IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES, Appellant	)	REPLY ON BEHALF OF APPELLEE
v.	)	Crim.App. Dkt. No. 202400058
Levani J. Eneliko Master-at-Arms (E-4) U.S. Navy Appellee	)	USCA Dkt. No. 26-0138/NA

TO THE JUDGES OF THE UNITED STATES COURT OF APPEALS
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Reply

A. Appellee categorically disclaimed objection to his confession for lack of knowing, intelligent waiver.

Appellee asserts both that he properly preserved the objection to knowing and intelligent waiver at trial, and that whether he raised the issue on appeal is irrelevant to the inquiry. (Appellee Ans. at 28, 39, June 9, 2026.)

Appellee is incorrect; federal courts find that whether an issue is preserved hinges on how it was preserved at trial and on appeal. For example, in *United States v. Giddens*, police officers told the appellant his car could not be returned to him unless he spoke with the police; the court found this was economic coercion and rendered the subsequent confession involuntary. 858 F.3d 870, 877 (4th Cir. 2017). The dissent argued that, because the appellant's trial defense counsel never made any argument as to the economic consequences of losing the car, the issue had not been properly preserved. *Id*. at 892. Yet the *Giddens* majority found the issue was preserved; the trial defense counsel explicitly told the court that police used the car as leverage, the financial leverage issue was raised at the first available opportunity on appeal, and the government did not argue waiver at the first available opportunity. *Id*. at 883, n.7.

Here, the opposite is true. Appellee's counsel affirmatively limited any inquiry into his mental capacity to the time of the offense. (J.A. 261.) Appellee's written motions at trial exclusively discussed psychological coercion, where law

enforcement caused Appellee to "crack and give up." (J.A. 180.) At the first opportunity on appeal, Appellee challenged the voluntariness of the confession "because unconstitutional trickery and cajoling was used," and that the Military Judge "overlooked the coercive effect of the Detective's statements." (J.A. 25–29.) And, at the first opportunity—after the lower court had granted relief on a ground not raised at trial nor appeal—the United States argued that Appellee had waived the issue.[1] (J.A. 121–24.) Unlike *Giddens*, this issue was not preserved because it simply was not asserted in any form by Appellee prior to the lower court's opinion. In fact, the first time Appellee ever made the case that his confession was not knowing and intelligent was on the present appeal. (Appellee Ans. at 46.)

Finally, Appellee's contention that his passing reference—"the defense would say that the way you characterized it . . . as confusion, we believe that extends to the portion where he's being read his 31(b) rights"—properly preserved an objection to knowing and intelligent waiver is incorrect. (Appellee Ans. at 29;

[1] Appellee avers that the United States has "not suggested that their ability to litigate the case before this Court has been prejudiced in any way by the fact that Appellee failed to raise the issue before the NMCCA." (Appellee Ans. at 39–40) (citing *United States v. RosarioMartinez*, No. 25-0102/MC, slip op. at 9–10) (C.A.A.F. June 2, 2026). First, the Trial Defense Counsel in *RosarioMartinez* preserved the issue at trial by filing a written post-trial motion before the entry of judgment. *Id*. Second, the United States has suggested both here and before the service court that Appellee's failure to raise the issue prejudiced the ability to develop the Record. (Appellant Br. at 11, Apr. 10, 2026; J.A. 122.)

J.A. 272.) Appellee's Counsel were not referring to Appellee's ability to comprehend his rights or his ability to exercise free choice, *Berghuis v. Thompkins*, 560 U.S. 370, 382 (2010); they were agreeing with the Military Judge's earlier characterization in his colloquy with trial counsel, in which he explained:

> . . . I read the motion as arguing not that there was an issue with the Article 31(b) advisement of rights, not that there was an issue of threats, inducements or promises, but more of a *general voluntariness* in that potentially using the word "help" repeatedly, and the context in which it was used, might have overcome the will of the accused in that it generated confusion as to what the purpose of the conversation with the detective was.

(J.A. 267) (emphasis added).

The Military Judge then followed with a colloquy with Trial Defense Counsel:

> . . . I read your motion to be focused on . . . psychological impact on the accused during the interrogation and not more of a discreet there was a functional problem with the 31(b) rights or waiver, or that there were discreet threats, or promises. Is that fair?"

(J.A. 271.) Trial Defense Counsel agreed that it was fair. (J.A. 271.)

As such, Appellee again disclaimed that he lacked "a full awareness of both the nature of the right being abandoned and the consequences of abandoning it." *Moran v. Burbine*, 475 U.S. 412, 421 (1986). This Court should reject Appellee's contention that he properly preserved this issue.

B. Raising an objection to a confession's voluntariness does not "inherently" raise an objection that the waiver was not made knowingly and intelligently.

Appellee is incorrect that, in raising voluntariness at trial, he "inherently" raised knowing and intelligent concurrently. (Appellee Ans. at 30–31.) Such an argument runs contrary to this Court's holding in *Mott* that "voluntariness of consent and knowing waiver are two distinct and discrete inquiries." 72 M.J. 319, 330 (citing *Edwards v. Arizona*, 451 U.S. 477, 484 (1981)).

Federal courts likewise treat the two inquiries separately, considering voluntariness to be an issue of police conduct, while knowing and intelligent waiver is concerned instead with volitional abilities and mental health. *United States v. Bradshaw*, 935 F.2d 295, 298–300 (D.C. Cir. Ct. App. 1991); *United States v. Turner*, 157 F.3d 552, 555 (8th Cir. 1998) (police coercion is necessary prerequisite to finding involuntary waiver, does not bear on separate question that waiver was knowing and intelligent).

Thus, federal and military appellate courts have gone so far as to decline to address a prong of *Edwards* when not raised at trial or on appeal. *See United States v. Wasson*, No. 24-20243, 2025 U.S. APP LEXIS 15707, at *3 (5th Cir. June 5, 2025.)("[Appellant] does not contend his statement was made knowingly and intelligently. Therefore we only address voluntariness *vel non*."); *Bradshaw*, 935 F.3d at 300 (court applied plain error in analyzing invocation of right to counsel

not raised below, but reviewed knowing and intelligent waiver de novo because raised at trial); *United States v. Salmon*, No. 202400473, 2025 CCA LEXIS 428 (N-M. Ct. Crim. App. Sep. 28, 2025) (*rev. denied*) (where solely knowing and intelligent waiver challenged at trial, voluntariness waived on appeal).

Appellee's proposed rule distorts the notion of "distinct and discrete inquiries." *See Mott*, 72 M.J. 330. On one hand, he asks this Court to hold that an accused need only challenge the constitutionality of the confession generally to trigger an analysis of distinct legal theories not asserted. (Appellee Ans. at 35–36.) Yet he and the lower court simultaneously fault the Military Judge for failing to separately analyze if the waiver was knowing and intelligent. (Appellee Ans. at 16; J.A. 8.) This is despite that the factors a military judge would consider in finding the waiver knowing and intelligent would include Appellee's alertness, his AQFT score, his military police training, his mental state, his lack of confused expressions, and the detectives' explanation of his rights—all of which the Military Judge did consider here, concluding that Appellee made a "knowing, intelligent, and voluntary choice to waive [his rights]." (J.A. 212–16; 221–22.)

C. *Edwards* and *Mott* do not require an analysis of both *Edwards* prongs in every case.

Appellee's assertion that *Edwards* and *Mott* require a military judge to apply and analyze both prongs of *Edwards* in every case is incorrect. (Appellee Ans. at 37.) This Court in *Mott* implied that the military judge's error was in large part

because it "focus[ed] on voluntariness . . . despite the fact that Appellant's suppression motion was based on knowing and intelligent waiver . . . ." 72 M.J. at 331. The *Mott* opinion never said that all suppression rulings where an appellant alleges *Edwards* issues must always test for both prongs.

In fact, the Supreme Court has implicitly said the opposite. In *Colorado v. Connelly*, 479 U.S. 157 (1986), the Supreme Court found an appellant, experiencing command hallucinations that motivated him to confess, had voluntarily waived his rights. The Court neither analyzed the appellant's choice for knowing intelligent waiver, despite the presence of mental health defects, nor faulted the trial judge or lower court for failing to do so. Rather, the Court focused on and rejected the appellant's argument that waivers are involuntary where coercion came from mental illness, not police action. *Id.* at 170–71.

This Court has done the same. In *United States v. Lewis*, the military judge suppressed the appellant's confession to law enforcement as involuntary. 78 M.J. 447 (C.A.A.F. 2019). Yet this Court reversed the Military Judge without reference to whether he separately analyzed the knowing and intelligent prong of *Edwards*. *Id*. at 455. And the Court itself reviewed only whether the appellant's confession was voluntary by assessing the characteristics of the appellant and the level of coercion within the interview. *Id*. at 453–55.

Thus, this Court should decline Appellee's invitation to create a new rule that a military judge apply both prongs of *Edwards* in every case.

D. The United States did not exceed the scope of the Judge Advocate General's Certified Issue.

In *United States v. Jacobsen*, 77 M.J. 81 (C.A.A.F. 2017), the Judge Advocate General of the Army certified for review whether trial counsel's statement that a fact was "substantial proof of a fact material in the proceeding" was sufficient to establish interlocutory appellate jurisdiction. Because the certified issue did not contemplate whether the excluded evidence was, in fact, substantial proof, this Court declined to consider the issue. *Id*. at 83 n.2.

Here, unlike the limited issue in *Jacobsen*, the certified issue contemplates waiver because it broadly asks if the lower court improperly reversed the Military Judge on the basis of *Mott*. In *Mott*, the trial defense counsel objected to the admission of the appellant's conviction, alleging his delusions foreclosed the knowing and intelligent waiver of his rights. 72 M.J. 319, 322 (C.A.A.F. 2013). Because the military judge's ruling failed to address the legal standard for knowing and intelligent waiver, the uncontested expert testimony, and the R.C.M. 707 results, he abused his discretion in admitting the confession. *Id*.

The lower court here, citing *Mott*, found that the Military Judge: (1) failed to address the impact of the Detective's pre-waiver questions; (2) did not analyze the

impact of the claim that law enforcement could "help" Appellee; and, (3) failed to address the totality of the circumstances to find voluntary, knowing and intelligent waiver. (J.A. 8.) The United States sought certification to challenge these conclusions as erroneous interpretations of *Mott*—namely, that failing to address both *Edwards* prongs is not per se improper so long as the Military Judge analyzes the "discrete inquiry" raised, where all others are waived.

Conclusion

The United States respectfully requests this Court affirm the findings and sentence as adjudged below.

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