

Appendix J: Transcript of Testimony of Col. Weil,
November 30, 2020.

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
COUNTY OF YUMA

STATE OF ARIZONA,)
)
Plaintiff,)
)
)
vs.) No. S1400 CR 2016-404
)
THOMAS JARED CARDWELL,)
)
Defendant.)
)
)
_____)

BEFORE THE HONORABLE BRANDON S. KINSEY
JUDGE OF THE SUPERIOR COURT
DIVISION SIX
YUMA, ARIZONA

REPORTER'S TRANSCRIPT OF PROCEEDINGS

JURY TRIAL - DAY 30

STATUS HEARING / MOTION FOR JOHN WEIL TO TESTIFY

November 30, 2020

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JOHN ALBERT WEIL

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P R O C E E D I N G S

THE COURT: Thank you. Please be seated. The Court calls case number S1400 CR 2016-404, State of Arizona versus Jared Thomas Cardwell. The Court notes the presence of the defendant and counsel for the parties. We are here on a hearing regarding, I guess, John Weil's -- whether or not he'll be allowed to testify.

I do need to notify the parties we found out today that Juror 11 -- so if you're looking at the jury box, the back right, back row, right-hand side has tested positive for the COVID-19. And I haven't yet excused him but my guess is that that's what I'll be doing. Any objections to that from either of the parties?

MS. GONZALEZ: No objection from the State, Your Honor.

MR. BREEZE: No, Your Honor.

THE COURT: Okay. So Juror 11 is excused. The bailiff is directed to, after this hearing, call him and notify him that he is excused.

MR. BREEZE: Your Honor, the other issue with respect to that is I saw an order that was issued by Judge Nelson and he made reference to an impending order by the presiding judge that the juries -- trial is going to be continued to January. Is that going to apply to our

1 case or not?

2 THE COURT: That will not apply to our case.
3 I've already spoken to the presiding judge. He indicated
4 that that's for trials that will -- have yet to be --
5 have -- be seated with the jury. He doesn't want to call
6 in big groups of jurors at this time.

7 We already have our jury in. We've snuck in a
8 grand jury right before that was -- he was going to do
9 that. I don't know if he's actually signed that order yet
10 anyway, but it -- it's not to affect our trial at all.
11 Okay. Any other questions?

12 MR. BREEZE: We're ready to proceed.

13 THE COURT: Okay.

14 MR. BREEZE: Colonel Weil is outside.

15 THE COURT: This is -- I'm going to treat this
16 as though it's your motion. It is your motion so I'll
17 allow you to go first call and Mr. Weil in.

18 MR. BREEZE: Yes, sir.

19 MR. WEIL: Should I remove my mask now or not?

20 THE COURT: You can -- you can probably keep it
21 on. I know what you look like so.

22 MR. WEIL: Okay.

23 THE COURT: Just for the record, just -- I
24 think I've already stated this before but I've known
25 Mr. Weil since I came to town 14 years ago out of law

1 school. He and I were representing separate clients in a
2 dispute with the City. And I've known him ever since,
3 mostly on a professional basis, although I have seen him
4 at the Fur Ball one time, I believe. His wife is involved
5 with the Humane Society. I don't believe it's a conflict.
6 I've already disclosed this to parties. So, Mr. Breeze,
7 you may proceed.

8 MR. BREEZE: Thank you, Your Honor.

9
10 JOHN ALBERT WEIL,
11 Having been first duly sworn, testified as follows:

12
13 DIRECT EXAMINATION

14 BY MR. BREEZE:

15 Q. Would you state your full name.

16 A. John Albert Weil.

17 Q. And would you describe your military
18 background.

19 A. I did 35 years in the Marine Corps, five as
20 enlisted. On August 10, 1975, I was -- received an
21 honorable discharge as a sergeant and was, on the same
22 day, commissioned a second lieutenant. I then went
23 through the Marine Corps officer's basic course, naval
24 justice school. I served 30 years. I had non-legal
25 billets as a -- as a commanding officer of an artillery

1 battery, Fifth Battalion, 14th Marines. I served in a
2 non-legal billet as an air officer and a executive officer
3 for Fourth Tank Battalion.

4 As -- in terms of legal billets I served in all
5 capacities, a defense counsel; a trial counsel or
6 prosecutor; a review officer, which would review records
7 of trial for error; a military judge; deputy chief defense
8 counsel for the Marine Corps. And my last tour was as
9 staff judge advocate for the commanding general of First
10 Marine Expeditionary Force.

11 Q. That was in Iraq?

12 A. That was in Fallujah, Iraq.

13 MR. BREEZE: Your Honor, may the witness remove
14 the mask? It's apparent he's having difficulty breathing.

15 THE COURT: Yeah, you can take your mask off if
16 you want.

17 MR. BREEZE: Thank you, Your Honor.

18 Q. (By Mr. Breeze:) Would you describe the
19 documents you reviewed in preparation for your testimony
20 today.

21 A. Well, I reviewed the pleadings, transcripts of
22 testimony in the military proceedings and the order
23 entered by military judge, Lieutenant Colonel Kasprzyk.
24 I've reviewed similarly the pleadings, transcript of
25 hearings in this court on the motion to suppress, and

1 Judge Rouff's order, and all related documents.

2 Q. And understanding the issues that are before
3 the Court today in consideration of your review and your
4 experience and your training, have you opinions with
5 respect to the issues?

6 A. Yes, I do.

7 Q. What are they?

8 A. Well, they would be extensive and you might
9 have to direct me, but essentially my opinion is that the
10 statement taken on May 19th was in violation of federal
11 law and not voluntary. It was also not voluntary -- it
12 was not knowingly, voluntarily, or intelligently made --
13 intelligently made using what I pronounce as the
14 Schneckloth factors.

15 Similarly, on May 22nd, that statement was not
16 knowing, voluntary, or intelligently made. And the
17 statement on May 26th was taken in violation of Lance
18 Corporal Cardwell's Fifth and 14th Amendment rights to
19 counsel and rights against self-incrimination and was also
20 not voluntary.

21 Q. Now, with respect to the first station house
22 interrogation with Detective Tejeda, were you aware of the
23 circumstances surrounding that from your -- your review?

24 A. Yes, I am.

25 Q. And was at that time Lance Corporal Cardwell

1 subjected to interrogation at a time when his freedom of
2 movement was restricted?

3 A. Yes. I think my expertise would relate
4 primarily to understanding the restrictions on freedom of
5 movement that would apply to a lance corporal in the
6 Marine Corps. If I may, I would like to highlight the
7 important factors.

8 There's a distinction between a Marine being in
9 a duty status or a non-duty status, sometimes called
10 leave. When a Marine is in a non-duty status he's been
11 secured from work. He goes home. He has more -- a
12 similar freedom of action as a civilian. He can wear
13 civilian clothes. He can go off base. He can go
14 essentially anywhere he wants, subject to some
15 limitations. He could not go to Mexico and so forth.

16 However, when a Marine is in a duty status,
17 his -- particularly a lance corporal, who would be one of
18 the most junior Marines at Marine Corps Air Station Yuma,
19 his freedom of movement is highly restricted. It's under
20 strict control of his superiors.

21 On May 19th Lance Corporal Cardwell left his
22 quarters on base, drove to work in his utilities. At that
23 point he was in a duty status. He was not free to go
24 anywhere he wanted to. You know, he's -- if he's working
25 on a radar or whatever and completed that work, he

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1 couldn't just say, well, I'm finished with that, I'm going
2 to drive out in town to the drugstore or whatever.

3 So what happened was when his wife called him
4 at work, he obtained authorization from his superior, a
5 corporal, to leave work and go to the hospital to comfort
6 his wife. His freedom of movement was restricted to doing
7 exactly that and nothing else. He wasn't free to, you
8 know, under some crazy set of facts, I guess, if he got
9 there and they'd already been separated or something and
10 -- and Beatrice said, I don't want you here, he wouldn't
11 have been free to just go out in town or do something
12 else.

13 The second part I think important to understand
14 is that a Marine's freedom of action is restricted by the
15 uniform he's wearing. On May 19th Lance Corporal Cardwell
16 was wearing what's called a utility uniform. That uniform
17 by Marine Corps regulation cannot be worn off base. It's
18 considered strictly a work uniform.

19 In 2007 the general I worked for in Fallujah,
20 Iraq, became Commandant of the Marine Corps. His name was
21 James Conway. And he -- he issued an order that even
22 tightened those restrictions. Some bases at that time
23 were allowing Marines to go to daycare in their utilities
24 to drop off their child or pick them up. They were
25 allowing them to stop at a gas station, get out of their

1 car in their utilities.

2 General Conway issued an order that a Marine
3 can only wear his utilities from his off-base quarters to
4 the base and cannot get out of his car. He can drive
5 through a drive-through or an ATM or McDonald's or
6 something like that, but he cannot get out of his car.

7 So the only exception to that would be a bona
8 fide emergency. Only if there's a bona fide emergency
9 could a Marine be in his utilities off base in town. So
10 that restricted Lance Corporal Cardwell's movement.

11 When he was at the hospital, that was an
12 emergency, as determined by his superior. He could wear
13 that uniform and comfort his wife. He could not take off
14 and go somewhere else. I found it interesting. I did
15 check on the status of that order in 2015. Generally what
16 happened was in 2013 the Navy relaxed their restrictions
17 and there was kind of a debate among Marines, you know,
18 are we being too tough, and the decision was made not to
19 change that.

20 So because of that emergency the only -- and
21 the Marine Corps orders, a Marine cannot go to the
22 courthouse, he cannot go to the police station, he cannot
23 go to sheriff's office, he cannot go to a civilian
24 attorney's office wearing his utilities. On May 19th
25 Lance Corporal Cardwell could only go where he was

1 authorized by his corporal.

2 I think another important point is the special
3 language that the Marine Corps uses, sometimes called
4 Marine Corps jargon. You know, when you show up for basic
5 training, you basically have to learn another language.
6 Because we have all these naval terms and terms that have
7 just come down through -- through history.

8 Judge Rouff mistakenly was led to believe that
9 an order has to be stated in explicit terms -- that's in
10 his order -- and that is untrue. Orders are most commonly
11 communicated in polite language, not using the word
12 "order" or using the word "command." And the language
13 that Naval Criminal Investigative Services Special Agent
14 Ruby used after he identified himself to Lance Corporal
15 Cardwell as a person in position of superior military
16 authority was -- first of all, he said, You're not going
17 anywhere except where I tell you.

18 He then -- and it's in all the transcripts --
19 said, Lance Corporal Cardwell, I need you to go to the
20 Yuma Police Department and be interviewed by civilian
21 policeman. Those words, "I need you to go," are
22 effectively an order.

23 I am personally aware that in a combat
24 situation those -- that term "I need you to do something"
25 is frequently used. An example would be a captain in

1 charge of convoy that was under attack would -- would call
2 a conference and say, Sergeant Smith, I need you to get
3 your man on the right flank behind that building; Sergeant
4 Jones, I need you to get your men on the right flank on
5 top of that building; First Lieutenant Brown, I need you
6 to call in air support. So that terminology, "I need you
7 to do something," is understood by a lance corporal in the
8 Marine Corps as an order.

9 I would also say that lance corporals do not
10 question orders, ever. I -- I have seen a situation
11 where, you know, a lance corporal who has technical
12 knowledge, such as Lance Corporal Cardwell, would -- you'd
13 have a briefing, and they would say something.

14 And I've personally observed as soon as that
15 briefing was over with, their NCO what take them aside --
16 and I happened to overhear it -- and they you would say,
17 Look, Lance Corporal, you don't ever say anything in that
18 briefing. You never question an order of an officer or --
19 or of a superior. If you have a question about it, you
20 come to me, your direct superior, as an NCO, tell me what
21 you're concerned about, and I will communicate that up the
22 chain of command to my staff NCO. That staff NCO to the
23 officer, and so forth.

24 So the concept that it has any relevance or
25 that someone would expect Lance Corporal Cardwell to

1 question Special Agent Ruby, a person who had identified
2 himself as being in a position of superior military
3 authority -- and I would say, I know that it's -- Special
4 Agent Ruby was wearing civilian clothes but, you know, it
5 doesn't -- I mean, everybody knows you see an old dude,
6 you know he's superior in rank. You see a 20 year old,
7 you can -- if he's in civilians you might think he's
8 another lance corporal.

9 But when you see someone that's in the same age
10 as Special Agent Ruby who has identified himself as a
11 person in a position of superior military authority who's
12 giving you an order, you're not -- you're not going to
13 question that.

14 The -- you know, just to continue my analysis
15 of whether or not Lance Corporal Cardwell's restriction of
16 movement was restricted under Miranda vs. Arizona
17 analysis, there's some importance that he was followed to
18 the police station by an escort. And I would just ask,
19 well, what if he had had -- what if the facts were
20 different, the Marine Corps were different, and he's on
21 his way to the police department and he says, Hey, you
22 know, I think I'll just go back out to my unit and talk to
23 one of my more senior Marines, they would have pulled him
24 over. You know, they would have stopped him and he would
25 have assumed that seeing that he's being followed.

1 I think probably one of the most critical
2 things -- and Judge Rouff was impressed by the fact
3 that --

4 MS. GONZALEZ: Judge, I'm -- I appreciate and I
5 respect, you know, Colonel Weil's opinions and -- but
6 these are based on speculative notions as to Judge Rouff's
7 orders. I'm also going object as to narrative at this
8 point.

9 MR. BREEZE: Yes, Your Honor. I think that
10 since this is a hearing where we're going to -- we're
11 developing a record, some leeway is appropriate. In
12 addition, we want to have this completed within two hours.
13 I think that's the additional reason to do it.

14 Now, with respect to the foundations for
15 Colonel Weil's opinions, he's established those -- those
16 credentials. And if -- if the prosecutor has an issue
17 with it she can explore that further in cross, but I don't
18 think the objections are well taken. I think narrative is
19 appropriate under the circumstances.

20 THE COURT: Ms. Gonzalez?

21 MS. GONZALEZ: I think the objection
22 specifically as to speculation is extremely well founded
23 considering we're going into the mental state, even into
24 Judge Rouff's mental state, let alone the defendant's
25 mental state. That is the objection as to narrative. I

1 mean, and that was 10 minutes ago and there's been
2 sufficient leeway.

3 MR. BREEZE: And finally with respect to the
4 allegation of speculation, these are well founded opinions
5 grounded in the opinions that were expressed by
6 Commissioner Rouff at the time and the obvious import of
7 the statements he made in -- in his findings, so there's
8 nothing speculative about it.

9 THE COURT: Okay. I'm going to, for now,
10 overrule the objection, although -- at least as to
11 narrative. I think that that's pretty well founded. I
12 think we need to ask him some questions, but for now it's
13 overruled. I don't know where you were.

14 THE WITNESS: I would say, Your Honor, I -- I
15 don't purport to speculate as to Judge Rouff's internal
16 mental thoughts, but in his order he talks about or
17 mentions that Detective Tejeda at the Yuma Police
18 Department had told Lance Corporal Cardwell that the door
19 was open and that he was free to leave.

20 So I would -- my -- my opinion would be that a
21 statement from a civilian that conflicts with an order of
22 a person in a position of superior military authority
23 would at -- would be disregarded or at a minimum confusing
24 to a lance corporal.

25 Also, I -- I believe that it's extremely

1 significant Lance Corporal Cardwell testified at the
2 suppression hearing that Detective Tejeda at the
3 commencement of the interrogation took his military
4 identification card. Again, understanding the
5 Marine Corps culture and the rules and regulations that a
6 lance corporal faces, that's very significant.

7 Because, you know, every Marine at all times
8 has his military ID. I bet if you called your dad he's
9 got it in his billfold right now. You're never without
10 your military ID. You can't get back aboard the base
11 without your military ID. So he was effectively locked
12 into that interview until dismissed by Detective Tejeda.

13 There's also testimony from Lance Corporal
14 Cardwell and Gunnery Sergeant Sandoval, the unit
15 representative, that they met just outside the gate at the
16 Chevron gas station so that Gunnery Sergeant Sandoval
17 could escort Lance Corporal Cardwell aboard the base.
18 Otherwise without his military ID he would not be able to
19 get past the gate guards. So I'll be quiet and wait for a
20 question from counsel.

21 Q. (By Mr. Breeze:) Did -- did the fact that
22 Agent Ruby relieve -- relinquish temporary control of
23 Cardwell, in quotes, handed him off to his unit when the
24 interrogation is completed, is that significant?

25 A. I think it's significant in that understanding

1 the Marine Corps and how it works. Special Agent Ruby
2 took temporary control over Lance Corporal Cardwell. You
3 know, there's a hundred percent accountability in the
4 Marine Corps.

5 As a commanding officer I have to know where
6 all my men are at all times all during the day. You know,
7 there's kind of a history -- I don't want to, you know,
8 drag this out, but, you know, in, like, at the artillery
9 battery we would have morning formation. I mean, people
10 would report. Now you're under -- you're under duty.
11 Take a roll call. And then at the end of the day we'd
12 have a formation and we would dismiss everyone.

13 During the workday every one of my Marines was
14 under the control of one of my officers or staff NCO or
15 NCOs. You never just -- you know, I could go at any time,
16 call up and say, Hey, Corporal Smith, where's Lance
17 Corporal Cardwell, and he would be able to tell me.

18 And so there was this concern by his unit --
19 because he had been given limited authorization to go out
20 and comfort his wife -- where is Lance Corporal Cardwell.
21 And Special Agent Ruby testified that when he -- he made
22 it down to the Yuma Police Department, he got a call from
23 a master gunnery sergeant, who's an E-10, saying, Hey, I'm
24 from MALS, my commanding officer wants to know where Lance
25 Corporal Cardwell is.

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1 And Special Agent Ruby said, Well, he's here at
2 the station. When we're finished, I will, quote, hand him
3 off to your unit representative, Gunnery Sergeant
4 Sandoval. So I'm just trying to illustrate how there is a
5 restriction on freedom of movement. There is no doubt in
6 my mind as an expert that Lance Corporal Cardwell's
7 freedom of movement was restricted when he was in that
8 interrogation room on May 19th of 2015.

9 Q. Was Lance Corporal Cardwell a low rank -- of
10 such low rank and just out of basic with a pattern of
11 obedience, immediate obedience with an eagerness to please
12 persons in superior military authority?

13 A. Yes. You know, I think that -- that sort of
14 gets blown over. When you come out of boot camp or basic
15 training, you have this incredible, you know,
16 indoctrination into the Marine Corps. Some people call it
17 brainwashing but you -- you know, you've just gone through
18 this extreme experience where your drill instructor tells
19 you everything, when to get up, when to go to the
20 bathroom, when to eat, what to wear, and you become
21 conditioned to that pattern of obedience.

22 Equally important is a lance corporal learns to
23 trust and respect his superiors. That's just as
24 important. And the Marine Corps never lets that away.
25 You know, as any Marine takes care of their junior troops,

1 you know, my Marines, whatever they need, you know. In
2 this case, he was going through -- Lance Corporal Cardwell
3 was going through a very traumatic situation. His unit
4 said we're going to assign a experienced staff NCO to take
5 care of him.

6 Now, as you move away from boot camp, I mean,
7 the effect of that diminishes. All right. When you've
8 been in the Marine Corps for 30 years you're -- you know,
9 perhaps your pattern of obedience is not the same. But --
10 but the point I think is important is Lance Corporal
11 Cardwell goes through boot camp, basic training. He goes
12 to these military avionics schools.

13 He just arrived at Yuma in December. So he's
14 only been, you know, a Marine on a installation for less
15 than six months. And it's takes a period of time before,
16 you know, the extremes of basic training, you know,
17 diminish in their pervasive effect on the way you think
18 and the way you react to orders from a superior.

19 Q. In the context where Agent Ruby is in apparent
20 military authority would that lead Lance Corporal Cardwell
21 to trust him implicitly?

22 A. Yes.

23 Q. And would that blind lieutenant -- Lance
24 Corporal Cardwell to the fact that they -- they -- he and
25 Ruby were in a adversarial position?

1 A. I would say at that point in time Lance
2 Corporal Cardwell had never been lied to by a Marine
3 superior. He had never been tricked by one of his Marine
4 Corps superiors. He would implicitly trust them and he
5 would not expect them to be adversaries.

6 Q. Did Agent Ruby ask Lance Corporal Cardwell not
7 to leave the hospital without escort?

8 A. You know, there's several versions but clearly
9 he -- he told Lance Corporal Cardwell to wait outside
10 while Special Agent Ruby went back in to talk to the
11 doctors. Both Beatriz and Lance Corporal Cardwell
12 objected and Special Agent Ruby, through language which is
13 recorded in different testimony differently but --
14 persuaded him that he could not leave. And he was --
15 Lance Corporal Cardwell was standing there when he came
16 out of the hospital.

17 Q. Is the fact that Lance Corporal Cardwell was
18 escorted to Nancy Carreno's house significant and how?

19 A. It confers that Special Agent Ruby had taken
20 temporary control over Lance Corporal Cardwell and that
21 his freedom of movement was restricted.

22 Q. Was it apparent that Sergeant Freedman and
23 Agent Ruby coordinated their investigation and jointly
24 made the decision to have Cardwell interrogated at YPD?

25 A. I don't think that's contested from all the

1 transcripts and testimony I've read. They met actually at
2 the mother-in-law's house, if I recall, Nancy Carreno's
3 house. At that point there were numerous law enforcement
4 personnel there, both military and civilian. Sergeant
5 Freedman was the senior civilian. Special Agent Ruby was
6 the senior military. They coordinated how they would
7 proceed.

8 It is somewhat suspicious that they decided to
9 send Lance Corporal Cardwell to the Yuma Police Department
10 off base isolated from his fellow Marines to be
11 interviewed by a civilian. I believe that had he been
12 taken to the NCIS office aboard base there's no question
13 that any NCIS agent would have advised him of his
14 Article 31 rights before eliciting a statement from him.

15 If I can, and I don't want to go into another
16 narrative, but at some point I think I should explain the
17 difference between Article 31 and the Miranda rights.

18 Q. That was going to be my next question.

19 A. Okay. Article 31 is federal law and it was
20 passed by Congress in recognition that, you know, there's
21 no arrest warrants, there's no subpoenas. I can order --
22 if I'm doing an investigation, I can order any Marine to
23 come to my office or meet me somewhere and give a
24 statement. I don't need a subpoena.

25 If I don't suspect them of an offense I

1 don't -- I just order them. Okay. I'm asking you, were
2 you present when Lance Corporal Smith drove his truck into
3 -- into the Humvee. Well, sir, he's my friend. I don't
4 care, answer the question. Yes, I was present. What
5 happened? Well, he just -- he was looking out the other
6 way and he ran into it. So there's no sort of need to
7 compel testimony.

8 Now, if at any point I suspect that witness of
9 being guilty of a military offense, that's when Article 31
10 kicks in. Article 31 does only three things: I have to
11 advise the Marine that I suspect him of committing an
12 offense, I have to tell him that he's free not to make a
13 statement, and I have to tell him if he makes a statement
14 it can be used against him. Article 31 doesn't say
15 anything about attorney rights, you know, the right to
16 consult an attorney, before deciding whether you want to
17 make a statement.

18 It doesn't -- Article 31 doesn't say anything
19 about the right to have counsel present during your
20 statement. Article 31 doesn't say anything about
21 attorneys. That is all brought in through constitutional
22 law. Miranda vs. Arizona applies to the Marine Corps.

23 Interestingly, NCIS, because any time they
24 summon a Marine to report to -- to their office to make a
25 statement, they've restricted his movement and it has

1 Miranda implications. So now NCIS has incorporated the
2 attorneys rights within their Miranda rights. And that's
3 why you see on May 22nd that acknowledgment of rights
4 includes attorney rights and similarly on May 26th.

5 Q. Now, does Special Agent Ruby's use of the
6 words, It's common practice and standard -- standard
7 procedure to submit to or require submission to a -- an
8 interview have a special meaning to a lance corporal in
9 this context?

10 A. I think it -- it -- it was a way to alert Lance
11 Corporal Cardwell, look, you're going to be an
12 embarrassment to your unit if you don't go down and make
13 this statement to Yuma Police Department, because
14 everybody does it. And you're going to look like you're
15 not following orders, not following my orders. And you're
16 NCOIC or your officer is going to have to get involved.
17 And he would not want to embarrass his -- his superiors at
18 MALS-13.

19 Q. So is the pressure that Lance Corporal Cardwell
20 was under at this time complicate or enhanced by the fact
21 that he just lost his stepdaughter to death?

22 A. Well, I think, of course. You know, Special
23 Agent Ruby testified that Lance Corporal Cardwell looked
24 like he was in shock. That's Special Agent Ruby's words,
25 not mine. Detective Tejeda testified that he thought

1 Lance Corporal Cardwell was suicidal at the Yuma Police
2 Department. He was -- he was crying, he was sobbing. So
3 he's under intense emotional distress by virtue of the
4 death of the child and his wife is hysterical. His
5 mother-in-law is hysterical.

6 Q. Does that make it more difficult or impossible
7 to have a decision that's voluntary, knowing, and
8 intelligent with respect to disobey an order to
9 interrogate?

10 A. I'd say of course. Anybody that's in shock or
11 suicidal is not mentally capable of making a voluntary,
12 knowing, and intelligent decision.

13 Q. Now, from your -- in your opinion was Cardwell
14 subjected to a station house interrogation?

15 A. Obviously. The interrogation room at the Yuma
16 Police Department has all of the psychological coercive
17 aspects that are addressed by Chief Justice Warren in
18 Miranda vs. Arizona.

19 Q. You testified the statements by Detective
20 Tejeda to the effect that the door was unlocked and he was
21 free to go, that -- that would not have impacted or have
22 impressed a Lance Corporal Cardwell as much as the order
23 that he had to submit?

24 A. Well, Lance Corporal Cardwell's testimony under
25 oath was he -- he said, Well, that's your opinion,

1 Detective Tejeda. You're not a Marine. You haven't been
2 ordered to be here. So I think it would at a minimum be
3 confusing when he's -- when Tejeda is taking his military
4 ID and he's been ordered to go there by a person who's
5 identified them as a -- a person in a position of superior
6 military authority.

7 Q. So basically you're explaining lieutenant or --
8 Lance Corporal Cardwell's observations that that's your
9 opinion to Tejeda to mean that, no, I'm not free to go,
10 you just don't know it?

11 A. Well, Tejeda is a civilian and lance corporal
12 was a Marine. And so I think what he's saying is I -- my
13 understanding I've been ordered to come here. And a
14 civilian can't countermand an order I've just received
15 from a person in position of military authority.

16 Q. The fact that lieutenant -- or Lance Corporal
17 Cardwell was separated from the fellow Marines work as a
18 psychological device or impact on his mind?

19 A. Of course. When you're isolated from your
20 fellow Marines, you can't talk to your superiors, you're
21 out -- you know, you're -- the same thing that Justice
22 Warren talked about in Miranda Arizona. You're isolated
23 from family, friends, and in this case, fellow Marines.

24 Q. Did he also appear to be in a mental fog from
25 the contemporaneous trauma of losing his daughter?

1 A. Well, as I've stated, based upon the
2 transcript, yes.

3 Q. Was he, Cardwell, particularly vulnerable to
4 manipulation and psychological intimidation and coercion
5 at that time?

6 A. The factors I've discussed about just being out
7 of boot camp and how that would make him have a more
8 compliant personality. I think some of the things that
9 the military judge discussed, you know, his youth, his
10 immaturity. And I think that comes through with the
11 record in terms of his relationship with his wife and, you
12 know, sort of his neighbors and, you know, sleeping under
13 the bed, those kind of things would indicate a lack of
14 maturity.

15 And, you know, he was soft-spoken during the
16 interview. I think, again, not to -- not to question
17 Judge Rouff's mental process, but Judge Rouff seemed to
18 apply some importance in his order to his stoic appearance
19 during that interrogation. And, again, from my position
20 as a military expert, Marines are taught to be stoic in
21 basic training.

22 You know, we call it throwing sweat grenades.
23 You know, when you're in combat and somebody gets all
24 excited, it doesn't fare well with the Marine Corps.
25 We're all taught, you know, just relax, be calm, be stoic,

1 don't get excited. People are getting blown up next to
2 you, shot, killed. You know, be stoic. You know,
3 concentrate on the mission.

4 Q. Was it clear that Tejeda did not tell Cardwell
5 that he was entitled to consult with an attorney before he
6 decided whether to make a statement?

7 A. There's no question that he wasn't told that he
8 could speak with an attorney, or he wasn't given
9 Article 31 rights, he wasn't given Miranda rights.

10 Q. All right. And -- and I guess this is a good
11 time to talk about Agent Green, his advisements and I
12 guess legal advice to Lance Corporal Cardwell. Was it
13 inaccurate?

14 A. Yes, it was. You know, and, Judge, I don't
15 know how much of all this, where you're at, but just to
16 orient everyone, Gunnery Sergeant Green was a special
17 agent with NCIS. On May 26th he had Lance Corporal
18 Cardwell brought to the NCIS office from the brig. He
19 obtained a statement from Lance Corporal Cardwell, but
20 there's no question Lance Corporal Cardwell was -- was in
21 custody and that he was being interrogated.

22 The -- the thing that Gunnery Sergeant Green
23 got wrong is he informed Lance Corporal Cardwell, he
24 said -- he kind of goes through the advisements. He says,
25 Don't read them, I do this different than Jurj, if I'm

1 pronouncing her name correctly. I'm just going to -- I'm
2 just going to explain your rights to you; I'm not going to
3 ask you to read them. And he goes through an explanation.

4 And -- and he has Lance Corporal Cardwell sign
5 the acknowledgment. And then he starts the interview and
6 then says, Oh, I forget something, have you retained
7 counsel? And Lance Corporal Cardwell says, Well, my wife
8 is trying to retain a civilian attorney for me and my unit
9 representative gunnery -- gunnery sergeant is -- is trying
10 to get me an attorney.

11 And Gunnery Sergeant Green then goes through
12 this, what he, I believe, thought was a correct statement
13 of law, but it was wrong. He said, Well, until official
14 charges -- or until charges have officially been brought
15 against you the Marine Corps is not going to assign you an
16 attorney. And you're in the brig, charges have not been
17 officially brought against you. You're not entitled to
18 talk to an attorney.

19 And then he kind of gets confusing. He says,
20 Well, you could go to up to legal maybe and, you know, if
21 you'd walk in, you won't get an attorney but maybe they
22 could give you some legal advice. I can say
23 unequivocally -- you know, I served three years as the
24 deputy chief defense counsel of the Marine Corps. I was
25 second in command of all defense counsel all over the

1 Marine Corps.

2 Any Marine that is in custody or asks -- or
3 asks to make a statement has an immediate right to consult
4 with a Marine Corps defense counsel. And Marine Corps
5 defense counsel will -- will come down and talk to them.
6 They'll form an attorney-client relationship. They'll be
7 their attorney. They'll -- they'll -- they'll appear at
8 the interview if requested by the Marine.

9 And so what Gunnery Sergeant Green said is
10 blatantly wrong, and therefore Lance Corporal Cardwell was
11 not correctly advised of his rights on May 26th by Gunnery
12 Sergeant Green.

13 Q. In your opinion was -- were Cardwell's
14 statements admissible under the Miranda standard?

15 A. Which statement?

16 Q. Let's talk Tejeda's statement to start with.

17 A. No. I mean, he -- his freedom of movement was
18 restricted, as I've already testified to. He was in the
19 type of station house interrogation that Justice Warren,
20 Chief Justice Warren talked about. So you had both the
21 elements of Miranda, significant restriction on freedom of
22 movement and an interrogation room. That would have
23 triggered Miranda and he would have had to have been
24 advised of his Miranda rights.

25 Q. And the fact that he was not advised, does --

1 does that compromise later interrogations?

2 A. If you're talking about the May 22nd -- can
3 I -- can I back up just little bit on the May 19th?

4 Q. Go ahead.

5 A. I don't know if the Court's read the military
6 judge's order, Lieutenant Colonel Kasprzyk, but I think
7 it's important to understand the military judge based his
8 decision on both military law or federal law, Article 31;
9 and Miranda. Article 31 requires two things: Reasonable
10 suspicion that the Marine's committed an offense; and
11 secondly, that -- geez, mental block there -- that the
12 person who is asking the questions is subject to the
13 Uniform Code of Military Justice.

14 If you read Judge Kasprzyk's extensive order,
15 114 findings of fact, it's 25 pages, he says -- there's a
16 lot of discussion about this joint investigation that
17 Freedman and Ruby were jointly allocating resources and
18 conducting this investigation. And there's a lot of
19 discussion and a finding that Tejeda was acting in
20 furtherance of a military investigation. That's the
21 one criteria.

22 There's also discussion, was Lance Corporal
23 Cardwell a suspect. And, you know, the military judge
24 goes through that in detail about, you know, the -- the
25 baby appearing at Yuma Regional Medical Center, the red

1 spot on her cheek, the bruises. And then Tejeda was being
2 fed information from the other detectives. As the
3 interview progressed, he -- he asks Lance Corporal
4 Cardwell to take a lie detector test.

5 And so part of the Marine Corps order
6 suppressing the statement is based on federal law, not the
7 Constitution. It's based on military law. There's one
8 aspect that says, hey, his Article 31 rights were violated
9 and that the statement's inadmissible. Judge Kasprzyk
10 goes further on the 19th and says this was not a voluntary
11 statement. And he goes to May 22nd, which was -- started
12 off with Agent Jurj, or Jurj, I apologize. None one has
13 ever told me how to pronounce her name. She does give
14 Lance Corporal Cardwell a rights advisement, which is
15 termed Article 31, suspect's rights, but it includes
16 Miranda attorney rights.

17 So she does that. She does not give him what's
18 called a cleansing warning. She never stops and says,
19 Look, you should have been advised of your rights on
20 May 19th and everything you told Detective Tejeda is
21 inadmissible against you.

22 And Judge Kasprzyk goes through a detailed
23 analysis of how, you know, she watched -- she was briefed
24 on what Lance Corporal Cardwell said on May 19th. And she
25 called upon him to explain, you know, what he said on

1 May 19th without telling him that's not admissible against
2 you. And there's a whole line of cases that say, you
3 know, if you don't explain on the second interview that
4 the first one is inadmissible then it's not -- it's not --
5 it's not complete. It's confusing, and the suspect can't
6 voluntarily, knowingly, and intelligently waive their
7 rights.

8 Q. And that concept transcends the military --
9 concepts of military justice, doesn't it?

10 A. It's constitutional law.

11 Q. Now, did the military judge in this case enjoy
12 special expertise in analyzing voluntariness in the
13 context?

14 A. Obviously. I mean, he would have been in the
15 same situation I am, part of the military. He would
16 understand all the things about on-duty status, off duty,
17 inability to wear your uniform off base. He would
18 understand how orders are communicated. He would
19 understand the Marine Corps communication system. He'd
20 understand how attorneys are appointed. All of those
21 things.

22 He -- he would be able to apply the special
23 cultural and -- you know, it's really a society unto
24 itself. He would understand all those things, apply the
25 Constitution under those facts.

1 Q. And irrespective as to whether issues of
2 voluntariness are precluded by decisions of Lieutenant
3 Colonel Kasprzyk, are his findings entitled to profound
4 regard in making that analysis?

5 A. I think Judge Kinsey would have to make his own
6 decision on that. As a Marine and, you know, retired
7 judge advocate, I would hope that at least the civilian
8 judge would pause and say, hey, let me understand why this
9 military judge found that Lance Corporal Cardwell's
10 Constitutional rights were violated. I need to understand
11 that and at least pause and review that order in detail.

12 Q. Now, at what point do you, in your analysis,
13 opine that Cardwell was a suspect, as of what point?

14 A. He -- he was a suspect either when he arrived
15 at Yuma Police Department on May 19th or during the course
16 of that interview when Detective Tejeda was given a great
17 deal of information from other detectives regarding the
18 bruises. What's mentioned in the order, Lance Corporal
19 Cardwell was the disciplinarian.

20 You know, they talk about the red spot on her
21 cheek. They talk about how she was in his care the night
22 before. They talk about how Lance Corporal Cardwell
23 leaving Celine alone understanding that in the military
24 Article 19 or Article 18 could be based on culpable
25 negligence alone. So they -- all this information, what

1 the neighbors had to say was fed to Detective Tejeda
2 during the course of the interview.

3 Under Article 31 if at any point -- and
4 sometimes, you know, you call a Marine in, the example I
5 was talking about, Hey, you know, did -- did you see Lance
6 Corporal Smith crash his five-ton truck into the Humvee?
7 And, you know, if that Marine said, Yeah, I was waiving at
8 him and, you know, I distracted him. Then you would stop
9 and -- stop, terminate the interview and say, All right, I
10 have to advise you you're now a suspect. And what you've
11 told me can't be used against you but if you -- you don't
12 have to talk to me anymore. If you do, whatever you say
13 after this point can be used against you.

14 Q. Was Tejeda's interrogation accusatory?

15 A. It -- it was. I mean, you don't ask a witness
16 to take a lie detector test.

17 Q. Did Tejeda ever advise Lance Corporal Cardwell
18 that he was suspected of an offense?

19 A. No.

20 Q. That he didn't have to make a statement?

21 A. He never said that.

22 Q. Or that he had -- that statement could be used
23 against him?

24 A. It was never said by Detective Tejeda.

25 Q. I think you indicated that your review of

1 testimony by Agent Ruby was that Cardwell appeared to be
2 in shock at the hospital?

3 A. That's what Special Agent Ruby said.

4 Q. And that was at the Article 32 hearing?

5 A. Yes.

6 Q. Is that his sworn testimony?

7 A. Yes.

8 Q. Could you explain to the Court what an
9 Article 32 hearing is.

10 A. You know, I stand corrected. Thank you. That
11 testimony was made at the suppression hearing, which is
12 called an Article 39(a) hearing at Miramar, California.
13 An Article 32 hearing is like a preliminary hearing, and I
14 have not reviewed the transcripts of the preliminary
15 hearing.

16 Q. So it was 39 what?

17 A. 39(a) session.

18 Q. Okay. In your opinion as of May 19 was -- that
19 interrogation was Lance Corporal Cardwell particularly
20 vulnerable to psychological pressure and manipulation?

21 A. You know, if a person just experienced, you
22 know, a very tragic incident and appears to be in shock, I
23 don't see how that could not affect his abilities to
24 understand his rights, to knowingly, voluntarily, and
25 intelligently waive his Fifth Amendment right not to

1 incriminate himself and to start making statements.

2 Q. You indicated earlier that Lance Corporal
3 Cardwell's submission to basic training would have
4 compromised his ability to withstand psychological
5 pressure at a station house interrogation and you provided
6 some of the bases. Were there any other bases you -- that
7 you've not yet talked about?

8 A. I think I would be repeating basically the fact
9 that a Marine comes out of basic training with really a
10 compliant personality. You know, their whole day is how
11 can I please my superior. I want to do what my superior
12 wants me to do. I'm not going to question his orders.
13 And so lance corporals are just extremely compliant
14 persons.

15 You know, I would say that, you know, without
16 going off on a tangent, but there was a case called the
17 Norfolk Four was out of the naval -- naval base at
18 Norfolk, Virginia. And four sailors, same age and rank as
19 Lance Corporal Cardwell, confessed to a murder that they
20 did not commit. And it was subsequently -- through DNA
21 and finding the real perpetrator. And so that was in
22 1997. And I think a lot of Marine lawyers and judges and
23 officers said, How can this happen. You know, How can we
24 have four junior naval persons go and confess to something
25 they -- they did not do.

1 So at the time, and I read like a lot of
2 psychiatric analysis of, you know, the -- the
3 psychological coercion of an interrogation and how being
4 that junior in the military and how just coming out of
5 boot camp affects your ability to resist that type of
6 psychological coercion.

7 You know, they -- the drill instructors, it's a
8 psychological process. You know, it's for a good purpose,
9 but they break you down. You know, you lose your
10 personality. You become part of -- part of the unit;
11 you're not an individual. And all of that is needed
12 for -- in combat and it's needed to have an effective
13 military, but it creates a dangerous mindset, you know,
14 when a lance corporal then is taken out in town and
15 subject to interrogation in an interrogation room.

16 At least it's one of those factors that has to
17 be considered. I'm not saying it's controlling. I'm not
18 saying that any Marine just out of boot camp could never
19 voluntarily, knowingly, and intelligently make a decision.
20 It's one factor that has to be considered.

21 Q. What does instant and unquestioned obedience
22 refer to?

23 A. You know, if I told my secretary to -- you
24 know, I have to have this 30-page memorandum typed
25 tonight, she's going to, you know, resist that. And she's

1 going to say, hey, I got to go home, you're not paying me
2 overtime. You should have had this done earlier. If I go
3 out to a lance corporal in the Marine Corps who's my
4 clerk, not going to be one word said. He's going to stay
5 there all night if they have to, to complete that
6 memorandum. So that's the unquestioned obedience to
7 orders.

8 Q. The Marines at boot camp refer to themselves in
9 the third person?

10 A. Correct.

11 Q. Why?

12 A. It's part of the psychological process. You're
13 not a person. You say, you know, the recruit needs to go
14 to the bathroom, drill instructor. You don't say, I need
15 to go to the bathroom. You never refer to yourself in the
16 first person. It's all part of the indoctrination.

17 Q. Was Lance Corporal Cardwell one of the most
18 junior Marines at the base?

19 A. I think I've already said that. Here there
20 might be a few PFCs at Marine Corps Air Station Yuma, but
21 lance corporal is pretty much the lowest you get because
22 most of the Marines have attended some service school
23 before they get here, such as Lance Corporal Cardwell
24 attended aviation school. And so, you know, most of them
25 are lance corporals by the time they get to this base.

1 Camp Lejeune, Camp Pendleton, you'll see a lot of PFCs.

2 Q. Was the fact that Lance Corporal Cardwell was
3 soft-spoken, does that hold any significance for you?

4 A. You know, one -- one of the Schneckloth
5 factors. You know, he seemed at the time from what I've
6 read to have low self-esteem. He was, you know, not an
7 assertive person. Pretty much would not argue with
8 anyone, including his wife. You know, all of those things
9 are in the record.

10 Q. Now, in Miranda warnings, there's -- one of --
11 is the purpose to alert accused person as to the right
12 against self-incrimination?

13 A. Obviously. All you have to do is read the
14 decision and the progeny of Miranda vs. Arizona.

15 Q. Did Agent Jurj comprise or did -- in your
16 opinion, did she appear to try to alleviate or direct
17 Cardwell not on to be alerted to obtaining a 31,
18 Article 31 waiver?

19 A. Well, I -- I saw -- I think that Marine
20 officers would typically, again, want to take care of
21 their lance corporals. So they approach it with the
22 absolutely honest desire to make sure that lance corporal
23 understands their rights, their right to remain silent
24 under the Fifth Amendment, that they don't have to talk to
25 a superior.

1 I understand NCIS is trained in interrogation
2 techniques. I noticed that they wouldn't start the rights
3 advisement until into the interview so they've kind of
4 already spoken to Lance Corporal Cardwell. He's making
5 statements. And then they stop, you know, which is kind
6 of confusing. Like, hey, I've already been talking to
7 you. So I've already been talking you, but let me tell
8 you about your rights now.

9 And one of the things that Agent Jurj had said
10 is, Hey, I don't want to alert you, you know, I don't --
11 that's her term, "alert you." I don't want to get you
12 excited, but I got to go through these rights. I got to
13 get your signature on this piece of paper. So it kind of
14 discounts, you know, really emphasizing to a lance
15 corporal, hey, this is really important. I'm superior
16 than you but, you know, listen -- listen up. You know,
17 this is -- this is important. You need to make this
18 decision. And I understand law enforcement, you know,
19 would want to take advantage of the situation and obtain a
20 statement if they can.

21 Q. Did Agent Jurj and Rendon use the 19th,
22 interview from May 19th as a takeoff point?

23 A. Absolutely.

24 Q. Is that significant?

25 A. It is significant. I mean, there's a lot

1 significant about the May 22nd interview. It was eight
2 hours. It was extremely confrontational. Lance Corporal
3 Cardwell was badgered. You know, there was six agents
4 present. I can't imagine a more coercive atmosphere than
5 the Yuma Police Department interrogation room for Lance
6 Corporal Cardwell on May 22nd.

7 Q. And did the NCIS agents fail to give Lance
8 Corporal Cardwell his proper cleansing instruction?

9 A. Well, they never told him that the May 19th
10 statement would be inadmissible against him, so the answer
11 is yes.

12 Q. And the purpose for a cleansing instruction
13 again is what?

14 A. Well, otherwise you're compelled to explain
15 your previous statement. You know, you don't want to
16 leave it standing there. You know, you want to explain
17 it. And that's why people keep talking if they're not
18 given a cleansing warning.

19 Q. All right. In your opinion was the room in
20 which Lance Corporal Cardwell was interrogated just
21 because of its physical dimensions stressful and anxiety
22 provoking?

23 THE COURT: Which -- which room are you
24 speaking of?

25 MR. BREEZE: The -- the NCIS room, the

1 interrogation room.

2 THE WITNESS: You know, I -- I don't -- I've
3 never seen the NCIS office. I -- so I think that I can't
4 really answer that.

5 Q. (By Mr. Breeze:) How about the YPD
6 interrogation room, did you see a video of that?

7 A. I haven't seen it. It was described in some of
8 the testimony as all that's clear is that he was in there
9 alone with Detective Tejeda. Subsequently he was in there
10 alone with Agent Jurj and agent -- what was from -- from
11 Camp Pendleton. His name's Rendon, Agent Rendon.

12 Q. Now, was the interrogation by Jurj and Rendon
13 badgering, confrontational, overbearing, deceptive,
14 hostile, and manipulative?

15 A. I think all of those are accurate descriptions.
16 The judge could read that interview himself. I think they
17 tried every technique under the -- you know, they call it
18 the Reid interrogation technique. You know, they're --
19 they're highly trained, highly experienced. They tried
20 every psychological coercive method known or used.

21 Q. And considering the totality of the
22 circumstances was the May 26th statement -- 22nd statement
23 made voluntarily, knowingly, and intelligently?

24 A. No. I think what -- what -- you know, its
25 duration, the intense psychological pressure, and the

1 failure to give the cleansing instructions would render it
2 not voluntary.

3 Q. Let's talk --

4 A. That was the military judge's conclusion as
5 well.

6 Q. Let's talk about the military communication
7 system. How is the information transmitted to personnel
8 in the Marine Corps?

9 A. Well, it's very detailed and sophisticated.
10 Any information is sent up the chain of command and to all
11 individuals that need to know it.

12 Q. And were you -- you're aware that Lance
13 Corporal Cardwell asked for an attorney when he spoke to
14 Master -- on Gunnery Sergeant Sandoval?

15 A. Well, he submitted a request for counsel to his
16 unit representative, Gunnery Sergeant Sandoval. Again,
17 special situation in the Marine Corps called a chain of
18 command. Lance corporal has to communicate up the chain
19 of command. So he goes to the corporals in charge of him.
20 That corporal goes to the staff NCO. The staff NCO to
21 lieutenant, all -- up to the CO.

22 He doesn't just walk into the CO's office and
23 say, Hey, you know, Lieutenant Colonel, I'm here to talk
24 to you. That's not done. And so the proper thing for
25 Lance Corporal Cardwell to do was to submit his request

1 for counsel to -- through his chain of command,
2 specifically to the unit representative, Gunnery Sergeant
3 Sandoval, which he did, prior to his interview by Gunnery
4 Sergeant Green on May 26th.

5 Q. Now, would that information have been
6 communicated to brig personnel?

7 A. It was. The testimony of Gunnery Sergeant
8 McClure, the brig supervisor said when a Marine arrives
9 here we request counsel for him. It's automatic. Because
10 in the Marine Corps there's no bail in the Marines but
11 there's this pretrial confinement hearing where a Marine
12 is entitled to counsel. And that has to be handled within
13 72 hours similar to, you know, the civilian.

14 So the first thing the brig does is call up to
15 the defense activity and say, we got Lance Corporal
16 Cardwell, he just came in the brig. You know, so we're
17 expecting -- they don't say it, but they know it.
18 Everybody knows, okay, we're going to have a pretrial
19 confinement hearing real fast and so he needs counsel to
20 get down there and talk to him.

21 Q. And all the brig personnel are aware of that
22 procedure; is that correct?

23 A. They should be.

24 Q. They're made aware of it?

25 A. In my -- in my experience they are all aware of

1 it. I can't testify specifically as to the personnel at
2 Yuma in 2015.

3 Q. And if you were made aware of that Gunnery
4 Sergeant Green had -- is one of his, I guess, billets had
5 been working in the brig, would that be significant to you
6 as far as his --

7 A. I would expect Gunnery Sergeant Green to know
8 that the process that Marines are provided counsel. He
9 obviously didn't by reason of his mistaken advisement of
10 rights to Lance Corporal Cardwell. The military judge
11 made a ruling that Lance Corporal Cardwell's request for
12 counsel made to -- through the chain of command was
13 imputed to Gunnery Sergeant Green. That's -- that was --
14 there are cases holding that.

15 And that's really through Marine Corps
16 communication system, because as that request went up the
17 command it should have also went over to NCIS. And
18 Gunnery Sergeant Green, by reason of his experience,
19 should have known that.

20 In my personal experience as a defense counsel
21 I would often have NCIS call me and say, hey, we need to
22 get a blood sample or, you know, something from Lance
23 Corporal Cardwell. I think that's what Gunnery Sergeant
24 Green was initially -- he was trying to take some sort of
25 samples. That was his testimony. Well, NCIS would

1 normally call the law center and say, hey, who's Lance
2 Corporal Cardwell's attorney. We need to talk to him.
3 You know, we're just taking a sample. We're not going to
4 interrogate him. And -- and then you as the defense
5 counsel will go down, accompany him over to NCIS, make
6 sure he didn't say anything and allow for that sample.

7 So somehow all that got disregarded, fouled up,
8 and Lance Corporal Cardwell ended -- ended up down there
9 making a statement which, again, the military judge said,
10 no, you know, he did everything he could. He requested an
11 attorney. You can't do that. It's imputed. Knowledge of
12 his request is imputed to you.

13 Q. And when Lance Corporal Cardwell told Gunnery
14 Sergeant Green that my -- my gunnery is -- is trying to
15 get a lawyer for me, is that an indication that he invoked
16 at some point?

17 A. It should have been for Gunnery Sergeant Green.

18 Q. And that's because -- and based on the culture
19 of the Marine Corps, the communications, and what else?

20 A. I think most Marines, certainly in law
21 enforcement, know that a Marine -- a Marine in the brig is
22 going to get a lawyer immediately and they would know that
23 he would request that through the chain of command. So
24 once that request is made they would know that he's
25 desirous of speaking to an attorney.

1 Q. And is the fact that Lance Corporal Cardwell
2 advised Green that his -- Cardwell's father was trying to
3 get a lawyer for him, is that significant?

4 A. You know, I think less so. You know, I don't
5 know, because I think you may or may never get a civilian
6 attorney because when you find out what the retainer is,
7 it may not happen. But you're going to get a Marine Corps
8 lawyer immediately. I mean, it happens all the time.
9 That's what they're there for is to go there and meet with
10 the lance corporal in the brig and say, hey, this is your
11 Fifth Amendment rights. I'm alerting you to it. That's
12 why I'm here. You know, you need to understand this.
13 It's real important.

14 Now, you can waive it and talk to the NCIS
15 agent. But, you know, you have a right to have me there.
16 And that's why we have counsel available because of this
17 rank structure. You know, where he's just out of boot
18 camp, you know, he believes his superiors are going to
19 take care of him and we do take care of him.

20 Q. When Cardwell told Green that in quotes, I
21 don't really know what I should do, close quotes, what
22 significance does that have to this analysis?

23 A. Well, I saw that in the transcript and, you
24 know, again, it's just like I understand Gunnery Sergeant
25 Green is in law enforcement. He's trying to get a

1 statement. He -- he kind of over-talked Lance Corporal
2 Cardwell and Cardwell, Lance Corporal Cardwell starts
3 saying, "Well, I don't know," and then -- and then he got
4 interrupted.

5 So it's really just, you know, law enforcement
6 not having the same degree of concern that Lance Corporal
7 Cardwell understood his constitutional rights that a
8 Marine officer or lawyer would have.

9 Q. Would military regulations require that Agent
10 Green clarify that? Or what would military regulations
11 require in that context?

12 A. Well, again, they -- they probably would -- you
13 know, there's nothing that says an investigator can't cut
14 off and, you know, and use the best techniques he has.
15 But clearly a statement of the law that's wrong would
16 invalidate any warning that Gunnery Sergeant Green gave to
17 Lance Corporal Cardwell on May 26th.

18 Q. When a Marine requests to speak to counsel,
19 does that request retain effect even when the Marine's
20 subsequently persuaded to make a statement to NCIS?

21 A. There are many military cases applying Miranda
22 that say yes. Again, the rank structure. You know, he's
23 asked for a lawyer. All of sudden he's called in by a
24 gunnery sergeant and says, Hey, I want to talk to you.
25 I'm not saying that's what Gunnery Sergeant Green did.

1 He -- he started out with a different, you know, reason
2 for that but it ultimately led to that. And the
3 Marine Corps would not allow that, nor would the line of
4 cases under, you know, military law that would be found to
5 be improper.

6 Q. In the course of your experience in the Marine
7 Corps did you have occasion to advise NCIS agents of their
8 obligation to honor Marine requests for counsel?

9 A. I did that as a -- when I was a prosecutor.

10 Q. And if a Marine requests to speak with an
11 attorney is it the responsibility of NCIS agents to make
12 sure that he has that opportunity?

13 A. Well, I would say it's the responsibility of
14 every superior to assist a lance corporal in properly
15 requesting counsel.

16 Q. And how is that done?

17 A. Well, as I say it's -- you know, I've been
18 appointed as an investigating officer, so when I've had a
19 Marine -- you know, I'm trying to get to the facts of an
20 accident or something like that. If I had a Marine and I
21 said, Well, you're a suspect and he would say, Hey, I'd
22 like to talk to a lawyer before I make a statement, then I
23 would stop it right there. And I would personally call up
24 the defense activity and say, hey, I got this lance
25 corporal down here that needs to see a lawyer. You know,

1 get him in, talk to him. And call -- call me back and let
2 me know if he wants to make a statement.

3 Q. At any time did Lance Corporal Cardwell
4 knowingly waive his right to speak to a Marine attorney?

5 A. No.

6 Q. Did Green explain that the May 19th and
7 May 22nd statements could not be used against Cardwell?

8 A. Again, Gunnery Sergeant Green did not explain
9 that or make any kind of cleansing warning.

10 Q. Did Gunnery Sergeant Green use those statements
11 on the 19th and 22nd and attempt to build on those?

12 A. Yes.

13 Q. And during the 22nd, the interview on the 22nd,
14 did Lance Corporal Cardwell continue to be a vulnerable
15 position for the reasons you already stated?

16 A. I believe so.

17 Q. And on the -- was he subjected to the same
18 psychological coercion factors as you just discussed with
19 regard to the May 19 and 22nd interrogations?

20 A. I think there were psychological coercive
21 factors used by Gunnery Sergeant Green. They weren't the
22 same. The duration was shorter. It appeared that Gunnery
23 Sergeant Green's approach was to -- there's a name for it,
24 where, you know, you try to diminish the significance of
25 what you're talking about. And you say, Well, it's an

1 accident. You know, I'm telling you scientific
2 information is going to prove that, you know, it was an
3 accident and you were responsible for Celine's death. And
4 then you get the suspect to agree to a diminished
5 explanation of what occurred.

6 So it looked like to me -- and that's part of
7 the Reid interrogation technique. And it looked like to
8 me that Gunnery Sergeant Green was using that more than
9 being, you know, forceful and, you know, belligerent and
10 badgering. He used a different technique.

11 Q. So that's providing an alternative explanation
12 that's inculpatory but is more social -- sociologic --
13 more society acceptable?

14 A. Correct.

15 Q. In -- in the final analysis, did he -- the
16 determination made by the lieutenant colonel in the Marine
17 and your opinion today, is that based on the analysis of
18 the totality of circumstances?

19 A. Yes. Lieutenant Colonel Kasprzyk, the military
20 judge, specifically cites to the Schneckloth factors and
21 totality of circumstances test. He specifically also
22 mentions Fifth Amendment and 14th Amendment.

23 Again, there's only part of his decision based
24 on military law. That is that Lance Corporal Cardwell was
25 a suspect and that Detective Tejeda was acting in

1 furtherance of a military investigation. And therefore,
2 the statement of May 19th was illegal under federal law,
3 specifically Article 31.

4 Q. And that -- that narrow understanding is based,
5 it appears -- is it based upon an understanding of the
6 Marine Corps culture and the relative positions of Lance
7 Corporal Cardwell and others in the investigation?

8 A. It's evident from the Lieutenant Colonel
9 Kasprzyk's 25-page opinion that he applied the Marine
10 Corps cultural and order issues to both the one military
11 law issue and to all of the other constitutional issues.

12 Q. And -- and his final decision, was that based
13 on law that's consistent between civilian and military law
14 as far as whether a statement is voluntary?

15 A. His final decision was that the Fifth Amendment
16 to the Constitution rendered all of Lance Corporal
17 Cardwell's statements inadmissible as being involuntary.

18 Q. Is there any other thing that we've -- that we
19 haven't discussed today you think is significant?

20 A. Not that I can think of.

21 MR. BREEZE: Pass the witness, Your Honor.

22 THE COURT: Okay. We've been at this for about
23 an hour and a half. We'll take a recess and then we'll do
24 cross-examination.

25

1 (A recess was taken.)

2

3 THE COURT: Thank you. Please be seated. We
4 are back on the record in case number S1400 CR 2016-404,
5 State of Arizona versus Jared Thomas Cardwell. The Court
6 notes the presence of counsel for the parties. Mr. Weil
7 is still on the stand. Ms. Gonzalez, are you going to be
8 cross-examining?

9 MS. GONZALEZ: Yes. Thank you, Your Honor.

10 THE COURT: You may proceed.

11

12 CROSS-EXAMINATION

13 BY MS. GONZALEZ:

14 Q. Colonel Weil, retired Colonel Weil?

15 A. Correct.

16 Q. Retired Colonel Weil?

17 A. You don't have to say retired or colonel if you
18 don't want to. Just call me John. It'd be fine.

19 Q. Colonel Weil, when you said -- you testified
20 that you were in the Marine Corps military for 35 years?

21 A. Correct.

22 Q. Or you served?

23 A. Yes.

24 Q. And you entered in 1975. When did you retire?

25 A. 2005.

1 Q. Since then have you been practicing privately?

2 A. I practiced privately until 2018 and then I
3 retired.

4 Q. All right. As a civilian attorney did you
5 practice criminal law?

6 A. No, I did not.

7 Q. What did you practice?

8 A. I -- I practiced bankruptcy and civil
9 litigation. And then the last 10 years I was in-house
10 counsel for Hall's General Contractor. That's when
11 Judge Kinsey and I worked on a case together.

12 Q. All right. So from 2005 when you retired to
13 2018 you worked in bankruptcy and business and business
14 law?

15 A. Fair.

16 Q. Okay. And have you -- since 2005 since you
17 retired have you served in any capacity with the military?

18 A. No.

19 Q. Do you have a résumé?

20 A. I do.

21 Q. And does that list your qualifications?

22 A. It does.

23 Q. Your education?

24 A. It does.

25 Q. Your background?

1 A. Yes.

2 Q. Your military service?

3 A. Well, I have a military résumé.

4 Q. Okay. So you have two separate ones?

5 A. I do.

6 Q. All right. And have you ever been asked to
7 provide that, those -- either of these résumés?

8 A. I created them because I was asked to produce
9 them but it -- I haven't been asked to do that recently.

10 Q. When were you asked to do that?

11 A. Let me think. You know, in the Marine Corps
12 reserve you have to actually get a job. So you apply to a
13 command and say, I want -- I want that billet, like deputy
14 chief defense counsel for the Marine Corps. I would have
15 submitted my military résumé. And then I know it was used
16 a lot, you know, with --

17 Q. And I don't mean to interrupt you, but I guess
18 I wasn't clear. Do you have a current CV that lists the
19 qualifications in your background upon which you testified
20 today?

21 A. It would be current to my retirement.

22 Q. Okay. Have you produced one for the purposes
23 of your testimony?

24 A. I have not been asked you to and I have not.

25 Q. Okay. When was it that you first were asked to

1 participate either as a witness or as an expert for this
2 trial?

3 A. I'd say approximately two years ago.

4 Q. In 2018?

5 A. Sometime in that time frame.

6 Q. Was that by defense counsel, Mr. Breeze?

7 A. Yes.

8 Q. And how do you know Mr. Breeze?

9 A. I know him as an attorney. I know him
10 primarily through Colonel Mallek, who I understand has
11 been in the courtroom in some capacity.

12 Q. Okay. So in 2018 when you were first
13 approached by Mr. Breeze about this case generally did you
14 discuss your opinions with him?

15 A. Not initially, no.

16 Q. When you were given materials to review for
17 this case?

18 A. I was given a portion of it approximately two
19 years ago. I was given -- I think it's -- as I recall the
20 military judge's order is dated maybe in December of 2015,
21 so that had been completed, and so I had reviewed that. I
22 had not reviewed judge -- the suppression hearing in this
23 court or Judge Rouff's order until more recently.

24 Q. More recently when? And I only ask that
25 because the suppression -- the suppression hearings that

1 spanned the course of four days that were multiple
2 witnesses and produced hundreds of pages in transcripts
3 and orders, that was in 2017?

4 A. Correct.

5 Q. Do you know when you reviewed those 2017
6 hearings and transcripts?

7 A. I received a portion of those probably in 2018.
8 And I -- I had requested additional documents which were
9 provided to me about the time that Josh filed his motion
10 for reconsideration.

11 Q. In 2019?

12 A. I think it was -- yeah, 2019 or '20.

13 Q. Okay. And when did you first discuss your
14 opinions with respect to the material reviewed with
15 defense counsel?

16 A. I think it's been an ongoing process but
17 probably first in, sometime, 2019.

18 Q. Okay.

19 A. Early 2019.

20 Q. Were you --

21 A. It was before COVID. I know that.

22 Q. Yeah. Everything is pre- or post-COVID. Were
23 you aware that there was a trial scheduled for this case
24 in October of 2019?

25 A. No.

1 Q. All right. And I'm just going to use it as a
2 benchmark. In general I know you said pre-COVID. Did you
3 discuss your opinions or thoughts about your -- your
4 opinions of this, the materials that you've reviewed with
5 defense counsel prior to COVID?

6 A. Yes.

7 Q. And would you say prior to October of 2019?

8 A. Yes.

9 Q. Would you say that you reviewed -- well, when
10 was the last time that you received material for your
11 review?

12 A. Yesterday.

13 Q. And what was that?

14 A. I had asked for some additional statements that
15 were missing through, I think, clerical error. In
16 particular I asked for Lance Corporal Cardwell's testimony
17 at the suppression hearing through Zack.

18 Q. Okay. So that was prior to receiving
19 yesterday's material, the transcripts of the -- of the
20 defendant's testimony. When was the last time that you
21 received any material?

22 A. I think I received some additional material,
23 let's say, 30 days ago or maybe even two weeks ago.

24 Q. And what was that?

25 A. I requested a copy of my retainer

1 agreement/contract. I asked for some additional
2 transcripts of testimony and -- in front of
3 commissioner -- is it judge or commissioner?

4 Q. Commissioner Rouff, you mean?

5 A. Commissioner Rouff, yeah. I asked for some --
6 you know, I didn't have all the witnesses. There was a
7 psychological report, that was just a clerical error, for
8 somebody else. I asked to see that. And, you know, I
9 probably made a half dozen requests through attorney
10 Breeze. And I apologize, Josh. Is it Tereso?

11 MR. TESORIERO: Tesoriero.

12 THE WITNESS: Okay. I asked -- I called Josh
13 or Michael up and say, hey, I'm doing some research. I'm
14 looking at this. I don't have this. Can you get this to
15 me. And that's been kind of an ongoing thing since COVID.
16 After COVID I've been sort of locked up at home and
17 reading a lot of things.

18 Q. (By Ms. Gonzalez:) Okay. So the bulk of the
19 material upon which you base the opinions that you
20 testified today, was that received prior to COVID or after
21 COVID?

22 A. I'd say about 50/50.

23 Q. Okay. So did you have -- is it my
24 understanding that -- I don't know what you wrote. Oh,
25 when did you -- let me back up.

1 My understanding is that you've received
2 written documents; is that right?

3 A. Correct.

4 Q. You've received no videos?

5 A. No videos.

6 Q. No audios?

7 A. No audios.

8 Q. No photographs?

9 A. I don't think there's any photographs of
10 anything in what I've received, correct.

11 Q. Okay. So everything has been in writing?

12 A. Correct.

13 Q. All right. And you don't know what the room at
14 the Yuma Police Department looks like visually, right?

15 A. Correct.

16 Q. You don't know what the NCIS interview room
17 looks like?

18 A. Correct.

19 Q. And when did you first discuss your opinions or
20 determination that the defendant's 5/19 statements were
21 involuntary with defense counsel?

22 A. Pre-COVID.

23 Q. Okay. Would you say prior to October of 2019?

24 A. I don't believe there was a trial date set when
25 I first discussed that with Mr. Breeze.

1 Q. Okay. Have you been subpoenaed for this trial?

2 A. No.

3 Q. And in 2019 did -- was your trial testimony
4 discussed?

5 A. No, not specifically.

6 Q. Okay. Did you speak to any of the witnesses
7 that participated in the 2017 suppression hearings as part
8 of your review of this case?

9 A. No.

10 Q. Okay. Did you interview anyone outside of the
11 2017 suppression hearing witnesses?

12 A. No.

13 Q. Aside from Mr. Breeze and Mr. Tesoriero, have
14 you discussed this case with anyone else?

15 A. My wife.

16 Q. Okay. Fair. Anyone else to confer on your
17 opinions?

18 A. No.

19 Q. All right. Have you been published, Colonel
20 Weil, in the area of military culture?

21 A. I have. I've only had a published article in
22 the *Arizona Bar Journal* on my return from Iraq, so that's
23 the only publication I have.

24 Q. And was that publication with respect to the
25 issue of Marines instant obedience, the profile, I guess,

1 that you've created today of a young lance corporal
2 Marine?

3 A. No. It was more a description of what I did in
4 Fallujah during 2004.

5 Q. Okay. And do you confer or keep up with any
6 articles on Marine -- on Marine culture?

7 A. Yes.

8 Q. And what is that?

9 A. Well, I, of course, read the *Marine Corps*
10 *Gazette* and the *Stars and Stripes*. And I have -- there's
11 a tankers organization I belong to that has a publication.
12 There are numerous articles on the internet. I have an
13 extensive group of friends, and so they alert me to
14 things, you know, like appointment of Chris Miller as
15 Secretary of State and discussion about eliminating the
16 Marine Corps and that sort of thing.

17 Just because when I was retained to render an
18 opinion, I have been monitoring cases and psychological
19 studies dealing with the issues that I've been called upon
20 to testify today.

21 Q. Okay. Do you have any formal psychology
22 education or training?

23 A. No.

24 Q. Have you ever been published in the area of
25 psychology or psychiatry?

1 A. No.

2 Q. You would agree that the -- that in the
3 military at the courts martial that the UCMJ governed the
4 courts martial?

5 A. Along with the Constitution of the United
6 States.

7 Q. Correct, the federal laws apply, yes.

8 A. Federal laws apply and the Fifth Amendment and
9 the Constitution apply.

10 Q. You would agree that here in the Yuma County
11 Superior Court the statutes of the State of Arizona apply?

12 A. I believe the Constitution of the United States
13 is also applicable through the 14th Amendment.

14 Q. And you -- but you would agree that the
15 statutes of the State of Arizona apply?

16 A. Generally I think this would be governed by
17 Arizona law. There is -- you know, there's -- there's a
18 line of cases that say if a statement is obtained in
19 violation of federal law such as Article 31, that
20 statement is not admissible under state law. So it's kind
21 of a derivative application of federal law, but other than
22 that, of course.

23 Q. All right. And you -- you would agree that
24 Title 2621 which states that jurisdiction of courts
25 martial not exclusive, that this court has jurisdiction

1 over a case, over an offense that is committed within the
2 county of Yuma?

3 MR. BREEZE: Objection, irrelevant.

4 THE COURT: Overruled.

5 THE WITNESS: I haven't been requested to opine
6 on the jurisdiction of this court and I haven't really
7 taken a look at that. I find it disturbing that a Marine
8 can appear in a court martial, a military judge can
9 determine that his constitutional rights have been
10 violated, and then he would then again find himself here
11 today facing a state court judge on exactly the same
12 issues. But I haven't researched that and I certainly
13 don't have an opinion as to whether or not this court has
14 jurisdiction.

15 Q. In your 35 years with the Marine Corps,
16 Colonel Weil, you -- do you have knowledge or education as
17 to whether the base is a base of concurrent jurisdiction?

18 A. I have knowledge that the Marine Corps Air
19 Station, Yuma, Arizona, is a base of concurrent
20 jurisdiction, yes. I -- I didn't know the specifics with
21 regard to -- I haven't looked at -- I know there's a
22 Memorandum of Understanding, which to some extent
23 delegates jurisdiction between the two entities. I just
24 haven't looked at that.

25 I was -- I was stationed here. Actually, one

1 of my first duty stations, 1975, I served as a reservist
2 off and on, on the base but that -- that issue I haven't
3 been requested to update my research on and have no
4 opinion on.

5 Q. As a lawyer in general, Colonel Weil, would you
6 agree that a state statute, a state statute that gives
7 concurrent jurisdiction trumps a Memorandum of
8 Understanding?

9 A. No, I would not agree.

10 Q. And why not?

11 A. Well, because I think that the military, there
12 are bases that have exclusive jurisdiction. And I think
13 the exclusivity or concurrent arrives from federal law and
14 not state law. In other words, I don't think a state can
15 assume jurisdiction over a Marine Corps installation
16 unless that's agreed to by the Marine Corps or the
17 Secretary of the Navy in particular.

18 Q. Are you aware that the majority of the Marine
19 Corps bases in the nation are exclusive and that the Yuma
20 County one is one of the few, if not the only one, that is
21 specifically concurrent?

22 A. There are many Marine Corps bases. I'm aware
23 that Camp Lejeune, North Carolina; and Camp Pendleton,
24 California, are exclusive but I haven't had occasion to,
25 you know, look at, you know, Twentynine Palms, California,

1 you know, the numerous other Marine Corps installations
2 around the country, so I simply don't know.

3 Q. And are you familiar with Title 20 -- Title
4 26-1021 which specifically confers concurrent
5 jurisdiction?

6 A. No.

7 Q. You were asked about -- or you testified as to
8 the ID card that Marines carry?

9 A. Correct.

10 Q. All right. And you testified that you knew
11 from a transcript that you read or materials that you were
12 given that his ID card was taken?

13 A. Yes. Lance Corporal Cardwell testified to that
14 in his testimony, which I read yesterday.

15 Q. All right. Okay. Are you aware that that ID
16 card was given back that day?

17 A. No, I'm not, because Lance Corporal Cardwell
18 testified that it was not given back to him, and that he
19 met Gunnery Sergeant Sandoval at the Chevron station
20 across the gate in order to gain admission. So I'm
21 relying upon Lance Corporal Cardwell's testimony that I
22 read yesterday.

23 Q. So if you were told that his ID card was given
24 back later that day after releasing back to his home,
25 would that change your analysis of what happened that day?

1 A. No, it would not, because when you take a
2 Marine's ID card then you've taken control over them.
3 They're not going to leave that interrogation until you
4 return it. So if it was returned after the interrogation
5 it would have no impact upon my opinion that his freedom
6 of movement was restricted on May 19th and that Miranda
7 vs. Arizona was applicable.

8 Q. Are you aware that NCIS is a civilian sworn
9 entity that investigates criminally, it is not a military
10 branch?

11 A. Of course.

12 Q. Okay. And so when Agent Ruby presents himself
13 he is not a military member, is he?

14 A. He is not a member of the military, but NCIS
15 works closely with the active duty military. You know,
16 they're there as when I was staff judge advocate I would
17 be providing them advice, talking to them. They're under
18 the control of the commanding officer of the base.

19 As such they are a type of military authority.
20 They're -- clearly Special Agent Ruby was a person who
21 identified himself as a position -- a person in a position
22 of superior military authority.

23 Q. You also testified that it made sense that the
24 defendant was soft-spoken and that he was a mild-mannered
25 person in the interviews because it went along with the

1 profile of a lance corporal in the Marines?

2 A. That was not my testimony.

3 Q. Please -- please clarify.

4 A. Well, being soft-spoken is not something you
5 would be taught in boot camp. Probably the opposite. I'm
6 only talking about the overall indoctrination would tend
7 to make a lance corporal compliant to orders of a
8 superior. And he would not -- you know, if you want to
9 use this comparison. If you take, you know, as a civilian
10 I might call them a gangbanger or something like that who
11 resents authority, doesn't respect authority, is going to
12 challenge authority, they're going to tell the policemen,
13 hey, I'm not doing anything you tell me to do. You
14 compare that to a lance corporal he's going to be yes,
15 sir; no, sir; whatever you say, sir.

16 Q. Would that -- would that be -- would I guess
17 that characteristic or that profile that you just -- that
18 you just outlined for us be consistent with someone who
19 punched walls in anger or broke things in anger?

20 A. I think that -- not necessarily. I know that
21 Lance Corporal Cardwell is accused -- or there's evidence
22 that he punched a wall. I think that's consistent with
23 his sort of inability to confront people. And so he
24 probably just becomes frustrated, and instead of
25 confronting them and arguing with them, he goes off alone

1 and -- and punches a wall. That is a symptom of, you
2 know, his -- his inability to stand up for his rights.

3 Q. Are you aware that he was not accused of
4 punching a wall; he admitted punching a wall that was next
5 to his wife's face?

6 A. I know that's in the inadmissible statements
7 that we're here to discuss today. So, you know --

8 Q. But are you aware that he said that?

9 A. He said that in a involuntary situation through
10 an interview in which he, in my opinion, should have never
11 happened and would -- should not be considered by the
12 jury. If he said it in another context, I don't know.
13 Clearly I believe he said that in the May 19th interview
14 or interrogation.

15 Q. Is it your opinion, Colonel Weil, that a -- a
16 Marine, a lance corporal being told you don't have to
17 leave -- you don't have to be here, you can leave, you are
18 not detained renders him incapable of individual thoughts?

19 A. No, that's not -- that exceeds my opinion.

20 Q. Are you -- since you read the 5/19, the
21 5/19 transcript, right?

22 A. Yes.

23 Q. And so you're aware that Detective Tejeda told
24 him, okay, I appreciate you coming down here on your own,
25 you're not being detained or anything, do you understand

1 that, you're not being held, and that he responded, Yes, I
2 do?

3 A. I believe, again, that Lance Corporal Cardwell
4 recognized Special Agent Ruby as a person in a position of
5 superior military authority. I believe that Ruby ordered
6 him to go to the interrogation room. I believe that he
7 understood that Tejeda was a civilian. I believe that a
8 civilian cannot countermand an order of a military
9 superior.

10 So when he testified that, hey, that's Tejeda's
11 opinion, he's saying, well, Tejeda's a civilian, he
12 doesn't understand that I've been ordered to be here and
13 I'm not free to leave. I further believe that when Tejeda
14 took his military ID that's totally inconsistent with,
15 hey, the door is open, you're free to leave; that's
16 saying, hey, you ain't leaving here, you ain't getting
17 your ID back until we finish this interrogation. That's
18 my opinion.

19 Q. And you would -- your opinion is -- would be
20 the same even after Tejeda told him, We appreciate you
21 coming down here, I mean, we just want to find out what
22 happened today, and then he responded, Okay?

23 A. Yes.

24 Q. Okay. Now, again, give me one second. I'm
25 sorry.

1 A. Certainly.

2 Q. Are you aware that NCIS does not work under the
3 control of the base commander; they work with the base
4 commander?

5 A. I don't know what the difference is in that
6 terminology. In my experience NCIS works for the
7 commanding officer and they do everything he asks them to
8 do. I have never seen a situation in which the commanding
9 officer made a request to NCIS that they did not comply
10 with.

11 Q. Are you aware that NCIS simply occupies a space
12 at MCAS Yuma and is not under the control of MCAS?

13 A. I do not think that's a correct statement
14 either in practice or law.

15 Q. Are you aware that NCIS is simply under the
16 Department of Defense but not under any of the military
17 branches?

18 A. I don't agree with that. They were in Iraq.
19 They were working for me. They did what I told them to
20 do.

21 MS. GONZALEZ: One moment, Judge.

22 THE COURT: Yeah.

23 Q. (By Ms. Gonzalez:) Did you practice criminal
24 law, Colonel Weil? I forget. After you retired, did you
25 practice criminal law in the county superior courts?

1 A. After I retired I didn't practice law anywhere.

2 Q. And under the --

3 THE COURT: Just to be clear, after you retired
4 from Marine Corps?

5 THE WITNESS: Oh, from the Marine Corps? I
6 apologize. I misunderstood your question. After I
7 retired from the Marine Corps in 2005 I practiced law as a
8 civilian lawyer here in Yuma until I went to work for
9 Hall's General Contractor in about 2007. I apologize.

10 Q. (By Ms. Gonzalez:) And you know what, I think
11 I understood it that way and I just assumed that's what
12 you were referring to, but thank you for the
13 clarification.

14 In -- as a lawyer when you read the word "must
15 provide" in a statute or rule, how do you take that, as
16 a -- as optional or mandatory?

17 A. I would have to have a greater context.

18 Q. Just general rules of interpretation in law, do
19 you have an opinion?

20 A. I mean, obviously "must provide" is, you know,
21 directive. It doesn't appear, out of context, to be
22 optional.

23 Q. And the word "and" in a list of things, would
24 that be inclusive or exclusive as opposed to "or"?

25 A. You know, I remember some -- some appeals where

1 that issue came up in statutory interpretation and whether
2 it's -- you know, it can be interpreted as "and/or" or it
3 can be interpreted as both requirements.

4 Q. Okay.

5 A. So I can't really answer that intelligently out
6 of context.

7 Q. I understand. Fair -- fair answer. Are you
8 aware that the defendant on May 22nd was read his rights
9 on a form of Article 31(b) that has been marked as Defense
10 Exhibit Number 2.

11 A. Would I be able to take a look at the exhibit?

12 MS. GONZALEZ: Sure. May I have Defense
13 Exhibit No. 2.

14 Q. (By Ms. Gonzalez:) I'm handing you what's been
15 marked as Defense Exhibits 1 and 2.

16 MS. GONZALEZ: Do you have an objection?

17 MR. BREEZE: To him reviewing it?

18 Q. (By Ms. Gonzalez:) I'm handing you Defense
19 Exhibits 1 and 2.

20 A. I've had an opportunity to review Defense
21 Exhibit 1 and 2.

22 Q. And do you recognize those as part of the
23 materials that you reviewed?

24 A. Yes.

25 Q. And what are they?

1 A. They're a form of military suspect's
2 acknowledgment and waiver of rights.

3 Q. And is that form May 22nd and May 26th of 2015?

4 A. There's two forms and they're identical. And
5 one's dated May 22nd. One's dated May 26th of 2015.

6 Q. And are those forms -- do these forms include
7 the rights to an attorney, the rights to remain silent,
8 and the rights under Article 31?

9 A. Yes.

10 Q. And do -- does the defendant's signature -- or
11 is the defendant's signature and initials next to them?

12 A. They are.

13 Q. And did you have an opportunity to view him
14 reading it or being read those articles in a video or an
15 audio?

16 A. As I testified on direct, I read the transcript
17 both for the May 22nd interrogation and May 26th
18 interrogation. And I know what was said by Agent Jurj and
19 Gunnery Sergeant Green on both of those occasions.

20 Q. Did the transcripts that you read reflect the
21 fact that he read those and he initialed them?

22 A. No, they did not.

23 Q. Okay.

24 MS. GONZALEZ: The State -- the State moves to
25 admit Defense Exhibits 1 and 2, Your Honor.

1 MR. BREEZE: No objection.

2 THE COURT: For the purposes of this hearing
3 Defense Exhibits 1 and 2 are admitted into evidence.

4
5 (Defendant's Exhibits 1 and 2, Waiver of
6 Rights were marked and received.)

7
8 MS. GONZALEZ: One moment, Your Honor. Pass
9 the witness.

10 THE COURT: Mr. Breeze?

11 MR. BREEZE: Thank you, Your Honor.

12

13 REDIRECT EXAMINATION

14 BY MR. BREEZE:

15 Q. Starting from last first, the Exhibits 1 and 2,
16 are they consistent with the testimony you've offered
17 before?

18 A. They're consistent with the testimony. I never
19 said he didn't sign the acknowledgment of rights. I think
20 the May 26th acknowledgment, it's very clear from the
21 transcript he did not read it. He was told by Gunnery
22 Sergeant Green not to read it. Gunnery Sergeant Green
23 said, I'll just explain it to you, I do it differently
24 than Agent Jurj. And then Gunnery Sergeant Green's
25 explanation of his rights is not consistent with what's

1 written on the rights acknowledgment and is, in fact,
2 blatantly wrong under military law and practice.

3 Q. Now, to be sure, did you offer in your
4 testimony today a profile of a lance corporal of short
5 duration or did you rely upon the specifics that you
6 observed in your review of the material in this case?

7 A. I relied upon specifics of what I reviewed.
8 All lance corporals are different. You know, what I'm
9 trying to convey to the Court and assist the Court is when
10 you apply those totality of circumstances you need to at
11 least consider that, you know, the character of Lance
12 Corporal Cardwell having just gotten out of boot camp,
13 being extremely junior, and desiring to please his
14 superiors, not questioning their orders.

15 Q. And as part of your evaluation I think you
16 reviewed a description of the interrogation room at YPD;
17 is that correct?

18 A. There is a description of it as being -- you
19 know, having, you know, no one else in there. I mean, I
20 don't know much more than that other than the -- you know,
21 the interrogation room, the factors that make it
22 psychologically intimidating, what Chief Justice Warren
23 was concerned about is the isolation. You're isolated
24 from family, from friends, from attorneys. You're
25 isolated in this case from fellow Marines.

Adam W. Gage
Official Court Reporter

1 So that, you know, I'm not saying it was, you
2 know, a Japanese prison with smells and that kind of
3 thing. The fact is he was alone in that room with
4 Detective Tejeda. He was alone in the room with Agent
5 Jurj and Rendon. And he was alone with Gunnery Sergeant
6 Green. So those -- the impact of interrogation rooms or
7 station house interrogations is the same regardless of the
8 exact physical layout.

9 To further answer your question, yes, Lance
10 Corporal Cardwell described the interrogation room at Yuma
11 Police Department. He talked about it had, you know, some
12 kind of -- of screen that he noticed that -- that people
13 could look through and he couldn't see through, and pretty
14 bare. He described it in the -- in those terms.

15 Q. Now, in your opinion has the Marine Corps
16 changed significantly since you retired and upon what do
17 you base that opinion?

18 A. Well, it has not changed. I base that on my
19 contact with retired Marines and active duty Marines as
20 well as monitoring, you know, changes that are reported.
21 Every time the commandant suggests changing something,
22 retired Marines are all over it talking about it.

23 In particular the prohibition against wearing a
24 utility uniform off base. When -- when the Navy started
25 backing off on that and the commandant got tougher on it,

1 there was a lot discussion. That's just an example. But
2 I -- I am also social friends with the commanders at
3 MCAS Yuma. You know, I know -- I knew Colonel David
4 Scruggs -- Suggs, I'm sorry, S-U-G-G-S, fairly well and I
5 just keep in touch with Marines.

6 Q. And could you describe for the Court your
7 experience as a criminal practitioner in the Marine Corps?

8 A. You meant to repeat what I said earlier?

9 Q. Reemphasize it. It came up in cross.

10 A. Well, specifically I -- after attending the
11 naval justice school I was stationed in Yuma, Arizona. I
12 served as both a defense counsel and as a prosecutor trial
13 counsel here. That was for four years.

14 I have been a military judge for three years.
15 I've, you know, been -- tried many member's cases and
16 non-member's cases. I think as the deputy chief defense
17 counsel for the Marine Corps, I was certainly trusted
18 with, you know, administering the defense counsel all over
19 the world, you know, in looking at issues and assisting
20 them and how they defend a case.

21 As a staff judge advocate, particularly my last
22 tour with 1st Marine Expeditionary Force, worked for a
23 three star general, and both General Conway and then
24 General Sattler. So I was the senior lawyer in Iraq for
25 the Marine Corps. I've reviewed every court martial.

Adam W. Gage
Official Court Reporter

1 I've reviewed every investigation. And so I think that
2 was kind of the pinnacle of my career where I got to see
3 virtually, not necessarily always in the field, but
4 through the investigations and records that went across my
5 desk.

6 Q. And finally, you had occasion to train other
7 Marines in the judge advocate corps as far as trial
8 practice and the like?

9 A. Yes. I was an instructor for the Marine Corps
10 trial advocacy team. And we -- we did a -- what we
11 referred to, National Institute of Trial Advocacy type of
12 trainings. Colonel Mallek was on that. We went all over
13 the world. It was what they call a purple activity, so we
14 taught Marines, Army, Navy, Coast Guard, Air Force basic
15 trial techniques. We'd have a mock trial which would last
16 for one week. Probably down hundreds of those.

17 MR. BREEZE: That's all I have, Your Honor.

18 THE COURT: Thank you. You may step down.

19 THE WITNESS: Thank you.

20 MR. BREEZE: May Colonel Weil be excused?

21 THE COURT: Yeah, you may be excused.

22 THE WITNESS: Your Honor, may I return the
23 exhibits to the prosecutor or?

24 THE COURT: You can just hand them to me.

25 THE WITNESS: Thank you.

1 THE COURT: Mr. Breeze, argument?

2 MR. BREEZE: Yeah. We'll reserve argument,
3 Your Honor. We want to evaluate testimony today and
4 properly address it with the Court. That would be
5 premature at this point.

6 THE COURT: Okay. Any objection to that from
7 the State?

8 MS. GONZALEZ: No, Your Honor. We will respond
9 accordingly.

10 THE COURT: Okay. All right. So we will
11 continue with trial Wednesday morning. If there is a
12 matter to be brought before the Court prior to the jury
13 being brought in, please notify my assistant. Otherwise
14 I'll just assume that we're starting at 9:00 a.m. on
15 Wednesday if I'm not notified otherwise.

16 MS. GONZALEZ: And, Judge, just as with regards
17 to the witness today specifically, I assume that any
18 decision as to his appearing for trial would require
19 notice. Part of our continuing objection is the
20 continuing lack of disclosure.

21 THE COURT: Okay. And so as I recall I've
22 already precluded Colonel Weil or Mr. Weil, John Weil from
23 testifying at trial. Any -- him -- him getting on the
24 stand would require me to reverse that decision. Okay?

25 MS. GONZALEZ: Okay. And what I meant was

1 notice to the State about him taking the stand --

2 THE COURT: Right.

3 MS. GONZALEZ: -- if the decision is reversed,
4 I guess --

5 THE COURT: Right.

6 MS. GONZALEZ: -- is what I'm --

7 THE COURT: Right, but we aren't doing argument
8 on that now, so I'm not going to render my decision now.
9 I'll wait until after argument is made by the parties.
10 And then if that results in the State needing some more
11 time to complete its case, if -- and I'm not saying I'm
12 going to do this -- but if I reverse my decision and allow
13 him to testify and then you need to get a new witness to
14 counter the testimony or witnesses to counter the
15 testimony by Mr. Weil and that necessitates us coming back
16 in January, we'll come back in January.

17 MS. GONZALEZ: All right.

18 THE COURT: But we'll cross that bridge if and
19 when we come to it. Okay. All right. The Court is in
20 recess.

21

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25

1 STATE OF ARIZONA)

2)

3 COUNTY OF YUMA)

4

5

6 I, Adam W. Gage, having been duly appointed as
7 Official Court Reporter herein, do hereby certify that the
8 foregoing pages numbered *1* through *82* inclusive,
9 constitute a full, true, and accurate transcript of all
10 the proceedings had in the above matter, all done to the
11 best of my skill and ability.

12 Dated this 2nd of December 2020 at Yuma, Yuma
13 County, Arizona.

14

15

16

17

_____/s/_____
Adam W. Gage
Certified Reporter
Arizona CCR # 50145

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Adam W. Gage
Official Court Reporter

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Appendix K: Partial MOU for Department of Justice and
Department of Defense, and Department of Justice and
Department of Transportation

 An official website of the United States government

Here's how you know



THE UNITED STATES
DEPARTMENT OF JUSTICE
ARCHIVES

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938. DEPARTMENT OF DEFENSE MEMORANDUM OF UNDERSTANDING

In August 1984, the United States Attorney General and the Secretary of Defense signed the following Memorandum of Understanding ("MOU") between the Departments of Justice and Defense:

MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENTS OF JUSTICE AND DEFENSE RELATING TO THE INVESTIGATION AND PROSECUTION OF CERTAIN CRIMES

A. PURPOSE, SCOPE AND AUTHORITY

This Memorandum of Understanding (MOU) establishes policy for the Department of Justice and the Department of Defense with regard to the investigation and prosecution of criminal matters over which the two Departments have jurisdiction. This memorandum is not intended to confer any rights, benefits, privileges or form of due process procedure upon individuals, associations, corporations or other persons or entities.

B. POLICY

The Department of Justice has primary responsibility for enforcement of federal laws in the United States District Courts. The Department of Defense has responsibility for the integrity of its programs, operations and installations and for the discipline of the Armed Forces. Prompt administrative actions and completion of investigations within the two (2) year statute of limitations under the Uniform Code of Military Justice require the Department of Defense to assume an important role in federal criminal investigations. To encourage joint and coordinated investigative efforts, in appropriate cases where the Department of Justice assumes investigative responsibility for a matter relating to the Department of Defense, it should share information and conduct the inquiry jointly with the interested Department of Defense investigative agency.

C. INVESTIGATIVE AND PROSECUTIVE JURISDICTION

1. CRIMES ARISING FROM THE DEPARTMENT OF DEFENSE OPERATIONS

- a. Corruption Involving the Department of Defense Personnel. The Department of Defense investigative agencies will refer to the FBI on receipt all significant allegations of bribery and conflict of interest involving military or civilian personnel of the Department of Defense. In all corruption matters the subject of a referral to the FBI, the Department of Defense shall obtain the concurrence of the Department of Justice prosecutor or the FBI before initiating any independent investigation preliminary to any action under the Uniform Code of Military Justice. If the Department of Defense is not satisfied with the initial determination, the matter will be reviewed by the Criminal Division of the Department of Justice. The FBI will notify the referring agency promptly regarding whether they accept the referred matters for investigation. The FBI will attempt to make such decision in one (1) working day of receipt in such matters.
- b. Frauds Against the Department of Defense and Theft and Embezzlement of Government Property. The Department of Justice and the Department of Defense have investigative responsibility for frauds against the Department of Defense and theft and embezzlement of government property from the Department of Defense. The Department of Defense will investigate frauds against the

MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENTS OF JUSTICE AND TRANSPORTATION (COAST GUARD) RELATING TO THE INVESTIGATIONS AND PROSECUTION OF CRIMES OVER WHICH THE TWO DEPARTMENTS HAVE CONCURRENT JURISDICTION.

Whereas, certain crimes committed by Coast Guard personnel subject to the Uniform Code of Military Justice may be prosecuted by Coast Guard tribunals under the Code or by civilian authorities in the Federal Courts; and

Whereas, it is recognized that although the administration and discipline of the Coast Guard requires that certain types of crimes committed by its personnel be investigated by that service and prosecuted before Coast Guard military tribunals other types of crimes committed by such military personnel should be investigated by civil authorities and prosecuted before civil tribunals; and

Whereas, it is recognized that it is not feasible to impose inflexible rules to determine the respective responsibility of the civilian and Coast Guard military authorities as to each crime over which they may have concurrent jurisdiction and that informal arrangements and agreements may be necessary with respect to specific crimes or investigations; and

Whereas, agreement between the Department of Justice and the Department of Transportation (Coast Guard) as to the general areas in which they will investigate and prosecute crimes to which both civil and military jurisdiction attach will, nevertheless, tend to make the investigation and prosecution of crimes more expeditious and efficient and give appropriate effect to the policies of civil government and the requirements of the United States Coast Guard;

It is hereby agreed and understood between the Department of Justice and the Department of Transportation (Coast Guard) as follows:

1. *Crimes committed on military installations (including aircraft and vessels).* Except as hereinafter indicated, all crimes committed on a military installation by Coast Guard personnel subject to the Uniform Code of Military Justice shall be investigated and prosecuted by the Coast Guard if the Coast Guard makes a determination that there is a reasonable likelihood that only Coast Guard personnel subject to the Uniform Code of Military Justice are involved in such crimes as principals or accessories, and except in extraordinary cases, that there is no victim other than persons who are subject to the

Uniform Code of Military Justice or who are bona fide dependents or members of a household of military or civilian personnel residing on the installation. Unless such a determination is made, the Coast Guard shall promptly advise the Federal Bureau of Investigation of any crime committed on a military installation if such crime is within the investigative authority of the Federal Bureau of Investigation. The Federal Bureau of Investigation shall investigate any serious crime of which it has been so advised for the purpose of prosecution in the civil courts unless the Department of Justice determines that investigation and prosecution may be conducted more efficiently and expeditiously by the Coast Guard. Even if the determination provided for in the first sentence of this paragraph is made by the Coast Guard, it shall promptly advise the Federal Bureau of Investigation of any crime committed on a military installation in which there is a victim who is not subject to the Uniform Code of Military Justice or a bona fide dependent or member of the household of military or civilian personnel residing on the installation and that the Coast Guard is investigating the crime because it has been determined to be extraordinary. The Coast Guard shall promptly advise the Federal Bureau of Investigation whenever the crime, except in minor offenses, involves fraud against the government, misappropriation, robbery, or theft of government property of funds, or is of a similar nature. All such crimes shall be investigated by the Coast Guard unless it receives prompt advise that the Department of Justice has determined that the crime should be investigated by the Federal Bureau of Investigation and that the Federal Bureau of Investigation will undertake the investigation for the purpose of prosecution in the civil courts.

2. *Crimes committed outside of military installations.* Except as hereinafter indicated, all crimes committed outside of military installations, which fall within the investigative jurisdiction of the Federal Bureau of Investigation and in which there is involved as a suspect an individual subject to the Uniform Code of Military Justice, shall be investigated by the Federal Bureau of Investigation for the purpose of prosecution in civil courts, unless the

Department of Justice determines that investigation and prosecution may be conducted more efficiently and expeditiously by other authorities. All such crimes which come first to the attention of Coast Guard authorities shall be referred promptly by them to the Federal Bureau of Investigation, unless relieved of this requirement by the Federal Bureau of Investigation as to particular types or classes of crime. However, whenever Coast Guard military personnel are engaged in scheduled military activities outside of military installations such as organized maneuvers or organized movement, the provisions of paragraph 1 above shall apply, unless persons not subject to the Uniform Code of Military Justice are involved as principals, accessories or victims.

If, however, there is involved as a suspect or as an accused in any crime committed outside of a military installation and falling within the investigative authority of the Federal Bureau of Investigation, an individual who is subject to the Uniform Code of Military Justice and if the Coast Guard authorities believe that the crime involves special factors relating to the administration and discipline of the Coast Guard which would justify investigation by them for the purpose of prosecution before a Coast Guard military tribunal, they shall promptly advise the Federal Bureau of Investigation of the crime and indicate their views on the matter. Investigation of such a crime may be undertaken by the Coast Guard military authorities if the Department of Justice agrees.

3. *Transfer of investigative authority.* An investigative body of the Coast Guard which has initiated an investigation pursuant to paragraphs 1 and 2 hereof, shall have exclusive investigative authority and may proceed therewith to prosecution. If, however, any Coast Guard investigative body comes to the view that effectuation of those paragraphs requires the transfer of investigative authority over a crime, investigation of which has already been initiated by that or by any other investigative body, it shall promptly advise the other interested investigative body of its views. By agreement between the Departments of Justice and Transportation (Coast Guard), investigative authority may then be transferred.

4. *Administrative action.* Exercise of exclusive investigative authority by the Federal Bureau of Inves-

tigation pursuant to this agreement shall not preclude Coast Guard military authorities from making inquiries for the purpose of administrative action related to the crime being investigated. The Federal Bureau of Investigation will make the results of its investigations available to Coast Guard military authorities for use in connection with such action.

Whenever possible, decisions with respect to the application in particular cases of the provisions of this Memorandum of Understanding will be made at the local level, that is, between the Special Agent in Charge of the local office of the Federal Bureau of Investigation and the local Coast Guard military commander.

5. *Surrender of suspects.* To the extent of the legal authority conferred upon them, the Department of Justice and Coast Guard military authorities will each deliver to the other promptly suspects and accused individuals if authority to investigate the crimes in which such accused individuals and suspects are involved is lodged in the other by paragraphs 1 and 2 hereof.

Nothing in this memorandum shall prevent the Coast Guard from prompt arrest and detention of any person subject to the Uniform Code of Military Justice whenever there is knowledge or reasonable basis to believe that such a person has committed an offense in violation of such code and detaining such person until he is delivered to the Federal Bureau of Investigation if such action is required pursuant to this memorandum.

APPROVED:

/s/ Ramsey Clark
Ramsey Clark
Attorney General
Date: 9 October 1967

/s/ Alan S. Boyd
Alan S. Boyd
Secretary of Transportation
Date: 24 October 1967

Appendix L: Transcript: Motion to Dismiss Regarding
Memorandum of Understanding
October, 10, 2019

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
COUNTY OF YUMA

RECEIVED
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STATE OF ARIZONA,

YUMA COUNTY
PUBLIC DEFENDER

Plaintiff,

vs.

No. S1400 CR 2016-404

THOMAS JARED CARDWELL,

Defendant.

BEFORE THE HONORABLE BRANDON S. KINSEY
JUDGE OF THE SUPERIOR COURT
DIVISION SIX
YUMA, ARIZONA

REPORTER'S TRANSCRIPT OF PROCEEDINGS

PARTIAL TRANSCRIPT - MOTION TO DISMISS

9:04 a.m. - 9:34 a.m.

JURY TRIAL - DAY 16

October 14, 2020

PREPARED BY:

Adam W. Gage, RPR, CR, CCR (TN)
Certified Reporter
Arizona CCR No. 50145
Yuma County Superior Court

CERTIFIED COPY

COUNSEL APPEARING:

For the Plaintiff:

BY: Claudia M. Gonzalez, Esq.

BY: Joshua K. Davis-Salsbury, Esq.
Yuma County Attorney's OfficeFor the Defendant:

BY: Michael A. Breeze, Esq.

BY: Joshua B. Tesoriero, Esq.

Yuma County Public Defender's Office

P R O C E E D I N G S

1
2
3 THE COURT: The Court calls case number
4 S1400 CR 2016-404, State of Arizona versus Jared Thomas
5 Cardwell.

6 We're going to do the argument first and then
7 we'll bring the jury in. Okay. The Court notes the
8 presence of defendant and counsel for the parties. All
9 right. We're going to -- the jury is not present at this
10 time. We're going to take up this morning the defense
11 motion to dismiss for lack of jurisdiction.

12 Mr. Breeze, are you going to be making that
13 argument?

14 MR. BREEZE: Yes, Your Honor, but before we do,
15 we've -- we've been engaging in some proposed plea
16 negotiations. I think that the prosecutor needs time with
17 the victim.

18 MS. GONZALEZ: Well, and I have -- I have been
19 approached this morning, but I think we're -- we're going
20 to move forward with the jurisdiction issue as far as -- if
21 we choose to go get that out of the way.

22 MR. BREEZE: If I may approach?

23 THE COURT: You may.

24 MR. BREEZE: We've filed a supplemental
25 memorandum with the Court. We've copied counsel with it.

1 THE COURT: Okay. All right. Mr. Breeze?

2 MR. BREEZE: Our argument in a nutshell is we
3 have an agreement between two parties, that being the Board
4 of Supervisors and the commander of Marine Corps base Yuma
5 that -- and you'll see the -- our citation of authority,
6 both the commander and the Board are empowered to enter
7 into agreements like this. And actually, it's -- it's not
8 only common, it's required when you review the -- the
9 handbook for commandants in -- in the legal area to enter
10 into these types of agreements.

11 And what the agreement basically does, it covers
12 exercise of jurisdiction. That's why we observed that the
13 State's response indicating there's concurrent jurisdiction
14 does not address the issue. The issue is whether there's
15 agreement as far as how jurisdiction is going to be
16 exercised and -- and the exercise of that jurisdiction has
17 to follow the agreement.

18 In this case the jurisdiction was referred to the
19 Marine Corps so that they could prosecute the case. The
20 wing general, who dismissed the -- the court martial had
21 the authority to dismiss the court martial but he was not a
22 party to the agreement nor was he in the line of authority
23 of the commandant. This is an agreement between commandant
24 and Board of Supervisors, those are the ones who are
25 empowered. So the agreement was not followed properly in

1 order for the jurisdiction to be revested in the -- in the
2 State. That decision has to be made by the Board of
3 Supervisors, not the county attorney.

4 THE COURT: Well, can the -- can the Board of
5 Supervisors divest jurisdiction from the State of Arizona?
6 I don't think they have -- I don't think they have the
7 authority to do that, do they?

8 MR. BREEZE: It's not divesting jurisdiction.
9 In -- in the agreement it says "waive" but what it really
10 is, it's an agreement to apportion jurisdiction. And --
11 and you look at our citation to authority, and that's where
12 I started this argument, is that the Board of Supervisors
13 is empowered by the State to enter into these kind of
14 agreements. That's why they did it.

15 If you look at the agreement, it was signed off
16 by then director of the county attorney's county counsel,
17 the civil side as proper to form. What that means is he's
18 agreeing that the -- the agreement was -- not as to
19 content. That's a decision for the Board and for the
20 commandant. But as to form, meaning he acknowledges they
21 have the authority to enter into this agreement and the
22 powers to do that.

23 So yes, the Board is a subset of the State and
24 they are empowered by the -- by the State to enter into
25 agreements of this sort. And I'm referring the Court to

1 the citations of authority in the statutes. The
2 legislature has empowered the Board to engage in a number
3 of -- number of things, a number of decisions, and this is
4 one of the areas in which they've been empowered.

5 And the county attorney is a non-party and not
6 empowered to make that decision as to take up jurisdiction
7 again, but that's a decision for the Board. And obviously
8 the Board is the one that has to fund this case. And they
9 have -- there's a lot of serious financial consideration,
10 among others. They can always refer the case to the county
11 attorney to determine whether charges are to be
12 appropriate, but the Board has to make decisions as to
13 resources and -- and financial cost to the County in making
14 this decision. So it's -- it's a decision that's
15 critically in the hands of the Board.

16 Now, with -- with respect to the power of the
17 Board, I cite the Court to A.R.S. Section -- Title 11,
18 Section 952 and it's -- indicates that it's authorized the
19 legislative or other governing bodies then -- well, the
20 agencies in this case are even more powerful than public
21 agencies. It's the highest executive or legislative -- or
22 executive branch in the county. It can, by agreement, make
23 contract by agreement for services during the exercise of
24 any powers common to the contracting parties, and that's
25 what this is.

1 One of the issues and elements in the -- in the
2 agreement is the exercise of jurisdiction. And under the
3 second section, under Section D, it indicates that the
4 matter shall be submitted to the attorney for each such
5 public agency or public procurement unit who shall
6 determine whether the agreement is in proper form. That's
7 what we're talking about when Robert Pickel authorized and
8 signed the agreement as to form. And under Section 11-251,
9 under 14, the powers of the Board shall direct and control
10 the prosecution and defense of all actions to which the
11 County is a party and comprise [sic] them.

12 Now, when we talk about the commandant as the
13 Marine Corps Air Station Yuma, under 10 U.S. Code, Section
14 814 § Article 14, says that under the regulations that are
15 prescribed by the Secretary, says that he has -- a member
16 of the armed forces and accused against civil authority may
17 deliver upon request to the civil -- civil authority for
18 trial, but it has to be in accord with the regulations by
19 the Secretary. And it's obvious that the method by which
20 that is done is the determination of jurisdiction as
21 between the -- the Marine Corps and the venue in which they
22 exist.

23 Now, this is -- exists all across the world. We
24 use -- we have the same situation when you have concurrent
25 jurisdiction in other countries. In this case it's just

1 more clear because it's United States proper. And when you
2 look at the commandant's reference legal handbook, it
3 indicates and directs the commandant that each base
4 installation must have a Memorandum of Understanding with
5 local civilian law enforcement agencies regarding issues
6 pertaining to roles, responsibilities, jurisdiction, and
7 criminal prosecution.

8 Now, the purpose of the agreement is to make sure
9 that we assure the proper administration and discipline of
10 armed forces. The procedures that govern the assumption of
11 jurisdiction, there's what we're talking here. And it's --
12 and it's clear and -- by its terms that the jurisdiction
13 area includes MCAS housing, where this matter took place.

14 So this -- the purpose of the agreement, to
15 assure the -- that prosecutions be expeditious and
16 efficient, this case is neither. And that's why we're here
17 over five -- almost -- over five years later. We've been
18 informed also by the manual that's used by the JAG that
19 common -- commanding officer shall, before making delivery
20 of someone into civil authority for criminal prosecution,
21 obtain from the governor or other duly authorized office of
22 such state a written agreement that conforms to the
23 regulations. And that wasn't done in this case.

24 The agreement controls the exercise and
25 jurisdiction and it delimits that exercise in accordance

1 with the terms. It's incumbent upon the government to
2 follow closely those terms in order to properly assume
3 jurisdiction. That was not done in this case. The
4 military never divested itself of jurisdiction. The case
5 is still alive. The general dismissed the -- the court
6 martial but never did it with prejudice.

7 In fact, by explicit terms the dismissal was
8 without prejudice. That was the commanding general at
9 Miramar, but he lacks jurisdiction over MCAS Yuma and --
10 and Yuma MCAS never waived jurisdiction. The Marine Corps
11 must explicitly waive jurisdiction and the Board must
12 explicitly accept jurisdiction before prosecution may
13 properly proceed. Neither was done.

14 The agreement is binding on the government and
15 enforceable according to its terms and its scope has to be
16 determined with its four corners. The prosecutor hasn't
17 brought anything else as far as its interpretation, but
18 within its four corners I think that it's clear that the --
19 the government has not met their burden as far as
20 establishing that the -- the jurisdiction was properly
21 established.

22 In fact, I think we've shown that the
23 jurisdiction was never accepted and never -- and never
24 properly assumed as required under the memorandum of
25 agreement.

1 THE COURT: Ms. Gonzalez?

2 MS. GONZALEZ: Yes, Your Honor, and I'm actually
3 going to use this not to be facetious but because this is
4 jurisdiction and if we're saying that this is dispositive.

5 THE COURT: If you don't mind, Ms. Gonzalez, if
6 you could put it over there and angle it so that the
7 defense can see it.

8 MS. GONZALEZ: Sure. Judge, this issue --

9 MR. BREEZE: If we could have it back a little
10 bit?

11 MS. GONZALEZ: Sure. Is that okay?

12 MR. BREEZE: You know, with the Court's
13 permission I'll move over here and make it easy on counsel.

14 THE COURT: You may. Is there anything up on
15 Ms. Gonzalez's computer?

16 MR. BREEZE: No.

17 MS. GONZALEZ: And so the very first issue that
18 I'd like to start off with is that the State has police
19 power, period. The State of Arizona has police power. The
20 Board of Supervisors did not -- does not have police power.
21 The County does not have police powers. We're dealing with
22 two state laws that empower the State of Arizona to
23 prosecute and enforce the -- this offense within the State
24 of Arizona. And that's 13-1104, which is second degree
25 murder; and we have 2621, which explicitly states that MCAS

1 is concurrent jurisdiction, that it does not divest the
2 State of Arizona from jurisdiction of prosecuting offenses,
3 and then it explicitly says "these courts" from presiding
4 over these types of offenses.

5 So we're dealing with state law here. What the
6 issue that the defendant is bringing forth is simply a
7 memorandum. It's in a Memorandum of Understanding. It's a
8 five-page document that is essentially a best practices
9 agreement of how to enforce certain -- certain ways of
10 arresting, going about deferential prosecution with the
11 City of Yuma, and it mostly applies to, like, YPD and local
12 county agencies.

13 Now, as the defendant has aptly noted, this is --
14 this is a Memorandum of Understanding that is signed by
15 three parties: The first being the Board of Supervisors on
16 behalf of Yuma County, the second being the City of Yuma,
17 and the third being the military. I'm going to write
18 "MCAS" just to -- because that's what we're talking about.

19 The State of Arizona is not a party to this
20 Memorandum of Understanding. The State of Arizona cannot
21 be bound by the Board of Supervisor agreements. The State
22 of Arizona, when it is acting in its capacity as the county
23 attorney, and that is Jon Smith, an elected government
24 official for the State of Arizona, he is not bound by the
25 Board of Supervisors.

1 The only reason that the Board of Supervisors can
2 bind somehow the county attorney's office is through its
3 purse strings. For example, if the Board of Supervisors
4 wanted to limit marijuana persecution -- prosecution or
5 drug prosecution, it could withdraw funding from the drug
6 unit, for example. But the Board of Supervisors, a county
7 entity, a county -- a state instrumentality cannot divest
8 the power given to the State to prosecute legislature
9 passed offenses.

10 So in this case, it's very simple. The
11 Memorandum of Understanding is not -- does not bind in any
12 way the State of Arizona when prosecuting anything. The
13 MOU does not have this court. The Yuma County Superior
14 Court is not a party to this Memorandum of Understanding.
15 So when we're talking about jurisdiction to preside over
16 this as well, how can a Memorandum of Understanding bind
17 this court when it wasn't even a party to it?

18 In fact, this court is a separate complete
19 branch, a judiciary branch that has nothing to do with the
20 enforcement of best practices in this MOU. So it cannot
21 divest this court of presiding over this offense and it
22 cannot divest this court of jurisdiction that is
23 specifically outlined in 1021, 26-1021.

24 26-1021 specifically says, The provisions of this
25 chapter conferring jurisdiction on courts martial do not

1 deprive any other court of this state of concurrent
2 jurisdiction with respect to offenders or offenses that by
3 statute may be tried by those courts.

4 2621 -- 1021 specifically refers to courts. And
5 this is a -- a power, a jurisdictional power that this
6 court has through state legislature and it cannot be
7 divested by the Board of Supervisors through a simple
8 Memorandum of Understanding that is mostly for best
9 practices in law enforcement.

10 Now, if we're going to -- now, if we're going to
11 address the MOU as a contract, as apparently that is the --
12 the issue for the defendant. In his motion I believe in
13 argument he addresses that the issue at bar is that MOU not
14 only purports to, but does control the process for
15 bestowing or revoking jurisdiction.

16 First of all, there is no such thing, but if
17 we're going to treat the MOU as a strict contract, if we're
18 going to go ahead and do that, then the MOU is arguably
19 invalid. In the very first -- the very first subsection of
20 to intergovernmental agreement, which is 11-952(B)(1), it
21 says that it shall specify its duration. And in this MOU
22 there's technically no end to it.

23 This Court is aware that boards cannot bind
24 future boards in perpetuity, so it's arguably invalid.
25 Secondly, the defendant is not a party to this contract.

1 The defendant is not the Board of Supervisors, the
2 defendant is not the City of Yuma, and the defendant is
3 certainly not MCAS. So the defendant has no standing to
4 even argue this issue based on pure contractual terms.

5 And parties -- and the MOU is not for the benefit
6 of the defendant; it's only for the benefit of the parties
7 that entered into it, and those are the people that have
8 standing. And the parties here cannot change the legal
9 authority to act in a certain way. They're just simply
10 outlining the best ways procedures on how to carry out
11 those functions.

12 Last but not least, the procedure that the
13 defendant refers to and relies on doesn't exist in the
14 Memorandum of Understanding. There is no such thing as
15 bestowing jurisdiction and then revoking jurisdiction or
16 accepting jurisdiction. Here we have in -- specifically in
17 Section 5(c) of the MOU it says, If prior to adjudication
18 by the Arizona court, which -- if prior to adjudication by
19 the Arizona court in which the county attorney's office or
20 the city prosecutor's office is conducting the prosecution
21 of a military suspect who is also subject to prosecution
22 for the same act under the UCMJ, MCAS determines that it is
23 in the best interests of the military community to
24 prosecute that person for that same act or acts before a
25 military tribunal.

1 MCAS may request deferential that the county
2 attorney's office or the city prosecutor's office waive
3 jurisdiction in favor of court martial prosecution. The
4 MOU understands and acknowledges and recognizes not only
5 the concurrent jurisdiction but that it -- from the
6 military perspective it is a deferential prosecution
7 decision.

8 On top that -- on top of that, the argument that
9 the defendant made about the -- the letter from the
10 commanding general, the one that says, In accordance with
11 the references the charges and specifications in the
12 enclosures are hereby withdrawn and dismissed without
13 prejudice, and then it says, The case will be prosecuted by
14 the Yuma County district attorney's office. That's dated
15 April 18th, 2016. It's signed by general M.A. Rocco.

16 That letter that they refer to that they're
17 relying on to say that the military has retained
18 jurisdiction because it dismissed it without prejudice,
19 well, the defendant should know himself that he has been
20 discharged. He was discharged shortly after the charges
21 were dismissed in the military. And you cannot haul
22 somebody back into courts martial if you have no power over
23 them.

24 So even if the military wanted to prosecute him
25 back at the court -- in courts martial, they couldn't

1 because they have no power over him. And nothing is more
2 definitive of waiving jurisdiction, if we're going to go by
3 behaviorally indicative intentions, than discharging
4 someone and losing power over them.

5 Bottom line here, Judge, is that at no point does
6 the State of Arizona have to ask MCAS, the military, or any
7 other entity for permission to prosecute any felony offense
8 within the purview of the State to prosecute by asking to
9 waive jurisdiction.

10 THE COURT: Thank you. Mr. Breeze?

11 MR. BREEZE: Thank you, Your Honor. The second
12 it was read from the agreement by the prosecutor I think by
13 its terms puts a light over the agreement in the first
14 place. Next issue, he asks the -- it's our understanding
15 that the Secretary of the Navy can reengage the prosecution
16 of a person who is formerly under arms. There's -- there's
17 a procedure for that. The prosecutor has not established
18 that that's not an option.

19 Next, we have an interesting exercise here in an
20 understanding the separation of powers and the delegation
21 of powers. We've established that the legislature
22 delegated these powers to the Board. We've established
23 that the county attorney civil division has approved the
24 obvious power implicit in the fact that he approved as to
25 form.

1 It's clear that the Memorandum of Understanding
2 is valid. And it's also clear that, unlike most contracts,
3 when the government enters into a contract like this, it's
4 enforceable as to its terms. Irrespective as to which a --
5 whether a civilian, a citizen was party to the contract,
6 they're all party to the contract because the government
7 acts as their representative.

8 Not only that, if you want to talk about 3rd of
9 Contract Law you could -- we understand that every citizen
10 in Arizona is a third-party beneficiary of that contract
11 and of anything that the State's doing, although there
12 might be a disagreement as to the wisdom of the state
13 action, it's ostensibly for the interest of all citizens.

14 We're not talking about whether or not there's
15 concurrent jurisdiction. We've acknowledged that to begin
16 with. What we are -- what we presented to the Court today
17 with is a clear empowerment of the Board of Supervisors and
18 the commandant of MCAS to enter an agreement of these sorts
19 and -- and we just insist that the agreement has to be
20 followed.

21 When the government attempts to assume
22 prosecution of a case like this, it was not done. And
23 whether there's a procedure outlined in the memorandum for
24 doing it, it's obvious that in implementing that agreement
25 the -- the obvious implementation is the one that we

1 suggested.

2 And this despite the prosecutor's perspective
3 that it's just a best practices agreement, you don't --
4 it's not best practices memorandum or anything like that.
5 This is an agreement between two empowered parts of the
6 government, the military and the State.

7 And when -- the prosecutor makes a mistake when
8 they misunderstand that the Board of Supervisors is not
9 part of the state government. As a matter of fact, the
10 State is broken into counties and the counties have their
11 respective powers and obligations, so it's basically a
12 federal system. And those powers are individualized.

13 And, yeah, the powers are derivative from the
14 legislature, but that -- that power was vested in the Board
15 of Supervisors and that's where they were able to enter
16 into this agreement. And that's why the -- the prosecutor,
17 when they went -- intend to bring this prosecution should
18 have gone to the Board for the proper authorization.

19 THE COURT: All right. Even if -- even if I were
20 to find that somehow the Board of Supervisors could divest
21 the State of Arizona of jurisdiction through a Memorandum
22 of Understanding, I find that this -- this agreement
23 specifically includes a prosecution for this offense to be
24 conducted by the county attorney's office.

25 Section 5(a) of the Memorandum of Understanding

1 states that, Except as provided in Section 5(b) below
2 whenever an investigation of an offense involving a
3 military suspect and civilian victim is conducted by the
4 YPD or YCSO pursuant to Section 4(b)(1) above, any
5 resulting prosecution will normally be conducted by the
6 county attorney's office or a prosecutor's office.
7 Normally be conducted.

8 Now, I know MCAS did a lot of the investigation
9 in this case. I'm pretty sure YPD and YCSO may have done
10 some investigation in this case as well. But whenever they
11 refer to prosecution, it says "normally." Typically the
12 only time that -- that under this agreement that the
13 military would generally have -- I guess, be given the
14 prosecution of an offense would be, one, if it's a minor
15 traffic offense that occurred on base; or two, if both the
16 -- the accused and the alleged victim were members of the
17 military, which is under 5(b) below, 5(b).

18 I find that, one, this Memorandum of
19 Understanding by law cannot divest the State of Arizona
20 from -- with jurisdiction. I agree with the -- with
21 Ms. Gonzalez's argument in that the -- that the -- the
22 entity bringing this case is not the County of Yuma. It's
23 not Yuma County that's bringing this case.

24 It is the -- the prosecutors do work for the Yuma
25 County attorney's office, but it is not the County of Yuma

1 vs. Jared Thomas Cardwell; it is the State of Arizona
2 versus Jared Thomas Cardwell. And the Statute 26-1021
3 specifically states that the State retains concurrent
4 jurisdiction over matters that may be prosecuted in -- in a
5 court of military justice.

6 And also I find that the Memorandum of
7 Understanding, one, is not binding in such a way that would
8 prevent the county from prosecuting a case such as this.
9 And -- and I think it actually specifically contemplates
10 that a case such as this would be prosecuted by the county
11 attorney's office. And so for all those reasons, the
12 defendant's motion to dismiss is denied.

13 All right. So we're going to take brief recess
14 as we bring the jurors up. I understand that there is a --
15 there have been some negotiations back and forth or there
16 has been an offer made, I guess, from the defense to the
17 State. So you'll have a few minutes to convey that offer
18 to the -- to the victims if -- if you wish.

19 I would like to proceed with the case. And if
20 the parties do result -- resolve the case via plea, then
21 you can notify me of that but I don't want to wait around
22 and make the jury wait only to just continue with the case.
23 So Mr. Breeze?

24 MR. BREEZE: Yes, a couple of other issues. For
25 the record, we request a stay of proceedings so we can

1 review this for special action on the jurisdiction issue.

2 THE COURT: The request is denied.

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(End of Requested Proceedings)

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COUNTY OF YUMA)

I, Adam W. Gage, having been duly appointed as Official Court Reporter herein, do hereby certify that the foregoing pages numbered *1* through *21* inclusive, constitute a full, true, and accurate transcript of all the proceedings had in the above matter, all done to the best of my skill and ability.

Dated this 18th of October 2020 at Yuma, Yuma
County, Arizona.

Adam W. Gage
Certified Reporter
Arizona CCR # 50145

Adam W. Gage
Official Court Reporter

Appendix M: Petitioner's Testimony Regarding Motion To Suppress,
August 8, 2017



S1400CR201600404

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YUMA

FILED
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LYNN FAZZ
CLERK OF SUPERIOR COURT
YUMA, ARIZONA 85364

STATE OF ARIZONA,

Plaintiff,

vs.

JARED THOMAS CARDWELL,

Defendant.

No. S1400CR201600404

BEFORE THE HONORABLE STEPHEN J. ROUFF
COMMISSIONER TWO OF THE SUPERIOR COURT
YUMA, ARIZONA

TRANSCRIPT OF PROCEEDINGS

August 8, 2017

2:04 p.m. - 2:58 p.m.

MOTION TO SUPPRESS

PREPARED BY:

Julie K. Knowlton, CR, RPR, CSR(CA)
Certified Reporter
AZ Certification No. 50138
Yuma County Superior Court

Original

APPEARANCES

For the State:

Claudia Gonzalez
Deputy County Attorney
Office of the Yuma County Attorney

For the Defendant:

Zachary Dumyahn
Deputy Public Defender
Office of the Yuma County Public Defender

Julie K. Knowlton
Official Court Reporter

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Julie K. Knowlton
Official Court Reporter

4

PROCEEDINGS

1
2
3 THE COURT: Okay. Court calls State of Arizona versus
4 Jared Thomas Cardwell, CR2016-404. The record may show the
5 presence of defendant in custody.

6 This case is before the Court for continued evidentiary
7 hearing on defendant's motions to suppress and motions in limine.

8 Are the parties prepared to proceed at this time?

9 MR. DUMYAHN: Yes, Your Honor.

10 MS. GONZALEZ: Yes, Your Honor.

11 MR. DUMYAHN: Your Honor, at the last hearing on
12 July 5th, we left off with the State resting as far as their
13 presentation and witnesses, and today the defense has a single
14 witness. In the past the defense called a couple witnesses, and
15 we did that out of order at the witnesses' convenience.

16 And so the defense presentation today will simply
17 include the testimony of Jared Cardwell, and I will note that he
18 is only going to testify in relation to one of the four motions
19 filed by the defense in relation to the suppression motions, and
20 this motion would relate to the statements made to law
21 enforcement on May 19th of 2015.

22 Jared is aware that he need not testify at suppression
23 hearings and that, if he does, his testimony can't be used at
24 trial against him unless he takes the stand at trial and
25 testifies on the same matters he testifies to at suppression

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Official Court Reporter

1 hearings. So because he filed all four suppression motions
2 relatively at once and rather than piecemeal them, he is wishing
3 to testify only on one, noting that if he filed them one at a
4 time we'd have hearings one at a time, and it would be
5 essentially the -- the same process. So he plans on taking the
6 stand and, as noted, testifying in relation to a single motion
7 filed by the defense.

8 THE COURT: Miss Gonzalez?

9 MS. GONZALEZ: No objection, Your Honor.

10 THE COURT: You have no objection to that?

11 MS. GONZALEZ: No.

12 THE COURT: Okay. So his testimony -- and you're
13 willing to have your cross limited to the May 19th incident?

14 MS. GONZALEZ: That's fine, Your Honor.

15 THE COURT: Okay. Then that's agreeable pursuant to
16 the stipulation of counsel.

17 MR. DUMYAHN: Your Honor, the defense calls Jared
18 Cardwell to testify.

19 THE COURT: Please come up to the clerk and be sworn.

20 THE BAILIFF: Stand right here.

21 (Whereupon, the witness was sworn.)

22 THE COURT: Please sit in the tan chair.

23 Go ahead, Mr. Dumyahn.

24 MR. DUMYAHN: Thank you, Judge.

25 / / /

1 JARED THOMAS CARDWELL,
2 called as a witness, having been first duly sworn, testified as
3 follows:
4

5 DIRECT EXAMINATION

6 BY MR. DUMYAHN:

7 Q. Mr. Cardwell, please introduce yourself to Judge Rouff
8 by telling the judge your full name and your current age.

9 A. I'm Jared Thomas Cardwell, and I'm 22 years old.

10 Q. And, Mr. Cardwell, if you would, you're very
11 soft-spoken, and I can barely hear you from here. So if there's
12 a microphone in front of you, perhaps you could move that closer
13 to yourself.

14 THE COURT: That black thing is the microphone.

15 THE WITNESS: It -- it doesn't move.

16 MR. DUMYAHN: Perhaps just move your chair closer to
17 the microphone, please.

18 Thank you.

19 Q. (BY MR. DUMYAHN) Jared, where were you born?

20 A. I was born in Laguna Hills, California.

21 Q. And where were you raised?

22 A. I was raised here in Yuma.

23 Q. And where did you go to high school?

24 A. I attended high school at Yuma High for two years, and
25 I finished the other two years at Shadow Mountain High School in

1 Phoenix.

2 Q. After finishing high school in Phoenix, what did you
3 do?

4 A. After finishing high school, I enlisted in the United
5 States Marine Corps.

6 Q. And why did you do that, Jared?

7 A. My father, my grandfather, and my uncles were all
8 Marines, and I wanted to follow in their footsteps.

9 Q. When did you start Marine Corps training?

10 A. I went to boot camp July 29th of 2013.

11 Q. Where did you do that at?

12 A. I was at boot camp in San Diego, California.

13 Q. And how long did it take you to be assigned a position
14 within the Marines?

15 A. Overall, from boot camp all the way through school, it
16 took almost two years.

17 Q. Why did it take so long for that?

18 A. The job that I wanted to do in the military required
19 extensive training for school.

20 Q. And what job did that end up being?

21 A. I was in avionics. I did -- I fixed radar, night
22 vision goggles, transmitters, radios, stuff like that.

23 Q. How long did you do that for?

24 A. In total, I was almost on my third year in the
25 military.

Julie K. Knowlton
Official Court Reporter

1 Q. And so the first two years of that three years was
2 training, and then you did that job for about a year?

3 A. Once I was stationed in Yuma, it was from December up
4 until May, so just a few months, pretty much.

5 Q. So from December of [sic] May of 2015, December being
6 in the year 2014, you were positioned in Yuma?

7 A. Yes. That's where I was.

8 Q. And what would be your general job duties in Yuma?

9 A. I would show up at work and just fix pieces of
10 equipment that were broken.

11 Q. Where did you live when you were working in Yuma?

12 A. When I first arrived, I lived in the barracks on base;
13 and then once I was married, I lived in the base housing.

14 Q. And by "base," what are you referring to?

15 A. On the Marine Corps base.

16 Q. And that's just right here in the city of Yuma?

17 A. Yes, it is.

18 Q. Today you're testifying about events occurring on
19 May 19th of 2015, as noted right before you took the stand. When
20 did you wake up that day?

21 A. I woke up at 5:30, but I was in bed until 6:00 to 6:15
22 maybe.

23 Q. And what were you planning on doing that day? What was
24 the schedule for that day for you?

25 A. For that day, it was just get up, go to work, work

1 until maybe 12:00 or 1:00, depending on what time they decided to
2 give me lunch, and then for my hour of lunch I would go home to
3 eat lunch. After that I would return back to work until about
4 4:30 or 5:00, and then I would return home for the rest of the
5 day.

6 Q. Is that indeed what happened that day?

7 A. That is not.

8 Q. Okay. When did you actually go to work that day?

9 A. I got to -- I left the house at about 6:35, and I
10 arrived maybe around 6:45.

11 Q. When were you scheduled for work?

12 A. We're supposed to be at work at 6:45.

13 Q. Before coming to work that day, that morning, did you
14 have breakfast?

15 A. I do not eat breakfast at home. I eat breakfast when I
16 get to work.

17 Q. So you arrived at work, and you arrived there around
18 6:45 a.m., as you noted. What are you doing at work that day?

19 A. That day in the morning -- every morning we do a FOD
20 walk, which is we walk the entire van pad, the area that we work.
21 We walk there to find trash, foreign debris that can possibly be
22 sucked into jets if they fly over the van pad. And then since
23 that weekend was going to be a holiday weekend, we were required
24 to do vehicle inspections for our vehicles.

25 Q. Did you get around to doing vehicle inspections that

1 day?

2 A. We were in the middle of doing vehicle inspections that
3 day.

4 Q. And what happened in the middle of vehicle inspections?

5 A. As one of the corporals at my shop was inspecting my
6 vehicle, one of my fellow co-workers got a call from my wife, and
7 she told me that she was on the way to the hospital.

8 Q. Why didn't you receive that call from your wife
9 personally?

10 A. My phone had broken a few months prior.

11 Q. So you get this call. Do you actually talk to your
12 wife?

13 A. Yes, I do.

14 Q. And who is that?

15 A. Beatrize.

16 Q. And do you recall around what time of day this is when
17 you get the call?

18 A. This is around 8:30.

19 Q. And what do you two talk about on the phone?

20 A. She tells me that Celine was not breathing and that
21 they are on the way to the hospital.

22 Q. Who is Celine?

23 A. Celine was my stepdaughter.

24 Q. So you get this phone call, and then what do you do
25 after that?

1 A. I informed my corporal that Beatrize is on the way to
2 the hospital. I tell him what I was told, and I let him know
3 that I need to go to the hospital and if we can finish our
4 vehicle inspections later.

5 Q. Did you go to the hospital?

6 A. Yes, I did.

7 Q. How did you get there?

8 A. I drove my truck.

9 Q. Do you recall around what time you got to the hospital?

10 A. It probably took maybe 15 or 20 minutes for me to get
11 there, so a little bit before 9:00.

12 Q. When you get to the hospital a little bit before 9:00,
13 what do you do?

14 A. I go into the hospital, and I ask if my wife had showed
15 up. And, as I am asking a lady at a desk, she comes out of the
16 room and calls me over.

17 Q. And what hospital is this?

18 A. Yuma Regional Medical Center.

19 Q. And so there's no mistaking, who are you referring to
20 when you say, "She comes out of the room"?

21 A. That's my wife, Beatrize.

22 Q. Okay. So shortly after arriving at the hospital,
23 Beatrize comes out of a room, and then what do you do?

24 A. I follow her into the room, and inside of the room is
25 her and a woman who is talking to her.

Julie K. Knowlton
Official Court Reporter

1 Q. What is this room that you're talking about?

2 A. On the door I believe it just said it was a consulting
3 room or consultant room or something like that.

4 Q. So you go into this room that your wife is in. Is
5 anyone else in there?

6 A. There was a female, who I believe was probably the
7 chaplain.

8 Q. Why do you believe that?

9 A. I believe there was another time that we saw her later
10 on where she did tell me or tell all of us who she was and that
11 she had talked to us before.

12 Q. So you go into this room with your wife. Then what
13 happens?

14 A. She's talking to the chaplain for a little bit. The
15 chaplain leaves, and then a doctor comes in shortly after.

16 Q. Do you know which doctor that was?

17 A. I do not.

18 Q. When the doctor comes in, do you communicate with him?

19 A. I don't think I say anything besides just introduce
20 myself, I think, but there's nothing -- I don't say anything else
21 to him.

22 Q. What does the doctor do after he enters?

23 A. He informs us the -- what had happened to Celine.

24 Q. And what was that?

25 A. He said that she had passed away.

1 Q. Did he provide any other information, based on your
2 recollection today?

3 A. Not that I remember, no. Once he had told me that, I
4 wasn't listening anymore.

5 Q. Why not?

6 A. I had started crying.

7 MS. GONZALEZ: Objection, Your Honor, as to relevance.
8 If this defendant is testifying as to the issues on 5/19, those
9 are the suppression issues as to the voluntariness of this
10 interview and him being in custody. The State objects to this
11 line of questioning as irrelevant.

12 THE COURT: What is the relevance?

13 MR. DUMYAHN: Your Honor, Mr. Cardwell is simply
14 describing the events that day, and he'll shortly be describing
15 the law enforcement presence at the hospital and his observations,
16 which we're getting to now.

17 THE COURT: Okay. Objection is overruled.

18 Q. (BY MR. DUMYAHN) So your reaction is one of sobbing.
19 Do you notice anybody else in this room aside from the doctor,
20 yourself, and maybe the chaplain?

21 A. No, I don't.

22 Q. Okay. We heard a Mr. Simpson testify in the past in
23 this courtroom, and he testified that he was in that room with
24 you and Beatrice. Do you recall him being there?

25 A. I do not. Once -- once I had started crying, I

1 actually was on the floor with my head in Beatrize's lap.

2 Q. How long are you in this room?

3 A. I would say maybe five or ten minutes.

4 Q. After that, what do you do next?

5 A. We go to view Celine's body so Beatrize could tell her
6 good-bye.

7 Q. And after that, what happens?

8 A. We leave the hospital, and on our way out we run into
9 Special Agent Jeff Ruby.

10 Q. Where are you when you run into Mr. Ruby?

11 A. We are just outside of the entrance to the hospital.

12 Q. By Mr. Ruby, are -- are you indicating the gentleman
13 sitting at the table with the prosecution?

14 A. Yes, I am.

15 Q. So you see Mr. Ruby outside or inside the hospital
16 first?

17 A. He's just outside of the hospital.

18 Q. And what are you doing at that time, as far as what's
19 your intent?

20 A. Beatrize wants to go to her mother's house so we can
21 let her know what happened.

22 Q. So you and Beatrize are on your way to her mother's
23 house. You encounter Mr. Ruby. How do you know that he is with
24 law enforcement or NCIS or even an agent at that time?

25 A. He just approaches me and introduces himself as being

1 with NC -- NCIS.

2 Q. Was he in any special uniform?

3 A. No. He was just in normal casual wear, polo and jeans
4 or slacks.

5 Q. Did he display a badge?

6 A. No.

7 Q. Did you see a gun of any sort?

8 A. I did not.

9 Q. When you encounter Mr. Ruby and he identifies himself
10 as an NCIS agent, does he say anything else to you at that time?

11 A. He asks us where we are going. We tell him where we
12 are going, and he tells us to hold on for a minute for him to go
13 inside and talk to people real quick, that he wants to talk to
14 us.

15 Q. That initial encounter with Agent Ruby lasts how long?

16 A. Shorter than a minute.

17 Q. And all that's done is him introducing himself and then
18 saying he needs you to wait for a little bit?

19 A. Yes.

20 Q. And then what do you do?

21 A. We just sit outside of the hospital and wait for him to
22 come back.

23 Q. Why is that?

24 A. He -- he told us to wait, that he wanted to talk to us,
25 so we just waited.

Julie K. Knowlton
Official Court Reporter

1 Q. Yeah, but you noted that your wife wants to leave. Why
2 would you wait for him?

3 A. He's NCIS. He's part of the military. He told me to
4 wait, so I just -- I waited for him.

5 Q. How long do you wait for him?

6 A. I think he was in the hospital for maybe five or
7 ten minutes.

8 Q. And then when do you see him next? Is it in the same
9 location or somewhere else?

10 A. It's the same location. He comes out of the hospital,
11 tells us he needs to talk to us, tells us to wait longer while he
12 tries to call someone to escort us, follow us to Beatriz's mom's
13 house.

14 Q. Specifically, do you recall any words he mentioned to
15 you at that time?

16 A. That he needs to talk to us, that he needs to do some
17 interviews with us.

18 Q. Okay. And -- and what do you recall about waiting for
19 what you referred to as an escort or somebody else to come get
20 you?

21 A. He was on the phone. Me and Beatriz were just off to
22 the side. She was impatient. She wanted to leave. I didn't
23 blame her. I didn't want to be there either, but he told us to
24 wait, so we had to wait.

25 Q. Well, why didn't you wait and let Beatriz go?

1 A. She didn't have her license at the time, and we arrived
2 in my truck, so she had nowhere -- no way to get there unless she
3 walked.

4 Q. She didn't arrive in your truck, though, did she?

5 A. Yes, she did. Or no, she didn't, actually. She
6 arrived there in the back of the ambulance.

7 Q. Okay. So you drove from the base to the hospital on
8 your own, correct?

9 A. Yes, I did.

10 Q. Okay. So how long are you waiting at the hospital
11 after Agent Ruby comes back outside?

12 A. I would say no more than five minutes.

13 Q. And then after five minutes, what happens?

14 A. He tells us that he couldn't get ahold of anybody so
15 that he'll just follow us to Nancy's house.

16 Q. And is that what happens?

17 A. That's what happens, yes.

18 Q. How does he end up following you?

19 A. I tell him what I am driving; and once I start to pull
20 out, he just pulls in behind us and follows us.

21 Q. Do you actually see him following you?

22 A. I see his vehicle, yes.

23 Q. Do you -- do you see him in the vehicle?

24 A. I don't. I don't see it.

25 Q. How do you know it's his vehicle?

1 A. It's just the type of vehicle it is, really, and it's
2 the only one that's following me the majority of the way to
3 Nancy's house.

4 Q. Why do you say "majority" as opposed to all the way to
5 Nancy's house?

6 A. Because at one point I believe that he didn't make it
7 through a -- a light that we were going through at one of the
8 intersections.

9 Q. Okay. And tell us who Nancy is, in the event we forgot
10 since the last hearing.

11 A. Nancy is Beatrice's mother.

12 Q. So you're going to Beatrice's mother's house, and do
13 you recall about what time you arrive?

14 A. I'm not entirely sure, but if I were to guess, I would
15 say maybe between 9:30 or 9:45.

16 Q. And we don't need to know the exact address, but what
17 part of the Yuma neighborhood is this in or city of Yuma is this
18 in?

19 A. The street, I believe, is on Madison.

20 Q. Okay. And so you get to this home. Can you quickly
21 describe the home for us?

22 A. There's just two lines of apartments with a parking lot
23 going down the middle of them.

24 Q. How -- how big is the apartment?

25 A. Not very big. There's a living room, a kitchen, a

1 short hallway with, I think, three bedrooms off of it.

2 Q. So you get to this apartment with your wife, Beatrize,
3 and what do you do there?

4 A. We enter the apartment, and Beatrize let's her mother
5 and her sister know what had happened.

6 Q. Before entering the apartment, do you see Agent Ruby?

7 A. No, I don't.

8 Q. So you enter the apartment with your wife, and what do
9 you two do in the apartment?

10 A. I'm not doing very much talking. Beatrize is letting
11 her mother know what happened. And once she informs them what
12 happened, they start to cry, so we start to hug them and try to
13 console them.

14 Q. How long are you in that home?

15 A. No more than five minutes maybe.

16 Q. Who else is in that home aside from you, your wife, and
17 Nancy Carreno, the mother of Beatrize?

18 A. Beatrize's sister and her two daughters and infant son.

19 Q. So you mentioned you're in the home for five or
20 ten minutes. After that time passes, where are you going?

21 A. There's a knock at the door, and Ruby -- well, I don't
22 know who answers it, but I was there around the door, and I heard
23 Ruby say that he wants us to step outside.

24 Q. And then what do you do?

25 A. We start filing outside.

1 Q. By "we," who are you referring to?

2 A. Me, Beatrice, her mother, and her sister.

3 Q. So you go outside after the knock on the door. When
4 you do that, what do you do other than just simply go outside?

5 A. I go outside. We're standing around a little bit, and
6 Ruby eventually directs me to two law enforcement, saying that
7 they want to talk to me real quick.

8 Q. And which law enforcement is that?

9 A. One of them was a female detective, a blonde female,
10 but I don't know who the other one was. It was just -- I
11 remember it was a male.

12 Q. So what's the direction supplied by Ruby?

13 A. That he just wants me to go over there, talk to those
14 two people.

15 Q. Do you do that?

16 A. Yes, I do.

17 Q. What do you talk about?

18 A. It was just basic information.

19 Q. And how long do you talk to those people for?

20 A. Maybe five, seven minutes.

21 Q. And as far as your physical location at this time,
22 where is it in relation to the apartment?

23 A. I'm probably ten feet outside of the front door.

24 Q. Aside from Agent Ruby and the two agents or detectives
25 that you spoke to, are there any other law enforcement agents

1 there?

2 A. There's maybe two or four more people there.

3 Q. Okay. Are they already there when you get out, or are
4 they coming as -- as things are happening and as you're talking
5 to others?

6 A. There's a couple there as we get out, but there are
7 some arriving shortly later.

8 Q. Are you able to identify where these people are coming
9 from as far as their law enforcement affiliation?

10 A. No, I'm not. I mean, some of them, they're dressed in
11 what would look like civilian attire. Some of them are not.
12 Some of them are dressed in what looked like YPD uniforms.

13 Q. Why are you assuming that they're all with law
14 enforcement?

15 A. There's really no other reason for a group of people to
16 start showing up at the same area as us.

17 Q. Okay. Did they have law enforcement vehicles?

18 A. Not that I seen. There were a couple that were just
19 normal vehicles, but everybody was very official looking, and
20 they were all just kind of standing around in the area.

21 Q. How long do you believe you're in this parking lot
22 area?

23 A. Probably 30 or 45 minutes.

24 Q. Did you want to be in this parking lot area at that
25 time?

1 A. I wanted to be at the house, but as for in the parking
2 lot, not really.

3 Q. You mentioned that after you leave the apartment --
4 after you left the apartment, you spoke to Ruby briefly. You
5 spoke to two law enforcement officers, and that takes 5,
6 10 minutes. What's happening the other 30 to 40 minutes?

7 A. At one point Nancy wants to go and let Beatrize's
8 brother know what happened. She wants to pull him out of school
9 and let him know what happened.

10 Q. Okay. So how do you know she wants that?

11 A. I can -- I hear them discussing. I'm right there. I
12 hear her discussing it, and her and Beatrize go to get in the
13 vehicle to leave.

14 Q. What vehicle is that?

15 A. Her vehicle.

16 Q. Do they leave?

17 A. No. They tried to leave, but Ruby stops them, telling
18 Nancy that she shouldn't be driving with -- with the way she's
19 acting, with how emotional she is. So Beatrize decides to tell
20 me to take her down there to go pick him up, but Ruby tells me
21 that I'm not going to be going anywhere.

22 Q. Why -- why not?

23 A. He said that I still need to go down and do the
24 interviews.

25 Q. Do you go try to collect this son of Nancy anyway?

1 A. I do not.

2 Q. Why not?

3 A. He had given me an order to not go anywhere.

4 Q. Why do you say it was an order?

5 A. I'm in the military at the time. I'm only a lance
6 corporal. So I figured since he's NCIS, he's an officer or
7 something like that, and he's above me so anything that he says
8 for me to do I'd have to do.

9 Q. So after Ruby tells you this, what do you end up doing?

10 A. What do you mean what do I end up doing?

11 Q. Do you stay there indefinitely? What do you do after
12 that?

13 A. We stay there a while longer. Eventually -- I don't
14 know who it is exactly, but somebody does end up bringing
15 Beatrice's brother from his school down to the house. We're
16 still kind of just standing around, and Ruby's telling us a
17 couple of times that he's still just trying to figure out where
18 we're going to go down and do the interviews.

19 Q. Is that ever figured out?

20 A. Shortly before we leave, I am told that I'll be going
21 down to the YPD station to do the interviews.

22 Q. Who tells you that?

23 A. Ruby tells me that.

24 Q. How is that arranged with you?

25 A. He just pulls me aside and tells me that it's decided

1 that we're going down to YPD to do the interviews.

2 Q. And what was your reaction?

3 A. I was okay. I mean, that's where we're going, so
4 that's where we're going.

5 Q. Did you know where the police department was?

6 A. I did not. There was Detective Tejeda, who was
7 introduced to me at the same time, telling me that he's going to
8 be the one to go with me down to the station.

9 Q. Before you leave to the police department, do you know
10 any military or do you observe any military investigators at the
11 scene of Nancy's home?

12 A. There's other people there, but nobody is dressed in
13 anything specific toward the military that identifies them as
14 military, but I'm pretty sure there was since Ruby was with NCIS.

15 Q. Do you meet with anyone from YPD there?

16 A. Just the detective that I had talked to and Detective
17 Tejeda.

18 Q. When you talked to Detective Tejeda, what does he tell
19 you?

20 A. He just introduces himself to me and tells me that he's
21 going to be the one to go with me down to YPD. He asked me if I
22 know where it is. I tell him I do not and asked him if I should
23 just go with him in his vehicle, and he tells me that to just get
24 in my truck and follow him.

25 Q. Is that what you did?

1 A. That's what I did.

2 Q. So you follow Detective Tejeda to YPD. What's he
3 driving?

4 A. I believe it's just a four-door car. I'm not sure what
5 color or what make or model.

6 Q. Now, you've testified that at the hospital, from there,
7 you gave Beatrice a ride to the home. Is Beatrice still with you
8 when you're driving to YPD?

9 A. No, she's not.

10 Q. Where is she?

11 A. She's still at the -- her mom's residence.

12 Q. Did you -- did you want to leave her there?

13 A. I didn't want to leave her. I wanted to be with her as
14 much as possible.

15 Q. And -- and why is that?

16 A. Because what we were told at the hospital.

17 Q. So you left your wife at her mom's house, and you go to
18 YPD. Do you recall around what time you get there?

19 A. I'm not entirely sure, but I think it might have been
20 somewhere around 11:00.

21 Q. You noted that you followed Detective Tejeda. Did you
22 notice any other law enforcement presence go to YPD with you and
23 Tejeda?

24 A. I seen a vehicle following me when I left the
25 residence. I don't know who was in the vehicle but, considering

1 the number of law enforcement that was there, I could only assume
2 that it was law enforcement.

3 Q. Did that vehicle follow you all the way to the police
4 department?

5 A. Yes, they did.

6 Q. Did you see who got out of the vehicle?

7 A. I did not. I parked in a normal area and just met
8 Tejeda at the front steps.

9 Q. So when you meet Mr. Tejeda at the front steps, what's
10 arranged between you two, if anything?

11 A. He just asked me if I'm ready to go and to just follow
12 him to where we're going.

13 Q. And where do you go exactly?

14 A. We go into the lobby and then go in through a door
15 to -- leading somewhere in the back. We go down a hallway, and
16 then he has me sit in a little waiting room to wait for him.

17 Q. And as far as the waiting room, in reference to the
18 entrance of the police department, how far away are those two
19 things?

20 A. Not very far. It's just a quick cross across the lobby
21 and then just a little short hallway down the back.

22 Q. Is anyone else with you in the waiting room?

23 A. No, there isn't.

24 Q. Okay. Is this accessible by the general public?

25 A. No.

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1 Q. From the waiting room, what happens?

2 A. While I'm in the waiting room, at one point
3 Detective Tejeda comes back in and asks if he can frisk search me
4 to make sure that I don't have anything that I'm not supposed to
5 be having back there.

6 Q. What did you call that? A what search?

7 A. A frisk search.

8 Q. Okay. What is that, as far as you understand?

9 A. He just pats me down.

10 Q. Okay. And is that what he did?

11 A. Yes, it is.

12 Q. Did he find anything in the pat-down?

13 A. I had already told him before he patted me down that I
14 had a multi tool and my wallet on me and that was it.

15 Q. What's a multi tool?

16 A. It was a -- it's got pliers on it, knives on it, little
17 saws. Just a little handy tool, pretty much.

18 Q. So when you tell him that, does he do anything in
19 relation to the multi tool?

20 A. He takes it from me and let's me know that he'll give
21 it back to me later.

22 Q. And did he take anything else from you?

23 A. From my wallet, he took my IDs and told me that he will
24 give me those later as well.

25 Q. Did he give you both those later?

1 A. No, he didn't.

2 Q. Did you ever get those back?

3 A. I ended up getting my IDs back from my gunnery
4 sergeant, Sandoval, but I had never received the multi tool since
5 then.

6 Q. When did you get the IDs back?

7 A. I got them back later on in the day. I met Gunnery
8 Sergeant Sandoval at the gas station across the street from base
9 so I could get back on base.

10 Q. And you mentioned that you arrived to YPD around
11 11:00 a.m. When do you think you actually get your IDs back?

12 A. Maybe 5:00 p.m., 5:30.

13 Q. As far as Detective Tejeda taking a few things from
14 you, i.e., the multi tool and the license or the ID, after that
15 what happens?

16 A. Shortly after that, he just takes me down to the
17 interrogation room.

18 Q. Well, why do you call it an interrogation room?

19 A. It's not much in there. There's just a table and two
20 chairs. There's a window, a one-sided or two-sided window, on
21 the other side of the room.

22 Q. And is that accessible by the general public?

23 A. No, it's not.

24 Q. How far away is it from the entrance to the police
25 department?

1 A. It's just a little bit further than the little waiting
2 room that I was in.

3 Q. Okay. How did the interview with Detective Tejeda
4 begin?

5 A. He told me that if I wanted to leave I could get up and
6 leave at any point.

7 Q. Did you believe him?

8 A. I believed that what he said was true to him, but to me
9 it wasn't true.

10 Q. Why do you say that?

11 A. I'd been given an order by Ruby that I needed to go and
12 do an interview.

13 Q. Well, why would you obey that order and not take the
14 advice of Detective Tejeda at YPD?

15 A. Detective Tejeda was just civilian. I'm in the
16 military, so I would follow what I was told to by a military
17 person instead of him.

18 Q. As far as that interview, at any point did you need to
19 go to the bathroom during that?

20 A. Yes, I did.

21 Q. Okay. And did you, in fact, go to the bathroom at some
22 point during the interview?

23 A. Yes, I did.

24 Q. And what happened when you went to the bathroom?

25 A. Detective Tejeda escorted me down to the bathroom and

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1 followed me into the bathroom and watched me as I used the
2 bathroom.

3 Q. What did you make of that?

4 A. I thought it was quite odd. It made me feel like I
5 wasn't really trusted to be wherever I was.

6 Q. How long did that interview with Mr. Tejeda last?

7 A. I think it was maybe an hour and a half or almost two
8 hours.

9 Q. After the interview, what happened?

10 A. After the interview, Detective Tejeda told me that I
11 could go and see my wife, and he led me out and took me to the
12 room that she was in.

13 Q. What room was that?

14 A. It was another room down -- kind of just down a short
15 hallway and around a corner. There was couches, chairs,
16 paintings, rugs.

17 Q. Were you allowed to see your wife before that?

18 A. I was not. I had to finish the interview before I
19 could see her.

20 Q. Why do you say that?

21 A. I think at one point I asked if I could see her, and I
22 was told that we were almost done with the interview and that I
23 could go once we were done.

24 MR. DUMYAHN: I have no further questions, Judge.

25 Thank you.

Julie K. Knowlton
Official Court Reporter

1 THE COURT: Any cross-examination?

2 MS. GONZALEZ: Yes, Your Honor. Thank you.

3 CROSS-EXAMINATION

4 BY MS. GONZALEZ:

5 Q. Mr. Cardwell, I'd like to talk to you about a couple
6 things, about a couple things that you mentioned. You -- you
7 stated that you were in avionics and fixing transmitters as far
8 as your position at MCAS?

9 A. Things like that, yes, ma'am.

10 Q. Okay. Would you agree that that takes some skill and
11 some talent?

12 A. Yes, ma'am.

13 Q. Okay. With regards to -- with regards to your -- your
14 presence at the hospital, you mentioned that you did not see a
15 military police officer; is that correct?

16 A. Yes, ma'am, that is.

17 Q. All right. And at Miss Carreno's house you also did
18 not see a military police officer; is that correct?

19 A. If there were any there, I did not notice because there
20 were none dressed in fatigues. And if they were dressed in a
21 police uniform, I do not know the difference between a YPD or a
22 military police uniform.

23 Q. So as far as that day, nobody was there that you can
24 recall?

25 A. That I can recall, no.

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Official Court Reporter

1 Q. Okay. Now, I want to talk to you about a couple of
2 assumptions that you've just stated on direct. You said that
3 Mr. -- that Agent Ruby approached you at the hospital; is that
4 correct?

5 A. Yes, ma'am.

6 Q. And he introduced himself and identified himself as an
7 NCIS agent?

8 A. Yes, ma'am.

9 Q. And he told you guys to hold on because he was going to
10 go inside; is that correct?

11 A. Yes, ma'am.

12 Q. And that the reason that you stayed was because you
13 assumed that he is part of the military, that he's higher above
14 you, and that you had to listen; is that correct?

15 A. Yes, ma'am.

16 Q. But you didn't ask him, did you --

17 A. No.

18 Q. -- whether you had to stay?

19 A. No, ma'am.

20 Q. And Agent Ruby didn't tell you, did you, that -- did
21 he, that you were under investigation of any sort --

22 A. No, ma'am.

23 Q. -- is that correct?

24 In fact, Agent Ruby told you that this was all part of
25 the investigation into Celine's death; is that correct?

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1 A. No, ma'am.

2 Q. So he did not tell you that there was an invest -- that
3 there -- that they were trying to figure out what happened to
4 Celine?

5 A. No, ma'am. He just told us that he needed to do some
6 interviews with us.

7 Q. Okay. And you didn't ask him for what?

8 A. No, ma'am, I did not.

9 Q. Okay. You also mentioned that at Miss -- at Miss
10 Carreno's house, when Agent Ruby knocked on the door and you guys
11 all walked outside, you assumed that you had to be outside; is
12 that correct?

13 A. Yes, ma'am.

14 Q. All right. And at that point did you ask Agent Ruby
15 what was going on?

16 A. No, ma'am, I didn't.

17 Q. All right. Did you ask anybody else that you saw
18 present whether you had to be outside?

19 A. No, ma'am.

20 Q. All right. At any point did you tell Agent Ruby that
21 you did not want to either talk to him or be outside?

22 A. No, ma'am, I didn't.

23 Q. You also mentioned that Agent Ruby told you to talk to
24 two detectives; is that correct?

25 A. Yes, ma'am.

1 Q. And you talked about basic information?

2 A. Yes, ma'am.

3 Q. At any point did you tell them two that you did not
4 want to talk to them?

5 A. No, ma'am, I didn't.

6 Q. And were those civilian detectives?

7 A. I believe so, yes, ma'am.

8 Q. All right. At any point did you tell them that -- ask
9 them what was happening?

10 A. No, ma'am, I didn't.

11 Q. All right. You also mentioned that you were -- that
12 you were out in the parking area -- is that correct? -- for about
13 30 or 45 minutes? Is that -- is that what I recall you saying?

14 A. At Nancy's residence?

15 Q. Yes. I'm sorry.

16 A. Yes, ma'am.

17 Q. Yes. Correct. At Miss Carreno's residence outside in
18 the parking lot for about 30 to 45 minutes; is that correct?

19 A. Yes, ma'am.

20 Q. And were -- and that nobody was next to you or
21 shadowing you?

22 A. Most of the time I was near the two detectives that I
23 had talked to. There was -- I was by them or I was by Beatrice
24 and her family.

25 Q. All right. Did they tell you to stay with them?

1 A. No, ma'am, they didn't.

2 Q. All right. Did they prevent you from going anywhere?

3 A. Not until I tried to leave with Nancy to go and pick up
4 Beatriz's brother.

5 Q. But did those two detectives tell you to stand next to
6 them?

7 A. No, ma'am.

8 Q. And did they prevent you from going over to Beatriz
9 and Miss Carreno while in the parking lot?

10 A. No, ma'am.

11 Q. All right. So at no point while in the parking lot did
12 they prevent you from moving around?

13 A. Those two, no, they didn't.

14 Q. Okay. And you mentioned Agent Ruby told you not to go
15 anywhere because there was going to be an interview; is that
16 correct?

17 A. He told us that we aren't going anywhere, that we'd
18 need to go and do interviews with him.

19 Q. Okay. You also mentioned that he also told Miss
20 Carreno to not drive anywhere because of her emotional state; is
21 that correct?

22 A. Yes.

23 Q. Okay. And when Agent Ruby told you to not go anywhere
24 because you were going to be interviewed, at that point did you
25 tell him to -- that you didn't want to go anywhere?

1 A. No, ma'am, I didn't tell him that.

2 Q. All right.

3 A. He had said that I wasn't going anywhere, and I'm not
4 supposed to be arguing with my superiors.

5 Q. But that's an assumption that you made; is that
6 correct?

7 A. No, ma'am.

8 Q. So it's not an assumption? So did Agent Ruby tell
9 you --

10 A. (Indiscernible - simultaneous speaking.)

11 COURT REPORTER: Just a minute. You're both talking.

12 Q. (BY MS. GONZALEZ) Did Agent Ruby tell you to -- not to
13 argue with him?

14 A. No, ma'am, but it is -- as a lower level ranking
15 military member, you are not supposed to argue with a superior.

16 Q. And I get that, but did Agent Ruby tell you not to
17 argue with him?

18 A. No, ma'am.

19 Q. You also mentioned that there -- as far as you saw,
20 there were no military investigators but you assumed because
21 Agent Ruby was there; is that correct?

22 A. Yes, ma'am.

23 Q. Now, Mr. Cardwell, had you met Detective Tejeda before?

24 A. Before that day, no, ma'am.

25 Q. No. And you mentioned on direct that when he told you

1 that you were free to leave that you believed him; is that
2 correct?

3 A. That I believed that's what he says to me, that that's
4 what his opinion is to me, yes.

5 Q. Yes. And, in fact, Detective Tejeda told you that?

6 A. Yes.

7 Q. Okay. And you recall him pointing the door to you?

8 A. Yes, ma'am.

9 Q. And him telling you that it was unlocked?

10 A. Yes, ma'am.

11 Q. And that you were there voluntarily and that you were
12 not being detained?

13 A. I was not there voluntarily. If I had the choice, I
14 would not have gone down to YPD to do the interview at all.

15 Q. I understand, Mr. Cardwell, but did Detective Tejeda
16 tell you that you were not being detained?

17 A. Yes, ma'am.

18 Q. And do you recall him telling you that you were free to
19 leave if you wanted to?

20 A. Yes, ma'am.

21 MS. GONZALEZ: No further questions, Your Honor.

22 THE COURT: Any redirect?

23 MR. DUMYAHN: Yes, Judge. Thank you.

24 / / /

25 / / /

REDIRECT EXAMINATION

BY MR. DUMYAHN:

Q. Jared, on cross-examination the prosecutor was asking you about your -- your mental state in the sense that you thought you had to obey what you regard as higher command. What's your military training tell you about that?

A. Instant obedience to orders.

Q. What -- what does that mean?

A. Anything that doesn't involve harm to yourself or harm to others, you're just -- you do it. If it's your job or anything like that, you do what you're supposed to do.

Q. And when do you receive that training?

A. That's throughout the whole -- the whole training process -- boot camp, MCT, school.

Q. That day, were you working with the military?

A. I was, yes.

Q. What were you dressed in that day?

A. I was in my military uniform, my cammies.

Q. Did you remain in that uniform throughout the day?

A. Yes, sir.

Q. Did Agent Ruby ask you to do the interview, or did he tell you you needed to do the interview?

A. He told me that I needed to do the interview.

Q. And did you ever question that command or that directive?

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1 A. No, I didn't.

2 Q. Why not?

3 A. It's not in our nature, once we're trained, to question
4 commands or orders.

5 MR. DUMYAHN: I have nothing further.

6 THE COURT: Okay. You may step down.

7 THE WITNESS: Thank you.

8 THE COURT: Any other witnesses you wish to call?

9 MR. DUMYAHN: No, Judge. I believe Jared Cardwell was
10 the third witness for the defense. The other two were called
11 earlier, in April and in June.

12 THE COURT: Okay. Do you have any rebuttal evidence?

13 MS. GONZALEZ: No, Your Honor.

14 THE COURT: No additional evidence by either side?

15 MR. DUMYAHN: No, Judge.

16 THE COURT: Okay. Do you want to file memoranda, or
17 are you satisfied with what's previously been briefed?

18 MR. DUMYAHN: Your Honor, I wouldn't mind filing an
19 additional memorandum regarding the statements made on the 19th
20 of May. I believe the search has been thoroughly briefed.

21 The State filed a amended response, and so I think
22 there's been, in total, six filings for that, both a motion by
23 the defense, a response by the State, a reply, and then a second
24 response by the State and a second reply. So the only thing that
25 I believe was different as far as a factual basis, at least to

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1 some extent, was the testimony related to the -- the May 19th,
2 2015, interview and the events leading up to that.

3 THE COURT: Well, what -- Mr. Dumyahn, what is
4 incriminating about what happened in the search of the house or
5 the interviews on the 19th or the 22nd? I understand that
6 there's arguably some incriminating statements made in the
7 interview on the 26th, but what -- what -- what's inculpatory
8 about any of this other than what happened on the 26th?

9 MR. DUMYAHN: Your Honor, the -- the Government has
10 alleged in the past that Jared's statements have changed slightly
11 over time between the statements on the 19th and the 22nd and the
12 26th, and there's also a lot of information being provided
13 throughout that the Government will try to use against Jared at
14 trial. And -- and so the defense filed three motions for the
15 three separate interrogations and is asking the Court to preclude
16 all three.

17 THE COURT: Do you see anything incriminating in the --
18 in the search -- any incriminating evidence in the search of the
19 house? I don't even know what's being offered from the search of
20 the house.

21 MS. GONZALEZ: Well, Your Honor, the search -- the
22 evidence from the search of the house are items such as the
23 journal, journal where defendant makes statements as to his
24 mental health, him wanting to be -- I believe him wanting to be
25 with the grandfather unless that's -- I'm sorry. The journal in

1 which defendant and Beatriz are exchanging notes to each other
2 about certain fights. Nothing is specific to Celine, but
3 certainly everything that -- that the State intends to show as
4 corroborating evidence surrounding that time.

5 The -- the -- there are photographs of the house.
6 Anything taken from the house is certainly substantial and
7 essential for -- for the State to present as corroborating
8 evidence. So, of course, the State is asking to not suppress
9 that evidence as pertinent and relevant but also because it was
10 upheld by the military as part of the verbal CASS. If the Court
11 were to suppress all of that evidence, it would be photographs as
12 well as items.

13 MR. DUMYAHN: And, Judge, the mere fact --

14 THE COURT: Go ahead.

15 MR. DUMYAHN: I'm sorry. The mere fact that the
16 Government wants to introduce it at trial against Jared tells us
17 that it's incriminating at least as far as the State's concerned.
18 There's no requirement that it be incriminating before it be
19 suppressed, but the Government is trying to use this evidence
20 against Jared that was acquired illegally, and -- and we're
21 asking that the -- the Court preclude that.

22 THE COURT: Do you intend to offer all of these
23 interviews on the 19th and the 22nd?

24 MS. GONZALEZ: Statements from these interviews, yes,
25 Your Honor.

1 THE COURT: You mean the whole thing? The entire
2 interview?

3 MS. GONZALEZ: The -- the -- as in the entirety of each
4 interview?

5 THE COURT: They were pretty much recorded, weren't
6 they?

7 MS. GONZALEZ: Yes. All of them were recorded. Yes,
8 Your Honor.

9 THE COURT: Are you going to offer the entire
10 recordings?

11 MS. GONZALEZ: Yes. The State intends to offer
12 recordings.

13 THE COURT: Okay. Do you want to file memoranda?

14 MR. DUMYAHN: Yes, Judge.

15 MS. GONZALEZ: Could -- Your Honor, and just to be
16 clear, what is the additional memoranda being permitted at this
17 point, in addition? Is it corrections to factual bases? Is it
18 new legal issues in -- retroactive of the hearings?

19 THE COURT: Well, motions -- memoranda have been filed
20 with respect to all five motions, and I've -- I've read those.
21 I'm just giving you the opportunity, if you want, to file any
22 additional memoranda if you think something needs to be clarified
23 or added; or if the actual evidence presented varied from -- from
24 what you stated in your memoranda, you can point that out if you
25 want to.

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1 MS. GONZALEZ: Okay. But this is in light of the
2 testimony given --

3 THE COURT: Yes.

4 MS. GONZALEZ: -- in these hearings; is that correct,
5 Your Honor?

6 THE COURT: Uh-huh.

7 MS. GONZALEZ: Okay.

8 THE COURT: And they're your motions. So you want
9 to -- how much time do you want?

10 MR. DUMYAHN: Judge, I'll -- I'll file that by the end
11 of this week as far as any memorandum related to testimony that
12 may differ at least slightly to what was listed in the
13 memorandums previously or the motions previously.

14 THE COURT: Okay. And how much time do you need after
15 that?

16 MS. GONZALEZ: Depending on how many memoranda he --

17 MR. DUMYAHN: I anticipate only one, Judge, in relation
18 to the motion filed for the statements made on May 19th. There
19 may be an additional one in respect to the motion in limine, but
20 that is a fairly minor issue. It depends on whether these
21 statements are even going to be admitted in the first place.

22 MS. GONZALEZ: And, Your Honor, the State would ask --
23 and that's fine. If it's one memorandum or several, the State
24 would ask for some leeway in response. However, the State will
25 be gone for ten days starting next week, so the State is asking

1 the Court for -- preemptively for an extension if Mr. Dumyahn is
2 going to file any memoranda. That's just as an administrative
3 matter.

4 THE COURT: Okay. So when will you return?

5 MS. GONZALEZ: When I return.

6 THE COURT: When is that?

7 MS. GONZALEZ: Oh. The 25th -- the 25th.

8 THE COURT: Of August?

9 MS. GONZALEZ: Yes.

10 THE COURT: You want another ten days after that?

11 MS. GONZALEZ: That would be appreciated, Your Honor.

12 THE COURT: Okay. You can file -- if she's going to be
13 gone, you can have some more time if you want, Mr. Dumyahn.

14 MR. DUMYAHN: That's fine, Judge. I'll make sure it's
15 ten days before she gets back, as far as the filing.

16 THE COURT: Okay. So you can file whatever you're
17 going to file by August 15th, and you will have time to file a
18 response 10 days after August 25th when you return.

19 And then you want a reply time?

20 MR. DUMYAHN: No, Judge.

21 THE COURT: Okay. So it will be deemed submitted on --
22 that would be 10 days after August -- let's just call it
23 September 5th.

24 MS. GONZALEZ: All right.

25 THE COURT: It will be under advisement at that time.

1 MS. GONZALEZ: The -- the Court will enter an
2 advisement by September 5th, Your Honor?

3 THE COURT: Yes.

4 MS. GONZALEZ: Okay.

5 THE COURT: When I receive the memoranda.

6 MR. DUMYAHN: Judge, we'd like a hearing perhaps the
7 week after that, then, as far as a status hearing.

8 THE COURT: Let's see. You want me -- I don't know if
9 I can rule that quickly.

10 MR. DUMYAHN: And -- and perhaps the Court won't rule
11 that quickly, but we'll -- we'll simply have the next hearing
12 date set.

13 THE COURT: Well, I have not read all the cases cited.
14 I've read the memoranda thus far. It seems -- I don't know -- I
15 hate to say I'm troubled by this or concerned by that because
16 it's too early in the analysis, but the motion in limine related
17 to the -- all the statements made by the interrogators for
18 sometimes five to ten minutes at a time, that probably concerns
19 me more than anything else. It's a question of degree, to what
20 degree can defendants be accused or lied to or -- in -- in
21 interrogation techniques.

22 MS. GONZALEZ: And, if the State is understanding
23 correctly, the Court is concerned about to what extent -- how
24 long an officer is allowed to do that?

25 THE COURT: Well, I suppose I'm going to have to listen

1 to the whole -- the tapes and make some kind of determination.

2 MS. GONZALEZ: Okay.

3 THE COURT: See, I don't -- I don't know how extensive
4 these cases that you've cited have involved interrogation
5 techniques, whether it's -- it's as extensive as what apparently
6 occurred in this -- in this case.

7 MS. GONZALEZ: Okay. And --

8 THE COURT: So you might want to address that issue.
9 And also it just seems to me that in the -- the essence -- and,
10 here again, this is so preliminary. The essence of something
11 involuntary is that the defendant's will was overcome by -- by
12 some kind of police misconduct, and it seems to me that he -- he
13 didn't -- his will was not overcome anytime on the 19th or on the
14 22nd and -- and maybe at the end on the 26th when he started
15 talking about nine times out of ten or he might possibly have
16 caused the injuries.

17 MR. DUMYAHN: Your -- Your Honor, the defense position
18 has always been that the coercion at the beginning of the
19 interviews and throughout led Mr. Cardwell to continue
20 participating because there's promises being made by law
21 enforcement, there's threats being made by law enforcement right
22 at the outset of the May 22nd interview; and the only reason
23 they're getting continued statements from his -- from him is
24 because of these threats, because of this coercion that's being
25 constantly put upon him throughout the eight-hour period on the

1 22nd and throughout the three-and-a-half-hour period on the 26th.
2 And then ultimately his final statements are in relation to the
3 past 11 hours of interrogation, in which he's been lied to
4 repeatedly, in which he's been threatened repeatedly, in which
5 he's been promised benefits repeatedly, and all that has led up
6 to this final -- what the Government might call an admission
7 simply because that's what he's being told they want over and
8 over and over and over and over again, and that will give him
9 certain things and certain benefits and that will end this whole
10 thing.

11 MS. GONZALEZ: Just to briefly respond, Your Honor, of
12 course, the State's position is that there were no promises or
13 threats of leniency. The officers have -- have admitted on --
14 through their testimony that, yes, they used different tactics,
15 but at no point did they offer anything specific, which is
16 required under case law.

17 Voluntariness also requires, at the ultimate, to -- in
18 order to suppress that an actual confession be made as a result
19 of anything. So the State's first position would be that there
20 was none. And, of course, we've submitted all of the recordings
21 into evidence. We've played clips. Defense counsel has played
22 clips. And everything would be taken into context.

23 Officers testified that nothing specific was offered,
24 nothing necessarily was implied in return that he would get in
25 terms of confession. But even if this Court found that there was

1 some threat or there was some promise of leniency, at the end of
2 the day the defendant did not say, "I killed Celine." And, yes,
3 there are incriminating statements, but that is very different,
4 as required under case law, that a confession be made in order to
5 suppress.

6 THE COURT: Okay. You want a status hearing on the
7 12th?

8 MS. GONZALEZ: The 12th, Your Honor? Your Honor, I --
9 the State anticipates being -- being in trial that morning.
10 If -- the State would just simply ask if that's fine on
11 November -- on September 12th that we call the first thing on the
12 calendar.

13 THE COURT: Okay. We'll set a status hearing on
14 September 12th at 8:30, and we'll try to call it first thing.

15 MS. GONZALEZ: Thank you.

16 THE COURT: Okay. We're at recess.

17 (Whereupon, the proceedings concluded.)
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REPORTER'S CERTIFICATE

I, Julie K. Knowlton, having been duly appointed as Official Court Reporter herein, do hereby certify that the foregoing pages, numbered 1 through 48 inclusive, constitute a full, true, and accurate transcript of all proceedings had in the above matter, all done to the best of my skill and ability.

Dated at Yuma, Arizona, this 14th day of March, 2019.

Julie K. Knowlton
Julie K. Knowlton, CR, RPR, CSR(CA)
Certified Reporter
AZ Certification No. 50138

Julie K. Knowlton
Official Court Reporter

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