

**DEPARTMENT OF THE AIR FORCE  
UNITED STATES AIR FORCE JUDICIARY**

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<b>UNITED STATES OF AMERICA</b>	)	<b>DEFENSE MOTION TO SUPPRESS</b>
	)	<b>STATEMENTS AND EVIDENCE</b>
<b>v.</b>	)	
	)	
<b>SRA LOGAN A. MCLEOD</b>	)	
<b>AFLCMC Detachment 5 (AFMC)</b>	)	
<b>Maxwell AFB, Alabama</b>	)	
	)	<b>11 April 2022</b>

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**MOTION**

NOW COMES the Accused, SrA Logan McLeod, by and through defense counsel, pursuant to the Rules for Courts-Martial (RCM) 905(b)(3), Military Rules of Evidence (MRE) 304, 305 and the Fifth Amendment to the Constitution to request this Honorable Court to SUPPRESS statements and evidence in the present case.

**SUMMARY**

The Government obtained recorded and written statements from SrA McLeod in contravention of Military Rule of Evidence 305(c)(2), Article 31, and the Fifth Amendment. SrA McLeod was arrested on 18 September 2021 and was subsequently brought into AFOSI for questioning. While being interrogated for approximately 11 hours, SrA McLeod unequivocally invoked his right to counsel seven times. Instead of terminating the interview, Agents shuffled SrA McLeod from one room to the next, had him polygraphed, and read Art 31 rights three times. Eventually, SrA McLeod made incriminating statements to investigators and filled out an AF IMT 1168 essentially admitting to the alleged crimes. Accordingly, the Defense moves to exclude these items from consideration at the upcoming court-martial. The Defense also moves to exclude any and all evidence that was derived from these statements.

**FACTS**

*Procedural History*

1. On 18 September 2021, SrA McLeod was arrested in Montgomery, Alabama and placed into pretrial confinement on 19 September 2021.<sup>1</sup> (Attachment 1). A pretrial confinement hearing was held on 23 September 2021 and SrA McLeod remains in pretrial confinement to this day. On 19 November 2021, Lt Col ██████████ preferred one Charge and 12 Specifications of Attempt, in violation of Art 80, UCMJ; and one Charge and Specification of Obstruction, in violation of Art 131b, UCMJ. The Attempt Specifications featured a variety of violations, which included two Specifications of Attempted Murder; three Specifications of Attempted Rape; three

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<sup>1</sup> Details regarding the arrest and the interrogation that followed are discussed in detail below.

Specifications of Attempted Kidnapping; two Specifications of Attempted Drug Distribution, and two Specifications of Producing/Distributing Child Pornography.

2. On 6 December 2021, an Article 32 Preliminary Hearing was held. (Attachment 2). The Preliminary Hearing Officer (PHO) did not find probable cause for the Attempted Murder of “Caitlin”<sup>2</sup>, or the Attempted Rape and Kidnapping of A.B. *Id.* Additionally, the PHO recommended charging Assault offenses under Art 128, UCMJ.

3. On 22 December 2021, Lt Col ██████ preferred an Additional Charge and 10 Specifications of Attempt in violation of Article 80, UCMJ. The additional Specifications included the following: two Specifications of Attempted Conspiracy involving A.B.; and eight Specifications of Attempted Assault in violation of Art 128, UCMJ. All Charges and Specifications, to include the Additional Charge, were referred to court-martial on 29 December 2021.



### *The Arrest*

5. On 18 September 2021, SrA McLeod was arrested off-base during a sting operation by AFOSI and Homeland Security Investigations (HSI). (Attachment 4 at 48:20). The arrest was conducted in coordination with local uniformed police agencies, and SrA McLeod was placed in handcuffs and taken to the Maxwell AFB AFOSI Detachment for questioning. *Id.* While waiting for interrogators to arrive, SrA McLeod can be seen sitting in handcuffs for approximately 11 minutes. (Attachment 5). On his right, is a plain-clothes AFOSI agent with a gold law enforcement badge hanging around his neck. *Id.* At the end of this 11 minutes, SrA McLeod is offered a drink of water by SA ██████ and the handcuffs are removed. *Id.* SrA McLeod then waits patiently for approximately 40 minutes before SA ██████ and SA ██████ are seen entering the room to start an interrogation. *Id.* They identify themselves as AFOSI agents and SrA McLeod acknowledges that he knows what AFOSI is. *Id.* at 58:10.

6. As SA ██████ and SA ██████ begin speaking with SrA McLeod, they start by telling him that they want his help with an investigation into “Blazer”—a fictitious character invented by law enforcement. *Id.* This explanation is followed with an Art 31 rights advisement. *Id.* at 1:04:00. **SrA McLeod unequivocally states that he wants a lawyer.** Following his election to have a lawyer present, SA ██████ and SA ██████ quickly exit the room noting that the interview is over. *Id.* SrA McLeod is left in the interview room alone. *Id.* After roughly 20 minutes, SA ██████ and SA ██████ return to the interview room. *Id.* at 1:21:51. They inform SrA McLeod that they have “good news” from HSI and that SrA McLeod can be used in their investigation. *Id.* They note that they want to give him another chance and that he is just a small piece in a larger puzzle. *Id.* SA ██████ then intimates that, as an Air Force law enforcement agency, they want to protect the Air Force members like SrA McLeod from HSI by confirming that SrA McLeod is not a bad person and has not done things like this in the past. *Id.* To do this, they request that SrA McLeod

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<sup>2</sup> This is a fictitious name created by law enforcement for the purposes of their investigation. Accordingly, no expurgation is required.

interview with an AFOSI Polygraph Agent. *Id.* They also inform SrA McLeod that his life and family hang in the balance. *Id.* **Again, SrA McLeod requests a lawyer.** *Id.* at 1:26:00.

7. In response to SrA McLeod's second request for counsel, SA [REDACTED] tells SrA McLeod that they do not have a lawyer with them right now and that SrA McLeod would have to go get a lawyer. *Id.* SrA McLeod eventually agrees to meet with the AFOSI Polygraph Agent but asked "can't it be used against me?" *Id.* at 1:27:20 SA [REDACTED] and SA [REDACTED] assure SrA McLeod that his nervousness will not be used against him and that polygraphs are used to exonerate people just as much as they are used to substantiate misconduct. *Id.* Finally, SA [REDACTED] notes that "in the movies" they just bring you a lawyer, but, in this case, you would have to go get one. *Id.* at 1:28:00. SA [REDACTED] and SA [REDACTED] then escort SrA McLeod into another room to meet with the Polygraph Agent. *Id.* at 1:53:00.

8. As they are leaving the room to meet with the Polygraph Agent, SA [REDACTED] asks SrA McLeod if he wants to use the bathroom. (Attachment 5 at 1:53:05). SrA McLeod responds in the affirmative. SA [REDACTED] testified about this bathroom visit under oath at the Preliminary Hearing. The following is his testimony on cross examination:

"So I brought him to the bathroom; he's using the urinal. At some point, he stated that he was sorry that he hadn't helped us; that he wished he could talk to us and that he did want to; and I told him something along the lines of, you know, it's understandable, it's your choice, it's up to you and he said kind of the same thing again along the lines of I'm sorry that I didn't, **I wish I could help you** and that was pertinent" (Attachment 4 at 1:16:21) (emphasis added).

9. As SrA McLeod is introduced to the Polygraph Agent **he again makes his request for a lawyer known.** (Attachment 6 at 16:47). He is then asked if he will forgo his request for a lawyer for the purpose of a polygraph. *Id.* at 17:50. Article 31 rights are then read by the Polygraph Agent. *Id.* at 20:33. SrA McLeod again states that he is confused as to why he cannot get a lawyer during the interview, notes that he has been told that he cannot have a lawyer present and **again requests a lawyer.** *Id.* at 21:28. In response, the Polygraph Agent states that a lawyer typically "ties our hands" and notes that he is uncertain if they can produce a lawyer for the interview. *Id.* at 22:10. SrA McLeod then reluctantly agrees to forgo a lawyer for the purposes of the polygraph. *Id.* The Polygraph Agent then hands SrA McLeod what appears to be a pre-filled form pertaining to his rights to counsel; SrA McLeod expresses confusion and is told to sign by a pre-marked "X." *Id.* at 24:00.

10. Nearly an hour and a half into the substantive polygraph interview (which has since turned combative), SrA McLeod accuses the Polygraph Agent of badgering him; SrA McLeod notes that he is confused **and states that he wants to talk to a lawyer.** (Attachment 7 at 1:23:39). The Polygraph Agent notes that he is leaving the interview; SrA McLeod states that he asked for a lawyer hours ago and the Polygraph Agent states that he is instead arranging to have SrA McLeod picked up. *Id.*

11. The Polygraph Agent leaves the room and SrA McLeod is left alone. After approximately 20 minutes, SA [REDACTED] and SA [REDACTED] re-enter the interview room without the Polygraph Agent

present. *Id.* at 1:42:20. They allow SrA McLeod to speak with his wife while SA [REDACTED] holds the phone. *Id.* at 1:43:27. SrA McLeod's wife can be clearly heard by all personnel in the room. *Id.* SrA McLeod tells his wife **"I have an explanation, but I just need to talk to a lawyer first...I just need to talk to a lawyer..."** *Id.* at 1:45:50. After this conversation concludes, SA [REDACTED] and SA [REDACTED] ask SrA McLeod for his wife's phone number. *Id.* at 1:47:47. In response, **SrA McLeod states that he needs to talk to a lawyer first and asks when he can get a lawyer.** *Id.* SA [REDACTED] and SA [REDACTED] then explain that the process is not automatically arranged, and that SrA McLeod will have to solicit the services of a lawyer himself. *Id.* They also note that such a process has a lot of administrative steps involved and that there is no on-call ADC.<sup>3</sup> *Id.* at 1:49:30. **SrA McLeod responds by noting he will have to figure out how to get a lawyer.** *Id.*

12. Immediately after this conversation, the following exchange ensues between SA [REDACTED] SA [REDACTED] and SrA McLeod: *Id.* at 1:50:55.

SA [REDACTED] "Okay, uh, one last thing was when we were in the bathroom earlier, you said you wanted to help us with, um, something, and I just wanted to ask..."

SrA McLeod: "I don't remember exactly. What was it I said?"

SA [REDACTED] "When you were standing at the sink, you said..."

SrA McLeod: "I was just trying to help...and that guy was just trying to use everything I said against me.

SA [REDACTED] "And you don't have to talk to him again if you don't want to. We could make sure you never have to

SrA McLeod: "Does he work with you guys?"

SA [REDACTED] "He just came here to do this because we requested him to, but he's not going to be working on this at all."

SA [REDACTED] "And if you feel like you weren't treated well or something, then that's something I'll look into

SrA McLeod: "He didn't listen to what I had to say and I don't think you will either."

SA [REDACTED] "What do you mean?"

SrA McLeod: (long pause)

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<sup>3</sup> Of note, the ADC was available at Maxwell AFB after-hours and has an on-duty cell. I should know, I'm him.

SA [REDACTED] “Are you okay? You seem stressed, which I understand but I just want to make sure you’re taken care of”

SrA McLeod: “[REDACTED] expressed to me that she had sex with a 14 year old; and she was talking about this kidnap shit and trying to set up things I...I was playing along and I was planning on getting the victims there and taking them to the police. I was trying to maintain my cover by just being as convincing as possible with method acting. And I have no way to prove this...”

SA [REDACTED] “So, go ahead, I want to stop you because . . . so it sounds like...I, I want to stop you because um, again our concern is making sure that you are taken care of and you’re protected. It sounds like you’re changing your mind now, and, correct me if I’m wrong, but it sounds like you are wanting to talk to us about the circumstances involved.”

SrA McLeod: “Oh you’re talking about with...I uh”

SA [REDACTED] “I don’t know what you’re exactly referring to, but I want to make you you’re being clear with us if you...”

SrA McLeod: “So you’re actually here for my interests? Are you trying to do whatever it takes to like, make me look bad. So...”

13. SA [REDACTED] went on to explain he had two interests: (1) stopping “Blazer;” and (2) protecting Air Force members like SrA McLeod. *Id.* He also noted that he could make a “recommendation” to HSI about the disposition of the case and that it is a “big deal” depending on what SrA McLeod says. *Id.* at 1:56:00. SrA McLeod then stated that he was “**sorry for not talking before, I was just always told to wait for a lawyer.**” *Id.* SA [REDACTED] then went through a third Article 31 rights advisement. *Id.* at 1:58:00. When the right to an attorney was addressed, SrA McLeod expresses that he is confused and asked if requesting a lawyer means they have to stop. *Id.* SA [REDACTED] responded in the affirmative. *Id.* SrA McLeod then waived his right to an attorney. *Id.*

14. During the subsequent interview with SA [REDACTED] and SA [REDACTED] SrA McLeod expressed further confusion about the process, stating “I thought the lawyer would show up” (Attachment 8 at 38:00) and “what am I being charged with?” *Id.* at 43:06. After the interview concluded, SrA McLeod wrote an incriminating statement; which is partially the subject of this written motion. (See Attachment 9 at 1:14:00). Of note, Agents only address the rights portion of the statement *after* SrA McLeod has written the statement. (Attachment 10 at 1:20:54). They also direct him to sign the “I do not want a lawyer” portion of the AF IMT 1168 without addressing options for him wanting a lawyer. *Id.*

15. Not only did SrA McLeod provide law enforcement with incriminating statements that evening, he also provided them with the passcode to his phone. (Attachment 9 at 34:30). Using this passcode, law enforcement was able to access and data-mine SrA McLeod’s cellphone.

(Attachment 11). In total, SrA McLeod was interrogated by AFOSI for 10 hours and 47 minutes (from 1940 on 18 September 2021 until 0627 on 19 September 2021). (Attachment 12).

### **BURDEN**

16. As the moving party seeking to continue proceedings, the Defense bears the burden of persuasion by a preponderance of evidence. R.C.M. 905(c).

### **LAW**

17. M.R.E. 305(c)(2) addresses a member's Fifth Amendment Right to Counsel. It states "[i]f a person suspected of an offense and subjected to custodial interrogation requests counsel, any statement in the interrogation after such a request, or evidence derived from the interrogation after such a request, is inadmissible against the accused unless counsel was present for the interrogation."

18. According to R.C.M. 305(b)(2) an 'interrogation' "means any formal or informal questioning in which an incriminating response either is sought or is a reasonable consequence of such questioning." A 'custodial interrogation' is defined in R.C.M. 305(b)(3). It "means questioning takes place while the accused or suspect is in custody, could reasonably believe himself or herself to be in custody, or is otherwise deprived of his or her freedom of action in any significant way."

19. Concerning waiver of one's Fifth Amendment right to counsel after it has already been invoked, M.R.E. 305(e)(A) states the following: "If an accused or suspect subject to custodial interrogation requests counsel, any subsequent waiver of the right to counsel obtained during a custodial interrogation concerning the same or different offenses is invalid unless the prosecution can demonstrate by a preponderance of the evidence that: (1) the accused or suspect initiated the communication leading to the waiver; or (2) the accused or suspect has not continuously had his or her freedom restricted by confinement, or other means, during the period between the request for counsel and the subsequent waiver."

20. In *United States v. Swafford*, 2017 CCA LEXIS 747, \*8, our Air Force Court of Criminal Appeals summarized existing precedent concerning Fifth Amendment protections during custodial interrogation:

"We begin with the Fifth Amendment. Under the Fifth Amendment, the right to counsel is invoked once an accused unequivocally requests counsel in a custodial setting. *See Arizona v. Roberson*, 486 U.S. 675 (1988). Once invoked, the right may be waived under any one of three circumstances: (1) counsel is present; (2) the accused person initiates communication with law enforcement; or (3) 14 non-custodial days have passed since the invocation. *Maryland v. Shatzer*, 559 U.S. 98, 104-11 (2010)(citing *Edwards v. Arizona*, 451 U.S. 477, 484 (1981))."

21. M.R.E. 305(a) notes that "a statement obtained in violation of this rule is involuntary and will be treated under M.R.E. 304."

22. An ‘involuntary statement’ is defined as “a statement obtained in violation of the self-incrimination privilege or Due process Clause of the Fifth Amendment to the United States Constitution, Article 31, or through the use of coercion, unlawful influence, or unlawful inducement.” R.C.M. 304(a)(1)(A).

23. M.R.E. 304(a) states that “if the accused makes a timely motion or objection under this rule, an involuntary statement from the accused, or any evidence derived therefrom, is inadmissible at trial except as provided in subdivision (e).”

24. M.R.E. 304(b) notes that “[w]hen the defense has made an appropriate and timely motion or objection under this rule, evidence allegedly derived from a statement of the accused may not be admitted unless the military judge finds by a preponderance of the evidence that: (1) the statement was made voluntarily, (2) the evidence was not obtained by use of the accused’s statement, or (3) the evidence would have been obtained even if the statement had not been made.”

25. Involuntary statements may only be used to “(1) impeach by contradiction the in-court testimony of the accused; or (2) in a later prosecution against the accused for perjury, false swearing, or the making of a false official statement.” R.C.M. 304(e).

## ANALYSIS

26. As a threshold matter, this interrogation was custodial in nature. SrA McLeod had been brought in for questioning in handcuffs and can be seen on camera for approximately 11 minutes with his hands bound behind his back and flanked by a law enforcement officer displaying a badge. When he is uncuffed, AFOSI agents clearly make it known that they are law enforcement and SrA McLeod acknowledges that he understands. Any reasonable person would have considered themselves not free to leave and under arrest.

27. The rules at play clearly bar the admission of SrA McLeod’s statements to AFOSI. During the course of their nearly-11-hour custodial interrogation, SrA McLeod asked for an attorney at least seven times. Instead of terminating the interview, agents merely played hot-potato with SrA McLeod while applying pressure-tactics to get him to forgo his right to counsel. This pattern of abusive behavior is seen throughout the timeline of the evening.

28. At the outset of this custodial interrogation, SrA McLeod unequivocally requested a lawyer. This should have terminated the interrogation absent SrA McLeod re-approaching law enforcement. Instead, SA [REDACTED] and SA [REDACTED] *re-approached SrA McLeod* and asked him to make statements to a Polygraph Agent. For a second time, SrA McLeod requested an attorney. Instead of appropriately terminating the interview, SA [REDACTED] and SA [REDACTED] continued to engage SrA McLeod in an effort to deter him from seeking the assistance of counsel. In so doing, they emphasized the onerous nature of the right (that SrA McLeod would have to seek this assistance himself even though he was powerless to do so at that moment); they also used a host of deceptions to heighten psychological pressure on SrA McLeod to speak with the Polygraph Agent. In rather bold pivot, the Agents relayed to SrA McLeod that they were on his side and,

depending on whether he spoke/cooperated with them, his life and family hung in the balance. Only after these devices were employed did SrA McLeod agree to meet with the Polygraph Agent. Any statements made after SrA McLeod invoked his right to counsel should be suppressed.

29. This takes us to the alleged incident in the bathroom just before SrA McLeod's meeting with the Polygraph Agent. The sworn testimony of SA [REDACTED] clearly demonstrates that there was no affirmative waiver of SrA McLeod's right to counsel. Instead, SrA McLeod stated that he wished he could help, but was sorry that he didn't. This sentiment is borne out by the subsequent interview with the Polygraph Agent. During his introduction with the Polygraph Agent, SrA McLeod again made his wishes about obtaining counsel known. At that time, the interview should have terminated; instead, the Polygraph Agent described the consequences of making such an election. Although it should have been clear what SrA McLeod wanted, AFOSI was not deterred. At this juncture, SrA McLeod had requested counsel **four times**. Not accepting such an election, the agent noted that lawyers often "tie our hands" while continuing to pressure SrA McLeod into giving up his right. Visibly confused, SrA McLeod tentatively agreed to do a polygraph without a lawyer present.

30. When re-approached by SA [REDACTED] and SA [REDACTED] on video, they ask SrA McLeod about his bathroom statement; and SrA McLeod states that he can't remember what he said in the bathroom. Additionally, after this supposed bathroom break—a break that was conveniently away from cameras and prying eyes—SrA McLeod makes his wish to speak with an attorney known **two additional times** while SA [REDACTED] and SA [REDACTED] are in the room...and these subsequent statements are made on camera. Given these details, the alleged bathroom visit is not compelling evidence that SrA McLeod, contrary to his prior and subsequent pleas for a lawyer, knowingly and intelligently relinquished his right to an attorney while being interrogated. None of the exceptions listed in *Swafford* or M.R.E. 305 are present for such a thing to have occurred. Accordingly, SrA McLeod's statements were involuntary and M.R.E. 304(b) and (c) prevents the Government from using the statements made at trial. In addition, the Government should be barred from entering any evidence derived from those statements.

### **RELIEF REQUESTED**

31. THEREFORE, the Defense respectfully requests this Honorable Court to SUPPRESS the above statements and evidence pursuant to M.R.E. 304(b) and (c).

32. The Defense requests an Article 39(a) hearing on this matter.

Respectfully Submitted,  
[REDACTED]

STEPHAN A. RYDER, Capt, USAF  
Area Defense Counsel

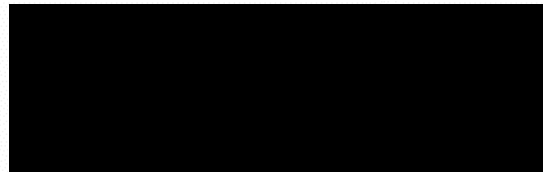


12 Attachments:

1. PCRO Memorandum, dated 29 Sep 21 (4 pages)
2. Art 32 Report, dated 15 Dec 21 (28 pages)
3. Joint Status Update – Dismissal, dated 23 March 2022 (1 page)
4. Art 32 Hearing Audio, dated 6 Dec 21 (1 disc)
5. Subject Interview Part 1, dated 18 Sep 21 (1 disc)
6. Subject Interview Part 2, dated 18 Sep 21 (1 disc)
7. Subject Interview Part 3, dated 18 Sep 21 (1 disc)
8. Subject Interview Part 4, dated 18 Sep 21 (1 disc)
9. Subject Interview Part 5, dated 18 Sep 21 (1 disc)
10. Subject Interview Part 6, dated 18 Sep 21 (1 disc)
11. DCFL Report, dated 21 December 2021 (14 pages)
12. AFOSI Interview Time Documentation, dated 19 Sep 21 (3 pages)

**CERTIFICATE OF SERVICE**

I hereby certify that I served a copy of the foregoing document on the Military Judge and Trial Counsel via e-mail on 11 April 2022.



STEPHAN A. RYDER, Capt, USAF  
Area Defense Counsel