

1 and a half hours.

2 MR. CHAIREZ: Right.

3 MS. HOLTHUS: There's, like, 15 minutes when the ID
4 is in there. I was going to leave everything. I'm also going
5 to leave that big gap where he's sitting in the room on his
6 own, you can observe him. He's got his head down. They can
7 fast-forward. You can see that nobody's coming in or out or
8 anything's changing. But rather than -- I don't want to do
9 any more --

10 MR. CHAIREZ: Editing?

11 MS. HOLTHUS: -- editing of the video that he
12 requests. So I'm fine -- I -- my plan is to leave it in. I
13 explained to Mr. Chairez that at 1:30 the detective leaves.
14 He comes in at that moment and he changes out the cuffs and
15 then there's a conversation. That's where we've already
16 addressed, Mr. Chairez wanted the part where Mr. Alotaibi asks
17 about a lawyer. And then he's told that he's being arrested.
18 And Mr. Alotaibi says, For what? And there's a -- a dialogue
19 going back and forth there that I understand Mr. Chairez wants
20 in. Then the detective leaves. And then that's at 1:30-ish.

21 And then at 2:12, ID and everybody come back in and
22 they start taking photographs, explaining to him the process,
23 they do buccal swabs and whatnot. Up at -- at 2:20, they
24 explain to him, Okay, now here's the, I don't know, awkward
25 part of the -- not-so-good part, this is where we're going to

1 take pictures of you naked, blah, blah, blah. We can cut it
2 right after the explanation so that it's clear what's going to
3 happen, and then right before Mr. Alotaibi is undressed, if --
4 if that's where he wants it. I just want to know where he
5 wants that. We'll cut it anywhere he wants.

6 MR. CHAIREZ: Well, I mean, the only part of it I
7 want to cut is the same part we cut out in the still
8 photographs. So.

9 MS. HOLTHUS: Okay. So I'm going to take it up to
10 him dropping his pants, basically.

11 MR. CHAIREZ: That's fine.

12 MS. HOLTHUS: Yeah?

13 MR. CHAIREZ: That's fine.

14 THE COURT: Okay.

15 MR. CHAIREZ: Okay.

16 THE COURT: Anything else before I bring the jury
17 back in?

18 Nope? All right. Mr. and Ms. Interpreter, remember,
19 you're still under oath.

20 THE INTERPRETER: Yes, ma'am.

21 THE COURT: Okay. Let's get the jury.

22 (Jury reconvenes at 1:22 p.m.)

23 THE COURT: All right. Welcome back, ladies and
24 gentlemen of the jury.

25 Ms. Holthus, I know today's the day we're taking

1 witnesses out of order. Is the next one up the State's
2 witness?

3 MS. BLUTH: Yes, Your Honor.

4 THE COURT: Okay.

5 MS. HOLTHUS: The next two are.

6 THE COURT: And please call your next witness.

7 MS. BLUTH: The State calls Ruth Leon.

8 THE MARSHAL: Who?

9 MS. BLUTH: Ruth Leon.

10 THE MARSHAL: Remain standing, raise your right hand
11 to be sworn in by our clerk, please.

12 RUTH LEON, STATE'S WITNESS, SWORN

13 THE CLERK: Please be seated. State and spell your
14 first and last name for the record, please.

15 THE WITNESS: Ruth Leon. R-U-T-H L-E-O-N.

16 THE COURT: Whenever you're ready.

17 MS. BLUTH: Thank you.

18 DIRECT EXAMINATION

19 BY MS. BLUTH:

20 Q Good afternoon, Ms. Leon. How are you employed?

21 A I'm an investigator with the district attorney's
22 office.

23 Q Okay. So you work with Ms. Holthus and I on
24 cases; is that correct?

25 A Right.

1 Q I'd like to turn your attention specifically to
2 October 9th of 2013. On that day were you present at a
3 pretrial conference with Rashed Alshehri?

4 A Yes.

5 Q And on that day did Mr. Alshehri talk to you
6 about when he came to Las Vegas with the defendant, Mr.
7 Alotaibi?

8 A Yes.

9 Q And during that questioning did he discuss
10 drinking alcohol with the defendant?

11 A Yes.

12 Q And specifically when he talked about getting
13 back to the Circus Circus after the strip club, did he ever
14 use the term "blackout" when referring to the defendant's
15 level of intoxication?

16 A No.

17 Q What did -- how did he discuss the defendant to
18 be behaving?

19 A He indicated that -- that the defendant had been
20 drinking. They were all drinking. They went to retrieve the
21 car back from the casino that they left the car at. At that
22 time, I believe, he said Mohammed and the defendant had an
23 argument about the keys, misplacing them. And then they were
24 able to drive away. They found the keys, they were able to
25 drive away. It was the defendant, Mazen, Mohammed, and

1 Rashed. They drove from the casino they were at to the Circus
2 Circus.

3 Q Okay. And you said he never used the term
4 "blackout"?

5 A No.

6 Q Did he ever -- what -- what did he say about
7 once they got to the casino in regards to the defendant's
8 intoxication level?

9 A He indicated they drove in, parked at the
10 self-parking, and the defendant wanted to continue partying.
11 That he didn't want to listen to reason, they were -- Mohammed
12 and Rashed was trying to get him upstairs to go to sleep.

13 Q Did he ever mention that he had any trouble
14 walking?

15 A No.

16 Q Talking?

17 A No.

18 Q Communicating with them?

19 A No. The only problem they had was trying to
20 convince them to -- for him to go upstairs.

21 Q And you also mentioned that he spoke about the
22 defendant driving from the parking lot to the Circus Circus?

23 A Correct.

24 Q Did he discuss whether or not the defendant had
25 any problems during that drive?

1 A He said he indicated that he drove good.

2 Q And, lastly, in regards to when AJ Dang left the
3 bathroom after the assault, did Rashed ever discuss whether or
4 not he could see AJ exiting the room after the assault?

5 A He did indicate that he could see somebody -- he
6 could see the body leave, but he couldn't see in detail who he
7 was or how -- like, what he looked like. Like, if he, you
8 know, he couldn't give us detail as to how he looked.

9 Q So, he didn't have a good enough view of the
10 victim as he left the room?

11 A Correct.

12 Q And those were all answers that he gave in a
13 pretrial conference before this trial started on October 9th?

14 A Correct.

15 MS. BLUTH: Thank you. I'll pass the witness.

16 THE COURT: Mr. Chairez, sir.

17 CROSS-EXAMINATION

18 BY MR. CHAIREZ:

19 Q Ms. -- is it Leone or Leon?

20 A Leon.

21 Q Okay. You don't know what the word "blackout"
22 is in Arabic, do you?

23 A I don't.

24 Q All right. And would you say that Rashed's
25 level of English was fluent, semi-fluent, un-fluent, or enough

1 to where you could barely converse with him?

2 A Fluent.

3 Q Fluent? All right. And so when you were
4 talking with Rashed for this pretrial conference, did you ever
5 use the word "blackout" with him to say how drunk was Mr.
6 Alotaibi?

7 A No.

8 Q Okay. So, this whole issue about a blackout is
9 just something that came up afterwards, correct?

10 A He never used that term.

11 Q All right. But you don't know whether or not he
12 even knows what the term -- how -- how to say that term in
13 English, do you?

14 A I couldn't tell you. I just know that he didn't
15 use that term when we met with him.

16 Q All right. And you never discussed with him the
17 various levels of intoxication, correct?

18 A We discussed with him how much he had been
19 drinking, how much the defendant had been drinking, those kind
20 of things.

21 Q All right. And did he tell you how much he saw
22 the defendant drink?

23 A He told he had -- he saw him drinking
24 continuously throughout the night.

25 Q All right. From, like, 2:00 in the morning

1 till, like, 6:00 or 7:00 in the morning, when they returned to
2 the hotel?

3 A I don't know the specific time. I just know
4 that he said he had been drinking.

5 Q And he told you that Mohammed and Mr. Alotaibi
6 had a fight because some keys were lost or something to that
7 effect. All right. And it was Mr. Rashed's recollection that
8 Mr. Alotaibi drove the car from wherever it was parked to the
9 Circus Circus?

10 A Correct.

11 Q And he didn't mention that he was weaving,
12 driving erratically or anything like that?

13 A No. We asked him specifically --

14 Q Okay.

15 A -- how he was driving.

16 Q All right.

17 A He said he was driving good.

18 Q Okay.

19 MR. CHAIREZ: Nothing further.

20 THE COURT: Anything else?

21 MS. BLUTH: Nothing, Your Honor.

22 THE COURT: Thank you, ma'am, for your time. You're
23 free to go.

24 THE WITNESS: Thank you.

25 THE COURT: Next witness, please.

1 MS. BLUTH: The State calls Jeri Dermanelian.

2 THE MARSHAL: Remain standing, raise your right hand
3 to be sworn by our clerk, please.

4 JERI DERMANELIAN, STATE'S WITNESS, SWORN

5 THE CLERK: Please be seated. State and spell your
6 first and last name for the record, please.

7 THE WITNESS: My name is Jeri Dermanelian, J-E-R-I
8 D-E-R-M-A-N-E-L-I-A-N.

9 DIRECT EXAMINATION

10 BY MS. HOLTHUS:

11 Q What do you do?

12 A I'm a registered nurse that practices sexual
13 assault nurse examinations.

14 Q Give me your education, experience, and training
15 in the area of sexual assault nurse examinations.

16 A I've been a sexual assault nurse examiner for
17 approximately five years. I've been a registered nurse in the
18 state of Nevada for 35 years. I became SANE certified by the
19 International Association of Forensic Nursing five years ago.
20 I have recertified as we're required to, every three years
21 now. I also have a certification as a -- a sexual assault
22 nurse examiner in pediatrics and adolescents and the adult
23 version.

24 I have continuing education units that are required
25 to keep your certification from the International Association

1 of Forensic Nursing and other agencies that offer sexual
2 assault examination education.

3 Q Prior to your last five years as a SANE
4 examiner, what did you do for the other 30 years?

5 A I have to tell you that I am a workaholic. I
6 worked 30 years at the county hospital, University Medical
7 Center. Started out as a staff nurse in the emergency
8 department, went on to become a charge nurse. After I was a
9 charge nurse, I became the educator for the emergency
10 department. Then I became a coronary care unit nurse,
11 open-heart nurse. And from there I went to becoming a nursing
12 supervisor for the house. And then I became an on-duty
13 administrator before I retired.

14 In addition to that, I worked for almost five years
15 at the same time at St. Rose Dominican Hospital in their ICU
16 and their ER.

17 In addition to that, I own a small educational
18 company called Academy for Career Enhancement, and that's
19 where I teach advanced cardiac life support, pediatric
20 advanced life support, emergency nurse pediatric course, adult
21 emergency nurse coursing, trauma nurse courses, advanced
22 cardiac life support. It -- it'll go on with my education and
23 my training and my work. And I have more if you need more to
24 hear from.

25 Q With respect to a sexual assault nurse examiner,

1 what -- what exactly is that?

2 A Sexual assault nurse examiner is someone who is
3 specialized in doing sexual assault exams. Again, qualified
4 for pediatrics, adolescents, and adults.

5 Q What is the purpose of a sexual assault
6 examination?

7 A Sexual assault examination, we basically do
8 three things. We do a medical exam with a head-to-toe
9 assessment, looking for any types of injuries that may have
10 been caused prior to a sexual assault, during the sexual
11 assault. We also do forensics examination and collection of
12 evidence, where we take swabs, we use different tools to get
13 to different body parts to get the DNA. We use secure digital
14 forensics imaging photography to help document the potential
15 injury patterns that we see. And we complete sexual assault
16 kits.

17 In addition to that, we offer our patients that come
18 in what we call preventative treatment and assessment for
19 sexually transmitted infections. We offer them what's called
20 prophylactic or preventative treatments for sexually
21 transmitted infections, which generally inquires -- or
22 requires a couple of antibiotics that we give to the patients.

23 In addition to that, we connect with the law
24 enforcement agency that may be involved in the case and we
25 work with them. In addition to that, we have them connect

1 with the advocates from the rape crisis center, make sure that
2 they get connected into the community system and have them
3 receive their advocacy from the rape crisis center.

4 Q And where is it that you see patients?

5 A We see patients at University Medical Center.
6 In the adult emergency department we have two rooms. One's
7 called a quiet room where patients are many times entered.
8 When they enter into the hospital, they'll go in and sit so
9 that they're separated out from the general triage area or the
10 waiting room. And then we have a room called the sexual
11 assault exam room, where the physical head-to-toe assessment
12 and the physical exam takes place when we do the examinations
13 and treatments.

14 Q And how many -- how many hospitals, how many
15 places are set up, basically, to perform the SANE
16 examinations?

17 A In Clark County we have one, the University
18 Medical Center. It's a central location, hospital-oriented
19 base program.

20 Q So, for the most part, if there's a sexual
21 assault alleged victim, they're going to come -- and they need
22 an examination, they would come through UMC?

23 A In -- in general, if they're age 12 or up. If
24 they are female and they have menstrual cycles, then they can
25 come in at the age of 9 or 10, as long as they're

1 menstruating.

2 Q And below that, non-menstruating or under 12?

3 A Generally, they will go to Sunrise Hospital for
4 the adolescent or the pediatric version of the SANE exam.

5 Q And so approximately how many SANE examinations
6 have you conducted?

7 A As of just this year from January until now,
8 I've done approximately 455 sexual assault exams.

9 Q And have you also testified in court regarding
10 the findings and results of those examinations?

11 A Yes, ma'am.

12 Q Approximately how many times?

13 A I believe I'm approaching 60.

14 Q In this particular -- you -- you know what case
15 you're here about, correct?

16 A Yes, ma'am.

17 Q And directing your attention to December 31st of
18 2012, did a patient present for a sexual assault examination?

19 A Yes.

20 Q What's the protocol upon arrival?

21 A The patients can -- the protocol is the patient
22 enters a variety of different ways. They can either walk in
23 by themselves, they can be brought in by a family member or
24 parent, they can come in by ambulance, they can enter the
25 hospital through the pediatric emergency department entrance,

1 they can come in through trauma resuscitation, or they can
2 walk in through the adult emergency department entrance. Or
3 they can come in by ambulance through the ambulance entrance.
4 So there's a lot of different entrances into the system.

5 Q In this particular case -- and we're talking
6 about the patient AJ Dang; is that correct?

7 A AJ Dang is who I did an exam on the 31st.

8 Q Tell me -- well, let's go -- generally, the
9 protocol is it comes to you, and then what happens?

10 A How they present, sometimes they enter with a
11 law enforcement agency and they're taken to the quiet room.
12 And then from the quiet room, the nurses in triage -- which
13 means to sort out the patients -- are notified that there's a
14 patient that needs to be registered and checked in. The
15 triage nurses will contact the sexual assault nurse examiner
16 who's on call. We are dispatched to the hospital at that
17 point in time.

18 Once we reach the hospital, we ascertain whether the
19 patient is in the quiet room, maybe being interviewed by a
20 detective possibly, or being talked to by a law enforcement
21 agency person. And when they're done, we will take the
22 patient into the sexual assault exam room and start our
23 process.

24 If the patient comes on -- in without law
25 enforcement, then the patient's placed in the quiet room. And

1 the triage nurses will get a general set of vital signs, if
2 the patient has any allergies, medications that they take, any
3 general medical history that we need to know about. And then
4 the patient will be placed again in the quiet room.

5 Then we are contacted, we will go in. If they don't
6 have law enforcement present and then we will ascertain
7 whether they want law enforcement involvement or not.
8 Adolescents have three options, adults have four. We go
9 through those options with the client and make sure that they
10 understand that they have the option and they control the
11 exam.

12 Q What are the three options?

13 A As an adolescent, you have the option, number
14 one, to say no, I don't want a examination done. I want
15 nothing further done. I don't want you as a sexual assault
16 nurse examiner to touch me at all. We honor that,
17 particularly in the face of the fact that they've just gone
18 through what they've gone through. We try and talk to them --
19 if they choose Option No. 1 and say don't -- I don't want
20 anything done, we try and educate them on why they may want to
21 consider the risk versus the benefits, some positives and
22 negatives of either not having anything done.

23 Second option that the adolescent has an option to do
24 is to do just the medical portion of the exam, which means the
25 STI testing, the head-to-toe assessment, and making sure that

1 there's no injury patterns that are present that need medical
2 assistance. And then we offer the STD lab draws where we test
3 for HIV, Hepatitis B, Hepatitis C, syphilis, gonorrhea,
4 chlamydia and such. Then we offer them the antibiotic
5 treatment.

6 And then we also make sure that they get connected
7 with the advocates so that they can have the advocacy piece
8 brought into that. So, if they take the second option,
9 there's no forensics, there's no DNA findings, there's no
10 secured digital forensics photographs taken, there's no law
11 enforcement involvement other than we do have mandatory
12 reporting. So it would be reported, but they make the choice
13 whether they talk to or not talk to law enforcement.

14 Third option that they have as an adolescent is to do
15 the full forensics sexual assault examination, which includes
16 the sexual assault kit, the medical exam, and the DNA testing,
17 and -- and whatnot. So, the third option includes the medical
18 and the forensics.

19 Q And you -- you were explaining that if they were
20 to refuse to talk to law enforcement, essentially you can't
21 force that, correct?

22 A I cannot make anybody speak.

23 Q Okay. But you do -- regardless of what an
24 adolescent would want, you have to call law enforcement, and
25 it's up to basically Metro to -- to take it from there; is

1 that correct?

2 A My job as a sexual assault nurse examiner, I'm
3 required by the State Board of Nursing, there are times when
4 we're mandated to call in. And one of those reasons would be
5 anyone under the age of 18, we're mandated to call that in to
6 a law enforcement agency.

7 Q If you suspect either sexual or physical abuse,
8 correct?

9 A That's correct.

10 Q All right. And then you said the adults have
11 one more choice?

12 A Yeah. The adults have something called a Jane
13 Doe option, and that was mandated by Joe Biden, Vice President
14 of the United States, several years ago. And a Jane Doe for
15 the adults is an option to do -- give a 30-day window so that
16 the -- the adult has the option to decide whether they want to
17 go forward or not. But we collect all the same evidence and
18 do the photographs and do the DNA testing.

19 But some people, some adults need more time to think
20 about the process of going through the full examination and
21 what that all entails going forward with all the legal process
22 and whatnot. So, we give them what's called a Jane Doe or a
23 John Doe, if it's male. And they have 30 days to acknowledge
24 whether they want to go forward. If we don't hear from them
25 within 30 days or they don't contact us or law enforcement

1 doesn't reach us, then we destroy the kit and it reverts back
2 to -- necessarily it'll revert back to just the medical
3 portion of the exam.

4 Q AJ was how old when he presented?

5 A AJ was 13.

6 Q Okay. Tell me what -- what you did with him.
7 He came in with anybody?

8 A AJ came in with his grandmother and a law
9 enforcement officer. And Detective Angie Christensen was the
10 detective assigned the case. AJ went with Detective
11 Christensen into the quiet room. I took AJ's grandmother into
12 the SANE room to try and get medical history, because that's a
13 vital piece of what we do as sexual assault nurse examiners,
14 is find out what kind of medical history is present so that I
15 can ascertain whether the injury patterns that I'm seeing or a
16 medical condition could cause the injury patterns that I may
17 find once I do my head-to-toe assessment.

18 Q And did you get a lot of medical history from
19 Grandma?

20 A Grandma did not know AJ's medical history
21 sufficiently. As a matter of fact, she couldn't tell me
22 anything about his medical history.

23 Q So what did you do then?

24 A I -- I talked to AJ's grandmother through an
25 interpreter, because she did not comprehend English at a level

1 where she was comfortable. So, through the interpreter I
2 asked the medical questions. She didn't -- wasn't able to
3 answer them. So, then I put a call in with that interpreter
4 to the mother. And it was ascertained at that time that the
5 mother spoke English. And so then the interpreter was let go,
6 so to speak. And then I talked and got his medical history
7 from his mom, Tina.

8 Q And after that, what was AJ's demeanor?
9 Describe how he -- how he presented.

10 A AJ is 13. He had various emotions. He was
11 anxious. He was cooperative. At times he was embarrassed.
12 During one point of the exam his face got beet red. When I
13 was talking to him about his bowel movement pattern and how
14 often he defecates or has bowel movement, or poops, his face
15 would get bright red when we would talk about such items.

16 At one point he got very tearful, when we were
17 initiating the anal exam or the rectal exam. And we did stop.
18 And that's one of the rules that we have in the room is that
19 if you need -- as many breaks as you want, we're taking
20 whatever it takes to help you get through this exam. So if
21 you need a break, we're going to take a break. Either they
22 will indicate that or their physical signs, tears in the eyes
23 will tell me it's time to take a break and let them take a
24 break and rest. And then we go forward with the exam.

25 Q So, prior to actually conducting the exam, you

1 do obtain -- did you obtain a history from AJ himself?

2 A Yes. When I did my history with AJ, he was with
3 me in the SANE room with the door shut. And it was AJ and
4 myself.

5 Q Did you determine his date of birth?

6 A I did.

7 Q That was?

8 A I would have to look at my notes to remember
9 that.

10 Q Do you have those with you?

11 A Yes, I do.

12 Q Would that refresh your recollection?

13 A Let me look. Birth date was 9/25 of 1999.

14 Q So he was essentially 13 and three months?

15 A Yep.

16 Q Almost to the day, to the week, anyway. Did you
17 do height and weight?

18 A I actually weighed AJ, because he appeared small
19 to me. Estimated his height at 5'3". Asked him what he
20 weighed, he had no clue. He appeared small statured to me,
21 when I was doing my physical, just, I -- we call it
22 across-the-room assessment. So I physically took him to a
23 scale in the adult emergency department and weighed him. He
24 was 108 pounds.

25 Q What other observations did you make about him

1 developmentally?

2 A He was, in my opinion, small. I kept calling
3 him young. AJ is young to me. And when I ask myself, Jeri,
4 what does young mean? Physically, when I looked at his body,
5 he had not filled out; his chest muscles, his arms, his
6 deltoid muscles were not filled out. His Adam's apple had not
7 protruded out. His voice was a timbre that told me he was
8 adolescent level.

9 When I did the physical exam, it was obvious that he
10 was young. He had no adult pubic hair, you know, on his pubic
11 area. His testicles were present. And so when I did the
12 physical exam, it did help me come to the conclusion that my
13 term, young, AJ was a young 13-year-old.

14 Q Are you familiar with the Tanner stages?

15 A Yes.

16 Q What are those?

17 A Tanner stages are something that we use in the
18 pediatric and the adolescent world to assess what level of
19 maturity the body is at. And I would scoot AJ in at a Tanner
20 -- light Tanner to just starting to get a little fuzz hair on
21 the pubic area. And there was no full pubic hair, there was
22 no elongation of the penis or widening of the penis that
23 occurs with an adult male penis.

24 Q I would be what?

25 A The adult male would be wider and longer.

1 Q No. But I'm saying, you said he's at a Tanner
2 Stage 2. So Tanner Stage 1 is?

3 A Pre-pubescent, meaning that there's no signs of
4 maturity, boy's upper body, arms, pubic region, penis,
5 testicles, size.

6 Q 3 being?

7 A Having some pubic hairs what would actually kind
8 of sparsely pop out. 4 would be an additional from, you know,
9 thigh to thigh, and then the -- the long -- the highest level
10 of Tanner would be the full -- including the full pubic hair,
11 including the inner aspects of a femur inside of the legs.

12 Q And based upon your observations, were you able
13 to assess whether he was prepubescent or not?

14 A In my opinion he's prepubescent based off of my
15 physical assessment findings.

16 Q Did you -- do you also inquire or take a history
17 regarding the alleged assault?

18 A I do take a history of the assault.

19 Q Directly from AJ?

20 A Yes.

21 Q And, essentially, with respect to the assault as
22 -- as it's relevant to your examination, what did he tell you?

23 A That he had been forced to have a penis into his
24 mouth, it caused him to have pain. He stated that he was --
25 finger was placed into his butt, is the term he used. I

1 ascertained that the butt meant his anus and his rectum. And
2 that his penis -- penis went into his anus and his rectum that
3 caused him to have tearing, pain, and a searing sensation. He
4 also told me that he was made to put out his hand, an erect
5 penis was put in his hand. He stated he didn't move his hand,
6 but the penis moved back and forth in his hand in what we
7 described as a masturbation process that took place.

8 He indicated that he was hit with a closed fist to
9 his buttocks. And that he indicated that he had been bit in
10 his left ear. And he stated that he had been licked on his
11 left chest, anterior chest wall. And he indicated that he was
12 standing at one point, and on his knees at one point, standing
13 and on his knees in -- in position, positioning.

14 Q Did you -- did you also inquire whether a
15 lubricant was used?

16 A He indicated during the section of the, what we
17 call the SART Smart documentation that I use, we go --

18 Q What's that stand for?

19 A SART Smart, it's the acronym that we use for
20 Sexual Assault Response Team Smart. Just a proprietary tool
21 that I use that helps me document what happened during the
22 physical assault of the sexual assault. So, we go through,
23 question by question by question, the -- the process of what
24 happened. So, he would be asked specific questions. For
25 example, have you eaten anything since the sexual assault?

1 Have you drank anything since the sexual assault? And it's
2 kind of a check box system that we use.

3 We also ask have you changed clothes, you know, we
4 ask questions about underpants. And it's a systematic process
5 that we use to make sure that we find out all the pieces of
6 information. And it's very interesting, because sometimes
7 patients will -- while I ask the question, and they'll -- when
8 I ask their general history of what happened, they will forget
9 a item. Then when I ask specifically off of our checklist, it
10 will trigger something else that occurred, and then that
11 information comes out.

12 Q You also collect evidence?

13 A I do collect evidence.

14 Q And did you in this case from AJ? What did you
15 collect?

16 A A sexual assault kit was collected.

17 Q Which is -- what does that include?

18 A A sexual assault kit is a kit that has in it
19 specific envelopes that are labeled and listed as to what area
20 of the body we take, like, swabs. And the swabs are really
21 like six -- six-inch Q-tips. And inside each little envelope,
22 there is a small box that has to be opened up. And some of
23 the boxes have different lettering on it, like "O" means that
24 we would take two swabs from the oral area of the mouth. Box
25 with the "B" would be buccal slides of the cheek, and so

1 forth.

2 Each one of these two swabs are put into the
3 individual box, they are labeled, they are put into the
4 envelopes that are designed for oral, an envelope for buccal,
5 an envelope for miscellaneous, an envelope for testicular or
6 testicles, an envelope for rectal, and -- and so forth.

7 In addition to that, we will take any debris that we
8 find and place that in the sexual assault kit. We will take
9 any -- sometimes we use 4x4s, little cotton swabs, and we'll
10 put those in. There's all types of tools that we use to
11 assess our clinical findings. And we can put those in the
12 kit.

13 Q Are each -- are each item put in a sealed
14 container or --

15 A Yeah. They all have envelopes, they're all
16 labeled. And if they're not labeled, like the miscellaneous,
17 I put whatever it was that I was, like, for AJ, his left ear
18 went into a box and I labeled that "left ear." His --

19 Q What -- what is done with the entire sexual
20 assault kit? Each envelope is --

21 A Sealed.

22 Q -- sealed and secured, and then they're placed
23 into the sexual assault kit, which is sealed and secured. And
24 then what?

25 A Yes, ma'am. And then I secure that into the

1 SANE room and into a locked -- it's a double-lock process that
2 we have. And then the -- the scientist from the Las Vegas
3 Crime Lab come once a week and pick the sexual assault kits
4 up. And then they're -- they're transported by that agency to
5 their crime lab.

6 Q And then during that time they remain in that
7 sealed, locked condition, with only Metro having access to it?

8 A Metro has access to it.

9 Q In this particular case, you -- you collected
10 the underwear?

11 A I did.

12 Q And you already described the secretions that
13 you collected; that was from the left-ear swabbing?

14 A I took a swab from the left ear, where he stated
15 he was bit, the left anterior chest where he said he was
16 licked. I also took swabs from his anal area before I took
17 swabs from the rectal area. Yeah.

18 Q Did you collect blood?

19 A I did draw blood. Sexually transmitted blood
20 testing would include HIV, Hepatitis B, Hepatitis C, and
21 something called an RPR, which is a syphilis test.

22 Q Did you also collect a buccal swab?

23 A I did a buccal swab. That's from the inside
24 cheek area of the mouth.

25 Q And, now, did you then -- or as you're

1 collecting the evidence, are you performing your medical exam?

2 A Yeah. We do the head-to-toe, it's called look,
3 listen, feel, where we start at the head and move on down.
4 So, it's literally where we start at the head, we look with
5 our eyes. If we can listen with our stethoscopes, we will.
6 And then we feel, which is a fancy word, we use palpate. We
7 look, listen, feel. And then if there's a swab to be taken --
8 and we're talking the entire time generally to our patient.
9 So that, again, when we're talking to them, we ask a thousand
10 questions and sometimes that jars their memory into something.
11 Because I don't want to miss any evidence, I need to
12 continually talk to my client and get the information from
13 them.

14 Q And what were the results of your overall --
15 your examination?

16 A AJ had signs of blunt force trauma. He had
17 contusions, which is a fancy -- fancy word I use is sometimes
18 ecchymosis, you'll see, he had edema or, you know, that's --
19 edema means swelling. And that he had multiple peri --
20 perianal lacerations noted. He also had a contusion,
21 ecchymotic area on his buttock. And he had glistening, wet
22 appearance noted on the outside of his buttocks.

23 Q Would that be consistent with a lubricant?

24 A That would be consistent with a lubricant.

25 Q And you said -- so where -- where is all this

1 stuff we're talking about? Where --

2 A He had a contusion inside his mouth.

3 Q Okay. Let me start with that.

4 A Okay.

5 Q What is a contusion?

6 A It's a bruise. It means that you bleed
7 underneath the skin.

8 Q And that bruise would be consistent with what?

9 A Some form of energy force or what we call
10 blunt-force trauma being applied to -- in AJ's throat. He
11 told me that he had pain when the penis was in his mouth. And
12 he did not have pain prior to that. So, a contusion was noted
13 by me on the -- what -- technical area I call the soft pallet
14 of the throat. And it was blue in color, and it was
15 irregularly shaped. And I did photograph it with secure
16 digital forensics imaging. And I also used a filter on that
17 photograph so that you can see the -- the image better.
18 Sometimes people can see better with a filter process on.

19 Q Were they -- would -- would getting that
20 contusion, that bruise, would that be painful?

21 A Yes, it could be.

22 Q Is that the kind of thing that's caused by,
23 generally speaking, illnesses?

24 A Generally, no. Unless you're, like, mortally or
25 going-to-die ill. You can sometimes end up with contusions

1 occurring when you have blood disorders. But when I talk to
2 AJ's mom, AJ has no history of having any kind of what we call
3 bleeding diathesis, which is a fancy word for any kind of
4 bleeding or clotting disorder.

5 Q So, then, based on your observation, what he had
6 was a -- a bruise consistent with blunt-force trauma?

7 A Blunt-force trauma, correct. Yes.

8 Q And what -- what is -- what do you define
9 blunt-force trauma?

10 A It's an energy force that's applied to an area
11 of skin, and when the tissue underneath it cannot tolerate
12 that energy force being applied to it any longer, a real small
13 -- what we call capillary bags -- veins in the arteries have
14 real small venials and arteries, they will start to bleed or
15 weep blood out from them when an energy force is applied to
16 them either one time excessively or multiple times.

17 Q Would it be consistent with an erect penis being
18 shoved against the soft pallet?

19 A Yes.

20 Q Would it be consistent with a flaccid penis
21 being shoved against the soft pallet?

22 A It -- it is possible that a flaccid penis, if it
23 was large enough and got to an area of that tissue, yes, it is
24 possible that a flaccid penis could cause a contusion.

25 Q Any other observations about the mouth?

1 A His, what we call the frenulum, was intact.
2 Which -- which is good. We look for energy forces that tear
3 that little piece that puts your lip -- tie your tongue down
4 to your mouth and the upper and the lower lip, you have a
5 little piece of tissue, that was all intact. That was good
6 for him.

7 Q All right. So, then you -- then you were
8 describing perianal tearing and other things, that perianal,
9 meaning anus?

10 A Yeah. Outside of the rectum. The rectum is
11 inside. Outside the rectum where we can see, you have the
12 anus, which is the distal-most end, where bowel movements or
13 poop comes out of. And AJ was noted to have multiple
14 lacerations in that region starting out in a clock position at
15 what we call the 11:00 position. So, I don't know if you want
16 me to talk about the clock position. But he had multiple
17 lacerations.

18 Q And those -- those lacerations were consistent
19 with what?

20 A His lacerations were consistent with his history
21 that he gave me that a finger was placed into his anus, into
22 the rectum, and a penis was placed into his anus into the
23 rectum.

24 Q Would it be consistent with a -- a big poop? A
25 large bowel movement?

1 A You -- you could have a tear or a laceration
2 occur with a bowel movement if you have a history of
3 constipation, if you have a history of fissures, if you have a
4 history of fistula formation, if you have a history of
5 hemorrhoids sometimes you will have a laceration occur when
6 you have a bowel movement. But again, with AJ's mom and with
7 AJ himself, I went through that history with him and he had no
8 history of constipation, hemorrhoids, fistulas, fissures. He
9 had no GI-related issues that would cause him to have massive
10 diarrhea that sometimes can break the skin down. He had no
11 history of infections, wasn't taking any medications for
12 anything that would cause his skin to wear down and cause a
13 laceration to occur.

14 Q And did -- did -- how many -- did he have more
15 than one laceration?

16 A He had multiple lacerations.

17 Q Is that more or less consistent with penetration
18 versus bowel movement?

19 A Yeah. Bowel movement, generally, you'll have
20 limited number of lacerations that can occur if you have all
21 the other conditions present. With blunt-force trauma,
22 rectal, and finger into the rectum, you can have multiple
23 areas of tear. And AJ had multiple areas of tear.

24 Q So, again, we're talking about the anus and the
25 rectum, you observed multiple lacerations, what else?

1 A I noticed on his rectum, right when he went into
2 what we call a knee-chest position, where his head is down on
3 the examination table and his butt is up in the air, you can
4 see the -- common language, crack of his butt. As soon as I
5 looked at the crack of his butt, on the left buttocks he had a
6 four-centimeter by two-and-a-half centimeter contusion and it
7 had six specific darkened areas that was consistent with his
8 history of telling me that he was hit once or twice with a
9 closed fist to his buttocks.

10 In addition to that, he had glistening, clear
11 glistening noted in the crack of his buttocks. If you look at
12 the secure digital forensics imaging photographs, I believe
13 that was imaged to you. To me, my visual eyes, it looked wet
14 appearance. And that is why I took swabs. Because he gave me
15 an information that there was a lubrication utilized with --
16 on his buttocks and into the rectum.

17 In addition to that, when I spread -- we use
18 something called separation and traction technique. When I
19 just separated his butt cheeks so I could get a closer look at
20 the initial visualization of his anus, the outside of his butt
21 -- what AJ was calling his butt -- it was evident immediately
22 to me that he had some redness called ecchymosis bruising and
23 that I saw immediately a laceration, immediately, right at the
24 12:00 position of the anus.

25 Q Was he bleeding?

1 A He was bleeding from two specific spots. On a
2 clock, at the 11:00 position, he had a laceration, which is --
3 it was irregular in shape, which tells me there was tearing of
4 the skin that took place. And there was a blood clot noted
5 there as well as free-flowing blood. And that's significant
6 to me as a nurse examiner, because that tells me that the
7 injury was recent. Because the body will try and seal itself
8 and heal itself. And his body was doing its normal job. It
9 had formed a small blood clot and was trying to seal off that
10 laceration. But there was free blood from the 11:00 position.

11 And then when you came to the largest laceration,
12 which was at the 12:00 position, that laceration was irregular
13 edge, again, so that you notice -- you know that when you see
14 an irregular edge on the laceration, that means that you have
15 tearing of the skin that occurs from an energy force that's
16 being applied either one time excessively, or repetitive
17 motion can cause that. There was free blood noted, also, in
18 that 12:00 laceration.

19 Q Was AJ in pain?

20 A Yes. AJ came in with a pain level, overall he
21 gave the level of 6 out of 10. 6 would be considered -- 1, 2,
22 3 would be minor pain, 4, 5, 6 would be medium pain, 7, 8, 9,
23 you know, or 9 -- 8, 9, or 10 would be severe pain. When he
24 walked in he had a pain level of 6 out of 10, which makes
25 sense to me, because the -- the energy force is not currently

1 being applied to his soft pallet of his mouth or to his rectum
2 or to his anus.

3 Q And was he complaining of pain to both of those
4 areas?

5 A Yeah. He had pain and he consistently kept
6 pointing to the area where I saw the bruise in his mouth. He
7 had no idea that he had a bruise in his mouth. And so when I
8 swabbed it, he had pain when he opened his mouth, because I
9 tell them, essentially, you have to unhinge your jaw for me to
10 get this photograph. And he would point to the area and say,
11 It hurts here. And it was consistent with where I saw the
12 contusion. He had pain that was not present prior to the
13 penis going in the mouth. He did not have pain prior to that.

14 Q Was it constant pain or was it increased by
15 various things you did?

16 A The pain was highest when the penis was in the
17 mouth. And then when I swabbed it with light palpation to get
18 the -- the DNA swab, he complained of pain additionally.

19 Q And if he was at rest with no swab or anything
20 else, was he still having pain in the throat?

21 A He told me that his throat hurt. So there would
22 be a level of pain.

23 Q And what about with respect to his rectum or his
24 anus?

25 A His anus, when we started out, again, the pain

1 level is 6. Spread the butt cheeks, pain level went higher,
2 because the air current hit the anal area. And the anal area
3 is very vascular and has nerve endings. And those nerve
4 endings, the technical term, it's called nociceptors, they're
5 pain receptors, are -- are open. And when air -- convection
6 air goes by, it causes the pain receptors to say you're having
7 pain. And he had pain when I separated his butt cheeks and
8 noted the wetness and -- he had pain. Swab, pain.

9 Q In your experience in your population, do your
10 patients traditionally like pain?

11 A No. The vast majority of my patients, and I
12 would estimate it at 1 percent or less, like pain.
13 Adolescents don't like pain, children don't like pain, and
14 most adults do not like pain.

15 Q In fact, in your area, is pain an indicator?

16 A I -- in medicine we always use pain. Pain --
17 pain is something that we pay a lot of attention to, because
18 it tells us where to go look for injury patterns, particularly
19 in the sexual assault exam world. And he had pain, again, in
20 the mouth and the -- and the anus and the rectum. He also had
21 pain when he pooped. After the exam was all done, AJ went
22 into the bathroom -- and I probably need to back this up.

23 When I did a -- the swabs from the rectum, it can
24 stimulate the want to -- to defecate or to poop. And so when
25 we were all done with the exam, AJ had taken his medication

1 that I gave him. And after his medicine, one of the medicines
2 he takes by mouth causes a pretty foul taste to be in your
3 mouth, so I have a box of candy for the kids. And the adults,
4 actually, hit the candy pretty hard, too, to eat some candy.
5 AJ ate a lot of candy, a lot of sugar. And just so you know,
6 when you eat a lot of sugar all at once, sometimes that will
7 stimulate the bowel to want to push a stool through.

8 So he went into the bathroom to have a bowel
9 movement. And I told him when he went into the bathroom not
10 to flush. I always tell the patients if you have a bowel
11 movement don't flush, because I want to look to see if there's
12 any blood or any clots or whatever I need to look at, the
13 color of the stool.

14 He went into the bathroom, had a bowel movement. And
15 when he came out of the bathroom, I was standing about 10 feet
16 away from him at my door of the SANE room, and I was looking
17 at him, and he came out fully pale. And I said, AJ, are you
18 okay? And he said, I pooped. And I said, Did you flush the
19 toilet? Because I thought I had heard he flushed the toilet,
20 and he had. He forgot not to flush. But he indicated that
21 his poop was normal, what he called a normal color. But it
22 had a blood clot in it and some blood noted in it.

23 And so, because he was pale -- and he was pale -- I
24 reassessed him, had him drink some fluids, kept an eye on him
25 to make sure that he fully recovered. Because he told me that

1 he had hurt to poop.

2 AJ also indicated to me during the DNA testing and
3 the sexual assault exam testing, when I was taking the DNA,
4 that there was a second event, a second time that the penis
5 went into the -- to the rectum. And he said the first time
6 his pain level was 10 out of 10, which is the highest, the
7 severe pain that you can go on a scale. He said the second
8 time the penis went into the rectum, he said it was more than
9 10.

10 Q Okay. And you -- you -- you actually can't,
11 from your examination, tell if it's one, two, three times,
12 essentially, that's -- all you can say is that there --
13 there's injuries consistent with at least some blunt force
14 trauma; is that correct?

15 A There was injuries consistent with blunt force
16 trauma.

17 Q And you -- you testified that you do take
18 photographs. I'm just going to show you -- and at this point
19 I'm just asking you to please fairly and accurately depict
20 things that you took at the time. Seven, I don't -- I won't
21 go through them what they are. Yes or no, is --

22 A Yes.

23 Q And if you'll hold them this way so we can --

24 A Oh, sure.

25 Q Nine.

1 A Yep.
2 Q There.
3 A Yep.
4 Q Eight, that was?
5 A Yes.
6 Q Nine.
7 A Yes.
8 Q I'm guessing 10?
9 A Yep.
10 Q 11?
11 A Yes.
12 Q 12?
13 A Yep. Yes.
14 Q 13?
15 A Yes.
16 Q 14? 15?
17 A Yes.
18 Q 16?
19 A Yes.
20 Q 17?
21 A Yes.
22 Q 18?
23 A Yep.
24 Q 19?
25 A Yep. Yep.

1 Q 20?
2 A Yep.
3 Q 21? 23?
4 A Yep.
5 Q 24?
6 A Yep.
7 Q 25?
8 A Yes. Yes.
9 Q 26? 27?
10 A Yep.
11 Q 28?
12 A Yes.
13 Q 29?
14 A Yes.
15 Q 30?
16 A Yes.
17 Q 31?
18 A Yes.
19 Q 32?
20 A Yes.
21 Q 33?
22 A Yes.
23 Q And 34?
24 A Yes.
25 MS. HOLTHUS: Move to admit.

1 THE COURT: Any objection?

2 MR. CHAIREZ: No objection.

3 THE COURT: Okay. Admitted. Permission to publish.

4 (State's Exhibit 7 through 34 admitted.)

5 MS. HOLTHUS: Permission to publish? Thank you.

6 THE WITNESS: Uh-huh.

7 BY MS. HOLTHUS:

8 Q I'm assuming this is just kind of a charting
9 thing?

10 A Yeah. That's documentation with the account
11 number, his birth date, his name, medical record number, age,
12 sex.

13 Q AJ?

14 A That's a photograph of AJ.

15 Q Hands?

16 A AJ.

17 Q Feet?

18 A AJ.

19 Q More medical record. What are we looking at
20 here?

21 A That's the -- what AJ referred to as his throat.

22 Q Okay. Are you able to see any of the injury
23 from this particular picture? Let me ask you, why don't you
24 pick out and show me which is the -- the photograph, that
25 best...

1 A The first or the second. The second has the
2 filter on it.

3 Q Has the what?

4 A The filter process that shows the -- the
5 contusion, or the bruise.

6 Q Let me see that.

7 A First or second.

8 Q Okay. Here's the first.

9 A Yep.

10 Q And then you said the second, that filter, what
11 -- what's the purpose?

12 A The filter shows the contusion better for some
13 people's eyes. And it helps me identify the edging, which
14 tells me whether it's defined or not.

15 Q Okay. Can you circle for me the contusion?

16 A Sure.

17 Q And then the rest of these are just other --

18 A Versions of --

19 Q -- the same?

20 A Yes, ma'am.

21 Q Now, I'm going to take this next bunch that are
22 -- as I'm looking for you, could you describe the glistening
23 substance consistent with lubricant. What's the best, easiest
24 there for you to point that out?

25 A Either -- either one of this -- this shows it

1 very well.

2 Q This is Exhibit 18.

3 A You're looking at the glistening here. You can
4 see it actually reflects off of the flash from the photograph.

5 Q And -- and that is consistent with lubricant.
6 How is that different from the body's own fluids?

7 A The blood that I saw out of his -- out of the
8 tears would be red. It was red in color. This is not. This
9 is clear.

10 Excuse me, but the volume, also --

11 Q Okay.

12 A -- is consistent with the lubrication.

13 Q What, an outside lubricant versus the body's
14 own?

15 A Correct.

16 Q I'm looking at the contusion you identified on
17 the buttocks?

18 A Yes.

19 Q Which one is...

20 A The one with the filter with the -- with the
21 measuring stick.

22 Q I think I -- you just said this is the one with
23 the filter?

24 A This has got the filter on. This is the left
25 buttock.

1 Q That's what you said was consistent with --

2 A He said he was hit once or twice with a closed
3 fist to his buttocks.

4 Q And the remainder of these I believe are -- if
5 you could pick. Those are the ones with respect to the
6 lacerations of the -- the perianal lacerations.

7 For the record, that was 32 that we just showed
8 regarding the contusions on the butt.

9 A Rectal... So may I separate these out into
10 upper anus, lower?

11 Q Sure.

12 A Okay. Lower. This is upper. Upper. Upper.
13 Upper. Lower. Lower. Upper and lower. And that's lower.
14 This was the initial... Okay. So I'll sort these out.

15 You want upper -- one photo of upper and one photo of
16 lower?

17 Q Sure. One or two or whatever --

18 A Okay.

19 Q -- that -- that adequately illustrate what
20 you're talking about.

21 A This --

22 Q They'll have all of them, so I'm just looking
23 for a couple of them.

24 A Yes. Those are the upper.

25 Q Uh-huh.

1 A And that would be the best for lower.

2 Q Okay. I'm showing you this as I -- did you give
3 me two of upper?

4 A I did.

5 Q Okay. So then that means this is lower,
6 correct?

7 A Is that the whole picture that I'm looking at
8 there? That looks like upper to me.

9 Q I think this is the one you said was lower.
10 These two is upper?

11 A Oh, I'm sorry. Yes. Now I can see the whole
12 picture of the raphe. That's the lower.

13 Q These are upper, right?

14 A Upper. Upper. Yes, ma'am.

15 Q Okay.

16 A Yep.

17 Q So, here's the lower. What are we looking at?

18 A That -- this area here, now this has got a
19 filter on it. This is the area where I'm noting a laceration,
20 and the 7:00 position of a clock, if I may draw, be if this
21 were a clock, this would be -- well, I'm following that 7:00.
22 There were two lacerations there noted at the 7:00 position.
23 The 6:00 position, which would be noted there, had a
24 laceration. And there also was a laceration at the 5 -- what
25 we would call the 5:30 position.

1 The 4:00 position had a contusion. Just so that you
2 know, the 6:00 position also had edema and swelling, based off
3 the fact that there were no perianal folds or folding on top
4 of each other. The anus is a lot like a curtain. When the
5 curtain's pulled open, you have a lot of the curtain that
6 folds over itself. When we separate out with something called
7 separation and traction technique, we look at whether they
8 have those folds or not. An edema gets rid of the folding.
9 So.

10 Q That's swelling, right?

11 A Swelling.

12 Q Okay.

13 A Yeah.

14 Q Now I'm showing you -- and that last picture of
15 a lower was 30. I'm showing you now the upper, State's
16 Exhibit 24. What are we looking at there?

17 A That's the upper -- the anus. And we're going
18 to go with the upper portion again. If this were a clock,
19 this would be the largest laceration that was at the 12:00
20 position. You can see the -- the width of the -- the
21 laceration. The depth varied and it was irregular, the edging
22 of the laceration is irregular, which means that you had
23 tearing of the anus occur. The 11:00 laceration is noted
24 right there. Those two lacerations, 11:00 had a blood clot
25 with free-blowing blood coming from it, and the 12:00

1 laceration, which was the largest most in-depth laceration,
2 had free-flowing blood coming from it. And again, the edging
3 of those lacerations were irregular in shape.

4 Q And this is with the filter?

5 A Yeah. Can --

6 Q Can you tap that off?

7 A Yeah. Can that be -- thank you. Yes. That
8 is --

9 Q Is there anything additional that we can observe
10 here?

11 A The -- there is also a second laceration at what
12 we call the 12:30 position, and then again at the 3:00
13 position there is the contusion noted. Best I can do.

14 Q Essentially, have you detailed for us your
15 significant findings with respect to this examination. Did
16 you --

17 A Yes.

18 Q And you did -- you did say you gave him some
19 medication, antibiotics or something?

20 A Yes. Preventative treatment would be a gram of
21 azithromycin, that's a powder that turns into a liquid that
22 prevents one of the STDs. And then we gave an injection to
23 prevent the -- another STD. So he was given two antibiotics.

24 Q In your 35 years in nursing, are you familiar
25 with the effects of alcohol on the ability to get or maintain

1 an erection?

2 A Alcohol is a sedative, and sedatives can effect
3 muscles and cause sedative effects, which is relaxation.
4 There's a common, I guess, street term that's used that I hear
5 often with maintaining an erection. The street term would be
6 something like the person was not able to maintain an
7 erection, they call it a limp dick or a whiskey dick, it's
8 been termed by patients that come through.

9 Q And the last question I have, you described AJ
10 as being prepubescent. What does that mean with respect to
11 sperm?

12 A Until you hit puberty, you do not produce sperm.
13 Once you have puberty, it can take up to a year postpubescent
14 period for them to produce a full normal adult amount of
15 sperm.

16 Q Thank you.

17 MS. HOLTHUS: Pass the witness.

18 CROSS-EXAMINATION

19 BY MR. CHAIREZ:

20 Q How do you pronounce your last name?

21 A It's Dermanelian.

22 Q Okay. If I call you Dermelian, just forgive me.

23 But Derma --

24 A You can call me Jeri, sir.

25 Q All right. Jeri, and you can call me Don, all

1 right?

2 A Thank you.

3 Q Okay. In all of the pictures that you took, you
4 were taking photographs to document what you believed were
5 injuries that were consistent with AJ's story, correct?

6 A I did take AJ's history and I did document the
7 injury patterns that I noted.

8 Q And I notice in all of the pictures that we saw,
9 you didn't take any pictures of the ear or you didn't take any
10 pictures of the neck. Is there a reason for that?

11 A Yeah. I was very conservative with AJ's
12 privacy-related issues. If I did not see an injury, I did not
13 photograph it.

14 Q But you wrote down or you -- AJ told you that he
15 had been bitten on the ear; is that correct?

16 A That's correct.

17 Q And if he would have had a bite mark that would
18 have been visible with injuries or blood or something like
19 that, you would have taken that picture?

20 A I most likely would have taken that picture.

21 Q All right. And you had a long conversation with
22 AJ as to how all of this happened, correct?

23 A I had a conversation with him. Yes, sir.

24 Q And you wrote down everything that he told you,
25 basically?

1 A Everything? Probably not. I ask a thousand
2 questions, I get a thousand answers. But I do try and be
3 pertinent to the sexual assault information.

4 Q All right. But AJ told you that he had
5 breakfast with a girl named Mary?

6 A He did.

7 Q All right. And he told you that he had four
8 donuts?

9 A Four Krispy Kreme donuts.

10 Q And AJ also told you, at least in the way you
11 wrote it down in your notes, that he was anally assaulted
12 first and thereafter the penis was forced in his mouth; is
13 that correct?

14 A Actually, not by my documentation that I have
15 that information. I did not put down the order of occurrence.

16 Q Okay. Well, do you want to take a minute to
17 look at your notes? And I'm -- I'm looking at page 11 of 27,
18 but it could be something different. It's just below, "The
19 patient states that his left ear was bit by the male, swabs
20 were taken of the left ear."

21 A Is that on Rose Hart documentation, sir?

22 Q Yes, it is. It is. Is that not you?

23 A That Rose Hart.

24 Q Pardon?

25 A May I just see that?

1 Q Yes.

2 A So I can ascertain which page you're on. Oh.
3 Documentation... I'm with you, sir.

4 Q Okay. Well, right after -- my -- my notes are
5 highlighted. I don't know if you highlighted them or the DA's
6 office highlighted them. But go down just a -- three lines
7 from the swabs taken of the left ear. And do your notes say,
8 well, read your notes and tell me where he says he was
9 sexually assaulted. And then I want you to read at the bottom
10 to say where he was sexually assaulted.

11 A "The patient states the male put lotion on his
12 penis"?

13 Q Correct.

14 A "And put lotion on AJ's 'butt.'"

15 Q Okay. Now let's go down to the third -- well,
16 the second from the bottom line.

17 A "Patient states he thinks he passed out for a
18 second when his penis entered the rectum."

19 Q No, the -- I guess the next line. Second from
20 the bottom. The line.

21 A Oh. "The patient states the male turned him
22 around and forced his penis into the patient's mouth."

23 Q All right. Now, do you see any -- anything
24 significant in perhaps the order that the patient is telling
25 you all of these sexual activities took place?

1 A I don't ascertain that from the way that I
2 dictated.

3 Q Okay. All right. So, this is what the patient
4 told you; first, he was anally raped; secondly, the penis was
5 forced into his mouth, correct?

6 A Technically, I cannot say that from my notes. I
7 did not put an order of occurrence. Normally when I do an
8 order of occurrence it'll be the order No. 1 is penis to
9 mouth, order No. 2 would be penis to rectum. Normally I would
10 say order of occurrence. I did not in this case.

11 Q Okay. So, you don't know which one took place
12 first?

13 A I -- I can't say with any certainty at this
14 point which came first.

15 Q All right. Okay. Now, with respect to
16 descended testicles, did you make any notes in your notes
17 about whether or not AJ had descended testicles?

18 A In the dictation I believe I put that he had two
19 testicles that were descended, meaning in the scrotal sac.

20 Q All right. And generally speaking, when a young
21 man has descended testicles, is that an early stage of making
22 him postpubescent?

23 A The testicles, normally when an infant is born,
24 are outside the scrotal sac. So I would have to say -- I'd
25 have to think about that. I don't know if I can come up with

1 an answer for you right now. I'm going to think about that
2 for a minute, if I may.

3 Q Okay. Well, I mean, I think the prosecutor went
4 to great trouble asking you questions as to whether or not AJ
5 could, in fact, produce his own sperm or ejaculate or have
6 semen and you were of the opinion that maybe he was just a
7 little bit too young. But, so, you know, in terms of thinking
8 about it, I'm just trying to decide, you mentioned that
9 there's descending testicles, and generally speaking,
10 descended testicles are a sign that a young man can already
11 produce his own semen.

12 A Semen is different than --

13 MS. HOLTHUS: I'm going to just object. Is he --

14 MR. CHAIREZ: Or -- or just -- or --

15 MS. HOLTHUS: -- is that a question or is he
16 testifying?

17 MR. CHAIREZ: I'm asking her --

18 MS. HOLTHUS: Okay.

19 MR. CHAIREZ: -- if she agrees with that statement.

20 MS. HOLTHUS: Okay.

21 MR. CHAIREZ: Or --

22 THE WITNESS: I would not be able to agree with that
23 statement.

24 BY MR. CHAIREZ:

25 Q Okay. All right. So what are -- what was the

1 significance of putting down that he had descended testicles?

2 A That he had two balls in the scrotal sac. He
3 had two testicles noted in the scrotal. Sometimes one
4 testicle stays inside the body cavity. And so when we do our
5 assessment of male genitalia, we look and ascertain whether
6 they have two testicles, small almond shaped, hard almond
7 objects, in the scrotal sacs. Just noting that, because if
8 there's only one, then I would want to have him medically
9 evaluated. If there were none, I would want him to be
10 medically evaluated.

11 Q All right. And did you find any semen or around
12 the genital areas of AJ?

13 A Semen I cannot see and I do not test for. I
14 take the swabs, and the scientist from the Las Vegas Crime Lab
15 would answer your question, sir.

16 Q All right. And with respect to the perianal
17 lacerations that you saw and that you photographed, in your
18 mind, that would indicate that there was -- hate to use this
19 word, but heavy friction between the two body parts, correct?

20 A There was an energy force applied to the anus
21 that exceeded the skin's ability to stay together and
22 collected into one unit.

23 Q Okay. And this energy force that you're
24 referring to, would you say that -- I don't want to use the
25 word violent enough, but lack of a better term, violent enough

1 that you would think that there would be some kind of a skin
2 or liquid that would have been left behind that could be found
3 in the DNA samples that were later taken?

4 MS. HOLTHUS: I'm going to object. This is outside
5 her expertise.

6 THE COURT: She can answer, if she can.

7 THE WITNESS: I cannot answer that question.

8 BY MR. CHAIREZ:

9 Q If the prosecutor will let you, I think you
10 should.

11 THE COURT: Hold on. I think --

12 MR. CHAIREZ: Okay.

13 THE COURT: -- are you saying that you're not
14 qualified to answer that question?

15 THE WITNESS: I don't have the education to answer
16 that question.

17 BY MR. CHAIREZ:

18 Q Well, they -- they also got into questions about
19 whiskey dick and other things like that, and I think that's
20 beyond her education. But at any rate --

21 THE COURT: There's no objection placed on the
22 record, though.

23 MR. CHAIREZ: Okay.

24 BY MR. CHAIREZ:

25 Q All right. At any rate, you believe, based upon

1 your observations, there was aggressive touching between the
2 person who had sex with AJ and AJ, correct?

3 A There was an energy force applied to his anus --

4 Q Right.

5 A -- that caused him to have multiple anal tears.

6 Q Right. And you don't know whether or not that
7 would leave multiple amounts of skin DNA or multiple amounts
8 of DNA from another source?

9 MS. HOLTHUS: Same objection.

10 MR. CHAIREZ: Okay. I'll -- I'll --

11 THE COURT: Hold on a second. Are you withdrawing
12 the question?

13 MR. CHAIREZ: Pardon?

14 THE COURT: Are you -- are you withdrawing the
15 question?

16 MR. CHAIREZ: I'll rephrase the question, Your Honor.

17 THE COURT: All right.

18 MR. CHAIREZ: Okay.

19 BY MR. CHAIREZ:

20 Q And with respect to the energy force that was
21 used on the mouth of AJ, would you say that was a heavy-duty
22 energy force that was being used or violent energy force,
23 enough to where it would leave what you believe to be a bruise
24 in the boy's mouth?

25 A Generally, yes.

1 Q Okay. Now, one other question. In -- based
2 upon your observation, there's no question that this boy had
3 anal sex with somebody, correct?

4 A He had an energy force applied to his anus.

5 Q All right. And --

6 A His history that he gave me stated there was a
7 finger and a penis --

8 Q All right.

9 A -- placed in the anus into his -- what he called
10 butt.

11 Q And based upon what the boy told you, he stated
12 this was not a consensual encounter between him and the
13 perpetrator?

14 A AJ told me he told the man to "stop" and "no."

15 Q And with respect to the penis that you believe
16 went inside the boy's mouth, again, you do not believe that
17 was a consensual encounter, correct?

18 A Consent versus nonconsent, I have no x-rays, lab
19 tests, swabs, that can help me with consent versus no consent.

20 Q So, when you look at these pictures, we would
21 agree that AJ had sex with somebody. But we don't know
22 whether AJ consented or didn't consent?

23 A I have no test results that can help you with
24 consent versus no consent.

25 Q So, and -- and lastly, in looking at these

1 pictures, you say that the wounds are essentially very recent,
2 correct?

3 A The free-flowing blood indicates to me, from 35
4 years of looking at lacerations, cuts, bruises, bleeding
5 items, that it was a current -- within hours. And that the
6 fact that AJ had clot noted at the 11:00 laceration tells me
7 that his body was trying to do what it's supposed to do, which
8 is start to heal.

9 Q And lastly, did AJ's mother tell you whether or
10 not AJ had any -- or did you find out whether or not AJ had a
11 -- a condition known as Attention Deficit Hyperactivity
12 Disorder?

13 A His mom indicated he had ADHD. Yes, sir.

14 Q All right. And did the mother tell you whether
15 or not AJ was on medication for that?

16 A She indicated to her knowledge he had stopped
17 taking the medication when he went to live with his father,
18 which was in July, if I remember my notes correctly.

19 Q Okay. So, in terms of a child not taking his
20 medication, if he has the symptoms of -- or he has this
21 condition ADHD, do you know whether or not that would affect
22 his behavior or are you not qualified to answer that question?

23 A It's out of my realm of expertise, ADHD. I -- I
24 cannot speak to that.

25 Q Okay. Do you know what ADHD is?

1 A It's a hyperactive disorder.

2 Q And do you know how it would influence the
3 behavior of a 13- or 14-year-old?

4 A I'm sure that it would have --

5 MS. HOLTHUS: I'm going to object. I think it calls
6 for speculation and it's outside her area of expertise. She's
7 not here as a psychiatrist or a psychologist or --

8 THE COURT: The objection's sustained.

9 MR. CHAIREZ: All right.

10 BY MR. CHAIREZ:

11 Q And lastly, I just want to clarify, in your
12 opinion, and I don't know where you got this term energy
13 force, is that something that's used in the medical field?

14 A We use it in the trauma world all the time.

15 Q Okay. All right. In terms of the energy force
16 that you believe was used, no question in your mind that this
17 was a sexual encounter between AJ and somebody else?

18 A The lacerations were consistent with blunt-force
19 trauma, an energy force that caused the lacerations.

20 Q All right. And that would go with respect to
21 the rectum and that would also go with respect to the mouth?

22 A And the buttock.

23 MR. CHAIREZ: Nothing further.

24 MS. HOLTHUS: Just a couple.

25 REDIRECT EXAMINATION

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1 BY MS. HOLTHUS:

2 Q You had talked about AJ describing the
3 perpetrator putting lotion on his butt, correct?

4 A Yes.

5 Q And also on his -- on the perpetrator's own
6 penis?

7 A Yes.

8 Q And when he described the -- the male putting
9 the finger into his butt, it was kind of in a -- when he was
10 putting the lotion on it, basically?

11 A Yes.

12 Q He was kind of describing the -- the digital
13 penetration was kind of a precursor to -- to the penis
14 penetration?

15 A The finger came before the penis, according to
16 AJ.

17 Q And it was to lube up his butt? Where he had
18 the lube on -- the lubricant and he was putting the finger
19 with the lubricant inside AJ's butt?

20 A Yes.

21 Q And while you can't -- you don't have a test for
22 consent, AJ told you these sexual acts were not consented to;
23 is that correct?

24 A That's correct.

25 Q And the energy force that caused the injury to

1 the throat would have been painful?

2 A Yes.

3 Q And then the energy force that caused the
4 injuries to the rectum would also have been painful?

5 A Yes.

6 Q Thank you.

7 THE COURT: Anything else, Mr. Chairez?

8 MR. CHAIREZ: No, Your Honor.

9 THE COURT: Thank you, ma'am, for your time. You're
10 free to go.

11 THE WITNESS: Thank you.

12 THE COURT: Are the next -- yeah. Jase says the
13 jurors need a little bit of a break. Is the next witness
14 yours, Mr. Chairez?

15 MR. CHAIREZ: It is, Your Honor.

16 THE COURT: Okay.

17 MR. CHAIREZ: He is.

18 THE COURT: He is?

19 MR. CHAIREZ: Yeah.

20 THE COURT: All right. Why don't we give the jurors
21 a 10-minute break.

22 Ladies and gentlemen of the jury, you're admonished
23 not to converse amongst yourselves or with anyone on any
24 subject connected with the trial. Don't read, watch, or
25 listen to any report of or commentary on the trial by any

1 medium of inform, including, without limitations, television,
2 newspaper, radio, Internet. Do not form or express an opinion
3 on this case until it's submitted to you. Thanks.

4 (Court recessed at 2:43 p.m., until 3:01 p.m.)

5 (In the presence of the jury.)

6 THE COURT: All right. Welcome back, ladies and
7 gentlemen.

8 The next witness, please. Does Jason know who it is?

9 MR. CHAIREZ: Jennifer Melendez.

10 THE COURT: I think he knows, because he's going to
11 get her.

12 THE MARSHAL: Please remain standing and raise your
13 right hand to be sworn by our clerk.

14 JENNIFER MELENDEZ MURILLO, DEFENDANT'S WITNESS, SWORN

15 THE CLERK: Please be seated. State and spell your
16 first and last name for the record, please.

17 THE WITNESS: Jennifer, J-E-N-N-I-F-E-R, Melendez,
18 M-E-L-E-N-D-E-Z, Murillo, M-U-R-I-L-L-O.

19 THE COURT: Your witness.

20 MS. BLUTH: Your Honor, may the parties approach,
21 please?

22 THE COURT: Yes.

23 (Bench conference transcribed as follows.)

24 MS. BLUTH: I just realized that we didn't rest.

25 Like, we're done with our case in chief and I didn't put on

1 the record that we had rested before he started calling his
2 witnesses. So, I just told Don I need to rest, sorry.

3 MR. CHAIREZ: That's fine.

4 MS. BLUTH: Sorry about that.

5 THE COURT: You're finished?

6 MS. BLUTH: Yeah.

7 THE COURT: Okay.

8 (End of bench conference.)

9 THE COURT: All right. So, the State rests at this
10 point. We're not calling the defendant's witness in his case
11 in chief.

12 MS. BLUTH: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MR. CHAIREZ:

15 Q Jennifer, is it okay if I call you Ms. Melendez?

16 A Yes.

17 Q All right.

18 A That's fine.

19 Q And I need you to speak loud. There's a little
20 black box in front of you. It's a microphone, and the lady
21 over here is recording everything. So she's going to need you
22 to say yes or no. No uh-huh or uh-uh, etcetera, etcetera.
23 Okay?

24 A Okay.

25 THE COURT: Are you okay? Are you -- are you -- I

1 know you're pregnant, correct?

2 THE WITNESS: Yes.

3 THE COURT: You're not having contractions, are you?

4 THE WITNESS: Oh, no. I'm not that far.

5 THE COURT: Okay. You were concerning me the way
6 you're breathing. Okay. Something -- you need to take a
7 break or something, please let us know.

8 THE WITNESS: Oh, no. I'm fine. I just woke up from
9 a nap.

10 THE COURT: Okay.

11 THE WITNESS: Thank you.

12 BY MR. CHAIREZ:

13 Q Ms. Melendez, where do you live?

14 A San Antonio, Texas.

15 Q All right. And how long have you lived there?

16 A Almost all my life.

17 Q And how old are you now?

18 A 27 years old.

19 Q And I guess you told the judge that you're
20 pregnant. Do you know how far along you are?

21 A Three months.

22 Q And are you familiar with my client, Mazen
23 Alotaibi?

24 A Yes.

25 Q All right. And how do you know Mazen Alotaibi?

1 A In San Antonio through mutual friends. We've
2 spent a lot of time together.

3 Q And are there any military bases near San
4 Antonio, Texas?

5 A Yes. There's quite a few.

6 Q All right. And which Air Force base was Mazen
7 working at when you met him?

8 A At Glenn Air Force Base.

9 Q All right. And how far is that from where you
10 live?

11 A I'm going to say at least 21, 25 miles.

12 Q Okay. And do you recall when you first met
13 Mazen Alotaibi?

14 A I think it had to be in December,
15 November/December of 2011.

16 Q Well, let's put it another way. When was the
17 last time you were in Las Vegas before yesterday?

18 A Well, yeah, New Year's, couple days after New
19 Year's.

20 Q All right. And prior to the New Year's of this
21 year, 2013, how long had you know Mazen? A couple of months,
22 a few months?

23 A Well, it was already a year.

24 Q Well, would you say that -- you didn't know
25 Mazen before he lived at -- or was stationed at Lackland Air

1 Force Base; is that correct?

2 A Before then? No.

3 Q All right. So, maybe it -- it was just a couple
4 of months; is that correct? Or a few months?

5 A No. It was one year from December to December.

6 Q Well, and did you know any of Mazen's other
7 friends that were in the military?

8 A Yes.

9 Q All right. Now, was he in the American military
10 or was he in another military?

11 A Saudi military.

12 Q All right. And what branch of government for
13 the Saudi military was he in?

14 A Air Force.

15 Q Now, his other friends, were they also in the
16 Saudi Air Force?

17 A Yes.

18 Q And how was it that you happened to have contact
19 with Mazen and these other guys?

20 A I met one individual, I was actually selling
21 hookah for a friend of mine. I volunteered to do it one night
22 for him at Club Rio. And I met another guy there. And he was
23 very helpful through the whole night. And we exchanged
24 numbers to hang out and party and stuff.

25 Q What did you say, you were selling hookah?

1 A Hookah, yeah. One of a -- a friend of mine from
2 another bar, he actually has his own business doing hookah.

3 Q All right.

4 A And he asked me if I would do it for him at
5 another place, and so I said yes.

6 Q So you worked like a bartender or a waitress --

7 A No --

8 Q -- walking around the --

9 A -- I just promote.

10 Q Promote. Okay. Now, through these individuals
11 you got to know Mazen Alotaibi?

12 A Yes.

13 Q All right. And how often would you see Mazen
14 Alotaibi?

15 A Almost every day.

16 Q And why is that?

17 A Because he was a good person.

18 Q All right. And you --

19 A And we were good friends.

20 Q Okay. Were you ever romantically involved with
21 Mazen Alotaibi?

22 A Oh, no, sir.

23 Q Okay. And why is that?

24 A Just friends.

25 Q Okay. But did you have -- do you have a

1 boyfriend?

2 A Yes, sir.

3 Q All right. And is the boyfriend that you have a
4 friend of Mazen's or not?

5 A Yes, sir.

6 Q All right. And what's your boyfriend's name?

7 A Mohammed.

8 Q Okay. And what's Mohammed's last name?

9 A Aziz [phonetic].

10 Q Okay. And when you say you got together with
11 Mazen regularly, did you ever have a chance to socialize with
12 Mazen?

13 A Yes. It took a while, maybe three or four times
14 encountering each other to actually speak. He's very quiet.

15 Q All right. And when you guys would socialize,
16 did you ever see Mazen Alotaibi drink alcohol?

17 A Yes.

18 Q All right. And did you ever see any of the
19 other Saudis drink alcohol?

20 A Yes.

21 Q All right. And did that surprise you?

22 A No.

23 Q Okay. And why not?

24 A Because men drink.

25 Q All right. Well, what about Moslem men?

1 A They're not supposed to.

2 Q Okay. And in the time that you've lived in San
3 Antonio and been in San Antonio, have you seen these Saudi men
4 who are Moslems drink alcohol?

5 A Yes.

6 Q All right. And do they drink a lot?

7 A Yes.

8 Q But had -- prior to this -- let's say New
9 Year's, while you were there in San Antonio, did you ever see
10 Mazen get drunk?

11 A Yes.

12 Q Okay. How -- on how many different occasions?

13 A More than I could count.

14 Q Okay. Did that concern you that you would see
15 Mazen get drunk?

16 A Yes and no.

17 Q Okay.

18 A He's very quiet and to himself. But going out,
19 I mean, he's all right, he's just very shy person.

20 Q All right. When you say shy, is he shy around
21 other men or is he shy around other women?

22 A Women.

23 Q All right. And did he ever express a -- an
24 interest to you that he wanted you to help him meet women?

25 A Yes.

1 Q Okay.

2 A I tried one time and then it ended up kind of
3 bad. He tried to dance with one girl and ended up another
4 gentleman pretty much fighting him, hitting him. So it didn't
5 end well.

6 Q And so the other gentleman hit Mazen?

7 A Yeah. But that gentleman has a lot of problems
8 at that club.

9 Q Well, did that gentleman think that the girl
10 that Mazen was trying to dance with was his girl?

11 A I don't know. Maybe he just knew her. Because
12 they weren't boyfriend and girlfriend. So I think he just was
13 wanting to not have any guys around his friend.

14 Q All right. And in the time that you knew Mazen
15 there in Texas, did you ever travel with him to Austin?

16 A With Mazen? No.

17 Q Let's talk about New Year's. When did the idea
18 first come up that it would be a good idea to go to Las Vegas,
19 Nevada, and spend New Year's there in Las Vegas?

20 A Well, actually, me and another gentleman that
21 actually accompanied him, Mohammed, we were going to come
22 together with another friend, Ali. But Ali got sent back. So
23 that plan got cancelled. He didn't -- I didn't know he knew
24 Mohammed. And so when I found out they were coming, I was
25 already in Vegas.

1 Q All right. Now, so I guess I'm confused now.
2 You came with a guy by the name of Mohammed?

3 A No. He came with a guy named Mohammed. I came
4 with another gentleman named Aziz, Sam, and a girl, Serena.

5 Q All right. And where did you guys stay?

6 A The first hotel we stayed at the Stratosphere.
7 The second one was Harrah's. And that's exactly where he met
8 up me and another gentleman that was in Saudi Air Force.

9 Q All right. So, when -- do you recall what date
10 and what time you met up with Mazen here in Las Vegas?

11 A It was New Year's Eve, and I'm going to have to
12 say it had to be around 7:30 or 8:00 p.m.

13 Q Okay. And that's when you first met up with him
14 or that's --

15 A Yeah. That's -- they came to -- by our hotel,
16 and then we ended up meeting them later again at another
17 casino.

18 Q Okay. So when you met up with these Saudis,
19 Mazen and Mohammed were already here in Las Vegas?

20 A No. They had just got there that night, I
21 believe.

22 Q Okay.

23 A They drove on I believe they went to California
24 first and then came here.

25 Q So, do you recall where you guys went first to

1 party or socialize?

2 A I'm believing the Palms, because we did try to
3 get in the club there. And they ended up closing.

4 Q And what kind of club were you looking for?

5 A Just where I could dance.

6 Q All right. So you guys did not look for a strip
7 club; is that correct?

8 A No. Absolutely not. I am -- the people I came
9 with earlier that night went to a strip club. And that's why
10 I wasn't with them. And so another Saudi guy named Emad, he
11 was in town, and he ended up walking the Strip with me that
12 day because I didn't want to go to a strip club.

13 Q All right. Now, when you were at the Palms
14 Casino, is that where you met Mazen?

15 A The second time, yeah. He met up there maybe a
16 hour or so after the first time meeting.

17 Q All right. And did you see Mazen drinking?

18 A Yes.

19 Q And what was he drinking?

20 A He does a lot of doubles with no mixers. Crown,
21 any brown liquor.

22 Q Any what kind of liquor?

23 A Brown liquor.

24 Q All right. Is there a difference between brown
25 liquor and other liquor?

1 A There's clear liquor.

2 Q Clear liquor?

3 A Vodka and all that he doesn't drink.

4 Q Okay. And did there come a time when you guys
5 decided to leave the Palms Casino?

6 A Yeah. We actually asked the bartender what bar
7 -- club we could go to that we -- I could dance. And he told
8 us one, I'm not sure the name, Bill-something-or-other. And
9 so I went outside to get us a car to fit our group, because
10 there was a lot of us. And I found this lady, and I asked her
11 if she could fit us. She said yes. But she didn't take us to
12 where I asked her to take us. We did end up at a strip club.

13 Q Do you remember the name of that strip club?

14 A Oh, no. Because, like I say, I didn't want to
15 go to a strip club.

16 Q And do you remember how much she charged you for
17 the taxi ride from the Palms Casino to the strip club?

18 A Like, \$175.

19 Q That seem like a lot of money to you?

20 A Yeah. I was kind of shocked.

21 Q Okay. Did she take a short route or did she
22 take some other kind of route?

23 A No, we actually went a long way around.

24 Q All right. And who ended up paying the money
25 for the taxi when you arrived at the --

1 A I believe him and maybe two other boys pitched
2 in.

3 Q Okay. And when you got to the strip club, how
4 did Mazen act?

5 A He went straight to the bar.

6 Q All right. And where did the other guys go?

7 A We actually sat in front of the -- the girls
8 dancing. Well, I started dancing, but they told me to stop.

9 Q Who told you to stop?

10 A The girls got off the stage and had one of the
11 bouncers come and tell me that I couldn't dance, I was being
12 distractive.

13 Q All right. So what did you do as a result of
14 the bouncer telling you to stop?

15 A I went to where Mazen and Sam were.

16 Q And what was Mazen doing?

17 A Drinking and talking with Sam.

18 Q All right. At any point during the time that
19 you were there, did somebody do a strip dance for Mazen?

20 A No. But he did actually pay one for me, because
21 I felt bad for the girl. I was, like, it'll be all right,
22 it'll get you some money. And I asked them if they would get
23 me a dance, and they did.

24 Q All right.

25 A But none of the boys I was with got a dance that

1 night.

2 Q Okay. Now, Mazen basically sat at the bar most
3 of the time that you were there at the strip club?

4 A Yeah. Him and Sam sat away from the girls and
5 they just talked to each other.

6 Q All right. And were they drinking?

7 A Yes.

8 Q And did you see -- I guess he was drinking,
9 what, brown liquor?

10 A Yeah. Because, like I say, he always does
11 double drinks.

12 Q Okay.

13 A So.

14 Q And you recalled approximately what time you
15 guys left the strip club?

16 A I'm not sure, but I believe I got back to my
17 hotel around 6:00 or 7:00 in the morning.

18 Q All right.

19 A And I ended up passing out, because I was
20 intoxicated.

21 Q And when did you wake up from being passed out?

22 A Not till the next day, maybe 10:00 or 11:00 in
23 the morning.

24 Q All right. And when was the last time that you
25 saw Mazen when you left the --

1 A The strip club was the last time I saw him.

2 Q When you looked at him, could you tell whether
3 he had been drinking?

4 A Yes. His eyes were bloodshot and he was just
5 sitting there. He wasn't really doing anything.

6 Q All right. Did he -- so, in your opinion, was
7 he drunk?

8 A Yes. Well, having a bunch of doubles.

9 Q All right.

10 A Yeah.

11 Q In your opinion, did you see whether or not he
12 was combative?

13 A No.

14 Q Okay. And do you know how Mazen, Mohammed, and
15 his group got back to Circus Circus?

16 A I don't. Because one of their group members
17 actually escorted me back to my room with Sam. They both
18 escorted me to my room.

19 Q All right. So you last saw Mazen at the strip
20 club?

21 A Yeah. That's the last time I remember seeing
22 him.

23 Q Just one final area of questions. When you knew
24 Mazen in San Antonio, you say he was good to you or --

25 A Yes.

1 Q Okay.

2 A We talked a lot.

3 Q All right. And what kinds of things did you
4 talk about?

5 A My life, my drama.

6 MS. HOLTHUS: Objection. Hearsay.

7 THE COURT: Sustained.

8 BY MR. CHAIREZ:

9 Q All right. Do you feel that you have the
10 ability to determine whether -- well, in the time that you
11 socialized with Mazen, did he ever express an interest to
12 you --

13 MS. HOLTHUS: Objection. Hearsay.

14 MR. CHAIREZ: Well, it's not being offered to prove
15 the truth of the matter, Your Honor.

16 THE COURT: Finish the question, please. And then
17 let me rule --

18 MR. CHAIREZ: Okay.

19 THE COURT: -- rule on the objection.

20 BY MR. CHAIREZ:

21 Q In your interactions and encounters with Mazen,
22 would you characterize Mazen as a studious guy or not a
23 studious guy?

24 A To be honest, I don't know what that means.

25 Q Okay. Did he read a lot of books and go to

1 classes all the time?

2 A Yeah. He did do his studies. He was the one to
3 lock himself in his room.

4 Q All right.

5 A Him and another gentleman that he stayed with.

6 Q All right. And you say that he helped you a
7 lot. In what ways would he help you?

8 A He was a good friend. Like I said, we talked a
9 lot about me.

10 Q Did he ever offer you rides when your car was
11 broken?

12 A Yes.

13 Q Okay.

14 A To and from school, he would pick me up, or
15 just, if I needed somebody to hang out with --

16 Q All right.

17 A -- he would come and we'd hang out.

18 Q All right. And in your encounters with him,
19 other than the one time he got hit by the individual because
20 he was trying to dance with this guy's girl, you never saw him
21 get violent?

22 A No.

23 Q All right. And were you a Facebook friend of
24 Mazen's?

25 A Yes.

1 Q Okay. And did you ever look at the things that
2 Mazen posted?

3 A Well, most of it is in Arabic.

4 MS. HOLTHUS: Objection.

5 THE COURT: What's the objection?

6 MS. HOLTHUS: It's hearsay and relevance, and now
7 that she says it's -- most of it's in Arabic, lack of personal
8 knowledge.

9 THE WITNESS: Yeah. I wouldn't understand.

10 THE COURT: Hold on a second. What it -- where are
11 we going?

12 MR. CHAIREZ: I didn't hear the part about Arabic.
13 But that's -- the question was did she ever look at the things
14 that Mazen was posting on the --

15 THE COURT: Yeah. And the State objected. She said
16 some of it was Arabic.

17 MR. CHAIREZ: Okay.

18 THE COURT: But I wasn't sure where you were going
19 with this line of questioning.

20 MR. CHAIREZ: All right.

21 BY MR. CHAIREZ:

22 Q On the Facebook images that you saw on Mazen's
23 Facebook, did you ever see pictures --

24 MS. HOLTHUS: I'm going to object to the relevance.

25 MR. CHAIREZ: Well, I'm --

1 THE COURT: I think I know what you're going at. But
2 where -- where are you going with this?

3 MR. CHAIREZ: Well, let me approach.

4 (Bench conference transcribed as follows.)

5 MR. CHAIREZ: I'm just going to ask if he ever --

6 THE COURT: Likes girls or boys?

7 MR. CHAIREZ: [Indiscernible.]

8 MS. HOLTHUS: [Indiscernible.]

9 MR. CHAIREZ: [Indiscernible.]

10 MS. HOLTHUS: [Indiscernible.]

11 MR. CHAIREZ: [Indiscernible.]

12 MS. HOLTHUS: [Indiscernible.]

13 MR. CHAIREZ: [Indiscernible.]

14 THE COURT: Sure.

15 (End of bench conference.)

16 THE COURT: Ladies and gentlemen of the jury, please
17 disregard Mr. Chairez's last statement. He's decided to
18 withdraw that from the record.

19 BY MR. CHAIREZ:

20 Q And so, lastly, Jennifer, I just want to
21 clarify. When you last saw Mazen, in your opinion, based upon
22 all the drinking that he was -- he had done, was he drunk?

23 A Yes.

24 Q Okay. And were you drunk?

25 A Yes.

1 Q And did you see Rashed?

2 A I really don't know who that is.

3 Q Okay. All right.

4 MR. CHAIREZ: Nothing further.

5 THE COURT: All right. Anything by the State?

6 MS. HOLTHUS: Yeah. Please.

7 CROSS-EXAMINATION

8 BY MS. HOLTHUS:

9 Q Are you -- do you speak Arabic?

10 A I know some.

11 Q Okay. When you speak to Mazen and -- and his
12 friends, what do you speak?

13 A Well, I try teaching them English, so mostly
14 English, some Arabic.

15 Q All right. And how fluent are you in Arabic?

16 A Not very fluent.

17 Q What is your primary language?

18 A English.

19 Q Now, you said -- you said you came to Las Vegas
20 for New Year's with Mohammed?

21 A No. I came with Aziz and Sam and Serena.

22 Q And then you said Mazen came with Mohammed?

23 A Yes.

24 Q And then who else?

25 A I think there was another individual, but I

IN THE IN THE SUPREME COURT OF THE STATE OF NEVADA

MAZEN ALOTAIBI.

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

CASE NO. 67380

District Court Case No. C-15-287173-1
DEPT. XXIII

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APPELLANT'S APPENDIX

VOLUME III OF V

BATES NOS. AA000501 – AA000750

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APPELLANT'S APPENDIX

INDEX

DOCUMENT	DATE	VOL.	BATES NOS.
Information	02/04/13	I	AA000001- AA000005
Amended Information	10/14/13	I	AA000006- AA000009
Second Amended Information	10/18/13	I	AA000010- AA000013
Transcript of Proceedings Partial Jury Trial - Day 2	10/11/13	I	AA000014- AA000073
Transcript of Proceedings Jury Trial - Day 3	10/14/13	I	AA000074- AA000221
Transcript of Proceedings Jury Trial – Day 4	10/15/13	I	AA000222- AA000250
Transcript of Proceedings Jury Trial – Day 4	10/15/13	II	AA000251- AA000396
Transcript of Proceedings Jury Trial – Day 5	10/16/13	II	AA000397- AA000496
Transcript of Proceedings Jury Trial – Day 6	10/17/13	II	AA000497- AA000500
Transcript of Proceedings Jury Trial – Day 6	10/17/13	III	AA000501- AA000632
Transcript of Proceedings Jury Trial – Day 7	10/21/13	III	AA000633- AA000750
Transcript of Proceedings Jury Trial – Day 7	10/21/13	IV	AA000751- AA000830
Transcript of Proceedings Jury Trial – Day 8	10/22/13	IV	AA000831- AA000091
Transcript of Proceedings Jury Trial – Day 9	10/23/13	IV	AA000902- AA000913
Instructions to the Jury	10/23/13	IV	AA000914- AA000951
Verdict	10/23/13	IV	AA000952- AA000955

Transcript of Proceedings: Defendant's Motion for New Trial and/or for an Evidentiary Hearing	11/07/14	IV	AA000956- AA000997
Findings of Fact, Conclusions of Law and Order and Decision (Motion for New Trial)	11/18/14	V	AA000998- AA001012
Transcript of Proceedings: Sentencing	01/28/15	V	AA001013- AA001025
Judgment of Conviction	02/05/15	V	AA001026- AA001028
Defendant's Notice of Appeal	02/05/15	V	AA001029- AA001031

1 But at any rate, let Mr. Rashed or Rashed testify and we'll
2 cross-examine him.

3 THE COURT: Okay. I just want to make sure I'm
4 clear. Hold on a second, Ms. Holthus. I just want to make
5 sure I'm clear because I -- Ms. Holthus was telling me what
6 the expected testimony is. I had some concerns about
7 testimony about how they gained the marijuana in California.
8 I'm not really sure whether it's relevant of whether it's
9 medical marijuana, whether it wasn't. But I think it
10 certainly seems to be used in that context just to shed a poor
11 light upon your client. But if you're okay with that
12 information coming in.

13 MR. CHAIREZ: No ifs, ands or buts about it, Your
14 Honor, it is a prior bad act. It's uncharged criminal
15 conduct. We've had a police officer testify. We didn't take
16 the evidence because we didn't think there was anything wrong
17 with it.

18 MS. HOLTHUS: That's not what he testified to.

19 THE COURT: Hold on a second. I guess I'm a little
20 bit confused what you're saying. I mean, if you're not
21 objecting to it because somehow it goes to your theory or
22 defense, it's one thing. If you are objecting to it, I need
23 to make a ruling.

24 MR. CHAIREZ: The bottom line, Your Honor, is I don't
25 want to be hampered in my cross-examination. We are sitting

1 here trying to tell the facts. The bottom line is the
2 marijuana was purchased by somebody else and given to Mr.
3 Alotaibi there in California. And if Rashed is going to
4 testify that I or that he didn't use any marijuana and that
5 Mazen was smoking it while they were driving, obviously we'll
6 cross-examine him on that.

7 THE COURT: Make sure I'm clear. Okay, so you
8 acknowledge that. There is an argument that I think can be
9 made that how this marijuana was obtained, especially if it
10 was obtained unlawfully. That could be argued as a prior bad
11 act. And the fact that he was driving while smoking
12 marijuana, that could also be arguably a prior bad act. But
13 even acknowledging that fact, you're not objecting to that
14 testimony; is that correct?

15 MR. CHAIREZ: Well, our position is going to be Mr.
16 -- no, I'm not going to object.

17 THE COURT: Okay. I just want to make sure. You
18 acknowledge what it is but strategically you believe it goes
19 toward your theory of case so you're not making an objection,
20 you're not asking that the Court exclude it. Is that a
21 correct statement?

22 MR. CHAIREZ: That's correct, Your Honor.

23 THE COURT: Okay.

24 MS. BLUTH: So we're specifically talking about right
25 now, the driving while either intoxicated or high and getting

1 the -- procuring the marijuana illegally? I just want to make
2 sure because I feel like we're talking about two different
3 things.

4 MR. CHAIREZ: Our position is going to be no, there
5 wasn't any driving while he was intoxicated. He didn't drink
6 until he got here. But I don't know what Rashed is going to
7 say because in the opening statement it's totally different
8 than the statement they gave to me last week. So I'm just
9 going along for the ride and taking all these unexpected
10 surprises that are being handed to me in trial, the day of
11 trial.

12 THE COURT: But it would be -- it's error for me if
13 you bring it up not to rule on it. And the only reason I
14 wouldn't rule on it is because you can see -- I mean, I'll be
15 frank with you. Sitting here as it is now, unless it's
16 explained to me a different way, it would seem like a bad act.
17 I don't really see the relevance other than to show he's a bad
18 guy because he illegally obtained marijuana. He's a bad guy
19 because he was impermissibly driving with marijuana in his
20 system. I don't see really any relevance.

21 MS. HOLTHUS: For the record, I can make it relevant
22 if I need to. If I need to make a bad acts motion, I can make
23 it. We can argue it, we can do it. But if he's not objecting
24 to it -- because I think it is relevant.

25 THE COURT: But what would it go to show other than

1 he's doing these things that are just bad?

2 MS. HOLTHUS: The fact that he's drinking and
3 driving?

4 THE COURT: What does drinking and driving have to do
5 with whether or not he sexually assaulted this kid?

6 MS. HOLTHUS: Because his defense is that he was too
7 intoxicated to know what he was doing. And we can show that
8 within hours of that he was drinking or driving. So I'm not
9 -- I don't know. Was he driving drunk or was he so sober that
10 he could drive and he's making up the defensive intoxication
11 for the --

12 MR. CHAIREZ: We're not making up anything, Your
13 Honor. We just let the facts speak for themselves.

14 MS. HOLTHUS: You know what I'm saying? Do you see
15 where it's relevant?

16 THE COURT: I understand like limited questioning of
17 basically to the fact of would you drive -- is it true you
18 were driving? Yes. Would you drive if you believed you're
19 impaired? No. I mean, I can see that argument if you're
20 saying that he did not believe he was impaired. He felt he
21 was okay to drive and was not that impaired and thus, he was
22 not impaired at the time of the hotel room. But it would be
23 very narrow usage.

24 MS. HOLTHUS: That's all I want. The way I'll --
25 I'll tell you exactly what Rashed said. Rashed said he was so

1 drunk he asked me to keep an eye on him, to help him out
2 because he was so drunk. And I said so well, how did you get
3 back to the hotel.

4 MR. CHAIREZ: At what point is she referring to?

5 MS. HOLTHUS: I said how did you --

6 MR. CHAIREZ: At what time?

7 MS. BLUTH: The early morning hours after the strip
8 club.

9 MS. HOLTHUS: On the way back to Circus Circus.
10 After the strip club they went back, my understanding is they
11 went and picked up the car, which I believe was the
12 defendant's car. He -- and I said to Rashed how did you get
13 back and he said well, Mazen drove. And I said well, you let
14 this guy who's so drunk that you have to keep an eye on him,
15 that he's out of his mind drunk, you let him drive. And he
16 said he drove good. So I think that is absolutely relevant.

17 MR. CHAIREZ: When you're saying, if we're talking
18 about driving drunk from a hotel to another hotel here in
19 Vegas early in the morning, we don't dispute that. But I
20 don't believe there was any evidence at all other than what
21 Mr. Rashed is going to say that he had any drinks from L.A. to
22 Las Vegas.

23 MS. HOLTHUS: That's correct.

24 MS. BLUTH: That's correct.

25 THE COURT: Okay. I need direction then, Mr.

1 Chairez, from you as to --

2 MR. CHAIREZ: Your Honor, if she wants to go into the
3 stuff about after six or seven o'clock in the morning and
4 after they were here, it's okay with me. We don't dispute
5 that.

6 THE COURT: Okay. So if she starts with leaving the
7 strip joint and she goes into him driving under the influence
8 of marijuana, you're not going to object and you're not going
9 to claim that's excludable as a prior bad act; is that right?

10 MR. CHAIREZ: Correct.

11 MS. HOLTHUS: And just to be fair, I'm going to talk
12 about from the time he hits Vegas, not just six or seven in
13 the morning, because that's really kind of after the fact.

14 MR. CHAIREZ: That's fine too, Your Honor.

15 THE COURT: Okay, as long as you're conceding that.
16 And let's step back one more so I'm clear. As far as the
17 discussion the State wants to bring up, I have concerns about
18 that, about the obtaining of the marijuana. Are you claiming
19 that's a prior bad act where you want the Court to issue a
20 ruling or are you --

21 MR. CHAIREZ: It is a prior bad act.

22 THE COURT: -- agreeable with that?

23 MR. CHAIREZ: I'm not going to fight it. Because my
24 philosophy is the jury has a good internal gyroscope as to
25 what is the truth and what is not the truth. And it doesn't

1 help my client to try to deny that the medical marijuana was
2 purchased for him. So at any rate, it is a prior bad act, but
3 at any rate, as you say, being in possession of marijuana is
4 far less than sexual assault with a minor which carries 35
5 years to life.

6 THE COURT: That's why I said, I just didn't see the
7 relevance.

8 MR. CHAIREZ: I'm just saying I would -- the bottom
9 line is --

10 MS. HOLTHUS: I don't need to get into it. I just
11 want to know -- I wasn't going there, but I can go there and
12 here's my problem. Mr. Chairez specifically in his opening
13 said you'll hear that they brought legally obtained marijuana
14 to Las Vegas, medical marijuana that was legally obtained
15 here. What I'm trying to say is if he's going down that road,
16 I need to ask Rashed about it.

17 If on Monday after Rashed is back in San Antonio this
18 guy's going to come out and now open the -- and start talking
19 about all this stuff that Mr. Chairez talked about in opening,
20 then in fairness I should be able to bring it out. I can go
21 there and will go there. If they want it out at the trial,
22 then it can be out at the trial.

23 MR. CHAIREZ: I'm going to speculate -- I mean, Your
24 Honor, that calls for speculation. How does Rashed know
25 whether it was legally obtained or not.

1 THE COURT: Please, I need some direction.

2 MR. CHAIREZ: Bottom line is we're going to agree
3 that it was purchased in California and it was purchased at a
4 medical marijuana facility.

5 THE COURT: And the point is other than to say
6 something about the defendant's character, I mean as far as
7 the kid smoking and the kid didn't have a prescription for it,
8 so he shouldn't have been smoking it.

9 MS. BLUTH: The only point is, Your Honor, if they're
10 going to open that door we can't just let it be a lie out
11 there. Do you know what I'm saying? And so we --

12 THE COURT: Well, no. It's not that you just can't
13 let it be a lie, you still -- that doesn't give you carte
14 blanche to go into prior bad acts unless it's a ruling by the
15 Court. But it sounds like it doesn't matter one way or the
16 other because, again, I want to make sure, absolutely clear
17 because I do think it's a prior bad act. I'll frankly tell
18 you that.

19 MR. CHAIREZ: It is a prior bad act.

20 THE COURT: And I think it would require more
21 findings by the Court in order for it to be admissible.
22 However, Mr. Chairez, you're conceding that it is arguably a
23 prior bad act. However, you are agreeable to that testimony
24 coming into evidence, right?

25 MR. CHAIREZ: That's correct. But I don't want to be

1 hampered when I start cross-examining him about it. At any
2 rate, you know, I mean that's my position. So if they want to
3 present it, we're not going to oppose its presentation.

4 THE COURT: Okay. Sounds good. Did you have
5 anything else? I think everyone's on the same page. I see
6 you have a question. Please, I can't read your minds and
7 that's why I keep trying to be clear.

8 MS. HOLTHUS: I understand. I just, I'm not sure --
9 I'm concerned about the record that Mr. Chairez is making that
10 it is and it isn't.

11 THE COURT: And that's why I keep trying to get
12 clarification because we all know if this were looked at later
13 on, he raises that it's a prior bad act, I don't do the
14 requisite findings, it would be -- it is prejudicial and it
15 would probably be a reversible error. I acknowledge it.
16 That's why I'm trying to make sure I'm very clear if someone
17 ever goes back and looks at this.

18 MS. HOLTHUS: I don't think it's a reversible error,
19 but I think arguably --

20 THE COURT: But well, it could be. I mean, arguably,
21 but it could be error.

22 MS. HOLTHUS: That's why -- and I don't need it so
23 maybe what I'll do -- but by the same token --

24 THE COURT: From what Mr. Chairez is saying, yes, the
25 Court also does agree that it is a prior bad act and will

1 require a Petrocelli hearing. However, Mr. Chairez also
2 acknowledges it's a prior bad act. He does not ask for --
3 he's not asking for a Petrocelli hearing. He is agreeable to
4 its admission, notwithstanding the fact that it's a prior bad
5 act because it goes to his theory of defense and that's what
6 he just told me.

7 MS. HOLTHUS: We agree that that -- he specifically
8 mentioned that in his opening or did I just --

9 THE COURT: He mentioned marijuana and he mentioned
10 medical marijuana.

11 MS. HOLTHUS: Legally obtained in California I think
12 is what he actually called it.

13 THE COURT: Okay. Are we on the same page?

14 MR. CHAIREZ: We're on the same page, Your Honor. I
15 think the purpose of this discussion is to make sure I don't
16 get hampered in my cross-examination when I cross-examine
17 Rashed.

18 THE COURT: Yeah. All he wants -- if you're going to
19 bring it up he wants full ability to cross-examine him on the
20 issue.

21 MS. BLUTH: Well, it seems to me you also want us to
22 bring it up because you want to cross-examine him over that
23 topic. Would that be correct?

24 MR. CHAIREZ: I don't need to -- I don't want you to
25 bring it up, but I cannot stop you from bringing it up.

1 THE COURT: You can.

2 MR. CHAIREZ: So if they're going to bring it up, the
3 medical marijuana was found inside of the room where Mr.
4 Alotaibi was staying. So the bottom line is we don't deny
5 that it was found in his possession. We don't deny that it
6 was in his possession.

7 THE COURT: And I'm sorry, maybe I'm just not
8 following this morning. Do you want them to bring it up or do
9 you not want them to bring it up? Because if you don't want
10 them to bring it up, there is a basis for you to argue that.

11 MR. CHAIREZ: Well, I don't want them to bring it up.

12 THE COURT: If you argue it's a prior bad act and it
13 doesn't fall into an exception and it's more prejudicial and
14 probative, all those things, we need to address that and
15 that's what I'm not sure on.

16 MR. CHAIREZ: Well, here is my thought, Your Honor.
17 It is a prior bad act, but the bottom line is if they argue
18 that it was illegally obtained, then I believe it becomes
19 prejudicial. If they just argue that it was in the
20 possession, that Mazen and his friends went and bought it, it
21 was transported from California to Nevada, it was in Mr.
22 Alotaibi's possession or the possession of he and Rashed and
23 Mohammed, we're not going to deny those facts. And the bottom
24 line is, it is our position that I believe it was Rashed that
25 gave the marijuana to Mazen to smoke because he was so

1 intoxicated and on the verge of vomiting that they gave him
2 the marijuana to calm him down. But, you know, that's --

3 THE COURT: Do we even need to get into the point of
4 whether it was legally or illegally obtained in California?
5 The bottom line is there's marijuana. And the bottom line is
6 the kid was smoking marijuana that wasn't prescribed to him.

7 MS. BLUTH: We are not going to get into it.

8 THE COURT: Okay. That makes it easier.

9 MS. BLUTH: We're obviously having a disconnect.
10 We're not getting into. If the door's opened by Mr. Chairez,
11 then it's fair game. The State isn't even going to get into
12 it.

13 MS. HOLTHUS: We don't need it, but I want him to
14 understand I don't think it was legally obtained. And if he
15 tries to make it look like it was legally obtained, then I'm
16 going to go back in and say you met the guy in the street, you
17 follow him into a pharmacy, where's your prescription, where's
18 your medical marijuana card. Because they don't have it.
19 It's a little plastic -- it's Mr. Nice Guy or something.

20 THE COURT: I don't think we even need to get -- I
21 don't see where this is relevant to the case.

22 MR. CHAIREZ: It's not relevant, Your Honor. The
23 bottom line is it was Rashed's cousin who went and bought the
24 marijuana. They were staying with Rashed's cousin in Santa
25 Monica.

1 THE COURT: Does it really matter at this point?

2 MR. CHAIREZ: No, it doesn't matter. The point is we
3 are going to stipulate that the marijuana was -- what's the
4 actual, not constructive -- anyway, the constructive
5 possession of Mr. Alotaibi. He helped transport it from
6 California here. We are not denying that.

7 MS. BLUTH: But we're denying it. That's the point,
8 that's what I'm trying to say. We're having a disconnect.

9 MR. CHAIREZ: That it was transported by him from
10 California here?

11 MS. BLUTH: The whole thing, that's why we're not
12 going to bring it up. We just want you to be on notice if you
13 try to make it seem that it was legally obtained, that opens
14 the door.

15 MR. CHAIREZ: We don't even want to go into the --

16 THE COURT: Well, I haven't made that decision that
17 it opens the door. Let me put it that way.

18 MR. CHAIREZ: Well, I think the police officers
19 have --

20 THE COURT: But let me --

21 MR. CHAIREZ: -- already testified it was medical
22 marijuana. That's why we left it there.

23 MS. HOLTHUS: Medical marijuana isn't per se legal.

24 MR. CHAIREZ: Well, I'm just saying --

25 MS. HOLTHUS: You can't just stamp something and say

1 it's medical marijuana, go ahead.

2 THE COURT: Frankly, I'll be honest with you, I've
3 said this a few times. I don't understand where the relevance
4 is whether it was illegally or legally obtained. I mean, we
5 know there was marijuana. There's testimony he was using
6 marijuana. There's testimony from the young boy that he was
7 using marijuana as well. The bottom line is the boy, even if
8 it was legal for Mazen to have that marijuana, it is legal for
9 that boy to smoke marijuana. So I don't really see the
10 relevance as to whether or not he's actually assaulted this
11 young man.

12 MS. HOLTHUS: It's not --

13 THE COURT: I can see the relevance if you're talking
14 about the ability to understand what he's doing if there's
15 testimony, very limited testimony that says, you know, along
16 the line like I indicated before, like he would not have
17 driven if he was impaired and he felt he was okay to drive. I
18 see that. But I don't see it for any other purpose. I
19 mean --

20 MS. HOLTHUS: I guess the --

21 THE COURT: He was either impaired or he wasn't.

22 MS. HOLTHUS: If it mattered, it's, you know, they
23 were getting ready to party. They're bringing their
24 marijuana, drinking, something and that would be the relevance
25 that it was kind of the frame of mind, that they came to Vegas

1 for that.

2 THE COURT: Okay. Well, I don't think we need to go
3 into the legal, illegal obtaining of the marijuana. I just
4 think it's prejudicial. I don't see the relevance. Mr.
5 Chairez is not objecting, and Don, Mr. Chairez, please tell me
6 this is correct so we can bring the jury in. You are not
7 objecting if the State elicits testimony for the purpose of
8 showing that he felt -- I'm guessing what I believe the
9 State's going to say, something along the lines to the fact
10 that Mazen was driving the vehicle and that he was not
11 impaired -- he was not impaired to the extent that it would
12 affect his ability to drive their vehicle because that goes to
13 your claims of he was so wasted he had no clue. Are you
14 objecting or not?

15 MR. CHAIREZ: No. If we're talking about after six
16 or seven, after they're already in Las Vegas, we don't deny
17 that. But if we're talking that he drove drunk and smoked
18 marijuana from L.A. to Las Vegas -- I mean, they could go into
19 it, but we don't believe that happened.

20 THE COURT: Why don't we just limit the time frame,
21 because wouldn't it really be what's important the hours
22 leading up to this event?

23 MS. HOLTHUS: Oh, yeah. Let me just go verify with
24 Rashed. My understanding is there was no drinking or smoking
25 between L.A. and here, because I want that too because that

1 cuts the State's way, that he only had a limited period of
2 drinking time. So if I go verify that and then we'll know
3 whether that's even an issue. He's in the rest room, but I've
4 asked our investigator to go let him know not to talk about
5 anything prior to Vegas and to verify my understanding that
6 nothing was smoked or drank in the car between L.A. and here.

7 THE COURT: Okay. So the only testimony about
8 driving would be once they're in Vegas. Mr. Chairez, do you
9 have any objection to that and does that go to your theory?

10 MR. CHAIREZ: We have no objection, Your Honor.

11 THE COURT: All right. And then, we're not going to
12 mention, unless somehow Mr. Chairez brings it up, the Court
13 will then consider it, whether it was legally or illegally
14 obtained. I just don't think it's relevant.

15 MR. CHAIREZ: I agree with you, Your Honor.

16 THE COURT: Is this gentleman that's in the rest
17 room, is he your next witness?

18 MS. HOLTHUS: He is.

19 THE COURT: You want to bring the jury in? Ms.
20 Interpreter, remember, you're still under oath, ma'am.

21 MS. HOLTHUS: Okay, Judge. Mr. Alshehri said there
22 was no drinking, the defendant wasn't drinking between L.A.
23 and here. He can't say for sure whether he may have been
24 smoking some marijuana. So I told him we weren't going to ask
25 him that. I will ask him, I'll kind of lead him through there

1 was no drinking in the car between here and there. I'm not
2 trying to get anything about marijuana. Just so Mr. Chairez
3 knows if he goes down that road, the witness may say there may
4 have been some weed, marijuana.

5 THE COURT: All right.

6 MR. CHAIREZ: That's fine, Your Honor.

7 THE COURT: Okay. Is there anything else we need to
8 address before bringing the jury back in?

9 MS. BLUTH: No.

10 THE COURT: Have him bring the jury in, please.

11 (Jury reconvened at 10:08 a.m.)

12 THE COURT: All right. Good morning, everybody.
13 Looks like everyone's prepared; everyone brought jackets
14 today. It looks like everyone's dressed for winter in here.
15 I see sweatshirts, I see jackets buttoned all the way up.
16 It's just always cold in here.

17 Thank you. Good morning, ladies and gentlemen. When
18 we left off the State was going to call its next witness.
19 Please do so at this time.

20 MS. HOLTHUS: Rashed Alshehri.

21 RASHED ALSHEHRI, STATE'S WITNESS, SWORN

22 THE CLERK: Please be seated. State and spell you
23 first and last name for the record, please.

24 THE WITNESS: My name is Rashed Alshehri.

25 THE CLERK: Can you spell that for me, please.

1 THE WITNESS: R-a-s-h-e-d, A-l-s-h-e-h-r-i.

2 THE COURT: Sir, is your native language Arabic?

3 THE WITNESS: Yes.

4 THE COURT: All right. Obviously, this is going to
5 be done in English. If at any point you don't understand a
6 word or something that's being said, please let us know so
7 that we can reask the question or rephrase the question.

8 THE WITNESS: All right.

9 THE COURT: Because if you go ahead and answer, we're
10 going to assume that you're understanding everything.

11 THE WITNESS: Okay. Thanks. Ms. Holthus.

12 DIRECT EXAMINATION

13 BY MS. HOLTHUS:

14 Q How long have you studied English?

15 A It's a couple, two years.

16 Q Where did you first study?

17 A I studied in New Zealand.

18 Q And you go to school in the States?

19 A Yes, I do.

20 Q What school do you go to?

21 A Texas Wesleyan University.

22 Q Texas, I'm sorry.

23 A Texas Wesleyan University.

24 Q And how long have you been going there?

25 A I start from January.

1 Q Last January?

2 A Yeah.

3 Q What are you studying there?

4 A Computer science.

5 Q Are all of your classes in English?

6 A Yes.

7 Q So you speak English daily?

8 A It's my second language, so.

9 Q You understand it well.

10 A Yeah, sometimes. Most of it I can do.

11 Q Your books and whatnot at school are all in

12 English?

13 A All in English.

14 Q Directing your attention to December of last

15 year before you started school, December 2012, were you -- at

16 some point did you get together with a group of people to come

17 to Vegas?

18 A I just came from my country because of my friend

19 over there.

20 Q Your country is?

21 A Saudi Arabia.

22 Q When did you come to the United States?

23 A Ninth of December.

24 Q Was that your first time here?

25 A Nineteenth of December.

1 Q Was that your first time in the United States?

2 A Yes.

3 Q And you came here because of why?

4 A Because I'm going to study in Texas Wesleyan
5 University.

6 Q You said something about your friend.

7 A I mean, you said about the group, so.

8 Q I got you. Okay. So you came December 19th
9 because you were supposed to start school in January?

10 A Right.

11 Q And then you talked with a friend about a road
12 trip, basically?

13 A Like I came, I just -- when I came before I
14 start because I want to know about like when I leave or
15 something like that.

16 Q So who did you talk to?

17 A Emad Alshehri.

18 Q Can you spell that?

19 A The first name, I'm not real sure about. Starts
20 with E-m-a-d.

21 Q And the last name?

22 A The same as my last name, like A-l-s-h-e-h-r-i.

23 Q It's the same last name?

24 A Yeah.

25 Q Are you guys related?

1 A We are from same tribe.
2 Q What does that mean?
3 A It's like the same town, a long time ago, like a
4 family.
5 Q Okay.
6 A It's called tribe. I think you know about
7 tribe.
8 Q So it's not blood related, it's more location
9 related?
10 A Yeah, exactly.
11 Q So Emad says -- invites you to go on a trip?
12 A Just because I didn't have school, so two weeks
13 before the school start, I ask him to go outside to have fun,
14 you know, any state.
15 Q So when did you -- where were you at the time
16 while you were waiting for school? Were you in San Antonio?
17 A Yeah.
18 Q So who did you leave San Antonio with?
19 A I lived with Emad.
20 Q Anybody else?
21 A His roommate called Adel.
22 Q Called?
23 A Adel.
24 Q Adel?
25 A Yeah.

1 Q Is that A-d-e-l?
2 A I guess so.
3 Q Do you have his last name?
4 A [indiscernible]
5 Q Can you spell it?
6 A No, I can't.
7 Q So it's Adel, Emad and you. And who drives?
8 Oh, that's who you lived with?
9 A Yeah.
10 Q Okay. Who did you leave with? Oh, I said
11 leave, live, got it. You left San Antonio to go to
12 California.
13 A Yes.
14 Q Who did you go to California with?
15 A I went with Mazen and Mohammed.
16 Q Mohammed. Do you know Mohammed's last name?
17 A Not really.
18 Q Does Jafaari sound familiar?
19 A Sorry?
20 Q Jafaari.
21 A Jafaari? No.
22 Q And what about Mazen's last name? Do you know
23 his last name?
24 A Yeah, Alotaibi.
25 Q Do you see Mazen here in court?

1 A I see what?

2 Q Do you see Mazen here in court?

3 A Yes, I do.

4 Q Can you point to him and tell me what he's
5 wearing?

6 A Sorry?

7 Q What is he wearing?

8 A A suit.

9 Q Which suit, dark suit or light suit?

10 A Dark suit.

11 MS. HOLTHUS: May the record reflect the
12 identification of the defendant?

13 THE COURT: It will.

14 BY MS. HOLTHUS:

15 Q So it was Mohammed, Mazen and you?

16 A Yeah.

17 Q Whose car did you take?

18 A I went to his car.

19 Q Whose car?

20 A Mazen car. Mazen and Mohammed, I think they
21 rented from a company.

22 Q All right. So you -- what was the purpose of
23 going to California?

24 A I suggest to go California because my cousin
25 live there. So they said okay, we can go there.

1 Q So you drove -- and how long a trip from San
2 Antonio to California?

3 A It's about 18 hours.

4 Q Did you drive straight through?

5 A Yeah, we do.

6 Q You didn't stop and stay anywhere?

7 A No. We just stop for the gas.

8 Q Did you all take turns driving?

9 A Yeah. I guess, yeah.

10 Q So when did you leave San Antonio, what day?

11 A As I said before, it's like after Christmas,
12 maybe two days or more like that, or three days.

13 Q And whereabouts in California did you go?

14 A We went to Santa Monica.

15 Q When did you arrive in Santa Monica?

16 A It's like about ten in the morning.

17 Q Why day?

18 A I'm not real sure, but like maybe 27th or 28th.

19 Q Okay. So when you got there on whatever date it
20 was, it was about 10:00 in the morning?

21 A Yes.

22 Q And what did you do when you got there?

23 A We just ate a breakfast and we sleep.

24 Q So you ate and slept?

25 A Yeah.

1 Q Because you had been up basically for 18 hours?
2 A Exactly.
3 Q How long did you guys sleep? Did you all sleep?
4 A Yeah, we all sleep.
5 Q All at your cousin's house?
6 A Yes.
7 Q How long did you all sleep?
8 A I remember I woke up like at night, maybe ten or
9 nine, something like that.
10 Q Nine or 10:00 at night?
11 A Yes.
12 Q And you had gone to bed around -- sometime after
13 you'd gotten there at ten?
14 A Yeah, I think so.
15 Q So did everybody get up around nine or ten at
16 night?
17 A Like someone wake up and like go to the rest
18 room and come back, something like that. It not like we wake
19 up at the same time and sleep at the same time.
20 Q But when you woke up, did everybody else get up
21 about that time?
22 A I think all of us wake up -- yeah, I think.
23 Q So you all slept about ten to 12 hours?
24 A Exactly.
25 Q What did you do at nine or ten when you woke up?

1 A I remember I start talking with my cousin.
2 Q Did you guys go anywhere that night?
3 A No.
4 Q So you just hung out at the cousin's house?
5 A Yes.
6 Q And did you all go back to bed?
7 A Right.
8 Q Did you sleep through the night that night?
9 A Yes.
10 Q All of you?
11 A All of us.
12 Q What did you do the next day?
13 A I think we woke up about, like in the morning,
14 seven or six. Had breakfast and we go -- we went to like
15 around the city.
16 Q Tourist stuff?
17 A Exactly.
18 Q What time did you get back to your cousin's
19 house?
20 A At like 11 or 12 that afternoon.
21 Q In the afternoon?
22 A Uh-huh.
23 Q When you got back to your cousin's house, did
24 you just hang out there?
25 A At that time I slept.

1 Q You slept?

2 A Yeah.

3 Q Did Mazen sleep?

4 A No. He went out, all of them went out except
5 me.

6 Q Okay. Then what time did they all come back?

7 A About like three, two, four.

8 Q They came back about three or 4:00?

9 A Uh-huh.

10 Q And what did everybody do then?

11 A And then we come back together, me and Mazen and
12 Mohammed to downtown.

13 Q To Vegas?

14 A No.

15 Q To L.A. or Hollywood?

16 A Yeah, right.

17 Q At what time did you get back to your cousin?
18 When did you finish your tourist stuff?

19 A About six, seven.

20 Q Did you then go back to your cousin's house?

21 A Yeah.

22 Q At some point, did you guys go back to sleep for
23 a while?

24 A No, we just stayed for relaxing.

25 Q Just relaxed?

1 A Yeah.

2 Q Until when?

3 A Until nine or ten.

4 Q And then what did you do at nine or ten?

5 A We went to Vegas.

6 Q Did you drive straight through from California
7 to Vegas?

8 A Right.

9 Q How many hours was that?

10 A I guess four hours.

11 Q What time did you arrive in Vegas?

12 A At nine to ten, I think it's going to be one or
13 two.

14 Q Where did you go when you got here?

15 A We meet our friends like a bar. I don't know
16 what it's called.

17 Q Was it a casino?

18 A Yeah, exactly.

19 Q Who did you meet?

20 A I remember I meet like Emad and other people.
21 Some people, I didn't know them.

22 Q Okay. There was no drinking on the road from
23 California, right?

24 A No.

25 Q So once you hit the casino, did you guys start

1 drinking?

2 A Right.

3 Q How long were you at that first casino?

4 A It's about two, two and a half hours.

5 Q And were you at a bar?

6 A Yes.

7 Q Do you know the name of the bar?

8 A No. In the same casino.

9 Q Was it like a bar with a band? Did it have a
10 singer? Did it have sports stuff?

11 A No, just a normal bar.

12 Q Video poker around it, poker machines?

13 A Yeah.

14 Q How many of you were there?

15 A It's about six people to eight.

16 Q Now, was the defendant drinking there?

17 A Sorry?

18 Q Was Mazen drinking there?

19 A Yeah.

20 Q What was he drinking?

21 A I guess he drink Hennessy.

22 Q Did you see him drinking it?

23 A Yeah, I saw him.

24 Q Was everybody drinking?

25 A Yeah.

1 Q What were you drinking?

2 A I think everybody drink. I'm not like -- I
3 don't know what they drink. But we drink like [indiscernible]
4 whiskey, something like that.

5 Q Okay. You don't remember what you personally
6 were drinking?

7 A I remember I drink like a tequila and some vodka
8 with some beer.

9 Q Did you say something -- you said earlier you
10 had Red Bull and vodka?

11 A Yes.

12 Q Do you remember everything that happened that
13 night?

14 A Not everything.

15 Q At some point, did you guys decide to leave that
16 bar?

17 A Yes. We went to a strip club.

18 Q Who all went to the strip club?

19 A All of us. I remember like --

20 Q Emad?

21 A Yes.

22 Q Adel?

23 A Right.

24 Q Mazen?

25 A Mazen.

1 Q Mohammed?

2 A Mohammed.

3 Q You?

4 A Me.

5 Q Anybody else?

6 A And I think Jennifer and other guy, but I don't
7 know his name. But he's not like from that group.

8 Q Okay. He just hooked up with you at the bar or
9 he was a friend of Jennifer's?

10 A Yeah, he just join us.

11 Q Okay. Was there somebody -- was Saeed there?

12 A I guess yes, but I'm not really sure.

13 Q Okay. So when you went to the strip club how
14 did you get there?

15 A By taxi.

16 Q Where was the car that you drove in from
17 California?

18 A We drove it in public parking.

19 Q Did you leave it at the public parking?

20 A Yes.

21 Q So all of you went by cab to the strip club?

22 A Right.

23 Q Do you remember what strip club you went to?

24 A No, I don't.

25 Q About what time was it when you got there?

1 A It's like from four to six, five, something like
2 that.
3 Q Somewhere between four and six?
4 A Right.
5 Q How long were you at the strip club?
6 A What?
7 Q How long were you at the strip club?
8 A Two and a half, two hours.
9 Q Were you drinking there?
10 A Yes.
11 Q How many drinks did you have?
12 A I'm not too sure, but we drink.
13 Q More than one?
14 A I guess, yes.
15 Q I'm talking about you. More than two?
16 A I think like one or two.
17 Q And were you with Mazen the whole time you were
18 at the strip club?
19 A Not all the time.
20 Q How much of the time were you with him?
21 A Maybe like half of the time.
22 Q During the time that you were with him, did you
23 see him drink?
24 A Yeah, I saw him drink.
25 Q How many drinks did you see him drink?

1 A I saw him, like he used to drink Hennessy shots
2 and a black drink, but I'm not really -- what is it.

3 Q A shot and a black drink?

4 A Yeah.

5 Q Like two different cups?

6 A Yes.

7 Q And how many did you see him -- how many shots
8 of Hennessy did you see him drink?

9 A I'm not too sure, but it's like more than three.

10 Q More than three?

11 A Yeah.

12 Q And then the black drink, is that like a soda
13 drink, a Coke or something?

14 A No, I think it's alcohol.

15 Q A black alcohol drink?

16 A I guess. Maybe the, the light for the strip is
17 sometime I can't see exact.

18 Q So when you left the strip club, what time was
19 that?

20 A I think it's like starting the morning.

21 Q Daylight?

22 A Huh?

23 Q Was it daylight? Was it dark out or light out?

24 A No, it's not dark out.

25 Q Was it light already?

1 A Right.

2 Q Where did you go from the strip club?

3 A We wanted to take the car from the public.

4 Q So who left the strip bar together?

5 A We left, me and Mazen.

6 Q Just the two of you?

7 A And Mohammed.

8 Q The three of you?

9 A Yeah.

10 Q So you went by cab?

11 A Yes.

12 Q Did you leave the others still at the strip bar?

13 A No, they leaved.

14 Q At the same time?

15 A Yeah.

16 Q But it was just the three of you that went to

17 get the car?

18 A Yeah, because our --

19 Q It was your car, not their car.

20 A -- stuff with it.

21 Q So you take a cab back to the public parking,

22 yes?

23 A Yes.

24 Q How far are you from that? How long a trip?

25 A It's not that far.

1 Q And what do you do when you get back to the
2 public parking?

3 A We didn't find the key for this and then we look
4 around the car and then we found it.

5 Q Where was it?

6 A I'm sorry?

7 Q Where was the key?

8 A In the car.

9 Q The car was open?

10 A Yes.

11 Q So at that point who drove back to -- where did
12 you go from there?

13 A We went to the hotel.

14 Q Which hotel?

15 A The hotel has a -- the hotel you call it. I
16 don't know what is it.

17 Q The hotel had what?

18 A The hotel over there and the problem.

19 Q Circus Circus?

20 A Circus Circus.

21 Q How long did it take you to get from the public
22 parking to the Circus Circus?

23 A Less than 30 minutes.

24 Q Who drove?

25 A Mazen.

1 Q Did you come down the Strip? Did you drive down
2 the Strip where all the hotels are?

3 A I don't know. Like we came back from the public
4 parking to the hotel.

5 Q Right. But was the public parking on the Strip?

6 A No.

7 Q Okay. And you don't know where it was?

8 A Yes.

9 Q And then what happened when you got back to the
10 Circus Circus? Where did you park?

11 A We parked I think near to the hotel. Maybe it's
12 for the hotel parking.

13 Q Did you self-park?

14 A Yeah.

15 Q Then what?

16 A Then we wanted to go upstairs to get a room.

17 Q Did you have a room yet?

18 A Not yet.

19 Q Some of your friends had a room there, though?

20 A Yes.

21 Q Who had the room there?

22 A I think Emad and Adel and Saeed.

23 Q You knew which room it was, they said come on
24 over, whatever?

25 A Yeah. I called my friend Emad. He said you

1 should come over here, then you choose the room.

2 Q Okay. So you were going to get your own room
3 but you were just kind of going to see them?

4 A Yes.

5 Q So you get to the parking lot and what happened
6 then?

7 A And then like Mazen start talking, like I drink,
8 like he black out at that time.

9 Q You think what?

10 A He's like I think black out, you call it.

11 Q He blacked out?

12 A Yeah. Like he just trying to fight his friend
13 Mohammed and he just talking about like something is stupid,
14 you know. And we know he's like drunk.

15 Q He's drunk?

16 A Yeah.

17 Q Who wanted to go to the room?

18 A So I called my friend, Emad, to bring anyone who
19 can like control him because we couldn't.

20 Q You said you and Mohammed wanted to go to the
21 room? You just wanted to go to bed.

22 A Yeah. Like all of us want to stay like.

23 Q And what did Mazen want to do?

24 A Like he would like, he want to stay outside.

25 Q Keep partying?

1 A Yeah.

2 Q So you called somebody up from the room because
3 he didn't want to come to the room with you. And then what
4 happened?

5 A And then he like, we still like around about 15
6 minutes or an hour.

7 Q In the parking garage?

8 A Around the area, front of the hotel.

9 Q Around the hotel. In the hotel or in the
10 parking lot?

11 A I think there is a Subway over there and we
12 tried to give him some food to wake him up.

13 Q Oh, Subway. Food?

14 A Yeah.

15 Q All right. Was he sleeping?

16 A No, he's drunk. He doesn't know. I don't know,
17 he start fighting us, you know.

18 Q And when was it he got so drunk?

19 A I think at the time, like he's completely
20 changed.

21 Q When did he completely change?

22 A After we parking and he started fighting with
23 Mohammed because Mohammed said give me the car, you are drunk.
24 And he just the left the key in the car and he said do what
25 you like to do, just leave me alone, something like that.

1 Q You guys let him drive that drunk for 30 minutes
2 from the parking, public parking to the Circus Circus?

3 A Yes.

4 Q Why?

5 A Because we are all of us like drunk, but he just
6 said I can drive, I can drive.

7 Q He said he could drive?

8 A Yeah.

9 Q Did he have any problems driving?

10 A I think like just speeding and something like
11 that.

12 Q But otherwise, he was able to drive?

13 A He was driving, yes.

14 Q So then who came down from the room to help you?

15 A Adel.

16 Q And what did Adel do?

17 A He just like keep talking to him. We can stay
18 in the room and then we can go outside.

19 Q Tried to talk him back to the room, let's go
20 hang out in the room for a while and then we'll go back out
21 and party more?

22 A Yeah. And he said, I think he just keeping say
23 just leave me alone, I can go. I want to do like anything.
24 Today we are in Vegas, we can outside. Why we came to the
25 hotel? Some stuff like that.

1 Q At some point then do you go to the room?
2 A Yeah.
3 Q Do you go to the room alone?
4 A We go like, we went together.
5 Q Who all went together, all four of you?
6 A Yeah, but not that close together. So Adel and
7 Mazen, they are like together and me and Mohammed, we are like
8 together.
9 Q But you're still in a group of four?
10 A Yeah.
11 Q So you guys go up to the room, right?
12 A Yeah.
13 Q Do you remember what room it was?
14 A I think it's like upstairs, but which floor I
15 don't remember.
16 Q So do you take the same elevator up?
17 A Yes.
18 Q And what happens when you get off the elevator?
19 A I think we saw a boy. I think he's like
20 Chinese.
21 Q And you just saw the Chinese boy?
22 A Yeah. And we walking and I heard about some
23 people, he said like -- I don't know which one, like he said
24 he listen to the music, Snoop Dogg, and he asking for weed.
25 Q The boy was listening to music on his phone?

1 A Headphone, yeah.

2 Q He had headphones or his phone up to his ear?

3 A No, a headphone.

4 Q And you said he was listening to Snoop Dogg?

5 A I think this -- I heard about -- my friends,
6 they say it.

7 Q Did you hear the Snoop Dogg?

8 A I'm not really sure. I guess, like, I heard the
9 music, but I'm not like --

10 Q Did you hear the music?

11 A I'm sorry?

12 Q You could actually hear the music?

13 A Yeah.

14 Q Did you hear the boy ask for weed?

15 A I heard about, my friends said he want that.
16 Like he asking for it, but I didn't hear.

17 Q You didn't hear the boy say that.

18 A No.

19 Q Which one of your friends said the boy asked for
20 weed?

21 A Adel and Mohammed. I think Mazen too, but.

22 Q Then what happened?

23 A Then we went to the room. And then we stayed.

24 Q Did everybody go in the room?

25 A Yes.

1 Q Where did the Chinese boy go?

2 A After like five minutes or a couple of minutes,
3 I was I think lying on the ground or on the phone, I just saw
4 him in the room.

5 Q You were lying on the floor in the room?

6 A Yeah, like I used the phone. I'm not sure. I
7 knew he was standing in front of me.

8 Q So you don't know how he got in there?

9 A Yeah.

10 Q All of a sudden you look up and he's standing
11 there?

12 A Yeah. And then Adel ask him about his age and
13 he said I am 13. Then we let him go outside. He said you
14 have to go and we took him outside.

15 Q Where was Mazen?

16 A He was with us.

17 Q He was right there? Yes?

18 A Yes.

19 Q So basically, you guys shooed him out because he
20 was 13.

21 A Right.

22 Q Then what happened? Did he leave?

23 A Yes, he leave. And then, like after a couple of
24 minutes, I'm not sure about the time because I was tired and
25 drunk, but after that I saw like Mazen and the boy get into

1 the rest room.

2 Q Into the --

3 A Rest room.

4 Q In the hotel room?

5 A Right.

6 Q Together?

7 A Together.

8 Q Did they shut the door?

9 A Yes, they close the door.

10 Q What did you think of that?

11 A I don't know about. We just like knock on the
12 door and we ask him to open the door. But we didn't hear
13 anything.

14 Q Did you -- how long were they in the rest room?

15 A Just like a couple of minutes. They didn't take
16 a long time inside.

17 Q Not a long time. A couple minutes?

18 A Yes.

19 Q And you said you knocked on the door?

20 A We knocked on the -- me and Mohammed.

21 Q What were you saying?

22 A Like we had just a shower -- what you --

23 Q You heard a shower?

24 A Yeah, but nobody answer.

25 Q You just shoed this 13 year old out of the room

1 and now he's in the rest room with your friend.

2 A Uh-huh.

3 THE COURT: Will you say yes, please?

4 THE WITNESS: I'm sorry?

5 THE COURT: Instead of saying uh-huh, please say yes.

6 THE WITNESS: Okay.

7 THE COURT: Thank you. Or no if that's the answer.

8 BY MS. HOLTHUS:

9 Q Didn't you guys do anything about it?

10 A Do what?

11 Q Well, you didn't even want the 13 year old in
12 the room.

13 A Well, we didn't see him. Like he just too fast
14 go inside. Like, we didn't like remember what like -- because
15 the door of the hotel room and the door for rest room was
16 near. We just opened it, you can see it's rest room and then
17 you go --

18 Q But you knew he was in there with the kid,
19 right?

20 A Yeah. Yes.

21 Q What did you do to stop it?

22 A Sorry?

23 Q What did you do to stop it?

24 A We couldn't see him until he got inside the rest
25 room.

1 Q And then once he got inside the rest room, what
2 did you do?

3 A Like we knock on the door and we ask him to open
4 the door.

5 Q Did you say anything else to him?

6 A No.

7 Q Did Mohammed say anything to him?

8 A We said like open the door, you have to like
9 open the door.

10 Q Did you tell him to let him go, let the kid go?

11 A Yeah. And then after like, as I said, a couple
12 of minutes they opened and the boy like just left the hotel.

13 Q So when you first knocked and said open the
14 door, let him go, he didn't open the door?

15 A No.

16 Q How long after that happened did they open the
17 door, a couple of minutes?

18 A It was like a couple of minutes.

19 Q And what were you doing during that couple of
20 minutes?

21 A We just knock on the door, asking him to open
22 the door.

23 Q When he came out of the door, when the kid came
24 out of the rest room, where did he go?

25 A Who?

1 Q The kid.

2 A He just left the room.

3 Q Left the hotel room?

4 A Yes.

5 Q Where did Mazen go?

6 A He just came back to the room with us and he

7 said like the Chinese want weed and some money and he didn't

8 give him [indiscernible].

9 Q He said the kid wanted weed or money?

10 A Yes.

11 Q Did he say he gave him weed or money?

12 A No, he said no.

13 Q What happened then?

14 A After that I think I talked to the front desk

15 about, to get a room.

16 Q On the phone, you called them?

17 A On the telephone. And they said like you have a

18 room available but you have to come downstairs.

19 Q So did you go downstairs?

20 A After that we decide, me and Mohammed, we have

21 to go right now or we should do it, Mazen with us or something

22 like that. Then he said we have to go.

23 Q So you and Mohammed were going to go get a room?

24 A Uh-huh.

25 Q Yes?

1 A Yes.

2 Q Were you taking Mazen with you?

3 A No.

4 Q You were going to leave him?

5 A Like we were going to -- we couldn't control him
6 and Mohammed, he just want to leave the room because he just
7 like --

8 Q Was he mad about the whole 13 year old boy in
9 the bathroom?

10 A We, all of us --

11 MR. CHAIREZ: Objection, that calls for speculation.

12 THE COURT: Sustained.

13 BY MS. HOLTHUS:

14 Q Were you guys annoyed with him for bringing the
15 13 year old in the bathroom, you?

16 A I mean, because Mazen start fighting, like
17 talking with Mohammed when we arrive to the hotel. So
18 Mohammed, he tried, didn't talk with him anymore because he
19 said if I talk to him we going to fight for real.

20 Q So you and Mohammed leave. And what happens
21 when you get outside the door?

22 A We just opened the door and the securities like
23 catch us and they said you have to stay here.

24 Q So you did?

25 A Yes.

1 Q Eventually they took you downstairs?

2 A Yeah.

3 Q Who did you go in the elevator with?

4 A I remember Mohammed, he was like beside me. I
5 ask him like what's going on and something like that. And he
6 just keep telling me you didn't do anything, everything is
7 going to be fine, something like that.

8 Q He told you you didn't do anything bad?

9 A Yeah, like we didn't do anything bad, so didn't
10 need to be scared. So like the weed and the -- you know, so
11 we were scared about that.

12 Q Did you have any idea what was going on?

13 A I think because we know about like a Chinese boy
14 or the weed inside, some stuff like that.

15 Q And then eventually you were released by the
16 police and you went back to school. In fact, you're still
17 going to school in Texas, right?

18 A Right.

19 Q Where are Mohammed -- where's Mohammed now?

20 A All of [indiscernible] we were in Vegas, they
21 came back except Mazen. They came back to Saudi Arabia.

22 Q Back to San Antonio? Oh, to Saudi Arabia.

23 A At the same time, I mean, like we got to San
24 Antonio for a couple of days, like three days, I guess, and
25 then I left San Antonio.

1 Q Went to Saudi Arabia?

2 A Me? No, I left San Antonio. I went Fort Worth,
3 Dallas.

4 Q Oh, that's where you go to school.

5 A Yes.

6 Q And then the other ones you were with that night
7 are back in Saudi Arabia.

8 A Right.

9 MS. HOLTHUS: Thank you. Pass the witness.

10 CROSS-EXAMINATION

11 BY MR. CHAIREZ:

12 Q Rashed, you go to school at Texas Wesleyan?

13 A Right.

14 Q And that's near Dallas, Texas?

15 A It's in Fort Worth.

16 Q And how far is Fort Worth from Dallas?

17 A It's about -- from my school to Dallas like 20
18 minutes.

19 Q And you say you just arrived in the United
20 States to go to school in early December of last year,
21 correct?

22 A Yes.

23 Q I wasn't quite sure. How did you get from
24 Dallas to San Antonio where you met Mazen and Mohammed?

25 A No, I didn't. First city in United States was

1 in San Antonio.

2 Q Oh, you arrived in San Antonio?

3 A I arrived in San Antonio.

4 Q Did you have any friends in San Antonio or why
5 is it that you arrived in San Antonio?

6 A Yeah. My friend over there, he's Emad.

7 Q Emad.

8 A Yes.

9 Q And Emad and I'm sorry, I got the names
10 confused. Did Emad also come to Las Vegas?

11 A Yes.

12 Q Okay. But he didn't ride with you or Mohammed
13 and Mazen, correct?

14 A No. Yes.

15 Q He came on his own?

16 A Yeah.

17 Q And was Emad one of the Saudi students that was
18 studying at Lackland Air Force Base?

19 A Right.

20 Q And he was studying English?

21 A What?

22 Q He was studying English?

23 A Yes.

24 Q So did Emad tell you that they had plans to go
25 from San Antonio to Las Vegas for New Year's?

1 A That's the alternate idea, like our plan, me and
2 him. But then because he [indiscernible], he said we can't go
3 in the same time because they have to study until they have
4 like exams or something.

5 Q So you and Mazen and Mohammed, you left because
6 you had more time -- they had more time and more leave,
7 correct?

8 A Right. They have like a vacation and they said
9 we can go earlier, so if you want to go with us you should go
10 with us, so I did.

11 Q Did anybody rent a car so you could go from San
12 Antonio to California?

13 A Sorry?

14 Q Did somebody rent a car so you could go from San
15 Antonio to California?

16 A That's what I had from my friend Emad. He said
17 Mazen and Mohammed rented a car.

18 Q So you didn't rent the car?

19 A No, I didn't.

20 Q And Mazen and Mohammed let you ride with them,
21 correct?

22 A Right.

23 Q And you didn't help pay for the car, correct?

24 A Sorry?

25 Q You didn't help them pay for the car?

1 A No. They said we already pay for the car.

2 Q And the place that you went to in California,
3 was it Santa Monica?

4 A Exactly.

5 Q And it was your cousin's house or apartment?

6 A Right.

7 Q And your cousin didn't charge you to stay at his
8 place, did he?

9 A No.

10 Q So what else did you do in California -- well,
11 how many days were you in California to just be able to visit
12 the sites, so to speak?

13 A It's like about two days or one day, one night.

14 Q Okay. So you saw downtown Los Angeles?

15 A Right.

16 Q And the big, tall buildings?

17 A Hollywood?

18 Q Tall buildings? You went to downtown Los
19 Angeles?

20 A Yeah, yeah.

21 Q And you also went to Hollywood?

22 A Right.

23 Q Did you go to the beach at all?

24 A I didn't.

25 Q Was there any discussion about whether or not

1 you should stay in L.A. or did everybody want to go from L.A.
2 to Las Vegas?

3 A We want to go because we want to go there to
4 have fun in New Year celebration.

5 Q All right. How is it or what did you know
6 beforehand about whether or not Las Vegas was a fun place to
7 be on New Year's?

8 A Like I heard about it in --

9 Q TV?

10 A TV, something like that, movies.

11 Q Movies?

12 A Right.

13 Q What kind of things did you know about Las Vegas
14 and why you wanted to come and visit?

15 A Like people there can drink alcohol all the time
16 in the street and something like that. And it's, a lot of
17 people came from different countries and Vegas is Vegas. I
18 heard about it a lot, so I just want to see the city.

19 Q So it's an exciting place, at least the way they
20 portray it in on TV, correct?

21 A It's not really.

22 Q Not really?

23 A Not really. Like I heard about a lot, but me I
24 didn't.

25 Q But you wanted to see Las Vegas, correct?

1 A Sorry?

2 Q You wanted to see Las Vegas?

3 A Yeah, right.

4 Q And you knew that they had drinking here?

5 A Yes.

6 Q And you knew that they had casinos?

7 A Yes.

8 Q And you knew that they had gambling inside those

9 casinos?

10 A Right.

11 Q Did you know beforehand whether or not they had

12 strip clubs?

13 A I guess if you were in United States they have

14 strip club.

15 Q Okay. So where you come from they don't have

16 casinos, do they?

17 A No, we don't have all this stuff.

18 Q They don't have drinking?

19 A No.

20 Q They don't have gambling?

21 A No, we don't.

22 Q And they don't have women dancing naked?

23 A No, we don't.

24 Q Have you ever heard the expression Sin City?

25 A Sorry?

1 Q Have you ever heard the expression Sin City?

2 A What do you mean by that? I don't know.

3 Q Well, sometimes on TV they call Las Vegas Sin
4 City. You've never heard that before?

5 A No.

6 Q Now, when you came to Las Vegas, did you tell
7 your family you were coming to Las Vegas for New Year's?

8 A Like my -- yeah, my brothers.

9 Q You didn't tell your mother or you didn't tell
10 your father?

11 A Not really, because they will not accept it or
12 they will not know about it.

13 Q So young men from Saudi Arabia, if they come to
14 Las Vegas, it's not something you brag about back home,
15 correct? Let me rephrase the question. If young men from
16 Saudi Arabia come to Las Vegas, it's not something that you
17 telephone home about and say I'm going to Las Vegas.

18 A Exactly. It's not really thing you have to tell
19 your family.

20 Q Because if your family knew you were coming to
21 Las Vegas, it might bring shame on you, correct?

22 A Something like that, right.

23 Q Okay. And if they got drunk like Mazen got
24 drunk, it might bring shame on Mazen and his family, correct?

25 A Exactly.

1 Q And if Mazen's family knew that he went to a
2 strip club and watched girls dance naked, that would bring
3 shame on Mazen and his family, wouldn't it?

4 A Exactly.

5 Q Okay. How old are you, Rashed?

6 A Twenty-five.

7 Q And you look like a small, skinny guy to me.
8 How much do you weigh?

9 A I guess like 166.

10 Q How much do you think Mazen weighs?

11 A I don't know.

12 Q Ten or 20 pounds more?

13 A Because I lift some pounds when I came here.

14 Q You gained pounds when you came here?

15 A I lift some.

16 Q You lose some or you --

17 A I lose, I lose.

18 Q You lose. Okay. How many drinks do you think
19 you had at the first casino when you guys came from Los
20 Angeles to Las Vegas?

21 A I didn't like -- we drink a lot. We drink
22 something like, because it's like a holiday. We drank a lot.

23 Q You mentioned you drank tequila.

24 A Tequila, tequila and shots, something like that.

25 Q And you drank -- I forgot what other two drinks

1 you mentioned. But you had a lot of drinks, correct?

2 A A lot for us, yes.

3 Q And you felt that you got drunk, correct?

4 A Yes. That's why I don't remember like sometimes
5 between when they asked me about.

6 Q Now when -- I'm a big guy and you're a little
7 guy, so when a little guy like you has a lot of drinks and you
8 get drunk, do you get dizzy? Do you know what the word dizzy
9 is?

10 A Yeah, I know. I feel like when I drink alcohol,
11 like I remember, but not everything I can't remember.

12 Q But when you drink, you don't get mean and angry
13 and want to fight, do you?

14 A Like easy to get mad.

15 Q What was the answer?

16 A Easy to get angry.

17 Q It's easy to get angry?

18 A Right.

19 Q But you didn't get angry that night, correct?

20 A Yes.

21 Q That morning I should say.

22 A Yes.

23 Q Did you get angry?

24 A No. That time, like I was like, I just want to
25 leave. Like I kid about my studying more than anything else.

1 Q Okay. But when you saw Mazen, you and Mohammed
2 thought he was pretty drunk, correct?

3 A Uh-huh. Yes.

4 Q You say that -- well, let me ask you this. In
5 the strip club, did any girls dance naked for you guys?

6 A Yes.

7 Q Did any girls dance naked for Mazen?

8 A Yes.

9 Q And when these girls dance naked, what is it
10 that they do? Do they get close to you?

11 A It's close, very close.

12 Q Are they wearing tee shirts or no tee shirts?

13 A Like they, you know, strip club. I don't know
14 how to describe it, but almost naked.

15 Q Almost naked. All right. When you watched
16 these girls dance, did you get excited?

17 A Yes, I do.

18 Q And did you hear Mazen say whether or not he was
19 excited watching these girls dance?

20 A He was, yes.

21 Q He looked excited?

22 A Yes.

23 Q And where was -- was Jennifer sitting with you
24 guys when you were at the strip club?

25 A Yes. Right.

1 Q Was she encouraging you guys to drink or
2 encouraging you guys to say hey, let's watch more girls dance?

3 A Yes, and she does too.

4 Q She danced too?

5 A Right.

6 Q Where does she dance?

7 A Like a stripper girl.

8 Q Like how?

9 A Like a stripper girl.

10 Q Like a stripper girl?

11 A Yeah.

12 Q Did she take off her clothes?

13 A Not like them, but.

14 Q Not like them. All right. So there was music
15 in the nightclub?

16 A Yes.

17 Q Do you remember the name of the nightclub?

18 A No, I don't remember.

19 Q If I were to say Olympic Garden, would that help
20 you remember or you don't remember the name of the club?

21 A It was like, I can describe the club, but I
22 can't remember the name. But it's like big and huge and
23 things.

24 Q Was it near the Circus Circus hotel, the strip
25 club?

1 A Everything like was so close. It's not like far
2 from there.

3 Q All right. Was the first casino that you went
4 to that closed and you guys had to leave, was that close or
5 was that pretty far?

6 A All of it like it's not really far.

7 Q When you went back to the hotel or when you went
8 to look for Mazen's car, you couldn't find the car keys,
9 correct?

10 A Yes.

11 Q And who was the one that lost them, you,
12 Mohammed or Mazen?

13 A He.

14 Q Mazen did?

15 A Because he was hold the key of the car.

16 Q When you went back to the hotel, you said it was
17 around 7:00 in the morning?

18 A Six to seven, right.

19 Q Six or seven. All right. And how many drinks
20 do you -- did you see Mazen drink or do you know how much he
21 drank by the time you came back to the hotel?

22 A I guess he drank a lot.

23 Q Okay.

24 A Yes. But I don't know how many.

25 Q But when Mazen would walk, would he walk like he

1 was falling down or did he walk like it was almost normal?

2 A It's not normal.

3 Q It's not normal? Okay. And you were able to
4 recognize that, correct?

5 A Exactly.

6 Q That he was walking not normal. When you went
7 back to the -- I want to make sure I get this straight. When
8 you went back to the hotel, did you run into this Chinese boy
9 before you arrived in the hotel room or after you arrived at
10 the hotel room?

11 A Can you say that, please, again?

12 Q Yes. When you came back from the strip club and
13 you hung around the lobby, correct?

14 A Uh-huh.

15 Q How long did you guys hang out in the lobby?

16 A We didn't go in the lobby. Like most of the
17 time we was in the street near to the Subway food and near to
18 the front of the hotel.

19 Q Mentioning Subway, did you buy a sandwich for
20 Mazen to eat?

21 A We would like to at that time, but it was
22 closed.

23 Q All right. At seven in the morning?

24 A Yes.

25 Q So why did you and Mohammed want to get food for

1 Mazen?

2 A Because we want him to like wake up because he
3 just drunk, he want to fight us.

4 Q So you were trying to sober him up?

5 A Like we want to control him because we couldn't.

6 Q But were you able to buy him any food or not?

7 A It's like closed.

8 Q Everything was closed?

9 A Everything closed, right.

10 Q And this was at Circus Circus?

11 A Yes.

12 Q And when you went back to the room and you saw
13 the Chinese boy, did anybody go back to the room and were they
14 smoking marijuana?

15 A When we got to the hotel?

16 Q Were you and your friends smoking marijuana in
17 the room?

18 A Yeah. I think Emad said like we have -- I ask
19 Emad to control him and he said like I want to give him some
20 weed to sleep.

21 Q Give who some weed?

22 A Mazen.

23 Q So the purpose in giving him the marijuana was
24 to help put him to sleep?

25 A Right.

1 Q And after Mazen was given this marijuana, is
2 that when the boy came and knocked on the door?

3 A Right.

4 Q So you didn't see Mazen drag the boy from the
5 elevator down the hall to your room, did you?

6 A No, I didn't.

7 Q And you didn't see Mazen drag the boy from the
8 front door into the bathroom, correct?

9 A He doesn't do that. I think the Chinese was
10 like so quiet and he came by his self.

11 Q He came voluntarily?

12 A Right. Like he just know everything like where
13 he going to. He's not like scared of something.

14 Q The boy did not look scared?

15 A No.

16 Q And you saw the boy walk into the bathroom
17 voluntarily?

18 A Right. I'm not real sure about -- they go so
19 quick and they, without any noise.

20 Q All right. So you believe that the boy and
21 Mazen were in the bathroom for about, you said two minutes or
22 a couple minutes?

23 A About a couple minutes, but I'm not really sure.
24 But it was like so quick.

25 Q But you didn't get a stopwatch and time them,

1 how long they were in --

2 A Exactly, exactly. I cannot do that.

3 Q All right. Now, did you say that you came, you
4 and Mohammed and knocked on the door?

5 A Right.

6 Q How loud or how many times did you knock on the
7 door?

8 A Like twice, three times.

9 Q And did you try to open the door?

10 A Yes.

11 Q How did you -- you put your hand on the handle?

12 A Yes.

13 Q And you twisted it?

14 A It was locked.

15 Q It was locked. Okay. And did you hear any
16 screaming inside the bathroom?

17 A No, we didn't.

18 Q You didn't hear anybody saying help, help?

19 A No, we didn't.

20 Q And you didn't hear Mazen say anything, like go
21 away, go away?

22 A No.

23 Q You heard no talking.

24 A We just heard about the shower.

25 Q Okay. So you heard water running?

1 A Right.

2 Q Well, you don't know whether it was the shower
3 or the sink?

4 A I guess it's the shower.

5 Q The shower?

6 A Yeah.

7 Q Okay. And why are you saying it was the shower?

8 A Because I heard it.

9 Q Okay. Now the little boy the other day
10 testified to say nobody turned on the shower water and he was
11 inside.

12 A Yeah.

13 Q So was it possible it was a shower from another
14 room or was it -- did you think it was the shower in that
15 room?

16 A No, that's him.

17 Q So you have a different story than the boy has,
18 correct?

19 A Different story?

20 Q The boy says there was no shower on, there was
21 no sink on.

22 A I heard about a shower.

23 Q Okay. So after the couple minutes that the two
24 of them were in there, you didn't see blood or scratches on
25 the boy's face, correct?

1 A No.

2 Q And you didn't see blood or scratches on Mazen's

3 face?

4 A No.

5 Q Did you see scratches on Mazen's arms or any

6 signs that there was a fight?

7 A No, it's like normal.

8 Q Normal. Okay. And when Mazen -- when the boy

9 left, when the boy and Mazen came out, Mazen said the boy

10 wants money or weed, correct?

11 A Exactly.

12 Q Did you give him any money?

13 A No. He said he want like money and weed, but we

14 didn't -- he said I didn't do that.

15 Q Okay. Now when the boy left the room, nobody

16 tried to stop him from leaving, correct?

17 A No, it was easy.

18 Q He left on his own.

19 A Right.

20 Q And when the boy left the room, Mazen didn't say

21 where's my suitcase, I'm leaving, I need to go.

22 A No.

23 Q Mazen just went into the corner and what,

24 started drinking?

25 A Like talking and smoking.

1 Q Talking and smoking. All right. Was he smoking
2 cigarettes or was he smoking marijuana?

3 A Marijuana.

4 Q Okay. So from the time the boy left the room to
5 the time that security came, would you say it was 20 or 30
6 minutes?

7 A It's like, not that many times.

8 Q Not that long?

9 A Yeah, not that long.

10 Q But you don't know for sure, correct?

11 A Yes.

12 Q When you were in the elevator with Mazen, he was
13 still drunk, correct?

14 A I guess they like talk him -- they talk to him
15 like he's the one -- something happened between him and --

16 Q Okay. But when you were --

17 A Like we go like normal, except him and the
18 police.

19 Q Okay. Now when Mazen was with you in the
20 elevator, you said that he said don't worry, nothing happened,
21 everything is going to be okay.

22 A Not Mazen, it's Mohammed.

23 Q Mohammed. Okay. All right. Did Mohammed say
24 it in Arabic or in English?

25 A Sometime Arabic, sometime English.

1 Q And do you remember what Mazen said while you
2 guys were there?

3 A I don't remember.

4 Q You weren't with him?

5 A I'm not really sure about the time, but because
6 we are like -- a lot of people.

7 Q But I want to make sure of one thing, Rashed.
8 In your mind, there's no question that when you came back from
9 the strip club, Mazen was very drunk.

10 A Your question? He was drunk.

11 Q Very drunk.

12 A But like -- yes.

13 Q He was drunk enough that you were concerned we
14 need to buy him food to help him out.

15 A Right.

16 Q Correct?

17 A Exactly.

18 Q And he was drunk enough that you friend said we
19 need to give him marijuana to help calm him down, correct?

20 A Exactly.

21 Q And he was drunk enough, but when he would walk
22 around you felt he was not walking normal, correct?

23 A Exactly.

24 Q And you'd seen him walking in Santa Monica and
25 you'd seen him walking in San Antonio and you saw a difference

1 between the way he walked there and the way he was walking
2 after you guys left the strip club, correct?

3 A Like I saw him like two days -- like I just know
4 him like between two, three days. But he was like okay with
5 us, he doesn't talk, like shout. He doesn't start fighting.
6 But at that time he completely changed.

7 Q Completely changed.

8 A Right.

9 MR. CHAIREZ: All right. Nothing further, Your
10 Honor.

11 THE COURT: Redirect.

12 MS. HOLTHUS: Just a few.

13 REDIRECT EXAMINATION

14 BY MS. HOLTHUS:

15 Q You said today that you thought that Mazen and
16 the boy were in the bathroom for two minutes. But isn't it
17 true that sometime before you actually said that they were in
18 there like ten minutes?

19 A I said like a couple of minutes, but I'm not too
20 sure about the times. All the story, I'm not really sure
21 about the times. I can't count the times from story that I
22 see it.

23 Q So is it possible, though, that you told
24 Detective Christiansen it was ten minutes?

25 A I just say like, I just guessing for the time.

1 Q Do you want to see this and see if you said
2 that, if I show you this?

3 A I saw like, you mean, the first --

4 Q The statement that you gave to Detective
5 Christiansen before.

6 MS. HOLTHUS: May I approach?

7 THE COURT: You may.

8 A But it is different, like a different day when I
9 came to America.

10 BY MS. HOLTHUS:

11 Q Do you read English?

12 A Yes. I'm not sure.

13 Q I understand. But at some point you did say it
14 was like maybe ten minutes, right?

15 A Right, yeah. I'm not really sure about the
16 times.

17 Q And then I think the video itself shows that the
18 -- Mazen and the boy got off the elevator and it's almost a
19 half hour. Is it possible it was even longer than ten minutes
20 that he was in the room?

21 A If you think like, I guess it was so quick
22 because I was like tired and drunk. So the times, I didn't
23 know.

24 Q So it could have been longer.

25 A Everything is maybe.

1 Q There was a point that you said that you saw --
2 after you guys find out the boy is only 13 and you say get
3 out. In your statement you said, in fact, go back to your
4 family, to the boy, yes?

5 A Yes.

6 Q And then Mazen followed him out?

7 A I didn't see that.

8 Q I thought -- right after the boy left, Mazen
9 left the room?

10 A Sorry?

11 Q After the boy left, Mazen left the room? The
12 first time.

13 A The first time I didn't see Mazen leave the
14 room.

15 Q Did you tell Detective Christiansen that after
16 the boy left the first time you guys, you saw Mazen walk out?

17 A That first time, like Adel he said to the boy
18 you have to leave the hotel room and he just left the room.

19 Q With the boy.

20 A Just the boy. Like he just left him and closed
21 the door.

22 Q But at some point after that Mazen followed him
23 out, right?

24 A Yeah, just like what I said in here. I just
25 remember he just opened the door and he go inside the rest

1 room. But she said like we have a video, he like go outside
2 and follow him. But I'm not sure about that.

3 Q But I'm talking about before they went into the
4 bathroom. The first time the boy came you saw him in the
5 room?

6 A Uh-huh.

7 Q Yes?

8 A Yes.

9 Q And you guys find out he's 13 and you tell him
10 to leave.

11 A Exactly.

12 Q But Mazen follows out after him, right?

13 A No, no, I'm not sure. No, I think just Adel
14 leave the door, leave him and close the door. And then after
15 that Mazen left.

16 Q You were asked before did anybody try to stop
17 Mazen when he left? I mean, he's so drunk now, he's leaving
18 the room alone?

19 A Like you mean --

20 Q Did you try to stop him?

21 A Stop who?

22 Q Mazen after he left.

23 A No, we didn't try that.

24 Q And isn't it true that you said that you didn't
25 think it was like the first time because he wasn't so drunk

1 and shouting. It had been 30 minutes or an hour and he got
2 quiet and relaxed and you thought he was okay when he walked
3 out.

4 A What do you mean, about who?

5 Q Mazen.

6 A Okay. I just like, I didn't feel about his left
7 and get the boy. I didn't feel that because, as I said, like
8 it's a couple of minutes when he left the hotel, the hotel
9 room and he back, I said like two minutes. But she said you
10 have a video he left about like 30 minutes. So this time I'm
11 not really sure about it because, as I said, tired and --

12 Q So did you tell Detective Christiansen that
13 after you got back to the room, before Mazen left the room,
14 that he had calmed down, that he was quiet, he wasn't fighting
15 anymore?

16 A Yeah, yeah. Like he just wasn't --

17 Q And you thought he was okay then?

18 A Yeah.

19 Q So when he left the room you weren't worried
20 about him anymore?

21 A For me, I didn't like feel he goes outside, like
22 maybe the others.

23 Q And you had been in the room a half hour to an
24 hour already, right?

25 A Half hour?

1 Q You said you were back in the room a half hour
2 to an hour, right?

3 A The time?

4 Q Before the boy came back into the room.

5 A No, I didn't say that. Like she said like we
6 have a video. He followed the boy outside the room.

7 Q You testified and you told Detective
8 Christiansen earlier the two were in the -- by the car for a
9 half hour to an hour with Mazen.

10 A Before the --

11 Q Before you went to the room.

12 A Outside?

13 Q Right.

14 A Exactly. Yeah, between 30 minutes to an hour.

15 Q And then you said you were in the room 30
16 minutes to an hour.

17 A In the room, I'm not real sure. But it's like
18 we wait like about until 8:00 to get a new day for other room.

19 MS. HOLTHUS: If I may approach again, Judge?

20 THE COURT: Yes.

21 BY MS. HOLTHUS:

22 Q Read that to yourself. Is that what you said?

23 A Yeah, but I mention about some --

24 Q I'm just asking. Did you say -- because first
25 time it was like so drunk and he shout out. And after that 30

1 minutes or one hour, he like completely get quiet and relaxed
2 and we thought he's okay now.

3 A In the hotel room.

4 Q In the hotel room.

5 A Yeah.

6 Q And that was before the boy came into the
7 bathroom with him?

8 A Exactly.

9 Q When the little boy -- when the boy left the
10 room, you didn't see him leave. I mean, he left quickly.

11 A The first time or second time?

12 Q The second time. When he left the bathroom.

13 A Yeah, I saw him.

14 Q Did you get a good look at him?

15 A He's like nothing happened. He's just like, he
16 doesn't crying or shouting.

17 Q Were the lights on or off?

18 A The room is light.

19 Q All the lights were on?

20 A Sorry?

21 Q The lights were all on or the window --

22 A Yeah, it was like we can see.

23 Q Were the curtains open?

24 A Because it was in the morning.

25 Q The curtains were open?

1 A Sorry?

2 Q Were the curtains open?

3 A You mean the window --

4 Q Right.

5 A Yeah.

6 MS. HOLTHUS: Nothing else. Thank you.

7 RE-CROSS-EXAMINATION

8 BY MR. CHAIREZ:

9 Q Rashed, are we confusing you?

10 A No.

11 Q Okay. So when the prosecutor just asked you
12 were they in the bathroom for a couple minutes or ten minutes,
13 you never told an investigator or the detectives that they
14 were in there for ten minutes, correct?

15 A I just like said about the time, I'm not really
16 sure about the time.

17 Q Okay. So when they heard you maybe they
18 misunderstood you, correct?

19 A Maybe yes.

20 Q Because if they wrote down ten minutes, that's
21 not what you said.

22 A I'm not sure about that time.

23 Q Would you say that -- and remember, did you
24 sleep at all from L.A. to Las Vegas in the car?

25 A I guess I was like behind them so sometime I

1 fell asleep, sometime I wake up.

2 Q But from the time you arrived in Las Vegas until
3 9:00 in the morning, you didn't sleep, correct?

4 A Can you say that again?

5 Q Okay. From the time you arrived in Las Vegas at
6 2:00 in the morning until like 9:00 in the morning when
7 everybody was arrested, you hadn't had any sleep, correct?

8 A When I had --

9 Q You didn't sleep when you arrived in Las Vegas,
10 did you?

11 A No, I didn't.

12 Q Because you went to a casino first where you
13 drank --

14 A Yes, yes, right.

15 Q -- and then you went to the strip club where you
16 drank.

17 A Right.

18 Q And then you came back to the hotel.

19 A Right.

20 Q So in your mind, are you able to remember
21 everything that happened or is there a little bit of
22 fuzziness?

23 A It's like yeah, I don't remember everything
24 because it was last year and that time they didn't talk to me.

25 Q Just a couple more questions. When you say the

1 boy left his room, you saw him and looked right at him,
2 correct?

3 A Yes.

4 Q And he didn't sound -- he didn't cry, he didn't
5 sound scared?

6 A No.

7 Q He just looked at you.

8 A Right.

9 Q And you didn't see anything on his body that
10 would be bruises or cuts or scratches?

11 A Yes. Nothing.

12 Q And when Mazen came out of the bathroom, he just
13 went to the corner to drink or smoke, correct?

14 A Right.

15 Q And he didn't say let's get out of here, I got
16 to go?

17 A No.

18 MR. CHAIREZ: Nothing further.

19 THE COURT: Anything else?

20 MS. HOLTHUS: No, thank you.

21 THE COURT: Thank you, sir, for your time. You're
22 free to g.

23 THE WITNESS: Thank you.

24 THE COURT: The State has one more witness today?

25 MS. BLUTH: Yes, Your Honor.

1 THE COURT: She's here right now?

2 MS. BLUTH: Yes, Judge.

3 THE COURT: Why don't we just give the jury a very
4 quick break to stretch and use the rest room. Can you come
5 back in ten minutes, please, and then we'll have our final
6 witness for the day.

7 You're admonished not to converse among yourselves or
8 with anyone on any subject connected with the trial, to read,
9 watch or listen to any report of or commentary on the trial by
10 any medium of information including, without limitation,
11 television, newspaper, radio or Internet and do not form or
12 express an opinion on this case. See you shortly.

13 (Court recessed at 11:22 a.m. until 11:36 a.m.)

14 (In the presence of the jury.)

15 THE COURT: Welcome back, ladies and gentlemen.
16 Let's bring in the next witness, please.

17 MS. BLUTH: State calls Julie Marschner.

18 JULIE MARSCHNER, STATE'S WITNESS, SWORN

19 THE CLERK: Please be seated. State and spell your
20 first and last name for the record, please.

21 THE WITNESS: My name is Julie Marschner. First
22 name, J-u-l-i-e. Last name, M-a-r-s-c-h-n-e-r.

23 THE COURT: Whenever you're ready.

24 MS. BLUTH: Thank you.

25 DIRECT EXAMINATION

KARR REPORTING, INC.

1 BY MS. BLUTH:

2 Q Good morning, Ms. Marschner. How are you
3 employed?

4 A I'm a forensic scientist with the Las Vegas
5 Metropolitan Police Department's laboratory and I'm assigned
6 to the biology and DNA detail.

7 Q Can you explain to the ladies and gentlemen of
8 the jury the type of training and education that you had in
9 order to obtain that employment?

10 A I have a Bachelor's degree in biological
11 sciences from Cal Poly in San Luis Obispo, California and a
12 Master's degree in forensic science from Virginia Commonwealth
13 University in Richmond, Virginia. During all of my graduate
14 school training, all of the laboratory training, including an
15 internship, was done at the Virginia Department of Forensic
16 Science, which is a State crime lab in Richmond, Virginia.

17 After finishing graduate school, I was hired on with
18 Metro's forensic lab where I underwent an additional nine
19 months of training before I began working cases on my own.

20 Q And you stated that you are a forensic scientist
21 and you work within the DNA lab at the Las Vegas Metropolitan
22 Police Department.

23 A Correct.

24 Q Could you define with DNA is?

25 A DNA, it's an acronym. It stands for

1 deoxyribonucleic acid. And it's the genetic material that's
2 found in the cells of all living organisms. Now in humans,
3 most of our DNA is organized in chromosomes and most of our
4 cells have 46 chromosomes or 23 pairs. And it's a pair
5 because half is inherited from your mom and the other half is
6 inherited from your dad. And it's a unique combination of
7 these two that make us different from one another.

8 Now between everyone in this room, over 99 percent of
9 our DNA is the same and that's because we all need the same
10 basic genetic information to make us a human, to give us eyes
11 to see, ears to hear, ten fingers, ten toes. It's the less
12 than one percent that makes us different than one another and
13 it's in this less than one percent that we look at in forensic
14 DNA analysis to be able to tell two individuals apart. Now
15 the only time we can't do this is with identical siblings and
16 that's because identical siblings have identical DNA.

17 Q So in the lab when you receive a piece of
18 evidence, your job is to conduct DNA analysis on that
19 evidence. If you could explain the process you go by doing
20 that.

21 A So I examine evidence that's been collected from
22 crime scenes. And it could be something obvious, like blood
23 on a knife, semen on a bed sheet or maybe saliva on a soda
24 can. But it could also be what we call touch DNA, and this is
25 when cells have been left behind where someone came into

1 contact with something with their skin and suffuse cells that
2 are being left behind.

3 So after I've located an area that contains possible
4 DNA, I'll either swab the item or take a cutting from it and
5 then put that cutting into a tube. And I add various
6 chemicals and heat and that's going to break open the cells
7 that contain that DNA. I'm going to wash everything else away
8 so that I end up with a purified DNA product. I'll determine
9 how much DNA's there and then make copies of it. And then I
10 load it onto an instrument that's going to generate what we
11 all a DNA profile.

12 A DNA profile from one individual is 15 pairs of
13 numbers. And it's 15 because we're looking at 15 different
14 locations in that less than one percent of the DNA. And it's
15 a pair because half were inherited from the person's mom and
16 the other half were inherited from the person's dad. So I'm
17 going to compare a DNA profile from an item of evidence to a
18 DNA profile from a known individual to see if they match up or
19 not.

20 Q So I want to break this down pretty simple. If
21 I licked this pen or if I touch this pen and then you swabbed
22 it and found a DNA sample. And then a buccal, which we've
23 already heard what a buccal is, was taken from the inside of
24 my cheek, you would then compare the buccal and if you were
25 able to get a DNA sample off the pen from me licking it or

1 touching it, and then you would be able to compare the two.

2 Would that be correct?

3 A Yes.

4 Q Now you talked about different ways someone
5 could leave DNA. You talked about blood, saliva, either --
6 sperm would be one.

7 A Yes, in semen.

8 Q So bodily fluids.

9 A Correct.

10 Q And semen. And then there's touch DNA. Are any
11 of -- do any of those leave a stronger trace of DNA than the
12 others?

13 A So the body fluids are very rich sources of DNA
14 because there are a lot of cells inside of them. When we're
15 talking about touch DNA, you're talking about a few cells that
16 are being left behind. So it's harder to get a DNA profile
17 from those touch DNA items than it is from an item that has a
18 body fluid, like blood, semen or saliva on it.

19 Q You know that you're here to testify in the case
20 of State of Nevada versus Mazen Alotaibi.

21 A Correct.

22 Q And you're the forensic scientist who did the
23 analysis in this case?

24 A Yes.

25 Q When you go to get evidence -- so we heard

1 testimony from the crime scene analyst, Ms. Tucker. And she
2 talked to us about the procedure of impounding evidence into
3 the vault. How does that then get to you?

4 A So I will receive a request either from the
5 District Attorney's Office or a detective within the police
6 department and they're going to ask me to look at specific
7 items of evidence. So I will call up those items of evidence
8 from our main evidence vault storage area downtown. They
9 transfer it to the forensic lab where we have another smaller
10 evidence vault, and then I can go and pick up the items there
11 and then keep them in my custody when I'm analyzing the items.

12 MS. BLUTH: May I approach, Your Honor?

13 THE COURT: Yes.

14 BY MS. BLUTH:

15 Q I'm showing you what's been marked for purposes
16 of identification as State's Proposed 174. Could you take a
17 look at that and let me know if you recognize it?

18 A Yes. This is a buccal swab kit that was
19 collected from Mazen Alotaibi. When it's originally booked,
20 it just has the red evidence tape on it. But once it comes to
21 the laboratory and we open it, we will reseal it with blue
22 evidence tape. So I've signed the chain of custody here with
23 my signature and my personnel number and the date that I
24 sealed the package. And then I also initialed and dated the
25 evidence seal when I was finished with my analysis.

1 Q And that is to ensure that the chain of custody
2 is not broken; is that correct?

3 A Correct.

4 Q So I want to break this down. In the beginning
5 -- excuse me. In the front of the package, first of all, it's
6 labeled buccal swab kit, correct?

7 A Yes.

8 MS. BLUTH: Your Honor, at this time I'd like to use
9 the ELMOS so I move to admit into evidence State's Proposed
10 174.

11 MR. CHAIREZ: No objection.

12 THE COURT: Admitted and permission to publish.

13 MS. BLUTH: Thank you.

14 (State's Exhibit 174 admitted.)

15 BY MS. BLUTH:

16 Q Just so the ladies and gentlemen of the jury can
17 look at this as we go through it -- is your monitor on, Ms.
18 Marschner?

19 A Yes.

20 Q So as we're looking at it now, obviously it
21 clearly says buccal swab kit. The date it was taken is
22 December 31st of 2012.

23 A Correct.

24 Q And then the event number also has the date.
25 That would be 12-12-31.

1 A Correct.

2 Q And each event is also given what's called a
3 call number. Would that be correct?

4 A Yes.

5 Q And that's -- so it's the first six are the date
6 and the next four are the call number that's associated with
7 the case we're here to talk about today.

8 A Correct.

9 Q And then in this buccal swab kit it shows it was
10 taken from Mr. Alotaibi, it has his birth. And then it has
11 the signature of the crime scene analyst who impounded it into
12 evidence or booked it into evidence.

13 A Correct.

14 Q It also has her P number. Can you explain to
15 the ladies and gentlemen of the jury what a P number is?

16 A P number is a personnel number. It's a unique
17 number that's assigned to every individual that's employed
18 with the police department. So hers is 14402.

19 Q So when she impounds it or books this into
20 evidence, the red tape is used by crime scene analysts?

21 A Yes.

22 Q Or police.

23 A Anyone that's originally packaging an item would
24 use the red evidence tape.

25 Q And it also has her P number on it?

1 A Correct.

2 Q And the date.

3 A Yes.

4 Q So when you received this piece of evidence,
5 this is exactly how it came to you except it didn't have your
6 blue tape and your signature.

7 A Correct.

8 Q So then when you get it, you open it in order to
9 get the buccal swabs out and conduct your testing.

10 A Correct.

11 Q And when you're done with your testing, you then
12 reseal it with the blue tape.

13 A Yes.

14 Q You put your name and P number --

15 A Yes.

16 Q -- so that people know who it is from the lab
17 who conducted the testing.

18 A Correct.

19 Q And then you reseal it with your P number and
20 the date.

21 A Correct.

22 Q Is that correct?

23 A Yes.

24 Q And we're going to talk about a couple of
25 different pieces of evidence today. And each of these pieces

1 of evidence all have this same type of documentation on them.

2 A Correct.

3 Q Showing you State's Proposed Exhibit 175. Do
4 you recognize this?

5 A Yes. This is a sexual assault evidence
6 collection kit that was collected from AJ Dang.

7 Q And does it say which hospital it came from?

8 A UMC.

9 Q And the nurse's name.

10 A Jeri Dermanlian.

11 Q And the same things, the event number is on
12 there.

13 A Correct.

14 Q The date.

15 A Correct.

16 Q Who it was collected by, Ms. Dermanlian.

17 A Correct.

18 Q And your -- you did your testing and that's
19 what's evidence by the blue tape.

20 A Correct.

21 MS. BLUTH: Your Honor, at this time I'd move into
22 evidence State's 175.

23 MR. CHAIREZ: No objection.

24 THE COURT: Admitted.

25 (State's Exhibit 175 admitted.)

1 BY MS. BLUTH:

2 Q Going backwards here. Sorry. Showing you
3 State's Proposed 173. What is this?

4 A These are swabs that were collected from the
5 body of Mazen Alotaibi.

6 Q To be clear, it's two penile swabs?

7 A Yes.

8 Q And again, the same thing. It's the same event
9 number, impounded by Ms. Tucker, the crime scene analyst.

10 A Correct.

11 Q And it came to you sealed and you did your
12 testing.

13 A Correct.

14 Q After your testing was done you put it back in,
15 sealed it with the blue tape.

16 A That's correct.

17 MS. BLUTH: At this time I'd move into evidence
18 State's Proposed 173.

19 MR. CHAIREZ: No objection.

20 THE COURT: Admitted.

21 (State's Exhibit 173 admitted.)

22 BY MS. BLUTH:

23 Q And lastly, State's Proposed 176. If you could
24 tell me what that is?

25 A These are items of clothing that were collected

1 from Mazen Alotaibi.

2 Q Same thing, same event number.

3 A Correct.

4 Q Same date.

5 A Correct.

6 Q This, to be specific, says one red truck fit
7 shirt, size extra large with a smiley face with a yellow crown
8 and white glasses printed on the front.

9 A Yes.

10 Q And one pair of black and white U.S. Polo
11 boxers, size small, with a tear on the upper left backside.

12 A That's correct.

13 Q And that's what's in this package.

14 A Yes.

15 Q And you did your testing, which is why it's
16 sealed with the blue tape with your initials and your P number
17 and the date.

18 A That's correct.

19 MS. BLUTH: I move into admission State's Proposed
20 176.

21 MR. CHAIREZ: No objection.

22 THE COURT: Admitted.

23 (State's Exhibit 176 admitted.)

24 BY MS. BLUTH:

25 Q So these are the items that you conducted your

1 DNA analysis on.

2 A Yes.

3 Q So you have the sexual assault kit provided by
4 Ms. Dermanlian that she did on the victim AJ Dang at
5 University Medical Center.

6 A Correct.

7 Q What is in the sexual assault kit?

8 A So inside that envelope are several more smaller
9 envelopes. And then inside of those envelopes are various
10 swabs that were collected from the body, as well as a pair of
11 boxer shorts.

12 Q And we spoke about needing to create what's
13 called a profile to compare this evidence with. So were you
14 able to get a profile of AJ Dang?

15 A Yes. There were buccal swabs in that evidence
16 kit.

17 Q That you have the DNA makeup for AJ Dang?

18 A Correct.

19 Q And were you able to create a DNA profile for
20 the defendant?

21 A Yes.

22 Q Using his buccal swab as well?

23 A Correct.

24 Q And you generated a report with the results of
25 your analysis in this case; is that correct?

1 A Yes, I did.

2 MS. BLUTH: And, Your Honor, I believe pursuant to
3 the stipulation by both parties, I'm asking to move into
4 evidence State's Proposed 151.

5 MR. CHAIREZ: No objection, Your Honor.

6 THE COURT: Admitted.

7 (State's Exhibit 151 admitted.)

8 BY MS. BLUTH:

9 Q The first testing that I'd like to speak to you
10 about is the DNA analysis that you did on the testicle swabs
11 of AJ Dang.

12 A Okay.

13 Q Those I'm going to just go through it line by
14 line with you. The testicle swabs were -- in your report it
15 states that they were semen positive but sperm negative. Can
16 you explain what that means?

17 A So when we have items suspected of possibly
18 containing semen, we have to do chemical tests to see if it is
19 there. So the first thing I do is a prostate specific antigen
20 test. And this is testing for protein that's found in seminal
21 fluid. So that's the first part where it says semen positive.
22 That means that there was a positive prostate specific antigen
23 test on this sample. Then, from the same sample, I will also
24 put it on a microscope slide and look at it under a microscope
25 to look for actual sperm cells. So I did not see any on the

1 sample, so that's why it says sperm negative.

2 Q So DNA cannot be found in semen if there is no
3 sperm in the semen. Does that make sense? Unless it's from
4 what's called epithelial cells.

5 A Yeah. There are other cells in the semen
6 besides the sperm cells that we are able to get DNA from.

7 Q How could something be semen positive, but sperm
8 negative?

9 A So this could be the results of someone either
10 being naturally sterile in that they don't produce sperm or
11 maybe because a male had a vasectomy and no longer is able to
12 ejaculate sperm. Or maybe with a prepubescent male who is not
13 yet producing sperm, you may only detect semen but not actual
14 sperm cells.

15 Q Then we just spoke briefly on what's called
16 epithelial cells. Can you give a brief definition on what an
17 epithelial cell is?

18 A So this epithelial cell is a scientific term for
19 a skin cell. So you would see these types of cells in semen
20 because as it's being ejaculated, there are cells inside the
21 body that are going to come out in that fluid. So we would be
22 able to detect DNA from those cells.

23 Q So here on your report EF stands for what?

24 A Epithelial fraction.

25 Q And the results were partial mixture profile.

1 A Yeah.

2 Q Can you explain that, please?

3 A Actually, I wanted to first explain what an
4 epithelial fraction is and then also the sperm fraction. So
5 when I have a sample that has semen in it, we do another step
6 in the DNA process called a differential extraction. This is
7 when we're able to separate those skin or epithelial cells
8 from the sperm cells in that mixture. So it allows us to get
9 two different DNA profiles from one sample. One being mainly
10 the epithelial skin cells, and the other being the sperm
11 cells. Now it's not always an exact and perfect process, so
12 there is some crossover between the two. So you might see
13 some sperm DNA in the epithelial fraction or you might see
14 some of those skin cells or epithelial cells in the sperm
15 fraction.

16 Q So now do you feel comfortable going into your
17 results?

18 A Yeah.

19 Q Okay. Thank you. So for the epithelial
20 fraction, what were your results?

21 A The DNA profile I got from this was a partial
22 mixture. And it's partial because I didn't get results at all
23 15 of the locations that we tested for. And it's a mixture
24 because I can see that there's DNA from more than one
25 individual in this sample.

1 Q And you are referring to what you've decided --
2 excuse me, discussed as a major profile and a minor profile.

3 A Well, within that mixture I can sometimes
4 determine whether someone contributed more DNA compared to
5 another person. So that person that contributed more DNA, I
6 could call their DNA profile the major DNA profile of that
7 mixture. And the person who didn't contribute as much DNA,
8 their DNA profile would be called the minor DNA profile.

9 Q And you found that in this specific testing; is
10 that correct?

11 A Yes.

12 Q And who was the major profile?

13 A The partial major DNA profile in this mixture
14 was consistent with Mazen Alotaibi.

15 Q And is there a frequency with which you can
16 compare that to?

17 A So anytime we make a comparison between an
18 evidence sample and a known profile and we see that the
19 numbers are matching up, we will calculate a statistic to show
20 how rare that profile was on the evidence. So for this
21 particular sample, the estimated frequency of that partial
22 major DNA profile was rarer than 119,000. And that means that
23 in every 119,000 people I would expect one person to have that
24 partial major DNA profile.

25 Q And do you have graphs that would help assist

1 you in showing how you do your analysis?

2 A Yes.

3 MS. BLUTH: Judge, I move into evidence State's 182.

4 MR. CHAIREZ: I'll stipulate.

5 THE COURT: Admitted.

6 (State's Exhibit 182 admitted.)

7 BY MS. BLUTH:

8 Q Let me zoom out for you, Ms. Marschner. Now, we
9 can do this two ways. If you would like to answer or explain
10 this to the jury from sitting down or if it would help you to
11 go up to the television if that's okay with Her Honor. We can
12 do it either way.

13 THE COURT: I don't care. Either way is fine.

14 A Doesn't matter to me.

15 BY MS. BLUTH:

16 Q Okay. Do you want to use -- I also have
17 PowerPoint laser if it's easier to use the TV when speaking to
18 the jury.

19 A I can do that.

20 Q I'm going to zoom in just a little bit more.

21 A First I'll explain what you're look at here. So
22 here I have three DNA profiles. And on the far left-hand side
23 of the chart where you see these colored boxes down here,
24 these are the names of the 15 different locations that I'm
25 looking at in the DNA. The third one from the bottom in the

1 pink box that's called amelogenin, this is a sex typing marker
2 that we also look at so that we can determine whether a DNA
3 profile is from a male or a female. If it was only a female,
4 you would only see an X there. And if it was a male, then it
5 would be an X and a Y.

6 So then the next three columns are three DNA
7 profiles. The first DNA profile is from the epithelial
8 fraction of the testicle swab. The profile in the middle is
9 the known profile from AJ Dang. And then the profile on the
10 far right-hand side is the known profile from Mazen Alotaibi.
11 Now if you look at the two known profiles from AJ Dang and
12 Mazen Alotaibi, you can see that at some of the locations
13 there's only one number listed there and that's because they
14 inherited the same number from both their mom and their dad.
15 So I'm only listing it there once. But the other places where
16 you see two numbers, that's because they inherited one from
17 their mom and one from their dad.

18 So then looking at the DNA profile for the testicle
19 swab, anywhere that you see a star means that there's
20 additional data present below a threshold that we set at our
21 laboratory in order to make comparisons. So any data that
22 falls below that threshold, I'm not able to make any
23 comparisons.

24 So for this particular sample, the reason I called it
25 a mixture is because there is additional data below that

1 threshold to tell me that there's more than one person's DNA
2 here. So I'm only going to be comparing the locations where I
3 believe I have a complete major profile. So for this
4 particular sample, I was only able to compare four out of
5 those 15 locations to the known profiles of AJ Dang and Mazen
6 Alotaibi.

7 Q And is that how the number is generated that you
8 got?

9 A Yes. So that statistic is only based on the
10 comparisons at those four locations. So if I had compared it
11 at all 15 locations, the statistic would have been much
12 larger. But because I'm only looking at four different
13 locations, the number is lower.

14 Q So on those four different locations, the
15 defendant's profile was found?

16 A For the major profile, yes.

17 Q And again, so just to simplify. On the testicle
18 swabs the partial major DNA profile is consistent with that of
19 the defendant.

20 A Yes.

21 Q And the frequency would be one out of 119,000.

22 A Correct.

23 Q The next item that you tested was the penile
24 swabs and these are also from AJ Dang taken during his sexual
25 assault nurse examination.

1 A Yes.

2 Q And those were semen positive and sperm
3 negative?

4 A Yes, just like the other sample.

5 Q And the testing done on the epithelial cells,
6 the skin cells, resulted in what?

7 A I got a mixture profile in here. It wasn't
8 partial because I had data above the threshold at all of the
9 locations that I was looking at. And then his sperm fraction
10 again, I did not get a DNA profile.

11 Q So the major DNA profile was consistent with
12 whom?

13 A It was consistent with AJ Dang.

14 Q And could the defendant be excluded as the minor
15 profile?

16 A No. So when I looked at the mixture DNA profile
17 and then compared it with the profile of Mazen Alotaibi, even
18 though he wasn't the major profile, I could see that his
19 numbers were showing up in that mixture at the locations that
20 I determined were complete and that I could make comparisons
21 at.

22 Q And what was the frequency with that?

23 A So this statistic is a little bit different
24 because I'm not doing it on just one person's DNA profile.
25 I'm doing it on the mixture as a whole. So for this

1 particular sample, approximately one in 45 individuals in the
2 general population could be included as a contributor to that
3 mixture.

4 Q And with the sperm fraction we see no DNA
5 profile obtained. Why is that?

6 A Most likely because there weren't any sperm
7 cells. So when I separated out the two fractions, there
8 wasn't -- weren't any sperm cells in order for me to get the
9 sperm fraction DNA from.

10 Q The next item tested was the boxer shorts of AJ
11 Dang. And it looks like you tested two different areas; is
12 that correct?

13 A Yeah. So when I'm looking at an item of
14 clothing, it's not as obvious where I need to sample from. So
15 first I need to locate possible stains to look at. So I'm
16 going to use what we call an alternate light source. It's
17 kind of like a UV light. I turn off the lights and when I
18 shine the UV light on the item of clothing, body fluids such
19 as semen, saliva and sweat will fluoresce. So that will
20 pinpoint possible areas for me to do further testing on. So
21 then, once I've located those areas on the boxer shorts using
22 the UV light, I can do further chemical testing to determine
23 if there's possible semen present.

24 Q So it shows in the first item that was tested
25 was the stain on the outside front left.

1 A Yes.

2 Q And like you said, you did the positive
3 presumptive test. You did the presumptive test, it came back
4 positive.

5 A Correct.

6 Q But when you actually did the testing, it came
7 back as semen negative; is that correct?

8 A Yes. Semen negative and sperm negative. So
9 then I didn't do any further DNA analysis on the sample.

10 Q So you then moved on to the stain on the inside
11 of the crotch.

12 A Yes.

13 Q You did that same positive -- excuse me. You
14 did that same presumptive test.

15 A Yes and it was positive.

16 Q And you then did your further analysis which
17 showed what?

18 A It was both semen positive and sperm positive.

19 Q On the testing you did for the epithelial cells,
20 what were your results?

21 A I got a mixture profile from this and then I was
22 able to determine that there was a major and a minor
23 contributor. So when I compared the major DNA profile, it was
24 consistent with Mazen Alotaibi. And then the minor DNA
25 profile was consistent with AJ Dang.

1 Q And do you have a graph to show your testing in
2 this?

3 A Yes, I do.

4 MS. BLUTH: These are already admitted as
5 [indiscernible] document.

6 BY MS. BLUTH:

7 Q If you could explain what this is showing.

8 A Okay. So these are DNA profiles similar to the
9 one before. The only thing that's different is that the first
10 DNA profile there is the DNA profile that was from the
11 epithelial fraction from the stain in the crotch of the
12 boxers. So here it's more clear that I have a mixture profile
13 because all of the data here is above that threshold. So I'm
14 not seeing any of those stars indicating that there's
15 additional data. So I'm actually able to make conclusions at
16 every single one of the locations when I'm making my
17 comparison.

18 Now, you'll see that some of these numbers have a
19 bracket around them. That indicates that they don't have as
20 much DNA there. So they're going to be attributable to that
21 minor contributor. So if I look at the numbers that are not
22 in the brackets and I compare them to the two profiles that I
23 have here, you'll see that the majority of them are matching
24 up with the known profile of Mazen Alotaibi. And then the
25 ones that are in the brackets are consistent with the known

1 profile of AJ Dang. Any numbers that he may share or have in
2 common with the other person in the mixture who's the major
3 profile, that number's going to show up outside of the
4 brackets because it's kind of being masked by that major
5 contributor.

6 Q And we're discussing right now, we're talking
7 about the epithelial fraction, so the skin cells.

8 A Yes.

9 Q And you stated there was a mixture in the
10 profile.

11 A Yes.

12 Q You said that the major profile was the
13 defendant's.

14 A Correct.

15 Q And that -- what was the frequency of that?

16 A So for this particular one, because I had a full
17 major profile, the estimated frequency is rarer than one in
18 700 billion. The number's actually much larger than that, but
19 our laboratory, we cut it off at 700 billion. And the way
20 that we came up with that number is that the world's
21 population is approximately seven billion, so we took 100
22 times that. So I'm saying that in over 100 times the world's
23 population, I'm only expecting one individual to have the
24 major profile that's seen in this evidence.

25 Q So it can conclusively be stated that the

1 defendant's DNA is on the inside of AJ Dang's boxer shorts?

2 A Yes. We assume identity at this point and
3 that's assuming that he doesn't have an identical sibling that
4 would have that same DNA profile.

5 Q And then your results state that in regards to
6 the sperm fraction in the inconclusive profile.

7 A Yes. And this is because of all the data that's
8 there, it's either not being detected or it's all below that
9 threshold where I'm able to make any comparisons. So if I
10 were to show you that DNA profile, it would just be a bunch of
11 stars going down because there weren't any pieces of DNA that
12 were above that threshold for me to make a comparison to.

13 Q The next item was the left ear swabs that were
14 taken during the examination on AJ Dang?

15 A Yes.

16 Q And your results show a mixture profile on that.
17 Is there a graph for that as well?

18 A Yes, there is. So again here, similar setup.
19 The only thing that's different is that the DNA profile on the
20 left-hand side is the mixture profile that I got from the left
21 ear swabs. So you can see that there -- many of the numbers
22 don't have the brackets around them, which means that I have a
23 good major profile here. However, there are additional
24 alleles here. There are additional numbers that are either in
25 the brackets or they're being marked here as a star because

1 they're below our threshold.

2 So if I compare the numbers that are not in the
3 brackets to the known profiles of the two known individuals
4 here, they were all consistent with Mazen Alotaibi. So his
5 DNA was the major DNA profile in this mixture.

6 Q And is that identity assumed?

7 A Yes. The same stat, rarer than one in 700
8 billion.

9 Q You were talking about the strength of the DNA
10 sample. Is it more likely that this was a body fluid that you
11 were testing versus the touch DNA?

12 A Yeah. Because one of the steps that I do during
13 my analysis is to determine how much DNA is there, based on
14 the quantity that I detected, I would expect that this is more
15 likely from a body fluid than from touch DNA.

16 Q Moving on to the chest swabs. Actually, I do
17 want to ask you a question on the left ear swabs. It was a
18 mixture profile?

19 A Yes.

20 Q Could any conclusions be made to the partial
21 minor?

22 A When I compared it to AJ Dang, he was included
23 as the minor contributor to that mixture.

24 Q If it's from AJ's ear, it would make sense that
25 the minor would be AJ, correct?

1 A Correct.

2 Q Now moving on to the left interior chest swabs.
3 Again, mixture profile?

4 A Correct.

5 Q And what were the results on that?

6 A So here when -- I had a mixture profile and I
7 was able to identify a major profile here. So the major DNA
8 profile was consistent with Mazen Alotaibi. And then
9 estimated frequency is rarer than one in 700 billion.

10 Q So identity is assumed?

11 A Correct.

12 Q That would be Mr. Alotaibi's DNA on the left
13 chest of AJ Dang?

14 A Correct.

15 Q And can you say whether or not that sample would
16 have been?

17 A Again, as in the previous sample, when I
18 determined how much DNA was there, it's more likely that it
19 was from a body fluid rather than from touch DNA.

20 Q The next thing you tested were the rectal swabs
21 taken during the sexual assault examination of AJ Dang?

22 A Yes.

23 Q And when you tested these, they were positive
24 presumptive for blood.

25 A Correct.

1 Q And what was your results in regards to this
2 piece?

3 A So I also tested them for semen. So they were
4 positive for that prostate specific antigen, but negative for
5 sperm cells. And then the DNA profiles I got here, the
6 epithelial fraction was a full male profile, meaning a DNA
7 profile from one individual and it was consistent with AJ
8 Dang. And then for the sperm fraction I got an inconclusive
9 profile, meaning that there wasn't enough DNA there for me to
10 make any comparisons to it.

11 Q Let me ask you a few questions. If an
12 individual is anally penetrated by a penis and a lubricant is
13 used, so like shampoo, lotion, something of that sort, can
14 that affect the testing process and the results?

15 A Yeah. So if you were wanting to see if someone
16 else's DNA was left in the rectum or the anal area, it would
17 be more likely that their DNA would be left behind if it was
18 like a direct skin-to-skin contact without any lubricant
19 because then there would be more friction and more likely that
20 cells would be shed from each of the parties and then
21 transferred to one another.

22 Now if you have a lubricant there, there isn't going
23 to be as much friction and so the cells from the penis are not
24 necessarily going to transfer directly to the sin of the
25 rectal area. So when you went and later swabbed that rectal

1 area you probably wouldn't get any of those skin cells from
2 the penis.

3 Q So if I rubbed my hand on your hand real quick
4 back and forth, friction is created.

5 A Yes.

6 Q And there's a greater chance that skin cells can
7 be transferred from my skin to your skin.

8 A Correct.

9 Q Now if we do that same thing but we have a
10 lubricant in between us, less friction.

11 A Correct.

12 Q And less chance of a cell transfer to occur.

13 A Correct.

14 Q In regards to if that individual -- so if the
15 penis goes into the anal opening and the person does not
16 ejaculate, would that also affect if DNA were left?

17 A Yes, because if they ejaculated, then there
18 would be body fluid being transferred to that area. And the
19 body fluid, as I mentioned earlier, is a good source of DNA.
20 But if there's no ejaculation and the only type of transfer
21 possible are those few skin cells being transferred, then it's
22 going to be less likely that you're going to be able to detect
23 that it was there.

24 Q What if the victim bled after the incident or
25 during the incident? Does that affect whether DNA can be left

1 or found?

2 A Yes. Because blood is a better source of DNA, if
3 the victim's blood is present on the surface in addition to
4 skin cells maybe transferred from the penis, any of the DNA
5 from that blood is going to overwhelm the DNA from those few
6 skin cells that are left behind. So when I'm doing my
7 analysis, the only DNA that I'm going to be detecting is most
8 likely from the blood DNA and not from the few skin cells that
9 are mixed with it.

10 Q Okay. So in conclusion, if a lubricant is used,
11 that can affect your ability to recover DNA.

12 A Correct.

13 Q If the individual does not ejaculate, that
14 greatly affects the possibility of finding DNA.

15 A Correct.

16 Q And if the victim bleeds, that also affects it.

17 A Correct.

18 Q And the next item you tested was the anal swabs;
19 is that correct?

20 A Yes.

21 Q And again, you did a presumptive test and it
22 came back positive for blood.

23 A Yes.

24 Q So there was blood on those swabs as well from
25 AJ. And what did the rest of your testing, what were those

1 results?

2 A So the testing for semen, the prostate specific
3 antigen was positive. However, I did not identify any sperm
4 cells. And then from the two different samples or from the
5 two different DNA profiles from the sample, the epithelial
6 fraction was a full male profile that was consistent with AJ
7 Dang. And then the DNA profile from the sperm fraction was a
8 full male profile that was also consistent with AJ Dang. So
9 this is most likely that carryover from fraction to fraction
10 where I'm detecting DNA in the sperm fraction that isn't
11 necessarily from sperm cells because I didn't identify any.

12 Q The next testing under item F was the oral swabs
13 from AJ Dang?

14 A Yes.

15 Q And what were your results on that?

16 A So when I did the testing for semen for a
17 prostate specific antigen, it was negative. And then I didn't
18 identify any sperm cells. So I didn't do any further DNA
19 analysis on this sample.

20 Q If an individual places their penis inside
21 someone else's mouth but they do not ejaculate, would you be
22 able to recover DNA?

23 A No. There could be a few cells left behind, but
24 again, it's now in the presence of saliva in the victim's
25 mouth which is a good source of DNA. So even if there are a

1 few skin cells there, all that I would detect from that swab
2 would be the victim's saliva because it was such a better
3 source of DNA than the touch, the cells from the surface of
4 the penis.

5 Q The next items was the right hand swab of AJ
6 Dang?

7 A Yes.

8 Q And that was semen positive.

9 A Semen positive and I didn't identify any sperm
10 cells, so it was sperm negative.

11 Q It says as far as the skin cells, the epithelial
12 fraction, it was a mixture profile.

13 A Yes.

14 Q And what were the results of that?

15 A So here I had a major and a minor profile. The
16 major profile was consistent with AJ Dang on his own hands.
17 And then the minor profile was consistent with Mazen Alotaibi.
18 And then the frequency for this one, it wasn't identity, it
19 was one -- it was rarer than one in 94.7 billion.

20 Q How many people did you say are on earth?

21 A Approximately seven billion.

22 Q Okay. So there's not even 94 people, 94.7
23 billion people on earth.

24 A Correct.

25 Q That shows how conservative your threshold is,

1 correct?

2 A Yes.

3 Q So in order to assume the identity of Mr.
4 Alotaibi, it would have to be one in 700 billion?

5 A Yes.

6 Q And here it's one in 94.5 billion.

7 A Correct.

8 Q But even though that's more than people are on
9 earth, you still are conservative and you don't say identity
10 is assumed.

11 A Correct.

12 Q So assuming AJ is the major, like you said the
13 defendant cannot be excluded from this sample.

14 A As the minor profile, correct.

15 Q The next testing that you did was the left hand
16 swab.

17 A Yes.

18 Q And your results state you received a mixture
19 profile on that as well?

20 A Yes. And from this mixture profile, the major
21 DNA profile was consistent with AJ Dang on his own hands. And
22 then, I wasn't able to make any conclusions about who the
23 minor contributor was on this sample. That's because there
24 wasn't enough DNA from that person.

25 Q The next item you tested was a white bath towel

1 and that was negative presumption for semen tests.

2 A Yes. So I used the alternate light source to
3 locate possible areas to test for semen. And then when I did
4 the presumptive testing for semen, it was negative. So I
5 didn't take any cuttings on for either further confirmatory
6 testing for that prostate specific antigen or a microscopic
7 sperm. I just stopped it at the presumptive testing.

8 Q So no further testing was done on that.

9 A Right.

10 Q The next item that we're going to be discussing
11 is the condom that was impounded from the hotel room by Ms.
12 Tucker.

13 A Okay.

14 Q And the swabbing inside, your results were both
15 positive for semen and sperm.

16 A Correct.

17 Q And you were able to obtain a full male profile
18 from that piece of evidence.

19 A Yeah. And both the epithelial fraction and the
20 sperm fraction, it was a full male profile that was not
21 consistent with either Mazen Alotaibi or AJ Dang. It was an
22 unknown male that I don't have a known profile to compare it
23 to.

24 Q And in regards to the testing on the swabbing of
25 the outside of the condom?

1 A I got inconclusive profiles for both epithelial
2 fraction and the sperm fraction, meaning that there wasn't
3 enough DNA left behind for me to get a DNA profile from that I
4 could make a comparison to.

5 Q The next item we'll be talking about belonged to
6 Mr. Alotaibi, the penis swabs from Mr. Alotaibi. Those were
7 semen positive, sperm positive.

8 A Correct.

9 Q And you got from the skin cells, the epithelial
10 fraction, you got a mixture profile.

11 A Yes. The mixture profile, the major profile was
12 consistent with Mazen Alotaibi. And then I couldn't make any
13 conclusions about who the minor contributor was. And then on
14 the sperm fraction, I got a partial male profile. Partial
15 because I didn't get results at all 15 locations, but the DNA
16 profile that I did generate was consistent with Mazen
17 Alotaibi.

18 Q The next item is the boxer shorts of the
19 defendant. There were two stains. The first stain we're
20 going to talk about is the stain that was on the front right
21 of the shorts.

22 A Okay.

23 Q You did a presumptive test for semen?

24 A Yes.

25 Q And what were the results of that?

1 A So I did the presumptive test for semen and then
2 took a cutting from that sample and the prostate specific
3 antigen test was positive. And then I also identified sperm
4 cells on this item. From the epithelial fraction I had a
5 mixture profile again. The major profile is consistent with
6 Mazen Alotaibi, but I wasn't able to make any conclusions
7 about who the minor contributor was. And then for the sperm
8 fraction, it was a full male profile consistent with Mazen
9 Alotaibi.

10 Q Second thing was the stain on the inside of the
11 front left of the boxers.

12 A Okay.

13 Q You also did a test of, presumptive test of
14 semen on that and it came back positive?

15 A Yes.

16 Q And it was also semen positive, sperm positive
17 when you did your confirmation testing on that.

18 A Correct.

19 Q And you found a mixture profile on the skin
20 cells, the epithelial fraction?

21 A Yeah. So in this mixture profile, again the
22 major profile was consistent with Mazen Alotaibi, but I wasn't
23 able to make any conclusions about who that minor contributor
24 was to the mixture. And then in the sperm fraction, it was a
25 partial male profile consistent with the known profile of

1 Mazen Alotaibi.

2 Q And then lastly, it also notes there was a stain
3 in the inside crotch seam on the back of the shorts.

4 A Yes. But when I did my presumptive testing for
5 semen on this, it was negative. So I didn't take any cuttings
6 on to do further semen testing or DNA analysis.

7 Q And does that conclude the testing that you did
8 in regards to this case?

9 A Yes.

10 MS. BLUTH: Pass the witness, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. CHAIREZ:

13 Q Ms. Marschner, how many extractions from AJ Dang
14 did you run where you separated the sperm from the nonsperm
15 DNA?

16 A There were six samples that I performed the
17 differential extraction on to get the epithelial fraction and
18 the sperm fraction.

19 Q All right. Do you mind if I use, I mean is it
20 okay if I use the word skin DNA as opposed to epithelial
21 because it's a smaller word?

22 A That's fine.

23 Q Okay. And in all of those cases where you did
24 the separation, how many times did you find Mazen Alotaibi's
25 sperm on those six samples that you drew from AJ Dang?

1 A In the sperm fractions I wasn't able to include
2 him on any of those samples.

3 Q But you did find skin cells or skin DNA on these
4 fractions that you're talking about, correct?

5 A Correct.

6 Q So we found Mazen's DNA on AJ's right hand?

7 A Yes.

8 Q And that was skin DNA, correct?

9 A I can't say for sure -- I can't say for sure
10 what kind of DNA it is because obviously, there are other body
11 fluids that contain the skin cells.

12 Q But it was definitely not sperm DNA that we
13 found on AJ's right hand, correct?

14 A Not from sperm cells, no.

15 Q And the DNA that was found on AJ's left ear, it
16 was nonsperm DNA, correct?

17 A I didn't do any semen testing on that sample.

18 Q Okay. With respect to the semen that is found
19 on AJ's testicles, did we make an assumption that AJ is a
20 prepubescent teenager or do we know?

21 A I don't know that information myself when I'm
22 doing my testing, so I don't make any assumptions.

23 Q Well, one of the things that you said and I just
24 want to -- because it will be coming an issue after the nurse
25 testifies, is whether or not AJ is a prepubescent teenager or

1 post pubescent teenager. If AJ, in fact, is a post pubescent
2 teenager, we would expect to find AJ's own sperm inside of any
3 semen that may be on him; is that correct?

4 A That's correct unless maybe it was preejaculate,
5 then it might not have any sperm cells in it.

6 Q All right. But we mentioned that one of the
7 reasons we wouldn't find sperm in the semen would be because
8 somebody might be sterile or they might be prepubescent. Are
9 those the two reasons or are there any other?

10 A The other option would be if it was only
11 preejaculate and that doesn't always contain sperm cells in
12 it.

13 Q Okay. So the semen that is -- and help me
14 remember this. So you took -- you found semen on AJ, on his
15 testicles, correct?

16 A Yes.

17 Q And you found semen on AJ inside of his boxers,
18 correct?

19 A Yes.

20 Q And you found semen on AJ where else?

21 A On his right hand and then in his rectal and
22 anal areas.

23 Q All right. And in all of the semen that you
24 found on AJ, there was no sperm DNA from Mazen Alotaibi,
25 correct?

1 A Correct. I never got a DNA profile I could
2 compare it to from that sperm cell fraction.

3 Q Okay. Now you mentioned that you did a DNA
4 profile from AJ's mouth, correct?

5 A I did not do a DNA profile because it was
6 negative for semen and sperm.

7 Q Okay. So Mazen's DNA is not found on or near
8 AJ's rectum, correct?

9 A Correct. I was only detecting AJ Dang's DNA
10 from those profiles.

11 Q And Mazen's DNA is not found on or near the
12 mouth of AJ, correct?

13 A I didn't do any DNA testing on that sample so I
14 couldn't say.

15 Q Now with respect to the items in the bathroom,
16 how many items did you test?

17 A The only additional items that I tested are the
18 ones that we went over. There was a towel and a condom and
19 then there were boxer shorts from both individuals.

20 Q All right. So you only tested on towel?

21 A Yes.

22 Q But how many towels were in the evidence bag
23 that you had that you could have tested?

24 A I would have to refer to my notes to see.

25 Q Go ahead and do that.

1 A There were a total of six towels and washcloths.
2 However, I was asked by the detective to only look at the one
3 particular towel that I looked at.

4 Q And why was it that one particular towel the one
5 that you looked at?

6 A The reason I only looked at that is because
7 that's what I was told to do. Why they told me to only do
8 that, I don't know.

9 Q Okay. Just a few more questions, Ms.
10 Marschner. In terms of the boxer shorts or the items of
11 clothing from Mr. Alotaibi, you did find stains with semen in
12 them, correct?

13 A Yes, I did.

14 Q And you did find stains with his sperm inside of
15 that semen, correct?

16 A Correct.

17 Q And the condom that you found, it didn't have
18 Mazen's semen or sperm, correct?

19 A Correct.

20 Q Now, I'm a little confused on the stain with
21 respect to the boxer shorts when you said there was like a
22 mixture profile. Was that -- would you explain that again to
23 me?

24 A You're talking about the boxer shorts that
25 belonged to AJ Dang?

1 Q No, to Mazen Alotaibi.

2 A Okay.

3 Q When you say there was, again, there was
4 positive semen or positive DNA semen.

5 A Positive for semen and then also positive for
6 sperm cells.

7 Q But it was his own sperm, correct?

8 A Yes. In the sperm fraction, the DNA profiles
9 were consistent with Mazen Alotaibi. But in the epithelial
10 fractions, I got a mixture where the major profile was
11 consistent with Mazen Alotaibi, but I couldn't say who the
12 additional DNA was from.

13 Q Okay. So we cannot say whether or not it was
14 AJ's skin DNA that was found on his boxers.

15 A No, I can't.

16 Q And lastly, if an individual gets sexually
17 aroused, is it possible for semen to come and stain your
18 shorts without actually having sex or do you not know?

19 A That's probably not really my area of expertise.

20 Q All right. So finally, with respect to AJ's
21 clothes and/or DNA tests for semen that you found, you never
22 found Mazen's sperm DNA anywhere on AJ's body, correct?

23 A From sperm cells, no.

24 Q From saliva we found it and from epithelial or
25 touching we found it.

1 A Correct.

2 Q And we did find semen on AJ's testicles.

3 A Yes.

4 Q You don't whether it was AJ's semen or somebody
5 else's semen.

6 A On the testicles, I didn't detect any sperm
7 cells and so I didn't get DNA profile from the sperm fraction.
8 But then from the epithelial fraction, the DNA profile that I
9 was able to compare it to, the major profile was consistent
10 with Mazen Alotaibi.

11 Q So we find Mazen's skin DNA on AJ's hand, is it
12 possible that AJ could have used his own hand to touch his
13 testicles and we would make a DNA transfer that way?

14 A It's possible.

15 Q And the amount of epithelial DNA or skin DNA you
16 found on AJ's testicles, was it a huge amount or was it a
17 small amount?

18 A It was only a small amount, which is what you
19 usually expect when you're talking about touch DNA.

20 Q All right.

21 MR. CHAIREZ: That's it, Your Honor.

22 THE COURT: Redirect.

23 MS. BLUTH: Just one.

24 REDIRECT EXAMINATION

25 BY MS. BLUTH:

1 Q If an individual did not ejaculate it would be
2 difficult to find sperm from -- excuse me. It would be
3 difficult to find DNA because there would be no sperm; is that
4 correct?

5 A Yeah. There would be no body fluid transfer.
6 You would have to come into direct contact with the skin. And
7 then, even then, it's difficult to detect that touch DNA.

8 MS. BLUTH: Thank you. Nothing further.

9 THE COURT: Anything else?

10 MR. CHAIREZ: No, Your Honor.

11 THE COURT: You're free to go. Thank you, ma'am, for
12 your time. Is this the last witness of the day?

13 MS. BLUTH: Yes, Your Honor.

14 THE COURT: All right. Ladies and gentlemen of the
15 jury, we are finished for the day. And again, we will not
16 have trial tomorrow. So the next time I will see all of you
17 is Monday at 1:00. Like I said, the way this trial is
18 progressing, there is a good chance this will be sent to you
19 for deliberations probably sometime toward the end of the day
20 on Tuesday, probably at the latest on Wednesday afternoon.

21 So ladies and gentlemen of the jury, you're
22 admonished not to converse amongst yourselves or with anyone
23 on any subject connected with the trial. Do not read, watch
24 or listen to any report of or commentary on the trial by any
25 medium of information including, without limitation,

1 television, newspaper, radio or Internet and do not form or
2 express an opinion on this case.

3 Remember, it is very important that until this trial
4 is finished that you not watch the news or anything else where
5 you may hear anything about this case. Thank you very much.

6 (Jury recessed at 12:33 p.m.)

7 THE COURT: All right. The jury is out of the room.
8 Do you guys want to start on jury instructions?

9 MS. HOLTHUS: We're not ready to start now. We've
10 got some generics, but we were going to go back and work on
11 them right now.

12 THE COURT: Okay. When do you want to go over them?

13 MR. CHAIREZ: Your Honor, I guess my question is does
14 the Court have their own standard stock instructions or do you
15 expect us to provide all of those?

16 THE COURT: Yes [indiscernible].

17 MS. HOLTHUS: We'll provide them all.

18 MR. CHAIREZ: I'm going to ask for like maybe two or
19 three special ones maybe. One, intoxication being a defense
20 to a specific intent crime. I'm not sure if they believe that
21 consent is a defense to statutory rape or statutory sexual
22 seduction. So the issue about against his will or against
23 their will. I guess I want to see their stock ones first
24 so --

25 MS. HOLTHUS: Yeah. I pulled a specific intent

1 instruction. It's not going to say intoxication is a defense,
2 it's going to say you've got [indiscernible] prove a specific
3 intent. [indiscernible] intoxication only [indiscernible]
4 it's not a defense to sex assault, general intent crime.
5 We're researching right now. It's our belief he's not
6 entitled to the statutory. That will probably be something
7 we're going to end up fighting between us. We believe that if
8 AJ consented to the acts, that it's a lewdness, not a
9 statutory.

10 THE COURT: I will do a little research on that as
11 well. If there's any cases you want me to look at I will.

12 MS. HOLTHUS: We'll send them. I've got a whole
13 bunch of people pulling and looking. If the Supreme Court
14 [indiscernible] both ways. The time they included it I
15 believe they were wrong. So there's also cases where they
16 found the other way. Clearly, consent is their defense but
17 our position is it only takes it out of the sex assault down
18 to the lewdness because AJ is 13 he's incapable of consenting.
19 I mean, as a matter of law it becomes a lewdness. We believe
20 statutory is reserved for the 14 and up. If AJ were 14, then
21 I think stat would probably be the appropriate charge, but not
22 when he's under 14. So anyway, just to give you a preview of
23 what I think we're going to mostly argue.

24 THE COURT: And I would like to read those ahead of
25 time.

1 MR. CHAIREZ: I'll give you some of our citations,
2 Your Honor. We believe State versus District Court Eckerson
3 is the case. I'll give you a citation. I have a 89 Pacific
4 3d 663 --

5 THE COURT: Hold on. 89 Pacific 3d 663?

6 MR. CHAIREZ: Right. Which will say that yes,
7 consent -- that somebody under 14 can consent and it is a
8 defense to the charge of sexual assault.

9 MS. HOLTHUS: That's true. I don't argue with that.

10 MR. CHAIREZ: And we believe -- I think Linda Bell
11 got reversed on a case recently. It was Manson, but it's an
12 unpublished opinion, which also says that it was wrong not to
13 give the --

14 THE COURT: The theory defense if the defendant, if
15 they can show even somewhat. Is that the case?

16 MR. CHAIREZ: Here, I'm quoting the Supreme Court.
17 "Further, we cannot conclude that the District Court's error
18 was harmless beyond a reasonable doubt in light of evidence
19 adduced at trial and the District Court's erroneous
20 instruction that consent is not a defense to the charge of
21 sexual assault of a child under the age of 14."

22 MS. HOLTHUS: That's not the issue. We're not saying
23 -- I've agreed. Consent is a defense to the charge of sexual
24 assault. The question becomes what do you do when you have
25 consent? My take is his defense of consent is covered by the

1 alternative count of lewdness. It isn't statutory, it's
2 lewdness. Lewdness is sex assault with consent.

3 MR. CHAIREZ: And we would, basically we would say,
4 Your Honor, the other thing we're going to do at the close of
5 the State's case is to move to have two of the Counts of
6 lewdness dismissed because out of AJ's own mouth, he said
7 there was no fondling, there was no touching, there was no
8 rubbing, et cetera, et cetera. So they can't -- I mean,
9 essentially we would move to dismiss two of those lewdness
10 Counts.

11 MS. HOLTHUS: AJ's -- we need to go back and listen
12 to the testimony. AJ specifically said that he kissed him on
13 the left ear.

14 MR. CHAIREZ: Well, that's different. We're not
15 moving to dismiss the ear or the neck. We believe that's --
16 and so the other thing is we believe that intoxication is a
17 defense to lewdness and I have two cases for that.

18 MS. BLUTH: Can I just have your citations? Then we
19 can go back -- because we don't have any of ours right now.
20 So can we just get your citations so we can all go research?

21 MR. CHAIREZ: Okay. You want me to e-mail you all
22 these cases?

23 THE COURT: I would like them too.

24 MR. CHAIREZ: Do we have an e-mail address for the
25 Court?

1 THE CLERK: It's dept231c@clarkcountycourts.us.

2 MR. CHAIREZ: Did you say lc or dc?

3 THE CLERK: Lc.

4 MR. CHAIREZ: L as in Las Vegas and C as in
5 California?

6 THE CLERK: It stands for law clerk.

7 MR. CHAIREZ: Oh, okay.

8 THE COURT: You know, I'm going to have to go back
9 and listen to AJ's testimony because I agree with Mr. Chairez.
10 I remember there was discussion in the elevator, but once
11 they're in the bathroom I don't recall him saying anything.

12 MS. HOLTHUS: And they were touching all over his
13 body.

14 THE COURT: There's a whole lot of questions about
15 that. And I don't -- my memory is more consistent with Mr.
16 Chairez. I'm going to have to go back and listen to that.

17 MS. HOLTHUS: I think what he said was the penis went
18 right through the mouth, it wasn't any pushing on the face.
19 The penis went [indiscernible]. Like I said -- go check. I
20 believe he said he touched him all over.

21 MR. CHAIREZ: Your Honor, they can't have it both
22 ways. Either he was -- either there was penetration and no --
23 well, essentially, we don't believe there was any foreplay if
24 you listen to AJ's story.

25 THE COURT: I'm going to have to listen. Again, my

1 recollection is consistent with yours, Mr. Chairez. Okay.
2 And you'll get the cases to me?

3 MR. CHAIREZ: Yes.

4 THE COURT: So I can read them probably tomorrow
5 afternoon and over the weekend.

6 MR. CHAIREZ: All right.

7 THE COURT: We'll see you Monday. Actually, let's
8 cover the admonishment of the defendant because shortly we'll
9 go into your case in chief.

10 Ms. Interpreter, it's really important that you
11 interpret all of this.

12 Mr. Alotaibi, under the Constitution of the United
13 States and under the Constitution of the State of Nevada, you
14 cannot be compelled to testify in this case. Do you
15 understand that?

16 THE DEFENDANT: Is it testify?

17 THE COURT: I'm sorry? Under the Constitution of the
18 United States and the Constitution of the State of Nevada, you
19 cannot be forced to testify in this case. Do you understand
20 that?

21 THE DEFENDANT: Yes.

22 THE COURT: You may, however, at your own request,
23 give up this right and take the witness stand and testify.
24 However, if you do take the stand and testify, you will be
25 subject to cross-examination by the District Attorney and

1 anything that you may say, whether it's on direct or
2 cross-examination, will be the subject of fair comment when
3 the District Attorney speaks to the jury in their final
4 argument. Do you understand that, Mr. Alotaibi?

5 THE DEFENDANT: Yes.

6 THE COURT: If you choose not to testify, the Court
7 will not permit the District Attorney to make any comments to
8 the jury because you have chosen not to testify. Do you
9 understand that as well, Mr. Alotaibi?

10 THE DEFENDANT: Yes.

11 THE COURT: And also, if you elect not to testify,
12 the Court will instruct the jury, but only if your attorney
13 specifically requests, as follows. The law does not compel a
14 defendant in a criminal case to take the stand and testify and
15 no presumption may be raised and no inference of any kind may
16 be drawn from the failure of a defendant to testify. Do you
17 understand all of this, Mr. Alotaibi?

18 THE DEFENDANT: Yes.

19 THE COURT: And I'm assuming he does not have any
20 felony convictions within the last ten years, Mr. Chairez?

21 MR. CHAIREZ: I don't believe he has any convictions,
22 but I guess Ms. Holthus found that he was arrested for
23 something in Austin, public indecency. What is it?

24 THE COURT: On Sixth Street?

25 MS. HOLTHUS: All I know about it is he like was

1 running out on a check and they -- something happened with a
2 check.

3 MR. CHAIREZ: That's okay.

4 MS. HOLTHUS: It was a nothing. It was like a
5 misunderstanding. It was nothing.

6 MR. CHAIREZ: No, he has no criminal convictions.

7 THE COURT: Okay. Good.

8 (Court recessed for the evening at 12:44 p.m.)
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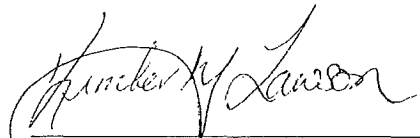
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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STATE OF NEVADA,)	CASE NO. C287173-1
)	DEPT NO. XXIII
Plaintiff,)	
vs.)	
)	
MAZEN ALOTAIBI,)	TRANSCRIPT OF
)	PROCEEDINGS
Defendant.)	
_____)	

BEFORE THE HONORABLE STEFANY MILEY, DISTRICT COURT JUDGE

JURY TRIAL - DAY 7

MONDAY, OCTOBER 21, 2013

APPEARANCES:

FOR THE STATE:	MARY KAY HOLTHUS, ESQ. Chief Deputy District Attorney JACQUELINE M. BLUTH, ESQ. Deputy District Attorney
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FOR THE DEFENDANT:	DON P. CHAIREZ, ESQ.
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Also Present:	Mohammad A. Taha, Interpreter Saad Musa, Interpreter Theresa Tordjman, Interpreter
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AA000633

I N D E X

WITNESSES FOR THE STATE:

RUTH LEON

Direct Examination By Ms. Bluth 41

Cross-Examination By Mr. Chairez 44

JERI DERMANELIAN

Direct Examination By Ms. Holthus 47

Cross-Examination By Mr. Chairez 85

Redirect Examination By Ms. Holthus 97

Direct Examination By Mr. Chairez 135

WITNESSES FOR THE DEFENDANT:

JENNIFER MELENDEZ MURILLO

Direct Examination By Mr. Chairez 100

Cross-Examination By Ms. Holthus 118

MONTE MILLER

Direct Examination By Mr. Chairez 135

Cross-Examination By Ms. Bluth 165

E X H I B I T S

STATE'S EXHIBITS ADMITTED:

PAGE

7 through 34

Photographs

78

1 LAS VEGAS, NEVADA, MONDAY, OCTOBER 21, 2013, 11:11 A.M.

2 * * * * *

3 (Outside the presence of the jury.)

4 THE COURT: Okay. We're on. So, we're discussing
5 jury instructions. The defendant is not present yet. Mr.
6 Chairez wants to start. And that's fine with the Court, so
7 long as the instructions, once they're settled, will be
8 reviewed with the defendant prior to the jury coming in.
9 Right?

10 MR. CHAIREZ: That's -- that's fine, Your Honor.
11 That's correct.

12 THE COURT: All right. So let's get started. I have
13 a bit of case law that I read over the weekend. Let's just go
14 over the disputed instructions.

15 MR. CHAIREZ: Right.

16 MS. HOLTHUS: What -- from -- from the defense end of
17 them --

18 MR. CHAIREZ: I haven't seen anything from the State,
19 Your Honor.

20 THE COURT: I don't have any --

21 MR. CHAIREZ: But I'm assuming they're bringing the
22 stock instructions to which I have no objection --

23 MS. HOLTHUS: They -- they should have been sent to
24 you.

25 MS. BLUTH: Howard sent them to you last week.

1 MR. CHAIREZ: No. All I got was a case called State
2 vs. Cossack. I didn't get anything else.

3 MS. HOLTHUS: You should have --

4 MR. CHAIREZ: But --

5 MS. HOLTHUS: -- got all of our instructions last
6 week.

7 MS. BLUTH: I'll forward you an electronic copy, Don.

8 MR. CHAIREZ: Okay.

9 MS. HOLTHUS: So, do you want to just go through
10 yours first, Don? Your --

11 MR. CHAIREZ: Yeah. That would be fine.

12 MS. HOLTHUS: Okay. With respect to his first one --

13 THE COURT: I don't have any of them. I'm trying to
14 pull -- see if they're in my e-mail.

15 MS. HOLTHUS: Oh, you don't have Don's, either?

16 THE COURT: I have -- well, I have a couple. I don't
17 -- I'm assuming they're from the defendant.

18 MR. CHAIREZ: I think I just submitted four or
19 five --

20 THE COURT: There are, like, four.

21 MR. CHAIREZ: -- specials.

22 MS. HOLTHUS: Yeah.

23 MR. CHAIREZ: Right.

24 THE COURT: And I have your four.

25 MR. CHAIREZ: Right.

1 THE COURT: Okay. So, the first one I have is --

2 MS. HOLTHUS: You have ours, right?

3 THE COURT: No. That's what I'm trying to see if I
4 can just pull up.

5 MS. HOLTHUS: I have five of Don's, actually.

6 MR. CHAIREZ: And I made another one today.

7 THE COURT: I have four, if you want to give me the
8 fifth one.

9 MR. CHAIREZ: Can I approach, Your Honor?

10 THE COURT: You may, sir. Thank you. I don't have
11 them. Thank you.

12 (Pause in proceedings.)

13 THE COURT: Where do you want to start?

14 MS. HOLTHUS: I was just going to go through
15 defendant's --

16 THE COURT: Sure.

17 MS. HOLTHUS: -- first, while he -- because he still
18 hasn't gotten ours, with respect to the first one, you are
19 instructed that consent of the defense to the sexual assault,
20 he's giving the Carter instruction, and I believe that the
21 State has a more comprehensive, thorough, more exact -- we're
22 not disputing that he's entitled to that. But under Carter
23 and Honeycutt, I'm sure -- I'm looking for it now.

24 THE COURT: Now I have the State's. And the ones the
25 State gave me, is the instruction you're referencing in here?

1 MS. HOLTHUS: It should be, yes.

2 THE COURT: Do you know where approximately it is?

3 MS. HOLTHUS: It'll be in the back, because it's the
4 specials. I'm looking for it myself. I just had my hand on
5 it, now I lost it.

6 THE COURT: Is it -- does it start out, "It is a
7 defense to the charge of sexual assault that the defendant
8 entertained a reasonable good faith belief that the alleged --

9 MS. HOLTHUS: Yeah. I think so.

10 THE COURT: -- "victim consented to engage in sexual
11 intercourse"?

12 MS. HOLTHUS: Yep.

13 THE COURT: Mr. Chairez --

14 MR. CHAIREZ: I haven't seen it.

15 THE COURT: -- it's four from --

16 MR. CHAIREZ: Let me --

17 THE COURT: -- no, it's fifth from the back. Do you
18 want to see it?

19 MR. CHAIREZ: Sure.

20 THE COURT: I don't want to make a mess of these.

21 MS. BLUTH: Don, do you want me to run in the back
22 and make you a physical hard copy?

23 MR. CHAIREZ: No, that's okay. Let's see.

24 MS. HOLTHUS: I think ours is actually even stronger
25 pro-defense, quite honestly.

1 THE COURT: You want to compare it with yours?
2 Here's yours right here.

3 MR. CHAIREZ: Well, let's see. I don't have a
4 problem with their first paragraph, but their second paragraph
5 I have a -- I'm not sure where they're getting the authority
6 for that.

7 MS. HOLTHUS: Honeycutt and Carter.

8 THE COURT: I have Carter right here. What does the
9 second sentence say? I can't see it.

10 MR. CHAIREZ: It says, "The claim that is based upon
11 ambiguous conduct by the alleged victim that is the product of
12 force, violence, duress, menace, or fear of immediate and
13 unlawful bodily injury on the person of another is not a
14 reasonable good faith belief."

15 MS. HOLTHUS: I think what they're kind of defining
16 is good faith. It's not in good faith if you've caused the...

17 MR. CHAIREZ: Then I don't think either case -- show
18 me where it says in that Honeycutt, and if it says that, I'll
19 agree to it.

20 THE COURT: Do you have Carter? I have a copy of
21 Carter right here.

22 MR. CHAIREZ: Okay.

23 MS. HOLTHUS: I don't have either case right here,
24 Don.

25 THE COURT: Here. I was just looking through

1 Carter --

2 MR. CHAIREZ: Carter --

3 THE COURT: -- if you want to look at Carter.

4 MR. CHAIREZ: Oops.

5 THE COURT: Why don't you look at it. I don't have
6 Honeycutt.

7 MR. CHAIREZ: Okay. It's okay with me.

8 THE COURT: All right. So let's do this. Do you
9 have the one --

10 MS. HOLTHUS: Is it in there, Don?

11 MR. CHAIREZ: Huh?

12 MS. HOLTHUS: Is it in there?

13 MR. CHAIREZ: Yeah. It's --

14 THE COURT: Are you going to withdraw this proposed
15 instruction?

16 MR. CHAIREZ: Yeah. I guess I'll withdraw it.

17 THE COURT: Okay. Because, otherwise, I would make
18 it part of the record. Okay. So the consent instruction
19 that's been agreed upon by the defense and the State is as
20 follows:

21 "It is the defense to the charge of sexual assault
22 that the defendant entertained a reasonable and good faith
23 belief that the alleged victim consented to engage in sexual
24 intercourse. If you find such a reasonable and good faith
25 belief, even mistaken, you must give the defendant the benefit

1 of the doubt and find him not guilty of sexual assault. A
2 belief that is based upon ambiguous conduct by the alleged
3 victim that is a product of force, violence, duress, menace,
4 or fear of immediate and unlawful bodily injury on the person
5 of another is not a reasonable and good faith belief."

6 Okay. So that's one's stipulated to. Do you want to
7 go to the next one by the defendant? It's a flight
8 instruction.

9 MS. HOLTHUS: Yeah. And I don't -- I don't know that
10 we have any -- I mean, if there was flight, I'd probably be
11 asking one -- for one. So he's asking for non flight. He
12 wants to argue non flight. I guess that's --

13 THE COURT: Okay.

14 MR. CHAIREZ: I mean, I just want to use it for the
15 opposite inference. You know, when somebody flees, they can
16 use it to be an indication of a guilty mind. And so to me the
17 absence of flight would infer the opposite.

18 THE COURT: Okay. So, we'll allow the defense's
19 proposed instruction on flight. It sounds like the State is
20 stipulating to its admission.

21 MR. CHAIREZ: All right.

22 THE COURT: So.

23 MS. HOLTHUS: I think, then, the next -- the next one
24 I have is the statutory defense. Is that what you have? The
25 credibility, or where -- what do you have next?

1 THE COURT: I have the statutory sexual seduction.

2 MS. HOLTHUS: I would suggest we set that one aside,
3 because I think that's going to be the big brawl.

4 MR. CHAIREZ: Okay. That's fine, Your Honor.

5 MS. HOLTHUS: And if we get everything else worked
6 out first, I mean, that's -- as far as I can tell from the
7 instructions, that's the big bone of contention.

8 THE COURT: Okay. The next one is, "The credibility
9 or believability of the witness should be determined by his
10 manner upon the stand."

11 MS. HOLTHUS: That's the same one we give.

12 MR. CHAIREZ: That's fine. I took it from theirs.

13 THE COURT: So, it's going to be withdrawn since it's
14 duplicative?

15 MR. CHAIREZ: That's fine.

16 THE COURT: The next one. "Voluntary intoxication is
17 a defense to a specific intent crime. If you find that the
18 defendant was intoxicated, you may consider this evidence in
19 determining whether he could form the specific intent to
20 commit the crime for which he is charged."

21 MS. HOLTHUS: Judge, this one as well as the next one
22 that he talks -- has submitted, the voluntary intoxication,
23 I'm going to ask that you give the actual statute rather
24 than --

25 THE COURT: Is that set forth in your proposed?

1 MS. HOLTHUS: It is. And all I did was literally
2 have my secretary retype the statute, because that, I think,
3 gives the -- looks like... Five from the back.

4 THE COURT: Five from the back. Hold on. "No act
5 committed by a person" -- do you see it, Mr. Chairez?

6 MR. CHAIREZ: I see that.

7 MS. HOLTHUS: That's the actual -- I'm showing Mr.
8 Chairez, that's literally word for word the statute.

9 THE COURT: Do you have language somewhere in --
10 somewhere else talking about the specific intent crime?
11 Because I think otherwise they don't know what crimes it could
12 be applied to. Because it can only -- obviously apply to the
13 specific intent --

14 MS. HOLTHUS: I guess we could -- we could add a
15 paragraph that says you are instructed that burglary,
16 first-degree kidnapping and lewdness --

17 MR. CHAIREZ: And coercion.

18 MS. HOLTHUS: -- and coercion --

19 MR. CHAIREZ: Are specific intent crimes.

20 MS. HOLTHUS: -- are specific intent crimes.

21 THE COURT: I would. Otherwise --

22 MS. HOLTHUS: That's fine.

23 THE COURT: -- I don't know if it'll delineate
24 between the two. So, Mr. Chairez, with the -- the correction
25 that we've indicated, any objections to their intoxication

1 defense?

2 Sir?

3 MR. CHAIREZ: Yeah, I'm thinking, Your Honor.

4 THE COURT: Oh. Okay. I'm sorry.

5 MS. HOLTHUS: Shall we go ahead and add that sexual
6 assault is a general intent crime? Just to be balanced?
7 That's the only one left, right?

8 THE COURT: I'm going to add -- when you add -- I
9 would add this first sentence proposed by the defendant, which
10 is voluntary intoxication is a defense to a specific intent
11 crime. The following crimes are specific intent crimes.

12 MS. HOLTHUS: Well, that's -- it's not a defense,
13 Judge. It's a fact that will be considered. I think that
14 kind of --

15 THE COURT: Well, then, phrase it like that.

16 MS. HOLTHUS: Well, but that's --

17 THE COURT: Well, I think it is a defense.

18 MS. HOLTHUS: That's what it says.

19 THE COURT: Isn't that how they use it?

20 MR. CHAIREZ: Well, that's what the -- the Supreme
21 Court says it's a defense. Okay.

22 THE COURT: Well, I think they did use the word
23 defense. Let me look.

24 MS. HOLTHUS: And it would -- the statute says the
25 fact that the person's intoxication may be taken into

1 consideration in determining the purpose, motive, or intent.

2 THE COURT: Well, if you look at -- let's see, looks
3 like Adamson vs. State, which is an unpublished case, 2012
4 West Law, 1660, 635 Nev. It says -- and it cites to it looks
5 like Ewish vs. State, it says, "Holding voluntary intoxication
6 is a defense to specific intent crimes." So they use the word
7 defense. Do you need me to pull that case?

8 MR. CHAIREZ: Remember, Your Honor, the purpose of
9 the Courts is to interpret the statute. So I think that the
10 language that the Supreme Court gave in the Adamson case is
11 combining two other cases and -- and also NRS 193.220. So I
12 don't see any harm in using the language of the state Supreme
13 Court.

14 MS. HOLTHUS: And then I think when you take that out
15 of context, when -- even when they use it, they make it sound
16 like it's a complete defense. And that's not the -- it's not
17 the question. I mean, that's not -- that's not the law.

18 MR. CHAIREZ: Yeah, but --

19 MS. HOLTHUS: Just the fact that you're drunk, that
20 isn't a defense to a specific intent crime. It's something
21 that you can consider. And that's why I pulled the statute so
22 that it's not -- it's not inaccurate. I mean, that's --
23 that's what the statute says. So, I don't understand how we
24 can be wrong with that. But to instruct them that if you find
25 him voluntarily drunk, that's a defense to lewdness, well, I'm

1 here to tell you he was, on some level, drunk.

2 MR. CHAIREZ: Your Honor, I mean, the State spent
3 days saying the client, I mean my client, was totally sober.
4 So.

5 Your Honor, you have this instruction I gave you this
6 morning?

7 THE COURT: I'm sorry. I'm trying to look up
8 something. One -- one second, please.

9 MR. CHAIREZ: Okay. Go ahead. I mean, it's the
10 three sentence one. "Voluntary intoxication is a defense to a
11 specific intent crime."

12 THE COURT: Yes. That's the one I'm looking at.

13 MR. CHAIREZ: "If you find that the defendant was
14 intoxicated, you may consider this evidence." It's not asking
15 for directed verdict. You may consider this evidence in
16 determining whether he could form the specific intent. So, I
17 just think it explains the statute, and that's what we took
18 from the Adamson case.

19 MS. HOLTHUS: The what case?

20 MR. CHAIREZ: Well, Adamson, Ewish, and Catanio.

21 THE COURT: Adamson is unpublished.

22 MR. CHAIREZ: Correct.

23 THE COURT: Ewish is who it cites.

24 MR. CHAIREZ: Right.

25 MS. HOLTHUS: Did you find this Ewish or just...

1 THE COURT: No, I don't have it. But I'm pulling it
2 up right now.

3 MR. CHAIREZ: Ewish and the other case, one says
4 intoxication is a defense in a specific intent crime and
5 another one says lewdness with a minor is a specific intent
6 crime.

7 MS. HOLTHUS: Which -- what page is it, Don?

8 THE COURT: On Adamson, it's the second of two pages.

9 MS. HOLTHUS: I don't have -- I just have Catanio. I
10 don't see it in Catanio.

11 (Pause in proceedings.)

12 MR. CHAIREZ: We're making your job easy, Your Honor.

13 THE COURT: I'm happy about that.

14 MR. CHAIREZ: What we're thinking of doing, Your
15 Honor, is with my proposed instructions --

16 MS. HOLTHUS: Why don't we do this one, though,
17 because this is all of them.

18 MR. CHAIREZ: Okay. Yeah.

19 MS. HOLTHUS: This is just lewdness.

20 MR. CHAIREZ: Yeah.

21 MS. HOLTHUS: So, just take out this.

22 MR. CHAIREZ: Right.

23 MS. HOLTHUS: Then we put that here.

24 MR. CHAIREZ: Right.

25 MS. HOLTHUS: And then below that --

1 MR. CHAIREZ: Right. All right.

2 MS. BLUTH: Your Honor, were you saying that Adams or
3 Adamson was unpublished and it cites Ewish?

4 MR. CHAIREZ: It cites Ewish and Catanio.

5 (Pause in proceedings.)

6 THE COURT: Did you guys come up with a stipulated --

7 MS. HOLTHUS: I think we did.

8 THE COURT: -- instruction on intoxication?

9 MR. CHAIREZ: We have, Your Honor.

10 MS. HOLTHUS: And I will --

11 MR. CHAIREZ: Fix it.

12 MS. HOLTHUS: -- fix it. That's what I will do.

13 I'll fix it.

14 THE COURT: Okay. So, we will say that you guys
15 stipulated on an instruction for intoxication. Okay.

16 The last one I have, and this is the one you're
17 saying there's going to be some discussion on --

18 MS. HOLTHUS: Yes.

19 THE COURT: -- is statutory sexual seduction. I -- I
20 was looking at cases this weekend on statutory sexual
21 seduction. The only thing I don't think it is, is I don't
22 think it's a lesser included. It looks like a lesser related.

23 MS. HOLTHUS: Which is exactly our argument.

24 THE COURT: Okay. However, I'll tell the State --

25 MR. CHAIREZ: Well, I mean --

1 THE COURT: -- I was inclined to allow this
2 instruction if proffered by the defense after looking at the
3 case law. I do think there is testimony in this case of
4 consent by the victim.

5 MS. HOLTHUS: But then that makes it lewdness.

6 MR. CHAIREZ: No.

7 MS. HOLTHUS: And they're only entitled to lesser
8 included. The law is clear about that.

9 THE COURT: I understand that. But they can also
10 request --

11 MR. CHAIREZ: No.

12 THE COURT: -- lesser related.

13 MS. HOLTHUS: Our position, he's not entitled to it
14 and we don't see where -- how do you get around the lewdness,
15 I guess. When -- when would that be? If -- if your issue is
16 consent, because AJ's 13, if it's consensual, it's a lewdness.
17 Or not guilty.

18 MR. CHAIREZ: Then what is this -- what's statutory
19 sexual seduction, then, Your Honor?

20 MS. HOLTHUS: Our --

21 MR. CHAIREZ: See, lewdness, in my opinion, is lack
22 of penetration. So, if the -- you know, if the penis does not
23 go in the mouth or the penis does not go in the rectum, then
24 you would have lewdness. And --

25 MS. HOLTHUS: Well, lewdness in our facts, we have

1 two counts that are both ultimately, if you were convicted,
2 going to be treated as alternative counts, and those -- those
3 are the ones that are alternative to the effects of both. The
4 remaining, obviously not. But the statutory -- I mean, he's
5 arguing is that is an alternative for which count?

6 MR. CHAIREZ: Well, it would be the -- the sexual
7 assault counts. Because they've charged two lewdness counts,
8 and we're going to move to dismiss those, Your Honor. Because
9 we believe AJ said there was no fondling, there was no
10 touching, there was no rubbing.

11 THE COURT: But there's not a --

12 MS. HOLTHUS: The cause -- it clearly --

13 THE COURT: -- there's a case law that says there's
14 no requirement of touching.

15 MR. CHAIREZ: Well --

16 THE COURT: It says, "While lewdness does not require
17 physical contact," that's State vs. Catanio.

18 MR. CHAIREZ: Right. That's correct. I agree with
19 that position.

20 MS. HOLTHUS: Well, we do --

21 MR. CHAIREZ: There doesn't need to be touching, Your
22 Honor. But when I asked AJ on cross-examination, you know,
23 your position is he just forced it in. There was no foreplay,
24 there was no rubbing, there was no fondling. And that's what
25 he said. So...

1 MS. HOLTHUS: We would --

2 MR. CHAIREZ: But -- okay.

3 MS. HOLTHUS: We provided the case was Cossack, which
4 clearly supports our right. The two lewdnesses are obviously
5 related to the sex assault, and ultimately if he were
6 convicted of both, we would ask that you sentence him only on
7 the sex assault and set aside for another day, if you will,
8 the lewdness. But Cossack clearly says that we can charge
9 those two lewdnesses in the event the jury found consent or
10 maybe in this fact -- on these facts, reasonable belief
11 regarding consent. Then those would be the appropriate
12 counts. So, we certainly have the right to do that. I'm
13 assuming those are the only two he's objecting to.

14 MR. CHAIREZ: Well, the concern, Your Honor, is --

15 MS. HOLTHUS: And let -- let me -- just one more
16 thing, Don.

17 MR. CHAIREZ: Okay.

18 MS. HOLTHUS: He's worried about the fondling and
19 hinting around. My position is particularly he's addressing
20 the anal. One of the things we do allege is touching the
21 penis to the anus. And you can't get in the anus without
22 touching it. So the argument would be it would be complete
23 upon contact without requiring the extra penetration and/or
24 against the consent. So that is an alternative on two
25 different theories.

1 THE COURT: Okay. Anything else?

2 MR. CHAIREZ: Well, I guess this is the problem when
3 politicians make the law, Your Honor. Because it seems
4 illogical that if you have an -- a sexual act against
5 somebody's will, it's sexual assault. If you have sexual
6 assault, even with a minor under 14 where the state Supreme
7 Court has said consent is a defense, I guess my -- my concern
8 or my issue is, Well, what is the lesser included? Is it
9 basically just consent as a defense to sexual assault?
10 Because why would it be a defense and then you still find them
11 guilty of lewdness? Because I think lewdness is a completely
12 different act than sexual assault.

13 So, the purpose of -- and so Mr. Alotaibi and I went
14 around and around yesterday about the statutory sexual
15 seduction jury instruction as to what you would do and, you
16 know, how we would go about arguing it in closing argument.
17 But my sense is --

18 MS. HOLTHUS: Can I interrupt for a minute?

19 MR. CHAIREZ: Yeah.

20 MS. HOLTHUS: And the record should reflect that Mr.
21 Alotaibi is present in the courtroom.

22 MR. CHAIREZ: That's -- that's right.

23 THE COURT: I did notice it. The interpreter is not
24 present, though.

25 All right, Mr. Alotaibi, we're going over jury

1 instructions. You've missed some of the discussion of the
2 jury instructions. However, the only reason we started
3 without you is Mr. Chairez has agreed that he's going to go
4 over every single thing as well as all the instructions that
5 were agreed upon with you with the presence of the
6 interpreter. So you'll know exactly what the case laws --
7 what case law is going to be given to the jury in your case.

8 MR. CHAIREZ: It's okay. He has a lawyer that speaks
9 simple English. So...

10 THE COURT: Well, let me -- on the statutory sexual
11 seduction, the reason I think it's a lesser related versus a
12 lesser included, because it includes the additional factor of
13 the consenting percent must be under the age of 16 years.
14 What I did not see, I'll be frank with you, perhaps the State
15 or the defense has it, is any case which discussed the
16 propriety of having a lewdness count as well as a statutory
17 sexual seduction. And I didn't find it. The only thing I've
18 found so far is Slobodian vs. State, 107 Nev. 145.

19 MR. CHAIREZ: That was my case, Your Honor.

20 THE COURT: Yeah.

21 MR. CHAIREZ: As a DA.

22 MS. HOLTHUS: And, you know, I don't have it here. I
23 know that -- I mean, to us it doesn't make any sense that --
24 and -- and Mr. Chairez is asking when. The statutory would be
25 the appropriate alternative if you had consent issue and you

1 had a child between, say, the ages of 14 and -- and 16.
2 That's when it -- then you could make the pitch more so. But
3 if it's not a lesser included, then he's not entitled to it.

4 THE COURT: Well, he's not entitled to it --

5 MS. HOLTHUS: And I suppose the Court --

6 THE COURT: -- as a matter of course.

7 MR. CHAIREZ: Well, Your Honor --

8 MS. HOLTHUS: Correct.

9 THE COURT: He can still request.

10 MR. CHAIREZ: I believe Epperson based --

11 MS. HOLTHUS: I don't --

12 THE COURT: Hold on. I --

13 MR. CHAIREZ: Okay. I'm sorry.

14 THE COURT: Only one at a time. Let Ms. Holthus
15 [indiscernible].

16 MS. HOLTHUS: My objection is that it -- it's in some
17 ways an absurdity that he would be allowed to argue for a
18 statutory lesser for anally raping or anally penetrating or
19 fellatio, when the kiss on the neck and the lick on the neck
20 and the fondling on the body, he's certainly not going to get
21 a statutory alternative on that. And so it just doesn't even
22 make sense. How can -- how can it be this low-grade felony
23 for -- for tearing up his anus, whereas the little lick on the
24 neck is -- is the full lewdness? That can't be the intent --

25 MR. CHAIREZ: Well --

1 MS. HOLTHUS: -- of a legislature. And I think it's
2 real clear from those facts that it was never intended. A
3 child can consent to a sexual assault. A child cannot consent
4 to a lewdness.

5 MR. CHAIREZ: That's correct.

6 MS. HOLTHUS: That's just the way the law is.

7 MR. CHAIREZ: That is correct, Your Honor.

8 MS. HOLTHUS: And so therefore there is no reason to
9 go to the statutory.

10 MR. CHAIREZ: Well, here's -- first off Your Honor --

11 THE COURT: Well, I'm --

12 MR. CHAIREZ: -- we're not asking for --

13 THE COURT: Hold on.

14 MR. CHAIREZ: -- statutory --

15 THE COURT: I'm guessing the lewdness are, like, the
16 kissing on the neck and everything else.

17 MR. CHAIREZ: Right.

18 THE COURT: And then --

19 MR. CHAIREZ: We're not asking for a statutory sexual
20 seduction as a lesser included or lesser related of lewdness.
21 Okay. That's just the bottom line. In the lewdness, our
22 defense will be intoxication. All right. And we'll fight --
23 and we'll fight the specific intent. So, for any of the
24 lewdness counts that are going to go to the jury, that is our
25 defense, intoxication.

1 For the two sexual assault counts, our defense will
2 be reasonable consent or reasonable mistaken belief of
3 consent. So, as the State has it charged right now, if they
4 want to go for all or nothing, and not have a -- I mean, I
5 don't believe that a lesser -- lewdness is a lesser included
6 of sexual assault. And I even think the Cossack case that
7 they cited --

8 MS. HOLTHUS: That's -- that's correct.

9 MR. CHAIREZ: Pardon?

10 MS. HOLTHUS: That's correct.

11 MR. CHAIREZ: Okay.

12 MS. HOLTHUS: That's why we've gone ahead and pled
13 it, because we realized we wouldn't be entitled to it
14 ultimately. So we have pled it as an alternate theory. We
15 could have pled the alternate related theory of statutory. We
16 chose not to. I mean, that's a -- that was a charging
17 decision we made at the beginning of the case, because it
18 factually -- it doesn't make any sense. Because if Mr.
19 Chairez is successful and -- and getting the reasonable belief
20 as to consent, or that the child actually consented, then it
21 goes to the lewdness. And then he has the consent of
22 intoxication. If they believe that, then it's not guilty.
23 Period.

24 Because, quite honestly, statutory under these facts
25 also requires intent of arousing, appealing, or gratifying.

1 THE COURT: So are you asking for statutory sexual?
2 I'm looking at he case right now.

3 MS. HOLTHUS: We're -- we're --

4 MR. CHAIREZ: Well, Your Honor --

5 MS. HOLTHUS: -- opposing it.

6 MR. CHAIREZ: -- here is my thing. As long as the
7 Court gives me the consent instruction and the reasonable
8 mistaken belief of consent --

9 THE COURT: Which the State stipulated to.

10 MR. CHAIREZ: Well, I guess it's stipulated.

11 THE COURT: I thought that was the one where you guys
12 came up with --

13 MR. CHAIREZ: Right.

14 MS. HOLTHUS: We did. We specifically said if they
15 have a -- a doubt, a reasonable doubt as to his -- whether he
16 believed the consent, then he gets the benefit of the doubt
17 and it's a not guilty on the sex assault. I mean, it's --

18 THE COURT: Okay. But that's the instruction the
19 State and the defense counsel, you put your heads together and
20 came up with a -- an agreeable stipulated instruction, right?

21 MR. CHAIREZ: Well, I know we did that with voluntary
22 intoxication and -- and maybe we did it with -- did we, with
23 the -- the consent? I think we did, Your Honor.

24 MS. HOLTHUS: We did.

25 MR. CHAIREZ: I mean --

1 MS. HOLTHUS: We did the Carter -- we did a Carter
2 instruction that we agreed on --

3 MR. CHAIREZ: Okay.

4 MS. HOLTHUS: -- and we did a voluntary
5 intoxication --

6 MR. CHAIREZ: Okay.

7 MS. HOLTHUS: -- that set forth a statute first.

8 MR. CHAIREZ: Right.

9 MS. HOLTHUS: And then it -- I have it right here.
10 It was the statute and then it adds with it, "If you find the
11 defendant was intoxicated, you may consider this evidence in
12 determining whether he could form the specific intent to
13 commit the crime for which he is charged." And then, "You are
14 instructed that burglary, first-degree kidnapping, lewdness
15 with a child under 14, coercion, are specific intent crimes.
16 Sexual assault is a general intent crime."

17 MR. CHAIREZ: Well, I just want to make sure, Your
18 Honor, for a sexual assault, I can argue consent or reasonable
19 mistaken belief of consent for the two counts of sexual
20 assault, correct?

21 MS. HOLTHUS: Correct.

22 MR. CHAIREZ: All right. And we're not going to give
23 any --

24 THE COURT: And the jury has an instruction that --

25 MR. CHAIREZ: -- lesser included. It's going to be

1 guilty or not guilty, correct?

2 MS. HOLTHUS: Well -- and --

3 MR. CHAIREZ: Okay. Well, that's --

4 MS. HOLTHUS: We're giving the -- I mean, we're not
5 giving. The law -- I mean, we have charged the lewdnesses.
6 Our argument will be that he's guilty of both. And that it's
7 a sentencing determination. To me, I believe that that's the
8 way the case law reads. Because here's the problem. If we
9 structure it any other way, if the jury finds him guilty of
10 the sex assault, he's still guilty of the lewdness. Because
11 these facts, it's completely contained in the sex assault.

12 MR. CHAIREZ: I mean, and I disagree, Your Honor.
13 Based on -- I believe, based on these facts, lewdness is not a
14 lesser included to the two sexual assault counts. I believe
15 the lewdness as they've charged it, with the neck and the
16 other part of the body --

17 THE COURT: I think it is a lesser included. I think
18 the State indicated.

19 MR. CHAIREZ: That it is or is not?

20 THE COURT: Is not.

21 MR. CHAIREZ: Is not?

22 MS. HOLTHUS: It's lesser related, which is why we --

23 MR. CHAIREZ: Okay.

24 MS. HOLTHUS: -- chose to offer it. We have
25 alternative theories. If for some reason on these facts, I

1 think it's probably not ever going to happen, if they found
2 that there was not penetration, I suppose. But it's simply
3 that there's no consent requirement as to the lewdness. So
4 they -- he would be guilty of -- potentially of both. He
5 can't be sentenced on both. But we're entitled to present the
6 alternative theory to the extent that there's any issue
7 regarding consent. And -- and/or penetration.

8 We have pled the anal penetration as simply a
9 touching. So we don't even need the penetration there.
10 Fellatio's trickier, because touching the mouth is effectively
11 fellatio. So, you can't really plead it any other way. So
12 that one has to be just a straight lesser related, he's guilty
13 of both.

14 THE COURT: I'm not sure what you want me to do, Mr.
15 Chairez. Do you want to think it over? I mean, as far as
16 whether or not as a strategy you want to argue for the
17 additional charge of statutory sexual seduction? I'm not sure
18 what you're asking for at this point. Would you like to have
19 the chance to think it over? Because I think we're mostly
20 settled on the instructions. Yes?

21 MR. CHAIREZ: I guess I'll think it over.

22 THE COURT: Okay.

23 MR. CHAIREZ: But, I mean, I'll just say --

24 THE COURT: Because it -- I think it's more of a
25 defense strategy --

1 MR. CHAIREZ: -- based upon -- for me, again, as long
2 as I'm able to argue consent and reasonable mistake of
3 consent, and they're going to have the sexual assault guilty
4 or not guilty, that's one thing. And I guess for the lewdness
5 and any of the other specific intent crimes, if we're allowed
6 to argue voluntary intoxication, I think we're 99 percent
7 there. So I'll just decide whether -- and they're totally
8 opposed to the statutory sexual seduction as a lesser included
9 of sexual assault, correct?

10 THE COURT: I -- I agree with the State in that it's
11 not a lesser included.

12 MR. CHAIREZ: Okay. But a lesser related?

13 THE COURT: I believe that it's a lesser related.

14 MR. CHAIREZ: Okay.

15 THE COURT: Which means it's not as a matter of
16 course, but you can request the instruction as lesser related.
17 I will, in the meantime, do a little bit more research --

18 MR. CHAIREZ: Okay.

19 THE COURT: -- on the issue. So, okay. We'll --

20 MS. HOLTHUS: Let me just -- let me just make a
21 little bit more of a record, then, in that regard.

22 THE COURT: Yes.

23 MS. HOLTHUS: Our position is that it is not a lesser
24 included of sexual assault. Sexual assault can be committed
25 without necessarily committing statutory sexual seduction;

1 One: Digital or other object of penetration of a
2 minor can be done without the intent of arousing, appealing
3 to, or gratifying a lust or passions or desires of either
4 persons. This specific intent is not required for sexual
5 assault, but is required for statutory sexual seduction under
6 subsection B for other penetrations not found in subsection A.

7 Two: Forcing another person to make a sexual
8 penetration on himself or herself or another or on a beast.
9 This is because statutory sexual seduction only involves
10 sexual penetrations occurring between the defendant and the
11 victim.

12 Third, sexual penetration of a minor by a juvenile
13 who has been certified as an adult. This is because statutory
14 sexual seduction requires the defendant to be age 18 or over,
15 but sex assault does not.

16 Four, the age of a victim under 16 is required for
17 statutory sexual seduction, but not for sexual assault.

18 The victim's age is an element of the enhancement for
19 sexual assault of a minor, but it's our position that there
20 should be a distinction between an element of offense and an
21 element of an enhancement when you're looking at a lesser
22 included analysis. It makes no sense the statutory sexual
23 seduction should be a lesser included of sexual assault on a
24 minor, but not on sexual assault.

25 So, that's -- that's our position, that it doesn't

1 make sense and that it's not the law.

2 MR. CHAIREZ: Was she reading the case right now?

3 MS. HOLTHUS: No.

4 MR. CHAIREZ: And did I hear -- okay.

5 THE COURT: I think she's responding to the --

6 MR. CHAIREZ: Did I hear her say statutory -- did she
7 say statutory sexual seduction requires specific intent?

8 MS. HOLTHUS: If -- if it's under -- sub B of the
9 statute, where it says, "Statutory sexual seduction is any
10 other sexual penetration committed by a person 18 years of age
11 or older with a person under the age of 16," that is not --
12 not ordinary sexual intercourse, anal, cunnilingus, or
13 fellatio.

14 THE COURT: That's NRS -- I don't have the statute in
15 front of me.

16 MS. HOLTHUS: 200.34 -- 364.

17 THE COURT: Okay. So at this point, Mr. Chairez is
18 not requesting statutory sexual seduction. You will indicate
19 to the Court prior to jury instructions, obviously --

20 MR. CHAIREZ: Correct.

21 THE COURT: -- if you do want the Court to offer
22 this.

23 MR. CHAIREZ: Right.

24 THE COURT: Okay. Is there anything else we need to
25 go over as far as the jury instructions?

1 MS. HOLTHUS: Do they -- there were arguable other
2 bad acts brought in by the defendant, the driving and drinking
3 and such, possible marijuana. Do they want a -- first of all,
4 we're going to ask if defense requests that you read the --
5 what's that instruction...

6 THE COURT: The not testify instruction?

7 MS. HOLTHUS: No, the -- you've heard evidence
8 defense could --

9 THE COURT: The limiting instruction?

10 MS. HOLTHUS: Yeah. But, what's it called?

11 THE COURT: The prior bad acts?

12 MS. HOLTHUS: Just the other bad acts admonishment, I
13 guess. And also offer it if defense wants in our jury
14 instructions.

15 MR. CHAIREZ: If they're offering it, we'll take it,
16 Your Honor.

17 MS. HOLTHUS: Okay. Then I'm -- we will ask you then
18 to read the admonishment. I don't know that they're --

19 THE COURT: Is it contained in these?

20 MS. HOLTHUS: I don't know that.

21 THE COURT: Oh, I see you put them in your
22 instructions.

23 MR. CHAIREZ: Yeah. I haven't had a chance to read
24 them yet.

25 MS. HOLTHUS: We intended to. Yes.

1 MR. CHAIREZ: But I --

2 MS. HOLTHUS: Yes, it's --

3 MR. CHAIREZ: I'm --

4 MS. HOLTHUS: It's in there, Judge. "Evidence which
5 tends to show the defendant committed offenses other than that
6 for which he's on trial, if believed, may not be considered
7 that he's a person of bad character." Anyway, you do have it.

8 THE COURT: I do. Well, that's a standard
9 instruction.

10 Mr. Chairez, you wanted that instruction, yes?

11 MR. CHAIREZ: About uncharged bad acts?

12 THE COURT: Yes.

13 MR. CHAIREZ: Yes, Your Honor.

14 THE COURT: Okay. So that is in the State's pile.

15 MS. HOLTHUS: The interpreter's present.

16 THE COURT: The interpreter is present. So --

17 THE INTERPRETER: There might be --

18 THE COURT: You know what, that's okay. What --
19 what's going to happen now is Mr. Chairez needs to go over the
20 jury instructions we went over with the defendant. So you can
21 sit next to him. We're not going to -- I mean, we don't have
22 to be -- we're not going to be on the record while he
23 discusses them with his client.

24 Mr. Chairez, it sounds like we have settled jury
25 instructions. Is there anything else? Did you look at the

1 State's proposed?

2 MR. CHAIREZ: Well, I'm looking at them now, Your
3 Honor.

4 THE COURT: Okay.

5 MR. CHAIREZ: Well --

6 MS. HOLTHUS: Are you ready to flip through them,
7 Don, or no? Do you want to break for lunch and give him time
8 to go through these with his --

9 THE COURT: Yeah, that's fine.

10 MS. HOLTHUS: You want that, Don?

11 MR. CHAIREZ: Yeah, that's fine.

12 THE COURT: Because, what I'll ultimately ask you
13 guys to do is come up with your finalized instructions and ask
14 you to go through and number it together.

15 MR. CHAIREZ: Okay.

16 THE COURT: And both of you can make sure that --

17 MR. CHAIREZ: Okay.

18 THE COURT: -- it does include everything that was
19 agreed upon.

20 MR. CHAIREZ: Right.

21 THE COURT: And then give me that copy.

22 MR. CHAIREZ: Okay.

23 THE COURT: To make sure nothing's left out. Okay.

24 Thanks.

25 MR. CHAIREZ: Now, am I going to be allowed to stay

1 here with my client and the interpreter?

2 THE COURT: I don't have any trouble with that.

3 MR. CHAIREZ: Or do we need to go someplace else?

4 THE COURT: I don't know where Jason is, but that's
5 fine.

6 THE MARSHAL: Here, Judge.

7 THE COURT: He needs to stay in here and talk to Mr.
8 Alotaibi, go over the instructions, okay, during the lunch
9 break. All right. Jason's nodding yes. Okay.

10 (Court recessed at 12:02 p.m., until 1:16 p.m.)

11 (Outside the presence of the jury.)

12 THE COURT: We are on the record. Okay. I just want
13 to make sure of some things, since Mr. Alotaibi is here with
14 the interpreter.

15 Mr. Alotaibi, when we left off, you kind of came in
16 as we were doing jury instructions. What I want to make sure
17 is that Mr. Chairez went over all the jury instructions, which
18 are the laws we're going to give the jury when they decide
19 your case. Did he do that with you with the --

20 THE DEFENDANT: Yes.

21 THE COURT: Yes? I need to hear -- you're nodding
22 your head. Are you -- are you saying yes?

23 THE DEFENDANT: Yes.

24 THE COURT: Yes. All right. And I just want to make
25 sure that you don't have -- do you have any questions

1 regarding the jury instructions or what went on?

2 THE DEFENDANT: My attorney will address you at this
3 point.

4 THE COURT: Okay. I just need a yes or a no.

5 MR. CHAIREZ: Yeah. He's answering yes. I mean, we
6 don't have any questions right now. And I -- we didn't even
7 get into the issue of -- I mentioned to him there is an issue
8 whether or not statutory sexual seduction is a lesser related
9 or lesser included. Obviously, that's a concept he does not
10 understand.

11 But -- so we focused on the jury instructions that
12 talked about consent, reasonable mistake of consent, the
13 intoxication, the various definitions. He wonders why we give
14 the same instruction, it seems to him, over and over. And --
15 and that kind of thing.

16 But at any rate, yeah, it's -- and we discussed it
17 yesterday, as well, Your Honor. So --

18 THE COURT: Okay.

19 MR. CHAIREZ: -- we didn't have the State's
20 instructions at that time, but we discussed the special ones
21 that we would be asking for.

22 THE COURT: Okay.

23 MR. CHAIREZ: So.

24 THE COURT: And as we left it, the statutory sexual
25 seduction, it was not requested by you at this time.

1 However --

2 MR. CHAIREZ: Right.

3 THE COURT: -- if you make a strategic decision to
4 request it, then we'll address it prior to the giving --

5 MR. CHAIREZ: Right.

6 THE COURT: -- of the jury instructions.

7 MR. CHAIREZ: Right.

8 THE COURT: All right.

9 MR. CHAIREZ: And it also depends on whether or not
10 Mr. Alotaibi testifies. Because we're -- that -- that for me
11 is the bigger issue right now.

12 THE COURT: Okay.

13 MR. CHAIREZ: Okay.

14 THE COURT: Okay. Is there anything else we need to
15 address before bringing the jury back in?

16 MS. HOLTHUS: Just that I have -- I found my person
17 on standby to redact that video. It's my understanding I gave
18 Mr. Chairez several choices on where we could stop it before
19 the -- the nude whatever -- before Mr. Alotaibi is undressed.
20 He has indicated that he wants as much of the video as he
21 possibly can have.

22 There is downtime that the jury can fast forward.
23 But there's, like, a half hour where he's sitting in the
24 office with his head down on the desk and the people come in
25 and do everything. I'm going to let it run through the ID

1 collection of the photos and swabbed. Everything except for,
2 obviously, the penile swabs and the photographs of his penis.
3 And that's my understanding, the way Mr. Chairez wants that.

4 MR. CHAIREZ: And -- and that is correct, Your Honor.
5 And basically our main concern is defendant does not remember
6 being photographed at all. Okay. And since that's one of the
7 issues as to what level of intoxication did he have, I want to
8 show yes, he was photographed, and we have that already in the
9 exhibits. But that would be the main reason for wanting to
10 include it. So I don't want the jury to be bored with lots
11 and lots of video or lots and lots and lots of downtime. But
12 that's my only concern.

13 And the other concern we had about the one exhibit
14 that you kept out, the nude picture. So --

15 MS. HOLTHUS: The one that's up there --

16 THE COURT: Hold on. Hold on. You wanted me to keep
17 the nude picture out.

18 MR. CHAIREZ: I did. I know. We want that out --

19 THE COURT: Okay.

20 MR. CHAIREZ: -- and I think Ms. Holthus and I agree
21 that that 30 seconds to 90 seconds, whatever it is, they could
22 cut it out.

23 MS. HOLTHUS: Okay. Well, let me -- let me -- this
24 is -- my understanding of this is what our plan was to do.

25 There's approximately -- the whole thing is, like, two to two