

Appendix E: Military Dismissal of Court Martial,
April 18, 2016.



UNITED STATES MARINE CORPS
3D MARINE AIRCRAFT WING
MARINE CORPS AIR STATION MIRAMAR
PO BOX 452038
SAN DIEGO, CA 92145-2038

IN REPLY REFER TO:
5809
SJA

18 APR 2016

From: Commanding General
To: Trial Counsel

Subject: WITHDRAWAL OF THE CHARGES AND SPECIFICATIONS IN THE CASE OF
UNITED STATES V. LANCE CORPORAL JARED T. CARDWELL, USMC

Ref: (a) R.C.M. 306, MCM (2012 Ed.)
(b) R.C.M. 504(a), MCM (2012 Ed.)

Enclosure: (1) Charge Sheet dtd 29 Jun 15
(2) Charge Sheet dtd 6 Oct 15
(3) Charge Sheet dtd 8 Oct 15

1. In accordance with the references, the charges and specifications in the enclosures are hereby withdrawn and dismissed without prejudice. The case will be prosecuted by the Yuma County District Attorney's Office.


M. A. ROCCO

Copy to:
BC:
File:

Photocopy made NOV 28 '17

3734

Appendix F: Three Orders Admitting Statements from
May 19, 2015, May 22, 2015, May 26, 2015,
Entered on November 27 and 30, 2017.
Commissioner Stephen Rouff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

2017 NOV 30 AM 10:58

PLAINTIFF

FILED

2017 NOV 29 AM 10:48

CLERK OF LYNN FARRIS
YUMA SUPERIOR COURT
3556-1

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YUMA

State of Arizona) Case No.: S1400-CR-2016-00404

Plaintiff,)

Vs.)

JARED THOMAS CARDWELL,)

Defendant)

) ORDER PARTIALLY DENYING MOTION
TO SUPPRESS May 19, 2015
STATEMENTS

) COMMISSIONER TWO

The court has reviewed the defendant's Motion to Suppress Statements from 5/19/15 Interview and the State's Response to Defendant's Motion to Suppress Statements from 5/19/15 Interview and any supplemental memoranda; and the transcript of the subject interview and all arguments of counsel and evidence presented at the hearings on April 18, May 24, July 6 and August 8, 2017.

The defendant urges three reasons for suppression. First, the defendant claimed he was illegally arrested or stopped or detained on May 19, 2015, and his subsequent statements were all caused by this illegality. Second, the defendant asserts that the interview on May 19th was a custodial interrogation without necessary Miranda

1 Warnings. Finally, the defendant seeks suppression because his
2 statements during the interview were involuntary.

3 The court has applied an objective totality of circumstances
4 analysis to these three claims. The key factors in the examination
5 of all the surrounding circumstances of the interview are as
6 follows.

- 7 1. The interview occurred at the police station.
- 8 2. The defendant voluntarily traveled in his vehicle to the
9 interview.
- 10 3. The defendant was told he was not under arrest and was
11 free to leave at any time and was advised the door to the
12 interview room was not locked.
- 13 4. The defendant was not searched, not restrained in any
14 manner and was not booked or finger printed.
- 15 5. The defendant testified he felt he was ordered by NIS
16 agent Ruby to participate in the interview. He was not
17 expressly ordered by anyone to cooperate in the interview.
18 The defendant was just told an interview was needed to
19 figure out how the infant died and agent Ruby preferred
20 that the interview take place on May 19th. There were no
21 statements of any consequences if the defendant chose not
22 to be interviewed.
- 23 6. The defendant never communicated to anyone his alleged
24 subjective belief that he had to cooperate in the
25 interview. He never asked anyone whether as an active duty
26 serviceman that he had to cooperate in the interview.

1 7. Officer Tejeda was polite throughout the interview and did
2 not badger or threaten the defendant. Officer Tejeda did
3 ask the defendant on a handful of occasions whether the
4 defendant "snapped" or lost control or went overboard and
5 caused injuries to the defendant. The defendant
6 consistently denied losing control or causing serious
7 injuries or the death of the child. He consistently
8 claimed he only on one occasion jerked the child's arm and
9 pulled her to him over his lap and gave her one smack on
10 her buttocks. The court finds such questioning by Detective
11 Tejeda was investigatory and not accusatory in nature and
12 were permissible under State vs. Cruz-Mata, 138 Ariz. 370,
13 674 P.2d 1368 (1983).
14 8. The trip to the bathroom occurred after the interview was
15 over; and the defendant was escorted because the bathroom
16 was in a secure area of the police station where no non-
17 employee-civilians are allowed without supervision.
18 9. The interview was approximately two hours long.
19 10. The defendant was calm and unemotional throughout the
20 interview.
21 11. The will of the defendant was never overcome and the
22 defendant consistently provided what he considered to be
23 exculpatory statements.
24 12. No Miranda Warning were given.
25 13. YPD Detective Tejeda conducted the interview in civilian
26 clothes and no evidence was presented that the defendant

1 was aware Agent Ruby observed a portion of the interview
2 from another room.

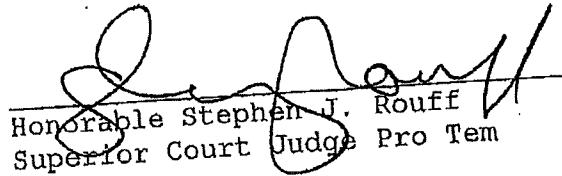
3 The court has weighed all the above circumstances and
4 the court finds the defendant was never arrested or illegally
5 stopped or detained. Furthermore, the defendant was never
6 subjected to custodial interrogation which would require
7 Miranda Warnings. Finally, the State has clearly overcome the
8 presumption that the statements of the defendant were
9 involuntary. All the statements were freely and voluntarily
10 given.

11 The court only has limited knowledge of the evidence in
12 this case. The court currently fails to see how any of the May
13 19 statements of the defendant are incriminating.

14 The court does order suppression of the question whether
15 the defendant would take a polygraph test and the response of
16 the defendant that he would take the test; that is, page 25,
17 line 44 to page 25, line 6 of the transcript. This evidence
18 is not inadmissible for any of the reasons urged by the
19 defendant. The polygraph references are not relevant and may
20 certainly mislead the jury or lead to speculation whether the
21 defendant took the test and the result of any test. This
22 portion of the transcript or tape should be omitted
23 seamlessly. The court does not want to hear any tapes or see
24 any transcripts with gaps of silence or blank spaces.

1 THEREFORE IT IS ORDERED the defendant's Motion to
2 Suppress the 5/19/15 statements is denied except for the
3 polygraph portion.

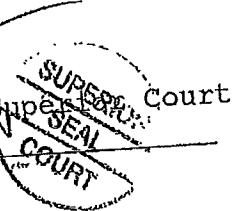
4 DATED this 27th day of November 2017

5 
6 Honorable Stephen J. Rouff
7 Superior Court Judge Pro Tem

8 Copies of the foregoing placed/mailed
9 In the boxes this 29 day of November, 2016, to:
10

11 Claudia Gonzalez
12 Deputy County Attorney

13 Cynthia Brubaker
14 Attorney for Defendant

15 LYNN FAZZ, Clerk of the Superior Court
16 By TAMMY SHERMAN 
17 Deputy Clerk

18
19
20
21
22
23
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

FILED
2017 NOV 30 AM 10:58 2017 NOV 29 AM 10:48
CLERK LYNN FAZZ
YUMA SUPERIOR COURT
YUMA, ARIZONA 85364

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YUMA

State of Arizona) Case No.: S1400-CR-2016-00404
)
Plaintiff,)
)
Vs.) ORDER PARTIALLY DENYING MOTION
JARED THOMAS CARDWELL,) TO SUPPRESS May 22, 2015
) STATEMENTS
Defendant) COMMISSIONER TWO
)
)

The court has reviewed the defendant's Motion to Suppress
Statements from 5/22/15 Interview and the State's Response to
Defendant's Motion to Suppress Statements from 5/22/15 Interview
and any supplemental memoranda; and Part 1 and Part 2 the
transcripts of the subject interviews and all arguments of counsel
and evidence presented at the hearings on April 18, May 24, July 6
and August 8, 2017.

The court finds the defendant was adequately advised of his
Miranda Rights when he was given the very thorough Article 31(b)
military advisement of rights. The military advisement of rights
given to the defendant is actually more extensive and more

1 protective than the Miranda Rights typically given to suspects by
2 Arizona law enforcement, State's Exhibit 3, May 24, 2017 hearing.
3 Clearly, the Article 31(b) advisement of rights reasonably conveyed
4 to the defendant his rights as required by Miranda, Doody v. Ryan,
5 649 F.3d 986 (9th Cir. 2011); and States v. Loucious, 847 F.3d 1146
6 (9th Cir. 2017).

7 The NCIS agent's statement "Don't let it alert you" was not
8 intended to diminish the importance of the advisement of rights. A
9 more reasonable interpretation of the intent of the agent was to
10 avoid the defendant becoming unreasonably emotionally upset when he
11 was told he was being investigated for murder.

12 There certainly was no detraction or diminishment of rights
13 even remotely similar to the egregious conduct in Doody, *supra*.

14 The court finds that the defendant did not invoke his right to
15 remain silent by occasionally stating "I've said it all" or "I've
16 said everything" or similar words to the same effect. The analysis
17 focuses on the intent of the defendant, State v. Peterson, 228
18 Ariz. 405, 267 P.3d 1199 (2011); State v. Szpyrka, 220 Ariz. 59;
19 and State v. Lawson, 144 Ariz. 547.

20 The court has read approximately 500 pages of transcripts of
21 the interviews of the defendant on May 19, May 22 and May 26, 2017.
22 The defendant was very willing to be interviewed and repeatedly
23 questioned. The defendant's alleged invocations of his right to
24 remain silent are much more reasonably interpreted as an expression
25 of frustration by the defendant that the officers did not believe
26 his denials of guilt or his account of the facts, and were adamant

1 The officers did not promise or imply any specific benefit to
2 the defendant, State v. Lopez, 174 Ariz. 131 (1992). The officers
3 permissibly urged the defendant to tell the truth, Amaya-Ruiz,
4 supra. The officers did not illegally threaten to arrest the wife
5 of the defendant if he did not confess, State v. Ross, 180 Ariz.
6 598 (1994).

7 In summary, the court finds under the totality of the
8 circumstances, including the length of the interview, that all of
9 the statements of the defendant were voluntary with the key facts
10 being the consistent willingness of the defendant to answer
11 questions and his will was never overborne.

12 The court is going to suppress the comment by agent Ruby to
13 the effect that if the defendant did not admit he accidentally killed
14 the child he would be "booked" for intentionally hurting the child.
15 This can be reasonably interpreted as a threat, but it did not
16 induce any incriminating statement. However, it should nevertheless
17 be suppressed as an improper threat. Independently, the comment and
18 the surrounding monologue should be suppressed because the
19 defendant's response was unintelligible and the agent's comments
20 were hearsay, speculative and improper opinion and any conceivable
21 relevance is outweighed by confusing the issues and misleading the
22 jury, Rule 403. Part 1 page 65 lines 30 to 45 are suppressed.

23 The court also orders suppressed the references to polygraph
24 testing for the same reasons stated regarding similar references in
25 the order regarding the May 19 interview. Part 1 page 108, line 39
26 to page 109, line 23 is ordered suppressed.

1 The court is also ordering suppressed many long and
2 unnecessary monologues by the officers for several reasons. Many
3 have no intelligible response by the defendant and are thereby
4 meaningless if not offered for the truth of the words spoken. Many
5 are redundant to shorter and much more understandable questions and
6 may certainly confuse the issues and may mislead the jury. The
7 court believes the jury will never understand any instruction that
8 the question is not offered for the truth of the words spoken when
9 applied to such long monologues which are largely statements and
10 opinions by the officers and not a question.

11 The following portions of Part 1 of the May 22 transcript are
12 suppressed:

13 Page 32, line 42 to page 34, line 3.

14 Page 35, line 17 to page 36, line 27.

15 Page 37 lines 6 - 33.

16 Page 38, lines 4 - 25.

17 Page 53, line 1 to page 54, line 26.

18 Page 57, line 1 to page 58, line 43.

19 Page 96 lines 31 - 45.

20 The following portions of Part 2 transcript are suppressed:

21 Page 24, line 6 to Page 27, line 16.

22 Page 28, line 31 to Page 30, line 35.

23 Page 65, lines 1 - 44.

24 Page 68 lines 1 - 31. Last sentence admissible.

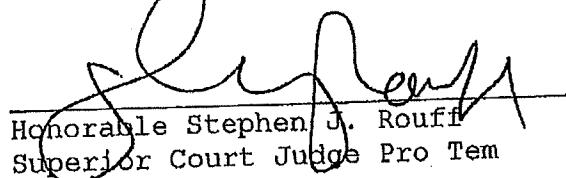
25 Page 69 lines 19 - 39.

26 Page 72, line 18 to page 73, line 16.

1 Page 78, line 16 to page 79, line 4.
2 Page 86, lines 7 - 47.
3 Page 88, line 27 to page 90, line 45.
4 Page 99. Lines 3 - 26.
5 Page 101, line 27 to page 102, line 9.
6 Page 102, line 43 to page 103, line 17
7 Page 106, line 42 to page 107, line 12.
8 Page 108, line 36 to page 109. Line 6.
9 Page 110, line 22 to page 111, line 5.
10 Page 111, lines 27 - 42.

11 THEREFORE IT IS ORDERED the defendant's Motion to
12 Suppress the 5/22/15 statements is denied except for the
13 above suppressed portions of the transcripts.

14 DATED this 27th day of November 2017

15 
16 Honorable Stephen J. Rouff
17 Superior Court Judge Pro Tem

18 Copies of the foregoing placed/mailed
19 In the boxes this 29 day of November, 2016, to:

20 Claudia Gonzalez
21 Deputy County Attorney

22 Cynthia Brubaker
23 Attorney for Defendant

24 LYNN FAZZ, Clerk of the Superior Court
25 By TAMMY SHERMAN
26 Deputy Clerk



FILED

2017 DEC -1 AM 10:52

LYNN FAZZ
CLERK OF SUPERIOR COURT
YUMA ARIZONA 85364

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YUMA

9 State of Arizona) Case No.: S1400-CR-2016-00404
10)
10 Plaintiff,)
11)
11 Vs.) ORDER PARTIALLY DENYING MOTION
12 JARED THOMAS CARDWELL,) TO SUPPRESS May 26, 2015
12) STATEMENTS
13 Defendant) COMMISSIONER TWO
14)
14)
15)

16 The court has reviewed the defendant's Motion to Suppress
17 Statements from 5/26/15 Interview and the State's Response to
18 Defendant's Motion to Suppress Statements from 5/26/15 Interview
19 and the defendant's Reply to State's Response to Defendant's Motion
20 to Suppress Statements from 5/26/15 Interview and any supplemental
21 memoranda; and the transcript of the subject interview and all
22 arguments of counsel and evidence presented at the hearings on
23 April 18, May 24, July 6 and August 8, 2017.

24 The defendant's request to Sergeant Sandoval and to the guard
25 at the brig and the subsequent email by Sergeant Sandoval should be
26 characterized as initial efforts to obtain general legal

1 representation as an exercise of the Sixth Amendment right for
2 legal representation. These efforts were not made during a time of
3 custodial interrogation. The defendant was clearly in custody, but
4 he was not being questioned and all the efforts were made at a time
5 when no imminent interrogation was expected.

6 The defendant was interrogated by agent Green approximately
7 three hours after the defendant requested Sergeant Sandoval's
8 assistance in seeking legal representation. However, this
9 questioning was not planned and coincidentally occurred when the
10 defendant was taken to the NCIS office for fingerprinting and other
11 identification procedures, and was not taken to the office for any
12 interrogation. Agent Green took advantage of this unexpected
13 encounter to interrogate the defendant.

14 The court finds that the efforts of the defendant to seek
15 legal representation prior to the May 26 interview were made
16 without any imminent expectation by the defendant of any
17 interrogation. Thus, these efforts cannot be fairly characterized
18 as any exercise of a Fifth Amendment right to counsel prior to
19 interrogation.

20 The defendant was given Article 31(b) rights on May 22, and
21 the court has previously ruled that these rights were more
22 thorough, more extensive and more protective than the Miranda
23 Rights typically given to adult interviewees. The defendant clearly
24 did not invoke his right to counsel or invoke any of his other
25 Miranda Rights during the custodial interrogation on May 22nd.

26

1 The decisions urged by the defendant represent the rule that
2 once a defendant invokes his Miranda Rights during custodial
3 interrogation, law enforcement may not thereafter initiate
4 custodial interrogation even when Mirandizing again and with a
5 waiver by the defendant, *Edwards v. Arizona*, 451 U.S. 477, 101 S.
6 Ct 1880 (1981); *State v. Routhier*, 137 Ariz. 90, 669 P.2d 68 (1983)
7 and *Arizona v. Roberson*, 486 U.S. 675 (1988). These cases are
8 factually distinguishable because our case lacks any invocation of
9 Miranda Right during any custodial interrogation.

10 The factual scenario of this case is not distinguishable from
11 the circumstances of *Montejo v. Louisiana*, 556 U.S. 778, 129 S.Ct.
12 2079 (2009); *McNeil v. Wisconsin*, 501 U.S. 171, 111 S.Ct. 2204
13 (1991) and *U.S. v. Boyd*, 63 Fed. App. 312, (9th Cir. 2003).

14 In particular, the defendants' requests for counsel at the
15 arraignment in *Montejo*, *supra*, or at a bail hearing in *McNeil*,
16 *supra*, were held to be exercises of Sixth Amendment rights and not
17 effective exercises of Fifth Amendment right precluding subsequent
18 lawful custodial interrogations. The court finds the efforts of
19 the defendant on May 26 to seek general legal representation cannot
20 be distinguished and were a similar exercise of Sixth Amendment
21 rights.

22 The most cogent precedent is *U.S. v. Boyd*, *supra*. Defendant
23 Boyd asked his arresting officer for an attorney and this was not
24 communicated to a different subsequent interrogating officer. The
25 court finds that agent Green was not aware of the requests by the
26 defendant at the brig to see a lawyer. The key similarity is that

1 neither defendant exercised a Fifth Amendment right to counsel
2 during any custodial interrogation.

3 The court is not dissuaded by the reliance by the defendant in
4 his Reply upon People v. Schunning, 399 Ill. App. 3d 1073, 928 NE2d
5 128 (2010). First, the Illinois appellate court was giving
6 deference to the trial court's factual determination that the
7 defendant asked to call his attorney during custodial
8 interrogation. Second, the decision is not consistent with Boyd,
9 McNeil and Montejo, *supra*. Third, the trial court found the request
10 for counsel occurred during a break during custodial interrogation
11 with the interrogating officer stating he would return. Imminent
12 interrogation for Miranda purposes logically requires that the
13 defendant is aware or believes interrogation will occur, and such
14 an awareness does not exist in the subject case.

15 The court finds the defendant did not effectively invoke his
16 Fifth Amendment right to counsel prior to the May 26 interview.

17 For the same reasons given in the order denying suppression of
18 the May 22, 2015 interview, the court finds the lengthy Article 31
19 (b) admonishment by agent Green more than adequately properly
20 advised the defendant of his Miranda Rights. In each interview, the
21 court finds from the totality of the circumstances, that the
22 defendant knowingly, intelligently and voluntarily waived his known
23 Miranda Rights. Also, please see State's Exhibit 10, the article
24 31(b) documents received in evidence on July 6, 2017; and RT Page
25 1, line 44 to page 2, line 8; and page 3 line 39 to page 6, line 5.

26

1 Independently, the court finds all the statements of the
2 defendant on May 26 were voluntary following an analysis of the
3 totality of the circumstances. The salient circumstances were that
4 the interview was not excessively long, the defendant was not
5 badgered, threatened or coerced and he consistently participated in
6 the interview after being clearly advised he could terminate the
7 interview at any time. Agent Green did not express or imply any
8 promise for any specific benefit or leniency, State v. Lopez, 174
9 Ariz. 131 (1992). There was no coercive law enforcement activity,
10 State v. Smith, 193 Ariz. 452 (1999). Agent Green was permissibly
11 urging the defendant to tell the truth and was properly making
12 statements of fact of the difference in culpability between an
13 unintentional and intentional killing, State v. Miles 186 Ariz. 10
14 (1996) and State v. Walton, 159 Ariz. 571 (1989). The defendant was
15 cooperative and unemotional throughout the questioning and did not
16 break down or otherwise manifest that his will was overborne.

17 For the same reasons stated in the orders for the 5/19 and
18 5/22 motions to suppress, the court orders suppressed the
19 references to polygraph testing, Page 56, line 33 to page 57, line
20 43.

21 Also, for the same reasons stated in the order relating to the
22 motion to suppress the 5/22 interview, the following long
23 monologues are ordered suppressed.

24 Page 6, line 10 to page 7, line 6

25 Page 9, line 27 to page 10, line 4

26 Page 31, line 1 to page 37, line 9

1 Page 43, lines 1 - 20 (The last phrase about bleach is
2 permissible)

3 Page 45, line 13 to page 46, line 22

4 Page 63, line 12 to page 64, line 44

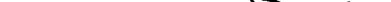
5 THEREFORE IT IS ORDERED the defendant's Motion to
6 Suppress the 5/26/15 statements is denied except for the
7 portions ordered suppressed.

8 DATED this 30th day of November 2017

Honorable Stephen J. Rouff
Superior Court Judge Pro Tem

13 Copies of the foregoing placed/mailed
In the boxes this 1st day of November, 2016, to: December

16 | Cynthia Brubaker
Attorney for Defendant

18 LYNN FAYZ, Clerk of the Superior Court
By 

19 Deputy Clerk
TAMMY SHERMAN

**Appendix G: Minute Entry Admitting Statements
and precluding testimony of Col. Weil.**

December 14, 2020

Judge Brandon Kinsey.



S1400CR201600404

Filed on 12/16/2020 3:10:51 PM

**SUPERIOR COURT OF ARIZONA
YUMA COUNTY**

Judge: Honorable Brandon S. Kinsey

Division: 6

Court Reporter: Elizabeth Hengstebeck

Lynn Fazz, Clerk of the Superior Court

By: Reyna Herrera, Deputy Clerk

Hearing Date: 12/14/2020

MINUTE ENTRY

STATE OF ARIZONA,

v.

JARED THOMAS CARDWELL,

Plaintiff,

Defendant.

CASE NO.: S1400CR201600404

ORAL ARGUMENTS RE: WITNESS TESTIMONY (DAY 34)

Start: 3:34 P.M.

End: 4:33 P.M.

This matter comes on properly before the Court in courtroom #2048 with the following appearances:

Deputy County Attorney: Claudia Gonzalez and Joshua Davis-Salsbury

Defense Counsel: Michael Breeze and Joshua Tesoriero

Defendant: Present

This is the time set for Oral Arguments to allow John Weil to testify.

Michael Breeze presents oral arguments in support of Defendant's motion.

Claudia Gonzalez presents oral arguments in opposition to Defendant's motion.

Michael Breeze is heard in rebuttal.

The Court informs counsel of a situation which results in a juror not being available this week. The record reflects the Court does not want to excuse the juror and its inclination is to resume trial on January 6, 2021. The record reflects the parties have no objection to the continuance. The Court instructs the bailiff to contact the jury and notify them to come back on January 6, 2021.

As to the testimony of Colonel Weil, the Court finds that the Defense's motion amounts to a motion for reconsideration of Judge Rouff's orders in 2017 with regard to the suppression of statements that the Defendant made to Detective Tejeda on May 19th and to the NCIS Investigators on or about May 22nd and 26th. The Court finds this information or similar testimony was available to Judge Rouff at the time he made this decision and there is no basis to reconsider Judge Rouff's decision at this point in the trial. The Court further finds Mr. Weil's testimony would be confusing to the jury and would confuse the issues as to voluntariness of Defendant's statements. Finally, the Court finds that Mr. Weil was improperly noticed to the State as an expert witness in this case due to the fact the nature and content of his testimony was not properly given to the State.

The Court precludes John Weil's testimony at trial; therefore, the Court denies Defendant's motion.

Mr. Breeze offers John Weil's as opinion testimony by lay witness under Rule 701.

The State is heard in opposition.

The Court is heard regarding Rule 701 on the record; and finds that all three factors are not met therefore, opinion testimony under Rule 701 as a lay witness would not be proper; therefore, Defendant's request is denied.

The Court is heard regarding trial scheduling issues.

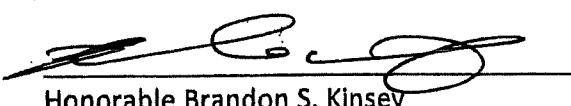
The Court amends its Trial Setting Order and adds the following dates to the jury trial calendar in this matter as follows: January 6, 2021; January 7, 2021; January 8, 2021; January 13, 2021; January 14, 2021 and January 15, 2021.

The Court notes having been informed that Mr. Tesoriero is not available on January 8, 2021.

Mr. Tesoriero is heard regarding the commitment he made to this case and to the Bar Leadership Institute; however, he will abide by the Court's Order.

The Court states its concern involving the current health situation and its effect on the trial jury; therefore, IT IS ORDERED trial shall be held on January 8, 2021.

Mr. Breeze requests a signed minute entry for Mr. Tesoriero to submit to the State Bar of Arizona indicating that this murder trial takes precedence; IT IS SO ORDERED.



Honorable Brandon S. Kinsey

12/16/2020

Date

C: MICHAEL BREEZE – EMAILED
JOSHUA TESORIERO - EMAILED

OFFICE DISTRIBUTION:
YUMA COUNTY ATTORNEY, CRIMINAL DIVISION – EMAILED
FREEDOM BAUDER - EMAILED

Appendix H: Judgment and Sentencing Order,
April 30, 2021.

SUPERIOR COURT OF ARIZONA

FILED

RECEIVED

YUMA COUNTY
YUMA, AZ

2021 APR 30 PM 1:29

2021 MAY -3 A 11:08

Six
Div.

YUMA COUNTY Brandon S. Kinsey
PUBLIC DEFENDER Judge

LYNN FAZZ
CLERK OF SUPERIOR COURT
YUMA, ARIZONA 85364

April 30, 2021
Date

No. S1400CR201600404

STATE OF ARIZONA

vs.

JARED THOMAS CARDWELL,

DATE OF BIRTH: 11/29/1994

County Attorney
By: CLAUDIA GONZALEZ

Attorney for Defendant
By: MICHAEL BREEZE

2021 APR 30 PM 1:29
ME

SENTENCE OF IMPRISONMENT

~~10:04~~ a.m. The State is represented by the above-named Deputy County Attorney; the defendant is present with counsel named above.

The Court Reporter is present.
The Court Clerk is present.

Pursuant to A.R.S. §13-607, the court finds as follows:

JURY VERDICT The determination of guilt was based upon a verdict of guilty after a Jury Trial.

IT IS THE JUDGMENT OF THE COURT that the Defendant is guilty of the following crime(s), that upon due consideration of all the facts, law and circumstances relevant here, the Court finds that suspension of sentence and a term of probation are not appropriate and that a sentence of imprisonment with the Department of Corrections is appropriate.

NO. S1400CR201600404 STATE VS. Jared Thomas Cardwell

THE COURT FINDS the Defendant's Lifetime term appropriate.

AS PUNISHMENT, IT IS ORDERED that the Defendant is sentenced to a term of imprisonment and is committed to the Arizona Department of Corrections as follows:

CHARGES: Count One: Second Degree Murder A class One Felony, all in violation of A.R.S. 13-1104 (A) (3), 13-1104 (C), 13-1104, 13-1101, 13-705 (B), 13-705, 13-710, 13-804 and 13-801, Committed on or around the 18th day of May, 2015 through the 19th day of May, 2015.

SENTENCE: Defendant's Lifetime

The Defendant is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the defendant has served Thirty-Five years or the sentence is commuted.

X Dangerous Crimes against Children

X NONREPETITIVE

This sentence is to date from April 30, 2021. The Defendant is to be given credit for Two Thousand Two hundred and Sixty-Five (2,265) days served prior to sentencing.

NO. S1400CR201600404 STATE VS. Jared Thomas Cardwell

FEES, FINES AND ASSESSMENTS

Financial Assessment/Surcharge	Amount	Start Date
Attorney Fee	\$750.00	First day of the second month following release from prison
Superior Court Enhancement Fee	\$40.00	First day of the second month following release from prison
Victim Rights Enhancement Fee	\$2.00	First day of the second month following release from prison
Victim Rights Assessment	\$9.00	First day of the second month following release from prison
Restitution Yuma County Attorney's Office, Victim Services Division.	\$846.69	First day of the second month following release from prison

All payments shall commence on the first day of the second month following defendant's release from custody and are due and payable on the first of the month thereafter until paid in full. All payments are to be made to the office of Yuma County Clerk of Superior Court through the Judicial Assistance Unit.

COMMUNITY SUPERVISION

IT IS ORDERED the defendant shall serve a term of community supervision consecutive to the term(s) of imprisonment ordered herein pursuant to A.R.S. §13-603(l).

The defendant is advised concerning rights of appeal or post conviction and written notice of those rights is provided.

NO. S1400CR201600404 STATE VS. Jared Thomas Cardwell

IT IS ORDERED authorizing the Sheriff of Yuma County to transport the defendant to the Arizona Department of Corrections and authorizing the Department of Corrections to carry out the term of imprisonment set forth herein.

IT IS ORDERED that the Clerk of the Court send to the Department of Corrections a copy of this order together with all presentence reports, probation violation reports, medical reports and mental health reports relating to the defendant and involving this cause.

U.S. CITIZENSHIP AND IMMIGRATION SERVICES

IT IS ORDERED the Clerk of the Superior Court shall transmit to the regional office of the U.S. Citizenship and Immigration Services, Phoenix, Arizona, at no expense and no fee, within thirty (30) days, a certified copy of the minute order of conviction and sentencing, including the entry of judgment of guilt as to all charges and sentence(s) imposed, and the original Indictment.

IT IS ORDERED exonerating any bond.

Let the record reflect that the defendant's fingerprint is permanently affixed to this sentencing order in open court.

10:14 a.m. Hearing Concludes

Case No. S1400CR201600404

STATE v. JARED CARDWELL

Defendant's DOB 11/29/1994

Let the record reflect that the Defendant's right index fingerprint is permanently affixed to this sentencing order in open court.



(right index fingerprint)

Signed on the 30th day of April 2021



JUDICIAL OFFICER OF THE SUPERIOR COURT

(right index fingerprint)

Appendix I: Partial transcript of First Suppression
Hearing
May 24, 2017.

S1400CR201600404

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA. FILED

COUNTY OF YUMA

2019 MAR 15 PM 2:08

CLERK LYNN FAZZ
YUMA ARIZONA 85354

STATE OF ARIZONA,)
)
)
Plaintiff,)
)
)
)
vs.) No. S1400CR201600404
)
)
JARED THOMAS CARDWELL,)
)
)
Defendant.)
)
)

BEFORE THE HONORABLE STEPHEN ROUFF
JUDGE OF THE SUPERIOR COURT
COMMISSIONER THREE, YUMA, ARIZONA

TRANSCRIPT OF PROCEEDINGS

MOTION TO SUPPRESS (continued)

May 24, 2017

8:42 a.m. to 5:00 p.m.

PREPARED BY:

Laurie Cooper, RPR, CRR, CR
Arizona Certified Reporter No. 50887
Yuma County Superior Court

Original

1 APPEARANCES:

2 For the Plaintiff
3 State of Arizona: Claudia Gonzalez, Esq.

4 For the Defendant: Zach Dumyahn, Esq.

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 I N D E X

2 3 WITNESSES DIRECT CROSS REDIRECT

4 By the State:

5 JESSICA JURJ 8 84,163 191

6 VICTOR SANDOVAL 108 132 140

7 (By Telephone)

8 JEREMY GREEN 205

9 (By Telephone)

10

11 By the Defense

12 MANUEL MORENO 143 152 160

13 (By Telephone)

14

15 E X H I B I T S16 PLAINTIFF'S EXHIBITS RECEIVED

17 2 59

18 3 61

19 4 85

20 5 132

21 6, 7 and 8 241

22

23 DEFENDANT'S EXHIBITS RECEIVED

24 1 174

25

PROCEEDINGS

THE COURT: Good morning, everyone.

The Court calls CR2016 number 404, State of Arizona versus Jared Thomas Cardwell. This is the time set for the continuation of the evidentiary hearing on the motions defendant filed which commenced on April 18th.

11 MR. DUMYAHN: Yes, Your Honor.

12 THE COURT: Okay.

13 MS. GONZALEZ: Yes, Your Honor. We just --
14 before -- on logistics, can we just test whether the
15 computer is actually set up to project? I've connected
16 it.

17 THE COURT: If I can figure out how to do it.

18 MS. GONZALEZ: It seems like it is over there,
19 but -- which is fine. Okay.

20 THE COURT: I don't know if it works or not.

21 MS. GONZALEZ: Well, we don't need it now.

22 MR. DUMYAHN: I would suggest we sample it and
23 make sure the audio is functioning correctly before we
24 start.

25 THE COURT: The speakers in this courtroom are

1 terrible, too.

2 MS. GONZALEZ: So it's on here, but it's not
3 on the speakers. Is that --

4

5 (Whereupon an audio recording was played in
6 open court.)

7

8 MR. DUMYAHN: So that's simply coming from the
9 computer? That might be sufficient.

10 THE COURT: I think it might sound better not
11 using our speakers.

12 MS. GONZALEZ: He just plugged in the
13 headphones. I'm a little embarrassed. Hold on.

14 THE COURT: Ms. Gonzalez, remember the trial
15 we had with the problem with the speakers in the
16 courtroom?

17 MS. GONZALEZ: Yeah. They are very terrible.
18 It actually might even be better without the -- hold on.

19

20 (Whereupon an audio recording was played in
21 open court.)

22

23 MS. GONZALEZ: Is that okay?

24 THE COURT: I can certainly hear it.

25 MS. GONZALEZ: If and when we need it.

1 MR. DUMYAHN: Your Honor, one thing I did want
2 to note before we begin taking testimony this morning is
3 that a couple weeks ago, defense counsel sent the
4 prosecutor a letter, and the letter was asking the
5 prosecutor to subpoena military witnesses for today's
6 hearing, and the prosecutor did that as far as all the
7 requests.

8 There was a request related to the defense
9 possibly calling the victim representative to the stand
10 in relation to at least one of the motions to suppress
11 filed, and the prosecutor's position was that the victim
12 representative has a right to refuse to testify in court
13 pretrial. The right related to the victim's ability to
14 refuse testimony does not apply to actually in-court
15 testimony. It only applies to pretrial interviews by
16 defense counsel, i.e. outside the courtroom. And that's
17 the plain reading of the statute in Arizona, and that's
18 the interpretation the appellate courts have given the
19 plain reading of the statute.

20 I don't see her in the courtroom this morning.
21 The victim representative that was being requested to
22 testify by the defense was Beatrice Cardwell. If she
23 were to testify, I don't even know if we would get to her
24 testimony today. I don't know if we'll get that far in
25 the hearing. The State, I believe, is going to present,

1 you know, maybe a half dozen witnesses to testify, and
2 then the defense will begin its presentation.

3 So I just wanted to make the Court aware that
4 the defense may or may not wish to call her as a witness.
5 It depends on the testimony of the State's witnesses, but
6 I would like to make that request again in court, that
7 she be required to appear if the defense wishes to call
8 her as a witness.

9 THE COURT: Okay.

10 MS. GONZALEZ: May I?

11 THE COURT: Do you want to be heard on that,
12 or just --

13 MS. GONZALEZ: Well, yes, Your Honor, just
14 briefly.

15 Again, the State does reiterate the -- the
16 State's position that it would be against the victim's
17 rights to in fact -- it may be the plain reading of the
18 statute, but case law -- the case law says that it --
19 that defense cannot do a round-about summoning or
20 subpoenaing an in-court testimony of the witness except
21 at trial by calling them to pre-trial hearing. And the
22 State would be glad to brief the Court on that issue
23 if -- if the Court so wants, but the State reiterates its
24 position that it would be against Beatriz Cardwell's
25 right under the victim's rights statutes to be subpoenaed

1 for this testimony.

2 THE COURT: Well, she's not just the victim
3 representative. She also a victim, isn't she?

4 MS. GONZALEZ: She is. Under the statute, she
5 is a victim as a result of the infant child being
6 deceased. She is.

7 THE COURT: Okay.

8 MS. GONZALEZ: That's it, Your Honor.

9 Also, just to give the Court a heads-up, of
10 course there will be several people calling in
11 telephonically today because they're not in Arizona.

12 THE COURT: Okay. So do you want to call the
13 next witness.

14 MS. GONZALEZ: The first witness would be
15 Agent Jessica Jurj, Your Honor. And she's here.

16

17 JESSICA JURJ,

18 having been first duly sworn to tell the truth, testified
19 as follows:

20 THE BAILIFF: Ma'am, please follow me this way
21 and have a seat on this chair. Yeah, this one. It's
22 closer to the mic.

23 MS. GONZALEZ: Thank you, Your Honor.

24

25 (No Omissions.)

1 DIRECT EXAMINATION

2 BY MS. GONZALEZ:

3 Q Could you please state your name for the
4 record.

5 A Jessica Jurj.

6 Q And could you spell your last name?

7 A J-u-r-j.

8 Q Thank you. And what is your position and
9 employer?10 A I am a special agent with NCIS, the Naval
11 Criminal Investigative Service.

12 Q And where are you currently positioned?

13 A Camp Pendleton, California.

14 Q How long have you been with NCIS?

15 A Since 2014.

16 Q And where did you begin your employment with
17 NCIS?18 A I began at Marine Core Air Station Yuma,
19 Arizona.

20 Q That's in 2014, you said?

21 A Yes.

22 Q All right. Did you have any law enforcement
23 experience prior to NCIS?

24 A Some, as well as military, yes.

25 Q Could you please tell us about that?

1 A I worked on a joint task force with the
2 military. I was platoon leader doing counter-terrorism
3 operations in New York City, defense support to civil
4 authorities.

5 Q And for how long?

6 A For five years.

7 Q And any law enforcement experience prior to
8 that?

9 A No.

10 Q Did you have to go to an academy or some type
11 of training to become an NCIS agent?

12 A Yes.

13 Q And what is that?

14 A There's the Federal Law Enforcement Training
15 Center in Glynnco, Georgia, which is for about three
16 months. It's a three-month period. And then a
17 subsequent academy for NCIS specifically focusing on
18 naval criminal investigative techniques and policies and
19 laws.

20 Q And how long is that?

21 A That is approximately, I would say, 12 weeks.

22 Q As part of your training in the academy for
23 the NCIS, were you trained in investigative techniques
24 such as search and seizures, interviews, of that nature?

25 A Yes.

1 Q And did you learn about military search
2 warrants?

3 A I did.

4 Q And what are those called?

5 A Command authorized search and seizure
6 authorizations that are issued by command or convening
7 authority.

8 Q All right. Did you successfully complete your
9 training for NCIS?

10 A I did.

11 Q All right. Do you have to complete any
12 periodic training or tests in order to keep up with your
13 law enforcement credentials?

14 A Yes.

15 Q And are you up to date with all of those
16 requirements?

17 A I am.

18 Q Have you had -- has your position within NCIS
19 ever been suspended or revoked, or have you been
20 reprimanded?

21 A No.

22 Q You mentioned the command authorizations for
23 search and seizure; is that correct?

24 A Yes.

25 Q And those are the equivalent of search

1 warrants in the civilian realm?

2 A Yes.

3 Q And do you know the requirements for a command
4 authorization for search and seizure?

5 A Probable cause.

6 Q And what is probable cause?

7 A Probable cause to believe that a crime
8 occurred. Evidence will be located and -- for example,
9 if it's a CAS or command authorization for search and
10 seizure for a residence, it would be probable cause that
11 evidence would be located in that residence to support a
12 proof that a crime had occurred or did not occur.

13 Q Who may issue a CAS?

14 A A convening authority, so a commander or
15 somebody in position to do that, who has that legal
16 authority in writing provided to him or her.

17 Q And if you were on a marine base, who would
18 that be? Who would that be, that convening authority?

19 A It would be the base commander who would have
20 convening authority over the entire base, and then lower
21 commanders for their own individual units and individuals
22 they -- they command. But the base commander would be
23 the ultimate convening authority.

24 Q And in the absence of a base commander, who is
25 the convening authority?

1 A Any individual appointed by the base commander
2 to be his convening authority while he's not there.

3 Q Okay. Does a CAS have to be written or can it
4 be verbal?

5 A It can be either verbal or written.

6 Q Under what circumstances typically will a
7 verbal CAS be issued?

8 A A verbal CAS will be issued under exigent
9 circumstances. If there's a sensitive time line,
10 anything of that nature.

11 Q Okay. Did -- in the -- under Marine Corps or
12 military authority, is there rights under *Miranda* or is
13 there an equivalent?

14 A There is an equivalent. They are called
15 Article 31 bravo rights.

16 Q What do those rights entail?

17 A They are provided to anyone who is suspected
18 of a crime prior to them being interviewed, and they're,
19 relative to the *Miranda* rights, a little more detailed, I
20 would say, where the suspicion is brought up to the
21 individual, they are informed of what they're suspected
22 of, and then told what rights they have and then asked
23 whether they want to waive them or not.

24 Q And what are those rights? What do those
25 rights consist of?

1 A So they're the same as *Miranda* rights. You
2 have the right to remain silent. Anything you say or do
3 can be used against you in a court of law. You have the
4 right to counsel, whether a military counsel or civilian
5 one, appointed to you or retained by you at your own
6 cost. That you have the right to remain silent, as I
7 said before.

8 Q Does it also include the right to have an
9 attorney during the interview or questioning?

10 A It does, yes, and that is listed as one of the
11 rights.

12 Q Okay. In your years as a law enforcement
13 officer, how many -- how many child deaths have you
14 investigated?

15 A That was the first one I was the case agent
16 for.

17 Q And this is in 2015?

18 A 2015, May, yes.

19 Q All right. Now, turning your attention to
20 2015, were you at the Yuma Marine Corps Air Station base?

21 A Yes.

22 Q All right. And were you in your position as
23 an agent with NCIS?

24 A Yes.

25 Q And did you become involved that morning with

1 agent to be informed --

2 A Yes.

3 Q -- of a death on base?

4 A Yes.

5 Q All right. What steps did you take after you
6 received that call?

7 A I took all the facts that I had at the time.
8 I informed my supervisor, Brian Werlman (phonetic) at the
9 time and corraled the other agents in the office to go to
10 the scene, coordinated with the CID agents who had called
11 me to find out where the location was, and then I called
12 the base commander, Colonel Martinez at the time.
13 However, found out that he was not in the office, and was
14 directed to speak to Lieutenant Colonel Moreno, who was
15 his acting base commander.

16 Q And what is Colonel Martinez's first name? Do
17 you recall?

18 A I believe it is Ricardo.

19 Q Okay. And Lieutenant Colonel Moreno, you
20 said, was the acting base commander?

21 A Correct.

22 Q All right. And he -- did you contact him
23 immediately?

24 A I did. As -- myself and Special Agent Green,
25 Jeremy Green, who was with me at the time in the office

In the Supreme Court of the United States

JARED THOMAS CARDWELL,

Petitioner,

v.

STATE OF ARIZONA,

Respondent.

On Petition for a Writ of Certiorari to the
Court of Appeals of the State of Arizona, Division One

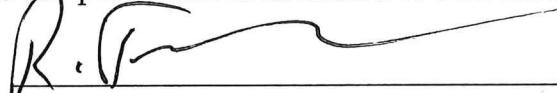
OTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

ile 39 of this Court, the petitioner asks leave to file the attached
rit of certiorari without prepayment of costs and to proceed *in forma*

Petitioner has previously been granted leave to proceed *in forma pauperis* in the
Superior Court of Arizona in and for Yuma County, the Arizona Court of Appeals,
Division One, and the Arizona Supreme Court.

Petitioner's declaration in support of this motion, through counsel, is attached.

A copy of the appointment to represent the petitioner is attached to this motion.



Robert Trebilcock
Deputy Public Defender
Office of the Yuma County Public Defender
241 S. Main Street
Yuma, Arizona 85364
928-817-4600
Robert.Trebilcock@yumacountyaz.gov

1 YUMA COUNTY PUBLIC DEFENDER
168 S. 2nd Avenue
2 Yuma, Arizona 85364
3 Phone: (928) 817-4600
4 Fax: (928) 817-4619
4 Public.Defender@yumacountyaz.gov

5 | Attorney for Defendant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YUMA

STATE OF ARIZONA,

Plaintiff,

vs.

JARED THOMAS CARDWELL,

Defendant.

Case No. S1400CR201600404

DIV. 6
HON. Brandon S. Kinsey

NOTICE OF ASSIGNMENT OF COUNSEL

NOTICE IS HEREBY GIVEN that the Yuma County Public Defender's Office has assigned Joshua Tesoriero as counsel to represent the defendant on his Notice of Appeal.

/S/

MICHAEL A. BREEZE, ESQ.
Yuma County Public Defender