

**LANCE CORPORAL E. H., U. S. Marine Corps, was called as a witness for the prosecution, was sworn, and testified as follows:**

**DIRECT EXAMINATION**

Questions by the trial counsel:

Q. Good morning.

A. Good morning, sir.

Q. Would you please state your full name?

A. E. H.

Q. Can you spell your last name for us please?

A. H.

Q. And you're a Lance Corporal on active duty in the United States Marine Corps?

A. Yes, sir.

Q. And what is your current command?

A. VMU-1.

Q. What is VMU-1, what does that acronym stand for?

A. It's unmanned aerial vehicles.

Q. And where are you stationed at?

A. Twentynine Palms.

Q. Lance Corporal H, when did you join the Marine Corps?

A. December 2011.

Q. And what is your military occupational specialty?

A. 7314.

Q. And what does that mean?

A. UAV operator.

[The court reporter confers with the military judge.]

MJ: We need you to speak a little bit louder. Might have you try to pull that microphone down a little bit, it kind of popped up on you there. Just try to get a little bit closer.

[The witness did as directed.]

MJ: There you go, and just a little bit louder here so we can hear you.

WIT: Yes, sir.

MJ: That's better, thank you.

TC: That's much better, thank you, Lance Corporal.

Q. Where did you attend your MOS School?

A. At Fort Huachuca, Arizona.

Q. When did you report to Fort Huachuca, Arizona?

A. June 2012.

Q. And when you were at Fort Huachuca, Arizona, did you meet Petty Officer Darin Lopez?

A. Yes, sir.

Q. Do you recall approximately when it was that you met Petty Officer Lopez?

A. Late November.

Q. I'm sorry, I just want to make sure that everybody could hear that response, was that November?

A. Yes, sir.

Q. Was that November of 2012?

A. Yes.

Q. How did you meet Petty Officer Lopez?

A. It was in the Mall in Sierra Vista.

Q. What were you doing when you met Petty Officer Lopez?

A. I was outside waiting for a taxi.

Q. And what happened as you were waiting for a taxi  
outside?

A. He came out and asked me if I needed a ride.

Q. Did you accept his invitation for a ride?

A. Yes, sir, I did.

Q. And where did he take you?

A. To the barracks.

Q. I'm sorry, I want to make sure that we could all hear  
that response, was that the barracks?

A. Yes, sir.

Q. Is that the barracks aboard Fort Huachuca?

A. Yes, sir.

Q. When you were riding with Petty Officer Lopez, did you  
exchange phone numbers with him?

A. Yes.

Q. After exchanging phone numbers with him and after him dropping you off at the barracks, did you communicate at all with Petty Officer Lopez?

A. Yes, sir.

Q. How often would the two of you communicate?

A. Daily.

Q. Now, the day that you met him at the Mall and he dropped you off at the barracks, do you remember going to dinner with him later that day?

A. Yes, but I don't remember anything about it.

Q. Well, Lance Corporal H, do you remember speaking with some Investigators, fast-forwarding quite a bit of the time into the future, do you remember speaking with Investigators?

A. Yes, sir.

Q. Do you remember telling Investigators that you had dinner with him at Applebee's?

A. Yes.

Q. After that day that you met him at the Mall, did you see Petty Officer Lopez again?

A. Yes, I did.

Q. And approximately when was that?

A. [No response.]

Q. Well, let me ask that differently, how many days later would you approximate?

A. I'm not entirely sure, maybe the weekend.

Q. Do you recall Saturday, the 24<sup>th</sup> of November, 2012?

A. Yes.

Q. What was going on that evening?

A. My coworkers, fellow Marines and friends, were having--  
having a birthday party, we were going to go out.

Q. Where were you going out to with your friends?

A. A nightclub in Sierra Vista.

Q. Do you remember the name of that Club?

A. The Peacock.

MJ: Could you repeat your answer, please, to make sure  
that---- WIT: Yes, sir, it was the Peacock Lounge.

MJ: Thank you.

TC: Thank you.

Q. And did things go as planned that evening, did you meet  
up with your friends at the Peacock?

A. No, I did not.

Q. What happened?

A. They did not show up.

**[END OF PAGE]**

Q. So, what did you do when your friends didn't show up?

A. I invited him to come out with me.

Q. "Invite him," are you referring to Petty Officer Darin  
Lopez?

A. Yes, sir, I am.

Q. Why did you invite him?

A. Because he was an acquaintance of mine.

Q. And did he show up to the Peacock Lounge?

A. Yes.

Q. And what happened when he arrived?

A. Socializing.

Q. Did you drink alcohol at the Peacock Bar?

A. Yes, sir, I did.

Q. What was it that you drank?

A. Pineapple juice, Coconut Rum, mixed drinks, two of them, and one shot of Goldschlager.

Q. The mixed drinks, I think you said you had two of the mixed drinks of the pineapple juice and Coconut Rum, is that right?

A. Yes, sir.

Q. Did you order that for yourself?

A. No. No, it was--it was mutual, we were standing at the bar.

Q. Did you know anybody else at the bar?

A. No. They----

Q. Did you meet anybody else at the bar?

A. Yes, sir, a woman with blonde hair.

Q. Where did you meet this woman with blonde hair?

A. She was--she was at the bar and I remember her presence.

Q. Did she ask you anything?

A. Yes.

DC: Objection, hearsay, sir.

MJ: Response?

TC: Sir, the question that I asked was if this person asked her a question, a question being non-hearsay.

MJ: The objection is overruled.

Q. Did this woman that you met, did she ask you anything?

A. Yes, sir, later.

Q. What did she ask you?

A. If--if I needed to get away.

Q. Did that mean anything to you when she asked you that?

A. No, sir.

**[END OF PAGE]**

Q. Did you leave to go to the restroom at some point during the night when you were hanging out with Petty Officer Lopez?

A. Yes, sir, I did.

Q. And what happened when you got back from the restroom?

A. We continued drinking at the bar.

Q. I want to take a bit of a pause to talk about something else right now. Back in November of 2012, could you describe for us generally how often you would drink alcohol?

A. Not too often, maybe once or twice a month.

Q. In the once or twice a month that you would drink alcohol, how much would you typically drink?

A. A few--a few mixed drinks.

Q. Now, going back to hanging out with Petty Officer Lopez at the Peacock, as the night went on, did you begin to feel any effects from the alcohol that you were drinking?

A. Yes, sir.

Q. Could you describe that for us please?

A. Dizziness.

Q. How would you compare the level of intoxication that you were experiencing that night compared to other occasions that you drank alcohol?

A. It was more intense, different almost.



Q. Had you ever felt like that before?

A. No, sir.

Q. What is your--what's the last thing -that you remember about being at the bar?

A. Just standing there.

Q. Do you remember leaving the bar?

A. No, sir.

Q. Do you remember going anywhere else?

A. No.

Q. What is the next thing that you remember?

A. Waking up.

Q. Did you know where you were when you woke up?

A. No. No.

Q. What was going on when you woke up?

A. There was someone on top of me.

Q. Were you able to recognize who was on top of you?

A. Yes.

Q. And who did you recognize on top of you?

A. He was on top of me.

Q. And by "he," are you referring to Petty Officer Darin Lopez?

A. Yes, sir, I am.

**[END OF PAGE]**

Q. Lance Corporal H, I know this is tough, but I want to make sure that we captured your last answer, was that Petty Officer Darin Lopez that you recognized on top of you?

A. Yes, sir.

Q. Was he doing anything when he was on top of you?

A. Yes, he was.

Q. And what was he doing?

A. [Crying] He was--he was having sex with me.

MJ: I need you to repeat that. We need to capture that for the recording, so I need you to say it a little louder so we can all hear you.

Will you please repeat your answer?

WIT: Yes, sir. He was--he was inside of me.

Q. Lance Corporal H, just so we're clear, does that mean when he was on top of you that his penis was inside your vagina?

A. Yes, sir.

Q. Did he say anything to you?

A. Yes.

Q. And what did he say to you?

A. "Don't--don't worry, I used a condom."

Q. Were you able to move?

A. No.

Q. Did you try to move?

A. Yes.

Q. How did you try to move?

A. Well, I just put my hand up and I couldn't move.

Q. Were you able to say anything?

A. No.

Q. And what happened after that?

A. I passed out.

Q. What's the next thing that you remember after that?

A. Waking up.

Q. Where did you wake up at?

A. This really white room, stark white.

Q. Was anybody else around when you woke up this second time?

A. No, sir.

Q. Were you in the same place that you had awoken previously that you just told us about?

A. Yes.

Q. How did you feel when you woke up the second time?

A. Confused, like it wasn't real.

Q. Were you experiencing anything physically at this point?

A. Sickness.

Q. If you can, will you please elaborate on that a little bit more how it was that you were feeling ill?

A. Like my head was spinning.

Q. Were you sick to your stomach?

A. Yes, sir.

Q. Was there any pain--did you have any pain in your head?

A. Yes, sir, I did.

Q. Did you notice anything about--well, first of all, let me ask you, do you remember what you were wearing?

A. Yes.

Q. And what was that?

A. It was a long black dress.

Q. When you woke up, how was your dress positioned on your body?

A. One of the sleeves were down and it was bunched up across my waist.

Q. What did you notice about yourself when you woke up?

A. I had vomit in my hair and on the sheets. There was a sticky fluid.

Q. Was the bed wet?

A. It was.

Q. What about your hair, was it in your hair as well?

A. Yes, sir, it was.

Q. So, what did you do when you woke up?

A. I immediately got into the shower. There was--there was a door connected to the room, two doors, one of them was a bathroom.

Q. Why did you get into the shower?

A. Because I was wet and sticky, there was vomit in my hair.

Q. Did you discover any injuries or marks on your body?

A. Yes.

Q. And what was it that you noticed?

A. I had bite marks on my chest.

Q. By "chest," are you referring to your breasts?

A. Yes, sir.

Q. Did you know where those bite marks on your breasts had come from?

A. I can assume, I--I--I never saw it happen.

Q. Well, let me ask----

MJ: Well, just hang on a second, we didn't pick up an answer. Corporal, would you please repeat your last answer?

WIT: Yes, sir, I--I didn't see where--where the bites came from.

**[END OF PAGE]**

Q. Did you--well, let me ask that differently, did you--before that evening meeting up with Petty Officer Lopez, did you have those marks on your chest?

A. No, sir, I did not.

Q. Did you have any other marks or injuries on your body?

A. Scratches on my lower back.

Q. Did you know where those scratches on your back had come from?

A. No, sir.

Q. Same--the same question that I asked earlier, did you have those scratches prior to this night with Petty Officer Lopez?

A. No, I did not.

Q. What happened after you took a shower?

A. I put my dress in the dryer.

Q. Did you shower with your dress on?

A. I did.

Q. Before--did you do anything else in the bathroom after you took a shower?

A. Yes.

Q. And what was that?

A. The mirror was fogged up, so I wrote something in it.

Q. What did you write in the mirror?

A. "I'm in hell, help me."

Q. What was going through your mind at that point in time?

A. I don't--I don't know, that's just how I reacted. I didn't think about it, I--I did it.

Q. How were you feeling at that point in time?

DC: Objection, sir, relevance.

MJ: Response to the relevance objection?

TC: Your Honor, her physical and mental condition is relevant to the element of the offense regarding her level of impairment.

MJ: The objection is overruled. You can answer the question.

Q. So, once again, Lance Corporal H, how were you feeling at this point in time after you had taken the shower?

A. Exactly what I wrote.

Q. And by that, are you referring to what you wrote on the mirror?

A. Yes, sir.

Q. Now, you indicated, after you had taken the shower, you had put the dress that you were wearing in the dryer, what did you do while your dress was drying?

A. I was wrapped in a towel, I sat on the couch.

Q. Did you wait long for your----

A. No, the [Indiscernible].

MJ: Hang on just a second, we're getting--we're having a little problem picking up some answers and so, Lance Corporal, I just need to remind you, you need to speak up louder. If you respond physically, we need to make sure we capture that on the record. I don't believe that that last question necessarily called for an affirmative response. There was some nodding, I'm not sure that was responsive to the question, but I'm just going to remind trial counsel and defense counsel, if it's applicable, if we have any non-verbal responses, we need to capture those on the record.

And, Corporal, again, I just need you to speak up a little louder for me, okay?

WIT: Yes, sir.

MJ: Go ahead.

TC: Thank you, sir.

**DIRECT EXAMINATION (CONT'D)**

Questions by the trial counsel:

Q. Lance Corporal, I believe the last question that I had asked was if it took long for your dress to dry.

A. No, it didn't.

Q. And what were you doing as your dress was drying?

A. I was sitting there.

Q. And what did you do after your dress dried?

A. I left.



Q. I'm sorry, that answer was very soft.

A. I left.

Q. During this timeframe where you were at his apartment after you had awoken, do you remember seeing Petty Officer Lopez?

A. No.

Q. Do you remember talking to him?

A. I remember his voice, but I couldn't see him.

Q. And what did you do when you left the apartment?

A. There's--there was a taxi at the edge of the street.

Q. Did you get into the taxi?

A. I did, sir.

Q. And did you speak with the taxicab driver?

A. Yes, sir.

Q. Where did the taxicab driver take you?

A. I don't--I don't know, everything is so hazy. The only thing I remember from that day is I eventually ended up back at the barracks.

Q. And what did you do when you made it back to your barracks?

A. I slept.

Q. I'm sorry, did you say that you slept?

A. Yes, sir.

Q. Did you talk to anybody about what had happened?

A. Eventually, eventually.

Q. Who was it that you spoke with?

A. I suppose--I spoke to the UVA.

Q. And who was the UVA?

A. Staff Sergeant Finn.

Q. And just so we're clear, UVA means Uniformed Victim Advocate?

A. Yes, sir.

Q. And he was your command's Uniformed Victim Advocate?

A. Yes, he was.

Q. After--and did you explain to Staff Sergeant Finn what had happened to you?

A. Yes.

Q. I'm sorry, that was a very soft----

A. Yes. Yes, sir.

Q. Thank you. And after speaking with him, did you meet with some Investigators?

A. Yes, sir, I did.

Q. Did you go with Investigators back to the apartment?

A. Yes, yeah.

Q. I'm sorry, Lance Corporal, that was a soft answer, can you repeat that for us please?

A. Yes, sir, I did.

Q. And were you able to recognize the apartment complex that you had been at?

A. Vaguely.

Q. Lance Corporal, in the days following did you go to Medical?

A. Yes, sir.

Q. For what purpose did you go to Medical?

A. Because I was feeling sick.

Q. Lance Corporal H, can you describe for us why it was that you reported to Staff Sergeant Finn when you did?

A. I don't know.

TC: Thank you, Lance Corporal, that's all the questions that I have.

WIT: Yes, sir.

MJ: Cross-examination?

DC: Your Honor, can I request a brief recess prior to cross-examination?

MJ: How much time do you need?

DC: I believe 10 minutes should be sufficient.

MJ: We'll take a brief recess.

Corporal, during the recess you're not to discuss your testimony with anyone. We'll have you back in here in 10 minutes and then we'll have any cross-examination on behalf of the defense.

WIT: Yes, sir.

MJ: We're in recess for 10 minutes.

[The court-martial recessed at 1033 hours, 24 June 2014.]

**[END OF PAGE]**

[The court-martial was called to order at 1052 hours, 24 June 2014.]

MJ: This court-martial will again come to order. All parties that were present when we broke are again present in the courtroom, and we're now ready for cross-examination.

Lieutenant Hochmouth, you ready to proceed?

DC: Yes, sir, I am.

MJ: Please do so.

DC: Thank you, sir.

#### **CROSS-EXAMINATION**

Questions by the defense counsel:

Q. Lance Corporal H, I want to talk about the injuries you suffered to begin with, okay?

A. Yes, sir.

Q. I want to talk about the bruises that you saw on your chest, were they bruises, were they teeth marks, could you see the teeth mark, what--can you describe these injuries to us?

A. Bite marks, sir.

Q. They were bite marks. Did you notice any bruising with these injuries?

A. I'm--I don't know.

Q. I'm sorry, can you repeat the answer?

A. I don't know, sir.

Q. You don't know? You don't know what these injuries looked like?

A. Bite marks.

Q. I'm sorry, can you please repeat the answer?

A. Bite marks.

Q. They looked like bite marks?

A. Yes, sir.

Q. Could you see the teeth marks?

A. Yes, sir.

Q. You could. And could you notice any bruising around the teeth marks?

TC: Your Honor, asked and answered, objection.

MJ: Objection sustained, asked and answered. You can ask another question.

DC: Yes, sir.

Q. Now, I want to talk about the scratches on your back, when did you first notice them?

A. I felt them later.

Q. When later?

A. They were very painful later. I--I don't know what day.

Q. Did you notice them before you got into the shower?

A. I could feel them.

Q. When could you feel them?

A. When I got in the shower.

Q. When you got into the shower you could feel the water into the cuts?

A. Yes, sir.

Q. And these injuries, you never showed them to anyone, did you?

A. No, sir.

Q. Even when you went to Medical the next day, you did not show these injuries to anyone?

A. No, sir.

Q. You didn't take any pictures of these injuries, did you?

A. No, sir.

Q. Now, Lance Corporal H, I want to talk about what you wrote in the mirror, when I asked you about that earlier, you said that you had no logical explanation for that, is that correct?

A. Yes, sir.

Q. And you never asked the taxicab driver for help, did you?

A. I--I don't know what I--I don't know what I discussed with the taxi driver.

Q. Okay. You don't remember that conversation at all?

A. No.



Q. Do you remember going to 7-Eleven?

A. No.

DC: I'm sorry, can you----

MJ: I'm sorry, could you repeat that?

WIT: No, sir.

Q. And you don't remember buying a soda and a pack of cigarettes?

A. No, sir. I--I spoke to a cab driver, I don't...

Q. So, your memory even the next day after this incident is very hazy?

A. Yes, sir.

Q. Well, let's talk about what happened before this incident. Captain Harrell asked you about having dinner with Petty Officer Lopez, and he said that--he mentioned Applebee's, do you remember going to Applebee's with Petty Officer Lopez?

A. I don't, no.

Q. I'm sorry, can you repeat that?

A. I--I just couldn't tell you anything that we talked about.

Q. Okay, so you can't remember what you talked about, but do you remember going to Applebee's?

A. No, sir.

**[END OF PAGE]**

Q. You don't remember going to Applebee's. But do you remember in your statement to Army CID saying that you went to dinner with Petty Officer Lopez at Applebee's?

A. Yes, sir.

Q. And then at the Article 32 Hearing you said you don't remember any of that, correct?

A. Yes, sir. I know I remember writing that.

Q. I'm sorry?

A. I just don't remember anything that happened at Applebee's.

Q. Okay. I'm just going to ask you one more question on this, so you remember going to Applebee's, but you don't remember what happened at Applebee's?

A. I remember telling the CID Agents.

Q. Can you just speak up a little bit?

A. Yes, sir.

Q. Thank you. So, you remember telling CID----

A. I remember making that statement, yes.

Q. Okay, you remember making that statement, but you actually don't remember anything about the dinner, if the dinner even took place?

A. Yes, sir.

**[END OF PAGE]**

Q. Okay. Now you mentioned that you think you had vomit in your hair and on your body?

A. Yes, sir.

Q. But you couldn't see any chunks or anything?

A. No, sir.

Q. So, the only reason you think that you vomited is because you woke up and you were sticky?

A. Yes, sir, like...

Q. Now, you could wake up after having sex and be sticky too, couldn't you?

A. Yes.

Q. Was that a yes?

MJ: Corporal, here's what I'm going to do, I'm going to have you slide up just a little bit closer to the microphone for me, and I know it's hard, but we need you to speak loudly and clearly so we can hear you. So, I'm going to go ahead and let defense counsel re-ask the question, and then go ahead and give him your answer so we can hear you.

And just so you know, we have a court reporter over here and part of the record is taken down--it's being taped, so we need to make sure that we can pick up what you're saying.

Do you understand that?

WIT: Yes, sir.

MJ: That's good. If you keep that volume right there, we're in good shape.

Lieutenant Hochmouth, go ahead and re-ask your question for me please.

DC: Yes, sir.

**CROSS-EXAMINATION (CONT'D)**

Questions by the defense counsel:

Q. Lance Corporal H, you could wake up and be sticky after having sex though, could you not?

A. Yes.

Q. And your answer to that question was yes?

A. Yes.

Q. Okay, thank you. And the liquid that you saw, it was a clear liquid?

A. It was thick and sticky.

Q. I'm sorry, can you repeat that?

A. It was thick and sticky.

Q. It was thick and sticky, okay. And when you woke up, you decided to take a shower?

A. Yes, sir.

Q. Now, after you took a shower, you wanted to dry your dress?

A. Yes, sir.

Q. So you put your dress in the dryer, right?

A. Yes, sir.

Q. And then you put a towel on and you sat on the couch in the apartment?

A. Yes, sir.

DC: I'm going to show you--or I have here what is Prosecution Exhibit 2, a copy, sir. With your permission, I'd like to approach the witness.

MJ: Yes.

DC: I'm going to hand you Prosecution Exhibit 2 and that is next to the witness. Lance Corporal H, that's a copy.

Sir, do you need a copy?

MJ: I do.

[The court reporter handed PE 2 to the military judge.]

MJ: All right, I have the original here.

Captain Harrell, do you have any doubt that the witness is looking at a copy of the original or would you rather have the witness be working off the Prosecution Exhibit 2 that the court has received?

TC: I have no concern, sir.

MJ: Okay.

TC: I'm following along with a copy at trial counsel table.

MJ: Go ahead.

DC: Thank you, sir.

**CROSS-EXAMINATION (CONT'D)**

Questions by the defense counsel:

Q. Lance Corporal H, that's a diagram of Petty Officer Lopez' apartment, do you recognize that at all?

A. [Peruses document] Yes, sir.

Q. In the middle of that diagram, do you see what's labeled as "couch?"

A. Yes, sir.

Q. So, you're sitting on that couch with a towel wrapped around you, correct?

A. Yes.

Q. Where in that apartment is Petty Officer Lopez?

A. I don't know.

Q. You don't know 'cause--did you ever see him that next morning?

A. No.

Q. You never had any conversations with him?

A. I--I could hear his voice.

Q. Okay, you could hear his voice, was his voice talking to you?

A. I just heard it.

Q. Do you know what he was saying?

A. [No response.]

Q. Lance Corporal H, could you make out any of the words that he was saying, yes or no?

A. Yes.

Q. Yes.

A. I don't know if it was directed to me.

Q. You don't know if his words were directed to you then?

A. No.

DC: I want to retrieve, sir, with your permission,  
Prosecution Exhibit 2.

MJ: Yes.

DC: And I have retrieved that from the witness, sir.

Q. Now, Petty Officer Lopez' apartment, it's not that big,  
is it?

A. No, sir.

Q. And you could hear his voice, but you don't know where  
he was?

A. Yes, sir.

Q. Do you remember Lance Corporal Lopez--I'm sorry, do you  
remember Petty Officer Lopez calling a cab--taxicab for you?

A. No, sir.

Q. And you don't remember getting in a confrontation with  
Petty Officer Lopez the next morning?

A. No, sir.

Q. Do you remember walking down the stairs out of Petty Officer Lopez' apartment?

A. Vaguely, it was really bright.

Q. It was very bright outside?

A. Yes, sir.

Q. So, it was daylight. Did you have your shoes on when you were walking out of the apartment?

A. I don't know.

Q. You don't know where your shoes were?

A. No.

Q. You don't know if you were holding them or if they were on your feet?

A. No, sir.

Q. What kind of shoes were they?

A. I don't remember.

Q. You don't remember what shoes you had on that day either?

A. No, sir.

Q. You do recall asking Petty Officer Lopez to meet you at the bar though?

A. Yes, sir, to...

Q. Can you answer that just a little bit louder please?

A. I'm--I'm unsure what you're asking me.



Q. Do you remember calling Petty Officer Lopez to have him come out to the bar with you that night?

A. Yes, sir.

Q. You do remember that, and you invited him out because you thought he was interesting?

A. He was an acquaintance and interesting.

Q. I'm sorry, can you repeat that answer one more time?

A. Yes, sir.

MJ: Corporal, you said in your initial answer that he was an acquaintance, and you said something about interesting because that was the question.

Can you repeat the answer you initially gave?

WIT: Yes, sir, he was an acquaintance and interesting, yes.

MJ: Okay.

DC: Okay.

MJ: And, Corporal, again, I know it's difficult, but if you can speak loudly so we can hear you the first time, then we won't have to keep having you repeat your answers, okay?

WIT: Yes, sir.

MJ: Go ahead.

DC: Thank you, sir.

#### **CROSS-EXAMINATION (CONT'D)**

Questions by the defense counsel:

Q. So, your memory from the bar to the next morning is basically hazy?

A. Yes, sir.

Q. Was there anyone else at that bar that you knew?

A. No, sir.

Q. Did you ever go back to that bar after this incident?

A. No, sir.

Q. Did you need a liberty buddy when you went off base?

A. Not for that time, sir.

Q. Not at that time you didn't?

A. No, sir.

Q. How did you pay for the cab?

A. I don't know.

Q. Do you remember Petty Officer Lopez standing on the balcony as you walked out of the apartment?

A. I don't know, sir.

Q. Do you remember him waiving to the taxi, saying that "She'll be down in a minute?"

A. I don't remember seeing that.

**[END OF PAGE]**

Q. Yet you went to Medical 2 days later and you never told them that you were sexually assaulted?

A. I don't remember what I told Medical.

Q. So you don't even remember what you told Medical 2 days after the incident?

A. [No verbal response.]

Q. Did you show Medical the injuries?

MJ: Hang on a second. If you're asking a question, then wait for an answer.

DC: Yes, sir.

MJ: If you're repeating an answer to clarify in asking your next question, that's fine, but we don't need to hear the same question twice when we get an answer, so--and then we only need one question at a time. So, start over and ask your next question please.

DC: Yes, sir.

Q. Do you remember what you told Medical?

A. No, sir.

Q. When you were in the taxicab, do you remember the taxicab driver asking you if you wanted to go to the Police?

A. No, sir.

Q. Do you remember her offering to take you to a hospital?

A. No, sir.

Q. After this incident, you called--actually, never mind. I want to talk about the Article 32 Hearing briefly. At that Article 32 Hearing when you were talking to myself on the phone, remember we were talking on the phone?

A. Yes, sir.

TC: Objection, relevance.

MJ: What's the relevance here?

DC: M.R.E., sir, 608(c), I'm just going to be impeaching the witness, sir.

MJ: I will hear the answer and then determine if it's relevant. Go ahead.

Q. Do you remember talking to us on the phone?

A. Yes, sir.

Q. And during that conversation, you kept on muting the phone to talk to your UVA?

TC: Objection, relevance.

MJ: Overruled, I'll hear the line of questioning and I'll determine what, if any, relevance it has.

Go ahead.

WIT: No, sir, not the UVA.

Q. Who were you talking to?

A. The Victim's Legal Counsel.

DC: The Victim--okay.

One moment, sir?

MJ: Go ahead.

Q. Lance Corporal H, do you remember any other noises in the apartment when you woke up?

A. No, sir.

Q. Before you got to the Peacock Lounge, did you have any other alcohol beverages?

A. No, sir.

Q. Do you remember what time you got to the Peacock Lounge?

A. Late.

Q. I'm sorry, you said late?

A. Yes, sir.

Q. What's late?

A. That evening.

Q. Late that evening?

A. Yes, sir.

Q. Do you know what time?

A. Not the exact time, no.

Q. Was it before or after midnight?

A. I don't know.

**[END OF PAGE]**

Q. Okay. What did you have to eat before you got to the Peacock Lounge, did you have anything in your system?

A. Yes.

Q. Okay, so you--did you have dinner that night?

A. Yes.

Q. What'd you have for dinner?

A. I don't--I don't remember, I just remember eating.

Q. Okay, you don't remember what you had, but you remember eating?

A. Um-hum.

Q. Were you on any medications that could affect your memory at that time?

A. No, sir.

DC: No further questions, sir.

MJ: Captain Harrell, standby for just a second.

Lieutenant Hochmouth, tell me what the relevance is of your question regarding the Corporal talking to the VLC during-- was this Article 32 testimony?

DC: Yes, sir, this is Article 32 testimony, sir. It goes to her potential motive to fabricate that testimony, sir. She was pausing during the questions, consulting with someone and then answering the questions, sir. But during that time period, she would actually mute the phone so nobody in the courtroom

here in Norfolk would hear the conversations that was talking place in Arizona, sir.

MJ: Captain Harrell, you want to tell me why you don't think that's relevant?

TC: It's not relevant because it didn't happen, sir. Defense has nothing to substantiate what he just said. In fact, Captain Larippa, the VLC at the time, did, in fact, enlighten us on what was going on. All that----

MJ: I'm going to stop you right there because, you know, nothing either one of you say is evidence. All I have from the witness here is a question about muting the phone and talking to her counsel, so I don't find that particularly relevant, so the original objection is sustained. The court will not take into account that testimony.

Captain Harrell, do you have any redirect you want to do at this time?

TC: Yes, sir, thank you.

**[END OF PAGE]**

### **REDIRECT EXAMINATION**

Questions by the trial counsel:

Q. Lance Corporal H, I want to go back briefly and talk a little bit more about the substance that was on you and your clothes when you awoke in Petty Officer Lopez' room. You described it, I believe, as a thick, sticky fluid, is that right?

A. Yes, sir.

Q. What did you believe that it was?

A. Vomit.

Q. I believe you also describe the bed being wet, is that right?

A. Yes, sir.

Q. And what did you believe the wetness on the bed to be?

A. I don't know.

Q. Lance Corporal H, do you recall speaking with a Detective with the Sierra Vista Police Department after you had reported to the UVA what had happened?

A. Yes, sir.

Q. Do you believe that--well, do you think it might help refresh your recollection about what that fluid was by taking a look at a summary of your interview?

DC: Objection, sir.

MJ: What's your objection?



DC: It's improper refreshing of memory, sir.

MJ: Why is it improper?

DC: I mean, first off, he's leading the witness right now, sir.

MJ: Well, so far we've got the witness saying that she doesn't remember, and the question was "Will looking at something help refresh your memory?" That's the first couple of steps in refreshing recollection, so your objection is overruled at this time. I'll entertain other objections, if and when you have them.

Go ahead, Captain Harrell.

TC: Thank you, sir.

**REDIRECT EXAMINATION (CONT'D)**

Questions by the trial counsel:

Q. Lance Corporal H, once again, do you think it might help possibly to refresh your recollection by taking a look at a summary of an interview that you had with Detective Barron?

A. Yes, sir.

TC: All right [Retrieves document].

MJ: Captain Harrell, before you proceed, I just want to make sure that we get a copy of whatever you're showing the witness to make an Appellate Exhibit.

**[END OF PAGE]**

TC: Yes, sir.

May I approach the court reporter and have this marked as the next Appellate Exhibit?

MJ: Yes.

[The trial counsel handed the document to the court reporter, who then marked it as Appellate Exhibit XVIII and handed it to the military judge.]

MJ: Captain Harrell, we've got what's been marked as Appellate Exhibit XVIII, it's a 3-page document that you were referring to. It appears to be a narrative from a Sierra Vista Police Department Report. I'm handing this back to you. You may continue.

TC: Thank you, sir.

May I approach the witness with Appellate Exhibit XVIII?

MJ: Yes.

**REDIRECT EXAMINATION (CONT'D)**

Questions by the trial counsel:

Q. Lance Corporal H, I'm handing you Appellate Exhibit XVIII. I have it turned to page 2. I'm going to direct your attention to the first full sentence, if you could read that silently to yourself please.

A. [Did as directed.]

Q. Have you had an opportunity to review that?

A. Yes, sir.

TC: Your Honor, may I approach?

MJ: Yes.

TC: I'm retrieving Appellate Exhibit XVIII from the witness.

Q. Lance Corporal H, does that refresh your memory as to what the wetness on the bed was that you remember?

A. Yes, sir.

Q. And what was it?

A. At the time I believed it to be urine.

TC: Thank you, Lance Corporal, that's all the questions I have. I'm returning Appellate Exhibit XVIII to the court reporter.

MJ: Lieutenant Hochmuth, any additional cross?

DC: No, sir.

MJ: Are we subjecting this witness to possible recall, Captain Harrell?

TC: Yes, sir.

[The witness was duly warned, excused subject to recall and withdrew from the courtroom.]