

2 Marines refuse to testify in ex-comrade's case

By CHELSEA J. CARTER, AP Military Affairs Writer
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RIVERSIDE, Calif. – A judge found two Marines in contempt of court Friday for refusing to testify against a former squad leader accused of killing unarmed detainees in Iraq, but he rejected the prosecution's pleas to throw the men in jail immediately.

U.S. District Judge Stephen Larson instead ordered Sgt. Ryan Weemer and Sgt. Jermaine Nelson to return to court in 30 days to begin proceedings on the contempt charges.

The men invoked their Fifth Amendment rights against self-incrimination after being called to testify in the civilian trial of former Marine Jose Luis Nazario Jr. The two face military charges of their own over the Nov. 9, 2004, shootings in Fallujah during some of the fiercest fighting of the Iraq war.

Weemer and Nelson could have been the trial's most important witnesses. Other Marines are scheduled to testify about events that day, but unlike Weemer and Nelson, prosecutors do not allege that Nazario ordered those witnesses to shoot detainees.

Larson said before ruling on the contempt issue that he did not believe jailing the men would compel them to testify. "My suspicion is considering what these men have been through, there is probably not a whole lot in this world they do fear," he said.

Several Marines allege Nazario shot two Iraqi men who had been detained while his squad searched a house, according to a Naval Criminal Investigative Service criminal complaint. The complaint claims four Iraqi men were killed during the action.

The case came to light in 2006 when Weemer volunteered details to a U.S. Secret Service job interviewer during a lie-detector screening that included a question about the most serious crime he ever committed. Larson has ruled that the interview cannot be presented as evidence.

When prosecutor Jerry Behnke asked Nelson whether Nazario ordered him to shoot and kill a detainee, he responded, "Sir, at this time, I'd like to plead the Fifth Amendment."

Larson asked if there was any condition under which he would testify. Nelson told him "no."

It was nearly identical testimony when Weemer took the stand.

The proceedings became so contentious that Larson at one point asked if the two Marines were perpetuating "a charade." Nelson's attorney, Joseph Low, said he objected to that characterization.

Weemer and Nelson have been granted immunity in the federal case and told that their testimony would not be used against them in their own military cases. Their attorneys, however, do not believe their testimony would be withheld from their upcoming courts-martial.

Behnke pleaded with the judge to jail both Marines immediately.

"The government is extremely concerned about the fraud that is being put before the jury," Behnke said.

Larson declined to jail the Marines without a contempt trial but said he also has "serious concerns about what is going on here."

Weemer's attorney Chris Johnson asked the judge for leniency, saying Weemer was facing a murder charge and that he was fighting for his life. Larson dismissed the argument, saying his understanding was the last thing a Marine had was his honor.

"This court is once again calling on his honor and integrity," Larson said.

Behnke said Weemer was made an offer to plead guilty to a reduced charge of dereliction of duty in his military criminal case. Until recently, Nelson was cooperating with the government, the prosecutor said.

Weemer and Nelson were previously jailed for refusing to testify before a federal grand jury looking into allegations against Nazario, whose trial began Thursday.

Nazario's federal trial marks the first time in which a civilian jury will decide whether the alleged actions of a former service member in combat violated the rules of engagement. A law written in 2000 and amended in 2004 made that possible.

During opening statements, prosecutor Charles Kovats described Nazario as a man who killed "unarmed, submissive, docile" detainees and encouraged men under his charge to do the same.

Defense attorney Kevin McDermott countered that Nazario killed insurgents to protect his men in a city where every resident was looking for a fight.

Nazario, 28, has pleaded not guilty to voluntary manslaughter on suspicion of killing or causing others to kill four unarmed detainees, assault with a deadly weapon and discharging a firearm during a crime of violence. If convicted of all the charges, he could face more than 10 years in prison.

Weemer was ordered this month to stand trial in military court on charges of unpremeditated murder and dereliction of duty in the killing of an unarmed detainee in Fallujah. He has pleaded not guilty.

Nelson, 26, is slated to be court-martialed in December on charges of unpremeditated murder and dereliction of duty for his role in the deaths. Although he has not entered a plea in military court, Nelson's attorney has said his client is innocent.

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