

## TRANSCRIPT OF PROCEEDINGS

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Ref. 43SP0485123

### IN THE CROWN COURT AT OXFORD

St Aldate's  
Oxford

Before HIS HONOUR JUDGE DALY

**R E X**

**- v -**

**KHALIZ ALI ALSHIMERY**

**MR E LUCAS appeared on behalf of the Prosecution**

**MR P DU FEU appeared on behalf of the Defendant**

**WHOLE HEARING**  
**16<sup>th</sup> MAY 2024**

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**STATUTORY ANONYMITY APPLIES**

**A** JUDGE DALY: Mr Lucas.

MR LUCAS: Yes, your Honour.

JUDGE DALY: When you're taking the expert through the evidence that she's going to give, obviously there will be technical terminology, and if she could take it slowly I'd be

**B** obliged. Not only because I've got to write it all down, but also because the interpreter has to interpret it.

MR LUCAS: Yes, your Honour, thank you, I'm aware of it.

JUDGE DALY: Thank you. Yes, can we have the jury, please.

(In the presence of the jury)

**C** JUDGE DALY: Sorry for the delay, ladies and gentlemen, I had a few matters to deal with, which took longer than I expected. Now, Mr Lucas, we're going to hear from the forensic scientist.

MR LUCAS: Your Honour, yes, Claire Reynolds with a bit of luck should be on a video link. No.

**D** JUDGE DALY: No.

MR LUCAS: Perhaps we should have tested this link before the jury came in. You Honour, I didn't realise this hadn't been tested before the jury came in, so rather than the jury messing around while this goes on, may be they should just go away for a couple of minutes.

JUDGE DALY: Ladies and gentlemen, could you perhaps leave us.

**E** MR LUCAS: Sorry.

(Short adjournment)

JUDGE DALY: Can we have the jury, please.

(In the presence of the jury)

**F** JUDGE DALY: Ladies and gentlemen, sorry for the delay, I think it's all sorted out now. You're going to hear from this witness, Claire Reynolds, who is an expert witness. She is a forensic scientist. As you can see, she's giving her evidence on the screen. It's a bit different to the evidence that you've already seen on the screen, this is not part of what we call special measures. It's merely done for the convenience of the witness, so that she doesn't have to

**G** come all the way into court from where she is, and she can give evidence over the link, and the evidence that she gives is just the same as if she was in the witness box here. Mr Lucas.

MR LUCAS: Your Honour, thank you very much indeed. Good morning, Miss Reynolds.

THE WITNESS: Good morning.

MR LUCAS: I think, I hope you can hear me loud and clearly?

**H** THE WITNESS: I can, yes.

**A** MR LUCAS: Well, we haven't actually met. My name is Edward Lucas and I prosecute this case.

THE WITNESS: Hello.

MR LUCAS: Hello. Miss Reynolds---

**B** THE WITNESS: I've got one camera, oh, there we go, I can see you now.

MR LUCAS: Brilliant. May I call you Claire, or would you like to be called Miss Reynolds?

THE WITNESS: Either is absolutely fine.

MR LUCAS: Claire, it's right, isn't it, that you are a forensic scientist?

THE WITNESS: I am, yes.

**C** MR LUCAS: And have been since 2007?

THE WITNESS: That's correct, yes.

MR DU FEU: She needs to take the oath.

MR LUCAS: Pardon?

MR DU FEU: She needs to affirm.

**D** MR LUCAS: Oh, she hasn't affirmed yet.

COURT CLERK: No, she hasn't.

MR LUCAS: My apologies, I didn't realise.

CLAIRE REYNOLDS, Affirmed

Examined in-chief by MR LUCAS

**E** Q. Thank you very much, and I'll continue. Well, we've established that you're called Claire Reynolds, and that you're a forensic scientist, and that you have been since 2007?

A. Yes, that's correct.

Q. And one of your specialities is the analysis of body fluids and the interpretation of

**F** DNA results?

A. That's correct, yes.

Q. Thank you very much indeed. In relation to this case, you received a number of exhibits which are called, well, or samples from the police, which included high vaginal swabs taken from [Person A]?

**G** A. Yes, that's correct. Just so that there are future questions, may I refer to my notes? Is that OK?

Q. Of course.

JUDGE DALY: Yes, yes.

MR LUCAS: There was also, there was also swabs taken from the penis of the defendant in

**H** this case?

**A** A. Yes, that's correct.

Q. There were DNA samples taken from both [Person A] and this defendant?

A. Yes, I believe I received a copy of the profile. Yes, I received a copy of the profile from the defendant and physical reference DNA sample from [Person A3].

**B** Q. Thank you very much indeed. We know [Person A3], and I'm just going to deal with this quite shortly, there was a DNA analysis done of material found on the neck of [Person A3]?

A. Yes, that's correct.

Q. And that showed the DNA of this defendant?

**C** A. I'll just get to the relevant, there was a DNA profile which matched the reference DNA profile of the defendant, yes, that's correct.

Q. Well, I'm not going to trouble you with that, [Person A3], because the defendant accepts that he kissed the defendant, the complainant's neck.

A. Yes, absolutely fine.

**D** Q. What I want to ask you is what was found on the high vaginal, the high vaginal swabs of [Person A3].

A. OK.

Q. And we know, because you've put it in your report, that semen from this defendant was found on the high vaginal swabs of [Person A3]?

**E** A. Actually from the (inaudible) just for completeness we examined the vulva and perineum swabs, the low vaginal swabs, the high vaginal swabs, the endocervical swabs and the perianal swab.

Q. Yes.

**F** A. And only, semen was found on all of them, but the samples that we submitted for DNA profiling, although were actually from the low vaginal swab and the endocervical swabs. So we didn't actually conduct DNA profiling on the high vaginal swab specifically.

Q. I see, but semen from this defendant was found on those swabs?

A. We detected a complete profile which, just let me check---

**G** JUDGE DALY: Sorry, can you repeat that, please.

A. So I was clarifying, we, essentially we can never say categorically that semen has originated from a particular person, unless that is accepted by the court, because it's possible for two people to share a DNA profile by chance---

MR LUCAS: Yes.

**H** A. ---so we always provide a (inaudible) statistical evaluation. So---

**A** Q. And what's the chance in this case that---

JUDGE DALY: Wait a minute, wait a minute.

MR LUCAS: Sorry, your Honour.

JUDGE DALY: You found a complete profile of the defendant, is that right?

**B** A. Yes, a complete profile which matched the relevant DNA profile of the defendant was obtained from both of the samples that we submitted for DNA profiling, so from the low vaginal and the endocervical swabs.

Q. Sorry, you found a complete profile of the defendant's DNA from which swabs, please?

**C** A. A complete profile matching the defendant's DNA profile was obtained from the low vaginal swabs and the endocervical swabs.

Q. Low vaginal and endocervical?

A. Yes, and that, those findings are as I would expect if that semen that we detected had originated from the defendant. And then I then went on to conduct statistical evaluation of

**D** the finding in relation to the endocervical swabs specifically, and---

Q. Can I just, sorry---

A. Sorry.

Q. ---I just want to be clear about this. The DNA profile that matched the defendant's DNA profile, which were found in the low vaginal and endocervical swabs, were they from

**E** semen?

A. In my opinion, yes, that DNA had originated from semen. That's sort of an opinion that we have to provide.

Q. Yes. Now, you were going to tell us about statistical probability of that.

**F** A. Yes.

MR LUCAS: What's the - OK, I won't say anything.

A. So in order to determine the evidential significance of the finding from the endocervical swabs specifically, I considered the following alternative proposition. First being that the semen detected originated from Mr Alshimery, the second being that the semen

**G** did not originate from him, but instead originated from someone other than and unrelated to him, and it is estimated that this result is in the order of one billion, which is a thousand million, times more likely the former was true rather than the latter. So if the semen detected had indeed originated from Mr Alshimery rather than if it had not, but had instead originated from someone other than and unrelated to him.

**H** Q. All right.

**A**

A. And then I have done---

Q. So just to be clear, one billion times more likely?

A. Yes, it's estimated that this is in the order of one billion, which is a thousand million, times more likely if the semen had originated from Mr Alshimery rather than if it had not.

**B**

Q. Right.

JUDGE DALY: Again, I'm sorry to interrupt but I just want to be clear. That was from the endocervical swab which is the highest swab as far as the vaginal tract is concerned, because it's right, just below the entrance to the womb, is that correct?

A. That's correct, yes. It's the, yes, the highest point in the vagina.

**C**

MR LUCAS: I was just about to ask that, your Honour, thank you very much indeed.

JUDGE DALY: Sorry.

MR LUCAS: So semen detected from the lower vaginal swabs and the one you've just referred to?

A. Yes.

**D**

Q. Right, let me just ask you this straight question, Miss Reynolds, or Claire, do you conclude that the defendant ejaculated?

A. Let me just again, it's not really a fact, this is more of an opinion, but, well, it is an opinion, so in my opinion the quantity and distribution of semen detected on the vaginal swab can be explained if Mr Alshimery has had penile vaginal intercourse with [Person A3], and if he had ejaculated in her vagina (inaudible).

**E**

Q. So one interpretation therefore is that he ejaculated inside her vagina?

A. Yes, in my opinion that could explain the quantity and distribution of semen that we observed on the vaginal swabs taken from her.

**F**

Q. Is there any other way that semen could have got into those places?

A. So in considering the, what we do as forensic scientists is we, we conduct the examinations on the items and then our role, as an expert witness, is to give our opinion on the significance of those findings in relation to two, usually two alternative what we call propositions, or hypotheses, and so, and usually the first is based on the version of events provided by the complainant in the case, and the other is based on the version of events provided by the defendant in the case.

**G**

So in relation to the semen detected on the vaginal swabs taken from [Person A] I considered the following two propositions. So the first was that Mr Alshimery had penetrated [Person A]'s vagina with his penis and his fingers, as she had alleged, and the second, which was based on Mr Alshimery's defence case statement, which I've viewed, was

**H**

**A** that he did not penetrate her vagina with his penis but did touch her vagina, although he was unsure as to where his finger or fingers had penetrated her vagina or not. And prior to this he had ejaculated into his underwear and had also urinated. So they were, so that would be an alternative proposition that I was considering. So we've discussed that in my opinion the

**B** quantity and distribution of semen detected on the vaginal swab could be explained essentially if the first proposition was true, so if Mr Alshimery had had vaginal intercourse with [Person A3] and if he had ejaculated into her vagina, but it's important to note that from the finding it's not possible to (inaudible) that whether Mr Alshimery had also penetrated [Person A3]'s vagina with his fingers, and then - sorry, this is a very long winded answer to a

**C** very straight forward question, I do appreciate that. So the second proposition includes a potential method of introduction of semen into [Person A3]'s vagina via the possible digital penetration, but I had to make some assumptions to allow me to evaluate the findings.

So in his, he's given an explanation that could account for the presence of a significant quantity of semen on his hands or fingers, via of his accepted touching of [Person A3]'s vagina, and his case that he ejaculated in underwear, and he's also urinated, but it's not quite clear in his account whether he had urinated prior to or after the ejaculation. But if it was afterwards, then he could have touched his semen stained underwear, and/or penis with his hands whilst urinating, and so whilst it is not inevitable that a significant amount of semen would transfer to his hands from such an action, I also don't know what, any actions he may have had between that transfer, that potential transfer and the touching of [Person A3]'s vaginal area in the way it was meant to have occurred in the quantity (inaudible). But I have assumed, for the purposes of interpretation, that he did have a significant quantity of semen on his hand, his fingers, at the time of the accepted touching of [Person A3]'s vagina, and

**E** I've also (inaudible)---

**F**

JUDGE DALY: Sorry, sorry, could you just pause a moment. Could you just pause a moment. Could you just pause a moment, please. You are considering whether or not he could have touched his semen stained underwear because he claims to have ejaculated into his underwear, then the semen---

**G** A. Yes.

Q. ---transfer to his hands, if, for example, he urinated, and from his hands then transferred into the vagina of [Person A3], is that what you're considering?

A. Yes, yes, that's correct.

Q. And your---

**H** A. So that's---

**A** Q. And your conclusions?

A. So I said, so just to fully complete what I was just saying---

Q. Yes.

A. ---so I have to assume that he did also actually digitally penetrate [Person A3]'s

**B** vagina. So basically I have assumed the circumstances that would be the fairest to Mr Alshimery, essentially maximising the chances of transfer of semen using his account. And so the question of my conclusions, in my opinion, considering all of the above, if Mr Alshimery's account was true, in the absence of penile vaginal intercourse with internal ejaculation, I would have a low expectation of detecting the quantity of semen detected in the

**C** distribution observed, and cutting straight to my final conclusion, and in my opinion the findings from the vaginal swabs provide strong support for the first proposition rather than the second.

MR LUCAS: Well, let me just, let me just deal with that. You conclude, your Honour, this is at page 13, so the jury can hear this, it's quite complicated, you conclude this---

**D** A. Yes, I---

Q. You considered the following alternative propositions. One, that the defendant penetrated [Person A3], [Person A3]'s vagina with his penis, and his fingers, as alleged, or, two, he did not penetrate [Person A]'s vagina with his penis, but did touch her vagina. You conclude "In my opinion the findings from the vaginal swabs provide strong support for the

**E** first proposition". That is---

A. (Inaudible).

Q. That is that he penetrated her vagina with his penis and his fingers as alleged.

A. Yes, the (inaudible) from [Person A2]'s dress, that it's just in there because it wasn't

**F** part of the account, yes, and the second proposition does include the ejaculation into the underwear and also urinating, which is quite (inaudible).

Q. Right, so---

A. But yes.

Q. So let's draw this to a conclusion on the basis of what you said, Miss Reynolds. First

**G** of all, semen from this defendant was found high up in the vaginal or the cervical area of [Person A3]?

A. It is (inaudible) that the semen has originated from Mr Alshimery, and that's fine, otherwise I need to refer to my statistical evaluation.

Q. Well---

**H** A. Semen attributed to Mr Alshimery was detected on the endocervical swabs.

**A**

Q. So sperm, sperm from him was found high up in her vagina, low down in her vagina, and your conclusion is that it is more, that there is strong support for the proposition that he penetrated her vagina with his penis and his fingers, as alleged?

**B**

A. Yes, when compared with the alternative status, that he did not, did touch her vagina, although he was unsure as to whether his fingers had penetrated her vagina or not, and with the addition of the ejaculation into the underwear and the urination.

Q. Yes.

A. Sorry, all of the details are quite important---

Q. Yes.

**C**

A. ---in forming an opinion.

Q. Well, thank you, I've got no further questions, thank you.

MR DU FEU: Would your Honour allow me to stay seated so I'm near the microphone?

JUDGE DALY: Yes, of course.

Cross-examined by MR DU FEU

**D**

Q. Miss Reynolds, can you now see and hear me as well?

A. I can, yes.

Q. Thank you very much. Just to perhaps go to your conclusions, would it be fair to say that another way of expressing the position is that you can't rule out the possibility that the second proposition might explain the findings?

**E**

A. So when, the way that we evaluate findings in, in my role is that later I've used the term 'strong support'. Now that's on a scale, so a (inaudible) scale that goes up, limited support, so limited, moderate, moderately strong, strong, very strong, and extremely strong. So that's the range of (inaudible). And, yes, you're correct that there is a possibility that the findings could be explained by his account, but that's what this interpretation is, so whilst it is possible but still where the finding fits on the scale. So all of the certainty is that taken into consideration in providing my, my evaluation.

**F**

Q. Perhaps I could put it another way. If you could rule out that proposition you'd be able to go not only to very strong, in the scale above strong, but to extremely strong, would you not, if you could rule it out?

**G**

A. If it could be completely ruled out then, yes, the findings would provide a higher level of support, that's correct, but it's also worth noting that a lot of assumptions have been made to essentially maximise the possibility that you're discussing under Mr Alshimery's account, that if I were to be provided with further information may allow a different interpretation to the findings. But, yes.

**H**

**A**

Q. Well---

A. I think that answer's your question.

Q. Thank you, I'll go through some of those findings now, if I may, that we haven't covered. [REDACTED]

**B**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**C**

[REDACTED]

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**H**

[REDACTED].

**A**

[REDACTED]

**B**

[REDACTED]

**C**

[REDACTED]

**D**

[REDACTED]

**E**

[REDACTED]

**F**

[REDACTED]

**G**

[REDACTED]

**H**

Q. Let me ask you this then. You've already discussed the penile shaft and glands wet and dry swabs taken from the defendant, yes?

**A**

[REDACTED]

**B**

[REDACTED]

**C**

[REDACTED]

**D**

[REDACTED]

**E**

Q. But what you were able to conclude from the penile swabs from the defendant was that you found no DNA attributable to [Person A], is that right?

A. I'll double check. Yes, that is correct.

Q. And in fairness, looking at your explanation for that, you say that this could be explained if there was no penile penetration of [Person A3]'s vagina?

**F**

A. That's correct.

Q. But you go on to say that it's also possible that such penetration had occurred but that effectively---

A. Yes.

Q. ---it had been lost prior to the taking of samples?

**G**

A. Yes.

Q. When I say 'lost', washing, transfer to underwear, that sort of thing?

A. Yes, the swabs were taken approximately 24 hours after the alleged intercourse, by the time period such material could be lost or otherwise removed.

**H**

Q. In cases like this you will routinely examine items of clothing, in particular underwear, won't you?

**A**

A. Yes, (inaudible) was provided to us for examination, yes.

Q. So, for example, if you had been able to examine the underwear of [Person A3] you could perhaps have found out more about what had been shed into the underwear, is that fair?

A. Yes, that's correct.

**B**

Q. If you'd been able to examine the underwear of the defendant you would have been able to consider his account of ejaculating into his pants, is that fair?

A. Yes, that is fair. I did consider that when converting my interpretation of the findings, and I determined that so because we can never be entirely sure that the underwear provided was that worn at the time, so if we hadn't detected a significant quantity of semen attributable to the defendant himself, then that's essentially what I was assuming had

**C**

occurred anyway, and that, that gives, as you say, that would, could be explained if he ejaculated into his underwear as he stated, or there may have been other potential

explanations. But if we detected no semen attributable to him, or very little, we still would have had to consider that may be that wasn't the pair of underwear worn at the time, and that there still could have been a significant quantity of semen attributable to him that could have transferred to hands and subsequently to the vagina of [Person A3]. So that's why that particular underwear wasn't examined.

**D**

Q. Thank you, and finally returning to the swabs from the neck, if I may.

**E**

A. Yes.

Q. Saliva attributable to the defendant was found, is that fair?

A. So can I just for one second go back to the---

Q. Yes, of course.

A. --- (inaudible) of the complainant, [Person A3]. If we do detect significant quantities of semen on vaginal swabs we would not always routinely go on to examine the underwear, because essentially the underwear (inaudible) in cases when, where it's not found, for example, it was (inaudible) and longer after the alleged incident, meaning that any semen could have been lost from the vagina that may still have been retained on the underwear. Sorry, I just wanted to clarify that.

**F**

**G**

Q. Thank you.

A. Sorry, back to the neck swabs.

Q. Yes. Page 9 of 16.

A. Yes, thank you. Yes, again this is an opinion as to whether the DNA detected originated from saliva, but based on the level of DNA detected and the test that we conduct it

**H**

**A**

can indicate the presence of saliva, in my opinion the DNA detected which matched the reference profile of Mr Alshimery had originated from saliva.

Q. And in addition, on the neck swabs you found a trace amount of semen, is that right?

A. That is correct, yes.

**B**

Q. Yes, thank you very much. I've no more questions.

A. Thank you.

MR LUCAS: Your Honour, there's nothing further from me, has your Honour got any questions of this witness?

**C**

JUDGE DALY: You found a trace amount of semen on the neck swabs, was it possible to determine whether there was a DNA profile which matched anybody?

A. So we did conduct DNA profiling on, on the fraction of the sample that contained the trace amount of semen, and we detected a low level mixed result indicating the presence of DNA for at least two individuals. The reference profile of Mr Alshimery was fully represented, such that in my opinion he could fit as a potential contributor of the majority of the DNA detected within it, but in my opinion when we examine items for semen we effectively try and separate any sperm cells or spermatozoa from any other cellular material. So when we profile the separation isn't always entirely efficient, so given the complete profile that we obtained from the seminal fraction, which is the saliva considerations we were discussing earlier, there potentially could have been cross over from that result into this result from the seminal fraction. So in my opinion it wasn't possible to determine whether that DNA potentially attributable to Mr Alshimery had originated from semen or from some other body fluid or source of cellular material such as saliva. So in order to answer your question, it wasn't possible to specifically attribute that semen to Mr Alshimery.

**F**

Q| [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**G**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**H**

**A**

[REDACTED]

**B**

[REDACTED]

**C**

[REDACTED]

**D**

[REDACTED]

**E**

[REDACTED]

**F**

[REDACTED]

Q. Right. Any questions from that, please?

MR DU FEU: No, thank you, your Honour.

**G**

MR LUCAS: No thank you, your Honour.

JUDGE DALY: Yes, well, thank you very much for giving your evidence. It's been a little bit difficult and I apologise for that, Miss Reynolds, but thank you for your evidence and you're free to carry on and work.

THE WITNESS: Thank you very much.

**H**

COURT CLERK: Thank you, Miss Reynolds.

**A** JUDGE DALY: Yes, Mr Lucas.

MR LUCAS: That's the case, your Honour.

JUDGE DALY: Thank you very much.

MR DU FEU: As long as nobody needs a break, I'm in a position to call the defendant to

**B** give evidence, your Honour. Sorry, that's my fault, your Honour. Your Honour's usher checked with me, and I gave her a wrong timescale, not unusual for a barrister.

JUDGE DALY: What are we waiting for?

MR DU FEU: We're just waiting for more support in court.

JUDGE DALY: Oh, right. The clerk is going to read it, if you then translate into Arabic, he

**C** can then give it in Arabic, and then it can be re-translated into English.

KHALIZ ALI ALSHIMERY, Affirmed

Examined in-chief by MR DU FEU

JUDGE DALY: Now, it's being translated, and you are going to be giving effectively the

**D** answers that he gives translated into English. Now, I doubt very much if the jury speaks much Arabic, so they really want to hear what you have to say in English, translating what he has to say.

THE INTERPRETER: Sure.

JUDGE DALY: So please use the microphone.

THE INTERPRETER: Sure.

**E** JUDGE DALY: Yes, Mr Du Feu.

MR DU FEU: Could you give your full name, please?

A. Khaliz Ali Alshimery.

Q. Which country were you born in?

**F** A. Kuwait.

Q. How long ago did you come to this country?

A. 2022.

Q. Are you seeking asylum in this country?

A. Yes.

**G** Q. How did you come into this country?

A. By sea.

Q. In a boat crossing from France?

A. Yes.

Q. I want to ask you a little bit about your background, please. In this country do you

**H** have any convictions at all?

**A**

A. Never.

Q. In Kuwait were you ever arrested or imprisoned?

A. No.

Q. Were you in trouble with the police in Kuwait for anything?

**B**

A. No.

Q. What is your background in Kuwait, how would you describe yourself?

A. Bidoon.

THE INTERPRETER: Which is, if I can say, it's mean without.

MR DU FEU: Bidoon. Is that where we get the word 'Bedouin'?

**C**

A. No, Bidoon does mean without papers.

Q. So you're in Kuwait, and you're Bidoon, is that a tribe of some sort?

A. No, Bidoon is not a tribe.

Q. When you say it means without, what problems did you have in Kuwait?

A. We are deprived of all rights that any other human being has.

**D**

Q. Were you allowed to work?

A. No.

Q. Were you given any formal papers like a birth certificate?

A. No.

Q. Were you allowed to go to school?

**E**

A. No.

Q. In Kuwait do you have a family?

A. Yes.

Q. Do you have a wife?

**F**

A. Yes.

Q. Do you have any children?

A. No.

Q. Why did you come to Britain?

A. In order for me to claim asylum, bring my family here, in order to correct my

**G** situation, have formal papers.

Q. So you're here and at the time that we're dealing with were you living in a hotel in Oxford?

A. No.

Q. Where were you living?

**H**

A. London.

- A**
- Q. Why were you in Oxford?
- A. I was after just finishing finalising some papers here, never said I wanted to go back to London.
- Q. Did you hear that the police wanted to speak to you?
- B**
- A. My friends told me so.
- Q. And in response to that what did you do?
- A. Direct I went to police.
- Q. Do you remember where you went to the police, where were you? Which police station did you go to?
- C**
- A. The one which is here.
- Q. And how long did you wait at the police station?
- A. I'm not sure exactly about the time but it has took me about smoking two cigarettes.
- Q. And then we've heard that you walked towards a police sergeant, did you see a policeman and go towards him?
- D**
- A. Yes, I did see some police officers coming closer to the police station, so when I saw them I went there, I spoke to them.
- Q. And what did you say?
- A. I think I'm wanted, the police are looking for me.
- E**
- Q. Were you then arrested?
- A. I did surrender myself.
- Q. You were then interviewed at a police station, weren't you?
- A. Yes.
- Q. Where you answered questions?
- F**
- A. Yes, I did.
- Q. And you were asked to provide samples, did you provide samples?
- A. Yes, I did.
- Q. We've seen the answers that you gave to the police, were you telling the truth when you spoke to the police?
- G**
- A. Yes, I did say the truth, but also I was so nervous and I was very surprised about the whole situation.
- Q. Now I want to go back to when you met [Person A] on the High Street in Oxford, please. Describe to us, please, what you remember of first meeting her?
- A. I was going towards Cowley and we just met up and introduced ourselves.
- H**
- Q. When you say met up and introduced ourselves, can you tell us more about that?

- A**
- A. OK, it was a narrow road, so we said hi to each other and we been walking closer to each other, enough that our hands were just around each other.
- Q. What were you able to talk about, how much could you talk to her, please?
- A. Her name, which country are from, where are you living.
- B**
- Q. So you could understand if she asked you questions, is that right?
- A. I was able to answer a few questions she asked me, like she ask me where I'm from, so I said I'm from Kuwait.
- Q. Do you remember anything she said to you?
- A. I did ask about her name and she said that Kuwait they have a lot of money.
- C**
- Q. With your English, are you able to understand more than you can speak, or, or is it roughly the same?
- A. No, I have difficulty in both about speaking and understanding, and also have problem with the pronunciation, because I had suffered kind of an incident or accident before that make my articulation or saying things a bit difficult.
- D**
- Q. Did she tell you how old she was?
- A. 25.
- Q. When you met and you started to have your arms around each other, where did you then go?
- E**
- A. We went up to the junction where it's one, one side to Cowley, and other side to somewhere else.
- Q. We have seen CCTV of you and [Person A3] in a doorway, on that part of the road. Please tell us about that? How did that happen?
- A. Since the start when we have met in that little narrow way we have started to kiss each other all of that, until we reach that door and we have continue kissing.
- F**
- Q. You move from the pavement into the doorway, how did that happen?
- A. OK, we were kissing, so simply with our movement we went there.
- Q. When you say kissing, can you please try to help us with what you mean, who was kissing and where were you kissing?
- G**
- A. We were kissing on the neck and we were kissing on the lips.
- Q. Do you remember anybody coming by and speaking to you?
- A. Yes, I do remember.
- Q. Tell us about that, what did you hear?
- A. I don't really remember, he was walking behind me and she has saw them and she
- H**
- said "my friend", and after that she said "I walk, you follow me".

**A** Q. All right, well, let's just break that up. When did you first become aware of these people you're now speaking about?

A. In the first place, you mean?

Q. Were you in the doorway?

**B** A. OK, she told me, so therefore I have turned my back.

Q. Were you in the doorway?

A. Yes, we were at the door.

Q. Do you remember anything that was said by the people who came to the doorway?

A. I don't remember.

**C** Q. And after that what happened next, why did you leave the doorway?

A. OK, she said to me "It's my friend, so follow me", and therefore we have left that area.

Q. Were you with her or were you following her some way behind?

A. When she said to me "My friend", so I have to stay a little bit back.

**D** Q. In your mind why did you think she asked you to follow her?

A. So we were already intimate with each other, kissing and all of that, so I thought may be she want me to follow her later so we finish what we have started.

Q. And when did you next come into contact with her, do you remember how soon you caught up with her and came into contact with her, please?

**E** A. It wasn't, I don't know the name of that street but it wasn't that far away.

Q. Was there any more touching, was there any more, well, first of all was there any more touching?

A. During the way, yes, there was.

**F** Q. What sort of touching, please try to help us?

A. Well, she, it was kissing and plus she was touching my penis above the clothes.

JUDGE DALY: Pause there.

MR DU FEU: Yes, of course. Again, let's take things in stages. We heard from [Person A3] that you caught up with her at some traffic lights. Is that right?

**G** A. Close by the area.

Q. And did you stay there, or did you then walk on up the road?

A. We continue walking.

Q. Did there come a time when you had to turn left to go down another road?

A. In the same road, you mean?

**H** Q. You're walking along with [Person A3]?

- A**
- A. Yes.
- Q. And did you then have to turn left with her?
- A. No.
- Q. OK. On that walk that you were going with her, when did the touching of your penis start?
- B**
- A. While we are walking.
- Q. What were you doing to her?
- A. Between us there was mutual kissing and we were hugging each other.
- Q. As you were going along or were you standing?
- C**
- A. We were between standing and walking we were doing that.
- Q. Do you remember how you got to the graveyard?
- A. No, I don't remember, I don't know the area.
- Q. Was there any discussion between the two of you on the way to the graveyard?
- A. She asked me about the money, to give her some money.
- D**
- Q. Was that on the way to the graveyard, or at the graveyard?
- A. She has spoke about the money twice, when we were in the city centre while we were walking she know that I come from a country where there's lots of money, so she ask me first for the money.
- E**
- Q. You say you didn't know the area, did you know that there was a park or graveyard there at all?
- A. You mean did I know that before?
- Q. Yes, did you know before that there was a park or graveyard there?
- A. No, I don't know that area at all.
- F**
- Q. [Person A3] described an area with a block, a brick and concrete block, we've seen the photographs, do you remember that area?
- A. Yes, I do remember that.
- Q. What happened when you got there, take us through it slowly, please, what happened?
- G**
- A. She has put her hand on that block, and she was lowering her body, doing kind of provocative movements, seductive movements. She has, and she has took off her clothes, and she has raised up her skirt.
- Q. So when you say took off her clothes, what clothes do you mean?
- A. So she has raised up her skirt and then she has lowered that soft thing that I don't
- H**
- know what it's called, tights.

- A**
- Q. OK, so she's lowered perhaps her tights, her underpants, is that right?
- A. I don't know actually she was wearing underpants or not.
- Q. Did she say anything at this point?
- A. She continued doing this kind of seductive movement, and she sit on me, "Make love with me and give me £50".
- B**
- Q. Now, what was your response to that?
- A. I refused to give her money, at the time I had no money.
- Q. How had her stimulating your penis made you feel, had it had any effect?
- A. I didn't understand.
- C**
- Q. What happened to you when she stimulated, rubbed your penis?
- A. A lot of, a lot of the sperm has been in, has been put inside my, my trousers, and it was a good quantity.
- Q. Right. Now, when you are at the block and she is behaving as you describe did she do anything with your hand?
- D**
- A. So I went to urinate, I went outside in order to urinate, and there was a lot of sperm in my hand.
- Q. Did she do anything with your hand in relation to herself?
- A. She has took my hand and put it in her vagina.
- E**
- Q. You've talked about her taking her tights down, yes, you've talked about her asking you for money for sex?
- A. Yes.
- Q. At what stage did she take hold of your hand and put it to her vagina?
- A. After I had urinated and we were standing there beside that block.
- F**
- Q. And did you urinate before or after she took her tights down and asked you for money for sex?
- A. She has asked for the money before, before this twice, when we were in the city centre and we were there, and I, I have urinated before she has took my hand and put it in her vagina.
- G**
- Q. And how did this all come to an end?
- A. I didn't understand.
- Q. Did you stay there?
- A. No, we didn't stay, we didn't stay there for long, a little bit, then we left.
- H**
- Q. [Person A3] says that you may have put your penis in her vagina, what do you say about that?

- A** A. Impossible, this has never happened.
- Q. She says that you pushed her to the ground and then continued to try to have sex with her?
- A. No, this didn't happen.
- B** Q. Were you and she lying on the ground at any stage?
- A. No.
- Q. [Person A3] talked about hearing voices nearby, and jumping up at that point, did you hear those voices?
- A. We were not actually doing a lot of things so even if there's people passing by we were not doing so much then.
- C** Q. Did you say anything when you left, did you say anything to [Person A3]?
- A. No, I didn't say anything, bye bye.
- Q. Mr Alshimery, the Crown say, the police say firstly that you sexually assaulted [Person A3] by grabbing at her breast, holding her breast, what do you say about that?
- D** A. No, I didn't touch it, like we were walking beside each other in the street, hugging each other, but I don't remember touching it.
- Q. And secondly the police, the Crown say that when you were kissing in the doorway she did not consent, that was a sexual assault, what do you say about that?
- A. No, it was consensual and there was no objection from her side from my side about doing so.
- E** Q. And thirdly the Crown say that when you put you, that you put your fingers in her vagina and she did not consent to that, did you do that?
- A. I didn't assault her, she has, she's the one who put it inside.
- F** Q. The Crown also say that you were rubbing your penis against her backside and her vagina, without her consent, did you do that?
- A. Impossible, this didn't happen.
- Q. When you were with [Person A3] did your penis come out of your tracksuit bottoms at any stage?
- G** A. When we were beside each other?
- Q. Yes.
- A. No, it didn't come out.
- Q. When you parted, when you left the graveyard, where did you go?
- A. I get lost, and after that I walk in the same street.
- H** Q. Yesterday the jury saw some CCTV of you in the city centre, do you remember?

**A**

A. Yes.

Q. Do you remember that you seemed to approach two women in the city centre?

A. Yes, I did.

Q. Tell us about that, what were you doing?

**B**

A. Is that in the first video you mean?

Q. Yes.

A. Have a good day, have weekend.

Q. Did they say anything back, do you remember?

A. I don't really remember exactly what they have said to me, it was six months ago, but

**C**

they looked familiar, I've seen them in the bar these two ladies.

Q. What about the other CCTV of you, do you remember what you were doing in any of those?

A. Yes, I do remember.

Q. Tell us about that, what do you think you were doing in those clips?

**D**

A. The one beside the gate?

Q. Start with that one.

A. There's two ladies were a bit like middle age, I do know them, I used to see them in the bar, and other side it was that guy was disabled, and he's stay with us in the same hotel, and I was talking and chatting with him.

**E**

Q. The last clip that we saw was on George Street, up by the traffic lights where you crossed, do you remember if you were with anybody?

A. George Street, I don't know the place.

Q. Some traffic lights, the very last clip we saw yesterday, do you remember anything about that?

**F**

A. I don't remember.

Q. All right, thank you, there may be more questions about that. Mr Alshimery, that's all I have for you, just wait there, please, because there'll be more questions of course from my learned friend, the prosecutor, OK.

**G**

JUDGE DALY: Mr Lucas, do you want to start?

MR LUCAS: Well, your Honour, I see it's ten to one, I think I'd rather, if your Honour wouldn't mind, get it done in one, one.

JUDGE DALY: Yes, OK. Ladies and gentlemen, we're going to break slightly earlier for lunch. I've got a few things to discuss with counsel in any event, so if you can be back by

**H**

2 o'clock, please.

**A**

(In the absence of the jury)

JUDGE DALY: Yes, can the defendant go back to the dock, please.

MR DU FEU: Your Honour, might we confirm, I wonder if the interpreter could translate this, because he is giving evidence nobody can speak to the defendant about his case,

**B**

including me, and I know you will know this, but he should be told he shouldn't discuss it with you either. Thank you, your Honour.

JUDGE DALY: Yes, gentlemen, I propose to give a split summing up.

MR DU FEU: Yes.

**C**

JUDGE DALY: Beginning of course with matters of law, is there anything in particular that either of you want to raise in terms of the law?

MR DU FEU: I can't think of anything. There'll be definitions of the offences. Your Honour's already, in opening remarks, given warnings about stereotypes and the rest, is your Honour going---

**D**

JUDGE DALY: I'll be repeating those.

MR DU FEU: Yes, understood.

JUDGE DALY: Previous complaints? Any previous, she made complaints to the two witnesses---

MR DU FEU: Yes.

**E**

JUDGE DALY: ---[Person C2] and [Person B5].

MR DU FEU: Yes, how they deal with that.

JUDGE DALY: I will, distress, she was also distressed when she spoke to [Person C2] and [Person B5], but she wasn't distressed when she gave evidence.

MR DU FEU: Yes.

**F**

JUDGE DALY: So they will need a direction with regard to that, distress to [Person C2] and [Person B5]. Assumptions of stereotypes, expert evidence---

MR DU FEU: Yes.

JUDGE DALY: ---and how they can deal with that. Reminder of special measures, and good character.

**G**

MR DU FEU: Yes.

JUDGE DALY: Yes.

MR DU FEU: No inference arising either from interview or, he's given evidence. I can't think there's anything else.

JUDGE DALY: Mr Lucas?

**H**

MR LUCAS: I can't think of anything else, your Honour, thank you.

**A** JUDGE DALY: It doesn't, certainly not at present, require a direction in terms of the defence statement, or the interview, I don't think.

MR LUCAS: Well, your Honour, I'd just, I'd just wait for that if I were you.

JUDGE DALY: Well, I am waiting, I'm just sort of, I've not dealt with that at all, because

**B** he's not finished giving evidence.

MR LUCAS: Yes, your Honour. Well, if he does it may arise.

JUDGE DALY: Understood. All right. Right then, anything else?

MR DU FEU: No, thank you.

MR LUCAS: Thank you, your Honour, no.

**C** JUDGE DALY: 2 o'clock then, please.

(Luncheon adjournment)

JUDGE DALY: Yes, please.

(In the presence of the jury)

JUDGE DALY: Yes, Mr Lucas.

**D** Cross-examined by MR LUCAS

Q. Yes, thank you very much indeed. Good afternoon, members of the jury.

Mr Alshimery, let's just deal with a couple of general things. You're from Kuwait?

A. Yes.

**E** Q. You entered the UK in 2022?

A. Yes.

Q. On a boat?

A. Yes.

Q. Legally or illegally?

**F** A. Illegally.

Q. Have you applied for asylum?

A. I did apply, yes.

Q. Did you have a hearing?

A. Is that about the residency, you mean?

**G** Q. Yes.

A. Not yet.

Q. Not yet, I see. Can you count in English?

A. I do count but some numbers I don't really understand.

Q. What is your, what is your age in English?

**H** A. 77. September, 40.

**A** MR DU FEU: Date of birth rather than age.

JUDGE DALY: Yes, I know. He's not 77. Yes, I think that makes him 46.

A. I don't know.

MR LUCAS: Yes, what is your actual age in English, I don't, I don't mean your date of

**B** birth, what is your actual age?

A. We don't say the age, we say that it's birth.

Q. Right, so how did you understand that the complainant in this case was 25?

A. She said 25.

Q. I see, and you understand what that mean, did you?

**C** A. Yes, I did, I do understand about this number, yes.

Q. Were you drunk on this evening, Mr Alshimery?

A. What do you mean by all night, I didn't understand.

Q. Were you drunk on the evening of this incident?

A. I did, yes, I started drinking at 10 o'clock and I continue drinking with my friends.

**D** Q. Were you drunk?

A. I wasn't drunk but I was a bit relaxed.

Q. Relaxed. Relaxed?

A. Yes.

Q. And you'd certainly remember what you were doing then, wouldn't you?

**E** A. Yes, I do remember.

Q. You certainly remembered whether or not you put your fingers inside a young girl's vagina, wouldn't you?

A. No, I, she's the one who started the initiated, I didn't do it, she's the one who has, she

**F** has done that.

Q. I'll come back to that. Are you trying to tell me you cannot remember whether your fingers went inside her vagina or not?

A. I don't know.

Q. You don't know?

**G** A. Because I didn't insert it.

Q. You didn't insert it?

A. Because it wasn't me who inserted it.

Q. Did your fingers go inside her vagina, or did they not?

A. I don't know, she's the one who has started it all and she's the one who has been

**H** seducing me.

**A** Q. Mr Alshimery, did your fingers go inside her vagina, or did they not?

A. She, she's the one who had inserted it, I'm not sure if it was one finger or two but she's the one who inserted it.

Q. Do I need to ask you for a fourth time? Did your fingers go inside her vagina or not?

**B** A. She's the one who pulled it and she, in order to insert it, but I'm not sure if it was fully inserted or half of it, I'm not sure.

Q. And are you saying you can't remember whether she did or not?

A. I do remember that she's the one who pulled my hand and she inserted my hand inside.

**C** Q. Right, could you look, please, at your interview, at page 10.

MR DU FEU: We need the interview.

MR LUCAS: It's the interview, not the - not that. I thought he had it, your Honour, I'm sorry. Madam Interpreter, could you take it to page 10, please. Right, let's just start a third of the way down. "Where on her did you touch? A. Just her vagina, we were kissing."

**D** THE INTERPRETER: Apologies, which timing are you referring to?

MR LUCAS: "How were you touching her vagina?"

THE INTERPRETER: Excuse me, which timing are you referring to so I can read it?

MR DU FEU: 45.10.

MR LUCAS: 45.10.

**E** THE INTERPRETER: That's the one, OK.

MR LUCAS: Do you want me to start again?

THE INTERPRETER: Yes, please.

MR LUCAS: "Where on her did you touch? A. Just her vagina, we were kissing. Q. How

**F** were you touching her vagina? A. She was grabbing my hand towards her vagina. Q. Did you touch her vagina? A. Yes, she put my hand, it wasn't me, she want, she put my hand on her vagina. She was pulling my hand to put it inside or on the top of her, but I'm aware of that my hand was touching the vagina, but I don't know if it went inside her vagina or not."

The police officer asked, "Surely you would know if your hand or fingers went inside her

**G** vagina?", and you replied, Mr Alshimery, "I was drunk too, so I wasn't aware of everything. We had a bottle of vodka, so". So let me ask you for the fifth time, did your fingers go inside her vagina or didn't they?

A. She's the one who has pulled my hand and put it inside.

Q. Why didn't you remember that in your interview, just a day later?

**H**

**A** A. I was so nervous at that time, I wasn't smoking for a few days so it had affected my nerves, and I think it just the nerves got the worst of me.

Q. I see, so you were so nervous you couldn't remember whether you put your fingers inside her vagina or not?

**B** A. OK, even I have asked for a break in order to have a cigarette break in order to calm my nerves a bit, they have even refused to give, to grant me such break.

Q. It's just total nonsense, isn't it, Mr Alshimery? Were you drunk, let me ask you this again, were you drunk or were you not drunk?

**C** A. I drank with my friends, my friends has drank a few pints, and the rest I drank myself.

Q. Were you drunk or were you not drunk?

A. I was, I wasn't unconscious, I was, I wasn't drunk but I was much more like relaxed.

Q. Right, you do understand that the interview that you gave to the police was your opportunity to tell the truth? In your interview you said you didn't know whether you put your fingers in or not, because you were drunk. So you couldn't remember that information at the time of your interview? It's quite important, Mr Alshimery, wasn't it? Wasn't it?

**D** A. Yes, important but I was very nervous and I was very surprised about what, about her complaint because everything has happened between us was consensual.

**E** Q. Yes, I see. Very important for you to tell the truth in your interview, Mr Alshimery, wasn't it, and not - pardon me, are you going to answer that or not?

A. I was, I was surprised at that time, and I was nervous because also I was, just wanted to have kind of a break, having a cigarette or something, and I also surprised about everything so I was trying just to give answers but---

**F** Q. I see.

A. ---I wasn't thinking it through.

Q. And this woman, this young girl, 20 year old student who you met by accident on a road, with whom you were having sexual relations within minutes, within minutes you end up in a graveyard, and she's stimulating you so much, Mr Alshimery, that you ejaculate inside your pants.

**G** A. Yes.

Q. You ejaculated inside your pants?

A. Yes.

Q. Are you standing by that?

**H** A. Yes.

**A** Q. That's pretty important information, Mr Alshimery.

A. This is what happened.

Q. Why isn't it in your interview, why didn't you mention that in your interview?

A. In the interview they have asked me if I have had intercourse with her, they haven't

**B** said to me if I have ejaculated in my pants or not.

Q. Mr Alshimery, they were asking you about your DNA, why didn't you say "Oh by the way you might find it interesting that I actually ejaculated inside my pants"? Why didn't you?

A. Well, I didn't say that because they have already got my boxers there. So they can

**C** examine it.

Q. Why didn't you tell the police that you ejaculated?

A. They have asked me about the sexual intercourse, they didn't ask me about ejaculation.

Q. And you never thought it was relevant that you ejaculated inside your own pants?

**D** A. No, I didn't think it was relevant because simply this has happened for myself in my own pants, it didn't reach her, so because of that I didn't think it is relevant.

Q. It's just total nonsense and you know it.

MR DU FEU: Your Honour, that really is a speech comment if he wants to make it in a

**E** speech, not a question.

JUDGE DALY: Mr Lucas, confine yourself, please, to questions.

MR LUCAS: It's not true, is it?

A. No, this is the true, I didn't say anything about from the truth.

Q. Can I ask you, Mr Alshimery, what on earth were you doing round the streets of

**F** Oxford between 11 o'clock and 5 o'clock in the morning?

A. I was out with my friends, my friends they live in a hotel, so we were not able to go and meet inside the hotel and my friend in this next day he is working, so because of that we went outside and we met outside. Then I, they spend the most of the day outside.

Q. Why were you approaching single women on the street to talk to them in the middle

**G** of the night?

A. These ladies that I have seen are ladies I have met and I knew before in the bar that I was in.

Q. Are you in the habit of talking to single women in the middle of the night,

**H** Mr Alshimery?

**A** A. In the weekend usually sometimes say hi and hello, but it doesn't mean that sometimes you can joke, but it doesn't mean that you are having any kind of bad intention out of it.

Q. Can I put it to you what I suggest you were doing, Mr Alshimery. You were

**B** wandering around Oxford for hours looking for a single woman to sexually assault?

A. No, that wasn't.

Q. Why is it that you ended up following [Person A3] down that road?

A. She has asked me to do so.

Q. She asked you to?

**C** A. She asked me to follow her.

Q. Mr Alshimery, you're going home, you said earlier on, to Cowley?

A. I didn't say I was going to my house, I said I'm going to go to the restaurant to Cowley to eat something there.

Q. Why didn't you go to Cowley?

**D** A. Well, I didn't go because simply we have met and we had the kissing and was consent, consensual and we stayed together.

Q. Did you intend to have sex with her when you met her?

A. No.

Q. What did you intend to do with her?

**E** A. It wasn't actually the sex was in my mind at that time, it just could be kind of casual kissing and that's it.

Q. Casual kissing, Mr Alshimery?

A. Yes, it was kind of something mutual between us that we have done kissing and

**F** hugging and that's it.

Q. Do you go round the streets of Oxford at 2 o'clock in the morning looking casually to kiss females?

A. No.

Q. Well, why did you do it this time?

**G** A. With who?

Q. With the victim, Mr Alshimery?

A. What happened between us was consensual.

Q. Mr Alshimery, are you suggesting that she put her arm around you at any time?

A. Both of our arms were around each other.

**H** Q. Not on a single video does it show her arm round you, it shows your arm around her?

**A**

A. No, it was her hand and also even her head has reached my shoulder.

Q. And you grabbed her breast almost immediately, because you thought you were in here, didn't you, Mr Alshimery?

THE INTERPRETER: Pardon me?

**B**

MR LUCAS: You thought you were in with a chance with this girl, didn't you?

A. I didn't, I didn't grab her, her breast and I wasn't, wasn't trying to take a chance on her.

Q. Yes, the video shows her pointing, after you saw her, and that was telling you where Cowley was, wasn't it?

**C**

A. No, it wasn't this, she wasn't saying Cowley in that way. At that time a friend of her has come over and she was trying to talk to him, and then after that she said to me, "After he goes you follow me".

Q. You pushed her into a doorway, Mr Alshimery, a single woman, you pushed her into a doorway?

**D**

A. No, I didn't push her.

Q. And you marked and bit her neck?

A. No, I didn't bite her and it was kissing and it was mutual.

Q. And when two people, who were not her friends, came and saw what was going on, she went immediately, didn't she?

**E**

A. At that time what I have understood she said that "This is my friend, and then after that follow me".

Q. Why didn't you go to Cowley, like you intended?

A. I was, I was just meeting her, not meant she would be my girlfriend or something like that, but when she asked me for money after that I said no, I thought I'm not interested.

**F**

Q. So before she left she asked you for money?

A. No, she did ask, but it wasn't like she insisting on the money, it was kind of a jokingly she was asking for it.

Q. Well, you didn't have any money, did you?

**G**

A. I did have money but I didn't want to give her money.

Q. So why did you follow her then, Mr Alshimery?

A. When she was speaking to me in the start of the road I thought she was joking.

Q. So you thought she was joking?

A. I wasn't really thinking that she was really meaning that she really after money, I thought that she was may be just joking.

**H**

**A**

Q. Did you think she was a prostitute?

A. No.

Q. Well, what did you think when she, on your evidence, that she was asking you for money for sex, what did you think?

**B**

A. In the first time she asked me for that I think I thought that she was joking so.

Q. Why did you follow her, Mr Alshimery? You didn't need to go that way, you could have gone to Cowley?

A. She has asked me to do so.

Q. And so what?

**C**

THE INTERPRETER: Pardon me?

MR LUCAS: So what? What does that matter?

A. Just in order to meet up with her and hopefully she will be my friend at that time.

Q. Friend?

THE INTERPRETER: Sorry, he means girlfriend.

**D**

MR LUCAS: So you wanted her to be your girlfriend?

A. Yes, if she was a good, good person, yes, she can be my girlfriend.

Q. You said earlier on that you followed her because you wanted to "finish off what we'd started", what did you want to finish off, Mr Alshimery?

**E**

A. So what do you mean by 'finish', what?

Q. Well, what was your intention? When you said earlier on to the jury "I wanted to finish off what we'd started", what did you want to finish?

A. Well, it was kissing and hugging, all of that, and I want her to be my friend.

Q. You wanted her to be your friend?

**F**

A. Yes.

Q. The woman you had met four or five minutes before, you wanted her to be your friend?

A. Why not?

Q. Mr Alshimery, you followed that woman and you pushed her into a graveyard?

**G**

A. It didn't happen.

Q. You stuck your fingers inside her serially and you raped her?

A. She's the one who has put my finger and I didn't rape her.

Q. Which you couldn't even remember in your interview?

A. No, I did mention it.

**H**

- A** Q. And that's why your sperm ended up high inside her vagina, Mr Alshimery, because your penis went inside her?
- A. It's impossible that even that my penis has gone that far inside her, or even touched her.
- B** Q. You ejaculated inside her, Mr Alshimery?
- A. 100 per cent I haven't take out for her at all.
- Q. And what you've done is you've devised a story about how sperm could have got onto your fingers and then got into her vagina, haven't you?
- A. If it has been through my hand, yes, I can tell it might happen, but through sexual intercourse it didn't happen through that.
- C** Q. Are you suggesting, Mr Alshimery, seriously, that a young 20 year old student was taking the sexual initiative with you?
- A. She's the one who asked for it, and it was consensual and it wasn't against her will.
- Q. She found you so irresistible, Mr Alshimery, that she was putting your hands inside her own vagina?
- D** A. She's the one who pulled my hand.
- Q. And you weren't interested at all, were you?
- A. What happened for me is already I have ejaculated in my pants, and after this usually what happen is that I wouldn't have an erection for about two to three hours.
- E** Q. Right, I see. You were so stimulated that you ejaculated, Mr Alshimery?
- A. I have a condition that simply I can ejaculate while I'm urinating, it could be sometimes three to four times a week.
- Q. Are you suggesting that you're the victim in this case, Mr Alshimery?
- F** A. Yes, I am the victim here, because if I wasn't the victim I would not go and surrender myself to the police.
- Q. Are you suggesting that this woman, this young girl, this 20 year old girl sexually assaulted you?
- A. If there is anybody who does rape, does anybody who commit rape go and surrender themselves?
- G** Q. Mr Alshimery, I don't know why you went to the police, may be you knew there was CCTV all over Oxford?
- A. As soon as I have heard from phone call from one of my friends that the police is looking for me less than an hour I went to the police station in order to surrender myself.
- H**

- A**
- Q. Yes, and then you gave an interview and you didn't even say whether you ejaculated or not?
- A. Because when I went there I didn't know exactly what was the issue, what was the problem, why I have been called for.
- B**
- Q. You knew fine well, Mr Alshimery?
- A. No, I didn't know anything, I went there, I was surprised about the whole issue.
- Q. So complete surprise?
- A. Yes, it was a complete surprise because I didn't rape her.
- C**
- Q. So you followed a woman up the Headington Road, you had some form of sexual activity with her on your evidence, and you didn't know why the police wanted to speak to you?
- A. I didn't have kind of sex with her, all what I have done is may be kissing and she has pulled my hand towards her.
- D**
- Q. And you've insulted her, haven't you, by calling her effectively a prostitute?
- A. I did not know how to say prostitute in English actually.
- Q. Well, what is a woman who asks for money for sex, Mr Alshimery?
- A. She is the one who asked for the money, I didn't.
- Q. What do you call a woman who asks for money for sex, Mr Alshimery?
- E**
- A. That word, or a bit something similar to it, but yes.
- Q. Mr Alshimery, after you'd had your way with her she went home, why didn't you then go to Cowley?
- A. Because the restaurant I was going to had shut by that time.
- Q. Well, what did you do then, go back to the centre of Oxford again?
- F**
- A. Yes, I was waiting until it become morning time because I can't go to the hotel because my, my friend is asleep at that time, I cannot go there to see him.
- Q. And at 4.29, Mr Alshimery, you're approaching another female?
- A. So how did I, as you can say that I have already have done sex with that lady, and then after that you say that I have done, and trying my luck with another woman?
- G**
- Q. You were trying your luck, that's what you were doing that night, Mr Alshimery?
- A. No, I didn't, I didn't try my luck, these people I know, I have met them, I said hello to them, and one of the people I've met was one of my friends, and I said hello to him.
- Q. Well, let's just go back a bit, the restaurant that you were going to go to in Cowley, what time does it close at?
- H**

- A**
- A. So it was about three, three and a half, because the person I know there who works there is a good friend of mine, he can just, you know, do a special meal for us.
- Q. Right, and that was at half past three in the morning you were going to be heading there, was it?
- B**
- A. When I, when I was going there I was supposed to be it was around 2.30.
- Q. It was at 3 o'clock in the morning, wasn't it?
- A. It was at 2.30 I have called him and have received a phone call from him, and he said that, that for me to come to his place in order to give me a meal with a reduced price.
- Q. Right, at 3 o'clock in the morning, Mr Alshimery, you're seen back, walking back
- C**
- into the city centre, sorry, 3.28 in the morning?
- A. Yes, because at that time the restaurant has closed and my friend has gone, so because of that there's no need, there is no use for me to go there.
- Q. Half an hour later? Mr Alshimery, you had no intentions of going to Cowley, you followed that single vulnerable woman and you raped her?
- D**
- A. I didn't follow her and I didn't rape her.
- Q. And within half an hour you're heading back into the centre of Oxford to try and find some yet more women, aren't you?
- A. No.
- Q. Mr Alshimery, within minutes of your encounter with [Person A3] she was back at home, within minutes. She was able to speak to one of her friends, Mr Alshimery, and she was so upset that she couldn't talk. What do you think had happened to her, Mr Alshimery?
- E**
- A. I don't know what happened to her at all, because when we left she wasn't upset.
- Q. Mr Alshimery, she was so upset she couldn't talk, and the first thing she said to her friend, you've heard it, "I've been raped". It's a funny thing for a prostitute to do,
- F**
- Mr Alshimery, isn't it?
- A. I didn't rape her.
- Q. Within minutes she says she's been raped, not joking around with her friend saying "Actually I didn't get the 50 quid, what a laugh". Well, Mr Alshimery, anything to say about that?
- G**
- A. I didn't rape her, and apart from my hand nothing else has been inserted from my body towards inside her.
- Q. Mr Alshimery, I put to you you're a sexual predator?
- A. No, that's impossible, I don't do such thing.
- H**

**A** Q. And you followed and raped a single female at 3 o'clock in the morning who you had just met minutes before?

A. No, I didn't rape her.

Q. Are you ashamed of yourself?

**B** A. No, I'm not ashamed because I haven't done anything wrong.

Q. I see. Thank you, I've no further questions.

MR DU FEU: There's no re-examination, does your Honour have any questions?

JUDGE DALY: No, thank you.

MR DU FEU: I wonder if---

**C** JUDGE DALY: Would you like to go back to your seat.

MR DU FEU: Thank you very much, and, your Honour, once he's back in the dock that is the case for the defence.

JUDGE DALY: Thank you. Will you go back into the dock, please. Ladies and gentlemen,

**D** that concludes the evidence for the defence, and it concludes all the evidence you're going to hear in this case, and that, that's what you are going to decide the case on. Now, I think, as far as the videos and everything are concerned, they have been recorded and you will be able to look through those at your leisure when you're in your room, so don't worry too much about that. Where do we go from here? Well, what I'm going to do is what's called a split

**E** summing up. My summing up comes in two parts, it comes of me giving you directions on the law, and you're going to receive those in writing so that you can take them with you when you retire. I will also remind you of some of the evidence, but I'm going to do the first part first, and then you're going to get speeches from counsel, from Mr Lucas and Mr Du Feu, and then I will remind you of some of the evidence. That now is not going to be until tomorrow.

**F** So I need to just have a chat with prosecution and defence about matters of law. Then I am going to have to get them typed out, I'm going to have to type them up, and then they are going to have to be copied so that you can all have one each when you retire. So it'll be at least 3 o'clock, possibly getting on a little bit later. I've got to rise by quarter past four in any event this afternoon, but I hope I will be able to give you my directions of law before then.

**G** So if you go to your rooms now and we'll call for you when we're ready to do something.

(In the absence of the jury)

JUDGE DALY: Mr Lucas.

MR LUCAS: Yes, your Honour.

JUDGE DALY: Failing to mention in interview the fact that he ejaculated into his

**H** underpants.

**A** MR LUCAS: Yes.

JUDGE DALY: Anything else?

MR LUCAS: Only, your Honour, the fact that he couldn't even remember whether he had put his fingers inside her or not, but essentially the ejaculation is a major deficiency it seems to me.

**B** JUDGE DALY: Mr Du Feu?

MR DU FEU: I'll have to take the ejaculation, I don't think the fingers are sufficiently clear.

JUDGE DALY: No, I agree with you on that. The ejaculation is important though.

MR DU FEU: It is.

**C** JUDGE DALY: It's correct to say that that was in the defence statement but the defence statement was served I think in February of this year. The initial forensic report was served, uploaded in December last year. So there is a point to be taken nonetheless that he put it in his defence statement.

MR DU FEU: Yes, the timings of the relative reports aren't in evidence.

**D** JUDGE DALY: No, they're not, and I'm not suggesting they are.

MR DU FEU: No.

JUDGE DALY: And that's not something which I'm going to say---

MR DU FEU: But the failure to mention---

JUDGE DALY: ---but his failing to give that account in interview---

**E** MR DU FEU: Yes.

JUDGE DALY: ---the jury are entitled to wonder why not.

MR DU FEU: Absolutely, your Honour.

JUDGE DALY: Right. Now, I shall add something then to the directions that I've got at the moment. Can I just go through very briefly, I will see if I can send them to you, once I've done it. Can you make sure, both of you, that I have your email addresses so that I can send them once I've added what I wish to, so that you can review them and we can discuss them if necessary.

**F** MR DU FEU: Thank you.

JUDGE DALY: Right, I'll rise and get on with it.

**G** MR DU FEU: Thank you very much, your Honour.

(Short adjournment)

JUDGE DALY: OK, can we have the jury, please.

(In the presence of the jury)

**H**

**A** JUDGE DALY: Right, ladies and gentlemen, I'm going to ask the usher to distribute my directions of law. OK, now, some of this may be a little repetitive at some points because I mentioned a few things to you right at the start of this case, so I apologise for that. So what I'm going to do is go through this now with you, and when we've finished doing this it will be time to go home. So let's get through it.

**B** I begin with reminding you about our roles of Judge and jury, and I did touch upon this at the start of the case. We have separate roles. In summing the case up as part of my role, I will tell you what the relevant law is, and you must take it from me because I am the sole Judge of the law. You are the sole judges of fact. You decide what facts you find

**C** proved from the evidence that you have received. You then apply the law as directed by me, and you determine whether your verdicts are guilty or not guilty. I will also summarise the evidence, I will not go through everything. This means that I may miss bits out that you think are important. If you think they're important then they are important. It is your view on the evidence that counts, not mine. Similarly, I may seem to stress matters that you do not think

**D** are important, again it's your view that counts, not mine, so if you don't think they're important then they are not important.

The evidence is over, it is complete, and there will be no more. You have to judge the case on the evidence that you have heard, and only that evidence. It may be that you would have liked to have heard more evidence from a particular source, or a particular witness, well,

**E** the evidence is over and you will not hear it. You judge the case on the evidence that you have heard. You must not speculate about what you might have heard or what someone might have said. You will consider all the evidence, and in so doing you will have to make judgements about the witnesses. Are they reliable, are they mistaken, are they trying to tell

**F** you the truth, are they lying? In this case the defendant has given evidence and as such he is a witness, the same as any other. All witnesses go into the witness box as equals, whether they come out as equals is a matter for your judgement.

In every case there will be matters in dispute which may be incapable of complete resolution. In other words, you may be left with some loose ends. It may not be necessary to

**G** decide each and every disputed issue of fact in order to reach a proper verdict, but there are some things which are essential to the prosecution case which you will have to resolve before you can find the defendant guilty on the particular count that you are considering, and I'll set these out for you later in this document.

First, the burden and standard of proof, and this first direction of law is fundamental

**H** to our criminal justice system, and it is this. The prosecution brings these charges against this

**A** defendant, and it's for the prosecution to prove them. The defendant does not have to prove his innocence, he has to prove nothing. The burden of proof, as we call it, lies with the prosecution, and remains with the prosecution throughout, and it never shifts. The fact that the defendant has given evidence makes no difference to this principle.

**B** The burden is upon the prosecution to prove guilt to a high standard. You will only convict the defendant on a count that you are considering if you are satisfied so that you are sure of guilt, nothing less will do.

**C** So looking at the indictment, ladies and gentlemen, you've got a copy of that right at the start of your bundle, and you can see there are five counts on this indictment. They are separate charges. They will require separate consideration and separate verdicts. The evidence on each is different, although it may overlap. You should consider each count separately and consider the evidence for and against each allegation separately. They do not stand or fall together. You are entitled to come to the conclusion that there is sufficient evidence on one count for you to be sure, but insufficient on others. You may find you are sure on one of the counts, all of the counts, or not sure on any of the counts, that is a matter entirely for you and your view of the evidence.

**D** So let's look at those allegations, beginning with Count 1, rape. Before you can convict the defendant of this offence the prosecution would have to make you sure of all of the following. Firstly, he intentionally penetrated the vagina of the complainant with his penis, and the complainant did not consent to the penetration, and he did not reasonably believe that she did consent.

**E** Count 2, assault by penetration, before you can convict the defendant of this offence the prosecution would have to make you sure of all of the following. Firstly, the defendant intentionally penetrated the vagina of the complainant with his finger or fingers, and that the penetration was sexual, and she did not consent to the penetration. And he did not reasonably believe that she consented.

**F** What do we mean by penetration? Penetration does not have to be complete penetration. It would be enough for the penis or finger to penetrate the vagina only slightly, and for these purposes the vagina includes the whole of the vulva including the labial lips. For the offence of rape, for example, the prosecution do not have to prove that the ejaculation occurred, and proof of penetration beyond the labial lips is all that is required. Now, ladies and gentlemen, some of you may be medically qualified, some of you may be medical students, some of you may be students of anatomy, and you would turn to me and say the vagina does not medically include the vulva, and you would be right, but legally it does.

**G**

**H**

**A** Legally the vagina includes the whole of the vulva and labial lips. So you can forget anything that you know from a medical point of view for these purposes.

**B** Counts 3, 4 and 5 sexual assault, before you convict the defendant of this offence the prosecution would have to make you sure of all of the following. That he intentionally touched the complainant, and the touching was sexual, and she did not consent to the touching, and he did not reasonably believe that she consented. Now, a touching is sexual if a reasonable person would consider that, whatever its circumstances, or any person's purpose in relation to it, it is because of its nature sexual. Or, because of its nature a touching may be sexual and because of its circumstances and/or the purpose of any person in relation to it, it is sexual. So just to give you a couple of examples. If a male were to stick his fingers up a female's vagina, unless he's conducting some sort of medical examination, that would be sexual. However, if, for example, your maiden aunt came to visit you, and she gave you a kiss upon the cheek, such a touching may be sexual, but because of the circumstances or the purpose of the person in relation to it, it's probably not sexual.

**C**

**D** Consent. Now, a matter of law. A complainant only consents if she has the freedom and capacity to make a choice, and she exercised that choice to agree to that touching. So reluctant consent is still consent, but submission, where free choice is overborne, is not. As to reasonable belief in consent, if the prosecution have proved to you that the complainant did not consent, they must also prove the defendant did not believe she consented. This involves two questions. Did the defendant, or may he have genuinely believed that the complainant consented, and if he did, or may have believed she consented, was his belief reasonable. For question 1, if you are sure that he did not genuinely believe that she consented, then question 2 does not arise, and you needn't consider it. But if you decide that he did, or may have believed that she consented, you must then decide question 2, whether his belief was reasonable. Whether or not it's reasonable is a matter for you to decide once you have considered all the evidence. You must decide whether an ordinary reasonable person, in the same circumstances, would have believed she was consenting. This includes looking at any steps he took to find out whether she was consenting, or not. The question is whether, in your view, it was reasonable, not whether the defendant thought it was reasonable.

**E**

**F**

**G**

**H** This is slightly wrong what comes next. I said in both counts consent is the primary issue. That's not true as far as the rape is concerned, because he does not accept that his penis penetrated her vagina. But in as much as in some cases he performed the acts necessary to form the basis of the counts, his account is that she did consent, he does not assert that if she didn't consent he reasonably believed that she did. So really there, on, for example, the

**A** sexual assaults, on the assault by penetration, he accepts that that occurred, the acts occurred, but he said she was consenting.

**B** Contents of previous complaints. The primary evidence of what [Person A3] says happened comes from the evidence she gave on the recording, and in the witness box. You have also heard about what she said about the events to other people, particularly to those statements that were read to you by [Person C] and [Person B4]. It's important that you realise that these other accounts that she's given come from her, not from anyone else, and are simply repeated by the person she gave them to. It follows that they don't come from a separate independent source, as the other people were not there at the time of the incident.

**C** The reason you have evidence about this is to show how the investigation came to be made and it may go to show consistency in the complaint, or conversely it may show inconsistency. Either way, it may help you as to the reliability of the complainant. More consistency may show more credibility. Less consistency may show less credibility. It's a matter for you to determine if and how much such consistency or inconsistency helps you but you'll bear in

**D** mind that no one will repeat word for word the same account when they give it to different people in different circumstances. But these accounts form part of the overall evidence in the case, for you to consider, and you're entitled to treat the accounts of what she said to others as part of the evidence of what happened to her.

**E** A word about distress of the complainant. You heard from [Person C2] and [Person B5] that when she gave her account to them, [Person A3] seemed very upset. [Person C2] said she was crying and sobbing, [Person B5] said that she was, said she was crying and shaking. Although such evidence may give some support to the prosecution case, you should be satisfied of two things before you give it any weight at all. Firstly, you must be sure that

**F** the apparent distress is genuine and not feigned, and, secondly, if you are sure it's genuine you must also be sure that the distress related to being the victim of the offence and not for some other unconnected reason. And in any event, such evidence of distress can only give some support to the prosecution case, and you must not convict the defendant solely or mainly upon it.

**G** A reminder again about assumptions and stereotypes. I've already said something to you about this at the start of the trial. It would be understandable if you came to this court with ideas about how people behave if they've been the subject of a sexual assault, or how people who commit sexual assaults behave. I simply ask you to approach your task with an open mind, putting aside any preconceived ideas about sexual abuse, or how victims or

**H** perpetrators behave. Experience has shown that there is no typical sexual assault, typical

**A** assaulter, or typical person who has been assaulted. Each particular sexual assault is unique, and it is impossible to say how individual people will behave in particular circumstances. A woman who is the subject of an assault may shout and scream, she may fight, she may freeze, and some will go along with it out of fear, she may do any number of things. So you must set  
**B** aside any assumptions or stereotypes, stereotypes that you may have. Judge the case on the evidence that you have heard, on the witnesses that you have heard from, and the law as I explain it to you.

Moving on to expert evidence. You have heard the evidence of Claire Reynolds, forensic scientist, who told you of her qualifications and experience, and it's accepted that  
**C** she has relevant expertise in the relevant area of biological science, including body fluids and DNA. So she's able to give evidence of her findings and express an opinion. She is to be regarded as an expert witness. And the purpose of an expert witness is to provide you with evidence and opinion in an area where you yourselves do not have such expertise, and  
**D** because she is an expert she is allowed to give evidence of opinion, and in this case she has given evidence of fact, in other words what her findings were, and opinion, what her and other scientist's findings mean. Her findings of fact are not really disputed, her opinion and how it helps in relation to the matters you have to decide is not really challenged, but you are not experts, and although her evidence is largely unchallenged you will have to evaluate this expert evidence just as you would any other evidence. She deals with what, but one part of  
**E** the case, you receive all the evidence, and it is on all the evidence that you make your final decisions. If, having given careful consideration to this expert evidence, you do not accept it, you should not act upon it. Please remember, however, that you yourselves are not experts, and you should not carry out your own investigations, tests or comparisons to try to reach  
**F** your own conclusions, ignoring that of the expert. If, however, you do accept this evidence, it's something that you should take into account in considering your verdicts. The weight you attach to that which you accept is of course for you to decide.

Another subject, failing to mention facts when interviewed. You will recall that before he was interviewed the defendant was told, and this is correct, that he did not have to  
**G** say anything. He was also told that it may harm his defence if he did not mention when questioned something he later relied on in court. So he was aware that conclusions could be drawn against him if he didn't mention facts which he later relied on. He was also told anything he did say may be given in evidence. Well, in the course of giving his evidence he has said that he ejaculated into his underwear, and subsequently urinated, and he said he  
**H** urinated before she put his hand into her vagina. He did not mention this in his interview.

**A** The prosecution say that this is because when he was interviewed he was not aware of the findings of the forensic scientist in this case, and he has subsequently made this up in order to explain those findings. The defence say this is not the case, and the reason he said nothing about this in interview is that they already had his underwear, and in any event neither his  
**B** penis nor his semen reached the complainant. He also said that at the time of the interview he was nervous, and terrified of the whole situation, and you may wish to take into account that although he had an Arabic interpreter, English is not his first language. If you find he had a good reason not to give this account in interview, you should not draw any conclusions against him. If, however, you are sure that the real reason for his silence was that he did not  
**C** wish to answer the questions until he knew the full extent of the evidence against him, and was keeping his powder dry, then you could draw such an inference if you thought it right and proper to do so, and there was no other sensible explanation for his failure. But if you do draw such an inference you must not convict him solely or mainly on the strength of it. Please remember this is just a small part of the evidence before you, and it is on the entirety  
**D** of the evidence that you judge the case.

Reminder of special measures. Special measures are used to assist the complainant in the giving of her evidence. We had the use of screens when she gave evidence in court and the use of the pre recorded interview as the first part of her evidence. You treat all this evidence in exactly the same way, no matter how it is given. These are common procedures  
**E** adopted to assist her to give the best evidence that she can, and for no other reason. You will no doubt understand how difficult it may be for a witness to come into a court room and give such evidence, so these measures are designed to put them at their ease as best we can. The fact that she gave evidence in this way has no reflection on the defendant, and you must not let it affect your judgement on him.  
**F**

Character. You have been told that the defendant has no convictions, no cautions, no findings of guilt in respect of similar matters or indeed any offences. You can use your knowledge of his good character in two ways. Firstly, his good character supports his credibility, and you should take it into account when you are considering whether you believe  
**G** his evidence. Secondly, the lack of such convictions may mean he is less likely than otherwise would be the case to have committed the offences with which he is charged. However, good character cannot be a complete defence to a criminal charge, otherwise no one could get their first conviction, and it is of course a matter for you to determine what weight you give to this, but it is something you may weigh in his favour in the way I have  
**H** said when considering the overall evidence in the case.

A

Now, what follows next, ladies and gentlemen, is described as a route to verdict. It's not strictly speaking a matter of law, it's a suggestion of how you may approach the case, and it's done by way of questions and answers, looking at each count in turn.

B

And so we start with rape, and question 1, did the defendant penetrate the vagina of the complainant with his penis. If you're not sure that he did your verdict would be not guilty and you don't proceed further on that count. If you're sure that he did, you go to question 2, did she consent to this act of penetration. If you conclude that she did consent, or may have consented, verdict not guilty, don't proceed further on this count. If you are sure that she did not consent, go to question 3, did the defendant believe that she was consenting. If you're sure that he not believe the complainant was consenting, your verdict would be guilty, you don't have to go further. If you conclude that he did believe or may have believed that the complainant consented, you go to question 4, was the belief reasonable in the circumstances. If you conclude it was not a reasonably held belief your verdict would be guilty, if you conclude that it was or may have been a reasonably held belief, verdict not guilty.

D

Count 2, assault by penetration. Question 1, did the defendant intentionally penetrate the vagina of the complainant with a part of his body. If you are not sure that he did your verdict would be not guilty, you do not proceed further. If you are sure that he did, proceed to question 2. Are you sure that penetration was sexual. If you're not sure that it was, verdict not guilty, don't go further. If you're sure that it was you go to question 3. Are you sure that she did not consent to the penetration. If you conclude that she did consent or may have consented, your verdict would be not guilty, you don't proceed further. If you're sure she did not consent, proceed to question 4. Question 4, did the defendant believe that she was consenting to the penetration. If you're sure that he did not believe she was consenting to the penetration, verdict guilty, don't proceed further. If you conclude that he did believe, or may have believed she was consenting, proceed to question 5. Was this belief reasonable in all the circumstances. If you're sure it was not a reasonably held belief, verdict guilty, don't proceed further. If you conclude that it was or may have been a reasonably held belief, your verdict would be not guilty.

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Final three counts, 3, 4 and 5, allegation of sexual assault. Same procedure. Question 1, are you sure that the defendant intentionally touched the complainant. If you're not sure, verdict not guilty, don't proceed further. If you're sure, question 2, are you sure the touching was sexual. If you're not sure, not guilty, do not proceed further. If you're sure, go to question 3, are you sure the complainant did not consent to such touching. If you are not sure, verdict not guilty, do not proceed further. If you are sure, please go to question 5. Are

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you sure the defendant did not reasonably believe she consented to such touching. If you think he did or may have reasonably believed that she was consenting, verdict not guilty, do not proceed further. If you are sure he did not reasonably believe she was consenting, your verdict would be guilty.

B

Now that's all set out for you, ladies and gentlemen. The directions of law are my directions of law, and I'm afraid you are obliged to follow and apply those directions of law. The route to verdict, it's there to help you. If you think it does, by all means adopt it. If it doesn't help you, by all means ignore it.

C

Time for home. 20 past four, ladies and gentlemen, back tomorrow at I think it's ten, 10 o'clock, please. What will follow tomorrow, speeches from counsel, and then I'll remind you of some of the evidence. So please, ladies and gentlemen, remember what I say, don't talk to anybody about it, all that stuff, leave it all behind, have a pleasant evening, see you tomorrow.

D

(In the absence of the jury)

JUDGE DALY: Anything? No?

MR DU FEU: No, thank you very much, your Honour.

JUDGE DALY: No, 10 o'clock then, please.

MR DU FEU: Thank you.

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ADJOURNED UNTIL 17<sup>th</sup> MAY 2024

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