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Federal trial begins for ex-Marine in Fallujah case

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RIVERSIDE – Prosecutors and defense attorneys jostled Thursday to present their contrasting descriptions of former Camp Pendleton Marine Jose Nazario, who is accused of shooting two unarmed captives and urging his men to kill two others.

Nazario, who left the Marine Corps three years ago, is the first former service member to be prosecuted in civilian court for an incident that took place during military service.

The trial is taking place in U.S. District Court in Riverside, where he was working as a probationary police officer at the time of his arrest.

In opening remarks, Assistant U.S. Attorney Charles Kovats contended that Nazario led his squad in killing “unarmed, submissive, docile” prisoners during battle Nov. 9, 2004, in Fallujah, Iraq.

He said Nazario violated the Marine Corps' clearly defined rules for handling detainees when he and two other Marines killed the four captives during their house-to-house search in Fallujah.

“The defendant didn't show courage, honor and commitment that day,” Kovats said. “Being a Marine means doing the right thing, even if it's the hard thing. That's what separates us from the other guys.”

Nazario has denied shooting any prisoners. Besides, his lawyers argued Thursday, the intense fighting in Fallujah forced the Marines to “toss out” their prior rules of engagement.

“The overwhelming majority of those left were people who were spoiling for a fight,” said

attorney Kevin McDermott, a former Marine. “The insurgents didn't play fair. They didn't follow the rules.”

Nazario is charged with voluntary manslaughter, assault with a deadly weapon and discharge of a firearm during a crime of violence. Conviction on all those charges could land him in prison for more than 10 years.

Two members of Nazario's squad – Sgts. Ryan Weemer and Jermaine Nelson – are scheduled for courts-martial later this year at Camp Pendleton on similar charges.

On Thursday, U.S. District Judge Stephen Larson ordered Weemer and Nelson to appear in court Friday morning to testify about Nazario's conduct during the alleged incident. A few months ago, Weemer and Nelson went to jail rather than obey a judge's order to testify before a grand jury in Nazario's case.

Larson also granted a defense motion to suppress a taped statement in which Weemer said he, Nelson and Nazario killed the detainees.

The audiotape came from a 2006 job interview that Weemer had with the U.S. Secret Service. During the session, he underwent a lie-detector test and was asked about the worst crime he had ever committed. His response marked the first time the Fallujah killings were revealed.

Weemer said he and other Marines from the 3rd Battalion, 1st Marine Regiment were fighting their way through Fallujah when they discovered four men in a barricaded house containing weapons. He recalled that they didn't have enough time to bring the captives to jail.

“We called the platoon leader and the response was, 'Are they dead yet?' ” he said on the tape.

Weemer said Nazario and other Marines interpreted the question as an order to kill the detainees, so they did.

“We argued about it, but we had to move, we had to get out, our unit is moving down the street. . . I did one guy,” Weemer said on the tape.

“If we let anyone go,” he added, “they were going to run down the street and grab an (assault rifle) because they had them stashed.”

Weemer then said there were “plenty of incidents” in which Marines killed Iraqis in similar fashion.

The military also has a taped statement in which Nelson said his squad shot the captives to death.

Nelson gave his account during an interview with an agent from the Naval Criminal Investigative Service. He said he watched Nazario become angry after finding assault rifles in the house, even though the detainees had insisted there were no weapons.

On the tape, Nelson recalled Nazario shooting a kneeling captive at point-blank range, then saying: "I'm not doing all this by myself. You're doing one and Weemer is doing one."

Weemer then pulled his 9mm sidearm and killed one of the detainees, Nelson said.

"He shot him and the dude was on the ground and rolling and (Weemer) was shooting, shooting, shooting, shooting," Nelson told the naval investigator.

Afterward, Nelson said, he joined in and shot another detainee.

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