

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.

Q. So, is this a sketch of the apartment that Petty Officer Lopez had resided in?

A. That's correct, sir.

Q. Can you draw our attention, just so we're all oriented to the significant aspects of this diagram, the bedroom in which the investigation determined that the alleged sexual assault occurred?

A. Sure. Is this a touch screen?

Q. Well----

A. Or just verbalize it?

Q. ----it is, but let's just verbalize it, please.

A. Okay. If you look off to the left of the sketch towards the middle of that wall, you'll see it labeled as the "master bedroom," that's where the victim in this case had described to us the attack took place and that was the room that appeared to be lived in some.

Q. Special Agent, was any items of physical evidence collected during the course of this search?

A. Yes, we collected several pieces of evidence. Outside, while I began to photograph the crime scene, Detective Barron and another Agent from my office were searching the trash bags directly outside the front door. They discovered, I believe, two condoms and those were collected as evidence. I also collected lint from the trash can and from the laundry--I'm sorry, the dryer. I collected a

pillow case and bed sheet from the master bed, and I also collected a long strand of brown hair from the master bed.

Q. One of the things that you mentioned were two condoms that were collected. Is the location that they were discovered, is that reflected on the diagram?

A. That's correct, sir. If you look off to the legend, each piece of evidence is coded with a letter, and that letter is reflected on the sketch where it was collected from.

Q. Can you draw our attention to where the condoms were discovered at?

A. They were collected from the trash bag, as depicted in that rough circle on the balcony there at the bottom of the sketch.

TC: Your Honor, permission to publish Prosecution Exhibit 3?

MJ: Yes.

Q. Currently displayed on the monitor is Prosecution Exhibit 3, page 1 of 2. Special Agent, do you recognize this photograph?

A. Correct, sir, that was the photograph I took of the condoms before they were removed from the trash bag.

Q. All right, so is this a photograph of one of the trash bags that you just described for us that was discovered on the balcony outside of Petty Officer Lopez' apartment?

A. That is correct, sir.

Q. And moving to page 2 of Prosecution Exhibit 3, is this a close-up of the same trash bag?

A. Yes, sir.

Q. And what of significance is apparent in this photograph?

A. [No response.]

Q. Are the condoms that you described, are they...

A. Yes, the--the condoms are present at the top and bottom of the photograph.

Q. So, after identifying these photographs--I mean identifying the condoms and photographing them in place, what actions were taken in reference to the condoms?

A. They were collected as evidence by CID. Before they were processed and sent off to our lab, we had a discussion with Detective Barron of Sierra Vista on who should run the test, who could get it done faster. Initially, we thought they might, however, in the end we decided that USACIL would be the quicker route, so we maintained custody of the condoms and we sent them off to USACIL to be tested for DNA.

[END OF PAGE]



Q. And the results of that analysis are--are before the court, so we don't need to get into that. As part of your investigation did--well, first of all, did Lance Corporal Hatcher describe speaking with a taxi driver?

A. That is correct, sir, a Ms. Tammy Ruiz. She didn't know her last name at the time, but she remembered her first name and she remembered the cab company that she had worked for, so I was able to track her down through that route.

Q. So, you were able to identify the cab driver that Lance Corporal Hatcher described speaking with?

A. That's correct, sir.

Q. And did you interview Mrs. Ruiz?

A. Yes, I did.

TC: All right, thanks, Special Agent, that's all the questions that I have.

WIT: Okay.

TC: Please standby for potential questions from defense counsel and the military judge.

I'm removing Prosecution Exhibit 3 from the display.

MJ: Cross-examination?

DC: Yes, sir.

[END OF PAGE]

CROSS-EXAMINATION

Questions by the defense counsel:

Q. Special Agent, Petty Officer Lopez' apartment was on the second floor, is that correct?

A. I believe it's the third floor, sir.

Q. Third floor? So, you had to walk up flights of stairs to get there?

A. That's correct, sir.

Q. There was no elevator?

A. No.

Q. And do you know what kind of shoes Lance Corporal Hatcher was wearing in November on the night of this incident?

A. I do not. Agent Rex Walters would have been the one that corrected--collected those. It was a dress and shoes, I'm not sure what type of shoes they were.

DC: Okay, thank you.

No further questions, sir.

MJ: Captain Harrell, anything else?

TC: No, Your Honor.

MJ: Either counsel want this witness subject to recall?

TC: Yes, Your Honor.

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

MJ: Captain Harrell, we're getting close to the lunch hour. I'm going to let you decide if now is a good time to take a lunch break or if you've got another witness standing by that you'd like to get on?

TC: Sir, I would--I'll take you up on your offer to take our lunch break now.

MJ: We are going to take a recess for lunch. It is currently noon, we'll reconvene at 1300 and continue with any additional evidence on behalf of the government.

Before we do that, any other issues we need to take up at this time from the government's point of view?

TC: No, sir.

MJ: Defense?

DC: No, sir.

MJ: We'll see you all back here at 1300. We're in recess.

[The court-martial recessed at 1149 hours, 24 June 2014.]

[END OF PAGE]

[The court-martial was called to order at 1256 hours, 24 June 2014.]

MJ: This court-martial will again come to order. All parties that were present when we broke for lunch are again present.

When we broke, we finished up with a government witness.

Captain Harrell, do you have any other evidence you want to present at this time?

TC: No, Your Honor, the government rests.

MJ: Lieutenant Hochmouth, do you have any motions you want to make at this time?

DC: [No response.]

MJ: Do you want some time to think about it? I know we----

DC: One moment, sir.

MJ: ----apparently were expecting to come back with some additional evidence. The government's rested, so if you want to take a few moments, we'll do that in place here. If you have any motions you want to make or present any evidence----

DC: We have no motions, sir.

MJ: No motions?

DC: No motions, sir.

MJ: All right, do you have any evidence you want to present?

DC: Yes, sir, we have two witnesses that are standing by, sir-- actually, let me rephrase that, we have two witnesses who we plan on calling, one is standing by currently. The other one is going to be



telephonically. They are currently underway with the USS THEODORE ROOSEVELT. We're unable to get ahold of them right now, but we do have our live witness and are prepared to go with him, sir.

MJ: We'll take what witness you have available, and then we'll work on the logistics of the other one when we have to.

DC: Yes, sir.

MJ: Go ahead.

ADC: The defense calls Lieutenant Turhan M. Anderson.

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

TC: Please raise your right hand.

[The witness did as directed.]

LIEUTENANT TURHAN M. ANDERSON, U. S. Navy, was called as a witness for the defense, was sworn, and testified as follows:

#### DIRECT EXAMINATION

Questions by the trial counsel:

Q. Have a seat please.

A. [Did as directed.]

Q. Good afternoon, will you please state your full name?

A. Turhan Michael Anderson.

Q. Can you spell your first and last names for us please?

A. T-U-R-H-A-N, first name, last name is Anderson,

A-N-D-E-R-S-O-N.

Q. You're a Lieutenant on active duty in the United States Navy?

A. Yes.

Q. And what is your current command?

A. ONI, Office of Naval Intelligence.

TC: Thank you.

Questions by the assistant defense counsel:

Q. Good afternoon, Lieutenant Anderson. What's your position currently at ONI?

A. I'm the Deputy Division Head of the Naval Cyber Division.

Q. How many years have you been in the Navy?

A. Just over 20; I went over 20 in March.

Q. And I see you've got your ESWS pin, are you prior enlisted?

A. Yes, ma'am.

Q. Do you know Petty Officer Lopez?

A. Yes, ma'am.

Q. How do you know Petty Officer Lopez?

A. I've known him since he graduated boot camp. I was his first NMTLPO, Naval Military Training LPO at "A" School.

Q. How long ago was that?

A. That was '05/'06, 2005-2006 timeframe.

[END OF PAGE]

Q. Did you ever serve with him after "A" School?

A. Yes, after "A" School he went to the USS BATAAN and I went to the USS BATAAN as the LCPO.

Q. And what was your position over him at that time?

A. I was his LCPO, Boats "E" Division.

Q. During that time did you have a chance to observe him--or let me back up, what were his duty assignments?

A. He was OPINTEL Analyst in an Expeditionary Plot.

Q. Did you have a chance to observe him in his duties?

A. Yes.

Q. What extent, on a given week, how many days of the week would you see him?

A. Basically every day, and on deployment even, you know, 12, 14 hours a day.

Q. You deployed together?

A. Yes.

Q. How many times did you deploy together?

A. Just one deployment with workups in between.

Q. And, I apologize, you said that during--during those days about how many hours would you see him?

A. Normally, depending on what shift we were on, usually about 12, it could be even longer than that, depending on what was going on, what activities were going on during the day.

Q. As a result of your contact with Petty Officer Lopez, have you observed his attitude towards the military?

A. Yes.

Q. What was that attitude?

A. He had a very good attitude towards the military, he was motivated. I had no issues with him.

Q. Have you had a chance to observe his attitude with respect to military superiors?

A. Yes.

Q. And what was that attitude?

A. He had a good attitude also, didn't have any issues.

Q. And as a result of your contact and knowledge of Petty Officer Lopez, do you have an opinion about his military character?

A. I think he has very good military character. I've been his mentor after I left the BATON also, and he's come to me for career issues and other things, so...

TC: Objection, Your Honor, this has gone beyond relevant and admissible character evidence.

MJ: In what way, just the answer that you were just given?

TC: Yes, sir.

MJ: You're talking about reference to possible specific instances, is that what you're getting to?

TC: Yes, sir.



MJ: Do you have a response to the objection?

ADC: No, sir, I'll re-ask the question.

MJ: The objection is sustained, go ahead and ask another question.

Q. Lieutenant Anderson, without going into specific instances, what is your opinion of Petty Officer Lopez' military character?

A. I think he has very good military character.

ADC: That's all the questions I have.

MJ: Cross-examination?

TC: No, Your Honor.

MJ: Do either counsel wish to have this witness subject for recall?

ADC: Yes, sir.

MJ: Okay.

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

MJ: Lieutenant Hochmouth or Lieutenant Hudson, which one of you is doing the next witness?

ADC: I am, Your Honor.

MJ: Lieutenant Hudson, all right, you need some time to get the logistics going on that?

ADC: Yes, sir. I'd like to try to call him again.

MJ: We'll just wait in place here and we'll see if you're able to get your witness on the phone and, if that doesn't work, then we'll figure out how to go from there.

ADC: The defense now calls Lieutenant Kevin Stansick.  
[The assistant defense counsel called the witness a few times and finally got him on the line.]

WIT: INTEL, Lieutenant Stansick. How can I help you?

ADC: Good afternoon, Lieutenant Stansick, it's Lieutenant Hudson calling, I'm calling from the courtroom on board Naval Station Norfolk and I'm----

WIT: Hi, there, good afternoon.

ADC: ----I'm in the midst of the court-martial, we're on the record, I'm going to have Captain Harrell swear you in and ask you some questions.

WIT: That sounds fine.

TC: Good afternoon, this is Captain Harrell, can you hear me okay?

WIT: Yes, sir, I can.

TC: All right, are you in a place where you can testify free from distraction or interruption?

WIT: I am in a private office with the door shut.

TC: All right, will you please raise your right hand and let me know when you've done so?

WIT: I have.

LIEUTENANT KEVIN A. STANSICK, U. S. Navy, was called as a telephonic witness for the defense, was sworn, and testified as follows:

DIRECT EXAMINATION

Questions by the trial counsel:

Q. All right, thank you, you can make yourself comfortable.

Will you please state your full name?

A. Kevin Andrew Stansick.

Q. Will you spell your last name for us?

A. S-T-A-N-S-I-C-K.

Q. And are you a Lieutenant on active duty in the United States Navy?

A. That is correct.

Q. And what is your command?

A. USS THEODORE ROOSEVELT.

TC: Thank you.

Questions by the assistant defense counsel:

Q. Lieutenant Stansick, what's your billet on board the TR?

A. I am the Assistant Intelligence Officer, Division Officer in charge of the Intelligence Division.

Q. How long have you been in the Navy?

A. Twenty-three years.

Q. And do you know IS2 Lopez?

A. I do.

Q. How do you know him?

A. IS2 Lopez worked for me when I was a Division Officer at the Expeditionary Warfare Training Group Atlantic.

Q. How long ago was that?

A. I arrived at Expeditionary Warfare Training Group Atlantic in April of 2011 and I left there March of 2014.

Q. About how long did he work for you during that period?

A. I'd say about a year, maybe a few months longer than a year.

Q. During that time what were his duty assignments?

A. He worked as an Instructor and supported the production of intelligence briefs.

Q. And you said you were his Division Officer, how many people were in your Division at that time?

A. There were five of us, including myself.

Q. How well do you know Petty Officer Lopez?

A. Well, I know him enough that I worked with him 5 days a week, and I saw him a handful of times outside of work, maybe five or six.

Q. During any given week about how many hours a day would you see him?

A. Forty.



Q. Do you get a chance to observe him in the performance of his duties?

A. Yes, every day, 5 days a week.

Q. As a result of your contact with IS2 Lopez, have you observed his attitude towards the military?

A. Yes.

Q. And what has that attitude been?

A. It was very positive. I've never had any issues. When I wrote his performance evaluations----

TC: Objection, Your Honor, going into specific instances----

A. ----it was always a "Must promote" or an "Early Promote"----

MJ: Lieutenant, hang on a second please.

A. ----and never once had a problem.

MJ: Lieutenant, hang on for me a second, this is Commander Thornhill, the military judge. We have an objection here.

Captain Harrell, would you please state your objection for the record?

TC: Yes, Your Honor, the government objects, this is impermissible character evidence going into specific instances, as opposed to just his opinion.

MJ: Lieutenant Hudson, do you have any response to that?

ADC: Yes, sir, I'll rephrase.

MJ: The objection is sustained.

Lieutenant Stansick, standby, the defense counsel is going to ask you another question.

Go ahead.

**DIRECT EXAMINATION (CONT'D)**

Questions by the assistant defense counsel:

Q. Lieutenant Stansick, without going into specific instances, what has been his attitude towards the military?

A. It was positive.

Q. Have you had a chance to observe his attitude with respect to his military superiors?

A. Yes.

Q. And again without going into specific instances, what has been his interaction with military superiors----

TC: Your Honor, objection to the relevance of----

A. It was also positive.

MJ: Hang on a second, Lieutenant.

Captain Harrell, you've got another objection, go ahead and state that for the record please.

TC: Yes, sir, the government objects to the relevance of his impression of his attitude towards military superiors.

MJ: Lieutenant Hudson, have you got a response to the relevance objection?

ADC: Yes, sir, I'm simply laying the foundation for the fact that he knew him, was able to observe him in the performance of his military duties, and was able to perform--observe him and get a foundation for his observance of his military character.

MJ: The objection is overruled. The court heard the answer and will consider it.

Go ahead, Lieutenant Hudson.

**DIRECT EXAMINATION (CONT'D)**

Questions by the assistant defense counsel:

Q. Sir, I think you believe--I believe that you said yes to that previous question, but let me ask it again just to be clear, what was his attitude with regard to his military superiors?

A. It was positive.

Q. And as a result of your knowledge and your contact with Petty Officer Lopez, do you have an opinion about his military character?

A. My opinion is that I would like to have him on my staff at any other command----

TC: Objection, Your Honor, nonresponsive.

A. ----he was--he was a good part of the unit.

MJ: Lieutenant, hang on a second, we have another objection. I believe the objection is nonresponsive. The objection is sustained.

Lieutenant Hudson, I'm going to let you ask the question again.

Lieutenant Stansick, what I need you to do is answer the question that is asked please, and if there's any follow-up----

WIT: Yes, sir.

MJ: ----any follow-up questions that counsel wants to ask you, then they will do so.

**DIRECT EXAMINATION (CONT'D)**

Questions by the assistant defense counsel:

Q. Lieutenant Stansick, without getting into specifics or elaborating, what is your opinion of Petty Officer Lopez' military character?

A. He was a solid sailor with no issues.

ADC: No further questions, Your Honor.

MJ: Captain Harrell, do you have any questions for Lieutenant Stansick?

TC: No, Your Honor.

MJ: Do either counsel wish to subject Lieutenant Stansick for recall, Lieutenant Hudson?

ADC: Yes, sir.

[The witness was duly warned, excused subject to recall and the telephonic testimony concluded.]

DC: And sir, we've hung up the phone as well, sir.



MJ: Any other evidence on behalf of the defense?

DC: Sir, the defense rests.

MJ: Any rebuttal evidence that the government wishes to present?

TC: No, Your Honor.

MJ: That concludes the evidence presentation portion.

Defense, I'll give you another chance, any motions at this time?

DC: No, sir, not at this time.

MJ: We will next go into closing arguments. I will give the counsel a little time to get prepared for that.

Again, I know we've only been on the record for 20 minutes, but since our evidence taking after lunch went rather quickly, I suspect that the counsel may need just a little time to get their ducks in a row, so to speak, for closing, so we'll take a short recess before that.

Captain Harrell, how much time would you like for this recess?

TC: Sir, considering it's still relatively early in the afternoon, could I indulge the court with 45 minutes?

MJ: All right, well, 45 minutes is quite a break. The fortunate thing is that we don't have members. If we had, if this was a members' trial, we probably wouldn't be indulging in the breaks

that we are, but when it's a Judge alone trial, I encourage breaks just to make sure that everything runs smoothly. I'm happy to give you until 1400, which isn't quite 45 minutes, but if that'll suffice, we'll come back at 1400 and then we will push through with argument on behalf of both parties.

Is that acceptable to you, Captain Harrell?

TC: Yes, sir, thank you.

MJ: Lieutenant Hochmouth, do you want to be heard on that at all?

DC: Sir, we're ready whenever the court's ready, sir.

MJ: Then we will be in recess until 1400, and then at that time we'll reconvene for closing arguments. We're in recess.

[The court-martial recessed at 1314 hours, 24 June 2014.]

[END OF PAGE]

[The court-martial was called to order at 1355 hours, 24 June 2014.]

MJ: This court-martial will again come to order. All parties present when we last broke are again present in the courtroom.

When we broke, the evidence presentation portion of this court-martial had concluded and we're now ready for arguments on findings.

Captain Harrell, are you prepared to make your argument at this time?

TC: Yes, Your Honor.

MJ: I will hear from you first and, because you have the burden, you will also get a chance to make a rebuttal argument. So please proceed.

TC: Thank you, sir.

Your Honor, though relatively brief and straightforward in the presentation, the evidence that has been presented to you is compelling and it is sufficient to meet the burden of proof. The government, through the testimony that's been presented, as well as the documentary exhibits that have been presented for your consideration, proved beyond a reasonable doubt that on the 24<sup>th</sup> of November 2012 Petty Officer Lopez sexually assaulted Lance Corporal Hatcher.

Your Honor, I want to talk about the elements of the offense and the evidence that's been presented to this court for your

consideration to demonstrate how the elements of the offense have been proven beyond a reasonable doubt. First of all, Your Honor, that on or about 24 November 2012, at or near Sierra Vista, Arizona, the accused committed a sexual act upon Lance Corporal Elizabeth Hatcher, to wit: Penetration of her vulva with his penis.

What evidence has been presented--well, first of all, Your Honor, to satisfy the time and date timeframe, you heard Lance Corporal Hatcher testify about meeting Petty Officer Lopez in Sierra Vista in late November and then inviting him to the bar on the evening of the 24<sup>th</sup>. So, it was on or about that date that the sexual act occurred.

So, the evidence that's been presented for your consideration to prove beyond a reasonable doubt that there was a sexual act, you heard the testimony from Lance Corporal Hatcher herself describing her last memory at the bar, and then her next memory being waking up with Petty Officer Lopez on top of her and the way that she described it is "He was inside of me." I asked her a follow-on question, "Does that mean that his penis was inside of your vagina?" and she says, "yes." So, you have her testimony that she awoke with Petty Officer Lopez penetrating her vagina.

Your Honor, you have more than that, you have more than just her testimony, you have the forensic evidence. You heard that condoms were seized from his residence, that they were sent to USACIL



for testing and you have the results from the Forensic Biologist, Dr. Evelyn Ridgley, describing finding both Lance Corporal Hatcher's DNA and Petty Officer Lopez' DNA on both of the condoms. One of the condoms had--specifically had semen DNA from Petty Officer Lopez. So you have the report, and these facts have been stipulated by both parties. So, Your Honor, it appears that there is very little dispute, if at all, that there was a sexual act that Petty Officer Lopez committed upon Petty Officer Hatcher.

The second element being that the accused committed that sexual act when Lance Corporal Hatcher was incapable of consenting to the sexual act due to impairment by an intoxicant, and that condition was known, or reasonably should have been known, by Petty Officer Lopez. So, that's what this case comes down to, Your Honor.

Now, let's talk about the evidence that's been presented to demonstrate that. You heard extensive testimony from Lance Corporal Hatcher describing her level of intoxication, her level of impairment from the intoxicants, specifically in this case the alcohol that she drank. You heard her testify about her--you know, back in this timeframe in November of 2012 her--for lack of a better term, her drinking history, how much she--how often she would drink and, on those occasions that she drank, how much she would drink. You heard her testifying once or twice a month she would consume alcohol and have a few drinks.

Now, as related to how much she remembers drinking on this particular night, she testified that this level of intoxication was something that she's never experienced before. She remembers three drinks specifically. She remembers the two pineapple juice and Coconut Rum drinks and she also remembers a shot of Goldschlager that Petty Officer Lopez got for her. Now, those are the drinks that she remembers, Your Honor, and those were the drinks that she was able to specifically describe for you and specifically able to recall with a specific detail.

And you heard about the effect that that had upon her. First of all, we'll talk at the bar, even before she--even before her last memory at the bar, she told you about the effect that the alcohol began to have upon her as it began taking its effect--its intoxicating effect. She described feeling dizzy at the bar. And, once again, she described never experiencing that level of intoxication before, despite her drinking history, despite drinking maybe once or twice a month, as she described it. So, we have her level of impairment demonstrated at the bar itself. Now, her next memory, waking up in an unfamiliar location on her back with Petty Officer Lopez on top of her, she described how she felt at that point in time as well, and moving into the next morning, specifically when she awoke and she was by herself. She described significant and compelling effects, the aftereffects. Well, first of all, she said

that she was still fuzzy, so she was still experiencing the effects of the alcohol itself. In addition to that, she was feeling ill. She was--she described being nauseous, she described having a headache, she described being hazy.

Now, significantly, Your Honor, she also testified about the condition that she was in when she awoke. She testified about the condition of her clothing, how the dress was kind of pulled down and at the bottom it was bunched up around her waist, and what she discovered on herself, on her clothing and on the bed as well. She described the thick sticky fluid which she concluded was vomit.

So, she had--apparently was so intoxicated, so impaired so as to lose control of her bodily functions, not only vomiting, but urinating in the bed as well. You heard her testify that when she awoke the bed was wet and that she thought that was urine when she awoke, so impaired by the intoxicant to such an extreme level so that she no longer has voluntary control over her most basic of bodily functions; urinating on herself and vomiting on herself, body--her body trying to expel this intoxicant.

And the physical injuries that she noted are significant as well, the bite marks that she discovered on her breasts and the scratches on her back. Even with that physical stimuli being inflicted upon her, not even significant to arouse her from her sleep, to arouse her from her passed out state, so it's significant,



Your Honor, her physical condition the following morning. She put it in her own words that just her overall description of how she felt that morning was consistent with what she wrote in that mirror, "I'm--I'm in hell." That's the best way that she could describe it, Your Honor, just her physical, being that physically ill and her emotional state as well.

Consider the testimony that you heard from Mrs. Ruiz, the taxicab driver, specifically the mental and emotional state that Lance Corporal Hatcher was in that morning, after Lance Corporal Hatcher collected herself a little bit and left Petty Officer Lopez' apartment. You heard Ms. Ruiz testify that immediately upon seeing Lance Corporal Hatcher walking down the steps and approaching the taxicab she could tell that something was horribly wrong. And then when she got to the cab and began talking with her, she--well, first of all, that she could see the physical condition that she was in, she testified that it appeared that she had been crying.

But more compelling than her physical appearance was her emotional state. You heard that Lance Corporal Hatcher broke down in that cab, Your Honor, broke down, began crying, began clinging onto Mrs. Ruiz, asking Mrs. Ruiz for the simplest of favor, "Hey, just stay with me, stay with me." And Mrs. Ruiz was compassionate enough to ask for permission to do so, so they were able to spend a brief amount of time together.



But, Your Honor, once again, all of this evidence, it proves beyond a reasonable doubt the level of impairment that Lance Corporal Hatcher was under, such that she was unable to consent to the sexual act that Petty Officer Lopez inflicted upon her. We have her description of how she had felt--how she felt after consuming the alcoholic drinks that she remembers. We have the physical effects the next day. I glossed over what she described when she awoke for that brief period of time when he was penetrating her vagina, she testified that she couldn't move. She testified that she tried to take the most basic of physical movements with one's body, lifting up her arm, and she was unable even to do that. So, we have these descriptions, and then the aftereffects, the aftereffects of consuming the alcohol, and still feeling the effects of the alcohol that she had consumed.

"Don't worry, I used a condom." Your Honor, that might be the most compelling piece of evidence that's been presented. Why is that significant, Your Honor? Why would you need to remind somebody that you wore a condom? Why would you need to tell a coherent, competent person that you're having consensual sexual relations with that you wore a condom? You don't, Your Honor. Petty Officer Lopez, when he noticed that Lance Corporal Hatcher had come to, had regained consciousness, "Oh, don't worry, don't worry, I used a condom." Your Honor, there is absolutely no reason one would have to say that to

somebody that you're engaged in consensual sexual intercourse with. You don't have to tell a competent, coherent person that has the capability to appraise the nature of what's going on that you're wearing a condom. Had she consented, had she had the capacity to consent, she would have known that. He wouldn't have to tell her that.

Your Honor, taken together, first of all, the uncontradicted evidence that the sexual act occurred, and then her description of the events leading up to, and after, and during the sexual act as well, lead to one conclusion, that conclusion being that she was incapable of consenting to that sexual act due to impairment by that intoxicant. She was unable to appreciate the nature of what was going on. She was--in fact, she had no idea of what was going on, realizing only for the first time when she awoke for that brief fleeting moment, realizing that her vagina was being penetrated by Lance Corporal--pardon me, by Petty Officer Lopez, unable to resist, unable to even move, and then the next morning waking up in her own filth, her own filth of vomit and urine.

Your Honor, there is one conclusion, there is one reasonable conclusion from this evidence: Petty Officer Lopez sexually assaulted Lance Corporal Hatcher on the 24<sup>th</sup> of November 2012. Find him guilty, Your Honor.

MJ: Thank you, Captain Harrell.

Lieutenant Hochmouth, are you prepared to make argument at this time?

DC: Yes, sir, I am.

MJ: Please proceed.

DC: Sir, I said in the very beginning the government couldn't and wouldn't prove this case, and as I sit back and add now, sir, the government has not proven this case.

The government wants to make--have you take a lot of leaps. One of the leaps they just finished up on is that there was vomit or urine in that bed. Well, what evidence do we have of that, sir? We know that there was a sticky substance, a clear sticky substance in that bed. I asked Lance Corporal Hatcher herself, "You know, when you have sex, don't you wake up sometimes with sticky fluids on you?" "Yes."

So, we don't know if there vomit in that bed, we don't know if there was urine in that bed. We have no evidence to show us one way or the other. It could simply be that they had sex and there were sex fluids in that bed. There could have been sex fluids in her hair. What she describes goes along exactly with that, we just don't know, sir. And the reason we don't know is because she's not able to tell us anything. She's not able to tell us anything of substance. She can't even tell us what happened 2 weeks prior to this incident.



Did she have dinner with Petty Officer Lopez? Did she not have dinner with Petty Officer Lopez? Was it at Applebee's? Was it not at Applebee's? She can't tell us anything, sir. She can't tell us what the conversation was the next day with the taxicab driver. She can't tell us why she went to Medical, "I felt ill." Well, what does that mean?

And then she mentioned these injuries and she had a hard time describing them, and then she does. And she goes to Medical and she doesn't show anybody these bite marks, these scrapes. And she described these scrapes as being painful when the water hit it in the shower; that's not a scrape, that's not a cut that's going to go away, sir, in a few hours or a day, those are cuts that are going to be there.

And another interesting point about those supposed cuts that we have no evidence of, they're on her lower back. If they're having sex in the missionary position, how is he scratching her back? It's going to be extremely difficult to do. Now, sir, if she's on top during the sex, her back is much more exposed, much more feasible for injuries to occur in the lower back. But if she's on her back, or if she's on top, sir, and he's on his back having sex, well, she can't be to such a state where she doesn't know what she's doing. We have evidence that there was sex, sir, but we don't have any evidence



that it wasn't consensual sex. And the injuries, supposed injuries I should say, would point that that was a consensual act.

She can't tell us what she had for dinner that night. She doesn't remember going to 7-Eleven. The taxicab driver remembers this. The taxicab driver, "Oh, she actually bought me a pack of cigarettes and she got herself a soda," well, she doesn't remember that either. She doesn't remember what shoes she had on. She doesn't remember if she was wearing those shoes when she walked down the steps the next day.

She's in the apartment, and she even admitted that it was a small apartment, but she can't remember Petty Officer Lopez being in that apartment the next morning. "I think I kind of heard his voice. I don't know if he was talking to me or just talking. I think I heard his voice." It's a small apartment, sir, but she can't even tell us if there any interactions between when.

And the taxicab driver says some male--you know, we know a male called 'cause she was looking for a male, and then there was a male who she said told her, "Wait, she'll be down in a few." That male was Petty Officer Lopez. There was interactions between the two of them the next morning. He called a cab. Everything lines up to that. She doesn't even remember him being on the balcony telling the taxicab driver to wait. We understand, sir, blackouts do happen, but it gets a little farfetched when she can't remember what happened a

week prior. She can't remember what happened several days later. How long was this blackout for?

And then she does remember being at the bar. She remembered calling Petty Officer Lopez to come to the bar. She remembers being at the bar and then mutually buying drinks. They were both buying drinks, sir, that's what she said. Did she ever say that she left her drink? Did she ever say that she left her drink unattended? Absolutely not, there was no evidence of that at all. And then the government asked her, "Well, why did you report this?" And her exact words, sir, "I don't know why I reported it." She doesn't even know why she reported it, because she doesn't know what happened.

And if she doesn't know what happened, the government cannot prove their case because there's no other witnesses that the government has produced to say that this young lady was so drunk that she couldn't--we couldn't hear what she was saying, we couldn't understand her, she couldn't walk, there's no evidence of that. Petty Officer Lopez' apartment is on the second floor, maybe the third floor. What we do know is that there's no elevator, so she had to get into that apartment. Is the government saying that he threw her over his shoulder? He walked out the bar with her? He walked up a flight of stairs with her? There's no evidence of it. There's no

evidence that she was so far gone that she didn't know what she was doing.

As I said, sir, at the very beginning, at the end of this trial you're going to be left with a lot of questions, and we have a lot of questions still, sir. She says that she wrote on a mirror "Help me, I'm in hell." She had so many chances to get help that morning. With the taxicab driver, the taxicab driver offering, "Do you want me to take you someplace? Do you need to go someplace, Medical, the Police?" "No, no." She actually goes to Medical. Why? We don't know 'cause she didn't know, 2 days later. She doesn't say anything at that point either.

But what we do know, sir, is the next morning she goes--she wakes up, she finds the shower, she takes a shower. She then goes and puts her clothes in the dryer. If you have a dress and it's actually wet, and not only is it wet, but supposedly she took a shower with the dress on, so that dress is soaked, and she puts it in the shower--she puts it in the dryer to dry that dress. And what is she doing, sir? "Well, I'm sitting on the couch in a towel." She's just sitting there on the couch in Petty Officer Lopez' apartment in a towel as her dress dries. None of that adds up, sir, that she was sexually assaulted in any manner.

The government made a big deal out of supposedly an alleged statement that Petty Officer Lopez said of, "Don't worry, I used a



condom." We don't know what ~~contents~~ context that statement was made in, if it was even made, and there's many occasions, sir, when two people come home from the bar, they go and they have sex, it's passionate sex, clothes are coming off, or dresses are being hiked up, and maybe they don't know if they used a condom or not. It's just as likely as that conversation happened that next morning, and she was like, "Hey, last night, did you use a condom?" "Yeah, don't worry, I used a condom."

But we don't know what happened before that statement, we don't know what happened after that statement. We're still left with this hole, after hole, after hole, and the government cannot fill any of that for us.

And, sir, because of all this and because of all the unanswered questions that we have, because of her memory being nonexistent, not just during the incident, not just after the incident, but weeks prior--or, I'm sorry, a week prior, 2 days after, there is not enough evidence here to convict Petty Officer Lopez. The government cannot and will not prove this sir, and they have not proved this. And that's why, sir, there is only one answer that can be made in this trial, and that is going to be a not guilty verdict. Thank you, sir.



MJ: Thank you.

Captain Harrell, do you care to make a rebuttal argument?

TC: Yes, Your Honor, thank you.

MJ: Go ahead.

MJ: Petty Officer Lopez took advantage of Lance Corporal Hatcher's impaired state. Her impaired state continues to be taken advantage of. She remembers in explicit vivid detail about being on her back waking up in her own filth, having her vagina being penetrated in some place that she has no idea of. She remembers that with vivid detail, but she doesn't remember what she had for dinner. She doesn't remember what type of shoes that she was wearing. Your Honor, the government would respectfully request that you do not be distracted by such trivialities.

Your Honor, the fact that she may not remember what she had for dinner, that she may not remember what type of shoes that she was wearing, if she was actually wearing them when she left versus holding on to them as she walked out of his apartment, Your Honor, these are red herrings. These are distractions from the key aspects of this case, her condition. And, Your Honor, quite frankly, those little details, considering the state that she was in, considering her level of intoxication, considering the effects that it had upon her to the extent losing control of her bodily functions, it's not

unreasonable that she might not remember what she had for dinner or what types of shoes that she was wearing.

And, Your Honor, to comment on something that defense counsel mentioned, my specific question to Lance Corporal Hatcher was why she reported it when she did. She described some time later reporting what had happened to her, reported being sexually assaulted to her UVA, Staff Sergeant Finn. My specific question was why she reported it when she did. For that end--for that question, she expressed some uncertainty, not as to why she reported it. Why she reported it was absolutely clear, there was no--there's no questioning that, she had been sexually assaulted. She was reporting awaking with her vagina being penetrated.

Now, Your Honor, that begs the question, why report it at all if, as defense will have you believe, that this was just a sexual--a consensual sexual encounter? What would she have been afraid of? What would she be trying to cover up? What would she be trying to accomplish by reporting that? Who would have otherwise known? Your Honor, she reported it for one simple reason, she reported it because it happened.

We heard repeatedly from defense counsel in his closing argument, "There's been no evidence, sir, there's been no evidence of this, no evidence of that." Your Honor, you heard all the evidence that you need. You heard evidence beyond a reasonable doubt from

sworn testimony from Lance Corporal Hatcher talking about the vivid, explicit details that she remembers. Your Honor, that is evidence. That is strong evidence and that is compelling evidence. Once again, evidence of the sexual act that was inflicted upon her without her consent, evidence of the level of impairment that she was suffering from the amount of alcohol that she consumed, evidence of the condition that she was in when she was finally able to gain her senses and to take account of her surroundings. Your Honor, that is evidence, and that is evidence beyond a reasonable doubt. And Your Honor, that's the key aspect, beyond a reasonable doubt.

Defense will have you believe that the filth that she described awaking in, with how she described it as her vomit and her urine, defense will have you believe that no, that's bodily fluids, sex fluids on her hair, on her body, on her dress. The bed is soaked, as she described it, the bed's wet. Your Honor, that's not reasonable, that's not reasonable that that level of filth that she described on her body and on the bed would be the result of simple consensual sexual intercourse. No, that is the aftereffects, Your Honor, that is the aftereffects of the body--of her body succumbing to the intoxicating and impairing effects of the alcohol through vomiting, through urinating, losing control of her basic bodily functions.



Your Honor, the evidence that has been presented to you has been compelling and beyond a reasonable doubt. Once again, the government asks that you find Petty Officer Lopez guilty of sexually assaulting Lance Corporal Hatcher. Thank you.

MJ: Thank you.

All right, the court is going to close for deliberations on the findings. It's approximately 1430 right now. I have testimony to review and evidence to review, so what I'm going to do is I'm going to take this into deliberations overnight. I'm going to be prepared to announce my findings tomorrow morning. I will do that here on the record at 0830. I have the Prosecution Exhibits and the Defense Exhibit that I will be taking as part of the deliberations, and we will be in recess until tomorrow morning at 8:30.

I do want to talk to counsel real quickly in an 802. I'll meet you in the conference room in about 5 minutes.

And with that the court is in recess.

[The court-martial recessed at 1424 hours, 24 June 2014.]

[END OF PAGE]



[The court-martial was called to order at 0827 hours, 25 June 2014.]

MJ: This court-martial will come to order. All parties present when the court closed for deliberations are again present, with the exception of the court reporter. We have a new court reporter this morning.

Trial counsel, would you please clarify for the record the switch in court reporters?

TC: Yes, Your Honor, Ms. Stephanie Smith has replaced LNC Wanda Harris. Ms. Smith has previously been sworn.

MJ: Thank you. The court is ready to announce its findings.

Accused and counsel, please rise.

[The accused and defense counsel did as directed.]

MJ: Intelligence Specialist Second Class Darin G. Lopez:

Of the Charge and the sole  
Specification in this case,  
the court-martial finds you: **Guilty.**

Please have a seat.

[The accused and defense counsel did as directed.]

MJ: The court is prepared to proceed with sentencing.

Trial counsel, are you prepared to proceed with sentencing at this time or do you wish to take some time to prepare?

TC: Your Honor, if I may request a brief recess?

MJ: And, defense counsel, do you have a request beyond the court's normal break time that you need in order to prepare for sentencing?

DC: Yes, sir, we do.

MJ: How much time would you need?

DC: We ask for an hour, sir.

MJ: Trial counsel, do you have any objections to an hour recess pending sentencing?

TC: No, Your Honor.

MJ: The court will be in recess for 1 hour, we'll reconvene at 0930. At that time both parties will be allowed to present any matters on sentencing.

We're in recess.

[The court-martial recessed at 0829 hours, 25 June 2014.]

[END OF PAGE]

[The court-martial was called to order at 0938 hours, 25 June 2014.]

MJ: This court-martial will again come to order. All parties present when we last recessed are again present in the courtroom.

We're now prepared to go to the sentencing portion of this court-martial.

Are there any corrections or additions to the personal data listed on the charge sheet?

TC: No, Your Honor.

MJ: Do you agree with that, defense counsel?

DC: We do, sir. Just one thing we'd like to ask the court before we continue, we would ask for special findings pursuant to R.C.M. 4918(BRAVO), sir.

MJ: Special findings, as I recall, have to be requested prior to the announcement of general findings. Let me double-check the Rule here [Peruses MCM].

Are you following along on 4918(BRAVO) ~~(sic)~~ with me, counsel?

DC: Yes, sir.

MJ: It says "Special findings may be requested only as to matters of fact reasonably at issue as to the offense, and need to be made only as to the offense to which the accused is found guilty. Special findings may be requested at any time before general findings are announced."

So, tell me what your authority is for asking for special findings after the announcement of general findings?

DC: Sir, we'd rely upon that, and we have nothing further to add, sir.

MJ: Trial counsel, do you want to be heard on this at all?

TC: Sir, I don't believe I have anything intelligent to add.

MJ: The Rule specifically states that special findings need to be requested before the announcement of general findings. The general findings of this court have been made.

Defense counsel, I'll give you an opportunity to, not now, we're going to roll into sentencing, I'll give you an opportunity to give me some authority on your late request, so I'll reserve ruling on that, but at this point in time we're going to proceed with sentencing.

Do you understand?

DC: Yes, sir.

MJ: Do you have any additions or corrections that you feel need to be made to the personal data on the charge sheet?

DC: No, sir, we do not.

MJ: All right.

TC: Sir, with regard to the personal data on the charge sheet, this has been--been addressed in previous sessions of this court, but I'd just like to, once again, discuss Petty Officer Lopez is beyond



his EAOS. He's currently on Legal Hold, however, the documentation for the Legal Hold has been introduced as Appellate Exhibit IV.

MJ: I was aware of that. I did review the enlistment contract, which is Prosecution Exhibit 1, as part of my deliberations, saw the term in there, did also see that Appellate Exhibit I believe you said IV is the documentation showing Legal Hold. The current Legal Hold I think expires; it was initial 6-month hold from March to September, I believe, so I did note that in the Exhibits.

Trial counsel, is there any pretrial confinement credit in this case?

TC: No, Your Honor.

MJ: Do you agree with that, defense counsel?

DC: We do, sir.

MJ: Does the defense have any motions regarding any alleged unlawful pretrial restraint that they want to make at this time?

DC: No, sir, we do not.

MJ: Trial counsel, are you prepared to present a case in aggravation?

TC: Yes, Your Honor.

MJ: Just so the record's clear, the court will be considering the personal data on the charge sheet, as well as the evidence that was presented in the findings portion of this trial.

Go ahead and present any evidence you have in aggravation, trial counsel.

TC: Thank you, Your Honor, and the government offers what's been previously marked as Prosecution Exhibit 7 for ID. Prosecution Exhibit 7 for ID is a statement from Lance Corporal Elizabeth Hatcher.

MJ: Lieutenant Hochmouth, did you receive a copy of Prosecution Exhibit 7 for identification?

DC: Yes, sir, we have, and we have reviewed that documentation and we do not object to that documentation, sir.

MJ: The court then receives Prosecution Exhibit 7, the words "for identification" will be deleted.

Trial counsel, anything else?

TC: No, Your Honor, the government rests.

MJ: Petty Officer Lopez, at this time you have the right to present matters in extenuation and mitigation, that is, matters about the offense or yourself that you want the court to consider in deciding your sentence. Included in your right to present these matters are the rights you have to testify under oath, to make an unsworn statement or to remain silent.

If you testify under oath, you may be cross-examined by the prosecutor and questioned by me.

If you decide to make an unsworn statement, you may not be cross-examined by trial counsel or questioned by me. However, the prosecution does have the right to rebut any statement of fact in your unsworn statement. You can make an unsworn statement orally or in writing, personally or through your counsel, or you can use any combination of these methods.

If you decide to remain silent, that cannot be held against you in any way.

Do you understand what your rights are?

ACC: Yes, sir.

MJ: Lieutenant Hochmouth, do you have any evidence to present on sentencing?

DC: Yes, sir, we have two documentations, Defense Exhibit BRAVO and CHARLIE for identification, sir. Defense Exhibit BRAVO is IS2 Lopez' awards and Defense Exhibit CHARLIE for identification is IS2 Lopez' evals, sir.

MJ: Captain Harrell, have you received copies of Defense Exhibits BRAVO and CHARLIE for identification?

TC: Yes, Your Honor.

MJ: Do you have any objections to the court receiving either of these exhibits?

TC: No, Your Honor.

MJ: The court then receives Defense Exhibits BRAVO and CHARLIE, and the words "for identification" shall be deleted from both exhibits.

Lieutenant Hochmouth, any other evidence you want to present at this time?

DC: Yes, sir, we have several witnesses. The first two will be telephonic, sir.

MJ: Okay.

[The assistant defense counsel attempted to call the witness several times, but got no answer.]

MJ: You know, another issue is I don't have--my screen's not up here, and yesterday when we were using this, my screen was on.

Do we have a connection issue?

DC: Can you see it now, sir?

MJ: I can now.

DC: Okay.

ADC: Sir, the defense calls Lieutenant Kevin Stansick.

[The assistant defense counsel again called the witness and got him back on the line.]

WIT: INTEL, Lieutenant Stansick, how can I help you?

ADC: Good morning, Lieutenant Stansick, it's Lieutenant Hudson again, I'm calling from the court-martial for IS2 Lopez.

WIT: Yes, ma'am, good morning.



ADC: I wanted to talk briefly with you, but Captain Harrell is going to swear you in first----

MJ: Hang--hang on, this is Commander Thornhill, it's the Judge. Lieutenant Stansick, you testified yesterday, correct?

WIT: That is correct.

MJ: All right, I'm going to remind you that you're still under oath, we don't need to re-swear you, I just want to make sure that you understand that the oath you took yesterday still applies.

Do you understand that?

WIT: I understand.

MJ: All right, go ahead, counsel.

LIEUTENANT KEVIN STANSICK, U. S. Navy, was recalled as a telephonic witness for the defense, was reminded of his oath, and testified as follows:

#### DIRECT EXAMINATION

Questions by the assistant defense counsel:

Q. Lieutenant Stansick, we spoke yesterday when you were testifying for the court-martial about how long you have known IS2 and in what capacity that was, can you just remind us again how long have you known Petty Officer Lopez?

A. I originally met him almost summer of 2011. He worked for me for between a year to a year and a half, and then we had exchanged maybe three or four text messages since that time.

Q. During the time that you've known him, about how well would you say that you know him?

A. During the year to a year and a half he worked for me, we worked together 5 days a week, and I knew him very well over that period of time.

Q. What kind of person do you think Petty Officer Lopez is?

A. I thought he was pretty trustworthy. He seemed to be a sailor that I enjoyed having working for me with no issues.

Q. You spoke yesterday about his attitude, can you elaborate a little bit about Petty Officer Lopez' attitude and what you thought of that?

A. He had a positive attitude. Whenever a job needed to be done, he was always willing to do it. He always had plenty of energy and brought that into the workspace to get stuff done.

Q. What do you think about his potential in the Navy?

A. I thought he had good potential for the Navy. At the time he was unsure whether he wanted to stay in the Navy or not, and it looked like he was going to, and I thought he would have done well.

Q. Would you serve with Petty Officer Lopez again?

A. Absolutely.

[END OF PAGE]

Q. Do you have anything to add or any other thoughts on Petty Officer Lopez as we go into sentencing?

A. I'm on board a ship getting ready to go to combat operations and I would have him part of my staff today.

ADC: All right, thank you. That's all the questions I have.

WIT: Okay, thanks.

MJ: Captain Harrell, do you have any questions for Lieutenant Stansick?

TC: No, Your Honor.

MJ: Either counsel think we'll need to keep Lieutenant Stansick available for possible recall, Lieutenant Hudson?

ADC: No, sir.

MJ: Captain Harrell?

TC: No, Your Honor.

MJ: Lieutenant Stansick, that concludes your testimony here today. Thank you very much for your time, you're free to go.

WIT: Yes, sir.

[The witness was excused and the telephonic testimony concluded.]

ADC: Sir, the defense calls Lieutenant Turhan Anderson.

[The assistant defense counsel calls the witness and gets him on the line.]

WIT: ONI, Lieutenant Anderson speaking, may I help you?

ADC: Good morning, Lieutenant Anderson, it's Lieutenant Hudson calling. I'm calling from the courtroom in the court-martial of IS2 Lopez.

WIT: Yes.

MJ: Lieutenant Anderson, this is Commander Thornhill, the military judge. You testified yesterday and were put under oath, I just wanted to remind you that that oath still applies.

Do you understand that?

WIT: Yes, sir.

MJ: All right, go ahead, Lieutenant Hudson.

LIEUTENANT TURHAN ANDERSON, U. S. Navy, was recalled as a telephonic witness for the defense, was reminded of his oath, and testified as follows:

#### DIRECT EXAMINATION

Questions by the assistant defense counsel:

Q. Lieutenant Anderson, you spoke yesterday about where you first met Petty Officer Lopez, can you remind us again how many years you've known Petty Officer Lopez?

A. It's been approximately 7 to 8 years.

Q. And when you first met, that was in "A" School, correct?

A. Yes.

Q. And you were his LPO at that time?

A. Yes.



Q. About how much interaction did you have with him during "A" School?

A. Pretty much a daily interaction.

Q. What was your opinion of him at that time?

A. I thought he was pretty--he was a little more mature than the other sailors that were there, he was a little older and he's pretty squared-away.

Q. And after that point, the two of you served together on the USS BATAAN, correct?

A. Yes.

Q. Did you--when you were still at "A" School and knew that Petty Officer Lopez was going to be going to the BATAAN and that you also were going to the BATAAN, did you have any thoughts about that?

A. I--I actually was pretty happy about it and excited because I knew the type of sailor he was at "A" School and I knew it'd be a good fit for us.

Q. And why did you think that?

A. Because I knew that he--he didn't never have a problem coming to me with any issues, he was always upfront and I didn't have any problems with him at all.

Q. Okay, and when you served together on the USS BATAAN, you were his LCPO at that point?

A. Yes.

Q. How much interaction did you have with him on the BATAAN?

A. During normal underways, we were together probably 12-hour shifts, if not more, depending on what evolutions were going on. At the in port, you know, it was a daily mustering from Monday to Friday.

Q. What was your opinion of him at that time?

A. Opinion didn't change any, he was squared-away and, if he had any issues, he didn't have a problem coming to me and we'd figure them out before they became a problem.

Q. Was he a good worker?

A. Very good.

Q. What about his trustworthiness?

A. He was very trustworthy. Like I said, if--if he had any issues when he was doing some work, and he would be the first one to bring it forth to me and say, "Hey, this is what's going on, this is what we need to do."

Q. What kind of person do you think Petty Officer Lopez is?

A. I--I think he's a good person. I think he's a very good person.

Q. Would you serve with him again?

A. Yes.

[END OF PAGE]

Q. Do you have anything to add, as we go forward to sentencing, about, you know, any interactions that you've had with Petty Officer Lopez or any details about those interactions?

A. Other than, you know, throughout the years we still maintained contact as a--as his mentor, and any time he had questions about what he could--wanted to do in the Navy, he would call me and we would sit down and we'd talk about it. So, he was always looking forward to try to--to see what it is he can do to help his career.

Q. What do you think his potential is in the Navy?

A. I think he has great potential. I think he--he could have been getting commissioned somewhere.

ADC: All right, that's all the questions I have.

MJ: Captain Harrell, do you have any questions for Lieutenant Anderson?

TC: No, Your Honor.

MJ: Either counsel think we need to keep Lieutenant Anson-- Anderson subject to recall, Lieutenant Hudson?

ADC: No. No, sir.

MJ: Captain Harrell?

TC: No, Your Honor.

[The witness was excused and the telephonic testimony concluded.]

DC: Sir, at this time the defense calls Mr. Lopez to the stand, sir.

[The witness approached the stand from the gallery.]

TC: Please raise your right hand for me.

[The witness did as directed.]

**EDWARD LOPEZ, Civilian, was called as a witness for the defense, was sworn, and testified as follows:**

**DIRECT EXAMINATION**

Questions by the trial counsel:

Q. Please state your full name, sir.

A. Edward Lopez.

TC: Thank you.

Questions by the defense counsel:

Q. Mr. Lopez, you're IS2's father?

A. Yes, sir.

Q. I want you to talk just a little bit about your son. What can you tell us about him, how was he as a child?

A. He was a perfect child, he really was. I'd like y'all to know Darin's worked since he was about 10 years old. He's made enough money to maintain his own school clothes for school. Darin's a real religious guy. Even when he was in junior high school, his teachers would personally call me and say, "Mr. Lopez, be at the school today, we want you to see Darin get awards." He wouldn't get one or two awards, he would get hands full of awards.



And then when he got into high school, I don't think he--I don't he ever missed a day of school from junior high into high school. Maybe six--let's see, no, I don't think he missed any, and he excelled at everything he's ever done, basketball, sports, tennis. I'd just like to say that--that my son actually--when he turned 12, actually became a hero. He--he achieved more in a short period of time than I probably did in 10 years.

Q. And you have--you have two sons, correct?

A. That's right.

Q. And both of them have joined the military?

A. I groomed both of them to be military.

Q. Why was that?

A. My father served 40--I mean 20--21 years, I think, in the service, and I have an older brother, he--he was, I think, a First Sergeant of a five-man Recon Team, military kind of goes along with the family.

Q. Now, after this is all over and Darin gets to come back home, are you going to let him come back home to you?

A. Sure.

[END OF PAGE]

Q. Are you and your wife going to take care of him?

A. Sure. Darin has always looked after us, and we looked after Darin.

Q. So, he has--he's going to have a strong support network after this?

A. Yes, sir.

Q. And you and your wife have both come in from Texas?

A. Yes, sir.

Q. And is that where Darin's going to go back?

A. Darin will go back to Texas.

Q. You think your son can rebound from this?

A. I think this just ruined his career. I think that--I think with the stroke of a pen his life's pretty much over with.

Q. Well his naval career is over, but he can rebound from this moving forward, correct?

A. I don't know. I honestly can say I don't know.

Q. You know your son's work ethic though, correct?

A. I do, sir.

Q. And that's a strong work ethic?

A. Yes, sir.

Q. And he's going to have the love and support of you and your wife?

A. He will, always.

Q. And you two will always be there for him?

A. That's right, we will.

DC: Thank you, sir. No further questions.

MJ: Captain Harrell, do you have any questions?

TC: No, Your Honor.

[The witness was excused and took a seat in the gallery.]

MJ: Sir, we call Ms. Lopez to the stand.

[The witness approached the stand from the gallery.]

TC: Will you please raise your right hand?

[The witness did as directed.]

**CHARLENE LOPEZ, Civilian, was called as a witness for the defense,  
was sworn, and testified as follows:**

**DIRECT EXAMINATION**

Questions by the trial counsel:

Q. Can you please state your full name?

A. Charlene Lopez.

Q. Please spell your first name for us.

A. C-H-A-R-L-E-N-E.

TC: Thank you.

Questions by the defense counsel:

Q. Mrs. Lopez, what can you tell us about your son, Darin?

A. He's a very loving kid, he's always been. All his life all he's done was make friends. He can make friends anywhere. He was

very good in school. He made good grades. He was in sports, he played football, basketball. Everywhere he went, he did well at what he tried to do.

Q. What kind of role model has he been for your--for his brother?

A. Well, I guess Darin is one of the reasons my youngest one joined the Navy, is because he wanted to follow in his brother's footsteps. Darin has always been his mentor, hero, whatever you want to call it.

Q. And when Darin comes back to you, you're going to welcome him home?

A. Oh, definitely [Crying].

Q. And you're going to help him rebound from this?

A. Definitely.

Q. With his work ethic and everything, do you think this is something that he can put behind him and continue to grow?

A. We're going to do our best to help him do it.

Q. What else can you tell us about him, what kind of son was he?

A. Very family oriented, he loved being around family. He loves just [Crying], I'm sorry.

[END OF PAGE]



Q. It's okay, ma'am, there's tissues right in front of you.

A. He's very outgoing. He likes to exceed at everything that he does. He never just stops at one thing, he always tries to do better, like he--he just keeps going, that's all he's ever done.

DC: Thank you, ma'am.

MJ: Captain Harrell, do you have any questions for this witness?

TC: No, Your Honor.

[The witness was excused took a seat in the gallery.]

DC: Sir, IS2 Lopez will make an unsworn statement.

MJ: Petty Officer Lopez, you can begin when you're ready.

ACC: [Stood] Sir, I would just like to apologize for putting everybody through this. That's all.

MJ: Thank you, go ahead and have a seat.

[The accused did as directed.]

DC: And, sir, the defense doesn't have anything else to add, sir.

MJ: Trial counsel, do you have any evidence in rebuttal that you want to present?

TC: No, Your Honor.

MJ: If there's nothing else from either party, the court's going to close for deliberations.

Anything on behalf of the government?

TC: Your Honor, the government would respectfully----

MJ: Oh.

TC: ----like to offer sentencing argument.

MJ: Yeah, I apologize for that. Let's go ahead and go with your arguments.

Go ahead, Captain Harrell, I'll let you go first, and then we'll hear from Lieutenant Hochmouth.

TC: Thank you, sir.

Your Honor, the government respectfully recommends a sentence of 5 years confinement and a dishonorable discharge. Your Honor, the heavy weight of Petty Officer Lopez on top of Lance Corporal Hatcher during that brief moment of consciousness almost pales in comparison to the crushing weight that Lance Corporal Hatcher has borne since then, the crushing weight of reliving that experience, the crushing weight of the confusion, the crushing weight of the mistrust that she's experienced since then, reliving the fear, reliving the hell that she's described it as when she testified yesterday, constantly on guard, constantly on edge, now viewing others through a distorted lens of skepticism and mistrust, particularly those in the Navy.

Your Honor, Lance Corporal Hatcher has submitted a statement for your consideration, and she describes the great effect that this experience has had upon her. She's a different person.

Suffering through an experience like this changes somebody in countless ways. One of the most significant ways that she describes is her outlook on the Navy, her level of trust or should I say mistrust that she places with those in the Navy. Even the sight of a naval uniform is enough to repulse her and likely that trust will never be regained.

Your Honor, sexual assault is a serious offense, and the sentence imposed should reflect the seriousness of it. Now, Your Honor, you've seen evidence presented by the defense of the good performance of Petty Officer Lopez during his time in the Navy. You've heard testimony from witnesses speak highly of him, would serve with him again, Your Honor. But how one acts and performs is significant in the Navy, Your Honor, but how one acts, how one behaves off duty is just as important, if not more important than how they perform and act on duty. How one upholds themselves, the values that they uphold and portray, the way that they treat others, Your Honor, that's just as significant, if not more in the Navy.

The military is unique in the level of trust that is required amongst its members. Those in the military work closely together. Good order and discipline is absolutely crucial, is absolutely essential for the well functioning of the military. That doesn't just go with service members within the same branch, within-- all within the Navy, all within the Marine Corps, et cetera. Trust



is just as important between branches. The Navy and Marine Corps work quite extensively together.

Petty Officer Lopez has not only victimized Lance Corporal Hatcher, not only put her through that devastating experience, which she's relived and has testified in graphic detail about, but he's discredited the name of the Navy as well before Lance Corporal Hatcher's eyes and likely before many others. Once again, to such extent that the very gazing upon a naval uniform is enough to have her relive those actions that were inflicted upon her and has caused her to not want to associate with any other members of the Navy. Your Honor, that trust will likely never be regained. The high esteem of the Navy will likely never be restored.

Your Honor, Petty Officer Lopez took advantage of Lance Corporal Hatcher during a moment of impairment, during a weak point when trust is most crucial. That is the point when he took advantage of her. Your Honor, Petty Officer Lopez must be punished for what he's done, for the crime that he's committed upon Lance Corporal Hatcher. A strong message needs to be sent. A strong message needs to be sent to others that are aware of his crime or may become aware of it. Five years confinement reflects the seriousness. It reflects an appropriate punishment, an appropriate consequence for the level of pain and suffering that he's inflicted upon Lance Corporal Hatcher.



Furthermore, Your Honor, he's, through his actions, demonstrated that he should no longer continue to serve in the United States Navy. His actions in sexually assaulting Lance Corporal Hatcher has demonstrated that he's not upheld the values, the core values that the Navy expects of each and every one of its service members. He has not served honorably. He no longer deserves to hold the value, to hold the prideful name of a United States Sailor. He should be discharged, dishonorably so. Your Honor, the government respectfully recommends a sentence of 5 years confinement and a dishonorable discharge. Thank you.

MJ: Thank you.

Lieutenant Hochmouth, I'll hear from you as to your recommendations.

DC: Yes, sir, thank you.

Sir, the defense requests that you not give a dishonorable discharge in this case and we ask for confinement around 5 months, sir. We do not believe that Petty Office Lopez is a threat to others. We don't think he's a predator. We don't think he was going out looking to pry upon others. This is a situation where he went out to the bar with a young lady, they were both drinking, they went back to his place and he went too far. This is an isolated incident, sir. As you've seen from his record, he has no disciplinary issues at all in his naval career. He has had no issues outside of the Navy

before he joined or while he joined. This is a strictly isolated case where he made a mistake and he pushed things and went too far on one occasion, sir.

You have heard from the witnesses about what kind of sailor he was. You've heard from his parents on what his work ethic was. IS2 Lopez is going to have a tall hill to overcome, not just with a conviction, but also with the sex offender registration. This is something that will stick with him for the rest of his life, but he does have the love and support of his family----

TC: Your Honor, Your Honor, I'm going to object to any consideration of collateral consequences, such as sex offender registration.

MJ: Response to the objection, counsel?

DC: Sir, it's a well known collateral consequence. We have not gotten into any details or specifics, but I think this court specifically knows that anyone convicted of this crime will have to register as a sex offender.

MJ: The objection is overruled, you can continue to argue. Go ahead.

DC: Thank you, sir. As I was saying, sir, IS2 Lopez does have the love and support of a family. He does have that strong work ethic that he has shown throughout his childhood and throughout his time in the Navy. Though this is going to be a tall uphill battle

for him to overcome, this is something that we believe he will overcome, and he will become a productive member of society moving forward.

The two Lieutenants that you heard from, sir, on the phone, both of them are still willing to work with him. They knew what he'd been found guilty of. They know what he's going through and they have not given up on him. His parents have not given up on him either. This is not a situation where we take this young man and we throw him into the brig for 5 years; that is not going to serve the purpose that this individual needs, and that's what we focused on with sentencing, sir. We have an obligation in the military not just to punish those who have committed a crime, or those who have done wrong, or those who have made mistakes, but we have to look to see how can we build them back up and, by placing him in the brig, sir, for 5 years, that's not going to do that.

This is a young man who needs to pay for pushing things too far. This is a young man who may need a little shock therapy. He can get that for a few months in the brig, sir, but this is not something where he needs to spend extensive time. This is not a situation where he needs to spend five Christmases away from his parents, to miss five Father's Days or five Mother's Days. This is a situation where he can rebound, and we do--we believe he will



rebound. You have his evals, sir, we ask that you read through them. You have his awards, we ask that you read them as well.

Based on all of this, sir, we ask for no dishonorable discharge and confinement for no more than 5 months.

MJ: Thank you.

Court will close for deliberations. I have new evidence here that I need to read and consider. I can't tell you how long deliberations is going to be, but I'll tell you it'll at least be 45 minutes. So, we're going to be in recess until at least 1115. If at that point in time it turns out I need longer to review the items and deliberate, I will let counsel know, but for now we'll be in recess until 1115.

TC: Your Honor, may I be heard briefly on a matter?

MJ: Yes.

TC: Just going back to the government's objection to the reference to the sex offender registration, in U. S. v. Talkington, the Court of Appeals for the Armed Forces recently in April of this year ruled that sex offender registration is, in fact, a collateral consequence not appropriate for consideration during sentencing.

MJ: And I'm aware of that, and I do know that it's a collateral consequence, and I will take into account what is relevant and what's not in sentencing. The risk here of a mention of that in a Judge alone sentencing is obviously less, but I do know the case and I



understand the relevance of that particular item. But under the circumstances, I didn't feel that I needed to address that any more than I did, but I do appreciate you putting that on the record.

Anything else you want to say on that?

TC: No, Your Honor, thank you.

MJ: Lieutenant Hochmouth, you want to be heard on that anymore, anything else before we recess----

DC: No, sir. No, Your Honor.

MJ: The court stands in recess.

[The court-martial closed at 1022 hours, 25 June 2014.]

[END OF PAGE]

[The court-martial opened at 1133 hours, 25 June 2014.]

MJ: This court-martial will again come to order. All parties present when we broke for the court's deliberations are again present in the courtroom.

The court has come to a sentence. I'm going to ask the accused and counsel to please rise.

[The accused and defense counsel did as directed.]

MJ: Intelligence Specialist Second Class Darin G. Lopez, this court sentences you as follows:

**To be confined for a period of 3 years; and  
To be discharged from the naval service  
with a bad conduct discharge.**

Please be seated.

[The accused and defense counsel did as directed.]

MJ: Lieutenant Hochmouth, do you have a appellate rights statement that's been prepared?

DC: Yes, sir, it has been and it has been handed into the court reporter as the next Appellate Exhibit, sir.

[The court reporter hands the document to the military judge.]

MJ: I have an appellate and post-trial rights statement that's been marked as Appellate Exhibit XIX. I'm looking at page 4 of this document.

Petty Office Lopez, is this your signature that appears on the left-hand side of the document next to Lieutenant Hochmouth?

ACC: Yes, sir.

MJ: And then again on page 5, is that your signature that's on the line above your typewritten name next to Lieutenant Hochmouth's?

ACC: Yes, sir.

MJ: Now, prior to signing this document, did you read it over carefully and discuss its contents with your counsel?

ACC: Yes, sir.

MJ: Do you understand all of your appellate rights contained in this document?

ACC: Yes, sir.

MJ: I see that you've requested that both a copy of your record of trial and copy of the Staff Judge Advocate Recommendation be delivered to your counsel.

Is that correct?

ACC: Yes, sir.

MJ: Appellate Exhibit XIX will be attached to the record.

Anything else the counsel believes that we need to address on the record before we adjourn, Captain Harrell?

TC: No, Your Honor.

MJ: Lieutenant Hochmouth?

DC: Yes, sir, one item. Once again, sir, we understand R.C.M. 19--or 918 in regards to specific findings, sir. We understand that the Rule says counsel should do--or should request that before

general findings. It's not a--it's not an absolute. The military judge has discretion to grant this--or to grant this request. We still request that the military judge does provide specific findings, either orally or in writing, for the findings in this case, sir.

In addition to that, there's been precedent in this Circuit where defense counsel has asked for specific findings after the findings have come back and that has been granted, and we ask that this court--or this Judge follow the precedent that's been set previously in this Circuit, sir.

MJ: I understand what you're saying. Again, the Rule is clear that it says that special findings may be requested. They don't have to be requested, but may be requested at any time before general findings are announced. I read that as a requirement that the request has to be made before general findings are announced.

Having said that, and I'm not--certainly not bound by what other Judges do, but under the circumstances, even though it's a late request, I will grant your request to enter special findings. I will be doing that in writing, and I will provide counsel with a copy of that when I've completed that. The Rule states that the special findings just need to be completed before the record is authenticated. I'm going to endeavor to get those done here as quickly as possible, and my special findings will be again in writing and will be appended to the record, but I will give counsel a copy.



And I do understand the request and, notwithstanding the Rule, I will enter special findings, despite what I consider as a late request under the Rule.

Lieutenant Hochmouth, anything else you want to say on that?

DC: No, sir. Thank you, sir, we understand the court's ruling.

MJ: Captain Harrell, anything you want to say on that issue?

TC: No, thank you, Your Honor.

MJ: This court-martial is adjourned.

[The court-martial adjourned at 1139 hours, 25 June 2014.]

[END OF PAGE]

**AUTHENTICATION OF RECORD OF TRIAL**

In the case of


Intelligence Specialist Second Class Darin G. Lopez,

U. S. Navy

Navy Expeditionary Intelligence Command, Virginia Beach, Virginia

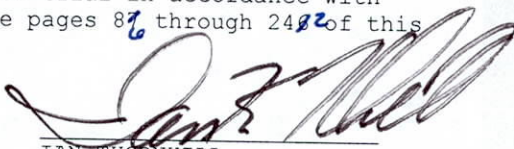
This Record of Trial was received by the Central Judicial Circuit on 8/22/14 and authenticated on 8/22/14. The following issues were encountered in the processing time of this record: NONE

I have reviewed the foregoing record of trial in accordance with R.C.M. 1104(a) and hereby authenticate pages 1 through 85 of this record.

  
MICHAEL J. LUKEN  
CDR, JAGC, USN  
MILITARY JUDGE

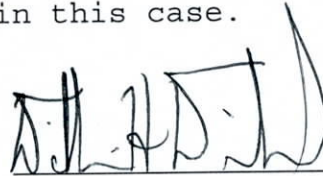
22 AUG 2014

I have reviewed the foregoing record of trial in accordance with R.C.M. 1104(a) and hereby authenticate pages 86 through 2482 of this record.

  
IAN THORNHILL  
CDR, JAGC, USNR  
MILITARY JUDGE

9 Aug 2014

I have caused an electronic copy of the foregoing record to be transmitted to Lieutenant Paul T. Hochmouth, JAGC, USN, and I have examined the foregoing record of trial in this case.



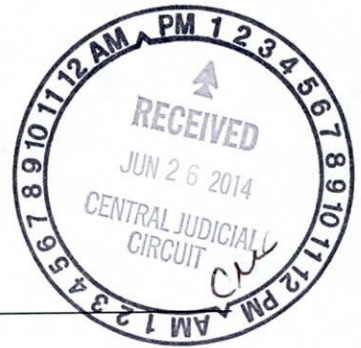
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TRIAL COUNSEL

RR AUGUST

2014

DEPARTMENT OF THE NAVY  
CENTRAL JUDICIAL CIRCUIT  
NAVY-MARINE CORPS TRIAL JUDICIARY  
GENERAL COURT-MARTIAL



UNITED STATES

v.

DARIN G. LOPEZ  
IS2/E-5

USN

SPECIAL FINDINGS

28 JUNE 2014

1. Introduction.

a. Trial by Military Judge alone in this case was conducted 25-26 June 2014, on board Naval Station Norfolk, Virginia. After the return of a general verdict of guilty on the Charge and Sole Specification of Sexual Assault, Accused, through counsel, requested the Court make special findings pursuant to R.C.M. 918(b).

b. Although noting the request is untimely,<sup>1</sup> the Court, in its discretion, now enters special findings as a supplement to its general verdict of guilty. In reaching both its general finding and the special findings contained herein, the Court applied its own reason and common sense; considered the applicable law, the credible testimony presented at trial, the documentary evidence received in the form of Prosecution Exhibits 1-6 and Defense Exhibit A; and has drawn all reasonable inferences from the evidence. Additionally, from its observations of the testimony and demeanor of LCpl E.H. and Ms. Tamara Ruiz, the Court notes it found the testimony of these two witnesses to be highly credible.

2. Applicable Law.

a. Accused was charged with sexually assaulting then PFC E.H. (hereafter LCpl E.H.) on or about 24 November 2012, at or near Sierra Vista, Arizona, in violation of Article 120(b)(3)(A), Uniform Code of Military Justice, 10 U.S.C. § 920(b)(3)(A).

b. To establish guilt, the United States had the burden to prove Accused committed each of the following elements of the charged offense beyond a reasonable doubt:

<sup>1</sup> R.C.M. 918(b) reads, in pertinent part: "Special findings may be requested at any time before general findings are announced." (emphasis added).



(1) On or about 24 November 2012, at or near Sierra Vista, Arizona, Accused committed a sexual act upon LCpl E.H., that is, the penetration of her vulva with his penis; and

(2) Accused did so when LCpl E.H. was incapable of consenting to the sexual act due to impairment by an intoxicant, and that condition was known or reasonably should have been known by Accused.

c. The following definitions<sup>2</sup> apply to the alleged offense:

(1) "Sexual act" means the penetration, however slight, of the vulva by the penis.

(2) The "vulva" is the external genital organs of the female, including the entrance of the vagina and the labia majora and labia minora. "Labia" is the Latin and medically correct term for "lips."

(3) "Consent" means a freely given agreement to the conduct at issue to the conduct at issue by a competent person. An expression of lack of consent through words or conduct means there is no consent. Lack of consent may be inferred based on the circumstances of the offense. All the surrounding circumstances are to be considered in determining whether a person gave consent.

3. Special Findings.

a. In November 2012, LCpl E.H., United States Marine Corps, was in a duty status at Ft. Huachuca near Sierra Vista, Arizona.

b. In November 2012, Accused was in a duty status in Sierra Vista, Arizona.

c. Sometime before 24 November 2012, LCpl E.H. was outside a shopping mall in Sierra Vista waiting for a taxi. Accused approached LCpl E.H. and offered her a ride. She accepted. LCpl E.H. did not know Accused prior to this time. Accused gave LCpl E.H. a ride to the barracks at Ft. Huachuca, they exchanged telephone numbers, and communicated thereafter. At some point, Accused and LCpl E.H. also went out for dinner together.

d. On Saturday, 24 November 2012, LCpl E.H. had plans to meet up with fellow Marines for a birthday party at the Peacock Lounge in Sierra Vista. LCpl E.H. arrived at the Peacock Lounge later in the evening but did not meet up with her friends because they were not there. LCpl E.H. called Accused and invited him to join her. Accused did so.

e. While together at the Peacock Lounge, both LCpl E.H. and Accused consumed alcohol. LCpl E.H. remembers having two mixed drinks containing coconut rum and pineapple juice and one shot of goldschlager. LCpl E.H. had eaten earlier in the evening and had not had

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<sup>2</sup> See Article 120(g), Uniform Code of Military Justice, 10 U.S.C. § 920(g).

any other alcohol prior to arriving at the Peacock Lounge. It is unclear how much alcohol Accused consumed. LCpl E.H. and Accused mutually ordered their drinks together directly from the bar. LCpl E.H. remembers going to the restroom on one occasion and then returning to the bar where she continued to drink.

f. 24 November 2012 was not the first time LCpl E.H. had consumed alcohol. During the time frame leading up to this incident, LCpl E.H. would drink alcohol once or twice per week, having "a few" mixed drinks on those occasions. LCpl E.H. has been intoxicated on alcohol in the past.

g. After drinking alcohol at the Peacock Lounge on 24 November 2012, LCpl E.H. began to feel dizzy and experienced a level of intoxication more intense than she had upon drinking in the past. Her last memory of the Peacock Lounge was "just standing there." LCpl E.H. does not remember leaving the bar or going to any other location.

h. At some point in the evening LCpl E.H. and Accused left the Peacock Lounge. They ultimately ended up together at Accused's apartment in Sierra Vista. Accused lived in an upstairs apartment which was accessed by stairs.

i. LCpl E.H.'s next memory is of waking up with Accused on top of her. She was unable to move and unable to say anything. Accused's penis was inside her vagina. Accused said to LCpl E.H.: "don't worry, I used a condom." LCpl E.H. again passed out.

j. Sometime thereafter, LCpl E.H. again woke up. She was alone in bed in the same place she remembers Accused being on top of her. LCpl E.H. was sick to her head and her stomach. Her head hurt and was spinning. She was laying in her own vomit and urine. She was still wearing the black dress she had on the night before. One sleeve was pulled down and the bottom of her dress was bunched up around her waist.

k. LCpl E.H. got out of bed, found a shower, and climbed in with her dress still on. While in the shower, she discovered a bite mark on her breast and scratch marks on her lower back. These marks were not there prior to meeting Accused at the Peacock Lounge. LCpl E.H. did not know when or how she got these marks. At some point LCpl E.H. wrote "I'm in hell, help me" on the steamed up mirror in the bathroom. After showering, LCpl E.H. wrapped herself in a towel and put her dress in a clothes dryer. She did not wait for the dress to completely dry, put the dress on, and left the apartment. It was daylight the next day.

l. There was a taxi cab waiting outside and it was driven by Tamara Ruiz. LCpl E.H. does not know who called the cab and does not remember any interaction with Accused that morning. She does remember hearing and recognizing Accused's voice in the apartment prior to leaving. LCpl E.H. did not know Ms. Ruiz.

m. Ms. Ruiz had been dispatched to Accused's apartment complex to pick up a male. She did not see anyone waiting for a taxi when she first arrived, but after confirming the call



with her dispatch and driving around the complex, she spotted a male waiving her down from the second floor of the complex. LCpl E.H. come down and got in Ms. Ruiz' cab.

n. From her initial observations of LCpl E.H.'s demeanor, Ms. Ruiz immediately concluded something was wrong with LCpl E.H. LCpl E.H. appeared confused, desperate, and looked as though she had been crying. Based upon these observations and her interactions with LCpl E.H., Ms. Ruiz asked LCpl E.H. if she wanted to be taken to the police or to a hospital. LCpl E.H. declined both offers. Ms. Ruiz spent significant time with LCpl E.H. during this time period, including stopping at a convenience store where LCpl E.H. bought a soda for herself and cigarettes for Ms. Ruiz. At some point during their interaction, LCpl E.H. grabbed and hugged Ms. Ruiz. Ms. Ruiz eventually dropped LCpl E.H. off at Ft. Huachuca.

o. LCpl E.H. ultimately reported this matter to the authorities and Army CID began an investigation. As part of their investigation, Army CID Special Agent Chad Hallett was able to locate Accused's apartment and conduct a search. This search took place on 12 December 2012. During the search, law enforcement seized a trash bag from the deck just outside Accused's apartment. Two used condoms were found in this trash bag and submitted to USACIL for forensic testing. Both condoms contained DNA on one side, the profile of which matched that of Accused. The other side of both condoms contained DNA, the profile of which matched LCpl E.H. One of the condoms contained semen, the profile of which matched Accused. Accused stipulated the DNA found on these condoms were a match for both himself and LCpl E.H.

p. From the credible evidence presented at trial, and the facts set forth above, the Court finds beyond a reasonable doubt that on or about 24 November 2012, at or near Sierra Vista, Arizona, Accused committed a sexual act upon LCpl E.H., that is, the penetration of her vagina with his penis when LCpl E.H. was incapable of consenting to the sexual act due to her impairment by an intoxicant, a condition that was known or reasonably should have been known to Accused.

(1) In finding a sexual act had taken place, the Court relies upon the credible testimony of LCpl E.H. where she said Accused's penis was in her vagina, coupled with the corroborating physical and forensic evidence found during a search of Accused's apartment, that is, the two condoms and the DNA contained on those condoms matching both Accused and LCpl E.H.

(2) In finding LCpl E.H. was incapable of consenting to the sexual act due to her impairment by an intoxicant and that this condition was known or reasonably should have been known to Accused, the Court relies upon the credible testimony of LCpl E.H. and Ms. Ruiz supporting the facts outlined above. Critically significant here is the statement made by Accused to LCpl E.H. when she became conscious and discovered Accused on top of her with his penis inside her vagina. The statement "don't worry, I used a condom," not only corroborates the finding a sexual act took place, but is also key in establishing the following pivotal facts:

(A) LCpl E.H. was not aware the sexual act was taking place when it began because she was unconscious due to her state of intoxication. Therefore, she was unable to consent to the act; and

(B) By attempting to 'comfort' her anticipated fears upon discovering he was performing sexual intercourse on her, Accused's statement, including the word "used" in the past tense, illustrates Accused was aware LCpl E.H. was not able to consent, and in fact did not consent, to the sexual act from its outset.

4. Conclusion.

**THEREFORE**, pursuant to R.C.M. 918(b), **THE COURT** hereby enters these Special Findings.



I.K. THORNHILL  
CDR, JAGC, USN  
Military Judge