

FINAL INVESTIGATION REPORT¹

Complainant: Tessa Tasker
Respondent: Michael Murphy
Investigator: Maxwell Smart
Date: October 28, 2021

On July 12, 2021, the University's Title IX Coordinator received a formal complaint from Complainant Tessa Tasker, a junior, alleging misconduct by Respondent Michael Murphy, also a junior. Specifically, the report stated:

On April 3, 2021, my then-boyfriend, Michael, sexually assaulted me in my residence hall room. We were in my bedroom and I was trying to sleep after a long night of going out with Michael and some friends. Michael knows I'm against premarital sex, but that night I was very intoxicated and he had sex with me, even though I was too incapacitated to consent and can't remember everything.²

Complainant lived in a two-bedroom suite in a residence hall at the time of the reported incident.

Both parties were provided with a Notice of Investigation of Allegations on July 13, 2021, which included a mutual no-contact order.³ The case was referred for investigation to determine whether Respondent committed Title IX Sexual Harassment (Sexual Assault) under the Marietta College Policy on Gender-Based Harassment, Discrimination, and Misconduct ("the Policy").

Jurisdiction

The University must investigate a formal complaint unless it is determined that:

- The conduct alleged in the Formal Complaint would not constitute Sexual Harassment as defined in the Nondiscrimination Policy, even if proved;

¹ Note: This scenario is entirely fictitious and is for training purposes only. No identification with actual persons is intended or should be inferred. While this report follows a format that we often use, it is not sufficiently detailed to be a model report. Certain details were left out to facilitate the creation of better questions for purposes of our mock hearing.

² If this were a real Final Investigative Report, the formal complaint would be attached.

³ Again, if this were a real Report, these notices would be attached.

- The conduct did not occur in the University’s education program or activity and/or the University does not have control of the Respondent;
- The conduct did not occur against a person in the United States; and/or
- At the time of the filing of a Formal Complaint, the Complainant is not participating or attempting to participate in the education program or activity of the University.

In this case, the Formal Complaint alleges conduct that, if true, may constitute Title IX Sexual Harassment (Sexual Assault) under the Nondiscrimination Policy. Further, the conduct was reported to have occurred on campus, in the United States, between two students. Finally, Complainant was (and still is) a student of the University at the time of filing the Formal Complaint. Therefore, the University must investigate this case, and it is appropriate to refer it to the Sexual Harassment Resolution Process for adjudication.

Relevant Excerpts from the Nondiscrimination Policy

Definition of Sexual Assault for Purposes of This Report

“Sexual Assault” is conduct on the basis of sex that is defined as a forcible or non-forcible sex offense, or attempted forcible or non-forcible sex offense, in one of the following six categories:

- (i) *Rape* is defined as the carnal knowledge of a person, without the consent of the reporting party, including instances where the reporting party is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. Carnal knowledge is defined as the slightest penetration of the sexual organ of the female (vagina) by the sexual organ of the male (penis).

Marietta College Definitions of Consent and Incapacitation

Consent: Consent is knowing, voluntary, and clear permission by word or action to engage in sexual activity. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or

thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the College to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced.

Consent in relationships must also be considered in context. When parties consent to BDSM or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so Marietta College’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

There is no specific legal definition of “consent” in the state of Ohio. However, submission to sexual conduct as a result of fear may be sufficient in proving lack of consent for legal purposes. Consent for the purposes of Marietta College’s Policy on Gender-Based Harassment, Discrimination, and Misconduct will be understood using the definition and explanations provided immediately above.

Incapacitation: A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including by alcohol or other drugs. A person violates this policy if they engage in sexual activity with someone they know to be, or should know to be, physically or mentally incapacitated.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g. to understand the “who, what, when, where, why, or how” of their sexual interaction). Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

History of Investigation

During the course of the investigation, the investigators interviewed all of the following students via Zoom between July 13, 2021 and September 10, 2021:

- Complainant;
- Respondent;
- Sarah Shade (Complainant’s roommate);
- Joe Jenkins (host of party #1);
- Angela Atkins (sister of Caleb); and
- Caleb Atkins (host of party #2).

No other witnesses were identified by the parties. When the investigators asked the Complainant and Respondent whether they remembered interacting with anyone else that night, they both indicated that while there were other people at the parties, they did not know any of them well and did not have significant interactions with them.

All interviewees were advised of the role of the investigators as neutral and unbiased gatherers of information, the anti-retaliation policy, and an overview of the investigation and adjudication process. Interviewees were also advised that information shared with the investigators is not confidential and would be included in this report, shared with the parties, and possibly become the basis for questioning at a later hearing.

A summary of each interview was shared with the appropriate interviewee. Interviewees were offered the opportunity to review and revise summaries to ensure accuracy. All interviewees approved the summaries attached to this report.⁴

⁴ For our purposes, we aren’t going to attach summaries. You can rely on what is in this report instead.

As part of the investigation, the investigators gathered additional information. All parties and witnesses were asked for all communications, photographs, and videos from the evening in question. They received the following:

- Text messages between Complainant and Sarah dated April 4, 2021;
- Text messages between Complainant and Respondent dated:
 - February 4, 2021
 - February 16, 2021
 - March 4, 2021
 - March 8, 2021
 - March 21, 2021
- Fifteen-second video of Complainant attempting a “trick shot” in pool at Party #1, timestamped 8:26 p.m., submitted by Sarah Shade;
- Photograph of Sarah and Complainant kissing Caleb’s cheeks, timestamped 10:15 p.m., submitted by Angela Atkins; and
- Photograph of Complainant’s ankle, taken April 3, 2021 at 11:36 p.m. and submitted by Angela Atkins.

The text messages are integrated into this report where appropriate. The photographs are attached,⁵ and the video, while not physically attached to this report, is considered to be attached and is on file with the Title IX Coordinator and is available for review.⁶

The parties were offered a chance to review a draft of this report and provide a response in writing within ten days. Neither party submitted a response.

Investigation

Background

The parties agree that they met in August 2019 during orientation and began dating in October 2019. Both students are History majors, and each is pursuing a minor in Philosophy. The parties dated for the remainder of their first year. When the campus locked down in March 2020, both parties continued with a long-distance relationship, with Complainant returning home to Celina, Ohio and Respondent returning to Philadelphia, Pennsylvania.

In Fall 2020, Complainant remained at home for online learning due to a medical issue, but Respondent came back to campus. Complainant returned to campus for in-person learning in January 2021.

The parties agree that broke up briefly over Spring Break in March 2021, but quickly reconciled. They do not agree about the reasons for the break-up. Complainant

⁵ Not really.

⁶ No, it isn’t.

stated that she broke up with Respondent because he kept pushing her for more sexual activity within their relationship. Respondent stated that Complainant broke up with him because she was stressed about mid-terms and thought that Respondent was coming over too much when she needed to study. Sarah stated that it was her understanding that they broke up because Respondent was “pushy” and “needy” and Complainant felt like she “needed space.”

To give context to their relationship and the ongoing discussions about sex, Complainant provided the investigators with a series of text message excerpts from February and March, 2021, as follows:

February 4, 2021

Respondent, 12:20 p.m.: V-Day is coming up. Valentine’s or victory.
Complainant, 12:26 p.m.: Are we going out to eat?
Respondent, 12:26 p.m.: I want to make you dinner.
Complainant, 12:27 p.m.: Is that a romantic gesture or a sex joke?
Respondent, 12:27 p.m.: Which do you prefer?
Complainant, 12:28 p.m.: Let’s go out to eat.

February 16, 2021

Complainant, 4:22 p.m.: In class, whacha doin
Respondent, 4:24 p.m.: Thinking about you.
Respondent, 4:25 p.m.: What I want to do to you.
Complainant, 4:26 p.m.: We aren’t married yet.

March 4, 2021

Complainant, 2:01 p.m.: Last night you pushed too hard.
Respondent, 2:02 p.m.: I know and I’m sorry. I just really want you.
Complainant, 2:03 p.m.: I know but I want you for always when that happens.
Respondent, 2:03 p.m.: I know. I think we’re ready for it.
Complainant, 2:04 p.m.: I don’t think so yet.
Complainant, 2:04 p.m.: But I still love you and want to marry you.

March 8, 2021

Respondent, 8:36 a.m.: Good morning, sweetheart. Can I bring you breakfast?
Complainant, 8:37 a.m.: Only if you plan on staying all day. I miss you.
Respondent, 8:38 a.m.: I thought you were getting tired of me.
Complainant, 8:38 a.m.: I am never tired of Nutella.
Respondent, 8:38 a.m.: I can do more than crepes, you know.
Complainant, 8:39 a.m.: Not today, but come over anyway.

Complainant stated that the reference to Nutella was from an incident a few days earlier when Respondent made Nutella crepes for breakfast.

March 21, 2021

Respondent, 2:42 a.m.: I can't sleep. Talk again, please?

Complainant, 2:42 a.m.: I can't sleep either, but I also can't let this go on.

Complainant, 2:42 a.m.: You ask for too much from me. I need space.

Respondent, 2:43 a.m.: I will give you space, but please don't leave me alone.

Complainant, 2:43 a.m.: I think that's what space means. Good night, Michael.

Complainant's Beliefs Regarding Premarital Sex

Complainant stated that she was raised "very religiously" and believes strongly that "premarital sex is against God's will." Complainant stated that she told Michael this before they began dating, and that Michael was "okay with it," but that "he was fine having sex if that's what [Complainant] wanted."

Respondent stated that Complainant told him that she "did not want to have sex with a person until she was sure that she was going to get married to them." Respondent stated that he went to visit Complainant when she was at home in October 2020, and that they began speaking about marriage at that time. After that, Respondent stated that Complainant would joke more about sex, would initiate more sexual activity with him (although it never progressed to sexual intercourse), and that she would often talk about when she felt that "having sex would be right."

April 3, 2021

Both parties agree that they went to two parties together before returning to Complainant's suite. Both parties agree that Respondent stayed the night in Complainant's bedroom afterwards. Below is the information provided by the parties and witnesses organized chronologically. Where all information is agreed upon, the information is not cited. Where a specific witness provides the information, it is noted.

Pizza with Sarah

Complainant and Sarah agree that they had dinner together at their suite, prior to Respondent's arrival and before they went out that evening. Complainant recalled that they ordered the pizza at around 5:00 p.m. Sarah thought that the pizza arrived around 6:00 p.m. While they waited for the pizza, they gave themselves manicures and drank alcohol. Complainant stated that she had two beers during this time period, while Sarah believed they were drinking white wine. Complainant and Sarah agree that they discussed Complainant and Respondent having recently gotten back together.

After the pizza arrived, Complainant and Sarah both stated that Sarah poured each of them a full glass of white wine, and they went to their individual bathrooms and bedrooms to get ready for an evening out. Complainant states that she drank half of the glass of white wine. Sarah did not see how much Complainant drank.

Michael Arrives and They All Leave for Party #1

Complainant, Respondent, and Sarah agree that Respondent arrived by foot at their suite sometime between 7:30 p.m. and 8:00 p.m. Respondent lived a few blocks away in an off-campus apartment. Respondent stated that when he arrived, Complainant was ready to go out, but that Sarah was still in her bedroom getting ready. Complainant and Respondent agree that they sat in the living room waiting for Sarah. Complainant stated that she took a few more sips of wine during this time, but that she still did not finish the glass. Respondent does not recall Complainant drinking during this time.

Complainant, Respondent, and Sarah all estimate that they left to go to Joe Jenkins's house between 8:00 and 8:15 p.m. Complainant noted that both parties were happening earlier than they might have otherwise because it was Easter the next day. Sarah stated that it was her intention to be home by midnight due to having to get up early the next morning for church.

Party #1 – Joe Jenkins's House

Complainant, Respondent, and Sarah agree that it took about fifteen minutes to walk five blocks to Joe's off-campus apartment. Complainant stated that they went to find Joe upon arrival, and that he was in the kitchen pouring shots of Fireball Whiskey. Complainant stated that she had a shot while they were saying hello. Sarah remembers taking a shot of Fireball Whiskey with Complainant in the kitchen. Michael does not remember anyone taking shots in the kitchen, but instead said that they just went to see Joe to say hi and ask whether they could play pool.

The three played pool for a brief period together upon arrival at the party, as Joe keeps a pool table instead of living room furniture. Sarah submitted a fifteen second video of Complainant trying a "trick" pool shot, missing it, and laughing. The video is timestamped 8:26 p.m. Michael is also in the background, chalking his pool cue. There is an empty shot glass on the corner of the pool table in the video.

Sarah recalled that after playing pool for "a while," Respondent went to find Joe, and Complainant and Sarah went out to the backyard, where others were dancing to music. Sarah stated that she and Complainant took another shot of Fireball Whiskey as they passed through the kitchen on the way outside. Complainant did not remember taking a second shot that evening.

Respondent stated that he found Joe in the kitchen getting food ready for the party, and that he helped make homemade pizza rolls for the guests with Joe. While the pizza rolls were cooking, he and Joe sat in the dining room and talked with various guests. Respondent does not recall seeing any Fireball Whiskey in the kitchen while he was there with Joe.

At 9:15 p.m., Complainant texted with Angela Atkins to see if Angela wanted to come to Joe's house. The text messages read:

Complainant, 9:15: We are dancing at Joe's. Wanna come?

Angela, 9:16: Can't. I'm wrapping Caleb's present.

Angela, 9:16: You're going to his party, right?

Complainant, 9:17: Next.

Angela, 9:18: What time are you leaving? I will meet you there.

Complainant, 9:18: Getting our stuff now. I'll let you know when we leave.

Complainant stated that she had been wearing a jacket and brought a purse with her, and that she had left it near the pool table but it took her a few minutes to find it. Sarah stated that she had brought a shawl and a clutch and found them in the kitchen. Sarah and Respondent agree that Respondent was in the kitchen when Sarah entered by herself, and that Sarah told Respondent that she and Complainant were going to Caleb's house. Respondent told Sarah that he was still helping Joe, but that he would come to the second party soon.

Party #2 – Caleb Atkins's House

At 9:30 p.m., Complainant sent Angela a text that said, "On our way." Complainant believes that they had just left Joe's house when she sent the message. Caleb's off-campus house is three more blocks away from Joe's house in the opposite direction from where Complainant and Sarah lived, making Caleb's house approximately eight blocks from their apartment.

Complainant and Sarah stated that when they arrived at the party, everyone was out in the backyard. They immediately each took a solo cup of punch at the gate and said "Happy Birthday" to Caleb, who was turning twenty-one years old that day. Caleb recalled that he had just finished pouring the punch, which was made from vodka, water, green Hawaiian Punch mix, and pineapple juice. He estimated that it was approximately 25% alcohol. Caleb said the party had a beach theme, so he had chosen a tropical punch for the drink. According to Caleb, the beach theme was meant to be ironic for early spring in Ohio, but the weather was unseasonably warm so it worked better than planned. Caleb noted that he had also purchased cans of beer for the party, which were in a metal tub on the back patio on ice. Aside from the glass of punch that Complainant and Sarah each took when they arrived, Caleb could not remember either of them taking another glass.

Complainant and Sarah stated that they went to the back patio to dance, and that Angela arrived shortly after they did. The three danced together. Complainant and Angela both recall Complainant having another glass of punch when Angela arrived. Sarah did not recall Complainant getting another glass of punch while on the dance floor.

Complainant and Respondent recall that Respondent arrived at about 10:00 or shortly thereafter. Complainant recalled that she was still dancing with Sarah and Angela when he arrived. Complainant stated that Respondent stopped her to ask if she was drinking anything, and when she showed him her empty cup, he brought her another cup of punch. Sarah recalled Respondent bringing Complainant a cup of punch. Angela remembered Respondent holding two cups when he got them from the dance floor, but she could not remember who he gave them to, if anyone. Respondent recalled holding only one cup of punch, which he gave to Sarah, not Complainant.

When Respondent came back onto the dance floor with the cup or cups, Complainant, Respondent, Angela, and Sarah went to sit around a campfire at the back of the property. Caleb was there stoking the fire. They all sat on benches, with Complainant and Sarah sitting on a bench next to each other. Respondent sat on a separate bench next to Complainant. Angela sat on a separate bench next to Sarah. Angela provided a photograph she took of Caleb with Complainant and Sarah, and each woman is kissing one of his cheeks.

Angela stated that when she pulled back her phone and saw the picture, she thought Complainant looked “flushed,” and she realized that Complainant was “pretty drunk.” Angela said that Complainant was clumsy and nearly toppled the bench when she sat back down from the photo. Respondent stated that Angela caught her foot on the bench leg and that he grabbed it at the last second to keep it from tipping. Complainant does not recall the photograph, but she does recall nearly falling when she sat down.

Complainant, Respondent, Angela, Sarah, and Caleb all recall sitting around the campfire for an unknown length of time. Complainant reported that during this time, she drank the glass of punch that Respondent brought her on the dance floor. Complainant recalled that she was “really feeling” the alcohol at this point, and that everything felt “hazy.” Complainant stated that she resolved to keep sitting for a while until she could “shake it off,” but after a bit, they started playing Taylor Swift’s song, “Shake It Off,” and that was Complainant’s “jam.” Complainant stated that she got back up to dance at that point with Sarah and Angela. Sarah and Angela also remembered getting back up to dance, but do not recall the impetus for it, other than Angela saying that “Caleb was being boring and just wanted to talk.”

Complainant stated that while she was on the dance floor, she fell due to her alcohol consumption. Complainant stated that she told Sarah that Complainant “shouldn’t have any more punch.” Sarah recalled Complainant making this statement.

However, Sarah thought the statement was more of a joke, because Complainant had slipped on a patio stone that was loose. Angela stated that she did not see Complainant fall because she was turned around, but that when she turned back to Complainant, she saw Complainant “sprawled on the dance floor” holding her ankle. All three women remember that Angela and Sarah helped Complainant to the back steps, where Complainant sat in the porch light so they could look at her ankle.

Sarah stated that Complainant’s ankle was swelling, so she went to the campfire to get Respondent. Respondent and Caleb both came to look at Complainant’s ankle. Caleb is a volunteer firefighter, and he told Complainant that her ankle was likely sprained. Caleb and Respondent helped Complainant to stand, but she could not put weight on her foot. Respondent stated that he would go home and get his car so that he could drive Complainant back home.

Complainant, Sarah, and Angela recalled that Sarah and Angela helped Complainant to the front porch. Caleb brought Complainant an ice pack. Complainant recalled putting her leg in Sarah’s lap with ice on it to keep it elevated. Angela said that Complainant asked for Tylenol or Ibuprofen, but none of them had any, so Angela went to the kitchen to get a shot of Caleb’s good tequila to help with the pain. Angela said that she knew Complainant was “drunk” but that she was “not worried” about Complainant’s level of intoxication and was more worried about the ankle.

Sarah stated that Complainant’s eyes were glassy and that she seemed confused at this point in the evening. Sarah stated that Complainant asked her what had happened, which “puzzled” Sarah. Sarah recalled reminding Complainant that she had fallen on a loose stone. Caleb promised Complainant that he would get his landlord to fix it. Sarah stated that she was “worried that [Complainant] had hit her head or something, because she wasn’t acting right.”

Respondent Takes Complainant Home

Respondent came with his car, and Sarah, Angela, and Caleb helped Complainant come down the driveway to the street and get into the front seat. Sarah, Angela, and Caleb stayed at the party. The only witness that could provide an approximate time for this was Sarah, who recalled that she did not want to leave with them because she had intended to stay out until midnight and it was not yet midnight. However, Sarah did not recall what time it was when Michael left.

Complainant and Respondent agree that when they arrived back at Complainant’s apartment, Respondent managed to find parking almost right in front of the door to Complainant’s building. According to Respondent, the elevator was out of order when they arrived and Complainant lived on the second floor. Respondent recalled assisting Complainant up the stairs and into her suite. Complainant does not recall getting from the front door to her bedroom.

Complainant recalled laying on her bed and feeling like the room was spinning. She believed she told Respondent that the room was spinning. Respondent told her that she needed to get ready for bed. Respondent took off Complainant's clothes, but not her underwear or bra. Both parties agree that Respondent gave Complainant a nightgown and then turned his back. Complainant does not recall taking off her bra, but knows that she woke up without it the next morning so assumes she must have. Respondent stated that Complainant took off her own bra.

Complainant recalled telling Respondent that she "feels awful," and that she laid down in a "fetal position" after putting on the nightgown. Complainant stated that she does not remember the rest of the evening except for one moment, mentioned below.

Respondent stated that he found a pillow to put Complainant's foot up, and that he got her a new bag of ice and some Tylenol. He stated that he decided to stay with Complainant in case she needed anything during the night. Respondent stated that he does not typically stay the night with Complainant, but he was worried about her and wanted to make sure she didn't try to get up in the middle of the night and fall. Respondent stated that while he did not usually stay with Complainant, it was not unheard of for him to do so. Respondent keeps a pair of flannel pajama pants in Complainant's dresser for this reason.

Respondent stated that he went to Complainant's bathroom to put on his pajama pants, as is his usual practice. Respondent stated that Complainant feels strongly about "being modest," and even though she was asleep, he felt "weird" about undressing in front of her. Respondent stated that when he finished getting dressed, he brushed his teeth and then climbed into bed with Complainant. Respondent stated that Complainant was facing the wall on her side, so he "spooned" with her as the "big spoon."

Respondent recalled that Complainant "nuzzled" into him and thanked him for how well he treated her that evening. Respondent recalled that Complainant told him, "It's stuff like this that makes me know that I'm going to marry you." Complainant then rolled over and asked Respondent to "make love to" her.

Respondent stated that he was "surprised" by the request, because he and Complainant hadn't discussed having sex since Spring Break. Respondent said he asked Complainant, "Are you sure? I don't want our first time to be when you're hurting," referring to her ankle. Respondent stated that Complainant told him that the Tylenol had taken care of it and that she "can't really feel it anyway." Respondent stated that Complainant told him that she had been "thinking about it and was sure, that it was time."

Respondent stated that he helped Complainant roll onto her back and adjust her foot on a pillow because he didn't want to accidentally injure her. Respondent stated that they kissed for a few minutes and then had sex with Respondent on top.

Respondent stated that Complainant helped him to penetrate her by “wiggling her hips” to make it easier for him to do so. Respondent stated that he did not use a condom because he didn’t have one with him and he knew neither of them had any STDs. He stated that he ejaculated into a tissue.

Complainant did not recall the sexual encounter clearly, except that she stated that she had a “very clear memory” of Respondent stating, “this might hurt” before he penetrated her with his penis. Complainant recalled that Respondent was on top of her at the time. Complainant remembered “crying out,” but could not remember anything else about the encounter.

Respondent stated that after the sexual encounter, he went to the bathroom to clean up and then laid back down with Complainant and continued to “spoon” with her.

During this time period, Sarah and Complainant exchanged text messages as follows:

Sarah, 12:20 a.m.: I’m home if you need me. How are you?
Complainant, 12:45 a.m.: terribl

Complainant has no memory of sending the text. Respondent does not recall seeing Complainant send a text, but he noted that it may have happened when he went to the bathroom.

Afterwards

The next morning, Complainant and Respondent woke up later than they planned. Respondent left to go home and change so that he could go to church. Complainant did not feel like going due to her ankle being swollen, so she stayed home and watched a service on television.

According to Complainant, when she finally got out of bed to use the restroom, Complainant realized that she had had sex. She facetimed Respondent to ask about it. Complainant stated that she “confronted” Respondent and asked if they had sex, and that Respondent said that they had and that she was the one who initiated it. Complainant told Respondent that she was too drunk to initiate anything.

According to Respondent, Complainant facetimed him after he got home from church. Respondent stated that Complainant told him that she had been really drunk the night before and asked if they had sex. Respondent told Complainant that they had had sex because she had said she was “finally ready.” Respondent recalled being disappointed that Complainant didn’t seem to recall their “first time.” Respondent told Complainant that it was “lovely” and that they will have to “try it again some time.” Respondent stated that he was “confused” as to why she didn’t remember it, but assumed it had something to do with the ankle injury.

Both parties agree that after this conversation, they spoke very little over the next week, and that on Friday, Complainant told Respondent that she didn't think they should see each other anymore.

Conclusion

This matter is referred for adjudication through the hearing process.