

**WESTERN JUDICIAL CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY**

UNITED STATES)	SPECIAL COURT-MARTIAL
)	
v.)	GOVERNMENT MOTION IN LIMINE
)	(Pre-Admit Accused's 17 June 2010 Video
VEGA, Nicolas)	Interview)
Staff Sergeant)	
U.S. Marine Corps)	
XXX XX 4253)	(14 Oct 10)
)	

1. **Nature of Motion.** Pursuant to R.C.M. 906(b)(13), the Government submits the instant Motion in Limine (Pre-Admit Accused's 17 June 2010 Video Interview).

2. **Summary of Facts.**

a. On 16 June 2010, Col C. Conlin, Acting Commander, MCRD San Diego, authorized NCIS to execute a Command Authorization for Search and Seizure of SSgt Vega's person, vehicle and workspace. The Search Authorization is attached to this motion as Exhibit A.

b. On 17 June 2010, SSgt Vega was taken into custody by NCIS.

c. SSgt Vega was advised of his Article 31(b) rights.

d. SSgt Vega signed a right's advisement and waiver and chose to speak with NCIS Special Agents Rebecca Fitzsimmons and Will Villalobos. The right's advisements and waivers signed by SSgt Vega are attached to this motion as Exhibit B.

e. The entirety of the interview with Special Agents Fitzsimmons and Villalobos was recorded and saved to CD/DVD.

f. During the course of the interview with Special Agents Fitzsimmons and Villalobos, SSgt Vega admitted to the course of conduct alleged in the sole specification of Charge II.

g. On 14 October 2010, a request to have the 17 June 2010 interview of SSgt Vega transcribed pursuant to Western Judicial Circuit Rule 31.3 was forwarded to the OIC of LSSS Camp Pendleton.

3. **Burden of Persuasion.** Pursuant to R.C.M. 905(c)(1) and (c)(2), the Government bears the burden of persuasion by preponderance of the evidence.

4. **Discussion.**

Article 31(b) of the Uniform Code of Military Justice states as follows:

No person subject to this chapter may interrogate, or request any statement from an accused or a person suspected of an offense without first informing him of the nature of accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial.

Similarly, M.R.E. 305(g)(1) states that after receiving the appropriate rights advisement under Article 31(b):

“a person may waive the rights described therein and in Mil. R. Evid. 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 acknowledge affirmatively that he or she understands the rights involved, affirmatively decline the right to counsel and affirmatively consent to making a statement.”

The Government concedes that Special Agents Fitzsimmons and Villalobos were required to advise the Accused of his Article 31(b) rights prior to questioning on 17 June 2010, as he was suspected of an offense under the U.C.M.J. Special Agents Fitzsimmons and Villalobos read the Accused his Article 31(b) rights prior to any questioning. The Accused waived his rights under Article 31(b), thereafter providing the video recorded interview dated 17 June 2010.

A defendant can waive his rights if such a waiver is knowing, intelligent and voluntary. *U.S. v. Curtis*, 44 M.J. 106, 144 (C.A.A.F. 1996) (citing *Miranda v. Arizona*, 384 U.S. 436, 444-45 (1966)). First, to make a knowing waiver, a suspect must understand he has “the right to remain silent and that

anything he said could be used as evidence against him. The Constitution does not, however, require that a suspect know and understand every possible consequence of a waiver of the Fifth Amendment privilege.” *Colorado v. Spring*, 479 U.S. 564, 574 (1987). Second, to make an intelligent waiver, the Accused must have understood the rights that he was abandoning. *Moran v. Burbine*, 475 U.S. 412 (1986). In the present case, the Accused’s age, education, and status as a Staff Non-Commissioned Officer make his comprehension of his Article 31(b) rights assured.


Third, to make a voluntary waiver, the Accused’s decision to submit to questioning may not be the result of physical or psychological pressure to elicit the statements. *U.S. v. Bubonics*, 40 M.J. 734, 738-39 (N.M.C.M.R. 1994), *aff’d*, 45 M.J. 93 (1996); *see also Colorado v. Connelly*, 497 U.S. 157, 170 (1986) (“The voluntariness of a waiver of this privilege has always depended on the absence of police overreaching, not on “free choice” in any broader sense of the word.”). Voluntariness of the confession is evaluated in the totality of the circumstances, considering both the characteristics of the accused and the details of the interrogation. *Schneekloth v. Bustamonte*, 412 U.S. 218, 226 (1973). In the present case, no coercion, whether physical or psychological, was levied on the Accused by Special Agents Fitzsimmons and Villalobos.

The video recorded statement made by the Accused on 17 June 2010 is admissible as evidence. The Accused was fully advised of his Article 31(b) rights prior to any questioning and the Accused proceeded to knowingly, intelligently, and voluntarily waive his rights under Article 31(b) prior to making his written statement.

5. **Relief Requested.** The Government respectfully requests that its Motion in Limine (Pre-Admit Accused’s 17 June 2010 Video Interview) be granted.

6. **Evidence.** Testimony of SA Rebecca Fitzsimmons; Search Authorization dated 16 June 2010 (Exhibit A); Suspect’s Acknowledgement and Waiver of Rights, dated 17 June 2010 (Exhibit B); CD/DVDs containing the video-taped interview of SSgt Vega, dated 17 June 2010.

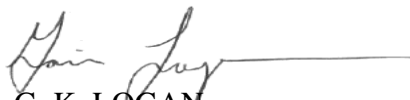
7. **Oral Argument.** The Government respectfully requests oral argument.



G. K. LOGAN
Capt, USMC
Trial Counsel

CERTIFICATE OF SERVICE

A true copy of this response was served upon the Defense on this date: 14 Oct 2010.

A handwritten signature in cursive script, appearing to read "G. K. Logan", followed by a horizontal line extending to the right.

G. K. LOGAN
Capt, USMC
Trial Counsel