[redacted]

CERTIFIED RECORD OF TRIAL

(and accompanying papers)

of

Patterson	Christopher	F	[redacted]	1stLt/O-2
(Last Name)	*(First Name)*	*MI*	*(DoD ID No.)*	*(Rank)*

CLR-17, 1st MLG	U.S. Marine Corps	Camp Pendleton, CA
(Unit/Command Name)	*(Branch of Service)*	*(Location)*

By

General Court-Martial (GCM) — COURT-MARTIAL

(GCM, SPCM, or SCM)

Convened by Commanding General

(Title of Convening Authority)

1st Marine Logistics Group

(Unit/Command of Convening Authority)

Tried at

Camp Pendleton, CA — On 23 May 2022, 28 June 2022, 15-19 August 2022

(Place or Places of Trial) — *(Date or Dates of Trial)*

Companion and other cases: None

(Rank, Name, DOD ID No., (if applicable), or enter "None")

[redacted]

CONVENING ORDER

UNITED STATES MARINE CORPS
1ST MARINE LOGISTICS GROUP, FMF
BOX 555606
CAMP PENDLETON, CALIFORNIA 92055-5606

5800
GCMCO #1b-2 1
AUG 05 2022

General Court-Martial Convening Order #1a-21, dated 2 August 2022, is modified as follows specifically for United States v. First Lieutenant Christopher F. Patterson, United States Marine Corps only:

DELETE

Major [redacted] United States Marine Corps;
Captain [redacted] United States Marine Corps; and
Captain [redacted] United States Marine Corps.

ADD

Major [redacted] United States Marine Corps;
Captain [redacted] United States Marine Corps; and
Captain [redacted] United States Marine Corps.

MEMBERS

Commander [redacted] United States Navy;
Lieutenant Colonel [redacted] United States Marine Corps;
Lieutenant Colonel [redacted] United States Marine Corps;
Lieutenant Colonel [redacted] United States Marine Corps;
Major [redacted] United States Marine Corps;
Major [redacted] United States Marine Corps;
Lieutenant Commander [redacted] United States Navy;
Major [redacted] United States Marine Corps;
Major [redacted] United States Marine Corps;
Major [redacted] United States Marine Corps;
Major [redacted] United States Marine Corps;
Major [redacted] United States Marine Corps;
Major [redacted] United States Marine Corps;
Captain [redacted] United States Marine Corps;
Captain [redacted] United States Marine Corps; and
Captain [redacted] United States Marine Corps.

[redacted]

P. N. FRIETZE
Brigadier General
U.S. Marine Corps
Commanding General

[redacted]

CHARGE SHEET

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI)	2. EDIPI	3. RANK/RATE	4. PAY GRADE
PATTERSON, Christopher, F.	[redacted]	1stLt	O-2

5. UNIT OR ORGANIZATION	6. CURRENT SERVICE	
	a. INITIAL DATE	b. TERM
CLR 17, 1st MLG	3 Jun 17	Indefinite

7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED	9. DATE(S) IMPOSED
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL		
$5,432.70	NONE	$5,432.70	PRE-TRIAL RESTRICTION ~~N/A~~	17 DEC 2020-21 DEC 2020 N/A

II. CHARGE AND SPECIFICATIONS

10. **Charge: Violation of the UCMJ, Article 120c**

Specification 1 (*Indecent Recording*): In that First Lieutenant Christopher F. Patterson, U.S. Marine Corps, while on active duty, did, at or near Oceanside, California, on or about 7 January 2020, without legal justification or lawful authorization, knowingly make a recording of the private area of Mr. [redacted] without his consent and under circumstances in which he had a reasonable expectation of privacy.

Specification 2 (*Indecent Recording*): In that First Lieutenant Christopher F. Patterson, U.S. Marine Corps, while on active duty, did, at or near Marine Corps Base Camp Pendleton, California, on or about 10 January 2020, without legal justification or lawful authorization, knowingly make a recording of the private area of Sergeant [redacted] U.S. Marine Corps, without his consent and under circumstances in which he had a reasonable expectation of privacy.

Specification 3 (*Indecent Recording*): In that First Lieutenant Christopher F. Patterson, U.S. Marine Corps, while on active duty, did, at or near Oceanside, California, on divers occasions, between on or about 17 January 2020 and on or about 28 January 2020, without legal justification or lawful authorization, knowingly make a recording of the private area of First Lieutenant [redacted] U.S. Marine Corps, without his consent and under circumstances in which he had a reasonable expectation of privacy.

Specification 4 (*Indecent Recording*): In that First Lieutenant Christopher F. Patterson, U.S. Marine Corps, while on active duty, did, at or near Marine Corps Base Camp Pendleton, California, on or about 24 January 2020, without legal justification or lawful authorization, knowingly make a recording of the private area of Sergeant Major [redacted] U.S. Marine Corps, without his consent and under circumstances in which he had a reasonable expectation of privacy.

[SEE SUPPLEMENTAL PAGE]

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI)	b. GRADE	c. ORGANIZATION OF ACCUSER
[redacted]	E-7	HqSptBn, MCI-W, MCB, CamPen, CA

d. SIGNATURE OF ACCUSER	e. DATE
[redacted]	13 January 2022

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 13th day of January, 2022, and signed the foregoing charge and specifications under oath that he is a person subject to the Uniform Code of Military Justice and that he either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his knowledge and belief.

K. D. CARTIER	HqSptBn, MCI-W, MCB, CamPen, CA
Typed Name of Officer	*Organization of Officer*
Captain, U.S. Marine Corps	Judge Advocate
[redacted] *Signature*	*Official Capacity to Administer Oaths (See R.C.M. 307(b)--must be commissioned officer)*

DD FORM 458 S/N 0102-LF-000-4580

ORIGINAL

ORIGINAL

12. On Jan 18 ,20 22 , the accused was informed of the charges against him and of the name of the accuser known to me. *(See R.C.M. 308(a)). (See R.C.M. 308 if notification cannot be made.)*

[redacted]
Typed Name of Immediate Commander

CLR 17, 1st MLG
Organization of Immediate Commander

Captain, U.S. Marine Corps

[redacted]

IV. RECEIPT BY COURT-MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at 1330 hours, 13 January 20 22 at CLR 17, 1st MLG
Designation of Command or

Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE[1] Commanding Officer

[redacted]
Typed Name of Officer

Legal Officer
Official Capacity of Officer Signing

Captain, U.S. Marine Corps

[redacted]

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY	b. PLACE	c. DATE
1st Marine Logistics Group	Camp Pendleton, California	MAY 10 2022

Referred for trial to the General court-martial convened by GCMCO #1-21

Dated 10 May 20 21 ,subject to the following instructions:[2] [redacted]20220510 ~~None.~~

To be tried in conjunction with the charges preferred on 28 April 2022.

By //////////////////////////////// Of
Command or Order

Phillip N. Frietze
Typed Name of Officer

Commanding General
Official Capacity of Officer Signing

O-7

[redacted]

15. On 12 May ,20 22 , I (caused to be) served a copy hereof on (each of) the above named accused.

K. D. CARTER

Captain, U.S. Marine Corps
Grade or Rank of Trial Counsel/Summary Court-Martial Officer

[redacted]
Signature

FOOTNOTES
1 -- When an appropriate commander signs personally, inapplicable words are stricken.
2 -- See R.C.M. 601(e) concerning instructions. If none, so state.

DD Form 458 Reverse

ORIGINAL

ORIGINAL

Specification 5 (*Indecent Recording*): In that First Lieutenant Christopher F. Patterson, U.S. Marine Corps, while on active duty, did, at or near Marine Corps Base Camp Pendleton, California, on divers occasions, between on or about 17 January 2020 and on or about 31 January 2020, without legal justification or lawful authorization knowingly make a recording of the private area of First Lieutenant [redacted] U.S. Marine Corps, without his consent and under circumstances in which he had a reasonable expectation of privacy.

Specification 6 (*Indecent Recording*): In that First Lieutenant Christopher F. Patterson, U.S. Marine Corps, while on active duty, did, at or near Marine Corps Base Camp Pendleton, California, on or about 25 February 2020, without legal justification or lawful authorization knowingly make a recording of the private area of Sergeant [redacted] U.S. Marine Corps, without his consent and under circumstances in which he had a reasonable expectation of privacy.

Specification 7 (*Indecent Recording*): In that First Lieutenant Christopher F. Patterson, U.S. Marine Corps, while on active duty, did, at or near Marine Corps Base Camp Pendleton, California, on or about 25 February 2020, without legal justification or lawful authorization knowingly make a recording of the private area of Major [redacted] U.S. Marine Corps, without his consent and under circumstances in which he had a reasonable expectation of privacy.

AND NO OTHERS

ORIGINAL

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI)	2. EDIPI	3. RANK/RATE	4. PAY GRADE
PATTERSON, Christopher, F.	[redacted]	1stLt	O-2

5. UNIT OR ORGANIZATION	6. CURRENT SERVICE	
	a. INITIAL DATE	b. TERM
CLR 17, 1st MLG	3 Jun 17	Indefinite

7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED	9. DATE(S) IMPOSED
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL		
$5,432.70	NONE	$5,432.70	~~PRETRIAL RESTRICTION~~ ~~N/A~~	17 DEC 2020 - 21 DEC 2020 N/A

II. CHARGES AND SPECIFICATIONS

10. **Additional Charge: Violation of the UCMJ, Article 120c**

Specification 1 (*Indecent Recording*): In that First Lieutenant Christopher F. Patterson, U.S. Marine Corps, while on active duty, did, at or near Marine Corps Base Quantico, Virginia, between on or about 3 June 2017, and on or about 14 August 2017, without legal justification or lawful authorization, knowingly and wrongfully make a recording of the private area of Captain [redacted] U.S. Marine Corps; Captain [redacted] U.S. Marine Corps; First Lieutenant [redacted] U.S. Marine Corps; First Lieutenant [redacted] U.S. Marine Corps; First Lieutenant [redacted] U.S. Marine Corps; First Lieutenant [redacted] U.S. Marine Corps; and First Lieutenant [redacted] U.S. Marine Corps, without their consent and under circumstances in which they had a reasonable expectation of privacy.

Specification 2 (*Indecent Recording*): In that First Lieutenant Christopher F. Patterson, U.S. Marine Corps, while on active duty, did, at or near Oceanside, California, on divers occasions, between on or about 9 January 2020, and on or about 24 February 2020, without legal justification or lawful authorization, knowingly make a recording of the private area of Mr. [redacted] without his consent and under circumstances in which he had a reasonable expectation of privacy.

Specification 3 (*Indecent Recording*): In that First Lieutenant Christopher F. Patterson, U.S. Marine Corps, while on active duty, did, at or near Marine Corps Base Camp Pendleton, California, on divers occasions, between on or about 24 February 2020, and on or about 3 March 2020, without legal justification or lawful authorization, knowingly make a recording of the private area of Hospital Corpsman Third Class [redacted] U.S. Navy, without his consent and under circumstances in which he had a reasonable expectation of privacy. [redacted]

[SEE SUPPLEMENTAL PAGE]

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI)	b. GRADE	c. ORGANIZATION OF ACCUSER
[redacted]	E-7	HqSptBn, MCI-W, MCB, CamPen, CA

d. SIGNATURE OF ACCUSER	e. DATE
[redacted]	28 Apr 22

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 28th day of April, 2022, and signed the foregoing charge and specifications under oath that he is a person subject to the Uniform Code of Military Justice and that he either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his knowledge and belief.

K. D. CARTER
Typed Name of Officer

HqSptBn, MCI-W, MCB, CamPen, CA
Organization of Officer

Captain, U.S. Marine Corps

[redacted]
Signature

Judge Advocate
Official Capacity to Administer Oaths
(See R.C.M. 307(b)--must be commissioned officer)

DD FORM 458 S/N 0102-LF-000-4580

ORIGINAL

ORIGINAL

12. On 29 April ,20 22 , the accused was informed of the charges against him and of the name of the accuser known to me. *(See R.C.M. 308(a)). (See R.C.M. 308 if notification cannot be made.)*

[redacted]
Typed Name of Immediate Commander

CLR 17, 1st MLG
Organization of Immediate Commander

MAJOR [redacted] U.S. Marine Corps

[redacted]

IV. RECEIPT BY COURT-MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at 0859 hours, 29 April 20 22 at CLR 17, 1st MLG
Designation of Command or

Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

[redacted]
Typed Name of Officer

FOR THE[1] Commanding Officer
Executive ~~Legal~~ Officer
Official Capacity of Officer Signing

MAJOR [redacted] U.S. Marine Corps
Grade

[redacted]

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY	b. PLACE	c. DATE
1st Marine Logistics Group	Camp Pendleton, CA	MAY 10 2022

Referred for trial to the General court-martial convened by GCMCO #1-21

Dated 10 May 20 21 ,subject to the following instructions:[2] To be tried in conjunction with the charges preferred on 13 January 2022.

By //////////////////////////////////// Of
Command or Order

Phillip N. Frietze
Typed Name of Officer

Commanding General
Official Capacity of Officer Signing

O-7 , U.S. Marine Corps

[redacted]

15. On 12 May ,20 22 , I caused to be served a copy hereof on the above named accused.

K. D. CARTER [redacted]
Signature

Captain, U.S. Marine Corps
Grade or Rank of Trial Counsel

FOOTNOTES
1 -- When an appropriate commander signs personally, inapplicable words are stricken.
2 -- See R.C.M. 601(e) concerning instructions. If none, so state.

DD Form 458 Reverse

ORIGINAL

ORIGINAL

Specification 4 (*Indecent Recording*): In that First Lieutenant Christopher F. Patterson, U.S. Marine Corps, while on active duty, did, at or near Marine Corps Base Camp Pendleton, California, on or about 6 February 2020, without legal justification or lawful authorization, knowingly make a recording of the private area of Lieutenant [redacted] U.S. Navy, and Staff Sergeant [redacted] U.S. Marine Corps, without their consent and under circumstances in which they had a reasonable expectation of privacy.

Specification 5 (*Indecent Recording*): In that First Lieutenant Christopher F. Patterson, U.S. Marine Corps, while on active duty, did, at or near Marine Corps Base Camp Pendleton, California, on or about 13 July 2019, without legal justification or lawful authorization, knowingly make a recording of the private area of Captain [redacted] U.S. Marine Corps, without his consent and under circumstances in which he had a reasonable expectation of privacy.

Specification 6 (*Indecent Recording*): In that First Lieutenant Christopher F. Patterson, U.S. Marine Corps, while on active duty, did, at or near Marine Corps Base Camp Pendleton, California, on or about 27 February 2020, without legal justification or lawful authorization, knowingly make a recording of the private area of Gunnery Sergeant [redacted] U.S. Marine Corps, without his consent and under circumstances in which he had a reasonable expectation of privacy.

Specification 7 (*Indecent Recording*): In that First Lieutenant Christopher F. Patterson, U.S. Marine Corps, while on active duty, did, at or near Marine Corps Base Camp Pendleton, California, on or about 23 January 2019, without legal justification or lawful authorization, knowingly make a recording of the private area of Captain [redacted] U.S. Marine Corps, and Gunnery Sergeant [redacted] U.S. Marine Corps, without their consent and under circumstances in which they had a reasonable expectation of privacy.

Specification 8 (*Indecent Recording*): In that First Lieutenant Christopher F. Patterson, U.S. Marine Corps, while on active duty, did, at or near Marine Corps Base Camp Pendleton, California, on or about 23 January 2020, without legal justification or lawful authorization, knowingly make a recording of the private area of Mr. [redacted] without his consent and under circumstances in which he had a reasonable expectation of privacy.

Specification 9 (*Indecent Recording*): In that First Lieutenant Christopher F. Patterson, U.S. Marine Corps, while on active duty, did, at or near Marine Corps Base Camp Pendleton, California, on or about 28 July 2019, without legal justification or lawful authorization, knowingly make a recording of the private area of Mr. [redacted] without his consent and under circumstances in which he had a reasonable expectation of privacy.

Additional Charge II: Violation of the UCMJ, Art 133

Specification (*Conduct Unbecoming an Officer and a Gentleman*): In that First Lieutenant Christopher F. Patterson, U.S. Marine Corps, while on active duty, did, at or near Marine Corps Base Camp Pendleton, California, on divers occasions, between on or about 23 January 2019, and on or about 17 December 2020, set up an activated recording device in a public restroom, which, under the circumstances, was unbecoming of an officer and a gentlemen.

AND NO OTHERS

ORIGINAL

TRIAL COURT MOTIONS & RESPONSES

WESTERN JUDICIAL CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY
UNITED STATES MARINE CORPS
CAMP PENDLETON, CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. CHRISTOPHER F. PATTERSON, First Lieutenant, U.S. Marine Corps, Accused.	UNITED STATES MARINE CORPS FIRST LIEUTENANT CHRISTOPHER F. PATTERSON'S MOTION IN LIMINE FOR AN ORDER DETERMINING EVIDENCE OF A CAMERA BE DEEMED INADMISSABLE BASED UPON THE LACK OF A VALID CHAIN OF CUSTODY Date: 28 June 2022 Time: 0900 Location: Military Courthouse, MCB CP

1. Nature of the Motion: The accused, hereinafter "1stLt Patterson," respectfully moves the Court *in limine* to exclude from admission into evidence at trial an item variously referred to by NCIS and government witnesses as a "recording device," "video recording device," "camera-pen," "pen-camera," and simply a "camera," on grounds a proper chain of custody for this item from it initial discovery to its transfer to NCIS was neither maintained nor properly documented so as to ensure its authenticity. For uniformity purposes, the item will be referred to below as a "camera."

2. Statement of Facts: The operative facts relevant to this motion are fairly summarized in the an NCIS Report of Investigation ('ROI'), dated 10 February 2021, pages 1 through 4, attached hereto as "Exhibit A." This document was provided by the government to the defense in discovery as pages 000135 through 000138.

On 17 December 2020, SSgt [redacted] USMC, 1st Intel Bn, 1st MIG, 1st MEF, discovered a camera in the locker room of Building 210821. When interviewed by NCIS, SSgt [redacted] stated that on 17 December 2020, between 0815 and 0830, he walked into the men's shower room in Building 210821 to shower after exercising. SSgt [redacted] stated that when he placed his gym bag on the ground and began removing his shoes, he saw the camera on the shower room floor, against the wall, under a wall mounted radiator. SSgt [redacted] picked up the camera with his bare hand, pressed the end cap, and unscrewed the end cap to check for ink. SSgt

Appellate Exhibit X (10)
Page 1 of 6

[redacted] claims that when he removed the end cap, he saw a Secure Digital memory card, and subsequently placed the camera inside his gym bag. According to SSgt [redacted] he left the men's shower room after showering at approximately 0900 and walked outside Building 210821 for a command formation in the parking lot. Once outside, SSgt [redacted] handed the camera to CWO2 [redacted] USMC, 1st Intel BN, I MIG, I MEF.[1] SSgt [redacted] explained that CWO2 [redacted] was sitting in a vehicle with GySgt [redacted] USMC, 1st Intel BN, I MIG, I MEF, when he handed the camera to CWO2 [redacted] The results of SSgt [redacted] telephone interview with NCIS is attached as "Exhibit B."

According to CWO2 [redacted] SSgt [redacted] walked up to his car and did hand him the camera. CWO2 [redacted] admits he handled the camera with his bare hands, but claims he did not disassemble it. CWO2 [redacted] has stated that after receiving the camera he placed it inside his vehicle's driver-side door. He further claims the camera stayed inside his vehicle driver-side door for a couple of hours while he drove to various locations on base in the performance of his job. CWO2 [redacted] claims he never left his vehicle while the device was in the driver-side door. CWO2 [redacted] has not explained how he performed his job for a couple of hours on base without leaving his vehicle. CWO2 [redacted] has stated that between 1100 and 1300 on 17 December 2020, he drove to Building 210722, and handed the camera off to SSgt [redacted] The results of CWO2 [redacted] telephone interview with NCIS is attached as "Exhibit C."

GySgt [redacted] USMC, 1st Intel Bn, 1st MIG, 1st MEF, was interviewed by NCIS and stated he was in CWO2 [redacted] vehicle the morning of 17 December 2020 when SSgt [redacted] gave CWO2 [redacted] the camera. GySgt [redacted] admitted that he may have also handled the camera briefly, but he was not sure. GySgt [redacted] stated he remembered CWO2 [redacted] taking the device to SSgt [redacted] The results of GySgt [redacted] telephone interview with NCIS is attached as "Exhibit D."

---

[1] CWO2 [redacted] last name is spelled in various places in the ROI has having one 't' and at other places as having two. It will be spelled with one 't' in this motion.

On 17 December 2020, SSgt [redacted] took possession of the camera from CWO2 [redacted] somewhere between 1100 and 1300. SSgt [redacted] admitted handling the camera with his bare hands and unscrewing the end cap, and placing the camera inside an unlocked mobile phone locker in the stairwell between the first and second story of Building 210722. SSgt [redacted] further claimed that after the camera was in the locker for about an hour, he removed and inspected it with gloved hands and it was also inspected by GySgt [redacted] USMC, 1st Intel Bn, 1st MIG, 1st MEF. According to SSgt [redacted] GySgt [redacted] was summoned to inspect the camera because GySgt [redacted] was a "Technical Specialist" and had been ordered to inspect the camera to determine if it could record, and store video and audio media. According to SSgt [redacted] after GySgt [redacted] performed his analysis, the camera was placed in a manila envelope and returned to the unlocked mobile phone locker. SSgt [redacted] admitted that the locker was never locked while the camera was in the locker. The results of SSgt [redacted] telephone interview with NCIS is attached as "Exhibit E."

When interviewed by NCIS, GySgt [redacted] stated that on 17 December 2020, somewhere between 1100 to 1300, he met with SSgt [redacted] at the mobile phone locker in the stairwell between the first and second floors of Building 210722, Marine Corps Base, Camp Pendleton. GySgt [redacted] admitted handling the camera with gloved hands by unscrewing the end cap and visually inspecting the device for a camera, microphone, and memory storage. GySgt [redacted] related that after inspecting the device for approximately five minutes in the stairwell of Building 210722, he informed SSgt [redacted] the device appeared to have the capability to electronically record and store video and audio media. The results of GySgt [redacted] telephone interview with NCIS is attached as "Exhibit F."

In the afternoon of 17 December 2020, NCIS was eventually notified by SSgt [redacted] USMC, 1st Intel Bn, 1st MIG, 1st MEF, of the discovery of the camera. See, "Exhibit A." Per "Exhibit A," paragraph 1, "NCIS subsequently conducted a cursory review of the contents of the camera's Secure Digital (SD) card." There is no mention in "Exhibit A," as to how, when, where,

or from whom, NCIS took possession of the camera. Likewise, there is no mention of the particular NCIS Special Agent or employee who initially took possession of the camera. There is no mention of the condition of the camera when NCIS took possession or whether or not it was in a secure container at the time. To the best of the undersigned counsel's knowledge, the government has not yet provided the defense any chain of custody documentation whatsoever in respect to the camera. Prima facially, "Exhibit A," reveals several gaps in the narrative discussion of the camera's journey, most importantly with regard to its whereabouts subsequent to SSgt [redacted] release of the camera and prior to NCIS's receipt of the camera.

3. Discussion. Physical evidence is only admissible provided it is relevant and authentic. According to M.R.E. 901(a), regarding authenticating evidence, "[t]o satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is." When an item of evidence passes through the hands of multiple government employees, the proponent is required to establish a reliable 'chain of custody' which proves the item of evidence is in the same condition as when it left the possession of the accused.

In criminal law, the term "chain of custody" refers to the order in which items of evidence have been handled during the investigation of a case. Proving that an item has been properly handled through an unbroken chain of custody is required for it to be legally considered as evidence in court. In criminal trials, the prosecution must typically prove that all evidence was handled according to a properly documented and unbroken chain of custody. Crime-related items found not to have followed a properly documented and unbroken chain of custody may not be allowed as evidence in trials. In practice, a chain of custody is a chronological paper trail documenting when, how, and by whom individual items of physical or electronic evidence—such as digital cameras—were collected, handled, analyzed, or otherwise controlled during an investigation. Under the law, an item will not be accepted as evidence during the trial and will not be seen by the members unless the chain of custody is an unbroken and properly documented trail

without gaps or discrepancies. In order to convict an accused of a crime, the prosecution evidence against the accused must have been handled in a meticulously careful manner to prevent tampering or contamination.

In the instant case, it appears the camera was mishandled by multiple government employees who passed it along without any documentation, left it in various unsecured places, including personal bags, lockers, and vehicles, all while it was being disassembled, inspected and examined by the same government employees, some of whom wore gloves, some of whom did not. At least one individual admitted that he was not sure whether he handled the camera or not. In the process, the camera was partially disassembled and re-assembled on multiple occasions by different individuals. No documentation was prepared in regards to any of these events.

It is respectfully submitted, that the government cannot establish a reliable chain of custody for the camera sufficient to support its authenticity as a predicate to its admission into evidence. The government cannot establish that the camera was in the same condition when it was presented to NCIS as it was when it allegedly was in 1st Lt Patterson's possession.

4. This Court Should Conduct An Evidentiary Hearing. It is respectfully requested that the court convene an evidentiary hearing pursuant to M.R.E. 901 to determine whether the government can produce evidence sufficient to support a finding that the camera is what the government purports it to be in light of the circumstances surrounding the discovery and the possession of the camera by various government personnel who failed to maintain any chain of custody or any documentation whatsoever concerning the whereabouts chronologically of the camera.

5. Relief Requested. That the camera not be admitted into evidence.

6. Burden of Proof. In accordance with M.R.E. 901, the government has the burden of proving of producing evidence sufficient to support a finding that a valid chain of custody can be established to support a determination of authenticity regarding the camera.

//

7. Oral Argument. The defense requests oral argument.

Very respectfully,

[redacted]

J. W. Carver
Civilian Defense Counsel for 1st Lt Christopher F. Patterson, USMC

//

CERTIFICATE OF SERVICE

On 15 June 2022, I caused this document to be served upon all counsel and the court.

Dated: 15 June 2022

Very respectfully,

[redacted]

J. W. CARVER, Declarant

Appellate Exhibit X
Page 6 of 6

UNITED STATES MARINE CORPS
WESTERN JUDICIAL CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY
GENERAL COURT-MARTIAL

UNITED STATES v. CHRISTOPHER F. PATTERSON FIRST LIEUTENANT U.S. MARINE CORPS	**GOVERNMENT OPPOSITION TO DEFNSE MOTION IN LIMINE TO EXCLUDE CAMERA EVIDENCE BASED ON VALID CHAIN OF CUSTODY** 23 June 2022

1. Nature of Response. The Government hereby opposes the Defense motion in limine to exclude camera evidence based on the chain of custody. The Defense has not shown that the chain of custody makes the camera footage inadmissible or unable to be authenticated. The Government is respectfully requesting that the Court DENY Defense's motion to exclude the camera evidence due to the chain of custody.

2. Facts.

a. On 17 December 2020 SSgt [redacted] USMC, 1st Intel Bn, I MIG, I MEF, reported to NCIS the discovery of a camera, disguised as a pen, within the men's restroom within building 210821 aboard Camp Pendleton, California.[1]

b. On 17 December 2020, NICS interviewed SSgt [redacted] 1st Intel Bn, I MIG, I MEF. SSgt [redacted] stated that around 0815 to 0830 he discovered what he believed to be a video recording device disguised as a pen in building 210821. SSgt [redacted] grabbed the pen and unscrewed the end cap and observed a SD memory card. Following his observation of the memory card, he placed the device in his gym bag and subsequently handed it to

[1] Enclosure 1.

Appellate Exhibit XII (12)
Page 1 of 7

CWO2 [redacted] outside in the parking lot. GySgt [redacted] was present in the vehicle with CWO2 [redacted] and witnessed the exchange.[2]

c. CWO2 [redacted] was interviewed on 22 December 2020 and stated that he was given the suspected recording device by SSgt [redacted] and did not disassemble it. He placed the device in his driver side door and performed his job functions on base for the next two hours, never leaving his car and the device unattended. At some point between 1100 to 1300 on 17 December 2020 CWO2 [redacted] handed the device to SSgt [redacted][3]

d. On 18 December 2020 NCIS interviewed SSgt [redacted] who stated that upon receiving the device from CWO2 [redacted] he unscrewed the end cap and placed the device in an unlocked phone locker in building 210722 aboard Camp Pendleton, California. He left the device unattended for approximately one hour until he returned with GySgt [redacted][4]

e. On 6 January 2021 NCIS interviewed GySgt [redacted] who stated that he met SSgt [redacted] at the phone locker located in building 210722 aboard Camp Pendleton, California. He handled the device with gloved hands and unscrewed the end cap and visually inspected the device for a camera, microphone, and memory storage. He concluded from his visual inspection that the device appeared to electronically record and store video and audio media.[5]

f. SSgt [redacted] stated that after the inspection by GySgt [redacted] the device was placed into a manila envelope and placed back into the unlocked mobile phone locker.[6]

---

[2] Enclosure 2.
[3] Enclosure 3.
[4] Enclosure 1.
[5] Enclosure 4.
[6] Enclosure 1.

Appellate Exhibit XII
Page 2 of 7

g. NCIS Special Agent [redacted] received the pen camera from SSgt [redacted] and started an evidence disposal log.[7]

h. NCIS inspected the device and found footage of an individual in uniform with nametape clearly visible. The individual was later positively identified as the Accused.[8]

3. Law.

a. Law Regarding Relevance

M.R.E. 401 provides that evidence is relevant if (1) it has a tendency to make a fact more or less probable than it would be without the evidence; and (2) the fact is of consequence in determining the action.[9] M.R.E. 403 provides that the military judge may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the members, undue delay, wasting time, or needlessly presenting cumulative evidence.[10]

A witness can testify to relevant evidence that survives the 403 balancing test "only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter" and said evidence "may consist of the witness' own testimony."[11]

b. Law Regarding Authenticity and Chain of Custody

M.R.E. 901 states that a witness with knowledge may testify that an item is what it is claimed to be and such testimony may be used to authenticate or identify an item of evidence.

[7] Anticipated testimony of SA [redacted] and Enclosure 5.
[8] Enclosure 6.
[9] M.R.E. 401.
[10] M.R.E. 403
[11] M.R.E. 602.

In *United States v. Gonzales*, 37 M.J. 456 the defense challenged the admission of appellant's urine sample prior to the time the sample was sealed and marked for transportation to the laboratory, alleging the prosecution had not established that the urine tested was the appellant's. The Court stated in their opinion "To rebut a chain of custody challenge to the admission of evidence, the prosecution is not required to "exclude every possibility of tampering." Instead, Courts say that its burden is to satisfy the military judge "that in reasonable probability the article has not been changed in important respects." 9 MJ at 291, quoting West v. United States, 359 F.2d 50, 55 (8th Cir.), cert. denied, 385 U.S. 867, 87 S.Ct. 131, 17 L.Ed.2d 94 (1966)."[12] In *United States v. Harris*, 55 M.J. 433 the appellant argued the evidence from a bank's video surveillance camera was inadmissible as substantive evidence because it was not properly authenticated. The court in its opinion stated that "Current computer technology makes alteration of photographs a possibility any time that photographs are used. However, the Government need only show by direct or circumstantial evidence a "reasonable probability" that the evidence is authentic." (citing *United States v. Maxwell*, 38 M.J. 148, at 150-151).[13]

Further the chain of custody goes to the weight, not the admissibility of evidence as evidenced in *United States v. Harris*, 55 M.J. 433 that "In addition, a mere claim that photographs may be altered should not bar their admission. The proponent is not required to prove a negative. Gaps in the chain of custody "go to the weight of the evidence, rather than its admissibility." Id. at 152 (quoting United States v. Olson, 846 F.2d 1103, 1117 (7th Cir. 1988)).[14]

[12] Enclosure 5 - *United States v. Gonzales*, (C.A.A.F. 1993) 37 M.J. 456, at 457.
[13] Enclosure 6 - *United States v. Harris*, (C.A.A.F. 2001) 55 M.J. 433, at 440.
[14] *Id.*

Appellate Exhibit XII
Page 4 of 7

4. Analysis.

Despite Defense's assertions, the evidence supports admission of the camera recordings due to the witness testimony of the presence of the object from initial seizure to transfer of custody to NCIS. Although the camera was handled by multiple government employees the camera was not changed in important respects, all handling concerned the end cap of the camera to examine its ability to record and whether there was the presence of a memory device. The camera was placed in an unlocked phone locker for a period of time between the first and second inspection, the individual who had initially inspected the camera was present while the second inspection was performed and did not state there were any differences. Between the second and third inspection the camera was placed in the same locker, this time in a manila envelope. NCIS then retrieved the camera and began their inspection of the device.

The Government does not have to exclude every possibility of tampering and in this case a reasonable probability exists that the camera was not changed in important respects. The crucial evidence in question for admissibility is not the physical camera itself, but rather the memory card contained within it. At no point did any witness who had custody of the camera state that the memory card was removed, switched, or analyzed until it reached NCIS. NCIS did not report any abnormalities in their review of the condition or presence of the memory device. The Government only needs to show a reasonable probability that the evidence is authentic. In *Harris* the court also looked to the content of the photographs to determine that it was reasonable that the evidence was authentic. The court looked at the time and date signature on the photographs, and the appearance of the drive-up lanes of the bank in question to determine to

help determine the authenticity. The same can be done here due to the presence of the accused in the videos setting up the camera for its recording.[15]

5. **Evidence.** In support of its motion, the Government offers the following:

Enclosure 1: NCIS IA Interview of SSgt [redacted] (previously provided as Enclosure 1 in the Government MIL – M.R.E. 404(b)).
Enclosure 2: NCIS IA Interview of SSgt [redacted]
Enclosure 3: NCS IA Interview of CWO2 [redacted]
Enclosure 4: NCIS IA Interview of GySgt [redacted]
Enclosure 5: Evidence Custody Log for Pen Camera
Enclosure 6: Videos of the Accused placing Pen Camera (previously provided as Enclosure 3 in the Government MIL – M.R.E. 404(b)).

The Government intends to call SA [redacted] in support of its motion.

6. **Relief Requested.** The Government requests the Court **DENY** Defense's motion in limine to exclude the camera recordings.

7. **Burden of Proof.** As the proponent of the evidence, the Government bears the burden of proof that these acts occurred, by a preponderance of the evidence.[16]

8. **Oral Argument.** The Government respectfully requests oral argument on the matter.

[redacted]
K. D. CARTER
Captain, U.S. Marine Corps
Trial Counsel

[15] Enclosure 6.
[16] R.C.M. 905(c)(2)(A).

Appellate Exhibit XII
Page 6 of 7

****

Certificate of Service

I hereby attest that a copy of the foregoing response was served on the Court and opposing counsel via the WJC SharePoint on 22 June 2022.

[redacted]

K. D. CARTER
Captain, U.S. Marine Corps
Trial Counsel

Appellate Exhibit XII
Page 7 of 7

WESTERN JUDICIAL CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY
UNITED STATES MARINE CORPS
CAMP PENDLETON, CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. CHRISTOPHER F. PATTERSON, First Lieutenant, U.S. Marine Corps, Accused.	UNITED STATES MARINE CORPS FIRST LIEUTENANT CHRISTOPHER F. PATTERSON'S MOTION PURSUANT TO R.C.M. 703(D) TO ORDER THE GOVERNMENT TO EMPLOY [redacted] PSY.D, AS A FORENSIC PSYCHOLOGICAL CONSULTANT Date: 28 June 2022 Time: 0900 Location: Military Courthouse, MCB CP

1. Nature of the Motion: The accused, hereinafter "1stLt Patterson," moves the Court pursuant to R.C.M. 703(d)(1) to order the government to employ [redacted] Psy.D., a psychologist, as an expert in severe mental diseases and defects to provide consulting services to aid the defense in preparation for trial.

2. Statement of Facts: 1stLt Patterson stands accused of multiple specifications of violating Article 120c - indecent recording. He is also charged with one specification of violating Article 133 - conduct unbecoming an officer. The alleged conduct giving rise to these specifications did not involve violence, weapons, drugs, money, hate, love, property, poverty, revenge; i.e, the common motivators leading to the commission of crimes. 1st Lt Patterson has no criminal record. There is no evidence that 1st Lt Patterson ever previously experienced disciplinary issues or was the subject of counseling for misconduct of any kind. In short, the only apparent and remaining explanation for the alleged conduct in this case is mental illness experienced by 1st Lt Patterson at the time the conduct occurred. The government has made a motion for a R.C.M. 706 inquiry into the mental capacity and/or mental responsibility of 1st Lt Patterson. The Court has granted that motion and ordered the R.C.M. 706 inquiry. That inquiry is pending.

On 1 June 2022, in accordance with the court-ordered milestones set out in the Trial Management Order ('TMO'), the defense emailed the government a request that it employ [redacted]

Appellate Exhibit XIV(14)
Page 1 of 5

[redacted] Psy.D., a psychologist, to provide expert consulting services to assist the defense in preparing for trial. A copy of the 1 June 2022-email, sent at 1342, is attached as "Exhibit A." Accompanying the email was a formal, written expert consultant request with supporting declaration of counsel and exhibits. See, "Exhibit B."

Twenty-four (24) minutes later, at 1406 on 1 June 2022, the government responded to "Exhibit A" and "Exhibit B," with an email requesting the defense augment its request for employment of Dr. [redacted] with "evidence for the 'good faith and substantial belief' that [1st Lt Patterson] had a 'severe mental disease or defect on which to rely.' See, "Exhibit C."

At 1746 on 1 June 2022, the defense emailed the government a revised request for Dr. [redacted] expert consulting services. See, "Exhibit D." The email was accompanied by a revised, formal, written request for Dr. [redacted] expert consulting services. See, "Exhibit E."

On 6 June 2022, the government emailed the defense, writing, "CG's decision on [the defense] expert witness request is attached." See, "Exhibit F." The email was accompanied by a 6 June 2022-First Endorsement on "Exhibit D." See, "Exhibit G." Adhering to the highest standards of terseness, the Convening Authority's First endorsement essentially stated succinctly: "Your request for approval of funding to employ Dr. [redacted] as a defense expert consultant is denied." No explanation was offered, no rationale for the decision was provided, no basis for the denial was mentioned.

Two minutes later, the defense emailed the government to ask: "Does the command plan to grant an alternative expert?" See, "Exhibit H." One minute later, the government replied by email, "[w]e would have to discuss with the [Convening Authority]. It will likely depend on the results of the 706 I imagine." See, "Exhibit I."

3. Discussion. The Manual for Courts-Martial (2019 ed.), states at R.C.M. 703(d)(1):

> "(d) *Employment of expert witnesses and consultants. (1) In general.* When the employment at Government expense of an expert witness or consultant is considered necessary by a party, the

party shall, in advance of employment of the expert, and with notice to the opposing party, submit a request to the convening authority to authorize the employment and to fix the compensation for the expert. The request shall include a complete statement of reasons why employment of the expert is necessary and the estimated cost of employment."

Based upon all the exhibits submitted herewith, it appears reasonably clear that the defense has more than substantially complied with the requirements of R.C.M. 703(d)(1) so as to have justified approval of its request that the government employ Dr. [redacted] to assist the defense in preparation for trial. Moreover, the government by its R.C.M. 706 motion has exhibited concerns about 1st Lt Patterson's mental competence. The Court's granting of the government's R.C.M. 706 motion would seemingly confirm the government's and the defense's concerns. Given that the Court, the government and the defense all appear to harbor the same concern about 1st Lt Patterson's mental fitness, it follows that this motion should be granted.

"Exhibit I," also supports the granting of this motion. By that exhibit, the government advised the defense that whether the government would "grant an alternative expert[?]," would "depend on the results of the 706." If that is truly the case, then the Court should grant this motion presently for the following reasons. Either the R.C.M. 706 inquiry will result in a finding that 1st Lt Patterson was mentally competent at the time of the alleged offenses or not. If the 706 Board's determination is "yes," then the defense will certainly be justified in requesting a second opinion. If the answer is "no," then the defense will clearly be justified in ferreting out the extent of the mental incompetence to demonstrate that it existed at the time the alleged offenses occurred.

4. This Court Should Conduct An Evidentiary Hearing. It is respectfully requested that the Court convene an evidentiary hearing pursuant to R.C.M. 703(d)(2) which reads:

"(2) Review by military judge. (A) A request for an expert witness or consultant denied by the convening authority may be

renewed after referral of the charges before the military judge who shall determine— (i) in the case of an expert witness, whether the testimony of the expert is relevant and necessary, and, if so, whether the Government has provided or will provide an adequate substitute; or (ii) in the case of an expert consultant, whether the assistance of the expert is necessary for an adequate defense. (B) If the military judge grants a motion for employment of an expert or finds that the Government is required to provide a substitute, the proceedings shall be abated if the Government fails to comply with the ruling. In the absence of advance authorization, an expert witness may not be paid fees other than those to which they are entitled under subparagraph (g)(3)(E)."

5. Relief Requested. That the government be ordered to employ Dr. [redacted] as an expert consultant to assist the defense in its preparation for trial.

6. Burden of Proof. In accordance with M.R.E. 905, the burden of proof shall be by a preponderance of evidence and the burden of persuasion shall be on the moving party; in this case, the defense.

7. Oral Argument. The defense requests oral argument.

Very respectfully,

[redacted]

J. W. Carver
Civilian Defense Counsel for 1st Lt Christopher F. Patterson, USMC

//

//

CERTIFICATE OF SERVICE

On 15 June 2022, I caused this document to be served upon all counsel and the court.

Dated: 15 June 2022

Very respectfully,

J. W. CARVER, Declarant

Appellate Exhibit XIV
Page 5 of 5

UNITED STATES MARINE CORPS
WESTERN JUDICIAL CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY
GENERAL COURT-MARTIAL

UNITED STATES v. CHRISTOPHER F. PATTERSON FIRST LIEUTENANT U.S. MARINE CORPS	**GOVERNMENT OPPOSITION TO DEFENSE MOTION TO COMPEL (Forensic Psychologist)** 23 June 2022

1. Nature of Response. The Government hereby opposes the Defense motion to compel a forensic psychologist. The Defense has not shown why a forensic psychologist is necessary for an adequate defense or why the lack of forensic psychologist would result in a fundamentally unfair trial, their motion should be **DENIED**.

2. Facts.

a. The Government generally concurs with the Defense statement of facts for the limited purpose of this motion. The Government does not concur with Defense facts in the first paragraph of (2. Statement of Facts) of the Defense motion. The Government adds the below additional facts.

b. Over an approximately three year period the Accused made numerous surreptitious recordings of multiple nude males.[1]

c. Many of these videos show the Accused deliberately placing the camera in a way to get a good angle for these recordings.[2]

d. In his interrogation, the Accused stated he recorded people surreptitiously to gratify

[1] Enclosure 1 and Enclosure 2.
[2] *Id.*

Appellate Exhibit XVII(16)
Page 1 of 9

himself and he enjoyed the people unaware they were being recorded.[3]

e. The Accused also admitted that he should have told the people they were being recorded and he deleted some of the videos out of guilt once he got over the excitement of the recording.[4]

f. The Accused previously searched for "Spy Cameras" online.[5]

g. The Government does not intend to call an expert witness forensic psychologist or psychiatrist in its case in chief at this point in time.[6]

h. The Government intends to supplement this motion with the R.C.M. 706 examination "short form" if it is received prior to the Article 39(a) session.[7]

3. Law.

a. Law Regarding Expert Consultants

Rule for Court-Martial (R.C.M.) 703(d)(2)(A)(ii) states that a request for an expert consultant denied by the convening authority may be renewed after referral of the charges before the military judge who shall determine whether the assistance of the expert is necessary for an adequate defense. "An accused is entitled to an expert's assistance before trial to aid in the preparation of his defense upon a demonstration of necessity."[8] "Necessity" is more "than a mere possibility of assistance from a requested expert."[9] The accused must show a reasonable probability exists both that (1) "an expert would be of assistance to the defense" and (2) "that denial of expert assistance would result in a fundamentally unfair trial."[10] To show that an expert

[3] Enclosure 3 at 1:02:00-1:03:00
[4] *Id.* at 1:03:45-1:04:07
[5] Enclosure 4.
[6] Trial Counsel Proffer.
[7] Trial Counsel Proffer.
[8] *United States v. Bresnahan*, 62 M.J. 137, 143 (C.A.A.F. 2001) (internal citations omitted).
[9] *Id.;* see also *United States v. Lloyd*, 69 M.J. 95, 99 (C.A.A.F. 2010) ("[t]he defense's stated desire to 'explor[e] all possibilities, however, does not satisfy the requisite showing of necessity.").
[10] *Bresnahan, 62 M.J. at 143.*

would assist the Defense, the Defense must show "(1) why the expert assistance is needed, (2) what the expert assistance would accomplish for the accused, and (3) why the defense counsel are unable to gather and present the evidence that the expert assistance would be used to develop."[11]

Repeatedly, CAAF has drawn a sharp distinction between necessity and helpfulness and concluded that an accused's trial is not fundamentally unfair simply because the Government did not pay for an expert to screen or evaluate evidence.[12]

b. Law regarding R.C.M. 916(k) – Lack of Mental Responsibility

The military judge must instruct upon all special defenses raised by the evidence. The test is whether the record contains some evidence as to each element of the defense to which the trier of fact may attach credit if it so desires.[13] A defense may be raised by evidence presented by the defense, the Government, or the court-martial.[14] In deciding whether the defense is raised, the military judge is not to judge credibility or prejudge the evidence and preclude its introduction before the court members.[15] A defense is not raised, however, if it is wholly incredible or unworthy of belief.[16] The Accused has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.[17]

---

[11] *United States v. Freeman*, 65 M.J. 451, 458 (C.A.A.F. 2008) (internal citation omitted).

[12] See, e.g., *Freeman,* 65 M.J. at 459 (affirming the military judge's denial of a motion to compel expert assistance where, "[a]lthough it is by no means clear that the expert would add anything that could not be expected of experienced defense counsel, we also accept arguendo that Appellant's counsel could benefit from the consultant's assistance."); *United States v. Bresnahan*, 62 M.J. 137, 143 (C.A.A.F. 2005) (affirming the military judge's denial of a motion to compel expert assistance while accepting, arguendo, that the expert in question "possessed knowledge and expertise in the area of police coercion beyond that of the defense counsel and that the defense counsel could benefit from his assistance.").

[13] *United States v. Ferguson*,15 M.J. 12 (C.M.A. 1983); *United States v. Tan*, 43 C.M.R. 636 (A.C.M.R. 1971); *see also United States v. Jackson*, 12 M.J. 163 (C.M.A. 1982); *United States v. Jett*, 14 M.J. 941(A.C.M.R. 1982).

[14] R.C.M. 916(b) discussion; *United States v. Rose*, 28 M.J. 132 (C.M.A. 1989).

[15] *United States v.Tulin*, 14 M.J. 695 (N.M.C.M.R. 1982).

[16] *UnitedStates v. Brown*, 19 C.M.R. 363 (C.M.A. 1955); *United States v. Franklin*, 4 M.J. 635(A.F.C.M.R. 1977).

[17] R.C.M. 916(b)(2)

The lack of mental responsibility defense is codified in Article 50a, UCMJ. It is an affirmative defense in a trial by court-martial that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense.[18] A severe mental disease or defect "*does not* include an abnormality manifested only by repeated criminal or otherwise antisocial conduct, or minor disorders such as nonpsychotic behavior disorders and personality defects."[19] Prior to the current standard codified in Article 50a, UCMJ, the standard was as follows: "A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law."[20]

A mental condition not amounting to a lack of mental responsibility (i.e., a finding of not guilty only by reason of lack of mental responsibility) is not an affirmative defense, but may be admissible to determine whether the accused entertained the state of mind necessary to prove an element of the offense. In other words, partial mental responsibility is not an affirmative defense, but it is a deficiency of the government proof of a necessary element (e.g., specific intent).[21] Testimony from an expert forensic psychologist may be used for mitigation purposes in sentencing whether or not it is also used for a lack of mental responsibility defense.[22]

4. <u>Analysis</u>.

---

[18] RCM 916(k)(1).
[19] RCM 706(c)(2)(A) (emphasis added).
[20] *United States v.Frederick*, 3 M.J. 230, 234 (C.M.A. 1977). *See also United States v. Daly*, 1987 CMR LEXIS 712 (N.M.C.M. 1987) (holding an Accused convicted of offenses concerning voyeurism was mentally responsible under the old *Fredericks* test).
[21] R.C.M. 916(k)(2) discussion.
[22] *See United States v. Baratta*, 77 M.J. 691 (N.M.C.C.A. 2018) (discussing how an Accused in a remarkably similar case had a low risk of recidivism during the Defense sentencing case).

Appellate Exhibit XVI
Page 4 of 9

a. The Defense has Failed to meet their Buden

The Defense has failed to meet its burden under every prong of the *Freeman* test. The Defense states the forensic psychologist is needed to assist with a possible lack of mental responsibility defense, however the Defense has provided no evidence to support this claim absent their initial expert consultant request. The Defense has provided no evidence showing what "voyeuristic disorder" is, whether the Accused has actually been diagnosed with this disorder, or how voyeuristic disorder is a severe mental disease or defect that would prevent the Accused from appreciating the nature and quality or the wrongfulness of the acts. Defense has *stated* these things, but have provided no actual evidence. Proffers from Counsel are not evidence. The Defense also could have attached an affidavit from Dr. [redacted] to support their position on these matters but have failed to do so. The burden is on the Defense by a preponderance of the evidence and they have provided no evidence for any prong of the *Freeman* test. Accordingly, the Defense motion should be denied based on this alone.

The Evidence does not Support that the Accused could not Appreciate the Nature and Quality of the Wrongfulness of his Acts.

If, hypothetically, the Court did have sufficient evidence to believe the Defense satisfied the three prongs of the *Freeman* test showing how the expert would be helpful, denial of this expert would not result in a fundamentally unfair trial. The evidence the Court does have before it show the following: (1) the Accused discreetly placing the recording device in a manner to capture people nude; (2) the Accused ensuring the recording device captures a good angle; and (3) the Accused's own admission that he knew surreptitiously recording people in the nude was wrong. Also, the fact that the Accused searched for, and subsequently purchased, a spy camera shows that he was attempting to refine his techniques for surreptitiously recording people. This leads to

the logical inference that the Accused knew that to keep committing these offenses ensuring he did not get caught was of the utmost importance and purchasing a more discreet device would assist with this.

For the defense of lack of mental responsibility to even be raised the Court must determine whether the defense is wholly incredible or unworthy of belief. Here, the Court does not even have any evidence from the Defense to consider the merits of their assertions. The evidence the Court does have shows an acknowledgement of wrongfulness (i.e. appreciation of the wrongfulness of the acts), and a pattern of behavior indicative of the Accused trying to avoid being caught (i.e. appreciation of the nature and quality of the acts).

Finally, the specific nature of this asserted disorder (voyeuristic disorder) seems to fit squarely within the following language from R.C.M. 706: "A severe mental disease or defect "*does not* include an abnormality manifested only by repeated criminal or otherwise antisocial conduct, or minor disorders such as nonpsychotic behavior disorders and personality defects." Surreptitiously recording people nude for a three year period is *repeated criminal and antisocial conduct*. A disorder of this nature, acknowledging Defense has not shown evidence the Accused even has it, is explicitly contemplated in R.C.M. 706 as something that *is not* a severe mental disease or defect.

Although this issue was litigated and reviewed in the *Daly* case, the facts and law here are distinguishable. In the *Daly* case, multiple experts testified about voyeuristic disorder and counsel argued about member instructions regarding lack of mental responsibility.[23] This biggest difference is that the *Daly* court was operating under the old *Frederick* lack of mental responsibility standard. That standard included the language "lacks substantial capacity either to

[23] *United States v. Daly*, 1987 CMR LEXIS 712 (N.M.C.M. 1987)

appreciate the criminality of his conduct or to conform his conduct to the requirements of the law."[24] The Defense expert in that case focused much of their testimony on the latter part of that standard, whether the Accused was unable to conform his conduct to the requirements of the law.[25] The Appellate Court also focused on this because it was undisputed the Accused had voyeuristic disorder. The Appellate Court also highlighted the Accused otherwise meritorious and law abiding behavior as evidence that the Accused could conduct himself in accordance with the law.[26]

In the present case, the new standard for a lack of mental responsibility defense is more difficult for the Defense to meet. Defense now has to show the Accused was unable to appreciate the nature and quality or the wrongfulness of the acts. They can no longer argue that the mental disease or defect was just of a nature to make the Accused unable to conform to the law. The Accused in this case has an otherwise normal and unremarkable term of service absent the crimes he is charged with. Just as the *Daly* court noted, otherwise normal service shows that an Accused can *normally* conduct themselves in accordance with the law. The Accused in this case has done so. Accordingly, even under the less burdensome standard the *Daly* Court utilized, they found the Accused was mentally responsible. The evidence the Government has provided shows the Accused did appreciate the nature, quality, and wrongfulness of his acts through the nature of how he committed these offenses, his admission of guilty, and otherwise normal career where he remained out of trouble.

---

[24] *Id.* at 7.
[25] *Id.*
[26] *Id.*

For these reasons, the Government posits that this case does not warrant a lack of mental responsibility defense and denial of this expert would not make the trial fundamentally unfair as this issue has already been litigated under a less burdensome standard and failed.

The R.C.M. 706 Examination

The Defense is correct that the Government moved for, and the Court granted, an R.C.M. 706 examination. As stated in that motion, the primary reason for this was for judicial economy. Considering the only bar on the Court for not granting R.C.M. 706 motions is whether the motion is frivolous or not led the Government to believe that if the Defense made the motion the Court would grant it. The Government would rather address all pre-trial matters such as mental responsibility at the earliest opportunity. If the Government waited for the Defense to file that motion or for the Court to order it be done *sua sponte*, there would be a high chance of a lengthy continuance. Especially considering R.C.M. 706 examinations take months to complete. Further, confidential communications between Defense Counsel and Accused are, by itself, enough to warrant an R.C.M. 706 examinations. The initial Defense request was sufficient in that regard.

However, the standard when the Defense seeks to compel an expert are very different than a request for an R.C.M. 706 examination. For this motion, the burden is on the Defense by a preponderance of the evidence. The burden is not to show just enough to make the motion not frivolous. The fact that an R.C.M. 706 examination has been ordered should have no bearing on the Court's decision regarding this motion.

Partial Lack of Mental Resposnibility

Although not mentioned by the Defense, their motions also seems to indicate a potential partial of lack of mental responsibility defense. As cited in the previous case, a partial lack of mental responsibility defense may be used to negate specific intent. In this case, the Article 120c

offenses and the Article 133 offense are general intent crimes. The knowledge requirement for the Article 120c offenses only contemplates whether the Accused intended to do a certain criminal act, in this case record people in the nude. There is no intent required to achieve a specific outcome. Accordingly, partial lack of mental responsibility is not applicable in this case.

5. Evidence. In support of its motion, the Government offers the following:

Enclosure 1: Videos the Accused took of the OCS Victims (previously provided as Enclosure 14 in the Government MIL – M.R.E. 404(b)).

Enclosure 2: Videos the Accused took of the rest of the Named Victims at the Page Fieldhouse.

Enclosure 3: The Accused's Interrogation (previously provided as Enclosure 7 in the Government MIL – M.R.E. 404(b)).

Enclosure 4: NCIS IA Full Review of iPhone (previously provided as Enclosure 12 in the Government MIL – M.R.E. 404(b)).

6. Relief Requested. The Government respectfully requests that this Court **DENY** the Defense motion to compel.

7. Burden of Proof. The Defense bears the burden by a preponderance of the evidence.

8. Oral Argument. The Government respectfully requests oral argument.

[redacted]

K. D. CARTER
Captain, U.S. Marine Corps
Trial Counsel

****

Certificate of Service

I hereby attest that a copy of the foregoing response was served on the Court and opposing counsel via the WJC SharePoint on 22 June 2022.

[redacted]

K. D. CARTER
Captain, U.S. Marine Corps
Trial Counsel

Appellate Exhibit XVI
Page 9 of 9

WESTERN JUDICIAL CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY
UNITED STATES MARINE CORPS
CAMP PENDLETON, CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. CHRISTOPHER F. PATTERSON, First Lieutenant, U.S. Marine Corps, Accused.	UNITED STATES MARINE CORPS FIRST LIEUTENANT CHRISTOPHER F. PATTERSON'S MOTION PURSUANT TO M.R.E. 304 AND 305 TO SUPPRESS HIS STATEMENTS TO LAW ENFORCEMENT BASED UPON VIOLATIONS OF M.R.E. 305, U.C.M.J. ARTICLE 31, AND THE 5TH AMENDMENT

1. Nature of the Motion: The accused, hereinafter "1stLt Patterson," moves the Court pursuant to Military Rules of Evidence, Rule 304 and Rule 305, to suppress all evidence considered to be the product of an unlawful interrogation conducted on 17 December 2021, in violation of M.R.E. Rule 305, U.C.M.J. Article 31, and the 5th Amendment. 1st Lt Patterson also moves the Court to suppress all evidence considered to be derivative of, and/or discovered as a consequence of, the earlier unlawful interrogation (*i.e., fruit of the poisonous tree*), to include, but not be limited to, any and all incriminating admissions and statements made in the immediate aftermath of any subsequent search and seizure, as well as any and all evidence obtained from 1st Lt Patterson's cell phone(s), vehicle(s), and/or residence, and other locations pursuant to searches and seizures regardless of whether or not 1st Lt Patterson consented thereto, inasmuch as such consent is considered to be the result of the earlier unlawful interrogation.

2. Statement of Facts: 1st Lt Patterson is attached to Combat Logistics Regiment ('CLR') 17, 1st Marine Logistics Group ('MLG'). On the evening of Friday, 17 December 2021, at 2037, 1st Lt Patterson was at home when he received a telephone message from the CLR-17 Regimental Executive Officer (XO), LtCol [redacted] See, attached Declaration of 1st LT Patterson, paragraph 2. The message directed 1st Lt Patterson to return the XO's call. Id., at para. 3. Upon hearing the message, 1ST Lt Patterson immediately called the XO who ordered 1st Lt Patterson to report to his office "now." Id., at para. 4 & 5. The XO then asked 1st Lt Patterson how long it

Appellate Exhibit XXI(21)
Page 1 of 14

would take for him to get to the XO's office and 1st Lt Patterson replied "about 30-minutes." Id., at para. 6. After the call, 1st Lt Patterson dressed into the uniform of the day and drove to Camp Pendleton to report as ordered. Id., at para. 7. It was about 2045 when he left his home. Id., at para. 8.

1st Lt Patterson arrived at the regimental office at about 2100. The XO took 1st Lt Patterson into the XO's office and closed the door. Id., at para. 9. The XO told 1st Lt Patterson, "NCIS wants to talk with you about something. We are going to take you down there." Id., para. 10. The XO then ordered 1st Lt Patterson to "**answer their questions and not to squirrel around with them.**" Id., para. 11. The XO's exact words were: "When you get there, do not squirrel around with them. Just answer their questions." Id., para. 12. The XO then asked 1st Lt Patterson if he understood. Id., para. 13. 1st Lt Patterson replied, "Yes sir." Id., 14. The XO did not tell 1st Lt Patterson of what he was suspected and the XO did not administer 1st Lt Patterson Article 31(b) rights or warnings.

Per the XO's orders, 1st Lt Patterson immediately departed for the Naval Criminal Investigative Service ('NCIS') Marine Corps West Field Office located at [redacted] 1st Lt Patterson was not permitted to drive himself. Instead, he was ordered to use the Duty Driver and he was escorted by Captain [redacted] USMC. They arrived at the NCIS Field Office about 2110.[1]

Upon his arrival, 1st Lt Patterson was directed to wait while two NCIS Special Agents readied the interrogation room. At 1925:16, according to the date-time stamp on the NCIS video of the interview, the two Special Agents escorted 1stLt Patterson into the interrogation room.

From 1925:16 until 1938:51, about 13-minutes elapsed time, the Special Agents engaged in small talk. At 1938:45, one of the Special Agents brought out the customary Article 31(b)

---

[1]Times indicated up to this point in the Statement of Facts are based upon 1st Lt Patterson's attached declaration and the accompanying "Exhibit A." For the Court's and counsel's convenience and ease of reference in reviewing the NCIS interview video, times indicated from this point onward, are stated as reflected in the date-time stamp on the NCIS video, despite the fact that the defense does not consider these times accurate. The times reflected on the video appear to the defense to be in error by a factor of about two hours slow.

Acknowledgment of Rights and Waiver document. At 1938:56 this Special Agent, who undertook the balance of questioning relevant to this motion, stated that he "just got to go over this form with you." This was followed at 1939:04 by a statement from the Special Agent that the document was "just a piece of paper." At 1940:51, the Special Agent further diminished the significance of the Article 31b warnings by stating, "no way do I want you to think we are accusing you of anything; we're just here to find out some information."

Up to this point, 16-minutes into the interrogation, 1st Lt Patterson had neither been advised of what he was suspected, nor did he evidence any understanding of what he is going to be questioned about. At 1939:42, the Special Agent read from the "piece of paper," that 1st Lt Patterson was suspected of "indecent viewing, visual recording or broadcasting." 1st Lt Patterson was asked if he knew what these terms meant and he replied, "yes," at 1939:42. However, at 1942:31, 1st Lt Patterson explained, "I don't know what the questions are going to be." The Special Agent replied at 1942:30: "We'll get into that in just a second like I said, I just want to get this [the execution of the Article 31(b) Acknowledgement] out of the way." Despite having had 1st Lt Patterson sign the Article 31(b) rights document, the Special Agents still did not advise 1st Lt Patterson of the conduct at issued, but had only read the words from the "piece of paper," that he was suspected of "indecent viewing, visual recording or broadcasting."

Rather than describe to 1st Lt Patterson in real, factual terms the misconduct of which he was suspected, the Special Agent instead asked 1st Lt Patterson at 1943:30: "Why do think that you're here?" 1st Lt Patterson responded by explaining that he had a suspicion of why he was in the NCIS office, but denied any direct involvement with the actual crime. The Special Agents allowed 1stLt Patterson to go on for about 10-minutes until 1953, 30-minutes into the interrogation, when they advised 1st Lt Patterson of the actual accusations and the fact that they had the proof of his crimes.

Not only did the NCIS Special Agent unreasonably delay the notice to 1st Lt Patterson of the acts he was suspected of committing, the Special Agent also sought to deter 1st Lt Patterson from invoking his right to counsel. At 1954:20, the Special Agent told 1stLt Patterson "You seem

like a really good dude, it's a shame we had to meet this way. I don't want you to walk out of here and me have to, you know, tell your boss, you know, that [redacted] you know, lied to us." 1st Lt Patterson asked at 1954:50: "Do you think I should probably get a lawyer than just talk?" The Special Agent told 1st Lt Patterson that hiring a lawyer was his call, but at 1955:55, the Special Agent went further and told 1st Lt Patterson, "I want to be able to help you tell your side of the story[.]" as if to suggest hiring a lawyer would only thwart the Special Agent's desire to help.

3. Discussion.

A. EVIDENCE OBTAINED AS A RESULT OF AN UNLAWFUL INTERROGATION BY A PERSON ACTING IN A GOVERNMENTAL CAPACITY IS INADMISSABLE IF THE ACCUSED TIMELY AND SUCCESSFULLY MOVES TO SUPPRESS SUCH EVIDENCE.

Evidence which is the product of an unlawful interrogation is inadmissible at trial. Both the primary evidence of the interrogation and the derivative evidence discovered as a result thereof is to be excluded. Commonly known as the "Exclusionary Rule," this rule is based upon the landmark decision by the United States Supreme Court in *Weeks v. United States*, 232 U.S. 383 (1914). It was made specifically applicable to the military in *Parker v. Levy*, 417 U.S. 713 (1974) and is incorporated in the Manual for Courts-Martial as M.R.E. 304. This rule directs the exclusion of evidence which is the product of an involuntary statement.

The incriminating statements of 1st Lt Patterson were compelled by the Executive Officer's direct order that 1st Lt Patterson "not squirrel around and answer their questions." See, Declaration of 1st Lt Patterson. This order was given without the administration of Article 31 rights. The failure of the Executive Officer to give Article 31 warnings and, instead, order 1st Lt Patterson to answer NCIS's questions, was not only a violation of Article 31, it was a violation of the Executive Officer's training.

Military officers assuming the role of Commanding Officer, Commander, or Executive Officer, receive general training on the military justice system and specific training in respect to

Article 31. For example, the Army's 2015 Commander's Legal Handbook (Misc Pub 27-8) published by the Army Judge Advocate General's Legal Center and School, at pages 7 and 8, states in part in the Introduction:

"B. Role of Commanders

Commanders are responsible for both enforcing the law, **protecting Soldiers' rights**, and protecting and caring for victims." [Emphasis added.]

* * * * *

C. Rights of Soldiers

The military justice system provides for certain fundamental rights and safeguards that must be considered in any case involving criminal conduct.

* * * * *

2. Legal Counsel and Right to Remain Silent

Laws prohibit compulsory self-incrimination and provide that anyone suspected of committing a crime has the right to consult with a lawyer. Congress realized that Soldiers may not understand their rights and may be intimidated by the mere presence of a superior. Therefore, under military law no one may question a suspect without first determining that the suspect understands the nature of the offense, the right to remain silent, and the right to counsel. If interrogators violate these rights, the evidence obtained may not be used against the accused. **You must protect your unit members' rights and preserve the government's case by ensuring that your subordinate commanders understand and comply with UCMJ, Article 31, and right-to-counsel requirements**." [Emphasis added.]

Navy and Marine Corps service members are no less protected by Article 31 than their fellow service members in the Army. Likewise, Navy and Marine Corps commanders receive no less instruction and training on the importance and administration of Article 31 rights. The USN/USMC Commander's Quick Reference Legal Handbook (QUICKMAN) (March 2021 ed.), available at http://www.jag.navy.mil/njs_publications.htm states in part at pages 12 and 13:

> "***QUESTIONING/INTERROGATING SUSPECTS AND***
>
> ***ARTICLE 31(B) RIGHTS***
>
> ***REFERENCES***:
>
> (a) Military Rule of Evidence (MRE) 301-305
>
> (b) Uniform Code of Military Justice (UCMJ) Art. 31(b)
>
> (c) MILPERSMAN 1620-010 (d) JAGMAN Appendix A-1-(b-d)
>
> (e) JAGMAN Appendix A-1-n (f) JAGMAN Appendix A-1-(k-l)
>
> **MAJOR CRIMINAL OFFENSES**: Do not allow any command member to question or interrogate a Service member before discussing the case with a staff judge advocate and/or NCIS.
>
> ***ALWAYS*** **READ ARTICLE 31(b) RIGHTS**: When (1) you suspect a Service member of committing an offense punishable under the UCMJ, and (2) you are going to ask the Service member a question relating to the offense (e.g., asking questions or making statements that are likely to evoke an incriminating response).

ARTICLE 31(b) RIGHTS:

- Service members are entitled to be informed of their Article 31(b) rights when suspected of violating any punitive article of the Uniform Code of Military Justice, prior to being questioned regarding the violation.
- Use the rights warning form [see reference (e)]. Article 31(b) rights contained on the warning form should always be read in their entirety before any interrogation, however informal the questioning. Do not ask the Service member any questions unless the Service member has affirmatively waived the right to remain silent and the right to a lawyer. This waiver should be in writing.
- Article 31(b) rights waivers must be made freely, knowingly, voluntarily, and intelligently. **It is critical to ensure the Service member understands his/her rights and understands the consequences of waiving those rights.**
- Once the Service member wants to remain silent or asks for a lawyer, the command MUST NOT ask any additional questions, **even if the Service member had previously waived his/her right to remain silent and had answered questions**.

PRIOR QUESTIONING WITHOUT RIGHTS WARNING:

Provide a "cleansing warning" if the Service member was previously questioned and did not receive an Article 31(b) rights

warning. To do this, (1) advise the Service member that the prior statement cannot be used against him/her, and (2) that even though the Service member made the earlier statement, he/she can still choose to remain silent and request a lawyer. Finally, (3) fully advise the member of his/her rights using reference (e), and record any waiver of those rights in writing. [Some of the Emphasis is added, but most is in the original.]

* * * * *

ARTICLE 31(b) AND NONJUDICIAL PUNISHMENT (NJP): At mast/office hours, only part of Article 31(b) is read. Sailors always have the right to remain silent but do not have a right to an attorney during mast. However, **if it is reasonably foreseeable that an accused will make an admission or actually does make an admission that warrants court-martial punishment, the CO should provide a full reading of all Article 31(b) rights and execute a waiver [see reference (e)]. Only this waiver at mast/office hours will protect the admissibility of such confessions in court. That said, full rights warnings must be given at all other stages in the process (e.g., prior to any questioning by a supervisor, investigating officer, law enforcement officer, disciplinary review board, or executive officer inquiry)**. [Emphasis added.]

* * * * *

FALSE PROMISES OR THREATS: A confession must be voluntary. DO NOT use threats or make false promises to elicit an incriminating statement, because a military judge may later determine that the statement is not admissible." [Emphasis

added.]

Based upon his training, 1st Lt Patterson's Executive Officer should have administered Article 31 rights at some point in his meeting with 1st Lt Patterson prior to ordering him to go to NCIS; particularly since he had expressly ordered 1st Lt Patterson to "answer their questions." The failure of the Executive Officer to administer Article 31 rights combined with his ordering 1st Lt Patterson to answer questions resulted in making 1st Lt Patterson's statements involuntary and inadmissible per M.R.E. 304.

During the 17 December 2020-NCIS interview, the Special Agents did not asked 1st Lt Patterson if he had been ordered to speak with them and they did not administer any cleansing warning to counter the XO's order to "answer their questions." Moreover, the NCIS Special Agents treated the administration of the Article 31(b) warnings as perfunctory and a mere administrative nicety. The questioning NCIS Special Agent told 1st Lt Patterson that the Article 31(b) Acknowledgement of Rights document was "just a piece of paper" and then said, "no way do I want you to think we are accusing you of anything."

In weighing his options, to include whether to demand the assistance of counsel, 1st Lt Patterson had to consider the Executive Officer's direct order as well as the statements of the NCIS Special Agents that they would be reporting back to the command whatever 1st Lt Patterson chose to do. When 1st Lt Patterson asked the Special Agents whether he should request assistance of counsel, the Special Agents replied by basically warning 1st Lt Patterson that invoking his right to counsel would be reported back to his command. 1st Lt Patterson reasonably concluded that he would then be seen as "squirreling around," just the thing his Executive Officer had ordered him not to do less than a half-hour previous to the interview.

Moreover, by the time the NCIS Special Agents questioned 1st Lt Patterson, any statement he made was a product of his Executive Officer's order to 'answer their questions,' and was an order given without the administration of Article 31 rights. It is clear from the attached Declaration of 1st Lt Patterson that he felt compelled to speak to the NCIS Special Agents given the previous direct order from his Executive Officer that he "not squirrel around and to answer

their questions." The feeling of being compelled was reasonable under the circumstances. 1st Lt Patterson is a junior officer in the Marine Corps. The order to "answer their questions" was not only from a senior officer, it was from his Executive Officer and the officer who prepared his Fitness Reports. The order was issued face-to-face. It was followed for emphasis by the seemingly rhetorical question: "Do you understand?" There was no possible alternative way for 1st Lt Patterson to understand the order than that it was a direct order to answer NCIS's questions; particularly in light of the fact that the Executive Officer failed to give Article 31(b) warnings and did not even tell 1st Lt Patterson of what he was accused or of what he was even suspected. Without this information, 'answer their questions,' was simply a direct order to 'answer their questions,' and no further clarification was necessary. 1st Lt Patterson's statements were not the result of a voluntary decision to speak, but rather were the product of a decision to choose to whether to follow orders or not. Such statements are considered presumptively involuntary.

B. EVIDENCE DERIVED OF STATEMENTS OF THE ACCUSED TAKEN WITHOUT THE BENEFIT OF ARTICLE 31(B) WARNINGS ARE INADMISSIBLE AND SHOULD BE SUPPRESSED ALONG WITH ANY EVIDENCE DERIVATIVE THEREOF.

The Supreme Court has held that the prosecution may not use statements, whether exculpatory or inculpatory, stemming from a custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). This rule is essentially made applicable in the military setting by Article 31(b) and M.R.E. 305, which reads: "**Warnings about rights.** (a) General rule. A statement obtained in violation of this rule is involuntary and will be treated under Mil. R. Evid. 304." The rule at subsection (2) defines an "Interrogation" as "any formal or **informal questioning in which an incriminating response is sought** or is a reasonable consequence of such questioning." At subsection (3) "Custodial interrogation" is

defined as "questioning that takes place while the accused or suspect is in custody, could reasonably believe himself or herself to be in custody, **or is otherwise deprived of his or her freedom of action in any significant way**."

1st Lt Patterson was ordered by his XO to go to NCIS and answer their questions. The NCIS questioning at the NCIS Field Office clearly constituted a custodial interrogation where voluntariness was required to be predicated on an effective, valid warning of the right to remain silent in accordance with Article 31. However, the XO had effectively *poisoned the well*. NCIS did not inquire of 1st Lt Patterson what he had been advised by the XO and, therefore, had no knowledge of the requirement for a cleansing warning. The lake of knowledge, however, makes a cleansing warning no less required, particularly when the questing NCIS Special Agents could easily have acquired the knowledge by asking 1st Lt Patterson what his XO had told him before being ordered to the NCIS office. The absence of a cleansing warning rendered the resulting statement involuntary and therefore inadmissible.

C. IF THE GOVERNMENT CLAIMS 1st LT PATTERSON WAIVED HIS ARTICLE 31(B) RIGHTS, THEN THE GOVERNMENT MUST DEMONSTRATE THAT THE ALLEGED WAIVER WAS VOLUNTARY, KNOWING, AND INTELLIGENT.

In order for inculpatory statements made by an accused during custodial interrogation to be admissible in evidence, the accused's "waiver of Miranda rights must be voluntary, knowing and intelligent." *United States v. Binder*, 769 F.2d 595, 599 (9th Cir. 1985) (citing *Miranda* 384 U.S. at 479). See also *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973). When interrogation continues in the absence of an attorney, and a statement is taken, a heavy burden rests on the government to demonstrate that the accused intelligently and voluntarily waived his privilege against self-incrimination and his right to retained or appointed counsel. *Miranda*, 384 U.S. at 475. To satisfy this burden, the prosecution must introduce evidence sufficient to establish "that under the **'totality of the circumstances,'** the accused was aware of 'the nature of the right being

abandoned and the consequences of the decision to abandon it." *United States v. Garibay*, 143 F.3d 534, 536 (9th Cir. 1998) (quoting *Moran v. Burbine*, 475 U.S. 412, 421 (1986). See also *United States v. Doe*, 155 F.3d 1070, 1074 (9th Cir. 1998) (holding that the test for reviewing a juvenile's waiver of rights is identical to that of an adult's and is based on the "totality of the circumstances" (citing *Fare v. Michael C.*, 442 U.S. 707, 725 (1979)).

As the Ninth Circuit reiterated, "[t]here is a presumption against waiver." *Garibay*, 143 F.3d at 536, (citing *United States v. Bernard S.*, 795 F.2d 749, 752 (9th Cir. 1986), in turn citing North *Carolina v. Butler*, 441 U.S. 369, 373 (1966)). The standard of proof for a waiver of this constitutional right is high. *Miranda*, 384 U.S. at 475. See *United States v. Heldt*, 745 F.2d 1275, 1277 (9th Cir. 1984) (the burden on the government is great, the court must indulge every reasonable presumption against waiver of fundamental constitutional rights) (citing *Johnson v. Zerbst*, 304 US 458, 464 (1938). Accord *Garibay*, 143 F.3d at 537.

The validity of the waiver depends upon the particular facts and circumstances surrounding the case, including the background, experience, and conduct of the accused. *Edwards v. Arizona*, 451 U.S. 477, 482 (1981); *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). See also *United States v. Garibay*, 143 F.3d at 536; *United States v. Bernard S.*, 795 F.2d at 751 ("A valid waiver of Miranda rights depends upon the **totality of the circumstances**, including the background, experience and conduct of the accused."). In *Derrick v. Peterson*, 924 F.2d 813 (9th Cir. 1990), the Ninth Circuit confirmed that the issue of the validity of a Miranda waiver requires a two prong analysis: the waiver must be both (1) voluntary and (2) knowing and intelligent. *Id.* at 820. The voluntariness prong of this analysis "is equivalent to the voluntariness inquiry [under] the [Fifth] Amendment . . . ." *Id.*

The second prong, however, requiring that the waiver be "knowing and intelligent," mandates an inquiry into whether "the waiver [was] made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it." *Id.* (quoting *Moran v. Burbine*, 475 U.S. 412, 421 (1986)). Accord *Garibay,* 143 F.3d at 436. This inquiry requires that the court determine whether "the requisite level of comprehension" existed before

the purported waiver may be upheld. *Id.* Thus, "[o]nly if the 'totality of the circumstances surrounding the interrogation' reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the Miranda rights have been waived." *Derrick v. Peterson*, 924 F.2d at 820 (quoting *Moran v. Burbine*, 475 U.S. at 521).

Unless and until *Miranda* warnings and a knowing and intelligent waiver are demonstrated by the prosecution, no evidence obtained as result of the interrogation can be used against the defendant. *Miranda*, 384 U.S. at 479. The government in the present case has the burden of proving that 1ST Lt Patterson was effectively apprised of his rights in full and that he intelligently and voluntarily waived those rights. See *United States v. Estrada-Lucas*, 651 F.2d 1261, 1265 (9th Cir. 1980).

1st Lt Patterson is a young, Marine Corps officer. He has been trained to follow orders. He was ordered to go to NCIS, to "not squirrel around," and "to answer their questions." Once there, he received no cleansing warning to counter the XO's order to "answer their questions," which effectively was an order to 1st Lt Patterson that he relinquish his right to remain silent. He was not apprised of the actual misconduct of which he was suspected until well into the interrogation after he had made incriminating statements. The entire 17 December 2020-statement of 1st Lt Patterson, and any subsequent statements, should be deemed inadmissible and excluded.

D. ANY AND ALL EVIDENCE SEIZED AND/OR STATEMENTS MADE AFTER THE 17 DECEMBER 2020-STATEMENT ARE PRESUMPTIVELY DERIVATIVE THEREOF, AND, THUS, SHOULD BE EXCLUDED.

Any statements by 1st Lt Patterson to the government after 17 December 2020 and any evidence seized after that date is presumptively *fruit of the poisonous tree,* unless the government can prove otherwise.

4. This Court Should Conduct An Evidentiary Hearing. It is respectfully requested that the Court convene an evidentiary hearing pursuant to M.R.E. 304(b) to determine the circumstances

surrounding the XO's 17 December 2022-meeting with 1st Lt Patterson and the subsequent NCIS interview to determine based upon a totality of circumstances whether the resulting statements were voluntary.

5. Relief Requested. That all statements of the 1st Lt Patterson suppressed and deemed inadmissible, and that any and all evidence derivative thereof be suppressed and deemed inadmissible to include all 1st Lt Patterson's subsequent statements and all evidence seized from 1st Lt Patterson, including evidence from his personal cell phone(s), his personal vehicle(s), and/or his personal residence.

6. Burden of Proof. In accordance with M.R.E. 304(f)(3) the government has the burden of proving by a preponderance of evidence that 1st Lt Patterson statements were free and voluntary.

7. Oral Argument. The defense requests oral argument.

Very respectfully,

[redacted]

J. W. Carver
Civilian Defense Counsel

//

//

UNITED STATES MARINE CORPS
WESTERN JUDICIAL CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY
GENERAL COURT-MARTIAL

UNITED STATES v. CHRISTOPHER F. PATTERSON FIRST LIEUTENANT U.S. MARINE CORPS	**GOVERNMENT OPPOSITION TO DEFENSE MOTION TO SUPPRESS (Accused's Statements)** 23 June 2022

1. Nature of Response. The Government hereby opposes the Defense motion to suppress the Accused's statements to NCIS. The Government respectfully requests the Court **DENY** the Defense motion.

2. Facts.

The Accused's Background

a. The Accused is charged with multiple violations of Article 120c, UCMJ spanning a period of approximately three years and one violation of Article 133, UCMJ.

b. The Accused is a [redacted] year old First Lieutenant in the United States Marine Corps.[1]

c. The Accused has a [redacted] and an AFQT score of [redacted] with individual scores [redacted].[2]

d. The Accused is a graduate of Officer Candidate's School, the Basic School, and the Communications Officer Course.[3]

[1] Enclosure 1.
[2] Enclosure 1 and Enclosure 2.
[3] Enclosure 3.

Appellate Exhibit XXIV(24)
Page 1 of 15

e. The Accused has served as a Communications Officer, an Exercise Planner, and as a Platoon Commander.[4]

17 December 2020

f. NCIS contacted Lieutenant Colonel [redacted] ("LtCol [redacted]"), the executive officer of CLR-17.[5]

g. NCIS asked LtCol [redacted] if the command could bring the Accused to NCIS to speak with them.[6]

h. At this time, all LtCol [redacted] knew was that the Accused placed a pen camera in a I MEF male head.[7]

i. In LtCol [redacted] experience, anytime NCIS sought to speak to a Marine within CLr-17, NCIS would first contact the command and ask the command to bring the Marine to NCIS.[8]

j. Normally, if the Marine being questioned was enlisted, a First Sergeant or the Sergeant Major would inform the Marine that they need to speak to NCIS and make arrangements for the Marine to travel to the NCIS office.[9]

k. At the time of his statements to NCIS, the Accused was a First Lieutenant.[10]

l. LtCol [redacted] decided that he should be the one to tell the Accused that NCIS needed to speak with the Accused as a fellow officer.[11]

m. LtCol [redacted] called the Accused's cell-phone and asked for him to come to LtCol

---

[4] Enclosure 4.
[5] Anticipated testimony of LtCol [redacted]
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] Enclosure 5.
[11] Anticipated testimony of LtCol [redacted]

Appellate Exhibit XXIV
Page 2 of 15

[redacted] office.[12]

n. While in LtCol [redacted] office, LtCol [redacted] told the Accused that NCIS needed to speak with him and a fellow officer the command would drive the Accused over to NCIS.[13]

o. LtCol [redacted] remembers the meeting being very brief.[14]

p. LtCol [redacted] has no recollection of saying the phrase "squirrel around."[15]

q. LtCol [redacted] remembers trying to comfort the Accused, saying something to the effect of "[redacted]"[16]

The Accused's Statements to NCIS

r. The Accused was interrogated by NCIS Special Agent [redacted] and Special Agent [redacted]

[redacted]

[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] Enclosure 5 at 02:48-16:20.
[18] *Id.*
[19] *Id.* at 16:25.
[20] *Id.* at 16:25.

Appellate Exhibit XXIV
Page 3 of 15

[redacted]

[21] *Id.* at 17:25.
[22] *Id.* at 18:30
[23] *Id.* at 19:00-19:30
[24] *Id.*
[25] *Id.* at 20:30 and Enclosure 6.
[26] *Id.* at 21:10
[27] *Id.* at 30:00

Appellate Exhibit XXIV
Page 4 of 15

[redacted]

jj. The total length of the interrogation was 3 hours, 59 minutes.[33]

3. Law.

Rights Advisements and Voluntariness

Pursuant to Military Rules of Evidence (M.R.E.) 304(f)(6) and 304(f)(7), the Government must show "by a preponderance of the evidence that a statement by the Accused was made voluntarily." Prior to an interrogation, an accused must be advised on his or her rights under Article 31b, UCMJ.[34] Specifically: Under M.R.E. 305(c)(1), a person subject to the UCMJ may not interrogate "a person suspected of an offense without first: (A) informing the Accused or suspect of the nature of the accusation;(B) advising the Accused or suspect that the Accused or suspect has the right to remain silent; and (C) advising the Accused or suspect that any statement made may be used as evidence against the Accused or suspect in a trial by court-martial." A statement made in violation of M.R.E. 305 is normally not admissible. M.R.E. 305(e) states in relevant part:

---

[28] *Id.* at 32:24
[29] *Id.* at 32:24-33:00
[30] *Id.* at 33:00
[31] *Id.*
[32] *Id.* at 14:30 (Note, this is found in "part 2" of Enclosure 5).
[33] Note, the Government asserts the initial gathering of biographical and administrative data was not "interrogation."
[34] M.R.E. 305.

After receiving applicable warnings under this rule, a person may waive the rights described therein and in [M.R.E.] 301 and make a statement. The waiver must be made freely, knowingly, and intelligently. A written waiver is not required. The accused or suspect must affirmatively acknowledge that he or she understands the right involved, affirmatively decline the right to counsel, and affirmatively consent to making such a statement.

The analysis for whether a statement is voluntary is "whether the confession is the product of an essentially free and unconstrained choice by its maker. If, instead the maker's will was overborne and his capacity for self-determination critically impaired, use of the confession would offend due process."[35] This analysis is based upon review of the totality of circumstances.[36] This includes factors like age, education, and intelligence of the accused; whether the accused has been informed of his constitutional rights; the length of the questioning; the repeated and prolonged nature of the questioning; and the use of physical punishment, such as the deprivation of food or sleep.[37]

In determining that a statement is voluntary, it can be relevant if the accused attempted to couch admissions in an exculpatory explanation.[38] The inquiry is two-fold: was the waiver voluntary and was it knowing and intelligent.[39] "An accused's confession will not be suppressed for involuntariness absent 'coercive police activity."[40] Likewise, an Accused's waiver can be knowing and intelligent, and therefore admissible, even if the suspect does not "know and understand every possible consequence of a waiver of the Fifth Amendment privilege."[41]

An individual must be provided a frame of reference for the impending interrogation by being told generally about all known offenses. "It is not necessary to spell out the details . . . with

---

[35] *United States v. Bubonics*, 45 M.J. 93, 95 (C.A.A.F. 1996).
[36] *Schneckloth v. Bustamonte*, 412 U.S. 218 (U.S.).
[37] *Id.* See also *Fare v. Michael C.*, 442 U.S. 707, 725 (U.S. 1979).
[38] *United States v. Henderson*, 52 M.J. 14 at 18 (C.A.A.F. 1999). See also *United States v. Washington*, 46 M.J. 477 (C.A.A.F. 1997).
[39] *United States v. Mott*, 72 M.J. 319, 330 (C.A.A.F., 2012
[40] Id at 445.
[41] *Colorado v. Spring*, 479 U.S. 564, 574 (1987).

Appellate Exhibit XXIV
Page 6 of 15

technical nicety."[42] If an Accused is suspected of several offenses, warnings only pertaining to one offense is sufficient if the other offense(s) are implicitly tied to the warned offense.[43] Whether the stated warning sufficiently provided notice of the accusation is tested on the basis of the totality of the circumstances.[44]

Under Mil. R. Evid. 305(b)(2), action that triggers the requirement for Article 31 (or *Miranda*) warnings includes "any formal or informal questioning in which an incriminating response either is sought or is a reasonable consequence of such questioning." This includes direct questioning or action that amounts to the functional equivalent of questioning, and is evaluated based on an objective test from the perspective of a reasonable police officer/investigator. Generally, casual conversation and banter between an Accused and law enforcement is not considered interrogation.[45] Additionally, there exists a "routine booking exception" to the *Miranda* requirements that allows law enforcement to question a subject to custodial interrogation about police administrative matters.[46]

The 5th Amendment *Miranda* Right to Counsel

When a subject has invoked his right to counsel in response to a *Miranda* warning, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation, even if he has been advised of his rights. "Having expressed his desire to deal with the police only through counsel, the subject is not subject to further

---

[42] *United States v. Quintana*, 5 M.J. 484 (C.M.A. 1978) (Informing the accused that he was suspected of larceny of ship's store funds was held sufficient to cover wrongful appropriation of store funds during an earlier period.) *See also United States v. Rogers*, 47 M.J. 135 (C.A.A.F. 1997) (informing of "sexual assault" of one victim held sufficient to orient the accused to the offense of rape of a separate victim that occurred 4 years earlier).
[43] *See United States v. Kelley*, 48 M.J. 677 (A. Ct. Crim. App. 1998).
[44] *See, e.g. United States v. Erie*, 29 M.J. 1008 (A.C.M.R. 1990); *United States v. Pipkin*, 58 M.J. 358 (C.A.A.F. 2003)
[45] *See United States v. Guron*, 37 M.J. 942 (A.F.C.M.R. 1993); *c.f. United States v. Byers*, 26 M.J. 132 (C.M.A. 1988)(holding that a twenty minute pre warning lecture from the agent where the agent elicited incriminating statement was interrogation.)
[46] *Pennsylvania v. Munoz*, 496 U.S. 582 (1990).

Appellate Exhibit XXIV
Page 7 of 15

interrogation . . . until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police."[47] Once a suspect initially waives his *Miranda* rights and agrees to submit to custodial interrogation without the assistance of counsel, only an unambiguous request for counsel will trigger the *Edwards* requirements.[48]

4. Analysis.

The Initial Conversation

To begin, the Government concedes that the Accused's interrogation was "custodial interrogation" within the meaning of *Miranda*. However, NCIS's initial conversation with the Accused was part of the "routine booking exception" contemplated by *Munoz*.[49] NCIS only gathered biographical data such as name, rank, height, weight, address, and emergency contact information. None of these questions were likely to elicit an incriminating response. Further, the casual conversation NCIS had with the excused was a classic "preface conversation" that was thoroughly discussed in the *Guron* case. In that case, the Appellant alleged that law enforcement "relaxed" him and argued that if they had warned him earlier he would have requested counsel.[50] The A.F.C.M.R. expressly rejected this argument, stating "[W]e decline to create a rule that the first words out of the mouth of an interviewer must be a rights advisement."[51] This case is no different, the conversation between NCIS and the Accused was friendly, cordial, and had nothing to do with the allegations or the evidence.

---

[47] *Edwards v. Arizona*, 451 U.S. 477 (1981); *see also United States v. Harris*, 19 M.J. 331 (C.M.A. 1985) (*Edwards* applies to military interrogations).
[48] *See United States v. Davis*, 36 M.J. 337 (C.M.A. 1993), *aff'd*, 512 U.S. 452 (1994)(holding the statement "maybe I should talk to a lawyer" did not unequivocally invoke the 5th Amendment right to counsel.)
[49] *Munoz*, 496 U.S. 582
[50] *United States v. Guron*, 37 M.J. 942, 945 (A.F.C.M.R. 1993)
[51] *Id.* at 946 (Note, the *Guron* Court distinguished the facts of their case from the *Byrd* case where the agents commented on the evidence and intimidated the Accused).

The Accused's Background

The Accused in this case is a highly educated and successful Marine Corps officer. The Accused scored in the 97th percentile on the AFQT and had remarkably high individual scores. The Accused successfully passed the physically and emotionally demanding Officer Candidate's School, the intellectually demanding Basic School, and the extremely intellectually demanding Basic Communication Officer's Course. The evidence shows the Accused is a very smart man who is clearly capable of processing and understanding large amounts of varied information. The Accused's intelligence and background weighs in favor of voluntariness.

The Meeting with LtCol [redacted]

It is standard operating procedure that any time a service-member is sought for questioning by NCIS, NCIS contacts the command and relies on the command to get the service-member to NCIS. LtCol [redacted] as the Accused's superior officer, took it upon himself to orient the Accused top what was going on. Just as a First Sergeant would for an enlisted Marine. LtCol [redacted] made no attempt to intimidate the Accused or make him think he *had* to talk to NCIS. LtCol [redacted] merely sought to quell the Accused's nerves and let him know that all NCIS wanted to do was ask him some questions. This encounter is completely reasonable and routine in the context of military interrogations. Contrary to Defense's assertions, LtCol [redacted] was not required to administer the Accused his Article 31b rights before this meeting as LtCol [redacted] did not ask *any* questions which might tend to elicit an incriminating response. Nonetheless, this meeting could play a factor in determining whether the Accused's statements were made voluntarily.

The case of *United States v. Oakley*, is illustrative of how "admonishments to cooperate" are viewed in the context of voluntariness. In that case, civilian law enforcement was investigating

Appellant for civilian fraud offenses.[52] Stanley, an Army NCO, was assigned as a "liason" between civilian and Army law enforcement.[53] Stanley and a civilian officer went to Appellant's house to question him.[54] The civilian verbally *mirandized* appellant and Stanley told Appellant something to the effect of "it would be better in the long run if you cooperate with the civilian police."[55] Stanley went on to say that if Appellant cooperated the courts might be more lenient.[56] Finally, back at the station, Stanley told Appellant ""You need to really cooperate. I'm your military liaison; I'm the go-between between you and the military. If you cooperate and everything down here, everything will be okay at work and you'll be just fine."[57] The *Oakley* Court found that those statements were admonishments from a military superior that were unaccompanied by Article 31b rights.[58] However, the Court found that these statements did not compel the Appellant in violation of Article 31b.[59] The Court explained, ""[T]here is no hint that Stanley's advice to cooperate was meant to deceive Oakley or in any way trick him into a more malleable state."[60]

The facts of this case are even less persuasive for the Defense than those in *Oakley*. In this case, per standard operating procedure, LtCol [redacted] briefly spoke to the Accused to orient him to what was going on. LtCol [redacted] simply told the Accused that NCIS wanted to talk to him. Even if, in the light most favorable to Defense, LtCol [redacted] did say "don't squirrel around" it would still not be enough under the totality of the circumstances to conclude that the Accused's will was overborne.

---

[52] *United States v. Oakley*, 33 M.J. 27, 28-29 (C.A.A.F. 1991).
[53] *Id.*
[54] *Id.*
[55] *Id.*
[56] *Id.*
[57] *Id.*
[58] *Id.* at 32.
[59] *Id.*
[60] *Id.*

For these reasons, this meeting should be *considered* but it is not at all dispositive of whether the Accused's statements were involuntary.

The Accused's behavior during the Interrogation

The Accused's demeanor and attempt to lie about the pen camera are factors to be considered in determining whether his statements were voluntary. First, the Accused was engaged, attentive, and active for the entirety of the interrogation. The Accused also attempted to hide his culpability by coming up with the fake story about the pen camera. As held in the *United States v. Henderson* case, an Accused's attempt to "couch" their admissions in an exculpatory story is a factor that weighs in favor of voluntariness.[61]

Further, the Accused actually did unequivocally invoke his right to counsel to end the interrogation *after* requesting to review his rights waiver again. This shows that the Accused was fully cognizant and aware of his rights and make to free and conscious decisions: (1) to talk to NCIS when he determined it was in his best interest; and (2) to request to speak to a lawyer when he no longer felt comfortable. If the Accused was able to invoke his rights at the end of the interrogation what could possibly suggest he was unable to at any earlier point in time? These factors weigh heavily in favor of voluntariness.

The "do you think I should get a lawyer" Comment

The law is very clear that there is a difference between an equivocal and unequivocal request for counsel. The Accused understood this as well considering he did make an unequivocal request at the end of the interrogation. In *United States v. Davis*, the Appellant stated to NCIS

[61] *United States v. Henderson*, 52 M.J. 14, 18 (C.A.A.F. 1999)(Citing *United States v. Washington*, 46 M.J. 477, 482 (1997)

"Maybe I should talk to a lawyer."[62] CMA ruled that this comment was ambiguous and failed to invoke the 5th Amendment right to counsel.[63]

Here, the Accused asked SA [redacted] "do you think I should get a lawyer." That is not an *unequivocal* request for counsel. It was ambiguous and SA [redacted] clarified to the Accused that it was his choice alone. SA [redacted] than asked the Accused again if the Accused wanted to talk to NCIS and the Accused said "sure." Additionally, we know that the Accused was capable of making an unequivocal request, and NCIS would honor and unequivocal request, because it happened later in the interview.

The evidence shows that at the earlier point the Accused did not invoke his right to counsel and the statements should not be suppressed for that reason.

The Totality of the Circumstances

In sum, Defense argues that because of the meeting with LtCol [redacted] and NCIS attempting to minimize the seriousness of the situation, the Accused's statements were involuntary. All in all the factors that should be considered are as follows: (1) the Accused intelligence, education, family background, and military experience; (2) the Accused's reading, acknowledgement, and waiver of his rights; (3) the Accused's attempt to "couch" his admissions; (4) the short length of the interrogation; (5) NCIS's friendly and understanding demeanor; (6) numerous breaks and offers for food and water; (7) the complete lack of threats, abuse, harm, or deprivation of necessities; and (8) the Accused's unequivocal request for counsel at the end of the interrogation. All of these factors show that the Accused's will was not overborne and his decision to speak to NCIS was made freely and knowingly.

---

[62] *United States v. Davis*, 36 M.J. 337 (C.M.A. 1993), *aff'd*, 512 U.S. 452 (1994).
[63] *Id.*

Finally, the case of *United States v. Freeman* provides useful guidance on just how far law enforcement officer can push the limits of an interrogation while still keeping it voluntary. In that case the Accused alleged that his confession was obtained by the interrogators' use of coercion, unlawful influence, or unlawful inducement based on the length of the polygraph and subsequent interrogation, and the use of "lies, threats, and promises."[64] CAAF found the accused's confession voluntary even where (1) the interrogation lasted "almost ten hours," (2) the accused did not eat, and (3) interrogators told the accused that they would tell the accused's commander whether or not he cooperated.[65]

The *Freeman* interrogators went beyond simply informing the Accused that they would tell his command, they also told the Accused that: (a) they had fingerprint evidence contradicting his statements, which was not true, (b) the sooner they completed the interrogation, the sooner the accused "could get on with his life," (c) they would turn the accused over to civilian authorities if he did not cooperate, (d) civilian punishment would be harsher, and (e) he would be sent to jail for a long time if he did not cooperate.[66] Despite these potential influences, the Court found the statement to be voluntary.

In finding the statement voluntary, the Court emphasized that the accused "was neither physically abused nor threatened with such abuse," that he was offered and/or had several breaks throughout the ten hours, and the accused prepared the written statement himself.[67] The Court further found that the characteristics of the accused favored a finding of voluntariness because he

[64] *Freeman*, 65 M.J. at 454.
[65] *Id.* at 454-56.
[66] *Id.* at 454-56.
[67] *Id.* at 457.

"was a twenty-three-year-old E-4" when he was questioned and he was advised of and waived his Article 31 (b) rights, among others.[68]

The circumstances surrounding the Accused's statement here are much less onerous to those in *Freeman*. Under a totality of the circumstances, and by a preponderance of the evidence, the Government has proven that the Accused's statements were made freely, knowingly, and intelligently. The Accused's statement were the product of an essentially free and unconstrained choice by its maker and the Accused's will was never overborne.

5. Evidence. In support of its motion, the Government offers the following:

Enclosure 1: The Accused's TBIR
Enclosure 2: The Accused's Commissioning Contract
Enclosure 3: The Accused's TBTR
Enclosure 4: The Accused's CHRO
Enclosure 5: The Accused's Interrogation (previously provided as Enclosure 7 in the Government MIL – M.R.E. 404(b)).
Enclosure 6: The Accused's Signed Article 31b Waiver.

The Government also intends to call LtCol [redacted] in support of its motion.

6. Relief Requested. The Government respectfully requests that this Court **DENY** the Defense motion.

7. Burden of Prof. The Government bears the burden of proof by a preponderance of the evidence.

8. Oral Argument. The Government respectfully requests oral argument.

[redacted]

K. D. CARTER
Captain, U.S. Marine Corps
Trial Counsel

[68] *Id.* at 454.

****

Certificate of Service

I hereby attest that a copy of the foregoing response was served on the Court and opposing counsel via the WJC SharePoint on 23 June 2022.

[redacted]

K. D. CARTER
Captain, U.S. Marine Corps
Trial Counsel

Appellate Exhibit XXIV
Page 15 of 15

UNITED STATES MARINE CORPS
WESTERN JUDICIAL CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY
GENERAL COURT-MARTIAL

UNITED STATES v. CHRISTOPHER F. PATTERSON FIRST LIEUTENANT U.S. MARINE CORPS	**GOVERNMENT MOTION FOR MINOR CHANGES TO CHARGE SHEET** 25 July 2022

1. **Nature of Motion.** Pursuant to Rule for Courts-Martial (R.C.M.) 603, the Government respectfully requests to make minor changes to the title of Additional Charge I, Specifications Three, Four, Five, Six, Seven, Eight, and Nine of Additional Charge I, and the typographical errors in the Sole Specification of Additional Charge II.

2. **Facts.**

   a. Additional Charge I on the Additional Charge Sheet should contain a roman numeral "I" in the title. Encl 1.

   b. The Additional Charge Sheet is missing the middle initial of each named victim in Specifications three through nine of Additional Charge I. Encl 1.

   c. The Sole Specification of Additional Charge II contains two typographical errors, in that the two uses of the word "gentlemen" should instead say "gentleman." Encl 1.

3. **Law.**

"After arraignment the military judge may, upon motion, permit minor changes in the charges and specifications at any time before findings are announced if no substantial right of the accused is prejudiced." R.C.M. 603(c). "Minor changes in charges and specifications are any except those which add a party, offenses, or substantial matter not

Appellate Exhibit XXXI
Page 1 of 4

fairly included in those previously preferred, or which are likely to mislead the accused as to the offenses charged." R.C.M. 603(a).

4. Analysis.

Here, no party, offense, or substantial matter is added to that which was previously preferred, and at no point has Defense been misled regarding the substance of the charged offenses. Defense has been provided notice of the names of each victim in the Charge Sheets. Adding the middle initial of the victims will serve to make the charge sheet more uniform, more easily readable, and would decrease the risk of confusion for the members. Defense has also been put on sufficient notice as to the specific charges alleged in this case, and correcting the other typographical errors would not be substantial nor would Defense be misled.

5. Evidence. In support of its motion, the Government offers the following:

Enclosure 1: First Lieutenant Patterson Additional Charge Sheet dtd 28 April 2022.

6. Relief Requested. The Government respectfully requests that the Military Judge permit the following minor changes to the Charge sheet:

a) Additional Charge I: "Additional Charge" → "Additional Charge I"

b) Specification 3 of Additional Charge I: [redacted] → [redacted]

c) Specification 4 of Additional Charge I: [redacted] → [redacted] / [redacted] → [redacted]

d) Specification 5 of Additional Charge I: [redacted] → [redacted]

e) Specification 6 of Additional Charge I: [redacted] → [redacted]

f) Specification 7 of Additional Charge I: [redacted] → [redacted] and [redacted] → [redacted]

g) Specification 8 of Additional Charge I: [redacted] → [redacted]

h) Specification 9 of Additional Charge I: [redacted] → [redacted]

i) Sole Specification of Additional Charge II: "Gentlemen" → "Gentleman"

j) Sole Specification of Additional Charge II: "Gentlemen" → "Gentleman"

7. Burden of Proof. As the moving party, the Government bears the burden of proof on the factual issues contained in this motion by a preponderance of the evidence.

8. Oral Argument. If the Defense opposes this motion, then the Government respectfully requests oral argument on the matter.

[redacted]
P. E. FLEMING
Captain, U.S. Marine Corps
Trial Counsel

****

Opposing Party Response

Defense Counsel does not oppose the above motion and does not request oral argument.

[redacted]

Date: 25 July 2022

K. M. COURTNEY
Captain, U.S. Marine Corps
Defense Counsel

****

Court Ruling

The above request is approved/disapproved/approved in part.

Date:

D. A. POTEET
Lieutenant Colonel U.S. Marine Corps
Military Judge

Appellate Exhibit XX
Page 4 of 4

WESTERN JUDICIAL CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY
UNITED STATES MARINE CORPS
CAMP PENDLETON, CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. CHRISTOPHER F. PATTERSON, First Lieutenant, U.S. Marine Corps, Accused.	DEFENSE R.C.M. 917 MOTION FOR A FINDING OF NOT GUILTY ON ALL CHARGES

1. **Relief Requested**. The government has now closed its case-in-chief, and, therefore, the defense respectfully moves the Court pursuant to Rules for Courts-Martial ('R.C.M.'), Rule 917, to dismiss the Original Charge and Additional Charge I, both of which allege violations of Article 120c, on grounds there is an absence of evidence submitted at trial by the government establishing an element of the offense, to wit: Occurrence of the conduct under circumstances in which the alleged victim had a reasonable expectation of privacy. The defense also respectfully moves the Court pursuant to R.C.M. 917, to dismiss Additional Charge II, which alleges a violation of Article 133, conduct unbecoming an officer, on grounds there is also absence of evidence concerning the 'reasonable expectation of privacy,' element, which is also required to be proved under since the general offense charged is the same as a specific offense set forth in the Original Charge and Additional Charge I and, therefore, the elements required to be proved are the same as for those two other charges which allege specific offenses, with the additional requirement that the act or omission constitute conduct unbecoming an officer and gentleman.

2. **Statement of the Case**. The accused, 1stLt Christopher Patterson, USMC, (hereinafter "Lt Patterson"), is facing two charges of violating the Uniform Code of Military Justice ('UCMJ'), Article 120c, indecent recording, based upon sixteen (16) specifications, and one charge based upon a single specification of violating the UCMJ, Article 133, conduct unbecoming an officer. Lt Patterson has entered a plea of 'not guilty,' to all charges and specifications.

APPELLATE EXHIBIT XLVIII (
PAGE 1 OF 13

Specifications 1 and 3 under the Original Charge allege indecent recording by Lt Patterson of roommates in a rented house they all occupied together off-base in Oceanside. Specifications 2, 4, 5, 6, and 7, under the Original Charge allege indecent recording by Lt Patterson of visitors to the men's locker room at the Paige Field House gymnasium aboard Camp Pendleton. The recording in this instance was accomplished by Lt Patterson's cell phone. The cell phone was set by Lt Patterson to record and was then placed in the open in an area of the locker room where gym patrons congregated nude. It was **not** placed within a private stall. Additional Charge I, specification 1, alleges indecent recording by Lt Patterson of visitors to a men's locker room aboard Marine Corps Base Quantico, Virginia. The recording in this instance was similarly accomplished by Lt Patterson's cell phone and was likewise set to record when left in the open in the changing area of the locker room where Officer Candidate School ('OCS') candidates congregated nude after showering. The cell phone was **not** placed within a private stall.

Additional Charge II alleges conduct unbecoming an officer in violation of UCMJ, Article 133. This charge is factually and fundamentally based on the same conduct alleged in all the other charges and specifications, and the supporting specification alleges the conduct occurred "in a **public** restroom." As compared to all the other specifications alleged, this specification, contrariwise, makes no mention of the conduct occurring "under circumstances in which [the alleged victim] had a reasonable expectation of privacy."

3. ***R.C.M. Rule 917 Motion for a Finding of 'Not Guilty.'*** The Manual for Courts-Martial (2019 ed.) provides at Rule 917, in part, as follows:

> "(a) In general. The military judge, on motion by the accused or sua sponte, shall enter a finding of not guilty of one or more offenses charged at any time after the evidence on either side is closed but prior to entry of judgment **if the evidence is insufficient to sustain a conviction of the offense affected**. [Emphasis added.]

* * * * *

(b) Form of motion. The motion shall specifically indicate wherein the evidence is insufficient.

(c) Procedure. Before ruling on a motion for a finding of not guilty, whether made by counsel or sua sponte, the military judge shall give each party an opportunity to be heard on the matter.

(d) Standard. A motion for a finding of not guilty shall be granted only in the absence of some evidence which, together with all reasonable inferences and applicable presumptions, could reasonably tend to establish every essential element of an offense charged. The evidence shall be viewed in the light most favorable to the prosecution, without an evaluation of the credibility of witnesses.

4. *Discussion*:

a. **Introduction: Oh what a tangled web we weave when a clear statute we do not conceive.** Fundamentally, the instant motion depends on the appropriate interpretation of the phrase: "under circumstances in which that other person, [i.e., the alleged victim], has a reasonable expectation of privacy." It is respectfully submitted that reviewing courts have suggested four separate ways to interpret the phrase to determine the meaning of this crucial phrase.

1. **Plain Meaning Approach**. Courts which apply a textualist, or strict constructionist approach to statutory interpretation, simply read the words of a statute according to their plain meaning. If the plain meaning is not readily clear, then these courts declare the statute void for vagueness. The Supreme Court's opening passage in the case of *U. S. v. Davis* (2019) 588 U.S. ____; 139 S. Ct. 2319; 204 L. Ed. 2d 757, represents a recent, excellent example of this approach. Justice Gorsuch delivered the opinion of the Court.

> "In our constitutional order, a vague law is no law at all. Only the people's elected representatives in Congress have the power to write new federal criminal laws. And when Congress

APPELLATE EXHIBIT X LVIII
PAGE 3 OF 3

> exercises that power, it has to write statutes that give ordinary people fair warning about what the law demands of them. Vague laws transgress both of those constitutional requirements. They hand off the legislature's responsibility for defining criminal behavior to unelected prosecutors and judges, and they leave people with no sure way to know what consequences will attach to their conduct. When Congress passes a vague law, the role of courts under our Constitution is not to fashion a new, clearer law to take its place, but to treat the law as a nullity and invite Congress to try again."

In the instant case, the defense does not consider the language of Article 120c, and, in particular, the 'under circumstances in which that other person has a reasonable expectation of privacy' phrase, vague. The defense endorses an interpretation of the statute which is based upon the clear, ordinary meaning of the words, despite the fact that the statute includes two alternative definitions of the phrase at Article 120c(d). The statute reads:

> (d) DEFINITIONS.—In this section:
>
> * * * * *
>
> (3) REASONABLE EXPECTATION OF PRIVACY. — The term "under circumstances in which that other person has a reasonable expectation of privacy" means— (A) circumstances in which a reasonable person would believe that he or she could disrobe in privacy, without being concerned that an image of a private area of the person was being captured; or (B) circumstances in which a reasonable person would believe that a private area of the person would not be visible to the public.

Based upon the facts of the instant case, it seems we are clearly dealing only with the (A) definition. Application of the (B) definition appears inappropriate because surely the persons recorded in this case knew full well that while showering and changing in the locker room their

private areas were obviously exposed to multiple fellow-gymnasium patrons.

It is respectfully submitted that application of the (A) definition is appropriate, provided one adopts the two-step process prescribed by the definition in light of the comma which delineates the two separate clauses. Working backwards, it appears established to a degree that the second step of the analysis is satisfied, at least for purposes of opposing this R.C.M. 917 motion. The government's witnesses testified that they changed in the locker room "without being concerned that an image of a private area of the person was being captured."

On the other hand, it appears that for the first step of the two-step process there is a complete absence of proof. This is because the first step requires a determination that the area in question where the recording occurred presented "circumstances in which a reasonable person would believe that he or she could disrobe in privacy." To a man, every government witness has testified, some begrudgingly, some willingly, that the circumstances were not private, but, instead were public. A number of the government's witnesses specifically characterized the locker room as a "public" facility.

For example, government witness SSgt [redacted] testified essentially that one could not control how many people were walking back and forth in the locker room, since it was a "public place."

Sgt [redacted] testified that "expected to be seen because this is a public place."

Captain [redacted] testified, that "if I can't shower alone, I use [the locker room], a public facility."

Mr. [redacted] testified that he was "obviously, not [changing] in private, because there are other people there."

Captain [redacted] testified that "people going into a locker room are consenting to be seen naked."

GySgt [redacted] testified that it was "Okay for people in the shower to see him naked."

This is a representative sample of the evidence establishing the locker was not private, but instead was public. In so doing, the government's witnesses refuted the first step in the determination that the recording was under "circumstances in which a reasonable person would

believe that he or she could disrobe in privacy." None of the government's witnesses testified to believing they could disrobe in privacy. The locker room is a public place; just as the government alleges in Additional Charge II.

In respect to specifications 1 and 3 under the Original Charge, two witnesses testified that they lived as roommates with Lt Patterson in a rented house they all occupied together off-base in Oceanside and that there were no rules for wearing clothes in the residence and, that as a consequence, they often moved about the interior of the home in the nude. Videos admitted into evidence on specifications 1 and 3 show the roommates having been outside their rooms nude or clad only in a towel.

2. **Customary Meanings of Terms of Art are Established and Incorporated into Statutes to Express What They Customarily Mean**. Another approach which courts take in interpreting statutes which contain terms of art, such as an iconic legal phrase in the law, is to apply the statutory interpretation used elsewhere in the law. The phrase "reasonable expectation of privacy," is a term of art having a particular meaning in the field of law. Admittedly, the overwhelming majority of cases grappling with the phrase concern 4th Amendment issues relative to searches and seizures in areas where the defendant argued he had a 'reasonable expectation of privacy' in the area searched. Nonetheless, this does not mean the phrase should have a wholly different meaning in other contexts, although some courts disagree.

There is no doubt that context matters in determining the appropriate interpretation of a term of art. Obviously, the phrase 'play ball,' has a different meaning when spoken by a mafia boss and than when it is yelled by an honored fan at the commencement of a baseball game. But in this case, the phrase 'reasonable expectation of privacy' is being used in the legal context. Presumably Congress intentionally adopted the phrase from 4th Amendment cases to be used in enacting Article 120c specifically because the phrase had a long and storied history and its meaning was established and clear. Use of the phrase in the Article 120c context of "circumstances in which that other person has a reasonable expectation of privacy" requires the government prove that under the circumstances the alleged victim had a reasonable expectation of privacy. In this case, as noted about, the government's witnesses testified that they did not have

an expectation of privacy, reasonable or otherwise, because the locker rooms were not private, but, instead, were public facilities.

It should be noted that although the defense does not consider use of the 'reasonable expectation of privacy' clause Article 120c ambiguous, others might, including this Court, might. In that case, the rules of statutory construction regarding a criminal statute require that any ambiguity be resolve in favor of the defendant. For example, the U.S. Army Court of Criminal Appeals considered a strikingly similar case in *U.S. v. Rice*, 71 M.J. 719, (ARMY 20100678) (2012). During the guilty plea providency inquiry, the accused stated: "I observed and digitally recorded female personnel in various states of undress while they were conducting hygiene tasks in the female shower trailer." 71 M.J. at 721. In finding the guilty plea improvident, the court considered rules of statutory construction as follows:

> "Application of certain fundamental principles of statutory construction also reveals this error. "Ordinarily, where a specific [statutory] provision conflicts with a general one, the specific governs." *Edmond v. United States,* 520 U.S. 651, 657, 117 S.Ct. 1573, 137 L.Ed.2d 917 (1997) (citation omitted). Here, then, the specific provisions addressing voyeurism under the 2007 version of Article 120(t)(12), UCMJ, define the limits of that statute's reach over that sort of peeping behavior. *See Id.* In addition, " **'ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity.'** " *Busic v. United States*, 446 U.S. 398, 406, 100 S.Ct. 1747, 64 L.Ed.2d 381 (1980) (citations omitted). Therefore, if any ambiguity exists, the 2007 version of Article 120(k), UCMJ, necessarily considered in conjunction with Article 120(t)(12), UCMJ, limits criminal liability under that article for voyeurism to those specific situations listed. *See Id."* [Emphasis added.]

It is respectfully submitted that if this Court considers Article 120c, and/or the attendant Article 120c definitions or the phrase ambiguous, the Court is obliged to interpret them with lenity in favor of Lt Patterson.

3. **Reasonableness in the Law is Tested by an Objective Standard Rather than by a Unique Subjective Standard According to Each Individual Victim's Particular Sensibilities.** A third approach to determining the true intent of a statute and how it is to be applied, looks to use of the word 'reasonable' within the statute. Use of the word 'reasonable' in the text of Article 120c requires the court apply an objective test to determine whether, given the circumstances of the recording offense, the person recorded could have harbored a reasonable expectation of privacy, regardless of what the witnesses testified to respecting their subjective assessments of privacy.

Based upon the objective standard established by Article 120c for assessing whether the particular circumstances created a reasonable expectation of privacy, there is a complete absence in the government's case-in-chief of evidence tending to prove the average reasonable gymnasium patron could reasonably harbor a reasonable expectation of privacy while naked or partially clothed in the communal areas of two separate, public, locker rooms where the conduct occurred in this case.

The government attempted on multiple occasions to mix together two concepts in redirect questions to rehabilitate witnesses regarding the two separate concepts of 'privacy' and 'expectations of being recorded in a locker room.' For example, "Did you expect privacy from being recorded in the locker room?" The subjective answers of offended gym patrons to these cross-over questions are considered irrelevant if Article 120c is interpreted to apply an objective test of determining 'reasonable expectation of privacy."

The facts of this case are virtually uncontested. Lt Patterson made a full confession as to his conduct on 17 December 2020. Nonetheless, the government's evidence lacks any proof that the recordings in either the locker rooms aboard Marine Corps Base Quantico or at the Paige Field House aboard Camp Pendleton took place under circumstances in which the average, reasonable, locker room patron would have harbored a reasonable expectation of privacy.

In *U.S. v. McCarthy*, (1993), 38 M.J. 398, 62 USLW 2449, the United States Court of Military Appeals wrote:

> "A private but common area confers **no legitimate expectation of privacy**. *See United States v. Barrios–Moriera,* 872 F.2d 12 (2d Cir.) (no expectation of privacy in common hallway of apartment complex even though front door was locked), *cert. denied,* 493 U.S. 953, 110 S.Ct. 364, 107 L.Ed.2d 350 (1989). Communal living spaces confer no reasonable expectation of privacy. *See People v. Nalbandian,* 188 A.D.2d 328, 590 N.Y.S.2d 885 (1992) (no expectation of privacy for items on bed in communal sleeping area in men's shelter). Finally, a squatter living in a natural cave on federal land has no reasonable expectation of privacy. *United States v. Ruckman,* 806 F.2d 1471 (10th Cir.1986)."
>
> * * * * *
>
> "The Supreme Court's contextual analysis of the First Amendment in *Parker v. Levy, supra,* was applied to the Fourth Amendment by the District of Columbia Circuit in Committee for *GI Rights v. Callaway*, 518 F.2d 466, 477 (1975), which observed, "[t]he 'expectation of privacy' . . . is different in the military than it is in civilian life. . . . The soldier cannot reasonably expect the Army barracks to be a sanctuary like his civilian home." *See also People v. Nalbandian,* 188 A.D.2d at 330, 590 N.Y.S.2d at 887. (Defendant's quarters here partook more of an Army barracks or a **gymnasium locker room** than a private hotel suite...."). *Cf. Kauffman v. Secretary of the Air Force,* 415 F.2d 991, 997 n. 6 (D.C.Cir.1969). [Emphasis added.] 38 M.J. 401.

APPELLATE EXHIBIT XLVIII
PAGE 9 OF 13

The *McCarthy* court went on to write:

> "Of course, the physical characteristics of the barracks room are not in themselves determinative. They undoubtedly affect the occupant's subjective expectation of privacy, leaving the objective, *i. e.,* "reasonable," expectation of privacy to be otherwise determined." 38 M.J. 403.

By employing the word "reasonable" in the text of Article 120c, the test required to be applied is not whether the particular victim had a subjective expectation of privacy, but whether the circumstances objectively gave rise to a reasonable expectation of privacy. In this case, the two gymnasium locker rooms in question were not private hotel suites. The patrons to the gymnasium locker rooms knew that they would be viewed naked or partially clothed by other nude or partially clothed patrons while they were in the locker room; whether dressing, disrobing, or showering. The recordings in this case occurred in a public locker room and the government concedes this point in its specification under Additional Charge II, where it alleged Lt Patterson "set up an activated recording device in a **public** restroom, . . ." [Emphasis added.]

4. **To Completely Disregard the Language of the Statute to Ensure a Conviction is Sustained:** One last approach adopted by some military, appellate courts is seemingly to simply disregard the express language of a statute, ignore the grammar and punctuation of the statute, and arrive at an interpretation which upholds the conviction at all cost. The defense does not endorse this fourth approach to statutory interpretation. The defense believes that words matter, grammar matters, punctuation matters, the testimony of witnesses matters, and the pleadings of the government matter, despite the resulting outcome. However, some courts appear to disagree.

For example, the United States Air Force Court of Criminal Appeals in *U.S. v. Bessmertnyy,* Case No. ACM 39322 (2019) regarding an appeal from conviction in an Article 102c case in an unpublished opinion wrote:

> "The Government had the burden to prove Appellant made recordings of KG under circumstances in which she had a reasonable expectation of privacy. A person has a "reasonable expectation of privacy" when a reasonable person would believe (a) she could disrobe in privacy without being concerned that an image of her private area was being captured; or (b) her private area would not be visible to the public. 10 U.S.C. § 920c(d)(3)." ACM No. 39322, pages 9 and 10.

In this passage, the Air Force Court misquotes the statute. The opinion neglects the comma between the words "privacy" and "without." Although it is the omission of a humble little comma, the omission, nonetheless changes the meaning and application of the statute from a two-step test process to a one step process, and the mixture of the two tests into one is contrary to the express language of the actual statute Congress enacted.

The Air Force Court further compounds the mistake by including a footnote 14. That footnote reads:

> "14 Appellant, in his second assignment of error, invites us to use the *Katz* test for determining whether a Government search and seizure is lawful under the Fourth Amendment to the United States Constitution, U.S. CONST. amend. IV, to determine whether a person has a reasonable expectation of privacy under Article 120c, UCMJ. *See Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring) (concluding there "is a twofold requirement, first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as 'reasonable.'"). **However, we are not at liberty to give new meaning to a term used in an element of an offense beyond its clear, statutorily supplied definition, and decline to do so now.** [Emphasis added.] *See*

generally United States v. Lee, 2017 CCA LEXIS 185, at *15–16 (A.F. Ct. Crim. App. 17 Mar. 2017) (unpub. op.) (citation omitted) (rejecting application of Fourth Amendment doctrine to define "reasonable expectation of privacy" in Article 120c, UCMJ, different from its statutory definition), *rev. denied*, 76 M.J. 455 (C.A.A.F. 2017). Thus, we find no merit to this assignment of error."

The Court, while claiming it is "**not at liberty to give new meaning to a term used in an element of an offense beyond its clear, statutorily supplied definition, and decline to do so now**," has in fact done exactly that by omitting the comma as noted above, thereby ignoring the requirement clearly expressed in the statute that a two-step process be used in a similar fashion to the approach in Katz v. United States, 389 U.S. 347, 361 (1967) where the court established a "a twofold requirement, first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as 'reasonable.'"

Obviously, the defense respectfully requests the Court adopt anyone of the first three approaches set forth above in interpreting Article 120c and not use the last approach. If the request is granted, the conclusion resulting from adopting any of the first three approaches is the same: There is an absence of evidence establishing the element of 'reasonable expectation of privacy.'

b. **Granting the Motion as to the Original Charge and Additional Charge I, Mandates Granting the Motion as to Additional Charge II.**

Additional Charge II, alleges a violation of Article 133, conduct unbecoming an officer. Although not plead in the attendant specification, the government must also prove the "reasonable expectation of privacy," element since the general Article 133 offense charged is based on the same conduct as the specific offenses alleged in the Original Charge and Additional Charge I. Therefore, the elements required to be proved are the same as for those two other charges which allege specific offenses, with the additional requirement that the act or omission constitute

conduct unbecoming an officer and gentleman. A complete absence of evidence in support of the 'reasonable expectation of privacy' element requires Additional Charge II be dismissed as well as the balance of charges.

5. ***Relief Requested.*** That the Original Charge, Additional Charge I and Additional Charge II be dismissed.

6. ***Burden of Proof.*** In accordance with R.C.M 917, the government has the burden of negating the absence of any evidence proving the offense occurred "under circumstances in which [the alleged victim had] reasonable expectation of privacy."

7. ***Oral Argument.*** The defense requests oral argument.

Very respectfully,

[redacted]

J. W. Carver
Civilian Defense Counsel

//

//

CERTIFICATE OF SERVICE

On 18 August 2022, I caused this document to be served upon all counsel and the court.

Dated: 18 August 2022

Very respectfully,

[redacted]

J. W. CARVER, Declarant

APPELLATE EXHIBIT XLVI
PAGE 13 OF 13

UNITED STATES MARINE CORPS
NAVY AND MARINE CORPS TRIAL JUDICIARY
WESTERN JUDICIAL CIRCUIT
GENERAL COURT-MARTIAL

UNITED STATES **v.** **CHRISTOPHER F. PATTERSON** **FIRST LIEUTENANT** **U.S. MARINE CORPS**	**GOVERNMENT BENCH BRIEF ON ARTICLE 120c AND DEFENSE'S R.C.M. 917 MOTION (INDECENT RECORDING)** **17 August 2022**

1. **Nature of Motion**

The Government respectfully requests that the Court deny Defense's R.C.M. 917 motion, as the Defense's proposed interpretation of Article 120c is contrary to the plain text of the statute and binding precedent. As explained below, the requirements of R.C.M. 917 have not been met because the evidence for each of the charges and specifications is more than sufficient to sustain a conviction.

2. **Statement of Facts**

As the Defense concedes in its motion, "[t]he facts of this case are virtually uncontested" because "Lt Patterson made a full confession as to his conduct on 17 December 2020." Def. Mot. at 7. Specifically, 1stLt Patterson recorded, without their consent, dozens of men in various states of undress at his home, the men's locker room at the Paige Field House gym on Camp Pendleton, and a men's locker room aboard Marine Corps Base Quantico, Virginia. Def. Mot. at 1–2. The gym recordings were "accomplished by Lt Patterson's [devices,]" which "w[ere] set by Lt Patterson to record and . . . placed . . . in an area of the locker room where gym patrons congregated nude." *Id.* A more fulsome version of the facts is laid out in the Charge Sheet.

3. **Law and Analysis**

a. The Standard for Defense's R.C.M. 917 Motion

"A motion for a finding of not guilty shall be granted only in the absence of some evidence which,

together with all reasonable inferences and applicable presumptions, could reasonably tend to establish every essential element of an offense charged. The evidence shall be viewed in the light most favorable to the prosecution, without an evaluation of the credibility of witnesses." R.C.M. 917(d). When reviewing for legal sufficiency, the appellate courts consider "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *United States v. Wilson*, 76 M.J. 4, 6 (C.A.A.F. 2017) (emphasis in original) (citation omitted).

b. The Text of Article 120c

Article 120c of the UCMJ criminalizes three discrete actions—"indecent viewing," "indecent . . . visual recording," and "indecent . . . broadcasting." 10 U.S.C. § 920c(a)(2). With respect to "indecent . . . visual recording," Article 120c makes it a crime for "[a]ny person subject to this chapter" "without legal justification or lawful authorization" to "knowingly photograph[], videotape[], film[], or record[] by any means the private area of another person, without that other person's consent and under circumstances in which that other person has a reasonable expectation of privacy." *Id.* § 920c(a)(2). The UCMJ goes on to define "circumstances in which that other person has a reasonable expectation of privacy" to include "circumstances in which a reasonable person would believe that he or she could disrobe in privacy, without being concerned that an image of a private area of the person was being captured." *Id.* § 920c(d)(3)(A).[1]

c. Military Case Law

---

[1] At several points, the Defense suggests that this Court should consider Fourth Amendment case law in determining the meaning of "reasonable expectation of privacy." Def. Mot. at 6 (arguing that the phrase should not have "a wholly different meaning" in the context of Article 120c); *id.* (arguing that Congress "adopted the phrase from the 4th Amendment cases"); *id.* at 7–8 (relying on a Fourth Amendment case, *United States v. McCarthy*, 38 M.J. 398 (1993), for the proposition that "[a] private but common area confers no legitimate expectation of privacy"). But as the Defense later concedes, *id.* at 9–10, the military justice system has rejected that approach. *See United States v. Bessmertnyy*, 2019 CCA LEXIS 255, at *16 n.14 (A.F.C.C.A. June 14, 2019) ("[W]e are not at liberty to give new meaning to a term used in an element of an offense beyond its clear, statutorily-supplied definition . . . ."); *United States v. Lee*, 2017 CAA LEXIS 185, at *16 (A.F.C.C.A. March 14, 2017), *rev. denied*, 76 M.J. 455 (C.A.A.F. 2017) ("We reject Appellant's application of Fourth Amendment 'reasonable expectation of privacy' doctrine as it applies to Article 120c because the statutory language is clear and defines that phrase as it applies to this statute.").

Because Article 120c criminalizes three distinct forms of indecent conduct (viewing, recording, and broadcasting), the military appellate courts have consistently interpreted Article 120c to mean that an individual may consent to having their private areas *viewed* without consenting to having their private areas *recorded* or *broadcast*. More to the point, the courts have emphasized that an individual may maintain his reasonable expectation of privacy in not having his private areas recorded, even if by his actions he has forfeited his reasonable expectation of privacy in not having his private areas viewed. *See, e.g.*, *United States v. Simpson*, 2020 CCA LEXIS 67, at *19, *21 (N.M.C.C.A. March 11, 2020) (accepting that while a victim's consent to being viewed deprived her of a reasonable expectation of privacy in not being viewed, the fact that the victim "did not know her mother was recording her private areas" confirmed that the victim "maintained her reasonable expectation of privacy from *being recorded*") (emphasis in original); *United States v. Lohr*, 2020 CCA LEXIS 15 (N.M.C.C.A. January 17, 2020) (upholding the conviction of a Sailor who surreptitiously recorded his sexual activity with a prostitute where the prostitute had consented to the sexual activity but not its recording); *United States v. Raines*, 2014 CCA LEXIS 600, at *13 (N.M.C.C.A. August 21, 2014) ("[A]lthough all four female victims may have consented to sexual acts with the appellant, they all testified that they were completely unaware that their sexual activities with the appellant were being recorded and did not consent to their naked bodies or their participation in sexual acts being recorded."); *id.* (dismissing the argument that "by agreeing to have sex with him, [the victims] implicitly agreed to the recording" as "patently ridiculous" because even "agreeing to have sex with another does not remove all reasonable expectations of privacy").

The Air Force Court of Criminal Appeals' (AFCCA's) decision in *United States v. Bessmertnyy*, 2019 CCA LEXIS 255 (A.F.C.C.A. June 14, 2019) is particularly instructive. There, the Court upheld the conviction of an Airman who secretly recorded the intimate Skype video sessions he had shared with his girlfriend. The accused argued that because his victim had consented and even invited him to view her

exposed private areas while she performed sexual acts, she had had no reasonable expectation of privacy whatsoever. *Id.* at * 16–17. The Court flatly rejected that argument:

> Appellant[] . . . invites us to find that a person has no expectation of privacy, or loses what privacy she has, simply by agreeing to expose her private area to another. We disagree. A person who willingly shows her bare breasts, buttocks, and genitalia to an intimate partner would nonetheless have a reasonable expectation that her private area was not under the watchful eye of a camera operated by her partner, or the public. We find that [the victim]'s testimony that she was unaware she was being recorded combined with evidence of the private setting in which she exposed her private area to none other than Appellant did not undermine [the victim]'s expectation of privacy, much less one held by a reasonable person, and thus defeats this argument.
>
> *Id.*

Notably, the Court found that the victim had a reasonable expectation of privacy in not having her private areas recorded even though she had previously consented to having the accused record her private areas:

> Appellant[] . . . [also] invites us to focus on the circumstances of recorded sexual acts when [the victim] acknowledges she was aware of being recorded instead of the circumstances of the charged recordings when she asserts she was not. But the term, "under circumstances in which" another person has a "reasonable expectation of privacy" directs the factfinder and this court to look no further than circumstances when each recording was made.
>
> *Id.* at 17.

The Defense asserts that there is insufficient evidence to convict the Accused of indecent recording because "the average reasonable gymnasium patron" could not have "reasonably harbor[ed] a reasonable expectation of privacy while naked or partially clothed in the communal areas of [the] . . . public locker rooms where the conduct occurred." Def. Mot. at 7. But as the above case law demonstrates, that is incorrect. Even assuming *arguendo* that the victims in this case lost *all* reasonable expectation of privacy in not having their private parts viewed (notwithstanding the fact that they chose to change and shower in areas where their private parts would be hidden from the vast majority of the general public, including the entirety of the opposite sex), there is overwhelming evidence that the victims still retained a reasonable

expectation of privacy in not having their private areas *recorded*. Every single one of the participating victims in this case—even the ones that have acknowledged they "expected" or "consented" to be seen naked, Def. Mot. at 5—has testified that they did not consent to the Accused *recording* their private areas.

The Defense also places great emphasis on the fact that the Accused never placed a camera "within a private stall." Def. Mot. at 2. But nothing in Article 120c or its associated case law requires that an accused invade his victim's privacy to the greatest extent possible before he can be convicted. Rather, Article 120c requires only that the accused record the victim "under circumstances in which that other person has *a* reasonable expectation of privacy." 10 U.S.C. § 920c(a)(2) (emphasis added). Whatever amount of privacy can be reasonably expected in a given situation is entitled to protection. Just because the Accused could have violated his victims' privacy even further by placing cameras in individual stalls or directly inside of toilet bowls does not mean that he did not violate his victims' privacy by placing secret cameras in the more common private areas of the locker room where a sense of privacy still exists. As many of the Victim's testified to, and as common sense dictates, the purpose of a locker room and shower is to get naked, hygiene, and change clothes. The locker room is segregated by sex and is separate and apart from the rest of the gym, base, and public at large.

Unsurprisingly, the appellate military courts have routinely upheld the Article 120c convictions of those who secretly record the private areas of unconsenting individuals—even when those individuals have voluntarily displayed their private in more common private areas such as locker rooms. *See, e.g.*, *United States v. Baratta*, 77 M.J. 691, 692 (N.M.C.C.A. 2018) (upholding the conviction of a Sailor who "[f]or nearly four years, . . . recorded unsuspecting individuals in the locker room at a naval installation gym" by "hid[ing] a small camera in the heel of his running shoe and manually record[ing] colleagues showering"); *United States v. Ali*, 2022 CCA LEXIS 427, at *4 (N.M.C.C.A. July 21, 2022) (upholding the conviction of a Sailor who "surreptitiously made over 60 video recordings of fellow male Sailors exiting the shower in the forward head" of the *USS Alabama*, specifically noting that "[n]one of the Sailors consented to being video recorded in this location, where they had an expectation of privacy"). *See also United States v. Rocha*, 2020 CCA LEXIS 317, at *18–19 (N.M.C.C.A. September 17, 2020)

(approving of an AFCCA case in which a victim was found to have had a reasonable expectation of privacy in not being recorded even though she was "voluntarily naked in a vehicle parked in a public area," with her feet hanging outside after a sexual rendezvous).[2]

Indeed, the facts of *Baratta* are nearly identical to the facts of this case. In *Baratta*, the accused not only made videos of unsuspecting individuals in a Navy locker room, but he also placed cameras in his home to "surreptitiously record house guests undressing and showering." 77 M.J. at 692. In holding that the accused's sentence of three years' confinement and a dismissal was not excessive, the court held that "[i]n a locker room on a military installation," the accused "violated the privacy of unsuspecting men who reasonably assumed no one would record them undressing and showering." *Id.* at 693. The Court then observed that the accused's "deception and betrayal were even greater in his own home." *Id.* "By planting hidden cameras in a bedroom and bathroom, carefully positioning them to capture guests in bed, using the toilet, or exiting the shower, regularly downloading the recorded video to his computer, and methodically sorting and storing the files, the [accused] evidenced a sustained intent to invade the privacy of trusting house guests for his own sexual gratification. The voyeurism lasted for four years and ended only when the [accused] was caught." *Id.*

Whatever 1stLt Patterson's victims' reasonable expectation of privacy may have been in the locker room *vis a vis* having their private parts viewed, all the evidence presented has shown that the victims did not consent to their being recorded. Accordingly, the victims in this case maintained their reasonable expectation of privacy *in not being recorded*, and the Accused violated UCMJ Article 120c by knowingly recording their private areas without their consent and "under circumstances in which [they] ha[d] a

---

[2] The favorably cited AFCCA case was *United States v. Lee*, 2017 CCA LEXIS 185 (A.F.C.C.A. 2017). In concluding that the victim had a reasonable expectation of privacy in not being recorded under Article 120(c)(d)(3), the Court noted that the victim and her partner "left the party and went to the parked car intending to engage in sexual conduct," and that "[t]he logical (and only reasonable) inference to be drawn from that conduct is that both . . . wanted to disrobe and engage in that activity in private, outside the view of other partygoers (the 'public' in this case)." *Id.* at *16. Notably, the Court held that "[a]lthough other partygoers eventually found them and apparently watched some of their activity, that alone does not preclude a finding that [the victim] did not reasonably think she would be free from prying eyes." *Id.* at *16–17. Ultimately, the Court concluded: "We cannot say that when viewing the evidence in the light most favorable to the Prosecution, a reasonable fact-finder could not have found that [the victim] had a reasonable expectation of privacy (as defined by Article 120c) generally . . . ." *Id.* The facts of this case compel the same conclusion.

reasonable expectation of privacy." 10 U.S.C. § 920c(a)(2).

The Defense is essentially asking the Court to ignore on point case law and common sense in their motion. The implications for the Defense position are mind-boggling. If their motion were to be granted, it would stand for the proposition that it is perfectly legal for someone to enter a gym shower/changing area of any sex and record patrons nude with no consequences.[3] Additionally, if, as Defense asserts, locker rooms and showers have no privacy, every single nude patron would be culpable of indecent exposure. The Defense motion, and its logical conclusions, have no bearing in fact or law. Their motion must be denied.

4. **Relief Requested**. The government requests that the Court deny the Defense's motion.

5. **Burden of Proof**. "Except as otherwise provided in this Manual the burden of persuasion on any factual issue the resolution of which is necessary to decide a motion shall be on the moving party." R.C.M. 905.

6. **Oral Argument**. The Government respectfully requests oral argument.

[redacted]
K. D. CARTER
Captain, U.S. Marine Corps
Trial Counsel

CERTIFICATE OF SERVICE

This motion was served upon defense counsel and the court electronically on 18 August 2022.

[redacted]
K. D. CARTER
Captain, U.S. Marine Corps
Trial Counsel

---

[3] For a broad overview of the historical developments of criminal offenses involving surreptitious recordings please *see* COMMENT:RE-THINKING PRIVACY: PEEPING TOMS, VIDEO VOYEURS, AND FAILURE OF THE CRIMINAL LAW TO RECOGNIZE A REASONABLE EXPECTATION OF PRIVACY IN THE PUBLIC SPACE, 49 Am. U.L. Rev. 1127.

REQUESTS

WESTERN JUDICIAL CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY
UNITED STATES MARINE CORPS
CAMP PENDLETON, CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. CHRISTOPHER F. PATTERSON, FIRST LIEUTENANT, USMC, Accused.	1ST LIEUTENANT CHRISTOPHER F. PATTERSON'S EXPERT CONSULTANT REQUEST, SUPPORTING DECLARATION OF COUNSEL, and EXHIBITS

TO: THE PLAINTIFF, BY AND THROUGH CAPTAIN KADIAN D. CARTER, U.S. MARINE CORPS, and CAPTAIN PATRICK E. FLEMING CAPTAIN, U.S. MARINE CORPS, TRIAL COUNSELS IN THE ABOVE-ENTITLED MATTER,

CHRISTOPHER F. PATTERSON, FIRST LIEUTENANT, USMC, the accused in the above-referenced matter, by and through the undersigned civilian defense counsel, in association with detailed defense attorneys, Captain Kevin M. Courtney, USMC, and Captain Thomas J. Giblin, III, USMC, respectfully requests the Convening Authority on behalf of the Plaintiff, per Rules for Courts-Martial, Rule 703(d), authorize the employment of, and fix the compensation for, the following expert consultant: [redacted] **Psy.D.**. Dr. [redacted] is the Director of Intrapsychic Offense-specific Treatment. He routinely performs forensic evaluations and consultations to determine the existence of mental, emotional and/or psychological conditions suffered by individuals pending criminal proceedings. He performs this works on behalf of the United States government pursuant to contracts with United States Federal Probation, United States Pretrial Services, and the City of San Diego, as well as for members of the private bar, as in the instant case. His addresses, including his email address, and telephone numbers are: [redacted]

[redacted] Dr. [redacted] Curriculum Vitae and Biography is attached as "Exhibit A" and "Exhibit B." The defense has a substantial and good faith belief that the "the employment at Government expense of" Dr. [redacted] as an "consultant is considered necessary, for the reasons below.

Dr. [redacted] employment as an expert consultant is considered necessary because the defense has a good faith and substantial belief that the offenses charged in the current charge sheet are a consequence of the accused's mental, emotional and psychological condition at the time of the alleged offenses, such that 1stLT Christopher F. Patterson, USMC, was clinically susceptible to a diagnosable and [redacted], and the commission of the charged offenses was a proximate result of is [redacted] condition. The defense notes that 1stLT Patterson did [redacted] for his condition and was prescribed medications by a Navy doctor. Depending on the results of Dr. [redacted] expert consultation, the defense tentatively intends to contend at trial that 1stLT Patterson is legally entitled to raise the affirmative defense of lack of mental responsibility per R.C.M. 916(k)(1).

The defense has a good faith and substantial belief that the offenses charged in the current charge sheet, at the time of their commission were as a proximate result of a severe mental disease or defect then suffered by 1stLt Patterson, who, as a proximate result, was unable to appreciate the nature and quality or the wrongfulness of his act. Since the Plaintiff is by law afforded the advantage at trial of the presumption that the accused is presumed to have been mentally responsible at the time of the alleged offense, and moreover, since the accused by law is required to rebut this presumption by clear and convincing evidence that he was not mentally responsible at the time of the alleged offense, it is necessary, crucial and only fair, that this request for Dr. [redacted] services be granted.

Dr. [redacted] work is described in "Exhibit A." His Curriculum Vitae is set forth in "Exhibit B." The estimated cost of Dr. [redacted] expert consultation services is $5,200.00. See, "Exhibit C."

Further support for this request is set forth in the following Declaration of Counsel which is incorporated by reference here as though set out in full.

Dated: 1 June 2022

Very respectfully,

[redacted]

J. W. CARVER
Attorney for the Accused,
Christopher F. Patterson, 1st Lieutenant, USMC

//

//

DECLARATION OF COUNSEL

IN SUPPORT OF 1ST LIEUTENANT CHRISTOPHER F. PATTERSON'S

EXPERT CONSULTANT REQUEST.

I, JEFFREY W. CARVER, the undersigned, do hereby declare under the penalty of perjury in accordance with the state laws of California and the law of the United States of America that the following is true and correct, and if called upon to testify, could and would swear under an oath that:

1. I am a practicing attorney and have been licensed by, and have continuously been a member in good standing with, the State Bar of California since 1976.
2. I have been practicing law from my office in San Diego since 1988.
3. I am a retired Lieutenant Commander, JAGC, USN.
4. My practice chiefly deals with the defense of criminal cases, in state and federal courts, with an emphasis on military courts-martial.
5. I have also been engaged by governments to provide legal services, and, for example, I was retained by the County of San Diego to defend a homicide detective with the San Diego County District Attorney's Office on a federal civil rights claim which I litigated to the United States Supreme Court.
6. Through my practice I have become familiar with Dr. [redacted] Psy.D..
7. I would rate Dr. [redacted] reputation in the local San Diego legal community as impeccable.

8. He is well-regarded by attorneys of the defense bar as well as those who are prosecutors.

9. I am a member of the San Diego Criminal Defense Bar Association and I subscribed to its online bulletin board service.

10. When I recently posted a query to fellow members of the San Diego Criminal Defense Bar Association on the best forensic psychologist in San Diego, the answer from every attorney who responded was Dr. [redacted]

11. I agree with the assessment of my colleagues.

12. I believe Dr. [redacted] is fair, effective, and charges fees which are in line with other practitioners in the field locally.

13. I believe his assistance on the instant case is necessary for the defense team to adequately and effectively prepare for a fair trial in this matter.

Executed this 1 June 2022, at San Diego, California, under penalty of perjury.

[redacted]

J. W. CARVER
Declarant

//

//

NOTICES

NAVY-MARINE CORPS TRIAL JUDICIARY
WESTERN JUDICIAL CIRCUIT
GENERAL COURT-MARTIAL

UNITED STATES	)	
	)	**VICTIMS' LEGAL COUNSEL**
v.	)	**NOTICE OF APPEARANCE**
	)	**ON BEHALF OF**
CHRISTOPHER F. PATTERSON	)	**Capt [redacted]**
FIRST LIEUTENANT	)	
U.S. MARINE CORPS	)	**19 May 2022**

---

1. I am Captain Austin L. Swink, U.S. Marine Corps, Victims' Legal Counsel, Marine Corps Air Station Miramar. I am admitted to practice law and currently in good standing in the state of Florida and am certified in accordance with Article 27(b) and sworn in accordance with Article 42(a) of the Uniform Code of Military Justice. I hereby enter my appearance in the above captioned court-martial on behalf of Captain [redacted] U.S. Marine Corps, a named victim in this case.

2. The Regional Victims' Legal Counsel detailed me to represent Capt [redacted] and I have entered into an attorney-client relationship with him. I have not acted in any manner which might disqualify me in the above captioned court-martial.

3. Capt [redacted] reserves the right to be present throughout the court-martial in accordance with Military Rule of Evidence 615, with the exception of closed proceedings that do not involve him.

4. To permit a meaningful exercise of Capt [redacted] rights and privileges, I respectfully request that this Court direct the defense and government to provide me with informational copies of motions and accompanying papers filed pertaining to issues that fall under Military Rule of Evidence 412, 513, 514, and 615 and any other matter in which Capt [redacted] rights and privileges are addressed.

5. Capt [redacted] has limited standing in this court-martial and reserves the right to make factual statements and legal arguments himself or through counsel.

6. My current contact information is as follows:

Building 2244
MCAS Miramar
San Diego, CA 92145
[redacted]

Respectfully submitted this 19th day of May 2022,

[redacted]
A. L. SWINK

Appellate Exhibit \
Page 1 of 1

DEPARTMENT OF THE NAVY
NAVY-MARINE CORPS TRIAL JUDICIARY
WESTERN JUDICIAL CIRCUIT

UNITED STATES	)	
	)	
v.	)	**VICTIMS' LEGAL COUNSEL**
	)	**NOTICE OF APPEARANCE**
CHRISTOPHER PATTERSON	)	**ON BEHALF OF**
FIRST LIEUTENANT	)	**GUNNERY SERGEANT** [redacted]
U.S. MARINE CORPS	)	

1. I, Captain Joseph D. Zottola, USMC, Victims' Legal Counsel, Marine Corps Base Camp Pendleton, CA, admitted to practice law and currently in good standing in the Commonwealth of Pennsylvania and am certified in accordance with Article 27(b) and sworn in accordance with Article 42(a) of the Uniform Code of Military Justice, hereby enter my appearance in the above captioned court-martial on behalf of Gunnery Sergeant [redacted] a named victim in the case.

2. The Regional Victims' Legal Counsel-West, Marine Corps Victims' Legal Counsel Organization, detailed me to represent GySgt [redacted] and I have entered into an attorney-client relationship with GySgt [redacted] I have not acted in any manner which might disqualify me in the above captioned court-martial.

3. GySgt [redacted] reserves the right to be present throughout the court-martial in accordance with Military Rule of Evidence 615, with the exception of closed proceedings that do not involve him.

4. To permit a meaningful exercise of GySgt [redacted] rights and privileges, I respectfully request that this Court direct the defense and government to provide me with informational copies of motions and accompanying papers filed pertaining to issues that fall under Military Rules of Evidence 412, 513, 514, and 615 and in which GySgt [redacted] rights and privileges are addressed.

5. GySgt [redacted] has limited standing in this court-martial, and GySgt [redacted] reserves the right to make factual statements and legal arguments himself or through counsel.

6. My current contact information is as follows:

Building 53505
Camp Pendleton, CA 92055
[redacted]

Respectfully submitted this 20th day of May 2022.

[redacted]
J. D. ZOTTOLA
Captain, USMC

Appellate Exhibit \\
Page 1 of 1

DEPARTMENT OF THE NAVY
NAVY-MARINE CORPS TRIAL JUDICIARY
WESTERN JUDICIAL CIRCUIT

U N I T E D S T A T E S	)	
	)	VICTIM LEGAL COUNSEL
V.	)	NOTICE OF APPEARANCE ON
	)	BEHALF OF SGT [redacted] USMC
CHRISTOPHER F. PATTERSON	)	
FIRST LIEUTENANT	)	
U.S. MARINE CORPS	)	
	)	

1. I, Captain Brett M. Johnson, USMC, Victim Legal Counsel, MCAGCC, Twentynine Palms, CA admitted to practicing law and currently in good standing in the State of New Mexico and, although not appearing as a defense counsel or trial counsel, certified in accordance with Article 27(b), UCMJ, and sworn in accordance with Article 42 (a), UCMJ, hereby enter my appearance in the above captioned court-martial session of court on behalf of Sergeant [redacted] USMC, a named victim in the charges.

2. On 22 October 2021, I, Captain Brett M. Johnson, Marine Corps Victims' Legal Counsel Organization, was detailed to represent Sergeant [redacted] and I have entered into an attorney-client relationship with him. I have not acted in any manner which might disqualify me in the above captioned court-martial.

3. I have reviewed the Navy-Marine Corps Trial Judiciary Uniform Rules of Practice.

4. Sergeant [redacted] reserves the right to be present throughout the court-martial in accordance with Military Rule of Evidence 615, with the exception of closed proceedings that do not involve Sergeant [redacted]

5. To permit a meaningful exercise of Sergeant [redacted] rights and privileges, I respectfully request that this Court direct the defense and government to provide me with informational copies of motions and accompanying papers filed pertaining to issues that fall under Military Rules of Evidence 412, 513, 514, and 615 and in which Sergeant [redacted] rights and privileges are addressed.

6. Sergeant [redacted] recognizes he has limited standing in this court-martial, however, he reserves the right to make factual

Appellate Exhibit III
Page 1 of 2

statements and legal arguments himself or through counsel when appropriate.

7. My current contact information is as follows:

Room 82, Building 1417
MCAGCC, Twentynine Palms, CA 92278
[redacted]

Respectfully submitted this 20th day of May 2022,

[redacted]
B. M. JOHNSON

CERTIFICATE OF SERVICE

I certify that a copy of this Notice of Appearance was served upon the Military Judge, Trial Counsel, and Defense Counsel on 20 May 2022 via email and submission to the Judiciary Share Point account.

[redacted]
B. M. JOHNSON

Appellate Exhibit III
Page 2 of 2

WESTERN JUDICIAL CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY

U N I T E D S T A T E S	)	
	)	
v.	)	COURT-MARTIAL NOTICE
1ST LT CHRISTOPHER R. PATTERSON, USMC	)	OF APPEARANCE
	)	

1. I, Jeffrey W. Carver, admitted to practice law, currently in good standing before the bar of the highest court of the State(s) of California as well as before the bar of the United States Supreme Court and the bar of the Court of Appeals of the Armed Forces, and, having appeared as counsel in United States military courts-martial on approximately 500 occasions during my legal career, military or civilian, hereby enter appearance as attorney on behalf of the accused in the above captioned court-martial to do all that is necessary in connection therewith. I certify that I am not now de-certified or suspended from practice in Navy-Marine Corps courts-martial by the Judge Advocate General of the Navy.

2. I hereby certify that I have obtained a copy and agree to abide by: (1) the Rules for Courts-Martial and the Military Rules of Evidence set forth in the current editions of the Manual Courts-Martial; (2) United States, JAG INSTRUCTION 5803.1 series (Professional Conduct of Attorneys Practicing Under the Supervision of the Judge Advocate General); (3) NAVMARCORTRIJUDAC INSTRUCTION 5810.5B (Uniform Rules of Practice Before Navy-Marine Corps Courts-Martial); (4) WESTERNJUDCIRINST 5810.1 (Western Judicial Circuit Rules of Court); and, (5) if published, the local District Rules of Practice for the Judicial District within which the above-captioned is currently pending. I further certify and agree to provide, upon request by the Circuit Military Judge or designee, a copy of the professional responsibility rules applicable to the Bar of the State in which I am licensed to practice law.

3. Unless indicated otherwise by the accused, all post-trial matters, including the staff judge advocate's or legal officer's recommendation and the accused's copy of the record of trial should be served on the undersigned. For purposes of this trial and all subsequent review matters, notice to and service upon the undersigned may be affected at the address listed below.

APPELLATE EXHIBIT U (5)
PAGE 1 OF 2

WESTERNJUDCIRINST 5810.1

Subj: NOTICE OF APPEARANCE ICO US V. 1ST LT CHRISTOPHER PATTERSON, USMC

4. Under penalty of perjury, I swear or affirm all the information on this notice of appearance is true, correct and complete.

5. Signed this date, 23 MAY, 2022

[redacted]

Signature

[redacted] J.W. CARVER

Printed full name under which licensed to practice law: Jeffrey W. Carver

State(s)admitted to practice law: California

State Bar Number(s): [redacted]

Mailing Address: [redacted]

Office Telephone Number: [redacted]

Facsimile Telephone Number: [redacted]

Email Address: [redacted]

APPELLATE EXHIBIT U
PAGE 1 OF 2

DEPARTMENT OF THE NAVY
NAVY-MARINE CORPS TRIAL JUDICIARY
WESTERN JUDICIAL CIRCUIT

UNITED STATES	)	
	)	
v.	)	**VICTIMS' LEGAL COUNSEL**
	)	**NOTICE OF APPEARANCE**
CHRISTOPHER PATTERSON	)	**ON BEHALF OF**
FIRST LIEUTENANT	)	**SERGEANT** [redacted]
U.S. MARINE CORPS	)	

1. I, Captain Joseph D. Zottola, USMC, Victims' Legal Counsel, Marine Corps Base Camp Pendleton, CA, admitted to practice law and currently in good standing in the Commonwealth of Pennsylvania and am certified in accordance with Article 27(b) and sworn in accordance with Article 42(a) of the Uniform Code of Military Justice, hereby enter my appearance in the above captioned court-martial on behalf of Sergeant [redacted] a named victim in the case.

2. The Regional Victims' Legal Counsel-West, Marine Corps Victims' Legal Counsel Organization, detailed me to represent Sgt [redacted] and I have entered into an attorney-client relationship with Sgt [redacted] I have not acted in any manner which might disqualify me in the above captioned court-martial.

3. Sgt [redacted] reserves the right to be present throughout the court-martial in accordance with Military Rule of Evidence 615, with the exception of closed proceedings that do not involve him.

4. To permit a meaningful exercise of Sgt [redacted] rights and privileges, I respectfully request that this Court direct the defense and government to provide me with informational copies of motions and accompanying papers filed pertaining to issues that fall under Military Rules of Evidence 412, 513, 514, and 615 and in which Sgt [redacted] rights and privileges are addressed.

5. Sgt [redacted] has limited standing in this court-martial, and Sgt [redacted] reserves the right to make factual statements and legal arguments himself or through counsel.

6. My current contact information is as follows:

Building 53505
Camp Pendleton, CA 92055
[redacted]

Respectfully submitted this 22th day of July 2022.

[redacted]
J. D. ZOTTOLA
Captain, USMC

Appellate Exhibit XXVII (28)
Page 1 of 1

WESTERN JUDICIAL CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY
UNITED STATES MARINE CORPS
CAMP PENDLETON, CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. CHRISTOPHER F. PATTERSON, First Lieutenant, U.S. Marine Corps, Accused.	UNITED STATES MARINE CORPS FIRST LIEUTENANT CHRISTOPHER F. PATTERSON'S NOTICE OF PLEAS AND FORUM

1. Pleas: In accordance with the current Trial Management Order, ('TMO'), the accused, 1st Lt Christopher F. Patterson, USMC, hereby gives notice of his pleas to the charges and specifications in the above-referenced matters as follows. To the Charge of violation of Article 120c, and the specifications thereunder, 1st Lt Patterson pleads '**Not Guilty**.' To the first Additional Charge of a violation of Article 120c, and the specifications thereunder, 1st Lt Patterson pleads '**Not Guilty**.' To Additional Charge II of a violation of Article 133, and the sole specification thereunder, 1st Lt Patterson pleads '**Not Guilty**.' To all charges and specifications presently before the court, 1st Lt Patterson pleads '**Not Guilty**.'

2. Forum: In accordance with the current TMO, 1st Lt Patterson, hereby gives notice of his choice of forum for the trial of the charges and specifications in the above-referenced matters as follows. 1st Lt Patterson chooses trial by members.

Very respectfully,

[redacted]

J. W. Carver
Civilian Defense Counsel for 1st Lt Christopher F. Patterson, USMC

//

Appellate Exhibit XXIV
Page 1 of 2

CERTIFICATE OF SERVICE

On 20 July 2022, I caused this document to be served upon all counsel and the court.

Dated: 20 July 2022

Very respectfully,

[redacted]

J. W. CARVER, Declarant

Appellate Exhibit XXIX
Page 2 of 2

COURT RULINGS & ORDERS

THERE ARE NO COURT RULINGS AND ORDERS

STATEMENT OF TRIAL RESULTS

STATEMENT OF TRIAL RESULTS

SECTION A - ADMINISTRATIVE

1. NAME OF ACCUSED (last, first, MI)	2. BRANCH	3. PAYGRADE	4. DoD ID NUMBER
PATTERSON, Christopher, F.	Marine Corps	O-2	[redacted]

5. CONVENING COMMAND	6. TYPE OF COURT-MARTIAL	7. COMPOSITION	8. DATE SENTENCE ADJUDGED
1st Marine Logistics Group	General	Judge Alone - MJA16	Aug 19, 2022

SECTION B - FINDINGS

SEE FINDINGS PAGE

SECTION C - TOTAL ADJUDGED SENTENCE

9. DISCHARGE OR DISMISSAL	10. CONFINEMENT	11. FORFEITURES	12. FINES	13. FINE PENALTY
Dismissal	36 Months	N/A	N/A	N/A

14. REDUCTION	15. DEATH	16. REPRIMAND	17. HARD LABOR	18. RESTRICTION	19. HARD LABOR PERIOD
N/A	Yes ○ No ◉	Yes ○ No ◉	Yes ○ No ◉	Yes ○ No ◉	N/A

20. PERIOD AND LIMITS OF RESTRICTION

N/A

SECTION D - CONFINEMENT CREDIT

21. DAYS OF PRETRIAL CONFINEMENT CREDIT	22. DAYS OF JUDICIALLY ORDERED CREDIT	23. TOTAL DAYS OF CREDIT
0	0	0 days

SECTION E - PLEA AGREEMENT OR PRE-TRIAL AGREEMENT

24. LIMITATIONS ON PUNISHMENT CONTAINED IN THE PLEA AGREEMENT OR PRE-TRIAL AGREEMENT

There was no plea agreement.

SECTION F - SUSPENSION OR CLEMENCY RECOMMENDATION

25. DID THE MILITARY JUDGE RECOMMEND SUSPENSION OF THE SENTENCE OR CLEMENCY?		26. PORTION TO WHICH IT APPLIES	27. RECOMMENDED DURATION
	Yes ○ No ◉		

28. FACTS SUPPORTING THE SUSPENSION OR CLEMENCY RECOMMENDATION

SECTION G - NOTIFICATIONS

29. Is sex offender registration required in accordance with appendix 4 to enclosure 2 of DoDI 1325.07?	Yes ◉ No ○
30. Is DNA collection and submission required in accordance with 10 U.S.C. § 1565 and DoDI 5505.14?	Yes ◉ No ○
31. Did this case involve a crime of domestic violence as defined in enclosure 2 of DoDI 6400.06?	Yes ○ No ◉
32. Does this case trigger a firearm possession prohibition in accordance with 18 U.S.C. § 922?	Yes ◉ No ○

SECTION H - NOTES AND SIGNATURE

33. NAME OF JUDGE (last, first, MI)	34. BRANCH	35. PAYGRADE	36. DATE SIGNED	38. JUDGE'S SIGNATURE
GOODE, Andrea, C.	Marine Corps	O-5	Aug 19, 2022	GOODE.ANDREA.CHAMPAGNE.[redacted] Digitally signed by GOODE.ANDREA.CHAMPAGNE.[redacted] Date: 2022.08.19 15:09:17 -07'00'

37. NOTES

STATEMENT OF TRIAL RESULTS - FINDINGS

SECTION I - LIST OF FINDINGS

CHARGE	ARTICLE	SPECIFICATION	PLEA	FINDING	ORDER OR REGULATION VIOLATED	LIO OR INCHOATE OFFENSE ARTICLE	DIBRS
Charge	120c	Specification 1:	**Not Guilty**	Not Guilty	N/A		120CC1
		Offense description	Indecent recording				
		Specification 2:	**Not Guilty**	Guilty	N/A		120CC1
		Offense description	Indecent recording				
		Specification 3:	**Not Guilty**	Guilty	N/A		120CC1
		Offense description	Indecent recording				
		Specification 4:	**Not Guilty**	Guilty	N/A		120CC1
		Offense description	Indecent recording				
		Specification 5:	**Not Guilty**	Guilty	N/A		120CC1
		Offense description	Indecent recording				
		Specification 6:	**Not Guilty**	Guilty	N/A		120CC1
		Offense description	Indecent recording				
		Specification 7:	**Not Guilty**	Guilty	N/A		120CC1
		Offense description	Indecent recording				
Additional Charge I	120c	Specification 1:	**Not Guilty**	Guilty	N/A		120CC1
		Offense description	Indecent recording				
		Specification 2:	**Not Guilty**	Guilty by Exception	N/A		120CC1
		Offense description	Indecent recording				
		Exceptions and Substitutions	Guilty except for the words "on divers occasions between on or about 9 January 2020 and". To the excepted words, not guilty. To the specification as excepted, guilty.				
		Specification 3:	**Not Guilty**	Guilty by Exception	N/A		120CC1
		Offense description	Indecent recording				
		Exceptions and Substitutions	Guilty except for the words "on divers occasions". To the excepted words, not guilty. To the specification as excepted, guilty.				
		Specification 4:	**Not Guilty**	Guilty	N/A		120CC1
		Offense description	Indecent recording				
		Specification 5:	**Not Guilty**	Guilty	N/A		120CC1
		Offense description	Indecent recording				
		Specification 6:	**Not Guilty**	Guilty	N/A		120CC1
		Offense description	Indecent recording				
		Specification 7:	**Not Guilty**	Guilty	N/A		120CC1
		Offense description	Indecent recording				
		Specification 8:	**Not Guilty**	Guilty	N/A		120CC1
		Offense description	Indecent recording				
		Specification 9:	**Not Guilty**	Guilty by E&S	N/A		120CC1
		Offense description	Indecent recording				

STATEMENT OF TRIAL RESULTS - FINDINGS

SECTION I - LIST OF FINDINGS

CHARGE	ARTICLE	SPECIFICATION	PLEA	FINDING	ORDER OR REGULATION VIOLATED	LIO OR INCHOATE OFFENSE ARTICLE	DIBRS
Exceptions and Substitutions	Guilty except for the language "28 July 2019" substituting the language "10 June 2019". To the excepted language, not guilty. To the specification as excepted and substituted, guilty.						
Additional Charge II	133	Specification:	**Not Guilty**	Dismissed	N/A		133-D-
		Offense description	Conduct unbecoming generally				
		Withdrawn and Dismissed	Conditionally dismissed on the grounds of unreasonable multiplication of charges.				

MILITARY JUDGE ALONE SEGMENTED SENTENCE

SECTION J - SENTENCING

CHARGE	SPECIFICATION	CONFINEMENT	CONCURRENT WITH	CONSECUTIVE WITH	FINE
Charge	Specification 1:	N/A	N/A	N/A	N/A
	Specification 2:	2 Months	N/A	Ch I.,3,4,5, Add Ch I 1,2,3,4,5,6,7.8,9	None
	Specification 3:	5 Months	N/A	Ch I.,2,4,5, Add Ch I 1,2,3,4,5,6,7,8,9	None
	Specification 4:	2 Months	N/A	Ch I. 2,3,5, Add Ch I 1,2,3,4,5,6,7,8,9	None
	Specification 5:	3 Months	N/A	Ch I.,2,3,4, Add Ch I 1,2,3,4,5,6,7,8,9	None
	Specification 6:	2 Months	Ch I, Specification 7	N/A	None
	Specification 7:	2 Months	Ch I, Specification 6	N/A	None
Additional Charge I	Specification 1:	5 Months	N/A	Ch I.,2,3,4,5, Add Ch I 2,3,4,5,6,7,8,9	None
	Specification 2:	2 Months	N/A	Ch I.,2,3,4,5, Add Ch I 1,3,4,5,6,7,8,9	None
	Specification 3:	2 Months	N/A	Ch I.,2,3,4,5, Add Ch I 1,2,4,5,6,7,8,9	None
	Specification 4:	2 Months	N/A	Ch I.,2,3,4,5, Add Ch I 1,2,3,5,6,7,8,9	None
	Specification 5:	2 Months	N/A	Ch I.,2,3,4,5, Add Ch I 1,2,3,4,6,7,8,9	None
	Specification 6:	2 Months	N/A	Ch I.,2,3,4,5, Add Ch I 1,2,3,4,5,7,8,9	None
	Specification 7:	3 Months	N/A	Ch I.,2,3,4,5, Add Ch I 1,2,3,4,5,6,8,9	None
	Specification 8:	2 Months	N/A	~~Ch I.,2,3,4,5, Add Ch I~~ 1,2,3,4,5,6,7,9	None

Specification 9:	2 Months	N/A	Example: I,2, I,4, II,1	Ch I.,2,3,4,5, Add Ch I 1,2,3,4,5,6,7,8	
Additional Charge II	Specification:	N/A	N/A	N/A	N/A

SECTION J - SENTENCING

CONVENING AUTHORITY'S ACTIONS

POST-TRIAL ACTION

SECTION A - STAFF JUDGE ADVOCATE REVIEW

1. NAME OF ACCUSED (LAST, FIRST, MI)	2. PAYGRADE/RANK	3. DoD ID NUMBER
Patterson, Christopher F.	O2	[redacted]

4. UNIT OR ORGANIZATION	5. CURRENT ENLISTMENT	6. TERM
Combat Logistics Regiment 17, 1st Marine Logistics Group	03-Jun-2017	Indefinite

7. CONVENING AUTHORITY (UNIT/ORGANIZATION)	8. COURT-MARTIAL TYPE	9. COMPOSITION	10. DATE SENTENCE ADJUDGED
1st Marine Logistics Group	General	Judge Alone - MJA16	19-Aug-2022

Post-Trial Matters to Consider

11. Has the accused made a request for deferment of reduction in grade?	○ Yes	◉ No
12. Has the accused made a request for deferment of confinement?	○ Yes	◉ No
13. Has the accused made a request for deferment of adjudged forfeitures?	○ Yes	◉ No
14. Has the accused made a request for deferment of automatic forfeitures?	◉ Yes	○ No
15. Has the accused made a request for waiver of automatic forfeitures?	◉ Yes	○ No
16. Has the accused submitted necessary information for transferring forfeitures for benefit of dependents?	◉ Yes	○ No
17. Has the accused submitted matters for convening authority's review?	◉ Yes	○ No
18. Has the victim(s) submitted matters for convening authority's review?	○ Yes	◉ No
19. Has the accused submitted any rebuttal matters?	◉ Yes	○ No
20. Has the military judge made a suspension or clemency recommendation?	○ Yes	◉ No
21. Has the trial counsel made a recommendation to suspend any part of the sentence?	○ Yes	◉ No
22. Did the court-martial sentence the accused to a reprimand issued by the convening authority?	○ Yes	◉ No

23. Summary of Clemency/Deferment Requested by Accused and/or Crime Victim, if applicable.

– The SJA consulted with the Convening Authority and explained his clemency authority under Art. 60, UCMJ.

– On 25 Aug 22, Civilian Defense Counsel submitted a letter dated 25 August 2022, requesting the deferment of automatic forfeitures. On 8 Sep 22, Civilian Defense Counsel submitted a letter dated 8 September 2022, requesting the waiver of automatic forfeitures for a period of six months.

– CONTINUED ON PAGE 3

24. Convening Authority Name/Title	25. SJA Name
Brigadier General P. N. FRIETZE/ Commanding General	Lieutenant Colonel [redacted]

26. SJA signature	27. Date
[redacted]	1 November 2022

S I N B - CONVENING AUTHORITY ION

28. Having reviewed all matters submitted by the accused and the victim(s) pursuant to R.C.M. 1106/1106A, and after being advised by the staff judge advocate or legal officer, I take the following action in this case: [If deferring or waiving any punishment, indicate the date the deferment/waiver will end. Attach signed reprimand if applicable. Indicate what action, if any, taken on suspension recommendation(s) or clemency recommendations from the judge.]

- I have considered all matters submitted by the accused and the accused's spouse. On 1 November 2022, I, the Convening Authority, defer all of the automatic forfeitures from 2 September 2022 until the date the Entry of Judgment is signed by the Military Judge. The request for the waiver of automatic forfeitures for six (6) months following the Entry of Judgment is denied. The remainder of the sentence is approved as adjudged.

29. Convening authority's written explanation of the reasons for taking action on offenses with mandatory minimum punishments or offenses for which the maximum sentence to confinement that may be adjudged exceeds two years, or offenses where the adjudged sentence includes a punitive discharge (Dismissal, DD, BCD) or confinement for more than six months, or a violation of Art. 120(a) or 120(b) or 120b:

- On 27 September 2022, I considered all matters submitted by the accused. Due to the nature of the accused's offenses, I did not believe that clemency was appropriate; therefore, the request to defer automatic forfeitures through the Entry of Judgment and waive automatic forfeitures for six months following the Entry of Judgment was denied and the sentence was approved as adjudged.

- Now, after careful consideration of all matters submitted on behalf of the accused's request for clemency, I believe that clemency in the form of deferral of automatic forfeitures through the Entry of Judgment is warranted, given the immediate financial distress the accused's spouse is facing. Due to the nature and circumstances of the accused's offenses, however, I do not believe that clemency in the form of waiver of automatic forfeitures is appropriate in his case.

30. Convening Authority's signature	31. Date
[redacted]	1 Nov 2022

32. Date convening authority action was forwarded to PTPD or Review Shop. NOV 0 1 2022

23. Summary of Clemency/Deferment Requested by Accused and/or Crime Victim, if applicable. (Continued)

- On 13 Oct 22, Civilian Defense Counsel submitted a letter dated 13 October 2022, requesting that the Convening Authority reconsider his action; specifically, the denial of the accused's request for waiver of forfeitures, due to an error in block 16 (Enclosure 1) regarding the submission of information for transferring forfeitures for benefit of dependents.

- On 21 Oct 22, the accused's spouse, [redacted] sent an email dated 21 October 2022, requesting that the Convening Authority reconsider his action; specifically, the denial of the accused's request for waiver of forfeitures, due to an error in block 16 (Enclosure 1) regarding the submission of information for transferring forfeitures for benefit of dependents.

- The victims did not submit matters pursuant to R.C.M. 1106a.

CONTINU. .C.. SHEET - CA'S ACTION AND EN. Y F JUDGMENT

29. CA's Explanation (Continued)

ENTRY OF JUDGMENT

ENTRY OF JUDGMENT

SECTION A - ADMINISTRATIVE

1. NAME OF ACCUSED (LAST, FIRST, MI)	2. PAYGRADE/RANK	3. DoD ID NUMBER
Patterson, Christopher F.	O2	[redacted]

4. UNIT OR ORGANIZATION	5. CURRENT ENLISTMENT	6. TERM
Combat Logistics Regiment 17, 1st Marine Logistics Group	03-Jun-2017	Indefinite

7. CONVENING AUTHORITY (UNIT/ORGANIZATION)	8. COURT-MARTIAL TYPE	9. COMPOSITION	10. DATE COURT-MARTIAL ADJOURNED
1st Marine Logistics Group	General	Judge Alone - MJA16	19-Aug-2022

SECTION B - ENTRY OF JUDGMENT

****MUST be signed by the Military Judge (or Circuit Military Judge) within 20 days of receipt****

11. **Findings of each charge and specification referred to trial.** [Summary of each charge and specification (include at a minimum the gravamen of the offense), the plea of the accused, the findings or other disposition accounting for any exceptions and substitutions, any modifications made by the convening authority or any post-trial ruling, order, or other determination by the military judge. R.C.M. 1111(b)(1)]

Charge: Violation of the UCMJ, Article 120c
Plea: Not Guilty Finding: Guilty
Spec 1: Indecent Recording
Plea: Not Guilty Finding: Not Guilty
Spec 2: Indecent Recording
Plea: Not Guilty Finding: Guilty
Spec 3: Indecent Recording
Plea: Not Guilty Finding: Guilty
Spec 4: Indecent Recording
Plea: Not Guilty Finding: Guilty
Spec 5: Indecent Recording
Plea: Not Guilty Finding: Guilty
Spec 6: Indecent Recording
Plea: Not Guilty Finding: Guilty
Spec 7: Indecent Recording
Plea: Not Guilty Finding: Guilty

Add Charge I: Violation of the UCMJ, Article 120c
Plea: Not Guilty Finding: Guilty
Spec 1: Indecent Recording
Plea: Not Guilty Finding: Guilty
Spec 2: Indecent Recording
Plea: Not Guilty Finding: Guilty by Exception*
Spec 3: Indecent Recording
Plea: Not Guilty Finding: Guilty by Exception**
Spec 4: Indecent Recording
Plea: Not Guilty Finding: Guilty
Spec 5: Indecent Recording
Plea: Not Guilty Finding: Guilty
Spec 6: Indecent Recording
Plea: Not Guilty Finding: Guilty
Spec 7: Indecent Recording
Plea: Not Guilty Finding: Guilty
Spec 8: Indecent Recording
Plea: Not Guilty Finding: Guilty

12. **Sentence to be Entered.** Account for any modifications made by reason of any post-trial action by the convening authority (including any action taken based on a suspension recommendation), confinement credit, or any post-trial rule, order, or other determination by the military judge. R.C.M. 1111(b)(2). If the sentence was determined by a military judge, ensure confinement and fines are segmented as well as if a sentence shall run concurrently or consecutively.

The Military Judge (segmented sentencing) adjudged the following sentence:
- Dismissal, and 36 months of confinement to run as follows:
  Charge: Violation of the UCMJ, Article 120c
    Spec 2: 2 months of confinement
    Spec 3: 5 months of confinement
    Spec 4: 2 months of confinement
    Spec 5: 3 months of confinement
    Spec 6: 2 months of confinement
    Spec 7: 2 months of confinement

  Additional Charge I: Violation of the UCMJ, Article 120c
    Spec 1: 5 months of confinement
    Spec 2: 2 months of confinement
    Spec 3: 2 months of confinement
    Spec 4: 2 months of confinement
    Spec 5: 2 months of confinement
    Spec 6: 2 months of confinement
    Spec 7: 3 months of confinement
    Spec 8: 2 months of confinement
    Spec 9: 2 months of confinement

Confinement for Charge, Specifications 2, 3, 4, 5, and Additional Charge I, Specifications 1, 2, 3, 4, 5, 6, 7, 8, 9 will run consecutively.
Confinement for Charge, Specifications 6, 7 will run concurrently.
Total confinement time will be 36 months.

Convening Authority:
Approved as adjudged; however, the Convening Authority granted, in part, the Accused's request for clemency, deferring automatic forfeitures through the Entry of Judgment.

Pretrial confinement credit: 0 days

13. **Deferment and Waiver.** Include the nature of the request, the CA's Action, the effective date of the deferment, and date the deferment ended. For waivers, include the effective date and the length of the waiver. RCM 1111(b)(3)

- On 25 Aug 22, Civilian Defense Counsel submitted a letter dated 25 Aug 22, requesting deferral of automatic forfeitures though the entry of judgment and waiver of automatic forfeitures for a period of 6 months following the entry of judgment.
-On 27 Sep 22, the Convening Authority denied that request.
-On 13 Oct 22, the Civilian Defense counsel submitted a letter dated 13 Oct 22, requesting that the Convening Authority reconsider his denial.
-On 21 Oct 22, the accused's spouse submitted an email dated 21 Oct 22, requesting that the Convening Authority reconsider his denial.
-On 1 Nov 22, the Convening Authority granted the accused's request for deferral of automatic forfeitures though the entry of judgment but denied the request for waiver of automatic forfeitures.

14. Action convening authority took on any suspension recommendation from the military judge:

N/A

15. Judge's signature:	16. Date judgment entered:
GOODE.ANDREA.CHAMPAGNE.[redacted] Digitally signed by GOODE.ANDREA.CHAMPAGNE.[redacted] Date: 2022.11.29 09:30:53 -08'00'	Nov 29, 2022

17. In accordance with RCM 1111(c)(1), the military judge who entered a judgment may modify the judgment to correct computational or clerical errors within 14 days after the judgment was initially entered. Include any modifications here and resign the Entry of Judgment.

18. Judge's signature:	19. Date judgment entered:

11. Findings (Continued)

Spec 9: Indecent Recording***
Plea: Not Guilty Finding: Guilty by E&S

Add Charge II: Violation of the UCMJ, Article 133
Plea: Not Guilty Finding: Dismissed****
Spec: Conduct unbecoming generally
Plea: Not Guilty Finding: Dismissed****

*Guilty except for the words "on divers occasions between on or about 9 January 2020 and". To the excepted words, not guilty. To the specification as excepted, guilty.

**Guilty except for the words "on divers occasions". To the excepted words, not guilty. To the specification as excepted, guilty.

***Guilty except for the language "28 July 2019" substituting the language "10 June 2019". To the excepted language, not guilty. To the specification as excepted and substituted, guilty.

****Conditionally dismissed on the grounds of unreasonable multiplication of charges.

12. Sentence (Continued)

13. Deferment and Waiver (Continued)

APPELLATE INFORMATION

IN UNITED STATES NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS

Before Panel No. 2

UNITED STATES *Appellee* v. **Christopher F. PATTERSON** First Lieutenant (O-2) U.S. Marine Corps *Appellant*	NMCCA No. 202200262 **APPELLANT'S MOTION FOR SECOND ENLARGEMENT** Tried at Camp Pendleton, California on 23 May, 28 June, and 15-19 August 2022, before a General Court-Martial convened by Commanding General, 1st Marine Logistics Group, LtCol Derek A. Poteet and LtCol Andrea C. Goode, USMC, Military Judges, presiding

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS

COMES NOW Appellant, by and through the undersigned counsel, and respectfully moves for a second enlargement of time to file a brief and assignments of error. The current due date is 16 March 2023. The number of days requested is thirty. The requested due date is 15 April 2023.

The current status of the case:

1. The Record was docketed on 16 December 2022.

2. The Moreno III date is 16 June 2024.

3. Appellant is in confinement with a normal release date of 18 February 2025.

4. The Record consists of 953 transcribed pages and 2110 total pages.

5. The undersigned is still reviewing the record of trial.

Good cause exists for granting the requested enlargement. This case involves a contested bench trial resulting in convictions for indecent visual recording and a sentence of three years' confinement and a dismissal. Appellant's original appellate defense counsel discovered he was conflicted from the case after reviewing the record of trial. The undersigned was thereafter detailed to represent Appellant and requires additional time to complete his review of the record of trial and research and formulate assertions of error. Appellant has been consulted and concurs with this enlargement request.

Respectfully submitted.

[redacted]
Arthur L. Gaston III
CAPT, JAGC, USN
Appellate Defense Counsel
1254 Charles Morris St SE, Suite 100
Washington Navy Yard, DC 20374-5047
[redacted]

CERTIFICATE OF FILING AND SERVICE

I certify that this document was emailed to the Court's filing address, uploaded into the Court's case management system, and emailed to the Director, Appellate Government Division on 9 March 2023.

[redacted]

Arthur L. Gaston III
CAPT, JAGC, USN
Appellate Defense Counsel
1254 Charles Morris St SE, Suite 100
Washington Navy Yard, DC 20374-5047
[redacted]

[redacted]

Subject: RECEIPT - FILING - Panel 2 - U.S. v. Patterson - NMCCA 202200262 - D 2EOT (Gaston)
Date: Tuesday, March 14, 2023 10:28:24 AM

MOTION GRANTED
MARCH 14 2023
UNITED STATES NAVY-MARINE CORPS
COURT OF CRIMINAL APPEALS

V/R,

[redacted]
Corporal, USMC
Panel Secretary
Navy-Marine Corps Court of Criminal Appeals (Code 51)
1254 Charles Morris St SE, Ste 320
Washington Navy Yard, D.C 20374

[redacted]

Subject: FILING - Panel 2 - U.S. v. Patterson - NMCCA 202200262 - D 2EOT (Gaston)

To this Honorable Court:

Please see the attached for electronic filing in U.S. v. Patterson, NMCCA 202200262. Thank you.

V/r

CAPT Arthur L. Gaston III, JAGC, USN
Director, Navy-Marine Corps Appellate Defense Division
1254 Charles Morris Street SE, Suite 100
Washington Navy Yard, DC 20374-5047
[redacted]

IN UNITED STATES NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS

Before Panel No. 2

UNITED STATES *Appellee* v. **Christopher F. PATTERSON** First Lieutenant (O-2) U.S. Marine Corps *Appellant*	NMCCA No. 202200262 **APPELLANT'S MOTION FOR THIRD ENLARGEMENT** Tried at Camp Pendleton, California on 23 May, 28 June, and 15-19 August 2022, before a General Court-Martial convened by Commanding General, 1st Marine Logistics Group, LtCol Derek A. Poteet and LtCol Andrea C. Goode, USMC, Military Judges, presiding

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS

COMES NOW Appellant, by and through the undersigned counsel, and respectfully moves for a second enlargement of time to file a brief and assignments of error. The current due date is 15 April 2023. The number of days requested is thirty. The requested due date is 15 May 2023.

The current status of the case:

1. The Record was docketed on 16 December 2022.

2. The Moreno III date is 16 June 2024.

3. Appellant is in confinement with a normal release date of 18 February 2025.

4. The Record consists of 953 transcribed pages and 2110 total pages.

5. The undersigned is still reviewing the record of trial.

Good cause exists for granting the requested enlargement. This case involves a contested bench trial resulting in convictions for indecent visual recording and a sentence of three years' confinement and a dismissal. Appellant's original appellate defense counsel discovered he was conflicted from the case after reviewing the record of trial. The undersigned was thereafter detailed to represent Appellant and requires additional time to complete his review of the record of trial and research and formulate assertions of error, in consultation with Appellant. Appellant has been consulted and concurs with this enlargement request.

Respectfully submitted.

[redacted]

Arthur L. Gaston III
CAPT, JAGC, USN
Appellate Defense Counsel

[redacted]

CERTIFICATE OF FILING AND SERVICE

I certify that this document was emailed to the Court's filing address, uploaded into the Court's case management system, and emailed to the Director, Appellate Government Division on 10 April 2023.

[redacted]

Arthur L. Gaston III
CAPT, JAGC, USN
Appellate Defense Counsel

[redacted]

REMAND

THERE WERE NO REMANDS

NOTICE OF COMPLETION OF APPELLATE REVIEW