



Testimony Continues in Marine-Iraq Deaths Trial

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Two Marines summoned as witnesses in the federal trial of a former comrade accused of killing two prisoners during a 2004 battle in Iraq refused to testify Friday, leading a Riverside judge to find them in contempt of court.

"The court finds the sergeants in contempt of a legal order," said U.S. District Court Judge Stephen G. Larson, in ruling that Sgt. Ryan Weemer, 25, and Sgt. Jermaine Allen Nelson, 26, will have to stand trial for disobeying the court's order to answer questions in the case of former Marine sergeant and ex-Riverside police officer Jose Luis Nazario.

The 28-year-old defendant is charged with voluntary manslaughter, assault with a dangerous weapon and discharging a firearm during a crime of violence in connection with the alleged shootings of two prisoners in the first days of the Marines' campaign to retake Fallujah, Iraq, from insurgents four years ago.

Nelson and Weemer, members of Nazario's squad attached to K Company, 3rd Battalion, 1st Marine Regiment, allegedly shot two men on Nazario's orders.

"This was an execution," said Assistant U.S. Attorney Jerry Behnke, who urged Larson to issue a summary judgment against Nelson and Weemer and sentence them to six months in prison. "Nelson said he was acting on the defendant's orders when he shot a detainee in the back of the head. Weemer shot his detainee in the chest."

Nelson and Weemer face murder and multiple dereliction of duty charges in connection with the alleged shootings. The men are expected to be court-martialed, separately, at Camp Pendleton.

Both Marines, dressed in their uniforms, briefly took the stand Friday morning, out of the presence of the jury.

Behnke repeated to each Marine the court's order compelling him to testify, under a grant of testimonial immunity, shielding him from prosecution for whatever was said in the Nazario case.

"Did the defendant order you to shoot to kill a detainee?" Behnke asked Nelson.

"Sir, at this time I would like to plead the Fifth Amendment," Nelson replied.

When the prosecutor asked Weemer whether he had been ordered by Nazario to execute a

prisoner, the Marine also invoked his Fifth Amendment right against self-incrimination.

The judge asked the men's attorneys whether their clients understood they were in violation of a federal court order and would be held criminally responsible.

Nelson's attorney, Joseph Lowe, said he had explained the ramifications to his client, who had no intention of changing his mind.

Christopher Johnson, Weemer's counsel, said his client might consider testifying if he was assured by military authorities that anything he says in Nazario's trial "cannot come back to haunt him."

Johnson said any assurance would need to be written and signed by someone well up the Marine Corps chain-of-command. The attorney said Weemer's immediate concern is his arraignment Monday on the murder and dereliction charges, which were drawn up last month after an Article 32 hearing, tantamount to a preliminary hearing in civilian court.

Behnke said that by standing in contempt of court, the Marines could face administrative hearings that result in their being dishonorably discharged from the Marine Corps "with loss of pay."

Lowe argued the prosecution's request for immediate sentencing of Nelson on contempt charges ignored "the sacrifices this young man has made for this country, providing it with a blanket of freedom."

Johnson told the judge that Weemer had taken three bullets during fighting in Iraq, earning him a Purple Heart and entitling him to a jury trial.

Larson agreed there could be "circumstances in mitigation," and set a jury trial on the contempt allegations for Sept. 29. He released both Marines on their own recognizance.

"By using this procedure, the witnesses should be cognizant there is no max limit to which the court can sentence them" if they're found guilty, the judge said.

Nazario's trial is believed to be the first in which a former U.S. serviceman is being judged by a civilian jury for actions taken in combat, according to Kevin Barry McDermott, one of five attorneys representing Nazario pro bono.

"If I was to tell you this case has historical importance, I'd probably be understating the circumstances," McDermott told jurors in his opening statement Thursday. "The government is asking you to dictate to every young man in battle that, `You better be right, better be certain, or we will second-guess you years after the fact.'"

According to the prosecution, on Nov. 9, 2004, in the first hours of the Fallujah campaign known as Operation Phantom Fury, one of Nazario's fellow platoon members, Lance Cpl. Juan Segura, was shot dead by enemy fire.

A short time later, Nazario and his squad of 10 Marines searched a house where they discovered four men inside, presumably insurgents.

"They were sitting on the floor, unarmed, submissive and docile," said Assistant U.S. Attorney Charles Kovats.

Nazario shot two of the detainees in the back of the head and told other members of his squad to dispatch the other two suspected insurgents, according to Kovats.

He said Nazario violated one of the basic tenants behind the "Law of War," an internationally recognized military doctrine that states detainees must be safeguarded and not harmed after being taken into custody.

McDermott described Nazario and his squad's push into Fallujah, with thousands of other Marines, as an intense campaign in which the Marines "were called in to make an example of the insurgents."

The attorney said after an exodus of civilians from the city, the only people left were enemy combatants intent on doing the Marines harm.

Marines "searched hundreds of houses," McDermott said. "They lived by the creed, `We keep each other alive. If we believe there is hostile intent, we pull the trigger to keep ourselves and our fellow Marines alive.'"

McDermott said despite investigators' efforts to track down physical evidence connected with the alleged prisoner shootings, nothing has been recovered.

"The government is asking you to convict Jose of using a gun in the course of a felony when there is no evidence of a crime being committed -- no DNA, no fingerprints, no identities," McDermott told jurors.

Weemer first reported the alleged shootings during a 2006 job interview with the Secret Service, during which he was asked whether he had ever been involved in an unjustified killing.

Nazario's case fell under the Justice Department's purview because of a provision in the federal Military Extra Territorial Jurisdiction Act, passed in 2000, that authorizes the U.S. Attorney General to prosecute former Armed Forces members for offenses committed while on active duty.

After a decade of service, the defendant was honorably discharged from the Marine Corps in 2005 and no longer on reserve status when he was indicted. He had been on the Riverside police force over a year and was arrested as he was finishing a night on patrol last August.

He was immediately fired from the police department, but could be reinstated depending on the outcome of the trial, his lawyers say.

If Nazario is convicted of all charges, he could face a maximum of 30 years in prison. He is free on a \$50,000 property bond, and lives in his native New York with his wife, Diette, and their 2-year-old son.



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