

# Fog of War Clouds Witnesses' Recollections

Defend Our Marines | Nathaniel R. Helms | Tuesday, August 26, 2008

**Riverside, California**--The jury weighing the evidence in the manslaughter trial of former Marine Jose L. Nazario is expected to begin deliberations Thursday morning in the US District Court in Riverside.

Government prosecutors are expected on Wednesday to call the NCIS special agent who brought the case to them. Then the government will rest.

Tuesday afternoon, Assistant US Attorney Jerry Behnke brought out the government's biggest guns. Two reputed eye witnesses and another Marine who was outside the alleged crime scene. All three former Marines belonged to 3rd Platoon, Kilo Company, 3rd Battalion, 1st Marines--the Thundering Third.

Two of them were commanded by Nazario and a third belonged to another squad.

Defense attorney Joseph M. Preis, a former Marine enlisted man working pro bono from the Pepper Hamilton LLP law firm in Irvine, Calif., equated their conflicted testimony to a group of people interpreting Christian scripture.

"Combat is a lot like reading the Bible," Preis said. "Everybody comes away with a different interpretation. Today we had three Marines on the stand all testifying about the same event, each with a different interpretation about what took place."

Their testimony was Behnke's best last hope to convince the jury of nine women and three men that the quiet Riverside police officer from New York City executed two prisoners and encouraged the killing of two more. The government has been unable to provide the identities of the alleged victims, their nationalities, or any other other physical and forensic evidence to prove a crime was committed.

Nazario was on his final weeks of probation on Aug 7, 2007 when he was arrested on the job by Naval Criminal Investigative Service agents and booked for two counts of manslaughter after allegedly shooting two of the prisoners on November 9, 2004.

Absent in the government's case were key platoon personnel who were initially identified as participants in the affair. When charges against Nazario were filed by NCIS Special Agent Mark O Fox in August 2007, he claimed the former 3rd Platoon Squad leader was directed by superiors who gave Nazario orders over his radio to kill the prisoners.

After a government motion to suppress, none of that testimony was allowed in court.

The only physical evidence the government presented to corroborate their key witnesses' testimony were pictures of an apparently unblemished house that witnesses identified as the alleged crime scene. .

In July, a Grand Jury hearing the evidence issued a superseding indictment against Nazario, charging the eight-year

Marine veteran with abetting murder, assault, and unlawfully using his weapon in addition to two counts of manslaughter. Absent from the superseding complaint were allegations that Nazario's superiors ordered him to kill the four prisoners.

It took Behnke just four hours to present the government's eyewitnesses.

Behnke's most compelling witness was Corey Carlisle, 26, a college student in Salt Lake City, Utah. In 2007, when he talked to Fox, Carlisle was a missionary for The Church of Jesus Christ of Latter-Day Saints working in Indiana, he said.

Carlisle said he was tortured by events at Fallujah, Iraq on Nov 9, 2004 during the opening hours of the vicious battle. Four days later he was wounded in the Hell House, his right femur shot in half.

His injuries was so severe he was retired from the Marine Corps, he said.

Even that disabling experience was not as bad as what he saw on the first day of the battle, Carlisle testified.

As expected, Carlisle identified the triggermen in the alleged episode as Nazario, his fire team leader Cpl Ryan Weemer, and Cpl Jermaine Nelson, an attached assaultman from another platoon in the Thundering Third.

Weemer and Nelson are charged with murder and dereliction of duty at Camp Pendleton under military law.

Under Behnke's adroit direction Carlisle told the spellbound jury how he led a squad of Marines through the back door of a locked house in Fallujah after a demolitions man was unable to blast open the front gate.

After Weemer "mule kicked" open the back door he discovered four men of Middle Eastern descent sitting on the floor. One was an "older gentleman" and three were younger men called "MAMs," an acronym for Military Aged Males, he said.

Last Friday, former Kilo company commander Maj. Timothy Jent testified that enemy four-men cells led by an older man were typical enemy formations his Marines encountered at Fallujah.

After the prisoners were secured, Carlisle and LCpl James Prentice began searching the house while Nazario, Weemer and Nelson conferred about what to do with the prisoners, he said.

Meanwhile, Carlisle and Prentice found several AK-47 assault rifles, full and empty ammunition magazines and spent cartridges.

Prentice had previously testified to the Grand Jury that the barrels of the weapons were still hot and that "somebody" told him they could smell burnt carbon, a sure odor of a recently fired weapon. On Tuesday, however, he wasn't so sure.

In the time it took Prentice and Carlisle to search the house the prisoners were killed one by one, Carlisle said. He never saw who killed them, he told Behnke. Carlisle said he only saw the aftermath of two executions presumably conducted by Nazario and Weemer and heard gunshots that announced two more.

He was also unsure what co-defendant Sgt Jermaine Nelson might have done.

Carlisle said he discovered the first execution when he returned to the main room to investigate a gunshot. Inside a room he called the "kitchen" Carlisle discovered a prisoner dead on the floor from a bullet to his head.

Weemer was standing over him still holding his pistol. He appeared rattled, Carlisle said.

Before the trial began Tuesday morning, the government introduced a motion to suppress testimony that Weemer told Carlisle the dead man had tried to take away his pistol so the jury never heard it.

when he heard another gunshot, he said.

When he returned to the area where the prisoners were being held the second time he discovered Nazario holding his weapon over another dead man.

“Nazario was standing over him,” Carlisle said.

The surviving prisoners faces were filled with “obvious dread” at their impending fate, he added.

Carlisle was less certain whether the prisoners were restrained with plastic “flex cuffs” before they were executed.

When defense attorney Kevin B. McDermott brought out Carlisle’s sworn statement to Fox in which he claimed the prisoners were restrained with the plastic bands, Carlisle became agitated and confused.

Earlier testimony by a Marine warrant officer revealed that the Marines were issued the restraining devices.

“As of right now I don’t recall that,” Carlisle explained. “Maybe then I did, but now I don’t remember that.”

Carlisle was not the only witness whose recollections have faded or changed since they gave their statements to investigators and the federal Grand Jury last year. In each instance McDermott capitalized on their confusion by pointing out the inconsistencies in their testimony to the jury.

Confusion and inconsistencies are easy to understand. Nazario has said that the foreign fighters who shot Carlisle at the Hell House left him screaming on the floor until they were killed, bait for the Marines trying to rescue him from inside the fire swept room. Former Sgt. R.J. Mitchell earned the Navy Cross, in part, for coming to Carlisle’s aid.

The next witness was LCpl Samuel R. Severtsgaard, a security guard from Northfield, Minnesota who was outside the house when Carlisle exited with Weemer and Prentice after the alleged executions occurred. He was wounded in the same incident that left Carlisle in such desperate straits.

After identifying the house as the alleged crime scene, Severtsgaard told the jury Carlisle appeared shaken and unable to talk after he exited the house. Intrigued that his close friend appeared so distraught, Severtsgaard said he then explored the house on his own and discovered the bodies and several weapons in the otherwise empty home.

Prentice, who left the Marine Corps in February, was the last witness called to make the government’s case. He was honorably discharged after three combat tours in Iraq with Kilo, 3/1 to Iraq. He appeared nervous and somewhat dazed by the proceedings.

Before being told not to volunteer information, Prentice revealed to the jury that Nazario and Weemer held a conference about what to do while Nelson guarded the four prisoners, now sitting unrestrained against the wall.

Then Nazario exchanged laconic radio messages with higher ups, Prentice said.

“Spartan Three, this is Spartan Three-Three,” Prentice claimed Nazario said over his radio. “We have four MAMs, found AK47s in the house.”

“Then Nazario says negative,” Prentice said. “Then Nazario says affirmative.”

That is when McDermott objected. His objection was reinforced by another from Behnke that led to a rushed sidebar that ended that line of questioning for good.

Marine Corps records show that at Fallujah “Spartan Three” was 1st Lt. Jesse Grapes, the 3rd Platoon commander. Grapes, who commanded 3rd Platoon, Kilo, was not called as a witness.

Nazario has always maintained the alleged radio conversation never happened.

McDermott used the government's eyewitnesses to point out to the jury the conflicts in their recollections. Instead of attacking the government's points, he picked away at the conflicts produced by their previous testimony.

Weemer and Nelson were expected to be the government's best witnesses. Both men had given incriminating statements to Fox and other federal agents. Weemer's initial statement to Secret Service agents that triggered the investigation was suppressed by the presiding judge last week.

Instead of testifying, both Marines exercised their Fifth Amendment right against self incrimination for which they now face criminal contempt of court charges. They refused last Thursday morning after being granted testimonial immunity to do so.

Both Marines were jailed by presiding US District Judge Stephen Larson and another judge in May and June for refusing to testify to the federal Grand Jury that indicted Nazario.

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