Mr. Smith on your chest, Mr. Doe inserting his fingers in your vagina. What else did they

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do? What do you remember?

A I know Mr. Doe then inserted his penis into my vagina, and then I remember -- it was very dark, I mean the room was dark, and I opened my eyes at one point to look at both of them, because I knew I was being raped and that this wasn't, you know, what I wanted to do. So -- but then after that, I closed my eyes the whole time.

But I -- so I remember, I don't know who was coming and who was going, but I know Mr. Smith got off my chest, you know, someone came back on my chest, and I know I was, you know, penetrated vaginally, you know, several times, but I didn't know who was where and what was happening, and who was coming and going. Just all very -- very, very foggy.

Q So did it feel like they were switching off?

A Yes. Es. Very much so.

Q Now you mentioned at one point you made yourself open your eyes and look at them. Why did you want to look at them?

A Because I wanted to be able to recognize them.

Q To identify.

A To identify them.

Q You said you know that you were vaginally

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penetrated, you said I think several times?

A Yes.

Q Can you describe how that felt. Did it hurt?

A It was very painful and I remember specifically thinking at the time how painful it was because, you know, I'd been drinking so much, that you just kind of like, you know, lose touch with how -- with pain. You know, I mean, like I had fallen down on the way, you know, with Justin, and I was like -- I remember thinking in my head, well, your ankle's going to be swollen tomorrow, so you better dance tonight because you can't feel it. You know. So, you know, when drinking, just don't feel things as acutely. So I remember thinking that, how painful it was.

Q You talked about some of the things you were saying to them. Did you ever ask for your cell phone? What was going on? Where was your cell phone?

A Yes. When we got in the car, I looked in to my clutch for my cell phone to --

Q This is in D.C. when you got in --

A This is in D.C. when we left Five -- to contact Grace and Erin, you know, cause at that time, I didn't know if I was going to go home, or go to, you know, that bar, and so I was

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going to, you know, call them and see, are you guys going to go back? should I meet you at the house?, or shall I come there? And my cell phone was gone; wasn't in my purse. I have no -- I mean, my purse and my pockets, that's all I had, so I didn't have it, and the gentleman suggested that I probably, you know, left it at the Five, and being intoxicated as I was, I was like, you know, you're probably right. I mean --

Q Were you looking around the car for it?

A Yes. I mean, I looked around for it, so --

Q All right. And once you were in the apartment --

A I looked on the floor, in my purse, my pockets.

We got to the apartment, I had sandwiches, and looking in my purse. My purse is this big. There's nowhere for it to go, you know, so -- I mean, I looked for it before, and I also, in the middle of being assaulted, I asked for my cell phone, multiple times. I probably asked for that more than anything else.

Q Okay. And why did you want your cell phone?

A That was the only way I felt that I could, you know, get help, get out of the situation, get home, get anything.

Q And did they ever answer you, when you were asking for your cell phone?

A No.

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Q And when you were saying other things, like telling them no, and you're a virgin, did they respond to you?

A Not very often. The only things they really said were, relax, it's all right, you know, I mean, just very -- I mean, soothing tones and just very much, you know, like calming like, and the one reference, the one reference that was a little bit more was, you know, "It's cool." They just kept saying "It's cool." You know, "it's cool, it's cool," and you were so "cool" earlier, you know, when I was like, you know, starting, trying to get a little more, you know, verbal aggressive.

Q Okay. Now you described them as telling you, calming you down, "It's cool," you were so "cool" earlier.

A Yes.

Q Were they ever physically violent? Did they ever hit you?

A No.

Q Did they ever threaten to hurt you?

A No.

Q Did they show you any weapons?

A No.

Q And what were you able to do, physically? You mentioned saying no, but what, if anything, were you able to do

physically, to try to prevent them from doing what they were doing?

A        There was a couple times that I was able to like, you know, try to pull my legs together, you know, and, you know, twist your knees, twist your ankles. My ankle was in a lot of pain, so, you know, to do that, just kind a, you know, squirm here and there, and that was pretty much it.

Q        Did you have the ability to get, just get up, push them off, get up, leave?

A        No; no.

Q        Describe how you felt, physically?

A        I felt very -- I mean, I felt like dead weight, like a rag doll, like I can't get up, and I knew if I could ever get up, I couldn't walk on my ankle.

Q        Now eventually, did someone give you your cell phone --

A        Yes.

Q        -- when you were asking for it repeatedly?

A        At one point, I mean, I remember, I was laying there with my head to the side, and someone was on top of me, and all of a sudden my cell phone just appeared right there. I mean, no words were spoken. There was nothing communicated about the

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cell phone. It was just, it was just handed to me.

Q And it was your cell phone?

A And it was my cell phone.

Q What, if anything, did you do with the cell phone?

A I tried to text -- well, I was trying to, you know, text. I knew I can't call, you know, and my friends -- the first thing I thought was of Matt who was, I mean my last reference. I was just so far gone, all I could think of was the last person. I'm like "Matt," you know, and so I went to text him that I was getting raped, to come help.

Q Now were you concerned that they could see what you were trying to do, or --

A Yes. So I mean, I got the text to send. I mean, it took six, seven tries. My fingers, my words were misspelled, it was awful, but I thought I got enough out, that it would be fine, and then I just slid it on the floor under the bed. Like I just dropped it on the floor so it kind of -- cause I didn't want them to see.

Q All right. Do you have any idea of how long all this went on?

A It felt like forever but I think, you know, I know I got my cell phone back at about, like, a quarter till 6:00 in

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the morning.

Q And do you have any idea what time it was when you left Five, Club Five?

A I think it was around like 3:30 or so.

Q So you were with them a couple hours?

A Yes.

Q Okay. How did all this come to an end? What do you remember?

A I remember one leaving, you know, like leaving the room, like permanently, and then I think some conversation about something -- I can't even remember, I mean, what was being said, you know, and then it just all -- I mean, you know, it was like it was just over and I was just asleep.

Q Okay. Did you fall asleep?

A Yes. Fell asleep, passed out, whatever it was. I do remember flipping on to one side, you know, like my back, you know, towards the end of the bed, just flipping over.

Q And what woke you up?

A My cell phone buzzing. My brother-in-law had sent me a text message, it was Sunday, and I always keep their car seats for their children in my jeep. So he had just sent the text that said, you know, "Car seats. What time you going to be

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home?," assuming that I was at a girl's house.

Q Okay. And so you remember what time that was?

A Yes; it was 9:30 a.m.

Q Now describe, when the phone went off and woke you up, where were you?

A I was in the bed, underneath the sheet, naked, and so I just reached over, picked up my cell phone, texted back real quick, you know, "On my way."

Q Who else was there in the room?

A Mr. **Smith** was in the bed as well. I didn't see Mr. **Doe** anywhere.

Q What did you do once you finished --

A I sent the text to Andrew, and I took one big deep breath, and I just -- you know, I lifted the sheet, realized I was naked, and saw my clothes on the floor, and stood up, got dressed, grabbed my purse and walked out the door. I did everything as quickly and silently as I could.

Q What did you do when you got outside?

A I remember just looking for exit signs. You know, I just -- the first two exit signs I saw, you know, I just walked towards the first exit sign, went down those stairs, walked towards the next exit sign.

I was just like, you know, if I just keep hitting the exits, I'll get out of here.

Q And when you got outside, did you know where you were?

A Not at all.

Q Okay. What did you do?

A I called my friend, Grace, and as soon as I hit the -- you know, I felt -- I was walking out the parking garage, I'm on like a little side road by this condo and I just see all these, you know, condo buildings and buildings, and I -- and there's no road signs, and I mean, I didn't know what state I was in at that point. I just remembered thinking, you know, they could have driven me anywhere, I have -- D.C., Virginia, Maryland. You know. For a minute I thought it was -- I have no idea where I was.

So I called Grace, and as soon as I was standing there, talking to Grace, just all the vaginal pain hit me and it's like everything just came together really suddenly. The realization of everything that had happened, and the pain. So I called Grace --

Q You were hurting, vaginally?

A Yes, and I called Grace, and said I don't know

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where I am, you need to come get me. And she's like, "What happened? you know. And then I told her I was raped, and then I just started bawling hysterically, and I couldn't walk, I'm carrying my shoes. I mean, I'm in terrible pain.

She's like you have to find a road sign so we can, you know, Google it and come find you.

Q Okay. In the meantime, as you were looking for the road sign, did someone else come along?

A Yes; yes. Eventually, I went to the, you know, couple hundred feet to the nearest sign and sat down on the curb, and was just telling them everything I was seeing, you know, businesses, whatever, and then a car pulled up next to me. And I was, I was hysterical, and so I told the girls there's a car.

They said you have to ask someone where you are, your roads aren't making sense, we need to come find you. So a car pulled up next to me, and I think the husband was putting something in the trunk or whatever, so they were actually stopped, and I just stood up and asked where I was, you know, and hobbled over there, and then they go, you know, what's, obviously, the matter with you, and so I told them what happened. They drove me to the hospital.

Q And was it at the hospital, then, that you

reported this to the police?

A Yes.

Q Okay. While this case was under investigation, in fact on -- this was now Sunday morning?

A Yes.

Q May 13th. Okay. The next day, Monday, did you meet with Detective Ignacio --

A Yes.

Q -- to give a complete statement?

A Yes.

Q All right. And did you -- did he take you to a location and show you some buildings?

A Yes.

Q Okay. Did you recognize those condo buildings being where you were?

A Okay. What did you recognize about it?

A The side street and the parking garage. The gazebo that was in the back. You could see the gazebo from their apartment balcony.

Q And did you indicate to the detective that that is where this happened?

A Yes.

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MS. SULLIVAN: No further questions.

THE COURT: Cross examination, Mr. Leibig.

MR. LEIBIG: Good morning, Your Honor. My name is  
Chris Leibig. I represent Mr. Doe

THE COURT: You need to keep your voice up just a  
little bit.

MR. LEIBIG: Is this all right?

THE COURT: Yes.

MR. LEIBIG: Thank you.

CROSS EXAMINATION

BY MR. LEIBIG:

Q At the start of the night, you started out at  
Grace and Erin's house. What time did you go over there?

A I'd been with Grace all day. I went home to  
change and get ready, and I think I got back there about 8:00  
o'clock.

Q Okay. And was the whole group there, or just the  
two of you?

A I was there -- just Grace, and Erin was there,  
getting ready as well.

Q Okay. And what --

A And everyone else was coming over.

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Q What was the plan for the night?

A The plan was Matt's work friend, Brian's girlfriend's birthday party down at the sushi/saki bar.

Q Okay. And was the sushi bar Japone's, if I'm saying it right?

A Yes. If it's on P Street, then I assume you're probably --

Q Okay, and you'd never been to that sushi bar?

A No.

Q At the sushi bar, how long were you there? Do you remember?

A I think we were probably there, probably about an hour.

Q Okay. And you left there about 10:45?

A No. We left to go to into D.C. We were supposed to meet -- yes, we left Grace and Erin's to go into D.C. and be there at 10:45.

Q Are you sure that you didn't leave, actually leave the sushi bar at 10:45?

A Yes. I'm pretty sure. I'm -- I know we were supposed to meet them there at 10:45.

Q Do you remember talking to Detective Ignacio on

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the Monday that you talked about, and telling him about the events of the night?

A Yes.

Q Did you tell him that you left the sushi bar at 10:45?

A I don't believe so. I relied heavily on my cell phone and text messages to lay out the time line of the evening, to be honest.

Q Okay. So do you remember what you told him about that?

A I believe I told him that we were supposed to be at the sushi/saki bar at 10:45, because the group that we were meeting had reservations and were seating us and knew we were coming.

Q Okay. How much did you drink before going to the sushi bar?

A I had a Heineken in the afternoon at Matt's apartment.

Q What time was that?

A I would say around -- between 3:00 and 5:00. Just went out to see his new condo. And then got ready, went to Grace's, had, you know, two red plastic cups of sangria and fruit,

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and the other guys got there, had two shots of brandy.

Q You had two shots of brandy?

A Yes.

Q And then you left there, 10:30, maybe?

A Yes. 10:30.

Q Who drove?

A I drove.

Q Okay. And you drove down and parked in D.C. near  
the sushi bar?

A Yes.

Q Everybody riding with you?

A Yes.

Q Including Matt?

A Yes.

Q Okay. And then you were at the sushi bar for  
about an hour?

A Yes. Grace and Erin left pretty much immediately.  
They sat down, took off their coats, didn't like it, wanted to  
leave. So they took off --

Q So you left there maybe 11:45?

A Yes. I would think so.

Q Did you pay with your credit card at the sushi

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bar?

A No. I just gave Matt's work friend, Brian, money.

It was, you know, one group tab, so I just gave him cash; you know.

Q And when you were talking about the drinks at that bar, was everybody doing the "saki bombs"?

A Yes.

Q Do you remember exactly how many you had?

A No.

Q I think you had said ten to fifteen. Did you mean for the whole group, ten to fifteen?

A No. Each of us, individually, was taking -- I mean, I -- no, I individually took at least ten, fifteen.

Q How much did that cost when you paid for that?

A I know that I gave him a twenty for myself. That's all I did. I don't know how much it cost. Brian was throwing the party for his girlfriend, so it was just kettles and kettles of saki.

Q You don't have a specific memory of how many saki bombs you had? It could have been a little less; could have been a little more?

A I know I had at least ten. I mean, it was -- I

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know I had ten to fifteen. I remember the cheers and the conversation and "Fill 'em up again," and --

Q Do you have any way to know how much alcohol is in each of them?

A No. It's a shot glass of saki and then -- but the beer is different every time, depending on who's pouring it and how much beer.

Q Okay.

A And it was my first time drinking them as well, so

--

Q When you went to -- the next club you went to is Pasha, right? Yes?

A Yes.

Q And you had one drink there?

A Yes.

Q Was that right when you got there?

A Yes.

Q Okay. And you had no drinks at Club Five; right?

A I had a drink. I don't know -- it's very foggy.

I remember having a glass in my hand. I know I remember asking for water but I know I had a cocktail as well. I don't know if I bought it, someone bought it for me. It's just there; you know.

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Q Just looking back on it, do you remember giving a taped interview with Detective Ignacio, when he asked you about what you drank at Club Five?

A Yes.

Q Do you remember saying to him: I don't even think I got a drink to drink there?

A Yes.

Q So you don't know if you had a drink at Club Five?

A Upon further reflection, I remember holding a glass in my hand, you know, so --

Q Could it have been water that you remember holding?

A It could have.

Q So you're not sure you had any drinks at Club Five?

A Yes.

Q Okay. So the other -- and that's one drink at Pasha; right?

A Yes.

Q Do you remember what time you left Pasha to go to Fuddruckers?

A I don't remember, exactly, what time it was.

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Q How long were you there? Do you remember?

A Enough that everyone, you know, finished their round, danced a little bit, and then instead of getting another round, left. So it'd probably take, you know, forty minute -- I mean, half --

Q Forty minutes or so?

A Yes.

Q Around a half an hour to 45 minutes?

A Yes.

Q Okay. So that's maybe 12:30 when you go to Fuddruckers?

A I mean, 12:30, 1:00. I mean, yes, I'd put it in that range.

Q Okay. And you didn't drink at all at Fuddruckers?

A No.

Q So the drink at Pasha, other than the drink you had at Pasha, and other than the one sip of champagne you had later that night, you didn't have anything to drink, at all that night, after 11:45; right?

A It's very foggy, if I drank anything at Five or not, so I mean, I might have had a drink at Five, but --

Q Leaving that aside, then, other than that,

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you didn't have anything to drink after 11:45 except one drink at Pasha and maybe a drink in Club Five. You're not sure. Is that fair?

A I think 11:45 is when I left. You know, I mean, I don't know when I left, exactly; but that's true; yes.

Q Okay; that's true. Did you eat at Fuddruckers?

A I just took a couple bites of Pat's chili. I didn't order anything.

Q At any point in the night, did you actually lose memory, have a blackout?

A I don't know. I'm sorry. The question --

Q Is there a period of time you just simply don't remember at all?

A No. I don't think so. It was -- I'm sorry.

Q When you guys went, when you're sitting at Fuddruckers with the group, Matt left alone; right?

A Yes. Matt wasn't there when I got to Fuddruckers.

Q He'd already gone to Club Five alone?

A Yes.

Q And he didn't specifically invite you to follow him there; right?

A Right.

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Q Okay. Then you got finished up at Fuddruckers and you're walking outside, and Fuddruckers is right next to Club Five, right?

A Yes.

Q Or one thing in between them?

A Yes.

Q And then all of your friends, except for you, decided to leave in a cab?

A Yes. That decision was made in Fuddruckers, just sitting there.

Q And you decided to go into Club Five by yourself?

A Yes.

Q Why?

A Because Pat and Justin were like -- everyone was going to Five, like everyone was going to go to Five, that's why Matt went in, and then Justin and I get there, Pat's eating his chili, it's talked about, Justin and Pat are like we're too drunk and tired, we're going home, we're going to cab home, you know, and I was like, Are you sure Matt's in Five? Like yes, he just went into Five. So they changed their minds and wanted to go home, instead of continue to go out, and so I said, well, I'll just go. So that was decided, and then I just got up and went to

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an ATM, got some money to pay the cover, and go.

Q So you felt -- they felt like they were -- the night was kind of over, they were too drunk, they should go home?

A Yes.

Q And you felt that you weren't too drunk to stay out; right?

A I mean, I knew I should go home. I was feeling drunk enough that I should have -- I mean, I'd twisted my ankle already, was hobbling around, but --

Q You felt like you were okay to go into Club Five?

A And find Matt.

Q And before that you went to an ATM?

A Yes.

Q By yourself?

A Yes.

Q How far away was the ATM?

A It's right on the other side of Five, and I knew it was there, so I felt comfortable. It's a busy street. There's a lot of people out, you know, so I felt comfortable just walking.

Q And when you walked from standing in front of Club Five, after your friends left, to the ATM, you weren't stumbling; right?

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A I'm sure I was.

Q Do you remember that, stumbling?

A Do I remember stumbling? I mean, I just remember being drunk and put -- you know, dropping my ATM card on the ground, you know, in front of -- I mean, I was "hammered."

Q How many times, if ever, have you hung out around Matt?

A We were friends in college, and then we lost touch, but we just -- I just moved to D.C. over the holidays. We probably hung out like, I don't know, five -- five, six times in like -- you know.

Q Is he a very, very close friend?

A No. I mean, but a good, good friend from college.

Q And you weren't going out that night to "hang out" with him?

A No. I mean, the group -- I mean, like the group was all going out together. Everyone was planning on staying the whole night in D.C. and then people just started dropping like flies and cabbing all over the place.

Q And when you got into Club Five, you text messaged Matt right when you got there; right?

A Yes.

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Q And that's about 1:50 a.m.?

A Yes.

Q Makes sense?

A Yes.

Q Whenever you sent him that text message.

A Whenever; thank you; yes.

Q That would be when you first got there?

A Yes, because I was going up the stairs.

Q And you danced while you were there?

A Yes. I did.

Q And I think you referenced this. When you're, when you're kind of drunk, when you're dancing, you don't feel the pain in your ankle as much; right?

A Yes.

1B

Q So you were able to dance okay, because you were drunk enough at that point, that --

A Yes.

Q -- you didn't feel the ankle. Later in the night, you did begin to feel the pain in your ankle; right?

A Yes.

Q And that's because you were sobering up as the night went along; right?

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A I mean, as soon as I twisted my ankle on the street, I knew it was going to be a "doozie." There was a twist there, felt something snap, you're in, you're in trouble. So, you know, for me it was just like, you know, just keep -- just keep going, you know, suck it up tonight --

Q But my question was, is it accurate that you didn't feel the pain while you were dancing and a few hours later you didn't feel --

A I felt the pain -- I know -- I did feel -- I mean, I felt the pain while I was dancing. It wasn't -- I didn't ever stop feeling the pain completely but it wasn't as intense as I knew it would be the next day, when I was, you know --

Q But at this point, at 1:50 or 2:00 in the morning, when you began dancing, you hadn't had a drink for at least two hours; right?

A Did it take two hours to get from the place where we had a cocktail, at the second bar?

A Well, I was asking you. I believe you said 11:45 was around when you left Pasha, and this is now 1:50 in the morning, and you had no drinks at Fuddruckers. So my question is it had been at least two hours since you had any drinks when you started --



A If it took two hours to get from the second bar to Five, then it had been two hours. I'm sorry. My time line is just really--

Q Okay. And you walked around the club. Did you talk to anybody other than Matt?

A Yes. I mean --

Q Random people?

A Yes.

Q And you only spent a second talking to Matt?

A Yes. I finally -- I went in with the intention, obviously, to find Matt, and so I looked for him, found him. He was heavily intoxicated as well, and he had been taking saki bombs with me. So I just remember, he didn't even look me in the face, and he was just -- I'm like, "Matt." -- you know, and he was just like "I'm gonna be here a while." I remember thinking, I'm in pain, I'm exhausted, I'm drunk, I'm going to go home; you know.

Q And when you had that conversation with Matt, was it pretty much right when you got there?

A No.

Q Half an hour after you got there?

A I probably -- I'd probably say -- I mean, it probably took me a good 15, 20 minutes or so to find him.

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Q So that conversation was probably before 2:15 now.

It didn't take you a full half an hour to find him?

A Yes. I mean, probably. I'm not sure, exactly.

Q And at that point he was kind a "doing his own thing" on the dance floor.

A Yes. He was in the middle of a circle of girls. He's a very good dancer.

Q And you didn't "hang out" in that circle of girls, did you?

A No. I saw him, you know, I talked to him for a second, then we got disconnected again, and, you know --

Q And you danced somewhere else, separate from him?

A Yes. I went up to the front and danced with --

Q And the way Club Five is, there's a big dance floor right at the front on the first floor; right?

A Yes.

Q And then the second floor is something where you can look down on that dance floor; right?

A Yes.

Q And, really, that's the only formal, if you want to call it that, the only official dance floor at Five?

A Right.

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Q Everywhere else are couches and bars and stuff like that?

A Yes.

Q And then the third floor is an outside deck?

A Yes.

Q People aren't really dancing up there; right?

A Right.

Q Okay. So when you talked to Matt before 2:15, your testimony was that you wanted to leave right then?

A I didn't tell him I was -- I didn't ever -- you know, I was just like, hey, I just was glad to find him, so --

Q But my question was, did you want to leave right then?

A I don't know.

Q You stayed there for another hour and a half by yourself; right?

A If that's when I left. Yes. I mean, if I didn't leave until 3:30, then I definitely stayed there for an hour.

Q Was Matt still there when you left?

A I assumed so. I didn't see him. I was looking for him, to tell him I was leaving when I decided to leave. So I didn't ever end up actually seeing him.

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Q Where did you run into these guys?

A By the bar. Like the main floor, the first floor, the dance floor. I trolled around looking for Matt, you know, tell him I'm leaving, do you want to leave; you know, anything. Or I'm just gonna cab by myself, I was fine with that, and tell him I'm leaving.

Q You had, you had money -- you had money for a cab on you?

A Yes. I had -- I'd gotten 20 bucks from the ATM. But I had my credit card, so I --

Q And there's a line of cabs in front of Club Five if you want one; it's easy to get one?

A Yes; absolutely.

Q Who did you speak to first? Mr. Doe or Mr. Smith?

A They were side by side, just standing there. I don't know who I spoke to.

Q Did you approach them or did they approach you?

A I think -- I mean, it's a club and you're just standing there. I don't know who approached who.

Q And you talked to them about your French last name; right?

A Yes. I mean, at some point.

Q And I just wanted to go over the part about Matt.

Did you tell them Matt's last name?

A I think so.

Q They didn't tell you Matt's last name?

A No.

Q Did you tell them where Matt worked?

A No.

Q Did they tell you where Matt worked?

A No.

Q Did they tell you how they knew him?

A No.

Q Did they -- did you have any conversation at all,  
about anything about how they knew Matt? Anything like that? No.

A No. Sorry.

Q The entire conversation related to Matt, thirty  
seconds maybe?

A Probably more like two. You know Matt? Oh, yes,  
we know Matt. Have you seen him? He's up there, dancing. I was  
like I'm not going back up there again to look for him. And that  
was it.

Q And for the whole night, there was never another

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conversation about Matt?

A No. I didn't bring --

Q Not at Quick Pita restaurant?

A No.

Q Not in the car?

A No.

Q Not at the apartment?

A No.

Q And you asked no further questions about him?

A No.

Q Does Matt have any African American friends that  
you know of?

A Yes. Not that I -- I don't know any of them  
personally, but my girlfriends have told me about Matt's friends,  
and it's very diverse --

Q Does he have any European friends that you know  
about?

A At college. I mean, we went to a diverse college.

Q But you had never heard of anybody around the D.C.  
area, that fits these guys' characteristics, that you knew --

A No.

Q -- Matt was friends with?

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A No.

Q And you didn't ask them any questions about Matt?

A No.

Q Did they say they were going to help you look for  
Matt?

A No. I don't think so.

Q Did they say they worked with him?

A No.

Q Did they spend any time looking around for Matt  
with you?

A No.

Q Did you give them a description of Matt?

A No. I wasn't -- no.

Q So you go outside Club Five with both of them --

A Yes.

Q -- and having fun, friendly conversation at that  
point?

A Yes.

Q And you're thinking about maybe going out to  
another bar right then; right?

A Yes.

Q And then the conversation came up about getting

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some food?

A Yes.

Q Who brought that up?

A I don't know.

Q You agreed. You wanted to get some food?

A Yes.

Q And you had eaten at Fuddruckers a couple hours before; but you were hungry again?

A Yes. I only had two bites at -- I didn't eat. I remember wanting to eat at Fuddruckers and not ordering food. I almost -- I remember I -- left-over food on someone else's table, and almost going and grabbing it.

Q Do you remember telling Detective Ignacio that you all ate at Fuddruckers?

A If I told him they all ate at Fuddruckers -- I mean, like everyone was sitting there eating, and I just nibbled on some a Pat's. Yes. I mean, yes.

Q How long was the walk from Club Five to the car?

A Probably just a couple blocks; you know.

Q And you left, you decided to leave your car downtown?

A I had completely forgotten about my car at that

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point.

Q When you were walking on the way to the car, what was the conversation?

A It's -- I can barely remember it. I barely remembered it the next day. But it was just, you know, laughing, Saturday night in the city. What do you do? What do you do? I mean, I couldn't even tell you what they do. I mean, just talking about the accents. I'm a sucker for accents. I love accents. So I was just very much like, you know, I like to talk about people's histories, so --

Q And were you mostly talking with Mr. Doe or mostly talking with Mr. Smith?

A I don't know. There was one on either side. We were just all talking.

Q And at this point, it's about 3:45, 4:00 in the morning; right?

A I don't think it had hit 4:00 o'clock yet.

Q Well, if it -- I mean, if this refreshes your memory at all, your receipt from Quick Pita is at 4:19 in the morning. So when you're walking to the car, is that around 3:45, 4:00 in the morning?

A Okay; that would make sense.

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Q And other than at that point, 3:45 in the morning, other than the one drink that you might have had at Club Five, but you're not sure, you had not had any alcoholic drink in four hours; right?

A Yes.

Q So, fair enough. You were sobering up compared to the way you were at midnight?

A I didn't feel like I was sobering up. I thought I was about to pass out or go to sleep.

Q Do you remember where everyone was sitting in the car on the way to Quick Pita?

A Yes.

Q Do you have a specific memory of Doe being behind you but sort of in the middle?

A I just remember glancing over my shoulder and being able to see his face.

Q And were you guys singing along to songs in the car?

A Yes; yes. The radio's on --

Q Do you remember what songs?

A No.

Q So at that point still a friendly, "fun"

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conversation?

A Yes.

Q Where did you park in Georgetown near the pita place?

A I don't know. Maybe on the street. I couldn't tell you. It's all foggy.

Q On M Street? On the main strip?

A Yes. I just remember driving through the lights; but I don't remember.

Q And how long of a walk was it from where you parked to the place?

A I don't know.

Q So you walked into the restaurant. Do you remember the name of it?

A No.

MR. LEIBIG: May I approach, Your Honor?

THE COURT: Yes.

MR. LEIBIG: I'm going to show you an exhibit marked PH-1.

THE COURT: Has the Commonwealth seen these?

MS. SULLIVAN: I have, Your Honor.

MR. LEIBIG: And it has two photographs of a

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restaurant. Take your time. That's the restaurant you went to in Georgetown; right?

THE WITNESS: If you say so. I mean, I don't remember walking -- that it was night. I remember it being very white on the inside and it's white on the outside, so I'm sure that's it.

BY MR. LEIBIG:

Q And do you remember that M Street, the main drag in Georgetown, is one-half a block away from that? Do you remember that?

A No.

Q But you knew you were in Georgetown; right?

A Yes.

Q And you've lived around this area -- at that point you lived around the area how long?

A Five months.

Q So you knew, you know where Georgetown is?

A Yes.

Q And you know where it is in relation to where you live?

A Some days. I work from home. I really don't get out that much and I don't really drive a whole lot.

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Q But you've gone out in bars in Georgetown before?

A Yes, twice.

Q I'm going to hand you another exhibit marked PH-M-

2.

A Yes.

Q Is that a fair and accurate, complete, fair and accurate depictions of the inside of the restaurant?

A Yes.

Q And if you look -- you mentioned sitting down in there. Would you mind marking with an X -- and I'm sorry about these random people in the picture -- but would you mind marking with an X where you sat.

A I could not remember, but if you come in -- where's the counter? Is this the counter?

Q Yes.

A Okay. I think I sat on this side.

Q Okay. Would you mind mark -- there's two seats there. Would you mind marking where you think you sat in.

A I mean, I think I was further from the counter, so probably like this one.

Q Okay. And could you initial that.

A Yes.

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Q Where was Mr. Doe standing while you were sitting there?

A He was ordering sandwiches and talking.

Q Talking to you?

A No; no. I mean, people were actually -- I mean, I sat very dejected, in the corner, on the chair.

Q You weren't having any conversation with --

A I don't think so. I mean, I might have said something, just to look social; but I was drunk.

Q It's light in there; right? Not dark like a club?

A Right; right. It's very light.

Q Fair enough, you were there maybe 20 minutes waiting for the food?

A I guess; yes. I mean, I don't know how long it takes to get the sandwiches.

Q Okay. And you paid with a credit card; right?

A Yes. I don't even remember going to the counter and paying. I mean, like I just don't remember a lot of --

Q Do you remember about the tip?

A No.

Q Would it refresh your memory if I showed you a copy of the receipt for Quick Pita about whether you left a tip?

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A Yes.

Q You left a tip; right?

A That doesn't look -- I mean, I -- it's my signature but I just can't --

Q That is your signature?

A Yes.

Q And that's your writing?

A I think -- yes. I mean, it looks like my writing.

Q And you left a tip of \$5.77; right?

A It's very uncommon for me to tip like that.

Q In --

A In change like that. I mean, I just always --

Q My question was, on this occasion, you tipped--the bill was 27.23 and you tipped 5.77, to add exactly to a rounded-off dollar amount of \$33.00; right?

A Yes. I don't remember doing that.

Q But you did it. This is your writing --

A Okay. Fine. I just don't --

MS. SULLIVAN: Your Honor, I object. He asked her about doing it. She said no.

MR. LEIBIG: It is your writing; right?

THE WITNESS: It looks like my signature.

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BY MR. LEIBIG:

Q And at that point you have some conversation -- well, you get the food to go; right?

A Yes.

Q And then you decide to go back, and you decide we're going to go eat it somewhere; right?

A Yes.

Q The whole time at Quick Pita, not one word about Matt; right?

A No.

Q And I'm not asking for your exact address, but around where do you live? What area of Virginia do you live in?

A Arlington.

Q And is it near the Glebe Road, 395?

A Yes. I'm sure I referenced that.

Q And when you -- you guys walked back to the car after Quick Pita; right?

A Yes.

Q And then you went over Key Bridge into Virginia? Yes?

A I don't remember going over Key Bridge. I just remember the lights of Georgetown, main drag.

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Q So you weren't paying attention to --

A I wasn't paying attention --

Q You guys still talking on the way back?

A Yes.

Q Singing songs to the radio?

A Yes.

Q But you are aware that Arlington, where you live, is closer than Alexandria, where Mr. Smith lives, to Georgetown; right?

A No. Honestly -- I mean, very honestly, I'm not good with directions, but I --

Q You have your own address memorized; right?

A Yes.

Q And you know, for example, you know you live with your sister; right?

A Yes.

Q And her husband?

A Yes.

Q And you know her cell phone number; right?

A Yes.

Q And you did not ask them to drive you home?

A I referenced going home. I didn't demand to be

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driven home, if that's what you're asking.

Q You were having a good time at that point and you didn't want to go to your home; right?

A I wanted to go -- I wanted to go home but I just very -- you know -- I was drunk, I just wanted to go to bed. You know, they suggested the plan, and so I told them where I lived, and they were a little quicker, so --

Q No questions about Matt, or anything, at that point?

A No.

Q So your plan at that point was that you were going to go to sleep -- you were going to go back to their place but you wanted to just go there to go to sleep instead of going to your own house to go to sleep?

A That was fine; yes. We had food, we were going to eat sandwiches, pass out there, go for the morning versus going out --

Q I guess my question is, if you were just going to go back to their place, eat the sandwiches and go straight to sleep, why didn't you just go home?

A You mean and not have the sandwiches?

Q Or have the sandwich at your place?

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A About -- yes. No one ever comes to my house after 7:00 o'clock, my sister has two toddlers, so everyone goes to bed at 7:00. No one comes to my house --

Q So the reason -- so you wanted to be with them?

A I was fine with what they were suggesting. I mean, I was very indifferent. It was fine. I agreed to it; you know.

Q You could have gone home. Fair enough?

A I mean, I never suggested, "Drop me off now," and, you know, I mean, so -- but I'm sure I could have. I could have jumped out of the car.

Q And at this point, when you're getting back to Mr. Smith's apartment, it's around 4:45, around that time, assuming 4:19, Quick Pita?

A Yes. I didn't have my cell phone --

Yes.

Q It takes more than 20 minutes to get there in that car; right?

A Okay. I've no idea.

Q Is that fair enough: 4:45 or so?

A Fair enough.

Q And so at this point, other than the drink you

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might have had at Club Five, but you're not sure, you hadn't had any alcoholic drink in five hours; right?

A Right.

Q You were a lot more sober than than you were at midnight; right?

A I didn't feel more sober than I did at midnight.

Q Okay. When you went to the apartment, you went up the stairs, you said?

A Yes.

Q Second floor?

A It could have been. I know I went upstairs.

Q Do you remember commenting on the apartment, about it being a nice apartment?

A I'm sure I did. I'm sure I did.

Q And do you remember saying, "I love champagne"?

A Yes. I do love champagne.

Q You wanted to drink some champagne at that point? Would you say "yes" for the record.

A Yes.

Q And do you remember commenting on a champagne chiller that Jason has in his apartment?

A I don't remember.

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Q Just if you do or not, do you remember seeing that wine chiller?

A I don't.

Q Were you in the kitchen while whoever was pouring the champagne?

A I didn't go in the kitchen. To my memory, I didn't go in the kitchen at all.

Q You sat down right on the couch?

A Yes.

Q Will you just take a second to look at these two pictures. Do both of these represent a fair and accurate depiction of the couch at Mr. Smith's apartment?

A Yes.

Q Could you note with this pen, where you were sitting on the couch. And was there a time when all three of you were sitting together on the couch?

A Yes. Mr. Doe was sitting here.

Q Could you put an D next to that one.

A Yes.

Q And then where was --

A And Mr. Smith sat here.

Q Okay. And could you put an S next to that one;

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thanks. And initial that.

A So you said you pretty much sat down right away?

A Yes. I mean, come and sit down, we're going to eat sandwiches.

Q And you got the champagne?

A Yes.

Q And your sandwich?

A Yes.

Q Two sandwiches or one? Two falafels?

A I don't know.

Q After you had a little bit of the champagne and after you ate, you went out on the balcony?

A Yes.

Q Did --

A I don't -- I mean, I remember going out on to the balcony, because I remember looking at the gazebo, I mean like it's a great view.

Q I'm going to show you what's marked as Exhibit PH-M-8. Does that look like the balcony at Mr. Smith's?

A I don't remember anything on the balcony. I'm sorry.

Q PH-M-9. Does that look like the view?

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A It was dark, so I don't remember like a lot of the building. That would look -- I just looked at the gazebo and the greenery, so -- and that does look like it would be the gazebo and the greenery.

Q But you also -- you don't need to mark -- but you also saw there are dozens and dozens of apartments out there facing his balcony?

A Yes; yes; yes.

Q And you remember that it was on the second floor and not the 20th floor?

A Yes. And I felt up, but not like ten flights.

Q Not on the ground floor but it's not a long drop to the ground floor?

A Yes.

Q How long were you out on the balcony?

A I figure about five minutes.

Q Was anybody out there with you?

A I don't remember. I don't believe so.

Q Were you sitting in a chair?

A I don't think I sat down. Maybe -- I mean, I might have. I don't know. I don't remember.

Q Then did you go back and sit in exactly the same

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place as you'd been before?

A Yes.

Q And at this point the video's still going on?

A Yes.

Q And what video was it again?

A It was a Jay Z documentary, or something on Jay Z.

Q Had you seen it before?

A No. I'd watched Jay Z's stuff before but --

Q And at this point, how much of the champagne did  
you drink?

A Just a sip or two.

Q But you had ... you love champagne?

A Yes.

Q And at that point you were sober enough to think  
to yourself, maybe I'll just have a sip instead of drinking more,  
even though you like it?

A No. That wasn't my train of thought. My thought  
was I took a sip or two and was like I'm gonna throw up if I drink  
anymore. That was my mind set.

Q And at that point, it's getting to be after 5:00  
o'clock, 5:10, 5:15; right?

A I assume -- I mean, you tell -- I didn't have my

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cell phone, so that's my watch, you know, my -- I have no idea what time it was.

Q When was the last time you saw your cell phone?

A In Five. In Five. I got a text from my friend, Grace. I mean, they were very much adamant that I come to Brass Monkey where they were, you know, and they were making fun, poking jokes, and I remember texting them back that it wasn't funny because I was by myself cause I couldn't find Matt.

Q And you hadn't seen your phone since then, but you had -- did you have -- what kind of pockets did you have?

A I was wearing jeans, so I had two front, two back pockets.

Q Okay. A jacket or anything?

A No.

Q Just a button-down shirt and pair of jeans.

A Yes.

Q And you had a little purse?

A I had a little clutch.

Q Did your phone fall on the ground and break at one point?

A I don't -- I don't think so.

Q The battery separated from the phone?

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A I don't believe so.

Q Did you take your shoes off when you got there and sat on the couch?

A Yes.

Q And that was right at the beginning?

A Yes. I mean, I remember going up the stairs without my shoes on.

Q Could you describe -- when did it first become sexual?

A When Mr. Doe came towards me to kiss me.

Q Was he sitting in the position that you've shown on this exhibit?

A Yes. And I was back in the corner.

Q And Smith was on the couch in the middle section.

A Yes.

Q And just to check it again, this is Exhibit PH-M-5. These are also the positions in which you were sitting when Mr. Doe kissed you?

A Yes.

Q Okay. And you kissed him back at that point?

A Yes.

Q And you're not sure how long that went on?

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A Yes.

Q Did you have your arms around him?

A No. I don't think so.

Q Do you remember one way or the other, whether you had your arms around him?

A No. I don't remember my arms around him.

Q Five minutes this had been going on?

A I have no idea.

Q Did any of your clothes come off in the living room?

A No; not that I remember.

Q Is it possible that you don't remember or is it --

A No, I remember -- I mean, all -- no, I remember both my shirt and my pants coming off in the bedroom.

Q You testified about being carried. Who was carrying -- was somebody holding you by your wrists?

A No. I was -- I just felt like a rag doll, and I remember being in the position of almost a rag doll; you know. So I felt like they were both there, kind of carrying me. I don't remember -- it was dark and I was --

Q Did it hurt when they were carrying you?

A No.

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Q Were you struggling?

A No. I was a rag doll.

Q Attempting to get on your feet?

A No.

Q Twisting around at all?

A No.

Q Just limp?

A Limp.

Q Limp like a rag doll?

A Yes.

Q Well, let me ask you this. When you were dancing at 1:52 in the morning at Club Five, you had a lot more energy than a rag doll; right?

A Yes. I was mustering it up.

Q And this is three and a half, maybe four hours later. You're not as drunk as you were at Club Five at that point. You will admit that; right?

A I felt more drunk then, and more exhausted. I was absolutely exhausted; dead on my feet. I mean, I don't know what you mean --

Q My question was, leaving the fact that it was late night and you were tired aside, and talking about drunkenness, you

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were a lot more sober at 5:15 in the morning than you were at 2:00 in the morning when you were dancing in Club Five. Is that fair enough?

A Fair enough.

Q So the reason you were lying like a rag doll is because you were physically tired and wanted to go to sleep?

A Cause I'd been drinking all day and night.

Q And you do have a memory of that when they were carrying you into the room?

A Yes.

Q You have a memory of deciding to yourself to have only one or two sips of champagne, even though you loved it?

A Yes.

Q Did you help take your shirt off?

A No.

Q Where were your arms when your shirt was being unbuttoned?

A I'm sure they were -- I mean, I don't -- I mean, just beside me, I guess.

Q Just flat?

A Yes. I mean --

Q Were you on your back, on the bed, at that point?

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A Yes.

Q I'm going to show you an exhibit marked PH-M-10.

Is that a fair depiction of the bed in Mr. Smith's bedroom?

A Yes.

Q And this is the way the room was set up then, too;  
right?

A I don't remember -- I don't remember the night  
stand. I do remember just like a bare room, and that's bare, but  
I mean, I don't remember that comforter or anything, so --

Q Would you draw with a line on the top picture,  
where you were lying when your shirt was removed.

A You mean like a stick figure?

Q Like a stick figure.

Thank you. Was that also the position you were  
lying in when your pants were removed?

A Yes.

Q And were you kicking your legs, to try to avoid  
your pants being removed?

A I didn't realize my pants were being removed until  
they were; like a yank of the pants.

Q Did you try --

A And then I was -- I mean --

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Q Did you flex your arm and try to prevent your shirt from being removed?

A I don't remember. I mean, I just remember being five minutes behind everything.

Q But you weren't scratching at Mr. Smith -

A No.

Q -- or Mr. Doe ? You weren't screaming?

A No.

Q And you weren't pushing them away?

A I was trying but it was very -- I mean, like "push" with my body but there was no leg.

Q No pushing with the hand?

A No.

Q I think your testimony was that Mr. Doe penetrated you, penis to your vagina, before Mr. Smith did that; is that right?

A Yes. I don't actually -- I mean, I never --

Q You're not -- in fact, you're not sure that Mr. Smith ever penetrated you?

A Correct.

Q It's correct that you're not sure that Mr. Smith ever --

A That's correct.

Q -- had intercourse with you?

A Correct.

Q And it's correct that you're not sure that Mr.

**Doe** ever had oral sex with you?

A Correct. I remember the very first round. Then  
it then just -- I don't remember if --

Q How long -- when you say the "first round," how  
long was the sexual activity on the bed going on?

A I don't -- I don't want to be a bad estimate of  
time.

Q Could it have been as short as five minutes?

A No.

Q Ten minutes?

A No. I mean, it definitely was longer than that.

Q But was it definitely an hour?

A I mean, I would say that, but I mean, I had --

Q And during this whole time, you weren't screaming  
at all?

A No.

Q You weren't fighting physically, you weren't --

A I mean, I was -- yes, I was -- I was --

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Q You weren't squeezing your legs together to prevent --

A Yes, I was trying to squeeze my legs together, like, you know, like kick--not kick with my knees but like, you know, push your knees back and forth.

Q Was somebody gripping your legs and pulling them apart forcefully?

A No; no. It doesn't take much -- it doesn't take much force.

Q And was somebody grabbing your arms and holding you down, forcefully?

A No; just sitting on top of me.

Q And you were awake?

A Yes.

Q So when you sent the text messages, you were saying that that was about 5:40 in the morning?

A Yes.

Q Have you had an opportunity to look at police reports to refresh your memory about what time you sent the text message?

A No.

Q Have you gotten to look at any police reports to

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remember exactly what you put in your text message?

A No. I have my cell phone.

Q Okay. And what you put in the 5:40 text message was "I'm about to be raped, period -- come."

A Yes.

Q And that was to Matt?

A Yes.

Q And at that point you had not yet been raped; is that right?

A I had. No. I had been.

Q And you typed -- you took the time to type "I'm about to be raped"?

A Yes.

Q And where was Mr. Doe when you were typing that text message?

A I don't -- I don't really recall. I know there was one person on top of me and I don't know who it was. I'd already been raped and I know there was one person. So I don't know who gave me my cell phone and there was someone on top me, and I knew that I would be raped again, so I -- that's why --

Q Whoever gave you your cell phone -- both of the guys were still there in the room on the bed; right?

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A I'm not quite sure. It may have just been one.  
I'm not sure.

Q And after -- well, when they handed you the cell phone, you weren't alone in the room when you sent the text message; right?

A Correct.

Q And you didn't have any clothes on?

A Correct.

Q So whoever was still there saw you sending and could have easily seen you sending the text message?

A I don't think -- I mean, you know, I leaned my arm over the bed and texted, you know, and glanced down to see what I was writing. I was trying to do it as discretely as I could, so -  
-

Q And what was going on while you were doing that?

A I'm not exactly sure. I mean, I'm --

Q Was somebody having intercourse with you while you were doing that?

A I don't think at that exact point in time --

Q Was somebody on the bed?

A Yes.

Q Talking? Conversation?

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A I don't -- I don't know.

Q Might have been some conversation going on?

A Possibly. I have no idea.

Q Joking around maybe?

A I was focused on getting my text -- there was no joking.

Q When you were reaching your hand over the bed, you were sending the text message blind, without actually looking at the keys while you did it?

A I was trying to type it and then I would look to see what I typed, and tried to go back and --

Q So you were hitting it blind, then you would look every few seconds to see what you'd done?

A Yes.

Q And with your hand off the bed that way, blind, you were able to send a text message with one mistake in it that said "I'm about to be raped, period -- come -- period." Right?

A Yes.

Q Pretty good coordination, wouldn't you say?

A It took me like six times to get it to send, so I mean --

Q In that period, would you say that it took you a

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total -- to try it six times. Do you think it took about ten minutes?

A I don't know. Maybe not. I don't know how long it took. I really don't.

Q By this time you were much, much more sober than you were at 2:00 o'clock in the morning? Fair enough?

A I didn't feel sober. That's all I can say. I'm sure, you know, I did not feel anything except lethargic and drunk and exhausted and completely "out of it," and my mind could not -- my mind could not -- and my body, would not catch up. I couldn't do anything.

Q Ten minutes -- you hadn't done any drugs; right?

A No.

Q Ten minutes later, after the first text message, you sent a second text message; right? Right?

A Did I? I mean, is that --

Q I'm asking, do you remember sending a second text message?

A I remember -- I don't know the exact time. I just remember that I wanted to say "come help," and I mean, like I sent it without adding the "help," so I wanted to send "help," you know, I mean, because I didn't think I spelled rape right, so I

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got out an "h-e" --

Q And you did not --

A -- and then it accidentally -- and both these things are accidentally sending. Like I'm not trying to -- you know.

Q What happened in between the first text message and the second text message?

A I don't know. I think I was still messing with my phone the whole time. I tried to text another one a my friends, that I thought might be up at that hour.

Q And nobody is attacking you at this moment while you're doing these text messages?

A I mean, there's someone on the bed, in the room, on top of me. I mean, I definitely felt -- I mean, I don't remember like -- I don't know.

Q There wasn't any forcible pushing or shoving going on --

A No.

Q -- while you were sending this text message?

A No.

Q And you don't remember who was there?

A Correct.

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Q But you remember using subterfuge to send the text message?

A Subterfuge.

Q You were trying to hide it from whoever was in the room.

A Yes.

Q You did so successfully, in your opinion?

A Yes.

Q And you didn't call 911?

A No.

Q You chose not to call 911?

A I didn't think about it.

Q Why?

A I'm -- your guess is as good as mine. I wish I had.

Q Would it be -- would you agree that -- Matt lives in Falls Church; right?

A Yes. That's -- no. I mean, his new condo that he bought is over on Columbia Pike.

Q Wouldn't you think that calling 911 would be more likely to result in help than calling Matt across town in Falls Church?

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A Yes.

Q And you didn't call 911.

A I didn't think to. I was --

Q Why'd you call Matt?

A The last person on my mind; you know.

Q Because he had --

A And I thought maybe he'd be up, you know, and out.

Like I thought he would get it. You know, I thought he would get the message.

Q Well, how was he going to find you?

A I know. I didn't think -- I mean --

Q Do you remember telling the detective that you text messaged Matt because you figured that he would call the police?

A Yes; yes.

Q You didn't think about the idea of the police, according to you; right?

A Yes.

Q But you didn't just call 911 yourself, when you had the coordination to send the message without even looking; right?

A Yes. I guess I knew that I couldn't --

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[Simultaneous conversation]

Q You didn't want the police to come then; right?

A No; no. I knew I couldn't have a conversation, you know, and I guess with me, I, when I think 911, you talk on the phone. I knew I couldn't talk to anyone on the phone, you know, in the situation.

Q Matt is not somebody that's one of your closest friends; right?

A He's a good friend, he's a good acquaintance, but he's not one -- I don't know what you mean by "good friend."

Q Well, that night at the bar, he kind of ignored you; fair enough?

A I mean, yes. I mean, yes, he was definitely like -- I mean, when we saw each other at Five, if that's what you're talking about -- yes. I mean, like it was --

Q You'd gone to the bar -- he'd gone to the bar without you, he hadn't invited you, you came to the bar by yourself, and while you were there, he left you on your own. Fair enough?

A Yes.

Q And that relates, in part, to why you chose to text message him as opposed to your sister or someone closer to

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you?

MS. SULLIVAN: Your Honor, I'm going to object because she's answered why, at the time that she was thinking of why she did what she did.

THE COURT: Sustained.

BY MR. LEIBIG:

Q While you were at the apartment, did you use the bathroom at all?

A I don't think so; no.

Q Do you remember one way or the other?

A I would lean towards no, I didn't.

Q Okay. Are you sure?

A I'm not sure.

Q Okay. But you did have an opportunity to look around the apartment?

A I remember I stayed on the couch, and went out to smoke. That's all I remember doing.

Q But you knew where -- you know where the kitchen is, for example?

A Yes. I mean, like sitting on the couch, look straight ahead, there was the table and you could see the kitchen around the corner, but I never walked into it.

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Q You know where the front door is?

A Yes.

Q I'm going to hand you what's been marked PH-M-15,  
and ask you if that's a fair depiction of the -- a picture of the  
front door from the bed?

A Maybe the bathroom was -- maybe that door was  
shut, cause that -- I mean, that does look like a fair depiction  
to me.

Q Could you initial that.

A Yes.

Q The front door is about 15 feet from the bed?

A Yes.

Q And nobody ever shut the door to the bedroom while  
you were in there; right?

A I don't know.

Q And there's also a door to the bathroom leading  
off the bedroom?

A Yes.

Q And there's a door from the bathroom out the other  
way too, towards the front door?

A Okay.

Q Is that right?

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A The bathroom, the whole thing, I didn't understand exactly where it connected.

Q But you knew if you walked out the bedroom door, you were literally standing right in front of the front door?

A In the foyer; yes. Yes.

Q Was that door locked?

A I don't know.

Q The next morning, when you left, was it hard to get open or anything?

A The front door?

Q Yes.

A No.

Q It just opened right up?

A Yes.

Q It wasn't locked; right?

A I don't think -- I don't remember it being locked.

Q Okay. And then when you walked out the front door, immediately to the right there's an exit; right?

A Yes. I remember -- I don't -- I just remember red exit signs. I was very --

Q I'm going to show you what's marked PH-M-16. Is this a fair depiction --

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A Yes, that -- yes.

Q -- of **Smith**'s front door and then the exit?

A Yes.

Q They're right next to each other; right?

A Right.

Q Could you initial that one. Thanks.

And then one last one is PH-M-17. Is that the exit that you went -- does it look like the exit you went --

A It looks -- yes.

Q And there's a fire alarm right next to that; right?

A Okay. I didn't look for the fire alarm.

Q Okay. When you got up the next day, were both guys still there?

A I didn't see Mr. **Doe** I didn't see him

Q Right after you sent the final text message out of the two, there was another, I believe, round, as you call it, of -  
-

A Sexual assault.

Q Yes; sexual assault. By both guys; right? Could you say it outloud, yes or no.

A Yes.

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Q Mr. Doe and Mr. Smith sexually assaulted you again after you sent the text message?

A I was sexually assaulted again. I don't know who did what. I'm just being very honest. I don't know who did what.

Q You don't know who did what but you know both guys were there?

A Yes. I know that I was vaginally raped and forced oral sex again.

Q By both?

A I don't know -- I don't know who did what.

Q I know that you don't know who did what. I'm asking you if they were both there.

A Yes; yes.

Q Okay. When you woke up, it's about 9:30?

A Yes.

Q And you got woken up by a phone call or a text message?

A My phone's vibrating. I got a call, a message.

Q Was that your brother-in-law?

A Yes.

Q And you -- were you late for something?

A No. I wasn't late. He just sent a text message,

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"Car seats," question mark, you know, "What time'll you be home?,"

question mark. Just to see, cause they needed to go to mass.

Q And you text messaged him back?

A "Ten minutes; on my way."

Q But you didn't say anything about what had happened?

A No.

Q You didn't call him?

A No.

Q Was **Smith** asleep at that point?

A Yes.

Q And then you collected your clothes?

A Yes.

Q You didn't call the police?

A No.

Q And at that point you knew that -- I mean, you know that 911 leads to the police; right?

A Right.

Q When you went outside, you testified you made a phone call to your friend, and then you saw some people that you didn't know, some strangers in a car?

A Yes.

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2A

Q How did the conversation come up, where it was determined that you'd go to the hospital?

A I walked up to them, with my shoes and my purse, and, you know, bawling on the phone, and I asked them where I was, and they told me, you know, you're in Alexandria, and I -- you know, and they're like "What's the matter?" and I told them I was raped.

And then there was actually a doctor, in scrubs, parking his car in the same building, in the garage, and they flagged him over, cause the woman said, "You need to call the cops." You know, that's the first thing you do.

Q She was insistent about that?

A I mean, she just said, you know, "Call the cops," and then the doctor --

Q What did you tell her?

A I was just crying. I wasn't really saying anything.

Q You didn't give her much detail?

A No; no.

Q Did you use the word rape?

A Yes.

Q And then she said you have to call the cops?

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A She said -- yes. I mean, I think she said we gotta call the cops, you know, so --

Q Did they call the cops?

A No.

Q Did the doctor?

A No.

Q What happened next?

A She said -- cause the doctor came over and said, "Go to the hospital, they'll call the police, they'll handle everything."

Q And when you went to the hospital, they did call the police and handle everything; right?

A Yes. I mean, the doctor just said, "Don't shower, don't go home, go to the hospital."

Q And when you got to the hospital, they didn't ask your opinion about whether to call the police. They notified the police and Detective Ignacio came; right?

A I don't -- I mean, I was hysterical. I don't know if I was asked, at one point, or another, Do you want to call the -- I mean, if I was asked and I said yes. I mean, I'm not sure, exactly, if someone --

Q We've had a lot of questions about drinking. I

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just wanted to ask you a little bit about your tolerance for drinking. Is it unusual for you to have a night out drinking like this?

MS. SULLIVAN: Your Honor, I'm going to object. It's beyond the scope of direct, and object on the grounds of relevance.

MR. LEIBIG: Your Honor, the Commonwealth's obviously making a point that the extreme level of intoxication here contributed to what happened and explains the lack of resistance, and so forth. Her tolerance for drinking is made relevant by the prosecutor opening the door to this. It's obviously part of the case. I'd ask that we be able to explore --

THE COURT: The objection's overruled.

BY MR. LEIBIG:

Q Is it unusual for you to have a night out drinking like this?

A Not unusual.

THE COURT: When I said overruled, at least at this point it is. I'm not saying all the questions on this line going to be admitted.

BY MR. LEIBIG:

Q So you have a pretty good tolerance; right?

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A I mean, it depends how much I eat. You know, I don't know. I mean, like I have a decent tolerance, I guess.

Q You go out drinking -- when?

A Thursdays and Saturdays.

Q Two days a --

A I mean, like two days a week. Yes; two days a week. But you can say I probably go out for, you know, in Old Town or D.C., drinking two days a week.

Q So is it a fair statement that on one of those two days a week that you go out, it's not unusual in the course of the whole night, for you to have as many as eight, nine or ten drinks?

A No; that's unusual. I don't drink that -- and I rarely do shots. I'm not supposed to do shots.

Q You're not supposed to?

A It's a rule for myself, cause --

Q You've laid down that rule?

A Yes.

Q That's because of bad experiences when you do do shots. Is that --

A Yes; yes.

Q When did you make that rule?

A A couple years ago. I mean, like it's just one of

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my things I try to stick to.

Q You never actually tried to get up and leave the apartment; right?

A No.

Q You never screamed out loud?

A No.

Q At some point when you went to sleep, did you figure that since you didn't know where you were, it was just easier to sleep then?

A Yes. There was -- I mean, the thoughts that ran in my head was if I get up, where am I gonna go? I don't know where I am. I have a broken ankle. You know, I --

Q Your ankle wasn't broken.

A I know. But I mean -- right.

Q You had your cell phone back.

A When I got my cell phone back; yes.

Q Okay. But you decided to sleep there after you got your cell phone back?

A I didn't feel like I was in a position to leave. I didn't feel like I would be allowed to leave.

Q Nobody was stopping you, though?

A I didn't -because I hadn't tried. So I just

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didn't want to escalate the situation.

Q You did not see any indication of someone stopping you --

A They just raped me, so I didn't really think they'd be keen on me saying I'm leaving, I don't know where I am. You know, like I didn't want to send up any flags that would put me in any danger.

Q But you never tried or asked to; right?

A No.

Q Before court today, did you refresh your memory from any reports?

A I read just my statement to Detective -- to Victor.

Q Did you read or hear about the statements given by these two gentlemen?

A No.

Q The next day, your mother was in Virginia; right?

A Yes.

Q Did she come in response to this?

A Yes.

Q What time did you call her?

MS. SULLIVAN: Objection, Your Honor. Far beyond

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the scope.

MR. LEIBIG: I'll withdraw that.

MR. LEIBIG: That's all I have, Judge. Thank you.

MR. GREENBERG: Your Honor, could I have a five minute break? We have agreed to join the preliminary hearing, we need to go through a lot of the same, but there's some aspects that he's covered, that I'm going to try to strike from my notes because I think he's exhausted those issues. I'd like to speak with Mr. Doe for just a moment, if that'd be all right.

THE COURT: Can't just do that and keep going?

MR. GREENBERG: I was just hoping for five minutes, if possible?

THE COURT: We'll just keep going.

#### CROSS EXAMINATION

BY MR. GREENBERG:

Q Ma'am, my name's Cary Greenberg. I represent Smith, and I'll try to bring you through this for a third time.

That evening, you said you started off at your friend's house, and it wasn't your house; is that correct?

A Correct.

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Q And if Mr. Conrad said that it started off at your house, he would have been in error about that?

A That we started off at my house?

Q That's correct.

A Yes. He seemed to like it. I live there, because I'm over there quite a bit.

Q And you said you started off, you'd had a beer in the afternoon, and then you had two glasses of sangria while you were visiting at your friend's home?

A Yes.

Q At that point, had you already started to feel the effects of the alcohol?

A Yes. I felt slightly buzzed. Like slightly.

Q Then at that point you got in the car?

A Yes.

Q And you drove?

A Yes.

Q And who was in the car with you?

A Matt. Conrad had shotgun, and then in the back seat was Grace, Erin, Pat, and Justin.

Q Had everyone been drinking at that point?

A Yes.

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Q Did you feel that you were too drunk to drive?

A No. I didn't feel that I should be behind the wheel, though. But I did.

Q Where were the car seats at this time?

A We threw them in the trunk. I have a Jeep Cherokee.

Q And then you drove the car to what location?

A To the saki/sushi bar, P Street. Matt knew where we were going, I didn't, so he directed.

Q So you left your car at the Dupont restaurant that we've heard about?

A Yes. There's a -- we ended up parking next to like a Gandhi statue thing. I mean, it took forever -- finding parking was a big thing; but we just left it there.

Q What did you think you were going to do after you went back to get your car? What were you thinking? You were going to drive the car to the next location, or back to your house?

A Leave it. I knew I'd cab home that night, go with the girls, cab home and cab back and come get my car. My car was gonna stay there till the next day, till Sunday.

Q So your plan was to get a cab?

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A Yes.

Q And did you figure wherever location you went to, that would be easy to do?

A Yes.

Q So you're at Japone restaurant and you're drinking the shots. Do I understand that occurred for about an hour and a half?

A Yes.

Q Now as you're leaving the restaurant, how do you feel?

A You know, I stood up and, I mean, we're there for an hour and a half, I took a couple smoke breaks and stuff, and I'd never had saki, and everyone said, oh, you'll feel it later, you know, and so we left the saki place, I started to feel like, well, you know, very intoxicated.

Q Was your head fuzzy?

A I don't recall.

Q Was the room spinning?

A I don't -- I think so.

Q Were you nauseous?

A No.

Q Did you find that in order to walk, you had to

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hold on to something as you --

A Yes. I mean, I definitely was, you know, swaying to and fro, you know, type things.

Q Did you start to get that effect where sounds actually become numb, you can't quite hear as well?

A I don't think so.

Q Were you able to recall clearly, what went on around you?

A No.

Q So you didn't know which friends were going where or who was doing what?

A Yes, I mean, just things like, you know, who's paying for this. You know, just, I mean just things like that. I mean, did I go to the bathroom? What restaurant or bar were we going into? I mean, like I was very much like just kind of --

Q How about the way you're appearing to the people around you? Do you start to lose -- and you're intoxicated enough, that you can't tell exactly what signals you're giving off to them?

A Sure; yes.

Q And how about the signals that you're picking up from other people? Do you start to lose that affect as well, to

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basically understand what they're saying and what their intentions are?

A I mean, possibly. I mean --

Q So then you decided to go to Fuddruckers; is that right?

A Yes. That was my -- yes, that was my decision.

Q And you just had, you said a nibble or two of chili?

A Yes.

Q Not much. Do you think, had you eaten more, that would have helped your intoxication?

A I don't -- I don't know.

Q I don't even mean now, today, but back at the time, did you think to yourself that you were feeling the effects of the alcohol. I take it the saki bombs were sneaking up on you, as predicted?

A Yes; yes.

Q And did you think to yourself that you're on an empty stomach and perhaps if you had filled up your stomach, that would absorb some of the alcohol?

A Yes, but when I eat late at night, though, it usually doesn't help. You know, I was regretting not eating

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earlier in the day. You know, going out, drinking so much on --

Q An empty stomach.

A On an empty stomach.

Q So you didn't like the food at Fuddruckers?

A No.

Q And so you decided that wasn't really an option?

A Right.

Q Now your friends started to go to different locations. Is that yes?

A Yes. Sorry.

Q And you know that Matt is going to go over toward -- to Five?

A Yes. He'd already gone into Five. I didn't talk to Matt at Fuddruckers. He had already left. Justin and I fell behind because I twisted my ankle, you know. I mean, I fell down on the street, like a drunk, you know, and --

Q Do you know what caused you to twist your ankle?

A I was -- they -- you know, Pat and Matt were so far ahead, and then like, I mean -- the block, you know, it took maybe -- and then Justin's a little bit, and I'm like I've got to pick it up, and I was yelling to Justin because I'm like, you don't have to wear four-inch heels, and then I, you know, go to,

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you know, run a little bit, and just completely twisted my --

Q And you were in four-inch heels that evening?

A Yes.

Q And so you mis-stepped and twisted your ankle that way?

A Yes.

Q I see. Otherwise, you were in jeans?

A Yes.

Q And what kind of blouse were you wearing?

A It's just a black short-sleeve, like button-down.

Like is a collar shirt, button-down.

Q And did you have hose on? No?

A No.

Q Jeans. No undergarments except for a bra?

A Correct.

Q You decided to go find Matt at Five; correct?

Yes, you decided --

A Yes. I'm sorry. I'm sorry. Yes; yes.

Q I know. I know. And there are a number of bars out there; correct?

A Yes.

Q There's Five, and Fly, a bunch of other bars, all

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coalesced in one small area. Would you agree with that?

A Yes.

Q And you went first to the ATM because you had no money left?

A Yes.

Q I believe you left twenty to your friends at Japone as you --

A Yes; yes.

Q To chip in for the bill?

A Right.

Q So you had a credit card but no cash?

A Yes. It's a \$10 cover to get into Five, and Pat and Justin -- I was like -- I mean, they reminded me later, when we were talking about it. They're like, do you remember, you know, you only had \$3. You just kept pulling your \$3 out and being like, you know, I have three -- and I didn't even recall that the next day. I mean --

Q Where were you holding up the \$3?

A At Fuddruckers, sitting at the table. You know.

[Simultaneous conversation]

A You guys, like I need seven more dollars. Yes -- seven bucks, they didn't have any cash. I don't have any cash.

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You know. So I go to the ATM.

Q You don't remember holding up the \$3 and only having \$3, but you knew at the time that you needed more money. That's why you went to the ATM?

A Yes.

Q And you chose to take out only twenty?

A Yes.

Q Could you have taken out more, if you wanted to?

A Yes.

Q All right. But you figured if you had to take a cab, you would just use your credit card?

A Yes.

Q You went into Five and you paid the \$10?

A Yes.

Q And then you still had \$10 left over?

A Yes.

Q Do you know, the following morning, now looking back, did you still have the \$10?

A I don't know.

Q Did anybody buy drinks for you?

A I -- you know, it's really hard, because I -- it's just I remember being up on the roof talking to -- I think they

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were like Spanish, Mexican soccer players, you know, I mean, and it's just such bits and pieces. I remember having a glass in my hand but I don't think anyone bought it for me but -- well, why was it in my hand? Like it's completely --

Q It's a blur.

A -- a blur. It's just completely a blur. I'm sorry.

Q Did you look at your credit card statement? Do you know whether or not you charged any drinks at Five while you were --

A I did. I did look at my credit card statement.

Q And that's not the case?

A That's not the case.

Q And you don't recall -- you might have had the \$10. You're just not sure?

A Right.

Q So if you had anything to drink -- and I notice you said on direct examination, you could have had a Jack and diet Coke --

A Yes.

Q -- and then you said you weren't sure, it could have been water.

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A I know; yes. Or both. It could have been both.

You know, I mean --

Q Do you remember people buying you drinks?

A Yes. Matt did not buy me a drink.

Q You were kind of looking for someone to continue to party with, weren't you?

A No. I mean, I was looking for Matt. You know, I really was looking for Matt, and then I was fine by myself. I mean, I was -- you know, I -- at the time my mindset was very much like I'm looking for Matt and I'm not being successful finding him. So I would stop, and, you know, I mean, I danced with these three chicks, you know, and, talked to them. So I was just wandering. I mean --

Q Did you dance with any guys?

A No. The Spanish guys on the roof "hit on me," and I just got out of the situation.

Q By going downstairs?

A Yes. I just left. I mean -- yes.

Q What did they say, to "hit on you"?

A And I have to say, I mean like the next day, with Victor Ignacio, like at this time I hadn't even remembered it. I mean, like I was so intoxicated, I didn't remember it, and then

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later that day, I'm looking through my missed calls, and calls, and there's a 703 number, and I'm like, who? I know at the time I was at Five, and I sit there, and I think and I think, and I remember -- oh, I was on the roof with these Spanish guys.

I mean, I could barely piece things together. And that's an actual fact, it happened, but I totally forgot until 24 hours, until prompted by a number, to think, you know, that was that; you know

Q Why did that number prompt that recollection?

A I don't --

Q Is it related to the Spanish guys that you met on the roof?

A Yes.

Q Oh, it is. You gave them your telephone number?

A Because they were -- you know, because they were much like let's go to the park tomorrow. You know, like let's -- I mean, trying to think of anything to, you know, get my number, let's do something, and I -- path of least resistance, it's easier to give them your number than put up a fight, and then you don't ever have to talk to them again.

Q Did they call you while you were standing there, to make sure --

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A Yes.

Q -- that you gave them your number?

A Yes.

Q And then so --

A And so I saw the numbers, and so the conversation came back.

Q So with the Spanish guys on the roof at Five, I mean, you were uncomfortable and didn't want to engage with them.

You took yourself out of that situation?

A Yes.

Q You were able to do that?

A Yes. I just put down my drink and walked downstairs.

Q And walked away. Then you're saying that -- now you saw Matt, you did see Matt because he was dancing this techno dance; right?

A Yes; yes.

Q And then you indicated, on cross examination, I think you said you still stayed about another hour, after you saw Matt?

A Yes.

Q So you were -- even though you didn't like -- even

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though you didn't like the guys upstairs on the roof, you were still looking to maybe still find someone that you could laugh with and joke around with. Is that fair to say?

A Yes. I mean, I wouldn't phrase it like that; but yes. I mean --

Q Someone to socialize with.

A I didn't want to go home. Yes.

Q And you didn't want to be alone either.

A Yes.

Q That your friends were paging you from the Brass Monkey, saying --

A Yes.

Q -- come to us 'cause we're here.

A Right.

Q Right. And you said don't send me jokes cause I'm alone.

A Yes.

Q And being alone was not fun.

A Yes; right.

Q But you didn't go over to the Brass Monkey --

A I did mean that text in the context of I can't find Matt; you know.

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Q Oh, this is before you found Matt?

A Before or after. I mean, like when we saw each other, you know, it was like a sentence exchanged, and then he went for a drink or I went to the bathroom or something, and then I wanted to find him again. I wasn't there to meet random strangers. I would -- you know, it was -- I was there for Matt, to hang out with Matt.

Q Is it fair to say your purpose would have been to hang out with Matt?

A Yes.

Q But now when you say him techno dancing, you noticed that, number one, he's having a good time?

A Yes.

Q And he was very drunk?

A Yes.

Q Why didn't you just start techno dancing with him?

A Cause I just don't, I don't really dance like that.

Q Why didn't you dance the way you dance with him?

A Yes, I just wasn't -- you know, I mean, he was in the middle of a whole circle of girls, like I mean, you know, techno dancing, and I was just like this is his scene, it's not

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mine. You know, the whole thing, in general.

Q Did you find another person to dance the way you like to dance with, another part of the floor? Other girls?

A Yes. I mean, at one point I went up to the front, and -- yes.

Q Once you saw Matt, that he was involved with a circle of friends, whether he met them there or not, and you knew your other friends were at the Brass Monkey, why didn't you make it over to the Brass Monkey?

A It was crossing my mind. You know, I didn't -- I don't know, I didn't -- partying and cabbing by myself. You know, I was like, hmm.

Q Inertia. You just didn't have inertia to go.

A Yes. And what is inertia --

Q Inertia is energy. You were like --

[Simultaneous conversation]

A Yes. Really. I was I don't have the energy to do anything; you know.

Q So you decided to stay at Five, and maybe you'd find someone else that was interesting. Just, just --

A Yes.

Q -- say hello, have a drink with?

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A Right. You know, definitely --

Q [Simultaneous conversation]

A -- thought -- yes. Yes.

Q Now you're leaving the bar, it's about 3:30 in the morning. Is that when you run into **Smith** --

A Yes, and I was still walking, you know, around the dance floor. I'm leaving like the main dance floor, coming up to the bar, then past the bar is the bathroom. So I'm like kind of just moving by the dance floor and they're standing by the bar and we start talking.

Q Was the music very loud?

A Yes.

Q Unbelievably loud?

A Unbelievably loud.

Q And you're pretty drunk still; right?

A Yes.

Q And you've got like buzzing in your ears a little bit from --

A Yes.

Q -- drinking too much? So are you sure you know what you're saying to them, what they're saying to you about Matt?

A No, and that's the thing. I'm not sure, exactly,

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what I said, what they said; you know.

Q So just people are pointing to like upstairs something -- no -- upstairs, and --

A I have the indication, you know, that, you know, I thought, you know, I was like Matt, and they're like -- I'm like, oh, you know Matt too? You know, I mean I'm saying I could have easily suggested -- you know, I mean, I brought up Matt up. I said, oh, you know Matt? And like yes --

Q Is it possible you said one thing and they thought of something else, they responded --

A I don't think so.

Q --with drinks and drinking --

A No. I don't -- no. That -- that wasn't the case. You know, I said, oh, you know Matt? Cause then I asked where he -- I said, Do you know where he is cause I can't find him? You know. And they're like, oh, he's up there. And I was like, I'm not going up there again, cause I mean, I -- I don't have the right word -- is it inertia? And I'm like, I have no energy to move to the front of this mass of people and then try to find him. You know, heck with it. I'll just go by myself or -- you know.

Q Well, you also thought perhaps it would be interesting to talk to these fellows for a minute?



A Yes; yes.

Q So the other reason not to find Matt is because if you went back and found Matt, he was still with his friends, and that you didn't want to break into that scene again, you'd be back to being alone.

Right? That's a yes?

A Yes.

Q So you decided instead you would mingle with the two of them; correct?

A Yes.

Q And then did they say to you, we're going to go and get some food?

A Yes. I think -- I'm not even sure if I said that I was leaving first, or if they said they were leaving, you know, but it was all --

Q It was a kind of mutual thing, leaving the bar?

A Yes.

Q It was about 3:30 in the morning?

A Yes.

Q Are they still serving alcohol?

A I don't know. I know that at Five, later, but they don't serve alcohol anymore, all they do is serve Ripple, and

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water and things, but I wasn't --

Q Wasn't the bar breaking up, so to speak, the lights coming on and people starting to usher toward the front of the door, and you were a part of the --

A No. I mean it wasn't -- no. It wasn't like closing time.

Q Oh.

A In Five --

Q So one of you said I'm leaving, and the other two said we're leaving too, and all of you walk out of the door?

A Yes.

Q And did you mention you were hungry?

A I don't know if I mentioned it or if they asked if I was hungry or -- I don't know.

Q But it's possible. You might have said I'm hungry?

A Right.

Q And you were still ready to then eat and you liked the company, it seemed like they were going to be fun.

A Yes.

Q You got to talking about accents and people's last names; right?

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A Yes.

Q So you decided you would go to eat. Did you discuss where you might go to eat?

A No; not that I remember. I think very much whatever -- you know.

Q And you also said, by the way, that you said that when you twisted your ankle, you said that could be "mouthy."

A Yes.

Q What did that mean?

A I mean, just means that I twisted my ankle, and, you know, Justin was like -- my friend Justin from college was like, "Let me help you," you know, and I'm like -- and with my purse, you know, like I can do it, you know, very independent woman, mouthy type of thing, like I don't need your help.

Q And are you an independent woman?

A Yes.

Q And are you mouthy when you need to be?

A Yes.

Q Now okay. So you said you got in the car and you all decided you were going to go to a place to eat. You don't recall. It's possible that they, everyone discussed where to eat? Or are you certain that nobody did?

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A I'm not sure.

Q You're not sure. But what you do remember is that you enjoyed "the vibe," the feeling of the car. That is, you --

A It was -- everyone was fine, having a fine time, laughing.

Q Laughing.

A Yes.

Q Listening to music?

A Yes.

Q Singing?

A I know I'm drunk and I felt safe at the time. I'm not gonna -- I mean, like --

Q I didn't ask you about safe. I didn't ask you about safe. But you liked where you were?

A No, I mean, there's -- it's pretty much the ABCs of life, you don't go with strange men places. You know, so -- so always in the back of my head is if I'm safe or not, and I felt like very -- I just felt safe. I felt they weren't, you know, weren't doing anything offensive to me. So I felt safe.

Q You thought they liked -- they liked you and you liked them?

A Yes, and they seemed like, you know, good,

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upstanding, good guys.

Q And in fact you might have been leaning upon them to get from Five to the car --

A Oh, yes, I know I did. I know I did. Like they helped -- I mean, like, you know, these people on this one stoop were, I mean, like making comments, and they helped me, you know, get across the street to the car; you know.

Q How did that help? Physically, how did that work out? Did they lift you? Did they put your arm around you? Did you put your arm around them? Did you hold them arm in arm?

A I think I might have just like hooked 'em, you know, by -- like, you know, like gentlemanly, they hooked their arm. So --

Q And did you lean your weight down on each of them, or one of them?

A I'm not sure. I mean, I don't know. They were -- they just helped me walk -- I'm not exactly sure how but--

Q Was it a decision you all made, that when you went to get the pitas, you would take them to go versus eating them at the restaurant?

A I don't remember that decision being made; you know.

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Q Do you remember why you chose to pay?

A Cause they were giving me a lift. So I felt like it was the nicest thing to do. I'm like they're going to continue to a bar, take me home, like, you know, I should pay.

Q I noticed when you looked at the receipt, that you said it was unusual.

A Yes.

Q You said it was unusual; the tip was unusual.

A Yes.

Q That's what you said?

A Yes.

Q Was that because of the amount of the tip or because it had the change amount?

A No. It was because I usually don't put dashes through my sevens.

Q Do you think someone helped you to make out this tip number?

A I don't -- I don't --

Q You don't recall?

A No.

Q When you looked at the -- I know you said that's your signature.

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A Yes.

Q But I was unclear, when you looked at the numbers themselves, do those look to be your numbers?

MR. GREENBERG: May I approach, Your Honor.

THE WITNESS: I mean, it actually -- it just looks really sloppy for me.

BY MR. GREENBERG:

Q Does that mean it could be and you're not sure? It probably is but --

A It probably is.

Q But you just look a little -- it's like a little drunk -- is it a bit of a drunken --

A Yes. It's a drunken signing of the tab; yes.

Q It's a drunken couple numbers. Okay. And that's PH-M-3, for the record. Okay. So you got the food and you're with the two gentlemen, and you decide you're all going to go back to someone's apartment. You knew that; right?

A Yes.

Q Okay. And you knew at that time -- I mean, you had your options; right? You could have gotten a cab and chose not to?

A Right.

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Q Could you have gone back to your house?

A I guess I could have; by myself.

Q Why --

A You know, but I guess it was like -- it didn't really cross my mind a whole lot; you know.

Q Cause you didn't want to?

A Because I have sandwiches with these guys, you know, take my sandwich and go to my house, drop me off and -- it didn't seem appropriate.

Q You wanted to stay with them. Yes?

A I just don't like that question; it just sounds bad.

Q I know.

A No. I'm sorry.

Q But the truth is you wanted to stay with them?

A I mean --

Q At least at that time --

A Yes; yes.

Q All right. You state you live with your sister and your brother-in-law?

A Yes.

Q And where do you stay in the house? In a room?

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A They have like a three floor townhouse, and so I rent the finished basement.

Q Okay. Does it have its own entrance to it?

A Through the back gate, but, like, I don't come in that way.

Q But you could, if you wanted to?

A Yes; yes.

Q If you didn't want to disturb them, for example --

A Yes.

Q -- there's a way for you to do that --

A Yes.

Q -- like come in the house? Okay.

A But I never use it, so I mean --

Q Cause you don't have a --

A I just -- yes. I mean, when I come in, I come in through the front door, and it's -- I mean, you know, if I'm with a girlfriend, it's, I mean, silence. You don't wake sleeping babies; you know.

Q Did you go -- and did you go to Fly, by chance, that evening too?

A No.

Q Now you went into the -- now this is the ... You

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get to the apartment, the condominium. Do you remember who chose watching Jay Z video?

A No.

Q Is it possible you may have helped choose that video?

A Possibly; yes. I know I commented. I love Jay Z and Beyonce. I think they're both --

Q And you knew that you wanted to drink champagne?

A Yes. I know when I was offered it, I was like "Great." You know, I love champagne.

Q And do you recall stepping out to the balcony at some time to smoke a cigarette? That's a yes?

A Yes.

Q But where things got a little out of hand, I suppose, as you would say, is that when you're sitting on the couch, first, Doe came and started kissing you?

A Yes.

Q All right. And this is going to be a tough question too, but did you like either one of them at that time?

A No.

Q Didn't feel that way about either one of them?

A No.

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Q When he started kissing you, you said you started kissing him back.

A Yes.

Q And you were hoping in your mind, that maybe that would just be a friendly gesture that would lead nowhere?

A Yes. I -- yes.

Q When you were asked, on cross examination, for how long, the question was could this have been five minutes, and you said could have been.

A Yes; yes. I mean, I was thinking after I answered that question, like, I really don't think it was that long. It was very much just a, if I kiss him, then, you know, it'll just be, you know, one kiss friendly, and then no, thanks, and then that'll be it. You know?

Q But it's a bit of a blur because of --

A Yes.

Q -- how you're feeling. Cause your head is spinning right now; right?

A Yes.

Q And you're intoxicated?

A Yes.

Q So you say that at that point, after him kissing

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you and you kissing him back, next thing you know, you're being transported from the couch in the living room to the bedroom; is that correct?

A Yes; yes.

Q Now your mental perspective, like I'm going to say you were like a rag doll, and you were just kind of like "out of it." Is that correct?

A Yes.

Q But you're not offering any resistance; right?

A I mean no.

Q You allowed them to take you into the bedroom?

A Yes. I mean, they did.

Q And from their perspective, from their perspective, they're kissing you, they're picking you up and nothing's being said --

A I mean, I pushed him off, I mean, after he kissed me. You know, I did like, you know, do that. It was a friend -- not "friendly" but it was -- I mean, in my mind it was like the very nice rejection. You know?

Q How about in their mind?

MS. SULLIVAN: Objection, Your Honor.

MR. GREENBERG: To the degree you could tell what

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-- as --

THE COURT: Sustained.

MR. GREENBERG: For speculation Your Honor.

THE COURT: She can't read their minds.

MR. GREENBERG: All right.

BY MR. GREENBERG:

Q So you went into the bedroom with them but you --  
and you didn't say anything on the way to the bed, did you?

A I don't -- I don't recall. I don't think so.

Q And even though your ankle was badly hurt, they  
didn't do anything to hurt the ankle as you were taken from the  
living room to the bedroom?

A No.

Q And did they have to help you get up the steps?

A Yes. I'm sure they did. I remember them being  
helpful, you know, carried my shoes, my purse.

Q They carried you?

A Up the stairs?

Q Yes.

A I don't think so. I don't remember. I mean, I  
don't -- I don't recall. They were very helpful. I mean, I was -  
- I could not walk well at all.

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Q And it was the kind of help that you relied upon.

I mean, you wanted that assistance; correct?

A Yes; earlier in the evening.

Q Now you said that you got into the bedroom and that point you realized that your pants were being removed and you said you were about five minutes behind everything, so you weren't reacting to what was happening to you --

A Yes.

Q -- and the next thing you felt, that things were sliding off?

A Yes.

Q And that one of them took -- Doe in particular, took your pants off, and you said that Smith sat on your chest?

A Yes.

Q Now how did -- I know you started to explain this before but I was unclear about what you said. How did they get your shirt off?

A It was unbuttoned. I mean, it just sat there, you know, on your stomach, and, you know, I mean, and then he unbuttoned my shirt, and --

Q But how did he get it out of each arm? Did he

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pull your elbows? Did you move a little bit for him at that point and help him get your shirt off?

A I don't recall.

Q Did you just kind of be like a rag doll and just simply not resist, and not saying anything?

A Yes. I don't -- I don't -- I just think I was pretty much rag doll-ish. I mean, I'm sorry, that's all I --

Q I understand. You just don't remember. You don't remember exactly how your shirt --

A Yes. I remember it being unbuttoned and like the snaps there, but then I don't remember -- you're right -- like how I got out of the arms. I mean, I don't remember. I mean, at the same time like -- everything's happening at the same time, my pants being taken off, shirt's being taken off. I'm, you know, barely responding to anything, I feel so drunk, you know, I mean, I just -- and what the hell's happening to me? You know, I mean, so --

Q Did they appear drunk to you?

A No. They didn't -- I mean, they said they'd been drinking but they didn't -- I mean, they didn't appear, you know, like falling over.

Q They appeared to genuinely like you?

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A What do you mean?

Q Well, did they act in a way that they -- that was kind to you? They liked you, they were kissing you, and holding, touching you.

A Well, I mean no. I mean, like earlier in the evening, like it was friendly banter, just like -- good people, I'm a good person, we can laugh, you know, enjoy Saturday night in the city. You know what I mean? But at that moment, like genuinely liked me? No. I don't think two men generally like one girl at the same time. Does that make sense?

Q I understand. Then you said that -- now if I understand, it's kind of a blur from that point between who's sitting on your chest and who's --

A Yes. I just know everything started and that was it.

Q You said that you said no, about a half a dozen times?

A Yes.

Q What did you say "no" to?

A Oral sex at one point. You know, I mean, you know, I was trying to spit and turn my head a little bit. I was like "no," and I said "no," you know, and then I know at one

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point, when I was being vaginally penetrated, I was like "no." I mean, I said "no," just at different points in time. You know --

Q And when you said "no" --

A -- rubbing, kissing, touching. I'm like "no," and I'm Catholic, and it was very hard for me to speak; you know. It's hard to say -- I'm sorry, I was going to be sarcastic, so --

Q When you said "no" with the oral sodomy, you said "no," at one point, you're saying as this was happening to you, that eventually at a point you said "no" and then you go back to -

A Yes.

Q And did anyone respond to you when you said no? Did anyone say "Be cool," "It's cool," "Everything's okay," "It's good"?

A Yes. It wasn't in direct response to like when I would say something. If I would say I'm Catholic, they would just be like later, you know, and maybe if I was like, you know, pulling my knees a bit, or this or that, it would just be very much -- you know -- "It's cool, it's cool," just trying to relax me. That's how very much it felt. It didn't feel like -- you know, just trying to relax me, so I'd go along.

Q Do you know whether either of them ever used a

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condom?

A No.

Q Did anybody ever leave the room while you were there?

A Yes. It seemed -- there was definitely points in time where there was just one person on me, so, I mean, I assumed they left the room. I mean, I don't know where they went.

Q Do you recall who sat on your chest?

A Mr. Smith

Q And that's the only person you recall?

A Yes.

Q Did he ever get off of your chest?

A Yes.

Q Did you ever say to him, "Get off"?

A I didn't use those words; no.

Q Did you ever say "Get off me"?

A I don't think so.

Q Did you ever say "You're hurting me"?

A No.

Q "You weigh too much"?

A No.

Q This is -- no. All right. Your cell phone. You

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testified that you lost sight of it at the bar; is that correct?

A No. When I got in the car. I went to grab -- I went into my purse to get it, to --

Q That's when you realized?

A Yes.

Q Now were you wearing tight slacks?

A No. Jeans.

Q Were you wearing tight jeans?

A Yes.

Q Did you keep your phone in your pants pocket or did you keep it in your purse?

A Most times my purse. Sometimes I'd hook it on a pocket. I mean --

Q It's hard to know.

A Yes.

Q Especially if you're drinking a lot?

A Yes.

Q Is it possible that it fell out of your pants pocket on to the front seat?

A No, because I had looked in my clutch, and then, I mean, I looked on the floor, in my pockets, on the seat. Like I really -- I was scouring the car for my cell phone.

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Q When you first realized that you couldn't locate it, was it between Five and the pita place?

A Yes.

Q How could they have gotten your phone from the time they met you, standing outside -- standing on the dance floor and everyone says we're going to leave, and walking to the car?

A And they helped me to the car. I mean, they were, you know, holding me, my purse, my shoes. I mean, I was a mess, you know, and they were being very helpful. So I'm sure they were holding my purse at one time or another. I mean --

Q So you suspect that somebody went into your purse and took the phone out of the purse?

A Yes.

Q And your testimony is the next time you see the cell phone is, all of you're sudden, you're lying on the bed and the cell phone appears by your right hand?

A Yes.

Q Now at that point is **Smith** still sitting on you?

A I don't -- I'm not -- I don't remember who -- I don't know who was in the room. I don't know who gave me the cell phone.

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Q But was somebody sitting on you at the time?

A I can't recall exactly what the situation was.  
I'm sorry.

Q Well, what I'm trying to say: What stopped the sexual activity? Cause there's sexual activity, someone's sitting on you, someone's --

A Yes.

Q Right. Penetrating you from behind, and then all of a sudden everything stops, and you're lying on the bed, you have no clothes on, they have no clothes on, and your cell phone appears. Is that right?

A I mean, my eyes were shut the whole -- I mean, like I don't know. I mean, like -- can you ask the question again. I'm sorry.

Q Okay. What I understood you to say was that you were lying on your back and then, when you open your eyes, the cell phone's right here, by your right hand.

A Yes.

Q And I understand this happened, if I understood you, you used the term "rounds." It was round one and round two, and somewhere between round one and round two, the cell phone appears.

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Now my understanding of round one, round one is where **Smith** is sitting on your chest and he has his pants off, and **Doe** is behind you and he's penetrating from behind, and he either has a condom on or doesn't, he's got at least most of his clothes off, and then all of a sudden you're lying there, and you have no clothes on, and then the cell phone appears.

Is that right?

A Yes. After that happened, then I'd been given my cell phone. I don't know where they are or who gave me my cell phone.

Q Did somebody get up, though, and stop -- what stopped the sexual activity? Why did they stop?

A I don't know why they stopped.

Q But all of a sudden, everybody just stops; all activity stops?

A I don't think all activity stopped. You know, I mean, like I think there -- I mean, I don't know what was going on at the exact moment.

Q Do you think one person stopped and that person stopped to go get your cell phone?

A Possibly.

Q Why?

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A Because I asked for it, over and over and over and over. I mean, possibly. I don't know.

Q And were you asking for it during, during the time --

A Yes.

Q -- of the sexual activity? You kept saying just give me my phone. Can I have my phone?

A Yes. It was one of my, you know, catch phrases. I'm Catholic, I'm a virgin, no, and where's my cell phone?

Q And you think that -- and so one of them went to get your cell phone, which would certainly suggest they weren't trying to hide it from you, I suppose?

A Yes.

MS. SULLIVAN: I'm going to object to counsel putting words in her mouth. She said she's not sure if someone went to get it. She doesn't remember what happened.

[Simultaneous conversation]

THE COURT: I'll sustain it.

BY MR. GREENBERG:

Q So you get the cell phone, and then, right after they give you the cell phone, then they start sexually assaulting you again?

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A I mean, I was able to send the text to Matt but, I mean, I get --

Q Between these two times.

A Yes.

Q And you are lying on your back at this point?

A Yes.

Q And you're assembling your text to your right?

A Yes.

Q I notice you're left-handed. So it's difficult for you to send the text with your right hand?

A Yes.

Q Did that take more time?

A You know, I mean, it only takes a split second to hit keys. You know, it just took me a while to get the name. I don't know how long it took me to assemble text.

Q But you said that you realized -- in cross examination, you said you realized that you misspelled raped.

A Yes.

Q And you knew that at the time.

A Yes.

Q So you were cognizant, your mind was aware that -- do you have the kind of phone where, for example, you have ABC, so



if you're doing PQR, right, it would have been the third letter on number 7 --

A Yes. My phone is like that; yes.

Q -- so you got to PQR, and then you go to number two, and hit A one time to come back to seven. That's how you would have to do it; right?

A Yes.

Q And you realized while you were doing that, that you misspelled the word?

A Yes. I just remember knowing that I hit a wrong -- I knew that I was making a lot more mistakes, and I was trying to fix them, and this one I was like -- "he'll understand what it means."

Q And during this time, while you're sending this text message, is it possibly taking seven minutes? Is that fair to say, to correct all the errors, look at it, especially with your right hand, laying down, try to put -- glancing to your right cause you don't want them to know, right? You're doing on the sly?

A Right; yes.

Q Would you say seven minutes or ten minutes?

A No. I'd say that's too long. I really -- I mean, I don't -- I just can't imagine taking 10 minutes to send one --

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Q But you're not sure?

A I'm not sure how long it took.

Q What are they doing at this time?

A I just -- I'm not sure. I just remember I felt a body on my body. I have no idea what they were doing.

Q Well, if someone was sitting on you, were they -- were you in the middle of --

Q No, I mean, like I was free from like the waist up. You know, I was laying there, you know, texting. So I mean, no one was on --

Q In this zone?

A Yes. I remember being like I don't think they're going to see, you know, and then I was --

Q And from your waist down, was anybody penetrating you?

A Yes, I mean, I don't know exactly what was happening -- someone was touching me. That's all I know, that someone was touching me. I don't know in what capacity it was. I couldn't feel a lot the whole night, okay, I mean --

Q After you got done texting, then what started the second round, do you know?

A I don't know.

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Q Do you know why they even went the second round?

A No.

Q Do you remember when either of the Defendants left?

A No.

Q So when you went to sleep, both these men were still in the room?

A At one point in the evening, I remember Mr. Doe leaving the room. I don't remember if he came back. I don't remember -- you know, I remember him leaving the room.

Q When was it, in the scheme of things? Was it after the text message?

A I don't -- I don't remember.

Q Do you think you could try to remember? Is it possible to think about it, see if you could remember?

A No. I mean, I've tried, I've tried very much to pull from my memory as much as I can. I just remember, because like I mentioned, I mean, I opened my eyes twice to, you know, really, to try to get a look at them. So, you know, I open my eyes and start -- I just remembered, you know, seeing a naked man standing in front of me, looking at his face, and just wanting to throw up from everything, and see him walk out of the room. So I

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closed my eyes. And I don't know if he came back. I don't know who did what --

Q Now was Mr. Doe --

A Yes.

Q -- the naked man, standing there?

A Yes.

Q Okay. So he leaves the room and you don't know if he came back. After he left the room, did any more activity occur?

A Yes; this was earlier. It could have been before the text message; it could have been after. I mean, the whole thing is -- I mean, it's dark and I don't know, I mean --

Q Why did it finally stop?

A I don't -- I don't know. I mean, I'm -- in my mind, I think, you know, I'm like, well, I used a harsher tongue when I, you know, said one thing, you know, maybe that got them to -- I mean, I don't know. Because I'm hoping it stopped from -- because they realized I -- you know.

Q You didn't want --

A Yes.

Q So do you think there was a point in time when you used a harsh term and said no, and everything stopped?

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A I don't know if that was the case. I hope so.

Q But I'm asking you, did that happen, though?  
Factually. Did there come a point in time you said "Look, guys,  
no, I'm done with this," and then everything stopped?

A I had no energy to do that. The most I could get  
out -- the hardest I could get was "no," I mean, like that, but it  
wasn't like -- I never screamed. You know, I just said no.

Q You just said that there was a point in time you  
may have used a harsher term.

A Yes.

Q So I'm asking you: Is there a point in time, you  
recall, where you did that in fact? You said look, enough -- no -  
- and then everything stopped?

Did that factually happen?

A No.

Q No; it did not?

A No.

Q So what stopped, what stopped everything from --

A I don't know.

THE COURT: Counsel, she's said that about four  
times.

MR. GREENBERG: Yes, Your Honor.

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THE COURT: Move along.

MR. GREENBERG: Yes; thank you.

BY MR. GREENBERG:

Q Did you fall asleep while sexual activity was occurring?

A No.

Q Okay. How long of a time was it from the time that all sexual activity stopped and the time you fell asleep?

A I don't know. It didn't seem like -- it didn't seem long. It seemed momentary.

Q Did you talk at all to anybody during that time?

A I remember, you know, not like banter. You know, I mean, I just remember -- I remember flipping over on to my side, you know, in a little bit of disgust, and just, you know, passing out, going to sleep.

Q But did you talk? Do you remember talking about where you were, or friends, or interests, or anything?

A No; no.

Q Did you have any conversation with **Mr. Smith**?

A No. I don't remember. I don't remember.

Q Once you fell asleep, did anybody ever try to wake you up?

A No.

Q When you woke up in the morning and **Mr. Smith** was present, did he try to assault you?

A No.

Q Did he try to prevent you from leaving the house?

A No, he just -- yes, I mean, I tried not to stir him, you know, but I knew that I did right, you know, got out of the bed to get my clothes and purse, and so -- but, you know -- and I knew he woke up.

2B

Q And was he -- he was looking at you when you left?

A No. As I opened the front door, I put on my pants, grabbed my purse, walked out the door, and as I opened the door, I could see him in my peripheral, in the bathroom. So I knew he was up. And then I just ran down the stairs.

Q And he didn't try to chase you?

A No.

Q He didn't try to grab your cell phone or look at your cell phone at the time, did he?

A No.

Q You also testified earlier -- did you ever go into the kitchen?

A No.

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Q You're sure or you just don't remember?

A Not that I recall. I'm pretty -- I'm pretty sure that I didn't go in the kitchen.

Q But all the events are -- so you are sure of that? That's clear in your mind?

A Yes. Yes.

Q Okay. Now when you got the text message in the morning that woke you up, did you have a hangover?

A Yes.

Q It was hard to get yourself out of bed?

A Yes.

Q And did you text back your brother-in-law, "Help, call the police"?

A No.

Q You texted a very common thing, which was don't worry, I'll be home by 10:00 o'clock, the car seats.

A Yes. Ten minutes; on my way.

Q At this point you are in the bedroom of a guy who you believe just raped you.

A Yes.

Q And you have no idea what he's going to do next?

A Right.

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Q Could have sexually assault you again?

A Right.

Q Could hurt you?

A I know.

Q And your text message back was not "Help," "I'm in a bad spot," or to get 911. It was I'll be home by 10:00?

A Yes. I wanted to get out as soon as I could, and honestly, I mean, the reason at the time, I think he was -- I mean, like when I heard my phone go off, I was, you know, I didn't want that to be a noise. I just wanted to get up and get out of there, and I was -- so I thought like Andrew knows I sent him a text message, and then I never show up, they'll know that I was, you know, in case something did happen.

I was worried about being assaulted again. I was worried about a lot of things. I was worried about me, you know, starting to cry or get angry or something, and then, I mean, a million things run through your head, and I wanted Andrew to know I was alive.

Q How many telephone calls did you make that evening, do you think?

A The night before that Saturday night?

Q Yes. Throughout the evening. Like when you were

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trying to find Matt, did you text him multiple times?

A Yes; yes.

Q Why --

A It was -- everyone was texting everyone.

Q And so I saw that there was a text, according to the reports that we saw, there was a text saying, "Five -- where are you?" That was your first one.

A Yes.

Q And the next one was at 5:40 where you gave the cry for help.

A Yes.

Q Were there other text messages throughout the evening?

A I think maybe -- I don't think so. I don't think I texted him any earlier in the evening.

Q And did you find that using text messages are better in a lot of clubs because you get the buzzing and popping -

A Yes; right. You can't hear anything when you get them on the phone anyway.

Q Did you make any phone calls to anybody else, about where they were, what they were doing?

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A Just Grace and Erin.

Q Do you take medication after that?

A No.

Q And you don't take anything today, either, before  
your testimony?

A No.

Q That evening, other than alcohol, were there any  
other substances that were ingested?

A No.

Q You have a formal education?

A Excuse me?

Q You have a formal education?

A Yes.

Q And what's your degree?

A Business administration, concentrating in  
marketing, from Franciscan University.

Q Have you taken a post-graduate degree?

A No.

MS. SULLIVAN: I'm going to object to the --

THE COURT: Most of this today has been discovery;  
but this is objectionable. Sustained.

MR. GREENBERG: The Court's indulgence.

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I'm sorry. A few more questions and then I'll be done.

THE WITNESS: Fine.

BY MR. GREENBERG:

Q Do you recall the size of the beers that you had, the one with saki bombers?

A It's just like that -- I mean, I guess -- I mean, depended on who's pouring. Some of the guys like to, you know, pour more, but I mean, they were just --

Q So just for the record, you're showing about three to five inches?

A Yes; yes.

Q And how round would the glass be?

A It was just like a --

Q With a cover? You know, those side covers?

A Yes; yes; yes. I do.

Q You wouldn't know the number of ounces, guessing?

A No; sorry.

Q When you fell asleep at Mr. Smith's apartment, do you remember which side of the bed you slept on?

A I think the right side. My right.

Q Your right side?

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A Well, I mean, like --

Q Closest to the window?

A This is the wall and this is the bed. I mean, I'm sorry. Just give --

Q I'm sorry. I know you looked at these before, and, Your Honor, may I approach? This is Preliminary Hearing M-14.

A Yes; this side.

Q This right here?

A Yes.

Q Okay. The side away from the --

A Yes. Closest to the wall.

Q Closest to the wall.

Did you see -- when the champagne was opened, did you see either of the men drink any of it?

A Yes.

Q How much of it did you watch them drink?

A I wasn't paying attention.

Q Did you see them drink anything at Club Five?

A No. I mean, I don't remember if they had drinks when I met them, or not.

Q When they spoke to you, were they slurring words?

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