

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR HARRIS COUNTY, STATE OF LONE STAR
CRIMINAL DIVISION**

STATE OF LONE STAR)

v.)

TOBY BARON,)

Defendant.)
_____)

Case No. 2006-1965

Prepared by:

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This case file was commissioned by the Texas Young Lawyers Association and was prepared by Tracy E. Leduc for the 2007 National Trial Competition.

**State of Lone Star
v.
Toby Baron**

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STATEMENT OF THE CASE

The State has charged Toby Baron with one count of sexual battery against Krista Chacona. The State intends to prove that Toby Baron had sexual intercourse with Krista Chacona against her will and without her consent. Toby Baron has raised the defense of consent, and intends to prove that he and Ms. Chacona engaged in a consensual sexual encounter.

STIPULATIONS REGARDING EVIDENTIARY MATTERS

Procedural Matters

1. Federal Rules of Criminal Procedure and Federal Rules of Evidence apply.
2. All witnesses called to testify who have identified the parties, other individuals, or tangible evidence in depositions can, if asked, identify the same at trial.
3. Each witness who gave a deposition agreed under oath at the outset of his or her deposition to give a full and complete description of all material events and occurrences and to correct the deposition for inaccuracies and completeness before signing the deposition.
4. All depositions were signed under oath.
5. For this competition, no team is permitted to attempt to impeach a witness by arguing to the jury that a signature appearing on a deposition does not comport with signatures or initials located on an exhibit or by arguing that a signature provided at trial does not comport with signatures or initials provided in the problem.
6. Other than what is supplied in the problem itself, there is nothing exceptional or unusual about the background information of any of the witnesses that would bolster or detract from their credibility.
7. This competition does not permit a listed witness, while testifying, to "invent" an individual not mentioned in this problem and have testimony or evidence offered to the court or jury from that "invented" individual.

8. "Beyond the record" shall not be entertained as an objection. Rather, teams shall use cross-examination as to inferences from material facts pursuant to National Rules VII(4)(C) and (D) and VIII(5). Any party wishing to file a complaint concerning a violation of this rule shall use the procedure found in rule VIII(4).

9. The State and the Defendant must call the two witnesses listed as that party's witnesses on the witness list.

10. All exhibits in the file are authentic. In addition, each exhibit contained in the file is the original of that document unless otherwise noted on the exhibit or as established by the evidence.

11. It is stipulated that no one shall attempt to contact the problem drafter about this problem before the conclusion of the 2007 National Trial Competition Final Round. Contact with the competition officials concerning this problem must be pursuant to the rules of the competition.

12. 2007 should be the current year in which this case comes to trial.

13. Presentation and argument on pretrial motions shall be limited to a total time of sixteen minutes divided equally between the parties as follows: (1) the State shall have four minutes to present any pretrial motions; (2) the Defendant shall have four minutes to respond to the State's motion(s); (3) the Defendant shall have four minutes to present any pretrial motions; and (4) the State shall have four minutes to respond to the Defendant's motion(s).

14. This competition permits teams to argue additional case law and other relevant authority to support the team's argument on motions and evidentiary issues. However, no additions or deletions are permitted to the provided jury instructions.

15. The testimony of Toby Baron shall conform to the testimony given by him at his earlier trial.

16. The parties have stipulated that Exhibit A is a true and accurate copy of the original Emergency Room report created on August 11, 2006, at Our Lady of Perpetual Help Hospital. The parties have stipulated that foundational testimony by a records custodian is not necessary for the admission of Exhibit A. However, the parties have NOT agreed to waive any objections, other than lack of foundation, to the admissibility of Exhibit A.

17. Neither team may make any inference or argument about the lack of the security video of the employee parking lot from the night of August 8, 2006.

Substantive Matters

1. Toby Baron has entered a plea of not guilty and has requested a trial by jury.

2. The trial court has denied a motion to dismiss the indictment.

3. The State and the defense have agreed to an "all or nothing" verdict; therefore, no lesser included offenses may be argued to or considered by the jury.

4. The State and the defense agree that because of the delay in the victim reporting the alleged crime to law enforcement, no DNA samples could be recovered from the victim or the crime scene. This stipulation may be read to the jury at the request of either the State or the defense.

5. The State and the defense stipulate that the trial testimony of Toby Baron, starting on page 23, is an accurate transcription of his testimony taken from the trial record of a jury trial on January 15, 2007, where, at the conclusion of the trial, the jury was unable to reach a verdict.

6. The stipulated sworn testimony of Clint Harbour, who is unavailable for trial but who was deposed by the defense, may be read to the jury, either in whole or in part, at the request of either the State or the defense.

7. Lone Star Statutes (2005) provide the following:

794.011 Sexual Battery

(1) As used in this chapter:

(a) "Consent" means intelligent, knowing, and voluntary consent and does not include coerced submission. "Consent" shall not be deemed or construed to mean the failure by the alleged victim to offer physical resistance to the offender.

* * * *

- (h) "Sexual battery" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.

* * * *

- (5) A person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process thereof does not use physical force or violence likely to cause serious personal injury commits a felony of the second degree.

8. The State and defense stipulate that a written motion complying with the requirements of Federal Rule of Evidence 412(c)(1) was timely filed by the defense. The State and defense have agreed that the court will hear arguments relating to this motion during pretrial arguments. Because the State and defense have stipulated to this procedure, no team shall be permitted to argue that any evidence is inadmissible due to an alleged failure to comply with rule 412(c).

9. The parties agree and stipulate that, if asked, Chacona must testify that the signature appearing on Exhibits E and F is her signature.

WITNESS LIST

Witnesses for the State:

1. Krista Chacona**
2. Corey Harbour***

Witnesses for the Defense:

1. Toby Baron*
2. Denny Sheppard***

Each team must call witnesses 1 and 2 listed for their respective party.

* This witness must be a male.

** This witness must be a female.

*** This witness may be either male or female.

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR HARRIS COUNTY, STATE OF LONE STAR

THE 30TH DAY OF AUGUST, 2006.

STATE OF LONE STAR :

v. :

TOBY BARON :

CASE NUMBER 2006-1965

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF LONE STAR:

Count One

The Grand Jurors of the County of Harris, State of Lone Star, charge that Toby Baron, on the 8th day of August, 2006, in the County and State aforesaid, did unlawfully sexually batter Krista Chacona, a person 12 years of age or older, by having his sexual organ penetrate or have union with her vagina without her consent, contrary to the form of the statute in such cases and made and provided, to wit: Lone Star Statute 794.011.

INDICTMENT FOR SEXUAL BATTERY ON A
PERSON 12 YEARS OF AGE OR OLDER

A TRUE BILL:

Mark A. White

Foreperson of the Grand Jury

I, Prosecutor for the Sixth Judicial Circuit, in and for Harris County, State of Lone Star, do hereby aver, as authorized and required by law, that I have acted in an advisory capacity to the Grand Jurors of Harris County previous to their returning the above indictment in the above-styled cause.

Gail Byrd
PROSECUTOR
SIXTH JUDICIAL CIRCUIT
HARRIS COUNTY

Presented before:

[Signature]
CIRCUIT JUDGE

DEPOSITION OF KRISTA CHACONA

Q. Please state your name.

A. Krista Chacona.

Q. Ms. Chacona, how old are you?

A. I am 28.

Q. Where do you live?

A. I live at 7510 Richardson Road in Armadillo.

Q. Is that in Harris County?

A. Yes.

Q. Are you currently employed?

A. I am currently self-employed.

Q. What do you do?

A. I am a licensed massage therapist and I have my own clientele.

Q. Have you ever worked for anyone other than yourself?

A. Yes, I used to work at the Lone Prairie Resort and Spa.

Q. When did you work there?

A. I worked there from May 2002 until August 2006.

Q. Is the Lone Prairie Resort and Spa also in Harris County?

A. Yes.

Q. What was your position at Lone Prairie Resort and Spa?

A. I was a front desk clerk.

Q. What were your responsibilities in that position?

A. I was responsible for registering new guests, posting charges to their accounts during their stay, and settling their accounts when they checked out. I was also supposed to do whatever I could to make sure the guests had a pleasant stay by answering questions and helping them find the services they wanted.

Q. Did you work at the Lone Prairie Resort and Spa when the Lone Star Rattlers stayed there?

A. Yes.

Q. Tell me how they came to be at the Lone Prairie Resort.

A. Well, the Lone Star Rattlers are a professional football team that is based in Flagstown, which is about two hours away from Armadillo. In 2002, when the Rattlers got a new head coach, they started coming to Armadillo for training camp. They hold their practices at the Armadillo Athletic Club and they stay at the Lone Prairie Resort. They basically take over the entire resort when they are there.

Q. When is training camp?

A. Usually the first two weeks or so of August.

Q. Had you worked at the front desk in the past years when the Rattlers were there?

A. Yes.

Q. Did you have any different responsibilities when the team was staying at the resort than when other guests were there?

A. Not really. We were instructed to treat the players like we would any other guests. Don't ask for autographs, etc. But other than that, we were just supposed to make their stay as pleasant as possible.

Q. Did you get to know any of the players?

- A. Well, several of the players had been on the team for several years, so I knew them and they remembered me. Players like Rob Canas and Bob Stokes. Everyone's heard of them. They were friendly and always made a point of saying hello.
- Q. Did you know the new players?
- A. Well, no one really knew the rookies. This past year, the big news was Toby Baron. He had been traded to the team and was the new big star. Everyone knew who he was.
- Q. Did you ever talk to any of the players about massages?
- A. Yes. I had chatted with several of them, and they knew I was working on my massage therapy license. Some of them also knew that I was planning on starting my own business with that.
- Q. Did you ever give any of them massages?
- A. No. They got their massages from the team trainers. They get paid too much to have someone like me practice on them.
- Q. Did there come a time when you met Toby Baron?
- A. Yes. Of course, I knew who he was by sight. But one day he stopped at the desk and talked to me.
- Q. What was the discussion about?
- A. He initially stopped to ask about getting a particular type of wine delivered to his room. I told him that I would take care of it.
- Q. Did he ever ask about a massage?
- A. Yes. After I told him about the wine, he asked if it was true that I gave massages.
- Q. What did you tell him?

- A. Well, I wasn't sure what to say. I knew that the players only got massages from the trainers, so I told him that I was a massage therapist but that I was not a trainer.
- Q. Was that a true statement?
- A. Well, not exactly. I wasn't a licensed massage therapist at that point. But I figured the white lie would not matter because of the trainers.
- Q. What happened next?
- A. Nothing at that point. He just said he would see me around and left.
- Q. Did there come another time when you talked to him?
- A. Yes. The next day he came to the desk and said that he was very sore from practice. He asked if I would come to his room and give him a massage.
- Q. What did you say?
- A. I told him that it was against hotel policy for employees to visit guests other than family.
- Q. What did he say?
- A. He told me that it would be okay. He said that if there was a problem, he would smooth it over with the hotel.
- Q. So what did you do?
- A. I told him the massage would be \$100 for an hour, and he said that was no problem. So I agreed to do the massage.
- Q. At that point, what, if anything, did you know about his reputation?
- A. Well, I had heard from the media and everything that he was a real ladies man. And he was always throwing cash around. There had been news reports that he left a waitress a \$10,000 tip one time. So I figured there might be more than \$100 coming my way.

Q. So when did you schedule the massage?

A. I was off work on Tuesday, August 8. So I agreed to come to his room around 8 p.m.

Q. Did you bring anything with you?

A. I brought my bag of massage oils with me.

Q. Was there anything in the bag other than massage oils?

A. I'm sure there were some other items in there, but I don't recall what they were.

Q. When your bag was brought to the front desk the next day, it contained a leather riding crop. Do you know where that came from?

A. Yes. It is mine. I sometimes have it in that bag. I guess I forgot to take it out before going to meet Mr. Baron.

Q. So what happened when you got to Mr. Baron's room?

A. I had told him when he asked about the massage to call housekeeping and have a roll-away bed brought to his room. I thought that would work as a massage table. So when I got to the room, I had him get on the roll-away bed.

Q. What was he wearing?

A. He had removed his clothes and he had a towel around his waist.

Q. What happened next?

A. I started the massage and I had worked on his shoulders and his arms for a little bit. Then when I started to massage his back, he rolled part way over and grabbed my arm.

Q. What happened then?

A. I told him to stop because I was not finished, but he said that I had done enough, and then he threw me onto the regular bed and raped me.

- Q. Okay, Ms. Chacona, I'm sorry to have to do this, but we need to know a little more detail. How did he get you onto the bed?
- A. I don't know exactly. I mean, he's very strong. He's a professional football player, so it wasn't hard for him to move me where he wanted me. But I don't know exactly how it happened.
- Q. When you say he raped you, what exactly happened?
- A. Just what you would think. He got both my wrists in one of his hands and he held them above my head on the bed and he forced his penis into me.
- Q. Did he ejaculate?
- A. Yes.
- Q. Did you tell him to stop?
- A. Yes, many times. I kept saying "stop" and "no."
- Q. Did there come a time when you were able to get away?
- A. Yes. When he was finished, he just rolled away. I was crying and hysterical, and he told me to stop – that I had only gotten what I had wanted all along. Then he dozed off and I ran from the room.
- Q. Did anyone see you as you left?
- A. I did not know at the time. I ran through the lobby, but I didn't know then if anyone saw me. I learned later that one of my co-workers, Corey Harbour, saw me.
- Q. What happened next?
- A. Well, I was hysterical. I could not believe what had happened. I was also embarrassed. I couldn't figure out how I could have been so stupid as to go to Toby Baron's room. So I went home and showered and just curled up in bed and stayed there for two days.
- Q. Did anyone from the Lone Prairie Resort call you during those two days?

- A. Yes. I had a message on my answering machine from Corey and also one from the hotel manager, Denny Sheppard. But I did not answer the phone.
- Q. Did anyone come to see you during those two days?
- A. Yes. I had a friend who came over to check on me.
- Q. Who was that?
- A. I would rather not say. He does not want to be involved.
- Q. Well, he is involved since you filed this action. Who was it who came to see you?
- A. His name is Jim Casanova.
- Q. How do you know him?
- A. He is a client of mine.
- Q. A massage client?
- A. He sometimes gets massages, yes.
- Q. What day was he there?
- A. He came on August 10.
- Q. Did you tell him what happened?
- A. No, but he saw bruises on my wrists and saw how upset I was and said that I should see a doctor.
- Q. Did you agree to see a doctor?
- A. Yes, I did.
- Q. Did you, in fact, ever go to the doctor?

A. Yes. I went to Our Lady of Perpetual Help emergency room.

Q. When?

A. On August 11.

Q. What did they do?

A. They checked me out; they looked at my bruises. I'm not sure what else.

Q. Did they collect a rape kit or sexual assault kit?

A. No. The nurse said that it had been too long and that there was no point.

Q. Did you tell anyone there what had happened?

A. Yes, I told the nurse what had happened.

Q. Did you tell her who had done this to you?

A. Yes.

Q. Ms. Chacona, I'm showing you what has been marked as State's Exhibit A for identification. Do you recognize this?

A. Yes.

Q. What is this?

A. This appears to be the form that the nurse was filling out while I was speaking with her.

Q. Is the information on this form accurate based on what you told the nurse?

A. Some of it is. But I told her that Toby Baron did this to me. I don't know why she would have put on there that a friend did it.

Q. Did there come a time when you returned to work at the Lone Prairie Resort?

- A. No. I tried, but I was told I was fired.
- Q. Tell me how that happened.
- A. Well, I had called in sick from August 9 until the 11. I was scheduled to work on Saturday, August 12. When I showed up for work, my name had been crossed off the schedule and the shift supervisor told me that I had been replaced for that shift and that I needed to speak with Denny Sheppard before I started working. So I went to Denny's office.
- Q. What happened then?
- A. Denny told me that I was fired.
- Q. Did Denny tell you why?
- A. Supposedly for being at the resort when I was not scheduled to work.
- Q. How did they know that you had been there?
- A. Denny said that the security guard reported seeing my car there when I was not on shift.
- Q. Why would the security guard have known your car?
- A. Well, for one, it's a red Corvette. And it has a personalized license plate.
- Q. What is the license plate number?
- A. DMN8RX.
- Q. And does that reflect something about your lifestyle or business?
- A. No. It is really just a joke.
- Q. What did you do after you were fired?
- A. Well, at that point, I figured that I should go to the police. It was bad enough being raped, but then to be fired as well. I figured Toby Baron needed to pay.

Q. When did you go to the police?

A. On August 12, just after I was fired.

Q. What did you tell them?

A. Just what I've told you – that I was raped by Toby Baron at the Lone Prairie Resort on August 8.

Q. What happened next?

A. Ultimately, I gave them a taped statement. I don't know what other investigation they conducted, but Toby Baron was arrested several weeks later.

Q. Ms. Chacona, have you ever been disciplined at work for lying?


A. For lying? No. Not that I recall.

Q. Have you ever been convicted of a crime?

A. Yes. I was convicted of possession of marijuana when I was in college. But that was just a misdemeanor. I got six months' probation.


Q. Any other convictions?

A. No.



Krista Chacona

Sworn and subscribed before me
this 3rd day of November, 2006.



Notary Public

DEPOSITION OF COREY HARBOUR

- Q. Please state your name for the record.
- A. Corey Harbour.
- Q. How are you employed?
- A. I work as a front desk supervisor at the Lone Prairie Resort and Spa.
- Q. How long have you worked there?
- A. Since December 2003.
- Q. Is the Lone Prairie Resort located in Harris County?
- A. Yes, it is.
- Q. Do you know Krista Chacona?
- A. Yes, I have worked with her since I started working at the Lone Prairie.
- Q. Are you friends?
- A. Well, we have occasionally socialized outside of work, and I think of her as a friend, but not a close friend.
- Q. Were you working on August 8, 2006?
- A. Yes, I was the evening shift supervisor.
- Q. Did you see Ms. Chacona that evening?
- A. Yes, I saw her between 9:30 and 10 p.m.
- Q. What was she doing when you saw her?
- A. Well, I heard someone crying and I looked up and saw her walking quickly through the lobby.

- Q. Did you notice anything in particular?
- A. I did notice that her face seemed red as if she had been crying. I also thought that she had marks of some sort on her arms. But she was too far away for me to really see anything else.
- Q. Could you tell where she was coming from?
- A. She was coming from the south wing. I could not really tell other than that.
- Q. I'm showing you what has been marked as Exhibit B for identification. Do you recognize this?
- A. Yes, it is a floor plan of the first level of the Lone Prairie Resort.
- Q. Does it accurately depict the layout of the first level of the Lone Prairie Resort as it was on August 8, 2006?
- A. Yes.
- Q. Where were you when you saw Ms. Chacona?
- A. I was behind the front desk, which is here in the center of the floor plan.
- Q. And where was Ms. Chacona?
- A. She came into the lobby from the south wing. And she went toward the front doors.
- Q. Did you find it unusual that she was there?
- A. Yes. First because she was not scheduled to work, so she had no reason to be there. Second because she could be fired for being on the resort property when she was not working.
- Q. Did you speak with Ms. Chacona that night?
- A. No, I just saw her going through the lobby upset.
- Q. Did you speak with her later that night or during the week?

- A. No. I left a message on her answering machine, and I figured if she wanted to talk she would call me.
- Q. Were you aware that Ms. Chacona gave massages on the side?
- A. I was aware that she was working on her massage therapy license and that she was trying to build a clientele.
- Q. Were you aware of whether Ms. Chacona had any business other than giving massages?
- A. No.
- Q. Had you ever seen bruises on Ms. Chacona before?
- A. Once she had a number of bruises on her wrists.
- Q. When was that?
- A. About a month before this happened. Maybe sometime in early July.
- Q. Did you ask her about those bruises?
- A. I did, and she said that she had had a problem with a customer.
- Q. Did you ask her anything else about it?
- A. Well, I thought it was a little odd that she would get bruises on her wrists from giving massages, but I did not ask her anything else. I figured she would tell me if she wanted me to know.
- Q. Did you see bruises on Ms. Chacona in the days before the Toby Baron incident?
- A. No. I worked with Krista on August 7, and she did not have any bruises that day.
- Q. Did you see her any time on August 8 before you saw her in the lobby at 9:30 p.m. or 10 p.m.?
- A. No.
- Q. Did you ever learn anything more about what happened with Ms. Chacona on August 8, 2006?

A. Several days after that, a police officer came and was questioning the resort staff. He asked whether I had seen anything, and I told him what I had told you. Later, through the grapevine, I heard that Krista was saying that Toby Baron raped her.

Q. Do you believe that?

A. Well, that is what she is saying. I wasn't there. But that would explain why she was so upset in the lobby that night.

Q. Were you surprised that Ms. Chacona would have gone to Mr. Baron's room?

A. Not really. Krista used to brag about the "celebrities" that she had slept with. So I can understand why she might have gone to his room if he had asked her. But if she said no, he should have stopped. Just because he's a celebrity doesn't mean he can do whatever he wants or go ahead with it when the woman says no.

Q. When you saw Ms. Chacona leaving, did she have a bag with her?


A. Not that I saw.

Q. Had you seen her bag of massage oils before?

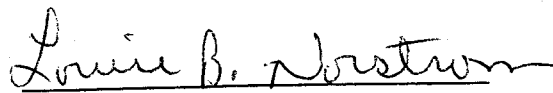
A. Yes, I saw it in the back of her car once when we went to lunch.

Q. Have you seen that bag since this incident?

A. I heard that Toby Baron brought it to the front desk. But I never saw it.


Corey Harbour

Sworn and subscribed before me
this 7th day of November, 2006.


Notary Public

PRIOR TRIAL TESTIMONY OF TOBY BARON

Direct Examination:

Q. State your name.

A. Toby Baron.

Q. Where do you reside?

A. My permanent home is in Las Vegas. But I have an apartment in Flagstow as well.

Q. Why do you have that apartment?

A. I am currently under contract with the Lone Star Rattlers, so I need to be in Flagstow during the season.

Q. For those members of the jury who may not know, who are the Lone Star Rattlers?

A. The best professional football team in the nation.

Q. And what "season" are you referring to?

A. Football season. You know, August through January of every year.

Q. How long have you played for the Rattlers?

A. This past season was my first with them, but I have played for other teams for the past five years.

Q. What position do you play?

A. I am a wide receiver.

Q. And do you go by any other names?

A. I don't have any other names. But sometimes the media call me "The Knife" because I cut through defenses like a hot knife through butter.

- Q. Did there come a time this past season when you were in Armadillo?
- A. Yes. The team held training camp in Armadillo.
- Q. Where did you stay when you were there?
- A. The entire team stayed at the Lone Prairie Resort and Spa.
- Q. What room did you have?
- A. I was in room 206, which was on the lobby level.
- Q. At some point, did you come to meet Krista Chacona?
- A. Yes.
- Q. How did that happen?
- A. Well, Krista worked at the front desk. She was always very friendly, so I liked to talk to her.
- Q. What did you talk about?
- A. Mostly nothing. She would ask about practices and the team. She would ask how my day was. She seemed to like to flirt a lot.
- Q. What do you mean by "flirting?"
- A. She would always smile and kind of lick her lips. She would bat her eyelashes at me.
- Q. Did there come a point when you became more than friendly with Ms. Chacona?
- A. Well, I don't know about that, exactly. One day not too long after I had started talking to her, she asked if I was sore from practice. I said that I was. She then told me that she had a business on the side and that she could take care of all my needs.
- Q. Did she do anything else?

- A. She gave me her business card.
- Q. Mr. Baron, I'm showing you what has been marked as Exhibit C for identification. Do you recognize this?
- A. Yes, this looks like the card that Krista gave me.
- Q. Is this in the same or substantially the same condition as when she gave it to you?
- A. Yes.
- Q. What did you do when she gave you this card?
- A. I put it in my wallet. Then I called her two days later to see if she would give me a massage.
- Q. Did she agree?
- A. Yes, we made an appointment for August 8.
- Q. Did she keep that appointment?
- A. Yes.
- Q. Did she bring anything with her to the appointment?
- A. She had had a roll away bed delivered to my room. When she got there, she had a bag of some sort.
- Q. What happened when she came to your room?
- A. We talked for a little bit. Then she had me get undressed and get under a sheet on the roll away bed and she gave me a massage.
- Q. Did anything else happen?
- A. During the massage, she made it clear that she was interested in more than just a massage. So when she was done with the massage, we had sex.

- Q. Did she consent to sex?
- A. Yes. She initiated it. She consented to it. She never said to stop.
- Q. When Ms. Chacona left your room, she claims she was bruised. Did you bruise her?
- A. No. I noticed that she had bruises on her wrists when she got to my room. I asked her about them, and she said she got them when she had a problem with another client earlier in the day. So I let it drop.
- Q. Did anything else happen?
- A. Well, after we had sex, I thought that we would talk some more. Maybe order room service. But she sat up all of a sudden and said she had to leave.
- Q. Did she say why?
- A. She said that she had just noticed the time and that she was late for an appointment with another customer. Then she rushed out of the room.
- Q. Was she crying when she left?
- A. No. She was fine. Just in a hurry.
- Q. Did she take her things with her?
- A. No. I discovered a little bit later that she had forgotten her bag. I thought that was strange since she said she was going to see another customer. I would have thought she would need the bag since it had the oils and lotions she used for the massage in it.
- Q. What did you do with the bag?
- A. I took it to the front desk so that they could give it to her.
- Q. What happened next?
- A. I did not see her at the desk for several days. Then I heard from another clerk that she had been fired.

Q. Did you ask anyone why?

A. No. I figured that was none of my business.

Q. Did you call Ms. Chacona again?

A. No. The team checked out of the Lone Prairie Resort on August 14, and I have not been back to Armadillo.

Q. Did there come a time when you were in contact with the police about the night of August 8, 2006?

A. Yes. The Flagstown police came to my apartment and told me that they had a warrant from the Armadillo police and that I needed to come to the station. When I asked what it was about, they told me that I had been charged with sexual battery.

Q. Were you surprised?

A. Hell yeah. Why would I rape someone? I have women throwing themselves at me every day. I don't need to rape anyone.

Q. Did you sexually batter Ms. Chacona?

A. No. She agreed to have sex with me, and never said she wanted to stop.

CROSS-EXAMINATION

Q. Have you ever been convicted of a crime punishable by more than one year in prison or involving dishonesty or false statement?

A. I have been convicted of a domestic violence battery and carrying a concealed weapon. I think both of those were felonies. I have also been convicted of willfully failing to file a federal income tax return, but my attorney told me that the conviction was only a misdemeanor.

Q. When were these convictions?

A. The domestic violence battery and concealed weapons convictions were in 2001. I got four years' probation. The tax return convictions were in 2003 and 2004. I was just fined for those.

Q. I'm showing what has been marked as Exhibit D for identification. Do you recognize this?

A. Yes. I recognize that.

Q. What is this?

A. Well, you can read it as well as I can. It is a newspaper article that claims that I have been violent with women I have dated. But none of it is true. If any of it was, I would have been arrested for it. But I haven't been.

Q. Why would Ms. Chacona make these allegations and subject herself to a trial if this was not true?

A. Well, you would have to ask her. All I can tell you is that I did not rape her. I paid her for a massage, and after that she agreed to have sex with me. I don't know what else I can say.

[NO FURTHER QUESTIONS FROM THE PROSECUTOR OR THE DEFENSE.]

DEPOSITION OF DENNY SHEPPARD

- Q. Please state your name for the record.
- A. Denny Sheppard.
- Q. Where do you live?
- A. I live on Rockledge Lane in Armadillo, State of Lone Star.
- Q. Are you employed?
- A. Yes, I am the manager of the Lone Prairie Resort and Spa in Armadillo.
- Q. Did Krista Chacona ever work at the Lone Prairie Resort?
- A. Yes, she worked there from May 2002 until August 2006.
- Q. Was she a good employee?
- A. She was an average employee.
- Q. Was there anything specific that made her average?
- A. Well, there had been several occasions over the years when her cash drawer had come up short. She had also called in sick on occasions and then returned to work with a sunburn.
- Q. What did these things mean to you?
- A. Well, as her employer, I questioned whether she was always completely honest. But the incidents were few enough that I chose not to fire her.
- Q. Are there any written documents concerning these prior incidents?
- A. Yes, her employment file.
- Q. I'm showing you what has been marked as Exhibit E for identification. Do you recognize this?

- A. Yes, this is an employee incident report from Ms. Chacona's employment file.
- Q. Is it a true and accurate copy of the report contained in Ms. Chacona's file?
- A. Yes, it is.
- Q. Is this type of record made at or near the time of the event to which it relates?
- A. Yes.
- Q. Are they made by someone with knowledge of the events themselves?
- A. Yes.
- Q. Are these types of records made and kept in the normal course of the business of the Lone Prairie Resort?
- A. Yes.
- Q. And are you the person at the Lone Prairie Resort who is charged with maintaining these records?
- A. Yes, I am.
- Q. I am now showing you what has been marked as Exhibit F for identification. Do you recognize this?
- A. Yes, this is another employee incident report from Ms. Chacona's employment file.
- Q. Is it a true and accurate copy of that report from Ms. Chacona's file?
- A. Yes, it is.
- Q. Is this type of record made at or near the time of the events to which it relates?
- A. Yes.

- Q. Is it made by someone with knowledge of the events themselves?
- A. Yes.
- Q. Are these types of records made and kept in the normal course of the business of the Lone Prairie Resort?
- A. Yes.
- Q. And are you the person at the Lone Prairie Resort who is charged with maintaining these records?
- A. Yes, I am.
- Q. I understand that Ms. Chacona was fired in August 2006. Why was that?
- A. When I came to work on August 9, I was told by our security guard that Ms. Chacona's car had been seen in the parking lot the night before when she was not on duty. I reviewed the security video of the employee parking lot from that night and saw Ms. Chacona's car in the lot.
- Q. How did you recognize her car?
- A. Ms. Chacona drives a red Corvette with a license plate that says something about being a dominatrix. That is distinctive enough for me to recognize.
- Q. Had you ever asked Ms. Chacona about the license plate?
- A. No. It was none of my business. Whatever she did in her free time was up to her.
- Q. Had you ever heard that Ms. Chacona was running another business while she worked at the Lone Prairie Resort?
- A. I knew that she was going to school to become a massage therapist. But it was my understanding that she was still in school and was not yet licensed and so was not working other than for the hotel.
- Q. Turning back a little, why was it important to you that Ms. Chacona's car was at the resort on the night of August 8?

A. The Lone Prairie Resort has a very strict policy of not permitting employees to be on the premises when they are not scheduled to work. Ms. Chacona was not on duty on August 8. Therefore, she had violated this policy and was subject to termination.

Q. What did you do after you watched the security video and saw Ms. Chacona's car?

A. I called Ms. Chacona at home and left a message for her to see me immediately when she came in for her next shift.

Q. When did that happen?

A. She came in on August 12.

Q. What happened then?

A. I confronted her with what I had seen on the security video. I asked her if she had an explanation. She said no. I told her that since she had no explanation, I would have to fire her.

Q. Did she say anything?

A. No.

Q. Did she mention anything at all about Toby Baron?

A. No. I never heard about what she is claiming happened until the police called several days later.

Q. Have you had any dealings with Ms. Chacona since she was fired?

A. We mailed her her final paycheck. I did not hear anything else from her until last week when I was served with a lawsuit.

Q. What is the lawsuit?

A. Ms. Chacona is suing the Lone Prairie Resort and Spa alleging that management failed to protect her from dangerous individuals and alleging that management was negligent in permitting the Lone Star Rattlers to stay at the Resort.

Q. What do you think of these allegations?

A. I really cannot comment on pending litigation against the resort. However, I understand that the resort is committed to defending itself vigorously against the allegations.

Q. Do you believe that Mr. Baron raped Ms. Chacona?

A. No.

Q. Why not?

A. Several reasons. One, her reputation for lying as an employee. Two, she used to have bruises all the time. I don't think the ones she had on August 8 were from Mr. Baron. Three, she didn't mention anything about it until after she was fired.

Q. Will the Lone Star Rattlers be staying at the Lone Prairie Resort and Spa in the future?

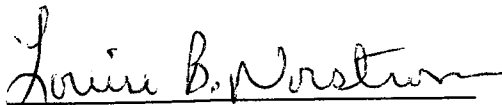
A. I hope so. I really hope that this alleged incident does not cause us to lose what is very profitable business for us. We hope to sign a new contract with the team for the 2007 and 2008 training camps in the next few weeks.

Q. So, the resort supports the team and its players?

A. Well, I don't think I can agree to that as a blanket statement. We support the team, but we don't condone violence if it occurs.


Denny Sheppard

Sworn and subscribed before me
this 7th day of November, 2006.


Notary Public

Stipulated Sworn Testimony of Clint Harbour

It is agreed and stipulated that if Clint Harbour were to be called as a witness in this trial, he would testify under oath as follows:

My name is Clint Harbour. I am a security guard at the Lone Prairie Resort and Spa in Armadillo. I am the brother of Corey Harbour, who is a front desk shift supervisor at the resort.

On the evening of August 8, 2006, I was patrolling the parking lots of the Lone Prairie Resort and Spa in the course and scope of my employment. At that time, I saw Krista Chacona's car parked in the employee parking lot. At around 9:30 p.m., I also saw Ms. Chacona walking toward her car in the employee parking lot. She appeared to be walking very quickly. I was too far away to see whether she was crying or upset.

I know Ms. Chacona's car because of her license plate, which is DMN8RX. I knew Ms. Chacona was not scheduled to work that day, so, as part of my job responsibilities, I reported to Denny Sheppard that I had seen Ms. Chacona's car parked in the employee lot.

- End of Stipulation -

HISTORY		PHYSICAL EXAMINATION	
Current Illness:		ABBREVIATIONS FOR RECORDING:	
FORGIBLE SEXUAL INTERCOURSE		N=NORMAL NE=NOT EXAMINED O=NEGATIVE	
3 days ago - says a		(Describe any abnormality)	
friend did it		General: <input checked="" type="checkbox"/> Alert <input checked="" type="checkbox"/> Orientated times 3	
Past Medical/Surgical History:		HEENT: <u>WNL</u>	
<u>NON-CONTRIBUTORY</u>		Heart: <input checked="" type="checkbox"/> Regular rhythm, no murmurs heard	
Family/Social History: <input checked="" type="checkbox"/> Non-contributory		Lungs/Airway: <input checked="" type="checkbox"/> Clear to auscultation bilaterally	
Allergies/drug reactions: <input checked="" type="checkbox"/> None		Abdomen: <input checked="" type="checkbox"/> Soft, non-tender, normal bowel sounds	
Current Medications: <input type="checkbox"/> None		Extremities: <input checked="" type="checkbox"/> Function, circulation normal	
<u>TRIVELEEN</u>		<input type="checkbox"/> No edema, clubbing, cyanosis	
REVIEW OF SYSTEMS		<u>HEALING BRUISES - BILATERAL WRISTS</u>	
	FINDINGS	Other:	
	NEGATIVE *POSITIVE	Preprocedure diagnosis:	
ENDOCRINE	<u>✓</u> _____	Plan: <u>REFERRED TO CRISIS</u>	
ENT	<u>✓</u> _____	<u>COUNSELING GROUP</u>	
CARDIORESPIRATORY	<u>✓</u> _____		
GASTROINTESTINAL	<u>✓</u> _____		
GENITOURINARY	_____ <u>✓</u>		
NEUROMUSCULAR	<u>✓</u> _____		
*If positive, describe:			
<u>NO EXAM DUE TO LENGTH OF TIME SINCE ATTACK</u>			
Physician's Signature: <u>[Signature]</u>		Date: <u>8/11/06</u>	
Our Lady of Perpetual Help Emergency Room		PATIENT:	
HISTORY AND PHYSICAL		<u>KRISTA GAGONA</u>	

EXHIBIT A

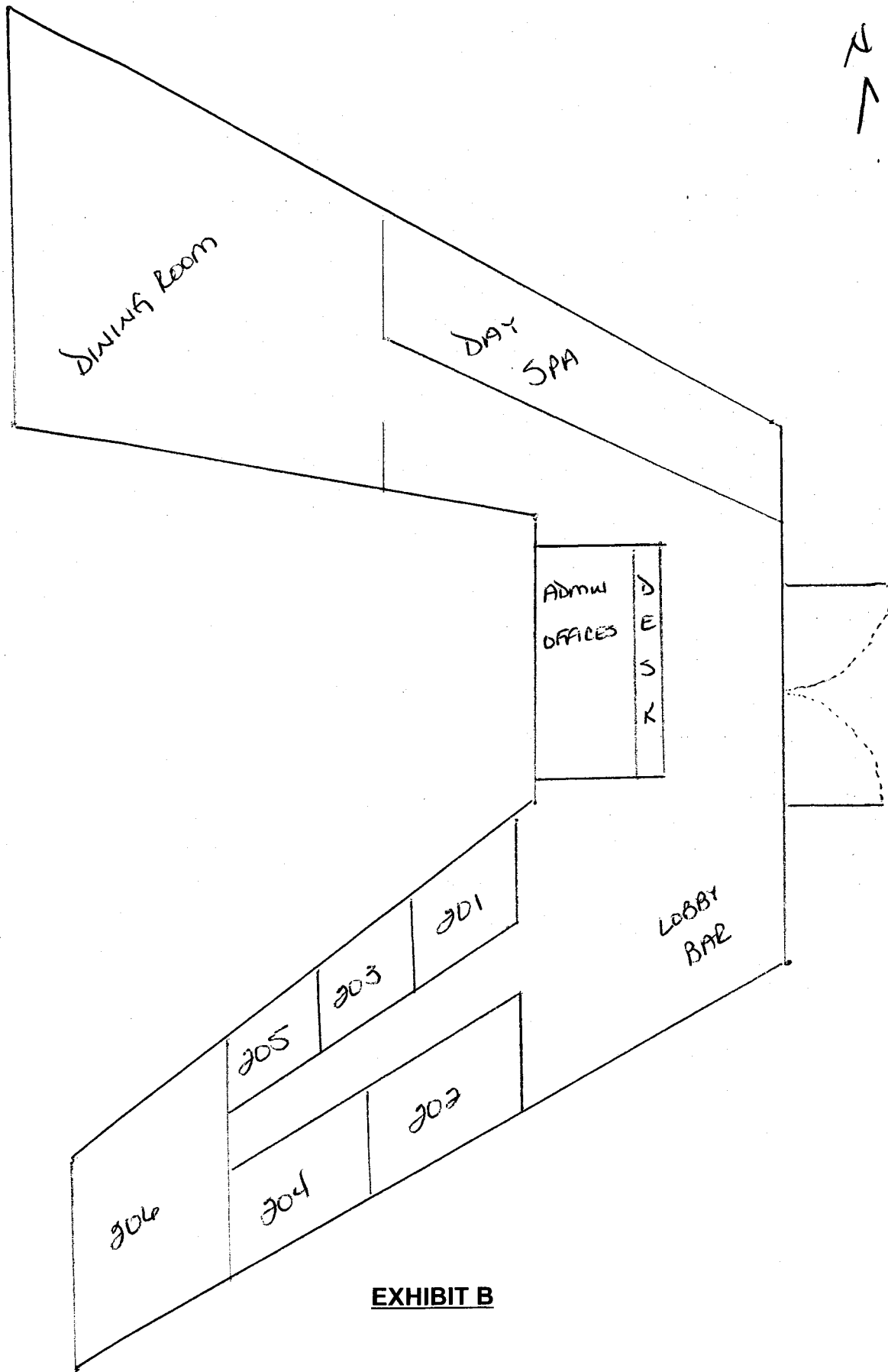
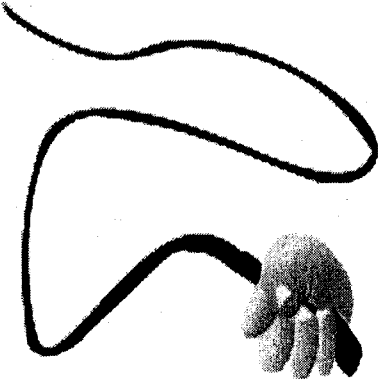


EXHIBIT B



Krista Chacona
Massage and Adult Fantasy
555-205-0212

EXHIBIT C

**TOBY BARON HITS BOTH ON THE
FIELD AND OFF**

Flagstown, L.S. – Another woman has come forward claiming that she was battered by professional football player Toby Baron. The woman, who is identified in court papers only as Jane Doe, alleges that Baron beat her up on two occasions when they were dating earlier this year. She is the second woman in as many months to sue Baron civilly for alleged injuries.

Toby Baron, known as “The Knife” to football fans because of how he “cuts through” opposing defenses, is currently under contract with the Motor City Marauders. He is in the last year of his contract and is expected to become a free agent at the end of this season. Baron could not be reached for comment; however, his agent released a statement saying that Baron denies that he has ever been violent with women. The statement also noted that the authorities have investigated the women’s allegations and have chosen not to bring criminal charges. The Marauders’ press office stated that they do not comment on the personal lives of their players and that they do not believe that the allegations will affect Baron’s playing time with the team.

EXHIBIT D

LONE PRAIRIE RESORT AND SPA

EMPLOYEE INCIDENT REPORT

EMPLOYEE: Krista Chacona

DATE: 9/10/02

EXPLAIN: Krista's cash drawer was \$10.26 short today

ACTION TAKEN: Krista was counseled concerning proper cash handling procedures and warned that future shortages would come from her pay

SUPERVISOR SIGNATURE: Joseph B. Ward

EMPLOYEE SIGNATURE: Krista Chacona

NOTE: Employee's signature means only that employee was present and advised of this report, not the employee agrees with incident or actions taken.

EXHIBIT E

LONE PRAIRIE RESORT AND SPA

EMPLOYEE INCIDENT REPORT

EMPLOYEE: KRISTA CHACONA

DATE: 7/9/04

EXPLAIN: Krista was scheduled to work the day shift at the front desk on July 8. That morning, she called in saying that she was too ill to come to work. When Krista arrived this morning, she was sunburned. I overheard her telling a fellow employee that she had spent the day at the pool.

ACTION TAKEN: Krista was counseled about unscheduled leave and using sick time only when she was sick.

SUPERVISOR SIGNATURE: Lorey Harbour

EMPLOYEE SIGNATURE: Krista Chacona

NOTE: Employee's signature means only that employee was present and advised of this report, not the employee agrees with incident or actions taken.

EXHIBIT F

PRELIMINARY JURY INSTRUCTIONS

Ladies and gentlemen of the jury:

You have been selected and sworn as the jury to try the case of the State of Lone Star vs. Toby Baron.

This is a criminal case. Toby Baron is charged with sexual battery upon a person 12 years of age or older. The definition of and the elements of this crime will be explained to you later.

It is your solemn responsibility to determine if the State has proved its accusations against Toby Baron beyond a reasonable doubt. I will decide which laws apply to this case and explain those laws to you. You will decide what the facts of this case are and apply the law to those facts. Thus, the function of the jury and the function of the judge are well defined, and they do not overlap. This is one of the fundamental principles of our system of justice.

Your verdict must be based solely on the evidence, or lack of evidence, and the law. The indictment is not evidence and is not to be considered by you as any proof of guilt. The case must be tried only on the evidence presented during the trial in your presence and in the presence of the Defendant, the attorneys, and the judge. Jurors must not conduct any investigation of their own. Accordingly, you must not visit any of the places described in the evidence, and you must not read or listen to any reports about the case. Further, you must not discuss this case with any person and you must not speak with the attorneys, the witnesses, or the Defendant about any subject until your deliberations are finished.

Before proceeding further, it will be helpful for you to understand how a trial is conducted. At the beginning of the trial, the attorneys will have an opportunity to make an opening statement, in which they may explain to you the issues in the case and summarize the facts that they expect the evidence will show. Following the opening statements, witnesses will be called to testify under oath. They will be examined and cross-examined by the attorneys. Documents and other exhibits also may be received as evidence.

After all the evidence has been received, the attorneys will again have the opportunity to address you and to make their final arguments. The statements that the attorneys now make and the arguments that they later make are not to be considered

by you either as evidence in the case or as your instruction on the law. Nevertheless, these statements and arguments are intended to help you properly understand the issues, the evidence, and the applicable law, so you should give them your close attention. Following the final arguments by the attorneys, I will instruct you on the law.

You should give careful attention to the testimony and other evidence as it is received and presented for your consideration, but you should not form or express any opinion about the case until you have received all the evidence, the arguments of the attorneys, and the instructions on the law from me. In other words, you should not form or express any opinion about the case until you retire to the jury room to consider your verdict.

The attorneys are trained in the rules of evidence and trial procedure, and it is their duty to make all objections they feel are proper. When a lawyer makes an objection, I will either overrule or sustain the objection. If I overrule an objection to a question, the witness will answer the question. If I sustain an objection, the witness will not answer, but you must not speculate on what might have happened or what the witness might have said had I permitted the witness to answer the question. You should not draw any inference from the question itself.

During the trial, it may be necessary for me to confer with the attorneys out of your hearing, talking about matters of law and other matters that require consideration by me alone. It is impossible for me to predict when such a conference may be required or how long it will last. When such conferences occur, they will be conducted so as to consume as little of your time as necessary for a fair and orderly trial of the case.

FINAL JURY INSTRUCTIONS

Members of the Jury, I thank you for your attention during this trial. Please pay attention to the instructions I am about to give you.

In this case, Toby Baron is accused of Sexual Battery upon a Person 12 Years of Age or Older.

To prove the crime of Sexual Battery upon a Person 12 Years of Age or Older, the State must prove the following three elements beyond a reasonable doubt:

1. The victim, Krista Chacona, was 12 years of age or older.
2. Toby Baron committed an act upon Krista Chacona in which the sexual organ of Toby Baron penetrated or had union with the vagina of Krista Chacona.
3. The act was committed without the consent of Krista Chacona.

“Consent” means intelligent, knowing, and voluntary consent and does not include coerced submission. Consent does not mean the failure by the alleged victim to offer physical resistance to the offender. “Union” means contact.

Toby Baron has entered a plea of not guilty. This means you must presume or believe that Toby Baron is innocent. This presumption stays with Toby Baron as to each material allegation in the indictment through each stage of the trial until it has been overcome by the evidence to the exclusion of and beyond a reasonable doubt.

To overcome the Defendant's presumption of innocence, the State has the burden of proving the following two elements:

1. The crime with which the Defendant is charged was committed.
2. The Defendant is the person who committed the crime.

The Defendant is not required to prove anything.

Whenever the words “reasonable doubt” are used, you must consider the following:

A reasonable doubt is not a possible doubt, a speculative, imaginary, or forced doubt. Such a doubt must not influence you to return a verdict of not guilty if you have an abiding conviction of guilt. On the other hand, if after carefully considering, comparing, and weighing all the evidence, there is not an abiding conviction of guilt or, if, having a conviction, it is one which is not stable but one which wavers and vacillates, then the charge is not proved beyond every reasonable doubt and you must find the Defendant not guilty because the doubt is reasonable.

It is to the evidence introduced during this trial, and to it alone, that you are to look for that proof. A reasonable doubt as to the guilt of the Defendant may arise from the evidence, a conflict in the evidence, or a lack of evidence. If you have a reasonable doubt, you should find the Defendant not guilty. If you have no reasonable doubt, you should find the Defendant guilty.

It is up to you to decide what evidence is reliable. You should use your common sense in deciding which is the best evidence and which evidence should not be relied upon in considering your verdict. You may find some of the evidence not reliable or less reliable than other evidence. In doing so, you should consider how the witness acted as well as what he or she said. Some things you should consider are:

1. Did the witness seem to have an opportunity to see and know the things about which the witness testified?
2. Did the witness seem to have an accurate memory?
3. Was the witness honest and straightforward in answering the attorneys' questions?
4. Did the witness have some interest in how the case should be decided?
5. Does the witness's testimony agree with the other testimony and other evidence in this case?
6. Has the witness been offered or received any money, preferred treatment, or other benefit in order to get the witness to testify?
7. Had any pressure or threat been used against the witness that affected the truth of the witness's testimony?
8. Did the witness at some other time make a statement that is inconsistent with the testimony he or she gave in court?
9. Was it proved that the witness had been convicted of a crime?
10. Was it proved that the general reputation of the witness for telling the truth and being honest was bad?

You may rely upon your own conclusions about the witnesses. A juror may believe or disbelieve all or any part of the evidence or the testimony of any witness.

The Defendant in this case has become a witness. You should apply the same rules to consideration of his testimony that you apply to the testimony of the other witnesses.

There are some general rules that apply to your deliberations. You must follow these rules in order to return a lawful verdict:

1. You must follow the law as it is set out in these instructions. If you fail to follow the law, your verdict will be a miscarriage of justice. There is no reason for failing to follow the law in this case. All of us are depending on you to make a wise and legal decision in this matter.

2. This case must be decided only upon the evidence that you have heard from the answers of the witnesses and have seen in the form of exhibits and these instructions.

3. This case must not be decided for or against anyone because you feel sorry for anyone or are angry at anyone.

4. Remember the lawyers are not on trial. Your feelings about them should not influence your decision in this case.

5. Your duty is to determine if the Defendant has been proven guilty or not guilty in accordance with the law. It is the judge's job to determine the proper sentence if the Defendant is found guilty.

6. Whatever verdict you render must be unanimous; that is, each juror must agree to the same verdict.

7. It is entirely proper for a lawyer to talk to a witness about what testimony the witness would give if called to the courtroom. The witness should not be discredited for talking to a lawyer about his or her testimony.

8. Your verdict should not be influenced by feelings of prejudice, bias, or sympathy. Your verdict must be based on the evidence and on the law contained in these instructions.

Deciding a proper verdict is exclusively your job. I cannot participate in that decision in any way. Please disregard anything I may have said or done that made you think I preferred one verdict over another.

Only one verdict may be returned as to the crime charged. This verdict must be unanimous; that is, all of you must agree to the same verdict. The verdict must be in writing and, for your convenience, the necessary forms of verdict have been prepared for you. They are as follows:

[READ VERDICT FORM]

In just a few moments, you will be taken to the jury room by the bailiff. The first thing you should do is elect a foreperson who will preside over your deliberations like the chairperson of a meeting. It is the foreperson's job to sign and date the verdict form when all of you have agreed on a verdict in this case and to bring the verdict back to the courtroom when you return. Either a man or a woman may be the foreperson of the jury.

Your verdict finding the Defendant either guilty or not guilty must be unanimous. The verdict must be the verdict of each juror as well as of the jury as a whole.

In closing, let me remind you that it is important that you follow the law spelled out in these instructions in deciding your verdicts. There are no other laws that apply to this case. Even if you do not like the laws that must be applied, you must use them. For two centuries, we have agreed to a constitution and to live by the law. No one of us has the right to violate the rules we all share.

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT

IN AND FOR HARRIS COUNTY, STATE OF LONE STAR

CRIMINAL DIVISION

STATE OF LONE STAR)

v.)

TOBY BARON,)

Defendant.)
_____)

Case No. 2006-1965

VERDICT

We, the Jury, find as to the Defendant, Toby Baron, as follows:

As to Count I - Sexual Battery

_____ Guilty

_____ Not Guilty

So say we all.

Foreperson of the Jury

Date