

[The session was called to order at 0855 hours, 24 June 2014.]

MJ: This court-martial is called to order at Naval Station, Norfolk, Virginia, in the case of the United States of America versus Intelligence Specialist Second Class Darin G. Lopez.

Trial counsel, would you please state for the record any personnel changes we've had since this matter was last in court?

TC: Yes, Your Honor. All personnel present when the court last recessed are again present, with the exception of the court reporter, LNC Wanda Harris has replaced Ms. Jenine Gray as court reporter and she has previously been sworn.

Also, I don't believe the assistant defense counsel, Lieutenant Latham Hudson, was present at the last session.

MJ: Thank you.

Lieutenant Hudson, we're going to get your qualifications on the record here, so please state by whom you were detailed, your legal qualifications and status as to oath, and whether you have acted in any disqualifying manner.

ADC: Yes, sir. I was detailed to this court-martial by the Senior Defense Counsel of DSO Southeast pursuant to the authority given to her by the Commanding Officer of the same command.

I'm qualified and certified under Article 27(BRAVO) and sworn under Article 42(ALPHA). I have not acted in any disqualifying manner.

MJ: Thank you.

I am also new to the proceedings. I am Commander Ian Thornhill. I've been detailed to this court-martial by the Circuit Military Judge for the Central Judicial Circuit.

I am certified and sworn as a military judge in accordance with Articles 26 (BRAVO) and (CHARLIE) and 42 (ALPHA) of the Uniform Code of Military Justice.

I will not be a witness for either side in this case and I'm not aware of any matter that I believe may be a ground to challenge me. However, I invite both sides to voir dire and challenge the military judge, if they so choose.

Trial counsel, I'll start with you, do you have any voir dire for me?

TC: No thank you, Your Honor.

MJ: Defense counsel, any voir dire or challenge for me?

DC: No, sir, we have no voir dire and no challenges, sir.

MJ: Thank you very much.

Yesterday I had an 802 session with Captain Harrell, Lieutenant Hochmouth, and Lieutenant Hudson. The accused was not present. At that 802 we discussed the following matters: We discussed my background, I'm a Reserve Military Judge, so I discussed my background with counsel for purposes of giving them an opportunity, if they wished, to voir dire or challenge me, which

we've just addressed; we discussed generally what preliminary matters we needed to go over here in court before we start trial today, included in those items were the personnel changes that we had; we discussed the accused's forum selection, which we'll get here to in a moment as well; we also discussed general logistical matters for trial, including any witness issues, any evidentiary issues, the use of technology in the courtroom and the general procedures that the court will follow, as far as conducting the court-martial today.

Captain Harrell, do you have any additions or corrections to the summary that I've provided regarding our 802 from yesterday?

TC: No, Your Honor.

MJ: Lieutenant Hochmouth, you, sir?

DC: No, sir, nothing further, sir.

MJ: We are going to now address the forum selection by the accused.

Are you in fact IS2 Lopez?

[The accused and defense counsel stood.]

ACC: Yes, sir.

MJ: You all can remain seated, unless I ask you to stand in the future, so have a seat please.

[The accused and defense counsel did as directed.]

MJ: I have a written forum selection that was dated June 12th, 2014. Let me have that marked as Appellate Exhibit Number VII. It

indicates in here that the accused is selecting trial by military judge alone, but, IS2, I want to go over your choices here regarding your selection of forum to ensure that what I have here in writing is, in fact, your wishes.

You have a right to be tried by a court-martial composed of a panel of members, including, if you request, at least one-third enlisted persons. The members determine if you are guilty or not guilty and, if you were found guilty of any offense, the members determine your sentence.

Do you understand that?

ACC: Yes, sir.

MJ: Further, you can request to be tried by military judge alone, which it appears that you're doing. If that request is approved, then I, as the military judge, would determine your guilt or innocence and, if you are convicted of the offense to which you are charged, then I would determine your sentence.

Do you understand that?

ACC: Yes, sir.

MJ: And have you discussed these forum choices with your counsel?

ACC: Yes, sir.

[END OF PAGE]

MJ: And is your forum selection in writing here, your choice of military judge alone, in fact, the forum that you're selecting here today?

ACC: Yes, sir.

MJ: Have you chosen trial by military judge alone as part of any agreement you have with the Convening Authority?

ACC: No, sir.

MJ: Did anyone force or threaten you to give up your right to a trial by members, including your option to have enlisted representation?

ACC: No, sir.

MJ: Your request for trial by military judge alone is approved and this court-martial is assembled.

[Appellate Exhibits VIII and X through XVII had been previously marked and appended to the record.]

MJ: We have had one formal motion filed by the defense, which was resisted by the government and, ultimately, decided by Judge Luken. His written ruling on that motion has been provided to counsel and is appended to the record as Appellate Exhibit Number IX.

Before we go any farther, Lieutenant Hochmouth, do you have any other motions that you'd like to bring at this time?

DC: No, sir, no additional motions from the defense, sir.

MJ: And, Captain Harrell, is there any other matters that we need to address on the record before we proceed to trial in this case?

TC: Yes, Your Honor, I've had six exhibits marked as Prosecution Exhibits for ID, I'd like to move them into evidence at this time prior to kicking off.

MJ: Is there any objections to Prosecution Exhibits 1 through 6?

DC: No, sir, we've received a copy of those, and we have no objections to Prosecution Exhibits 1 through 6 for identification, sir.

MJ: The court receives Prosecution Exhibits 1 through 6 and the words "for identification" shall be deleted from each of the six exhibits.

Captain Harrell, anything else we need to address on the record before we proceed?

TC: No, Your Honor.

MJ: Lieutenant Hochmouth, do you know of any matters that we need to address on the record before we proceed to opening statements in this case?

DC: Sir, the defense has one Defense Exhibit, Defense Exhibit ALPHA for identification, which is a CV for our expert, sir, and at

this point in time we wish to admit that as Defense Exhibit ALPHA, sir.

MJ: Any objections to Defense Exhibit ALPHA for identification?

TC: No, Your Honor.

MJ: The court receives Defense Exhibit ALPHA, the words "for identification" will be deleted, and that will be made part of the official evidentiary record.

Lieutenant Hochmouth, anything else that you believe we need to address on the record?

DC: No, sir.

MJ: Trial counsel, are you prepared to make an opening statement at this time?

TC: Yes, sir.

MJ: Please proceed.

TC: "Don't worry, I used a condom." Those are the words that Lance Corporal Hatcher heard during a brief moment of consciousness. "Don't worry, I used a condom," those are the words that Lance Corporal Hatcher heard in an unfamiliar place with Petty Officer Darin Lopez laying on top of her, penetrating her vagina with his penis. Those are the words that she heard when she lay there unable to move shortly before passing out again. "Don't worry, I used a condom." Those are the words that the following morning lingered in

her memory, pierced through her memory in vivid detail as she awoke disoriented, confused, ill.

There were many things that she couldn't account for the previous evening and the early morning. She couldn't account for how she left the bar. She couldn't account for how she got to this unfamiliar place. She couldn't account for how or when she vomited on herself. She couldn't account for how or when she urinated on herself and in the bed. She couldn't account for the bite marks on her breasts, and she couldn't account for the scratches on her back. But there was one thing that she could account for. There was one thing that remained vividly within her memory, and that was Petty Officer Lopez sexually assaulting her saying to her, "Don't worry, I used a condom."

Your Honor, through the course of this trial the government will prove to you beyond a reasonable doubt that on or about 24 November 2012, at or near Sierra Vista, Arizona, the accused, Petty Officer Lopez, sexually assaulted Lance Corporal Hatcher. He committed a sexual act upon her, penetrating her vagina with his penis, while she was in a state such that she was incapable of consenting due to impairment from a level of intoxication.

Once again, Your Honor, "Don't worry, I used a condom," that statement from Lance Corporal--pardon me, Petty Officer Lopez. We know that statement to be true, you'll hear; in fact, we know that

he used two condoms because, during a later subsequent investigation, two used condoms were discovered at the scene in a trash bag outside of his apartment, which were subsequently tested. I'll touch more on that later.

Your Honor, you're going to hear from Lance Corporal Hatcher. She's going to describe her meeting Petty Officer Lopez. You're going to hear that both she and Petty Officer Lopez were in-- were attending some training, not the same training together, but they were both at Fort Huachuca in Sierra Vista, Arizona, attending training. You're going to hear from Lance Corporal Hatcher that in late November she was at the Mall in Sierra Vista where Petty Officer Lopez approached her. She was outside waiting for a taxi to return her to the barracks aboard Fort Huachuca where she was staying when Petty Officer Lopez approached her and asked if she would like a ride home--or a ride back onto base.

Lance Corporal Hatcher agreed. They talked with one another, they were friendly with one another. They exchanged phone numbers. They talked, they texted a little bit. You're going to hear that a few days later, the following Saturday, on the 24th of November Lance Corporal Hatcher had some plans to meet up with some friends at a local bar in Sierra Vista, Arizona called the "Peacock." Her plan was to meet up with a few friends. It was one of the Marines--one of her fellow Marines' birthday that they were going to

be celebrating, however, those plans fell through. Her friends didn't end up coming out to the bar.

Lance Corporal Hatcher having few friends or acquaintances in the area, she decided to call Lance--pardon me, Petty Officer Lopez and invited him out. He agreed. You're going to hear that Petty Officer Lopez came out to the Peacock Bar with Lance Corporal Hatcher. Lance Corporal Hatcher began to drink. You're going to hear about the drinks that she ordered, and the drinks that Petty Officer Lopez ordered for her as well. She's going to describe for you the drinks that she had, mixed drinks consisting of pineapple juice and Coconut Rum. You're going to hear about a shot of Goldschlager that was ordered for her as well.

And as the night progressed, she began to experience the effects of the alcohol. She's going to describe for you the level of intoxication that she felt. She'll describe that she's never experienced that level of intoxication before and, particularly, the unfamiliar effects that it had upon her. She'll describe for you her last memory at the bar, how she remembers drinking the drinks that were ordered for her. She doesn't remember how or when she left the bar. She doesn't remember where she went. Her last memory is at the bar, and then her next memory is awaking for a brief period of time on her back with Petty Officer Lopez on top of her penetrating her vagina saying, "Don't worry, I used a condom."

She'll describe for you what was going through her mind, what she was physically experiencing at that point in time, what she was trying to do. She wasn't able to move until she passes out again, and then wakes up sometime later, this time alone, this time by herself in that bed where she begins to try to make sense of everything. She begins to try to piece together what led up to her being there with that memory vividly in her mind. She notices something, something sticky on her body, on her dress, in her hair. She realized that she vomited herself. The bed is wet. She's trying to compose herself, but it's difficult, you'll hear, because of what she was feeling. She was still under the effects of the alcohol, she was ill and she was confused.

Sir, you're going to hear about what she did when she woke up. You're going to hear that she stumbled off the bed, she saw a shower, so she climbed into the shower with her dress still on. Her dress that, when she awoke, a sleeve was down, the bottom was bunched up around her waist, and in the shower she starts to take account a little bit more about how she was feeling. And at that point in time that's when she detects some injuries to her body, she notices some bite marks on her breasts, as well as some scratches on her back. So, she gets out of the shower. You'll hear that she then puts her dress into a dryer that she sees, wraps herself up in a towel, and

waits briefly for her dress to dry before putting it back on and leaving.

When she leaves Petty Officer Lopez' apartment, she sees a taxicab, so she immediately goes to the taxicab. Your Honor, one of the witnesses that you're going to hear from is Mrs. Tamara Ruiz. She's a taxicab driver. She worked for Two-Tone Taxi in Sierra Vista, Arizona. She's going to describe for you being dispatched to the Sierra Vista--pardon me, the Casa Antigua apartments in Sierra Vista, Arizona. She's going to talk to you about her interactions with Lance Corporal Hatcher that morning. She's going to tell you about her observations about Lance Corporal Hatcher's demeanor, the-- the emotional and mental state that Lance Corporal Hatcher was in, how she was hysterical, how she was crying, how she was confused, how she was disoriented.

You're going to hear that at some time later Lance Corporal Hatcher reported what had happened. She reported it to a Victim Advocate at her command, Staff Sergeant Finn. Staff Sergeant Finn subsequently notified Army CID. You're going to hear about an investigation that was conducted by Army CID, as well as the Sierra Vista Police Department. You're going to hear, Your Honor, that the Investigators, they determined where Petty Officer Lopez lived. Lance Corporal Hatcher confirmed that the apartment that they identified was, in fact, the apartment that she woke up in.

You're going to hear about a search that was conducted of Petty Officer Lopez' apartment that he stayed in. By the time that they had conducted the search, Petty Officer Lopez had completed his time in Fort Huachuca, he had moved out of the apartment and returned to his current command back here in Norfolk. And during the course of that search, they searched some trash bags that were just outside of his apartment--just outside the door of his apartment. And in that trash bag they found two condoms. Those condoms were collected by Army CID. They were sent to the Army Criminal Investigation Lab, and they were tested by Dr. Evelyn Ridgley. She's a Forensic Biologist at USACIL.

Your Honor, this aspect of the case has been stipulated by the parties. One of the exhibits that's been introduced is a Stipulation of Fact between the government and defense, consented to by Petty Officer Lopez as well, describing the testing that was conducted by Evelyn Ridgley. During the course of the investigation, buccal swabs were collected from both Petty Officer Lopez and Lance Corporal Hatcher. Evelyn Ridgley extracted DNA profiles. She was able to identify two DNA profiles from both of the condoms, and they matched; one DNA profile from the condoms matched Lance Corporal Hatcher, one DNA profile from both of the condoms matched Petty Officer Lopez. So, you have that Stipulation of Fact. You have the

CV of Dr. Ridgley, and you have the USACIL report as well, Your Honor.

Your Honor, taken together, this evidence will prove beyond a reasonable doubt that, on the 24th of November 2012, Petty Officer Lopez sexually assaulted Lance Corporal Hatcher when Lance Corporal Hatcher was impaired by the alcohol that she had consumed and was in a state that she was incapable of consenting to a sexual act. You're going to hear about that state of impairment. You're going to hear about how she felt the effects, and you're going to hear about the after-effects, being the condition that she was in the following morning. And you'll have testimonial, as well as physical evidence, that the sexual act occurred and, taken together, Your Honor, we will prove beyond a reasonable doubt that he sexually assaulted Lance Corporal Hatcher.

So, Your Honor, at the conclusion of this trial the government will ask that you find him guilty. Thank you.

MJ: Thank you.

Lieutenant Hochmouth, would you like to make an opening statement at this time or do you want to reserve that?

DC: Sir, we're going to make an opening statement now, sir.

MJ: Please proceed.

[END OF PAGE]

DC: Sir, the government cannot and will not prove this case. They have evidence of condoms that show sex. We stipulated to that and we don't disagree with that.

They have a taxicab driver who will say that Lance Corporal Hatcher was upset.

And they're going to have Lance Corporal Hatcher, who's the key witness in this case, who isn't going to tell you much of anything, sir.

Lance Corporal Hatcher invited Petty Officer Lopez out to the bar that night. She'll say that she had three drinks. She will say that she drank these three drinks in a quick fashion, one being a shot, two being a pineapple-based drink.

You're going to hear from our expert, sir, Dr. Moore, who will talk about blackouts to the court.

We then have Lance Corporal Hatcher who doesn't remember a thing until the next morning. How did she leave the bar? How did she get up the stairs to Petty Officer Lopez' apartment? There's no evidence that he carried her. There's no eyewitnesses from the bar who's going to say that she was falling down, that she was unable to walk or to communicate. The government isn't going to give you any evidence, sir, to show that she was substantially incapable of consenting.

And if we look at what Lance Corporal Hatcher will tell us, she's going to tell us that the next morning she woke up, she's in this bed, doesn't know where she is. She has liquid on her, it's a clear liquid, she doesn't know what it is. The government's going to say that it's urine and vomit; they have no evidence of that. She's going to get up though, she's going to go and take a shower, and she does something in that shower that is extremely strange. As the bathroom is fogging up, she writes something on the mirror. It's words to the effect of "I'm in hell, help me." She won't give you an explanation, sir, as to why she wrote that. In fact, she's going to tell you, "I don't have an explanation for why I wrote that, I just did it."

Then she somehow, without knowing anything about the apartment supposedly, without knowing where anything is in the apartment, is able to find the dryer and put her clothes in the dryer. And after she does that, she takes a towel, puts the towel around her, sits down on the couch in the apartment and just hangs out until her clothes dry.

And this is another interesting fact, sir, where's Petty Officer Lopez? She says that she had absolutely no interaction with Petty Officer Lopez the next morning. The government gave you a diagram of that apartment, sir, it is a small apartment. She's going

to say, "Well, I heard his voice--but actually I think I heard his voice--yeah, I heard his voice, but I actually never saw him."

Then after her clothes dry, she's going to say that she just put her dress back on and put her heels back on and walked out and, magically, there's a taxicab there. You're going to listen to the taxicab driver, sir, and the taxicab driver is going to say that she was dispatched to that location; that means someone called in and said, "I need a cab at this location." And the taxicab driver knows that a guy called in; logically, sir, that guy was Petty Officer Lopez. If they had no communication at that apartment, how did he know to call a cab? He knew that, sir, because they had a conversation that morning. He knows that because there was a confrontation between Petty Officer Lopez and Lance Corporal Hatcher and she left that apartment pissed off, sir.

And, sir, when she gets into the taxicab, she had a conversation with the taxicab driver and the taxicab driver says, "Do you want me to take you to the Police?" "No." "Do you want me to take you to Medical, to a hospital? Do you want me to get help for you?" "No." They did actually go someplace that morning though, sir, they went to 7-Eleven, and Lance Corporal Hatcher walked into 7-Eleven to get a pack of cigarettes, she got a soda, and then she walked back into the taxicab and they went back to base.

And the government mentioned these bite marks that are on her breasts and they mentioned these scratches on her back. Lance Corporal Hatcher goes to Medical the next day. There's no pictures of these bite marks, there's no pictures of these scratches, there's no evidence even that she went to Medical. She goes there because she says she's ill. She wasn't able to give us any explanation of what she meant by that. Well, she goes to Medical, and does she disclose to them that she was sexually assaulted? No, absolutely not, sir. It wasn't until about a month later that she actually comes forward and says that she was sexually assaulted.

Sir, the evidence that we have here is not going to add up to a sexual assault. At the end of this, sir, there's going to be so many questions that are going to be before this court without any answers. And as I said before, sir, the government cannot and will not prove this case beyond a reasonable doubt and that's why, sir, we believe at the end of this trial you will find Petty Officer Lopez not guilty. Thank you, sir.

MJ: Thank you.

Trial counsel, are you prepared to call your first witness?

TC: Yes, Your Honor, the government calls Ms. Tamara Ruiz.

[The bailiff withdrew from the courtroom and returned momentarily with the witness.]

MJ: Ma'am, come right up here for me please?

[The witness approached the witness stand.]

TC: And, ma'am, will you please face me and raise your right hand.

[The witness did as directed.]

TAMARA D. RUIZ, Civilian, was called as a witness for the prosecution, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the trial counsel:

Q. Have a seat, please, ma'am.

A. Thank you [Did as directed].

Q. And will you please state your full name?

A. Tamara Dawn Ruiz.

Q. Please spell your first and last names for us.

A. Tamara, T-A-M-A-R-A, Ruiz, R-U-I-Z.

Q. Ma'am, what's the city and state that you live in?

A. Sierra Vista, Arizona.

Q. Ma'am, in November of 2012 were you working as a taxicab driver?

A. Yes, I was.

Q. For what company?

A. Two-Tone Taxi.

Q. And that's in Sierra Vista, Arizona?

A. Yes.

Q. When did you begin working with Two-Tone?

A. A couple of days before that.

Q. Now, do you remember when that was?

A. In November.

Q. All right, so you began working as a taxicab driver in November of 2012?

A. Yes.

Q. And how long did you work as a cab driver?

A. A little--almost a year.

Q. Okay, and you mentioned a couple--something happened a couple of days after you started working with them in November of 2012, were you dispatched to pick somebody up at the Casa Antigua Apartments in Sierra Vista?

A. Yes, I was.

Q. What information did you receive from Dispatch?

A. I was told to pick up a--a male at the apartments of An--Antigua--Casa Antigua.

Q. And what happened when you got there?

A. There was nobody there.

Q. So, what did you do?

A. Drove around the apartments looking for the person and then called Dispatch.

Q. What happened when you called Dispatch?

A. They said to go back and park over by the--the basketball courts--or the football--yeah, basketball courts.

Q. And did you eventually see somebody?

A. Yes, I did, I saw a male on the second story waiving to me or--to wait, they're coming.

Q. And then what happened?

A. And I waited and they came.

Q. Who came?

A. It was a female.

Q. Well, what do you remember about this female?

A. I watched her as she came completely all down the two stories and I noticed something was wrong with her.

Q. Can you elaborate on that for us how did you know that something was wrong with her?

A. I can't explain, it was her mannerism 'cause I watched her all the way down.

Q. Was there something about the way that she was walking?

A. She was walking all right, it's just I don't know how to explain it, but her mannerism, I knew something was horrible wrong.

Q. Was she walking with her head held down?

A. I think she was, yes.

Q. And did she approach your taxicab?

A. Yes, she did.

Q. What was she wearing?

A. She was wearing a dress.

Q. And what happened when she got to your taxicab?

A. She asked me if she could talk to me.

Q. Did she get into your cab?

A. Yes, she did.

Q. And did you talk with her?

A. I said yes, she could talk to me.

Q. How would you describe her demeanor once she got into the cab?

A. Same, something was wrong, something seriously wrong.

Q. How was she acting?

A. Very confused, very confused and something was wrong.

Q. Could you--what about her emotional state, can you describe that?

A. That's what I know--that's what was--something was wrong [Laughs], her emotional--she was very confused.

Q. And how long did you talk with her?

A. I would say it was about an hour.

Q. Where did you talk with her at?

A. A little bit in the parking lot and at the Circle K.

Q. How did you end up with her at the Circle K?

A. I called my Dispatch and asked if I could have time with her, that I had picked up somebody who mentioned something terrible, and he said I could have a half hour, which I already was with her a little while.

Q. And as you were talking with her, did you attempt to comfort her?

A. Yes, I did.

Q. Can you describe that for us please?

A. I touched her head [Crying] and she grabbed onto me real tight, was hugging me and saying, "Please let me stay with you, I'll pay you for your time. I need to talk to somebody, I need somebody with me."

Q. Was that when you asked?

A. That's when I asked permission.

Q. At that point in time where she asked you to stay with her, can you describe her emotional state at that point?

A. Desperate.

Q. Did you eventually take her somewhere?

A. Yes. After the half hour, whatever time my Dispatch said, I took her back to the Fort--back to Fort Huachuca--or to Fort Huachuca and dropped her.

Q. Did you have any further contact--well, pardon me, did she say what her name was, did she enter----

A. She told me her name.

Q. And what do you remember her telling you her name being?

A. Lizzie.

DC: Objection, hearsay, sir.

MJ: Do you agree it's hearsay and, if so, is there an exception that applies?

TC: Your Honor, this is a statement for purposes of identification. I'll move on, however.

Q. Did--did----

MJ: So, are you withdrawing your question?

TC: I'll withdraw the question, Your Honor.

MJ: All right, the question is withdrawn. The court will disregard the question. Go ahead and ask another question.

Q. This particular individual that you met, did you have any further contact with her?

A. A few texts, and then I saw her another time, one more time.

Q. When you say you texted, did----

A. I texted her to see if she was okay.

Q. And you said you saw her on one other occasion, where did---

A. Yes, she----

Q. ----where was that at?

A. On--on Post, she asked me to come.

Q. How would you describe her state on that other occasion?

A. Calm, more calmer, maybe a little mad.

Q. I want to back up a moment, when you were talking with her in your cab, you stated at one point she'd started crying, but did it appear to you that she had previously been crying?

A. Yes, it did----

DC: Objection, speculation.

MJ: Overruled.

Q. Once again, my question was did it appear to you that she had previously been crying?

A. Yes.

Q. What was it about her, how she appeared, that led you to that conclusion?

A. Her makeup.

Q. Can you elaborate on that?

A. It was black under here [Points to eyes].

Q. How did her eyes appear?

A. Well, she didn't look like she was partying all night, but she had--she had--I could tell she was crying.

TC: Thank you, Mrs. Ruiz, that's all the questions that I have.

WIT: Okay.

MJ: Cross-examination?

DC: Yes, sir, thank you.

CROSS-EXAMINATION

Questions by the defense counsel:

Q. Good morning, ma'am.

A. Morning.

Q. Did you offer to take her to the Police?

A. Yes, I did.

Q. And she declined that?

A. She was very, very confused, very, very upset and confused and she didn't know that to do.

Q. Okay, so she didn't want to go to the Police then, did she?

A. She was afraid, fearful of her job status, her--very bad.

Q. Let me ask you this, did you ask her if she wanted to go to the hospital?

A. Yes, I did.

Q. Okay. You didn't take her to the hospital though, did you?

A. No.

Q. You did make one stop though before you went back to base and that----

A. Yes.

Q. ----was at 7-Eleven?

A. Yes.

Q. And she bought a pack of cigarettes?

A. Um-hum.

Q. And a soda?

A. Yes. The cigarettes were for me.

Q. So, she bought you cigarettes?

A. Uh-huh.

Q. And you mentioned that Dispatch said that you were looking for a male when you went to the apartment complex?

A. A male?

Q. Yup.

A. A male what, male?

Q. Male person, a--a man?

A. No. I did? No.

Q. When you went to the apartment complex, who were you looking for?

A. Oh, yes, I'm sorry, okay, I'm thinking on base, on Post.

Q. Okay.

A. Yes, sometimes a male will call for the taxi and the Dispatch will say, "Pick up a male" and a lot of times it's a female.

Q. And when you actually got to the apartment, you actually did see a man waiving to you?

A. Uh-huh.

Q. And a man was standing on the second floor of the apartment complex?

A. Yes.

Q. And the person who came out to you was a female?

A. Yes.

Q. Now, you mentioned that the female had makeup on and you could tell that the makeup was kind of going down her face?

A. Um-hum, yes.

Q. So, you wear makeup, right?

A. Yes [Laughs].

Q. So, when you take a shower----

A. Um-hum, yes.

Q. ----and you get your face wet, does your makeup run down your face?

A. Yes.

Q. Now, the last interaction--or the time when you met Lance Corporal Hatcher on base, she asked you to testify for her, correct?

A. Yes. Is that her name, Hatcher?

Q. Yup.

A. Okay.

DC: No further questions, sir.

WIT: Okay.

MJ: Redirect?

TC: Yes, sir.

REDIRECT EXAMINATION

Questions by the trial counsel:

Q. Mrs. Ruiz, why did you ask her if you wanted-- if she wanted you to take her to the Police, what did she tell you?

A. Like I said, she was very confused. She--she--oh, she's very confused, fearful, that's the only thing I could think, you know.

Q. No, I'm sorry, my question was unclear, what did she tell you had happened that prompted you to ask if you should take her to the Police?

DC: Objection, hearsay.

MJ: Do you agree it's hearsay and, if so, is there an exception that applies?

TC: Your Honor, the defense opened the door to this by eliciting testimony about her question being if Lance Corporal Hatcher wanted her to take her to the Police or to the hospital. This is evidence and this is testimony which ought, in fairness, also be considered. The government did not elicit this testimony on direct examination, however, through cross-examination the defense opened the door for this.

MJ: How does that make it any less hearsay?

TC: Your Honor, this is-- it would be testimony to frame the answers that were given to defense counsel during cross-examination, so it would be offered not necessarily for the truth of the matter asserted, but to appropriately frame the question and answer during cross-examination.

MJ: The objection is sustained. Ask another question please.

TC: That's all I have, sir. Thank you.

MJ: Anything else?

DC: Nothing from defense, sir.

MJ: Do either counsel wish to have this witness subject to recall, Captain Harrell?

TC: Yes, Your Honor.

MJ: And, Lieutenant, it doesn't matter what your answer is. [The witness was duly warned, excused subject to recall and withdrew from the courtroom.]

MJ: Captain Harrell, do you have another witness you want to call?

TC: Yes, sir. If I may, may I request a brief recess before calling the next witness?

MJ: Certainly. Is 10 minutes enough time for you?

TC: Yes, yes, sir.

MJ: We'll be in recess for 10 minutes.

[The court-martial recessed at 0940 hours, 24 June 2014.]

[The court-martial was called to order at 0952 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.

We are ready to continue with any evidence on behalf of the government.

Captain Harrell?

TC: Yes, sir. Before calling my next witness, and if I may just be heard briefly, I'd respectfully like to recall Ms. Ruiz. I just want to make sure I articulated well enough the government's position why I think that the last question that I asked would be permissible, and I don't think I articulated it very well the first time.

MJ: All right.

TC: Defense asked--defense elicited on cross-examination the fact that Mrs. Ruiz asked Lance Corporal Hatcher if she would like her to take her to the Police or to the hospital. It's the government's position that it would be a fair follow-up question, for a non-hearsay purpose, not for the truth of the matter asserted, but for effect on the listener, what prompted Mrs. Ruiz to ask that question to begin with, what was it that she had learned that prompted her to ask Lance Corporal Hatcher if she needed medical or law enforcement involved.

MJ: Lieutenant Hochmouth, do you want to be heard on your objection any further because it appears to me that the trial counsel is saying that it is not hearsay because it's not being offered for the truth, but rather being offered for the effect on the listener?

DC: Sir, we still stand by our objection that it's hearsay. In addition to that, you know, we don't have any further objections at this moment until we actually hear what the witness has to say.

MJ: I understand and, since this is a Judge alone trial, the risks are smaller than they would be with members. I understand the Rules of Evidence and know what weight to apply to evidence, so I will allow you to call the witness back in. I'll overrule the objection, based upon your representation. I will let her answer the question, however she's going to answer it, and then I'll entertain any additional objections, if there is any, and we'll go from there.

TC: Thank you, sir. In that case the government recalls Mrs. Tamara Ruiz.

[The witness reentered the courtroom.]

MJ: Ma'am, come back up here for me please and have a seat.

[The witness did as directed.]

MJ: I want to remind you that you're still under oath, okay?

WIT: Yes, sir.

MJ: Captain Harrell, go ahead.

TC: Thank you, sir.

TAMARA D. RUIZ, Civilian, was recalled as a witness for the prosecution, was reminded of her oath, and testified as follows:

DIRECT EXAMINATION

Questions by the trial counsel:

Q. Mrs. Ruiz, I want to pick back up on something that we were talking about earlier. Can you describe for us what it was that prompted you--what did you learn from Lance Corporal Hatcher that prompted you to ask her if she wanted you to take her to the Police or to receive medical care?

A. I don't understand the question, can you re----

Q. Yes, ma'am, I'll be happy to. Did Lance Corporal Hatcher, did she say something to you that caused you concern, which caused you to ask her if----

A. Yes.

Q. ----she needed to go to the Police or to the hospital?

A. Yes.

Q. And what was that?

A. She thought she had been drugged and raped.

TC: All right, thank you, ma'am. That's all the questions I have.

WIT: Okay, thank you.

MJ: Cross-examination?

[The witness stands to leave.]

MJ: No, ma'am, hang on a second, ma'am, hang on, Lieutenant Hochmouth may have some questions for you.

WIT: Oh [Retakes her seat].

MJ: We'll give him a moment here and then we'll proceed.

CROSS-EXAMINATION

Questions by the defense counsel:

Q. Lance Corporal Hatcher didn't tell you that she was drugged or raped, did she?

A. She thought she was.

Q. She said maybe?

A. Not maybe.

Q. I think?

A. Yes.

Q. Okay.

A. And very confused.

Q. So she was confused 'cause she didn't know what happened, correct?

A. She thought she'd been drugged and raped.

Q. Did she tell you how?

A. She told me that she was very used to drinking, or whatever, and that someone made her a drink, it was like her first drink, and she said, "There's no way that I would have passed out and not know-- you know, and raped."

Q. She told you she only had two drinks, correct?

A. One or two drinks, yes.

Q. And that was it?

A. Yeah.

DC: Thank you.

No further questions, sir.

MJ: Anything else from the government?

TC: Your Honor, I'm going to admit I'm a bit confused now.

Is that--will the court be considering those last questions and answers during the recross-examination for the truth of the matter asserted, because it sounds like it's exceeded the bounds of the redirect. Government's not necessarily objecting, just trying to get clarification to determine if any redirect is required.

MJ: Well, there was no objection, so at this point it's substantive evidence in front of the court. I'm not sure what you're asking. I'm not here to give you legal advice, but there were no objections, so that is evidence before this court. If you have any additional questions you'd like to ask this witness, you're free to do so.

TC: The government has no questions, Your Honor.

MJ: Are we still keeping this witness subject to recall?

TC: Yes, sir.

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

MJ: Government, call your next witness.

TC: The government calls Lance Corporal Elizabeth Hatcher.

[The bailiff withdrew from the courtroom and returned momentarily with the next witness.]

TC: If you can just face me and raise your right hand?

[The witness did as directed.]

TC: Have a seat, please.

[The witness did as directed.]

MJ: Corporal, I need you to speak a little louder so we can all hear you. When you took your oath, we were unable to pick up your answer when the trial counsel asked if you swore to tell the truth and nothing but the truth.

What, in fact, was your response?

WIT: Yes, sir, I do.

MJ: Thank you. I'm going to ask you to pull that microphone down in front of you just a little bit there.

[The witness did as directed.]

MJ: Trial counsel, go ahead.

TC: Thank you, sir.

[END OF PAGE]

LANCE CORPORAL ELIZABETH HATCHER, 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. Elizabeth Hatcher.

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

A. H-A-T-C-H-E-R.

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 Hatcher, 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 Hatcher, 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 24th 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.

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.

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.

[END OF PAGE]

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.

[END OF PAGE]

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.

Q. Lance Corporal Hatcher, 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 Hatcher, 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.

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.

[END OF PAGE]

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 Hatcher, 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.

[END OF PAGE]

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 Hatcher, 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 Hatcher, 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 Hatcher, 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 Hatcher, 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 Hatcher, 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 Hatcher, 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 Hatcher, 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 Hatcher, 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 Hatcher, 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 Hatcher, 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 Hatcher, 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 Hatcher, 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 Hatcher, 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 Hochmouth, 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.]

MJ: Does the government have another witness it would like to call?

TC: Yes, Your Honor. I'm going to be using courtroom technology with the next witness.

If I can have a recess to make sure that that's set up please?

MJ: We can do that.

How much time are you going to need?

TC: It shouldn't take too long at all, sir, perhaps 10 minutes.

MJ: We're going to take--we'll take a 10-minute break and then, when we come back in, before you call your next witness, I haven't actually seen the physical copy of it yet, but Prosecution Exhibit 4 which is a Stipulation of Fact, I need to go through a brief colloquy with the accused on that, I was just waiting for a good time to do that, so that seems to be a decent time, so we'll do that when we come back from our brief recess and then we'll continue with the government's evidence.

All right, we're in recess.

[The court-martial recessed at 1122 hours, 24 June 2014.]

[END OF PAGE]

[The court-martial was called to order at 1136 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.

Before we continue with the government's presentation of evidence, I do have Prosecution Exhibit 4, which is an exhibit that was offered and not objected to by defense and received by the court at the start of trial.

However, this is a stipulation of fact, so Petty Officer Lopez, what I need to do is I need to ensure that you're in agreement with this Stipulation of Fact before I can actually accept it and make it part of the evidence in this case.

So, do you have a copy of Prosecution Exhibit 4 in front of you?

ACC: [Stood] Yes, sir.

MJ: You can go ahead and remain seated, you're fine.

[The accused did as directed.]

MJ: This is, in fact, titled as a "Stipulation of Fact," it's a 2-page document. On the second page there are a number of signatures. The first signature there appears to be your signature.

Is that, in fact, your signature on this document?

ACC: Yes, sir.

MJ: Now, before you signed this document, did you read it over completely and discuss it with your counsel?

ACC: Yes, sir.

MJ: Now, this is a Stipulation of Fact, and a Stipulation of Fact is an agreement between the trial counsel, the defense counsel and yourself that the facts in here that are stipulated to are true and, if this is entered into evidence, they're uncontradicted facts for the purposes of this trial. Once this stipulation is received into evidence, those facts cannot be disputed or contradicted by you or by any other party, unless I permit the stipulation to be withdrawn.

Do you understand this?

ACC: Yes, sir.

MJ: And is everything in this Stipulation of Fact, Prosecution Exhibit Number 4, the truth?

ACC: Yes, sir.

MJ: You have a right not to enter into the stipulation and the stipulation will not be accepted without your consent.

Do you understand that?

ACC: Yes, sir.

MJ: And do you consent to the use of this stipulation as evidence before this court for the purposes of this trial?

ACC: Yes, sir.

MJ: And, Lieutenant Hochmouth, do you also concur with the uses and admission of this stipulation?

DC: Yes, sir, the defense does, sir.

MJ: And, Captain Harrell, do you?

TC: Yes, sir.

MJ: I addressed earlier that there were no objections to the stipulation by either side, so the court now and formally receives Prosecution Exhibit 4, it's admitted into evidence and may be considered by the court as substantive evidence in this case.

MJ: Captain Harrell, are you ready to proceed with your next witness?

TC: Yes, Your Honor, the government calls Special Agent Chad Hallett.

[The witness entered the courtroom and approached the witness stand.]
CHAD A. HALLETT, Civilian, was called as a witness for the prosecution, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the trial counsel:

Q. Would you please state your full name, spelling your--
spelling your last?

A. My name is Special Agent Chad Aaron Hallett, H-A-L-L-E-T-T.

Q. And are you a Special Agent with U. S. Army Criminal
Investigation Command?

A. That's correct, sir.

Q. How long have you been a CID Agent?

A. Two and a half years.

Q. What is your current duty assignment?

A. I'm a--assigned to the Protection Team for the Chairman of the Joint Chiefs of Staff.

Q. And prior to that duty assignment, where were you at?

A. I was stationed at Fort Huachuca, Arizona.

Q. And what were your duties at Fort Huachuca?

A. I was a Criminal Investigator for the CID Office there.

Q. How long were you with the Fort Huachuca CID Office?

A. About 2 years, sir.

Q. In your capacity as a CID Agent at Fort Huachuca, were you involved in an investigation involving Petty Officer Darin Lopez?

A. Yes, I was.

Q. How did you become involved in that investigation?

A. Well, I was assigned as the Duty Agent the--the week that we were notified of--of this case. Our office was notified by the Unit Victim Advocate, a Staff Sergeant Finn from the Marine Corps Detachment on Fort Huachuca, that Lance Corporal Hatcher had been sexually assaulted.

[END OF PAGE]

Q. And did you observe an interview with Lance Corporal Hatcher?

A. Yes, I did.

Q. During the course of that interview, did she describe what she generally remembered about the location of the incident?

A. Yes, she did, sir.

Q. And from that information, was CID able to identify a location to conduct a search?

A. That's correct, sir.

Q. How was a particular location identified?

A. She had described the building behind the Mall. There's only one set of--the way that housing area is set up, there's--it's all commercial businesses on three sides, and then you have these condos on the back end behind a hotel, so that was the obvious spot. The Special Agent in Charge, Williams, asked her if she remembered the name at all, she said Antigua. This was the second part of the name. We confirmed that it was Casa Antigua. After that, he spoke with a Mr. Mike Benson, I believe, is his name. He's the Manager for TDY rentals out there for the condos, and he was able to provide us with a rental agreement with a Darin Lopez.

[END OF PAGE]

Q. So, were you able to confirm, in fact, that Petty Officer Lopez did stay at those apartments that you identified?

A. Yes, sir.

Q. Were you able to identify a specific apartment that Petty Officer Lopez had been residing in?

A. Yes, sir.

Q. And did you participate in a search of that apartment?

A. Yes, I did.

Q. Can you...

TC: Well, Your Honor, at this time permission to publish Prosecution Exhibit 2 on the monitors?

MJ: Yes.

Q. Special Agent, do you have an image displayed in front of you?

A. Yes, I do.

TC: All right, let the record reflect Prosecution Exhibit 2 is displayed on the Smart Courtroom technology.

Q. Special Agent Hallett, do you recognize this?

A. Yes, I do, it's a rough sketch depicting the crime scene that I conducted.

Q. All right, and did you create this, this sketch?

A. Yes, I did.