

IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

U N I T E D S T A T E S,)	FINAL BRIEF ON BEHALF OF
Appellee)	APPELLANT
)	
v.)	
)	Crim. App. Dkt. No. 20110679
Specialist (E-4))	
TRAVIS D. JONES,)	
United States Army,)	USCA Dkt. No. 14-0071/AR
Appellant)	

JAMES S. TRIESCHMANN, JR.
Captain, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division
U.S. Army Legal Services Agency
9275 Gunston Road
Fort Belvoir, VA 22060
703-693-0724
USCAAF No. 35501

JONATHAN F. POTTER
Lieutenant Colonel, Judge Advocate
Defense Appellate Division
USCAAF No. 26450

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Travis D. Jones,)	
United States Army,)	
Appellant)	
)	

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

ISSUE PRESENTED

**WHETHER THE MILITARY JUDGE ABUSED HIS
DISCRETION WHEN HE DENIED THE DEFENSE'S
MOTION TO SUPPRESS APPELLANT'S STATEMENT TO
THE MILITARY POLICE.**

Statement of Statutory Jurisdiction

The Army Court of Criminal Appeals (Army Court) had jurisdiction over this matter pursuant to Article 66, Uniform Code of Military Justice, 10 U.S.C. § 866 (2012) [hereinafter UCMJ]. This Honorable Court has jurisdiction over this matter under Article 67(a)(3), UCMJ, 10 U.S.C. § 867(a)(3) (2012).

Statement of the Case

On July 29 and August 8-10, 2011, at Camp Liberty, Iraq, an enlisted panel sitting as a general court-martial tried Specialist (SPC) Travis D. Jones. The panel convicted SPC Jones, contrary to his pleas, of one specification of conspiracy to commit a burglary and one specification of burglary, in

violation of Articles 81 and 129, UCMJ. The panel sentenced SPC Jones to two years confinement and a bad-conduct discharge. The convening authority approved the adjudged sentence.

The Army Court affirmed the findings of guilty and the sentence on July 31, 2013. (JA 8-9). Appellant was subsequently notified of the Army Court's decision. In accordance with Rule 19 of this Court's Rules of Practice and Procedure, appellate defense counsel previously filed a Petition for Grant of Review. On January 16, 2014, this Court granted the Petition.

Statement of Facts

In late March 2011, SPC Ellis received a Facebook message from Specialist (SPC) Carrasquillo requesting him to "swing by his room." (JA 25). When SPC Ellis entered the room, SPC Carrasquillos and SPC Jones were sitting on their beds. (JA 25-26). Specialist Carrassquillo asked SPC Ellis if he would be "interested in accompanying me and Jones to help rob this guy of his money." (JA 26). Specialist Ellis thought they were joking and declined. (JA 26). Although the three of them lived near each other, SPC Ellis did not hang out with either of them much and normally stayed in his containerized housing unit (CHU) most of the time. (JA 24). He did not consider SPC Carrassquillo a friend. (JA 24).

Early April 1, 2011, SPC John Ellis was performing his regular military police duties as an augmentee military police

officer (MP). (JA 3). SPC Ellis was attached to the 194th Military Police Company and had been performing MP duties with this unit for approximately six months. (JA 30). During these six months, SPC Ellis received on the job training as an MP including how to collect personnel information. (JA 30). There is conflicting evidence as to whether SPC Ellis received training on how to fill out a Rights Waiver Form and collect sworn statements. (JA 3, 32-34). Specialist Ellis was comfortable performing certain assignments as an MP, including patrolling areas and performing security checks, random vehicle searches, and the like. (JA 3). Specialist Ellis also was required to wear the MP uniform, which included a police belt, handcuffs, radio, etc. (JA 5).

While on duty the morning of April 1, 2011, SPC Ellis and his partner responded to a call regarding an armed robbery (JA 6). Upon arriving at the crime scene, Specialist Ellis and his partner were on high alert and the primary purpose of their investigation was to search "anything and everything" for the personnel responsible for the robbery. (JA 7). They searched trucks, the outside and inside of buildings, and "any place you could imagine hiding." (JA 8).

During the investigation, the noncommissioned officer in charge (NCOIC) of the Provost Marshal's Office (PMO), Sergeant Dubois, provided them a description of the suspects. (JA 9).

Based on SGT Dubois's description of the suspects and his previous interaction with SPC Jones, SPC Ellis immediately suspected, or as he phrased it, "had an assumption" that SPC Jones was involved in the robbery. (JA 10).

Specialist Ellis continued his investigation, searched numerous personnel bags of Soldiers standing in a flight line, and reported to the PMO at the end of his shift. (JA 11). After leaving the PMO, SPC Ellis returned to his CHU. After arriving in the area near his CHU, he saw SPC Jones walking around the area. (JA 13). Based on SPC Ellis's investigation and his suspicion that SPC Jones had committed the armed robbery, he questioned SPC Jones to find out "if they did it and if they didn't do it." (JA 13). The purpose of SPC Ellis's questioning was to report the information obtained, in accordance with his understanding of established MP procedures, to his chain of command at the PMO. (JA 14). Specialist Ellis immediately yelled to SPC Jones, "Hey Jones, come here. Let me ask you a question." (JA 13). Specialist Ellis instructed SPC Jones "to go to my room." (JA 15). There SPC Ellis immediately began interrogating SPC Jones. (JA 15). During the interrogation, SPC Ellis demanded that SPC Jones answer questions:

Question: Jones, don't fucking lie to me, what the fuck happened and why the fuck did you do it."

Answer: I don't know what your talking about we didn't do anything.

Question: Don't fucking lie to me tell me the truth?

Answer: Alright we did it!

Question: You did what exactly?

Answer: We went over there and robbed the guy with all the money.

(JA 15; JA 125)

Specialist Ellis demanded to know the identity of the other person involved but SPC Jones would not respond. (JA 15).

Specialist Ellis also demanded to know the location of SPC Carrasquillo, to which SPC Jones replied that he was in his room. (JA 15; JA 126). Specialist Ellis did not advise SPC Jones of his Article 31, UCMJ, rights during this interrogation. (JA 33).

Specialist Ellis then located and interrogated SPC Carrasquillo. Specifically, SPC Ellis said "Carrasquillo, I don't want to hear your BS. Tell me why you did it." (JA 15; JA 126). After more questioning, SPC Carrasquillo eventually, started telling why he did it and identified Private First Class (PFC) Backes as the third individual involved. (JA 17).

Following his interrogations of Jones and Carrasquillo, in accordance with the purpose of his questioning, SPC Ellis immediately reported his findings to his MP chain of command. (JA 19). Specifically, SPC Ellis reported this information to his superior, SGT Goodrich, who was also assigned to the PMO.

(JA 29). Upon hearing this information and in accordance with his training, SGT Goodrich immediately reported this information to the next level. (JA 31). At trial, Specialist Ellis stated he questioned SPC Carrasquillo to confirm his suspicion that they committed the armed robbery and, if they had, to report his findings to his MP chain of command. (JA 18). Specialist Jones, SPC Carrasquillo, and PFC Backes were subsequently questioned by Criminal Investigative Division.

At trial, defense moved to suppress all statements resulting from the interrogation of SPC Jones by SPC Ellis, as well as any fruits stemming from this interrogation. (JA 111). The motion alleged a failure to give warnings under Article 31(b), UCMJ. The military judge denied the motion to suppress. In his written order the military judge concluded that SPC Ellis was acting in an unofficial capacity and was not acting as a part of a law enforcement disciplinary investigation, and that SPC Jones did not perceive the questioning as more than a casual conversation between peers. (JA 129). The military judge also found:

1. Specialist Ellis was not authorized to conduct investigations nor was he trained to do so. No evidence showed that part of SPC Ellis's duties included gathering evidence using investigatory techniques. (JA 124-129).
2. Specialist Ellis questioned SPC Jones and SPC Carrasquillo as his duty as a Soldier, not as part of a law enforcement investigation, because they were his friends and he didn't want to report his friends until he confronted them. (JA 36).

3. No one could reasonably infer that the Accused felt pressured to answer SPC Ellis's questions after the Accused had previously solicited SPC Ellis to participate in that crime. (JA 129).

4. Specialist Ellis' purpose of questioning was of a personal nature and based Jones off a hunch based from the previously solicitation. (JA 36-37; JA 129-130).

He concluded that "SPC Ellis was not acting in an official capacity, as explained in *Duga*, [10 M.J. 206 (C.M.A. 1981)] nor actively engaged in a disciplinary or law enforcement investigation, as contemplated by *Swift*, [53 M.J. 439 (C.A.A.F. 200)] at the time of the conversation, which was of a personal nature." (JA 130).¹ (The military judge failed to address the defense's assertion that PFC's Backes' testimony implicating SPC Jones and other incriminating statements were derivative of SPC Jones' illegally obtained statement). At trial the government introduced the incriminating statements that SPC Jones gave to SPC Ellis. (JA 92-93).

Summary of Argument

The military judge abused his discretion by denying Specialist Jones' motion to suppress the statements he made to SPC Ellis on April 1, 2012. Specialist Ellis was required to administer Article 31(b) rights because he suspected PFC Jones of the robbery and interrogated him pursuant to and as a result

¹ The record fails to demonstrate that the military judge recognized that the government had the burden of establishing the admissibility of SPC Jones's statement. Mil. R. Evi. 304(e).

of his duties relating to a law enforcement investigation in which he was involved. The use of SPC Jones' statement was constitutional error because 'there is a reasonable possibility that the evidence complained of [his admission] might have contributed to the conviction.' " *United States v. Moran*, 65 M.J. 178, 187 (C.A.A.F. 2007).

Standard of Review

When there is a motion to suppress a statement on the ground that rights warnings were not given, the court reviews the military judge's findings of fact on a clearly erroneous standard, and conclusions of law are reviewed de novo. *United States v. Swift*, 53 M.J. 439, 446 (C.A.A.F. 2000). A servicemember's status as a suspect and the nature of the official inquiry as either law enforcement or disciplinary are ultimately legal questions. *United States v. Good*, 32 M.J. 105, 108 (C.M.A. 1991).

Law and Argument

Article 31(b), UCMJ, provides that no person subject to this chapter may interrogate, or request any statement from a person suspected of an offense without first informing him that he does not have to make any statement regarding the offense and that any statement made by him by be used as evidence. Article 31(b), UCMJ. In addition, no statement obtained from any person in violation of this article may be received in evidence against

him in a trial by court-martial. Article 31(d), UCMJ. The rights warning mandated by Congress for members of the armed forces is broader than the warnings required in a civilian setting under *Miranda v. Arizona*, 284 U.S. 436, (1966). Article 31(b), UCMJ, mandates rights' warnings for anyone "suspected of an offense," whereas Miranda warnings are required only in circumstances amounting to "custodial interrogation." *Swift*, 53 M.J. at 445. Article 31(b), UCMJ, requires rights warnings if: 1) the person being interrogated is a 2) suspect at the time of questioning and 3) the person conducting the questioning is participating in an official law enforcement investigation or inquiry. *Id.* at 446.

1. Specialist Ellis suspected SPC Jones of committing the alleged armed robbery when he questioned him.

A person is a suspect if, considering all facts and circumstances at the time of the interview, the "military interrogator believed, or reasonably should have believed, that the service member interrogated committed an offense." *Swift*, 53 M.J. 439, 446; *United States v. Morris*, 13 M.J. 297 (C.M.A. 1982). Thus, this test has both a subjective and objective prong. Under the objective prong, if the totality of the circumstances would cause a reasonable person to believe that the subject had committed an offense, the warnings are required. *United States v. Leiffer*, 13 M.J. 337 (C.M.A. 1982). However, a "hunch" that a crime has been committed does not trigger Article

31(b), UCMJ. *United States v. Meeks*, 51 M.J. 150, 161 (C.M.A. 1994). *Id.*

The military judge made erroneous findings of fact that SPC Ellis was operating under a "hunch," not a suspicion, when he questioned SPC Jones. The military judge focused primarily on SPC Ellis's subjective state of mind and his personal thoughts when determining whether SPC Ellis suspected SPC Jones of the robbery. The military judge failed to apply the objective portion of the test to determine whether a reasonable person would have believed SPC Jones committed the offense.² See *United States v. Muirhead*, 51 M.J. 94 (C.A.A.F. 1999) (military judge erred when he relied upon the subjective opinions of the agents as to whether Article 31(b), UCMJ, warnings were required where facts supported finding that reasonable person would have suspected accused of an offense).

The facts of this case clearly demonstrate that a reasonable person would have had much more than a "hunch" that SPC Jones committed the robbery. A week prior to the robbery, SPC Jones and SPC Carrasquillo allegedly requested that SPC Ellis to participate in the robbery. During his investigation, SPC Ellis learned the description of the perpetrators which

² In App. Ex. III, footnote 2, the military judge stated he did not base his ruling on whether SPC Ellis suspected SPC Jones. However, the military judge continued to use his finding that SPC Ellis was operating under a hunch in his analysis of the other factors. The military judge even characterizes SPC Ellis' believe as a suspension during his direct examination of him.

matched SPC Jones and SPC Carraquillo. Upon hearing the description, he immediately linked SPC Jones and SPC Carrasquillo to the robbery. The previous solicitation of SPC Ellis to participate in the robbery coupled with the witness's specific description of SPC Jones and SPC Carrasquillo would clearly lead a reasonable person to suspect SPC Jones of the robbery. Finally, the nature of Ellis' questioning indicated he had more than a "hunch," and suspected Jones was involved. Ellis did not ask Jones if he knew anything about the offense, but asked him "why" Jones did it, and warned Jones "not to lie to him." These are not the words employed when following a hunch. These are words employed against a suspect. SPC Ellis demanded that SPC Jones admit to the robbery, with the intent to report these incriminating statements to his MP supervisors.

"Only a relatively low quantum of evidence is required to treat an individual as a suspect." *Swift* at 447. Specialist Ellis' personal hopes that SPC Jones might not have committed the robbery do not change his status as a suspect. At the end of his testimony on this issue even SPC Ellis stated "I just had a suspicion." (J.A. 118). Thus, under the objective test, these circumstances demonstrate that SPC Ellis reasonably should have believed that SPC Jones was a suspect to the offense of robbery prior to his interrogation.

2. Specialist Ellis' questioning of SPC Jones was an interrogation.

Military Rule of Evidence [hereinafter Mil. R. Evid.]

305(b)(2), states an interrogation is "any formal or informal questioning in which an incriminating response either is sought or is a reasonable consequence of such questioning." The United States Supreme Court has held that actions that could reasonably be expected to elicit a response from a suspect should be considered formal questioning. *Brewer v. Williams*, 430 U.S. 387 (1977).

Here, SPC Ellis specifically questioned SPC Jones regarding his involvement in the armed robbery. Specialist Ellis suspected SPC Jones of the robbery and demanded to know if he committed the offense. Specialist Ellis asked these questions with the purpose of obtaining answers, and he would (and did) inform his MP superiors of SPC Jones' incriminating responses. "When one takes action which foreseeably will induce the making of a statement and a statement does result, we conclude that the statement has been "obtained" for purposes of Article 31." *United States v. Dowell*, 10 M.J. 36, 40 (C.M.A. 1980). {The only incriminating statement, if any, that was not a result of an interrogation occurred a week earlier when SPC Carrasquillo requested that SPC Ellis to join the robbery.

3. Specialist Ellis could reasonably be considered to have been acting in an official law enforcement capacity at the time of questioning.

An investigation is for law enforcement or disciplinary purposes when, based on all the facts and circumstances at the time of the interview, "the military questioner was acting or could reasonably be considered as acting in an official law enforcement or disciplinary capacity." *United States v. Good*, 32 M.J. 105, 108 (C.M.A. 1991)

Even if the military judge correctly found that SPC Ellis subjectively believed he was not acting pursuant to any law enforcement purpose, he erred by failing to find that that SPC Ellis could not reasonably be considered to be acting in an official law enforcement capacity. After all, 1) SPC Ellis was a law enforcement officer who was conducting the robbery investigation; 2) as a result of this investigation, particularly the description of the crime and the perpetrators, SPC Ellis's suspected SPC Jones and demanded answers from him during the interrogation; 3) SPC Ellis interrogated SPC Jones with the intent to report any criminal activity to his law enforcement chain of command; 4) he did in fact report these statements to them. If he did learn anything from SPC Jones his intent was to interrogate SPC Carrasquillo, and follow that interrogation up by reporting his findings to his chain of command. (JA 15).

a. SPC Ellis was a law enforcement officer who became immersed in the robbery investigation

The military judge clearly erred in finding that SPC Ellis was not authorized or trained to conduct investigations, and that no evidence existed to demonstrate that part of SPC Ellis's duties included gathering evidence using investigatory techniques. The military judge used this finding to support the notion that SPC Ellis was not authorized to take a statement because military persons not assigned to investigate offenses ordinarily cannot request statements from others accused of a crime. *United States v. Loukas*, 29 M.J. 385, 388 (C.M.A. 1990). Although SPC Ellis' official branch was not an MP, this fact has little consequence. The proper focus is not on the title but on the duties he performed pursuant to his role in law enforcement. The evidence demonstrated that SPC Ellis's sole duties for the previous six months were as a law enforcement officer. During this time SPC Ellis received substantial on the job police training, carried the required military police equipment, and engaged in numerous MP duties. There is evidence that he even received training to administer a rights waiver. Thus, even though SPC Ellis was not on paper officially an MP, his duties, job, and everyday routine was that a law enforcement officer.

Nor does SPC Ellis's lack of training excuse the requirements of Article 31(b), UCMJ. In *United States v. Brisbane*, 63 M.J. 106 (C.A.A.F. 2006), a Family Advocacy (FA)

treatment manager who initially questioned appellant was acting in furtherance of a law enforcement investigation. The accused made incriminating statements in response to the FA's questions. *Id.* at 109. The FA had never given anyone an Article 31 rights advisement or *Miranda* warnings, and she had not received any training in the matter because that was "just not part of [her] job." *Id.* at 109. This Court ignored the issue of whether she had the ability or authority to administer Article 31 rights and instead focused on her role in the investigation. This Court found that her actions of questioning the appellant and her subsequent notification to the authorities were in furtherance of the law enforcement investigation. *Id.*

In this case, the actual scope of SPC Ellis's investigative training is unclear. Sergeant Goodrich testified that SPC Ellis was never instructed on the limits of his authority to investigate a case. Also, the record contains numerous examples of SPC Ellis engaging in investigative activities. The military judge's finding that no evidence existed to demonstrate that part of SPC Ellis's duties included gathering evidence using investigatory techniques is untenable. In his finding of facts, the military judge discussed how SPC Ellis searched numerous bags and personnel during his investigation of the robbery. Most importantly not only did SPC Ellis appear to have the authority to investigate cases, he was specifically tasked to

investigate the underlying robbery with the goal of identifying the offenders. Specialist Ellis stated he wanted to help build a case and he would "do anything he could to help with the situation." (JA 49-50). Specialist Ellis was officially ordered to the scene to investigate the robbery. (JA 53). He stated "I was involved with it, I was one of the first to arrive on the scene." (JA 53). During SPC Ellis's investigation of the robbery and while acting pursuant to his law enforcement duties, he learned the description of the offenders and immediately suspected SPC Jones. These facts demonstrate that SPC Ellis was a law enforcement officer who was immersed in the robbery investigation.³ As a result of this investigation SPC Ellis suspected SPC Jones of the robbery and demanded answers from him during the interrogation.

The military judge clearly erred in finding that SPC Jones made the admission to SPC Ellis solely for personal reasons and that the record was devoid of any type of duty that might tend to show subtle pressure on the accused.⁴ The military judge found that SPC Jones, SPC Ellis, and SPC Carrasquillo were

³ Although the government argued that SPC Ellis was not a law enforcement officer for purposes the Article 31 motion, trial counsel argued during closing that "Specialist Jones was one of those conducting law enforcement duties and it was via his duties as a law enforcement officer he became aware of the money. . ." (JA 109).

⁴ The military judge was correct that rank was not an issue. However, this factor is of little consequence because this interrogation was a result of a law enforcement investigation.

friends, and coupled with the previous solicitation, SPC Ellis' questions were personal in nature. (JA 36). However, the record does not support they were friends. Specialist Ellis testified that SPC Carraquillo was not his friend and no evidence exists showing a friendship between SPC Jones and SPC Ellis.

In addition to a lack of any meaningful personal relationship, SPC Ellis's position, and how he demanded answers to his questions created a situation completely different from the first solicitation to commit a robbery. In the first instance SPC Carrasquillo sought out and engaged SPC Ellis. At that time, a robbery had not occurred, SPC Ellis thought they were joking, and did not suspect them of any crimes. However, in the second instance, immediately after being on high alert during his investigation of the robbery, SPC Ellis the person he suspected, SPC Jones, and demanded that he come with him. At this time, SPC Jones had allegedly just committed a robbery, was present during SPC Carrasquillo's pervious solicitation, and knew that SPC Ellis worked in law enforcement. Once in SPC Ellis' room, SPC Ellis' repeatedly demanded that SPC Jones answer his questions.

Question: Jones, don't fucking lie to me, what the fuck happened and why the fuck did you do it."

Answer: I don't know what your talking about we didn't do anything.

Question: Don't fucking lie to me tell me the truth?

Answer: Alright we did it!

Question: You did what exactly?

This Court has found that these types of demanding questions and accusations are associated with investigative activities. *Brisbon* M.J.at 113. In *Brisbon*, the first statement the FA made to the accused when he arrived for his interview was "[d]id you do it?" *Id.* The accusations in *Brisbon* are similar to the demands made by SPC Ellis and both were aimed at eliciting an incriminating response. Thus, as this Court in *Brisbon* stated, SPC Ellis's actions were more akin to an investigative agent. *Id.*

The questioning in this case was performed by someone SPC Jones knew to be involved in law enforcement and who in fact was investigating the robbery. When the questioner has some position of authority of which the accused or suspect is aware, the accused or suspect must be advised in accordance with Article 31. *United States v. Dole*, 1 M. J. 223, 225 (C.M.A. 1975). The fact that the first statement might have been personal in nature does not mean that the subsequent interrogation could not reasonably be considered pursuant to law enforcement.

c. Specialist Ellis intended to report any incriminating statements resulting from this interrogation to his law enforcement superiors in accordance with law enforcement procedures.

The military judge erroneously found that the purpose of SPC Ellis' interrogation was personal and out of a desire to satisfy his curiosity or hunch. However, the first question

that SPC Ellis demanded from SPC Jones was "why the fuck did you do it?" This statement certainly indicates that SPC Ellis had already determined that SPC Jones committed the offense.

Specialist Ellis's actions after his interrogation of SPC Jones further demonstrate he was acting in an official law enforcement purpose. In fact, after SPC Ellis was informed by SPC Jones that he and SPC Carrasquillo committed the robbery, there is no question that SPC Ellis was acting as law enforcement. Whatever personal reason or "hunch" that SPC Ellis claimed to have was satisfied after his interrogation of SPC Jones. Instead of stopping his investigation, SPC Ellis proceeded to interrogate SPC Carrasquillo. These facts are at odds with the notion these questions were purely for a personal nature.

Specialist Ellis' primary role of the robbery investigation was to determine what personnel were involved. Specialist Ellis questioned SPC Jones with the intent to report incriminating statements to his superiors. In accordance with this intent, SPC Ellis did in fact report SPC Jones's statement incriminating statements to his immediate supervisor. Thus, SPC Ellis's actions of obtaining and reporting SPC Jones's and SPC Carrasquillo's incriminating statements fulfilled the ultimate goal identifying the suspects who committed the robbery.

4. The use of SPC Jones' statement was not harmless beyond a reasonable doubt.

The use of SPC Jones' statement constitutes constitutional error, and constitutional errors must be harmless beyond a reasonable doubt. *United States v. Mott*, 72 M.J. 319, 332 (C.A.A.F. 2013). The admission of the statement is not harmless beyond a reasonable doubt if "'there is a reasonable possibility that the evidence complained of might have contributed to the conviction.'" *United States v. Moran*, 65 M.J. 178, 187 (C.A.A.F. 2007) (quoting *Chapman v. California*, 386 U.S. 18, 24 (1967)). "This determination is made on the basis of the entire record, and its resolution will vary depending on the facts and particulars of the individual case." *United States v. Sweeney*, 70 M.J. 296, 306 (C.A.A.F. 2011) (quoting *United States v. Blazier*, 69 M.J. 218, 226-27 (C.A.A.F. 2010)). Erroneous admission of a confession "requires a reviewing court to exercise extreme caution before determining that the admission of the confession at trial was harmless." *Arizona v. Fulminante*, 499 U.S. 279, 296 (1991). The admissions of a defendant come from the actor himself, the most knowledgeable and unimpeachable source of information about his past conduct. *United States v. Ellis*, 57 M.J. 375, 381 (C.A.A.F. 2002). "[T]he defendant's own confession is probably the most probative and damaging evidence that can be admitted against him."). "To say that an error did not contribute to the verdict is ... to find that error

unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record." *United Staes v. Gardinier*, 67 M.J. 304, 306 (C.A.A.F. 2009).

In *United States v. Hutchins*, 72 M.J. 294, 299 (C.A.A.F. 2013) this Court found that the government's use of appellant's statement, obtained in violation of his Fifth Amendment right, not harmless beyond a reasonable doubt, where the government made use of the detailed statement in its opening statement, closing argument, and rebuttal argument, and as evidence to corroborate other evidence. This Court found, notwithstanding the other evidence of appellant's guilt, there was a reasonable likelihood that the statement contributed to the verdict.

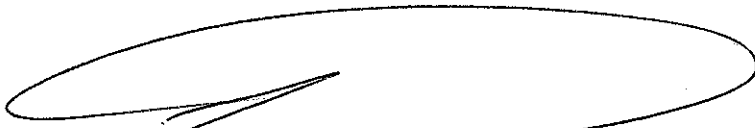
In this case, the government used SPC Jones' admission in its opening and closing statement. In his opening statement trial counsel quoted SPC Ellis: "SPC Jones told me he did it." (JA 52). In closing argument the government quoted SPC Jones admissions and used them as the basis to explain the actions SPC Ellis took after he received the admission. (JA 100). Specialist Ellis also quoted SPC Jones' admissions to the panel during trial. (JA 92-93). Without these admissions, the only remaining witness with substantial evidence of SPC Ellis' involvement was PFC Backes. However, the defense's case was based on discrediting PFC Backes who testified under government immunity. (JA 102-108). Thus, even if there was other evidence

of SPC Jones' guilt, there is a reasonable possibility that his direct admissions to SPC Ellis might have contributed to the conviction.

Wherefore appellant respectfully requests this honorable
Court to set aside the findings and sentence.




JAMES S. TRIESCHMANN, JR
Captain, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division
9275 Gunston Road
Fort Belvoir, VA 22060
703-693-0724
USCAAF No. 35501



JONATHAN F. POTTER
Lieutenant Colonel, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division
USCAAF No. 26450

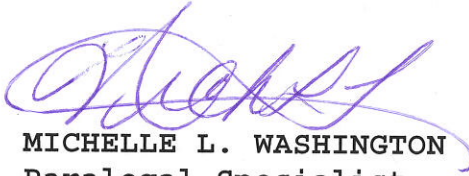
CERTIFICATE OF COMPLIANCE WITH RULE 24(d)

1. This brief complies with the type-volume limitation of Rule 21(b) because this brief contains 4,751 words.
2. This brief complies with the typeface and type style requirements of Rule 37 because this brief has been prepared in a monospaced typeface (12-point, Courier New font) using Microsoft Word, Version 2007.


JAMES S. TRIESCHMANN, JR
Captain, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division
9275 Gunston Road
Fort Belvoir, VA 22060
703-693-0724
USCAAF No. 35501

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing in the case of
United States v. Jones, Army Dkt. No. 20110679, USCA Dkt. No.
14-0071/AR, was electronically filed with both the Court and
Government Appellate Division on February 21, 2014.



MICHELLE L. WASHINGTON
Paralegal Specialist
Defense Appellate Division
(703) 693-0737