

## Investigation Report: Final Pre Hearing

Office of Equity & Title IX, Missouri University of Science & Technology

October 20<sup>th</sup>, 2020

**Title IX Coordinator:** Benjamin White, Deputy Title IX Coordinator

**Investigator:** Barbi Spencer

**Intake Officer:** Siobhan Macxis

**Date of initial meeting:** Thursday, August 27<sup>th</sup>, 2020

**This report summarizes the allegation of sexual harassment;** specifically Sexual Assault – Sodomy and Dating Violence of Nash Kelly.

**University of Missouri Collected Rules and Regulations 600.020 defines these alleged policy violations as follows:**

**Sexual Harassment.** Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- “Quid Pro Quo” - An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual’s participation in unwelcome sexual conduct;
- “Hostile Environment” - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University’s education program or activity;
- “Sexual assault” - Any sexual act that constitutes rape, sodomy, sexual assault with an object, fondling, incest, and statutory rape, as defined below:
  - “Sodomy” is oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

**“Dating Violence”** - The term “dating violence” means violence committed by a person-- (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship, (ii) The type of relationship, and (iii) The frequency of interaction between the persons involved in the relationship.

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**Involved Parties:**

Complainant: Nash Kelly, junior student at S&T

Respondent: Jed Smith, graduate student at S&T

**Witnesses:**

Brian Barker, junior at S&T – fraternity brother of Nash

Amal Jones, graduate student at S&T – Friend and housemate of Jed

James Lewis, graduate student at S&T – Friend of Amal, present for alleged incident

Samantha Rivers, Assistant Chief of S&T Police, first responder

**Timeline:**

Initial Report	8/25/2020
Outreach to Complainant	8/26/2020
Complainant Intake	8/27/2020
Formal Complaint Filed	8/27/2020
Supportive Measure provided to NK	8/27/2020
Notice of Allegations	8/28/2020
Interim Remedy Provided to Parties (No Contact Directive)	8/28/2020
Respondent Interview	8/31/2020
Supportive Measure provided to JS	8/31/2020
Witness Interview BB	9/3/2020
Witness Interview AJ	9/3/2020
Witness Interview SR	9/4/2020
Complainant Second Interview	9/7/2020
Respondent Second Interview	9/8/2020
Evidence Sent to Parties for Review	9/15/2020
Evidence Received From Parties	9/29/2020
Notice of Hearing sent to Parties	9/30/2020
Finalized Investigation Report sent to Parties	9/30/2020
Party's Proposed Witnesses/Evidence Received	10/6/2020
Request to Remove Hearing Panel Member	10/6/2020
Notice of Hearing sent to Witnesses	10/7/2020
Complete List of Proposed Witnesses/Evidence sent to Parties	10/13/2020
Intent to have an Advisor Received from Parties	10/13/2020
Request for Hearing Accommodations Received	10/13/2020
Final Investigation Report w/Evidence/Witnesses to HP Members	10/20/2020
Live Hearing	10/27/2020

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**Documents:**

Initial Report  
Formal Signed Complaint  
Outreaches and email correspondence  
Official Letters and Notices  
SANE Examination Summary  
University Incident Summary  
Text Messages

**Resolution Process:** University of Missouri Collected Rules & Regulations 600.030; Process for resolving complaints of Sexual Harassment under Title IX.

**Summary:**

Nash Kelly is a junior at Missouri S&T, and is alleging that during the course of a heated argument his on-again off-again boyfriend Jed Smith struck him violently, and then performed anal sexual intercourse without his consent. When interrupted by Jed’s roommate Amal Jones, Nash left the apartment and contacted his fraternity brother Brian Barker who took him to University Police. Assistant Chief Samantha Rivers transported Nash to Phelps Health Emergency Room and Nash had a SANE exam performed. Samantha completed his report, and notified the Deputy Title IX Coordinator, Benjamin White who instructed Siobhan Macxis to reach out and perform an intake meeting with Nash.

**Interim Remedies and Supportive Measures Provided:**

- No Contact Directive between Nash and Jed
- Counseling provided to Nash at his request
- Class Excusal for 8/26-8/28, extension to deadlines, and ability to make up missed work at Nash’s request
- Extension to research deadline provided to Jed at his request

**Intake Meeting 8/27/2020 with Nash Kelly**

Intake Officer: Siobhan Macxis

Siobhan met with Nash Kelly a junior at Missouri S&T on 8/27/2020. Nash explained to Siobhan that he was the victim of a sexual assault during a fight with his now former boyfriend, Jed Smith. Nash stated that he is an active member of the Alpha Beta Chi fraternity. Nash stated that he has been in an on again off again relationship with graduate student Jed Smith for approximately 8 months. Nash said that he and Jed do not hide their status as members of the LGBTQ community, and consider themselves comfortable with this aspect of their identities.

On the evening of Tuesday, August 25<sup>th</sup>, Nash stated that he had gone out to celebrate the start of the academic year with his fraternity brothers. He said that he and around 10 other brothers

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went to Hopper's, a local bar in downtown Rolla at about 7:30pm and drank and ate. Nash alleges that he received an angry text message from Jed demanding he come over right away. Nash stated that he left the party and went to Jed's. Nash indicates that he had drank about one pitchers worth of beer in two hours, and had not eaten very much that day before he left. Nash stated that he was intoxicated, however was not incapacitated at the time he left for Jed's apartment in the Rolla Suites on foot, just a couple blocks north of Hopper's towards campus.

Nash stated that when he arrived at Jed's apartment he was greeted at the door by Amal Jones, Jed's roommate. Amal was cordial with Nash, and stated "he's [Jed] really on one today man." And then Amal went to his room. Nash stated that he knocked on Jed's door and was told to come in. Nash stated that he and Jed argued, and the argument escalated; Jed became louder and louder, was gesturing his arms all around the place. Nash stated that Jed was getting into his face and calling him insulting names like "slut" and "whore" and making outlandish accusations that he had been cheating on Jed with his fraternity brothers. Nash stated that he tried to get Jed to calm down out of a concern that Amal would overhear them. When Nash attempted this Jed struck him in the face with the back of his hand, busting his lip and then forced Nash onto the bed face down. Nash states that he was in such a state of shock he did not realize that Jed had taken down his pants, and removed Nash's shorts and straddled him, pinning his hands down with his knees. Nash stated that Jed then penetrated him with his penis, without lubricant or a condom and had anal intercourse with him without asking for his consent, or Nash signaling that he gave consent. Nash stated that he screamed out to stop, and this is when Amal began banging on the door to Jed's room. Nash stated that Jed continued intercourse for about 20 more seconds before getting up and rushing to the restroom. Nash stated that he took this opportunity to run out of the apartment where he called his fraternity brother Brian Barker who was the sober driver for the party at Hopper's.

Nash stated that Brian picked him up and took him to the UPD office on campus where they met with Assistant Chief of Police Samantha Rivers. Nash stated that he began giving his statement to Samantha when he really began feeling a lot of pain, and explained this to Samantha. Nash stated that Samantha advised him that she could take him to the ER. Nash agreed to go to the Phelps Health Emergency Room, and Brian suggested to him that he should have a SANE exam performed, and Nash thought that was probably a good idea. Nash stated that it was a horribly embarrassing examination, and that the nurse was cold with him. However, Nash said that the doctor that tended to his bruised lip and anal fissures which were a result of the anal intercourse was very caring.

Nash made it clear to Samantha he did not want to file a police report, but he wanted something done about Jed, and hates to think that he could do this to someone else in the community.

Siobhan asked if Nash wanted to file a Formal Complaint, and explained the Equity Resolution Process to him, Nash stated that he wanted to file a Signed Formal Complaint, and did so in the

intake meeting. Throughout the intake Nash was very emotional, and at times cried. Siobhan advised Nash of supportive measures and interim remedies available to him under policy. Nash requested a No Contact Directive, and academic and counseling supportive measures.

### **Interview with Respondent – Jed Smith 8/31/2020**

Investigator: Barbi Spencer

Second in room: Siobhan Macxis

On Monday, August 31<sup>st</sup>, 2020 University Investigator Barbi Spencer met with Jed Smith, a graduate student at Missouri S&T. Jed stated that he had been seeing Nash for the better part of the spring and summer. They had met at a social sponsored by Spectrum (Spectrum is the LGBTQ social Recognized Student Organization) back in November. Jed said he was taken by Nash early on in the relationship, and that he was very passionate with him. Jed stated that he was very physically attracted to Nash, and felt like they had a lot in common. Jed stated that he didn't like how much Nash drank, and thought that the fraternity he was a part of was a detriment to his academic career. Jed also stated that he wasn't a fan of all of the "competition" that Nash lived with in his fraternity house. When Barbi asked Jed what he meant by "competition" Jed said that there were a number of attractive guys who lived there, and he didn't like how they all flirted with each other. Jed stated that this was an ongoing problem between him and Nash, that he had asked him repeatedly to stop hanging out and flirting with his fraternity brothers so much. Jed stated that Nash would seem to appease him for a week or so when this argument would happen, then Jed would notice it again and they'd be right back in the fight. When Barbi asked what the fights would look like, Jed stated that they were typically loud verbal fights, they both would say things that they didn't mean to each other to hurt them, or shock them.

Barbi asked Jed if he'd ever hit Nash, and Jed said no, it's never gotten physical before. Barbi asked Jed how Nash had wound up with a busted lip, and Jed explained that it happened during the make-up part of their argument. Barbi asked Jed to expand on that. Jed stated that after almost every argument he and Nash would have rough makeup sex. In this instance they were very loud, and Jed stated that he definitely was rough with him, perhaps too rough, but he thought it was what Nash normally liked, and again, it was normal for them as a conclusion to their argument. Jed said that when he pushed Nash onto the bed Nash struck his lip on the footboard, and that he didn't think it was bad at the time. Barbi asked Nash if he used protection, Jed said that he and Nash did not regularly use protection, as they were both on Prep and would get tested regularly. Barbi asked Jed if it was normal for him to use lubricant when having anal sex with Nash, and Jed said that he normally did, but sometimes, when he thought Nash really wanted it rough, he would not. Barbi asked Jed if Nash was saying anything to him during the recent sexual encounter, Jed hesitated, but then told Barbi that Nash did say stop, but attributed it to the fact that his roommate Amal was pounding on the door telling them to keep it down. Jed said that he did stop because Amal was being really annoying

pounding on the door. Jed stated that he got up and confronted Amal at the door, told him to go on, and then went to the bathroom.

Jed stated that he was surprised to find Nash gone when he returned, and Nash wasn't answering any of his texts or calls. He's been worried sick, and then when he got the notice of allegations became even more upset. Jed stated that this was Nash's way of getting back at him, his fraternity brothers probably encouraged him to do this because he wasn't a part of their "pack". Jed went on to characterize Nash as being prone to over exaggeration. Jed stated that he got a really hateful message from Nash's friend and fraternity brother Brian Barker; basically accusing him of being a monster rapist and on and on, it came off very threatening.

Jed stated that he was experiencing a lot of stress from this, and will now probably miss his research deadline. Siobhan advised Nash of supportive measures and interim remedies available to him under policy. Siobhan offered to help Jed with a supportive measure to extend his deadline, and he accepted.

### **Witness Interview – Brian Barker 9/3/2020**

Investigator: Barbi Spencer

Second In Room: Siobhan Macxis

On September 9<sup>th</sup>, 2020 Barbi Spencer met with Brian Barker, a junior, friend of Nash's and a member of the Alpha Beta Chi fraternity. Brian stated that he had known Nash since they were initiated into ABC fraternity the first semester of their freshman year, and had become very close friends early on. Brian stated that he had been aware that Nash and Jed had been seeing each other for a while, as Nash would frequently vent to him about the struggles in the relationship. Brian stated that Nash felt controlled at times by Jed, and knew that Jed did not like him, or his brothers. Brian stated that he didn't really care what Jed thought of him, or his friendship with Nash, and that his and Nash's friendship was stronger than whatever Nash and Jed had together.

Barbi asked Brian to recount the events of the night of August 25<sup>th</sup>. Brian stated that he and about 10 other members of the fraternity went to Hopper's to celebrate the start of the semester. Brian stated that he was the sober driver but was encouraging everyone to drink. Brian stated that he thought Nash had about a pitcher of some dark beer he didn't remember the name of before he abruptly left a few hours in. He wasn't sure if Nash had eaten anything. Brian stated that he texted Nash asking him where he was going, and Nash replied "the master has called me to his presence" which told him all he needed to know, Jed had told him to come over. Brian didn't really think anything of it he said, Nash tended to get a little dramatic when he drank a bit. Brian stated that Jed was always demanding Nash's attention, and it seemed more so whenever Nash was having a good time with his fraternity brothers. Brian stated that that wasn't the first time Nash had referred to Jed as "the master" and it was sort of their inside joke. Brian stated that he wasn't sure what kept Nash in that relationship, but when he was

happy with Jed he was really happy, so he never really pushed the issue. Brian stated “but man, when they fought... they were loud, and the fallout normally left Nash in tears, but then Jed would do something Nash thought was nice and they’d be right back together.”

Brian said he hadn’t heard a peep out of Nash until about 30, maybe 45 minutes after he had left and sent that text. Brian stated that Nash called him, he was in tears, and asked him to come pick him up really fast before Jed found him. Brian stated that this alarmed him, so he left Hoppers and picked Nash up. Brian said the minute Nash got into the car he knew something was wrong, his face was bloody and red, his lip had been busted open as well. Brian said that he also could tell by the way Nash was walking with a limp that something wrong had happened. Brian said he didn’t know what to do at first, because Nash was just sobbing and almost hyperventilating, he knew he was close to the UPD office so he would go there for help. Brian said he took Nash in and an officer named Samantha Rivers helped them. Brian said that’s when Nash told him and Samantha what had happened, that Jed had smacked him across the face during an argument and then basically raped him. Brian stated this had made him very angry, and he shot off a really fast and aggressive message to Jed basically saying that he was going to regret what he did to Nash. Brian stated that Samantha took them to the hospital because Nash was in a lot of pain, and suggested that Nash get a SANE exam performed, and he did. Brian stated that he picked Nash up after the exam was complete and took Nash home.

Brian said when Nash got his outreach he was reluctant at first to come in, but he encouraged Nash that this wasn’t okay and had to stop. Brian stated that he’s relatively certain that Jed hasn’t tried communicating with Nash.

### **Witness Interview – Amal Jones 9/3/2020**

Investigator: Barbi Spencer

Second In Room: Siobhan Macxis

On September 3<sup>rd</sup>, 2020 Barbi Spencer met with Amal Jones, a graduate student at Missouri S&T and Jed’s roommate. Amal stated that he had known Jed for about a year and a half when they moved in together in the Rolla Suite’s North complex on campus. They shared the same faculty advisor who encouraged them to live together, as it would be helpful for research and accountability. Amal stated that generally speaking, he got along with Jed. Amal stated that on occasion he observed Jed get rather loud and angry though.

Recently, Amal stated Jed’s anger would be centered on his boyfriend Nash. Amal stated that he didn’t really know Nash all that well, and only spoke to him in passing when he’d come over to Jed’s place, but that he seemed like a pretty chill guy. Amal stated that he had heard Jed and Nash argue before, and it was always very loud, but he didn’t think it was any of his business so he’d just put headphones on and listen to music, and by the time he was ready for bed Jed and Nash would seem to be getting along again.

When asked to recall the night of the 25<sup>th</sup> Amal stated that Jed had been going on a long rant about how inconsiderate and untrustworthy Nash was. Amal stated that he inferred it was because Nash was hanging out with his fraternity brothers again, something that he'd heard Jed talk and yell at length about. Amal stated that Jed didn't like to drink, and that he didn't like it when Nash drank. Amal stated that he'd seen Nash come over to the apartment once clearly intoxicated and Jed yelled at him for a long time about it. Amal stated that in this previous instance Nash was being over the top, pretty crazy and really dramatic in his argument about being able to drink.

Amal stated that he was getting kind of embarrassed by Jed's rantings because he had a friend over working on a research project with him, James Lewis, so he was relieved when Nash showed up. Amal stated that he told Nash when he answered the door "good luck, he's on one tonight" and he meant that Jed was on a rant about Nash. Amal said he watched Nash go to Jed's bedroom door, and he stumbled when he walked, Nash appeared drunk to Amal. Amal stated that he went to his room to continue working on his research project with James that was coming due.

Amal stated that he couldn't make out what was being said in the other room, but it kept getting louder and louder, and it seemed to go on for about 20 minutes when something about it changed. Amal stated that he stopped hearing raised voices and started to hear yelling and screaming. Amal stated that it was something about the pitch in the voices that bothered him, and he looked at James and could tell he was distracted by it too, and neither of them could focus on their project anymore, so he went to Jed's room and pounded on the door trying to get them to cut it out. Amal stated that when he did this he clearly heard Nash scream "stop". This concerned Amal, and after about 30 seconds Jed came busting through the door and went straight to the bathroom. Amal stated that he went after Jed to check on him, but he slammed the door in his face. Amal stated that he decided to go back to his room where James was, that it wasn't his place to get involved. Soon after he got to his room he stated that he heard the apartment door close, and inferred it was Nash leaving. Amal hasn't spoken to Jed since the incident, he stated that he's been very caught up in the research project and Jed's been keeping shut up in his room.

### **Witness Interview – James Smith – 9/4/2020**

Investigator: Barbi Spencer

Second In Room: Siobhan Macxis

On September 4<sup>th</sup>, 2020 Barbi spencer met with James Smith, a graduate student and friend of Amal's. Barbi asked James what he knew about the incident on August 25<sup>th</sup> between Nash and Jed. James stated that he really didn't know a whole lot, but that it sounded like a pretty intense argument was underway. James stated that he really didn't know Jed or Nash, he knew of them because Amal would occasionally mention his roommate in passing conversation.

James stated that he was working on a project with Amal in his room, and they heard a knock at the door. James stated that Amal said that “that must be Nash, I better let him in so Jed can calm himself down.” James stated that he kept working on the project, and Amal quickly returned. James stated that a few moments later he began hearing raised voices inside the apartment, and he looked at Amal however Amal didn’t seem to be reacting. James stated that he took his cue from Amal because it was his roommate, and really not his business. James stated that he was really trying hard to focus on the work. James stated that the raised voices went on for about 15-20 minutes or so, and then it changed, it got really loud, and James felt like it sounded more like a person in duress. James stated that he looked at Amal who then got up, mumbling something about wishing they’d knock it off, and then James heard what he presumes was Amal pounding on Jed’s door. James clearly heard someone scream “stop”, and then later heard a door open, and saw Jed pass by Amal’s room towards the bathroom. James stated that he saw Amal follow him, but Amal quickly returned to his room and said not to worry about it and then went back to work. James stated that he didn’t see or hear Jed the rest of the night.

James stated he really doesn’t want to be involved in this, it makes him really uncomfortable, and he really can’t waste his time on this kind of thing because he’s got a very important research deadline approaching.

#### **Witness Interview – Samantha Rivers – 9/4/2020**

Investigator: Barbi Spencer

Second Person In Room: Siobhan Macxis

On September 4<sup>th</sup>, 2020 Barbi Spencer met with Assistant Chief of Police Samantha Rivers for a witness interview. Samantha stated that she responded to the incident involving Nash at about 10:15 the evening of the 25<sup>th</sup> of August. Samantha characterized Nash’s demeanor as having been through something very traumatic, stating that he had a busted lip, a very red face, clearly had been/was still crying and when he was walking he was wincing in pain. Samantha stated that Nash began telling them that he had been assaulted both physically and sexually by his boyfriend Jed. Samantha stated that Nash told her he and Jed had been in an intense argument, and Jed had slapped him across the face with the back of his hand which stunned him, and that Jed had pushed Nash onto the bed, pulled down his pants and proceeded to have anal sex with him without his consent.

Samantha stated that she wanted to make sure Nash was okay physically before filing a full report, and offered to take Nash to the emergency room and have a SANE exam performed. Samantha stated that Nash agreed and Nash told her that he was having some significant pain “down there” which Samantha inferred as his anus. Samantha stated that she transported Nash to the Phelps Health Emergency Room, and got him set up to have a SANE exam performed. Samantha stated that Nash made it clear he did not want to file a formal police report, but wanted the exam performed. Samantha stated that she made sure that Nash had

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transportation once the exam was complete, and then returned to the station to complete her informational report and submit it to the Chief of S&T Police and Benjamin White, the Deputy Title IX Coordinator for campus.

### **Complainant Second Interview - Nash Kelly - 9/7/2020**

Investigator: Barbi Spencer

Second Person In Room: Siobhan Macxis

Barbi Spencer met with Nash on September 7<sup>th</sup>, 2020 to follow up with some additional questions. Barbi asked Nash to describe Jed's room, specifically his bed. Nash stated that Jed had a full sized mattress pushed up into the corner of the room, he stated that it was lower to the ground. Barbi asked Nash if the bed had a headboard or a footboard on the bed, to which Nash stated there was not. Barbi asked Nash what kind of pants he was wearing the night of the incident, to which Nash stated he was wearing athletic shorts with an elastic band.

Barbi asked Nash to characterize the typical sex Nash and Jed would have. Nash stated that it was pretty normal, however that when they fought their makeup sex was a little more passionate, and sometimes rough, but Nash didn't like hitting or super hard or rough sex, and had told Jed this. Barbi asked Nash if it was normal to not use a lubricant when he and Jed had anal sex, to which Nash replied that it was not normal, and he'd never allow it under normal circumstances. Nash stated that he attributed most of the injury to his rectum and anus to the lack of lubricant used.

Barbi asked Nash what the fight with Jed was about. Nash stated that Jed was mad at him because he was out with his fraternity brothers and drinking, a common point of contention between them. Nash stated that Jed would get jealous of the attention his fraternity brothers would pay him, and the attention he paid them in return. Nash also stated that Jed didn't like it when he drank, but it wasn't like he was over the top drunk. Barbi asked if Jed had been drinking that night, and Nash stated that he highly doubted it because Jed would rarely drink, or do any sort of drug. Barbi asked Nash what sort of cues he would typically give Jed that showed an interest in having sex at the end of an argument, to which Nash replied in the past he'd either go in for a kiss, grope him, or pull him close to him, something obvious and direct.

Barbi asked Nash if he, or anyone else had been in communication with Jed since the incident. Nash stated that he knew that Brian had sent a message to Jed, and that it was threatening, but after he had his intake with Siobhan and she explained the retaliation policy to him he made sure to have a conversation with his brothers about not retaliating, even though they wanted to.

## **Respondent Second Interview – Jed Smith - 9/8/2020**

Investigator: Barbi Spencer

Second Person In Room: Siobhan Macxis

Barbi met with Jed Smith on September 8<sup>th</sup>, 2020 for a follow up interview. Barbi asked Jed if he had been drinking the night of the incident, to which Jed replied no, he rarely drank. Barbi asked Jed how he knew that Nash was drunk, and he stated that Nash smelled like beer, and stumbled a bit when he came into the room. Jed went further to say that Nash had a tell when he was intoxicated, he got overly dramatic about everything, so he really escalated the argument and the language he was using. Barbi asked Jed to expand on that, and Jed stated that Nash was calling him things like “a slave master” “controlling” “lame” “asshole” to name a few.

Barbi asked Jed to describe his bedroom, specifically his bed. Jed stated that he’s got a full sized bed, with a red cover pushed against the wall and in the corner of the room. Barbi asked if the bed had a headboard or footboard, and Jed stated that it did not. Barbi followed up with Jed, and asked him how Nash’s lip became busted, because in his initial interview he stated Nash must have struck it on his footboard of the bed. Jed stated that Nash must have bit it during sex, and that that is the only explanation he had.

Barbi asked Jed how he knew Nash wanted to have sex with him. Jed stated that it was what always happened at the conclusion of their fights, and he wanted the fight to end. Barbi followed up, asking what cues or signals did Nash give you that showed he wanted to have sex and/or end the argument. Jed stated that he could tell Nash was getting calmer with him, and that he was attempting to calm him down, and that was typically how he’d initiate sex.

Barbi asked Jed if he had been in contact, or had been contacted by Nash or anyone else since they spoke last. Jed stated that he has not received any further contact from anyone, and has kept himself shut up in his room. Siobhan offered counseling services to Jed, to which he declined.

### **Informational Points**

- A Clery mandated timely warning was issued on the morning of 8/26/2020 by the University Police Chief indicating that a sexual assault had been reported to have occurred in the vicinity of the 1100 Block of N. Pine Street.
- A SANE Examination Report is on file with the Office of Equity & Title IX, however due to HIPAA will not be released in its entirety. A summary of the SANE Exam has been provided as an appendix to this report.
- Nash's BAC was .075 at 11:30pm according to the SANE exam, given the amount of beer Nash drank his BAC at about the time of the incident could be in the range of .105. Given Nash's weight this would put him in the designation of Legally Intoxicated. However, many factors impact BAC, metabolism, food consumed that day, and the alcohol content of the beer, and how fast Nash consumed the beer. Minus .2 would put Nash as Impaired at the time of the incident, plus .2 would push Nash further into Legally Intoxicated at the time of the incident.
- Rolla Suites North (the location of the alleged incident and Jed's apartment) is a residence hall on campus and under university control.

### **APPENDIX SUMMARY**

Appendix A – Informational Report filed by Assistant Chief of University Police Samantha Rivers

Appendix B – SANE Examination Summary

Appendix C – Text messages between Nash and Jed on the night of the alleged incident

Appendix D – Text message between Brian and Nash

Appendix E – Message from Brian to Jed

# Appendix A



### **University Police Information Report**

Written by: Assistant Chief Samantha Rivers

Date: 8/25/2020

Time: 23:30

#### **Incident Summary:**

At approx. 22:30 on 8/25/2020 I was informed by the front office that students Brian Barker and Nash Kelly had walked into the station and needed assistance. I took them to the private conference room and asked what was wrong. Mr. Kelly told me that he had been assaulted by his boyfriend Jed Smith. Mr. Kelly had a visible abrasion on his lip, and appeared to be red in the face. Mr. Kelly told me that Mr. Smith had struck him with the back of his hand, and then penetrated Mr. Kelly's anus with his penis and had sex with him. Mr. Kelly complained of pain in his rectum/anus due to the sexual assault. I became concerned for Mr. Kelly's wellbeing and offered to transport him to Phelps Health Emergency Room, where he could have a SANE exam performed and get medical attention. Mr. Kelly agreed to this. When we arrived, I arranged for a private space for Mr. Kelly to wait, and assisted in arranging for the SANE exam. I asked Mr. Kelly if he wanted to file a police report, and he declined. I ensured that Mr. Kelly had transportation arranged for when his exam was complete, and then returned to the station at approx. 23:25 to complete this information report and submit it to the Chief and the Title IX Office.

End Report.

# Appendix B

## **SANE Exam Summary**

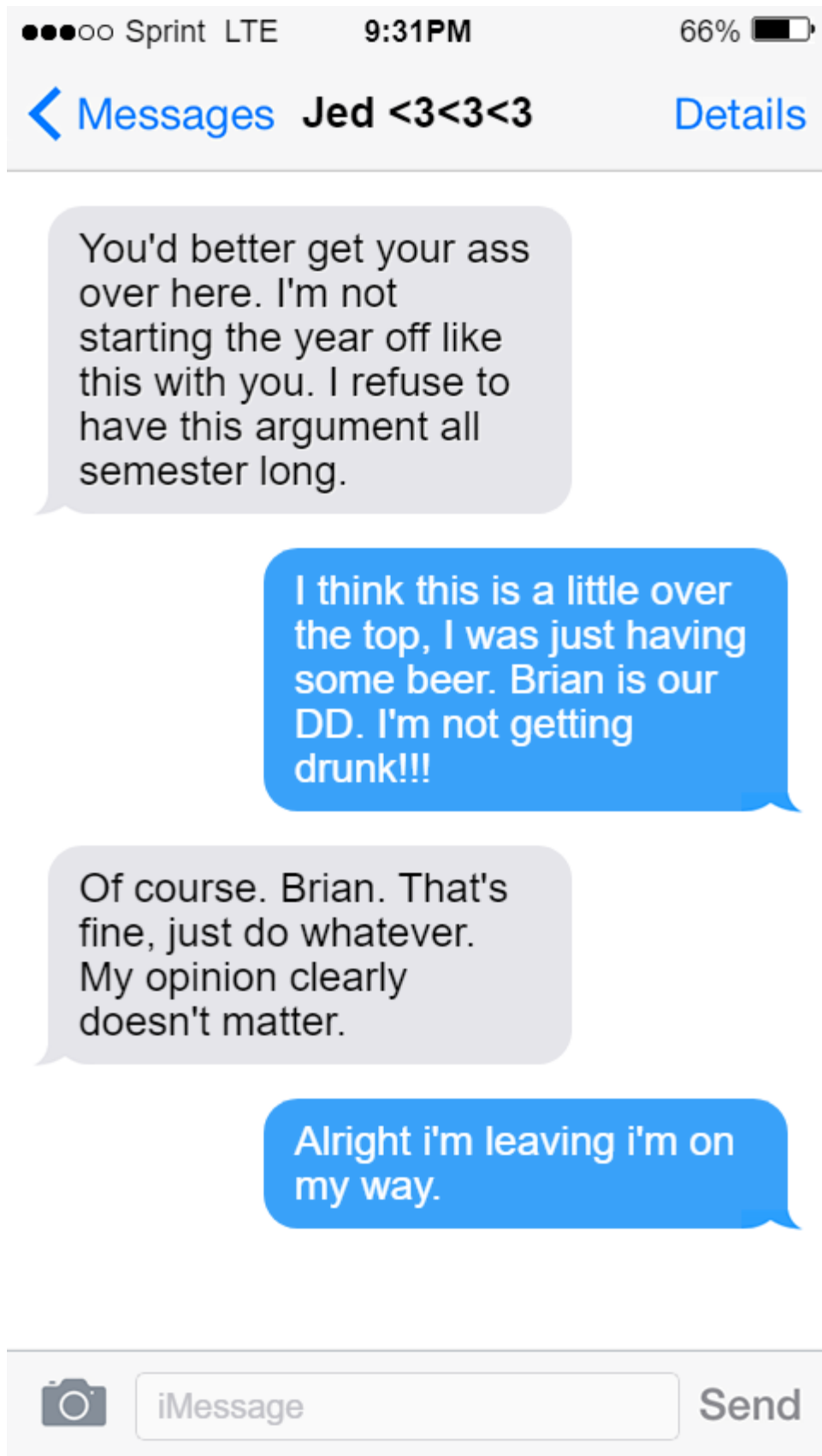
When provided, the university does not release the physical SANE exam report to the parties, as it is protected under HIPAA. However, the University Investigator has summarized the report with the following bullets:

- Nash Kelly was admitted to Phelps Health ER at 10:57 PM
- Nash Kelly requested a SANE exam be performed
- Nash Kelly had a vertically lacerated lip ½ inch in length, the laceration was treated
- Nash Kelly had heavy bruising to his right cheek, jaw, chin and lips
- Nash Kelly had moderate bruising to the underside of both his left and right wrists
- Nash Kelly had symptoms of anal fissures and tearing of the interior rectal walls that was treated
- Blood for STI and HIV screening was drawn from Nash Kelly
- Kelly Nash, a male who weighs 163lbs had a Blood Alcohol Content of .075% at the time his blood was drawn at 11:34PM.

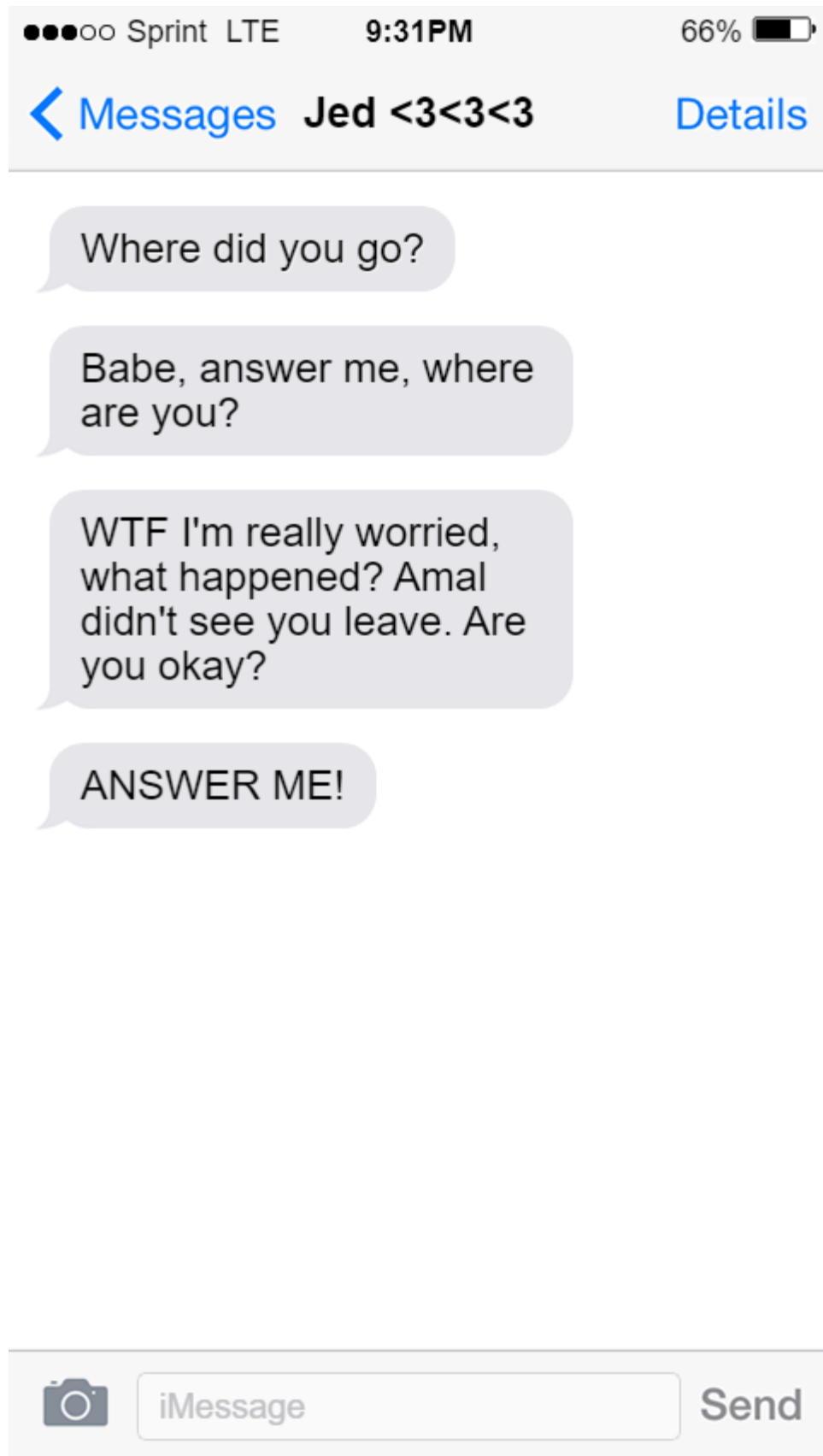
# Appendix C



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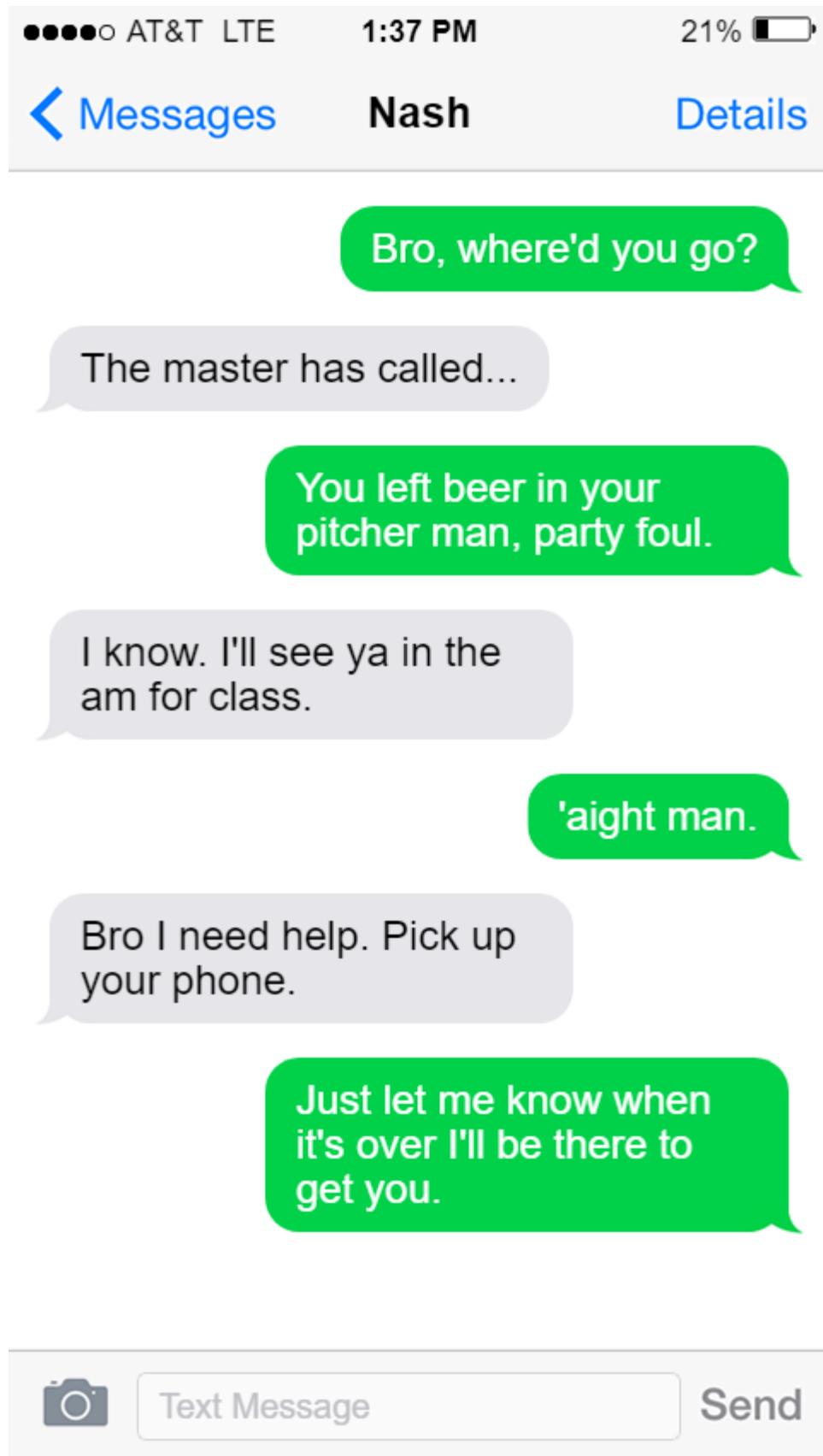


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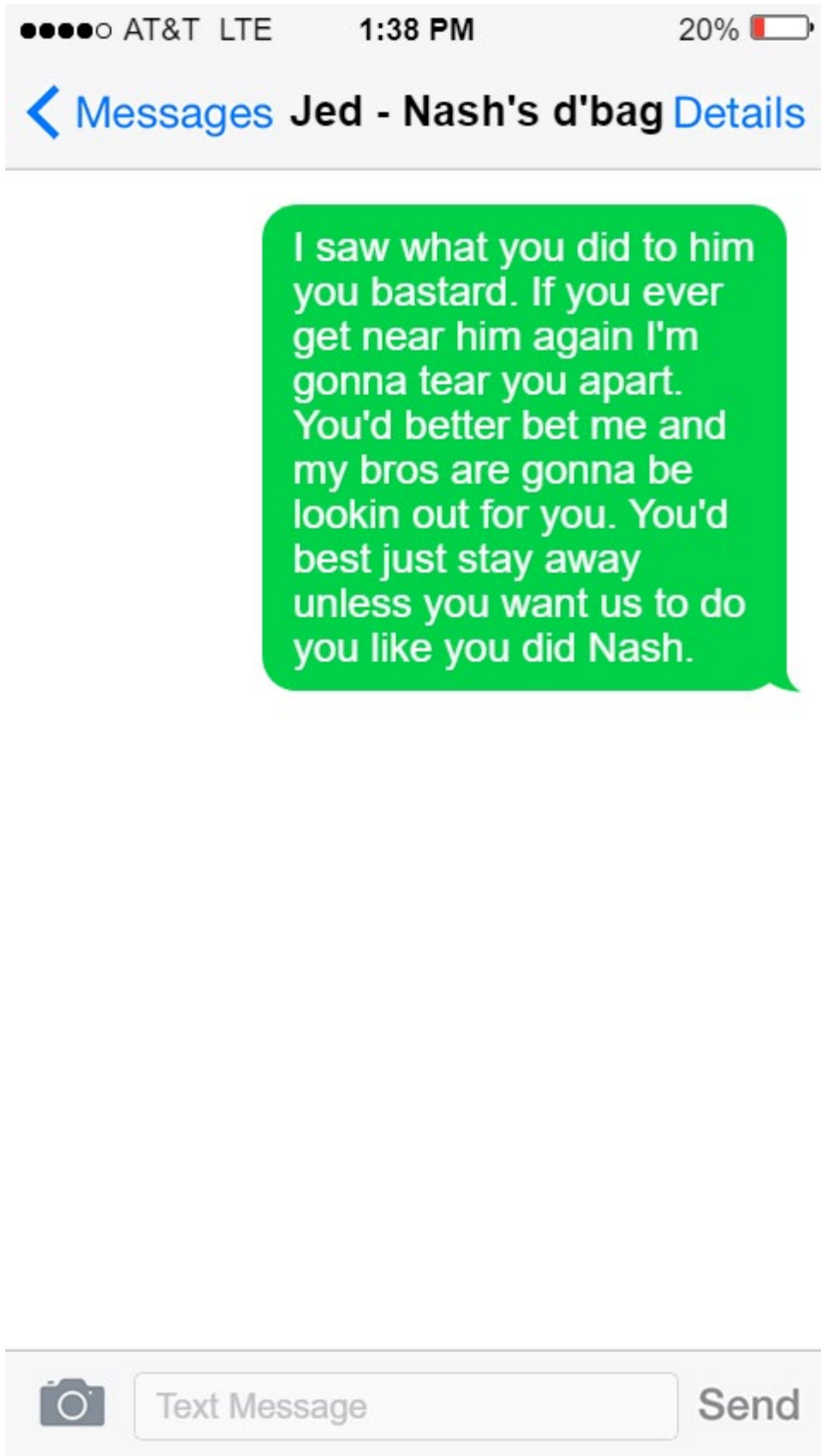
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# Appendix D



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# Appendix E



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**Decision Making/Analysis Flow**

Policy Violation	Point of Fact Confirming	Point of Fact Refuting

## Analysis/Rationale Questions to Consider:

- Is there a preponderance (51% did happen, or 51% did not happen) of evidence?
  - If there is, explain that.
    - “Quinn, I have thoroughly reviewed the facts at hand as presented in the investigation report and hearing. This included your testimony, the testimony of the complainant, witness testimony and documentary evidence. I have found that there is a preponderance of the evidence that shows you are responsible for violating the University of Missouri Collected Rules and Regulations 600.020: Sexual Misconduct, nonconsensual sexual intercourse.”
  - If there is not, explain that.
  - Identify the facts, one/two sentence paragraphs are okay.
    - “Quinn, text messages provided by Blake have identified that you both had been talking about attending this party for two weeks prior, and in those conversations Blake expressed how they were concerned because they did not drink often, and their tolerance was low. Blake also shared with you that they on a prescription for depression that sometimes had adverse interactions with Alcohol.”
- What’s the respondent’s defense?
  - If the facts at hand support their defense, identify that.
  - If the facts at hand do not support their defense, identify that.
    - “You stated in your interview with the University Investigator that you did not give Blake any drinks, or see Blake drink alcohol on the night the incident occurred, so how would you know how much they had to drink? However, through the course of the investigation multiple witnesses attested to seeing you give Blake drinks which summed to 6 alcoholic beverages, and 3 alcoholic Jell-O shots of unknown strength in the span of two hours, and overheard you actively encouraging Blake to “get wasted”. I have no reason to doubt the credibility of these witnesses, and believe that you are factually incorrect on this point.”
- How would “A Reasonable Person” respond?
  - A Reasonable Person is: a fictional person with an ordinary degree of reason, prudence, care, foresight, or intelligence whose conduct, conclusion, or expectation in relation to a particular circumstance or fact is used as an objective standard by which to measure or determine something (as the existence of negligence)
  - Use “a reasonable person” in your language
  - If the respondent’s behavior was contrary to what “a reasonable person” would do, explain that as well.
    - “You attested to observing Blake not handling the alcohol well. A reasonable person would have been able to tell, after observing Blake’s slurred speech, stumbling, passing in and out of consciousness, and vomiting that they were incapacitated, and as defined by University Policy, unable to provide consent to any sexual activity.
- What is the appropriate Remedy to this situation?
  - Consider the impact to the complainant and/or respondent in your rationale.
  - Weigh the wishes of the complainant.
  - If there is anything else that impacted your thought process, now is the time to include that.
    - “Quinn, the evidence in this matter is substantial, it is also clear that you actively lied to the University Investigator throughout the process, as the majority of your points of fact were debunked by neutral witnesses. Given the significant impact that this incident of non-consensual sexual intercourse has had on Blake, and the predatory nature of your actions leading up to the event, I have determined the only course of action available to me to protect the S&T community is University Expulsion. You are immediately expelled from Missouri University of Science & Technology.”