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WASHINGTON STATE
SUPREME COURT

COA No. 33171-7-III

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**COURT OF APPEALS
STATE OF WASHINGTON
(Div. III)**

FILED

APR 06 2017

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

STATE OF WASHINGTON,

Appellee-Respondent,

v.

MAHADI H. ALJAFFAR

Appellant-Petitioner,

SUPERIOR COURT No. 15-2-508604
Spokane County

PETITION FOR REVIEW

Jeffry K. Finer
Law Offices of JEFFRY K FINER, P.S.
35 West Main • Suite 300
Spokane, WA • 99201
(509) 464-7611
Attorney for Appellant

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A. IDENTITY OF PETITIONER

Petitioner Mahadi Aljaffar, the appellant below, is currently serving his sentence in Washington State.

B. COURT OF APPEALS DECISION

Mr. Aljaffar seeks review of Division Three's published decision in *State v. Aljaffar*, slip opinion attached as Appendix A. This timely petition followed.

C. ISSUES PRESENTED FOR REVIEW

- a. Where a non-English speaking defendant is deprived of a certified translator's services at his criminal trial, in violation of statute as well as the Sixth and Fourteenth Amendments, is it adequate to review the translation only of the defendant's testimony without considering the prejudice during the entire trial, including defendant's confrontation right and right to be present?
- b. Does RCW 2.43.030 protect constitutional rights, for which a violation requires the more generous "harmlessness" review?

D. STATEMENT OF THE CASE & PROCEEDINGS

a. Proceedings

On May 31, 2014, the defendant was charged with one count of

voyeurism, two counts of indecent liberties by forcible compulsion, and two counts of unlawful imprisonment all arising from an incident occurring in a Spokane bar. CP 20-22.

The state sought to have a certified translator appear at trial to assist the defendant as his native language is Arabic and he had only a rudimentary command of English. RP 4, 5-6. A court-appointed interpreter appeared who was not certified to translate for court proceedings. RP 8-11. The defense objected to the use of a non-certified interpreter. RP 6:25. The court accepted the services of the uncertified translator. RP 13.

On December 4, 2014, the defendant was convicted of one count of indecent liberties, the unlawful imprisonment count; the jury hung on the voyeurism count and one of the indecent liberty counts. CP 116-17, 120. The defendant received a standard range sentence.

The defendant appealed, case No. 33171-7-III. He raised two issues: his right to confrontation and to be present at trial. The assignment of error included a constitutional dimension as follows:

II. Assignment of Error

Mr. Aljaffar was denied his 6th amendment right to face his accuser and to be present at his own trial when the trial court, over his objection, permitted a non-certified Arabic interpreter to interpret the proceedings in violation of RCW 2.43.030.

Opening Brief, page iii. Following the reference hearing, the Defendant filed a supplemental brief to the Court of Appeals and assigned error to the trial court's reference hearing procedures.

II. Assignment of Error [Supplemental Brief]

As a reference hearing on the above cause as ordered by Division III, Court of Appeals, the trial court considered only a small partial translation of the trial proceedings (a transcript prepared from a recording of only the trial testimony of Mr. Aljaffar) and made its conclusions only from the translated trial testimony of the appellant. There was no analysis of the quality of the translation of the remainder of the 6-trial witnesses, including the testimony of the accusers. From this reference hearing, no rational conclusions can be made from the record provided as to whether adequate translation/ interpretation as guaranteed by RCW 2.43.030 was provided.

Supplemental Brief at 1. In addition, the argument portion of the Supplemental Brief cites to 6th amendment standards.

See Brief at 3.

On October 11, 2016, the Court of Appeals ordered a reference hearing to determine the extent of prejudice, and ordered that an audio recording of the defendant's own testimony be provided to a certified interpreter. Decision at 6.

A reference hearing was held on December 8, 2016. The trial court deemed the translation flawed but not prejudicial. Decision at

8. The matter was returned to the Court of Appeals which entered its decision on March 7, 2017, holding that the defendant preserved his objection to a non-certified interpreter, and under the abuse of discretion standard held that the trial court's weight of the evidence sustained the conviction over the identified translation errors. The appellate court held that the defendant never raised a constitutional issue to the non-certified translator and that the constitutional claims were not preserved. Accordingly, the appellate court adopted the standards under RAP 2.5(a)(3) (manifest constitutional error). The appellate court determined that there was not good cause to use a non-certified interpreter, Decision at 13, but that this error was of statutory not constitutional magnitude. Decision at 13. The court of appeals rejected the "harmless error beyond a reasonable doubt" standard in favor of the lesser standard measuring whether, "had the error not occurred, the outcome of the trial would have been materially affected."

Only Mr. Aljaffar's testimony was reviewed. Decision at 14-15.

The appellate court concluded that under the standard of RAP 2.5(a)(3) the defendant failed to show prejudice.

This timely Petition followed.

b. Facts.

On May 31, 2014, a go-go dancer at Irv's Bar, in Spokane County, observed the defendant in the women's bathroom. The dancer described to police the defendant's alleged sexual remarks and that he blocked her exit. The dancer reported that the defendant grabbed her, spoke in English, and rubbed his clothed erect penis against her groin. RP 93, 95-96, 98-99, 100. Another female encountered the defendant in the women's bathroom, RP 75, and she reported that he forced his way into her bathroom stall and groped her. RP 76.

The defendant, a Saudi national on a student visa, was charged with multiple counts of indecent liberties with forcible compulsion, voyeurism, and unlawful imprisonment. Pretrial, the State advised the court that a non-certified interpreter was present. RP 4. For logistical reasons, the Spokane County court administrator was "reluctant" to hire the Seattle-based certified Arabic interpreter for trial. The court proposed keeping the same non-certified interpreter that was present during the pretrial hearing. The defense objected based on the interpreter's lack of certification under RCW 2.43.030(1). RP 6.

In the court's colloquy the judge indicated that he found that the interpreter was "sufficiently qualified," being willing and having interpreted in a legal setting in the past. RP 14. No good cause findings were made.

Review of the defendant's testimony shows that, under the court's direct supervision, the translator persisted in using the third person when referring to Aljaffar's statements and numerous times narrated answers rather than merely translate.

For example, during direct the defendant testified that he was not sexually interested in women. During cross the testimony went as follows:

Q: How long has you been interested in men?

A: [by translator] When he was a teenager.

Reference Hearing RP 18. [The attached Reference Hearing transcript was prepared for the Court of Appeals. Commentary in all caps is provided by the Official Court Reporter. See Attachment B. The label [UI] indicates an unintelligible portion.]

The translation problem did not end with mixed pronouns. For example, on the subject of identification used to enter the bar the interpreter begins to take an active role in explaining questions,

leaving off the witness's answers and finally starts to make his own comments and openly leave off translating defense counsel's objections.

Q: [PROSECUTOR] What identification did you use to get inside the bar?

A: [INTERPRETER] He answered a different answer, and I will try to rephrase that question again.

[WITNESS RESPONSE [UI] they told me that I have to use identification so as to uh... the customers [UI]

[INTERPRETER DOESN'T INTERPRET THE ANSWER AND OFFERS TO REPHRASE THE QUESTION.

INTERPRETER: The ID you used, what ID was it?

A: Saudi

Reference Hearing RP 18:8-9.

The defendant explained he'd been nauseated and needed privacy:

Q: You said there was an urgency for you to throw up, to vomit?

A: I feel more comfortable in a place where privacy is more.

[WITNESS RESPONSE: or nobody... uh... nobody needs privacy]

He stumble over words

[INTERPRETER'S COMMENTARY]

Q: I didn't hear that.

[NO INTERPRETATION RENDERED]

A: He's thinking of saying more stuff.

[INTERPRETER'S COMMENTARY]

Q: But in fact the bathroom that you knew was a bathroom

—

DEFENSE COUNSEL: Objection to the question. That's been very clear on numerous lines of questioning that the defendant has stated he thought the bathrooms were unisex, that there was no designation —

[INTERPRETER BEGINS TO INTERPRET BUT STOPS AND NO FULL INTERPRETATION IS RENDERED OF THE OBJECTION].

Reference Hearing RP 26. Later on the mixing of impermissible narrative and third-person errors continued:

Q: So why did you wait in the female's restroom?

A: I felt dizzy. And I ~~needed to get some water~~ leaned against the wall.

[WITNESS RESPONSE: Because I felt dizzy and I leaned for support against the wall.]

Q: Why didn't you go to the other stall?

[INTERPRETATION: Why didn't you go to the other bathroom... the other bathroom stall?]

A: He didn't feel comfortable.

Q: You didn't feel comfortable about going to the unoccupied stall?

[INTERPRETATION: You didn't feel comfortable about the other bathroom? You didn't feel comfortable [UI]?]

A: [WITNESS RESPONSE: Tell him he is — The way he answer, he's confusing the men's bathroom from the ladies' bathroom. Reference Hearing RP 29.

Again, during cross, the prosecutor himself becomes confused:

Q: But isn't it true that security wasn't aware that that had taken place yet?

[INTERPRETATION: The security knew that this was happening?]

[WITNESS RESPONSE: What?]

[INTERPRETER: The security had an idea that this stuff was happening?]

[WITNESS RESPONSE: What does that mean? I don't understand.]

A: He didn't understand the question.

Reference Hearing RP 35. For the next pages the matter of the circumstances of when and where Mr. Aljaffar was detained by police is pursued in cross with little clarity until by Reference Hearing RP 46, the prosecution states:

PROSECUTOR: I guess the confusion the state is having — and that's why we're repeating the question — is because I thought Mr. Aljaffar indicated he was detained inside the women's bathroom.

THE COURT: Okay

PROSECUTOR: That's where the confusion is that I'm having.

THE COURT: I don't know if it's confusion or you don't agree with him. You have asked the question about eight times, and you are getting the same answer. I'm inclined to say that we're kind of done with the question, you keep using the same question over and over. We're not going anywhere. I'm sorry to interrupt. I'm a little frustrated. I don't know where we're going with all this.

* * *

Q: When you were detained by security, were you still inside the bar or were you detained outside the bar?

[INTERPRETATION: When the security were you inside the bar or outside the bar?]

Reference Hearing RP 46.

A: Outside

Q: So you were on – in the process of leaving the bar?

A: No. They took him by force outside the bar, and they detained him until the police came.

Q: You weren't detained —

DEFENSE COUNSEL: Objection, Your Honor, for the Court's same frustration.

THE COURT: I'm going to sustain it. We have covered it.

PROSECUTOR: No further questions.

Reference Hearing RP 44-47. These type of errors abound and include private colloquy between the witness and translator. See Reference Hearing RP 43:25.

The court of appeals was careful to note that Aljaffar never objected to the translation issues during trial. This is incorrect. Aljaffar himself sought to address the issue:

Q: Now at some point in time [matters relating to complaining witness leaving stall], correct?

A: TRANSLATOR: Yes.

Can I explain something? He answered yes, then he tries to explain the yes. Do I need to go on to explain the yes or should I wait for the next question?

PROSECUTOR: Sir, if Mr. Rae wants to follow up with you on other issues, that would be your opportunity.

DEFENSE: Your Honor, I would prefer for the Court to answer that question.

THE COURT: Well, if he's giving additional information, I think it is incumbent upon the interpreter to tell us what it is. If it is objectionable, that is another question.

So if you will go ahead, sir, and tell us what he said.
[NO INTERPRETATION IS RENDERED OF
THE EXCHANGE ABOVE]

A: Okay.

[INTERPRETER ADDRESSING WITNESS: Go ahead and finish the question. The last question, you said [UI].]

[WITNESS: [UI] I will wait for the question. [UI] question.]

He is going on with the next question.

PROSECUTOR: Well –

INTERPRETER: Can he wait until next question?

PROSECUTOR: Can you indicate on the record, though, what you just communicated to Mr. Aljaffar so we could have that as part of the record?

INTERPRETER: I was telling him about the question, Ms. Wicks was in the stall, he was starting to leave, did he observe her or not? He said, yes. And he start – he start – I stopped him. * * *

Q: So when you realized that Ms. Wicks started to exit out of the *bathroom stall*, you didn't let her get out?

[INTERPRETATION: When you say that this Ms. Wicks exited the *bathroom*, you did not let her exit?]

A: Absolutely did not happen. [Witness response: That did not happen at all.]

Reference Hearing RP 30-31 (italics added). The words “bathroom”

and “bathroom stall” are repeatedly mis-translated. Within

moments the witness states that he is not understanding:

Q: You did not go into the *bathroom stall* that she was still in?

[INTERPRETATION: You did not go into the *bathroom* that she was still in?]

INTERPRETER: He said he understood this question. There was a misunderstanding between me and him, yeah.

[INTERPRETER INTERPRETS IN THE THIRD PERSON]

[WITNESS RESPONSE: I understood the question. *Tell him there is a misunderstanding going on between me and the interpreter.*]

Reference Hearing RP 32:2-3 (italics added).

ARGUMENT

I. THIS CASE PRESENTS A SUBSTANTIAL QUESTION WHETHER AN INTERPRETER'S COMPETENCY AND PREJUDICE CAN BE DETERMINED BY LESS THAN A FULL REVIEW OF THE TRIAL RECORD.

The jury, instructed to observe the demeanor of every witness, cannot have fairly evaluated Mahadi Aljaffar's testimony given the confusing overlay from the inadequate translation. This is a grave and substantial problem, known to the trial courts for years.

Akinmade v. INS, 196 F.3d 951, 956-57 (9th Cir. 1999) (adverse credibility finding may result from a faulty translation).

In 2000, by executive order, the President of the United States issued rules to protect persons with limited English proficiency (LEP) and ordered substantial funding for state courts to organize and use certified translators in their courts of law. 65 FR 50121, Exec. Order No. 13166, 2000 WL 34508183. In 2007 the State

Court Interpreter Grant Program Act was proposed, supported by resolutions from The Conference of Chief Justices and the Conference of State Court Administrators (November 29, 2007 and January 18, 2006, respectively):

State and Federal courts have held that providing an interpreter may be necessary to ensure an LEP defendant's Sixth and Fourteenth Amendment rights to confront adverse witnesses, participate in his or her own defense, and to effective assistance of counsel, as well as to ensure fundamental fairness under the Fifth Amendment's due process clause.

S. Rep. No. 110-436, at 2 (2008).

The importance to our non-English speaking citizens and foreign visitors cannot be overstated. In the record above, the evident difficulty injected into the trial of Mr. Aljaffar manifestly denied him an accurate and faithful translation. Small points such as failing to translate the phrase "bathroom *stall*" (in a case where it mattered which events took place in a stall and which were in the open bathroom itself) and the prevalence of the third person whenever the translator spoke for the defendant create substantial barriers to confidence in the record and consequently in the verdict.

A non-English speaking defendant has a Sixth Amendment right to an interpreter. *State v. Gonzales–Morales*, 138 Wash.2d 374, 379

(1999). Washington law secures the right by statute. RCW 2.43.010. When the sufficiency of the interpreter's efforts is questioned, the inquiry becomes whether the rights of the non-English speaking defendant have been protected. *State v. Ramirez-Dominguez*, 140 Wash.App. 233, 244 (2007); *State v. Teshome*, 122 Wash.App. 705, 712, (2004), *review denied*, 153 Wash.2d 1028, 110 P.3d 213 (2005).

This case had no physical evidence. The eye witness accounts and Mr. Aljaffar's defense were all the jury had to go on. In this setting, small errors in translation might be negligible, but here there was a high prevalence of errors — several on each page. Many of the errors were manifest before the court. Some, only reviewable now that the reference hearing has taken place, show that the defendant's testimony was altered in material matters.

Given the scope of review to date, focused exclusively on the defendant's testimony, Mr. Aljaffar might as well have been left in a jail cell for all but his testimony. But from the partial transcript before the Court, it is evident that the entire trial must be reviewed.

II. THIS CASE PRESENTS A SUBSTANTIAL QUESTION WHETHER THE RIGHT TO COMPETENT TRANSLATION IS A CONSTITUTIONAL RIGHT PRESERVED BY

**DEFENDANT’S OBJECTION UNDER RCW
2.43.030.**

a. Constitutional rights are implicated and were the basis for trial counsel’s pretrial objection to a non-certified translator.

An alien suffers prejudice if the violation “‘potentially . . . affect[s] the outcome of the proceedings.’” *Hartooni v. INS*, 21 F.3d 336 (9th Cir. 1994); see also *State v. Gonzales–Morales*, 138 Wash.2d 374, 379, 979 P.2d 826 (1999). Grave doubt about the accuracy and fairness of a translator’s testimony is sufficient to trigger reversal. *Kovac v. INS*, 407 F.2d 102, at 108 (9th Cir. 1969). Error arises from: (1) direct evidence of incorrectly translated words (e.g., “bathroom” versus “bathroom stall”); (2) unresponsive answers by the witness providing circumstantial evidence of translation problems; (3) a witness’s difficulty in understanding what is said to him. See also *Perez-Lastor v. INS*, 208 F.3d 773 at 778-79 (9th Cir. 2000) (reverse and remanding based on incompetent translation; prejudice based on damage to credibility). *Perez-Lastor*, at 777-78. As noted, “incorrect or incomplete translation is the functional equivalent of no translation.” *Perez-Lastor*, at 778; see also *Akinmade v. INS*, 196 F.3d 951, 956-57

(9thCir. 1999) (adverse credibility finding may result from a faulty translation).

Yet the opinion below held that Aljaffar's objection under RCW 2.43.030 was insufficient to preserve constitutional issues. But RCW 2.43.030 itself preserves the constitutional rights of non-English proficient speakers to have access to competent translation as a matter of due process and confrontation under the Sixth Amendment. See *State v. Sengxay*, 80 Wn. App. 11, 16 (1995).

A material error from a violation of RCW 2.43.030 involving the interpreter's competence should be reviewed under a harmless standard. See *State v. Gonzales-Morales*, 138 Wn. 2d 374, 379 (1999) (purpose of statute governing appointment of interpreters for criminal defendants is to uphold the constitutional rights of non-English speaking persons); see also, *State v. Pham*, 75 Wn.App. 626, 633, review denied 126 Wn.2d 1002 (1994) (defendant's constitutional right to have interpreter means a competent interpreter). The decision below incorrectly determined that an objection to a non-certified translator was of non-constitutional dimension and incorrectly stated that Mr. Aljaffar had never indicated "any misunderstandings with the interpreter or a

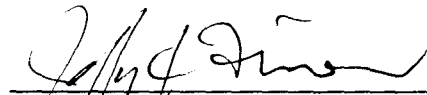
breakdown in communications....” Decision at 10-11. Nevertheless, the transcript shows that the translator specifically notified the court during trial that there were issues of accuracy and understanding between the defendant and the translator. The issue of the standard for reversal should be accepted for review as well.

CONCLUSION

For the reasons set forth above, Mahadi Aljaffar respectfully asks this Court to vacate the opinion below and grant the Petition.

DATED THIS 6th day of April, 2017.

Law Offices of JEFFRY K FINER



Jeffrey K. Finer, WSBA #14610
Attorney for Mahadi Aljaffar

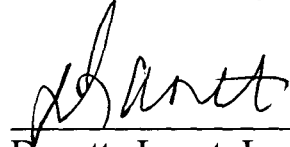
CERTIFICATE OF SERVICE

I, Danette Lanet, certify that on the 6th day of April, 2017, I caused the foregoing *Appellant's Petition for Review*, to be served, via electronic facsimile transmission and via USPS, postage prepaid, on the following:

Larry Steinmetz
Deputy Prosecuting Attorney
West 1100 Mallon
Spokane, WA 99260

Defendant Mahadi Aljaffar
Airway Heights Correction Facility
Airway Heights, WA

DATED this 6th day of April, 2017.



Danette Lanet, Legal Assistant

APPENDIX A

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MARCH 7, 2017
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WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON)	No. 33171-7-III
)	
Respondent,)	
)	
v.)	PUBLISHED OPINION
)	
MAHADI H. ALJAFFAR,)	
)	
Appellant.)	

PENNELL, J. — Being a court interpreter involves more than the ability to speak two languages. Court interpretation is a specialized skill, requiring not only language proficiency, but also the ability to relay information between court participants so non-English speakers are placed on substantially equal footing with their English speaking counterparts. Washington law recognizes the importance of high quality court interpretation. Under the court interpreter statute, when a non-English speaker is involved in a proceeding, the court must appoint a certified interpreter unless good cause justifies the appointment of an interpreter who is qualified, but not certified.

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During Mahadi Aljaffar's felony trial, the requirements of Washington's court interpreter statute were not met. Despite being advised of the need for an Arabic interpreter, the trial court did not appoint a certified interpreter. Nor did the court make a good cause finding prior to utilizing the services of an uncertified interpreter. Although arranging for a certified Arabic interpreter would have required coordinating with an interpreter residing across the state, this was not the kind of circumstance that justified appointment of an uncertified interpreter.

While the interpreter statute was violated in this case, reversal is not automatic. To obtain relief, Mr. Aljaffar must establish prejudice. He has not done so. Mr. Aljaffar's convictions are therefore affirmed.

BACKGROUND

Mahadi Aljaffar is a Saudi Arabian national living in the United States on a student visa. His primary language is Arabic. He was charged in Spokane County Superior Court with several felony sex offenses arising from incidents involving two separate women inside a nightclub bathroom. On the morning of Mr. Aljaffar's trial, the State alerted the court it had been unable to obtain the assistance of a certified Arabic interpreter. According to the State, Washington has only one certified Arabic interpreter and that individual resides in the Seattle area. The State claimed this circumstance made

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arranging for the assistance of a certified interpreter logistically difficult. Rather than proceed with a certified interpreter, the State proposed proceeding to trial with an interpreter named Imad Beirouty. Mr. Aljaffar objected.

In response to the State's request, the court conducted a colloquy with Mr. Beirouty regarding his qualifications. Mr. Beirouty stated Arabic is his native language and he had been speaking English as a second language for over 30 years. For over three years, he had been qualified by various Spokane trial courts to interpret for defendants, though had never before served at a trial. Mr. Beirouty told the court he communicated with Mr. Aljaffar "very well" and that Mr. Aljaffar was indicating he understood Mr. Beirouty. 1 Verbatim Report of Proceedings (VRP) (Dec. 1, 2014) at 11. Mr. Beirouty stated he understood his role as an impartial interpreter and he "took a vote [sic] of ethics." *Id.* at 12.

After permitting the parties to question Mr. Beirouty, the Court concluded:

I think based upon my conversation with this gentleman I believe he is sufficiently qualified to be an interpreter in this matter. He is willing to undertake the role. He has done it in the past in the legal setting. And he understands that he is a neutral party and he — as he indicated, he understands his role and he has no relation to the defendant outside of this process.

I think he is sufficiently qualified to interpret in this case. Having said that, I just need to administer the oath. Then I think once we do that, we're okay; we can proceed.

Id. at 14. The court then administered the interpreter oath. The court never made any findings with respect to whether the State had established good cause to proceed without a certified interpreter.

At trial, Mr. Aljaffar testified in his own defense. He denied assaulting the two female victims, explaining that he is not interested in women because he is gay. He testified he believed the bar where the assault took place was a gay bar and he did not realize the bathroom in question was a women's bathroom.

During his testimony, Mr. Beirouty frequently utilized a third person narrative in recounting Mr. Aljaffar's testimony. For example, when Mr. Aljaffar's attorney asked why he mistakenly chose to use the women's bathroom, the interpreter stated, "He saw two bathroom. There is one bathroom with more privacy than the other one." 2 VRP (Dec. 3, 2014) at 152. When asked what he did when Mr. Aljaffar entered the bathroom, Mr. Beirouty stated, "He, because there was some people leaning on the wall, he was waiting until he can use the bathroom." *Id.* On cross-examination, the prosecutor asked Mr. Aljaffar whether he was the only male that entered the women's bathroom. Mr. Beirouty responded, "He observed two—two men dressing like women go into the bathroom." *Id.* at 166.

At other times during Mr. Aljaffar's testimony, Mr. Beirouty provided commentary on what Mr. Aljaffar was saying, rather than interpretation. For example, at one point during cross-examination, the prosecutor stated he didn't hear Mr. Aljaffar's testimony. Mr. Beirouty responded, "He's thinking of saying more stuff." *Id.* at 168. Later in cross examination, Mr. Beirouty interjected that Mr. Aljaffar was "confusing the men's bathroom from the ladies' bathroom," so he was "going to explain to [Mr. Aljaffar] what you mean." *Id.* at 171.

At the close of trial, a jury found Mr. Aljaffar guilty of two counts of indecent liberties by forcible compulsion and one count of unlawful imprisonment with a sexual motivation. Mr. Aljaffar filed a timely appeal. The arguments on appeal focus solely on the adequacy of the court appointed interpreter. Mr. Aljaffar argues that the interpreter was not appointed pursuant to state law, which typically requires a certified interpreter, and that the interpreter's lack of competence deprived Mr. Aljaffar of his constitutional right to confront witnesses and participate in his trial.

Finding plausible merit to Mr. Aljaffar's statutory claim, but unable to resolve the question of prejudice on the existing record, we ordered a reference hearing under RAP 9.11(a). We also posed the following to the trial court for determination by written findings of fact:

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1. Were there any detectable discrepancies between the Arabic testimony presented at trial and the translation provided to the court? If so, explain.
2. Would the use of a certified Arabic interpreter have made a difference in the outcome of Mr. Aljaffar's trial?

Order for Reference Hearing, No. 33171-7-III, at 1 (Wash. Ct. App. Oct. 11, 2016). Our Order further directed the trial court to enlist the assistance of a certified Arabic interpreter in answering the court's questions, and that the certified interpreter be provided an audio recording of Mr. Aljaffar's trial testimony if available. In addition to eliciting testimony from the certified interpreter at the reference hearing, the parties were invited to address "any other factual issues related to" the questions posed by the court.

Id. at 2.

A reference hearing was conducted in superior court on December 8, 2016. At the hearing, the court heard testimony from Diana Noman, a certified Arabic interpreter. Ms. Noman had prepared an annotated transcript of Mr. Aljaffar's trial testimony based on an audio recording supplied by the court. Although portions of the recording were difficult to decipher, Ms. Noman was able to identify numerous problems with Mr. Beirouty's interpretation. In summary, she found: (1) 44 instances where Mr. Beirouty summarized Mr. Aljaffar's testimony using a third person narrative, as opposed to a first person direct interpretation, (2) 11 instances where Mr. Beirouty provided commentary rather than

strict interpretation, (3) 24 discrepancies between the English spoken at trial and the Arabic interpretation, and (4) 3 instances where no interpretation was provided at all.

The State also elicited testimony from Mr. Beirouty. Prior to his testimony, Mr. Beirouty reviewed the recording of Mr. Aljaffar's trial testimony, although he found it difficult to hear. He did not review Ms. Noman's annotated transcript. Mr. Beirouty testified that there had not been any communication problems between Mr. Aljaffar and himself and his interpretation was accurate. On cross-examination, Mr. Beirouty admitted he does not know the meaning of the third person or what it means to interpret in the third person.

After considering Ms. Noman's annotated transcript, the testimony of the two witnesses, and argument by counsel, the trial court entered written findings of fact and conclusions of law. In its findings, the court observed that the quality of the audio recording utilized by Ms. Noman was fairly poor, making it sometimes difficult to decipher the exact nature of the testimony. In addition, Mr. Aljaffar speaks and understands English to some extent. Despite these difficulties, the Court found there were numerous detectable discrepancies between the Arabic testimony of Mr. Aljaffar and the translation presented at trial.

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Having found problems with Mr. Beirouty's interpretation, the trial court moved to the question of whether the use of a certified Arabic interpreter would have made a difference in the outcome of Mr. Aljaffar's trial. The court observed, "This question might be difficult to be answered by anyone other than this Court, having in mind the knowledge of the totality of the evidence as well as the evidence received at the hearing of December 8th." Finding of Fact 2, at 3. Taking into account what happened at trial, the trial court found Mr. Aljaffar was not prejudiced by Mr. Beirouty's flawed interpretation. While there were numerous discrepancies, they did not alter the content of Mr. Aljaffar's message to the jury or his proffered defense. The trial court did not condone the errors committed by Mr. Beirouty. However, the court concluded, "To suggest that, for example, the use of the 'third person' by the interpreter would change the result of the trial ignores the weight of the evidence." *Id.* at 4.

After receiving the trial court's findings and conclusions, along with the reference hearing transcript and exhibit, this court resumed consideration of Mr. Aljaffar's appeal. At issue is whether the trial court's use of Mr. Beirouty as an interpreter violated Mr. Aljaffar's statutory and constitutional rights.

ANALYSIS

Non-English speakers involved in court proceedings are entitled to the assistance

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of a court-appointed interpreter. This right is guaranteed both by Washington statute and the United States Constitution. *State v. Gonzales-Morales*, 138 Wn.2d 374, 378-79, 979 P.2d 826 (1999). With respect to the Constitution, a criminal defendant's right to confront witnesses and participate in court proceedings encompasses a non-English speaker's right to competent interpretation services. *Id.* There is no constitutional right to a *certified* court interpreter. *State v. Tuoc Ba Pham*, 75 Wn. App. 626, 633, 879 P.2d 321 (1994). That right is conferred by statute. Absent a finding of good cause, Washington courts are required to appoint an interpreter who is certified by the administrative office of the courts to assist non-English speakers. RCW 2.43.030.

Standard of review

The legal standards governing our review of Mr. Aljaffar's appeal turn on the nature of the errors claimed and whether those errors were preserved at trial. In examining the record in this regard, we look at Mr. Aljaffar's statutory and constitutional claims separately. An error preserved on the basis of a statutory violation does not automatically preserve a similar constitutional claim.

During trial, Mr. Aljaffar only voiced one objection to the use of Mr. Beiruty as an interpreter. In response to the State's request for use of an uncertified interpreter on the morning of trial, defense counsel stated as follows:

I would rather have my client have this matter interpreted by a court-certified interpreter. There is a lot of very detailed information that I don't know whether or not it can be communicated from English to Arabic successfully.

So that is why I'm—I'm objecting to not having a court-certified interpreter here. I understand the rules. And I understand it's Your Honor's responsibility to make a decision as to whether or not the interpreter in the courtroom is qualified for such a complex trial with so many issues and witnesses. I'm deferring to the Court, but stating my objection for the record.

1 VRP (Dec. 1, 2014) at 6.

Defense counsel's objection made clear he disagreed with the State's proposed use of an uncertified interpreter. In doing so, counsel referenced the applicable "rules." This objection is similar to the one deemed sufficient to preserve a statutory objection in *Tuoc Ba Pham*, 75 Wn. App. at 632. We likewise find the objection sufficient to preserve Mr. Aljaffar's statutory claims here. Mr. Aljaffar's objection notified the trial court of his disagreement with the decision to proceed with an uncertified interpreter under the "rules." This was sufficient to alert the trial court of its statutory obligations and therefore preserve Mr. Aljaffar's statutory arguments for appeal.

Because Mr. Aljaffar has preserved his statutory objection, we will review the trial judge's decision to appoint an uncertified interpreter for abuse of discretion. *See Gonzalez-Morales*, 138 Wn.2d at 381. Although this is a deferential standard, it is still meaningful. A trial court abuses its discretion when a decision is based on a

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misapplication of the applicable law. *See State v. Lord*, 161 Wn.2d 276, 283-84, 165 P.3d 1251 (2007).

While Mr. Aljaffar adequately informed the trial court of his statutory concerns, he never alerted the court to any constitutional issues. Prior to this appeal, neither Mr. Aljaffar nor his attorney ever indicated there had been any misunderstandings with the interpreter or a breakdown in communication. Because the trial court was never asked to address any constitutional concerns, it was never provided the opportunity to remedy problems with Mr. Beirouty's services prior to the jury's verdict. Under these circumstances, Mr. Aljaffar's constitutional claims have not been preserved and our review is limited to RAP 2.5(a)(3), which requires Mr. Aljaffar to establish a manifest constitutional error.

The statutory right to a certified interpreter

Prior to appointing Mr. Beirouty as Mr. Aljaffar's interpreter, the trial court conducted a colloquy on the record. While the court asked questions regarding Mr. Beirouty's qualifications, no inquiry was made with respect to why the State had not secured the services of a certified interpreter. Nor were there any findings in this regard. Defense counsel proffered that the court had previously ordered a court-certified interpreter at a readiness hearing and that the State had access to a certified interpreter

from Seattle who was “otherwise available.” 1 VRP (Dec. 1, 2014) at 5-6. However, defense counsel explained the interpreter would need to be flown to Spokane and would require housing during trial. The State did not disagree with this proffer. Instead, the prosecutor volunteered that securing the presence of a certified interpreter would have been logistically difficult and that, in addition, the interpreter would not have been available at the start of the trial, which was set for December 1, 2014.

The trial court’s decision to permit Mr. Beirouty to serve as an interpreter violated RCW 2.43.030(b), which requires a finding of good cause. By statute,

“good cause” includes but is not limited to a determination that:

- (i) Given the totality of the circumstances, including the nature of the proceeding and the potential penalty or consequences involved, the services of a certified interpreter are not reasonably available to the appointing authority; or
- (ii) The current list of certified interpreters maintained by the administrative office of the courts does not include an interpreter certified in the language spoken by the non-English speaking person.

RCW 2.43.030(b)(i), (ii).

The circumstances here did not amount to good cause. Mr. Aljaffar was charged with serious felony offenses. Not only did he face substantial prison time, his immigration status made him vulnerable to deportation. Given the nature of Mr. Aljaffar’s legal proceedings, the State was obliged to make a substantial, good faith effort to obtain the services of a certified interpreter. There is no record this took place.

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Spokane County had access to a certified Arabic interpreter. The fact the interpreter lived a few hours away and could not be made available on short notice did not provide the State good cause to excuse retaining a certified interpreter. The State as plaintiff is expected to anticipate the needs of its case and make necessary arrangements before the day of trial. *See, e.g., City of Kent v. Sandhu*, 159 Wn. App. 836, 841, 247 P.3d 454 (2011); *State v. Chichester*, 141 Wn. App. 446, 170 P.3d 583 (2007). While we recognize the statutory definition of good cause permits some flexibility, the circumstances here clearly do not constitute good cause.

Having determined good cause did not justify the use of an uncertified interpreter, we turn to the question of remedy. The failure to make a good cause finding is a statutory violation, not one of constitutional magnitude. Accordingly, the stringent “harmless error beyond a reasonable doubt” standard is inapplicable. *State v. Cunningham*, 93 Wn.2d 823, 831, 613 P.2d 1139 (1980). Instead, we apply “the rule that error is not prejudicial unless, within reasonable probabilities, had the error not occurred, the outcome of the trial would have been materially affected.” *Id.*

The question of whether the use of a certified interpreter would have made a difference in Mr. Aljaffar’s case is a difficult one for us to assess. The errors apparent from the official transcript pertain to the manner of Mr. Beirouty’s interpretation. Mr.

Beirouty frequently used the third person to describe Mr. Aljaffar's testimony, rather than the first person interpretation expected of an interpreter. This practice could have detracted from the jury's ability to assess Mr. Aljaffar's credibility. Credibility was important in this case, as the success of Mr. Aljaffar's proffered defense turned on the jury's belief of his testimony. Because the record on appeal did not permit our evaluation of this kind of prejudice, we remanded the matter to the trial court for a reference hearing under RAP 9.11.

At the reference hearing, the trial court evaluated Mr. Beirouty's interpretation services with the help of a certified Arabic interpreter and an audio recording of Mr. Aljaffar's trial testimony. Although portions of the recording were inaudible, the trial court was largely able to compare the testimony provided to the jury by Mr. Beirouty with what would have been relayed had Mr. Aljaffar received the services of a certified interpreter. The court considered this information in the context of the rest of the trial and found Mr. Aljaffar had not been prejudiced by the use of an uncertified interpreter. Mr. Aljaffar was able to relay his version of the incident to the jury. The trial court's findings are entitled to deference and we accept them on appeal.

Mr. Aljaffar complains the information elicited at the reference hearing was incomplete and therefore insufficient to assess the issue of prejudice. He notes the trial

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court and the certified interpreter only reviewed Mr. Beirouty's interpretation of Mr. Aljaffar's testimony to the jury; no assessment was made of Mr. Beirouty's interpretation of the remainder of the trial proceedings to Mr. Aljaffar. These arguments are unpersuasive. Throughout this appeal, the only complaints lodged against Mr. Beirouty pertained to the interpretation of Mr. Aljaffar's trial testimony. At the reference hearing, the parties were invited to address *any* factual issues related to the question of whether the use of a certified Arabic interpreter would have made a difference at Mr. Aljaffar's trial. Despite having the assistance of counsel and a certified interpreter, Mr. Aljaffar did not present any evidence at the reference hearing and did not challenge Mr. Beirouty's testimony that he and Mr. Aljaffar had no problems communicating. Given these circumstances, Mr. Aljaffar's argument that inadequacies existed outside of his trial testimony lacks factual support.

The trial court's findings support the conclusion that the trial court's failure to comply with the certification requirements of RCW 2.43.030 was not prejudicial. Reversal on this basis is unwarranted.

Manifest constitutional error

Because the record does not reflect Mr. Aljaffar was prejudiced by the use of an uncertified interpreter, he cannot, by definition establish a manifest constitutional error.

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The manifest error standard requires the substance of a constitutional error be readily identifiable at the time of trial, based on the record before the court. *State v. O'Hara*, 167 Wn.2d 91, 99-100, 217 P.3d 756 (2009). This is the "actual prejudice" prong of the manifest error test. It requires an appellant to make a "plausible showing . . . that the asserted error had practical and identifiable consequences in the trial of the case." *Id.* (internal quotation marks omitted) (quoting *State v. Kirkman*, 159 Wn.2d 918, 155 P.3d 125 (2007)). If the appellant cannot establish actual prejudice arising from an alleged constitutional error, our manifest error review ends and we do not consider whether the error was harmless. *O'Hara*, 167 Wn.2d at 99-100.

The only errors regarding the substance of Mr. Beirouty's services that could have been apparent to the court at the time of trial were the various uses of third person testimony and other commentary. As determined during the reference hearing, such inadequacies did not have any practical impact on Mr. Aljaffar's case. Given this circumstance, Mr. Aljaffar has not shown that any constitutional errors arising from his interpreter were "manifest." *See, e.g., People v. Rivera*, 72 Ill.App.3d 1027, 1039, 390 N.E.2d 1259 (1979) (no constitutional error established by vague claims regarding inadequacy of interpretation coupled with the interpreter's use of third person testimony). Accordingly, no further review of Mr. Aljaffar's constitutional claims is warranted under

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RAP 2.5(a)(3).

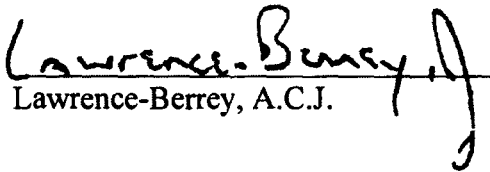
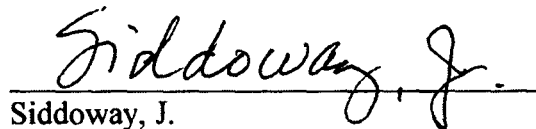
CONCLUSION

The failure to enlist the services of a certified interpreter without good cause was a serious violation. Given the fact that Mr. Aljaffar testified and placed his credibility before the jury, inadequate interpretation could have impacted the jury's verdict. Nevertheless, after careful review of the record, we are satisfied Mr. Aljaffar was not prejudiced by the use of an uncertified interpreter. The judgment of conviction is affirmed.



Pennell, J.

WE CONCUR:


Lawrence-Berrey, A.C.J.
Siddoway, J.

APPENDIX B

COVER PAGE FOR THE REVIEW OF TRIAL TRANSCRIPT OF MAHADI ALJAFFAR

REVIEW OF THE TRIAL TRANSCRIPT OF MAHADI ALJAFFAR

REVIEWING INTERPRETER: DIANA NOMAN WA STATE COURT CERTIFIED ARABIC
LANGUAGE INTERPRETER

PREPARED FOR REVIEW HEARING HELD ON NOVEMBER 30, 2016

ABBREVIATIONS USED: [UI] - UNINTELLIGIBLE
[PH] - PHONETIC

*Use of italic denotes words spoken in
English by the non-English speaking witness.*

REVIEWING INTERPRETER'S REMARKS ARE CONTAINED IN [SQUARE BRACKETS] IN BLUE AND BURGUNDY COLORED FONTS. SOME SECTIONS OF THE TEXT HAVE BEEN HIGHLIGHTED. EXPLANATION OF THE HIGHLIGHTED WORDS IS PROVIDED ON A SEPARATE ATTACHMENT. CHANGES TO THE TRANSCRIPT OF THE ENGLISH LANGUAGE SECTIONS HAVE BEEN MADE AND TRACKED. THEY APPEAR IN LIGHT TAN FONT.

TO PRESERVE THE PAGINATION AND LINE NUMBERING OF THE TRANSCRIPT THE FONT SIZE MAY VARY ON A SINGLE PAGE AS WELL AS FROM PAGE TO PAGE.

THIS REVIEW IS BASED ON LISTENING TO THE CASSETTE TAPE RECORDING OF THE PROCEEDINGS PROVIDED TO THE REVIEWING INTERPRETER AND IS SUBJECT TO ITS AUDIO QUALITY LIMITATIONS AS WELL AS THE LIMITATIONS OF THE LISTENING EQUIPMENT.

1 THE BAILIFF: All rise.

2 THE COURT: Thanks. Have a seat.

3 Mr. Rae, to you.

4 MR. RAE: Thank you. Your Honor, if I may approach
5 the well?

6 THE COURT: Yes.

7 (Opening statement presented to the jury by the defense.)

8 MR. RAE: With that, Your Honor, I call Mahadi
9 Aljaffar as my witness. Thank you.

10

11 MAHADI ALJAFFAR,

called as a witness at the request

12 of the Defendant herein, having

been first duly sworn on oath,

13 did testify, through the interpreter, as follows:

14

15 THE DEFENDANT: I do.

16 THE COURT: Have a seat.

17

18 DIRECT EXAMINATION

19 BY MR. RAE:

20 Q. Mr. Aljaffar, can you please state your name and spell
21 it for the record today. [AT THIS POINT THE INTERPRETER IN
ARABIC INSTRUCTS WITNESS TO STATE WITNESS'S NAME. [WITNESS RESPONSE:
'Alrubaie' [SPOKEN IN ARABIC]? (WHICH MEANS THE FULL NAME CONSISTING
OF 4 NAMES AS IS CUSTOMARY IN MANY ARABIC-SPEAKING COUNTRIES).

[INTERPRETATION: Alrubaie.] [INTERPRETER: What is your name?]

22 MR. BEIROUTY: Mahadi Aljaffar. You want it in
23 English?

24 MR. RAE: Yes, please. To the best of his abilities
25 between English --

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Mahadi Aljaffar/Direct

1 MR. BEIROUTY: The names are the same. They are not
2 translated. He can do that. [INTERPRETER SPEAKS FROM HIMSELF.]
[INTERPRETER THEN STATES TO WITNESS TO STATE WITNESS'S NAME IN ENGLISH
WHEN WITNESS WILL GIVE HIS ANSWER.]

3 MR. RAE: That would be fine.

4 A. Mahadi Aljaffar. [WITNESS RESPONSE: Mahadi Nassar Khalifa
Aljaffar [NAME MAY CONTAIN SPELLING ERRORS MADE BY REVIEWING
INTERPRETER].

5 Q. (By Mr. Rae) I understand are you speaking in a
6 foreign dialect. What is that? [ARABIC IS A LANGUAGE, NOT A
DIALECT]

7 MR. BEIROUTY: Yes.

8 A. Yes.

9 Q. (By Mr. Rae) What is that language? [WITNESS RESPONSE: Arabic]
Where are you from?

10 A. Saudi Arabia.

11 Q. How old are you?

12 A. Twenty-one.

13 Q. When did you turn 21?

14 A. Yesterday.

15 Q. I understand you're able to understand a lot of what
16 ~~was~~ I'm saying now?

17 A. Yes.

18 Q. If at any time you may not understand my question,
19 please remember that you have an interpreter there.

20 A. Okay.

21 Q. It may be easier for you to wait for me to finish my
22 question and let the translation occur so we make sure
23 there is no confusion of what I am asking and what you are
24 answering.

25 A. Okay.

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Mahadi Aljaffar/Direct

- 1 Q. Are you nervous right now?
- 2 A. Yes.
- 3 Q. So basically you're from Saudi Arabia?
- 4 A. Yes.
- 5 Q. What brings you to the United States?
- 6 A. To study mechanical engineering.
- 7 Q. Okay. And how long --
- 8 A. Yes --
- 9 Q. Remember I'm -- I'm going to ask for you to wait for
10 the translation before you answer my questions.
- 11 A. Okay.
- 12 Q. How long have you been in the United States?
- 13 A. Sixteen months.
- 14 Q. Fifteen months...and... So when did you arrive?
- 15 A. Twelve August, 2013.
- 16 Q. So from August, the middle of August, 2013, to the end
17 of May of 2014, you'd been in the country approximately
18 eight or nine months; correct -- [INTERPRETER BEGINS TO TO
INTERPRET, BUT WITNESS RESPONDS MIDWAY THROUGH THE INTERPRETATION.]
- 19 A. Yes.
- 20 Q. -- is that accurate? Had you learned any English
21 before you came to the United States? [WITNESS RESPONSE: "No."]
22 Have the translator translate.
- 23 A. He translated right away. [INTERPRETER: "He wouldn't let me
translate. He would answer right away.]
- 24 Q. We need to make sure we do this correctly, okay?
- 25 A. Okay.

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Mahadi Aljaffar/Direct

1 Q. Did you learn any English before you came into the
2 United States?

3 A. Like A, B, C, D; like, letters.

4 Q. So aside from basic characters of the English
5 language, when you arrived 15 months ago, you didn't
6 understand any English; correct?

7 A. Yeah. Almost like that.

8 Q. Where is your family?

9 A. In my country.

10 Q. Are you married? [NOT INTERPRETED]

11 A. No.

12 Q. Do you have any children? [NOT INTERPRETED]

13 A. No.

14 Q. So you said you are here to study to be a mechanical
15 engineer? [INTERPRETATION BEGINS, BUT WITNESS ANSWERS BEFORE IT
IT IS COMPLETED.]

16 A. Yes.

17 Q. So what do you have -- what is the process for that --
18 how did that take place for you to come here to study; what
19 is the process for that?

20 MR. BEIROUTY: He said, like, what? [INTERPRETER INTERPRETS IN
3RD PERSON].

21 Q. (By Mr. Rae) So what are the steps that you had to
22 take to become a student in the United States?

23 A. Like, dual visa, and dual, like -- [WITNESS RESPONSE: Like
uh... uh do a visa, and uh... do... like I-20... uh-huh...]

24 Q. Would it be easier for you to answer these questions
25 in Arabic? [INTERPRETER BEGINS TO TO INTERPRET, BUT WITNESS
RESPONDS MIDWAY THROUGH THE INTERPRETATION.]

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Mahadi Aljaffar/Direct

1 A. Yes.

2 Q. (By Mr. Rae) Then I will encourage you to do so,
3 please.

4 MR. BEIROUTY: He applied for a visa. [INTERPRETER INTERPRETS
IN 3RD PERSON].

5 MR. RAE: Okay.

6 MR. BEIROUTY: And he chose the university he ~~can~~ gonna go
7 to. And he communicated with them. And they accepted him
8 to -- [INTERPRETER INTERPRETS IN 3RD PERSON].

9 MR. RAE: Okay. Thank you.

10 Q. (By Mr. Rae) So I want you to focus your attention of
11 your activities on the night of May the 30th and then into
12 the morning of May the 31st.

13 MR. BEIROUTY: Okay.

14 Q. (By Mr. Rae) Why don't you take me through your day
15 on May the 30th?

16 MR. BEIROUTY: The day before the incident?

17 MR. RAE: Yes.

18 MR. BEIROUTY: I don't remember exactly.

19 Q. (By Mr. Rae) Okay. Do you remember what you were
20 doing the night that this incident was alleged to have
21 occurred? [INTERPRETATION: Do you remember the night on which
the... the incident happened?]

22 A. Yeah.

23 Q. Why don't you tell the jury what you were doing the
24 night in question?

25 A. I ~~had~~ ate my dinner. Uh... after that uh... I was [UI]-
after that I talked with my family. After that um...I

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| 1 called my friends to go to night club. [UI] And I went there.

2 Q. Okay. Where is "there?"

3 A. Irv's.

4 Q. And why did you choose that location -- or did you
5 choose that location? Is that a location that you chose?

| 6 A. Because I was am interested in boys--

7 Q. If you would repeat your answer, and maybe in Arabic,
8 for translation purposes?

9 MR. BEIROUTY: [NO ANSWER IS AUDIBLE FROM WITNESS]. Because he
| was interested in men ~~and~~ [INTERPRETER INTERPRETS IN 3RD PERSON]

| 10 ~~boys~~. This is the only night -- night club in Spokane that
| 11 allowed ~~it~~ gay.

12 Q. (By Mr. Rae) So when you were at the club, how did
13 you get in?

14 MR. BEIROUTY: I paid more.

15 Q. (By Mr. Rae) What do you mean by that?

16 MR. BEIROUTY: He paid more because some people told
| 17 him that because you are from schools, you can pay more and
18 get in. [INTERPRETER INTERPRETS IN 3RD PERSON].

19 Q. (By Mr. Rae) So did you feel if you paid more, you
20 couldn't get in because you were 20 at the time?

21 A. Yes.

22 Q. So what did people who were 21 pay?

23 A. I think \$5.

24 Q. And what did you pay?

25 A. Twenty.

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Mahadi Aljaffar/Direct

1 MR. BEIROUTY: \$20.

2 Q. (By Mr. Rae) Was anybody else that you were with
3 under the age of 21?

4 A. Not my friends, but I know them from my school.

5 Q. (By Mr. Rae) So not the friend that you went to the
6 club with, but some people in the club that you were
7 meeting with, were there other friends in the club; is that
8 what you are referring to? [INTERPRETER BEGINS TO TO INTERPRET,
BUT WITNESS RESPONDS MIDWAY THROUGH THE INTERPRETATION.]

9 A. Yeah.

10 Q. (By Mr. Rae) What did you do once you paid your \$20
11 to get in?

12 A. I come in.

13 Q. (By Mr. Rae) And then what?

14 MR. BEIROUTY: He drank. [INTERPRETER INTERPRETS IN 3RD
PERSON].

15 Q. (By Mr. Rae) What did you drink?

16 MR. BEIROUTY: It was my first time drinking. I had
17 four drinks. [WITNESS RESPONSE: This was my first experience
drinking and I drank four.]

18 Q. (By Mr. Rae) What kind of drinks did you have?

19 MR. BEIROUTY: Vodka.

20 A. Vodka.

21 Q. (By Mr. Rae) Was it just vodka or was it vodka mixed
22 with other things?

23 A. Just vodka.

24 Q. And where were you consuming this alcohol?

25 MR. BEIROUTY: He didn't understand the meaning of the

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1 question. [INTERPRETER INTERPRETS IN 3RD PERSON].

2 MR. RAE: Okay.

3 Q. (By Mr. Rae) We have had testimony that there were
4 two sides of the club you were at. Which side of the club
5 were you consuming the vodka? [INTERPRETATION: In which club
were you drinking?]

6 MR. BEIROUTY: On the left side.

7 Q. (By Mr. Rae) Okay. And what side is that?
[INTERPRETATION: Which side? What's its name?]

8 MR. BEIROUTY: Red Club.

9 Q. (By Mr. Rae) Club Red?

10 A. Yeah. I think the same night, ~~the same times on same night,~~
~~at the~~ I don't know.

11 club.

12 Q. Okay. Thank you.

13 What did you do after you consumed the alcohol?

14 MR. BEIROUTY: He felt nauseated and dizzy. [INTERPRETER
INTERPRETS IN 3RD PERSON].

15 Q. (By Mr. Rae) Okay. And why was that?

16 MR. BEIROUTY: That was my first time drinking. [WITNESS
17 RESPONSE: That was my first experience drinking.] I think from
| the drinks... from the alcohol.

18 Q. (By Mr. Rae) When you started feeling ill and dizzy,
19 what did you do next?

20 A. I went to the bathroom.

21 Q. Okay. For what purpose?

22 MR. BEIROUTY: To vomit.

23 Q. (By Mr. Rae) Okay. So there has been testimony from
24 one of the alleged victims in this case that you entered
25 the bathroom and you looked over and under the bathroom

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1 stalls.

2 What was your purpose of doing so? If you did so, how
3 do you respond to that, is what I'm asking?

4 MR. BEIROUTY: At first I entered, and I checked with if there is
5 somebody, because I was in a hurry.

6 Q. (By Mr. Rae) Okay. And what was your hurry?

7 MR. BEIROUTY: I had a strong feeling of vomiting.

8 Q. (By Mr. Rae) Okay. Did you notice any signs or
9 anything that -- that separated a woman's bathroom from a
10 men's bathroom that evening?

11 A. No.

12 Q. Why did you choose where you went when you were
13 feeling sick?

14 A. Because it has more privacy.

15 Q. And why do you say that?

16 A. Because it has door.

17 Q. Okay. And had you been in the other bathrooms in this
18 establishment?

19 A. No.

20 Q. When -- There has been testimony that you were in a
21 woman's bathroom when you went into -- when you were
22 feeling ill.

23 Did you know it was a woman's -- designated woman's
24 bathroom at that time? [INTERPRETATION: Did you know it was a
woman's bathroom?]

25 A. No.

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1 Q. When you chose that bathroom, why did you choose that
2 one instead of maybe one to the left? Did you even --

3 Excuse me, strike that.

4 Did you know there was a bathroom to the left of where
5 you entered at that time?

6 MR. BEIROUTY: He saw two bathroom. There is one
7 bathroom with more privacy than the other one. [INTERPRETER
INTERPRETS IN 3RD PERSON]. [WITNESS RESPONSE: There are two bathrooms.
There is a bathroom which has more privacy... I mean... and there is one
without privacy.]

8 Q. (By Mr. Rae) And that is why you choose it?

9 MR. BEIROUTY: Yes.

10 Q. (By Mr. Rae) So what happened once you got into the
11 bathroom?

12 MR. BEIROUTY: He, because there was some people
13 leaning on the wall, he was waiting until he can use the
14 bathroom. [INTERPRETER INTERPRETS IN 3RD PERSON]

15 Q. (By Mr. Rae) So at some point do you recall having
16 any contact with Amber Wicks -- excuse me -- and --

17 A. No.

18 Q. You heard her say that you came in and that you held
19 her breast with one hand and a door with another. What is
20 your response to those allegations at that time?

21 MR. BEIROUTY: I wasn't in a state -- I didn't have
22 that feeling for women to rape her. And I was in a
23 state -- very sick. [WITNESS RESPONSE: It's impossible that I
would do that, because I do not have the impulse to... I do not feel
attracted to girls so as to try and rape her... and [UI] because I was
in a such state... I didn't have the impulse [UI]]

24 Q. (By Mr. Rae) Okay. So, do you remember anyone
25 telling you to leave the bathroom or you weren't welcome

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1 there?

2 MR. BEIROUTY: Leslie came in and she started yelling
3 at him. And he didn't understand what she want. [INTERPRETER
INTERPRETS IN 3RD PERSON]

4 Q. (By Mr. Rae) Okay. Did you let people know you were
5 sick?

6 MR. BEIROUTY: Yes.

7 Q. (By Mr. Rae) And why was it that you didn't leave the
8 bathroom?

9 MR. BEIROUTY: Because I needed it.

10 Q. (By Mr. Rae) Okay. There was also some testimony
11 from Leslie Ellis that you held her and pressed her up
12 against a sink, and said that you wanted to have sex with
13 her.

14 And that had you an erection -- [INTERPRETER DOESN'T HAVE A
CHANCE TO FINISH INTERPRETING THIS PART OF THE QUESTION]

15 MR. CRUZ: Objection. This is a compound question and
16 the witness hasn't answered it.

17 MR. RAE: I was waiting for the interpreter, Your
18 Honor.

19 THE COURT: All right. I will give you some leeway
20 because of that situation. Go ahead and finish the
21 question.

22 MR. RAE: Thank you.

23 Q. (By Mr. Rae) So the three accusations that Ms. Ellis
24 accused you of, how do you respond to them?

25 MR. BEIROUTY: The charge that he pushed her and that
[WITNESS RESPONSE: [UI] I did not push her nor did any of that.]

[INTERPRETER INTERPRETS IN 3RD PERSON]

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1 he held her, he didn't do anything.

2 Q. (By Mr. Rae) Okay. And what about her conversation
3 about you having been aroused, stimulated and pressed that
4 up against her groin? [INTERPRETATION: And what... what... what
about her statements that she is making that you were sexually
aroused?]

5 MR. BEIROUTY: I was very tired. How could I be
6 aroused in this state? [WITNESS RESPONSE: I was not feeling
well, so how could I have been sexually aroused in this state.]

7 Q. (By Mr. Rae) Okay. Were you attracted to either of
8 the women that accused you of sexual misconduct?
[INTERPRETATION: Were you attracted to these two girls who accuse you
of... of sex?]

9 MR. BEIROUTY: I'm not feeling interested in girls.
10 I'm not interested in girls.

11 MR. RAE: Okay. All right. I don't have any further
12 questions. Thank you.

13 THE COURT: Thank you. Mr. Cruz, do you have any
14 questions? You may proceed.

15 MR. CRUZ: Yes, Your Honor. Thank you.

16 Mr. Aljaffar -- I think the wire is disconnected.

17 MR. RAE: Your Honor, if I --

18 THE COURT: Yes.

19 MR. RAE: I don't know at what point it happened, but
20 it appeared when I moved the podium, I may have
21 disconnected the microphone. I will hand it to your
22 bailiff --

23 THE COURT: It connects into the bottom of the mic.

24 MR. RAE: Oh. Thank you.

25 THE COURT: Right there (indicating). That's it.

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1 MR. RAE: My apologies, Judge.

2 THE COURT: No problem.

3

4 CROSS-EXAMINATION

5 BY MR. CRUZ:

6 Q. Mr. Aljaffar, you indicated that you arrived in the
7 States August 12, 2013?

8 A. Yes.

9 Q. Had you ever gone to any other English-speaking
10 countries other than the United States prior to that time?

11 A. No.

12 Q. You indicated that you came to the States because you
13 were admitted into a university --

14 A. Yes.

15 Q. -- for -- you had indicated mechanical engineering?

16 A. Yes.

17 Q. What school were you admitted into to study mechanical
18 engineering?

19 A. Central Washington University.

20 Q. So if you were admitted into Central Washington
21 University, why were you attending school here in Spokane,
22 Washington?

23 A. I still study English.

24 Q. So you hadn't started attending Central Washington
25 University; correct? [INTERPRETER BEGINS TO TO INTERPRET, BUT
WITNESS RESPONDS MIDWAY THROUGH THE INTERPRETATION.]

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1 A. Yes.

2 Q. And you were studying English?

3 A. Yes.

4 Q. And it is your testimony that you only studied very
5 little English prior to coming to the United States?

6 A. Yes.

7 Q. How did you make your way through the airport if you
8 had very limited English?

9 MR. BEIROUTY: There is a lot of interpreters there.

10 Q. (By Mr. Cruz) Okay. Are there designated bathroom
11 stalls in Saudi Arabia for men and women? [INTERPRETATION: In
Saudi Arabia are there designated bathrooms for men and women?]

12 MR. BEIROUTY: Yes.

13 Q. (By Mr. Cruz) And do they have symbols on the
14 bathrooms that kind of indicate what is for males, what is
15 for females?

16 A. Yes.

17 Q. And they are similar type of symbols when you came to
18 the United States and went into the airport, would you
19 agree?

20 A. Yes.

21 Q. And in fact those same universal symbols for male and
22 female are in a lot of the public restrooms in the
23 buildings in downtown Spokane; correct? [INTERPRETATION: And
these common symbols uh... are present in every establishment/place
in downtown Spokane.]

24 MR. BEIROUTY: Not in gay bar.

25 Q. (By Mr. Cruz) But would you agree when you go to

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1 public establishments, there is usually a designated male
2 bathroom and a designated female bathroom?

3 A. Yes.

4 Q. Okay. Now, when you went to Irv's bar on May 31st,
5 2014, that wasn't the first time you'd gone there; correct?

[INTERPRETATION: When you went to Irv's on that night, May 31st, it
was the first time you went there; correct?]

6 MR. BEIROUTY: That was the first time.

7 Q. (By Mr. Cruz) The very first time?

8 A. Uh-huh.

9 MR. BEIROUTY: Yes.

10 Q. (By Mr. Cruz) How did you learn about that bar?

11 MR. BEIROUTY: The Internet.

12 Q. (By Mr. Cruz) And only the Internet?

13 MR. BEIROUTY: While he was also walking the streets
14 also, he saw the bar. [INTERPRETER INTERPRETS IN 3RD PERSON]

15 Q. (By Mr. Cruz) So you had been in that area before;
16 correct?

17 MR. BEIROUTY: Yeah -- Yes. I know that area, but I
18 didn't go to bars.

19 Q. (By Mr. Cruz) How is it that you knew that if you
20 paid more money for the cover charge that you could get
21 into there even though you were under 21?

22 MR. BEIROUTY: My friend at school. [RESPONSE: My friends at
school...like... told me.]

23 Q. (By Mr. Cruz) So you knew about that place other than
24 the Internet?

25 MR. BEIROUTY: I research it on the Internet and from

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1 my friend.

2 Q. (By Mr. Cruz) So you researched it from the Internet,
3 then you talked to your friends about your interest in
4 going to that bar?

5 MR. BEIROUTY: Yes.

6 Q. (By Mr. Cruz) And did you tell your friends you were
7 interested in [REDACTED]?

8 A. No.

9 MR. BEIROUTY: No.

10 Q. (By Mr. Cruz) Because would you agree that from where
11 you're from that homosexuality is frowned upon?

12 A. Yes. For sure.

13 Q. Why would you talk to your friends, who are also Saudi
14 Arabian, about a gay bar that you are interested in going
15 to? [INTERPRETATION: So how is it that you talked to your
friends that you are going to a gay bar [UI]?]

16 MR. BEIROUTY: Some they go there to drink only.

17 Q. (By Mr. Cruz) Okay. But you had a different interest
18 than just going there to drink?

19 A. Uh-huh.

20 MR. BEIROUTY: To seek boys or men. [RESPONSE: To look for/at
boys.]

21 Q. (By Mr. Cruz) Now, as you walked past this
22 establishment on prior occasions, were you able to see
23 inside the bars?

24 A. Yes.

25 Q. And you also would be able to see the go-go dancers

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1 that were dancing within that establishment; correct?

2 MR. BEIROUTY: I wasn't interested in them. I was
3 interested in boys in that area.

4 Q. (By Mr. Cruz) The question, though, sir, is when you
5 passed that particular establishment, you were able to see
6 within the bar that they had female go-go dancers; correct?

7 MR. BEIROUTY: He knows that bar because it's for gay
8 people and lesbians. [INTERPRETER INTERPRETS IN 3RD PERSON]

9 Q. (By Mr. Cruz) The question, sir, is would you be able
10 to see from the street into the bar and observe that there
11 were female go-go dancers?

12 MR. BEIROUTY: Sometimes they go to the street and he
13 sees them. [INTERPRETER INTERPRETS IN 3RD PERSON]

14 Q. (By Mr. Cruz) So your answer is yes. So you knew
15 that women frequented that bar as well; correct?

16 A. Yes.

17 Q. Now in this particular case who did you go to the bar
18 with?

19 MR. BEIROUTY: He -- he get a ride with a friend.
20 When he get to the bar, he left him. [INTERPRETER INTERPRETS IN
21 3RD PERSON]

21 Q. (By Mr. Cruz) So you were dropped off at that bar?

22 A. Yes.

23 Q. So you weren't with other classmates of yours from the
24 school you attended in downtown Spokane?

25 MR. BEIROUTY: He knew some people from school, but he
[INTERPRETER INTERPRETS IN 3RD PERSON]

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1 didn't know them personally.

2 Q. (By Mr. Cruz) How long have you been interested in
3 men?

4 MR. BEIROUTY: When he was a teenager. [INTERPRETER INTERPRETS IN
3RD PERSON]

5 Q. (By Mr. Cruz) What identification did you use to get
6 inside the bar?

7 MR. BEIROUTY: He answered a different answer, and I
8 will try and rephrase that question again. [WITNESS RESPONSE: [UI]
they told me that I have to use identification so as to uh... the
customers [UI]] [INTERPRETER DOESN'T INTERPRET THE ANSWER AND OFFERS TO
REPHRASE THE QUESTION. INTERPRETER: The ID you used, what ID was it?]

9 A Saudi ID.

10 Q. (By Mr. Cruz) Did it have your date of birth listed
11 on it?

12 MR. BEIROUTY: Yes.

13 Q. (By Mr. Cruz) Did it have your correct date of birth
14 on it?

15 MR. BEIROUTY: Yes.

16 Q. (By Mr. Cruz) So if it had your correct date of birth
17 on it, they would have realized that you were too young to
18 have gotten into that club; would you agree?

19 MR. BEIROUTY: He said he knew from other people at
20 the school that if he did bribe, he could get in. [INTERPRETER
INTERPRETS IN 3RD PERSON]

21 Q. (By Mr. Cruz) And you bribed somebody, is that what
22 you're saying?

23 MR. BEIROUTY: Yes.

24 Q. (By Mr. Cruz) So if there were other people that were
25 there who were employed there who saw you at that

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1 establishment before, would they be mistaken?

2 MR. BEIROUTY: I think.

3 Q. (By Mr. Cruz) When did you start drinking?

4 MR. BEIROUTY: You want the time or the -- [WITNESS RESPONSE:
The time or the date?]

5 MR. CRUZ: The time.

6 MR. BEIROUTY: 12:30.

7 Q. (By Mr. Cruz) Is that when you had your first drink?

8 A. Yes.

9 Q. Was that a shot?

10 A. Yes.

11 Q. When did you have your second shot?

12 MR. BEIROUTY: There were four drinks, and he drank
13 them within half an hour. [INTERPRETER INTERPRETS IN 3RD PERSON]

14 Q. (By Mr. Cruz) So you drank four drinks between 12:30
15 and one o'clock?

16 MR. BEIROUTY: Yes.

17 A. Yes.

18 Q. (By Mr. Cruz) And you had no more drinks after that;
19 correct?

20 A. Yes.

21 Q. And you had eaten dinner, is that correct?

22 A. Yes.

23 Q. What do you remember having for dinner?

24 MR. BEIROUTY: Chicken pasta.

25 Q. (By Mr. Cruz) And when did you have dinner?

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1 MR. BEIROUTY: Nine o'clock; between 9:00 and 10:00.

2 Q. (By Mr. Cruz) You had a pretty big meal between 9:00
3 and 10:00 p.m.; correct?

4 A. Yes.

5 Q. Then you indicated you started drinking at 12:30 a.m.;
6 correct? [INTERPRETATION: You said that you started drinking at
12:30.]

7 A. Yes.

8 Q. So you had a full stomach, would you agree?

9 A. Yes.

10 Q. Then you stopped drinking at ~~11~~1:00 p.m. (sic).

11 A. Yes.

12 MR. BEIROUTY: One p.m.?

13 MR. CRUZ: Excuse me. One a.m.; correct?

14 MR. BEIROUTY: Yes.

15 Q. (By Mr. Cruz) Then you started dancing; correct?

16 MR. RAE: Your Honor, outside of the scope of direct.

17 MR. CRUZ: It was part and parcel of what he did that
18 evening.

19 THE COURT: From the questions as to what occurred
20 that evening. So I will let you continue as to what
21 happened from that perspective.

22 MR. BEIROUTY: Can you repeat that question, please?

23 Q. (By Mr. Cruz) Were you dancing that evening?

24 A. Yes.

25 Q. When did you start dancing?

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1 MR. BEIROUTY: After one o'clock.

2 Q. (By Mr. Cruz) When you were dancing, you weren't
3 dancing with ■■■; that is not who you were interested in
4 dancing with, would you agree?

5 MR. BEIROUTY: It was -- He was dancing by himself. [INTERPRETER
INTERPRETS IN 3RD PERSON]

6 Q. (By Mr. Cruz) Now, you were aware of where the
7 bathrooms were; correct?

8 A. No. Not actually.

9 MR. BEIROUTY: Not really.

10 Q. (By Mr. Cruz) Where did you buy your drinks from,
11 which side of the bar?

12 MR. BEIROUTY: The left side.

13 Q. (By Mr. Cruz) The Club Red side; correct?

14 MR. BEIROUTY: Club Red.

15 A. Yeah.

16 Q. (By Mr. Cruz) When did you first approach the
17 bathroom?

18 MR. BEIROUTY: About two o'clock.

19 Q. (By Mr. Cruz) And you were aware that there were two
20 different bathroom entrances at that time; correct?

21 MR. BEIROUTY: Yes.

22 A. (By Mr. Cruz) You knew one side was for the men;
23 correct?

24 MR. BEIROUTY: I thought anybody could go; it's not
25 the question. [RESPONSE: I thought... like... like anybody can
go into any of them [UI].]

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1 Q. (By Mr. Cruz) You knew one side -- one of those two
2 bathrooms, one side was for men; correct?

3 MR. RAE: Asked and answered, Your Honor.

4 MR. CRUZ: He hasn't answered it.

5 MR. RAE: He said he thought anyone could go. That is
6 his answer.

7 THE COURT: That is what he responded.

8 Q. (By Mr. Cruz) Okay. So then you knew the other side
9 was for women; correct?

10 MR. BEIROUTY: Can I explain? [WITNESS RESPONSE: Tell him,
tell him, can I explain?]

11 MR. CRUZ: The question, sir, just requires a
12 yes-or-no answer.

13 MR. BEIROUTY: I did not know they were specified or
14 not.

15 Q. (By Mr. Cruz) From the dance floor could you see
16 where the bathrooms are?

17 MR. BEIROUTY: I think -- He said all sides they have
18 the same bathroom. [WITNESS RESPONSE: I think--that side [UI]]
[INTERPRETER INTERPRETS IN 3RD PERSON WHEN CLARIFYING RESPONSE]

19 Q. (By Mr. Cruz) The question, sir, is, from the dance
20 floor could you see where the bathrooms were located?

21 MR. BEIROUTY: ~~The dance floor was big that is - From one part~~
~~you can see, the other part you can't. One side you can see, other-~~

22 ~~side you can't.~~ [WITNESS RESPONSE: The dance floor is big, so there
is a part from where you can see and another part where you cannot see.]

23 Q. (By Mr. Cruz) So you were at one part of the dance
24 floor where you could see the bathrooms?

25 MR. BEIROUTY: Sometimes no.

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1 Q. (By Mr. Cruz) Okay. But sometimes yes?

2 A. Yes.

3 Q. Okay. And if you were interested in men, you would
4 have been watching the men as they were going into the
5 bathroom; correct?

6 MR. RAE: Objection. Calls for speculation, Your
7 Honor.

8 MR. CRUZ: This would be his personal observation.

9 THE COURT: Understood.

10 MR. RAE: It's assuming he's sitting there staring at
11 ~~the~~ bathrooms, looking for people in ~~the~~ bathrooms. And that
12 is an inappropriate line of questioning.

13 THE COURT: There may be a foundational question. If
14 you want to back up and hit it, if you would.

15 Q. (By Mr. Cruz) I mean, the basis for you going to this
16 specific club ~~is~~ was because you believed there were gay men at
17 this club; correct?

18 A. Yes.

19 Q. And your focus would be on the men ~~that~~ who were also at
20 ~~the~~ this club; correct?

21 A. Yes.

22 Q. Not the women, correct, is what you are saying today?

23 A. Yes.

24 Q. So you would be watching the [REDACTED] as they were moving
25 around the establishment; correct?

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1 MR. BEIROUTY: Yes.

2 Q. (By Mr. Cruz) So you would see what bathroom they
3 were going into; correct?

4 MR. BEIROUTY: Some men were using the bathroom on the
5 left and some men were using the bathroom on the right. [WITNESS
RESPONSE: Some of the guys were [UI]... the same... um... the bathroom that
was on the right side and others [UI] the bathroom that was on the left, so
I mean, it wasn't [UI].]

6 Q. (By Mr. Cruz) So you are saying men were also using
7 the women's bathroom?

8 A. Yes.

9 Q. In this case you were the only [REDACTED] spotted going into
10 the women's restroom the night in question.

11 MR. BEIROUTY: He observed two -- two men dressing
12 like women go into that bathroom. [INTERPRETER INTERPRETS IN
3RD PERSON]

13 Q. (By Mr. Cruz) But they were -- they were portraying
14 themselves, at least the outwardly appearance, of being
15 female. Would you agree?

16 MR. BEIROUTY: No. They were men.

17 Q. (By Mr. Cruz) But they were dressed like women;
18 correct?

19 A. Yes.

20 Q. Okay. But you saw the [REDACTED] who were dressed like [REDACTED]
21 strictly going into the [REDACTED]'s bathroom (indicating)?

22 MR. BEIROUTY: Yes.

23 Q. (By Mr. Cruz) And in fact you had gone into the [REDACTED]'s
24 bathroom; correct?

25 MR. BEIROUTY: ~~I did not~~ [WITNESS RESPONSE: I don't know]-- I
thought they were

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1 unspecified; the same.

2 Q. (By Mr. Cruz) Okay. Regardless of whether or not
3 they were specified men versus women's bathrooms, did you
4 go in both bathrooms? [INTERPRETATION: Did you go to both
bathrooms? [UI]]

5 MR. BEIROUTY: I looked in the one bathroom. There is
6 no privacy, so I went the next one. [WITNESS RESPONSE: I went into
the first bathroom and there was no privacy. I went to the other bathroom
for privacy.]

7 Q. (By Mr. Cruz) So you went into both bathrooms?

8 MR. BEIROUTY: Yes.

9 Q. (By Mr. Cruz) And you knew that in the one bathroom
10 that you went into that you said didn't have privacy, did
11 you see urinals? [INTERPRETATION: When you went to the bathroom
that has privacy, you saw in it places for... the urinals. Did you see?]

12 MR. BEIROUTY: He said yes. [INTERPRETER INTERPRETS IN 3RD
PERSON]

13 Q. (By Mr. Cruz) So you saw the urinals; correct?

14 MR. RAE: Asked and answered; same question twice.

15 Q. (By Mr. Cruz) You know that urinals are designated
16 for [REDACTED]; correct?

17 Can you speak up, sir? I can't hear your answer.

18 MR. BEIROUTY: Yes.

19 Q. (By Mr. Cruz) And you knew there was a private stall
20 in there as well; correct?

21 MR. BEIROUTY: There wasn't privacy. In the other
22 bathroom there was more privacy.

23 Q. (By Mr. Cruz) The question was, there was a bathroom
24 stall in the men's bathroom?

25 MR. BEIROUTY: Yes, there was one. But there is no

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1 privacy. [WITNESS RESPONSE: Yes, there was... I mean, but basically
there wasn't any privacy.]

2 Q. (By Mr. Cruz) Why did you need privacy to throw up?

3 MR. BEIROUTY: This is -- this question, I need
4 privacy to throw up. [WITNESS RESPONSE: This question is [UI]...
I mean... [UI] need privacy in this bar.]

5 Q. (By Mr. Cruz) You said there was an urgency for you
6 to throw up, to vomit.

7 MR. BEIROUTY: I had that feeling.

8 Q. (By Mr. Cruz) So privacy was not your main concern
9 when the urgency is to vomit?

10 MR. BEIROUTY: I feel more comfortable in a place
11 where privacy is more. [WITNESS RESPONSE: ...or nobody... uh...
nobody needs privacy...]

12 He stumble over the words. [INTERPRETER'S COMMENTARY]

13 MR. CRUZ: I didn't hear that. [NO INTERPRETATION RENDERED]

14 MR. BEIROUTY: He's thinking of saying more stuff.
[INTERPRETER'S COMMENTARY]

15 Q. (By Mr. Cruz) So you had that urgency to vomit? But
16 you're concerned about your privacy?

17 MR. BEIROUTY: Yes.

18 MR. CRUZ: But in fact the [REDACTED]'s bathroom that you
19 knew was a [REDACTED]'s bathroom --

20 MR. RAE: Objection to the question. That's been very
21 clear on numerous lines of questioning that the defendant
22 has stated he thought the bathrooms were unisex, that there
23 was no designation -- [INTERPRETER BEGINS TO INTERPRET BUT
STOPS AND NO FULL INTERPRETATION IS RENDERED OF THE OBJECTION]

24 MR. CRUZ: The state gets to challenge his testimony
25 here through cross-examination.

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1 THE COURT: Understood. He has testified what he
2 THROUGH the bathrooms were. Your line of questioning was
3 that he knew the males were going in there to use it; that
4 is what was established. So wherever that leads us.

5 If you could go back to the question that you were asking
6 and ask the question again. [INTERPRETATION OF ONLY THE LAST SECTION OF
"GOING BACK TO THE QUESTION" IS RENDERED]

7 Pardon me.

8 Q. (By Mr. Cruz) The other bathroom, would you agree,
9 had no urinals ~~evident~~?

10 A. Yes.

11 Q. So these bathrooms, then -- fixtures that were in the
12 bathrooms are something that you see multiple times in
13 other similar setups, would you agree? [INTERPRETATION: The bathroom that
you saw... the bathrooms that you saw in other places, it's the same... the
same principle/standard as in other places [UI].] [WITNESS RESPONSE: How's
that? I didn't understand what he means.] [INTERPRETER CONTINUES: Uh...
women's bathrooms... if you go to other women's bathrooms, you see the same
thing... the same... the same arrangement.] [WITNESS RESPONSE: uh... yeah...
but [UI] this arrangement was different. I saw that the arrangement was
different.]

14 MR. BEIROUTY: I'm going to try to explain the
15 question for him. [INTERPRETER PREFORMS THE TASK OF EXPLAINING A
QUESTION, WHICH IS OUTSIDE THE SCOPE OF THE INTERPRETER'S DUTIES].

16 Yes. [WITNESS GIVES A LONGER [UI] RESPONSE]

17 Q. (By Mr. Cruz) Now, when you were on the dance floor,
18 you actually approached Ms. Danielle Weiler; correct?

19 MR. BEIROUTY: I was dancing. I was dancing by
20 myself. I never get close to other people.

21 Q. (By Mr. Cruz) You never got close to Ms. Weiler?

22 MR. BEIROUTY: I didn't touch her. I didn't.

23 Q. (By Mr. Cruz) So you're saying you never went up and
24 started grinding behind her on the dance floor?

25 MR. BEIROUTY: Absolutely I didn't do it.

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1 Q. (By Mr. Cruz) You never reached around and groped her

2 breasts while on the dance floor? [INTERPRETATION: You didn't reach your arms
and held her while you were dancing.]

3 MR. BEIROUTY: Absolutely I didn't do that. And I

4 don't have the motive. [WITNESS RESPONSE: I never did that... I didn't have
the intention...]

5 Q. (By Mr. Cruz) Then you weren't grinding on the front
6 side of Ms. Weiler's person as well?

7 MR. BEIROUTY: Absolutely not.

8 Q. (By Mr. Cruz) And you didn't follow her into the
9 women's restroom?

10 MR. BEIROUTY: No.

11 Q. (By Mr. Cruz) And that is just one woman.

12 Would you agree she's a woman? [INTERPRETER REPEATS THESE PHRASES SEVERAL
TIMES.]

13 MR. BEIROUTY: Yes.

14 Q. (By Mr. Cruz) And then you had gone into the women's
15 restroom and you were peering over and underneath the
16 bathroom stall where Ms. Wicks was. . . in; correct? [INTERPRETATION: You
went to the bathroom and... you were looking over the bathroom and under the
bathroom at Wicks.]

17 MR. BEIROUTY: When I felt the urge of vomit, I went
18 to the bathroom, I went to check if there was somebody in the
19 bathroom. I was ~~tot~~ tall-- [WITNESS RESPONSE: When I felt that this is the
time... like, when I will need the bathroom, I went to the bathroom and I saw... I
checked... like whether there was somebody there...] [WITNESS SPEAKS AT THIS POINT
HALF IN ENGLISH HALF IN ARABIC CLARIFYING A POINT]

20 It's ~~is~~ very easy for me to ~~see~~ over the door ~~but~~ underneath I
21 didn't look really. [WITNESS RESPONSE: It's not the *bathroom* underneath. I
mean, I was tall, so it's easy for to determine whether somebody is there or not.]

22 Q. (By Mr. Cruz) So when you were at the same stall that
23 Ms. Wicks was occupying, you agree that you looked over and
24 into the stall that she was occupying?

25 MR. BEIROUTY: For ~~sure~~ I know there was somebody there. [WITNESS RESPONSE:
No... I did not look... I didn't look...but uh... I mean... for sure...
afterward... because somebody uh... was there behind the bathroom, I mean...]

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1 Q. (By Mr. Cruz) So you knew that that bathroom was
2 occupied?

3 MR. BEIROUTY: Yes.

4 Q. (By Mr. Cruz) And how did you know it was occupied?

5 MR. BEIROUTY: I pushed on the door; they were closed. [WITNESS RESPONSE: I
6 pushed on the two doors and saw that they were closed.]

7 Q. (By Mr. Cruz) So why did you wait in the female's
8 restroom?

9 MR. BEIROUTY: I felt dizzy. And I ~~needed to get some~~ leaned
10 water against the wall. [WITNESS RESPONSE: Because I felt dizzy and I leaned
11 for support against the wall.]

12 Q. (By Mr. Cruz) Why didn't you go to the other stall? [INTERPRETATION:
13 Why didn't you go to the other bathroom... the other bathroom stall?]

14 MR. BEIROUTY: He didn't feel comfortable. [INTERPRETER INTERPRETS IN 3RD
15 PERSON]

16 Q. (By Mr. Cruz) You didn't feel comfortable about going
17 to the unoccupied stall? [INTERPRETATION: You didn't feel comfortable about
18 the other bathroom? You didn't feel comfortable [UI]?]

19 MR. BEIROUTY: [WITNESS RESPONSE: Tell him, he returned back to the same
20 topic. This bathroom has more privacy.] He is -- The way he answering,
21 he's confusing the men's bathroom ~~from~~ and the ladies' bathroom.
22 I am trying...uh... I'm going to explain to him what you mean. [INTERPRETER
23 PREFORMS THE TASK OF EXPLAINING A QUESTION, WHICH IS OUTSIDE THE SCOPE OF THE
24 INTERPRETER'S DUTIES]. [INTERPRETER'S EXPLANATION: The women's bathroom has two
25 stalls, one was empty, the other was [UI] [NOISE INTERFERENCE].]

26 (Discussion held off the record.)

27 MR. BEIROUTY: It was closed. He ~~thought~~ saw it it was
28 closed. [INTERPRETER INTERPRETS IN 3RD PERSON]

29 Q. (By Mr. Cruz) How did you know it was closed?

30 MR. BEIROUTY: He pushed on the two doors. He noticed
31 ~~door was~~ they were closed. [INTERPRETER INTERPRETS IN 3RD PERSON] [WITNESS
32 RESPONSE: I pushed [UI] I pushed the two doors and saw that they were
33 closed/latched.]

34 Q. (By Mr. Cruz) So why didn't you leave the women's
35 restroom, knowing that the two -- the two stalls were being
36 occupied?

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1 MR. BEIROUTY: I thought somebody would leave soon.

2 And I wasn't able to move. [WITNESS RESPONSE: I thought that
someone would finish quickly and I wasn't able to move.]

3 Q. (By Mr. Cruz) You weren't able to move?

4 MR. BEIROUTY: I was feeling dizzy. I need to just relax

5 ... calm down. [WITNESS RESPONSE: I was feeling dizzy, so [UI].]

6 Q. (By Mr. Cruz) So you decided the best way is to relax

7 and calm down was to remain in the women's bathroom?

[INTERPRETATION: So you decided that the best thing to do to relax...
in the women's bathroom.]

8 MR. BEIROUTY: The whole thing was under two minutes.

9 Q. (By Mr. Cruz) Now at some point in time you realized

10 that Ms. Wicks was starting to exit the bathroom stall;

11 correct? [INTERPRETATION: So, at some point this Ms. Wicks
started to exit... to exit from the bathroom. Correct?]

12 MR. BEIROUTY: Yes.

13 Can I explain something? He answered yes, then he

14 tries to explain the yes. [INTERPRETER INTERPRETS IN 3RD
PERSON] Do I need to go on to explain

15 the yes or should I wait for next question?

16 MR. CRUZ: Sir, if Mr. Rae wants to follow up with you

17 on other issues, that would be your opportunity.

18 MR. RAE: Your Honor, I prefer for the Court to answer
19 that question.

20 THE COURT: Well, if he's giving additional

21 information, I think it is incumbent upon the interpreter

22 to tell us what it is. If it is objectionable, that is

23 another question.

24 So if you will go ahead, sir, and tell us what he

25 said. [NO INTERPRETATION IS RENDERED OF THE EXCHANGE ABOVE]

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1 MR. BEIROUTY: Okay. [INTERPRETER ADDRESSING WITNESS: Go ahead and finish
the question. The last question, you said [UI].] [WITNESS: [UI] I will wait
for the question. [UI] question.]

2 (Discussion held off the record.)

3 MR. BEIROUTY: He's going to go to the next question.

4 MR. CRUZ: Well --

5 MR. BEIROUTY: Can he wait until next question?

6 MR. CRUZ: Can you indicate on the record, though,
7 what you just communicated to Mr. Aljaffar so we could have
8 that as part of the record?

9 MR. BEIROUTY: I was telling him about the question,
10 Ms. Wicks was in the stall, he was starting to leave, did
11 he observe her or not. He said, yes. And he start -- he
12 start -- I stopped him. [INTERPRETER ENGAGES IN 1ST PERSON DIALOGUE (FROM
HIMSELF) WITH THE INTERLOCUTOR, WHICH IS OUTSIDE THE SCOPE OF THE INTERPRETER'S
DUTIES] .

13 MR. CRUZ: Thank you.

14 Q. (By Mr. Cruz) So when you realized that Ms. Wicks
15 started to exit out of the bathroom stall, you didn't let
16 her get out? [INTERPRETATION: When you saw that this Ms. Wicks exited the
bathroom, you did not let her exit.]

17 MR. BEIROUTY: Absolutely didn't happen. [WITNESS RESPONSE: That did
not happen at all.]

18 Q. (By Mr. Cruz) You did not go into that bathroom stall
19 with Ms. Wicks? [INTERPRETATION: You did not go to that bathroom with
her... Wicks?]

20 MR. BEIROUTY: He said, how? [INTERPRETER INTERPRETS IN 3RD PERSON]

21 Q. (By Mr. Cruz) When she started to open up the door to
22 leave that stall, you prevented her from leaving that
23 bathroom stall. [INTERPRETATION: Uh... you... she... that when she was at
the bathroom [UI], you prevented her from leaving the bathroom.]

24 MR. BEIROUTY: He still said it didn't happen. [INTERPRETER INTERPRETS
IN 3RD PERSON]

25 Q. (By Mr. Cruz) You did not go into the bathroom stall

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1 that she was still in? [INTERPRETATION: You did not go into the bathroom
that she was in?]

2 MR. BEIROUTY: He said he understood this question.

3 There was a misunderstanding between me and him, yeah. [INTERPRETER
INTERPRETS IN 3RD PERSON] [WITNESS RESPONSE: I understood the question. Tell
him that there is a *misunderstanding* going on between me and *the interpreter*.]

4 MR. CRUZ: So could you repeat my question to

5 Mr. Aljaffar, please.

6 MR. RAE: Could we find out what the question was for
7 the record, what it is we're examining, where the confusion
8 lies?

9 THE COURT: It is my understanding the question is,
10 did he go into the bathroom stall. [INTERPRETATION: The question: Did you
to Wicks... did you go to the bathroom stall in which she was, did you go with
her?]

11 MR. BEIROUTY: When she left, he opened the door he went to go
12 in her ~~space~~ place.

13 Q. (By Mr. Cruz) Did you allow her to completely get out
14 of the bathroom stall before you decided to go into the
15 bathroom stall?

16 MR. BEIROUTY: When I tried -- when I tried this, she
17 thought he was going to rape her. And that is what she was
18 thinking. [INTERPRETER INTERPRETS IN 3RD PERSON]

19 She start shouting, and he started to calm her down. [INTERPRETER
INTERPRETS IN 3RD PERSON] [INTERPRETATION: She stated shouting, and I tried to
calm her down.]

20 Q. (By Mr. Cruz) You went into the bathroom stall even
21 though she was still in that particular physical space?

22 MR. BEIROUTY: No. [WITNESS RESPONSE: Not the stall. No.]

23 Q. (By Mr. Cruz) So you were never in the bathroom stall
24 with Ms. Wicks also inside the bathroom stall?

25 MR. BEIROUTY: It didn't happen. When she left, she

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1 saw him and she start screaming. [INTERPRETER INTERPRETS IN 3RD
PERSON]

2 Q. (By Mr. Cruz) She started screaming because you
3 started to place your free hand on her breasts; isn't that
4 correct?

5 MR. BEIROUTY: Impossible. Didn't happen.

6 Q. (By Mr. Cruz) And you were ~~trying~~ attempting to also try to close
the

7 ~~bathroom~~ stall with you and her inside the bathroom stall?

8 MR. BEIROUTY: Impossible. Didn't happen.

9 Q. (By Mr. Cruz) Then why didn't you just let her go?

10 MR. BEIROUTY: I let her go, normal and she start screaming.

11 From the ~~The other~~ time she came -- There is no time. Right
12 away the security came. [WITNESS RESPONSE: I let her go... in a
regular way. She screamed, but at the same time, when she yelled, I mean,
there was no time, the security person came right away.]

13 Q. (By Mr. Cruz) So you're saying you were never in the
14 bathroom stall alone with Ms. Wicks?

15 MR. BEIROUTY: Yes.

16 Q. (By Mr. Cruz) You had never gone in there and put
17 your hand -- one of your hands on her breast?

18 MR. BEIROUTY: No. It didn't happen.

19 Q. (By Mr. Cruz) And you're saying that you never also
20 attempted to shut that door with you and her inside the
21 bathroom stall?

22 MR. BEIROUTY: Didn't happen.

23 Q. (By Mr. Cruz) But she's just all of a sudden out of
24 the blue starts screaming that she believes she is going to
25 get raped by you? [INTERPRETATION: So without any reason she started
to yell.]

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1 MR. BEIROUTY: She was drunk and she was not in normal
2 state.

3 Q. (By Mr. Cruz) You had no idea how much she had been
4 drinking, isn't that correct?

5 MR. BEIROUTY: She was -- She drank a lot. Proof of
6 that, he didn't do anything to her. [WITNESS RESPONSE: She had drank a
lot and the proof is like... I did not do anything to her and [UI]]
7 When she saw him in the bathroom she thought he was
8 going to rape her. [WITNESS RESPONSE: I mean when she saw me in the
bathroom, she thought that I am coming to rape her or something like that.]

9 Q. (By Mr. Cruz) And you indicated in some ~~part of point~~ during
10 your answer that you tried to calm her down?

11 MR. BEIROUTY: Yes.

12 Q. (By Mr. Cruz) How did you try and calm her down?

13 MR. BEIROUTY: I... I thought told her I just would need to use
14 the bathroom. [WITNESS RESPONSE: I told her that all I want is to
just use the bathroom.]

15 Q. (By Mr. Cruz) You were just -- you just needed to
16 tell her to use the bathroom, that is how you were calming
17 her down?

18 MR. BEIROUTY: I didn't -- English -- and I wasn't in
19 a good state to -- [WITNESS RESPONSE: I didn't have enough language
skills and I wasn't in a state to...]

20 Q. (By Mr. Cruz) Did you place your hands on her?

21 MR. BEIROUTY: No.

22 Q. (By Mr. Cruz) And then she was able to -- you said --
23 it was at that point in time that then security came into
24 the bathroom? [INTERPRETATION: At this time the security guards came
to the *bathroom*.]

25 MR. BEIROUTY: Yes.

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1 Q. (By Mr. Cruz) But isn't it true that security wasn't
2 aware that that had taken place yet? [INTERPRETATION: The security knew
that this was happening.] [WITNESS RESPONSE: What?] [INTERPRETER: The
security had an idea that this stuff was happening.] [WITNESS RESPONSE: What
does that mean? I don't understand.]

3 MR. BEIROUTY: He didn't understand the question. [INTERPRETER INTERPRETS
IN 3RD PERSON]

4 Q. (By Mr. Cruz) Security wasn't aware of the
5 altercation that was happening inside the bathroom stall
6 when it was just you and Ms. Wicks -- [INTERPRETATION: The security
guards did not know what happened in the bathroom.] [WITNESS RESPONSE: Hum.]
[INTERPRETATION CONTINUED: Is that possible?] [WITNESS RESPONSE: Hum.]

7 MR. BEIROUTY: They thought he was trying to rape her
8 -- [WITNESS RESPONSE: [UI] trying to rape her, because I was present.]

9 THE REPORTER: Hang on. Thank you. Go ahead.

10 MR. BEIROUTY: They thought he was trying to rape her.
11 She acted like -- that he was going to rape her, and he
12 wasn't -- doing it.

13 Q. (By Mr. Cruz) The question, sir, is, did security
14 contact you inside the women's bathroom when you were in
15 there with Ms. Wicks?

16 MR. BEIROUTY: They came and they took him, and they
17 call the police. [INTERPRETER INTERPRETS IN 3RD PERSON]

18 Q. (By Mr. Cruz) Was that inside the women's restroom?

19 MR. BEIROUTY: Yes.

20 Q. (By Mr. Cruz) Now, after Ms. Wicks had left the
21 restroom, there was Ms. Ellis, who came into the restroom.
22 Do you remember that?

23 MR. BEIROUTY: Ms. Ellis, she came before, came before

24 Amber... Ms. Wicks. [WITNESS RESPONSE: As I recall Wellis [PH] came
before uh... uh... Amber.]

25 THE COURT: Do you have a ways to go, Mr. Cruz?

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1 MR. CRUZ: Just a little bit.

2 MR. BEIROUTY: Another ten minutes. If we could
3 break, that is fine.

4 THE COURT: Yes. Let's go ahead and do that. Let's
5 go ahead and take our lunch hour now. There is no reason
6 not to do that.

7 So, folks -- stay there -- we'll be in recess. You
8 can flip your note pads over. Mr. Stewart, you can lead our
9 crew out.

10 THE BAILIFF: All rise.

11 (The following was held out of the presence of the jury:)

12 THE COURT: All right. We're in recess.

13

14 (Court recessed at noon.)

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1 AFTERNOON SESSION

2 (December 3, 2014; 1:35 p.m.)

3 (The following was held in the presence of the jury:)

4

5 THE BAILIFF: All rise.

6 THE COURT: All right. Have a seat. Thanks.

7 Mr. Cruz.

8 MR. CRUZ: Thank you, Your Honor.

9

10 CROSS-EXAMINATION (continuing)

11 BY MR. CRUZ:

12 Q. Now, Mr. Aljaffar, prior to the sexual assault
13 accusations made by Ms. Wicks and Ms. Ellis, isn't it true
14 that you were contacted by Kippi Batteade? [INTERPRETATION AND
WITNESS VOICE ARE POORLY AUDIBLE, BUT A LENGTHY BACK AND FORTH
EXCHANGE TAKES PLACE. The word 'bouncer' is audible.]

15 MR. BEIROUTY: No. He took ~~them~~ him right away, he said.
16 But -- he think the incident -- at the time of the
17 incident. [INTERPRETER INTERPRETS IN 3RD PERSON] [WITNESS
RESPONSE: No, he took me right away and...]

18 Q. (By Mr. Cruz) You can't recall being contacted by
19 staff prior to these accusations being made that you
20 weren't supposed to go into the female's bathroom?

21 MR. BEIROUTY: No.

22 Q. (By Mr. Cruz) Were you aware that that complaint had
23 been made that you as a male had been going into the
24 female's bathroom? [INTERPRETATION: Did you know that there was
a complaint made about you going to the women's bathroom?]

25 MR. BEIROUTY: No.

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1 Q. (By Mr. Cruz) Do you remember going into the other
2 bar that was across the street?

3 MR. BEIROUTY: No.

4 Q. (By Mr. Cruz) You don't remember being contacted by
5 Mr. Mays, and he ejected you from that bar that was across
6 the street?

7 MR. BEIROUTY: No.

8 Q. (By Mr. Cruz) And isn't it true that after you were
9 ejected from that bar, that is when you went over to the
10 Irv's bar?

11 MR. BEIROUTY: Irv's -- I was walking there, trying to
12 get in, but I couldn't get in.

13 Q. (By Mr. Cruz) So you did attempt to get into the club
14 that was across the street from Irv's?

15 MR. BEIROUTY: Yes, I tried, but I didn't have any ~~ID~~ idea.

[WITNESS RESPONSE: Yes, I tried... I mean, the idea didn't cross my
mind.]

16 Q. (By Mr. Cruz) You didn't have any ID at all that
17 evening? [INTERPRETATION: You weren't carrying identification?]

18 MR. BEIROUTY: Yes.

19 Q. (By Mr. Cruz) So he was -- Mr. Mays was mistaken that
20 he ejected you from inside the bar across the street?

[INTERPRETATION: That uh... Mays uh... was wrong that he kicked you out
of the bar that was across [UI].]

21 MR. BEIROUTY: I think.

22 Q. (By Mr. Cruz) So before you went into the Irv's bar,
23 did you -- were you asked for ID?

24 MR. BEIROUTY: Some -- some of his friends at school,
25 they told him just to give the ID with money, and don't say

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1 anything. [INTERPRETER INTERPRETS IN 3RD PERSON]

2 Q. (By Mr. Cruz) So you had an ID?

3 MR. BEIROUTY: Yes.

4 Q. (By Mr. Cruz) Okay. So it wasn't correct, then, when
5 you said that you didn't have ID when you attempted to get
6 into the club across from the -- the street from Irv's?

7 MR. BEIROUTY: I didn't go into that bar.

8 Q. (By Mr. Cruz) Now, you had indicated that you also
9 had contact with Ms. Ellis inside the female's bathroom ~~and~~ at
10 Club Red; correct?

11 MR. BEIROUTY: No. Absolutely not.

12 Q. (By Mr. Cruz) You didn't have any contact whatsoever
13 with Ms. Ellis, the go-go dancer that worked at Club Red?

14 A. No.

15 MR. BEIROUTY: No.

16 Q. (By Mr. Cruz) So she was mistaken when she said she
17 encountered you inside the female's bathroom?

18 MR. BEIROUTY: She saw me and after that she went to
19 the security and told.

20 At this time Amber, she got out and she start
21 screaming same time.

22 Q. (By Mr. Cruz) So for clarification, you had already
23 been in the female's bathroom; correct? [INTERPRETATION: For
clarification, you were in the women's bathroom.] [WITNESS RESPONSE:
What?] [INTERPRETER: He says it's just for clarification, you were in
the women's bathroom.]

24 MR. BEIROUTY: I -- I wasn't -- I didn't think it was

25 for women bathroom. [WITNESS RESPONSE: I did not believe that
this is a bathroom for women. Because [UI].]

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1 Q. (By Mr. Cruz) You know ~~new~~ that it's now a women's
2 bathroom, so you were inside the women's bathroom; correct?

3 MR. BEIROUTY: Not an intent to be there. [WITNESS RESPONSE: It
was not intentional.]

4 Q. (By Mr. Cruz) Okay. But you had also indicated that
5 you specifically went into that women's bathroom because
6 you wanted more privacy.

7 MR. BEIROUTY: Yes. Because other restroom didn't
8 have a door.

9 I -- I saw other men dressing like women go into the
10 bathroom.

11 And he saw other women go into the men's bathroom.

[INTERPRETER INTERPRETS IN 3RD PERSON]

12 Q. (By Mr. Cruz) Were you dressed in women's clothing
13 that evening so you thought it would be okay for you to go
14 into there?

15 MR. BEIROUTY: Not -- No.

16 Q. (By Mr. Cruz) But you -- you intentionally went into
17 that specific restroom, then?

18 MR. BEIROUTY: He stated many times what his motive
19 was. [WITNESS RESPONSE: Tell him how many times [UI]]

20 Q. (By Mr. Cruz) So you did encounter Ms. Ellis inside
21 that bathroom as well; correct?

22 MR. RAE: Asked and answered, Your Honor. This is how
23 the state opened their line of questioning.

24 THE COURT: Seems like we have gone down this path a
25 little bit, Mr. Cruz.

[INTERPRETER DOES NOT RENDER AUDIBLE INTERPRETATION OF OBJECTION AND
COURT'S COMMENTARY.]

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1 MR. CRUZ: But he was evasive in his answer.

2 THE COURT: Okay. I will let him answer this
3 question. But I think we plowed this ground pretty
4 thoroughly as to what occurred. Go ahead.

5 MR. BEIROUTY: The question?

6 THE COURT: Did you encounter Ms. Ellis inside the
7 bathroom?

8 MR. BEIROUTY: Yes. She said something, and he didn't
9 understand. And she left. [INTERPRETER INTERPRETS IN 3RD PERSON]

10 Q. (By Mr. Cruz) So at no time did you pin her up
11 against one of the sinks inside the bathroom?

12 MR. BEIROUTY: I have no interest in the girls. How
13 could I do something like this?

14 I didn't have the -- energy to do. The last thing I
15 was thinking about was sex.

16 Q. (By Mr. Cruz) And you're saying that you never
17 restrained her inside the bathroom by grabbing both of her
18 hands and --

19 MR. BEIROUTY: He didn't -- he didn't grab her hands.

20 And she didn't have any ~~clothes~~ clues that he [UI] her there--

21 Police didn't take any picture of that. [INTERPRETER INTERPRETS
IN 3RD PERSON][WITNESS RESPONSE: I did not grab her hands... and she
was... when she was [UI] marks on her body... the police [UI] took
pictures]

22 Q. (By Mr. Cruz) And you're saying you never pressed her
23 body [INTERPRETER: He says you never pulled your body on her...]

[WITNESS RESPONSE AT THIS JUNCTION AS INTERPRETATION IS BEING RENDERED:
No.] to also prevent her from leaving that bathroom? [INTERPRETER: ...as
she exited the bathroom.]

24 MR. BEIROUTY: There was -- there was a big distance
25 between us. She went in the bathroom. She said a couple

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1 words and she left. [WITNESS RESPONSE: There was a big distance between
her and me [UI] and I noticed that she entered the bathroom and she said a
couple of words... and it wasn't clear to me what she meant... and [UI].]

2 Q. (By Mr. Cruz) And if you never got close to her, how
3 was she able to feel you pressing your erect penis against
4 her pelvic area?

5 MR. BEIROUTY: That question you ask her. I don't
6 know why she said this.

7 Q. (By Mr. Cruz) It was shortly after Ms. Ellis left
8 that you were then detained by security; correct?

9 MR. BEIROUTY: He was -- he was confused between the
10 names. [INTERPRETER INTERPRETS IN 3RD PERSON] [INTERPRETER: What names?]
11 He is confused between the family names for Ms. Ellis
12 and Wicks. [INTERPRETER INTERPRETS IN 3RD PERSON] [WITNESS RESPONSE: The
names... Wellis [PH] [UI] it's just that the names... the last name [UI]...
maybe I am mistaken [UI].] [INTERPRETER: [UI] [IN RESPONSE TO WITNESS]].

13 Q. (By Mr. Cruz) So who are you talking about, then, now
14 that you're not confused about who we're talking about? [INTERPRETER:
Whom are you talking about now that there is no mayhem?]

15 MR. BEIROUTY: Can you repeat the questions?

16 Q. (By Mr. Cruz) You said you were confused between
17 Ms. Wicks and Ms. Ellis? [INTERPRETER: You said you were getting confused
between Wicks and Ellis.]

18 MR. BEIROUTY: Now he understood. [INTERPRETER INTERPRETS IN 3RD PERSON]
19 I'm confused -- confused myself. [WITNESS RESPONSE: I mean from [UI]
from the beginning... from the beginning when [UI]]

20 Q. (By Mr. Cruz) Ms. Ellis -- Go ahead.

21 MR. BEIROUTY: Not from the beginning of the
22 questioning. What he was saying -- he wasn't confused from
23 the beginning of questioning, he was confused a couple
24 minutes ago [UI]. Now he's not. [INTERPRETER INTERPRETS IN 3RD PERSON]
[INTERPRETER PERFORMS THE TASK OF EXPLAINING, OUTSIDE OF SCOPE OF INTERPRETER'S
DUTIES.]

25 Q. (By Mr. Cruz) So who did you think I was talking

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1 about, Ms. Ellis, the short go-go dancer, or Ms. Amber

2 Wicks (indicating)? [INTERPRETATION: She... when he... when he was
talking about... about the short one, the go-go dancer or about... about...
about Wicks?]

3 MR. BEIROUTY: He said, repeat your question; he'll

4 answer. [INTERPRETER INTERPRETS IN 3RD PERSON] [WITNESS RESPONSE: Tell
him, repeat the question and I will answer.]

5 Q. (By Mr. Cruz) When you were in the women's bathroom,

6 you were -- you contacted Ms. Ellis; correct?

7 MR. BEIROUTY: She said a couple words and she left.

8 He didn't understand what she said. [INTERPRETER INTERPRETS IN 3RD PERSON]
[WITNESS RESPONSE: She said a couple words and left. I didn't understand what
she said.]

9 Q. (By Mr. Cruz) That is the go-go dancer we're talking

10 about; right?

11 MR. BEIROUTY: Yes.

12 Q. (By Mr. Cruz) So you're saying you never pinned her

13 up against the sink in the bathroom?

14 MR. BEIROUTY: Yes.

15 Q. (By Mr. Cruz) You never grabbed her arms and held her

16 in that bathroom against her will?

17 MR. BEIROUTY: Yes.

18 Q. (By Mr. Cruz) You never pressed your body up against

19 her person; correct?

20 MR. BEIROUTY: Yes.

21 Q. (By Mr. Cruz) Okay. So how was she able to feel your

22 erect penis up against her pelvic area?

23 MR. BEIROUTY: Like he said in the past, he -- he

24 didn't have the urge to feel her, and he wasn't in the

25 strength to do this stuff. [INTERPRETER INTERPRETS IN 3RD PERSON]

[WITNESS RESPONSE: As I said from the beginning... I did not have any [UI] and
the other thing is that I did not have the energy, because I was not feeling
well... [INTERPRETER ASKS A [UI] QUESTION OF THE WITNESS.] WITNESS CONTINUES:
Exactly.]

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1 Q. (By Mr. Cruz) We know you're saying now that you have
2 no interest in women, and we know you're saying now that
3 you were tired.

4 But the question is, how was she able to feel your
5 erect penis pressing up and grinding against her pelvic
6 area?

7 MR. BEIROUTY: In short, the story may be it's
8 fabricated.

9 I don't know what reason.

10 Q. (By Mr. Cruz) And it was shortly after that
11 accusation that Ms. Ellis made against you that you were
12 detained by security; correct?

13 MR. BEIROUTY: Yes.

14 Q. (By Mr. Cruz) Okay. So the contact that you had with
15 Ms. Ellis occurred after the contact you had with Ms. Amber
16 Wicks, isn't that true? [INTERPRETATION: You contacted/called Ellis
after you had uh... after you met [UI].]

17 MR. BEIROUTY: No. I was -- Ellis, she was first,
18 then Amber, she got out after. [WITNESS RESPONSE: [UI] No, Ellis
came out at the same time that [UI] came.]

19 Q. (By Mr. Cruz) So who was first -- and I don't want
20 you to get confused -- who are you saying you encountered
21 first? [INTERPRETATION: He says who was the first whom you encountered
in the bathroom?]

22 MR. BEIROUTY: Ellis.

23 Q. (By Mr. Cruz) Ms. Ellis? [INTERPRETATION: Ms. Ellis, correct?
[UI]?]

24 MR. BEIROUTY: Yeah.

25 Q. (By Mr. Cruz) The go-go dancer. [WITNESS RESPONSE: Yeah,
[UI].] That is who you are

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1 saying you encountered first? [INTERPRETATION: This is who you are saying you
first encountered in the bathroom?]

2 MR. BEIROUTY: Yes.

3 Q. (By Mr. Cruz) Then it was only after your encounter
4 with the go-go dancer you encountered Amber Wicks? [INTERPRETATION: After you
encountered Ellis, uh...you encountered Wicks?]

5 A. Yes.

6 MR. BEIROUTY: Yes.

7 Q. (By Mr. Cruz) Now, if that is the sequence of how the
8 events took place, you would have been already detained by
9 security after Ms. Ellis, the go-go dancer, reported that
10 you sexually assaulted her in the bathroom? [INTERPRETATION: This is the
sequence of the events which took place... uh... you were detained by the security
guards before you saw Amber.]

11 MR. BEIROUTY: Amber, when she left, the security came
12 in and they detain me. [WITNESS RESPONSE: No that didn't happen. That's not
how it happened. When... uh... when [UI] Amber, when she left uh... the security
came and detained me.]

13 Q. (By Mr. Cruz) You weren't detained outside of the
14 restroom?

15 MR. BEIROUTY: They took him out to the street and
16 they called the police. [INTERPRETER INTERPRETS IN 3RD PERSON]

17 Q. (By Mr. Cruz) Okay. But isn't it true that you were
18 detained outside of the women's bathroom? [INTERPRETATION: They detained you
outside of the women's bathroom.]

19 MR. BEIROUTY: They took him outside. [INTERPRETER INTERPRETS IN 3RD PERSON]
[WITNESS RESPONSE: [UI] no. They took me outside.]

20 Q. (By Mr. Cruz) The question, sir, is, you were
21 detained outside of the women's restroom; correct? INTERPRETATION: They
detained you outside of the women's bathroom.]

22 MR. BEIROUTY: He said outside. He answered many
23 times. [INTERPRETER INTERPRETS IN 3RD PERSON] [WITNESS RESPONSE: Didn't
[UI]. They took me outside. How many times have I already answered.]

24 Q. (By Mr. Cruz) So for clarification --

25 MR. RAE: Your Honor, asked and answered. [OBJECTION NOT AUDIBLY INTERPRETED]

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Mahadi Aljaffar/Cross

1 Q. (By Mr. Cruz) -- you were detained by your vehicle --
2 getting into a vehicle, weren't you?

3 THE COURT: When we're saying outside -- I'm sorry, I
4 don't mean to interject -- but the question is, are you
5 asking him outside but inside the building, or outside of
6 the building? We're just going in a circle here.

[INTERPRETATION OF ABOVE EXCHANGE NOT RENDERED AUDIBLY]

7 MR. CRUZ: I guess the confusion the state is having
8 -- and that's why we're repeating the question -- is
9 because I thought Mr. Aljaffar indicated he was detained
10 inside the women's restroom.

11 THE COURT: Okay.

12 MR. CRUZ: That's where the confusion is that I'm
13 having.

14 THE COURT: I don't know if it's confusion or you
15 don't agree with him. You have asked the question about
16 eight times, and you are getting the same answer. I'm
17 inclined to say we're kind of done with the question. You
18 know, if you want to clarify the question, you keep using
19 the same question over and over. We're not going anywhere.

20 I'm sorry to interrupt. I'm a little frustrated. I
21 don't know where we're going with all this. [INTERPRETATION OF
22 ABOVE EXCHANGE NOT RENDERED AUDIBLY]

22 MR. CRUZ: And I apologize.

23 Q. (By Mr. Cruz) When you were detained by security,

[INTERPRETATION: When the security guards detained you...]

24 were you still inside the bar or were you detained outside
25 the bar? [INTERPRETATION: When the security were you inside the bar
or outside the bar?]

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1 MR. BEIROUTY: Outside.

2 Q. (By Mr. Cruz) So you were on -- in the process of
3 leaving the bar?

4 MR. BEIROUTY: No. They took him by force outside the
5 bar, and they detained him until the police came. [INTERPRETER
INTERPRETS IN 3RD PERSON] [INTERPRETATION: No. They were the ones who took
me by force and took me out of the bar and detained me until the police
arrived.]

6 Q. (By Mr. Cruz) You weren't detained --

7 MR. RAE: Objection, Your Honor, for the Court's same
8 frustration.

9 THE COURT: I'm going to sustain it. We have covered
10 it.

11 MR. CRUZ: No further questions. [NO INTERPRETATION RENDERED]

12 THE COURT: Any redirect? [NO INTERPRETATION RENDERED]

13 MR. RAE: Yes, Judge. Thank you. I'll be brief. [NO
14 INTERPRETATION RENDERED]

15 REDIRECT EXAMINATION

16 BY MR. RAE:

17 Q. Mr. Aljaffar, you say you didn't have any energy to
18 hold Ms. Ellis, the go-go dancer, the short one.

19 What did you mean by that, no energy?

20 MR. BEIROUTY: I was in a state of dizziness.

21 Q. (By MR. RAE) Okay. It wasn't because you were tired,
22 it was because you were intoxicated?

23 MR. BEIROUTY: The alcohol, they make me tired. [WITNESS
RESPONSE: The drinking made me not feel well and not even...]

24 Q. (By MR. RAE) Okay. So a combination of -- of things.

25 I understand. Thank you. [INTERPRETATION: Like...]

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Mahadi Aljaffar/Redirect

1 You also stated that the last thing you were thinking
2 about was sex. What did you mean by that?

3 MR. BEIROUTY: The first thing, I was very tired. The
4 second thing, I wasn't interested in first girls. And I went to
5 the bar to go for my interest in men. [WITNESS RESPONSE: Because I simply was
not feeling well and secondly, I am not interested in girls. That's why this bar
is like... for boys. That's... [UI]]

6 Q. (By MR. RAE) Okay. So finally my question has to do
7 with all of this confusion about the bathroom. And I know
8 we have talked about it a lot. [INTERPRETATION: The question about the...
the... the confusion about the bathrooms. Like... the mixing of the bathrooms.]

9 You remember very early in the prosecutor's
10 questioning he asked you if you -- if you knew the
11 difference between the men's bathroom and a woman's
12 bathroom; correct? [INTERPRETATION: The prosecutor told you... asked you a
question which is do you know the difference between a women's bathroom and a [REDACTED]'s
bathroom.]

13 Yes or no. Go ahead and answer.

14 MR. BEIROUTY: Go ahead.

15 Q. (By MR. RAE) Do you remember the prosecutor asking
16 you if you remembered -- excuse me -- if you knew the
17 difference between the men's and women's bathroom? [RESPONSE FROM UNCLEAR
SOURCE: Yes.] [PRESUMABLY COURT REPORTER: Was there an answer?] [RESPONSE FROM
MULTIPLE PARTIES: "He said yes." "Yes."] [PRESUMABLY COURT REPORTER: Who said
yes?]

18 MR. BEIROUTY: Yes.

19 Q. (By MR. RAE) In Saudi Arabia are bathrooms different
20 than in the United States?

21 A. Yes.

22 Q. How?

23 MR. BEIROUTY: The bathrooms are the same. There is
24 no urinal for the men.

25 Q. (By MR. RAE) So how do [REDACTED] use the bathroom in Saudi

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Mahadi Aljaffar/Redirect

1 Arabia?

2 MR. BEIROUTY: The same as women. [WITNESS RESPONSE: The same way
that girls do.]

3 Q. (By MR. RAE) And how is that?

4 MR. BEIROUTY: They ~~went~~ want to urinate, they use the
5 bathroom just like ~~you~~ girls. [WITNESS RESPONSE: I mean... like if they
want to urinate, they use the toilet/latrine just like girls do.]

6 Q. (By MR. RAE) You mean you sit down?

7 A. Uh-huh.

8 MR. BEIROUTY: Yes.

9 Q. (By MR. RAE) So do ████ stand to urinate at all in
10 Saudi Arabia?

11 MR. BEIROUTY: No.

12 Q. (By MR. RAE) Okay. So to -- so -- when you use the
13 restroom, do you use the restroom like a Saudi Arabian or
14 like an American?

15 MR. BEIROUTY: Like Saudi.

16 MR. RAE: Thank you. I have no further questions.

17 THE COURT: Mr. Cruz?

18

19 RE-CROSS-EXAMINATION

20 BY MR. CRUZ:

21 Q. By the time of this incident you had been in the
22 United States for nine months; correct?

23 MR. BEIROUTY: Less than.

24 Q. (By Mr. Cruz) You arrived August 12th, 2013?

25 MR. BEIROUTY: Yes.

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Mahadi Aljaffar/Recross

1 Q. (By Mr. Cruz) Okay. So approximately eight months?

2 MR. BEIROUTY: Yes.

3 Q. (By Mr. Cruz) And so you got to know the difference
4 between men's bathrooms here in the United States versus
5 female's bathrooms?

6 MR. BEIROUTY: Yes, I know. But everything is
7 different in gay bar. [WITNESS RESPONSE: I know, but everything is
different in a gay bar. Because I described [UI] I mean...]

8 Q. (By Mr. Cruz) But you would agree there is a distinct
9 difference between men's bathrooms in the United States
10 versus women's bathrooms? [INTERPRETATION: There is a specific
difference between women's bathrooms and men's bathrooms... There is a specific
difference.]

11 MR. BEIROUTY: What do you mean, there is a
12 difference? [WITNESS RESPONSE: And what does he mean by 'difference'?

13 Q. (By Mr. Cruz) You know that there is urinals in the
14 men's bathrooms in the United States? [INTERPRETATION: You know that
men's bathrooms has that... that urinal... that...?]

15 A. Yes.

16 MR. BEIROUTY: Yes.

17 Q. (By Mr. Cruz) Even in the school you go to, are there
18 also women that attend that school?

19 A. Yep.

20 MR. BEIROUTY: Yes.

21 Q. (By Mr. Cruz) And there is men's bathrooms in that
22 school as well; correct? And you know that the men's
23 bathrooms in your school have urinals?

24 A. Uh-huh.

25 MR. BEIROUTY: Yes.

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Mahadi Aljaffar/Recross

1 Q. (By Mr. Cruz) And you know that the bathroom that you
2 were in at Irv's did not have any urinals?

3 MR. BEIROUTY: Yes.

4 Q. (By Mr. Cruz) But you knew that the other bathroom
5 across the way did have urinals?

6 MR. BEIROUTY: Yes. But there is no door for. . .

7 MR. CRUZ: Thank you.

8 THE COURT: All right. Gentlemen, you may step down.
9 Other witnesses?

10 MR. RAE: No, Your Honor. The defense rests.

11 MR. CRUZ: Can I just check with the advocate real
12 quick?

13 THE COURT: Yes.

14 (Pause in Proceedings.)

15 MR. CRUZ: No rebuttal.

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