

**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  
department  
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**APPELLANT'S APPENDIX**

**VOLUME IV OF VII**

BATES NOS. AA00624 – AA00821

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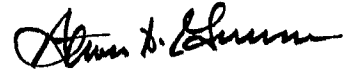
Attorneys for Appellant

**APPELLANT'S APPENDIX**

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TRAN



CLERK OF THE COURT

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.	)	
_____	)	

BEFORE THE HONORABLE STEFANY MILEY, DISTRICT COURT JUDGE

**JURY TRIAL - DAY 7**

MONDAY, OCTOBER 21, 2013

APPEARANCES:

FOR THE STATE:	MARY KAY HOLTHUS, ESQ. Chief Deputy District Attorney JACQUELINE M. BLUTH, ESQ. Deputy District Attorney
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FOR THE DEFENDANT:	DON P. CHAIREZ, ESQ.
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Also Present:	Mohammad A. Taha, Interpreter Saad Musa, Interpreter Theresa Tordjman, Interpreter
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AA00624

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1 LAS VEGAS, NEVADA, MONDAY, OCTOBER 21, 2013, 11:11 A.M.

2 \* \* \* \* \*

3 (Outside the presence of the jury.)

4 THE COURT: Okay. We're on. So, we're discussing  
5 jury instructions. The defendant is not present yet. Mr.  
6 Chairez wants to start. And that's fine with the Court, so  
7 long as the instructions, once they're settled, will be  
8 reviewed with the defendant prior to the jury coming in.  
9 Right?

10 MR. CHAIREZ: That's -- that's fine, Your Honor.  
11 That's correct.

12 THE COURT: All right. So let's get started. I have  
13 a bit of case law that I read over the weekend. Let's just go  
14 over the disputed instructions.

15 MR. CHAIREZ: Right.

16 MS. HOLTHUS: What -- from -- from the defense end of  
17 them --

18 MR. CHAIREZ: I haven't seen anything from the State,  
19 Your Honor.

20 THE COURT: I don't have any --

21 MR. CHAIREZ: But I'm assuming they're bringing the  
22 stock instructions to which I have no objection --

23 MS. HOLTHUS: They -- they should have been sent to  
24 you.

25 MS. BLUTH: Howard sent them to you last week.

1 MR. CHAIREZ: No. All I got was a case called State  
2 vs. Cossack. I didn't get anything else.

3 MS. HOLTHUS: You should have --

4 MR. CHAIREZ: But --

5 MS. HOLTHUS: -- got all of our instructions last  
6 week.

7 MS. BLUTH: I'll forward you an electronic copy, Don.

8 MR. CHAIREZ: Okay.

9 MS. HOLTHUS: So, do you want to just go through  
10 yours first, Don? Your --

11 MR. CHAIREZ: Yeah. That would be fine.

12 MS. HOLTHUS: Okay. With respect to his first one --

13 THE COURT: I don't have any of them. I'm trying to  
14 pull -- see if they're in my e-mail.

15 MS. HOLTHUS: Oh, you don't have Don's, either?

16 THE COURT: I have -- well, I have a couple. I don't  
17 -- I'm assuming they're from the defendant.

18 MR. CHAIREZ: I think I just submitted four or  
19 five --

20 THE COURT: There are, like, four.

21 MR. CHAIREZ: -- specials.

22 MS. HOLTHUS: Yeah.

23 MR. CHAIREZ: Right.

24 THE COURT: And I have your four.

25 MR. CHAIREZ: Right.

1 THE COURT: Okay. So, the first one I have is --

2 MS. HOLTHUS: You have ours, right?

3 THE COURT: No. That's what I'm trying to see if I  
4 can just pull up.

5 MS. HOLTHUS: I have five of Don's, actually.

6 MR. CHAIREZ: And I made another one today.

7 THE COURT: I have four, if you want to give me the  
8 fifth one.

9 MR. CHAIREZ: Can I approach, Your Honor?

10 THE COURT: You may, sir. Thank you. I don't have  
11 them. Thank you.

12 (Pause in proceedings.)

13 THE COURT: Where do you want to start?

14 MS. HOLTHUS: I was just going to go through  
15 defendant's --

16 THE COURT: Sure.

17 MS. HOLTHUS: -- first, while he -- because he still  
18 hasn't gotten ours, with respect to the first one, you are  
19 instructed that consent of the defense to the sexual assault,  
20 he's giving the Carter instruction, and I believe that the  
21 State has a more comprehensive, thorough, more exact -- we're  
22 not disputing that he's entitled to that. But under Carter  
23 and Honeycutt, I'm sure -- I'm looking for it now.

24 THE COURT: Now I have the State's. And the ones the  
25 State gave me, is the instruction you're referencing in here?

1 MS. HOLTHUS: It should be, yes.

2 THE COURT: Do you know where approximately it is?

3 MS. HOLTHUS: It'll be in the back, because it's the  
4 specials. I'm looking for it myself. I just had my hand on  
5 it, now I lost it.

6 THE COURT: Is it -- does it start out, "It is a  
7 defense to the charge of sexual assault that the defendant  
8 entertained a reasonable good faith belief that the alleged --

9 MS. HOLTHUS: Yeah. I think so.

10 THE COURT: -- "victim consented to engage in sexual  
11 intercourse"?

12 MS. HOLTHUS: Yep.

13 THE COURT: Mr. Chairez --

14 MR. CHAIREZ: I haven't seen it.

15 THE COURT: -- it's four from --

16 MR. CHAIREZ: Let me --

17 THE COURT: -- no, it's fifth from the back. Do you  
18 want to see it?

19 MR. CHAIREZ: Sure.

20 THE COURT: I don't want to make a mess of these.

21 MS. BLUTH: Don, do you want me to run in the back  
22 and make you a physical hard copy?

23 MR. CHAIREZ: No, that's okay. Let's see.

24 MS. HOLTHUS: I think ours is actually even stronger  
25 pro-defense, quite honestly.



1 THE COURT: You want to compare it with yours?  
2 Here's yours right here.

3 MR. CHAIREZ: Well, let's see. I don't have a  
4 problem with their first paragraph, but their second paragraph  
5 I have a -- I'm not sure where they're getting the authority  
6 for that.

7 MS. HOLTHUS: Honeycutt and Carter.

8 THE COURT: I have Carter right here. What does the  
9 second sentence say? I can't see it.

10 MR. CHAIREZ: It says, "The claim that is based upon  
11 ambiguous conduct by the alleged victim that is the product of  
12 force, violence, duress, menace, or fear of immediate and  
13 unlawful bodily injury on the person of another is not a  
14 reasonable good faith belief."

15 MS. HOLTHUS: I think what they're kind of defining  
16 is good faith. It's not in good faith if you've caused the...

17 MR. CHAIREZ: Then I don't think either case -- show  
18 me where it says in that Honeycutt, and if it says that, I'll  
19 agree to it.

20 THE COURT: Do you have Carter? I have a copy of  
21 Carter right here.

22 MR. CHAIREZ: Okay.

23 MS. HOLTHUS: I don't have either case right here,  
24 Don.

25 THE COURT: Here. I was just looking through

1 Carter --

2 MR. CHAIREZ: Carter --

3 THE COURT: -- if you want to look at Carter.

4 MR. CHAIREZ: Oops.

5 THE COURT: Why don't you look at it. I don't have  
6 Honeycutt.

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

8 THE COURT: All right. So let's do this. Do you  
9 have the one --

10 MS. HOLTHUS: Is it in there, Don?

11 MR. CHAIREZ: Huh?

12 MS. HOLTHUS: Is it in there?

13 MR. CHAIREZ: Yeah. It's --

14 THE COURT: Are you going to withdraw this proposed  
15 instruction?

16 MR. CHAIREZ: Yeah. I guess I'll withdraw it.

17 THE COURT: Okay. Because, otherwise, I would make  
18 it part of the record. Okay. So the consent instruction  
19 that's been agreed upon by the defense and the State is as  
20 follows:

21 "It is the defense to the charge of sexual assault  
22 that the defendant entertained a reasonable and good faith  
23 belief that the alleged victim consented to engage in sexual  
24 intercourse. If you find such a reasonable and good faith  
25 belief, even mistaken, you must give the defendant the benefit

1 of the doubt and find him not guilty of sexual assault. A  
2 belief that is based upon ambiguous conduct by the alleged  
3 victim that is a product of force, violence, duress, menace,  
4 or fear of immediate and unlawful bodily injury on the person  
5 of another is not a reasonable and good faith belief."

6 Okay. So that's one's stipulated to. Do you want to  
7 go to the next one by the defendant? It's a flight  
8 instruction.

9 MS. HOLTHUS: Yeah. And I don't -- I don't know that  
10 we have any -- I mean, if there was flight, I'd probably be  
11 asking one -- for one. So he's asking for non flight. He  
12 wants to argue non flight. I guess that's --

13 THE COURT: Okay.

14 MR. CHAIREZ: I mean, I just want to use it for the  
15 opposite inference. You know, when somebody flees, they can  
16 use it to be an indication of a guilty mind. And so to me the  
17 absence of flight would infer the opposite.

18 THE COURT: Okay. So, we'll allow the defense's  
19 proposed instruction on flight. It sounds like the State is  
20 stipulating to its admission.

21 MR. CHAIREZ: All right.

22 THE COURT: So.

23 MS. HOLTHUS: I think, then, the next -- the next one  
24 I have is the statutory defense. Is that what you have? The  
25 credibility, or where -- what do you have next?

1 THE COURT: I have the statutory sexual seduction.

2 MS. HOLTHUS: I would suggest we set that one aside,  
3 because I think that's going to be the big brawl.

4 MR. CHAIREZ: Okay. That's fine, Your Honor.

5 MS. HOLTHUS: And if we get everything else worked  
6 out first, I mean, that's -- as far as I can tell from the  
7 instructions, that's the big bone of contention.

8 THE COURT: Okay. The next one is, "The credibility  
9 or believability of the witness should be determined by his  
10 manner upon the stand."

11 MS. HOLTHUS: That's the same one we give.

12 MR. CHAIREZ: That's fine. I took it from theirs.

13 THE COURT: So, it's going to be withdrawn since it's  
14 duplicative?

15 MR. CHAIREZ: That's fine.

16 THE COURT: The next one. "Voluntary intoxication is  
17 a defense to a specific intent crime. If you find that the  
18 defendant was intoxicated, you may consider this evidence in  
19 determining whether he could form the specific intent to  
20 commit the crime for which he is charged."

21 MS. HOLTHUS: Judge, this one as well as the next one  
22 that he talks -- has submitted, the voluntary intoxication,  
23 I'm going to ask that you give the actual statute rather  
24 than --

25 THE COURT: Is that set forth in your proposed?

1 MS. HOLTHUS: It is. And all I did was literally  
2 have my secretary retype the statute, because that, I think,  
3 gives the -- looks like... Five from the back.

4 THE COURT: Five from the back. Hold on. "No act  
5 committed by a person" -- do you see it, Mr. Chairez?

6 MR. CHAIREZ: I see that.

7 MS. HOLTHUS: That's the actual -- I'm showing Mr.  
8 Chairez, that's literally word for word the statute.

9 THE COURT: Do you have language somewhere in --  
10 somewhere else talking about the specific intent crime?  
11 Because I think otherwise they don't know what crimes it could  
12 be applied to. Because it can only -- obviously apply to the  
13 specific intent --

14 MS. HOLTHUS: I guess we could -- we could add a  
15 paragraph that says you are instructed that burglary,  
16 first-degree kidnapping and lewdness --

17 MR. CHAIREZ: And coercion.

18 MS. HOLTHUS: -- and coercion --

19 MR. CHAIREZ: Are specific intent crimes.

20 MS. HOLTHUS: -- are specific intent crimes.

21 THE COURT: I would. Otherwise --

22 MS. HOLTHUS: That's fine.

23 THE COURT: -- I don't know if it'll delineate  
24 between the two. So, Mr. Chairez, with the -- the correction  
25 that we've indicated, any objections to their intoxication

1 defense?

2 Sir?

3 MR. CHAIREZ: Yeah, I'm thinking, Your Honor.

4 THE COURT: Oh. Okay. I'm sorry.

5 MS. HOLTHUS: Shall we go ahead and add that sexual  
6 assault is a general intent crime? Just to be balanced?  
7 That's the only one left, right?

8 THE COURT: I'm going to add -- when you add -- I  
9 would add this first sentence proposed by the defendant, which  
10 is voluntary intoxication is a defense to a specific intent  
11 crime. The following crimes are specific intent crimes.

12 MS. HOLTHUS: Well, that's -- it's not a defense,  
13 Judge. It's a fact that will be considered. I think that  
14 kind of --

15 THE COURT: Well, then, phrase it like that.

16 MS. HOLTHUS: Well, but that's --

17 THE COURT: Well, I think it is a defense.

18 MS. HOLTHUS: That's what it says.

19 THE COURT: Isn't that how they use it?

20 MR. CHAIREZ: Well, that's what the -- the Supreme  
21 Court says it's a defense. Okay.

22 THE COURT: Well, I think they did use the word  
23 defense. Let me look.

24 MS. HOLTHUS: And it would -- the statute says the  
25 fact that the person's intoxication may be taken into

1 consideration in determining the purpose, motive, or intent.

2 THE COURT: Well, if you look at -- let's see, looks  
3 like Adamson vs. State, which is an unpublished case, 2012  
4 West Law, 1660, 635 Nev. It says -- and it cites to it looks  
5 like Ewish vs. State, it says, "Holding voluntary intoxication  
6 is a defense to specific intent crimes." So they use the word  
7 defense. Do you need me to pull that case?

8 MR. CHAIREZ: Remember, Your Honor, the purpose of  
9 the Courts is to interpret the statute. So I think that the  
10 language that the Supreme Court gave in the Adamson case is  
11 combining two other cases and -- and also NRS 193.220. So I  
12 don't see any harm in using the language of the state Supreme  
13 Court.

14 MS. HOLTHUS: And then I think when you take that out  
15 of context, when -- even when they use it, they make it sound  
16 like it's a complete defense. And that's not the -- it's not  
17 the question. I mean, that's not -- that's not the law.

18 MR. CHAIREZ: Yeah, but --

19 MS. HOLTHUS: Just the fact that you're drunk, that  
20 isn't a defense to a specific intent crime. It's something  
21 that you can consider. And that's why I pulled the statute so  
22 that it's not -- it's not inaccurate. I mean, that's --  
23 that's what the statute says. So, I don't understand how we  
24 can be wrong with that. But to instruct them that if you find  
25 him voluntarily drunk, that's a defense to lewdness, well, I'm

1 here to tell you he was, on some level, drunk.

2 MR. CHAIREZ: Your Honor, I mean, the State spent  
3 days saying the client, I mean my client, was totally sober.  
4 So.

5 Your Honor, you have this instruction I gave you this  
6 morning?

7 THE COURT: I'm sorry. I'm trying to look up  
8 something. One -- one second, please.

9 MR. CHAIREZ: Okay. Go ahead. I mean, it's the  
10 three sentence one. "Voluntary intoxication is a defense to a  
11 specific intent crime."

12 THE COURT: Yes. That's the one I'm looking at.

13 MR. CHAIREZ: "If you find that the defendant was  
14 intoxicated, you may consider this evidence." It's not asking  
15 for directed verdict. You may consider this evidence in  
16 determining whether he could form the specific intent. So, I  
17 just think it explains the statute, and that's what we took  
18 from the Adamson case.

19 MS. HOLTHUS: The what case?

20 MR. CHAIREZ: Well, Adamson, Ewish, and Catanio.

21 THE COURT: Adamson is unpublished.

22 MR. CHAIREZ: Correct.

23 THE COURT: Ewish is who it cites.

24 MR. CHAIREZ: Right.

25 MS. HOLTHUS: Did you find this Ewish or just...



1 THE COURT: No, I don't have it. But I'm pulling it  
2 up right now.

3 MR. CHAIREZ: Ewish and the other case, one says  
4 intoxication is a defense in a specific intent crime and  
5 another one says lewdness with a minor is a specific intent  
6 crime.

7 MS. HOLTHUS: Which -- what page is it, Don?

8 THE COURT: On Adamson, it's the second of two pages.

9 MS. HOLTHUS: I don't have -- I just have Catanio. I  
10 don't see it in Catanio.

11 (Pause in proceedings.)

12 MR. CHAIREZ: We're making your job easy, Your Honor.

13 THE COURT: I'm happy about that.

14 MR. CHAIREZ: What we're thinking of doing, Your  
15 Honor, is with my proposed instructions --

16 MS. HOLTHUS: Why don't we do this one, though,  
17 because this is all of them.

18 MR. CHAIREZ: Okay. Yeah.

19 MS. HOLTHUS: This is just lewdness.

20 MR. CHAIREZ: Yeah.

21 MS. HOLTHUS: So, just take out this.

22 MR. CHAIREZ: Right.

23 MS. HOLTHUS: Then we put that here.

24 MR. CHAIREZ: Right.

25 MS. HOLTHUS: And then below that --

1 MR. CHAIREZ: Right. All right.

2 MS. BLUTH: Your Honor, were you saying that Adams or  
3 Adamson was unpublished and it cites Ewish?

4 MR. CHAIREZ: It cites Ewish and Catanio.

5 (Pause in proceedings.)

6 THE COURT: Did you guys come up with a stipulated --

7 MS. HOLTHUS: I think we did.

8 THE COURT: -- instruction on intoxication?

9 MR. CHAIREZ: We have, Your Honor.

10 MS. HOLTHUS: And I will --

11 MR. CHAIREZ: Fix it.

12 MS. HOLTHUS: -- fix it. That's what I will do.  
13 I'll fix it.

14 THE COURT: Okay. So, we will say that you guys  
15 stipulated on an instruction for intoxication. Okay.

16 The last one I have, and this is the one you're  
17 saying there's going to be some discussion on --

18 MS. HOLTHUS: Yes.

19 THE COURT: -- is statutory sexual seduction. I -- I  
20 was looking at cases this weekend on statutory sexual  
21 seduction. The only thing I don't think it is, is I don't  
22 think it's a lesser included. It looks like a lesser related.

23 MS. HOLTHUS: Which is exactly our argument.

24 THE COURT: Okay. However, I'll tell the State --

25 MR. CHAIREZ: Well, I mean --

1 THE COURT: -- I was inclined to allow this  
2 instruction if proffered by the defense after looking at the  
3 case law. I do think there is testimony in this case of  
4 consent by the victim.

5 MS. HOLTHUS: But then that makes it lewdness.

6 MR. CHAIREZ: No.

7 MS. HOLTHUS: And they're only entitled to lesser  
8 included. The law is clear about that.

9 THE COURT: I understand that. But they can also  
10 request --

11 MR. CHAIREZ: No.

12 THE COURT: -- lesser related.

13 MS. HOLTHUS: Our position, he's not entitled to it  
14 and we don't see where -- how do you get around the lewdness,  
15 I guess. When -- when would that be? If -- if your issue is  
16 consent, because AJ's 13, if it's consensual, it's a lewdness.  
17 Or not guilty.

18 MR. CHAIREZ: Then what is this -- what's statutory  
19 sexual seduction, then, Your Honor?

20 MS. HOLTHUS: Our --

21 MR. CHAIREZ: See, lewdness, in my opinion, is lack  
22 of penetration. So, if the -- you know, if the penis does not  
23 go in the mouth or the penis does not go in the rectum, then  
24 you would have lewdness. And --

25 MS. HOLTHUS: Well, lewdness in our facts, we have

1 two counts that are both ultimately, if you were convicted,  
2 going to be treated as alternative counts, and those -- those  
3 are the ones that are alternative to the effects of both. The  
4 remaining, obviously not. But the statutory -- I mean, he's  
5 arguing is that is an alternative for which count?

6 MR. CHAIREZ: Well, it would be the -- the sexual  
7 assault counts. Because they've charged two lewdness counts,  
8 and we're going to move to dismiss those, Your Honor. Because  
9 we believe AJ said there was no fondling, there was no  
10 touching, there was no rubbing.

11 THE COURT: But there's not a --

12 MS. HOLTHUS: The cause -- it clearly --

13 THE COURT: -- there's a case law that says there's  
14 no requirement of touching.

15 MR. CHAIREZ: Well --

16 THE COURT: It says, "While lewdness does not require  
17 physical contact," that's State vs. Catanio.

18 MR. CHAIREZ: Right. That's correct. I agree with  
19 that position.

20 MS. HOLTHUS: Well, we do --

21 MR. CHAIREZ: There doesn't need to be touching, Your  
22 Honor. But when I asked AJ on cross-examination, you know,  
23 your position is he just forced it in. There was no foreplay,  
24 there was no rubbing, there was no fondling. And that's what  
25 he said. So...

1 MS. HOLTHUS: We would --

2 MR. CHAIREZ: But -- okay.

3 MS. HOLTHUS: We provided the case was Cossack, which  
4 clearly supports our right. The two lewdnesses are obviously  
5 related to the sex assault, and ultimately if he were  
6 convicted of both, we would ask that you sentence him only on  
7 the sex assault and set aside for another day, if you will,  
8 the lewdness. But Cossack clearly says that we can charge  
9 those two lewdnesses in the event the jury found consent or  
10 maybe in this fact -- on these facts, reasonable belief  
11 regarding consent. Then those would be the appropriate  
12 counts. So, we certainly have the right to do that. I'm  
13 assuming those are the only two he's objecting to.

14 MR. CHAIREZ: Well, the concern, Your Honor, is --

15 MS. HOLTHUS: And let -- let me -- just one more  
16 thing, Don.

17 MR. CHAIREZ: Okay.

18 MS. HOLTHUS: He's worried about the fondling and  
19 hinting around. My position is particularly he's addressing  
20 the anal. One of the things we do allege is touching the  
21 penis to the anus. And you can't get in the anus without  
22 touching it. So the argument would be it would be complete  
23 upon contact without requiring the extra penetration and/or  
24 against the consent. So that is an alternative on two  
25 different theories.

1 THE COURT: Okay. Anything else?

2 MR. CHAIREZ: Well, I guess this is the problem when  
3 politicians make the law, Your Honor. Because it seems  
4 illogical that if you have an -- a sexual act against  
5 somebody's will, it's sexual assault. If you have sexual  
6 assault, even with a minor under 14 where the state Supreme  
7 Court has said consent is a defense, I guess my -- my concern  
8 or my issue is, Well, what is the lesser included? Is it  
9 basically just consent as a defense to sexual assault?  
10 Because why would it be a defense and then you still find them  
11 guilty of lewdness? Because I think lewdness is a completely  
12 different act than sexual assault.

13 So, the purpose of -- and so Mr. Alotaibi and I went  
14 around and around yesterday about the statutory sexual  
15 seduction jury instruction as to what you would do and, you  
16 know, how we would go about arguing it in closing argument.  
17 But my sense is --

18 MS. HOLTHUS: Can I interrupt for a minute?

19 MR. CHAIREZ: Yeah.

20 MS. HOLTHUS: And the record should reflect that Mr.  
21 Alotaibi is present in the courtroom.

22 MR. CHAIREZ: That's -- that's right.

23 THE COURT: I did notice it. The interpreter is not  
24 present, though.

25 All right, Mr. Alotaibi, we're going over jury

1 instructions. You've missed some of the discussion of the  
2 jury instructions. However, the only reason we started  
3 without you is Mr. Chairez has agreed that he's going to go  
4 over every single thing as well as all the instructions that  
5 were agreed upon with you with the presence of the  
6 interpreter. So you'll know exactly what the case laws --  
7 what case law is going to be given to the jury in your case.

8 MR. CHAIREZ: It's okay. He has a lawyer that speaks  
9 simple English. So...

10 THE COURT: Well, let me -- on the statutory sexual  
11 seduction, the reason I think it's a lesser related versus a  
12 lesser included, because it includes the additional factor of  
13 the consenting percent must be under the age of 16 years.  
14 What I did not see, I'll be frank with you, perhaps the State  
15 or the defense has it, is any case which discussed the  
16 propriety of having a lewdness count as well as a statutory  
17 sexual seduction. And I didn't find it. The only thing I've  
18 found so far is Slobodian vs. State, 107 Nev. 145.

19 MR. CHAIREZ: That was my case, Your Honor.

20 THE COURT: Yeah.

21 MR. CHAIREZ: As a DA.

22 MS. HOLTHUS: And, you know, I don't have it here. I  
23 know that -- I mean, to us it doesn't make any sense that --  
24 and -- and Mr. Chairez is asking when. The statutory would be  
25 the appropriate alternative if you had consent issue and you

1 had a child between, say, the ages of 14 and -- and 16.  
2 That's when it -- then you could make the pitch more so. But  
3 if it's not a lesser included, then he's not entitled to it.

4 THE COURT: Well, he's not entitled to it --

5 MS. HOLTHUS: And I suppose the Court --

6 THE COURT: -- as a matter of course.

7 MR. CHAIREZ: Well, Your Honor --

8 MS. HOLTHUS: Correct.

9 THE COURT: He can still request.

10 MR. CHAIREZ: I believe Epperson based --

11 MS. HOLTHUS: I don't --

12 THE COURT: Hold on. I --

13 MR. CHAIREZ: Okay. I'm sorry.

14 THE COURT: Only one at a time. Let Ms. Holthus  
15 [indiscernible].

16 MS. HOLTHUS: My objection is that it -- it's in some  
17 ways an absurdity that he would be allowed to argue for a  
18 statutory lesser for anally raping or anally penetrating or  
19 fellatio, when the kiss on the neck and the lick on the neck  
20 and the fondling on the body, he's certainly not going to get  
21 a statutory alternative on that. And so it just doesn't even  
22 make sense. How can -- how can it be this low-grade felony  
23 for -- for tearing up his anus, whereas the little lick on the  
24 neck is -- is the full lewdness? That can't be the intent --

25 MR. CHAIREZ: Well --



1 MS. HOLTHUS: -- of a legislature. And I think it's  
2 real clear from those facts that it was never intended. A  
3 child can consent to a sexual assault. A child cannot consent  
4 to a lewdness.

5 MR. CHAIREZ: That's correct.

6 MS. HOLTHUS: That's just the way the law is.

7 MR. CHAIREZ: That is correct, Your Honor.

8 MS. HOLTHUS: And so therefore there is no reason to  
9 go to the statutory.

10 MR. CHAIREZ: Well, here's -- first off Your Honor --

11 THE COURT: Well, I'm --

12 MR. CHAIREZ: -- we're not asking for --

13 THE COURT: Hold on.

14 MR. CHAIREZ: -- statutory --

15 THE COURT: I'm guessing the lewdness are, like, the  
16 kissing on the neck and everything else.

17 MR. CHAIREZ: Right.

18 THE COURT: And then --

19 MR. CHAIREZ: We're not asking for a statutory sexual  
20 seduction as a lesser included or lesser related of lewdness.  
21 Okay. That's just the bottom line. In the lewdness, our  
22 defense will be intoxication. All right. And we'll fight --  
23 and we'll fight the specific intent. So, for any of the  
24 lewdness counts that are going to go to the jury, that is our  
25 defense, intoxication.

1           For the two sexual assault counts, our defense will  
2 be reasonable consent or reasonable mistaken belief of  
3 consent. So, as the State has it charged right now, if they  
4 want to go for all or nothing, and not have a -- I mean, I  
5 don't believe that a lesser -- lewdness is a lesser included  
6 of sexual assault. And I even think the Cossack case that  
7 they cited --

8           MS. HOLTHUS: That's -- that's correct.

9           MR. CHAIREZ: Pardon?

10          MS. HOLTHUS: That's correct.

11          MR. CHAIREZ: Okay.

12          MS. HOLTHUS: That's why we've gone ahead and pled  
13 it, because we realized we wouldn't be entitled to it  
14 ultimately. So we have pled it as an alternate theory. We  
15 could have pled the alternate related theory of statutory. We  
16 chose not to. I mean, that's a -- that was a charging  
17 decision we made at the beginning of the case, because it  
18 factually -- it doesn't make any sense. Because if Mr.  
19 Chairez is successful and -- and getting the reasonable belief  
20 as to consent, or that the child actually consented, then it  
21 goes to the lewdness. And then he has the consent of  
22 intoxication. If they believe that, then it's not guilty.  
23 Period.

24           Because, quite honestly, statutory under these facts  
25 also requires intent of arousing, appealing, or gratifying.

1 THE COURT: So are you asking for statutory sexual?  
2 I'm looking at he case right now.

3 MS. HOLTHUS: We're -- we're --

4 MR. CHAIREZ: Well, Your Honor --

5 MS. HOLTHUS: -- opposing it.

6 MR. CHAIREZ: -- here is my thing. As long as the  
7 Court gives me the consent instruction and the reasonable  
8 mistaken belief of consent --

9 THE COURT: Which the State stipulated to.

10 MR. CHAIREZ: Well, I guess it's stipulated.

11 THE COURT: I thought that was the one where you guys  
12 came up with --

13 MR. CHAIREZ: Right.

14 MS. HOLTHUS: We did. We specifically said if they  
15 have a -- a doubt, a reasonable doubt as to his -- whether he  
16 believed the consent, then he gets the benefit of the doubt  
17 and it's a not guilty on the sex assault. I mean, it's --

18 THE COURT: Okay. But that's the instruction the  
19 State and the defense counsel, you put your heads together and  
20 came up with a -- an agreeable stipulated instruction, right?

21 MR. CHAIREZ: Well, I know we did that with voluntary  
22 intoxication and -- and maybe we did it with -- did we, with  
23 the -- the consent? I think we did, Your Honor.

24 MS. HOLTHUS: We did.

25 MR. CHAIREZ: I mean --

1 MS. HOLTHUS: We did the Carter -- we did a Carter  
2 instruction that we agreed on --

3 MR. CHAIREZ: Okay.

4 MS. HOLTHUS: -- and we did a voluntary  
5 intoxication --

6 MR. CHAIREZ: Okay.

7 MS. HOLTHUS: -- that set forth a statute first.

8 MR. CHAIREZ: Right.

9 MS. HOLTHUS: And then it -- I have it right here.  
10 It was the statute and then it adds with it, "If you find the  
11 defendant was intoxicated, you may consider this evidence in  
12 determining whether he could form the specific intent to  
13 commit the crime for which he is charged." And then, "You are  
14 instructed that burglary, first-degree kidnapping, lewdness  
15 with a child under 14, coercion, are specific intent crimes.  
16 Sexual assault is a general intent crime."

17 MR. CHAIREZ: Well, I just want to make sure, Your  
18 Honor, for a sexual assault, I can argue consent or reasonable  
19 mistaken belief of consent for the two counts of sexual  
20 assault, correct?

21 MS. HOLTHUS: Correct.

22 MR. CHAIREZ: All right. And we're not going to give  
23 any --

24 THE COURT: And the jury has an instruction that --

25 MR. CHAIREZ: -- lesser included. It's going to be

1 guilty or not guilty, correct?

2 MS. HOLTHUS: Well -- and --

3 MR. CHAIREZ: Okay. Well, that's --

4 MS. HOLTHUS: We're giving the -- I mean, we're not  
5 giving. The law -- I mean, we have charged the lewdnesses.  
6 Our argument will be that he's guilty of both. And that it's  
7 a sentencing determination. To me, I believe that that's the  
8 way the case law reads. Because here's the problem. If we  
9 structure it any other way, if the jury finds him guilty of  
10 the sex assault, he's still guilty of the lewdness. Because  
11 these facts, it's completely contained in the sex assault.

12 MR. CHAIREZ: I mean, and I disagree, Your Honor.  
13 Based on -- I believe, based on these facts, lewdness is not a  
14 lesser included to the two sexual assault counts. I believe  
15 the lewdness as they've charged it, with the neck and the  
16 other part of the body --

17 THE COURT: I think it is a lesser included. I think  
18 the State indicated.

19 MR. CHAIREZ: That it is or is not?

20 THE COURT: Is not.

21 MR. CHAIREZ: Is not?

22 MS. HOLTHUS: It's lesser related, which is why we --

23 MR. CHAIREZ: Okay.

24 MS. HOLTHUS: -- chose to offer it. We have  
25 alternative theories. If for some reason on these facts, I

1 think it's probably not ever going to happen, if they found  
2 that there was not penetration, I suppose. But it's simply  
3 that there's no consent requirement as to the lewdness. So  
4 they -- he would be guilty of -- potentially of both. He  
5 can't be sentenced on both. But we're entitled to present the  
6 alternative theory to the extent that there's any issue  
7 regarding consent. And -- and/or penetration.

8           We have pled the anal penetration as simply a  
9 touching. So we don't even need the penetration there.  
10 Fellatio's trickier, because touching the mouth is effectively  
11 fellatio. So, you can't really plead it any other way. So  
12 that one has to be just a straight lesser related, he's guilty  
13 of both.

14           THE COURT: I'm not sure what you want me to do, Mr.  
15 Chairez. Do you want to think it over? I mean, as far as  
16 whether or not as a strategy you want to argue for the  
17 additional charge of statutory sexual seduction? I'm not sure  
18 what you're asking for at this point. Would you like to have  
19 the chance to think it over? Because I think we're mostly  
20 settled on the instructions. Yes?

21           MR. CHAIREZ: I guess I'll think it over.

22           THE COURT: Okay.

23           MR. CHAIREZ: But, I mean, I'll just say --

24           THE COURT: Because it -- I think it's more of a  
25 defense strategy --

1 MR. CHAIREZ: -- based upon -- for me, again, as long  
2 as I'm able to argue consent and reasonable mistake of  
3 consent, and they're going to have the sexual assault guilty  
4 or not guilty, that's one thing. And I guess for the lewdness  
5 and any of the other specific intent crimes, if we're allowed  
6 to argue voluntary intoxication, I think we're 99 percent  
7 there. So I'll just decide whether -- and they're totally  
8 opposed to the statutory sexual seduction as a lesser included  
9 of sexual assault, correct?

10 THE COURT: I -- I agree with the State in that it's  
11 not a lesser included.

12 MR. CHAIREZ: Okay. But a lesser related?

13 THE COURT: I believe that it's a lesser related.

14 MR. CHAIREZ: Okay.

15 THE COURT: Which means it's not as a matter of  
16 course, but you can request the instruction as lesser related.  
17 I will, in the meantime, do a little bit more research --

18 MR. CHAIREZ: Okay.

19 THE COURT: -- on the issue. So, okay. We'll --

20 MS. HOLTHUS: Let me just -- let me just make a  
21 little bit more of a record, then, in that regard.

22 THE COURT: Yes.

23 MS. HOLTHUS: Our position is that it is not a lesser  
24 included of sexual assault. Sexual assault can be committed  
25 without necessarily committing statutory sexual seduction;

1           One: Digital or other object of penetration of a  
2 minor can be done without the intent of arousing, appealing  
3 to, or gratifying a lust or passions or desires of either  
4 persons. This specific intent is not required for sexual  
5 assault, but is required for statutory sexual seduction under  
6 subsection B for other penetrations not found in subsection A.

7           Two: Forcing another person to make a sexual  
8 penetration on himself or herself or another or on a beast.  
9 This is because statutory sexual seduction only involves  
10 sexual penetrations occurring between the defendant and the  
11 victim.

12           Third, sexual penetration of a minor by a juvenile  
13 who has been certified as an adult. This is because statutory  
14 sexual seduction requires the defendant to be age 18 or over,  
15 but sex assault does not.

16           Four, the age of a victim under 16 is required for  
17 statutory sexual seduction, but not for sexual assault.

18           The victim's age is an element of the enhancement for  
19 sexual assault of a minor, but it's our position that there  
20 should be a distinction between an element of offense and an  
21 element of an enhancement when you're looking at a lesser  
22 included analysis. It makes no sense the statutory sexual  
23 seduction should be a lesser included of sexual assault on a  
24 minor, but not on sexual assault.

25           So, that's -- that's our position, that it doesn't



1 make sense and that it's not the law.

2 MR. CHAIREZ: Was she reading the case right now?

3 MS. HOLTHUS: No.

4 MR. CHAIREZ: And did I hear -- okay.

5 THE COURT: I think she's responding to the --

6 MR. CHAIREZ: Did I hear her say statutory -- did she  
7 say statutory sexual seduction requires specific intent?

8 MS. HOLTHUS: If -- if it's under -- sub B of the  
9 statute, where it says, "Statutory sexual seduction is any  
10 other sexual penetration committed by a person 18 years of age  
11 or older with a person under the age of 16," that is not --  
12 not ordinary sexual intercourse, anal, cunnilingus, or  
13 fellatio.

14 THE COURT: That's NRS -- I don't have the statute in  
15 front of me.

16 MS. HOLTHUS: 200.34 -- 364.

17 THE COURT: Okay. So at this point, Mr. Chairez is  
18 not requesting statutory sexual seduction. You will indicate  
19 to the Court prior to jury instructions, obviously --

20 MR. CHAIREZ: Correct.

21 THE COURT: -- if you do want the Court to offer  
22 this.

23 MR. CHAIREZ: Right.

24 THE COURT: Okay. Is there anything else we need to  
25 go over as far as the jury instructions?

1 MS. HOLTHUS: Do they -- there were arguable other  
2 bad acts brought in by the defendant, the driving and drinking  
3 and such, possible marijuana. Do they want a -- first of all,  
4 we're going to ask if defense requests that you read the --  
5 what's that instruction...

6 THE COURT: The not testify instruction?

7 MS. HOLTHUS: No, the -- you've heard evidence  
8 defense could --

9 THE COURT: The limiting instruction?

10 MS. HOLTHUS: Yeah. But, what's it called?

11 THE COURT: The prior bad acts?

12 MS. HOLTHUS: Just the other bad acts admonishment, I  
13 guess. And also offer it if defense wants in our jury  
14 instructions.

15 MR. CHAIREZ: If they're offering it, we'll take it,  
16 Your Honor.

17 MS. HOLTHUS: Okay. Then I'm -- we will ask you then  
18 to read the admonishment. I don't know that they're --

19 THE COURT: Is it contained in these?

20 MS. HOLTHUS: I don't know that.

21 THE COURT: Oh, I see you put them in your  
22 instructions.

23 MR. CHAIREZ: Yeah. I haven't had a chance to read  
24 them yet.

25 MS. HOLTHUS: We intended to. Yes.

1 MR. CHAIREZ: But I --

2 MS. HOLTHUS: Yes, it's --

3 MR. CHAIREZ: I'm --

4 MS. HOLTHUS: It's in there, Judge. "Evidence which  
5 tends to show the defendant committed offenses other than that  
6 for which he's on trial, if believed, may not be considered  
7 that he's a person of bad character." Anyway, you do have it.

8 THE COURT: I do. Well, that's a standard  
9 instruction.

10 Mr. Chairez, you wanted that instruction, yes?

11 MR. CHAIREZ: About uncharged bad acts?

12 THE COURT: Yes.

13 MR. CHAIREZ: Yes, Your Honor.

14 THE COURT: Okay. So that is in the State's pile.

15 MS. HOLTHUS: The interpreter's present.

16 THE COURT: The interpreter is present. So --

17 THE INTERPRETER: There might be --

18 THE COURT: You know what, that's okay. What --  
19 what's going to happen now is Mr. Chairez needs to go over the  
20 jury instructions we went over with the defendant. So you can  
21 sit next to him. We're not going to -- I mean, we don't have  
22 to be -- we're not going to be on the record while he  
23 discusses them with his client.

24 Mr. Chairez, it sounds like we have settled jury  
25 instructions. Is there anything else? Did you look at the

1 State's proposed?

2 MR. CHAIREZ: Well, I'm looking at them now, Your  
3 Honor.

4 THE COURT: Okay.

5 MR. CHAIREZ: Well --

6 MS. HOLTHUS: Are you ready to flip through them,  
7 Don, or no? Do you want to break for lunch and give him time  
8 to go through these with his --

9 THE COURT: Yeah, that's fine.

10 MS. HOLTHUS: You want that, Don?

11 MR. CHAIREZ: Yeah, that's fine.

12 THE COURT: Because, what I'll ultimately ask you  
13 guys to do is come up with your finalized instructions and ask  
14 you to go through and number it together.

15 MR. CHAIREZ: Okay.

16 THE COURT: And both of you can make sure that --

17 MR. CHAIREZ: Okay.

18 THE COURT: -- it does include everything that was  
19 agreed upon.

20 MR. CHAIREZ: Right.

21 THE COURT: And then give me that copy.

22 MR. CHAIREZ: Okay.

23 THE COURT: To make sure nothing's left out. Okay.

24 Thanks.

25 MR. CHAIREZ: Now, am I going to be allowed to stay

1 here with my client and the interpreter?

2 THE COURT: I don't have any trouble with that.

3 MR. CHAIREZ: Or do we need to go someplace else?

4 THE COURT: I don't know where Jason is, but that's  
5 fine.

6 THE MARSHAL: Here, Judge.

7 THE COURT: He needs to stay in here and talk to Mr.  
8 Alotaibi, go over the instructions, okay, during the lunch  
9 break. All right. Jason's nodding yes. Okay.

10 (Court recessed at 12:02 p.m., until 1:16 p.m.)

11 (Outside the presence of the jury.)

12 THE COURT: We are on the record. Okay. I just want  
13 to make sure of some things, since Mr. Alotaibi is here with  
14 the interpreter.

15 Mr. Alotaibi, when we left off, you kind of came in  
16 as we were doing jury instructions. What I want to make sure  
17 is that Mr. Chairez went over all the jury instructions, which  
18 are the laws we're going to give the jury when they decide  
19 your case. Did he do that with you with the --

20 THE DEFENDANT: Yes.

21 THE COURT: Yes? I need to hear -- you're nodding  
22 your head. Are you -- are you saying yes?

23 THE DEFENDANT: Yes.

24 THE COURT: Yes. All right. And I just want to make  
25 sure that you don't have -- do you have any questions

1 regarding the jury instructions or what went on?

2 THE DEFENDANT: My attorney will address you at this  
3 point.

4 THE COURT: Okay. I just need a yes or a no.

5 MR. CHAIREZ: Yeah. He's answering yes. I mean, we  
6 don't have any questions right now. And I -- we didn't even  
7 get into the issue of -- I mentioned to him there is an issue  
8 whether or not statutory sexual seduction is a lesser related  
9 or lesser included. Obviously, that's a concept he does not  
10 understand.

11 But -- so we focused on the jury instructions that  
12 talked about consent, reasonable mistake of consent, the  
13 intoxication, the various definitions. He wonders why we give  
14 the same instruction, it seems to him, over and over. And --  
15 and that kind of thing.

16 But at any rate, yeah, it's -- and we discussed it  
17 yesterday, as well, Your Honor. So --

18 THE COURT: Okay.

19 MR. CHAIREZ: -- we didn't have the State's  
20 instructions at that time, but we discussed the special ones  
21 that we would be asking for.

22 THE COURT: Okay.

23 MR. CHAIREZ: So.

24 THE COURT: And as we left it, the statutory sexual  
25 seduction, it was not requested by you at this time.

1     However --

2             MR. CHAIREZ: Right.

3             THE COURT: -- if you make a strategic decision to  
4     request it, then we'll address it prior to the giving --

5             MR. CHAIREZ: Right.

6             THE COURT: -- of the jury instructions.

7             MR. CHAIREZ: Right.

8             THE COURT: All right.

9             MR. CHAIREZ: And it also depends on whether or not  
10     Mr. Alotaibi testifies. Because we're -- that -- that for me  
11     is the bigger issue right now.

12            THE COURT: Okay.

13            MR. CHAIREZ: Okay.

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

16            MS. HOLTHUS: Just that I have -- I found my person  
17     on standby to redact that video. It's my understanding I gave  
18     Mr. Chairez several choices on where we could stop it before  
19     the -- the nude whatever -- before Mr. Alotaibi is undressed.  
20     He has indicated that he wants as much of the video as he  
21     possibly can have.

22            There is downtime that the jury can fast forward.  
23     But there's, like, a half hour where he's sitting in the  
24     office with his head down on the desk and the people come in  
25     and do everything. I'm going to let it run through the ID

1 collection of the photos and swabbed. Everything except for,  
2 obviously, the penile swabs and the photographs of his penis.  
3 And that's my understanding, the way Mr. Chairez wants that.

4 MR. CHAIREZ: And -- and that is correct, Your Honor.  
5 And basically our main concern is defendant does not remember  
6 being photographed at all. Okay. And since that's one of the  
7 issues as to what level of intoxication did he have, I want to  
8 show yes, he was photographed, and we have that already in the  
9 exhibits. But that would be the main reason for wanting to  
10 include it. So I don't want the jury to be bored with lots  
11 and lots of video or lots and lots and lots of downtime. But  
12 that's my only concern.

13 And the other concern we had about the one exhibit  
14 that you kept out, the nude picture. So --

15 MS. HOLTHUS: The one that's up there --

16 THE COURT: Hold on. Hold on. You wanted me to keep  
17 the nude picture out.

18 MR. CHAIREZ: I did. I know. We want that out --

19 THE COURT: Okay.

20 MR. CHAIREZ: -- and I think Ms. Holthus and I agree  
21 that that 30 seconds to 90 seconds, whatever it is, they could  
22 cut it out.

23 MS. HOLTHUS: Okay. Well, let me -- let me -- this  
24 is -- my understanding of this is what our plan was to do.  
25 There's approximately -- the whole thing is, like, two to two



1 and a half hours.

2 MR. CHAIREZ: Right.

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

10 MR. CHAIREZ: Editing?

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

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

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

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

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

11 MR. CHAIREZ: That's fine.

12 MS. HOLTHUS: Yeah?

13 MR. CHAIREZ: That's fine.

14 THE COURT: Okay.

15 MR. CHAIREZ: Okay.

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

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

20 THE INTERPRETER: Yes, ma'am.

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

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

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

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

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

3 MS. BLUTH: Yes, Your Honor.

4 THE COURT: Okay.

5 MS. HOLTHUS: The next two are.

6 THE COURT: And please call your next witness.

7 MS. BLUTH: The State calls Ruth Leon.

8 THE MARSHAL: Who?

9 MS. BLUTH: Ruth Leon.

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

12 RUTH LEON, STATE'S WITNESS, SWORN

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

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

16 THE COURT: Whenever you're ready.

17 MS. BLUTH: Thank you.

18 DIRECT EXAMINATION

19 BY MS. BLUTH:

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

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

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

25 A Right.

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

4 A Yes.

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

8 A Yes.

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

11 A Yes.

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

16 A No.

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

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

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

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

5 A No.

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

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

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

15 A No.

16 Q Talking?

17 A No.

18 Q Communicating with them?

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

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

23 A Correct.

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

1           A     He said he indicated that he drove good.

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

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

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

11          A     Correct.

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

14          A     Correct.

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

16          THE COURT: Mr. Chairez, sir.

17                   CROSS-EXAMINATION

18          BY MR. CHAIREZ:

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

20          A     Leon.

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

23          A     I don't.

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

1 to where you could barely converse with him?

2 A Fluent.

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

7 A No.

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

10 A He never used that term.

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

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

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

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

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

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

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

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

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

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

10 A Correct.

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

13 A No. We asked him specifically --

14 Q Okay.

15 A -- how he was driving.

16 Q All right.

17 A He said he was driving good.

18 Q Okay.

19 MR. CHAIREZ: Nothing further.

20 THE COURT: Anything else?

21 MS. BLUTH: Nothing, Your Honor.

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

24 THE WITNESS: Thank you.

25 THE COURT: Next witness, please.



1 MS. BLUTH: The State calls Jeri Dermanelian.

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

4 JERI DERMANELIAN, STATE'S WITNESS, SWORN

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

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

9 DIRECT EXAMINATION

10 BY MS. HOLTHUS:

11 Q What do you do?

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

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

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

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

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

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

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

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

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

25 Q With respect to a sexual assault nurse examiner,

1     what -- what exactly is that?

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

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

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

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

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

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

4 Q And where is it that you see patients?

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

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

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

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

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

1     menstruating.

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

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

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

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

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

11            A     Yes, ma'am.

12            Q     Approximately how many times?

13            A     I believe I'm approaching 60.

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

16            A     Yes, ma'am.

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

19            A     Yes.

20            Q     What's the protocol upon arrival?

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

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

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

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

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

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

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

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

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

5 Then we are contacted, we will go in. If they don't  
6 have law enforcement present and then we will ascertain  
7 whether they want law enforcement involvement or not.

8 Adolescents have three options, adults have four. We go  
9 through those options with the client and make sure that they  
10 understand that they have the option and they control the  
11 exam.

12 Q What are the three options?

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

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

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

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

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

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

22 A I cannot make anybody speak.

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



1 that correct?

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

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

9 A That's correct.

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

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

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

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

4 Q AJ was how old when he presented?

5 A AJ was 13.

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

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

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

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

23 Q So what did you do then?

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

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

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

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

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

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

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

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

5 Q Did you determine his date of birth?

6 A I did.

7 Q That was?

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

10 Q Do you have those with you?

11 A Yes, I do.

12 Q Would that refresh your recollection?

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

14 Q So he was essentially 13 and three months?

15 A Yep.

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

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

25 Q What other observations did you make about him

1 developmentally?

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

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

14           Q     Are you familiar with the Tanner stages?

15           A     Yes.

16           Q     What are those?

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

24           Q     I would be what?

25           A     The adult male would be wider and longer.

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

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

6           Q    3 being?

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

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

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

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

18          A    I do take a history of the assault.

19          Q    Directly from AJ?

20          A    Yes.

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

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

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

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

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

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

18           Q    What's that stand for?

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

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

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

12 Q You also collect evidence?

13 A I do collect evidence.

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

16 A A sexual assault kit was collected.

17 Q Which is -- what does that include?

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



1     forth.

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

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

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

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

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

21                A     Sealed.

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

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

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

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

8 A Metro has access to it.

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

11 A I did.

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

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

18 Q Did you collect blood?

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

22 Q Did you also collect a buccal swab?

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

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

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

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

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

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

23           Q     Would that be consistent with a lubricant?

24           A     That would be consistent with a lubricant.

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

1 stuff we're talking about? Where --

2 A He had a contusion inside his mouth.

3 Q Okay. Let me start with that.

4 A Okay.

5 Q What is a contusion?

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

8 Q And that bruise would be consistent with what?

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

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

21 A Yes, it could be.

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

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

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

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

7 A Blunt-force trauma, correct. Yes.

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

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

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

19 A Yes.

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

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

25 Q Any other observations about the mouth?

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

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

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

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

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

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

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

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

16           A     He had multiple lacerations.

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

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

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

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

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

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

25           Q     Was he bleeding?



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

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

19           Q     Was AJ in pain?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 he had hurt to poop.

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

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

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

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

22 A Yes.

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

24 A Oh, sure.

25 Q Nine.

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

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

1 THE COURT: Any objection?

2 MR. CHAIREZ: No objection.

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

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

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

6 THE WITNESS: Uh-huh.

7 BY MS. HOLTHUS:

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

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

13 Q AJ?

14 A That's a photograph of AJ.

15 Q Hands?

16 A AJ.

17 Q Feet?

18 A AJ.

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

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

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



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

3           Q     Has the what?

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

6           Q     Let me see that.

7           A     First or second.

8           Q     Okay. Here's the first.

9           A     Yep.

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

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

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

16          A     Sure.

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

18          A     Versions of --

19          Q     -- the same?

20          A     Yes, ma'am.

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

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

1 very well.

2 Q This is Exhibit 18.

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

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

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

10 Excuse me, but the volume, also --

11 Q Okay.

12 A -- is consistent with the lubrication.

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

15 A Correct.

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

18 A Yes.

19 Q Which one is...

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

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

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

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

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

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

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

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

11 Q Sure.

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

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

17 Q Sure. One or two or whatever --

18 A Okay.

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

21 A This --

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

24 A Yes. Those are the upper.

25 Q Uh-huh.

1           A     And that would be the best for lower.

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

4           A     I did.

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

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

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

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

13          Q     These are upper, right?

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

15          Q     Okay.

16          A     Yep.

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

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

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

10           Q     That's swelling, right?

11           A     Swelling.

12           Q     Okay.

13           A     Yeah.

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

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

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

4 Q And this is with the filter?

5 A Yeah. Can --

6 Q Can you tap that off?

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

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

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

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

17 A Yes.

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

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

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

1 an erection?

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

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

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

16 Q Thank you.

17 MS. HOLTHUS: Pass the witness.

18 CROSS-EXAMINATION

19 BY MR. CHAIREZ:

20 Q How do you pronounce your last name?

21 A It's Dermanelian.

22 Q Okay. If I call you Dermelian, just forgive me.  
23 But Derma --

24 A You can call me Jeri, sir.

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

1 right?

2 A Thank you.

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

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

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

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

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

16 A That's correct.

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

20 A I most likely would have taken that picture.

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

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

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



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

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

6           A     He did.

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

9           A     Four Krispy Kreme donuts.

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

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

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

21          A     Is that on Rose Hart documentation, sir?

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

23          A     That Rose Hart.

24          Q     Pardon?

25          A     May I just see that?

1 Q Yes.

2 A So I can ascertain which page you're on. Oh.

3 Documentation... I'm with you, sir.

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

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

13 Q Correct.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 A Semen is different than --

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

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

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

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

18 MS. HOLTHUS: Okay.

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

20 MS. HOLTHUS: Okay.

21 MR. CHAIREZ: Or --

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

24 BY MR. CHAIREZ:

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

1 significance of putting down that he had descended testicles?

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

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

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

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

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

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

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

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

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

7 THE WITNESS: I cannot answer that question.

8 BY MR. CHAIREZ:

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

11 THE COURT: Hold on. I think --

12 MR. CHAIREZ: Okay.

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

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

17 BY MR. CHAIREZ:

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

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

23 MR. CHAIREZ: Okay.

24 BY MR. CHAIREZ:

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

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

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

4 Q Right.

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

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

9 MS. HOLTHUS: Same objection.

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

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

13 MR. CHAIREZ: Pardon?

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

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

17 THE COURT: All right.

18 MR. CHAIREZ: Okay.

19 BY MR. CHAIREZ:

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

25 A Generally, yes.

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

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

5           Q     All right. And --

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

8           Q     All right.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

25 Q Okay. Do you know what ADHD is?

1 A It's a hyperactive disorder.

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

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

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

8 THE COURT: The objection's sustained.

9 MR. CHAIREZ: All right.

10 BY MR. CHAIREZ:

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

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

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

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

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

22 A And the buttock.

23 MR. CHAIREZ: Nothing further.

24 MS. HOLTHUS: Just a couple.

25 REDIRECT EXAMINATION

1 BY MS. HOLTHUS:

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

4 A Yes.

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

7 A Yes.

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

11 A Yes.

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

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

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

20 A Yes.

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

24 A That's correct.

25 Q And the energy force that caused the injury to

1 the throat would have been painful?

2 A Yes.

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

5 A Yes.

6 Q Thank you.

7 THE COURT: Anything else, Mr. Chairez?

8 MR. CHAIREZ: No, Your Honor.

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

11 THE WITNESS: Thank you.

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

15 MR. CHAIREZ: It is, Your Honor.

16 THE COURT: Okay.

17 MR. CHAIREZ: He is.

18 THE COURT: He is?

19 MR. CHAIREZ: Yeah.

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

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

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

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

5 (In the presence of the jury.)

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

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

9 MR. CHAIREZ: Jennifer Melendez.

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

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

14 JENNIFER MELENDEZ MURILLO, DEFENDANT'S WITNESS, SWORN

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

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

19 THE COURT: Your witness.

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

22 THE COURT: Yes.

23 (Bench conference transcribed as follows.)

24 MS. BLUTH: I just realized that we didn't rest.  
25 Like, we're done with our case in chief and I didn't put on

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

3 MR. CHAIREZ: That's fine.

4 MS. BLUTH: Sorry about that.

5 THE COURT: You're finished?

6 MS. BLUTH: Yeah.

7 THE COURT: Okay.

8 (End of bench conference.)

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

12 MS. BLUTH: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MR. CHAIREZ:

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

16 A Yes.

17 Q All right.

18 A That's fine.

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

24 A Okay.

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

1 know you're pregnant, correct?

2 THE WITNESS: Yes.

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

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

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

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

10 THE COURT: Okay.

11 THE WITNESS: Thank you.

12 BY MR. CHAIREZ:

13 Q Ms. Melendez, where do you live?

14 A San Antonio, Texas.

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

16 A Almost all my life.

17 Q And how old are you now?

18 A 27 years old.

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

21 A Three months.

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

24 A Yes.

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

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

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

5           A     Yes. There's quite a few.

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

8           A     At Glenn Air Force Base.

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

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

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

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

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

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

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

23          A     Well, it was already a year.

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



1 Force Base; is that correct?

2 A Before then? No.

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

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

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

8 A Yes.

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

11 A Saudi military.

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

14 A Air Force.

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

17 A Yes.

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

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

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

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

3           Q     All right.

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

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

7           A     No --

8           Q     -- walking around the --

9           A     -- I just promote.

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

12          A     Yes.

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

15          A     Almost every day.

16          Q     And why is that?

17          A     Because he was a good person.

18          Q     All right. And you --

19          A     And we were good friends.

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

22          A     Oh, no, sir.

23          Q     Okay. And why is that?

24          A     Just friends.

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

1 boyfriend?

2 A Yes, sir.

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

5 A Yes, sir.

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

7 A Mohammed.

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

9 A Aziz [phonetic].

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

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

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

17 A Yes.

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

20 A Yes.

21 Q All right. And did that surprise you?

22 A No.

23 Q Okay. And why not?

24 A Because men drink.

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

1 A They're not supposed to.

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

5 A Yes.

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

7 A Yes.

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

11 A Yes.

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

13 A More than I could count.

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

16 A Yes and no.

17 Q Okay.

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

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

22 A Women.

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

25 A Yes.

1 Q Okay.

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

6 Q And so the other gentleman hit Mazen?

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

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

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

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

16 A With Mazen? No.

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

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

1 Q All right. Now, so I guess I'm confused now.

2 You came with a guy by the name of Mohammed?

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

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

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

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

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

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

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

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

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

22 Q Okay.

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

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

1 party or socialize?

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

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

5 A Just where I could dance.

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

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

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

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

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

18 A Yes.

19 Q And what was he drinking?

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

22 Q Any what kind of liquor?

23 A Brown liquor.

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

1           A     There's clear liquor.

2           Q     Clear liquor?

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

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

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

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

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

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

18          A     Like, \$175.

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

20          A     Yeah. I was kind of shocked.

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

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

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



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

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

5           A     He went straight to the bar.

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

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

9           Q     Who told you to stop?

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

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

15          A     I went to where Mazen and Sam were.

16          Q     And what was Mazen doing?

17          A     Drinking and talking with Sam.

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

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

24          Q     All right.

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

1 night.

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

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

6 Q All right. And were they drinking?

7 A Yes.

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

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

12 Q Okay.

13 A So.

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

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

18 Q All right.

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

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

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

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

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

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

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

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

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

9           Q     All right.

10          A     Yeah.

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

13          A     No.

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

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

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

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

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

25          A     Yes.

1 Q Okay.

2 A We talked a lot.

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

5 A My life, my drama.

6 MS. HOLTHUS: Objection. Hearsay.

7 THE COURT: Sustained.

8 BY MR. CHAIREZ:

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

13 MS. HOLTHUS: Objection. Hearsay.

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

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

18 MR. CHAIREZ: Okay.

19 THE COURT: -- rule on the objection.

20 BY MR. CHAIREZ:

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

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

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

1 classes all the time?

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

4 Q All right.

5 A Him and another gentleman that he stayed with.

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

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

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

12 A Yes.

13 Q Okay.

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

16 Q All right.

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

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

22 A No.

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

25 A Yes.

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

3 A Well, most of it is in Arabic.

4 MS. HOLTHUS: Objection.

5 THE COURT: What's the objection?

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

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

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

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

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

17 MR. CHAIREZ: Okay.

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

20 MR. CHAIREZ: All right.

21 BY MR. CHAIREZ:

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

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

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

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

3 MR. CHAIREZ: Well, let me approach.

4 (Bench conference transcribed as follows.)

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

6 THE COURT: Likes girls or boys?

7 MR. CHAIREZ: [Indiscernible.]

8 MS. HOLTHUS: [Indiscernible.]

9 MR. CHAIREZ: [Indiscernible.]

10 MS. HOLTHUS: [Indiscernible.]

11 MR. CHAIREZ: [Indiscernible.]

12 MS. HOLTHUS: [Indiscernible.]

13 MR. CHAIREZ: [Indiscernible.]

14 THE COURT: Sure.

15 (End of bench conference.)

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

19 BY MR. CHAIREZ:

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

23 A Yes.

24 Q Okay. And were you drunk?

25 A Yes.

1 Q And did you see Rashed?

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

3 Q Okay. All right.

4 MR. CHAIREZ: Nothing further.

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

6 MS. HOLTHUS: Yeah. Please.

7 CROSS-EXAMINATION

8 BY MS. HOLTHUS:

9 Q Are you -- do you speak Arabic?

10 A I know some.

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

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

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

16 A Not very fluent.

17 Q What is your primary language?

18 A English.

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

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

22 Q And then you said Mazen came with Mohammed?

23 A Yes.

24 Q And then who else?

25 A I think there was another individual, but I



1 don't know him.

2 Q Rashed, does that sound familiar?

3 A Really, I don't know.

4 Q Was he -- was he with you that whole night?

5 A Yeah. There was -- one of their friends, but  
6 like I said, I don't know him, so I didn't talk to him.

7 Q How many -- how big was this group?

8 A Wow. Let's see, I'm going to say at least more  
9 than six. Okay. Emad, Adel, Saeed, and then Mazen was with  
10 us, then Mohammed, and then their friend, oh, more than six.  
11 And then Emad was there, so.

12 Q We counted Emad already.

13 A Oh, okay. Well, then there's seven.

14 Q So there's Jennifer, I got Emad, Adel, Saeed.

15 A Uh-huh.

16 Q Mazen, Mohammed, Jennifer --

17 A And then --

18 Q -- did you say Sam?

19 A Sam. Yeah, he was with us that night.

20 Q Was there another female?

21 A Not with us.

22 Q Okay. I thought --

23 A She did come in my group, but she didn't -- she  
24 was not with us that night.

25 Q Okay. So, she came to Vegas in your group?

1 A Yeah. With Sam, Aziz, and then me and Serena.

2 Q Oh, Aziz.

3 A And Aziz wasn't with that that night, either.

4 He --

5 Q Mohammed is Mohammed Aziz, is that the same  
6 person?

7 A No. It's a totally different Mohammed.

8 Q Mohammed Jafaari, or do you know?

9 A I don't know. I'd have to check.

10 Q Okay. This is a different Mohammed than your  
11 boyfriend, though?

12 A Yes.

13 Q You didn't come with your boyfriend Mohammed?

14 A No. He was actually in Saudi Arabia. His  
15 father passed away and him and his brother had to go back and  
16 deal with the paperwork and all that.

17 Q Okay. So now I'm counting eight, does that  
18 sound right?

19 A Like I said, there was a lot.

20 Q And you said you were staying with who?

21 A Sam, Aziz, and Serena.

22 Q Serena, was that the girl?

23 A Yes.

24 Q That wasn't with you?

25 A Yes.

1 Q Okay. So, the four of you had a place at  
2 Harrah's?

3 A Harrah's.

4 Q And then it's your testimony that you hooked up  
5 with who, when?

6 A Emad actually met me on the Strip, because I was  
7 walking around by myself. The people I came with, they wanted  
8 to go to a strip club and I didn't want to be a part of that.  
9 So I went drinking by myself and I was texted.

10 Q And when was this?

11 A Pretty much all day. From --

12 Q When did they go to --

13 A -- after breakfast --

14 Q -- a strip club?

15 A Oh, they probably went around 4:00 or 5:00, they  
16 were ready to leave me.

17 Q 4:00 or 5:00 in the evening?

18 A In the -- yeah, in the afternoon.

19 Q Okay. So 4:00 or 5:00 in the evening your  
20 friends and --

21 A They -- they went their own way.

22 Q That's Aziz and Sam --

23 A And Serena.

24 Q -- and Serena.

25 A They had other friends there that they left

1 with.

2 Q So they went to the strip clubs and you went  
3 around drinking on the Strip by yourself?

4 A By myself. And Emad met me out there so I  
5 wouldn't be alone.

6 Q Okay. You knew Emad, though.

7 A Yes, from San Antonio.

8 Q And where did you meet -- I'm sorry. Where did  
9 you meet up with Emad?

10 A Oh, Caesar's Palace, I believe. Or --

11 Q How many places were you --

12 A -- I don't know.

13 Q -- drinking that night?

14 A I went from the Harrah's, and I went towards  
15 Circus Circus, because Emad was at Circus Circus. That's  
16 where he was staying. And so we kind of met in the middle.

17 Q You met up with Emad?

18 A Yeah. I'm not sure where it was.

19 Q Did you have a plan, did you call him on his  
20 phone? Or how did that work out?

21 A No. I was just drinking and we were texting  
22 where are you at? And I told him, Well, I'm alone. And he  
23 was like, Okay, well, I'm going to come meet you so you're not  
24 alone. I was like, Thanks.

25 Q And -- and what were you drinking?

1           A     I drank Crown and coke, and rum and coke. I  
2 can't drink just straight liquor.

3           Q     How many did you have before you met up with  
4 Emad?

5           A     Maybe two or three. I'm really slow.

6           Q     And over what period of time was that?

7           A     Well, from, like I said, we started early.  
8 After we ate breakfast or lunch we started drinking.

9           Q     Okay. Started drinking right after breakfast or  
10 lunch?

11          A     Uh-huh.

12          Q     And then --

13          A     Which was probably around 2:00 or 3:00.

14          Q     Okay. And then your friends left you around  
15 4:00 to go to the strip club?

16          A     Well, to meet up with their friends and they  
17 were going to get a limo and go to the strip club and --

18          Q     And that's when you went off on your own?

19          A     Yes.

20          Q     And you left Harrah's?

21          A     Yes. And I headed towards Circus Circus. So I  
22 don't know what casino we met at, but it was in between.

23          Q     But did you drink at -- did you stop at others?  
24 You stopped at, you said, Caesar's?

25          A     Well, I -- I pretty much went through the Strip.

1 Q Did you basically drink in every casino along  
2 the way?

3 A Not every one. But whenever I decided to sit  
4 down and take a break from all the walking, I got a drink.

5 Q Okay. And then at some point you hook up with  
6 Emad?

7 A Yes.

8 Q And it's just the two of you then?

9 A It's just the two us.

10 Q How long did --

11 A And we were walking around. We went and met up  
12 with his cousin, and then after that we went back to my hotel.  
13 We met up with my group. But...

14 Q Is that your -- your group that had left you?

15 A Yeah.

16 Q Hooked back up with you now?

17 A Yes. But, like, Serena's not old enough to get  
18 in the clubs. And that was my goal, to go to a club.

19 Q Okay. Now, earlier, we heard testimony that  
20 Mazen and Rashed and Mohammed didn't get into town until 1:00  
21 or 2:00 in the morning from California?

22 A Well, like I said, I was drunk.

23 Q Okay. So that could be?

24 A Yeah. I -- I didn't check my time on it. I  
25 just know that I met -- they met me at my hotel.

1 Q Okay. At some point?

2 A Uh-huh.

3 Q Yes?

4 A Yes.

5 Q And that once they met you, you continued to  
6 drink at your hotel?

7 A No. We actually went to another hotel. We went  
8 to the Palms.

9 Q Okay.

10 A Me and Emad.

11 Q That's when you went to the Palms?

12 A And then they met us maybe a hour or so later  
13 there.

14 Q At the Palms?

15 A Yes.

16 Q Okay. And the whole time you're drinking?

17 A Yes.

18 Q And that you get to the -- when you get to the  
19 Palms and Mazen -- and for the record, you're identifying  
20 somebody, you keep pointing at somebody saying Mazen.

21 A Mazen --

22 Q Do you see him here?

23 A -- the gentleman sitting in front of me.

24 MS. HOLTHUS: Record reflect identification of  
25 defendant.

1 THE COURT: It will.

2 BY MS. HOLTHUS:

3 Q So, defendant meets you over at Palms with  
4 Mohammed --

5 A Emad.

6 Q -- and some guy, you don't know his name?

7 A Yeah. Yeah. And at that time, Sam did  
8 accompany us, the guy from my group.

9 Q Okay. So, then you guys -- you do or don't  
10 drink at the Palms? I'm sorry.

11 A No, we did drink. We sat right at the bar. As  
12 soon as you walk in the door there's a bar.

13 Q Okay.

14 A We sat right there, we waited for them to  
15 accompany us.

16 Q All right. So, then they show up, and how many  
17 drinks do you have there once the defendant and his friend  
18 show up?

19 A I probably had two.

20 Q And how many did they have? How long were you  
21 there?

22 A Oh, I don't know. They drink fast. So they had  
23 at least more than two or three.

24 Q All right. And then from there you decided to  
25 leave there -- is that where you're going clubbing? Because



1 now you're --

2 A Yeah. There, that's when I asked the gentleman  
3 at the bar if he knew of a club I could go to, because the one  
4 at the Palms they had just closed for a season, I guess.

5 Q All right.

6 A And so I asked him where we could go, I want to  
7 dance. He gave me a name, he went outside to find a car to  
8 fit our group. And that's when the lady was like, Okay, well,  
9 I could fit your group.

10 Q So, how many -- how many in your group at this  
11 point go?

12 A I think --

13 Q Do --

14 A -- there was eight of us at that time.

15 Q Did Serena go now?

16 A No. She's not old enough.

17 Q Okay. To go to any clubs? And what about -- I  
18 thought Serena went to clubs before with Aziz and Sam earlier  
19 in the day?

20 A She went to a strip club.

21 Q A strip club?

22 A You have to be only 18 to go to a strip club.

23 Q Okay. You're going -- night clubs are 21?

24 A Yes. I want to dance. I don't want to see  
25 naked girls.

1 Q Okay. But you end up getting in a cab. Is it  
2 just you then and -- and seven guys?

3 A Yes.

4 Q And you guys -- and you don't know which strip  
5 club you went to, but you know it cost you 175 bucks to get  
6 there?

7 A Yeah. Because the guys were upset. Once we got  
8 there and the lady told us how much, they were kind of like,  
9 Really? We wanted to go to a club. And what was funny about  
10 that is the club I asked her to take me to was just across the  
11 street, three casinos down.

12 Q Okay. And how long did it take you to get from  
13 the Palms to the strip club?

14 A It took us a while. Like, I think we went  
15 through a lot of back roads. Because when I actually saw  
16 where it was and where everything else was, it was, like,  
17 right there. And we --

18 Q Okay.

19 A -- went, like, down dark roads and everything.  
20 So, it was like...

21 Q What time did you get to the strip club?

22 A I'm not sure.

23 Q Tell me approximately?

24 A I don't know. Like I said --

25 Q You have no idea?

1           A     -- I was drunk, and since you said, they didn't  
2 get there till 1:00 or 2:00, I don't want to be inaccurate.

3           Q     Okay. So you really have absolutely no idea  
4 what time anything --

5           A     No.

6           Q     You -- you were pretty drunk?

7           A     I could still stand and dance, but I was drunk.

8           Q     And you remember it, everything?

9           A     Yeah. I -- like I said, I mix my drinks. I  
10 didn't drink straight liquor.

11          Q     Okay.

12          A     So.

13          Q     You mean, with coke or something nonalcoholic?

14          A     Yes.

15          Q     Not different kinds of alcohol --

16          A     Yeah. Just one --

17          Q     -- the same kind of alcohol?

18          A     -- alcohol and -- and a coke.

19          Q     Mixer. And you said you were dancing. What  
20 kind of dancing? Were you on the dance floor? Were you --

21          A     No. There's no dance floor at the strip club.  
22 The stage right there was for the girls. And my friends, they  
23 were all sitting down and I'm the only one standing up  
24 dancing. Because the lady that drove us there actually said  
25 it's okay, you could dance there. And turning out I couldn't

1 dance there. The girls actually got off stage and went and  
2 complained. And one of the bouncers told me I need to sit  
3 down or I need to leave.

4 Q So, you were just dancing at your seat, you  
5 weren't, like, stripping or dancing at your --

6 A No, no, no.

7 Q You were just --

8 A God, no.

9 Q -- having a good time?

10 A Yeah. At that time I still had my boyfriend.  
11 So, no stripping.

12 Q Okay. So did you -- you sat down when they told  
13 you to sit?

14 A I actually went to where Mazen and Sam were and  
15 I sat with them.

16 Q At the bar?

17 A Yeah. Because I was upset when they told me I  
18 needed to sit down. I was, like, Are you serious.

19 Q You were upset?

20 A Yes. Because I -- I asked the girl to take me  
21 somewhere I could dance. And she took me to a strip club  
22 where I didn't want to go in the first place. And then I  
23 couldn't even dance. So, of course I was upset.

24 Q So, did you just sit at the bar and -- and were  
25 drinking?

1           A     I actually sat behind the boys. They had a  
2 cushion chair. And I sat there. And I was just like... And  
3 later on, a girl asked the boys if they wanted a dance. And  
4 they're like, No. So I told her, Wait a second, I'll get you  
5 some money. And I asked them if they would pay for me a  
6 dance. And they did. So I let her dance with me, but I was,  
7 like, Okay, you could stop.

8           Q     Okay.

9           A     Because she got a little too close.

10          Q     Okay. And then when you say dance, if you go  
11 into a strip club, you can -- there's dancers on the stage for  
12 everybody to watch, right?

13          A     And there's dancers walking around for personal  
14 dancers or a lap dance.

15          Q     And then you pay extra money to have them dance  
16 just --

17          A     I think it was like \$25, the dance.

18          Q     But then they dance --

19          A     She didn't sit on me. I didn't let her touch  
20 me.

21          Q     Okay.

22          A     I asked her, like, please don't touch me. This  
23 is just so you could have money. Because I kind of felt bad  
24 for her.

25          Q     Okay. You didn't just give her the money and

1 say skip the dance?

2 A No. She -- she doesn't get that lucky.

3 Q Okay. So you -- you had -- so she -- she was  
4 dancing, Mazen --

5 A In front of me. And Mazen --

6 Q -- in front of you --

7 A -- and Sam, they were still sitting at the bar.

8 Q Okay. But they had paid for that dance for you?

9 A Yes. Yes, they did.

10 Q All right. And that's what they call a lap  
11 dance. It's one-on-one dancing, it's not supposed to be  
12 touching, right?

13 A Not to me.

14 Q Okay. And then after she finished the dance,  
15 then what happened, what did you do?

16 A Actually, that -- we left a little while after  
17 that.

18 Q And how did you get home?

19 A Because, I mean, none of the guys were really  
20 doing anything. They didn't want a dance from a girls. And  
21 we just -- we were already pretty much drunk by then.  
22 Especially me. So Sam and Emad, they escorted me to my room.

23 Q When you say escorted?

24 A Like, they took me to my room. Emad made sure I  
25 laid --

1 Q How did they get you there? How did you get  
2 there?

3 A -- down, and -- I don't know. I was drunk.  
4 And, like, when I got to my room I laid on the bed. Emad was  
5 like, Are you okay, do you need anything? And I was like, I'm  
6 fine. And boom, I'm out.

7 Q Okay. So, from the time that you left the strip  
8 club with them to the time you go back to your room, you don't  
9 actually remember?

10 A No.

11 Q You have no idea whether you walk, drove, cab?

12 A No. But I'm sure we didn't walk. It was  
13 probably a cab. I think we may have went separately, but I'm  
14 not sure.

15 Q Okay. You have no recollection of it?

16 A Yes. I don't know.

17 Q And your best guess is that you got back to the  
18 room somewhere around 6:00 or 7:00 a.m.?

19 A Yeah. That's my guess.

20 Q But it's --

21 A Well, it was still --

22 Q -- you've had a lot to drink kind of --

23 A -- dark outside, so I know it wasn't around  
24 8:00, because the sun would have been out.

25 Q Okay. And then you said you slept through till

1 10:00 or 11:00?

2 A Yeah.

3 Q Does that mean three or four hours, or literally  
4 24 hours till the next day?

5 A No, no, no. It's till 11:00 in the morning. I  
6 have to eat.

7 Q Okay.

8 A So, I woke up --

9 Q So you got up a few hours later?

10 A -- at 8:00.

11 Q And then you -- you didn't -- you didn't see the  
12 defendant and them again?

13 A I didn't see him again. I did see the other  
14 guys.

15 Q Okay. And --

16 A That night on New Year's.

17 Q All right. And --

18 A And none of them spoke to me on what had  
19 happened.

20 Q Okay. And the -- the last -- you said that you  
21 thought the -- the defendant was drinking doubles, right?

22 A Yes.

23 Q And then isn't it true you said that he always  
24 drank like that?

25 A Yes.



1 Q Nothing else. Thank you.

2 MS. HOLTHUS: Pass the witness.

3 MR. CHAIREZ: Nothing further.

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

5 THE WITNESS: Okay.

6 THE COURT: Free to go.

7 THE WITNESS: Thank you.

8 THE MARSHAL: Remain standing and raise your right  
9 hand to be sworn in by our clerk.

10 MONTE MILLER, DEFENDANT'S WITNESS, SWORN

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

13 THE WITNESS: My name is Dr. Monte Wayne Miller,  
14 M-O-N-T-E M-I-L-L-E-R.

15 THE COURT: Whenever you're ready, Mr. Chairez.

16 DIRECT EXAMINATION

17 BY MR. CHAIREZ:

18 Q Dr. Miller, what kind of work do you do?

19 A I am a forensic scientist.

20 Q All right. And what is it that a forensic  
21 scientist does?

22 A Excuse me?

23 Q What is it that a forensic scientist does?

24 A Well, we're mainly scientists involved with  
25 issues that come before a court, evidence that's tested for

1 court proceedings, anything of that nature, really, is -- is  
2 forensic science.

3 Q All right. And have you come to court today to  
4 testify as an expert witness?

5 A I have.

6 Q And have you ever testified as an expert witness  
7 before?

8 A Yes. Many times.

9 Q All right. In which courts?

10 A Military court, Federal Court, civil court,  
11 state and district courts.

12 Q And have you ever testified as an expert witness  
13 in the state of Nevada?

14 A I have not.

15 Q All right. Now, Dr. Miller, based upon your  
16 education, training, and experience, do you feel you have  
17 specialized knowledge that would assist the jury or the trier  
18 of fact in reaching a conclusion with respect to the evidence  
19 that's been presented at this trial?

20 A I think I can.

21 Q All right. And can you tell me a little bit  
22 about your background? I mean, how many times have you  
23 testified as an expert witness?

24 A I've probably testified 25 to 30 times,  
25 somewhere in that range. I've worked on hundreds of cases. I

1 have about 15 years of DNA experience, either in a research  
2 lab or in a forensics lab or working as a consultant for the  
3 Texas Department of Public Safety. After I graduated and got  
4 my Ph.D. in biochemistry where I did DNA research, I went to  
5 the Texas Department of Public Safety where I worked for the  
6 state crime lab. There, they trained me to do crime scene  
7 investigation as well as work in the laboratory on biological  
8 samples. Anything having to do with blood, semen, saliva,  
9 DNA, processing evidence of that nature, or the types of  
10 things that I did inside the laboratory.

11 Q All right. The Texas --

12 A I left there --

13 Q -- Crime Lab, were you working for the  
14 prosecution?

15 A I generally testify for the prosecution, though  
16 the lab is really independent. They're not really there to,  
17 you know, put somebody in jail or get somebody out. They're  
18 really independent scientists that are hired by the State of  
19 Texas to process the evidence in criminal trials. So, I -- I  
20 testified on behalf of the prosecution, because if somebody  
21 was exonerated, I guess they let them go. But when, you know,  
22 there were issues and somebody had to testify on behalf of the  
23 State, then I would come in because I -- I work for the State.

24 Q Now, in your current profession, you -- do you  
25 testify only for the defense or do you testify for the

1 prosecution, or do you -- does it depend?

2 A Generally I testify for the defense. Almost all  
3 of my work comes from the defense. I do do other work, you  
4 know, I've done some work for the New York Police Department,  
5 NYPD, and -- and help them with some evidence things. I -- I  
6 do do a number of things. I have been called in by the, you  
7 know, US Department of Justice where they just, you know, ask  
8 me questions. I've had judges call me during break just out  
9 of the blue and ask me some questions because there were some  
10 issues. So I get questions and I do a little bit of work, but  
11 I would say primarily my work is -- is defense.

12 Q All right. And in preparation for your  
13 testimony today, did you receive a package from me about the  
14 evidence that had been gathered in this case?

15 A I did.

16 Q All right. And did you have an opportunity to  
17 review it?

18 A I did.

19 Q And did you receive from me a couple of weeks  
20 ago evidence that had been given to us by the Las Vegas Crime  
21 Lab?

22 A I did.

23 Q And did you have a chance to evaluate and run  
24 your test or whatever it is that you do?

25 A Yes.

1           Q     All right. So, have you come to court today  
2 prepared to offer an expert opinion as to the findings that  
3 you found based upon the evidence that was gathered in this  
4 case?

5           A     Yes.

6           Q     All right.

7           MR. CHAIREZ: I would tender him as an expert  
8 witness, Your Honor. I don't know if the State wants to ask  
9 him some questions or not.

10          MS. BLUTH: State's fine.

11          MR. CHAIREZ: Okay.

12          THE COURT: Okay. He'll be so qualified.

13 BY MR. CHAIREZ:

14          Q     And prior to coming to court today, what did you  
15 look at or what did you do in this case in an effort to  
16 understand the facts?

17          A     I was given a video from Circus Circus, for one,  
18 which I looked at. Shows a lot of, you know, Mr. Dang walking  
19 around. There are a lot of -- of gaps in it. But there are a  
20 lot of -- of information there. Then I actually went to the  
21 Circus Circus, stayed in Room 631, I took measurements of the  
22 room, the bathroom, all of the places that on the video where  
23 I saw people, all of the elevators, I walked through those, I  
24 looked at those, I evaluated, you know, where did he actually  
25 walk. And I went and re-did that again yesterday.

1 I was privy to some of the police reports. And then,  
2 of course, a couple of weeks ago I was given the information  
3 from the Las Vegas Metropolitan Police Department Crime  
4 Laboratory where I looked through all of that. I looked  
5 through all of their policies and procedures to see what it  
6 was that they did, how did they do it, what were the results,  
7 what kind of conclusions did they make. I looked at the DNA  
8 printouts to try and compare those. I looked at the  
9 concentrations of DNA that they got in different things.

10 So, I went through in -- in detail to look through  
11 that report. And I think that's most of what I've had to  
12 review.

13 Q So, based upon what you did, after you had all  
14 this information and the stuff that you had recently, how did  
15 you go about evaluating the case?

16 A I really try to look at it, the video and all  
17 the other stuff, gives me, you know, some --

18 MS. BLUTH: Your Honor, I'm going to object at this  
19 time and ask to approach.

20 THE COURT: Sure.

21 (Bench conference transcribed as follows.)

22 MS. BLUTH: I'm looking at the notice of when this  
23 notice was provided by Mr. Chairez. And his notice  
24 [indiscernible]. Get to the page. It states that Mr. Miller  
25 is going to testify as an expert witness to the DNA findings

1 provided by the State.

2 MR. CHAIREZ: Right.

3 MS. BLUTH: So, I mean, he has to stay within that  
4 scope. I don't know whether I'm talking about video and  
5 walking --

6 MR. CHAIREZ: That's not [indiscernible].

7 MS. BLUTH: -- and measurements.

8 MR. CHAIREZ: I just --

9 MS. HOLTHUS: Evaluating the case.

10 MR. CHAIREZ: I'm not going to get -- when I -- but  
11 that's -- we're not going to go into that. He's  
12 [indiscernible]. I'm going to start right now on the DNA  
13 report that was given him a couple of weeks ago. Yeah.

14 THE COURT: As long as you stay in those parameters.

15 MR. CHAIREZ: Yeah.

16 (End of bench conference.)

17 BY MR. CHAIREZ:

18 Q Dr. Miller, we basically just want to focus on  
19 the work and evaluation you did in terms of evaluating the DNA  
20 evidence and not the other stuff. Is that okay?

21 And so I guess the first question is with respect to  
22 the DNA, how did you go about evaluating this case?

23 A What I do is I take the whole file and I  
24 generally take the report. I start with that. Then I look  
25 down, every test that they do, whether it turns out positive

1 or negative, no matter what they do should be and is generally  
2 reflected on the report. So, if they look at a piece of  
3 evidence and they do some testing on it, they may not say,  
4 Well, I ran this particular test. But they will give you the  
5 results of that test. We found semen or we didn't find semen.  
6 And so the report is kind of a synopsis of all of their  
7 findings. I looked at this, I looked for this, this is what I  
8 found, this was the DNA results.

9           So, I start there and I use that as sort of my  
10 template. I read through it and make sure that I understand  
11 it, take notes on it. And then I go through all the  
12 paperwork. And I look to see that the results that they're  
13 reporting are accurate with the information that they  
14 collected. In other words, if they say, Did I find semen? I  
15 then go and look at what the results of their actual testing  
16 were, well, did they find semen? Did they find sperm?

17           When I look at the DNA profiles, you know, I look at  
18 those and compare them myself and say, Do I agree that this  
19 matches this or that this matches that. So, I look at these  
20 kinds of things, I look at the concentrations of DNA that they  
21 got off of different things. There are places where, you  
22 know, under certain circumstances I might expect there to be a  
23 lot of DNA. And so I look at the concentrations that they  
24 got, I look at the results that they got. And I compare those  
25 all to the report to make sure that what they did and what



1 they said are accurate.

2 Q So, essentially, you don't go out and do any  
3 independent testing, but you just rely upon the results that  
4 are given to you by the Las Vegas Metro Crime Lab?

5 A Correct.

6 Q All right. And in a nutshell, do you -- do you  
7 recall what it is that the Las Vegas Metro Crime Lab, what  
8 tests they ran and -- and what objects they considered?

9 A Yeah. I can tell you off the top of my head all  
10 the tests that they ran and what the results were.

11 Q Okay. What were the tests that they ran?

12 A They ran a number of tests. They tested a great  
13 deal of things for semen. And then they ran the DNA on those  
14 things on -- do you want me to list all of the things that  
15 they tested?

16 Q Yes, please. Or do you want to list them just  
17 one at a time? Okay.

18 A For Mr. Dang, they tested a -- a number of  
19 things. They tested for semen his -- and they tested for  
20 semen and it was positive on his testicles, on his penis, on  
21 the boxers, on the rectal sample, on the anal sample, and on  
22 the left hand. They also tested --

23 Q Okay. With respect to these five or six areas  
24 that they tested on AJ Dang, you say they found semen on AJ  
25 Dang's body and also upon his boxers?

1           A     Yes.

2           Q     Okay.

3           A     In these six places.  There were other places  
4 they either didn't test or the tests were negative.  But those  
5 six places they got positive results showing semen, sperm, or  
6 both.

7           Q     All right.  And the positive results that they  
8 received, did they run a DNA sample to see whether or not  
9 there was any DNA from Mazen Alotaibi upon these six spots  
10 that they found on AJ Dang?

11          A     They did on those semen spots, as well as some  
12 other spots.  They didn't test for semen.

13          Q     All right.  And with respect to the spots they  
14 -- that they tested, did they find any DNA on AJ's body or  
15 boxers that had semen DNA from Mazen Alotaibi?

16          A     When they run a sample that has semen, what they  
17 do is they separate the DNA.  Sperm are pretty hardy, so  
18 they're able to separate them from everything else.  So, let's  
19 just say that a man and a woman have -- have intercourse and  
20 she pulls on her panties, walks around with them for a couple  
21 of hours, you take them off, you cut a little spot out.  What  
22 you're able to do in the lab is separate out the sperm from  
23 everything else.

24               And so you can take that little cutting of the  
25 panties and you end up with two tubes of DNA from this one

1 piece of evidence. And in -- in this particular case, with a  
2 man and a woman, it's possible that you can then get one DNA  
3 profile that's him from the sperm, and another DNA profile  
4 that's her from everything else.

5 This is, you know, a worldwide procedure. Every  
6 crime lab in the world, as far as I know, uses it. It's  
7 really good. It works really well in the right hands. You  
8 know, there's a protocol for it. And if people follow it and  
9 they're good scientists, you get good results. In this case,  
10 it looked like their results were pretty consistent, so it  
11 appears that they did do a good job.

12 So, they have this process where from one piece of  
13 evidence -- and in this case, each one of these pieces of  
14 evidence that they determined there was semen on -- they did  
15 this procedure. So they have from, for example, the penis  
16 swab, they have two DNA results. One from the sperm, one from  
17 the nonsperm. And in this case, in all six cases where they  
18 had semen or sperm on samples that were taken from either AJ  
19 Dang's body or from his underwear, in every single case they  
20 either got no results, results that weren't useful, or they  
21 got the DNA profile from Mr. Dang himself, which, you know,  
22 suggests that any semen or sperm that was found on him or his  
23 body is from him.

24 Q Now, when you say it suggests that that semen or  
25 sperm is from AJ, you're implying that none of it is from

1 Mazen Alotaibi, correct?

2 A That's the implication from the testing that --  
3 that we saw. There's no -- nothing in the DNA from the sperm  
4 portion of those profiles that were consistent with -- with  
5 Mr. Alotaibi.

6 Q All right. Now, earlier, we had a nurse testify  
7 that she believed AJ Dang was prepubescent. Okay. Meaning  
8 that AJ Dang would be unable to generate any of his own semen,  
9 or I guess she also was implying that maybe AJ Dang could not  
10 ejaculate. Would you agree with her opinion, based upon the  
11 DNA stuff that was discovered?

12 A Yeah, I'm not a medical doctor, so I can't speak  
13 to, you know, any of that kind of stuff. But I can tell you  
14 that the results from this, on more than one sample they got a  
15 strong DNA profile or a good DNA profile from Mr. Dang. And  
16 that doesn't usually happen without sperm. Because  
17 essentially you -- you're using a chemical process that  
18 dissolves everything that's not sperm, and then you wash that  
19 away. And you're left with just sperm.

20 And so generally speaking, if there's no sperm there  
21 at all, you won't get anything in that sperm cell fraction, is  
22 what it's called. In this case, there were two samples that  
23 -- and one of them was a very good sample that I would think  
24 strongly suggests that there was his -- some of his sperm  
25 there.

1 Q Some of AJ's sperm?

2 A Some of AJ's sperm.

3 Q All right. Or semen?

4 A It's kind of the same thing. If you find sperm,  
5 you've found semen. Semen is the liquid ejaculate from the  
6 male orgasm and the -- the sperm are the little swimmers that  
7 get women pregnant. So, you know, the -- the semen is the  
8 pool and the sperm are the swimmers. And so if you find  
9 sperm, you've found semen.

10 Q All right. And what other spots did the Las  
11 Vegas Crime Lab test where they found spots of semen upon AJ's  
12 body?

13 A Those are -- in every case where they find semen  
14 and sperm, they run -- they run this -- it's called a  
15 differential. Because they have two different samples for  
16 each one. In every single case where they find semen and  
17 sperm, they run that.

18 Q All right. Well, let's talk about the nonsperm  
19 DNA. Did they find some nonsperm DNA upon AJ's body?

20 A Yeah.

21 Q And where did they find it?

22 A Well, there's going to be nonsperm DNA  
23 everywhere. Because we have DNA all over our bodies. So of  
24 the samples that they took, in addition to those that I  
25 mentioned, they also took ones from his neck, from his chest,

1 from his right hand. And they ran those, as well.

2 Q Did they also find any on his ear?

3 A They did find DNA on his ear.

4 Q Okay. And the DNA they found on these  
5 particular parts of AJ's body were nonsperm DNA; is that  
6 correct?

7 A That's the implication. If they didn't find  
8 semen, they didn't run it to see if there was sperm DNA. So I  
9 can't -- and I can't say whether there's sperm there or not.  
10 But the implication is that -- that, you know, there's no  
11 semen or sperm there.

12 Q So, with respect to the ear, if they found DNA  
13 from Mazen Alotaibi on AJ, what would be the likely ways that  
14 it could have been transferred from Mazen to AJ Dang? I mean,  
15 could saliva transfer that type of DNA?

16 A Saliva would do it. There are a number of ways  
17 you can transfer DNA. If two people shake hands and, you  
18 know, real hardy handshake, where you grab them real good and  
19 shake for a couple of seconds, you can transfer DNA. You can  
20 swab one person's hand and you would get the other person's  
21 DNA. Skin cells are not a great source. That's a good way to  
22 do it.

23 But a much, much better way are bodily fluids.  
24 Semen, saliva, blood, you know, anything from the internal  
25 part of the body is -- is an exceptionally good source of DNA.

1 Q All right. And you mentioned that the right  
2 hand also had nonsperm DNA; is that correct?

3 A The right hand had DNA that we assume was not  
4 from sperm.

5 Q But it also came back to Mazen Alotaibi,  
6 correct?

7 A The right hand, yes. The right hand did.

8 Q And --

9 A But the right hand also had -- was -- was a  
10 sample that was identified as having semen on it.

11 Q On AJ's hand? I mean, on AJ's hand?

12 A On AJ's right hand, yes.

13 Q Okay.

14 A So this is one they would have split into two --  
15 into two fractions.

16 Q But the semen was not from Mazen Alotaibi?

17 A The semen from the sperm cell fraction was not  
18 from Mazen Alotaibi. In other words, they split it into these  
19 two, and the sperm fraction on the right hand was not from  
20 Mazen Alotaibi. But what was in the nonsperm fraction on the  
21 right hand was from -- well, was consistent with the DNA  
22 profile of Mazen Alotaibi.

23 Q And if, assuming hypothetically, AJ Dang was  
24 sexually assaulted or had sex, voluntary sex with an  
25 individual, and a lubricant, like shampoo, would have been

1 used, would you expect any kind of DNA to be left behind?

2 A So, we're talking about having anal sex --

3 Q Yes, sir.

4 A -- and a lubricant being used --

5 Q Yes, sir.

6 A -- and we're wondering where or not the DNA  
7 would end up --

8 Q Correct.

9 A -- is that the question?

10 Q Right.

11 A The internal parts of the body are extremely  
12 good sources of DNA. The mouth, for example. Saliva, for  
13 example; if you cut yourself, blood; the inside of the rectum;  
14 any of our internal parts are exceptionally good sources of  
15 DNA. They're -- the skin there is just different than our  
16 outer skin. Once a lubricant is used, what ends up happening  
17 is because of the friction, a lot of the DNA then ends up in  
18 this liquid.

19 So, imagine for a moment that the liquid is not  
20 invisible, that it looks like red paint. Wherever you can  
21 find the liquid, you're going to find DNA. So, if two people  
22 have anal sex, they use some sort of lubricant, assuming that  
23 it's not just some huge amount so it's not diluted everywhere,  
24 but there's a significant amount, you would expect to find DNA  
25 anyplace you would find that liquid.



1           Now, if we imagine that it's -- it's red paint, for  
2 example, or, you know, it's red in color so we can see it, I  
3 would imagine that two people have anal sex, the person who  
4 was penetrating the person using his penis, I would imagine  
5 that he would pull that out, pull up his underwear, an  
6 enormous amount of easily detectable DNA would be found on his  
7 penis and on his underwear. And it would be like a dump-truck  
8 load of DNA. It would be easy to find and easy to detect.  
9 You would also expect that some DNA from the penis penetrating  
10 the rectum might be there. The -- the difference there is  
11 that the penis, of course, is an exterior part of the body.

12           And so as the skin on the outside of our body just is  
13 not a great source of DNA, the inside is. The potential  
14 exists that the interior DNA from the rectum would just be in  
15 such a high concentration that you wouldn't see the DNA from  
16 the penis. So, I would expect on the penis there to be a  
17 great deal of DNA. I would expect that the person who pulled  
18 up their underwear over a penis like that would get it all  
19 over them.

20           The person who was penetrated, I would expect there  
21 to certainly be a potential for DNA from the penis to be on  
22 them and on their rectum and on their underwear. But I  
23 wouldn't necessarily go as far to say that I would expect it.

24           Q     Now, in this particular case, did they find any  
25 DNA around the buttocks area of AJ Dang from Mazen Alotaibi?

1           A     On none of the samples from his rectum or his  
2 anus did you get a profile. And they split it into the two  
3 fractions. And you didn't get a profile from anybody but AJ  
4 Dang from his rectum or his anus that you would expect at  
5 least something.

6           Q     All right. And with respect to the mouth of AJ  
7 Dang, would you expect, if the penis of Mazen Alotaibi was in  
8 the mouth of AJ Dang, or anybody's penis was in the mouth of  
9 AJ Dang, would you expect to find some DNA from that person in  
10 the mouth or around the mouth of AJ Dang?

11          A     I wouldn't. The mouth has so much liquid in it  
12 and it's constantly being swallowed and it's got a lot of  
13 acids in it. And even from, you know, my experience running  
14 hundreds of these cases, even when somebody has come to the  
15 hospital two, three hours after an alleged ejaculation into  
16 their mouth, you rarely will find semen or -- or sperm. Even  
17 just a couple of hours later.

18          Now, certainly, I have seen cases where somebody, you  
19 know, just a few minutes afterwards, went down and was tested,  
20 I mean, just right after they had given somebody oral sex, and  
21 it was detected. And I think to my knowledge that's the only  
22 time I've ever seen somebody have their mouth come back  
23 positive. So, I would not expect to find DNA, I wouldn't  
24 expect to find sperm, I wouldn't expect to find anything  
25 inside the mouth of somebody else.

1           Q     With respect to Mazen Alotaibi's body, what  
2 parts were tested on him and what tests were run?

3           A     They took a swab of his penis and his boxers.

4           Q     All right. And with respect to his penis, did  
5 they find DNA -- what kind of DNA did they find?

6           A     Well, again, they took the sample. They  
7 detected semen and they split it into these two fractions.  
8 They had the sperm cell fraction and the nonsperm fraction.  
9 The sperm fraction here was consistent with -- with Mr.  
10 Alotaibi and him alone. In fact, that -- and on the boxers,  
11 the sperm cell fraction appeared to be him and him alone,  
12 which strongly suggests that the semen found on both of those  
13 samples is most likely his.

14                The nonsperm fraction on the penis was very low.  
15 What was there possibly could have been Mr. Dang, but it was  
16 so low, it would be difficult to really be sure. But if it  
17 was Mr. Dang, there's also a third person there. So it's just  
18 -- it's really low. You do see some mixtures. Could be Mr.  
19 Dang, maybe not. It certainly isn't in the quantity that I  
20 would expect from a sexual encounter. And a from a sexual  
21 encounter from having some lubricants and anal sex, you would  
22 expect there to be literally a dump load of -- a dump-truck  
23 load of DNA there. And what you see are maybe a couple of  
24 shovelfuls.

25                So, while there is some DNA there, it's really hard

1 to say what DNA is there that doesn't belong to Mr. Alotaibi.

2 Q And the DNA that you're referring to is nonsperm  
3 DNA?

4 A Nonsperm DNA. The sperm DNA, all -- it appears  
5 in this case, looking at all of the samples, that the semen  
6 and sperm found on Mr. Dang is Mr. Dang's, and the semen and  
7 sperm found on Mr. Alotaibi is Mr. Alotaibi's.

8 Q Now, with respect to the items that were found  
9 inside of the bathroom, do you know what items were found and  
10 what were tested?

11 A The only item that I'm aware of that was  
12 collected actually out of the bathroom was a white towel.

13 Q And did they run a test on that white towel?

14 A They did a run a test on the white towel. I --  
15 I assume that -- that they collected it to -- in case somebody  
16 had cleaned themselves off, wiped themselves off or something of  
17 that nature. And so a lot of times at a scene like this,  
18 they'll collect something like a towel, a washcloth, whatever  
19 looks like it potentially was used. And in this case they  
20 tested it and they didn't find anything useful on it at all.

21 Q When you say they didn't find anything useful,  
22 did they find any DNA that came back to AJ Dang?

23 A They didn't run any DNA. Basically, what they  
24 did was they tested it to see if they could find anything on  
25 it and they didn't find anything on it, so they didn't run any

1 DNA.

2 Q All right. Did they run a test on a condom that  
3 was found in the bathroom?

4 A The condom I don't believe was found in the  
5 bathroom. I believe the condom was found in the living area,  
6 which was away from the bathroom. They did run DNA on that.  
7 And all of the results that they got are not consistent with  
8 either Mr. Dang or Mr. Alotaibi. So whatever it was, it  
9 didn't seem to be connected directly to those two.

10 Q And one final area. Was there nonsperm DNA  
11 found near the genital areas of Mr. Dang?

12 A There was. On his boxers, on his testicles, and  
13 on his penis, they found DNA that was foreign to him in the  
14 nonsperm part of the DNA that was consistent with Mr.  
15 Alotaibi.

16 Q All right. And based upon everything that you  
17 know about this case, the -- the samples that were tested, the  
18 evidence that was gathered, how do you believe Mr. Alotaibi's  
19 nonsperm DNA could have arrived or gotten onto this particular  
20 part of Mr. Dang's body?

21 MS. BLUTH: Your Honor, I'm going to object as to  
22 speculation: How do you believe it could have gotten there.

23 MR. CHAIREZ: Well, he's here to offer a scientific  
24 opinion --

25 THE COURT: Let him offer an expert opinion.

1 MR. CHAIREZ: Okay.

2 THE COURT: Yes.

3 MR. CHAIREZ: Let me rephrase the question.

4 BY MR. CHAIREZ:

5 Q You mentioned you had an opportunity to read all  
6 of the police reports?

7 A Yes.

8 Q Okay.

9 A Well, I don't know if I had all of them.

10 Q Well -- well, you read Mr. Dang's statements,  
11 correct?

12 A I read some statements that they attributed to  
13 Mr. Dang. I don't know that I actually read a statement that  
14 he made. But there were statements or opinions of the  
15 officers as to what may have happened based on statements that  
16 he made.

17 Q Well, let's just focus on the DNA report. You  
18 were able to see the four-page DNA profile, plus the  
19 additional test or whatever that Metro Crime Lab ran, correct?

20 A Correct.

21 Q All right. And so with respect to the DNA  
22 that's found on Mr. -- Mr. Dang, on the left ear, the left  
23 neck, the chest, the right hand, and the genitals, would you  
24 agree with the Metro Crime Lab that all of the DNA found there  
25 is all nonsperm DNA?

1           A     Yes.

2           Q     Okay.  So, you don't disagree with them?

3           A     No.  I -- they're -- the testing that they did  
4 appeared to be accurate.  The testing was -- was consistent,  
5 it was consistent on this person, and it was consistent on  
6 this other person and throughout the case.  I -- I found the,  
7 you know, the -- the procedures that they ran and the way that  
8 they ran it and the reporting that they used, I found it to  
9 all be accurate and -- and good.  I don't really take issue  
10 with anything that they did.

11          Q     All right.  And if, hypothetically speaking, if  
12 two individuals are smoking a marijuana cigarette together,  
13 would there be a possibility of transferring saliva DNA if  
14 someone is sharing a marijuana cigarette?

15          A     If someone were to walk up right after it was  
16 lit, say, you know, when it's long, I would expect there to be  
17 probably very little.  But once it gets small and people are  
18 passing it around in the area where they're holding it with  
19 their mouth, I would expect there to be saliva transfer.

20          Q     All right.  And with this saliva transfer, would  
21 this be on the hand of AJ Dang?  Is it possible,  
22 hypothetically speaking?

23          A     Yeah.  I mean if he's holding it and passing it  
24 back and forth, that's where I would expect it to be.

25          Q     All right.  And it is possible -- what other

1 ways could AJ Dang get nonsperm DNA on his right hand from  
2 Mazen Alotaibi?

3 A I don't know. I mean, there are --

4 Q For instance, if you --

5 A -- there are a million different ways you can  
6 get your -- I mean, you can shake hands, you can give a  
7 high-five, I mean, you get any bodily fluid onto your finger,  
8 I mean, there's -- there's an innumerable number of ways where  
9 you can get DNA.

10 Q All right.

11 A Two people that are sharing an area for even  
12 more than a few minutes, if they come into contact, I would  
13 expect there to be at least some transfer of DNA.

14 Q All right. And is it possible to transfer from  
15 the right hand of AJ Dang to the testicle area of AJ Dang the  
16 DNA of Mazen Alotaibi that has no sperm in it onto Mr. AJ  
17 Dang's testicle or genital area?

18 A Again, I mean, if you treat saliva or something  
19 like that as if it's not some clear liquid that you can't see,  
20 but that it's bright red so you can see it, so the saliva gets  
21 wherever the saliva gets. So let's just imagine that you have  
22 some on your fingertips, you know, if you reach down to, you  
23 know, touch your penis or you go to the bathroom, anyplace  
24 that you would expect this red liquid that's now wherever it  
25 is on your fingers, and if you're smoking a joint I would



1 expect it to be probably in this area of your fingers, you  
2 know, imagine again that it looks like bright red paint.  
3 Where would that get? You know, wherever you touch, you're  
4 going to get some.

5           So, any method by which you touch that area, I mean,  
6 if you go in and you go to the bathroom, let's say, and you  
7 pull down your underwear and you touch your penis, well, you  
8 just transferred some DNA there. And with something like  
9 saliva, saliva's an excellent source of DNA. So, wherever  
10 that, you know, red paint, whatever you want to call it,  
11 wherever that saliva gets, if you swab that area, you're going  
12 to get DNA.

13           Q     Now, you mentioned -- you used earlier the  
14 illustration of a dump truck versus a shovelful. The DNA that  
15 they found on AJ Dang from Mr. Alotaibi, was it a -- more in  
16 the nature of a shovelful or was it more in the nature of a  
17 dump truck?

18           A     Well, that depends on which sample you're  
19 talking about. Some of those samples are -- are exceptionally  
20 good samples. For example, the one on the ear, that's a  
21 strong sample. There's a lot of DNA there. On the chest  
22 swab, there's a lot of DNA there. On the hand there is less,  
23 but if you imagine that the hand's touching things, it goes  
24 away on the hands a lot quicker than it would on, say, your  
25 ear, because it's going to slowly dissolve as you touch things

1 -- or not dissolve, but it's going to slowly water down as you  
2 touch things and get it on other things.

3           There is a -- a significant amount on his boxers.  
4 There is --

5           Q     On whose boxers?

6           A     On AJ's boxers there is a reasonably large  
7 amount of DNA. Again, this isn't like a dump-truck load, but  
8 there is a significant amount on his boxers, there is less on  
9 his testicles, meaning that you don't even get a full DNA  
10 profile. So there's, like, you know, a few shovelfuls on his  
11 testicles and very little on his penis.

12           Q     So, do you have an opinion that you hold to a  
13 reasonable degree of scientific certainty whether or not there  
14 is DNA evidence supporting whether Mr. Mazen Alotaibi had sex  
15 anally with the victim, AJ Dang?

16           A     At the end of the day what I try to do is just  
17 understand the evidence and how it applies. And essentially  
18 when you talk about a sexual assault of this case, you're  
19 talking about anal sex. And the question is where do you see  
20 the DNA and how much do you see and is it semen?

21                   In this case, I see that the semen on Mr. Dang  
22 appears to be his, and the semen on Mr. Alotaibi appears to be  
23 his. The places on Mr. Dang I would most expect to see the  
24 DNA of Mr. Alotaibi would be the rectum and the anus, and I  
25 don't see his DNA there at all.

1           Where I do see his DNA are on the -- on the neck and  
2 the ear, on the chest. And those are really not a concern.  
3 Two people spend any time together it's not a surprise to see  
4 your DNA on areas that are exposed. The areas here that are  
5 of some concern are the fact that you find a reasonable amount  
6 of his DNA on the boxers. But what you see is much less on  
7 the testicles and much less even then on the penis. And so  
8 while you see DNA in places that are questionable, you don't  
9 see a lot.

10           On the other side of that, when you're talking about  
11 anal sex, if you imagine that somebody doesn't take a shower,  
12 that right after sex they pull their underwear up, you would  
13 expect to find an enormous amount of DNA. And that's probably  
14 the No. 1 place that I would expect there to be a lot of DNA  
15 would be on Mr. Alotaibi's penis, as well as on his boxers.  
16 And you just -- you don't see that here. In fact, you see,  
17 you know, what could be somebody else's DNA on his boxers  
18 mixed with his semen. And so I just -- I -- I really can't  
19 say what happened.

20           But there are certain things that I look for. I look  
21 for what type of DNA is on somebody, what are the  
22 concentrations, where did it come from, where did it possibly  
23 come from, and where are the places that I -- I most likely  
24 would see it.

25           Q     So, in your opinion, there's no question that

1 the DNA on AJ's ear is from Mazen Alotaibi?

2 A On the ear, I would see -- say, to a scientific  
3 degree of certainty, I can say that Mr. Alotaibi's DNA is  
4 found on Mr. Dang's ear.

5 Q And it's found on his neck and chest area?

6 A Yes, as well.

7 Q And it's found on his right hand?

8 A Based on the fact that the rest of the DNA that  
9 I see I can say to a scientific degree of certainty came from  
10 Mr. Alotaibi, the sample on his hand does not rise to the  
11 level where I can say to a scientific degree of certainty  
12 that's his DNA. I would say to an extremely high probability  
13 the DNA found on his hand is from Mr. Alotaibi. And given the  
14 fact that the other profiles are so high, I find it very  
15 unlikely that it came from anywhere but Mr. Alotaibi.

16 Q The right hand?

17 A On the right hand.

18 Q Of AJ?

19 A Of Mr. Dang.

20 Q All right. And finally, with respect to Mr.  
21 Alotaibi, the Metro Crime Lab found no DNA from AJ Dang upon  
22 the body of Mazen Alotaibi?

23 A The only DNA that they found that had any  
24 possibility of belonging to Mr. Dang was they found an  
25 incredibly small amount -- I don't want to say incredibly

1 small amount; they found a very small amount on Mr. Alotaibi's  
2 penis. Again, this is a place I would expect to find just a  
3 -- a dump-truck full of DNA and we see just this tiny little  
4 bit. In fact, it's so low it's difficult to connect it to --  
5 to Mr. -- Mr. Dang.

6           You can say that there are striking similarities.  
7 Imagine that you have a lottery ticket and you've matched,  
8 say, 10 of the -- say there's -- you have a lottery ticket,  
9 you've got to match 30 numbers. You can match maybe 10 of  
10 them. But there are two or three numbers you can't account  
11 for.

12           So there's this profile on his penis that has some  
13 similarities to Mr. Dang. And if it is Mr. Dang's, there's at  
14 least three people on that penis. So it's low enough that the  
15 Las Vegas Metropolitan Police Department just said, We're not  
16 going to compare it. But that's because that's what their  
17 policy is and I'm not held to their policy, so I went ahead  
18 and compared it anyways.

19           Q     So, even though the Metro Crime Lab said it  
20 wasn't from AJ Dang or they couldn't be sure, you at least are  
21 throwing it out to be open with the jury that there is that  
22 small possibility of trace amounts on the penis of Mazen  
23 Alotaibi?

24           A     Yes.

25           Q     Okay. And you say there's another individual's

1 DNA also on the penis of AJ Dang? I mean, excuse me, Mazen  
2 Alotaibi?

3 A It could just be that it's Mr. Alotaibi's DNA  
4 and somebody else's. Again, your DNA profile is, like, 30  
5 numbers long. Now, if you got, let's say, 12 numbers, 12, 13  
6 numbers and 8 or 10 of them match Mr. Dang, it's, like, maybe  
7 it's his and maybe there's a third person. But it could just  
8 be somebody else altogether. Right. It might not be Mr.  
9 Dang, it might just be another person. So there may not be  
10 three people there. I don't know.

11 Q Well, can you tell whether or not it's from  
12 another man or another woman? Or another --

13 A You really can't. Guy -- all men have a Y  
14 chromosome. It's what turns you into a man. If you get the Y  
15 chromosome, then when you're a fetus, you turn into a boy.  
16 So, once you have the Y chromosome, you can't really tell  
17 where the rest of the DNA came from. If you have, you know,  
18 if you take an intimate sample from a woman's vagina after  
19 she's had sex and you find a Y chromosome, you know there was  
20 a boy there. But you can't really do it in reverse. Once you  
21 have the Y chromosome, you really can't tell where the other  
22 DNA came from.

23 Q And -- and lastly, Dr. Miller, from what was  
24 gathered in the bathroom, can we tell whether or not somebody  
25 took a shower based upon the evidence gathered by the Las

1 Vegas police?

2 MS. BLUTH: Your Honor, I'm going to object. This is  
3 way outside the expertise of a DNA expert, whether or not  
4 someone took a shower.

5 THE COURT: Why don't you perhaps ask it a different  
6 way.

7 MR. CHAIREZ: Well, I'll -- I don't need to ask.

8 THE COURT: All right.

9 MR. CHAIREZ: That's fine.

10 THE COURT: Cross?

11 CROSS-EXAMINATION

12 BY MS. BLUTH:

13 Q Good afternoon, Doctor.

14 A Good afternoon.

15 Q And I want to be clear about a few things before  
16 we get started. You're hired by Mr. Chairez, that's correct,  
17 to testify in this case?

18 A Yes.

19 Q Okay. And so he has to pay a certain fee for  
20 you to look at the materials?

21 A Correct.

22 Q And then he also has to pay a certain fee for  
23 you to come in and testify over what you looked over?

24 A Correct.

25 Q Okay. And how much would he be paying you for

1 those two things?

2 A Generally speaking, I charge \$165 an hour and I  
3 charge \$1,800 a day plus my travel costs. This one didn't  
4 always work out that way, but that's basically what I charge.

5 Q So what is the total, as we sit here today?

6 A For this entire case?

7 Q Yes.

8 A Or for just coming here today?

9 Q For this entire case, please.

10 A We're probably looking at about \$12,000.

11 Q Okay. Thank you. Now, you've stated that you  
12 worked for the State for a period of time?

13 A Correct.

14 Q And I was unclear, when you said you testified  
15 about 25 to 30 times, how many of those were in a criminal  
16 setting like we're in now?

17 A I think virtually all of them have been in a  
18 criminal setting. There have been a couple of them that were,  
19 like, lawsuits. I don't think I -- off the top of my head I'm  
20 not sure if I ever testified that, but I -- I testified --  
21 virtually every time is for a criminal case.

22 Q Okay. And since you quit working for the State  
23 and you started working in the private sector, how many times  
24 have you testified in a criminal trial like we're in now?

25 A Probably half the time, so maybe 15 to 20.



1           Q     And so in any of those 15 to 20 times, have you  
2 testified for the prosecution?

3           A     I have not.

4           Q     Okay. So, the last -- since you left working  
5 for the State, you've testified about 20 times in the criminal  
6 courtroom?

7           A     Approximately, yeah.

8           Q     Yeah. And all those times were for the defense?

9           A     Correct.

10          Q     Okay. When you have a sample left, and we  
11 talked a lot about sperm fractions and fractions taken from  
12 epithelial cells, so we -- we call them skin DNA and sperm  
13 DNA, if we could do that, just to keep it a little bit easier.

14          A     Sure.

15          Q     Is it possible to find carryover from one to the  
16 other?

17          A     Yes.

18          Q     Does that question make sense?

19          A     Yes.

20          Q     Okay. Can you explain that?

21          A     It's an imperfect process. I mean, basically,  
22 what happens is you take -- sperm are like little tanks.  
23 They're -- they're pretty tough little things. They've got a  
24 job to do and they have to swim upstream and -- and actually  
25 do some work. And so these are a little different kind of a

1 cell than -- than the rest of our cells, whether it comes from  
2 saliva, whether it comes from skin, no matter where it comes  
3 from.

4           And so what the lab does is they take a sample, let's  
5 just say it's -- it's a cutting from underwear. And what they  
6 do is they will try to put some soft chemicals in there that  
7 dissolves everything but the sperm. And then they try to wash  
8 it. And they spin it down. And the -- and the sperm kind of  
9 pellet to the bottom. And then they put harsher chemicals  
10 that will dissolve the sperm. And so the plan is to dissolve  
11 with something, you know, somewhat less harsh and try to  
12 dissolve and clear everything else away, then wash it off.  
13 And hopefully you have just sperm in the bottom and then you  
14 dissolve that and hopefully get just a sperm cell fraction.

15           And what happens is sometimes it doesn't get washed  
16 as well, and so you'll have carryover from the skin cell  
17 fraction into the sperm cell fraction. And other times when  
18 you're doing this process, some of the sperm cells will just  
19 break open in the earlier procedure and you will get some of  
20 the sperm carryover into the other.

21           Q     And so would you agree -- Ms. Marschner  
22 testified, the analyst who did the DNA in this case, and in  
23 certain areas where she saw sperm fraction and it was  
24 inconclusive, she testified that she believed that it was  
25 actually carryover from the skin cells. So that is a

1 possibility, correct?

2           A     It is a possibility. And certainly in -- in  
3 some of those cases, in this particular case, you're talking  
4 about the rectal and the anal sample. And those are excellent  
5 sources of DNA. They have large quantities of DNA. And so  
6 it's much more possible when you have a lot of DNA. The thing  
7 is that it's much more likely for you to have sperm break open  
8 and have carryover from the sperm into the nonsperm DNA. If  
9 you do a really good job and you're a good scientist,  
10 generally, you don't have much carryover from the skin cells  
11 into the DNA, because -- or into the sperm, because you can  
12 wash it off. You break everything open, you rinse it off, and  
13 then you generally have just sperm left.

14                So a high enough concenage [phonetic] of DNA you  
15 certainly can have carryover, though it's much less likely to  
16 have it carry over in the other direction. And in this case,  
17 just looking at the other profiles that she got, it looked  
18 like the -- some labs have more carryover than others because  
19 the scientists are just -- they're just better. In this case,  
20 there were a number of samples where there wasn't any  
21 carryover, leading me to believe that she's probably doing a  
22 pretty good job. So --

23           Q     I guess my question -- I'm sorry, we're getting  
24 a little far. But my question was is it possible for skin  
25 cells to carry over into the sperm fraction?

1           A     It's possible, yes.

2           Q     Thank you. I want to talk about the DNA on AJ's  
3 ear. You stated this is -- this is a very good sample?

4           A     It's a good sample, yes.

5           Q     And you also talked about the strengths about  
6 body fluids, saliva, blood, semen, that those leave stronger  
7 traces of DNA than what you referred to as touch DNA?

8           A     Yes.

9           Q     And so this sample on AJ's ear would be  
10 consistent with probably more of a body fluid?

11          A     Yes.

12          Q     And you saw the video from Circus Circus?

13          A     Yes.

14          Q     And so I'm sure you watched all of it?

15          A     Yes.

16          Q     And you saw the section where the defendant  
17 leaned over and appears to be doing something to AJ's ear?

18          A     Yes.

19          Q     And that would be probably consistent with  
20 leaving that body fluid on that ear?

21          A     I mean, if he -- if he licked his ear, then --  
22 then certainly that would be -- that would be consistent with  
23 how that profile could get there.

24          Q     Okay. The fact that someone uses a lubricant on  
25 the penis would cause less friction between the penis and the

1     anus?

2             A     Yes.

3             Q     So, there's a less of a chance for skin-to-skin;  
4     I'm not saying it's an impossibility, but there's less of a  
5     chance?

6             A     Okay.  Less of a chance of skin-to-skin  
7     friction, or less of a chance of DNA transfer.

8             Q     Well, we know that the lubricant causes less  
9     friction.  So I'm asking, there's less of a chance for  
10    cell-to-cell transfer, skin-to-skin transfer?

11            A     Well, actually, what ends up happening is -- is  
12    -- is there's a lot more DNA transferred to the liquid rather  
13    than directly from one item to the other.  And so the DNA gets  
14    into the liquid, and then the DNA ends up wherever the liquid  
15    is.  So, if the DNA, like, for example, the DNA from the penis  
16    and rectum end up getting into the liquid, and then the liquid  
17    -- where does the liquid go, is really the question.  There's  
18    a significant amount of DNA transfer into the liquid.  And  
19    then where does the liquid go?  Does the liquid stay on the  
20    penis?  Liquid get onto the underwear?  Does the liquid stay  
21    in the rectum?  Wherever the liquid is, there's DNA and it's  
22    significant.  That's a significant amount.

23            Q     And -- but what I'm asking you is the -- not  
24    testing the liquid, testing the body parts.  So, we have the  
25    swab of the penis, swab of the anus.

1 A Right.

2 Q So, the -- using the lubricant would decrease  
3 your chances of finding that in those places?

4 A It would increase it dramatically.

5 Q It would --

6 A Significantly.

7 Q It would decrease your ability to find it?

8 A No. It would -- it would increase the chance of  
9 finding DNA dramatically.

10 Q Explain that.

11 A Liquids transfer DNA really well. They transfer  
12 it into all the nooks and the crannies. If you just imagine,  
13 for example, that my hand is dry and I put it into something  
14 that, say, has a dry powder on it. Okay. And I would get  
15 powder on it. But if I stick my finger into a liquid, that  
16 liquid is going to not only soak into my hand, but it gets  
17 into all the little nooks and crannies and all those little  
18 other places.

19 Liquid is a far better way to transfer DNA and to  
20 transfer cells and to have them stick and soak in than -- than  
21 dry.

22 Q So, when --

23 A So --

24 Q -- when Mr. Chairez was asking you questions, I  
25 believe you stated that it would decrease your likelihood of

1 finding DNA if someone used a lubricant on your -- on his  
2 penis going into an anus. And so now you -- you are  
3 changing --

4 A No. I -- I would --

5 Q -- and now you're --

6 A -- I would say the chances of finding the DNA  
7 from the penis in the rectum is probably decreased. And the  
8 reason for that is because if you imagine that this liquid is  
9 taking in all the cells, and the rectal and anal cells are  
10 going to be probably 100 times stronger, because they're just  
11 so much better at transferring DNA, they come off a lot  
12 easier, all of them have DNA. Skin cells, not all of them  
13 have DNA. They don't come off easily.

14 And so if you just imagine that this liquid and this  
15 friction, and then you realize that the anus and the rectum  
16 are going to transfer a lot more DNA, then -- and on top of  
17 that the penis has -- now has less friction, you're going to  
18 transfer less penile DNA to the liquid. And so the penis is  
19 going to be less likely to be visible when you run the DNA,  
20 just because, numerically speaking, it's overwhelmed.

21 Q Okay. So, now you're saying that the use of a  
22 lubricant would increase your chances of getting DNA? I mean,  
23 it's a yes-or-no question.

24 A Okay.

25 Q So, are you -- lubricant --

1           A     Okay. It's decreasing the chances of finding  
2 the DNA from the penis and the rectum. It's increasing the  
3 chances of finding the rectal DNA in the liquid and on the  
4 penis.

5           Q     Okay. Well, if you don't have the liquid, if  
6 you don't have this lubricant to test, and so you're just left  
7 with the penis and the rectum?

8           A     Well, but -- but the liquid is -- has soaked  
9 into the penis, is -- is on the penis. What I'm saying is you  
10 pull your penis out, let's say you have sexual intercourse  
11 with somebody who is using a lubricant. You pull your penis  
12 out, that liquid is somewhere. It doesn't just magically go  
13 away. It's either in the rectum, and that which is in the  
14 rectum is probably now transferred less DNA from the penis  
15 onto it. But as far as the cells from the rectum, that's not  
16 increased on the penis, because that's where the liquid is.  
17 It soaks in, gets in all the nooks and crannies.

18          Q     So, if you have used lubricant, and on top of  
19 that not only did you lubricant the penis, but you lubricant  
20 -- lubricated the outside of the anus and the inside of the  
21 anus, that would again decrease your likelihood of leaving the  
22 DNA sample; yes or no?

23          A     Wherever you put the lubricant --

24          Q     Yes or no, please, Doctor.

25          A     Okay. Wherever you put the lubricant --



1           Q     No, Doctor.  It's a yes or no.  It's either a  
2     yes or it's a no.

3           A     Okay.  So, ask me again.

4           Q     Okay.  So, if you use lubricant, not only on the  
5     penis, but on the inside of the anus, so in -- in the  
6     rectum --

7           A     Uh-huh.

8           Q     -- on the outside of the anus, that increases or  
9     decreases --

10          A     Which, decrease --

11          Q     -- the likelihood of finding DNA?

12          A     It will -- okay.  Let's be specific.  It  
13     decreases the DNA from the penis being transferred into the  
14     rectum.  It increases the DNA from the rectum being  
15     transferred onto the penis.

16          Q     Even if the lubricant was inside of the rectum?

17          A     Oh, sure.  Wherever the liquid is, we've  
18     increased the amount of DNA from the rectum.  Wherever that  
19     liquid now is, we have rectum liquid.

20          Q     And --

21          A     So, wherever that gets, it's going to be  
22     stronger.  And wherever it gets, the penis is going to be  
23     lesser.

24          Q     And if you add to the fact that the individual  
25     did not ejaculate, that would also greatly decrease your

1 chances of finding DNA? Yes or no, please.

2 A You would detect an ejaculation.

3 Q Okay. But that wasn't my question. My question  
4 is if the individual does not ejaculate inside of the rectum,  
5 that would decrease your likelihood of finding DNA?

6 A Which DNA again, we -- are we talking about  
7 penile DNA or are you talking about the ejaculate?

8 Q Yes.

9 A Yes. You would not detect the ejaculate if he  
10 didn't ejaculate.

11 Q And on top of that, if the victim is bleeding so  
12 much that they're passing blood clots afterwards, that would  
13 also decrease your chances of finding DNA?

14 A Again, which DNA?

15 Q Well, both. I mean, the blood, you've said  
16 yourself that bodily fluids leaves much stronger sources of  
17 DNA. I mean, you used the mouth as an example, correct?

18 A Okay.

19 Q So if your anus is coated with lubricant, and on  
20 top of that you have tears and you're bleeding so much that  
21 you're blood-clotting, your sources would overtake that of the  
22 other individual?

23 A Again, yes. The -- the rectal sample in that  
24 case would overwhelm the penile sample on the rectum. And the  
25 rectal sample would overwhelm the penile sample on the penis.

1 Either way you look at it, the rectal sample is overwhelming  
2 the penile sample. No matter where it goes or which person  
3 we're talking about, if you add lubricants or you add blood or  
4 whatever, you've increased the amount of DNA from the rectum.  
5 And so you have less chance of finding the penile sample on  
6 any -- on any of those things, and you've increased the  
7 chances of finding the rectal sample on any of those things.

8 Q Okay. And Mr. Chairez had asked you some  
9 questions about, you know, how could the nonsperm DNA get on  
10 AJ's right hand; do you remember?

11 A Yes.

12 Q And you said there's -- there's plenty of ways  
13 that it could do that?

14 A Yes.

15 Q It could be transferred, I think you said, from  
16 one area to another. It could also be consistent that the  
17 victim was forced to hold the defendant's penis while being  
18 forced to perform oral sex on him; that would be another way  
19 that it would be possible?

20 A Yes.

21 Q The defendant's DNA was found on AJ's boxers,  
22 and to be specific, that was on the inside of AJ's -- the  
23 crotch of AJ's boxers; is that correct?

24 A I believe that's the spot that they cut out.  
25 But once you cut out a piece of the boxers, whatever's on the

1 inside or the outside or -- or whatever, is going to end up in  
2 that tube. So I believe that, generally speaking, when the  
3 crime lab looks at a pair of underwear, they look at the  
4 inside crotch area. That's where, you know...

5 Q I'm just asking you, is it clear from the report  
6 that it states that the DNA profile obtained was from the  
7 stain inside the crotch of the boxer shorts; is that what the  
8 report states?

9 A Yeah. But they're not talking about the -- in  
10 -- you cut a piece of fabric, you get the outside and the  
11 inside.

12 Q Okay.

13 A But I think what they're talking about, at least  
14 it was my interpretation at the time, they're just talking  
15 about the inside of the crotch.

16 Q Did you speak to Ms. Marschner?

17 A I did not.

18 Q Okay. So when she references on boxer shorts,  
19 "Stain, outside front left," that would probably be different  
20 from when she references, "Stain, inside crotch"?

21 A Yes. But if you look at the pictures, we're  
22 talking about the outer edge and the inner middle, as opposed  
23 to outside of the underwear, inside of the underwear. At  
24 least that was how I interpreted it at the time.

25 Q Was by pictures?

1           A     I do have -- I do have some -- I did have some  
2 pictures at the time. I don't have them with me.

3           Q     But I'm asking if that's what your  
4 interpretation came from, was from looking at the pictures?

5           A     I can't say that I actually looked at the  
6 pictures and said, well, where exactly was she talking about?  
7 I mean, basically, when you cut a piece of cloth, you cut the  
8 inside and the outside. So I wouldn't anticipate -- I mean, I  
9 know on some women's underwear there's, like, an inner liner,  
10 but generally on boxers there -- there isn't.

11          Q     But, I -- you would agree with me that in her  
12 report she delineates differences between outside and inside  
13 when she did the testing --

14          A     She does delineate --

15          Q     -- that's all I'm asking.

16          A     -- that specifically.

17          Q     Thank you. And the -- that stain came back as  
18 you said that it was consistent with the defendant, as well as  
19 Ms. Marschner said it was consistent with the defendant. And  
20 do you remember the frequency with which that identity was  
21 made?

22          A     Excuse me, can you repeat the question?

23          Q     Do you remember the frequency with which she  
24 noted?

25          A     Which stain?

1 Q The boxer shorts, the inside of the victim's  
2 boxer shorts?

3 A From AJ Dang?

4 Q Yes.

5 A The inside boxer shorts of AJ Dang, I believe  
6 that was 700 billion to one.

7 Q Okay. So, identity is assumed pursuant to the  
8 Las Vegas Metropolitan Police Department's standards?

9 A Yeah. Once you get to that number, yes.

10 Q Okay. And then in regards to the right hand, do  
11 you remember the statistic with which that was --

12 A 95 billion.

13 Q Would you call that identity assumed?

14 A That does not rise to the level.

15 Q Okay. And how many people live on earth?

16 A Seven billion.

17 Q Okay. Was it important to you to know whether  
18 or not AJ Dang was prepubescent at the time of you looking  
19 through the materials?

20 A It was.

21 Q Okay. And why is that?

22 A Well, if a boy hasn't hit puberty, and then he  
23 is not likely to be producing sperm. If he's to the point  
24 where -- and he's young enough, he probably doesn't produce  
25 semen, either. And so once you find semen and sperm on

1 somebody who doesn't produce it, it would make sense that it's  
2 from the other person. It's sort of like finding semen or  
3 sperm on a woman, you know it's not hers.

4 Q So, it was important to you to know whether or  
5 not AJ Dang was prepubescent?

6 A It was important to me to know whether or not he  
7 was capable of producing semen or sperm. And I -- to me, I'm  
8 -- I'm not a medical doctor. I'm not really sure at what  
9 point a young man can produce semen. I know that until he is  
10 at least somewhere along in puberty, he can't produce sperm,  
11 at least not viable sperm. But I'm not really sure at what  
12 point he can produce what.

13 Q So --

14 A I did --

15 Q Sorry.

16 A I did --

17 Q Go ahead.

18 A I did ask at some point, you know, what's the  
19 situation here with him? I mean, how old is he? You know,  
20 what -- what is his -- his pubescent status? Because it is  
21 important. If -- if he doesn't produce semen and he doesn't  
22 produce sperm, then anyplace we find semen and sperm...

23 Q It's assumed to be the defendant?

24 A Well, it didn't come from him.

25 Q But it's -- I mean, it was important to you to

1 find out whether or not AJ was prepubescent, because if he is  
2 prepubescent and he's not producing sperm or semen, then it  
3 can be assumed that everywhere where we see that, it's the  
4 defendant's?

5 A Well, doesn't necessarily that it came from --

6 Q It's yes or no.

7 A -- the defendant. No. That doesn't mean that.  
8 What it means is that it didn't come from Mr. Dang. And it  
9 could have come from the defendant or any other male. And  
10 unless we can do the DNA profile and find out that it was  
11 semen or sperm from this person, the results that the testing  
12 -- that the lab got do not imply that the DNA or semen or  
13 sperm was from anybody. If it's not from AJ Dang, then we  
14 don't know who it's from.

15 Q So, in an e-mail dated to Mr. Chairez on  
16 Tuesday, April 9th, at 6:17 a.m., you would agree with me that  
17 you wrote, "I cannot overemphasize the importance of whether  
18 or not AJ Dang is prepubescent. If he does not yet produce  
19 semen or sperm, then all of the semen and sperm found is  
20 assumed to originate from Mazen Alotaibi." Those are your  
21 words?

22 A Those -- sounds like my words.

23 Q In regards to -- well, actually, let me ask you  
24 this. When you get the materials from the Las Vegas  
25 Metropolitan Police Department's DNA lab, they give you raw



1 data, or data, however you want to say it; is that correct?

2 A I think I had the FSA files.

3 Q You -- you receive a disc --

4 A Yes.

5 Q -- that shows the graphs that they use --

6 A Yes.

7 Q -- and all those types of techniques?

8 A Yes. I don't know if I got the actual raw data  
9 from the computer. I didn't need those or I didn't use them  
10 if I had them.

11 Q Okay.

12 A But otherwise I got most of the raw data, yes.

13 Q Okay. And that's how you knew that the victim's  
14 DNA was found on several -- on those graphs. I think we -- we  
15 showed the -- the jury the graphs when we were going over with  
16 Ms. Marschner. That's where you had seen in several places  
17 the victim's DNA on the defendant's penis?

18 A The electropherograms?

19 Q Yes.

20 A Yes. I compared those myself.

21 Q And you -- and you saw, you saw the markers, you  
22 saw on several places where the victim's DNA could be found on  
23 the defendant's penis?

24 A There were several -- yes. There are -- there  
25 are indications on the penis that there's -- there are some

1 striking similarities.

2 Q Thank you.

3 MS. BLUTH: Nothing further.

4 THE COURT: Mr. Chairez, redirect?

5 MR. CHAIREZ: No, Your Honor.

6 THE COURT: All right. Is this gentleman free to go?

7 MR. CHAIREZ: He is free to go.

8 THE COURT: Thank you, Doctor. You're free to go,

9 sir.

10 All right. Mr. Chairez, any other witnesses today?

11 MR. CHAIREZ: No, Your Honor.

12 THE COURT: Can you come here for a sec?

13 (Bench conference transcribed as follows.)

14 THE COURT: Any further [indiscernible].

15 MR. CHAIREZ: [Indiscernible.]

16 THE COURT: That's right.

17 MR. CHAIREZ: Okay. And [indiscernible] sexual

18 assault.

19 THE COURT: Okay. [Indiscernible.]

20 MR. CHAIREZ: [Indiscernible.]

21 THE COURT: I haven't made a decision

22 [indiscernible].

23 MR. CHAIREZ: Okay.

24 MS. HOLTHUS: I want --

25 MR. CHAIREZ: Mazen doesn't want to give, and I do.

1 But he doesn't understand why [indiscernible]. So

2 [indiscernible] explain what happened.

3 MS. HOLTHUS: So when are you going to decide if he's  
4 testifying? I thought we were closing everything tonight and  
5 we were --

6 MR. CHAIREZ: I don't --

7 MS. HOLTHUS: -- coming back tomorrow and just  
8 closing.

9 MR. CHAIREZ: -- I don't [indiscernible]. Yeah.  
10 That's just -- I'd rather just do that. Then we can focus on  
11 closing arguments tonight and --

12 THE COURT: Is he going testify?

13 MR. CHAIREZ: Well, I would say no.

14 MS. BLUTH: I'm uncomfortable with that  
15 [indiscernible].

16 MR. CHAIREZ: [Indiscernible] rest and I tried to  
17 rest --

18 MS. HOLTHUS: Have you talked to him about  
19 testifying?

20 MR. CHAIREZ: Yeah, I have. And 90 percent of what  
21 he wants to testify [indiscernible] issues blackout, I don't  
22 [indiscernible].

23 MS. HOLTHUS: Selective memory, we're going to call  
24 it.

25 MR. CHAIREZ: Well, I know. So, see, just like I'm

1 going to crucify AJ for all his inconsistencies, I don't want  
2 you to be able to do that to him.

3 MS. HOLTHUS: I understand. I don't -- I don't care  
4 what you do. I just want to make sure you've had enough time  
5 to talk to him about it, consider it --

6 MR. CHAIREZ: [Indiscernible.]

7 MS. HOLTHUS: -- that's your decision. If that's the  
8 case --

9 MR. CHAIREZ: Right.

10 MS. HOLTHUS: -- then I would prefer to close it  
11 tonight so we know what we're doing tomorrow.

12 MR. CHAIREZ: Well, either we [indiscernible].

13 MS. BLUTH: You mean as it stands now?

14 MR. CHAIREZ: Now.

15 MS. BLUTH: No.

16 MR. CHAIREZ: Okay. Then I'll close it tomorrow.

17 THE COURT: So, will [indiscernible].

18 MR. CHAIREZ: Yeah. [Indiscernible.]

19 THE COURT: Okay.

20 MS. HOLTHUS: Do you want to speak to him?

21 MS. BLUTH: Yeah, do you want to -- do you want to  
22 speak --

23 MR. CHAIREZ: No. [Indiscernible.]

24 MS. BLUTH: He's -- I'm sorry, what did you say?

25 MR. CHAIREZ: I mean, I'll -- I'm the lawyer.

1 MS. BLUTH: I --

2 MS. HOLTHUS: I know what you said, but you need to  
3 speak to him, and you already know.

4 MR. CHAIREZ: Yeah.

5 MS. HOLTHUS: You want him to --

6 THE COURT: I'm going [indiscernible].

7 MS. HOLTHUS: -- [indiscernible] a while ago, right?

8 THE COURT: Thursday.

9 MR. CHAIREZ: Yeah. I understand.

10 MS. HOLTHUS: So, you -- you've been considering this  
11 with him more?

12 MR. CHAIREZ: The last three or four days.

13 MS. HOLTHUS: Okay. And I just want -- I don't care.  
14 I just want to know.

15 MR. CHAIREZ: Yeah. Yeah.

16 MS. HOLTHUS: That the record was...

17 THE COURT: You want [indiscernible] tomorrow, it  
18 doesn't matter to me.

19 MR. CHAIREZ: I'm ready -- I'm ready. I'm ready to  
20 argue. So, yeah, we'll rest.

21 THE COURT: Okay.

22 (End of bench conference.)

23 THE COURT: All right. Ladies and gentlemen of the  
24 jury.

25 Mr. Chairez, sir, do you have any additional

1 witnesses at this time?

2 MR. CHAIREZ: Hold on, Your Honor. We're going to  
3 rest, Your Honor.

4 THE COURT: All right. Ladies and gentlemen, we're  
5 going to -- we're going to have to call it a night. But we'll  
6 see you tomorrow at 1:00. Here's what's going to happen  
7 tomorrow. When you come in tomorrow we're going to give you  
8 the jury instructions. The jury instructions contain the law  
9 that you're going to use to decide this case when you go back  
10 to the jury room. After I give you the law in this case, the  
11 State will have a chance to present its closing arguments.  
12 The defense will have an opportunity to give you their closing  
13 arguments. Then after that the State may have a rebuttal.  
14 After that, we'll send you guys back into the jury room to  
15 deliberate.

16 Ladies and gentlemen of the jury, until I see you  
17 tomorrow, you're admonished not to converse amongst yourselves  
18 or with anyone on any subject connected with the trial, or to  
19 read, watch, or listen to any report of or commentary on the  
20 trial by any medium of inform, including, without limitations,  
21 television, newspaper, radio, Internet. Do not form or  
22 express an opinion on this case until it's submitted to you.

23 Thank you. And I appreciate the people that act like  
24 it's the first time they've heard this. All right. Have a  
25 wonderful evening.

1 (Jury recessed at 4:52 p.m.)

2 MR. CHAIREZ: Is it agreed that I'm allowed to argue  
3 consent and sexual assault -- consent as a defense to sexual  
4 assault? I don't want them arguing that lewdness is a lesser  
5 included of sexual assault.

6 THE COURT: But it's not.

7 MR. CHAIREZ: Well, but that's their position.

8 THE COURT: But you didn't say it's a lesser  
9 included.

10 MS. HOLTHUS: What I'm going to argue is -- no, what  
11 I'm going to say is even if you find there's consent or reason  
12 to believe consent, that gives you a lewdness. Now, you still  
13 have to meet the specific intent requirement, but it's not  
14 like it's not guilty everything. On those two count for the  
15 SA's, it's first the -- it's actually both. My -- I'm going  
16 to argue both. That he -- he committed them both. One -- one  
17 requiring consent, or one oblivious to consent and one  
18 necessarily assumes not consent.

19 MR. CHAIREZ: I mean, we agree, Your Honor, consent  
20 is not a defense to lewdness. That is our position. And so  
21 what we intend to do is argue Mazen was intoxicated, the kiss  
22 on the ear, the kiss on the neck, any of that, or the spitting  
23 or saliva transfer, that's all based on the intoxication.

24 I mean, it's no secret that that's what our position  
25 is. I just want to make sure that I'm not handcuffed, that

1 when I start arguing consent that AJ went up there, he can --  
2 whatever sex may have happened, AJ consented to it. I don't  
3 want them to say, Oh, he can't -- because the newspaper keeps  
4 on getting it wrong. Consent is not a defense to sexual  
5 assault. So, I'm getting these calls from all over the  
6 country, Why are you going through the motions if consent is  
7 not a defense to sexual assault? And I go, Because the  
8 reporter doesn't sit through the courtroom and he doesn't know  
9 the law. The judge, the DA, and I do.

10 THE COURT: I guess I'm still -- I'm sorry, I --  
11 maybe I'm a little bit slow to follow. I just need to know --

12 MR. CHAIREZ: No, no, Your Honor. It's --

13 THE COURT: I understand what you guys are saying.

14 MR. CHAIREZ: Right.

15 THE COURT: I just need to know whether or not you're  
16 going to ask for the statutory sexual seduction instruction so  
17 I can do some more research. Or preferably the State provides  
18 some really good research on the lewdness this afternoon --

19 MR. CHAIREZ: Well, to be honest with Your Honor --

20 THE COURT: -- towards the --

21 MS. HOLTHUS: Well, I mean --

22 MR. CHAIREZ: -- the state of the law in Nevada is  
23 confusing. Okay. And I think the -- what was the case you  
24 gave me?

25 MS. BLUTH: Cossack?



1 MR. CHAIREZ: Cossack -- Cossack?

2 MS. HOLTHUS: Cossack was more the alternate  
3 theories, though.

4 MR. CHAIREZ: Right. But I think based upon the  
5 evidence that we heard here is yes to the degree that the  
6 State tries to prove sexual assault, the main issue will be  
7 did penetration occur, and secondly, was it against the will  
8 of AJ Dang? All right. But, you know, if I argue out of AJ  
9 Dang's own mouth he said there was no fondling, he said there  
10 was no foreplay, he said all of this, he basically just said  
11 it was quick, violent, and etcetera, whatever he said. That  
12 would be to me sexual assault. So they can't have both  
13 theories if their own witness doesn't support it. And I think  
14 that this is what these cases are arguing.

15 For instance, I cannot argue intoxication unless  
16 there's some evidence -- I mean, intoxication as a defense to  
17 lewdness unless we admit there was intoxication. So we're  
18 forced to admit that in that kind of thing. So, it's -- don't  
19 think you're slow, Your Honor. I go through this every day  
20 and I'm trying to say am I missing something, and why isn't --  
21 why -- where does lewdness come in relationship to sexual  
22 assault, statutory sexual seduction, and I guess it's --

23 MS. HOLTHUS: It's a lesser -- on two of the counts,  
24 as to the sexual assault with a minor, two of the lewdnesses  
25 are lesser related counts. We have charged them to the extent

1 that they were defined for some reason, there was a consent  
2 issue on the SA. We are then saying even if you find that AJ  
3 consented or that defendant had a reasonable belief that AJ  
4 consented, you still can look at lewdness. Lewdness, even if  
5 he consented, would be -- would be the guilty verdict,  
6 assuming you can find specific intent. Now, that's where your  
7 intoxication argument --

8 MR. CHAIREZ: Right.

9 MS. HOLTHUS: -- comes in.

10 MR. CHAIREZ: Right.

11 MS. HOLTHUS: You would argue that, and then you say,  
12 No, not guilty, lewdness, because he couldn't form a specific  
13 intent.

14 THE COURT: Yeah. So basically, like, Count 5 and 6,  
15 it's the same act, which is placing the penis into the mouth.

16 MS. HOLTHUS: Correct.

17 MR. CHAIREZ: Right.

18 THE COURT: It's going to be sexual assault, yes or  
19 no, or lewdness, yes or no.

20 MS. HOLTHUS: Right.

21 THE COURT: Well, it'd be if no, then lewdness. But  
22 again, my question is --

23 MS. HOLTHUS: I don't know how -- I don't know --

24 I --

25 MR. CHAIREZ: Well, see, is Ms. Holthus saying

1 statutory sexual seduction under no circumstances is a lesser  
2 included --

3 MS. HOLTHUS: Yes.

4 MR. CHAIREZ: -- of sexual -- of sexual assault?

5 MS. HOLTHUS: Legally, yes. I mean, that's a total  
6 legal argument, is it -- or is it not the same?

7 MR. CHAIREZ: Well, I think their own case, Cossack  
8 says that it is.

9 MS. HOLTHUS: No. We chose to charge three --

10 MR. CHAIREZ: No, no. That you're allowed to --

11 MS. HOLTHUS: -- lesser-related offenses.

12 MR. CHAIREZ: You're allowed to charge in the  
13 alternative --

14 THE COURT: Correct. They did.

15 MR. CHAIREZ: -- and I think that that's what Cossack  
16 stands for.

17 MS. HOLTHUS: But if we came in and said we want it,  
18 because it's a lesser-included, you'd be going no, and you'd  
19 be right.

20 THE COURT: Okay. I guess I still need to --

21 MR. CHAIREZ: Why don't you -- I'm going to research  
22 it, Your Honor. But right now, as long as I'm allowed to  
23 argue consent, and as long as I'm allowed to argue  
24 intoxication for lewdness and all the other charges, I think  
25 we'll be okay. All right.

1 MS. BLUTH: So, you don't want it?

2 MR. CHAIREZ: Well.

3 MS. HOLTHUS: Do you want to meet at 10:00 and he  
4 could say yea or nay?

5 MR. CHAIREZ: Let's --

6 THE COURT: I could do 10:30, because I have morning  
7 calender. How about 11:00, so you don't have to wait at all?  
8 Can you do that?

9 MS. HOLTHUS: Well, I mean, we're -- we're doing  
10 Powerpoints, we're doing jury instructions, I'm fixing things  
11 up so that we can get right to the jury tomorrow.

12 THE COURT: Okay. I have calender at 9:30. I can  
13 either pitch in at 9:00, I don't know how much time I'll have  
14 to read everything, or after.

15 THE MARSHAL: The interpreter's asking what time to  
16 be back.

17 THE COURT: Hold on a second. I need to know. I  
18 need to know what you want to do, please, the interpreter.

19 MR. CHAIREZ: Your Honor. Your Honor, as long as I  
20 can argue consent and I'm not handcuffed, and as long as I can  
21 argue intoxication, we don't need the statutory sexual  
22 seduction.

23 THE COURT: Okay. And they've stipulated to you guys  
24 work together on an instruction for consent and intoxication.

25 MS. HOLTHUS: Yes.

1 MR. CHAIREZ: Right.

2 THE COURT: So, we do have one in the instructions?

3 MS. HOLTHUS: That's correct.

4 MR. CHAIREZ: Right.

5 THE COURT: Okay.

6 MR. CHAIREZ: So we'll just show up at 1:00.

7 THE COURT: Show up a little bit before that.

8 MR. CHAIREZ: Okay.

9 THE COURT: Because you have get the final jury  
10 instructions numbered.

11 MS. BLUTH: Want to meet us at 12:30 here?

12 MR. CHAIREZ: 12:30.

13 MS. BLUTH: Is that okay, Jason?

14 THE COURT: Yeah.

15 MR. CHAIREZ: Well, we can meet outside, Your Honor.

16 Or -- we want to walk in with agreement. Okay. We don't want  
17 you to miss your lunch and I don't need Jason telling me he's  
18 missing the World Series or something.

19 MS. HOLTHUS: Is this for jury -- do you want to come  
20 over early, Don, in the morning --

21 MR. CHAIREZ: Yeah, I --

22 MS. HOLTHUS: -- like, at 10:00?

23 MR. CHAIREZ: Well, I have to drop off Jennifer at  
24 the airport. So.

25 MS. HOLTHUS: No, we don't need to meet with her. We

1 can meet with the judge at, like, quarter to one. But we can  
2 meet earlier [indiscernible] already, so that you  
3 [indiscernible].

4 THE COURT: I'm not sure at this point what they're  
5 saying. When do I -- when do you need to see me and when do  
6 you need the defendant, please.

7 MS. HOLTHUS: Well, that's why I was --

8 MS. BLUTH: 12:30.

9 MR. CHAIREZ: Yeah. 12:30 or 1:00?

10 MS. BLUTH: Well, the jury's going to be here at  
11 1:00.

12 THE COURT: 12:30 so you -- because you've got to  
13 number the instructions and go through them.

14 MR. CHAIREZ: We'll meet beforehand.

15 MS. HOLTHUS: We'll meet at 12:30?

16 MS. BLUTH: Yeah. You and I will meet at 12:30,  
17 we'll put them in order, and then we'll give them to Judge at  
18 12:30.

19 MR. CHAIREZ: You have my cell number?

20 MS. BLUTH: Yeah.

21 MR. CHAIREZ: Okay.

22 MS. BLUTH: So, Judge, we'll see you at 12:30 and  
23 I'll make sure we're all ready by 12:30 to meet with you.

24 THE COURT: Okay. The defendant, 12:30?

25 MS. BLUTH: Yes, please.

1 THE COURT: Okay. So you need the defendant and we  
2 need an interpreter at 12:30.

3 MR. CHAIREZ: Okay.

4 (Court recessed for the evening at 5:01 p.m.)  
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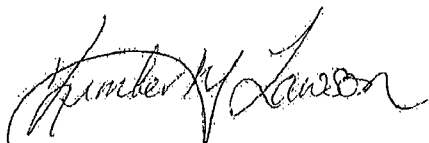
**CERTIFICATION**

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