

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

REPLY 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:

II.

- A. Appellant's verbal and physical responses are consistent with a person suffering from a severe mental defect, not one who understands his constitutional rights.

The revisions Appellant made to his written statement show his ever-shifting thought process caused by his mental defect. The Government contends that by revising his statement, Appellant was concerned with how a reader would perceive him. (Appellee's Br. at 30.) But Appellant's severe mental defect compromised his ability to think rationally (J.A. at 77), significantly disrupted his perception abilities (J.A. at 52), and affected his cognitive abilities. (J.A. at 29-30, 32.) Put another way, even if Appellant appeared to the average person that he understood what was happening, that was not the actual case. Dr. Sadoff testified as much:

Psychotic people have different ways of looking at things, and they do things that may appear to be logical but . . . if you probe even further, and get below the surface of that paralogic, I think you will find a whole set of psychotic bizarre ideas [SN Mott's] bizarreness was so apparent, about his belief about what happened to him, and why he had to do certain things, and what this meant to him, it was his paranoia that caused him to make these adjustments [to his written statement], not logical concern about how it would look.

(R. at 84.) But in SN Mott's case, the NCIS agents did not need to probe further to realize that SN Mott could not understand his rights because he was not thinking rationally. In fact, SN Mott's interrogator, Special Agent Jonathan Oakes, perceived his then-undiagnosed mental defect. The bizarre and grandiose¹ comments Appellant made in the interview led Special Agent Oakes to perceive that SN Mott may be considered "crazy." (J.A. at 25-28.)

Appellant's case is similar to the scenario in United States v. Jennings, where mental health experts testified that Jennings did not knowingly and intelligently waive his rights when questioned about his attempts to induce a minor to engage in sexual activity. 491 F.Supp. 2d 1072 (M.D. Ala. 2007). The

¹ SN Mott claimed that he had received personal phone calls from 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.)

court agreed that his statement should have been suppressed because he did not understand the consequences of waiving his rights. SN Mott's case mirrors that scenario.

B. Appellant's rescission of his consent to search his quarters demonstrated that he did not understand his constitutional rights.

After the NCIS agents had Appellant sign his statement, the agents provided Appellant search authorization forms for Appellant to sign. (R. at 331-34.) Appellant seemed confused when the agents restated what they had already discussed with Appellant's apparent authorization:

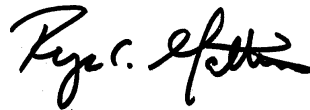
AGENT: As we discussed, so, this is just saying we did ask you. You told us, "I'm being truthful, I have nothing to hide, so go ahead," so this is just a written format of what you've already told us.

ACC: All right. Look, *can I say no now*, since this is already here?

(R. at 334) (emphasis added). Appellant did not know, or did not understand, that he had the ability to stop the Government from searching his property. Had he known, he would not have needed to ask the agent "can I say no now." Contrary to the Government's assertions (Appellee's Br. at 31), the record here demonstrates that Appellant did not know what his rights were, or the consequences of waiving them. This conclusion is strengthened by the fact that Appellant apparently rescinded his consent after the agents had already completed the search.

Conclusion

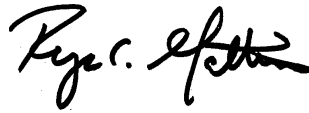
Appellant did not understand or appreciate his constitutional rights, or the consequences of waiving them. Accordingly, it was prejudicial error to admit Appellant's statement.

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CERTIFICATE OF FILING AND SERVICE

I certify that on November 29, 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.

A handwritten signature in black ink, appearing to read "Ryan C. Mattina". The signature is fluid and cursive, with the first name "Ryan" being the most prominent.

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