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SEMPER RAT

Gov't Coerced Marine Defendant to Snitch

by Nathaniel R. Helms | August 14, 2008 | 4:27 PM EST | [pdf](#)

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Government prosecutors, who filed an application in US District Court for an order compelling two Marines co-defendants to testify against their former squad leader, revealed that one of them was a government informant.

All three men are accused of executing four enemy combatants they captured in the opening hours of the month-long battle of Fallujah in November 2004.

Documents filed in the US District Court for Central California on August 11 reveal that Sgt. Jermaine Nelson, a co-defendant in the case against former Marine Jose L. Nazario, tried to trick his former squad leader into admitting the incident occurred.

Nazario, 28, is scheduled to go on trial next Tuesday in Riverside, California for killing two insurgent prisoners in Fallujah, Iraq, encouraging two subordinates to execute two other prisoners, and unlawfully using his rifle during the incident.

Nazario allegedly ordered Nelson and Weemer help him execute the enemy combatants after receiving radioed instructions to do so, the government claims.

US Attorney Thomas P. O'Brien asked US District Judge Stephen G. Larson to issue an order compelling Nelson and Sgt. Ryan Weemer to testify at Nazario's trial. Nelson and Weemer voluntarily went to a federal lockup in May and June on civil contempt charges for refusing to talk to a federal Grand Jury looking at the evidence.

If they refuse to testify at Nazario's voluntary manslaughter trial, they face criminal contempt charges and mandatory jail time, the defense says. Weemer's attorney Christopher D. Johnson has already told the court Weemer will not testify, the documents showed.

Nelson's civilian attorney Joseph Low is reportedly weighing a government offer of limited immunity in return for his client's cooperation. Low has not returned telephone calls regarding the government offer.

After Nelson was jailed in May for civil contempt, following his refusal to testify before the federal Grand Jury seated in Riverside, Low said that Nelson told the court he would never inform on a brother Marines.

"It was a beautiful thing to see," Low added. "The prosecutors are attempting to break the bonds formed in combat. Nelson told them he'd rather go to jail than rat out a brother Marine."

Both Nelson and Weemer currently under open arrest at nearby Camp Pendleton, charged with voluntary murder and dereliction of duty during the same November 9, 2004 encounter.

The superior who allegedly radioed the order to Nazario has neither been charged nor identified.

Nazario was initially indicted on August 7, 2007 for two counts of voluntary manslaughter allegedly committed during the battle. The indictment was based on a Naval Criminal Investigative Service complaint alleging that Nazario, Weemer and Nelson killed four prisoners after receiving radioed instruction from an unidentified superior to do so.

Nazario is charged under a new law that allows the government to prosecute former service members for crimes allegedly committed while under military jurisdiction. It is the first time a Marine has been charged under the law.

Nelson and Weemer are charged by the Marine Corps and face general court-martials.

In the applications for the *ex parte* orders US Attorney Thomas P. O'Brien asked the court to make Nelson and Weemer testify about what they did and later said about the alleged incident. In the narrative supporting the government's request O'Brien revealed that, during January 2007, Nelson agreed to help trap Nazario by recording telephone calls between the two former comrades-in-arms.

On January 8, Nelson, under the direction of Naval Criminal Investigative Service Special Agent Mark O. Fox and with the approval of Marine Corps prosecutors, made his first call to Nazario.

During the conversation Nazario and Nelson discussed the alleged killings in a cryptic conversation that the government claims clearly demonstrates that Nazario participated in the executions, the government documents show.

In one instance the secretly recorded conversation turns to what Nazario would say if he was asked during a polygraph test whether he had ever murdered anyone. Nazario apparently didn't respond so Nelson, who is African-American, then asked Nazario, "I mean we had the right orders, didn't we?"

Nazario responds, "Yeah."

Nelson then asks, "Who gave us the orders though, n-gger?"

Nazario responds, "I did."

After a brief time Nazario expands on his explanation, the government claims.

"That sh-t is coming from the battalion commanders. We got to get from Point A to Point B and we ain't got time to throw motherf-ckers on a truck 'cause we're moving.

"It was, you know, a decision we made because it was the outcome that was best. So it was, it was a decision. You can't play Monday morning quarterback, bro."

The government acknowledges that the enemy combatants the Marines allegedly killed have never been proven to exist. Neither is there an identifiable crime scene, forensic evidence, or any missing persons report, government evidence shows.

During the battle, Marines from Nazario's company encountered foreign fighters from 17 nations opposing their advance into the al Qaeda-controlled city, the Marine Corps said.

Nazario's platoon leader, radio operator and the platoon's senior Marines wearing private inter-squad radios that day in Fallujah told Fox in recorded, sworn statements that no such order was ever sought or given on any Marine Corps radio used during the operation.

Nazario's defense attorney Kevin B. McDermott says Nazario's claim of innocence is supported by the absence of any physical evidence indicating that a crime was ever committed.

Without convincing physical evidence that government is trying to prove that the killings occurred using the confused and conflicting statements of Nelson, Weemer and several other witnesses who claim they heard shots and subsequently saw dead bodies without seeing what actually happened, their statements to Fox revealed

The government's initial complaint alleged Nazario killed two prisoners in the heat of passion after witnessing the death of squad member LCpl Juan E. Segura, the first Marine to die in the battle of Fallujah.

Before Nelson obtained legal counsel he told Fox in two statements that he shot one insurgent with his rifle, Weemer shot another prisoner over and over again with his pistol, and Nazario executed the remaining two with his rifle after getting a radioed instruction to do so.

Weemer, also without legal counsel, told Fox he can't remember whether he personally witnessed the alleged radio conversation or heard about it from somebody else. Weemer also told Fox he executed one prisoner with a single shot from his pistol. He denied knowing who shot the other prisoners.



**Former Sgt.
Jose Nazario**



**Sgt.
Jermaine Nelson**



**Sgt.
Ryan Weemer**

Nazario says the incident never happened at all.

Nathaniel R. Helms
Defend Our Marines
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Note: Nat Helms is a Contributing Editor to *Defend Our Marines*. He is a Vietnam veteran, former police officer, war correspondent, and, most recently, author of [My Men Are My Heroes: The Brad Kasal Story](#) (Meredith Books, 2007).

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Documents:

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[Executive summary in the case of United States v. Jose Nazario](#), May 23, 2008.

[Government's affidavit](#) against Jose Luis Nazario Jr., August 6, 2007.

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