

**NAVY-MARINE CORPS TRIAL JUDICIARY
SOUTHWEST JUDICIAL CIRCUIT
GENERAL COURT-MARTIAL**

UNITED STATES v. RYAN S. MAYS SR/E-1, USN	GOVERNMENT RESPONSE TO DEFENSE MOTION IN LIMINE (ADMISSIBILITY OF STATEMENTS UNDER M.R.E. 402 AND 403) 10 AUG 2022
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NATURE OF RESPONSE

The Government respectfully requests this Court deny the Defense's Motion to Suppress various statements made by the accused during his 20 August 2020 interview as the statements are relevant and admissible under M.R.E. 801(d)(2).

SUMMARY

The various statements made by the accused during his 20 August 2020 interview are relevant to the accused's demeanor during questioning, his motive to start the fire onboard the USS BONHOMME RICHARD, his understanding of the gravity and consequences of such a crime, and as to tactics or ploys used by the accused to convince agents of his innocence.

BURDEN OF PROOF

The burden of proof rests on the Government and the standard of proof is preponderance of the evidence. R.C.M. 905(c).

SUMMARY OF FACTS

- a. The accused is charged with one specification of a violation of the U.C.M.J. Article 110 (willful hazarding of a vessel) and one specification of a violation of the U.C.M.J. Article 126 (aggravated arson). Charge Sheet.
- b. On 20 August 2020, the accused was brought to the Naval Criminal Investigative Service (NCIS) office located in San Diego, CA, as part of the investigation into the fire onboard the USS BONHOMME RICHARD (BHR). Enclosure 1.
- c. At 8:52 SA A.P. and Bureau of Alcohol, Tobacco, and Firearms and Explosives (ATF) Agent M.B. entered the interview room and began the interview by asking background/biographical information of the accused. Enclosure 2.

- d. At 9:08, SA A.P. provided the accused a Military Suspect's Acknowledgement and Cleansing Waiver of Rights Form and then began questioning the accused. Enclosure 2.
- e. The accused discussed his time at Basic Underwater Demolition Demolition/SEAL (BUD/S) and compared it to the Fleet Navy by stating, "But I loved it. Just the Fleet Navy is f[*]cking gay, man. It's f[*]cking gay...like unless you get like cool orders somewhere, or like you're on sea duty, it's like, what are you really doing? I mean we're at peace, so obviously, it's like...I'm sure we're doing some small ops. But like, the only people that are getting ops right now are like, the SEALs, EOD, Raiders, MARSOC, and like all those guys." Enclosure 1 at 12-13.
- f. The accused stated, "It's just the Navy sucks, man. This is not what I wanna do. Like, I wanna go do cool sh[*]t, and I wanna have like a purpose on like why I'm in the military." Enclosure 1 at 80.
- g. The accused also stated, "All I know is I got rock hard when I saw a SEAL Team come in. I was like, 'I need 15 to get a letter of rec.' I went up to some Chief, like some, he was like some uh, SOC. And I was just like, hand him a Powerade. I was like, 'Hey, hey man, uh, I know that—I know you're busy.' I was just like, 'Hey, can I, can I get a letter of rec? Can I pretty please?'" I was like, so desperate... 'How can I better myself to like, get to where I need to be to go back and be a good team guy and use this?'" And he was just like—I was like, damn, that's actually a better idea than going up and being like a bitch" Enclosure 1 at 89-90.
- h. SA A.P. said to the accused, "You said if somebody intentionally started this fire they should go to prison...How much time, how much prison time?" The accused responded, "Uh, a lot...For like for three f[*]cking billion dollars or however much this ship's worth." Enclosure 1 at 75-76.
- i. When SA A.P. confronts the accused about a conversation he had with Chief A, the accused calls SA A.P. a liar and stated, "I'm just—I'm really smart, dude. I caught, I caught you, man...You just proved — you just told me you lied....The Chief didn't talk...to you...all that stuff. I'm learning how to do this." Enclosure 1 at 100-101.
- j. When the accused stated he was not near where the fire started, SA A.P. responded, "Well, honestly, I don't, I don't believe you, dude. You know I don't, I don't." Enclosure 1 at 114.
- k. When discussing his time on the ship and interactions with the Commanding Officer the accused stated, "I mean, whenever I was in the ship...I thought about Psalms twenty-three four." Enclosure 1 at 231.
- l. The accused also discussed how his home community responded to news of the fire and that his church "raised a bunch of money together and paid...for like all kinds of stuff in the mail." Enclosure 1 at 289.

LAW

To be admissible at trial, evidence must “make a fact in [of consequence] more or less probable than it would be without the evidence.” M.R.E. 401. Relevant evidence is generally admissible absent some other rule to the contrary. M.R.E. 402. Evidence that is relevant, material, and otherwise admissible may yet be excluded “if its probative value is substantially outweighed by a danger of . . . unfair prejudice, confusing the issues, misleading the members, undue delay, wasting time, or needlessly presenting cumulative evidence.” M.R.E. 403. Per M.R.E. 801(d)(2), statements made by the accused are not hearsay and are not barred by M.R.E. 802.

ARGUMENT

A. Statements of the accused’s personal biographical data.

When the agents began the interview with the accused, they started by asking basic biographical data of the accused. This is a common practice utilized in most interviews in which agents attempt to build rapport with the accused while simultaneously completing an administrative task. This process took no more than 16 minutes. This portion of the accused’s interview is relevant for the members to be able to assess and compare the accused’s demeanor prior to being told he was suspected of an offense to after he was informed of his rights and questioned by agents. It is apparent that at the beginning of the interview the accused has a friendly demeanor and is easily answering questions posed by SA A.P. However, as the interview continues, the accused’s demeanor changes and he becomes combative and argumentative with the agents.

During findings instructions, the members will be instructed that they “have the duty to determine the believability of the witnesses. In performing this duty you must consider each witness’s intelligence, ability to observe and accurately remember, sincerity, and conduct in court, friendships and prejudices. Consider also the extent to which each witness is either supported or contradicted by other evidence; the relationship each witness may have with either side; and how each witness might be affected by the verdict.” In essence, the members will be instructed to consider a witness’s demeanor in determining the believability of that witness. The beginning of the interview when the accused is questioned regarding his personal biographical data provides a baseline for the members to use in assessing the accused’s demeanor and his believability later on in the interview, which is relevant and at issue in this case.

B. Statements of the accused’s BUD/S training and thoughts on Fleet Navy.

Statements made by the accused regarding BUD/S and his thoughts on Fleet Navy go directly to the accused’s motive in committing the charged acts. At various times during the accused’s interview, he glamorized Seals, EOD, Raiders, and MARSOC. He said he wanted to go back to BUD/S because Seals do “cool shit” and “have a purpose.” He said he got “rock hard” when he met a SEAL who had come to assist in firefighting as the BHR was still burning. He

said he asked that SEAL for a letter of recommendation. He wanted to be a "team guy" vice being a "bitch." Throughout the entire interview, the accused was dismissive of the Fleet Navy and talked about BUD/S several times. The accused said he wanted to go back to BUD/S as soon as possible. He said the Navy "sucks" and he wants to do "cool sh[*]t" that "has a purpose."

It is clear that the accused's motivation in joining the Navy was to become a SEAL and be a part of that community. However, when he was unable to complete BUD/S training he was transferred to the BHR doing work he believed to be meaningless and beneath him. The accused's statements regarding BUD/S and the Fleet Navy show that he was a troubled Sailor who was disgruntled with life on the BHR and was desperate to return to BUD/S.

In order to prove its case, the Government must present evidence to answer the question why the accused started the fire onboard the BHR. Proving motive and the thought process of the accused is often difficult and proven through circumstantial evidence. The accused's statements about BUD/S and the Fleet Navy are probative of his thought process, why he was disgruntled, and why he would be motivated to commit the charged acts. It provides context as to why the accused was driven to join the Navy in the first place and his current hatred for the Navy. Combined with other evidence, this suggests the accused had a particular motive to harm the BHR on that particular day, which is clearly relevant and probative to a fact of consequence in this case.

C. Statements of the accused's prior romantic relationships.

The Government does not object to redacting statements made by the accused regarding his prior romantic relationships.

D. Statements of the accused's thoughts on potential consequences if the fire was intentionally started.

Statements of the accused's thoughts on potential consequences if the fire was started intentionally are relevant to the accused's understanding of the seriousness of the offense as well as his motive to deny any involvement to NCIS. SA A.P. said to the accused, "You said if somebody intentionally started this fire they should go to prison...How much time, how much prison time?" The accused responded, "Uh, a lot...For like for three f[*]cking billion dollars or however much this ship's worth." The accused's response shows that he is aware that if an individual were convicted of starting the fire, they would be subject to serious consequences. This is relevant to the accused's state of mind and awareness that if he were to admit to any misconduct, he would be subject to those consequences. This helps shape the understanding of why the accused answers questions in a certain manner as well as his motive and ploy to convince the agents of his innocence.

E. Statements of the accused's conversations with Chief A and the accused's argumentative discussions.

Statements of the accused's conversations are relevant to the accused's state of mind and his belief that he is capable of outsmarting NCIS and ATF agents. When SA A.P. confronts the accused about a conversation he had with Chief A, the accused calls SA A.P. a liar and stated, "I'm just— I'm really smart, dude. I caught, I caught you, man... You just proved — you just told me you lied....The Chief didn't talk...to you...all that stuff. I'm learning how to do this." The accused appears triumphant and boisterous as if he just caught SA A.P. in a lie and as if his statements somehow established that the agents do not have the necessary evidence to show the accused committed the crime. The accused's statements that he is smart and his declaration that he has caught SA A.P. in a lie suggests that he believes he is engaged in a game with NCIS in which he must outsmart the agents by making sure he does not say anything incriminating or agree to any statements that could incriminate him.

During findings instructions, the members will be instructed that they "have the duty to determine the believability of the witnesses. In performing this duty you must consider each witness's intelligence, ability to observe and accurately remember, sincerity, and conduct in court, friendships and prejudices. Consider also the extent to which each witness is either supported or contradicted by other evidence; the relationship each witness may have with either side; and how each witness might be affected by the verdict." In essence, the members will be instructed to consider a witness's demeanor in determining the believability of that witness. The accused's demeanor and response when confronted with evidence that is not favorable to him will be relevant for the members in determining the accused's believability. This is especially true because in this portion of the interview the accused is confronted with evidence that he cannot explain and his demeanor changes drastically.

F. Statements regarding the agent's belief the accused was lying.

Statements that SA A.P. believed the accused was lying are relevant to the continued questioning and tactics used by NCIS agents. When the accused stated he was not near where the fire started, SA A.P. responded, "Well, honestly, I don't, I don't believe you, dude. You know I don't, I don't." SA A.P. then tried a different tactic and appealed to the accused in a different way in an attempt to get the accused to admit to his guilt. Why the agents continued their questioning and the tactics they used is probative of their thorough investigation and that they did not just take the accused's statements at face value. Any prejudicial effect of this comment by SA A.P. can easily be cured through an instruction given to the members.

G. Statements of the accused's religious belief.

Throughout the interview, several statements are made by either the accused or the agents regarding religious beliefs or one's thoughts on redemption. The statements are relevant to show the agents' tactics and appeals to the accused in an attempt to get a response from the accused. These are not in-depth religious discussions between the accused and the agents. They are probative of the accused's efforts to invoke religion to show he is being truthful while the agents

invoke religion to persuade the accused to be truthful. In other words, these minor invocations or discussions are relevant to show the context of the accused's response and are not so lengthy of a discussion to distract the members or create any sort of prejudice.

H. Statements regarding the accused submitting to a polygraph examination.

The Government does not object to redacting statements made by the accused or NCIS agents regarding a polygraph examination.

I. Statements regarding the accused's TikTok videos.

The Government does not object to redacting statements made by the accused or NCIS agents regarding TikTok videos.

J. Statements regarding the accused's underage drinking.

The Government does not object to redacting statements made by the accused regarding underage drinking.

K. Statements regarding the accused's prior drug use.

The Government does not object to redacting statements made by the accused regarding prior drug use.

RELIEF REQUESTED

The Government respectfully moves this Court to deny the Defense's motion to suppress various statements made by the accused during his 20 August 2020 interview.

EVIDENCE PRESENTED

The Government submits the following enclosures in support of this motion:

1. Transcript of Interview of Accused dtd 20 August 2020
2. Video of Interview of Accused dtd 20 August 2020

ORAL ARGUMENT

The Government is prepared to make oral argument on this matter.


S. E. GEARHART
LT, JAGC, USN
Trial Counsel

CERTIFICATE OF SERVICE

I certify that I have served a true copy via e-mail of the above on the Military Judge and Defense Counsel on 10 August 2022.



S. E. GEARHART
LT, JAGC, USN
Trial Counsel