

UNITED STATES NAVY-MARINE CORPS TRIAL JUDICIARY
NORTHERN JUDICIAL DISTRICT
GENERAL COURT-MARTIAL

UNITED STATES)
) GOVERNMENT MOTION IN
) LIMINE TO SUPPRESS
 v.) EXTRINSIC EVIDENCE OF
) ACCUSATIONS AGAINST AND
 JAMES M. ROWE) STATEMENTS REGARDING
 CAPTAIN) CORPORAL QUINN'S ILLEGAL
 UNITED STATES MARINE CORPS) USE OF PRESCRIPTION DRUGS
)

1. **Nature of Motion.** The government moves to suppress any extrinsic evidence of Corporal Garrett Quinn's illegal use of prescription drugs and Corporal Quinn's statements regarding his use of prescription drugs, under M.R.E. 608(b), M.R.E. 401, and M.R.E. 403.

2. **Summary of Facts.**

a. Corporal Quinn will testify as a government witness in United States v. Rowe.

1) Corporal Quinn was in the victim's house immediately before the alleged assault. His testimony corroborates the victim's version of events immediately preceding the assault; it is limited to placing the accused and his friend at the victim's house and describing the demeanor of the accused.

2) Corporal Quinn's proffered testimony is that he awoke in the victim's bed, with the victim naked beside him. He observed Captain Rowe and Captain Rowe's friend in the house, and he will testify that Captain Rowe appeared to be angry.

b. On 15 August 2011, Corporal Garrett Quinn was interviewed by NCIS regarding his knowledge and participation in trafficking and use of prescription/non-prescription narcotics aboard/around Marine Barracks Washington (8th and I).

1) During this interview Cpl Quinn acknowledged that he used prescription medications which had been prescribed to him for a shoulder injury (ibuprofen, Percoset, and muscle relaxers).

2) Cpl Quinn denied ever using or purchasing non-prescription narcotics.

3) Cpl Quinn was never charged as a result of that NCIS investigation due to insufficient evidence implicating him in criminal misconduct.

c. On the evening of 29 November 2011 Capt Mitchell Bishop, U.S. Marine Corps, Chief Trial Counsel for Marine Corps Base Quantico, interviewed LCpl Brandon Davis pursuant to M.R.E. 410 pretrial negotiations.

1) LCpl Brandon Davis is currently charged with soliciting another to traffic in weapons, attempted conspiracy to distribute prescription narcotics, and distribution of prescription narcotics.

2) LCpl Davis indicated that he had been Cpl Quinn's roommate from November 2010 through January 2011. During that time period LCpl Davis indicated that he had seen Cpl Quinn use oxycontin/oxycodone in a manner other than directed on an almost daily basis.

d. The government disclosed to this evidence/testimony to defense counsel in a memorandum on November 30, 2011.

3. Discussion.

A military judge has “wide latitude” to impose “reasonable limits” upon cross-examination. *U.S. v. Sullivan*, 70 M.J. 110, 115 (C.A.A.F. 2011), citing *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986), and “an accused does not have a right to cross-examine a witness on any subject solely because he describes it as one of credibility.” 70 M.J. 110, 115. To be admissible, evidence must satisfy the rules of evidence. *Id.*

a. Under M.R.E. 608, specific instances of the conduct of a witness may be brought out on cross examination when probative of truthfulness; however, these instances may not be proved by extrinsic evidence except for convictions or to show bias, prejudice, or any motive to misrepresent. As a threshold matter, any alleged drug use by Cpl Quinn is not probative of his truthfulness. Furthermore, M.R.E. 608 does not allow defense to contradict Cpl Quinn’s answer through use of extrinsic evidence to show specific conduct. Cpl Quinn’s alleged illegal use of prescription drugs is a specific instance of conduct that was not charged. It does not show bias, prejudice, or any motive to misrepresent; Cpl Quinn’s proffered testimony reflects poorly on his own character, and his statements opened him up to discipline/prosecution at the time he initially disclosed his misconduct. Because Cpl Quinn is already testifying to something for which he could be have been disciplined, any motive to lie is already moot. The introduction of any evidence regarding Cpl Quinn’s alleged abuse of prescription narcotics, through his testimony or extrinsic, is too remotely related to his credibility to be relevant.

b. To be a legitimate subject for cross-examination, there must be “a real and direct nexus” to the case: M.R.E. 401 requires a “logical relevance” and M.R.E 403 requires a “legal relevance” to a “fact or issue at hand.” 70 M.J. 110, 115.

1. Under M.R.E. 401, relevant evidence is that which has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than without the evidence. Evidence of Cpl Quinn’s prescription drug use and his statements concerning such is not logically relevant to the ultimate issues in this case, nor even to his proffered testimony. Cpl Quinn is only a corroborating witness in the case, whose testimony will be limited to setting the scene before the sexual assault occurred. The majority of facts Cpl Quinn testifies to are not in dispute, and will be alluded to by other government witnesses. Even if the members were given the impression that Cpl Quinn was untruthful, the doubt sown would not affect their judgment of whether the elements of the charges are met. In sum, evidence of Cpl Quinn’s alleged illegal prescription drug use (through cross-examination or extrinsic evidence) does not make the existence of any fact that is of consequence to the action any more or less probable than it would be without the evidence, and is therefore not relevant evidence.

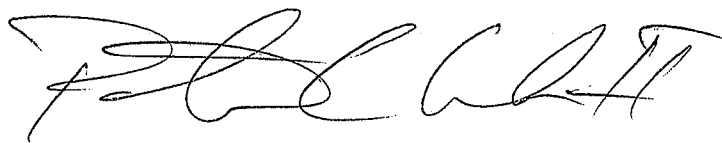
2. Under M.R.E 403, even relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the members, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. For the reasons articulated in the discussion of relevance under M.R.E. 401, evidence of Cpl Quinn’s drug use is attenuated and has little probative value for the ultimate issues in the case. Any such

evidence pertains to an unrelated matter involving a witness on a collateral issue. The probative value of such evidence is further diminished by its source; LCpl Davis is the only source of information contradicting Cpl Quinn's statements. The circumstances of the LCpl Davis's statements, where he was likely seeking to be of value to the government by implicating others in misconduct, call into question the veracity of Davis's statements implicating Cpl Quinn. Finally, the most substantial danger of allowing evidence of Corporal Quinn's alleged illegal use of prescription drugs is the substantial likelihood that the members will be confused and misled to focus on this collateral issue of Corporal Quinn's criminality, and distracted from evidence going to the elements charged.

4. **Evidence and Burden of Proof.** The Government bears the burden of proof by a preponderance of the evidence. R.C.M. 905(c).

5. **Relief Requested.** The Government requests the court to suppress defense from introducing any evidence related to Cpl Quinn's alleged prescription drug use or any denials thereof, through either cross-examination of Cpl Quinn or extrinsic evidence.

6. **Argument.** The Government requests oral argument on this motion if necessary for resolution.



P. C. COMBE
Captain, U. S. Marine Corps
Trial Counsel

I certify that a copy of this document was served electronically upon civilian and detailed defense counsel, electronically via email, on 5 December 2011.

A handwritten signature in black ink, appearing to read 'P. C. COMBE', written in a cursive style.

P. C. COMBE
Captain, U. S. Marine Corps
Trial Counsel

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

UNITED STATES)	GENERAL COURT-MARTIAL
)	
v.)	GOVERNMENT DISCLOSURE
)	OF EVIDENCE/TESTIMONY
JAMES M. ROWE)	
CAPTAIN)	
UNITES STATES MARINE CORPS)	30 November 2011
)	

1. The government, by and through trial counsel, hereby makes disclosure to the defense in the above captioned case of the following matters known to the government.

2. On 15 August 2011 Corporal Garrett Quinn was interviewed by NCIS regarding his knowledge and participation in trafficking and use of prescription/non-prescription narcotics aboard/around Marine Barracks Washington (8th and I).

~~a. During this interview Cpl Quinn acknowledged that he used prescription medications which had been prescribed to him for a shoulder injury (ibuprofen, Percocet, and muscle relaxers).~~

b. Cpl Quinn denied ever using or purchasing non-prescription narcotics.

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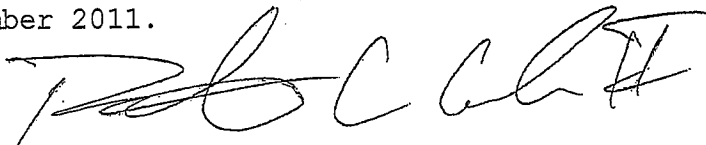
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I hereby certify that a copy of this document was served, electronically to civilian defense counsel and/or detailed defense counsel on 30 November 2011.



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Trial Counsel
