



UNITED STATES MARINE CORPS

OFFICE OF THE STAFF JUDGE ADVOCATE
MARINE CORPS BASE
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IN REPLY REFER TO:
5810
GKL
27 Aug 10

From: Captain G. K. Logan, USMC, Trial Counsel
To: Major S. S. Maroudis, USMC, IRO Officer

Subj: GOVERNMENT RESPONSE TO DEFENSE REQUEST FOR IRO REHEARING
ICO SSGT NICOLAS VEGA, JR., 4253

Ref: (a) R.C.M. 305(i)(2)(E)
(b) 72 hour letter from CO to IRO Officer dtd 21 Jun 10

1. R.C.M. 305(i)(2)(E) is the rule that controls reconsideration of continued confinement. It states that the decision to reconsider the confinement of a prisoner must be based upon significant information not previously considered.

2. A rehearing is not necessary in this case because no significant new information exists.

3. Per reference (b), the accused was placed into pre-trial confinement because "Staff Sergeant Vega admitted engaging in past physical acts of violence against Ms. Dana L. Orcutt." The past acts of physical violence described in the 72 hour letter were corroborated by the testimony of witnesses at the Article 32 hearing. No significant new information has been presented that contradicts the admissions of the accused or the testimony of the victim. Additionally, the accused was placed into pre-trial confinement to prevent him from having the "the opportunity to contact, intimidate, harm, or otherwise interact with Ms. Dana L. Orcutt or other individuals who have alleged misconduct on his behalf." The victim and her family remain extremely fearful of the accused.

4. Per reference (b), the Commanding Officer also stated that the accused is from Miami, Florida and has no ties to the local area. The letter also states that lesser forms of restraint are inadequate and pre-trial restraint is necessary to ensure his presence at trial. No significant new information has been presented that contradicts these facts.

4. The Government's response to defense counsel's request of 25 August 2010 is as follows:

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a. On 2 February 2010, a life insurance policy was taken out on the life of the victim. She did not purchase this policy. Mail, including her banking statements, was being sent to the address of the accused. The enrollment form used to purchase the policy was sent to the accused's address. NCIS located the original document. The mother of the victim is listed as the beneficiary. The government's theory is that the accused filled out the insurance policy to harass the victim and cause the premium to be debited from her account. Major case fingerprints and handwriting samples were taken of the accused and the victims. The major case prints, handwriting samples and the original copy of the insurance contract are currently with the San Diego County Sheriff's Crime Lab being analyzed.

b. The victim testified about drinking on the night of the rape. She testified that she consumed a great deal of alcohol and was intoxicated to the point of vomiting. The victim testified that she passed out in her bed and was awakened by the accused shoving his hand into her pants and touching her vagina. She drifted back out of consciousness and awoke with her pants and underwear around her ankles. The accused was also naked from the waist down and attempting to penetrate her vagina from behind her with his penis. She stated that while drifting in and out of consciousness she agreed to allow the accused to have anal intercourse with her. The accused continued to attempt to penetrate her vagina and did so 2-3 times.

c. The victim testified to numerous instances of the accused physically assaulting her. She did testify that the accused struck her in the face and caused her to have a busted lip. A sworn statement by a witness that saw the busted lip of the victim and corroborated her story was submitted to the investigating officer. Two other testifying witnesses stated that they saw the victim with bruises on her body consistent with the victim's testimony. One witness testified that she saw the accused grab the victim by the neck and shove her against a wall in his San Diego apartment.

d. At an NCIS interview, the accused admitted to pulling out a firearm during a dispute with the victim and throwing it at her. This was corroborated by the testimony of the victim. The victim denied that she stole the weapon. The whereabouts of the gun are still unknown.

e. The victim and her family are frightened of the accused and fear that he will harm them if released from confinement.

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4. Based on the facts above, a rehearing is not necessary in this case because no significant new information exists. The initial basis for pre-trial confinement remains the same.


G. K. LOGAN