



INTEROFFICE MEMORANDUM

TO:	David Benjamin Chief of DV Misdemeanor Court	DATE:	3/16/10
		DEFT NAME:	Sapp, Warren
		CASE NO:	M10-6176
FROM:	Heather Ravich Assistant Chief of DV Misd. Court	RE:	No Action Memo

Assigned case on 2/8/10. The Defendant was initially arrested and charged with one count of misdemeanor Battery on 2/6/10 by the Miami Beach Police Department.

Brief Facts:

Defendant and victim had been in an "on and off" dating relationship for two years. Before the Miami incident, they were broken up, but still spoke to each other via email/text/phone. Victim was invited to come down to Miami by her girlfriend. She made her own arrangements and was staying with friends. During one of her conversations with Defendant, it was discovered that he was also going to be in Miami for Super bowl weekend. The victim and Defendant planned to meet up at some point in Miami. Once in Miami, the Defendant mentioned that he was having a party at the Shore Club and invited the victim, along with her friends.

Per Arrest Form:

At the party, the victim got tired and asked the Defendant for the keys to his hotel room, so that she could go to sleep. Victim slept for a few hours when she was awakened by Defendant pulling her out of the bed, trying to remove her from the room. Victim began to get dressed. Verbal argument ensued over men that victim was hanging out with earlier. Defendant grabbed victim and began to choke her, then pushed her down on the couch. Another verbal argument ensued over victim's cell phone calls. At some point, the Defendant picked victim up and threw her back down. Victim landed on her leg and felt a sharp pain. Defendant helped victim up and told her to leave. Once outside in the hall, victim approached a male and asked him for help. Defendant saw this and sent a text to victim, "you whore". Victim left the hotel and stayed with a friend. Victim called police to report the incident later.

Once Defendant was arrested, Defendant stated that he allowed victim to stay in his room, but then asked her to leave, because he was expecting company. Defendant further stated that he tried to help victim get off the couch, but that she fell backwards and fell on her leg.

INVESTIGATION:

A preliminary interview was conducted over the phone with the victim, as well as a sworn interview via video conference.



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Victim was invited by her girlfriend to come to Miami for Super bowl weekend. She told Defendant she would be in Miami and they planned to meet at some point when she was in Miami. Victim was staying with her girlfriend and the girlfriend's boyfriend during her stay in Miami. It wasn't until several days after victim arrived in Miami that Defendant invited her to a party he was having at the Shore Club on 2/5/10.

On 2/5/10—going into the early hours of 2/6/10- Victim attended the party at the Shore Club along with a group of people she was with. Around 2:00am of 2/6/10, victim became tired and irritated at Defendant due to his rude behavior toward one of the men in her group. Victim asked Defendant for the key to his room so that she could sleep. Defendant gave it to her.

Once in the Defendant's hotel room, victim went to sleep. She awoke to hearing Defendant walking around in the room. They first began talking, which led to Defendant asking her questions about who the people in her group were. Victim does not remember the details of the conversation due to her lack of sleep and partying from the days before.

At some point, victim sent some text messages to her friends to see where they were. She received one text back from a man named Nick (she didn't know his last name) from her group, who wrote that Defendant was a "stool pigeon". Defendant saw the text and became mad, demanding that she call him back. When victim refused, Defendant pulled her out of the bed. Victim claimed that she did not fall at that time; that Defendant continued to pull her with one arm into the main room/living room, and then let her go.

Victim then exited the room and went into the hallway of the hotel to plug her phone into a charger. The Defendant went into the hallway and, in a nice way, asked the victim to re-enter the room. The victim went back into the bedroom. Defendant followed her. Once in the room, the Defendant, according to the victim, grabbed the back of the victim's neck with his right hand, and the front of the victim's neck with his left hand and began to squeeze. The Defendant then kissed the victim. The victim stated she did not believe Defendant intended to choke her.

Victim then sat back down on the couch and tried calling her friends to see where they were, when Defendant grabbed the cell and looked at the texts and call log. Defendant directed her to call one of the guys on her call log. Victim refused. At this point, victim was dressed and standing. Defendant grabbed victim with his right hand against her neck and then his left hand on her shirt and picked her up and threw her onto the chair/lounge sofa. Victim clarified that it was more like a slam, and that Defendant really didn't throw her. The chair/sofa was 3 feet from where she was standing.

Victim stated she landed awkwardly, twisting her knee from underneath her. Victim claimed that she was in "excruciating" pain immediately; that she was screaming and crying in pain. Victim stated, "I could barely stand". Defendant began apologizing and helped her stand for about 5 or 15 minutes (victim unsure of length of time).

Defendant then grabs her by the arm and takes her to the door to throw her out. Defendant never told her why he wanted her out. Victim claimed she willingly left.

Once in the hall, victim saw an unknown man and approached him. She asked him to walk her to the lobby area because she was unfamiliar with the directions (she had come to the room a different way). Victim stated she was "limping". At some point, Defendant opened the door and saw her talking to the guy, and then yelled out, "she sucks good dick". Victim stated that she never told the guy what had happened; just that it was her ex-boyfriend and she apologized for his behavior. The man never asked her if anything was wrong.

When asked how she got to the lobby area, Victim answered, "I limped".



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Once in the lobby, victim was still in “excruciating” pain. She stated she immediately sat down and plugged in her cell to call her friend. Once Victim got the directions of where her friend was, she got a taxi and went to the location.

Victim stated she was teary-eyed while in the lobby and was sniffing.

Once at her friend’s house, she claimed she was the only one there except for the chef (her friend hadn’t come home yet); that she took some Tylenol and elevated her leg. Victim then went to sleep. Victim stated she never spoke to anyone. When she woke up (around 10 or 11:00am), she was in severe pain and spoke only to her friend Vanessa Barron (couldn’t provide the phone number) before calling the police.

After the police came to the house and took her statement, she was seen/treated by fire rescue and went to the hospital.

I conducted sworn interviews with numerous witnesses at the Shore Club, visited the hotel for an on-scene investigation, viewing different angles of the hotel’s video surveillance footage on the date of incident.

The interviews revealed that there were at least two security witnesses who observed the victim walking without a limp on the date of incident. More specifically, there was one security witness who remembers speaking to the victim that early morning (around 6:00am) on 2/6/10. This witness remembers being as close as 2 feet from the victim when they spoke. This witness never saw the victim limping or in tears. In fact, the witness remembers the victim walking in high heeled stilettos, and acting in a jovial manner with a male who walked down to the lobby with her.

Sworn interviews were conducted with police officers assigned to the case. Interviews revealed that no significant statements of guilt were made by the Defendant.

Physical evidence was reviewed, which revealed photos of victim’s leg, and upper neck with slight redness, as well as the hotel video surveillance, showing victim walking without any limp.

Victim’s Injuries/Inconsistencies:

Despite victim’s claim of injuries and inability to walk on her leg right after the incident, the medical reports shows only slight swelling and no fracture or dislocation, which is consistent with the video surveillance of victim walking in high heels without limping, as well as evidence of her bending down with her knees to pick up an item.

Victim wrote a sworn narrative at the police station, where she gave a brief description of the battery and claimed that the “guy” in the hallway helped her out because she could barely walk. However, the video surveillance clearly shows that the anonymous man never aided her walking in any way. Several different angles were viewed with the two of them together, where they walked down stairs together (again, without the aid of the male).

Victim gave sworn testimony that she was in excruciating pain from the moment she fell on her knee and was teary-eyed while in the lobby moments after the incident. However, there is a security witness who observed the victim giggling with an anonymous man, as well as walking in high heels without any trouble. The video surveillance confirms the witness’ testimony. Also, with the pain level that victim testified to, she waited hours to report the incident to police. In fact, she gave testimony that she went to sleep and then called a friend before reporting the incident to police.

Miscellaneous/Other Inconsistencies:



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Victim gave sworn testimony that she left the hotel in a taxi. However, there is an independent witness who not only saw the victim leave in a white Range Rover, but also told the witness that she did not need a taxi, because she was waiting on her ride. This is partially captured on the video surveillance.

The victim gave sworn testimony that when she arrived at her friend's house, she was alone, except for the chef and that she spoke to no one and went to sleep. However, after interviewing the friend, it was discovered that this friend was actually waiting for the victim at the house with at least 20 other people, still partying. The friend also stated that the victim told her about the battery at that time, and that no one sought treatment for the victim's alleged injuries.

Victim's allegations on the delayed, police non-emergency tape is that the Defendant was "really drunk". However, there are witnesses who saw Defendant about an hour after the incident, and claim that he was sober.

Analysis/Conclusion:

Based on the investigation and evaluation of the evidence, the State cannot file charges against the Defendant. The main reason why the State cannot file charges is due to the totality of the evidence and inconsistencies with the victim testimony and the physical evidence gathered during the investigation. The State is not able to file charges since we cannot prove this case beyond a reasonable doubt and ethically meet our burden.

Based on the above evidence and analysis, the State cannot file charges against the Defendant and must announce a NO ACTION.



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