

STATE OF MICHIGAN

IN THE 86TH DISTRICT COURT FOR THE COUNTY OF LEECLANAU

THE PEOPLE OF THE STATE OF MICHIGAN

V

FILE NO.: 11-1100-FY

RICHARD CASEY ROBERTSON,

DEFENDANT.

PRELIMINARY EXAMINATION AND CIRCUIT COURT ARRAIGNMENT
BEFORE THE HONORABLE MICHAEL S. STEPKA, DISTRICT JUDGE

Suttons Bay, Michigan - Friday, July 1, 2011

APPEARANCES:

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EXHIBITS:

None

1 Suttons Bay, Michigan

2 Friday, July 1, 2011 - 11:11 a.m.

3 THE COURT: All right. This is the time and date
4 set for the preliminary examination of Richard Casey
5 Robertson. Are the parties ready to proceed?

6 MR. WILLIAMS: Yes, your Honor.

7 MR. HUBBELL: Yes, your Honor.

8 THE COURT: Okay.

9 MR. HUBBELL: I notice we have a pretty full
10 courtroom. If there's any witnesses that are going to
11 testify, I'd ask that they be sequestered.

12 THE COURT: Okay.

13 MR. HUBBELL: Otherwise, it's a public courtroom.

14 THE COURT: Yes, and I will order that. So if there
15 are any witnesses that are going to testify, would you please
16 step into the hallway?

17 (At 11:12 a.m., conference at People's table)

18 MR. HUBBELL: I think we've agreed to do what has to
19 be done so I'm prepared to call my first witness Judge.

20 THE COURT: So you're all set?

21 MR. HUBBELL: Yes, thank you.

22 THE COURT: Okay. Very good. You can call your
23 first witness then.

24 (At 11:13 a.m., witness approaches bench)

25 THE COURT: Ma'am, before you sit down, would you

1 raise your right hand please? Do you swear or affirm that the
2 testimony you'll give in this proceeding will be the truth,
3 the whole truth, and nothing but the truth?

4 MS. HROMADA: Yes.

5 THE COURT: Thank you. Please be seated.

6 LISSA HROMADA

7 (At 11:13 a.m., sworn as a witness, testified as
8 follows)

9 DIRECT EXAMINATION

10 BY MR. HUBBELL:

11 Q. Would you state your name for the record please?

12 A. Lissa Hromada.

13 Q. And how do you spell your first name?

14 A. L-i-s-s-a.

15 Q. And how do you spell your last name?

16 A. H-r-o-m-a-d-a.

17 Q. And how old are you?

18 A. Twenty.

19 Q. And did you go to school?

20 A. Yes.

21 Q. Did you graduate?

22 A. Yes.

23 Q. Where did you go to school?

24 A. I went to many different schools. I went to Glen Lake, West
25 Senior High, and Central.

1 Q. And from which school did you graduate?

2 A. West Sen--yes, West Senior High.

3 Q. Do you know a Richard Robertson?

4 A. Yes.

5 Q. How do you know him?

6 A. We met at Glen Lake.

7 Q. And how long ago would that have been?

8 A. About five years.

9 Q. So he was a--he was a student at Glen Lake when you went to
10 Glen Lake?

11 A. Yes.

12 Q. Okay. So you've known him for approximately five years?

13 A. Four or five, yeah.

14 Q. Okay. How would you characteri--characterize your
15 relationship with Richard?

16 A. I--me and Richard have been close friends for about two years.
17 I considered him like a brother to me. I told him several
18 times that--we called each other bro just to establish that it
19 was a sibling friendship.

20 Q. But you were--you were close to him and you considered him
21 like a brother to you?

22 A. Yes.

23 Q. Did you have opportunities to spend time with him at his
24 house?

25 A. Yes.

1 Q. And do you know where his house is located?

2 A. Yes.

3 Q. And what--do you know the address? Just the street.

4 A. Just the street?

5 Q. Or the road.

6 A. Yeah. I know the road but not the whole address or anything.

7 Q. What's the name of the road?

8 A. Beeman.

9 Q. And do you know which county that's in?

10 A. Empire, I believe.

11 Q. Okay. In Leelanau County, if you know? If not, I can--he

12 lives on Beeman Road near Empire?

13 A. Yes.

14 Q. Okay. Let me ask you this: I want to take you to the time of

15 May 14th/May 15th of this year. And can you tell the Court

16 where you were?

17 A. May 14th I was at his house.

18 Q. On Beeman Road?

19 A. On Beeman Road, yes.

20 Q. Okay. And what--just briefly, what did you do that day?

21 A. Everybody left from his party from the night before and

22 Richard had asked me to stay. And we hung out. We went into

23 Traverse City, you know, listened to music. It was a pretty

24 normal day.

25 Q. Okay. When you said he had a party the night before, was that

1 his 21st birthday party?

2 A. Yes.

3 Q. Okay. So you--he asked you to and you decided to spend the

4 day with him?

5 A. Yeah, I just moved back from Grand Rapids so I missed him.

6 Q. Okay. And there was nothing out of the ordinary about that,

7 you spending time with Richard?

8 A. No.

9 Q. Okay. And you went to Traverse City, you spent some time.

10 Let's move forward to later on that day. In terms of May

11 14th/May 15th, that would be a--was that a Saturday

12 night/Sunday morning?

13 A. Yes.

14 Q. Okay. And where did you spend Saturday night and Sunday

15 morning?

16 A. At his house.

17 Q. Okay. And that's on Beeman Road?

18 A. Yes.

19 Q. Okay. Did you--when you spent the--when you say you spent the

20 night at his house, where specifically did you stay that

21 night?

22 A. In his room.

23 Q. Okay. And who was in his room with him?

24 A. Just me. Nobody else.

25 Q. Anybody else besides you?

1 A. No.

2 Q. Okay.

3 A. Well, besides Richard but--

4 Q. Okay. Richard was there as well. And what were you doing in
5 his room? Where was--where was everybody situated?

6 A. We got back from Traverse City and we did smoke a bowl of
7 marijuana.

8 Q. Okay.

9 A. I laid on the Foof and he laid on his bed and we watched Ren
10 and Stimpny for awhile and then we went and smoked again at
11 about, I don't know, midnight or so. And he asked me to
12 cuddle on his bed with him and I did.

13 Q. Now when you say you were in his room and you were on his
14 Foof, was that like one of those bean bag chairs?

15 A. Yeah.

16 Q. What color was it?

17 A. Black.

18 Q. Okay. And ultimately your testimony is that he asked you to
19 come up into his bed and cuddle?

20 A. Yes.

21 Q. And was that a request that has--that he had made before to
22 you?

23 A. No. That's a pretty normal thing. I mean, I used to be a
24 very cuddly person. I would never turn down someone asking me
25 to cuddle.

1 Q. Okay. So when he asked you to come up to his bed and cuddle,
2 you weren't--it wasn't something out of the ordinary for you?
3 A. It would be like cuddling with a brother. It's--
4 Q. Okay.
5 A. It doesn't mean anything more than that.
6 Q. Okay. Do you--you said you're a cuddly person?
7 A. Yeah. I used to be.
8 Q. That means you like to hug people and cuddle?
9 A. (Non verbal response)
10 Q. Okay. In terms of--how would you characterize your--I think I
11 asked before but I just want to clarify this--your
12 relationship with Richard: Was it a romantic one?
13 A. No, not at all.
14 Q. Was he aware of that?
15 A. Yes.
16 Q. How was he aware of that?
17 A. He has told me several times that he was interested in me and
18 I told him, because I dated his best friend and because I did
19 see him as a bro, I would never have any of those feelings for
20 him.
21 Q. That night in his bedroom, May 14th/15th--I think your
22 testimony is probably on the 15th, that would be shortly after
23 midnight--you came to his room. Is that correct?
24 A. Yes.
25 Q. And your intent was to spend the night in his bedroom?

1 A. Yes.

2 Q. What were you wearing that night?

3 A. I was wearing Transformer pajama pants and a yellow Pokémon

4 shirt.

5 Q. Okay. And were you wearing underpants?

6 A. Yeah.

7 Q. Okay. And ultimately, what--so he asked you to come up to his

8 bed to cuddle; you were watching a movie, I think your

9 testimony is?

10 A. We were watching Ren and Stimpy. It's a cartoon.

11 Q. A cartoon. And ultimately what happened? Did you fall asleep

12 at some point in time?

13 A. Yeah. I looked right at him and, you know, before I moved

14 back from Grand Rapids I got a concussion.

15 Q. Okay.

16 A. And I told him between the concussion and the drinking and the

17 smoking, I probably just needed to go to sleep. And he told

18 me to, "Go for it, Bro."

19 Q. Okay. And do you know what time of night this would have

20 been? Or morning?

21 A. If I had to guess, I would say about 12:30.

22 Q. Okay. So--

23 A. 12:00--12:30.

24 Q. Did there come a time after 12:30 later on that night when you

25 woke up?

1 A. Yes.

2 Q. And can you describe to the Court why you woke up?

3 A. I woke up because I felt someone on top of me.

4 Q. Okay. And when you woke up, what did you see?

5 A. (Crying) I saw Richard over top of me wearing a shirt and he
6 was trying to force himself into me.

7 Q. All right. Where--Lissa, where were your pants and your
8 underwear at the time when you woke up?

9 A. They were just--they were just below my----like, just on top
10 of my knees; like on top of my thighs.

11 Q. Okay. When you went to bed earlier that night, where were
12 they?

13 A. They were on--you know, they were--

14 Q. Pulled up?

15 A. Yeah.

16 Q. Okay. You just said a minute ago that when you--when you woke
17 up, you realized Richard was on top of you. I think you said
18 he was wearing a shirt. Where--when he was on top of you, you
19 were laying--how were you laying? On your side? Back?
20 Stomach?

21 A. When I woke up, I was on my back.

22 Q. Okay. And he was physically over on top of you?

23 A. Yeah. I--yeah.

24 Q. Could you feel or realize what he was trying to do?

25 A. I did and that's--I pushed him off from me and his back hit

1 the wall and as I was pulling up my pants, I looked at him and
2 said, "What the fuck are you doing?"

3 Q. Okay. Now when you said you felt something, can you describe
4 to the Court what you did feel?

5 A. I felt pressure in that area.

6 Q. Well, you can--we're adults. You can tell us which area of
7 your body. I'm sorry this is difficult. I don't mean to
8 trivialize what you went through but I have to ask you.

9 A. I felt a small, tiny amount of pressure in my vagina.

10 Q. Okay. And this was when Richard was on top of you?

11 A. Yes.

12 Q. And is that what caused you to wake up?

13 A. Yes.

14 Q. Okay. Your testimony is that you pushed him off and basically
15 you said, "What the fuck?"; I think that's your statement to
16 the Court. I take it you were quite surprised to find him on
17 top of you trying to--

18 A. Yeah.

19 Q. --have sexual relations with you?

20 A. Absolutely.

21 Q. Was this something that you intended to do that night?

22 A. Absolutely not.

23 Q. In your mind, did you do anything to lead him on or to make
24 him think you were interested?

25 A. No.

1 Q. After you made that statement to him, "What the fuck?", did he
2 say anything to you?

3 A. He looked right at me and said, "I'm sorry Bro."

4 Q. And after he said this, what did you do?

5 A. I left and I panicked to go have a cigarette.

6 Q. You went outside the bedroom?

7 A. Yes, I went--walked out to his car where my cigarettes were
8 and I began to smoke one.

9 Q. Okay. What were you feeling at the time when--

10 A. I was in complete shock. I couldn't--I couldn't cry. I
11 couldn't comprehend what had just happened.

12 Q. In your mind, what had just happened?

13 A. In my mind, he raped me. I mean, I know what I woke up to. I
14 know he knows what I woke up to.

15 Q. Okay. And after you went outside to have a cigarette, did he
16 come outside with you?

17 A. Yeah, he followed me outside and his cigarettes were sitting
18 in the center console and he moved his arm towards me and I
19 jumped back, I freaked out, I didn't know what he was doing.
20 And he asked me just to beat the shit out of him.

21 Q. Okay. Now ultimately did you go back into the house?

22 A. Yes.

23 Q. And where did you go when you went back into the house?

24 A. I went back in his room and I grabbed like two or three
25 blankets and pretty much cocooned myself up and tried to go

1 back to sleep.

2 Q. And where did you try to go back to sleep?

3 A. On the Foof.

4 Q. On the bean bag?

5 A. Yes.

6 Q. Okay. And this would have been what time of night, if you

7 recall?

8 A. I remember the last thing I looked at before I closed my eyes

9 was the time and it was 3:26, so appropriately 3:30.

10 Q. Okay. When you got to Richard's house earlier that day, did

11 you have a vehicle?

12 A. No.

13 Q. Did you have a cell phone?

14 A. No.

15 Q. I assume you woke up the next morning. Can you tell the Court

16 what you did when that happened?

17 A. The minute I heard Richard leave, I got on Facebook and

18 contacted Aiden Hauxwell and told him I couldn't talk about it

19 but I needed to be picked up right away and he came and got

20 me.

21 Q. Did he--so Aiden came out and picked you up. Ultimately did

22 you make a report of this activity to the police?

23 A. Yes, I did.

24 Q. And did you go to Munson Medical Center as well?

25 A. Yes, I did.

1 MR. HUBBELL: Thank you. That's all the questions I
2 have.

3 THE COURT: Thank you, Mr. Hubbell.

4 MR. HUBBELL: Mr. Williams might have some questions
5 for you, okay?

6 THE WITNESS: All right.

7 THE COURT: Mr. Williams, cross-exam?

8 MR. WILLIAMS: Thank you.

9 CROSS-EXAMINATION

10 BY MR. WILLIAMS:

11 Q. Hi.

12 A. Hi.

13 Q. I've got to ask you some questions. It's my job. I'm not
14 here to give you a hard time or make you feel bad so I'm just
15 going to ask you some questions, okay? Now you did an
16 interview with the police and you said that Mr. Robinson
17 [sic.] was the first friend that you ever made?

18 A. At Glen Lake, yes.

19 Q. At Glen lake? Okay. How old were you at that time?

20 A. I was about 17.

21 Q. Okay.

22 A. Sixteen or seventeen.

23 Q. What--you also talked about that there was drama sometimes and
24 you'd get really upset with Richard sometimes?

25 A. The only time I got upset with Richard was when he would blow

1 off me or any of his friends and I stuck up for all of us, not
2 just myself.

3 Q. Okay. You would get upset with him when he'd blow you off?

4 A. Or any of our friends.

5 Q. Okay. Now you said you had just moved back from Grand Rapids,
6 correct?

7 A. Yes.

8 Q. Why did you move down to Grand Rapids?

9 A. Because I wanted a fresh start. I wanted to get away from
10 here.

11 Q. How come?

12 A. Because I'm not happy in Traverse City.

13 Q. Okay. Was there a lot of drama going on in your life?

14 A. I recently lost two friends so, you know, that's pretty hard
15 to deal with.

16 Q. To drugs?

17 A. No.

18 Q. Accidents?

19 A. One died in the lake and the other died in a car accident.

20 Q. Okay. Fair enough. Who were you living with when you moved back--
21 when you moved to Grand Rapids?

22 A. I was living with Annie Snedeker.

23 Q. Okay. Is that a girl? Boy?

24 A. That's a girl.

25 Q. Okay. Was that a friend of yours?

1 A. Yes.

2 Q. How come you moved back up here?

3 A. Because I really missed my friends and the plan was Aiden and
4 my friend Vince and Jake were going to get a place together.
5 And Richie decided--me and Richie had decided that we could
6 get a place together this summer.

7 Q. Okay. Gotcha. Now what did you guys--you guys drove around
8 that day, correct?

9 A. Yes.

10 Q. Leading up to that? What did you guys do that day?

11 A. We drove into Traverse City. We visited two of my friends and
12 went back to Empire.

13 Q. Okay. Did you guys smoke marijuana that day?

14 A. Yes.

15 Q. Do you remember maybe what time you guys started smoking?

16 A. I believe we started smoking at about 7:30--8:00 o'clock or
17 something like that.

18 Q. In the evening?

19 A. Yes.

20 Q. Okay. Not prior to that but that's probably when you guys
21 starting smoking?

22 A. Right.

23 Q. 7:30? Okay. Did you consume any other drugs or alcohol that
24 day?

25 A. No.

1 Q. No alcohol?

2 A. No.

3 Q. Okay. You just testified that because of the marijuana and
4 alcohol and your concussion, you were tired. Were you talking
5 about the alcohol you consumed the day prior?

6 A. Yes.

7 Q. Okay. All right. Now do you take any prescribed medications?

8 A. No.

9 Q. Okay. The concussion that you recently had, what happened
10 there?

11 A. I hit my head on a pedal board at a rock concert.

12 Q. Okay. Do you know what level of a concussion that was?

13 A. I have no idea. They did not fill me in on a lot.

14 Q. Okay.

15 A. I know that I had it for exactly a week.

16 Q. Do you remember what the symptoms were of it?

17 A. I was incredibly tired all the time. I wasn't--I would often
18 stare off in a daze, almost like daydreaming.

19 Q. Okay.

20 A. My speech was slurred and I felt nauseous.

21 Q. Okay. Did it cause you to have any lack of memory, do you
22 recall?

23 A. No, it didn't.

24 Q. Okay. Now the night before this incident, there was a party
25 at Richie's house. Is that correct?

1 A. Yes.

2 Q. Do you recall how many people were at the party?

3 A. Twenty to thirty, in and out.

4 Q. Okay. That night, do you re--do you remember where you slept

5 at that party?

6 A. I slept with--I slept out in the living room with Danielle

7 Leach and Nick Christianson.

8 Q. Okay. And where did you sleep?

9 A. On the pullout couch.

10 Q. Who was on that couch?

11 A. Danielle and Nick Christianson.

12 Q. Okay. So the three of you?

13 A. Yes.

14 Q. Were on that couch? Okay. Do you recall having any type of

15 intimate contact with Nick that night?

16 A. No, I don't.

17 Q. Is it possible that you did?

18 MR. HUBBELL: Your Honor, I'm going to object. I

19 don't know how this is relevant to the charges. First of all,

20 it's probably barred by the Rape Shield statute, although

21 we're not at trial.

22 And secondly, she's not on trial or at a hearing,

23 the defendant is and I don't think it's relevant for the

24 purpose of today's hearing.

25 MR. WILLIAMS: Your Honor?

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THE COURT: Go ahead.

MR. WILLIAMS: This goes to credibility. She's already testified--or she's already given a statement that she legitimately doesn't know what happened that evening and we have an affidavit from this young man who has set forth that they had a sexual encounter where she was sleeping and grabbed his hand and put it on her crotch the night before this incident occurred, which is very similar to what the allegations are today.

It's absolutely relevant and we're looking at the credibility of what occurred here. I don't see how this couldn't be relevant.

THE COURT: Mr. Hubbell?

MR. HUBBELL: Again, your Honor, ultimately the questions of credibility are determined at trial. You know what your decision would be if I meet my burden. The problem is, again, this alleged incident is probably protected by the Rape Shield law.

And secondly I don't think it's relevant if Mr. Williams is talking about an affidavit that's obviously not in evidence. We don't have a witness. And again, questions of credibility or for disputes in the facts and those issues are ultimately to be resolved at trial.

THE COURT: That is true.

MR. WILLIAMS: Your Honor?

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THE COURT: Go ahead.

MR. WILLIAMS: We're at an evidentiary hearing. You are obligated to look at the global picture here. I'm allowed to call witnesses. I'm allowed to cross-examine people. You have to take in the credibility of the witnesses. That's the whole purpose of this exam.

So again, we have these allegations that are identical to what Mr. Richie's [sic.] been accused of. So we need to at least get some testimony from Lissa on what happened. Because the parallels are so similar that I don't-- this isn't a Rape Shield. We're not accusing her of anything. We're not saying it's a prior bad act.

This is just we're trying to figure out what happened here and that's the purpose of having a preliminary exam. We ask questions, we try to figure out what happened and see what the story is.

Is the Court not interested in credible, reliable information? I don't--I'm having a hard time trying to understand why this isn't relevant.

THE COURT: Well, the Court does--at a preliminary examination does have some responsibility with respect to determining the credibility of witnesses.

Although the ultimate issue is decided by a jury, this issue could be covered by the Rape Shield statute and I think it's of very minimal relevance, even if it were true

1 that she had some contact with this other individual.

2 MR. WILLIAMS: Even if it were true?

3 THE COURT: It's got nothing to do with unconsented-
4 -just hang on a second please. I'll allow you to ask the one
5 question. I think it can be covered with a yes or no answer,
6 okay?

7 MR. WILLIAMS: Thank you. Thank you.

8 THE COURT: Go ahead.

9 CROSS-EXAMINATION

10 BY MR. WILLIAMS:

11 Q. Do you recall placing Nick's hand on any part of your body?

12 A. Other than my side that he already had because there were
13 three of us in that bed, no.

14 Q. Okay. Do you recall kissing Nick that night?

15 A. No.

16 MR. HUBBELL: Objection, your Honor.

17 THE COURT: I didn't even hear the question.

18 MR. HUBBELL: You said he could ask one question.
19 Now we're at two.

20 THE COURT: What was the question? Mr. Williams,
21 will you restate the question?

22 MR. WILLIAMS: I asked her if she recalled kissing
23 Nick that evening. Nick Christianson at Richie's house.

24 THE COURT: I'm not going to allow that question. I
25 don't see that that's relevant.

1 MR. WILLIAMS: Okay.

2 THE COURT: And I'll just remind you, Mr. Williams,
3 the more you bring in evidence that conflicts, it's even more
4 likely there's bind over under Michigan law so--

5 MR. WILLIAMS: Your Honor, I already realize that
6 you're going to bind over. The question is here is the time
7 to figure out what happened. We have an affidavit from a
8 young man who--

9 THE COURT: Well, it's not--

10 MR. WILLIAMS: It's his statement. At this time,
11 I'm going to introduce the affidavit into evidence and I would
12 like--

13 THE COURT: How are you going to introduce it? Mr.
14 Hubbell?

15 MR. HUBBELL: The affidavit is--

16 THE COURT: It's hearsay. No. Ask your next
17 question.

18 MR. WILLIAMS: Are you guys working together?

19 MR. HUBBELL: I'm sorry.

20 THE COURT: I said ask your next question, Mr.
21 Williams.

22 MR. WILLIAMS: All right. Fair enough.

23 CROSS-EXAMINATION

24 BY MR. WILLIAMS:

25 Q. On the day of this incident, do you recall telling Richie that

1 you loved him?

2 A. I told him that I loved him in the way that I loved my little
3 brother EJ.

4 Q. Okay. Fair enough. I'm just asking you. Do you recall
5 telling him that?

6 A. Yes.

7 Q. Okay. Now you've talked about this cuddling; that you're a
8 cuddly person?

9 A. Yes.

10 Q. Cuddling with Nick. Cuddling with Richie. Is that accurate?

11 A. I also cuddled with Danielle too.

12 Q. Okay. Now do you have a brother?

13 A. Yes.

14 Q. How old is your brother?

15 A. EJ's about 17 years old.

16 Q. Okay. Would you get your pajamas on and get into bed with him
17 and cuddle with him?

18 A. If--yeah. If he was upset or something was going on with him
19 and he needed his big sister, absolutely.

20 Q. Okay. I'm not attacking you. I'm just trying to figure out
21 what's going on here, okay? Now where did you and Richie put
22 your pajamas on that evening?

23 A. He put his on in the bathroom and I put mine on in his room.

24 Q. Okay. Now is it true that Richie stopped immediately when you
25 told him or pushed him?

1 A. Yes.

2 Q. Did he try to force himself on you?

3 A. No.

4 Q. After that?

5 A. No.

6 Q. Okay. Now you said that his back hit the wall, correct?

7 A. Yes. I remember his back hitting the wall.

8 Q. Okay.

9 A. I pushed. He was laying on top of me and I pushed him off
10 from me like that. (Indicating)

11 Q. Okay. Do you mind--what would be--let's say you're in the
12 bedroom right now and this--

13 MR. WILLIAMS: Can I approach your Honor?

14 THE COURT: Okay.

15 CROSS-EXAMINATION

16 BY MR. WILLIAMS:

17 Q. If this was like--let's say this was the edge of the bed.

18 (Indicating) Where would the wall be that his back would have
19 hit?

20 A. Right here. (Indicating)

21 Q. Okay. So he would have hit the bedroom wall closest to the
22 bed?

23 A. Yes.

24 Q. Okay. Do you know what side of the bed that would have been?

25 A. Probably the right.

1 Q. Like if I'm laying on the bed, it would have been--

2 A. Yeah, to the right.

3 Q. To my right?

4 A. Yes.

5 Q. Okay. Thank you. Do you remember kissing Richie that night?

6 A. No.

7 Q. Now have you ever kissed Richie, ever?

8 A. Yes, I did and I told him right after that it couldn't happen
9 again. I did not see him in that way and I felt really bad.

10 If he recalls, the minute it happened I broke down and started
11 crying.

12 Q. Okay. But--so you did make out with him, correct?

13 A. No, I did not make out with him. I kissed him.

14 Q. Was there--why did you start crying after that occurred?

15 A. Because that was shortly after Jake and I were having some
16 serious issues and he knew about them.

17 Q. Okay. So he--you kissed when he was--you were in a
18 relationship with Jake?

19 A. I was not in a relationship. We had broken up.

20 Q. Fair enough, but you were in a relationship and then you broke
21 up?

22 MR. HUBBELL: Your Honor, I think we're getting back
23 into the Rape Shield area. I don't know how this is relevant,
24 what her relationship was with Jake. I'd just object under
25 relevancy.

1 MR. WILLIAMS: Your Honor, if we're going to get
2 into the Rape Shield, can we have a specific objection to why
3 this is the Rape Shield? I'm having a hard time understanding
4 this. What--how is this relevant to the Rape Shield?

5 THE COURT: I'm going to sustain the objection. I
6 don't see that it's relevant.

7 MR. WILLIAMS: We're going to credibility, your
8 Honor. And we're trying to figure out what happened here and
9 we just had this witness testify that she's never had any
10 sexual relations with Mr. Richie [sic.] and now she's saying
11 that there was a time that they actually kissed so--

12 THE WITNESS: That's--

13 MR. WILLIAMS: So we're trying to figure out what
14 occurred.

15 THE COURT: Hang on a second, ma'am. Mr. Hubbell,
16 something--

17 MR. HUBBELL: Kissing somebody one time is not
18 making out, at least in my book. And it certainly doesn't
19 rise to the level of a sexual relation.

20 THE COURT: Exactly. She testified she kissed him.
21 It made her upset, okay. And she told him that it wasn't
22 going to happen again so you've covered the issue. Please
23 move on with relevant questions.

24 CROSS-EXAMINATION

25 BY MR. WILLIAMS:

1 Q. After you pushed Richie off of you--after you pushed Richie
2 off of you, you went out to his car?

3 A. Yes, that's where my cigarettes were.

4 Q. Okay. And you had a cigarette, is that correct?

5 A. Yes.

6 Q. And did Richie come out there with you?

7 A. Yes. He followed me out there shortly after.

8 Q. Okay. Did you tell him to get away from you at that point?

9 A. He opened up his door, like I told--like I said before. He
10 grabbed his cigarettes from the center console and I didn't
11 know what the fuck he was doing so--

12 Q. Okay. But you didn't tell him to get away from you?

13 A. I did not know what just happened. I woke up to that.

14 Q. Fair enough. You didn't know what happened, correct?

15 A. Correct.

16 Q. So--

17 A. I knew what I woke up to and he knows what I woke up to.

18 Q. But you don't--you don't know if he was inside you?

19 A. I do know that he was. I felt it.

20 Q. What did you feel?

21 A. I felt pressure down there. I said that already.

22 Q. I understand that. I'm not asking these questions to upset
23 you but these are serious allegations. So do you know what
24 the pressure was that you felt?

25 A. Yes. I know what--I know his pants were down and so were

1 mine.

2 Q. Okay. Where were your pants, do you recall how far they were
3 down?

4 A. On just--just on top of--just below my knees. Like just on
5 top of knees. They were still on my thigh, like right there,
6 yep.

7 Q. Right here? (Indicating)

8 A. Yep.

9 Q. Okay. Well with your pants being on your thighs right there,
10 were your legs spread open?

11 A. Yes, a little bit.

12 Q. How--would the pants restrict that and the underwear?

13 A. No, they were elastic. My underwear was pulled down and I had
14 a button on my Transformer pants that was undone and I didn't
15 realize that until I'd gotten in the car and looked down.

16 (Crying)

17 Q. Okay. Now the--but you felt some pressure.

18 (At 11:41 a.m. to 11:42 a.m., proceedings paused)

19 CROSS-EXAMINATION

20 BY MR. WILLIAMS:

21 Q. Is it okay to ask you a question?

22 A. Yeah.

23 Q. Okay. You felt pressure but you don't know what the pressure
24 was coming from, is that correct?

25 A. No, I just told you. I know that his pants were down. I know

1 what pressure was I--that I felt.

2 Q. When you were--

3 A. He had to pull up his pants too.

4 Q. I understand that but when you were interviewed by the
5 officer, you made a statement that you legitimately didn't
6 know what happened, is that correct?

7 A. At the time, yeah. I mean, I feel anybody who woke up to that
8 would legitimately not know what the hell was going on.

9 Q. And I understand that. To waking up to that would be a very
10 violating and scary experience. I sympathize with you. I'm
11 not here to attack you but I'm trying to figure out you felt
12 pressure but you don't know where that pressure was coming
13 from?

14 A. Yes, I do. I have said that. I know it was his penis.

15 Q. Okay. That's the first time you've said that. How do you
16 know it was his penis?

17 A. Because his pants were down and I told you I pushed him off
18 from me. It doesn't take a lot to put two and two together
19 regardless of how in shock you are.

20 Q. Okay. Did you see his penis?

21 A. No. I didn't have to.

22 Q. Okay.

23 A. To know what I felt. To--

24 Q. Okay. So you--okay. That's fine. Thank you. Now when you
25 were interviewed by the police, were you told that he raped

1 you?

2 A. No.

3 Q. When did--during that interview, the word rape never came up.

4 When did you decide that you were raped?

5 A. I decided that the minute I went out to have a cigarette.

6 Q. Okay.

7 A. I looked right at Richard and he's like, "I'm sorry. I don't

8 know what came over me. I don't know what came over me. I

9 fucked up." And I'm like, "Dude, you raped me. You pretty

10 much raped me." And he put his head by his steering wheel and

11 started crying.

12 Q. Okay. Lissa, have you ever slept walked?

13 A. No.

14 Q. Walked in your sleep? Do you know if you have a history of

15 ever being active in your sleep?

16 A. I know that there was a time, like I said, after my friend

17 Nick died and I was going through a lot, that people could

18 talk to me in my sleep. They would start the conversation and

19 I would talk back. But that's it.

20 Q. Okay. Do you--when those types of incidences occurred, do

21 you--do you remember talking to those people?

22 A. No.

23 Q. Did--would they have conversations with you?

24 A. Yes. They would always initiate the conversation first and I

25 would just reply.

1 Q. Okay. And you would have a full conversation while sleeping?

2 A. Yes.

3 Q. Okay. All right. On that morning when Richie--I'm sorry.

4 That morning when Richie left, did--you contacted Aiden on

5 Facebook, is that--is that correct?

6 A. Yes.

7 Q. Okay. Whose computer did you use?

8 A. Richard's.

9 Q. Okay. Did you contact anyone else on Facebook that morning?

10 A. No, I did not.

11 Q. Okay. Did--do you know if they had a land phone line at their

12 house?

13 A. Yes, but I'm well aware that his mother and step-father don't

14 like me so I was already in an uncomfortable position. I

15 wasn't going to ask for anything.

16 Q. Fair enough. I just--okay. I understand. This--was everyone

17 else in the house sleeping when this happened?

18 A. Yes, it was his mother and his step-father.

19 Q. And they were asleep?

20 A. Yes.

21 Q. Okay. Did you have--all right. I'm--and that--just a couple

22 more questions, I'm done. Earlier in the night, you started

23 out sleeping on the bean bag?

24 A. Yes.

25 Q. Is that correct?

1 A. Yes.

2 Q. And then you guys went and smoked together, is that--

3 A. Yes.

4 Q. And then when you came back, that's when you guys decided you
5 would--

6 A. He asked me to cuddle and I said yes.

7 MR. WILLIAMS: Okay. All right. Well thank you and
8 I'm sorry that you had to answer those questions. Thank you.

9 THE COURT: Thank you. Mr. Hubbell?

10 MR. HUBBELL: I just have a quick follow up to
11 clarify something.

12 REDIRECT EXAMINATION

13 BY MR. HUBBELL:

14 Q. When Mr. Williams was asking you questions about what you felt
15 down in your vaginal area, I assume there was discussion of
16 whether you really knew what happened. In your mind based on
17 what you felt, can you tell the Court where you believe
18 Richard's penis was?

19 A. In my vagina.

20 MR. HUBBELL: Thank you.

21 THE COURT: Okay. Mr. Williams, anything further
22 sir?

23 MR. WILLIAMS: No, your Honor.

24 THE COURT: Okay. Thank you.

25 MR. HUBBELL: One thing Judge. I want to follow up

1 one thing and I didn't ask and I would ask if I could.

2 THE COURT: Okay.

3 REDIRECT EXAMINATION

4 BY MR. HUBBELL:

5 Q. Do you see--

6 MR. WILLIAMS: We would stipulate, your Honor, to
7 identification.

8 MR. HUBBELL: I'll just--

9 REDIRECT EXAMINATION

10 BY MR. HUBBELL:

11 Q. Do you see Mr. Robertson in the courtroom today?

12 A. Yes.

13 Q. Can you point him out for the record?

14 A. He's right there. (Indicating)

15 MR. HUBBELL: Thank you.

16 THE COURT: Thank you. The record will reflect this
17 witness has identified the defendant. Thank you, ma'am. You
18 can step down now.

19 (At 11:48 a.m., witness excused)

20 MR. HUBBELL: Thank you, your Honor.

21 THE COURT: Any further witnesses?

22 MR. HUBBELL: Yes, I have Officer Clint Kerr.

23 THE COURT: Okay. Detective Kerr, Do you swear or
24 affirm that the testimony you are about to give in this
25 proceeding will be the truth, the whole truth, and nothing but

1 the truth?

2 DETECTIVE KERR: I do.

3 THE COURT: Thank you. Please be seated. Okay.
4 Mr. Hubbell?

5 MR. HUBBELL: Thank you.

6 DETECTIVE CLINT KERR

7 (At 11:49 a.m., sworn as a witness, testified as
8 follows)

9 DIRECT EXAMINATION

10 BY MR. HUBBELL:

11 Q. Sir, could you state your name for the record?

12 A. Richard Clinton Kerr, Junior.

13 Q. And how are you employed?

14 A. I'm a Detective Sergeant with the Leelanau County Sheriff's
15 Office.

16 Q. And how long have you worked for Leelanau County?

17 A. Twenty-four years.

18 Q. How long have you been in the position of the Detective with
19 Leelanau County?

20 A. Close to seven years.

21 Q. And in terms of being a Detective Sergeant, has that been a
22 recent designation?

23 A. Almost a year.

24 Q. Okay. As part of your duties as detective with the Leelanau
25 county Sheriff's Department, are you involved with the

1 investigations of allegations of Criminal Sexual Conduct?

2 A. Yes.

3 Q. And in that capacity, did you have an opportunity to speak to
4 a Richard Robertson?

5 A. I did.

6 Q. And do you recall what day you spoke with him?

7 A. May 17th of this year.

8 Q. And where did that conversation take place?

9 A. In our interview room in our Sheriff's Office.

10 Q. And was that conversation recorded?

11 A. Yes.

12 Q. And can you briefly tell the Court how you became involved in
13 the investigation?

14 A. I was called the previous night when the incident was reported
15 by the deputy who was assigned the complaint. I met with him
16 at Munson Medical Center but didn't take any investigative
17 action that day. The next day, we had drafted a search
18 warrant for the residence but didn't end up serving it.

19 Q. When you say the deputy, who was that deputy?

20 A. Terrance Cadieux.

21 Q. Okay. So you were going to draft a search warrant and serve
22 it on the residence but you didn't. What did you do instead?
23 What was done instead?

24 A. We set up an interview with Mr. Robertson to come in and speak
25 with us at the Sheriff's office and after we spoke with him,

1 we ended up not serving a search warrant so it was returned to
2 the Court unserved.

3 Q. Okay. When you say, "We spoke to him," did you and Mr.--
4 Deputy Cadieux speak to him at the same time or was this done
5 separately?

6 A. Deputy Cadieux interviewed him initially and then I spoke to
7 him after that.

8 Q. And during the course of speaking with Mr. Robertson, I assume
9 the topic of conversation was what we're here today for?

10 A. Yes.

11 Q. And what was your purpose in talking to him?

12 A. I viewed the interview that Deputy Cadieux had with Richie and
13 he just wasn't telling the truth in my opinion. So I spoke to
14 him after the deputy did.

15 Q. Okay. In other words, what you were hearing Mr. Robertson
16 telling Deputy Cadieux didn't add up in your mind?

17 A. Yes.

18 Q. And so you went in to speak to Mr. Robertson?

19 A. I did.

20 Q. Was he under arrest at the time?

21 A. He was not.

22 Q. Was he in handcuffs?

23 A. No.

24 Q. What did you and Mr. Robertson talk about?

25 A. I trust told him I didn't believe what he was saying.

1 Q. What was he telling Deputy Cadieux?

2 A. That basically Lissa initiated sexual contact with him while

3 she was in her sleep. Sleep sexing, I believe is the word.

4 Q. Okay. And you told Mr. Robertson you didn't believe his

5 story?

6 A. Yes.

7 Q. And ultimately what was his response to you?

8 A. He maintained that that's what happened for a short period of

9 time and then he eventually told me that that wasn't the

10 truth.

11 Q. Did he make a statement to you originally that the victim in

12 this case grabbed his penis?

13 A. Yes.

14 Q. Did he ultimately back off on that?

15 A. Yes. He said that that was not true.

16 Q. What did he tell you in fact happened?

17 A. He said that he had put his finger in her vagina and then she

18 woke up and then he tried to put his penis in her vagina but

19 he was unable to do so because he couldn't maintain an

20 erection.

21 Q. Did he tell you that--so he told you his finger was inside her

22 vagina?

23 A. Yes.

24 Q. And that--did he tell you that his penis did in fact go inside

25 her vagina?

1 A. Yes, but he said it was a very small distance.

2 Q. And did he tell you what her state of mind at the time was?

3 A. He said that she was asleep because he woke--she woke up after
4 he had put his finger inside of her.

5 MR. HUBBELL: Thank you.

6 THE COURT: Mr. Williams?

7 MR. WILLIAMS: Yes.

8 CROSS-EXAMINATION

9 BY MR. WILLIAMS:

10 Q. Is it okay to call you Detective Kerr?

11 A. Please do.

12 Q. Thank you. Detective Kerr, you already made up your mind that
13 Richie was lying before you went in and spoke with him, didn't
14 you?

15 A. Yes.

16 Q. Did you advise him at that time that he had a right to an
17 attorney?

18 A. No.

19 Q. Okay. Before you interrogated Richie, were you aware of any
20 inconsistencies with the victim's story?

21 A. As far as what?

22 Q. Any. Did you review her interview?

23 A. I didn't speak with her and I'm--I can't say whether I read a
24 written report of her statement. I had the general idea of
25 what she had said from Deputy Cadieux certainly.

1 Q. Did you watch the video that Deputy Cadieux took of her before
2 you spoke with Richie?

3 A. No, I've never seen that.

4 Q. Okay. You've never seen it?

5 A. No.

6 Q. Okay. And you formed your assumption on your conversation
7 with Deputy Cadieux, is that accurate?

8 A. Of what the victim had said?

9 Q. Correct.

10 A. Yes.

11 Q. Okay. All right, so you had no contact with the victim?

12 A. No.

13 Q. Okay. Did you lie to Mr. Robertson about what the victim
14 actually said to him?

15 A. Said to him?

16 Q. Correct.

17 A. To him, Deputy Cadieux?

18 Q. No, when you told Mr. Robinson [sic.], "This is what she
19 said," weren't you lying to him? Because you never spoke to
20 her. In your interview with him that was recorded that I
21 watched, you told him things that the victim said so you never
22 spoke to the victim so you were lying to him at that time.

23 A. Okay.

24 Q. Well, yes or no?

25 A. I did not speak to her.

1 Q. Okay. So you made--

2 A. I think that's what you're asking.

3 Q. So you made up whatever it was that you said the victim said
4 when you were speaking with Richie?

5 MR. HUBBELL: Your Honor, I think there's some
6 confusion here. I think what he heard is what Deputy Cadieux
7 told him the victim had told him and so in a sense, he had an
8 idea in his mind about what the victim said even though he
9 personally didn't interview her.

10 MR. WILLIAMS: I don't think so, your Honor. It's
11 pretty simple here. This isn't confusing. He never
12 interviewed the victim. He never spoke to the victim, he
13 never watched the interview.

14 He had a conversation with the deputy who
15 interviewed the victim and he made statements. We can play
16 the video. That's the best evidence. We can play the video
17 but he made statement to Richie during that interview of what
18 the victim told him. The victim, he never spoke to the victim
19 so those would have to be false statements.

20 THE COURT: Well, I think Detective Kerr can answer
21 the question. Even if they were false statements, police are
22 allowed to--

23 MR. WILLIAMS: Lie?

24 THE COURT: --use their interview techniques.
25 There's Michigan case law on it.

1 MR. WILLIAMS: I know there's case law on it but
2 doesn't--

3 THE COURT: Just go ahead and ask your question.
4 It's fine.

5 MR. WILLIAMS: I--so we can--fair enough.

6 CROSS-EXAMINATION

7 BY MR. WILLIAMS:

8 Q. Did you accuse Richie of lying?

9 A. Yes.

10 Q. Okay. Did you challenge and attack Richie's denials?

11 A. Yes.

12 Q. Did you swear at him?

13 A. Yes.

14 Q. Yell at him?

15 A. Raised my voice certainly.

16 Q. Fair enough. Did you use the word fuck? Like "this is
17 fucking--this is fucking bullshit. This is crap"?

18 A. I used it. Can I put it in context?

19 Q. Yes sir. Yes. I'm not--yes, please.

20 A. Because that is what one of the witnesses had used toward him
21 so I continued with that and I certainly banged the table and
22 I told him I didn't believe him.

23 Q. Okay. What witness was that that used towards him?

24 A. It was the victim.

25 Q. Fair enough, okay. Did you persuade Mr. Robinson [sic.] that

1 it was in his best interest to stop denying and start
2 confessing?

3 A. I did.

4 Q. Okay. How long have you known Mr. Robinson [sic.]?

5 A. Since fifth grade. He was in fifth grade.

6 Q. So you've known him for quite a long time, correct?

7 A. Yes.

8 Q. And did you tell Mr. Robinson that it would be his opportunity
9 to confess and his only opportunity and that if he did
10 confess, you would put in a good word for him?

11 A. I didn't say it was his only opportunity. I said this was his
12 opportunity to tell the truth where I would go forward and be
13 in his corner and the Prosecutor and anyone else that wanted
14 to hear that he was a truthful man.

15 Q. Okay. Do you think you ever used any rude or insulting
16 remarks towards--

17 MR. HUBBELL: Your Honor, at this point I'm going to
18 object. I mean, we're not here for a Walker Hearing.
19 Obviously if we're here to challenge his statement that he
20 made, this is not the venue to do so. I would just--I don't
21 think its relevant.

22 MR. WILLIAMS: Your Honor--

23 THE COURT: Well, I'll let you ask the question Mr.-

24 -

25 MR. WILLIAMS: Thank you.

1 THE COURT: --Williams but let's just keep moving
2 along.

3 MR. WILLIAMS: I mean, I don't--I don't know why I
4 need to keep moving along frankly. I'm in an evidentiary
5 hearing. I don't understand why I can't ask questions. I'm
6 really getting confused. I realize--

7 THE COURT: You can ask any question you want that's
8 relevant.

9 MR. WILLIAMS: Thank you.

10 CROSS-EXAMINATION

11 BY MR. WILLIAMS:

12 Q. Have you been trained to use special interrogation methods?

13 A. Yes.

14 Q. Okay. Can you explain what those are?

15 A. There's too many to even list. But I've been trained to do
16 the best I can to seek the truth and get people to tell the
17 truth.

18 Q. Would you say that you've been trained to--in the art of
19 getting people to confess?

20 A. Absolutely.

21 Q. Okay. Fair enough. Would you say it would be fair that you
22 used coercive tactics with Mr. Robinson [sic.]?

23 A. I didn't lie to him. I did go to bat for him when he told the
24 truth. I believe it's indicated in the report and I've told
25 the Prosecutor that as well.

1 Q. No, and I know you did Detective Kerr but I'm asking you would
2 you say--would it be a fair statement that you used coercive
3 techniques to get Mr. Robinson [sic.] to confess to you?
4 A. No, I don't think I coerced him.
5 Q. But playing on his emotions? Attacking him? Would that be
6 coercive?
7 A. I don't think that's coercive. I think I just made him--
8 Q. Okay.
9 A. --realize that he wanted to tell the truth.
10 Q. Do people make false confessions under pressure?
11 A. I've never had anyone make a false confession. I can only
12 speak from my own personal experience.
13 Q. Are you aware that false confessions occur?
14 A. Oh, I'm sure there's been cases where people have admitted to
15 things they haven't done.
16 Q. Okay. Is it possible that your interrogation methods would
17 predispose Mr. Richie [sic.] to give a false confession?
18 A. No.
19 Q. Okay. And that's your opinion, correct?
20 A. You asked.
21 Q. Okay. Fair enough. Now did you ever interview Nick
22 Christianson?
23 A. No.
24 Q. Christopher, I'm sorry. Nick Christopher.
25 A. I think it's Nick Christianson, and no I haven't.

1 Q. Christianson, okay. I don't--okay. Are you aware of whether
2 people--of a condition that people actually have sex in their
3 sleep?
4 A. I found that unbelievable then and I still find it
5 unbelievable.
6 Q. Fair enough. But are you aware that there is a condition out
7 there?
8 A. I'm not.
9 Q. Okay. Didn't Richie tell you over and over that he thought
10 that Lissa was awake?
11 A. Yes, he did.
12 Q. And didn't he tell you over and over that she--he was woken up
13 by her initiating kissing him?
14 A. He did.
15 Q. Okay. Now Lissa never stated that she was raped in her
16 interview, as far as you know, is that correct?
17 A. Correct.
18 Q. Okay. Now when you told Richie that you knew he was on top of
19 Lissa with his penis in her, that was a false statement,
20 correct?
21 A. That was the information I was given.
22 Q. Who gave you that information?
23 A. I think Deputy Cadieux.
24 Q. And Deputy Cadieux will testify that he told you that?
25 A. I don't know what he'll testify to but that's my recollection

1 that that was--that he told me that. It wasn't the victim
2 that directly told me that.

3 Q. What--what about the statement when you told Mr. Robinson
4 [sic.] that Lissa woke up and, "His penis was in me"? Who--
5 where did that statement come from? That's a statement you
6 made to Mr. Robinson.

7 A. Yes.

8 Q. And I'm asking you, do you know where that statement came
9 from?

10 A. I don't know if that came from the report or from Deputy
11 Cadieux.

12 Q. Do you remember telling Richie, and I'm quoting you, "You
13 fucked up. You did fuck up, Richie. You did fuck up and now
14 you're trying to fix a fuck up by lying." Do you remember
15 making that statement?

16 A. I do.

17 Q. Okay.

18 A. I'm not proud of it but I did.

19 Q. Fair enough and I'm not judging you, I'm just asking you.
20 After you had yelled at him and used profanities towards him,
21 did he start changing his story?

22 A. Eventually he did. I don't know where it was in the sequence.
23 I don't believe it was me raising my voice that caused him to
24 tell the truth.

25 Q. Okay. Do you remember telling him, "When we leave here, there

1 are two avenues to go. When the officer and I speak to the
2 Prosecutor we can say, 'We have a young man who's never been
3 in trouble that I know of, made a mistake, pretty serious
4 mistake, that's willing to tell the truth now and try to do
5 what's right.' We'll go to bat for you. We'll be in your
6 corner. We'll try to make it the best we can."

7 A. Absolutely.

8 Q. Do you remember telling him that?

9 A. Absolutely.

10 Q. Before he changed his story?

11 A. Yes.

12 Q. Okay. What--and I know this is really open ended, what did
13 you mean by that if I could ask that? I don't--

14 A. I mean, I get lied to by more people than not.

15 Q. Okay.

16 A. And I do the best I can with the power I have to reward
17 honesty. So when people tell me the truth, I go to the
18 Prosecutor and I tell anybody else that wants to know that
19 this person had the courage and was either man or woman enough
20 to tell the truth and they should be looked at in that light.

21 Q. Do you recall how many times you told him you would go to bat
22 for him?

23 A. I don't.

24 Q. Okay. Would it surprise you if you told him--it was multiple
25 times?

1 A. No, it wouldn't surprise me because--

2 Q. Okay.

3 A. --it's the truth.

4 Q. Do you recall how his story changed after you told him you

5 would go to bat for him?

6 A. I know eventually he decided to tell the truth.

7 Q. The truth that you believed, correct?

8 A. The truth that he said he put his finger in her and she woke

9 up and he put his penis in her.

10 Q. But you were--you really do not believe that she could do

11 anything in her sleep and you--is that true?

12 A. I believe what he told me.

13 Q. Did you believe when you started interviewing Mr. Richie

14 [sic.] that he was guilty of that before you even interviewed

15 him?

16 A. I don't know before I interviewed him. I know listening to

17 the answers he was giving to Deputy Cadieux, I didn't believe

18 it for a minute, no.

19 Q. Okay.

20 A. I think he was lying all day.

21 Q. So listening to what he told Deputy Cadieux, you formed an

22 opinion that he had to have been lying?

23 A. Yes, it was unbelievable.

24 Q. Okay. It was unbelievable to you?

25 A. To me.

1 Q. To you, okay. Do you recall how many times you told Richie
2 that Lissa said she felt his penis inside of her?

3 A. I don't.

4 Q. Would it surprise you at all that she never even said that
5 during the interview with Deputy Cadieux?

6 A. No.

7 Q. So you believe it's quite plausible that she never even
8 mentioned that a penis was inside her?

9 A. I believe she did but I don't have any factual basis for that.

10 MR. WILLIAMS: Okay. Well thank you Deputy Kerr. I
11 don't have any further questions.

12 THE COURT: Thank you, Mr. Hubbell?

13 MR. WILLIAMS: Or, I'm sorry, Detective. I didn't
14 mean to say deputy. Detective Kerr.

15 THE WITNESS: I thought maybe you demoted me.

16 MR. WILLIAMS: No, no. No disrespect. Sorry.

17 MR. HUBBELL: I don't have any additional questions.

18 THE COURT: Okay. Thank you. You can step down
19 Detective. Thank you.

20 MR. WILLIAMS: Wait. No, never mind. I'm good.

21 (At 2:06 p.m., witness excused)

22 MR. HUBBELL: Your Honor, we don't have any
23 additional witnesses.

24 THE COURT: Okay. Thank you. Does the Defense have
25 any witnesses?

1 MR. WILLIAMS: We do your Honor. We would like to
2 call Deputy Cadieux. Is it deputy? I don't think I've ever
3 pronounced it before.

4 MR. HUBBELL: It is Cadieux. [KA' do]

5 MR. WILLIAMS: Okay. Officer Cadieux.

6 MR. HUBBELL: Okay. They're getting him for you.

7 THE COURT: Deputy Cadieux, do you swear or affirm
8 that the testimony you are about to give in this proceeding
9 will be the truth, the whole truth, and nothing but the truth,
10 sir?

11 DEPUTY CADIEUX: Yes.

12 THE COURT: Thank you. Please be seated. Okay.
13 Mr. Williams?

14 DEPUTY TERRENCE CADIEUX

15 (At 2:07 p.m., sworn as a witness, testified as
16 follows)

17 DIRECT EXAMINATION

18 BY MR. WILLIAMS:

19 Q. Deputy Cadieux, could you please state your name for the
20 record?

21 A. Deputy Terrence Cadieux.

22 Q. Thank you. Who are you employed with?

23 A. Leelanau County Sheriff's Office.

24 Q. Okay. Did you interview a young woman--we're here today for
25 an interview you conducted with a young woman. Is that

1 understood?

2 A. Yes.

3 Q. Do you know who--what her name was?

4 A. Lissa.

5 Q. Lissa? Do you know what her last name was?

6 A. Hromada.

7 Q. Thank you. Now you interviewed her regarding allegations of a
8 sex crime, is that correct?

9 A. Yes.

10 Q. Now have you ever had any formal training on conducting such
11 an interview?

12 A. Yes.

13 Q. What kind of training?

14 A. I've had schools on interviewing people.

15 Q. Particularly sex crimes?

16 A. Somewhat, yes.

17 Q. What school?

18 A. In relation to this case?

19 Q. Any case. Just any school related to interviewing someone
20 when a sex crime occurred.

21 A. Well, there's basic interview and interrogation. I've had
22 advanced interview and interrogation. I've also had in
23 regards to children, forensic interviewing of children.

24 Q. Good. What do they tell you about when you interview someone
25 for a sex crime?

1 A. To listen to what they have to say.

2 Q. What type of questions would--are you supposed to ask?

3 MR. HUBBELL: Your Honor, with all due respect to
4 Mr. Williams, I've got to object to the relevancy. I mean, I
5 don't know. I can see where he's going if we're up in Circuit
6 Court but we're not in Circuit Court, we're in District Court.

7 MR. WILLIAMS: And again your Honor, no disrespect
8 to this Court or any other court, but it seems to be a trend
9 that people have forgotten what preliminary exams are and
10 often these defense attorneys waive them.

11 And the purpose of a preliminary exam is to ask a
12 wide variety of questions because we all are interested in the
13 truth. And this is an interview of a young, susceptible
14 female who's a victim and was a victim before this occurred
15 and we need to figure out the process of the interview and the
16 credibility of it.

17 And I think we all are concerned about what's
18 credible, what's not; what's reliable, what isn't. So I'll
19 keep my questions short. I would just like to ask a few
20 questions.

21 MR. HUBBELL: You know, my response your Honor is
22 you already heard from the victim. She came to court. It's
23 not like she's not available and we're trying to cram her
24 statement in through one of these officers. You heard from
25 her. She told us what happened.

1 THE COURT: Thank you Mr. Hubbell. I appreciate it.
2 Mr. Williams, I'll allow you to ask some of these questions,
3 okay?

4 MR. WILLIAMS: Thank you, your Honor.

5 DIRECT EXAMINATION

6 BY MR. WILLIAMS:

7 Q. Do you know why--do you now what the importance is of asking
8 questions that leaves room for alternative hypotheses?

9 A. Yes.

10 Q. Why do we do that?

11 A. The victim doesn't want to please the officer by answering in
12 a certain way.

13 Q. Okay. Did you ask leading questions?

14 A. Well, that's a--I'll explain what I've done. I interviewed
15 her, a short interview, at the Sheriff's Office. I then drove
16 her to Munson for the SANE examination. During that time, I
17 was with her for quite awhile driving in the car. She had
18 told me a lot about what had happened just on the drive. We
19 got back to the Sheriff's Office, recorded the interview. I
20 on some occasions may have summarized her statements from
21 before asking her questions.

22 Q. Okay. So your testimony is that you had a conversation with
23 her on the way to the hospital where you guys discussed what
24 took place?

25 A. She told me what had happened, is what I'm telling you.

1 Q. Was that--was those conversations recorded?

2 A. No.

3 Q. Okay. And your testimony is that when you got back to conduct
4 the formal interview that was recorded, you summarized her own
5 statements for her?

6 A. I may have on some occasions.

7 Q. You summarized her statements for her, is that correct? In
8 this recorded interview?

9 A. Your--it's not a broad--a broad question that I'm answering.
10 I'm telling you that sometimes I did have some questions where
11 some information that I had gained in the past, I used to ask
12 a question. That's what my questions were.

13 Q. Okay.

14 A. I mean, they're all on tape if--

15 Q. No, no. I know they are. I've watched the tape. When you
16 received your training and protocol training on interviewing
17 children, particularly forensic development type questions,
18 would that have been an appropriate means to interview a
19 person in this circumstance?

20 MR. HUBBELL: Your Honor, I really have to object.
21 First of all, she's not a child. You know, we're talking
22 about the forensic protocol. I don't--I mean, it's just not
23 relevant. I'm sorry.

24 THE COURT: Yes.

25 MR. WILLIAMS: The title to the forensic protocol

1 says, "Adolescents and Adults," so I'm pretty sure she's one
2 of the two so I'm pretty sure it's pretty important. This
3 officer just testified that he drove to the hospital with the
4 victim, had a conversation with her, didn't record it, came
5 back, put her in an interview room and gave her suggestive,
6 summarized statements of her own. I mean--

7 MR. HUBBELL: I object. That wasn't his testimony
8 and I think the real question is what did--did she say
9 anything to him different in the car than she did in the
10 interview room.

11 I mean, this person's been complaining to be raped,
12 she's going through an intrusive medical exam at Munson
13 Medical Center and she wants to talk about what happened to
14 her. Is he supposed to just blow her off?

15 I think the real question is was anything gained in
16 that interview or in that process different than what was said
17 on tape. And then we can argue later up in Circuit Court
18 whether the forensic protocol and we can get, you know, doctor
19 whatever her name is down in Ann Arbor to come up and tear the
20 interview apart. And if that's where we're going to go,
21 that's where we're going to go. But it's not relevant to this
22 proceeding here.

23 THE COURT: Yes.

24 MR. WILLIAMS: Your Honor?

25 THE COURT: Go ahead.

1 MR. WILLIAMS: Does this Court not care about how
2 this interview was conducted where there was a victim and
3 statements made? I mean is that really where we're at in
4 District Court these days where we just don't care; we'll just
5 deal with it in Circuit Court? I mean--

6 MR. HUBBELL: We had the victim testify already,
7 Judge.

8 THE COURT: Yes, the victim testified. I know what
9 she said.

10 MR. WILLIAMS: But you don't--

11 THE COURT: I understand--

12 MR. WILLIAMS: You don't know how this officer
13 interviewed her. And is the Court not interested in that? Of
14 course the victim testified. I subpoenaed this officer. I'm
15 questioning this officer as my witness right now.

16 Is the Defense not allowed to present a defense?
17 Are we just supposed to say, "Well, let's not have prelims
18 anymore. Let's just pretend nothing happened. It's good
19 enough. Let's go to Circuit Court"?

20 THE COURT: Look, stop with the lectures.

21 MR. WILLIAMS: Well--

22 THE COURT: I'm serious, stop with the lectures.

23 MR. WILLIAMS: But it's frustrating. It's like I
24 can't ask questions about what occurred?

25 THE COURT: Go ahead and ask the question but keep

1 moving.

2 MR. WILLIAMS: I will. Thank you.

3 DIRECT EXAMINATION

4 BY MR. WILLIAMS:

5 Q. Did--Officer Cadieux, prior to--after you interviewed Lissa,
6 did you conduct any further interviews with any other persons
7 as a result of that interview?

8 A. Yes.

9 Q. Who else did you interview?

10 A. I talked to her friend who was--who had driven her to the
11 police station.

12 Q. Do you know what her name was?

13 A. His.

14 Q. His name?

15 A. His name--Mr.--boy, I don't want to mistake it.

16 Q. Aiden?

17 A. Huh?

18 Q. Was it Aiden?

19 A. I--if I could see my report I could tell you exactly what his
20 name is.

21 MR. HUBBELL: I think it was--just for the record, I
22 think we're talking about Aiden Hauxwell.

23 MR. WILLIAMS: And I--they're right.

24 MR. HUBBELL: I don't know that it's a rule of
25 contention.

1 MR. WILLIAMS: NO, not at all and I'm not trying to
2 make any--

3 DIRECT EXAMINATION

4 BY MR. WILLIAMS:

5 Q. Did you record that interview?

6 A. No.

7 Q. With Aiden?

8 A. No.

9 Q. Okay. Fair enough. Didn't Lissa tell you in the interview
10 you had with her that she legitimately just didn't know what
11 happened?

12 A. Prior to her waking up, she had mentioned that.

13 Q. And you went into a line of questioning with her during that
14 interview about where her pants would have been or could have
15 been, correct?

16 A. Yes.

17 Q. And even after you guys went back and forth on whether they
18 were below the knees or above the knees, she made a comment to
19 you, "I just--I legitimately just don't know happened." Isn't
20 that true?

21 A. I'd like to actually, you know, review it to see if that's the
22 exact words if you're asking me to quote what the--what that
23 was. I don't know right now if that's her exact words.

24 Q. Okay. Fair enough. Okay. I'm quoting her from the recorded
25 interview but you're just saying you don't recall right now if

1 that was her exact words?

2 A. I know it was very similar to that. I would like to listen to
3 the interview to make sure.

4 Q. I'm not holding you to it.

5 A. Okay.

6 Q. I guess what I'm asking you is she was really confused,
7 meaning she didn't really know what happened that night. I'm
8 not saying something didn't happen to her but her statement to
9 her was she really just didn't know what happened?

10 MR. HUBBELL: I don't know if Mr. Williams wants to-

11 -
12 THE COURT: Yes.

13 MR. HUBBELL: --take the stand and testify, your
14 Honor, but this--

15 THE COURT: Yes.

16 MR. HUBBELL: --is not in the form of a question. I
17 think the officer has already said she was confused when she
18 woke up and she wasn't sure what had happened while she's
19 sleeping and she wakes up and we've already heard her
20 testimony.

21 This guy's on top of her and then he follows her out
22 and says, "Gee, I'm sorry. I screwed up." I mean, she was
23 asleep. That's the element of helpless. She was physically
24 helpless. She was penetrated digitally and--

25 MR. WILLIAMS: Objection, your Honor.

1 MR. HUBBELL: --helpless. That's the elements.

2 THE COURT: Let Mr. Hubbell finish please.

3 MR. WILLIAMS: But there's no testimony to a digital
4 penetration. None. Zero.

5 THE COURT: Detective Kerr said it.

6 MR. HUBBELL: Detective Kerr.

7 THE COURT: Detective Kerr, I heard Detective Kerr.
8 I'm--look, I'm giving you a lot of leeway, okay?

9 MR. WILLIAMS: Fair enough.

10 THE COURT: I can bind over on my own once I've
11 determined probable cause, okay, without you calling any more
12 witnesses or on Mr. Hubbell's motion. I'm allowed to do that.
13 So I'm giving you some leeway here. Ask relevant questions.
14 Don't testify yourself please.

15 DIRECT EXAMINATION

16 BY MR. WILLIAMS:

17 Q. Did you tell Detective Kerr that Lissa told you Richie's penis
18 was inside her?

19 A. I told him about the--wait. Repeat that again.

20 Q. Did you tell Detective Kerr that Richie's--that Lissa told you
21 that his penis was inside her?

22 A. Yes.

23 Q. When did you tell him that?

24 A. I don't know.

25 Q. When did she tell you that?

1 A. She had told me that during that--during that day.

2 Q. During the ride to Munson?

3 A. I don't know exactly.

4 Q. Well, did she ever tell you her penis was inside--his penis
5 was inside her during your recorded interview?

6 A. I don't recall if it was during the interview or during the
7 ride.

8 Q. Okay. What did she tell you? What did she tell you? I'm not
9 asking you--what do you recall her telling you? I've watched
10 the interview and it's certainly not on there so I'm asking
11 you when did she tell you this?

12 A. When did she tell me this?

13 MR. HUBBELL: Your Honor, at this point I'm going to
14 object and move for bind over.

15 THE COURT: Well, I don't think your question is
16 clear. I mean, I don't even understand it Mr. Williams.

17 MR. WILLIAMS: Well--

18 THE COURT: I'm going to let Mr. Williams proceed
19 but please ask clear questions, okay?

20 MR. WILLIAMS: Fair enough. Do you--

21 THE COURT: That this officer and I can understand.

22 DIRECT EXAMINATION

23 BY MR. WILLIAMS:

24 Q. Officer Cadieux, are you 100% certain that she told you that
25 Richie's penis was inside her?

1 A. Yes.

2 Q. Do you know where you were and where she was when she told you
3 that?

4 A. No.

5 Q. Okay. Did she have a difficult time remembering where her
6 pants were as far as how far up or down they were when you
7 talked to her?

8 A. I can tell you that that event happened after she realized
9 what Richie was doing and she started crying in the interview
10 room and that is when she started shaking, her voice started
11 getting crackly, and that is when the discussion about the
12 pants occurred and it was also--we talked about it prior to
13 that when she wasn't all flustered up and crying.

14 Q. Okay. You took her to Munson, is that correct?

15 A. Yes.

16 Q. And they performed a rape kit on her?

17 A. Yes.

18 Q. Do you know what the results of that are?

19 A. The test was--the SANE kit was performed. I had sent it to
20 the crime lab.

21 Q. Okay. And we don't have those results back yet?

22 A. I do not.

23 MR. WILLIAMS: Okay. Thank you Officer Cadieux for
24 answering those questions. I have no further questions for
25 you.

1 MR. HUBBELL: Just one question for me.

2 CROSS-EXAMINATION

3 BY MR. HUBBELL:

4 Q. Deputy Cadieux, 6707 West Beeman Road, Empire, Michigan. Are
5 you familiar with that address?

6 A. Yes.

7 Q. What county is that address in?

8 A. Leelanau.

9 MR. HUBBELL: Thank you. No more questions of this
10 deputy.

11 THE COURT: Okay. Thank you. You can step down.

12 (At 12:23 p.m., witness excused)

13 THE COURT: Any further witnesses, Mr. Williams?

14 MR. WILLIAMS: Your Honor, I'd like to call Jake
15 Dolan to the stand please.

16 THE COURT: Who?

17 MR. WILLIAMS: Jake Dolan.

18 MR. HUBBELL: I have an idea what this testimony is
19 going to be, your Honor. It has--it's so far out there, it's
20 not--this is becoming--

21 THE COURT: Yes. Why don't you make an offer of
22 proof as to what this witness would say?

23 MR. WILLIAMS: This witness has dated Lissa for the
24 last two years and is very familiar with and can testify to
25 where there have been multiple times in their relationship

1 where he and her were having consensual sex and very active,
2 and in the midst of it, as if she would wake up while she was
3 already awake and they both would be very confused of what
4 just happened.

5 THE COURT: Okay. I don't see how that's helpful or
6 relevant to my decision on bind over. That's more of a trial
7 issue. This is not a trial. This is simply a probable cause
8 hearing.

9 So, you know, again I can bind over once I feel
10 there's been adequate probable cause shown and prohibit you
11 from calling any more witnesses.

12 I mean, I respect what you're trying to do and
13 you're vigorously defending your client but again this is a
14 probable cause hearing. There's been a lot of questions that
15 haven't been relevant that I've allowed you to get into so--

16 MR. WILLIAMS: Well, that's fine your Honor. I'm
17 not going to argue with the Court any further. It is a CSC
18 case. I would preserve that objection.

19 I think that when someone's facing those types of
20 charges, a probable cause hearing is supposed to be extensive
21 and wide and defense is allowed to lay whatever foundation
22 defense thinks is adequate to present their defense.

23 But I disagree with the Court but I will
24 respectfully disagree and just preserve his right through
25 objection and I--

1 THE COURT: Okay.

2 MR. WILLIAMS: --will leave it at that then. Thank
3 you.

4 THE COURT: Look, I mean I appreciate your offer of
5 proof. It's not relevant as to the ultimate issue here and
6 it's not going to help me in making a probable cause
7 determination. Now at trial, that may be a relevant witness
8 but this isn't a trial. So Mr. Hubbell?

9 MR. HUBBELL: Thank you. Assuming there aren't any
10 more proposed witnesses, your Honor, I'd ask that the
11 defendant be bound over on the charges. I think there is
12 sufficient evidence presented to support that bind over.

13 We heard testimony about digital penetration and
14 also penile penetration. And you heard testimony that the
15 victim was physically helpless under the statute and that she
16 was asleep at the time.

17 And I think that cons--and the defendant knew or
18 should have reasonably known that she was in that condition
19 and therefore, at least for the purposes of the preliminary
20 examination, I think evidence has been presented which would
21 support the bind over.

22 THE COURT: Okay. Thank you. Mr. Williams?

23 MR. WILLIAMS: Yes, your Honor. I agree with Mr.
24 Hubbell except for one count for the bind over. Where's the
25 second count? The victim testified and was very clear that

1 she felt pressure. Pressure, one time. There's zero
2 testimony from the victim of digital or multiple penetrations.

3 I wholeheartedly object to a bind over on two counts
4 and I am quite certain that the record does not support it so
5 I agree that one count is probable and necessary for this
6 proceeding, but there is not enough evidence to support two
7 counts.

8 THE COURT: Mr.--

9 MR. HUBBELL: Judge, I respectfully disagree. I
10 think the digital penetration occurred while the victim was
11 still in a deep sleep and that was admitted to by the
12 defendant to Detective Kerr.

13 Once he started to climb on top of her and attempted
14 to, and did in fact, put his penis in her vagina that--at
15 which time, that is when she woke up. The other acts of
16 penetration occurred while she was asleep.

17 MR. WILLIAMS: Your Honor, Detective Kerr--that's
18 not accurate. First of all, the victim is the one who said
19 that she felt pressure in her vagina and Detective Kerr
20 testified that Mr. Richie [sic.] couldn't--wasn't erect enough
21 to penetrate her with his penis.

22 So no matter how you slice it and dice it, we have
23 one count. Whether it be digitally or penilely [sic.], or I
24 don't if that's the right word.

25 THE COURT: Well, I very clearly heard Detective

1 Kerr say that the defendant told him that he put his finger in
2 her first. She woke up and then he put his penis in her.
3 There was some reference to small and loss of erection or what
4 have you, but he did say that the defendant told him that he
5 did his finger in her, she woke up, and then he put his penis
6 in her.

7 She said that she felt pressure in her vagina and,
8 while upset, told you that she knows that he did put his--at
9 least his penis in her.

10 So there is probable cause, I think on both counts,
11 both digital and penile penetration from both the witness and
12 Detective Kerr and from what Detective Cadieux testified with
13 regard to his interview with her. So I'll bind over on both
14 counts, okay?

15 MR. WILLIAMS: Fair enough.

16 THE COURT: Would you like to proceed to
17 arraignment?

18 MR. WILLIAMS: Please, your Honor.

19 THE COURT: Okay. Do you waive a reading of the
20 charges?

21 MR. WILLIAMS: We do.

22 THE COURT: Okay. Standing mute?

23 MR. WILLIAMS: Yes, your Honor.

24 THE COURT: Okay. I'll enter not guilty pleas.

25 MR. HUBBELL: Judge, there's an order there for DNA

1 testing.

2 THE COURT: Yes, and I see that. I'll sign that.
3 Here's the pretrial form. Okay. The bond is continued.

4 MR. HUBBELL: Your Honor, as far as the bond's
5 concerned, my victim in this case has been contacted by Jake
6 Dolan and I've already brought this up to with Mr. Williams.

7 Obviously Mr. Dolan is not subject to the bond but I
8 would ask perhaps that the defendant advise friends that he
9 should not contact her or have other people contact her.

10 Jake Dolan wrote her and said, "You really need to
11 drop the charges Lissa. It's stupid." You know, via
12 Facebook, how everybody communicates.

13 I'm not saying the defendant had her--him do that
14 but I just want it to stop. So anybody--I know the bond is
15 not to have direct or indirect contact but I consider that
16 indirect although I'm not attributing it to the defendant. I
17 just want--

18 THE COURT: You just want to make a--

19 MR. HUBBELL: Record.

20 THE COURT: --record and a warning of it.

21 MR. HUBBELL: Thank you. And I talked to Mr.
22 Williams about it and he assured me he was going to put a stop
23 to it too, which I appreciate it.

24 THE COURT: Okay.

25 MR. HUBBELL: And I understand he will do that.

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THE COURT: I appreciate that.

MR. WILLIAMS: And that's correct, and just for the record, Mr. Rich [sic.] knows he cannot have direct or indirect contact.

Mr. Dolan is her ex-boyfriend. They have their own separate issues and what not but I will speak with him. We certainly don't want to make this situation any worse so I-- defense will do their very best as well in relaying that.

THE COURT: Okay. I appreciate that. Thank you, Mr. Williams. Thank you, Mr. Hubbell.

(At 12:31 p.m., proceedings concluded)

* * * *

STATE OF MICHIGAN)
)
COUNTY OF LEELANAU)

I certify that this transcript, consisting of 70 pages, is a complete, true, and correct transcript of the Preliminary Examination and testimony taken in this case on July 1, 2011.

July 11, 2011

Date



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