

Meeting with Ken Buck

**Present: Victim X, a 2nd male voice (unidentified), the victim's lawyer.
Possibly also another assistant DA.**

Man #2: Everything in the police report is all the information. It seems from my reading, based on suspect's statements, that this falls under (h) of 18.3.402, that Victim was in such a state that she was not able to give consent physically. It's Vic's desire to have the case proceed. We wanted to get your thoughts about it.

(95) Ken Buck: This is a case that is troubling to me. Troubling to Steve (ADA), the nature of a crime is on a such a magnitude.... We have looked at this from a lot of different angles. We have to fulfill our ethical obligation that this case would have an expectation of proof beyond reasonable doubt before a jury. That is in conflict with the law. "We may think we know who killed the Ramsey girl, but if we can't prove it, we can't bring a case forward." ... And that's where we're coming from with this decision.

Man #2: Is it the prior phone call that was made...

(118) KB: It's the totality of the circumstance... prior relationship with him... talk to the experts who try rape cases and have not found a prosecutor yet who would ...

(130) Victim: His statement says, "When he finished, ... (reading police report)... tried to get the victim to wake the victim up so he could apologize." How is that not "physically helpless, meaning unconscious, asleep, or unable to act" (legal code)

(139) KB: Because when you look at what happened earlier in the night, all the circumstances, based on his statements and some of your statements, indicate that you invited him to come to your apartment... that you told him how to get in It would appear to me and it appears to others that you invited him over to have sex with him. Whether that you, at that time, were conscious enough to say yes or no... ?

(147) V: So you're telling me that previous sexual relations is enough to provide consent, and you're telling me that because of me calling him and because of previous sexual relations and because I invited him up and told him how to get in, that invited him up for sex...

(153) KB: I'm telling you that's what the circumstances suggest, to people, including myself, who have looked at it. Although, you never said the word yes, but the appearance is of consent.

V: Even though, he also stated that I told him no.

KB: He stated that in a phone call that you had with him later.

V: No, that's not what that says ... (reading police report). He stated the victim did say no, he does recall the victim rolling over and saying no. That's me saying no during the act, that's men not giving consent.

KB: Do you recall your answer to police officer in your first interview, the police officer asked if you said no, you said I don't recall."

(168) V: I said I'm pretty sure that I said no, but I cannot be 100% sure. And at that point, it was because I said I couldn't be sure that I had actually verbalized. I know that that I had done my best to say no but I couldn't be sure. I did push the suspect away, told him know, passed out." (reading from police report).

(175) Man #2: ...The thing that struck me about this, as opposed to some other cases that I've looked at, is "his recognition that he had done something wrong, almost immediately, and certainly by the time he was done. In my mind, that's what sets this apart from a he said, she said. ... his own recognition... recognizing that he made a mistake ... trying to get her conscious enough to apologize. That was the thing that really struck home with me... His words against himself, might be enough to increase this to a reasonable likelihood..."

KB: Different people see differently, but I haven't come across a prosecutor yet that ...

M2: I thought it was likely that at least there would be differing opinions. I don't know if it ever gets to a point where you take a vote or something.

KB: "There's only one vote." There haven't been any contradicting opinions... experts here... experts in other offices.

V: Unlawful sexual contact. If not sexual assault, (explains 4 requirements)

KB: I think the same level has to be met. he has to have entered apartment and engaged in an act... If we were going to charge him with something, it would be an all or nothing situation. Could a jury find a lesser charge, perhaps, but to me the decision is based on the overall facts. It's not a case where, unless we've included, we're missing a jurisdictional element or a minor element. It's either a sexual assault or it's not.

V: So, I'm just going to run through again what you're telling me that I'm saying: It does not matter that I told him no, it doesn't not matter that I pushed him away, and that he admits to all of this. Is that what I'm hearing you say?

KB: No, you're not hearing me say that.

V: I've heard from numerous people that this is moral, but not illegal.

KB: There is contradictory evidence over consent. The act of inviting him, appear to be consensual acts, then there are statements that appear to be indicate that there

wasn't consent. That conflict is the conflict that doesn't give us the proof beyond reasonable doubt.

V: I appreciate you meeting with me. Anything else?

M#2: These are difficult cases... "before we do something further"

KB: when you say do something further, what to you mean

(250) M#2: we've talked about a motion to compel prosecution, and that's the only other option. Ultimately that's going to be [Name redacted] decision. But that's really the only option.... Whether or not we're going to do that, I don't know. Incredibly high burden ...

(255) KB: Be aware of something, if this, if you file this motion, it will be very public, publicly covered event. There are a lot of things that I have a knowledge of, that I would assume (name of possible suspect redacted) knows about and that they have to do with, perhaps, your motives for (unintelligible) and that is part of what our calculation has been in this.

V: I'm interested to hear more about that, my motives, for what this has been.

KB: You have, you have had HIS baby, and you had an abortion.

V: That's false, that's just false.

KB: Why don't you clarify?

V: I did have a miscarriage; we had talked about an abortion. That was actually year and a half ago. So ...

(268) KB: That would be something that you can cross-examine on, that would be "something that might be a motive for trying to get back at somebody." And it would be a (unintelligible). And it's part of what we have to take into account whether we can prove this case or not. And there are a lot of things that, um, you know, for as why weren't not prosecuting the case. We've got to weigh all that, and it not something that I feel comfortable with, but something I have to be.

(274) V: I would be interested in you actually bringing that up with me, actually being honest with me as to why you're not willing to take this case. Instead of dancing around, you know, what you've told me because if there are other things, I would be interested in hearing them...

KB: I don't appreciate your inference that I'm not being honest with you. I'm taking the time to meet with you. I've had prosecutors review ... I'm being absolutely honest when I say "Totally of circumstances, I don't believe that we can prove this case." That the ...?

(280) V: So you're looking at the fact that I had a miscarriage with his child, and

what else? Give me more information, because I'm really interested in knowing the totality.

KB: That's part of it. And part of it is, when you describe yourself as "bedfellows" and you did indicate that you were "bedfellows" and "it's hard to convince a Weld County jury that this wasn't consensual, when that is your label. So there are those kinds of factors. This office doesn't believe in (blaming the victim?) for the conduct of the case but, we do have to take into account what a weld county jury sees in the relationship. You had consumed a lot of alcohol. You had a prior relationship. According to him, you were naked from the top up when he came into the bedroom. So, there are enough indicators or (indications?) that in my opinion make this impossible to prove beyond a reasonable doubt.

V: if we decide to take it to a judge, then this will be very public, and honestly I plan on making it public. ... Date rape is something that happens; it is against the law... I'm hearing that a jury won't buy it, but I'm prepared to have that conversation as to why Is that it? Thank you very much.