

**IN THE IN THE SUPREME COURT OF THE STATE OF NEVADA**

MAZEN ALOTAIBI,

Appellant,

vs.

RENEE BAKER, WARDEN  
LOVELOCK CORRECTIONAL  
CENTER; AND JAMES DZURENDA,  
DIRECTOR OF THE NEVADA  
DEPARTMENT OF CORRECTIONS,

Respondents.

Supreme Court No. 79752

district court case no. A-18-78515-W  
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**APPELLANT'S APPENDIX**

**VOLUME III OF VII**

BATES NOS. AA00388 – AA00623

CLARK HILL PLC

DOMINIC P. GENTILE

Nevada Bar No. 1923

VINCENT SAVARESE III

Nevada Bar No. 2467

3800 Howard Hughes Parkway, Suite 500

Las Vegas, Nevada 89169

Tel: (702) 862-8300

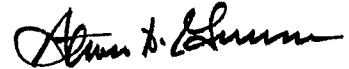
Fax: (702) 862-8400

Attorneys for Appellant

**APPELLANT'S APPENDIX**

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CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

STATE OF NEVADA,  
  
Plaintiff,  
vs.

MAZEN ALOTAIBI,  
  
Defendant.

CASE NO. C287173-1  
DEPT NO. XXIII

**TRANSCRIPT OF  
PROCEEDINGS**

BEFORE THE HONORABLE STEFANY MILEY, DISTRICT COURT JUDGE

**JURY TRIAL - DAY 5**

WEDNESDAY, OCTOBER 16, 2013

APPEARANCES:

FOR THE STATE:

MARY KAY HOLTHUS, ESQ.  
Chief Deputy District Attorney  
JACQUELINE M. BLUTH, ESQ.  
Deputy District Attorney

FOR THE DEFENDANT:

DON P. CHAIREZ, ESQ.

Also Present:

Saad Musa, Interpreter  
Mohammad A. Taha, Interpreter

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**AA00388**

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1 LAS VEGAS, NEVADA, WEDNESDAY, OCTOBER 16, 2013, 1:18 P.M.

2 \* \* \* \* \*

3 (Outside the presence of the jury)

4 THE COURT: Okay. Let's go on the record, Maria. So  
5 we have the two interpreters here. Gentlemen, you are still  
6 under oath today. Is there anything we need to address before  
7 we bring the jury in?

8 MR. CHAIREZ: What's that?

9 MS. BLUTH: Do either of you guys need to address  
10 anything before the Judge?

11 MR. CHAIREZ: No, no.

12 MS. HOLTHUS: No. We were just -- we were just  
13 talking scheduling. It's my understanding now that if we get  
14 through the three witnesses today that we anticipate getting  
15 through, that we will only have one for tomorrow and --

16 MR. CHAIREZ: You're going to have one for tomorrow  
17 or I'm going to have one for tomorrow?

18 MS. HOLTHUS: I'm going to have one for tomorrow.

19 MR. CHAIREZ: Okay.

20 MS. HOLTHUS: Are you having any?

21 MR. CHAIREZ: For tomorrow, no, unless we want the  
22 defendant to testify tomorrow. But right now I'm planning to  
23 put on three witnesses for -- for Monday, Your Honor.

24 THE COURT: Okay. So hold on. Tomorrow's Thursday,  
25 we have a full day tomorrow. Is your client -- I mean has --

1 is he leaning toward testifying?

2 MR. CHAIREZ: Well, he wants to testify but when he  
3 -- when he's gone to law school like I have and that kind of  
4 thing, then I'll let him make all those decisions. But I  
5 would say, yes, he's leaning towards testifying.

6 THE COURT: Okay. Well we -- at some point at the  
7 end of today then it would be appropriate to do the  
8 admonishment --

9 MR. CHAIREZ: Okay.

10 THE COURT: -- so he can think about it over the  
11 course of the night. But I'm trying to figure out for  
12 scheduling then. So we're going to have like one witness  
13 tomorrow and then be finished?

14 MS. HOLTHUS: Well, we'll have the --

15 MR. CHAIREZ: They have one more too --

16 MS. HOLTHUS: -- on Monday.

17 MR. CHAIREZ: -- on Monday.

18 THE COURT: And then so we'd have -- I mean maybe a  
19 few hours at most tomorrow and then nothing on Friday?

20 MS. BLUTH: Unless -- we've -- we were under the  
21 impression that Mr. Chairez's witnesses were going to be here  
22 this week.

23 THE COURT: It won't be?

24 MR. CHAIREZ: Well, we told them to be ready towards  
25 the end of the week or early next week. So my witnesses are

1 coming in from out of state. So I'm flying one from San  
2 Antonio on Saturday. The other will drive up from Riverside,  
3 that's the DNA expert who has gone through and analyzed  
4 everything that was given to him last week. So, I mean, if --  
5 if push came to shove maybe I could force him to come on  
6 Friday, but I want -- also wanted to have time to be together  
7 with him to go over his testimony.

8 THE COURT: No, I think you definitely need time to  
9 spend with him.

10 MR. CHAIREZ: Right.

11 THE COURT: So what would that mean? We'd send it  
12 out to the jury Wednesday because you'll need a day for your  
13 case in chief.

14 MS. BLUTH: I think that we'll be able to close  
15 Tuesday first thing, right?

16 MR. CHAIREZ: Absolutely. I mean, I think depending  
17 on how long Jeri Dermanlian testifies, I think I can get all  
18 my witnesses on Monday afternoon as well and get them out of  
19 here.

20 THE COURT: All right.

21 MS. HOLTHUS: And just one -- I don't know in terms  
22 of the defendant's plan to testify or not testify, but we are  
23 not forcing him to go in an order he doesn't want to go  
24 because of the other witnesses to fill tomorrow up. If  
25 strategically Mr. Chairez chooses to present him last or give

1 him more time to consider it, I don't want the record to say  
2 that he's having to testify sooner than he wanted to or to  
3 make a decision sooner then he wanted to.

4 THE COURT: That's all true. And the Court would  
5 abide by whatever order you wanted to present your case in.

6 MR. CHAIREZ: My preference would be to put him on  
7 last, Your Honor.

8 THE COURT: Okay.

9 MR. CHAIREZ: But, you know, I've taken issue with  
10 him. I don't think he understands 75 percent of everything  
11 that's going on, even though I was stunned to hear him say  
12 that. I understand we'll have his records from his English  
13 classes from the Air Force here, I think that's important.  
14 And so at any rate, if he testifies, we do want him to testify  
15 in English so the jury can compare how he comes across on the  
16 tape versus how he comes across in the courtroom as --

17 MS. BLUTH: Hey, guys you should be interpreting.

18 MR. CHAIREZ: Yeah, okay. So my preference is to put  
19 him on last but --

20 THE COURT: You can put him on last if you want  
21 because the decision may change as the evidence comes out.

22 MR. CHAIREZ: Right. And I don't need to put him on.  
23 But that's -- right now, that's what I'm planning to do, Your  
24 Honor.

25 THE COURT: Okay. So let's get through --



1 MR. CHAIREZ: And -- and I would also have this  
2 weekend to prep him, and I hate to use that word, but prepare  
3 him I should say.

4 THE COURT: That's fine, that's fine. So the jury  
5 just will have a short day tomorrow.

6 MR. CHAIREZ: Okay.

7 THE COURT: So what we'll do is we'll do the State's  
8 witnesses today. Then when they leave we'll do the  
9 admonishment of the defendant about his right to testify or  
10 not to testify. The only other thing I was going to ask is, I  
11 know that Mr. Chairez hasn't completed his case, can we at  
12 least start on the jury instructions?

13 MR. CHAIREZ: We can do that Thursday.

14 THE COURT: Because, I mean, the vast majority of  
15 them are probably going to be standard instructions.

16 MS. HOLTHUS: We can start Thursday right after  
17 Rashed or --

18 MR. CHAIREZ: Yeah, we can do that Thursday  
19 afternoon.

20 THE COURT: And that way we'd only have to do just a  
21 handful of whatever there -- there may be after the case is --

22 MR. CHAIREZ: No. We can finish -- we can finish the  
23 jury instructions tomorrow, Your Honor.

24 THE COURT: Okay. So we'll plan on that tomorrow  
25 morning.

1 MR. CHAIREZ: Okay.

2 MS. HOLTHUS: So would we be starting -- what time  
3 are we starting tomorrow if we're only going with one witness?

4 THE COURT: Nine-thirty. Okay?

5 MR. CHAIREZ: Okay. I'm ready.

6 THE COURT: Then let's bring the jury in.

7 (Pause in proceedings)

8 (Jury reconvened at 1:24 p.m.)

9 THE COURT: All right. Welcome back, ladies and  
10 gentlemen of the jury. It looks like we have everyone here.  
11 I want to go over a few just kind of housekeeping matters for  
12 all of you. I don't know if Jason's told you, but the  
13 scheduling of a trial is a little -- is more of an art than a  
14 science, which means not only do the attorneys in this case  
15 kind of have to work around the Court's other cases, we also  
16 have to work around the schedules of many other individuals  
17 who are called to testify in this case.

18 So what it appears right now is tomorrow's going to  
19 be a short day. We're going to start at 9:30 in the morning.  
20 It's anticipated there will be probably around one witness and  
21 that we will wrap up pretty early tomorrow. There will be no  
22 trial on Friday. You'll come back here on Monday at 1:00. It  
23 is anticipated, and I say anticipated because it's kind of  
24 again an art, not a science, that we will do closings and send  
25 this out to all of you to deliberate probably sometime later

1 in the day on Tuesday.

2 And that would be with a 1:00 start time on Tuesday.  
3 I don't know if some of you are trying to go into the office  
4 in the morning and get stuff done, but that's where we stand  
5 right now. All right?

6 With all that being said, the State was presenting  
7 its case and will call its next witness.

8 MS. HOLTHUS: Laura MacKenzie.

9 LAURA MACKENZIE, STATE'S WITNESS, SWORN

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

12 THE WITNESS: Laura, L-a-u-r-a, MacKenzie, M-a-c  
13 capital K-e-n-z-i-e.

14 THE COURT: Whenever you're ready.

15 DIRECT EXAMINATION

16 BY MS. HOLTHUS:

17 Q Ms. MacKenzie, what do you do?

18 A I'm the chief of instruction at the Defense  
19 Language Institute English Language Center where our students  
20 come to learn English. We have 230 instructors and then  
21 supervisory personnel.

22 Q Let me -- let me just break it down just a  
23 little bit.

24 A Yes.

25 Q You flew in from where?

1           A     From San Antonio, Texas. I work at Lackland Air  
2 Force Base at the Defense Language Institute.

3           Q     And I think you were kind of starting to tell us  
4 what the Defense Language Institute is.

5           A     Correct. We --

6           Q     Let me -- before we get there. What's your  
7 education and experience?

8           A     I have a master's in English with a  
9 concentration in English as a second language, English as a  
10 foreign language.

11          Q     And how -- how long have you been with -- this  
12 is a military agency?

13          A     This is -- yes. The Defense Language Institute,  
14 we have -- our students come on invitational travel orders  
15 from up to 110 different countries. They're there to learn  
16 English, most of whom go on to follow on training. Others  
17 might go back to their home country.

18          Q     Does it include also United States citizens?

19          A     We do have a program for U.S. Army students who  
20 are going to basic training. They have not yet gone to basic  
21 military training. They're primarily from Puerto Rico, but  
22 they're in the States legally. Maybe from Asia, Africa, they  
23 have volunteered to go into the U.S. Army and they come to  
24 learn English before they go to basic military training.

25          Q     So essentially, is that a small proportion?

1           A     That's a smaller portion of our student  
2 population, yes.

3           Q     All right. And so the bigger -- the bigger part  
4 is what? A hundred and ten countries?

5           A     Right. We have -- we graduate approximately  
6 3,500 students and of those, it varies from year to year, but  
7 the U.S. portion would be about 500.

8           Q     You of -- of those, got ya.

9           A     Of those, of that 3,500.

10          Q     And so if you could explain to me, now you said  
11 this is -- is this Army, Navy, what's the --

12          A     Okay. Students come to study English whether or  
13 not they're in their country's Army, Navy, Air Force, Marine  
14 Corps. This is where they learn English before they go to  
15 follow on training, to learn to be a pilot, to go to medical  
16 training in the U.S., to go to maintenance training,  
17 electronics, wherever they're going for follow on training.

18          Q     Which is actually the how to do your job  
19 training part?

20          A     That's correct. And so we train them to a high  
21 enough level of English so that they can then go to this  
22 technical training.

23          Q     And the technical training is all done in  
24 English?

25          A     The technical training is all done in English.

1           Q     And how do -- and which branch of the military  
2 are you run by or?

3           A     Okay. We are a Department of Defense Agency.

4           Q     Okay.

5           A     Under the operational control of the U.S. Air  
6 Force because we are physically located on an Air Force Base.

7           Q     Lackland?

8           A     Lackland, yes.

9           Q     Okay. And are there other -- other branches  
10 involved?

11          A     We have students and we have some of our  
12 military leadership. The commandant is a colonel in the U.S.  
13 Air Force. And the deputy commandant is a lieutenant colonel  
14 in the Army. We also have naval personnel who are at  
15 Lackland.

16          Q     So it includes all the branches?

17          A     Yes.

18          Q     Essentially. How -- how is it that it -- how --  
19 how does this work? How does somebody get to you? Where do  
20 you get them from?

21          A     Right. Again, it is a military to military by  
22 invitation only. So the students represented are from allied  
23 countries and come for training. Some are -- they need to  
24 start at -- their English is at a lower level and we get them  
25 to the level that's required by follow on training. Follow on

1 -- if I might just say, follow on training sets the  
2 requirement. They determine what score students will be  
3 successful operating in this English only environment.

4 Q And by score you mean basically what level of  
5 English do they need to attend this particular training?

6 A Right. We have what we call the ECL, the  
7 English Comprehension Level test, it's a proficiency test. So  
8 we have books that our students study every week or every two  
9 weeks. They advance in the books, but those are achievement  
10 tests. They take a book quiz at the end of the book and  
11 that's an achievement test. So they know what words and the  
12 grammar, what will be on the test. The ECL is the  
13 comprehension test. It's a proficiency test, so it covers a  
14 wider range of words and topics and that's the score the  
15 students need to proceed to follow on training.

16 Q And if you -- well, you said it was invite only.  
17 How do you get invited? I mean --

18 A Okay. Our military, the Department of Defense,  
19 will -- we, again, have this available to countries with whom  
20 we are allies. So if a country has purchased, for example,  
21 some aircraft --

22 Q And you've researched this case in particular,  
23 you've looked up the records of Mazen Alotaibi; is that  
24 correct?

25 A That's correct.

1 Q And you brought some of those records you have  
2 in there with you?

3 A Yes, that's correct.

4 Q And so you were saying, for example --

5 A Right. Saudi Arabia purchased the F-15 aircraft  
6 from the United States and this was a 29.4 billion dollar  
7 sale. So in order to train aircraft mechanics and pilots,  
8 they would need to come to DLI for English before they go to  
9 follow on training.

10 Q So is it pursuant to that purchase their  
11 military personnel are invited here to train them to use the  
12 product we sold them essentially?

13 A Right. And -- and it depends on the country  
14 whether they pay for the English language training. But DLI  
15 is really renowned in the world for our success rate for  
16 English language training because we also include military  
17 terminology and comprehension as to what to expect at follow  
18 on training.

19 Q And so in this particular case -- I'm showing  
20 you a packet of documents that have been marked as 177 for  
21 identification.

22 A Okay.

23 Q Do you recognize those?

24 A I do.

25 Q And just flip through them briefly and tell me



1 what you recognize them to be.

2 A Okay. It shows the record of Sergeant Alotaibi  
3 as when he started, what his scores were when he began, each  
4 of the books he studied and how long he was in English  
5 language training. He took general English to achieve a score  
6 of 81.

7 Q Okay. Let me just back you up just a little  
8 bit.

9 A Sure.

10 Q Are these records kept in the ordinary course of  
11 business?

12 A Yes.

13 Q Are they regularly relied on and you're familiar  
14 with them as the -- what's your title?

15 A Chief of Instruction, yes.

16 MS. HOLTHUS: I move to admit State's Proposed 177.

17 MR. CHAIREZ: No objection, Your Honor.

18 THE COURT: Admitted. You may publish.

19 (State's Exhibit 177 admitted.)

20 BY MS. HOLTHUS:

21 Q Ma'am, they're going to appear up here so maybe  
22 you can kind of tell me what we're looking at. And you said  
23 this is Sergeant Mazen Alotaibi. And I believe you said he  
24 was a Saudi --

25 A Sergeant.

1 Q Sergeant?

2 A Correct.

3 Q Is this on or not on?

4 MS. BLUTH: It's on. I think it's just zoomed in too  
5 much.

6 MS. HOLTHUS: Okay. Thank you.

7 BY MS. HOLTHUS:

8 Q Can you see that?

9 A Yes.

10 Q Okay. And just kind of just tell me what do we  
11 have here?

12 A Okay. This shows his -- the date that he took  
13 the --

14 Q Is it easier to point it out up there, do you  
15 think?

16 A I'm going to move over just a touch and then I  
17 can see it. Sorry.

18 Q Okay.

19 A Okay. It shows what his score was when he first  
20 entered English Language Training.

21 Q And that would be?

22 A That was -- well first -- the first score is his  
23 in country score of 41. The first week he was in training he  
24 then scored a 66.

25 Q What is this, this 41?

1 A That 41 was in country.

2 Q What does that mean?

3 A He had to show what his comprehension level test  
4 was in country before he came for training so they would know  
5 how many weeks to program him. That's a fairly low score.

6 Q So that was -- that's -- that would be he would  
7 take that in his own country?

8 A In his -- in Saudi Arabia at the U.S. Embassy.  
9 It is a controlled test; U.S. personnel administer it.

10 Q Got ya. But it indicates some English?

11 A Correct.

12 Q So that these are the various scores?

13 A That's correct.

14 Q Obviously by date. And so his final score  
15 was --

16 A On August 7th it was an 81.

17 Q And this is August --

18 A Of '12, yes.

19 Q -- 2012?

20 A 2012.

21 Q So how long was he with your program?

22 A He was with us for one full year in English  
23 Language Training. You're in class for six hours a day, from  
24 7:30 in the morning until 2:30 in the afternoon. You're  
25 expected to do homework, approximately two hours per day, and

1 that's our weekly schedule.

2 Q And that would be from April --

3 A Actually from --

4 Q -- when did he get there?

5 A -- October. October 11 -- 16 October -- or 18  
6 October 11 until -- he was in general English until 7 August.  
7 But if you -- there's another sheet that he then attended  
8 specialized training for an additional nine weeks.

9 Q And where is that?

10 A That's on the next page I believe.

11 Q The next page it also --

12 A That's his book quiz scores.

13 Q So what are those again now that we're looking  
14 at them?

15 A Okay. His -- you were just looking at the  
16 comprehension level scores. Again, this is a proficiency  
17 test, it indicates his level of proficiency, not on studying a  
18 particular list of words, but overall comprehension in reading  
19 and listening.

20 Q And overall how were his scores?

21 A Actually, he did very well. He was in the 70s  
22 for a while, which was -- it showed that he had somewhat  
23 plateaued or he needed to have some additional training. But  
24 even at a 70 to a 75, that is a good score. Many follow on  
25 trainings will accept students with that score.

1           Q     And that's your goal, to get a score high enough  
2 to be proficient in English enough to go to your next level --

3           A     Correct.

4           Q     -- actually the training that you're really here  
5 for?

6           A     Correct.

7           Q     Now what do these specialized English scores at  
8 the bottom mean?

9           A     If I might just refer to the book quiz scores  
10 above that, that's in the --

11          Q     Sure.

12          A     -- general English portion of it before we get  
13 to specialized.

14          Q     Sure.

15          A     Those are the achievement tests. So that showed  
16 he studied a book for one week or two weeks and then he took a  
17 test and he actually did very well. A 70 is passing. And as  
18 you'll be able to see that he received higher grades than  
19 that, 92, 98, 80. He did fail one book.

20          Q     The book 28?

21          A     Book 28, but then we offered it -- we -- we call  
22 it recycling. We recycled him back so that he didn't miss  
23 that information and then he scored an 80.

24          Q     Okay. Now can we move on to specialized  
25 English?

1           A     Once he achieved that score, then again he was  
2 in training for six class periods a day. Friday's actually  
3 one period less. We allow them to leave before lunch, so it's  
4 five hours. And, again, he did well. The one book quiz he  
5 took the Listening Strategies and scored a 96. He took the  
6 Reading Strategies and scored an 87. Those are --

7           Q     And what -- what are those?

8           A     Those are more to ensure that they -- it's more  
9 academic than specialized. Even though it's in Specialized  
10 English, again, we want to ensure that our students have all  
11 the really good skills to go to follow on training.

12          Q     And then does that -- would that include on some  
13 level an IQ of -- [indiscernible] say that they don't have  
14 learning disabilities or that they're at least of average or  
15 above average intelligence?

16          A     If a student were to have IQ or some difficulty,  
17 it would have been, you know, it would have -- it would have  
18 showed up much earlier in the General English Training because  
19 learning English as a foreign language is difficult at best.

20          Q     Did you -- is it particularly difficult when  
21 you're talking about Arabic to English?

22          A     That is why we -- we understand that it takes  
23 speakers of certain languages longer to obtain a score because  
24 the alphabet is different. So the Arabic alphabet is  
25 different from the Roman alphabet. So a year in training to

1 go from a 41 to an 81 is really -- it does indicate a good  
2 ability to learn the language. We've had students who don't  
3 achieve that and then go home.

4 Q And if they don't achieve that --

5 A That's correct.

6 Q -- that's what happens, they go home?

7 A Yeah.

8 Q And do you find typically countries send their  
9 best and brightest, if you will?

10 A For a score of 80, that is a much more difficult  
11 score than a score of 70 to 75. And, yes, many of the  
12 maintenance personnel, enlisted personnel, only need a 70.  
13 Those who are selected to achieve the 80 are the best,  
14 especially in learning English.

15 Q And then the next page, that looks like just the  
16 attendance issue? Is there anything notable about the  
17 attendance?

18 A Not really. There are -- this is again for a  
19 full year. There was some illness, there were some embassy  
20 calls, there's a code for it I believe on the next page to  
21 show you what it was for.

22 Q Nothing remarkable?

23 A There's -- there's nothing remarkable.

24 Q This next page, this is just a different way  
25 of --

1           A     It's just a different way of looking at it.  
2     Again, to show the level of books he studied. He went in  
3     sequence from book nine all the way through book 33.

4           Q     He came in beyond books [indiscernible].

5           A     Correct. We place students in class based on  
6     their individual proficiency and that English comprehension  
7     level score is what we use to determine book placement.

8           Q     And then here I believe is what you were saying,  
9     that initially Mr. Alotaibi achieved score of 70 to 75. And  
10    this essentially tells you what that means, correct?

11          A     Correct. And that is -- it comes directly from  
12    the book that every security cooperation officer, a U.S.  
13    military officer in country will use to program students  
14    and/or the international military personnel. It's also online  
15    at our website, DLIELC.edu. So we have a website. So it does  
16    list what a person at that level can do.

17          Q     Okay. And you took those out based upon the  
18    scores that Mr. Alotaibi achieved essentially by the time he  
19    graduated a score of 81; is that correct?

20          A     That's correct. And --

21          Q     And so this details essentially with a score of  
22    81, what abilities would he have?

23          A     Yeah. And the reason you're looking at 70 to 75  
24    is the student with an 80 can do what a 70 to 75 does plus  
25    what an 80 does.



1 Q And so that's -- this is --

2 A Yes.

3 Q -- additional --

4 A Information that --

5 Q -- proficiency that Mr. Alotaibi --

6 A Yes.

7 Q -- would have over --

8 A Just what's listed for an 80 but --

9 Q So by the time he gets to the 81, what -- what  
10 is he trained and able to do in addition to the other stuff?

11 A As you can see on the side, it gives some  
12 examples that a student with that level of proficiency can go  
13 into undergraduate pilot training and they would be in an  
14 aircraft with a U.S. military person. They could go to  
15 professional military education courses, such as those at the  
16 National Defense University, at the war colleges, whether it's  
17 the Army War College, the Command in General Staff College.  
18 They can interact on a daily basis in group discussions, in  
19 understanding and comprehending what is taking place in those  
20 types of settings.

21 Q And -- and I guess of more concern to me is, it  
22 indicates that they can function in an English only academic  
23 or highly technical environment?

24 A That's correct.

25 Q Exhibit listening comprehension and greater

1 facility with speech as demonstrated in situational dialogs,  
2 various types of role texts and role playing activities?

3 A That's correct.

4 Q We have a summary of an oral paragraph, which is  
5 three minutes in length and accurately write a paraphrase of  
6 an oral paragraph one minute in length?

7 A Correct.

8 Q And again, this is all proficiency in the  
9 English language, correct?

10 A Correct.

11 Q Read authentic military and semi-technical text  
12 of 350 words in length in a variety of formats, such as  
13 essays, reports and briefings?

14 A Correct.

15 Q Accurately transcribes in dictation.

16 A Correct.

17 Q Take notes in class.

18 A Correct.

19 Q Write an original cohesive paragraph up to 150  
20 words in length in military format as well in the following  
21 styles; descriptive, narrative, and expository, or controlled  
22 use of the language but errors are still common?

23 A Of course. Errors are still -- I mean spelling  
24 is difficult, grammar is difficult.

25 Q Comprehensive --

1 A But comprehensible, absolutely.

2 Q That just indicates that his highest score was  
3 an 81?

4 A Correct.

5 Q And that he achieved that in August and I think  
6 you said he went on?

7 A To nine more weeks of specialized training  
8 before he left --

9 Q English specialized training?

10 A In English, yes, in English. And this is not to  
11 teach the person to be a mechanic or to be a medical  
12 technician or to be a pilot, but to familiarize them with the  
13 phraseology and terminology that they will encounter at their  
14 follow on training.

15 Q This last page, SES Modules, what is that?

16 A That's just a repetition of all of the  
17 specialized modules. His specialized modules were listed, the  
18 ones he actually took. He took aircraft maintenance, he took  
19 electronics and he took the reading comprehension strategies  
20 and listening comprehension, those nine special books that he  
21 took in Specialized English.

22 Q And I believe you indicated that he did go on to  
23 follow on training?

24 A He did.

25 Q And when did he begin that?

1           A     He graduated with us in October of 2012 and then  
2 he went directly to follow on training. I do -- don't have  
3 any information after that, but he was successfully doing  
4 that. That is why he was still in the United States at that  
5 time.

6           Q     Okay. If he wasn't being successful in his  
7 follow on training --

8           A     He'd go home.

9           Q     -- he would have gone home?

10          A     Correct.

11          MS. HOLTHUS: I'll pass the witness. Thank you.

12                   CROSS-EXAMINATION

13   BY MR. CHAIREZ:

14          Q     Is it Officer MacKenzie or Ms. MacKenzie or?

15          A     It's Mrs. MacKenzie. Thank you.

16          Q     Mrs. MacKenzie. All right. How many defense  
17 language institutes do we have here in the United States?

18          A     We have one.

19          Q     One.

20          A     Teaching English. We have another where U.S.  
21 military personnel go to learn a foreign language and that is  
22 in Monterey.

23          Q     All right. And that's near where Fort Ord used  
24 to be?

25          A     I don't know.

1 Q Okay. All right.

2 A Sorry.

3 Q So the Defense Language Institute where you work  
4 is for foreign students wanting to learn English --

5 A That's correct.

6 Q -- and that's where my client -- did he start at  
7 Lackland Air Force Base or did he start at Keesler Air Force  
8 Base?

9 A He started at Lackland Air Force Base to learn  
10 English.

11 Q All right. And essentially, when he first came  
12 there, his constant -- his comprehension and ability to speak  
13 English, in your opinion, was probably pretty low, correct?

14 A We would base that -- we base our books, we have  
15 levels, we have five levels. Books one through 30, in  
16 addition level six, is for those who need to go on to higher  
17 levels. He took books nine through 33, so he started in level  
18 two, which is a -- a basic level. He had some English before  
19 he came.

20 Q All right. And at what level did he finish?

21 A He finished at an 80ECL, which according to  
22 follow on training, and they're the ones who set the  
23 requirements, has a comprehension level equivalent to someone  
24 who can function in an academic and technical environment  
25 without any problem in English.

1           Q     All right. So the progress that you mention  
2 that he made from when he started to when he was graduated in  
3 October 2012, would you say it was pretty good?

4           A     Yes, it was.

5           Q     All right. And either -- but there was one test  
6 that you mentioned that he didn't do very well on. In fact,  
7 you had him recycle that particular test?

8           A     And we only do that when he had enough time and  
9 we do want to ensure that all of our students do graduate with  
10 the requisite skills.

11          Q     All right. So either Mr. Alotaibi was a really  
12 smart guy or either Mr. Alotaibi worked very hard, correct, to  
13 make the progress that he did?

14          A     He worked hard and he had some ability to learn  
15 another language.

16          Q     Now Arabic, and pardon me for my ignorance, but  
17 in their alphabet, is it like Hebrew where they read from the  
18 right to the left or do they -- are they like the Romanized  
19 language, which reads from the left to the right?

20          A     They read from the right to the left.

21          Q     So they follow the same pattern that Hebrew  
22 does, correct?

23          A     I don't know Hebrew, but I would assume so, yes.

24          Q     And so considering that it's the non-Romanized  
25 letters and considering they read from right to left, that's

1 an additional hurdle that people like my client -- or all the  
2 Arabs go through when they want to learn English, correct?

3 A And that is correct. And that's why they take  
4 the test monthly to ensure that their reading ability is  
5 proficient enough to go forward.

6 Q Okay. Now when you talk about this generalized  
7 English class that you teach people, there's -- is there  
8 anything there on American history?

9 A Not specifically. We have -- the texts are very  
10 interactive, so we ensure that our students are able to speak  
11 and comprehend. That's why we mention dialogs. So we might  
12 include something about historical figures, not only an  
13 American historical figure, but also others. And we like our  
14 students to do oral presentations about perhaps someone in  
15 their own country who is a famous figure.

16 Q All right. Now is there anything in these  
17 classes that they study on the American legal system?

18 A We do include some information. The word lawyer  
19 is in book 21 --

20 Q All right.

21 A -- attorney. We don't drill down --

22 Q Wait. Is the word lawyer in book 21 or is the  
23 word attorney in book 21?

24 A The word lawyer is and the definition given is  
25 attorney.

1           Q     Okay. All right. Are any of the Amendments to  
2 the Constitution given in the books that they study?

3           A     We actually do include some as extra readings.  
4 We don't test our students on the law in the United States,  
5 but because they're living in the United States we do want to  
6 ensure that they understand. And I did bring a copy of the  
7 Monday morning briefing. We go over some of our rules and  
8 regulations because they're living here.

9           Q     All right. And so just a couple other questions  
10 on the legal system. Do you know whether or not in these  
11 booklets there's mention about the word rights?

12          A     Yes, we have the word rights.

13          Q     Okay. And what is -- what's the definition or  
14 explanation we give to that?

15          A     It's a privilege, a right is a privilege.

16          Q     Okay. And is there anything in there about  
17 let's say Miranda or Miranda versus Arizona?

18          A     We don't -- that is not covered in our  
19 materials. But I do want to add that we have country liaison  
20 officers who work with us at the Defense Language Institute  
21 and we want to ensure that any questions that our students  
22 have are answered and these are their countrymen. And from  
23 Saudi Arabia we have anywhere between five and ten country  
24 liaison officers.

25          Q     All right. So -- and what is it that the



1 officers advise the Saudi soldiers who happen to be studying  
2 here?

3 A That I don't have knowledge absolutely  
4 positively, but if we go back to that attendance chart --

5 Q Okay.

6 A -- that we covered previously, there was a code  
7 and it says legal. And the sergeant was absent from class in  
8 February of 2012 and it was coded legal. So I don't know what  
9 was covered, but he was out from class for some legal issue.

10 Q Mr. Alotaibi was?

11 A Yes, sir.

12 Q Okay. Now in these booklets on rights, I mean,  
13 is there at least as far as the Americans are concerned, do we  
14 tell them if they ever get in trouble to either call their --  
15 the Saudi consulate or to call somebody at the Air Force base  
16 or?

17 A They are given that type of emergency  
18 information and we do cover -- we want them to understand that  
19 our culture is different from the -- all the different  
20 countries represented and we know that women's rights in the  
21 United States are different from those in Saudi Arabia. We do  
22 cover sexual harassment every Monday in the briefing to  
23 indicate it's inappropriate and unacceptable.

24 Q All right. Now, with respect to sexual  
25 harassment, is it -- is there anything on those records that

1 would indicate whether or not my client --

2 A No.

3 Q -- ever had any disciplinary problems?

4 A There's nothing about sexual harassment that I'm  
5 aware of. Again, I don't know what the legal absence was for.

6 Q Is there anything in the records of my client to  
7 where he showed disrespect to any of his teachers or any of  
8 the officers there at Lackland Air Force Base?

9 A No.

10 Q Is there anything in those records to show that  
11 my client ever was a disciplinary problem with respect to the  
12 use of alcohol?

13 A Not in his records, no.

14 Q Okay. So there's no disciplinary marks at all  
15 inside of his record?

16 A No.

17 Q Okay. And when did he complete his classes  
18 prior to December 31st, 2012?

19 A He left Lackland Air Force Base to go to follow  
20 on training on the 26th of October 2012.

21 Q All right. And you say that was for like a  
22 nine-week training course?

23 A No. He was at Lackland for one year.

24 Q Right.

25 A From October of 2011 learning English only until

1 October of 2012.

2 Q All right.

3 A His last nine weeks were specifically to give  
4 him some of the words that he would have at follow on  
5 training. It was still English training.

6 Q All right. But the -- the follow on training  
7 would have been more specialized and more technical with  
8 respect to aircraft maintenance or the parts of the airplane,  
9 et cetera, et cetera, correct?

10 A Yes, uh-huh.

11 Q And do you know at Keesler when their Christmas  
12 break would begin?

13 A I don't have that information.

14 Q Okay. Also, in the English language part, do we  
15 teach them proper English or do they learn slang terms?

16 A We teach them proper English. We do introduce  
17 idiomatic expressions and two-word verbs such as, you know,  
18 when you're ordering a meal in a restaurant, you know, carry  
19 out and various terms like that, but it is proper English.

20 Q Do you know if the word prostitute is included  
21 in any of those words?

22 A We do not have that in our materials.

23 Q Okay. What about the word trick roll?

24 A No.

25 Q And you look surprised. Do you yourself know

1 what a trick roll is?

2 A Actually, no.

3 Q Okay. All right.

4 A I can guess, but --

5 Q Okay. And lastly, would you say that Mr.

6 Alotaibi was intelligent enough and able to comprehend English  
7 enough that if he did not know a certain word, he would try to  
8 figure out what was being said by the context of what was  
9 being said?

10 A We do give our students those types of  
11 strategies and to ask questions so they understand to ask a  
12 question if they don't understand. That question formation is  
13 vital in learning another language.

14 Q All right. Nothing further, Mrs. MacKenzie.

15 A Thank you.

16 Q All right.

17 THE COURT: Redirect?

18 MS. HOLTHUS: Just a couple.

19 REDIRECT EXAMINATION

20 BY MS. HOLTHUS:

21 Q Can I get this marked? It's just a packet.

22 Mrs. MacKenzie, I'm showing what's marked as State's Proposed  
23 178 for identification. Do you recognize that?

24 A This is information that's given to our students  
25 when they first begin training.

1 Q And to all the students?

2 A They -- this briefing is discussed with them,  
3 yes.

4 MS. HOLTHUS: Move for admission of 178.

5 MR. CHAIREZ: No objection.

6 THE COURT: Admitted.

7 (State's Exhibit Packet of Information to Students admitted.)

8 BY MS. HOLTHUS:

9 Q And what about 179 for identification, what is  
10 that?

11 A Every morning in -- because we have new students  
12 starting in class every week, based on their proficiency  
13 levels I mentioned, so someone may be having a new group of  
14 instructors -- or a new group of students in his or her class,  
15 we have a Monday morning briefing that covers classroom rules,  
16 parking rules. And this is the Monday morning briefing that  
17 every instructor gives every Monday.

18 Q So at some point in his one year, Mr. Alotaibi  
19 would have received that, if not every week for a year?

20 A He should have received it every week. If it  
21 was forgotten one week I can't attest for that but --

22 MS. HOLTHUS: Move for that, admission of that as  
23 well.

24 MR. CHAIREZ: No objection.

25 THE COURT: Admitted.

1 (State's Exhibit 179 admitted.)

2 BY MS. HOLTHUS:

3 Q And just -- I just want -- a couple of things.  
4 With respect to the Monday morning briefing, 179, there's a  
5 whole bunch of things, rules and what not. But this is where  
6 you said sexual harassment's inappropriate, told every Monday?

7 A Yes.

8 Q And in particular, always speak English?

9 A That's in -- in the classroom. We know that  
10 students are more comfortable and -- outside of class, but in  
11 the classroom it's mandatory that they have English only.

12 Q Five to six hours a day for almost a year?

13 A Yes. And part of that is, we are not required  
14 when we cannot possibly speak all of the languages of all of  
15 the students. We try to have the students in class -- if we  
16 have enough students from -- to mix groups based on the book  
17 they're studying, we might put a student who speaks Japanese  
18 in with Arabic speakers, Spanish speakers so that they do rely  
19 on English as the form of communication, absolutely, in the  
20 classroom.

21 Q And again, this -- the legal orientation, 178,  
22 this actually does go through in a more detailed view it talks  
23 about specific areas including driving in the U.S., sexual  
24 harassment and prostitution?

25 A That's correct. The country liaison officers

1 would have copies of that briefing. We as the instructors and  
2 supervisors, we don't go over that with the students. But the  
3 country liaison officers and -- would have that information.

4 Q And again, the sexual harassment discussion and  
5 an explanation of --

6 A Correct.

7 Q -- soliciting prostitution, don't do it?

8 A Correct.

9 Q Let me just reclarify. Mr. Alotaibi did -- he's  
10 -- he did the English training until the last nine weeks, was  
11 still English training but Specialized Technical English  
12 basically?

13 A Correct.

14 Q And he was out of that in October and then he  
15 went on to follow on. And where did he go to follow on  
16 training?

17 A He went to Keesler Air Force Base for aircraft  
18 maintenance. I don't know the specific training --

19 Q Okay.

20 A -- he was there for.

21 Q Do you know where that is?

22 A Where is it?

23 MR. CHAIREZ: Mississippi.

24 A Mississippi. Thank you. No, I didn't.

25 MS. HOLTHUS: That's all. Thank you.

1 THE COURT: Anything else, Mr. Chairez?

2 MR. CHAIREZ: Two questions.

3 RE CROSS-EXAMINATION

4 BY MR. CHAIREZ:

5 Q Mrs. MacKenzie, this manual about sexual  
6 harassment, prostitution, et cetera, et cetera, is this also  
7 given to all the American personnel that are in the military  
8 armed forces?

9 A I can't speak to that because I'm not in the  
10 military.

11 Q All right. Okay. Nothing further.

12 THE COURT: Is she free to go?

13 MR. CHAIREZ: She's free to go.

14 MS. HOLTHUS: She is, thank you.

15 THE COURT: Thank you, ma'am, for your time.

16 MS. HOLTHUS: Can we approach before the next  
17 witness?

18 THE COURT: You may.

19 (Bench conference transcribed as follows.)

20 MS. HOLTHUS: The next witness is the detective with  
21 the recording and I'm still waiting for the redaction of it.  
22 I've got the -- the things here I can start him but I also --  
23 my understanding from Mr. Chairez is he's not requesting any  
24 redactions from any -- any particular parts and I just want to  
25 make -- him to make the record that for strategic purposes --



1 because there's some things that we probably would have -- the  
2 defendants as he got in trouble once before for kissing a lady  
3 in public in Saudi but he was not guilty and some stuff like  
4 that.

5 MR. CHAIREZ: We think some of those [inaudible].  
6 Because they like have an expression [inaudible]. We just  
7 think that's [inaudible].

8 THE COURT: Well, are you asking that they redact it  
9 out?

10 MR. CHAIREZ: Oh, they can keep it in. I just want  
11 to make a point that [inaudible], let the jury [inaudible]  
12 they -- they can listen and see [inaudible].

13 THE COURT: Okay.

14 MS. BLUTH: How long's that tape again?

15 MS. HOLTHUS: Hour and a half.

16 THE COURT: I want a quick break to use the restroom  
17 then.

18 MS. HOLTHUS: Sure.

19 (End of bench conference.)

20 THE COURT: All right, ladies and gentlemen of the  
21 jury. We're going to give you a -- just a quick break to use  
22 the restroom. The next witness is going to be a little --  
23 little bit, it's going to be fairly long. So I want you to  
24 stretch, get comfortable before coming back here. Yes, sir?

25 JUROR NO. 007: Judge, can you give us those -- those

1 time slots again?

2 THE COURT: The way the trial's going so far,  
3 probably we'll come in, I would bet we're done before midday  
4 tomorrow because it looks like we'll probably have around one  
5 witness tomorrow morning. So after that you guys would be  
6 free. You should be -- do you think that's fair to say that  
7 they'll be free by -- before lunch?

8 MS. BLUTH: I would think so, yes.

9 MR. CHAIREZ: I think so, Your Honor.

10 THE COURT: All right. So again, remembering it's an  
11 art, not a science, but probably just half day tomorrow  
12 morning only. No trial on Friday, back on Monday at one, back  
13 on Tuesday at one.

14 JUROR NO. 007: Tomorrow's 9:30, ma'am?

15 THE COURT: Nine-thirty, sir.

16 JUROR NO. 003: And we'll be doing deliberations on  
17 Tuesday?

18 THE COURT: We are hopeful.

19 JUROR NO. 003: Still possibly Wednesday?

20 THE COURT: Possibly. I mean, our hope is that we'll  
21 do closing arguments on Tuesday. After they do closings then  
22 it goes to the jury and it's really up to the jury at that  
23 point and how long it takes. Okay? That all depends on you  
24 guys.

25 Ladies and gentlemen of the jury, come back in ten

1 minutes. You're admonished not to converse amongst yourselves  
2 or with anyone on any subject connected with the trial, read,  
3 watch, or listen to any report of or commentary on the trial  
4 by any medium of information including, without limitation,  
5 television, newspaper, radio, Internet. Do not form or  
6 express an opinion on this case. All right, see you shortly.

7 (Jury recessed at 2:08 p.m.)

8 THE COURT: Okay, let's go. You know, actually  
9 before we go off the record, Maria, I just -- what was being  
10 said at the -- the jury's out. What was being said at the  
11 bench, I want to make sure we have a good recording of it. My  
12 understanding is a detective is being called next by the  
13 State. There is a videotape --

14 MS. HOLTHUS: That's correct, Judge. We had -- I  
15 understand Mr. Sweetin [phonetic] and Mr. Chairez have  
16 discussed it before. There are potential things that the  
17 State was ambivalent, if the defense had wanted it out we  
18 would have acquiesced. My understanding is that they've  
19 requested that everything come in as-is. We've taken out two  
20 lines from page 32 that essentially asks are you aware of the  
21 sentence here and it says something to the effect you can get  
22 -- you can go to prison for a very long time, 40 to 50 years.  
23 We've taken those two lines out.

24 It's our position that sentencing is not an issue for  
25 the jury and they -- that there was no need to be in it and it

1 shouldn't be in there or considered by the jury, besides which  
2 it's an inaccurate statement of the law. So my understanding  
3 is there is no objection by them to -- to take that out.

4           There were a couple of other areas where we said, you  
5 know, there's an indication the defendant may have been in  
6 trouble before in Saudi for kissing a woman in public. I  
7 don't know that it even rises to a level of other bad act  
8 because it's -- it's not a bad act here, but it does talk  
9 about him maybe being arrested and going through something and  
10 being found not guilty. We --

11           THE COURT: I don't think you even need it, do you?

12           MS. HOLTHUS: We don't need it but they didn't want  
13 it out so we left everything in because you know --

14           MR. CHAIREZ: The bottom line is we want it in, Your  
15 Honor, because it shows how inaccurate the translation is.  
16 You know, he was not arrested in Saudi Arabia. If he was  
17 arrested in Saudi Arabia he would have not been allowed in the  
18 United States. So there are numerous instances in there where  
19 we believe the transcriber either got it wrong or Detective  
20 Pool got it wrong and so --

21           THE COURT: Okay.

22           MR. CHAIREZ: -- that's why -- we don't care. If  
23 they want to redact stuff they can, but I would rather leave  
24 as much in to show that it's not a perfect translation from  
25 Arabic or what Mr. Alotaibi speaking. That's the only reason

1 I want it.

2 THE COURT: Okay.

3 MR. CHAIREZ: Okay, so --

4 THE COURT: I agree with the State on the sentencing  
5 since that's within the discretion of the Court.

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

7 THE COURT: On the other -- the only person I really  
8 see that would object to that information would be you or your  
9 client and since you're not objecting --

10 MR. CHAIREZ: We're not objecting.

11 THE COURT: Okay. Anything else?

12 MS. HOLTHUS: That's all I have.

13 THE COURT: Okay.

14 MS. HOLTHUS: I'm going to give Mr. Chairez a  
15 transcript.

16 MR. CHAIREZ: A chance to what?

17 MS. HOLTHUS: I'm going to give you one of these in  
18 case you want to look at it.

19 MR. CHAIREZ: Oh, okay.

20 MS. HOLTHUS: This is the redacted and we're still  
21 waiting for the redacted --

22 MS. BLUTH: No, I have it. I just --

23 MS. HOLTHUS: Oh, we're not waiting for it anymore.

24 (Court recessed from 2:11 p.m. until 2:30 p.m.)

25 (Outside the presence of the jury)

1 MS. HOLTHUS: The only record I wanted to make is we  
2 have marked, and I believe Mr. Chairez is stipulating to the  
3 DVD of the statement. Obviously, he's stipulating subject to  
4 the prior motion to suppress that he filed and based upon the  
5 Court's ruling.

6 THE COURT: Oh, okay.

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

8 THE COURT: Are they on their way up with that?  
9 Soon?

10 MR. CHAIREZ: Tomorrow at 9:30, huh?

11 THE COURT: Tomorrow at 9:30. I guess just wait. I  
12 mean, it was difficult for everyone here last time for  
13 interpreting.

14 MR. CHAIREZ: Wait a second, Your Honor. I've got to  
15 get the baseball scores before we start.

16 (Pause in proceedings)

17 (Jury reconvened at 2:37 p.m.)

18 THE COURT: Okay. Ladies and gentlemen, welcome  
19 back. Thank you. Sorry, there was a little bit of a delay in  
20 your break but we had a little bit of problems with the  
21 equipment the interpreters were using. All right? So the  
22 interpreter will be sitting next to -- next to Mr. Alotaibi  
23 until we can get new equipment. So again, sorry for the  
24 delay.

25 Ms. Holthus, are you ready to call your next witness?

1 MS. HOLTHUS: Detective Pool.

2 KEITH POOL, STATE'S WITNESS, SWORN

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

5 THE WITNESS: Detective Keith Pool, K-e-i-t-h,  
6 P-o-o-l.

7 THE COURT: Whenever you're ready.

8 DIRECT EXAMINATION

9 BY MS. HOLTHUS:

10 Q How are you employed?

11 A I'm a detective with Las Vegas Metropolitan  
12 Police Department.

13 Q A particular section?

14 A Sexual assault.

15 Q Can you give me your law enforcement experience  
16 and training?

17 A I started as a police officer with Las Vegas in  
18 2001. I was in patrol for five years. Began being a  
19 detective in the property crime section for five years and the  
20 last two years I've been in sexual assault.

21 Q And prior to law enforcement?

22 A I was a corrections officer for the State of  
23 Michigan for 13 years.

24 Q Tell me about your duties as an SA -- sex  
25 assault detective.

1           A     I work the day shift starting at six in the  
2 morning until about four in the afternoon. We take all calls,  
3 cases that come in from patrol related to sexual assault, all  
4 sexually related cases, and phone calls from patrol units that  
5 just have questions.

6           Q     So essentially, patrol goes out to a scene,  
7 checks it out and then if there's something there it's  
8 referred back to the sex assault detectives?

9           A     Yes, ma'am.

10          Q     Do you actually respond to the calls?

11          A     Depending on what the call is, but yes. If they  
12 -- if they ask us to come out to help them, yes, but just  
13 depends on what the case is.

14          Q     And then if you get called to a scene, what do  
15 you do at the scene?

16          A     Once at the scene you talk to everybody  
17 involved, lock down the area, collect evidence, call in crime  
18 scene analysts.

19          Q     Would the detective be basically the supervisor  
20 of the scene if you will? Delegating responsibilities as well  
21 as conducting interviews on your own?

22          A     Yes, ma'am.

23          Q     Specifically, do you have any experience and  
24 training in conducting interviews -- let's say suspect  
25 interviews?



1           A     Yes, ma'am. I've been to multiple classes on  
2 interviews.

3           Q     Approximately how many potential suspects have  
4 you interviewed?

5           A     I would say hundreds.

6           Q     And that's over the course of 14 years?

7           A     Twelve years here, yeah.

8           Q     Okay. Specifically on December 31st, 2012, were  
9 you on duty morning hours?

10          A     Yes, ma'am.

11          Q     Where were you?

12          A     I was stationed at headquarters. That day I  
13 remember it was a busy day and I believe we got called out a  
14 little bit earlier than the start of our shift.

15          Q     What time was your shift?

16          A     Shift started at six, but we go on call at 3:00  
17 so --

18          Q     A.m.?

19          A     Yes, ma'am. And that day I remember we had  
20 approximately six sexual assaults or four assaults waiting for  
21 us before 6:00.

22          Q     Waiting for you where?

23          A     At UMC Hospital.

24          Q     We meaning?

25          A     Meaning my squad. We have a -- I have a squad

1 that I work on, there's four detectives and one sergeant.

2 Q And who -- who -- who was on that particular  
3 day?

4 A Myself, Detective Christiansen, Detective  
5 Williams and Detective Beza and my sergeant Shawn Comiskey.

6 Q Do you work in teams or in pairs?

7 A It just depends. Everyday there's -- we call it  
8 a bucket person. If you're in the bucket that day you get all  
9 the new cases, all the calls that come in from patrol or any  
10 phone calls that come in, so you take turn. But whoever's up  
11 that day is the person that gets all the cases.

12 Q Who was in the bucket that day?

13 A Detective Christiansen.

14 Q So basically you -- when you say we, the two of  
15 you get called out to UMC?

16 A Yes. We had multiple cases that day, so it's  
17 kind of a triage type thing. Her and I were at the hospital  
18 doing all the interviews with different victims while our  
19 partners were at different crime scenes.

20 Q Did you get -- or at what point did you get word  
21 about -- did you get a call from one that a sexual assault  
22 that allegedly occurred at Circus Circus here in Clark County,  
23 Nevada?

24 A I would say it was approximately around 9:00.

25 Q A.m.?

1 A A.m.

2 Q And you are where at the time you get the call?

3 A I believe we're at UMC.

4 Q Okay. And is there something in particular  
5 about UMC that all the victims are there or a bunch of victims  
6 are there or?

7 A That's where they go to get their sexual assault  
8 exams, the SANE exam. Children go to a different hospital to  
9 get theirs, but adults go to UMC for theirs.

10 Q So essentially anywhere in the Clark County area  
11 if there's an alleged sexual assault victim that needs an  
12 examination they would be referred to UMC?

13 A Yes, ma'am.

14 Q Whereas the children to Sunrise?

15 A Yes, ma'am.

16 Q So it's about 9:00, you're at UMC on a  
17 non-related call when the call comes in?

18 A A different sexual assault. We find out that  
19 there was one, another one that came in so we started on that.

20 Q Okay. And by starting what did you do?

21 A First thing we do is interview the victim.

22 Q And was that done -- the two of you, you and  
23 Detective Christiansen together?

24 A Yes, ma'am.

25 Q And then as a result of that -- was that a

1 recorded interview?

2 A Yes, ma'am. It's -- it's a digitally recorded  
3 interview.

4 Q Did you make contact with anyone other than the  
5 victim at the hospital there?

6 A I don't believe so.

7 Q After that interview was conducted, what did you  
8 do?

9 A Went back to LVMPD headquarters and started  
10 doing interviews.

11 Q In particular, which -- what -- who did you  
12 interview?

13 A I interviewed the suspect in the case and a  
14 witness in the case.

15 Q And what was the -- do you see the suspect here  
16 in Court?

17 A Yes, ma'am. He's sitting at the defense table  
18 in the middle, suit, tie, hand on his face.

19 MS. HOLTHUS: Let the record reflect the  
20 identification of the defendant.

21 THE COURT: It will.

22 BY MS. HOLTHUS:

23 Q And who was the other individual that you  
24 interviewed?

25 A I believe his name was Mohammed Jafaari. I

1 might have the pronunciation wrong on the last name.

2 Q At the time of the interview what are you  
3 wearing?

4 A Khaki pants, polo shirt, just a ID badge that's  
5 hanging from my -- from my neck. No -- no gun or nothing like  
6 that.

7 Q And what was your understanding of what had gone  
8 on at Circus Circus? What information did you have?

9 A The information that we had from the victim was  
10 that he had been taken into a hotel room by the suspect and  
11 sexually assaulted him in the bathroom.

12 Q And the victim, the victim's name was?

13 A AJ Dang.

14 Q Where is it that the defendant is interviewed in  
15 particular? You said headquarters. What does headquarters  
16 look like?

17 A Headquarters, building A. On the lower floor  
18 there's a special section that is set up with approximately 12  
19 different interview rooms. They're all --

20 Q The headquarters is basically just a large  
21 office building?

22 A Headquarters is three large buildings at the  
23 corner of MLK and Alton.

24 Q Okay. So the defendant is interviewed. When  
25 would you make initial contact?

1           A     Yes.  He -- he was brought to the headquarters  
2 and put in a room separately.

3           Q     And you met him there?

4           A     And I met him there, yes.

5           Q     Are those rooms audio/video recorded?

6           A     Yes.

7           Q     And is that running all the time regardless --  
8 from the time that you put the suspect in the room?

9           A     Yes.  We turn it on and start the recording.

10          Q     As soon as they're in there?

11          A     Yes.

12          Q     So there's no conversation between you and in  
13 this case the particular suspect that's not presented on the  
14 audio/video?

15          A     In this case, no.

16          Q     There may be other cases that they're chatting  
17 in the hallway or something else is going on?

18          A     Correct.

19          Q     But essentially, your initial contact with the  
20 defendant occurred in that interview room that was already  
21 under recording?

22          A     Yes.

23          Q     And by that point the defendant was already in  
24 custody; is that right?

25          A     Yes, ma'am.

1 Q And did you give him his Miranda warnings?

2 A Yes, I did.

3 Q Was that from memory or a card?

4 A A card.

5 Q And that's evidenced on the video; is that  
6 correct?

7 A Yes.

8 Q Did you at any point request an interpreter?

9 A No, I did not.

10 Q Why not?

11 A Because he understood me. I felt he could speak  
12 English.

13 MS. HOLTHUS: I'm going to have this marked next but  
14 it's going to remain a Court's Exhibit rather than -- it's  
15 demonstrative only.

16 THE COURT: Yes. Any objection to that? Well, it  
17 will be made a Court exhibit because it will be shown to the  
18 jury.

19 MR. CHAIREZ: What is it, Your Honor?

20 THE COURT: It's -- looks like the transcription.

21 MR. CHAIREZ: No objection.

22 THE COURT: Okay. It will be a Court exhibit.

23 MS. HOLTHUS: And then I'm going to request then to  
24 publish the recording as well as hand out the other copies of  
25 the transcript.

1 THE COURT: Any objections?

2 MR. CHAIREZ: That's fine. No objection, Your Honor.

3 THE COURT: That's fine.

4 MS. HOLTHUS: The recording is coming in by way of  
5 stipulation as Exhibit 180 for the record.

6 THE COURT: All right.

7 MS. HOLTHUS: With the Court's permission, there are  
8 some down times where, for example, the defendant's at a  
9 table. If there's no objection, we'll fast forward through  
10 some of those?

11 THE COURT: Mr. Chairez, is that acceptable to you?

12 MR. CHAIREZ: It's -- it's fine, Your Honor.

13 THE COURT: All right.

14 MS. HOLTHUS: You can still keep track of how long  
15 the time is passing. And I believe for everyone's  
16 information, the transcription is taken off the audio  
17 recording, so it begins later than those actual words.  
18 There's more video than audio.

19 BY MS. HOLTHUS:

20 Q Is that the defendant with his head on the table  
21 there?

22 A Yes, ma'am.

23 MR. CHAIREZ: Your Honor, can -- can I ask a  
24 question? There are a few spots here where I'm going to say  
25 that the transcription was bad. Would you rather have me wait



1 when I do the cross-examination to like point that out or --  
2 because I just wanted to go through and move quickly but I  
3 don't want to give up my right --

4 THE COURT: Would you prefer --

5 MR. CHAIREZ: -- to challenge it later on.

6 THE COURT: I think it would be easier if you do it  
7 on cross-examination. Can you put that on hold for one  
8 second? Counsel, come here, please.

9 (Bench conference transcribed as follows.)

10 THE COURT: [inaudible]

11 MS. HOLTHUS: Huh?

12 THE COURT: Does -- is [inaudible]

13 MS. HOLTHUS: Oh, I don't know, is he? I don't see  
14 [inaudible].

15 MR. CHAIREZ: [inaudible], three hours, it's a three  
16 hour --

17 THE COURT: It is and you think it's over but it's  
18 not.

19 MS. HOLTHUS: Oh, I thought it was over.

20 MS. BLUTH: But there's only two hours and 30 minutes  
21 on that CD so --

22 MR. CHAIREZ: [inaudible] 30 minutes. I don't know,  
23 we'll see.

24 MS. BLUTH: Okay. Can we just --

25 MR. CHAIREZ: [inaudible]

1 MS. BLUTH: Well, we can't fix it in the middle if  
2 it's playing.

3 MR. CHAIREZ: [inaudible] they leave --

4 THE COURT: It ends, they leave --

5 MR. CHAIREZ: -- and then they come back and they  
6 [inaudible]

7 THE COURT: The problem is, okay, [inaudible],  
8 because [inaudible] ask for a lawyer and then [inaudible]  
9 after that.

10 MR. CHAIREZ: I think it's [inaudible]

11 THE COURT: But how close after that?

12 MR. CHAIREZ: Ten minutes.

13 MS. BLUTH: But what if --

14 THE COURT: [inaudible]

15 MS. HOLTHUS: What if -- what if we cut it -- we cut  
16 it from today right after the [inaudible]?

17 THE COURT: But you have to keep it on through it  
18 because you've got to -- that very last part is what  
19 [inaudible] decision.

20 MS. HOLTHUS: Okay. Right.

21 THE COURT: That's where he had asked for a lawyer.

22 MS. HOLTHUS: Asked for a lawyer so we said he knew  
23 he had a right to a lawyer.

24 THE COURT: Yeah. And then Mr. Chairez I know is  
25 going to bring up that whole [inaudible], just turn it off

1 before the naked part.

2 MS. BLUTH: But I don't know where the naked part is  
3 so what -- I'm the one in charge [inaudible].

4 MR. CHAIREZ: [inaudible]

5 MS. BLUTH: No, not all the way through.

6 MR. CHAIREZ: [inaudible] we'll -- you'll know --

7 THE COURT: You'll see that there's a gap so like a  
8 guy comes in to change the handcuffs, he asked for a lawyer,  
9 guy goes out --

10 MR. CHAIREZ: [inaudible]

11 THE COURT: -- so I would cut it off probably after  
12 that. Don't you think, Mr. Chairez?

13 MR. CHAIREZ: Yeah.

14 MS. BLUTH: Okay. So someone just tell me --

15 THE COURT: I don't think anything really  
16 substantively -- I don't think anything [inaudible] happens  
17 after that.

18 MS. HOLTHUS: Just out of curiosity, why is he naked?

19 THE COURT: What?

20 MS. HOLTHUS: Why is he naked?

21 MS. BLUTH: Because that's when they do the  
22 [inaudible]

23 MS. HOLTHUS: Oh, that's all recorded on -- I didn't  
24 realize that.

25 THE COURT: Yeah, we didn't know that until it just

1 happened to stay on it. There you go.

2 MS. BLUTH: The one thing, Mr. Chairez, that you were  
3 saying is it's the State's position, even through  
4 cross-examination, when you [inaudible] question, did you  
5 think he said this but that the best evidence is the tape  
6 itself so --

7 MR. CHAIREZ: Yeah, but that's [inaudible] of the  
8 tape.

9 MS. BLUTH: In regards to whether or not --

10 MS. HOLTHUS: Yeah. Definitely don't want him  
11 interrupting the tape but, no, that's all cross-examination.

12 THE COURT: [inaudible] and just mark it with maybe a  
13 [inaudible] section. Okay.

14 (End of bench conference)

15 THE COURT: All right. If you want to play the  
16 video.

17 MS. BLUTH: Yes, Your Honor.

18 (Audio/Video played)

19 MR. CHAIREZ: Can we stop the tape just for a second,  
20 Your Honor?

21 THE COURT: Yes.

22 MR. CHAIREZ: Okay. I mean just -- this is one of  
23 the concerns that I have is -- and I don't want it to get too  
24 far, but I thought when -- words are missing from the  
25 transcription of what's being said on the tape. So I want the

1 jury to understand the tape is more important than the  
2 transcription.

3 MS. HOLTHUS: And I -- that's what I was explaining  
4 is that --

5 MR. CHAIREZ: Yeah.

6 MS. HOLTHUS: -- they take transcriptions off a  
7 recording that will be -- that's turned on when the detective  
8 enters the room once they begin the -- the process, but that  
9 the room is fully being recorded. So we give you the full DVD  
10 but the transcription actually only comes from the actual tape  
11 recording.

12 THE COURT: So they're saying is --

13 MR. CHAIREZ: Well, actually I don't -- I mean I  
14 think there's a mistake because I think Detective Pool asked  
15 him, do you understand English and he goes yes, but not too  
16 much. Yet, I don't see that on my transcript and yet --

17 MS. HOLTHUS: It's not transcribed.

18 MR. CHAIREZ: Pardon?

19 MS. HOLTHUS: That's pre-transcription.

20 MR. CHAIREZ: No, that was just said 30 seconds ago  
21 or 45 seconds ago so --

22 THE COURT: Well, let's -- ladies and gentlemen of  
23 the jury, what they're saying basically is this, is the best  
24 evidence is going to be what you hear, see and perceive. All  
25 right? The -- the transcription that you've been provided,

1 that is just to aide you in watching this. But it's very  
2 important that you don't focus on the transcription, that you  
3 actually listen and watch it. Okay? Anything else, Mr.  
4 Chairez?

5 MR. CHAIREZ: That's the only concern I had, Your  
6 Honor.

7 THE COURT: Okay. And I think the jury is aware of  
8 that now, so let's turn it back on.

9 MS. HOLTHUS: And let me just -- let me just --

10 THE COURT: Yes.

11 MS. HOLTHUS: -- briefly have him explain it.

12 BY MS. HOLTHUS:

13 Q Explain what I'm saying. Do you know what I'm  
14 saying?

15 A There's a audio and as you can see video  
16 recording from the room. But as you can see on the table,  
17 there is a -- to my right on the table, the shiny object, is a  
18 digital recorder and that gets turned on for us to do our  
19 digital recordings of the -- or audio recordings of the  
20 interview and we use that -- come up to my computer, download  
21 it, and turn that in for transcription after -- after we get  
22 the interview started. So technically haven't started the  
23 interview yet. It's normally when we turn the recorder on.

24 Q But this is the -- the DVD or the video is the  
25 full recording?

1 A The complete, full recording --

2 Q Full content.

3 A -- of me being in there.

4 Q Okay.

5 (Audio/video played)

6 MS. HOLTHUS: Any objection if we fast forward a  
7 little bit here?

8 THE COURT: Mr. Chairez?

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

10 THE COURT: All right. Ladies and gentlemen of the  
11 jury, can you see down in the corner that the time stamp?  
12 Yes? No, no, keep going.

13 MS. BLUTH: Can we approach, Judge?

14 THE COURT: Yeah.

15 (Bench conference transcribed as follows)

16 MS. BLUTH: I felt like you gave it [inaudible]

17 THE COURT: No, no. This is when he comes in and  
18 he's going to change handcuffs [inaudible].

19 MS. BLUTH: Oh, okay.

20 THE COURT: [inaudible]

21 MR. CHAIREZ: [inaudible]

22 THE COURT: Okay.

23 MR. CHAIREZ: [inaudible]

24 THE COURT: [inaudible]

25 MR. CHAIREZ: [inaudible] When they start picking

1 the pictures, we should --

2 MS. BLUTH: I just -- I --

3 THE COURT: Just be ready to hit stop.

4 MS. BLUTH: Okay. I thought [inaudible]

5 (End of bench conference)

6 BY MS. HOLTHUS:

7 Q What we're looking at is who's entered the room  
8 now?

9 A That's my supervisor, Sergeant Comiskey.

10 Q For what purpose?

11 A I believe he's going to be getting processed,  
12 he's changing out the handcuff.

13 Q Okay.

14 (Audio/video played)

15 MS. HOLTHUS: Can we approach?

16 (Bench conference transcribed as follows)

17 MS. HOLTHUS: I just want to be clear, you have no  
18 objection to any of it including the fact that he wanted the  
19 lawyer at this point and what not, correct?

20 MR. CHAIREZ: [inaudible] objections taken  
21 [inaudible]. That's the only objection.

22 MS. HOLTHUS: But I just want to make that on the  
23 record. What I want to suggest we do is I just make a  
24 blanket, you know, remainder of this is them coming in to take  
25 the [inaudible] involving whatnot --



1 MR. CHAIREZ: Okay.

2 MS. HOLTHUS: -- and we won't watch anymore here and  
3 then the jury can watch it back in the room once we edit it to  
4 cut off the [inaudible].

5 MS. BLUTH: And then we just need to make a record, a  
6 more clear record, that that was a conscious decision --

7 MS. HOLTHUS: Because we wouldn't put that in  
8 normally.

9 MS. BLUTH: -- conscious decision, strategic decision  
10 to put on the record that he was invoking his right to counsel  
11 and you were okay with that being [inaudible]. I just want to  
12 make sure we want [inaudible] on a recess if that's okay.

13 MS. HOLTHUS: I mean that's something we never do.

14 MS. BLUTH: And we're not going to [inaudible]

15 MS. HOLTHUS: Well, that's what I'm just saying. I  
16 want to make that record but I want to cut it here because I  
17 know the only part he wanted to stop was before he gets naked  
18 and I don't know where that is. So in abundance of caution  
19 I'm going to stop it here. I'll have it later if they want to  
20 watch [inaudible] taken and whatnot. We don't -- but we don't  
21 need to watch that right now.

22 MS. BLUTH: [inaudible] watch this whole thing back  
23 there, that's their choice and that's on there.

24 MS. HOLTHUS: Well, we're going to -- we're going to  
25 get them a new copy, we're going to cut off the naked part.

1 We'll just have to [inaudible].

2 MS. BLUTH: Okay, so we're going to take --

3 MS. HOLTHUS: We're going to substitute it, yeah.

4 MS. BLUTH: We need to make a record --

5 THE COURT: [inaudible]

6 MS. HOLTHUS: I want to stop it right now.

7 MR. CHAIREZ: It's okay with me.

8 THE COURT: We're at a stopping point?

9 MR. CHAIREZ: I'm -- I'm fine.

10 THE COURT: Okay.

11 MS. BLUTH: Okay.

12 THE COURT: All right. Thanks.

13 (End of bench conference)

14 BY MS. HOLTHUS:

15 Q Now essentially, the remainder of this is where  
16 you were saying he goes on and gets processed and CSA comes in  
17 and photographs him and takes the various buccal swabs inside  
18 his cheeks and swabbed his fingers and whatnot?

19 A Yes, ma'am.

20 Q Actually, even the penile swabs, correct?

21 A Correct.

22 MS. HOLTHUS: And Judge, I'm going to -- I'm going to  
23 stop it at this point. The jury will have it if they want to  
24 have [indiscernible] evidence later.

25 BY MS. HOLTHUS:

1           Q     Basically, as part of your training, do you  
2 learn different interviewing techniques?

3           A     Yes, ma'am.

4           Q     And what types of techniques are included?

5           A     Agreeing with the subject, telling him ruse,  
6 ruses or using a ruse --

7           Q     For example?

8           A     For example, saying things that aren't true to  
9 -- to gain trust and get him to elicit more information to me.

10          Q     And it's basically a search for truth; is that  
11 correct?

12          A     Yes.

13          Q     To eliminate wrongful -- wrongfully accused or  
14 to establish a confession if that's the case, correct?

15          A     Yes.

16          Q     Then you are, to a degree, allowed to use ruses  
17 or lies, if you will?

18          A     Yes.

19          Q     The idea being as long as the lie or the ruse  
20 isn't one that would result in a false confession, for  
21 example?

22          A     Correct.

23          Q     You couldn't say I'm taking your children out to  
24 the desert to kill them unless you say you did this crime?

25          A     Correct.

1           Q     Because that's kind of coercious -- coercive and  
2 really wouldn't have any meaning in terms of a confession,  
3 correct?

4           A     Correct.

5           Q     So in this particular interview, did you use  
6 some of these technique?

7           A     Yes.

8           Q     Agreeing with -- minimization?

9           A     Minimization, yes.

10          Q     Is that a technique? That the behavior isn't as  
11 bad as -- as it may seem so that they feel more comfortable?

12          A     Correct.

13          Q     For example, you told him -- you talked about  
14 finding a whole bunch of money on this kid and you know  
15 there's these groups of kids that are going around stealing  
16 from people. Was that true?

17          A     No.

18          Q     Was that a ruse?

19          A     Yes.

20          Q     Something you made up?

21          A     Yes.

22          Q     Heard him mention something about money and then  
23 just kind of played into that?

24          A     Correct.

25          Q     Okay. The prostitution, all a ruse?

1 A Correct.

2 Q You said to him that I -- you know the kid was  
3 stealing from people. Is that a ruse?

4 A Yes, ma'am.

5 Q Not true at all?

6 A Not true at all.

7 Q A trick roll. A trick roll is what?

8 A Well, prostitutes will take people back to their  
9 rooms and steal from them.

10 Q Before or after sex?

11 A Correct.

12 Q You said something about him having a lot of --  
13 of -- a lot to drink, you knew he had a lot to drink. Did you  
14 necessarily believe that?

15 A No.

16 Q Are you essentially kind of throwing him excuses  
17 and helping minimize his behavior?

18 A Yes.

19 Q The defendant several times told you there was  
20 no force used?

21 A Yes.

22 Q And that if you looked at the security camera it  
23 would actually show the boy walking behind him?

24 A Yes.

25 Q And did you actually confirm that? There was no

1 force visible in the video camera.

2 A Correct.

3 Q And the boy was actually walking with him?

4 A Yes.

5 Q What time did this interview begin?

6 A It was approximately ten -- 10:45 I think.

7 Q It went how long?

8 A Approximately -- I'm not sure exactly how long  
9 it went. It was about an hour and a half.

10 Q Prior to that statement, the victim had never  
11 told you that he had sex with the defendant for money?

12 A Prior to what statement?

13 Q Prior to interviewing the defendant.

14 A No.

15 Q He never said that he had sex with the defendant  
16 but he refused to pay?

17 A No.

18 Q That was again just ruses and minimization  
19 techniques?

20 A Yes, ma'am.

21 MS. HOLTHUS: I'll pass the witness.

22 THE COURT: Cross?

23 CROSS-EXAMINATION

24 BY MR. CHAIREZ:

25 Q Detective Pool, is it possible that maybe the

1 interview, because if you look at the timeline it actually  
2 started at 12:45 and not 10:45. Or let's just say 1:00 in the  
3 afternoon.

4 A It could have. I might have the interviews  
5 mixed up with the --

6 Q All right. The boy at 10:45 and the defendant  
7 at -- at 12:45?

8 A Yes, sir. I believe -- actually, I believe  
9 that's true.

10 Q Okay. And when you spoke with the boy, the boy  
11 was not honest with you; is that correct?

12 A That's correct.

13 Q The boy never mentioned to you that he went to  
14 the room voluntarily in order to try to get marijuana off of  
15 the defendant or the guy -- other guys in the room, correct?

16 A Correct, sir.

17 Q All right. And you spoke with the boy at 10:45,  
18 which would have been after 9:15 or 9:30 when he reported it  
19 to Circus Circus security, correct?

20 A Yes, sir.

21 Q All right. And so a couple days ago the boy  
22 mentioned or the prosecutors mentioned the boy was honest from  
23 the beginning and mentioned that he had gone to the room to  
24 buy marijuana and that's what he told Circus Circus, but two  
25 hours later he didn't tell you that, did he?

1           A     He did not tell me that.

2           Q     Did any of the Circus Circus officers tell you  
3 he had gone to the room voluntarily in order to buy marijuana?

4           A     I didn't speak to the Circus Circus officer,  
5 sir.

6           Q     Okay. So you spoke with AJ Dang --

7           A     Yes, sir.

8           Q     -- and you spoke with the defendant.

9           A     Yes, sir.

10          Q     And you also spoke with Mohammed Jafaari.

11          A     Yes, sir.

12          Q     Okay. And I'll confess, no pun intended, but  
13 I'm a little concerned about your use of the word ruse,  
14 r-u-s-e. Okay? And is this something that they train you to  
15 do in the police department to say when we interview subjects  
16 it's okay to be dishonest with them?

17          A     It is -- through some training that you learn  
18 how to use different techniques. And a lot of it is -- I  
19 would say most of my -- my techniques have been developed  
20 myself through just doing several interviews, but using ruses  
21 is perfectly normal.

22          Q     Okay. So you don't feel like, for lack of a  
23 better metaphor, that maybe you have egg on your face because  
24 the young boy used a ruse on you and he was dishonest to get  
25 you to believe certain things?



1 A Not a bit.

2 Q Okay. So you think it's perfectly acceptable  
3 that we base our evidence procedures -- well, strike that.

4 When you use the word evidence, did the defendant  
5 understand what you were saying?

6 A I believe so.

7 Q Do you recall using that word?

8 A Yes, sir.

9 Q Okay. And you think he said, he didn't -- he  
10 quickly understood what evidence was?

11 A I believe so, yes, sir.

12 Q Okay. And you've told me before that you don't  
13 believe Mr. Alotaibi had any problem understanding or  
14 communicating with you in English, correct?

15 A Correct.

16 Q All right. And you told me before that yes, he  
17 had some alcohol but you didn't think that he had too much  
18 alcohol that it wasn't wise for you to go forward with his  
19 interrogation, correct?

20 A Correct.

21 Q All right. And I see that you worked in the  
22 traffic division for almost ten years; is that correct?

23 A I've never been in the traffic section, sir.

24 Q Okay. Prior to being with the sexual assault  
25 unit, what unit were you with?

1           A     I started my career out in patrol for the first  
2 five years and then I went to the --

3           Q     Accident --

4           A     -- property crimes.

5           Q     Okay.

6           A     Which is burglary and grand larceny theft and  
7 that kind of stuff.

8           Q     Okay. But you were never with the accident  
9 reconstruction or?

10          A     I've taken accident reports a few times in  
11 patrol, but I was never in traffic per se, motors.

12          Q     Okay. All right. Well, but in the time that  
13 you were a patrol officer, you stopped numerous people for  
14 maybe driving under the influence?

15          A     Yes, sir.

16          Q     Okay. And so you learned how to do the  
17 horizontal gaze nystagmus test?

18          A     Yes. It's taught in the academy.

19          Q     And you learned all the other field sobriety  
20 tests that they give you, the counting the fingers, the walk  
21 and turn, et cetera, et cetera?

22          A     Yes, sir.

23          Q     Okay. And -- and you've arrested people for  
24 driving under the influence, haven't you?

25          A     Yes, sir.

1           Q     Okay. And so you're pretty experienced in  
2 recognizing people that are at least intoxicated enough not to  
3 be driving a car versus talking to people that are not  
4 intoxicated -- or are intoxicated, that maybe we shouldn't --  
5 we should wait to question them? Would you say you have that  
6 sophistication in terms of recognizing how drunk somebody may  
7 be?

8           A     To where they can't drive a car, yes.

9           Q     Okay. And do you think maybe there's a  
10 different standard between not allowing somebody to drive a  
11 car and not talking to somebody when we're dealing with  
12 something as serious as we're dealing with here?

13          A     Yes. If he was falling over and couldn't stand  
14 up, I would say I would not interview him.

15          Q     Okay. And you also told me before that when you  
16 listened to Mr. Alotaibi -- well, you said -- it sounded -- I  
17 can tell you're pretty drunk or you've had a lot of alcohol.  
18 Did you say that?

19          A     Yes, sir.

20          Q     Okay. And -- and he also told you that he'd  
21 been up all night, that he'd driven from L.A., came here,  
22 arrived at one or two in the morning and had not gone to sleep  
23 yet, correct?

24          A     Yes, sir.

25          Q     Okay. And despite those factors in his physical

1 condition, you didn't want to wait a couple hours in order to  
2 talk to him, correct?

3 A That's correct.

4 Q And -- and you even interviewed his friend,  
5 Mohammed, for the hour or hour and a half after you spoke with  
6 Mr. Alotaibi, correct?

7 A No. That -- that interview was very short.

8 Q Okay. We'll say 30 minutes?

9 A I don't even think it was 30 minutes.

10 Q Okay. But you -- you spoke to Mr. Jafaari  
11 afterwards, correct?

12 A Yes, sir.

13 Q Okay. Now, was Mr. Jafaari intoxicated or not?

14 A I'm not sure if he was or not, sir.

15 Q Okay. But in the hour and a half that you spoke  
16 to Mr. Alotaibi, you never thought, well, maybe he's -- he's  
17 too drunk, I should -- I should wait a little bit?

18 A Absolutely not.

19 Q Okay. And so you've never heard Mr. Alotaibi  
20 speak when he hasn't had alcohol in him has he -- have you?

21 A No. The first time I spoke to him was that day.

22 Q And -- so when you mentioned to Mr. Alotaibi --  
23 or let me just ask you. It was Mr. Alotaibi who first told  
24 you if the hotel has surveillance cameras it will show the boy  
25 went with me voluntarily, correct?

1           A     Yes, I believe so.

2           Q     Okay. But when -- when you questioned the boy,  
3 the boy told you he dragged him down the hall, he grabbed him  
4 by the clothes and he forced him into the room, correct?

5           A     Yes, sir.

6           Q     So in terms of that, who was being more honest  
7 with you, Mr. Alotaibi or AJ Dang?

8           A     Alotaibi.

9           Q     Okay. And the boy never mentioned to you that  
10 he wanted to go to the room because he was trying to get  
11 marijuana off of my client or the other gentlemen, correct?

12          A     Correct.

13          Q     And I don't recall it because the interview was  
14 long, but did Mr. Alotaibi mention anything about the boy  
15 coming to the room wanting weed?

16          A     I believe he mentioned weed, yes.

17          Q     Okay. And so it seemed to me repeatedly that  
18 Mr. Alotaibi said the boy wanted money or the boy wanted weed,  
19 correct?

20          A     Yes, sir.

21          Q     And so ten months after all of this happened, we  
22 know it -- now know Mr. Alotaibi was telling the truth and the  
23 victim was not being honest with law enforcement, correct?

24          A     About certain aspects, but not the entire case,  
25 no.

1           Q     Well, but we -- can we basically say 80 percent  
2 of the boy's story has been thrown out the door because he  
3 wasn't honest with you --

4           MS. HOLTHUS: I'm going to object to this --

5           MR. CHAIREZ: Let me rephrase it.

6 BY MR. CHAIREZ:

7           Q     Can we basically say a large portion of the  
8 boy's story was not true because he's changed that story from  
9 January -- December the 31st to this week?

10          A     I didn't hear the boy's testimony, sir.

11          Q     Okay. Well, would you like me to summarize it  
12 for you?

13          A     If you want to ask me a question about it.

14          MS. HOLTHUS: I'm going to object to that. His  
15 opinion in speculation in terms of how much of it was  
16 different. He can ask about specifically what was different,  
17 but the summary is more of a jury issue.

18          MR. CHAIREZ: Okay.

19          THE COURT: I agree.

20          MR. CHAIREZ: I'll break it down question by  
21 question, point by point.

22          THE COURT: All right. Don't ask him to speculate  
23 but you can ask regarding inconsistencies.

24 BY MR. CHAIREZ:

25          Q     So the boy when he spoke with you and Detective

1 Christiansen, didn't say he went down to the parking lot and  
2 had a couple hits of marijuana, correct?

3 A No, sir.

4 Q Okay. And the boy didn't tell you that at 9:04  
5 a.m. he received a cell phone call and it was his mother that  
6 was calling and he wouldn't tell his mother that he had just  
7 been sexually assaulted.

8 A No, sir.

9 Q And the boy told you that he didn't go to  
10 security right away because he had to stop because he had a  
11 breakfast appointment with a girl named Mary; is that correct?

12 A Yes, sir.

13 Q And later on we found out he told you -- or told  
14 the -- did he tell you or was it Detective Christiansen that  
15 was not true, he didn't have breakfast with Mary?

16 A I kind of got lost in that one, if you can  
17 rephrase it?

18 Q Okay. It was a compound question so it's my  
19 fault, Detective. Okay. And do you recall hearing him  
20 mentioning I'm going to go have -- I -- I didn't report the --  
21 I didn't report the crime because I was supposed to go have  
22 breakfast with Mary?

23 A Yes, sir.

24 Q And did that strike that to -- did that seem to  
25 you unusual that he would stop and -- and think it was more

1 important to have breakfast with Mary than to go report it to  
2 security that he had been raped?

3 A Yes, sir.

4 Q Okay. And if the boy had been honest with you,  
5 maybe you and Detective Christiansen might have taken a  
6 different angle or aspect in asking follow- up questions of  
7 the boy and asking follow-up questions of Mr. Alotaibi,  
8 correct?

9 A There would have been several different  
10 questions asked.

11 Q I mean, your job as an investigator or as a  
12 detective is only as good as the information that's given to  
13 you, correct?

14 A Correct.

15 Q And do you recall when you asked the question  
16 about the lotion, do you remember whether or not Mr. Alotaibi  
17 or the boy mentioned what color the lotion bottle was?

18 A I don't recall the color, sir.

19 Q Did they -- did the boy say whether or not the  
20 lotion was from the hotel?

21 A I believe he said it was from the bathroom area  
22 sink.

23 Q Okay. And I'll confess, Your Honor -- I mean,  
24 excuse me, Detective Pool. I myself don't even remember  
25 whether they mentioned it was shampoo or lotion that was used



1 when the -- when the boy first mentioned it to you and  
2 Detective Christiansen. Do you remember?

3 A No, sir. I believe it was lotion.

4 Q Okay. And how many times do you think the  
5 defendant told you I'm fucked up, I'm drunk --

6 MS. HOLTHUS: Objection, the transcript speaks for  
7 itself.

8 MR. CHAIREZ: Okay. Well, I'm just asking his  
9 estimate.

10 MS. HOLTHUS: And that's improper. Estimates and  
11 speculation are improper questioning.

12 THE COURT: Sustained.

13 BY MR. CHAIREZ:

14 Q Okay. Would you say that he told you he was too  
15 drunk more than once?

16 A Yes, sir.

17 Q Okay. And would you say it was a common theme  
18 in what he was saying during the time that you had him?

19 A He said it multiple times.

20 Q Okay. And did he also mention that I don't  
21 remember everything that happened because I was too drunk?

22 A He did say that.

23 Q And he at no time ever mentioned that to the  
24 degree that any sex may have happened, he forced himself on  
25 the boy.

1           A     No, sir.

2           Q     Whether we're talking about his mouth or whether  
3 we're talking about his rectum, correct?

4           A     Correct.

5           Q     And would you say that repeatedly you might have  
6 told him as part of your ruse, it's okay if the boy wanted it,  
7 it's okay if he wanted money. And even when all of that was  
8 said, he never mentioned that force was used.

9           A     Correct.

10          Q     Now with respect to the incident in Saudi  
11 Arabia, and I can't remember exactly what the question or the  
12 issue was, but something about maybe he kissed a girl in Saudi  
13 Arabia and he was arrested or -- or did we lose all of that in  
14 translation?

15          A     I believe you lost all that in translation.

16          Q     Okay. And did he tell you that he was married  
17 or did you -- did we transcribe it as if he was married?

18          A     I believe he was -- I believe he stated he was  
19 married.

20          Q     Okay. But is it possible that no, he's not  
21 married, maybe he just has a fiancé?

22          A     It very well could be.

23          Q     And he may not know what the difference between  
24 the word wife and fiancé is?

25          A     I'm not sure what he knows.

1 Q Okay. And when you asked him about medical  
2 evidence, did he -- did he understand what that word was?

3 A I have no idea.

4 Q Okay. I'll -- I'll strike that. It wasn't  
5 medical evidence, it was medical exam. But do you remember  
6 the question, you asking him saying the boy had a medical  
7 exam, I was present and he didn't know what a medical exam  
8 was?

9 A I -- I believe I told him that he had a medical  
10 exam.

11 Q Okay.

12 A I didn't think -- I didn't say I was present for  
13 it.

14 Q Okay. And you don't recall that he didn't know  
15 what the term medical exam meant?

16 A I don't know if he knew the term or not.

17 Q Okay. Well, do you want me to show you the  
18 transcript or read the transcript to you or would you  
19 basically say it speaks for itself?

20 A Oh, I'll say it speaks for itself --

21 Q Okay.

22 A -- I just don't recall.

23 Q All right. And Detective Pool, I'll be very  
24 honest with you, I feel sorry for you because you have many,  
25 many cases and I myself am confused on what may have happened

1 here so --

2 MS. HOLTHUS: I'm going to object to the -- I don't  
3 know, is it testimony or narration or small talk, but there's  
4 no question.

5 MR. CHAIREZ: All right. Well, okay.

6 THE COURT: Objection sustained. Just ask the  
7 question.

8 MR. CHAIREZ: Is the -- is the statement already in  
9 evidence?

10 THE COURT: That one? The one the jury's seen?

11 MR. CHAIREZ: Yes.

12 THE COURT: That was only going to be a court exhibit  
13 for demonstrative purposes.

14 MR. CHAIREZ: Okay. All right.

15 THE COURT: We discussed it at the break.

16 MR. CHAIREZ: Well, I don't want to play the tape,  
17 but if it's okay, can I read three or four lines of --

18 THE COURT: I mean, it is in evidence and that is a  
19 court exhibit.

20 MS. HOLTHUS: The tape itself is in evidence and will  
21 go back.

22 MR. CHAIREZ: Right.

23 THE COURT: The tape is in evidence. The other one  
24 is a court exhibit, not a State exhibit, though.

25 MR. CHAIREZ: Right.

1 THE COURT: Is that what you're asking me?

2 MR. CHAIREZ: I just want to read to the Detective  
3 and get him to agree with me that --

4 THE COURT: That's fine.

5 MR. CHAIREZ: -- Mr. Alotaibi didn't know what a  
6 medical exam was.

7 THE COURT: Yeah. And the jury has the, still has  
8 the transcriptions.

9 BY MR. CHAIREZ:

10 Q So I'm looking at page 3040, Detective Pool.  
11 Question, "What if he has a medical exam? Do you  
12 know what that is?"

13 Answer, "What?"

14 Question, "A medical exam?"

15 Answer, "What is a medical exam?"

16 Question, "Where they go in by a doctor and a nurse,  
17 they look and see -- they look for evidence. Yeah.  
18 Unintelligible for evidence, yeah."

19 Answer, "I don't care." So medical exam, would you  
20 say that's a pretty simple term to understand if somebody's  
21 fluent in the English language?

22 MS. HOLTHUS: Objection, calls for speculation. He  
23 -- he's not -- it's just not an appropriate question.

24 THE COURT: Sustained. I think it calls for  
25 speculation.

1 MR. CHAIREZ: Well, they presented evidence, Your  
2 Honor, that Mr. Alotaibi is --

3 THE COURT: Maybe ask it a different way --

4 MR. CHAIREZ: Okay.

5 THE COURT: -- so it doesn't call for speculation.

6 BY MR. CHAIREZ:

7 Q Okay. Do you know what a medical exam is?

8 A I've seen hundreds.

9 Q Okay. Did it surprise you when he answered that  
10 he didn't know what a medical exam was?

11 A No.

12 Q It didn't surprise you?

13 A No, sir.

14 Q Okay. And -- and why did you have Detective  
15 Christiansen leave the room?

16 A I felt he'd be more comfortable talking to me.

17 Q Okay. Because you're a man and she was a woman?

18 A Yes, sir.

19 Q Okay. Was there anything said by Detective  
20 Christiansen to you that I don't think he likes women or he's  
21 from the Arab culture and I think maybe there's something  
22 that's causing discomfort for him?

23 A No. It was my idea to have her leave, not hers.

24 Q Okay. All right. And do you recall how long  
25 into the interview it was that she left?

1           A     I would say it was a good portion, maybe --  
2 maybe an hour.

3           Q     Okay. And I don't recall, but I -- I think --  
4 did you mention anything about calling his military superiors  
5 if he wasn't honest with you?

6           A     I don't believe I said that.

7           Q     Okay. Did you -- so you basically, you said I'm  
8 going to give you one more chance and that's kind of like all  
9 of this started happening towards the end, correct?

10          A     Yes, sir.

11          Q     And so in the interview when you talked to him,  
12 he never admitted that there was force used, correct?

13          A     No, sir.

14          Q     All right. And when he mentioned about his  
15 penis, I believe it was his penis being touched by the boy, he  
16 said it was just for a second or two, correct?

17          A     The touching, yes.

18          Q     Okay. And -- and would you say it was  
19 conclusive that he said -- I mean, was his penis -- did it go  
20 inside the boy or did it not go inside the boy or did he say  
21 maybe?

22          A     Are you referring to his anus or his mouth, sir?

23          Q     His anus.

24          A     Yes. He said yes, I believe it was for -- I  
25 think he said for a second or two.

1           Q     Okay. And if, in fact, Mr. Alotaibi's penis  
2 would have gone inside the boy's anus, we would expect to find  
3 scientific evidence, correct?

4           A     Not necessarily.

5           Q     Well, we would expect to find something. You  
6 say there was a medical exam. The medical exam might reveal  
7 something, correct?

8           A     Are you referring to DNA or tears or?

9           Q     Tears.

10          A     Okay.

11          Q     Okay.

12          A     There sometimes are and sometimes are not.

13          Q     Okay. And what about DNA, would we expect to  
14 find DNA if --

15          A     In my experience, sometimes DNA is left but not  
16 always. So I can't say for 100 percent of the time DNA is  
17 always left because it's been times before where it has not  
18 been left. So it's not something that happens 100 percent of  
19 the time.

20          Q     Okay. So basically, you're aware that -- well,  
21 right after this interview they take swabs from Mr. Alotaibi's  
22 mouth in order to compare his DNA, correct?

23          A     Yes, sir.

24          Q     And you're aware that they take skin swabs off  
25 of his hand and skin swabs off of his penis, correct?



1 A Yes, sir.

2 Q Okay. And the same was done to AJ, the victim  
3 in this case, correct?

4 A Yes, sir.

5 Q All right. And we gathered evidence or you  
6 gathered evidence at the hotel room to look for DNA, correct?

7 A I wasn't there, but it was processed.

8 Q Okay. And it was written up in Detective  
9 Christiansen's report, correct?

10 A Yes, sir.

11 Q All right. And a full DNA exam was run on all  
12 of that, Mr. Alotaibi, AJ and the items found at the hotel  
13 room?

14 MS. HOLTHUS: Judge, I've got to -- I want to object  
15 at this point. This is not the appropriate witness, it's  
16 beyond his personal knowledge. We have a DNA expert that will  
17 be presented and at that time these questions will be  
18 appropriate but --

19 MR. CHAIREZ: We're just -- we're just leading in,  
20 Your Honor. It's foundational to the next witness and then  
21 for the witness that I'm going to have but --

22 THE COURT: I mean, I'll let him respond if he knows.

23 MR. CHAIREZ: Yeah.

24 MS. HOLTHUS: Well, it's all based on hearsay. He's  
25 having him talk about things well beyond his expertise.

1 THE COURT: I don't think he's asking him -- he's  
2 asking him if he's aware of certain things that happened and  
3 that really could be responded with a yes or no.

4 BY MR. CHAIREZ:

5 Q Yes or no, Detective.

6 A Yes or no to what question? I'm sorry.

7 Q I already forgot the question, so it's a senior  
8 moment on my part. I guess the question is, you believe that  
9 DNA evidence was gathered in this case, correct?

10 A The collection of possible DNA evidence was  
11 attempted to be collected.

12 Q Okay. And -- and one final question. At the  
13 hospital were you present when they drew AJ's blood?

14 A No, sir.

15 Q Were you present when they drew Mr. Alotaibi's  
16 blood?

17 A No, sir.

18 Q Okay. Do you know whether or not they drew Mr.  
19 Alotaibi's blood?

20 A I don't recall.

21 Q Okay. Do you know who would know?

22 A I guess I would have to ask where -- where the  
23 blood was drawn at.

24 Q I thought it might have been here, but I -- like  
25 I say, I don't remember.

1           A     No, sir. The -- when the CAs, the CSIs come to  
2 process them, their blood is not drawn in that -- in that  
3 room.

4           Q     Okay.

5           A     Their blood would be drawn at the jail and I'd  
6 have to -- I'd have to see the paperwork to show whether or  
7 not it was done.

8           Q     But you didn't draw it, you didn't observe it?

9           A     I didn't -- I know I didn't draw it. I don't  
10 know if I observed it or not.

11          Q     Okay. And lastly, did Mr. Alotaibi mention  
12 something to you about being out drinking at a strip club?

13          A     Yes, sir.

14          Q     And did he mention to you being out with some  
15 Mexican girl that confirmed that yes, he was out there, he was  
16 drinking, he was at a strip club?

17          A     Yes, sir.

18          Q     And did -- did he tell you that he thought he  
19 spent \$120 on drinks that night from -- the night before all  
20 of this happened?

21          A     Yes, sir.

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

23          THE COURT: Redirect?

24                         REDIRECT EXAMINATION

25          BY MS. HOLTHUS:

1           Q     Well, you said that you -- that you recognize or  
2 you believe that there's a difference between being legally  
3 intoxicated to drive a car versus someone who would be  
4 appropriate to be interviewed.

5           A     Yes.

6           Q     What's -- what's the difference?

7           A     If somebody was -- well, obviously can't drive  
8 if it's -- your blood alcohol is I think .08 for driving a car.  
9 To be interviewed I guess it would depend whether the person's  
10 able to understand what's being asked of him --

11          Q     Okay. And give answers.

12          A     -- and being able to speak.

13          Q     And isn't it true in your training in particular  
14 when you're interviewing a suspect that it's the speed is of  
15 the essence?

16          A     Yes, ma'am.

17          Q     The sooner you get to the suspect, the better  
18 chance you have of getting the truth?

19          A     Yes, ma'am.

20          Q     And conversely, the longer you wait?

21          A     Correct.

22          Q     So you could be highly unlikely to allow the  
23 defendant to say go to the detention center, take a nap, have  
24 some lunch and come back the next day?

25          A     Correct.

1 Q He did seem tired?

2 A Correct.

3 Q He seemed like he'd been up for several hours?

4 A Yes.

5 Q But in spite of that he was able to answer your  
6 questions articulately?

7 A Correct.

8 Q When there was a communication issue he pointed  
9 that out and you responded and answered appropriately?

10 A Yes.

11 Q He did initially -- a large portion of the  
12 interview denied actually --

13 A Correct.

14 Q -- even knowing the kid although early on he  
15 acknowledged that there was -- I think he's called him the  
16 Japanese kid that came up and wanted money?

17 A Japanese -- I thought he said Asian kid quite a  
18 few times.

19 Q I think the first time.

20 MS. HOLTHUS: Court's indulgence.

21 BY MS. HOLTHUS:

22 Q Page 16, the first mention in the bottom.

23 "There's a f'ing Japanese guy tried to ask me about some money  
24 and then he tried to get me inside the room." And that was  
25 only 16 pages in, right?

1 A Okay. Yes.

2 Q And then thereafter, he continued to deny,  
3 continued to deny and then he moved on to I was drunk, I don't  
4 remember.

5 A Yes.

6 Q In spite of that he didn't remember, but then he  
7 remembered, oh, yes, he did come in the bathroom?

8 A Yes.

9 Q And he didn't remember, but oh, yeah, he did ask  
10 him for money?

11 A Correct.

12 Q He didn't remember, but oh, yeah, he did want  
13 weed?

14 A Yes.

15 Q He didn't remember, but yeah, his clothes were  
16 off?

17 A Correct.

18 Q The victim's. He didn't remember -- and his  
19 pants were pulled down as well?

20 A Correct.

21 Q He didn't remember but the kid non -- was not  
22 forced to suck his dick?

23 A Correct.

24 Q He didn't remember but, yeah, the penis was in  
25 his anus for only a second or two?

1 A Correct.

2 Q He didn't remember anything, but he remembered  
3 that he was with the kid walking around for 20 minutes or so?

4 A Yes.

5 Q That he was with him on the elevator?

6 A Yes.

7 Q That the video would show that the -- that the  
8 kid wasn't going along forcefully, that he wasn't dragging him  
9 or pulling him, but that he was walking with him?

10 A Correct.

11 Q So at the end of the day there really weren't  
12 any parts during the night that he didn't remember, were  
13 there?

14 A I --

15 MR. CHAIREZ: Speculation, Your Honor.

16 MS. HOLTHUS: I'll rephrase it.

17 MR. CHAIREZ: No --

18 THE COURT: Rephrase it. Actually, I couldn't hear  
19 whether you said did or didn't.

20 MS. HOLTHUS: I'll rephrase it.

21 BY MS. HOLTHUS:

22 Q His statement takes him from his arrival in  
23 Vegas to between one and two in the morning?

24 A Yes.

25 Q Then he talks about meeting at a -- a bar that

1 was closing, that they drank there till it closed, a club?

2 A Correct.

3 Q And then he talks about going back to a car and  
4 there was an issue with a spare key and he described what was  
5 going on with that?

6 A Yes.

7 Q And then ending up back at Circus Circus?

8 A Correct.

9 Q And then he describes to you what's going on at  
10 Circus Circus, where they are, what they're doing, what  
11 they're drinking, who's there?

12 A Correct.

13 Q And then running into the -- the Japanese, later  
14 Asian boy, who wanted money and drugs?

15 A Correct.

16 Q To then being in the room when security came to  
17 take him down and come to you?

18 A Correct.

19 Q And then we know that from the time that  
20 security knocked on that door, he was in security's custody  
21 until the time that you spoke with him?

22 A Correct.

23 Q And are you aware of any marijuana or alcohol  
24 being served to him from that point on? Obviously not, right?

25 A No.



1           Q     So he hadn't been drinking or smoking during  
2 that time period?

3           A     Not from the time that security knocked on his  
4 door.

5           Q     You did, in fact, interview one of the other  
6 occupants from the room; is that correct?

7           A     Yes.

8           Q     And that was Mohammed Jafaari?

9           A     Yes.

10          Q     There were four other occupants that night. Do  
11 you know if they were interviewed on that particular day?

12          A     No, they weren't.

13          Q     Was there a time thereafter that any of those  
14 subjects were interviewed?

15          A     There was one that was interviewed approximately  
16 two weeks ago I'd say but --

17          Q     And do you -- do you know who that was?

18          A     No, ma'am.

19          Q     If I gave you the name would you know it?

20          A     No, I would not. I didn't do the interview so I  
21 -- I would have no idea.

22          Q     And with respect to the other -- other three  
23 individuals, are you aware of, were they ever formally  
24 interviewed and recorded?

25          A     No, they were out of country.

1           Q     All right. Mr. Chairez talked to you about  
2 cases that you've seen where -- do you get DNA. Would you --  
3 is DNA -- isn't it true that DNA is not only -- not the norm,  
4 but it's the exception, you rarely get DNA in sex cases?

5           MR. CHAIREZ: Your Honor --

6           THE COURT: Yes, sir?

7           MR. CHAIREZ: -- I'm going to object. I don't think  
8 that he's qualified to answer this question. They have the  
9 DNA expert coming tomorrow, she can ask her.

10          MS. HOLTHUS: Well, that was my point when he was  
11 asking the questions. But since you allowed it I was simply  
12 going to respond based upon his experience.

13          THE COURT: You can ask the question based on his  
14 experience.

15          A     In my experience we don't always get DNA.

16          BY MS. HOLTHUS:

17          Q     Particularly if there's no ejaculation?

18          A     Correct.

19          MS. HOLTHUS: Nothing else, thanks.

20          THE COURT: Mr. Chairez?

21                         RE CROSS-EXAMINATION

22          BY MR. CHAIREZ:

23          Q     But somebody found a condom with a liquid inside  
24 of it, correct?

25          A     I'm not sure, sir, I wasn't at the hotel.

1 Q All right.

2 THE COURT: Anything else?

3 MS. HOLTHUS: No, thank you.

4 THE COURT: Anything else, Mr. Chairez?

5 MR. CHAIREZ: No, Your Honor.

6 THE COURT: Thank you, Detective, you're free to go,  
7 sir.

8 All right, ladies and gentlemen, we're going to have  
9 to call it a day. So we'll see you back tomorrow at 9:30.  
10 There may actually be two witnesses tomorrow, but still  
11 anticipate that it will be a short day. Until we see you  
12 tomorrow, you're admonished not to converse amongst yourselves  
13 or with anyone on any subject connected with the trial or to  
14 read, watch or listen to any report of or commentary on the  
15 trial by any medium of information including, without  
16 limitation, television, newspaper, radio, Internet. Do not  
17 form or express an opinion on this case until it is submitted  
18 to you. See you tomorrow.

19 MR. CHAIREZ: Nine-thirty tomorrow, correct?

20 THE COURT: Kenny, I need one interpreter to stay.

21 (Jury recessed at 4:51 p.m.)

22 THE COURT: Okay, the jury's out of the room. The  
23 reason -- there's two things that we need to address. Number  
24 one, everyone --

25 MR. CHAIREZ: Interpreter --

1 THE COURT: Oh, I just need for you to translate for  
2 him, sir. So there's two things that we need to discuss now  
3 that the jury's out of the room.

4 MS. HOLTHUS: I'd like to -- one of the things I  
5 was --

6 THE COURT: Was the video.

7 MS. HOLTHUS: Correct. The video, we need to redact  
8 the ending of the defendant's request. We're going to take  
9 out any naked --

10 THE COURT: Pictures.

11 MS. HOLTHUS: -- pictures or parts of it. I don't  
12 think it's -- we don't need it and so we have no objection to  
13 that being taken out. And additionally, this -- the tape is  
14 allowed to run specifically up to and through the defendant  
15 requesting a lawyer and that was, again, defense had no  
16 request for any redactions out of it. That was part and  
17 parcel is my understanding of his argument and ultimately  
18 explaining it to the jury or I'm not sure where it comes in.  
19 But that was not done by the State independent of the defense,  
20 that was at their request.

21 MR. CHAIREZ: What was her point, Your Honor? That  
22 we didn't --

23 THE COURT: I think she's just waiting for you to --

24 MS. HOLTHUS: You didn't ask to keep that out. You  
25 didn't want it out, you wanted it in.

1 MR. CHAIREZ: No, we don't -- we don't any of it out.

2 THE COURT: You wanted to show as much of the  
3 videotape -- well, you wanted to show the entirety of the  
4 videotape with the exception of the portions where --

5 MR. CHAIREZ: His body is photographed.

6 THE COURT: Correct. Which we did keep out.

7 MR. CHAIREZ: Right.

8 THE COURT: And you don't have any objection to them  
9 -- at the very tail end, if memory serves, he shows his  
10 genitalia for photographs and --

11 MR. CHAIREZ: Right.

12 THE COURT: -- frankly, I don't see that the jury  
13 would need to see that.

14 MR. CHAIREZ: They don't need to see that.

15 THE COURT: You agree with that and the State agrees  
16 with that.

17 MR. CHAIREZ: Right.

18 MS. HOLTHUS: Yeah, that's fine.

19 THE COURT: All right. And the other issue we need  
20 to address, is do you want to do it now or do you want to do  
21 it tomorrow as far as the admonishment of his right to testify  
22 or not testify?

23 MR. CHAIREZ: Why don't we do it tomorrow because  
24 we'll have more free time then, Your Honor.

25 (Court recessed for the evening at 4:54 p.m.)

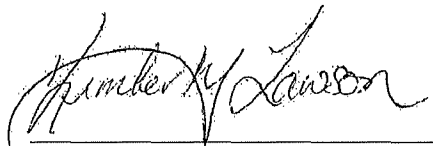
**CERTIFICATION**

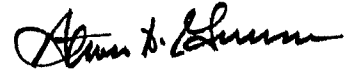
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TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

STATE OF NEVADA,	)	CASE NO. C287173-1
	)	DEPT NO. XXIII
Plaintiff,	)	
vs.	)	
	)	
MAZEN ALOTAIBI,	)	<b>TRANSCRIPT OF</b>
	)	<b>PROCEEDINGS</b>
Defendant.	)	

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BEFORE THE HONORABLE STEFANY MILEY, DISTRICT COURT JUDGE

**JURY TRIAL - DAY 6**

THURSDAY, OCTOBER 17, 2013

APPEARANCES:

FOR THE STATE:	MARY KAY HOLTHUS, ESQ. Chief Deputy District Attorney JACQUELINE M. BLUTH, ESQ. Deputy District Attorney
FOR THE DEFENDANT:	DON P. CHAIREZ, ESQ.
Also Present:	Nabiha Al-Abed, Interpreter

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## I N D E X

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1 LAS VEGAS, NEVADA, THURSDAY, OCTOBER 17, 2013, 9:44 A.M.

2 \* \* \* \* \*

3 (Outside the presence of the jury.)

4 THE COURT: Is Ms. Holthus coming?

5 MS. HOLTHUS: I just wanted to -- I'm calling Rashed,  
6 Rashed Alshehri now. He -- my plan was to kind of start with  
7 them all leaving from San Antonio going to California and  
8 coming to Vegas. Implicit in that or explicit in that, I  
9 guess you could say -- well, I don't know if you could say it,  
10 his testimony would be that it was the defendant who procured  
11 the marijuana in California.

12 Now I believe Mr. Chairez's position is it's medical  
13 marijuana. I don't necessarily agree with that. I wasn't  
14 going to get into it, but in light of Mr. Chairez's opening, I  
15 think he's going down that road anyway. He specifically said  
16 you'll hear how they went to California and they got the  
17 medical marijuana and then they came back here.

18 There will also be testimony, I anticipate, of the  
19 defendant smoking marijuana. I believe that's something that  
20 strategically they want in anyway because part of their  
21 defense is that he was too drunk, high or whatever to know  
22 what was going on. There's also going to be testimony that he  
23 was drinking and driving. So I don't know that those are bad  
24 acts. I think they're part and parcel. I don't know how they  
25 -- they certainly can't open the door to him drinking and

1 being high without us being able to offer evidence that he was  
2 drinking and being high. I just want to, in an abundance of  
3 caution, have Mr. Chairez acknowledge on the record that  
4 that's part of his defense, so he agrees it's coming in. Like  
5 I said, that's my understanding from his opening.

6 MR. CHAIREZ: Well, it's very simple, Your Honor. We  
7 are not going to deny Mr. Alotaibi was in possession of  
8 marijuana. We believe Rashed is going to lie and say Mazen  
9 only smoked marijuana, when the truth was Rashed was smoking  
10 marijuana too, but he didn't say that. So that's not in  
11 statement and he wants to make himself look innocent and pure.  
12 So if they want to open the door, we want to be able to ask  
13 that.

14 Secondly, our position is not that Mr. Alotaibi was  
15 high on marijuana. Our position is that Mr. Alotaibi was  
16 intoxicated, that he at least had seven double shots of  
17 Hennessy from 2:00 to 7:00. The bottom line is, now the State  
18 wants to have it both ways. They have all these police  
19 officers come in, these security officers come in. He was not  
20 intoxicated. He speaks perfectly English, et cetera, et  
21 cetera. Yesterday we pointed out some very basic words. He  
22 doesn't know what a medical exam is. He doesn't know what a  
23 prostitute is.

24 So in terms of oh, we want to be able to show that he  
25 was high and he was using marijuana just doesn't seem fair.

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 RECROSS-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 dept23lc@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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**CERTIFICATION**

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

**AFFIRMATION**

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

**KARR REPORTING, INC.  
Aurora, Colorado**

  
KIMBERLY LAWSON

KARR Reporting, Inc.