

professionally and humanely during his entire stay in the hospital in Bagram which included more than one surgery for the wounds he suffered during the firefight. An ophthalmologist, Dr. [REDACTED] flew to Bagram from Kuwait for the sole purpose of operating on the accused's eyes. Dr. [REDACTED] detected no signs of abuse or mistreatment of the accused. The accused made no complaints to her of any mistreatment. There is no evidence which in any way supports the accused's allegations of mistreatment while he was a patient at the Bagram hospital. Detainees were not allowed to be interrogated while hospitalized without approval by a doctor and then interrogators were only allowed to ask basic identifying information. There is no credible evidence this rule was violated.

d. Interrogator #2 interviewed the accused at Bagram one time on 12 August 2002. The accused had been medically cleared to be interviewed. That interview lasted about 90 minutes and was in the afternoon. The accused was not wearing a hood over his head. No dogs were present during the interview. The accused was on a stretcher during the interview. The accused appeared to be tired at one point, but he never complained about being in pain. The accused appeared to understand what was happening. No one yelled at, threatened, or otherwise abused the accused during the interview. The accused gave a false name and said he was from Pakistan. The accused said nothing about being a Canadian citizen. The accused talked about being on a mission as a translator. The accused was not abused in any way during that interview.

e. Mr. "M", a combat medic, was the noncommissioned officer in charge for medical care for detainees at the Bagram detention facility from 17 August 2002 to late February 2003. Mr. "M" met the accused while performing his duties as a medic. The detainees received the same level of medical care as U.S. and allied military forces. Mr. "M" regularly changed the dressing on the accused's wounds. He saw the accused at least twice each day. The accused's wounds on his chest and back appeared to be healing quickly. The accused was very cooperative and volunteered to help with translation with other detainees because the accused spoke English very well. He never saw any indication that the accused was mistreated when his bandages were changed. The accused never complained to him about any mistreatment. The accused exhibited no signs of fresh wounds or that he was forced to urinate on himself as he alleges in his affidavit. Mr. "M" saw no signs the accused had been physically abused. He did not think the accused was physically unfit to be interrogated. The Commission specifically finds no evidence which supports the accused's allegations he was medically mistreated while at the Bagram detention center or elsewhere.

f. Mr. "M" saw the accused handcuffed to a bar in the sally port of his cell one time. The accused's hands were slightly above eye level with a hood on his head. The accused seemed stressed but did not complain about being in any pain. The accused said this treatment was unfair and he was no longer willing to help with translation with other detainees. There is no evidence the accused made any statements to any interrogator in response to being handcuffed in the sally port of his cell. Mr. "M" saw the accused on the day he was to be transported to GTMO. The accused looked emotional and scared. The accused told Mr. "M" that what he had been told about the Americans was wrong, implying that he had been told American forces would mistreat him.

g. Mr. [REDACTED] was an interrogator who worked at the Bagram detention center while the accused was detained there. He was present during the normal in-process screening of the accused at the Bagram hospital, but he was not present during any interrogations of the accused. There is no evidence the accused was threatened or in any way mistreated during the normal in-process screening. Mr. [REDACTED] talked to the accused several times after the accused had been released from the hospital and was being held at the detention facility, though this was not during any interrogations of the accused. The accused seemed like a typical 15-year-old. Mr. [REDACTED] had a soft spot for the accused and would provide him with books, magazines, and drinks. Mr. [REDACTED] said that people were generally friendlier with the accused than other detainees because of the accused's age. The accused never mentioned anything to Mr. [REDACTED] about being threatened, abused, or mistreated.

h. Interrogator #17 worked at the Bagram detention facility from the fall of 2002 to early 2003. He did not interrogate the accused, and he did not witness any interrogation of the accused while the accused was at the Bagram detention center. He did not talk to anyone about the accused while the accused was at the Bagram detention center, though he knew the accused was a young detainee from Canada. The interrogators took precautions with younger detainees so no one would take advantage of them. He thought the accused was somewhat immature in the way he communicated and because of his interest in car magazines. Interrogator #17 remembers two specific interactions with the accused while at the Bagram detention center. While a doctor was treating the accused, the accused asked some questions and seemed in good spirits. Another time Interrogator #17 remembers seeing the accused and the accused started a conversation with him. The accused seemed more westernized than the other detainees. Interrogator #17 said the guards looked out for the accused because of his age and wounds. It appeared to him the accused became healthier as time passed. He never saw the accused crying, shackled, or wearing a hood over his head. He never heard of any allegations of abuse towards the accused.

i. Interrogator #1 was the lead interrogator for the accused while the accused was at the Bagram detention center. He interrogated the accused 20-25 times. He always interrogated the accused in an interrogation room. He never interrogated the accused in the hospital. He used a "fear up" technique as a last resort with the accused. It is a technique used to attempt to raise the fear level of the detainee. He, at times, used a harsh tone of voice with the accused by yelling and cursing at the accused if he caught the accused in what he thought were lies. The accused told him he did not like the cursing and stopped talking to Interrogator #1 at one point because of the cursing. Interrogator #1 one time "got into the accused's face" by yelling at him and flipping a bench so it made a loud noise. The "fear up" technique included the use of stress positions on detainees who were healthy enough to endure that technique. Interrogator #1 never used the stress position technique on the accused. He never inflicted pain on or tried to injure the accused. He never used any dogs while interrogating the accused.

j. During one of the interrogations, Interrogator #1 told the accused a fictitious story about a detainee, an Afghan male, who lied to interrogators and was sent to a US prison for lying. There were “big, black guys” in the prison. The Afghan male was a kid away from home who they could not protect. The Afghan male got hurt when the “big, black guys” raped him in the showers. This fictitious story was unsuccessful in obtaining information from the accused. The “fear up” technique was also not successful in obtaining information from the accused.

k. Interrogator #1 used other types of techniques on the accused, such as “love of freedom” and “pride/ego down.” These were attempts to gather information through appealing to a person’s desire to go home or implying that he was not really an important person and attempting to get him to talk about the people who really were important. He also used “fear of incarceration” as a technique. It was used in an attempt to gain cooperation in order to return to a normal life rather than being detained. These techniques did not amount to torture or abuse of the accused.

l. Guards would move detainees, to include the accused, with a hood over their heads. However, Interrogator #1 never interrogated the accused while he had a hood over his head. Interrogator #1 never threw cold water on the accused. He never bound the accused’s hands to the ceiling and made him stand. He never made the accused carry heavy water bottles. He never used bright lights with the accused. He never tied a bag over the accused’s head. He never pulled or yanked the accused off a stretcher.

m. The accused never told Interrogator #1 that there was a videotape (Appellate Exhibit (AE) 188 remarked as AE 230) in the house where the firefight took place. However, Interrogator #1 eventually obtained a copy of the videotape found in the house where the firefight took place. After he showed that videotape to the accused, the accused appeared somewhat shaken. The accused said that “the Americans know all.” There was a dramatic change to the accused’s cooperation after he saw the videotape. It was the use of the videotape which was successful in obtaining information from the accused rather than the other techniques used by Interrogator #1.

n. FBI Special Agent [REDACTED] and Interrogator #11 interviewed the accused several times together from 1 October 2002 to 11 November 2002 at Guantanamo Bay, Cuba (hereinafter referred to as GTMO). Interrogator #11 had the lead during those interviews.

o. Two of the interviews by SA [REDACTED] and Interrogator #11 took place while the accused was in the Fleet hospital shortly after his arrival at GTMO. At the Fleet hospital the accused was on a gurney wearing a typical hospital gown in a typical hospital ward setting. Interrogator #11 always received medical clearance prior to interviewing the accused at the Fleet hospital. Neither Interrogator #11 nor SA [REDACTED] ever threatened, yelled at, or otherwise used any coercive techniques when talking to the accused at the hospital or any other location.

p. The other interviews took place in the normal interview rooms. The accused never wore a hood during any of the interviews. The interviews took place during the

day, never at night, and there were no multiple interviews on the same day. The interview might last an hour but never more than 5 or 6 hours. Interrogator #11 and SA [REDACTED] engaged in relaxed conversation with the accused. The accused was always willing to talk. The accused did not appear disoriented and exhibited no signs of distress. The accused never complained of any prior mistreatment at the hands of U.S. personnel. He never complained about any threat of being raped.

q. Guards escorted the accused to the interview rooms in shackles. The accused was not wearing a hood over his head. During the interview the accused had on leg shackles but no hand shackles. No loud noise was made and no music was played. No dogs were used. No threats were made. No stress positions were used. No loud voices were used. The tone was conversational. They offered the accused water and snacks. The accused said he attended schools but was also homeschooled. The accused never mentioned any issues with nightmares or problems with sleeping. Neither SA [REDACTED] nor Interrogator #11 learned of the allegations of abuse the accused had made until each read the accused's affidavit long after each had interviewed the accused.

r. The accused provided much detail, particularly about the fire, normally in a narrative fashion. He was fairly certain about the time on a couple of occasions because he remembered looking at his watch during the fire. If Interrogator #11 was incorrect when she summarized what the accused said, he would correct her. The only mention he made of his eye was that the medical personnel were trying to fix it. He did not complain of pain in his eye.

s. The accused told Interrogator #11 that he lied to interrogators at Bagram until they showed him videotape found at the scene of the fire. He said the Americans were smart and had caught him in lies so he started to tell the truth.

t. FBI Special Agent [REDACTED] interviewed the accused at Camp Delta, GTMO, in January and February of 2003. The first interview was on 6 January 2003 in an interview in one of the trailers at Camp Delta. Each room was approximately 12' x 15' with no exterior windows. Each room could be observed through observation glass. The temperature was comfortable. The accused had on ankle restraints which were bolted to the floor, but his hands were not restrained. The accused was not wearing a hood over his head during any of the interviews. SA [REDACTED] did not yell, threaten, or otherwise abuse the accused. The accused did not appear to be tired and he never mentioned or complained about any prior treatment by any interrogator at any location. The accused mentioned he had some discomfort with an injury but did not indicate he was in pain. The accused talked freely about the fire which led to his capture. The accused asked for some books. The interview, which lasted a couple of hours, ended cordially.

u. SA [REDACTED] next saw the accused on 16 January 2003. He learned the accused was having some problems at Camp Delta and went to see him. The accused was in a trailer and seemed to be crying. He tried to talk to the accused, but the accused would not acknowledge his presence. He did not know why the accused was acting as he was. SA

█████ left shortly thereafter and went to the hospital in an effort to obtain medical treatment for the accused.

v. SA █████ next saw the accused on 3 February 2003 along with SA █████ from the Naval Criminal Investigative Service (NCIS) in the same type of interview room as on 6 January 2003. The temperature was comfortable. The accused had on ankle restraints which were bolted to the floor, but his hands were not restrained. The accused talked about his family, the travels he experienced with his family, and his experience with land mines. At one point the accused asked why SA █████ had not come by to see him more recently.

w. Mr. █████ was an NCIS agent who interviewed the accused at GTMO approximately a dozen times between 20 November 2002 and 10 December 2002. Guards would bring the accused into the interview room with his legs and hands shackled with no hood over his head. Once in the interview room, the guards removed the accused's handcuffs. The guards would connect the leg shackles to a bolt in the floor. Mr. █████ did not use any loud noise or music during the interviews. The interview room was a normal-sized room with no windows, a one way mirror, and several chairs. During each interview Mr. █████ was accompanied by an FBI agent. A DOD intelligence officer was present during the first two interviews. The interviews lasted 1-4 hours, and there were never multiple interviews on the same day. The interviews never occurred late at night. He offered the accused food and drink. No one yelled at, threatened, or otherwise abused the accused. The accused told Mr. █████ that he was told in the past that he was going to be tortured, not that he had been tortured. The accused provided no other details about that. The accused did not appear to be afraid of any torture while he was being interviewed. The accused talked freely about obtaining false identification cards because he needed the false identification cards to travel. The accused spoke about receiving some basic training concerning land mines and various types of weapons. The accused spoke freely in detail about the firefight during which he was injured. The accused seemed very comfortable during the interviews. The accused sent an unprompted letter to Mr. █████ after Mr. █████ left GTMO which is reflected in Appellate Exhibit 257. The accused's letter to Mr. █████ does not indicate any signs of fear of Mr. █████ or anyone else and does not indicate any mistreatment of the accused by anyone.

x. FBI Special Agent █████ interviewed the accused approximately 12 times at GTMO from November 2002 through December 2002. His partner during the interviews was an NCIS agent. Guards brought the accused into the interview room for each interview. Each time the accused had on handcuffs and leg irons. The accused wore orange prison garb and had no hood over his head. The handcuffs were removed once the accused was in the room. His leg irons were attached to a bolt in the floor. No one yelled at, threatened, or otherwise mistreated the accused during any of the interviews. No dogs were in the interview room. No loud noise was used during the interviews. The interview room was a typical room with a table and chairs. There was a window to an observation room. SA █████ offered the accused food and water. He occasionally brought the accused food from McDonald's after he learned the accused liked that type of

food. All the interviews occurred during the day and no interview lasted more than several hours. The accused appeared to become more relaxed with SA [REDACTED] as time passed. The accused provided details in a narrative format about: obtaining false identification documents for travel, training in land mines, and some basic training in use of various types of weapons. The accused said his father selected him for mine laying missions because of his language skills. The accused provided details about the firefight in which he was captured. The accused made no mention of the torture or mistreatment alleged in his affidavit. The accused talked very little about his time at the Bagram detention facility. The interviews stopped whenever the accused indicated he wanted to stop.

y. The accused alleged in his affidavit that he was mistreated while he was being weighed. The videotape of the accused being weighed, Appellate Exhibit 278, clearly shows the accused was not abused or mistreated in any way by any of the guards.

3. In support of its motion, the Defense submitted an affidavit signed by the accused. The Defense characterizes the accused as a child with limited formal education. The Defense offered no evidence to explain how the affidavit was prepared. The Defense presented no evidence that the accused understands the significance of an affidavit and how it is to be used by the Commission during the suppression motion. The Commission presumes the affidavit was prepared by a defense counsel, at least in part, for the purpose of litigating the suppression motion.

a. The accused has an absolute right not to testify. However, the accused effectively became a witness and placed his credibility at issue by submitting his affidavit during the suppression hearing. Cross-examination is a widely and long-recognized method of assessing a witness' credibility. The accused chose not to face the crucible of cross-examination. Thus, the ability of the Commission to assess the accused's credibility is limited. The Commission affords little weight to the accused's affidavit, particularly in light of the lack of corroboration for the allegations in the affidavit.

b. The accused, in his affidavit, alleges he told certain interrogators what they wanted to hear. However, the accused conveniently neglects to specify what it is he allegedly told these interrogators. The defense argues the accused was boxed into certain statements he made to the interrogators without specifically identifying what those statements were. While there is evidence Interrogator #1 told the accused a fictitious story about an Afghan male in a U.S. prison, there is no evidence such a story coerced or in any way caused the accused to make any incriminating statements at any time. There is no credible evidence the accused was boxed into saying anything to any interrogator. As such, the Commission finds the statements the accused made to Interrogator #11 and FBI and NCIS agents in non-threatening settings were not tainted by any previous statements the accused may have made.

c. The accused developed a good rapport with Interrogator #11 and the NCIS and FBI agents who interviewed him. The accused never complained to them about any prior

mistreatment. The accused wrote an unprompted letter to one of the NCIS agents which undermines any allegation of mistreatment.

d. The Government witnesses were subjected to the crucible of cross-examination. Each Government witness was forthright and exceedingly more credible than the accused's affidavit.

4. The relevant part of the Military Commission Rule of Evidence (M.C.R.E.) 304(a)(2) provides: A statement of the accused may be admitted in evidence in a military commission only if the military judge finds –

(A) that the totality of the circumstances renders the statement reliable and possessing sufficient probative value; and

(B) that –

(ii) the statement was voluntarily given.

a. The test for determining whether the statement was voluntary is prescribed in M.C.R.E. 304(a)(4): in determining for the purposes of (a)(2)(B)(ii) whether the statement was voluntarily given, the military judge shall consider the totality of the circumstances, including, as appropriate, the following:

(A) the details of the taking of the statement, accounting for the circumstances of the conduct of military and intelligence operations during hostilities;

(B) the characteristics of the accused, such as military training, age, and education level; and

(C) the lapse of time, change of place, or change in identity of the questioners between the statement sought to be admitted and any prior questioning of the accused.

b. The accused's statements being offered are detailed. The accused provided his answers to questions in a narrative form, rather than answering leading questions. The accused's statements being offered certainly possess probative value. While the accused was 15 years old at the time he was captured, he was not immature for his age. The accused had sufficient training, education, and experience to understand the circumstances in which he found himself.

c. There is no credible evidence the accused was ever tortured as that term is defined under M.C.R.E. 304(b)(3), even using a liberal interpretation considering the accused's age. While Interrogator #1 told the accused a story about the rape of an Afghan youth in an America prison, there is no evidence that story caused the accused to make any incriminating statements then or in the future. In fact, the credible evidence is that the accused started to make incriminating statements only after he learned the Americans found the videotape at the compound where the firefight took place which shows the accused and others making improvised explosives and placing them along the roadside at night. No statement offered against the accused was derived from, the product of, or connected to any story Interrogator #1 told to the accused.


e. The Commission concludes that, under the totality of the circumstances, the statements offered against the accused are reliable, possess sufficient probative value, were made voluntarily, are not the product of torture or mistreatment, and whose admission is in the interest of justice.

6. There is no evidence the accused made any statement to anyone about the existence of a videotape found at the scene of the firefight. There is no evidence to support the defense allegation that the commander made a decision to search the compound where the firefight occurred as a result of intelligence information obtained from the accused. The evidence is clear, and the Commission finds, the commander's decision to search the compound where the videotape was found was independent of and not derived from any interrogation of the accused. The videotape is not the "fruit of the poisonous tree" as there is no "poisonous tree."

7. The Commission finds the Government has met its burden to show the admissibility of the statements and videotape by a preponderance of the evidence. See MCRE 304(d)(1).

8. Accordingly, the motions to suppress the accused's statements and the videotape are denied.

So Ordered this 17th day of August 2010.


Patrick J. Parrish
COL, JA
Military Judge