

The Best Witness:

Using Digital Evidence to Build Non-Stranger Sexual Assault Cases

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On so many occasions, prosecutors and police hope to find an eyewitness to a sexual assault—someone, other than the survivor, who could tell the jury exactly what happened. Unfortunately, sexual predators choose where their crimes occur and rely on bystanders' silence to avoid being held accountable. Nevertheless, digital evidence can fill the gap with exceptionally reliable evidence—if prosecutors and police know where and how to look for it. This article aims to boost prosecutorial success by offering quick tips on where to find corroborating evidence, all based on the hypothetical scenario provided below.

Assault Scenario

Breanne, a 22-year-old woman, met Aaron, a 20-year-old man, at a party in March of 2024. The two engaged in conversation throughout the event and later connected on Instagram to view shared photos from the party. A month later, they unexpectedly crossed paths at a restaurant and discovered they were both headed to a friend's birthday gathering. Although her car was in the restaurant parking lot, Breanne suggested they share an Uber to the party due to limited parking near the condominium where the event was held. Aaron agreed, and Breanne arranged for an Uber around 8 p.m.

At the party, Breanne consumed alcoholic drinks and marijuana gummies while Aaron smoked some pot that he brought along. After a few hours, Breanne began feeling intoxicated and unsteady. Aaron noticed her condition and offered to share an Uber back to

the restaurant parking lot. Breanne accepted, intending to sober up in her car, before driving home.

Breanne recalled leaving the party with Aaron and getting into an Uber driven by a woman (2nd Uber). However, her memory grew hazy, and Breanne's next clear recollection was waking up in the back seat of her car around 7 a.m. She made a disturbing discovery: her pants and underwear were removed, and she had suspected ejaculate on her leg. Sensing soreness in her vagina, she vaguely remembered a man removing her pants inside the car, though she had no recollection of any sexual activity. She also noticed vomit on her shirt sleeve and outside of the back driver's side door.

Concerned, Breanne drove to a local hospital and reported her suspicion of being raped. Swabs taken at the hospital confirmed the presence of semen on Breanne's leg and in her vagina. Toxicology tests showed only marijuana in Breanne's system, ruling out the presence of any other drugs. Police attempted to interview Aaron, but he declined to speak with investigators.

What Questions Can Digital Evidence Answer?

Before the DNA results are back, digital evidence can clarify the central question in this case: ***did Aaron have the opportunity to commit a sex offense against Breanne?***



- *Was Aaron in the parking lot with Breanne after the Uber dropped her off?*
- *How long did Aaron remain in the parking lot?*
- *How long did Breanne stay in the parking lot?*

Suppose Aaron was in the restaurant parking lot after the Uber drop-off for long enough to commit an act of criminal sexual conduct. In that case, the investigation can proceed to subsequent inquiries concerning the parking lot events. However, if Aaron left the parking lot immediately after being dropped off and did not return, alternative suspects must be considered.

What other insights can be gleaned from digital evidence? Did the surveillance cameras capture any other individual present in the parking lot? Can the Uber driver, upon identification, offer any information about the events that transpired in the parking lot that evening? Did Breanne communicate with anyone indicating her presence in the parking lot? Were there any party attendees who captured photographic or video evidence that may depict individuals lingering near Breanne? Examination of photos and videos from the party could aid investigators in identifying attendees and facilitating subsequent interviews. Furthermore, analysis of cell tower data may reveal which devices were connected to the towers that covered the parking lot, enabling investigators to ascertain any correlation between party attendees and tower data.

Digital evidence can also yield insights into another critical component of the crime: establishing whether physical helplessness, force, or coercion was involved. Although the likelihood of anyone witnessing the events inside Breanne's car is slim, substantial digital evidence may illuminate the events leading up to Breanne entering her car.



Digital evidence may also provide insights into Breanne's level of helplessness. Recordings from the Uber and surveillance footage from the parking lot, if available, could potentially depict Breanne exhibiting impaired movement or appearing in a state of altered consciousness. Moreover, Aaron or other party attendees, or even the Uber driver, may have captured images or videos of Breanne's level of intoxication akin to those in the Steubenville, Ohio rape case, which may also be valuable.¹ Such digital evidence could aid in identifying individuals who can testify to Breanne's level of consciousness. For example, in the case of serial rapist Jeffrey Marsalis, a cab driver provided vital testimony about the victim's state of alertness and the defendant's conduct.² Alternatively, investigators may discover recordings indicative of a completely sober Breanne. Simply seeking such evidence enables investigators to demonstrate to jurors that their findings were guided by evidence beyond the victim's account.

Finally, other inquiries that jurors may have should be considered. If Aaron is identified as the individual involved in sexual contact with Breanne, he may argue consent. Insights gleaned from digital evidence may rebut or support this defense. By looking at communication between Aaron and Breanne, was there *any* communication before the birthday? Were there any messages exchanged on the night in question indicating sexual attraction or discussing plans to "hook up" after the party? Did Aaron and Breanne communicate with each other after the party, or was any discussion of the events in the car with others initiated by either party?

As the investigation progresses, close collaboration between law enforcement, prosecutors, and victim advocates becomes paramount. The prosecutor's role extends to facilitating search warrants and guiding investigators in determining the necessary follow-up actions to promptly address the most critical questions. There may be witnesses to interview and forensic tests to order, and you have a victim who will need support. There will be plenty of work to go around—but digital evidence may provide answers that nothing else can: answers crucial for the victim, the prosecution/investigation team, and ultimately definitive evidence for a jury to establish proof beyond a reasonable doubt.

¹ https://en.wikipedia.org/wiki/Steubenville_High_School_rape_case

² <https://caselaw.findlaw.com/court/id-court-of-appeals/1579670.html>

Digital Evidence Ideas and Necessary Legal Process

Physical source of evidence	Questions it can answer	Places within that source that need to be searched	Permission needed to search
Breanne's Cell Phone	Breanne's locations Her level of consciousness Who she interacted with What Aaron said to her	Any app that provides location data Call records Messaging apps Photos/videos	Consent or search warrant/court order
Uber Data	Identify of Uber drivers Location/times of drop-off and pickup Identity of any other passengers	All Uber records related to the use of Uber by Breanne and Aaron All Uber records for the location of the party during the time period in question	Search warrant or court order
Aaron's Cell Phone	Location data for the night in question Communication with and about Breanne	Any app that provides location data Call records Messaging apps Photos/videos	Search warrant/court order
Surveillance Videos	From the restaurant parking lot From neighboring businesses with a view of the restaurant parking lot Any video showing Breanne and Aaron entering the Uber From inside the Ubers	Recordings showing what happened in the parking lot Recordings showing what happened in the Ubers	Consent from businesses Consent from Uber drivers Search warrant/court order

Physical source of evidence	Questions it can answer	Places within that source that need to be searched	Permission needed to search
Vehicle Forensics	Data from Aaron and Breanne's vehicles for the night in question	Location data Use of infotainment systems to communicate or navigate	Search warrant/court order to extract data from vehicles Search warrant/court order to holder of data
Smart Watches	Data from any device worn by Aaron/Breanne	Biometric data Use of device to communicate	Search warrant/court order or consent
Recordings from Party	Any recordings showing Breanne/Aaron	Photos or videos from partygoers	Search warrant/court order or consent
Meta (Instagram)	Communication between Breanne and Aaron via the app	Any data showing interaction between Breanne and Aaron (messages, photo/video tagging, likes, comments) during the time period in question	Search warrant/court order
Cloud Data	Ensure nothing was deleted from Breanne or Aaron's phone	The same data from the cell phones, starting with the night of the party	Preservation orders for entire accounts Search warrant/court order for content

Case Assistance

At Zero Abuse, our staff includes former ICAC and child abuse investigators and prosecutors with extensive experience in cases involving physical child abuse and neglect, child sexual abuse, domestic violence, and non-stranger sexual assault. Please reach out if you need assistance with a specific case via our [case consultation form](#).



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