



UNITED STATES MARINE CORPS

OFFICE OF THE STAFF JUDGE ADVOCATE
MARINE CORPS RECRUIT DEPOT/WESTERN RECRUITING REGION
3700 CHOSIN AVENUE
SAN DIEGO, CALIFORNIA 92140-5001

IN REPLY REFER TO:
5810
GKL
27 Aug 10

From: Captain G. K. Logan, USMC, Trial Counsel
To: Investigating Officer

Subj: WRITTEN CLOSING ICO ARTICLE 32 INVESTIGATION OF SSGT
NICOLAS VEGA, JR., 4253

1. Based on the testimony elicited from Kayla Orcutt, Dana Orcutt and Miranda Loebnitz during the Article 32 hearing of 24 August 2010, the Government recommends the addition of the following charges:

a. One specification of Article 120(j) indecent liberty with a child for what was described during the hearing as the "bubblegum" incident. The three witnesses listed above all testified that SSgt Vega intentionally exposed his scrotum to them and referred to it as his "bubblegum." Kayla Orcutt and Cody Orcutt (younger brother of Dana and Kayla Orcutt) were present for the "bubblegum" incident. Kayla was fifteen (15) and Cody was ten (10) years old at the time. Both Kayla and Cody were under the age of sixteen (16) and, therefore, children pursuant to the definition of "child" found at section IV-71 of the Manual for Courts Martial. SSgt Vega's conduct is circumstantial evidence of his intent to arouse, appeal to or gratify the sexual desire of himself or Kayla and Cody Orcutt. SSgt Vega's actions were abusive, humiliating and degrading to Kayla and Cody Orcutt. In the alternative, as a contingency of proof, the Government recommends charging SSgt Vega with Article 120(n) Indecent Exposure for the conduct described above.

b. One specification of Article 120(j) indecent liberty with a child for what was described during the hearing as the "towel" incident. Kayla Orcutt testified that SSgt Vega intentionally exposed himself to her by facing her and opening up a towel that was tied around his waist. By doing so, SSgt Vega exposed his genitalia to her. Kayla was fifteen (15) years old at the time and within the definition of "child" cited above. SSgt Vega's conduct is circumstantial evidence of his intent to arouse, appeal to or gratify the sexual desire of himself or Kayla Orcutt. SSgt Vega's actions were abusive, humiliating and degrading to Kayla Orcutt. In the alternative, as a contingency of proof, the Government recommends charging

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SSgt Vega with Article 120(n) Indecent Exposure for the conduct described above.

c. One specification of Article 120(j) indecent liberty with a child for what was described during the hearing as the "fire hose" incident. Dana and Kayla Orcutt testified that SSgt Vega asked if anyone wanted to see his "fire hose." They testified that he intentionally lowered his pants or shorts, exposing his genitalia, and swung his penis around. Kayla and Cody Orcutt were present for this incident. Both Kayla and Cody were under the age of sixteen (16) and, therefore, children as previously described. SSgt Vega's conduct is circumstantial evidence of his intent to arouse, appeal to or gratify the sexual desire of himself or Kayla and Cody Orcutt. SSgt Vega's actions were abusive, humiliating and degrading to Kayla and Cody Orcutt. In the alternative, as a contingency of proof, the Government recommends charging SSgt Vega with Article 120(n) Indecent Exposure for the conduct described above.

d. One specification of Article 120(n) indecent exposure for what was described during the hearing as the "bubblegum" incident. Miranda Loebnitz was sixteen (16) when this incident occurred and, as a result, does not fit the definition of "child" required for Art 120(j) indecent liberty with a child. The appropriate charge for SSgt Vega exposing himself to Miranda is, therefore, Art 120(n) indecent exposure.

2. The testimony and evidence presented to the investigating officer during the Article 32 hearing of SSgt Nicolas Vega supported the charges currently on the charge sheet in the following manner:

a. Charge 1, sole specification, Article 92 Failure to Obey a Lawful Order or Regulation.

(1) GySgt D. Puente testified about the investigation he performed. GySgt Puente testified that IO6 (email traffic between SSgt Vega and Nuvia Gomez) and IO7 (nude photos of Nuvia Gomez) were recovered from SSgt Vega's NMCI account.

(2) Nuvia Gomez testified that she sent IO6 and IO7 to SSgt Vega at his NMCI email address.

(3) IO3 is the appropriate DOD regulation governing the use of government email and computer systems. SSgt Vega violated this regulation by having inappropriate pictures of

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Nuvia Gomez in his NMCI email account. Knowledge of this regulation does not need to be alleged or proved.

b. Charge 2, sole specification, Article 107 False Official Statement.

(1) This charge was withdrawn.

c. Charge 3, Specification 1, Article 120 Rape.

(2) Dana Orcutt 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. Dana testified that she passed out in her bed and was awakened by SSgt Vega 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. SSgt Vega 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 SSgt Vega to have anal intercourse with her. SSgt Vega continued to attempt to penetrate her vagina and did so 2-3 times. Dana was able to work her way off the bed and into the room where Adrianna (Anna) Lucas was. Dana told Anna what happened in the room with SSgt Vega.

(3) The statement of Anna Lucas contained in IO16 outlines Anna's interaction with Dana after Dana entered the room with her.

d. Charge 3, Specification 2, Article 120 Indecent Liberty with a Child.

(1) During his NCIS interview on 17 June 2010 (IO5), SSgt Vega admitted to taking a photograph with Nuvia Gomez and a female identified as "De." In the photograph, Nuvia's infant son Sergio was on the bed while SSgt Vega, Nuvia and "De" were engaged in sexual acts.

(2) Nuvia Gomez testified that she was involved in the same threesome described by SSgt Vega in his NCIS interview. Nuvia testified that pictures were taken of her, "De" and SSgt Vega engaged in sexual acts. She testified that in at least one of these photos her son Sergio was present.

(3) Dana Orcutt testified that she saw five (5) pictures of the previously described threesome on SSgt Vega's home

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computer. She stated that in four (4) of the pictures Nuvia's son Sergio was present while sex acts were performed by Nuvia, "De" and SSgt Vega. One photograph involved Nuvia performing oral sex on SSgt Vega while "De" performed oral sex on Nuvia. In this photograph, Sergio was in a car seat and sitting between Nuvia's legs. The second photograph was taken shortly after the previously described one. In this photograph, Nuvia and "De" were standing next to Sergio's car seat as if they had just stood up. The third photograph was a picture of SSgt Vega and one of the females together in the shower and engaged in a sexual act. The other female is standing next to them holding Sergio. The fourth photograph Nuvia's infant son Sergio was on the bed while SSgt Vega, Nuvia and "De" were engaged in sexual acts. The description of this photograph is similar to the one SSgt Vega admitted to in his NCIS interview (IO5).

(4) The Government does not have to prove that the presence of Sergio Gomez in the photographs described above was arranged with the intent to arouse, appeal to or gratify the sexual desire of SSgt Vega. His presence is circumstantial evidence of this element. The Government must merely show that sufficient evidence exists to take the ultimate issue before the fact finder.

(5) SSgt Vega's actions were abusive, humiliating and degrading to Sergio Gomez.

e. Charge 3, Specification 3, Article 120 Indecent Act.

(1) During his NCIS interview on 17 June 2010 (IO5), SSgt Vega admitted to posting 2-3 nude photographs of Dana Orcutt to the internet.

(2) Dana Orcutt testified that in the spring of 2008, SSgt Vega posted approximately 10-12 nude pictures of her, without her consent, to the internet. She stated that she did not remember the pictures being taken. Dana testified that she has allowed SSgt Vega to take nude pictures of her. Only one (1) of the pictures posted to the internet was consensually taken.

(3) Indecent conduct includes observing, or making a videotape, photograph, motion picture, print, negative, slide, or other mechanically, electronically, or chemically reproduced visual material, without another person's consent, and contrary to that other person's reasonable expectation of privacy.

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f. Charge 4, Specification 1, Assault.

(1) Dana Orcutt testified that on numerous occasions over the course of her relationship SSgt Vega physically assaulted and struck her. She stated that these assaults left bruises on her body. In particular, hand-shaped bruises on her arms, a boot print on her thigh and a busted lip. The boot print was a result of a specific incident where SSgt Vega threw one of his combat boots at her.

(2) Miranda Loebnitz testified that she witnessed bruises on Dana Orcutt over the course of Dana's relationship with SSgt Vega. Miranda specifically mentioned the hand-shaped bruises on Dana's arms. Miranda also testified that she witnessed SSgt Vega take Dana by the throat and force her against a wall in SSgt Vega's San Diego apartment.

(3) Stephanie Sepulvida described evidence of assaults on the body of Dana Orcutt in a sworn statement given to NCIS (IO12). Stephanie described seeing Dana with a busted lip and a black eye. Dana told Stephanie that SSgt Vega caused these injuries.

g. Charge 4, Specification 2, Assault with a Dangerous Weapon.

(1) During his NCIS interview on 17 June 2010 (IO5), SSgt Vega admitted to throwing his pistol at Dana Orcutt while he and Dana were traveling in his vehicle.

(2) Dana Orcutt testified that SSgt Vega pointed a loaded pistol at her head and threw the same loaded pistol at her while they were traveling in SSgt Vega's vehicle.

(3) Throwing the pistol at Dana, as SSgt Vega admitted to in his NCIS interview (IO5), is an "offer" type assault. Dana testified that she was frightened and had a reasonable apprehension of immediate bodily harm.

h. Charge 5, Specification 1, Adultery (with SSgt Reyes).

(1) In IO8, SSgt Vega admitted to sexually suggestive emails between him and SSgt M. Reyes on his NMCI email account.

(2) IO9 is email traffic between SSgt Vega and SSgt Reyes. In the email traffic, SSgt Vega makes sexually suggestive comments to SSgt Reyes.

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(3) IO11 is the 3270 marital status information of SSgt Reyes. IO11 demonstrates that SSgt Reyes is a married woman.

i. Charge 5, Specification 2, Adultery (with Dana Orcutt).

(1) Dana Orcutt testified that she had sex with SSgt Vega. SSgt Vega admitted to her that he was married at the time of their relationship.

(2) SSgt Vega admitted to having sex with Dana during his NCIS interview (IO5).

(3) IO10 is the Dependency Application for SSgt Vega. IO10 shows that SSgt Vega was married to his ex-wife until 11 May 2009.

(4) Dana Orcutt and her family knew that SSgt Vega was a Marine. By committing adultery with Dana he brought discredit upon the armed forces.

j. Charge 5, Specification 3, Adultery (with Nuvia Gomez).

(1) Nuvia Gomez testified that she had sex with SSgt Vega. SSgt Vega admitted to her that he was married at the time of their relationship.

(2) SSgt Vega admitted to having sex with Nuvia during his NCIS interview (IO5).

(3) IO10 is the Dependency Application for SSgt Vega. IO10 shows that SSgt Vega was married to his ex-wife until 11 May 2009.

(4) Nuvia Gomez knew that SSgt Vega was a Marine. By committing adultery with her he brought discredit upon the armed forces.

k. Charge 5, Specification 4, Communicating a Threat.

(1) SSgt Vega admitted to threatening Dana Orcutt on numerous occasions during his NCIS interview (IO5).

(2) Dana Orcutt testified that SSgt Vega threatened her with physical violence on numerous occasions during their relationship.

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3. The Government has the following objections:

a. The Government objects to Defense counsel alluding to Dana Orcutt's desire to be a Playboy model. This line of questioning is impermissible under M.R.E. 412. M.R.E. 412 was applicable to the Article 32 hearing via both M.R.E. 303 and Article 31(c). The line of questioning described is demeaning to the victim and is immaterial to the charges alleged.

b. The Government objects to the Investigating Officer asking the victim if she knew that the maximum punishment for rape in the military is death. The question is improper and the victim's knowledge of the potential punishment for rape is irrelevant.


G. K. LOGAN