

IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES,

Appellee

v.

Richard R. MOTT
Seaman (E-3)
U.S. Navy,

Appellant

BRIEF ON BEHALF OF APPELLANT

USCA Dkt. No. 12-0604/NA
Crim. App. Dkt. No. 200900115

TO THE JUDGES OF THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES:

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Issues Presented

I.

A LACK OF MENTAL RESPONSIBILITY DEFENSE EXISTS WHEN A MENTALLY DISEASED ACCUSED CANNOT APPRECIATE THE WRONGFULNESS OF HIS CONDUCT. HERE, EXPERTS TESTIFIED THAT APPELLANT'S PARANOID SCHIZOPHRENIA AND SEVERE DELUSIONS CREATED HIS SUBJECTIVE BELIEF THAT STABBING THE VICTIM WAS JUSTIFIED. BUT THE MILITARY JUDGE AND NMCCA ADOPTED AN OBJECTIVE STANDARD FOR "WRONGFULNESS." WHAT IS THE APPROPRIATE STANDARD IN DETERMINING WHETHER AN ACCUSED CAN APPRECIATE THE WRONGFULNESS OF HIS CONDUCT?

II.

UNDER THE FIFTH AMENDMENT, AN ACCUSED'S STATEMENT TO INVESTIGATORS IS ADMISSIBLE ONLY IF IT WAS OBTAINED WITH A VOLUNTARY, KNOWING, AND INTELLIGENT WAIVER WHERE THE ACCUSED UNDERSTANDS HIS RIGHTS AND THE CONSEQUENCES OF WAIVING THEM. HERE, EXPERT WITNESSES TESTIFIED THAT APPELLANT COULD NOT UNDERSTAND HIS RIGHTS OR THE CONSEQUENCES OF WAIVING THEM BECAUSE OF HIS SEVERE MENTAL DISEASE. DID THE MILITARY JUDGE ERR BY ADMITTING THE STATEMENT?

Statement of Statutory Jurisdiction

Appellant's approved court-martial sentence included a punitive discharge and more than one year of confinement. Accordingly, his case fell within the Article 66(b)(1), Uniform Code of Military Justice, 10 U.S.C. § 866(b)(1) (2006), jurisdiction of the Navy-Marine Corps Court of Criminal Appeals. He invokes this Court's jurisdiction under Article 67, UCMJ, 10 U.S.C. § 867 (2006).

Statement of the Case

Shortly after the offense, a Rule for Courts-Martial 706 Board found SN Mott mentally incompetent to stand trial. (J.A. at 48.) He received intensive mental health treatment for eight months before doctors determined that his mental capacity was restored to a level sufficient to understand the proceedings and assist in his defense. (J.A. at 48.) Appellant was initially convicted in 2008 of attempted premeditated murder in violation of Article 80, UCMJ, 10 U.S.C. § 880 (2006), and sentenced to twelve years of confinement. On November 24, 2009, the NMCCA set aside the findings and sentence due to the Government's discovery violations. United States v. Mott, No. 200900115, 2009 CCA LEXIS 424, at *6 (N-M. Ct. Crim. App. Nov. 24, 2009) (unpublished op.).

At his retrial, members sitting as a general court-martial convicted Appellant, contrary to his plea, of one specification of attempted premeditated murder, in violation of Article 80, UCMJ, 10 U.S.C. § 880. The members sentenced Appellant to be reduced to the pay-grade of E-1, confined for nine years, and a dishonorable discharge. The convening authority approved the adjudged sentence and, with the exception of the dishonorable discharge, ordered the sentence executed.

The NMCCA issued its second opinion in Appellant's case on April 30, 2012, and affirmed the findings and sentence. United

States v. Mott, No. 200900115, 2012 CCA LEXIS 157, at *14 (N-M. Ct. Crim. App. Apr. 30, 2012) (unpublished op.). The decision was mailed to Appellant on May 9, 2012, in accordance with Rule 19(a)(1)(B) of this Court's Rules of Practice and Procedure. Appellant filed a timely petition for review on July 6, 2012, which this Court granted on September 19, 2012.

Statement of Facts

Seaman Richard Mott, USN, believed many people meant to harm him -- his parents, grandparents, his ex-girlfriend, and strangers. (J.A. at 55, 60.) He had experienced auditory hallucinations that began as noises and developed into voices; these voices, which included his mother's, would talk back to him. (J.A. at 124.) He also experienced visual hallucinations including visions of a young Andrew Carnegie as an angel. (J.A. at 133.) He believed that a senior al Qaeda official launched the 9/11 attacks because SN Mott had killed the terrorist's two sons after they had raped SN Mott. (J.A. at 55.) In a college notebook that he kept to document his experiences, he noted his desire to "make a space ship to grow mushrooms on." (J.A. at 124.)

SN Mott is a paranoid schizophrenic who suffers from severe delusions. (J.A. at 52, 79, 130, 144.) His psychiatric condition existed at the time of the offense. (J.A. at 76.) Specifically, SN Mott suffered from the severe delusion that Seaman Recruit

[JG], a man he had not actually met, had raped him years before and intended to kill him and his family. (J.A. at 52.) Thinking God had ordained that SR JG face justice for his past and future crimes, SN Mott stabbed SR JG with a knife on their ship's crowded mess deck.¹ (J.A. at 103-04.) As he attacked SR JG, SN Mott yelled repeatedly "you raped me!" (J.A. at 103.) SR JG survived. (J.A. at 37.)

Shortly after the offense, a R.C.M. 706 Board found SN Mott mentally incompetent to stand trial because he was "ill to the point that he was not able to understand a court-martial proceeding sufficiently." (J.A. at 48.) SN Mott was then treated at the Prison Mental Health Facility at Butner, North Carolina, for about eight months. (J.A. at 48.) There, SN Mott continued experiencing delusions and exhibiting bizarre behavior. For example, he rinsed his food before meals for fear of being poisoned, created a "gas mask" from strips of cloth and a cardboard carrier, complained that his roommate had sexually assaulted him, and accused the medical staff of conspiring against him. (J.A. at 67, 125.) Eventually his treatment and medications were successful, and he was deemed competent to stand trial. (J.A. at 125.)

¹ SN Mott and SR JG served together on USS CAPE ST. GEORGE (CG-71).

At trial, two forensic psychiatrists testified that during the offense SN Mott could not understand the wrongfulness of his actions. (J.A. at 76, 81-82.) The defense presented expert testimony that at the time of his offense, there was a "significant disruption" in how SN Mott perceived the world around him.² (J.A. at 52.) One expert testified that SN Mott's mind was so delusional and hallucinatory that he believed, albeit incorrectly, that others were trying to harm him in some way or were "out to get him." (J.A. at 53.)

SN Mott's attack on SR JG happened because of SN Mott's long-standing delusions and hallucinations. He believed that his ex-girlfriend had drugged him during a sexual encounter in 2003. (J.A. at 104.) During that encounter, SN Mott believed that SR JG and a gang of about fourteen other men jumped out of the closet and sexually assaulted him. (J.A. at 104.) Specifically, he believed SR JG and the others held his arms down, inserted plastic bags of drugs in his anus, made cuts in his anus, and turned the bags inside-out while they were in his anus. (J.A. at 104.) In this delusion, SN Mott believed that SR JG pulled a bag over SN Mott's head and said "I need to kill Mott or else the whole team will get caught." (J.A. at 104.) SN Mott was convinced the men would always be watching him. (J.A. at 103.)

² Schizophrenia impairs one's ability to see reality. (J.A. at 52.)

In reality, SN Mott first saw SR JG aboard USS CAPE ST. GEORGE the day before SN Mott's attack. (J.A. at 68.) The two men had never before met, either as sailors or as civilians. (J.A. at 39.) But SN Mott's delusions and paranoia convinced him that SR JG, the gang leader who had raped him, now intended to kill him. (J.A. at 69.) The day before the attack on the ship, SN Mott believed he heard SR JG tell the other gang members, also on board, that they had to kill SN Mott and his family. (J.A. at 68, 103.) Expert testimony demonstrated that SN Mott was convinced that SR JG was going to kill him. (J.A. at 69, 81.)

Fearing an imminent attack from SR JG, SN Mott purchased a knife on March 7, 2007, to protect himself. (J.A. at 73, 81.) The next morning, on the day of the attack, SN Mott continued to experience active delusions and hallucinations. He believed SR JG was stalking him and preparing for an imminent attack. (J.A. at 76, 82.) So SN Mott walked onto the crowded mess deck and stabbed SR JG, screaming, "you raped me!" (J.A. at 103.) The expert forensic psychiatrists testified that SN Mott believed that stabbing SR JG was necessary to save his own life. (J.A. at 76, 82.)

In SN Mott's delusional state, he had no alternatives to his attack. (J.A. at 77.) His mental disease not only prevented him from rationally understanding what, if any, alternatives

existed (J.A. at 77); it also instilled a sense of distrust in authority and those around him (J.A. at 84). Two expert forensic psychiatrists concluded that, at the time of the attack, SN Mott did not appreciate that his actions were wrong. (J.A. at 76, 81-82.) Yet, the members dismissed the mental responsibility defense and convicted SN Mott of attempted premeditated murder.

After the attack on SR JG, two Naval Criminal Investigative Service agents quickly interrogated SN Mott. (J.A. at 21-22.) Before questioning, SN Mott was advised of his rights and signed a document indicating that he waived those rights. (J.A. at 23-24.) That interrogation produced SN Mott's written and videotaped confession. (J.A. at 103-05.) The defense moved to suppress all statements SN Mott made to the NCIS agents because his severe mental disease made his waiver of rights unknowing and thus inadmissible. (J.A. at 108-10.) Psychiatrist Dr. Robert Sadoff, MD, testified during the motion hearing that SN Mott's psychosis affected his cognitive abilities and that, in his opinion, SN Mott's paranoid schizophrenia prevented him from understanding the waiver of his rights. (J.A. at 29-30, 32.) Even SN Mott's interrogator, Special Agent Jonathan Oakes, perceived his then-undiagnosed mental disease. Special Agent Oakes admitted at the suppression hearing that during the interrogation, SN Mott made bizarre,³ and increasingly

³ SN Mott claimed that he had received personal phone calls from

"grandiose" statements, and that he perceived that SN Mott may be considered "crazy." (J.A. at 25-28.) Ultimately, the military judge denied the defense's motion to suppress SN Mott's statements. (J.A. at 117.)

Summary of Argument

It is uncontroverted that when SN Mott stabbed SR JG, and during SN Mott's later interrogation, he suffered from delusions and hallucinations caused by his severe paranoid schizophrenia. Experts testified that SN Mott could not understand the wrongfulness of his actions because his mental defect or disease created a subjective belief that his actions were justified. The Eighth Circuit, Ninth Circuit, and this Court have suggested that an accused's subjective delusions that their crimes were justified may establish an insanity defense. Appellant respectfully requests that this Court incorporate a hybrid objective and subjective standard to review whether SN Mott appreciated the wrongfulness of his actions.

Additionally, SN Mott stands convicted, in part, because of the statement he made to investigators just hours after his offense. Two experts testified that because of his mental defect or disease, SN Mott was unable to knowingly and intelligently

both President Clinton and then Governor Bush, that U.S. Special Forces soldiers had kidnapped him when he was a teenager, and that a gang of people constantly watched over him and repeatedly sexually assaulted him over the years. (J.A. at 25-26.)

waive his Article 31(b) rights. But the military judge and the NMCCA rejected these expert opinions and found that SN Mott validly waived his rights. This Court has never specifically held whether a mentally diseased person like SN Mott can validly waive his rights. Accordingly, Appellant asks this Court to remedy the errors by the military judge and the NMCCA in analyzing whether he was competent to waive his Article 31(b) rights.

Argument

I.

A LACK OF MENTAL RESPONSIBILITY DEFENSE EXISTS WHEN A MENTALLY DISEASED ACCUSED CANNOT APPRECIATE THE WRONGFULNESS OF HIS CONDUCT. HERE, TWO EXPERTS TESTIFIED THAT APPELLANT'S PARANOID SCHIZOPHRENIA AND SEVERE DELUSIONS CREATED HIS SUBJECTIVE BELIEF THAT STABBING THE VICTIM WAS JUSTIFIED. BUT THE MILITARY JUDGE AND THE NMCCA ERRONEOUSLY ADOPTED A PURELY OBJECTIVE STANDARD FOR "WRONGFULNESS." LIKE THE EIGHTH AND NINTH CIRCUITS, THIS COURT SHOULD ADOPT A SENSIBLE, HYBRID STANDARD THAT INCORPORATES SN MOTT'S SUBJECTIVE BELIEF AND IS CONSISTENT WITH ITS DICTA IN UNITED STATES V. MARTIN.

A. *Standard of Review and Principles of Law.*

Issues concerning mandatory instructions are reviewed de novo. United States v. Schumacher, 70 M.J. 387, 389 (C.A.A.F. 2011). In reviewing a court-martial's findings of guilt, this Court reviews issues of legal sufficiency de novo. United States v. Washington, 57 M.J. 394, 399 (C.A.A.F. 2002). To review a

jury's finding of fact regarding mental responsibility, courts use the "reasonableness" test. United States v. Martin, 56 M.J. 97, 107 (C.A.A.F. 2001). As such, this Court "should reject the jury verdict [on insanity] . . . only if no reasonable trier of fact could have failed to find that the defendant's criminal insanity at the time of the offense was established by clear and convincing evidence." Id. (citations omitted). Thus, whether an appellate court upholds a jury's insanity finding will depend on evidence on record that supports the jury's finding. Id.

The affirmative defense of lack of mental responsibility exists when an accused demonstrates by clear and convincing evidence that at the time of the offense, the accused: (1) suffered from a severe mental disease or defect; and (2) was unable to appreciate either the nature and quality, or the wrongfulness of his acts. Art. 50a, UCMJ, 10 U.S.C. § 850. The UCMJ codification is "substantively identical to 18 U.S.C. § 17." Martin, 56 M.J. at 103.

Here, SN Mott concedes that despite suffering from paranoid schizophrenia at the time of his offense, he appreciated the nature and quality of his actions. But because of his severe mental disease or defect, he did not appreciate the wrongfulness of his actions. In other words, SN Mott knew at the time that he was actually stabbing SR JG. Still, his delusions that SR JG would kill him and his family created a subjective belief that

stabbing SR JG was justified and therefore not wrongful. Thus, SN Mott's challenge is that he did not "appreciate" that his conduct was "wrongful."

B. Three of the possible definitions of "wrongful."

"Wrongfulness" remains undefined in the military. See, e.g., United States v. Brasington, No. 20060033, 2009 CCA LEXIS 383 (A. Ct. Crim. App. Oct. 5, 2009) *rev'd on other grounds*, 69 M.J. 160 (C.A.A.F. 2010) (The Army Court of Criminal Appeals remarked that "[o]ur superior court did not adopt any meaning of 'wrongfulness' in Martin [], which remains the leading decision on the defense of lack of mental responsibility in the military."); Mott, 2012 CCA LEXIS 157, at *10 ("The Court of Appeals for the Armed Forces has not defined the phrase 'appreciate the wrongfulness' in its existing case law."). And there is no statutory or legal definition of "wrongfulness" in insanity cases.

Scholars and courts have proposed three possible definitions. First, the term may mean "contrary to law" -- a legal standard. Under this meaning, an accused "does not meet his burden . . . if he was able to appreciate that his act violated the law." United States v. Danser, 110 F. Supp. 2d 807, 826 (S.D. Ind. 1999). Second, "wrongful" may mean "contrary to public morals" -- an objective standard. Under this definition, an accused "cannot meet his burden . . . if he could appreciate

that society morally condemns his acts." Id. Third, the word may mean "contrary to personal morals" -- a subjective standard. For this entirely subjective approach, an accused meets his burden if he proves that "because of a mental disease or defect, he believed that he was morally justified in his conduct even though he may appreciate either that his act is criminal or that it is contrary to public morality." Id. (emphasis added).

Notably, the meaning of "wrongfulness" could lay somewhere on a spectrum that includes each of these three possible definitions. Id. This Court should adopt a sensible, hybrid approach that incorporates both the objective and subjective standard.

C. *This Court, the Eight Circuit, and the Ninth Circuit have suggested that members should consider an accused's subjective morals.*

While this Court has not defined "wrongfulness," in United States v. Martin it suggested considering an accused's subjective morals. 56 M.J. 97, 108 (C.A.A.F. 2001). There, this Court noted the trend "toward a more relaxed standard that recognize[d] that a person might also not be convicted who 'delusionally perceived facts that amounted to a justification.'" Id. (citations omitted). That trend was advanced by the Eighth Circuit, which recognized that "a defendant's delusional belief that his criminal conduct is morally or legally justified may establish an insanity defense."

Id. at 109 (citing United States v. Dubray, 854 F.2d 1099, 1101 (8th Cir. 1988)).

In Dubray, the accused admitted that he had raped a sixty-year-old Catholic nun, but claimed he was insane at the time. Dubray, 854 F.2d at 1100. Dubray requested the judge instruct the jury that "'wrongfulness' implies moral, rather than criminal, wrongdoing." Id. Ultimately, the court held that Dubray raised no evidence that required a distinction between this subjective moral wrongfulness and objective legal wrongfulness. Id. It did so because Dubray's evidence suggested a complete break with reality, "rather than a mental state in which Dubray would have thought of rape as a morally necessary act proscribed by the law." Id. But the court noted that like the Ninth Circuit, United States v. Segna, 555 F.2d 226 (9th Cir. 1977),⁴ it too "recognizes that a defendant's delusional belief that his criminal conduct is morally justified may establish an insanity defense under federal law, *even where the defendant knows that the conduct is illegal.*" Id. (citing United States v. Ming Sen Shiue, 650 F.2d 919, 922 n.7 (8th Cir. 1981)) (emphasis added).

D. *The objective standard.*

⁴ While Segna predates the federal insanity defense codified in 18 U.S.C. § 17, the Ninth Circuit has yet to reject its adoption of a subjective definition of "wrongfulness."

By contrast, the Seventh Circuit adopted a purely objective standard in United States v. Ewing. 494 F.3d 607, 621 (7th Cir. 2007). There, Ewing suffered from schizophrenic delusions that he had won a \$25 million slip-and-fall judgment in a civil law suit, and that a state court judge was part of a conspiracy to withhold the funds. Id. at 610. Ewing entered the judge's courtroom and threw a Molotov cocktail at him, which nearly missed the judge but engulfed the bench and courtroom in flames. Id. The question of how to define "wrongfulness" for Ewing's insanity defense arose at trial. The court acknowledged that Congress did not define "wrongfulness" in the statute. But it determined that the statute's elements resemble those in the M'Naghten case, which created the common law insanity defense. Ewing, 494 F.3d at 617 (citing M'Naghten's Case, 8 Eng. Rep. 718 (1843)). In doing so, the Seventh Circuit inferred that Congress intended that "wrongfulness" inherited the same meaning as in M'Naghten and its progeny. Id. at 618. The Ewing court then held that "wrongfulness for purposes of the insanity defense statute is defined by reference to objective societal or public standards of moral wrongfulness, not the defendant's subjective personal standard of moral wrongfulness." Id. at 621.

E. The Military Judge and the NMCCA mistakenly excluded any subjective standard in their analyses.

At SN Mott's trial, the defense advanced a theory that SN Mott was not guilty by insanity because he could not subjectively appreciate the wrongfulness of his actions. Two forensic psychiatrist expert witnesses testified that SN Mott did not subjectively believe it was morally wrong to kill SR JG. (J.A. at 76, 81-82.) The military judge did not include a definition of "wrongfulness" for SN Mott's insanity defense in his initial findings instructions to the members. Significantly, the senior member requested the legal definition of "wrongfulness" during deliberations. (J.A. at 111.) Over defense objection, the military judge limited his instruction to a purely objective standard:

If the accused was able to appreciate the nature, and quality, and the wrongfulness of (his) conduct, (he) is criminally responsible; and this is so, regardless of whether the accused was then suffering from a severe mental disease or defect, and *regardless of whether or not (his) own personal moral code was violated by the commission of the offense.*

. . . .

When the law speaks of wrongfulness, the law does not mean to permit the individual to be his own judge of what is right or wrong. What is right or wrong is judged by societal standards. The standard focuses on the accused's ability to appreciate that his conduct would be contrary to public or societal standards.

(J.A. at 96-97, 112) (emphasis added for the additional instruction language). The defense counsel objected to the instruction (J.A. at 94-95) because of the difference between SN Mott's appreciation of society's standards and SN Mott's subjective justification; he was subjectively justified, under his delusion, SR JG raped him and was about to kill him, regardless of whether others would believe him. (J.A. at 61, 70-72, 75-76, 78, 82-83, 84.) The military judge overruled the defense objection and provided the objective standard. The members, without a subjective component to the "wrongfulness" instruction, convicted SN Mott.

The NMCCA affirmed. Mott, 2012 CCA LEXIS 157, at *10. Like the military judge, the lower court chose between the three definitions the Seventh Circuit provided in Ewing. Id. (citing Ewing, 495 F.3d at 616). In doing so, the NMCCA decided that "the phrase 'appreciate the wrongfulness' must employ an objective societal standard of moral wrongfulness." Id. Using that standard, the lower court found that the defense failed to establish the affirmative defense because its experts had relied on SN Mott's subjective moral code -- not the objective standard the NMCCA chose to follow.

F. SN Mott's case should have been analyzed through a hybrid approach given his delusional justification.

By employing a purely objective standard here, the military judge and the NMCCA ignored vital evidence that distinguishes SN Mott's case. The irregular way that SN Mott thought and processed information at the time of his attack is paramount. Adopting a purely objective insanity test discounted SN Mott's insanity. To be sure, SN Mott does not request that all military cases involving insanity defenses employ a subjective component.⁵ Some evidence should be present to trigger the test and its associated instruction. But in SN Mott's case, a standard that in some way accounts for his subjective morals is required. Such a standard can exist where the definition of "wrongfulness" could lay somewhere on a spectrum that incorporates a hybrid, objective *and* subjective approach. Cf. Danser, 110 F. Supp. at 826.

SN Mott would have likely been found not guilty by lack of mental responsibility if the lower courts followed this Court's suggestion in Martin to consider an accused's subjective morals. Martin, 56 M.J. at 108. SN Mott "delusionally perceived facts,"

⁵ While the Seventh Circuit's purely objective Ewing standard may be appropriate in some instances, SN Mott's case is not one of them. Ewing's theory of defense was that his conspiracy delusions justified his attack on the judge. See Ewing, 494 F.3d at 622. But his delusions--that the judge withheld a large lawsuit settlement--did not justify his action of throwing a Molotov cocktail at the judge. Here, SN Mott's delusions caused him to fear for his life and the life of his family members. He believed that SR JG, the man who previously raped and stalked him, would kill him if he did not act first. Thus, SN Mott's delusion justified his actions.

namely that his prior rapist and stalker would imminently kill him and his family, which "amounted to a justification" in his mind. See id. Under the Eight Circuit's perspective, SN Mott's "delusional belief that [pre-emptively attacking his potential murderer] is morally justified may establish an insanity defense under federal law, even where [SN Mott] knows that the conduct is illegal." Dubray, 854 F.2d at 1101. And unlike the accused in Dubray, SN Mott provided a reasonable quantum of evidence that required a distinction between this subjective moral wrongfulness and objective legal wrongfulness. Specifically, SN Mott's severe paranoid schizophrenia and delusions trapped him in a mental state in which he would have thought of pre-emptively attacking SR JG "as a morally necessary act proscribed by the law." See id. Two experts testified as much.

Despite this evidence, the military judge gutted the defense's entire theory of the case, to include its affirmative defense, when he employed a purely objective standard to instruct the members on wrongfulness. This instruction came after the defense presented its evidence and made its closing argument to the members. The prejudice is apparent on its face.

Conclusion

SN Mott's mental disease was uncontroverted and his subjective justification should have been included in the members instruction. The Eighth Circuit, Ninth Circuit, and this

Court have suggested that an accused's subjective delusions that their crimes were justified may establish an insanity defense. At least in this case, SN Mott's subjective belief should have been incorporated in the analysis of whether he appreciated the wrongfulness of his actions. Two experts provided consistent testimony sufficient to raise such an instruction. As a result, this Court should reverse the lower court. A contrary holding would adopt a myopic approach that discounts significant dicta from this Court's past decision in Martin and the decisions of the Eighth and Ninth Circuits.

II.

UNDER THE FIFTH AMENDMENT, AN ACCUSED'S STATEMENT TO INVESTIGATORS IS ADMISSIBLE ONLY IF IT WAS OBTAINED WITH A VOLUNTARY, KNOWING, AND INTELLIGENT WAIVER WHERE THE ACCUSED UNDERSTANDS HIS RIGHTS AND THE CONSEQUENCES OF WAIVING THEM. HERE, TWO EXPERT WITNESSES TESTIFIED THAT APPELLANT COULD NOT UNDERSTAND HIS RIGHTS OR THE CONSEQUENCES OF WAIVING THEM BECAUSE OF HIS SEVERE MENTAL DISEASE. THE MILITARY JUDGE ERRED BY ADMITTING APPELLANT'S STATEMENT.

- A. *To validly waive an Article 31(b) right, an accused must be fully aware of the nature of the right he is waiving and the consequences of waiving it.*

A military judge's denial of a motion to suppress an accused's statement is reviewed for an abuse of discretion. United States v. Pipkin, 58 M.J. 358, 360 (C.A.A.F. 2003). A military judge's findings of fact are reviewed under the clearly erroneous standard, United States v. Leedy, 65 M.J. 208, 213

(C.A.A.F. 2007), and his conclusions of law are reviewed de novo. United States v. Bubonics, 45 M.J. 93, 94 (C.A.A.F. 1996). This Court considers the totality of circumstances in determining whether an accused's waiver of his Fifth Amendment rights was voluntary, knowing, and intelligent. United States v. Bresnahan, 62 M.J. 137, 141 (C.A.A.F. 2005).

Investigators must warn a suspect, before questioning, that he has a right to remain silent and a right to have an attorney present. Maryland v. Shatzer, 559 U.S. ___, 130 S. Ct. 1213, 1219 (2010) (citing Miranda v. Arizona, 384 U.S. 436, 444, 86 S. Ct. 1602, 1612 (1966)); Art. 31(b), UCMJ, 10 U.S.C. § 831(b). An accused's statement to investigators is inadmissible at court-martial if it was obtained without the accused voluntarily, knowingly, and intelligently waiving these constitutional rights. MILITARY RULES OF EVIDENCE 304, 305, MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.).

Determining a waiver's validity involves "two distinct dimensions." Moran v. Burbine, 475 U.S. 412, 421, 106 S. Ct. 1135, 1140 (1986). To admit a confession, the government must first show that the decision to speak with investigators was "voluntary in the sense that it was a product of free and deliberate choice" and lacked government "intimidation, coercion, or deception." Id. Second, the government must demonstrate that the waiver was "made with a full awareness of

both the nature of the right being abandoned and the consequences of the decision to abandon it." Id.

B. The question of whether a mentally impaired person can validly waive his Article 31(b) rights remains unanswered.

SN Mott conceded at trial that the government met the standard for voluntariness. (J.A. at 35.) Thus, the question here is whether SN Mott was fully aware of both the nature of the rights he abandoned and the consequences of the decision to abandon those rights. In other words, can a person suffering from SN Mott's mental disease validly waive his Article 31(b) rights?

This Court, in United States v. Campos, expressly left this issue unanswered. 48 M.J. 203, 207 n.1 (C.A.A.F. 1998). It did so because the Appellant there did not challenge the validity of his Article 31 rights waiver because of mental impairment. Id. SN Mott, however, directly challenged the validity of his waiver based on his severe paranoid schizophrenia and delusions.

Although the U.S. Supreme Court has not ruled directly on this issue, it has found that convicting a person based on a statement made while insane violates a fundamental sense of justice. See Blackburn v. Alabama, 361 U.S. 199, 80 S. Ct. 274 (1960) but see Colorado v. Connelly, 479 U.S. 157, 173, 107 S. Ct. 515, 525 (1986) (finding, absent police coercion during questioning of mentally ill Defendant, his statement to police

was voluntary under the Due Process Clause). In Blackburn, the Court held that evidence "establishing the strongest possibility that [the accused] was insane and incompetent at the time he allegedly confessed" sufficiently established a due process violation when considered with other factors including the absence of his friends, relatives, or legal counsel, and the fact that the interrogator composed the written confession. Id. at 207-08. While the Blackburn Court focused on the voluntariness of the statement, it noted that given the circumstances "the chances of a confession's having been *the product of a rational intellect* and a free will become even more remote and the denial of due process even more egregious." Id. at 208 (emphasis added). The Court decided this way despite the fact that the interrogators believed the suspect was sane when he confessed. Id. at 209. The Court rejected as dispositive the interrogators' claim that the accused seemed sane because he "'talked sensible and give [sic] sensible answers,' was clear-eyed, and did not appear nervous." Id. at 204. While the investigators in Blackburn believed the defendant was sane, Special Agent Oakes in this case perceived that SN Mott was "crazy" during his interrogation. This Court should incorporate the general rationale of Blackburn here and find that SN Mott did not knowingly and intelligently waive his rights.

C. *Appellant's severe mental disease prevented him from understanding the consequences of waiving his rights.*

SN Mott's severe mental disorders affected his ability to understand, reason, and make decisions. Dr. Edward Simmer, a forensic psychiatrist, testified that there was a significant disruption in how SN Mott perceived the world. (J.A. at 52.) His delusions exacerbated this perception problem. For example, SN Mott believed U.S. Special Forces kidnapped him as a teenager, and that U.S. Presidents had personally phoned him. (J.A. at 25-26.) SN Mott had wanted to build a space ship to grow mushrooms. (J.A. at 124.) He heard voices in his head that would talk back to him (J.A. at 124), and saw visual hallucinations (J.A. at 133).

SN Mott's severe mental defect affected him immediately before waiving his rights. Specifically, he was delusional while he was stabbing SR JG because SN Mott yelled, "You raped me" during the attack. (J.A. at 103.) Of course, SN Mott had never actually met SR JG. But he still believed he was the leader of a gang of men who had raped him years earlier and constantly watched over him, and that SR JG intended to kill him and his family. (J.A. 103-04.)

SN Mott's delusions continued after the attack when Special Agent Oakes questioned him about the offense. At the time SN Mott waived his rights, he was an undiagnosed paranoid

schizophrenic (J.A. at 52, 79), who suffered from severe delusions and hallucinations (J.A. at 52). His ability to think rationally was compromised (J.A. at 77), and his perception abilities were significantly disrupted (J.A. at 52). Even his interrogator, Special Agent Oakes, perceived that SN Mott might be "crazy" because of his responses during the interrogation. (J.A. at 25-28.) At trial, Dr. Sadoff testified that SN Mott's psychosis affected his cognitive abilities, and that in his expert opinion, SN Mott's paranoid schizophrenia prevented him from understanding his waiver of rights. (J.A. at 29-30, 32.)

Shortly after the interrogation, SN Mott lacked the mental capacity to understand the nature of the proceedings or to intelligently assist in his defense. (J.A. at 48.) Each mental health expert who evaluated SN Mott concluded that he was delusional on the day of the attack and NCIS interrogation. Doctors at Federal Medical Center in Butner, North Carolina, and the first R.C.M. 706 Board agreed that SN Mott's severe mental disease precluded him from understanding the proceedings against him and from intelligently assisting in his defense.

Importantly, one requirement for an accused to intelligently assist in his defense is the ability to knowingly decide whether to exercise or waive certain rights, to include the right to remain silent. No evidence demonstrated any improvement in his psychotic condition from the date of interrogation to the date

of the 706 board. Thus, it is no leap of logic to conclude that he was unable to intelligently exercise or waive his rights before speaking to his interrogator.

In fact, SN Mott's mental disease was so severe that it took eight months of treatment at Butner to restore his mental capacity to a level sufficient to understand the proceedings and assist in his defense. (J.A. at 48.) Surely then he could not have understood his rights in the interrogation room earlier, or understood the consequences of waiving them. While the U.S. Supreme Court has not directly ruled on this knowledge question, at least one Justice agreed with SN Mott's position: "Since it is undisputed that respondent was not then competent to stand trial, I would also conclude that he was not competent to waive his constitutional right to remain silent." Connelly, 479 U.S. at 173, 107 S. Ct. at 525 (Stevens, J., concurring in the judgment in part and dissenting in part).

D. The Military Judge and the NMCCA erred in finding that SN Mott knowingly and validly waived his Article 31(b) rights.

SN Mott's mental defect prevented him from understanding his Article 31(b) rights, and understanding the consequences of waiving those rights. Thus, the military judge's admission of his confession was error that materially prejudiced SN Mott's substantial rights. This error led the members to convict SN Mott of attempted premeditated murder based on improper evidence

derived from an interview conducted when he was an untreated paranoid schizophrenic suffering from severe delusions and hallucinations.

In affirming SN Mott's conviction, the NMCCA found that he knowingly and intelligently waived his rights based on the totality of the circumstances. Mott, 2012 CCA LEXIS 157, at *7. Specifically, the NMCCA relied on Colorado v. Connelly, finding that "a diagnosed mental health condition does not necessarily vitiate one's ability to execute a valid waiver of the right against self-incrimination." Id. at 5 (citing Connelly, 479 U.S. at 169-71, 107 S. Ct. at 522-24). But Connelly is distinguishable from SN Mott's case because Connelly focused on voluntariness, which SN Mott conceded. Connelly, 479 U.S. at 169-171, 107 S. Ct. at 522-24. There, Connelly spoke to investigators because he felt coerced to do so by the "voice of God." Id. at 170. Conversely, SN Mott's challenge is limited to his ability to knowingly and intelligently waive his rights. Still, the question here -- whether a mentally impaired person can validly waive his Article 31(b) rights -- remains unanswered by Connelly or this Court.

Additionally, the NMCCA discounted expert testimony that SN Mott could not understand his waiver. Instead, the lower court relied on its own analysis of SN Mott's actions and his understanding of their consequences. Mott, 2012 CCA LEXIS 157,

at *5. In doing so, the court used only three facts: (1) SN Mott did not acquire a gun for fear it would draw unwanted attention, (2) he thought he would go to the brig for attacking SR JG, and (3) he revised his written statement during the interview. Id. The NMCCA reasoned that in revising his statement, SN Mott attempted to cast his actions in a more favorable light." Id. This revision, it concluded, demonstrated his understanding that others would read his statement and that it would be used against him.

But relying on SN Mott's actions to demonstrate his understanding is impossible given his particular mental disease. He was not a logical, rational person at the time. Dr. Sadoff testified that during his interrogation, SN Mott demonstrated inconsistency in his responses that "reflected his degree of confusion, and his psychotic state of mind." (J.A. at 31.) Because of SN Mott's severe mental defect, Dr. Sadoff rightfully cautioned using a logical approach to analyze SN Mott. SN Mott's own written statement is inconsistent from one line to the next. And his revisions, while also inconsistent, show little more than his changing thought process; a symptom of his mental disease. The lower court's theory that he revised his statement to "cast his actions in a more favorable light" contradicts the expert testimony on SN Mott's abilities. Dr. Sadoff found that SN Mott could not "have emotionally appreciated [the appearance

of how his conduct would be perceived], even though it appeared on the surface, to an intelligent person" that he did. (J.A. at 31.) The NMCAA's cursory analysis of SN Mott's actions did not account for the severe logical disconnect in SN Mott's thinking.

E. The error in admitting Appellant's statement at trial materially prejudiced his substantial rights.

Admitting SN Mott's statement, derived from his unknowing waiver, materially prejudiced his substantial rights. SN Mott attacked SR JR on a crowded mess deck during a meal. Thus, the government could easily prove the stabbing through eye-witness testimony. But without SN Mott's statement, the government's only evidence of his intent to kill or injure SR JG besides the attack was that SN Mott purchased a knife the day before. That evidence is insufficient to meet the government's burden.


In fact, the government based its case on the content of SN Mott's statement. The first words Government counsel uttered during closing argument focused on SN Mott's statement: "Revenge and justice. You heard directly from the accused's statements that this is what he sought with the attack of Seaman Recruit [G]." (J.A. at 86.) The government counsel later quoted directly from SN Mott's statement, "'I wanted justice upheld, and I knew I was the one to do it, because he raped me.' Vengeance is what [SN Mott] was seeking. He wanted justice served." (J.A. at 86.)

Discussing the elements of premeditated murder, the government counsel again relied on SN Mott's statement. He first used the statement to prove SN stabbed SR JG (J.A. at 88), and then to prove SN Mott intended to kill SR JR. He specifically used the statement to show why SN Mott decided to purchase a knife rather than a gun. (J.A. at 89.) To highlight SN Mott's demeanor, government counsel used SN Mott's admission that while watching SR JG from the galley window, he poured himself a glass of water before the attack. (J.A. at 90.) Additionally, the government counsel used the statement to prove SN Mott's premeditated design to kill SR JG. (J.A. at 92.) Finally, the government emphasized, during rebuttal argument, that SN Mott's statement was "the best source[] of understanding what his thought process was at the time." (J.A. at 93.) Thus, admitting the statement was not harmless. Instead, it prejudiced SN Mott's substantial rights.

Conclusion

SN Mott, an undiagnosed paranoid schizophrenic, suffered from severe delusions and hallucinations before, during, and after he waived his rights. At the time of his waiver, SN Mott's mental disease compromised his cognitive abilities, perception, and ability to think rationally. Shortly after he waived his rights, medical experts found him incompetent to assist in his own defense and thus, incompetent to exercise and waive his

rights. For these reasons, SN Mott did not knowingly and intelligently waive his rights. The military judge should have suppressed his prejudicial statement, which was reiterated time and again by Trial Counsel during closing and rebuttal argument.



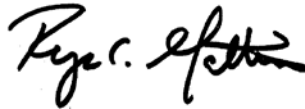
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CERTIFICATE OF FILING AND SERVICE

I certify that on October 19, 2012, a copy of the foregoing was delivered electronically to this Court, and served on both the Navy-Marine Corps Appellate Government Division and Code 40.

CERTIFICATE OF COMPLIANCE

This brief complies with the page limitations of Rule 21(b). This brief complies with the typeface and type style requirements of Rule 37 because it has been prepared in a monospaced typeface using Microsoft Word version 2003 with 12-point-Courier-New font.



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