

IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES,
Appellee

v.

Edmond A. MAEBANE III
Hospital Corpsmen
Second Class (E-5)
United States Navy,

Appellant

REPLY BRIEF ON BEHALF
OF APPELLANT

Crim.App. Dkt. No. 202200228

USCA Dkt. No. 24-0196/NA

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

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Table of Contents

Table of Contents.....	i
Reply.....	1
I. The military judge was required to apply controlling Supreme Court precedent in <i>Chambers v. Mississippi</i> and <i>Holmes v. South Carolina</i> despite the Government’s argument to the contrary.	1
A. <i>Chambers v. Mississippi</i> controls.....	1
B. The Government misinterprets <i>Holmes v. South Carolina</i>	4
II. Adopting the Government’s position would frustrate an appellant’s right to present a complete defense.	6
A. The Government’s reliance on <i>Rhodes, Moore</i> and <i>Scheffer</i> is misguided.	7
B. The Answer misrepresents the military judge’s consideration of forensic evidence limitations and downplays the significance of Petty Officer Whiskey’s location during the shooting.	10
C. The Answer misunderstands the application of M.R.E 807 to an accused.....	12
III. The Government’s Answer does not confront critical issues pivotal to Appellant’s right to present a complete defense.....	13
A. The Answer overlooks the importance of Petty Officer Williams’ ability to refuse to admit to obstructing justice.....	13
B. The Answer contradicts the Government’s stance at trial regarding Petty Officer Williams’ mental state.....	10
C. The Answer overlooks the corroborating evidence and its purpose.....	12

Table of Authorities

Supreme Court

<i>Chambers v. Mississippi</i> , 410 U.S. 284 (1973).....	2, 3, 4
<i>Holmes v. South Carolina</i> , 547 U.S. 319 (2006)	4, 5, 6, 9, 10
<i>United States v. Scheffer</i> , 523 U.S. 303 (1998)	6, 7, 9, 10
<i>Zedner v. United States</i> , 547 U.S. 489 (2006)	14
<i>Pegram v. Herdrich</i> , 530 U.S. 211 (2000).....	14

Court of Appeals for the Armed Forces

<i>United States v. Schmidt</i> , 82 M.J. 68, 80 (C.A.A.F. 2022)	14
--	----

Circuit Court of Appeals

<i>Rhoades v. Henry</i> , 638 F. 3d 1027 (9 th Circ. 2011).....	6, 7, 9
--	---------

District Court of Appeals

<i>United States v. Moore</i> , 651 F. 3d 296 (D.C. Cir. 2011).....	7, 8, 9
---	---------

Navy-Marine Corps Court of Criminal Appeals

<i>United States v. Dominguez</i> , 81 M.J. 800 (N-M. Ct. Crim. App. 2021).....	10
---	----

Military Rule of Evidence

Mil. R. Evid. 807.....	6
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Argument

I.

The military judge was required to apply controlling Supreme Court precedent in *Chambers v. Mississippi* and *Holmes v. South Carolina* despite the Government’s argument to the contrary.

A. *Chambers v. Mississippi* controls.

The Government’s Answer casts the holding in *Chambers* as inapplicable because the *Chambers* Court’s analysis centered on whether Mississippi’s “voucher” rule denied the appellant his right to a fair trial.¹ Though the *Chambers* court did not establish new principles of constitutional law, the holding resulted in a finding that the trial court deprived the appellant of a fair trial.² Important to the instant case, the *Chambers* court identified several factors to analyze whether a hearsay statement is trustworthy. It is these factors that the military judge here failed to properly grapple with.

The factors the *Chambers* Court identified to ensure the trustworthiness of a hearsay statement include (1): whether the confessions were made spontaneously and to a close acquaintance; (2) whether the hearsay statement was corroborated by other evidence; (3) whether the hearsay statement was against the declarant’s penal interest, and (4) if there were concerns about the truthfulness of the extrajudicial

¹ Appellee’s ans. at 35.

² *Chambers v. Mississippi*, 410 U.S. 284, 312 (1978).

statements, the declarant was available for cross-examination under oath in court, allowing the trier of fact to evaluate credibility.³

The chart below synthesizes the analysis of Petty Officer Williams’ confession under the *Chambers* factors.

<i>Chambers</i> Factors	Petty Officer Williams’ confession ⁴
(1) Whether the confessions were made spontaneously and to a close acquaintance.	Confession was made shortly after the incident, albeit not to a close acquaintance.
(2) Whether the hearsay statement was corroborated by other evidence.	<ul style="list-style-type: none"> • Williams was in the room at the time of the shooting⁵ • gun residue found on his person • lack of blood spatter on his shirt • Williams’ dinner plate was in the trajectory cone of where the shot originated Williams was seen dry-firing the weapon shortly before the fatal shot ⁶
(3) Whether the hearsay statement was against the declarant’s penal interest.	Yes. Williams recanted only after spending time in confinement.
(4) If there were concerns about truthfulness of the extrajudicial statements, the declarant was available for cross-examination under oath in court, allowing the trier of fact to evaluate credibility.	Yes. Williams was available for cross-examination and was cross-examined on the issue. But the trier of fact was barred from considering these statements for their truth.

³ *Chambers*, 410 U.S. at 300-01 (emphasis added).

⁴ JA at 0479-0848; 0500, 0502, 0538

The military judge erred by failing to apply the *Chambers* factors when conducting his analysis. Had he done so, he would have been left with the only logical answer—that Petty Officer Williams’ confession had sufficient guarantees of trustworthiness thus leaving the factfinder to evaluate Williams’ credibility. In this case, as in *Chambers*, Petty Officer Williams’ confessions were against his penal interest.⁷ He admitted to NCIS that he killed Petty Officer Deleon.⁸ He even wrote a letter to the victim’s family apologizing for his act.⁹ This confession exposed Petty Officer Williams to the risk of criminal prosecution for involuntary manslaughter. In fact, Petty Officer Williams was placed in pre-trial confinement shortly after confessing.¹⁰

Similar to *Chambers*, Petty Officer Williams’ confession was made shortly after the incident, though not to a close acquaintance. The following facts corroborate Petty Officer Williams’ confession: (1) he was present in the room when the shooting occurred; (2) he had pointed the weapon that killed Petty Officer Deleon at him earlier in the evening; (3) his dinner plate was near the location where forensic evidence suggested the fatal shot came from, (4) gunshot residue was found on his clothing, indicating that he had been in close proximity to

⁷ JA at 0479-0848.

⁸ *Id.*

⁹ *Id.*

¹⁰ JA at 0500, 0502, 0538.

a discharged firearm; and (5) forensic experts would have expected to find blood splatter on his clothing, which was not the case.¹¹ It cannot be discounted that just as in *Chambers*, Petty Officer Williams was available for cross-examination under oath, at trial, allowing for the members to assess his credibility.¹²

Thus, in line with *Chambers*, the hearsay in this case demonstrated sufficient guarantees of trustworthiness and was critical to Appellant's defense. The military judge erred by failing to apply the principles in *Chambers* to the facts of this case.

B. The Government misinterprets *Holmes v. South Carolina*.¹³

The Government argues that unlike in *Holmes*, the military judge here did not solely rely on forensic evidence that inculpated the accused.¹⁴ Instead, the Government submits that the military judge considered other factors that take this case out of the *Holmes* arena.¹⁵ Specifically, the Government cites to the military judge's consideration of the questioning by the NCIS agent, Petty Officer Williams' mental state at the time of the confession, Petty Officer Williams' recantation, and the note as the "only" corroboration to the confession.¹⁶ Yet this

¹¹ JA at 0299, 0316; JA at 0650-51; JA at 0502; JA at 0368-71; JA at 0343-44; JA at 0446.

¹² JA at 0337.

¹³ *Holmes v. South Carolina*, 547 U.S. 319, 331 (2006).

¹⁴ Appellee's Ans. at 36

¹⁵ *Id.*

¹⁶ *Id.*

argument fails because it does not properly account for the emphasis that the military judge put on the strength of the forensic evidence in the Government's case.

In his ruling the military judge explicitly states, “[f]orensic evidence determined that it is highly unlikely, if not impossible that Williams shot HM3 M.D.”¹⁷ Doubling down on the point, the military judge cites the forensic evidence as the first “aspect persuasive” on the point of the trustworthiness of the confessions. “First, the forensic evidence in this case directly contradicts HM3 Williams’ confession. Forensic and ballistic evidence from the crime scene, including the entry wound location on HM3 M.D.’s forehead suggest HM3 Williams did not shoot the victim.”¹⁸ Thus, throughout his ruling, the military judge emphasized that the forensic evidence is what drove his analysis and ultimately led to his denying the introduction of Petty Officer Williams’ confession.

The Supreme Court in *Holmes* made clear that trial judges cannot use the rules of evidence to block a defendant from presenting evidence of third-party guilt simply because the prosecution’s theory, if accepted, appears strong.¹⁹ In *Holmes*,

¹⁷ J.A. at 0574.

¹⁸ J.A. at 0575-76.

¹⁹ *Holmes*, 547 U.S. at 331.

the Court found that a rule excluding third-party guilt evidence based solely on the strength of the Government's case was unconstitutional.²⁰

Here, the military judge ruled that the Government's forensic evidence made it "highly unlikely, if not impossible" that Petty Officer Williams was responsible for the killing of Petty Officer Deleon.²¹ This reasoning was central to the military judge's decision to exclude Petty Officer Williams' confessions.²² As a result, the military judge's focus on the prosecution's evidence was misplaced.²³ In light of *Holmes*, the military judge's failure to admit the confessions was a misapplication of the law, constituting an abuse of discretion.

II.

Adopting the Government's position would frustrate an appellant's right to present a complete defense.

The military judge wrongly and harmfully denied Appellant's right to present a complete defense when he refused to admit Petty Officer Williams' confessions as evidence. This decision infringed Appellant's constitutional right to present a complete defense. Yet the Government's argument that the military judge did not err in excluding the confessions hinges on the claim that the confessions

²⁰ *Id.*

²¹ JA at 0574-76.

²² *Id.*

²³ *Holmes*, 547 U.S. at 330.

lacked the required circumstantial guarantees of trustworthiness.²⁴ The Government relies on *Rhoades v. Henry*, *United States v. Moore*, and *United States v. Scheffer* to support its position.²⁵ But its reliance on this case law is folly, and distinguishable from the facts in this case.

Additionally, the Government's Answer misunderstands the application of Military Rule of Evidence 807 to the accused, misrepresents the military judge's consideration of the forensic evidence's limitations, and importantly, underrates the significance of Petty Officer Williams' location during the shooting.

A. The Government's reliance on *Rhoades*, *Moore* and *Scheffer* is misguided.²⁶

The Answer incorrectly minimizes the differences between *Rhoades* and *Moore* and the present case. In *Rhoades*, the Ninth Circuit upheld the trial judge's exclusion of hearsay where: (1) the declarant was highly intoxicated at the time of the confession, (2) the officer believed the declarant was attempting to provide a reason for being detained, (3) the declarant recanted the confession once sober, (4) the recantation was backed by a confirmed alibi that excluded him from the scene of the murder, (5) there was no physical evidence linking the declarant to the

²⁴ JA at 0553; Mil. R. Evid. 807(a)(2).

²⁵ Appellee Ans. at 32-37.

²⁶ Appellee Ans. at 25-27 (citing *Rhoades v. Henry*, 638 F.3d 1027 (9th Cir. 2011)); Appellee Ans. at 26-27 (citing *United States v. Moore*, 651 F.3d 30 (D.C. Cir. 2011)); Appellee Ans. at 33 (citing *United States v. Scheffer*, 523 U.S. 303 (1998)).

crime, and (6) the police were unable to connect the declarant to the murder weapon.²⁷

In contrast, Petty Officer Williams was not intoxicated when he confessed, and recanted only after spending time in pre-trial confinement. Moreover, it is undisputed that Petty Officer Williams was present at the scene and handled the weapon that killed Petty Officer Deleon. Thus, as the chart below crystalizes, Rhoades is distinguishable from this case.

<i>Rhoades</i> Facts	Williams' Confession
Intoxicated when questioned	Not intoxicated when questioned
Recanted once sober	Recanted after being confined
Alibi that did not place him at the scene	Was in the room at the time of the fatal shot
No physical evidence tying Rhoades to the crime	Gunshot residue found on Williams' person
Could not be connected to the murder weapon	Was seen holding the murder weapon shortly before the fatal shot

In *United States v. Moore*, the D.C. Circuit upheld the trial judge's decision to exclude hearsay where: (1) there was no evidence that the declarant was present at the scene of the murder, (2) the declarant only claimed to know the victim but did not admit to killing him, (3) the declarant made contradictory statements, and (4) the declarant denied killing the victim both before and after claiming to have done so.²⁸ Just as with *Rhoades*, this case is distinguishable from *Moore*.

²⁷ *Rhoades v. Henry*, 638 F.3d 1027 (9th Cir. 2011).

²⁸ *Moore*, 651 F.3d at 81-83.

Unlike the declarant in *Moore*, Petty Officer Williams' presence at the crime scene is uncontested.²⁹ Despite some inconsistencies in his statements, Petty Officer Williams' confessions were made while he was lucid and coherent, and he had gun residue on his clothing, indicating his proximity to the shooting.³⁰ He recanted his confession only after spending time in pre-trial confinement, a factor that strengthens the reliability of his initial statements.³¹ Therefore, the Government's reliance on *Rhoades* and *Moore* to question the trustworthiness of Petty Officer Williams' confessions is misplaced. The military judge abused his discretion by concluding that the confession lacked the necessary trustworthiness under M.R.E. 807.

The Government's reliance on *United States v. Scheffer* is flawed as it is distinguishable from the present case.³² In *Scheffer*, the Supreme Court considered whether the exclusion of polygraph evidence under M.R.E. 707 violated the defendant's right to present a complete defense.³³ The Court ruled that a blanket rule excluding polygraph evidence did not violate the Constitution because such evidence is often collateral and not central to the case.³⁴

²⁹ JA at 0574.

³⁰ *Id.*; JA at 0368-71.

³¹ JA at 0500, 0502, 0538.

³² Appellee Ans. at 33 (citing *United States v. Scheffer*, 523 U.S. 303 (1998)).

³³ *Scheffer*, 523 U.S. at 305.

³⁴ *Id.* at 308-09.

The issue here, however, is not a blanket rule, but an *as-applied* challenge to excluding hearsay evidence under specific circumstances. As discussed above, in *Holmes*, the Supreme Court ruled that excluding defense evidence simply because the prosecution's evidence appears strong is an arbitrary application of the rule and infringes on the accused's constitutional right to present a complete defense.³⁵ As such, *Holmes* (along with *Chambers*) directly apply, not *Scheffer*. The Government's reliance on *Scheffer* is therefore misplaced, and its argument should be rejected.³⁶

B. The Answer misrepresents the military judge's consideration of forensic evidence limitations and downplays the significance of Petty Officer Whiskey's location during the shooting.

In its Answer, the Government claims Appellant failed to demonstrate that the military judge disregarded the limitations of the forensic evidence, arguing that the evidence was not specifically presented as part of the motion.³⁷ However, the Answer overlooks that the military judge referenced the forensic evidence both from the bench and in his written ruling as part of his reasoning for excluding Petty Officer Williams' confessions.³⁸ The military judge's use of this evidence in his decision demonstrates that he in fact *did* consider it. Additionally, when

³⁵ *Holmes*, 547 U.S. at 330-31.

³⁶ Appellee Ans. at 33.

³⁷ Appellee Ans. at 30-31.

³⁸ JA at 0281, 0286; JA at 0574-76.

evaluating the trustworthiness of evidence, the underlying assumptions and limitations of that evidence are crucial.³⁹ Here though, the military judge did not address or analyze these factors in his conclusions, constituting an abuse of discretion.⁴⁰

The Answer also fails to acknowledge Petty Officer Williams' position at the time of the shooting. Yet this is a critical issue as Petty Officer Williams' location is key to evaluating the plausibility and reliability of his confessions. Even if one assumes more specificity is needed than merely being in the room at the time of the shooting, the evidence that Petty Officer Williams was positioned *on the entrance wound side of Petty Officer Deleon* just before the shooting is paramount to Appellant's defense.⁴¹ Petty Officer Williams' dinner plate is evidence that he was indeed situated on the entrance wound side for some period of time before the fatal shot. The record supports that Petty Officer Williams moved his plate just

³⁹ See *United States v. Dominguez*, 81 M.J. 800, 812-13 (N-M. Ct. Crim. App. 2021) (finding the contours of what constitutes an important fact includes the entire circumstances in which the evidence obtained). Here, forensic evidence is at issue, so it was important for the military judge to consider the entire circumstances in which that evidence was produced—including its assumptions and limitations. *Id.*

⁴⁰ *United States v. Commisso*, 76 M.J. 315, 323 (C.A.A.F. 2017).

⁴¹ JA at 0502.

before the shooting and the military judge's failure to recognize this key piece of evidence was an abuse of discretion.⁴²

C. The Answer misunderstands the application of M.R.E 807 to an accused.

The Answer incorrectly argues the M.R.E. 807 applies equally to the government and the accused without taking into account the distinct constitutional implication for the accused.⁴³ In *Chambers*, the Supreme Court made it clear that when constitutional rights, particularly those related to the defendant's ability to mount a defense, are at stake, hearsay rules cannot be applied mechanically to deny justice.⁴⁴ In such cases, where the hearsay evidence implicates an accused's constitutional rights, the rule must yield to those rights. This is a crucial distinction that the Answer overlooks, especially when considering that the Government operates under constitutional *limitations* rather than constitutional *rights*, unlike the accused. The military judge erred by applying cases focused on the *Government's* use of hearsay without considering the intersection of constitutional rights and hearsay in the context of an accused's defense.⁴⁵ This was an abuse of discretion.

⁴² *Id.*

⁴³ Appellee ans. at 28-29.

⁴⁴ *Chambers*, 410 U.S. at 302.

⁴⁵ *E.g.*, JA at 0286 (military judge citing *United States v. Zamora*, 80 M.J. 614 (N-M. Ct. Crim. App. 2020), which concerns the government's use of residual hearsay as evidence and *United States v. Donaldson*, 58 M.J. 477 (C.A.A.F. 2003), which concerns the government's use of residual hearsay as evidence).

III.

The Government's Answer does not confront critical issues pivotal to Appellant's right to present a complete defense.

A. The Answer overlooks the importance of Petty Officer Williams' ability to refuse to admit to obstructing justice.

The Government submits that there is no legal significance to Petty Officer Williams' refusal to confess to obstructing justice after having confessed to killing Petty Officer Deleon.⁴⁶ However, the mental state that allowed Petty Officer Williams to resist false pressure to admit to another crime directly undermines the military judge's conclusion that his confession was unreliable due to his alleged mental state of grief and fear.⁴⁷ The fact that Petty Officer Williams could resist such pressure suggests that his confession was likely made with greater clarity and reliability than the military judge credited. The failure to consider this crucial aspect of his mental state was an abuse of discretion.

⁴⁶ Appellee Ans. at 30.

⁴⁷ JA at 0574.

B. The Answer contradicts the Government’s stance at trial regarding Petty Officer Williams’ mental state.

The Answer challenges the trustworthiness of Petty Officer Williams’ mental state at the time the confessions were made.⁴⁸ But at trial, the Government conceded that the circumstances surrounding Petty Officer Williams’ confessions were just as reliable as when he later recanted.⁴⁹ The Government’s inconsistent position on appeal should not be permitted, as it undermines the fairness and consistency of legal arguments. Judicial estoppel should prevent the Government from shifting its stance in this case.⁵⁰

⁴⁸ Appellee Ans. at 17, 31, 34, 38.

⁴⁹ JA at 0552.

⁵⁰ *Zedner v. United States*, 547 U.S. 489, 504 (2006) (“‘[W]here a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him.’ *Davis v. Wakelee*, 156 U.S. 680, 689 (1895).”); *Pegram v. Herdrich*, 530 U.S. 211, 228 n.8 (2000) (“Judicial estoppel generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase.”); *United States v. Schmidt*, 82 M.J. 68, 80 (C.A.A.F. 2022) (Maggs, J., concurring) (citing 18B Charles Alan Wright et al., *Federal Practice and Procedure* § 4477 (2d ed. 1992 & Supp. 2021) (“Absent any good explanation, a party should not be allowed to gain an advantage by litigating on one theory, and then seek an inconsistent advantage by pursuing an incompatible theory.”); the doctrine is to prevent a party from playing fast and loose with the courts, and to protect the essential integrity of the judicial process.”).

C. The Answer overlooks the corroborating evidence and its purpose.

The Answer does not address the importance of corroborating evidence provided by Petty Officer Dini, who witnessed Petty Officer Williams dry-firing the pistol at Petty Officer DeLeon.⁵¹ Although Petty Officer Dini was unable to pinpoint the exact timing of the dry-firing event, he agreed that it occurred within minutes, not hours, of the shooting.⁵² The record supports the assertion that Petty Officer Williams dry-fired the weapon shortly before the fatal shot.⁵³ The evidence here supports that there was some other evidence.⁵⁴ The evidence here was sufficient to establish that Petty Officer Williams' confession was circumstantially reliable.

⁵¹ JA 0330-32.

⁵² JA at 0332-33.

⁵³ *Id.*

⁵⁴ *Chambers*, 410 U.S. at 300-01 (the hearsay is corroborated by “*some* other evidence” (emphasis added)).

Conclusion

WHEREFORE, Appellant respectfully requests this Court to set aside the findings and sentence.

Respectfully submitted.



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