

Doug Richards:

If you want to talk about something scary. Something scary is having to defend your life against the worst type of accusation in the world, that you sexually assaulted somebody.

Doug Richards:

What I want to talk about today is a recent sex assault case that occurred on a college campus and what we did to prepare for and present the evidence at trial. The evidence was complicated evidence that was coming from several sources, electronic data, testimony from witnesses that were contradicting themselves. And what we needed to do was take information that may have been negative for us, but go with the grain instead of against the grain and turn that into evidence that actually supported our theory of the defense. Part of this was identifying a way to simplify that and present it in a way that is visually appealing to a jury, that is at the same time supporting the arguments that we were making to try and acquit our client. And what's really scary for a lot of people that come to me, they didn't realize until it happened to them, is how little evidence is needed to bring a case against you for sex assault.

Doug Richards:

You think by watching TV or just by having faith in the justice system, that there's going to be a requirement for there to be some evidence that you did something wrong. It's quite the opposite. When it comes to sex assaults, there is an entire army of people working against you, trying to put you in jail based upon the accusation of some other person who they don't even know, they've never even tested that person's credibility. And is what is so incredibly shocking to a lot of my clients and their families when they come to me for the first time, because they'll say this person just made this allegation, but it didn't happen. The prosecutors don't care, they don't care because they've been trained that they need to start by believing these alleged victims. And they can get trained by police to start by believing. And the police get trained by the hospitals who have nurses that specialize in these types of things.

Doug Richards:

And then outside of the hospitals are these advocacy groups that do training on all of these people. And all of these organizations are working towards one thing, they're working towards putting you in jail for something you didn't do. And on the one hand, their initial motive for getting involved with what they're doing is really noble, because no one is in favor of sex assaults. Obviously, nobody is in favor of that, but just because somebody makes an allegation of sex assault doesn't mean it happened. And there's a lot of reasons why somebody would make up an allegation and it could take years to unwind that problem. So when somebody's in my office and they've been accused of this and they come to me and they say, "Help me fix this, let's go down to the police. Let's make this right." It's not that easy.

Doug Richards:

And they are really shocked to learn that they could be in this for the long haul. Because what we're talking about is, it's not just the having to go to court, it's your reputation. And your reputation is really marked by this type of accusation. And your reputation, especially with online reputation, this could haunt you forever, even if you're ultimately acquitted. Even if the DA dismisses the case the next day, your reputation could be haunted forever, because of this false accusation that's been made against you. And it's not just you that has to deal with this. Your family has to deal with this because there's bond conditions that get put in place. And then I don't care how much your family loves you and tell you that they believe you. There's going to be questions in their mind of, "Well, is this possible? Is it possible that our loved one did this awful thing that's being accused of them?"

Doug Richards:

And what's really scary for the person who's being accused is, they don't know where to start in their explanation. Because, a lot of times you're having to prove a negative. Either, I wasn't there at that time, or I don't know this person, or yeah, we had consensual sex and everything was fine, I don't know why the person is now making this allegation against me. It's really scary. And you can bet your life that you need somebody who knows what they're doing. And these are felony charges of course, that bring with them the requirement that somebody would register on a sex offender list for upwards of decades, up to the rest of their life. That's an especially tricky thing in a trial because if you go to trial, you're saying I didn't do it.

Doug Richards:

And if you lose a trial and you go to prison, you have to ultimately say, "I did do it." In order to get out. And if you are staying with your position that, "I never did this." You're never going to get out of jail. So it leads to a situation where people can plead guilty to crimes that they didn't commit, just because they're scared of the consequences that could happen at trial if they lose. So this particular case I took over for another lawyer and it was already set for trial and the case was actually within about 60 days of trial when we were hired. And I had to get up to speed on the case very quickly, realize, or identify issues that had not previously been spotted before by the prior counsel, and also figure out whether we needed to litigate anything. Because at this point in the process, they'd already had a motions hearing where substantive motions had been filed and then argued.

Doug Richards:

I realized that we needed to be chasing down other pieces of evidence that was going to lead to additional litigation. My first reaction was that the evidence that the prior attorney thought was the most damaging for us, was actually the evidence that was going to be the most helpful. So for example, there was an injury to the alleged victim in the case that the prior attorney was very concerned about, explaining to the jury. My reaction was the exact opposite. My reaction was that the injury was completely inconsistent with the alleged victim's story and that the injury was actually going to be helping us explain that this person is lying about what they say our client did to them. This case is a sex assault on a college campus. I have sisters and so when I hear about these kinds of cases, I immediately think of my sisters. And so whenever you hear of a case or you learn about a case, it's very natural to identify part of that with your own life.

Doug Richards:

And you have the natural reactions that anybody would have when you hear about these things. But what I think really is the critical factor for an attorney that's doing their job is to be able to look past all of that and to understand where the problems are with the allegation. Because just like when you hear a story in the news, it causes you to have an initial emotional response. But then once you start reading the story and you start understanding both sides of the story. And even if you start looking at different news outlets, for example, and finding out how different people are reporting it, you start to realize that there are a lot of facts that you might not have been getting right out of the gate. And that's exactly how it is with my job. I need to know all of the facts and I'm going to make my own decision up, just like you do in your daily life.

Doug Richards:

When things don't make sense to me, I start digging in deeper and I immediately think about, well, how would I explain to a juror, whether this makes sense or not. As you dig deeper into these cases, you start to uncover other problems that once you start shining a light on, become devastating for the prosecution's case. This one, for example, was the timeline. Once you identify data, that's good, you had to figure out how you're going to present it to 12 jurors who are just learning about this case that you've spent months and months and months thinking about. I told them that this timeline that we were going to show them is created based upon certain data, key card data, Snapchat data, and statements that these witnesses gave to each other or to the police. And I showed them that these are the icons. And then I put these icons down in the lower portion of the screen so that they could always refresh their memories from 8:00 PM until on the left-side to on the right-side one o'clock in the morning.

Doug Richards:

And what I explained to the jury is that while the prosecutors want you to believe that all of these things happened in a vacuum in a very small period of time, it actually occurs over the course of many, many hours. So I built the timeline around the alleged victim's statement that she locked herself in on. This was a critical moment for us. The prior attorney was very concerned with the fact that there was going to be testimony that the alleged victim was drunk, that she was wasted because that's what her friends were saying. And the allegation, in this case, was that the alleged victim was too drunk to consent. This event occurred over an entire evening where there was drinking, but the drinking ended. And then there were several hours of sobering up. It's all about the timeline.

Doug Richards:

So this first part of the timeline was establishing where everybody was. I needed to identify which witnesses were the most critical witnesses to the important parts of the night. These witnesses gave three to four statements to different people, over a period of about two years. So their statements varied slightly to dramatically, depending on when they were questioned. The friends were saying that the alleged victim was not just drunk, but the most drunk in their group. And they were making certain descriptions of her behavior that certainly sound to a layperson like she might have been intoxicated or under the influence of something. What I realized quickly is that those descriptions were of the alleged victim early in the night. And the alleged assault took place hours and hours and hours later. All of the authorities that were taking statements from these witnesses were combining the part of the timeline where they were drinking with the part of the timeline that it was the end of the night. And they were making it as if it all happened at the same time.

Doug Richards:

When in reality, what we needed to do was show that it took place over hours and hours. And that while she may have been drinking very early in the night, that by the time that she was alone with the client, that she was completely sober and had been sober for hours. And I had her friends that could corroborate her sobriety. The critical thing when you're defending somebody against these awful allegations is to not go against the grain. You want to go with the grain, you can't rewrite facts, or you can't change what a witness is going to say. They're going to say whatever they're going to say. My job is to understand that statement and be the master of the facts of the case. In this situation, the grain was, all of the friends are going to say that this alleged victim was drinking. And all of the friends are going to say that she was exhibiting signs of being under the influence of alcohol.

Doug Richards:

What I wanted to do is show that while the prosecutor's going to stand up and tell this jury that this girl was drunk. I'm going to say, I don't know if she was drunk or not. I know she was drinking. And I know her friends were saying that she was showing signs of intoxication that was at like 8:00 or 9:00 PM. But at one o'clock in the morning when this all happened, she had stopped drinking for several hours and was completely sober. So the signs of impairment or out of drinking alcohol that you may hear about from earlier in the night are completely irrelevant to her state of mind when she was with my client. In this case, what I quickly realized is that I had no way of creating this separation between the early drinking and the late-time interactions where I knew this alleged victim was sober.

Doug Richards:

What else is out there for me to help build the timeline? And I realized that these kids all are on a college campus, where they have these key cards that they use to get in and out of the buildings. And not just to get into the building, but to move about the building, to access certain areas that they are allowed to be in. What we did was we sent a subpoena to the school to get all of the key card access data for these kids over a certain period of time. What the data was able to show is who in the group used the key card at what time. That is only part of the issue because it doesn't show you who was using it. So it was a matter of re-interviewing people with this new data to make sure that we properly authenticated the information and linked it back to the witnesses and that there weren't going to be any surprises when we got to court.

Doug Richards:

That a witness, wasn't going to say, "No, I was using this other person's key card on that day." Or something similar. Thankfully, all the witnesses agreed with us that if the key card said that they were at a particular location at a particular day, then that was the information that was the most accurate, not their own memories. Once they've all agreed that the data that we've presented to them is accurate, then we need to figure out a way that we incorporate this into our theory of the case and our arguments that we're going to make to a jury. And one of the big things that you have to do when you have that much data is present it in a way that's visually appealing to jurors and that's easily and quickly digestible. This is where the timeline so important because we were able to show that all of these kids were together and the group was completely intact at 11 o'clock at night. In fact, the alleged victim wasn't alone with my client until after one o'clock in the morning.

Doug Richards:

So when the witness said that she received this Snapchat message of the alleged victim passed out, at 11 o'clock at night or around 11 o'clock at night, I knew that the issue of the Snapchat was immediately done. For those that don't know what Snapchat is, it's a social media platform where you can also send direct messages to each other, but the idea behind it is that the messages delete, they just sort of disappear. But Snapchat maintains messages on their servers. So while things will disappear from your phone, they don't necessarily disappear from the Snapchat servers. So the detective subpoenaed all this information from Snapchat, it came in and Snapchat maintained a lot of logs of messages between these kids and things like that. But there was no message between my client and this witness and there certainly was no picture.

Doug Richards:

And I think that the prosecutor started to realize that too. And she went back and she said, "Are you sure it happened at that time?" And she wanted to try to prompt this witness to change her story or her

statement. And I immediately objected, meaning the judge said that I was correct and would not let the prosecutor continue with that line of questioning. I knew this witness was lying, and I knew that I needed to show it to the jury. Once the witness was done testifying, the judge asked the jury, "Do you have any questions?" The jury submitted a question, and the question was, "Was there a message or a photo from the defendant to this witness that contained a picture of the alleged victim passed out?" A lot of times when I'm in trial, I'm mostly watching the jury. And I definitely watched the jury for their reactions on this, because when the juror question was asked and the witness said, "No, there was no message." And Snapchat was not able to produce any message.

Doug Richards:

Several of the jurors looked very satisfied, and you could tell that this was an important issue for them to have resolved in their heads. So these are moments in a case that seem insignificant but are critical because we were the masters of the facts. We were able to know when key parts of the case were about to become an issue. And we knew that this was a critical moment that we had to really be on alert and careful of how the record was being developed. So that we knew that the jury wasn't being misled by the testimony of a witness that we knew was lying. And what we were able to do is demonstrate that it never happened in the first place and that the witness lied. When you're in trial, there's a all sorts of emotions and feelings that you have. And it's very much like a chess match, leading up to and during the trial.

Doug Richards:

And once you've finished delivering your closing arguments and the jury starts deliberating, all you think about are the hundreds of thousands of decisions that you've made leading up to the trial and during the trial. And you start thinking, well, did I do this right? Did I do that right? And it's just natural to just sort of do a postmortem in your head of how the trial went. I mean, I've done over a hundred jury trials and that's the way it is every single time. It had been a week-long trial and I knew that the jury had a lot to talk about. So we expected that they were going to need to adjourn, then come back the next morning, and everybody's assembled back in the courtroom, it's a very nervous time.

Doug Richards:

The client is extremely nervous, realizing that their life is about to change forever, one way or the other. It's a very stressful several moments. You're in front of the jury and the judge says, "Do you have a verdict?" The jury hands the verdict to the clerk. And the clerk walks over to the judge and the judge looks at the verdict forms to make sure that they're properly filled out. And while that may take 15, 20 seconds, it feels like a lifetime, because you are just on pins and needles, waiting for the verdict. The jury is watching you. They know what the verdict is. They know whether or not your client is about to go to jail or is about to walk out of the courthouse, a free member of society again. And they're watching you experience these emotions. And I always have an arm on, or around my client at this moment because it's stressful for them. I could feel his body trembling as I had my arm on him.

Doug Richards:

And the judge began to read the verdict. And it's not like it's a very quick thing to do either. The judge says, "The State of Colorado versus the defendant." And reads the full name and the case number, and then reads the entire verdict form. And again, you're just thinking, just tell us, what's the verdict. And you hear those two words, "Not guilty." And you just are elated. But there's two counts in this particular case. So while we received the verdict and we won the first count, there was still a second count. And

we had to wait for the judge to read the second verdict form. And immediately when we heard those two magic words again, "not guilty." My client just broke down crying. I could hear his family in the gallery behind us crying.

Doug Richards:

My client looked at the jury and said, thank you to them. I've never been hugged so tight before. He recognized the gravity of the situation where he was, what he went through, and that we literally saved his life. The charges were officially dismissed, and my client was once again free. Anytime I hear those words in front of a jury, it gives you chills because you had the full weight and authority of the State of Colorado coming down on your client. And it's not easy for a client to say, "Not guilty." There's a lot of risk. And it's a scary thing to go through.

Doug Richards:

And the clients that go through it, it's well worth it to restore your name and stature in the community. Now it doesn't happen overnight, because it's not like at the end of, My Cousin Vinny, where everybody runs out of the courthouse and the judge and the clerk and the prosecutor, they're all waving at Joe Pesci and Marisa Tomei when they're driving off into the sunset. It doesn't work that way. There's still work to do to restore your client's reputation. But that, not guilty verdict feels good and it's a really good first step. That is what gets me up in the morning. And it's those moments when the client is thanking you, and their family is thanking you, that really make you realize that what you're doing is important work and is making a difference for people.