IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

In Re R.C., Petitioner	)	**GOVERNMENT ANWER TO PETITIONER'S PETITION FOR EXTRAORDINARY RELIEF**
v.	)	
COL Thomas P. Hynes, Respondent	)	Army Misc. 20250284
v.	)	
Staff Sergeant (E-6) **COLEMAN**, Nathaniel P., Real Party in Interest	)	

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Assignment of Error I

THE MILITARY JUDGE ERRED IN DETERMINING R.C.'S MENTAL HEALTH DIAGNOSES, TREATMENTS, AND PRESCRIPTIONS ARE NOT PRIVILEGED RECORDS OF COMMUNICATIONS DESPITE AMENDMENTS TO MIL. R. EVID. 513(a) CONTAINED IN EXEC. ORDER 14130 DATED 20 DECEMBER 2024.

Assignment of Error II

THE MILITARY JUDGE FAILED TO FOLLOW THE PROCEDURES OUTLINED IN MIL. R. EVID. 513(e)(4) PRIOR TO ORDERING PRODUCTION OF R.C.'S MENTAL HEALTH DIAGNOSES, PRESCRIPTIONS RELATED TO SUCH DIAGNOSES, AND DATES OF ANY MEDICAL OR MENTAL TREATMENTS FROM R.C.'S MENTAL HEALTH RECORDS.

Panel No. 2

Assignment of Error III

THE MILITARY JUDGE ERRED WHEN HE CONDUCTED IN CAMERA REVIEW OF NON-RESPONSIVE MATERIALS CONTAINED IN R.C.'S MENTAL HEALTH RECORDS IN VIOLATION OF HIS ORDER DATED 12 MAY 2025.

Preamble

COMES NOW the United States and provides this answer to petitioner's petition for extraordinary relief, pursuant to this court's Order, dated 18 June 2025, and Rules 19(f), 19.3(b) of this court's Rules of Appellate Procedure. The United States requests this court deny the present petition because Respondent did not commit clear and indisputable error in denying petitioner's motion to seal records of diagnoses, treatment, and prescription.

Statement of the Case

On 30 May 2025, petitioner submitted to this court a Writ of Mandamus and Request for Stay in the pending general court-martial of *United States v. Nathaniel P. Coleman* (the Real Party in Interest). The Real Party in interest is charged with seventeen specifications of domestic violence in violation of Article 128b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 928b. (Charge Sheet). Petitioner, R.C., is the named victim in ten specifications. (Charge Sheet). Petitioner requests this court issue a writ staying execution and enforcement of a subpoena issued

pursuant to military judge's order to produce and discover certain non-privileged mental health records from the Womack Army Medical Center.

On 30 May 2025, the court docketed this case. (Order, dated 30 May 2025). On 9 June 2025, petitioner filed a Supplemental Briefing on Behalf of Petitioner. (Petitioner's Supp. Br). On 18 June 2025, this court ordered the government to file a brief. (Order, dated 18 June 2025).

Facts

The United States agrees with petitioner's recitation of the facts for purposes of resolving this writ-petition and adds the following relevant facts:

On 6 February 2025, the General Court-Martial Convening Authority, XVIII Airborne Corps, referred charges against the accused. (Charge Sheet). Arraignment took place on 13 February 2025. (R. at 2).

On 9 March 2025, trial defense counsel filed a Motion to Compel Discovery, including Mil. R. Evidence 513 evidence. (App. Ex. VII). Defense proffered that witnesses' accounts of petitioner crying or visibly upset could be attributed to a mental health diagnosis, intoxication, or to her and accused arguing. (App. Ex. VII, p. 13). Defense further offered that petitioner's medication could have impacted her ability to perceive and recall as well as to control her behavior at the time she reported the accused. (App. Ex. VII, p. 13). On 13 March 2025, trial

counsel filed a response to defense's motion. (App. Ex. IX). On 13 March 2025, petitioner's special victim counsel (SVC) filed a response. (App. Ex. X).

On 14 March 2025, the parties litigated the motion in a closed hearing. (R. at 106–28)(sealed). Defense confirmed they were solely requesting *Mellette* materials and narrowed the date range for records between 13 April 2021 to present located at Fort Bragg, North Carolina. (R. at 107–08, 112, 125 (sealed); App. Ex. XV, p. 1).

On 19 March 2025, Lieutenant Colonel (LTC) Tyler Heimann ruled on the motion granting defense's motion to compel production of petitioner's diagnoses, treatment, and prescriptions for the period 14 April 2021 to present. (App. Ex. XV, p. 7). Petitioner's SVC filed a request for reconsideration on 31 March 2025. (App. Ex. XVIII). On 4 April 2025, the parties further discussed the implications of Executive Order 14130. (R. at 205–11)(sealed).

On 11 April 2025, LTC Heimann issued a written ruling again granting defense's motion to compel the production of petitioner's mental health diagnoses, treatment, and prescriptions for the period of 14 April 2021 to present. (App. Ex. XX). The military judge determined that the amended language of Mil. R. Evid. 513(a) did not clearly abrogate the holding of *Mellette*. (App. Ex. XX, pp. 9–10).

Additional facts are incorporated below.

Petitioner's Burden under Article 6b(e), UCMJ

Article 6b(e)(1), UCMJ, provides, in relevant part:

> If the victim of an offense under [Chapter IV, MCM] believes that . . . a court-martial ruling violates the rights of the victim afforded by a section (article) or rule specified in paragraph (4), the victim may petition the Court of Criminal Appeals for a writ of mandamus to require . . . the court-martial to comply with the section (article) or rule.

Paragraph 4 of Article 6b(e), UCMJ specifies protections afforded by Mil. R. Evid. 513, relating to the psychotherapist-patient privilege. *See In re B.M. v. United States and Bailey*, 84 M.J. 314, 318 (C.A.A.F. 2024).

The purpose of a writ of mandamus is to "confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." *Roche v. Evaporated Milk Ass'n*, 319 U.S. 21, 26, 63 S. Ct. 938, 87 L. Ed. 1185 (1943) (citations omitted). A writ of mandamus "is a 'drastic and extraordinary' remedy 'reserved for really extraordinary causes.'" *E.V. v. United States*, 75 M.J. 331, 332 (C.A.A.F. 2016) (quoting *Cheney v. United States Dist. Court for D.C.*, 542 U.S. 367, 380, 124 S. Ct. 2576, 159 L. Ed. 2d 459 (2004)).

To prevail on a petition for a writ of mandamus, a petitioner "must show that: 1. There is no other adequate means of relief; 2. The right to issuance of the writ is clear and indisputable; and 3. Issuance of a writ is appropriate under the

circumstances." *Hasan v. Gross*, 71 M.J. 416, 418 (C.A.A.F. 2012); *H.V.Z. v. United States*, 85 M.J. 8 (C.A.A.F. 2024) (citation omitted). Petitioner must show that the military judge clearly and indisputably erred for the writ to issue. *H.V.Z.*, 85 M.J. at 12.

Questions of statutory interpretation are reviewed de novo. *Id.* (citation omitted). "'The plain meaning of a [rule] will control unless it leads to an absurd result.'" *United States v. Beauge*, 82 M.J. 157 (C.A.A.F. 2022) (quoting *United States v. King*, 71 M.J. 50, 52 (C.A.A.F. 2012). "In determining whether language is plain, a court must look 'to the language itself, the specific context in which that language is used, and the broader context of the [rule] as a whole.'" *Id.* (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997)). Where "only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law," that meaning will prevail. *United Sav. Ass'n v. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 371, 108 S. Ct. 626, 98 L. Ed. 2d 740 (1988).

"To justify reversal of a discretionary decision by mandamus, the judicial decision must amount to more than even gross error; it must amount to a judicial usurpation of power, or be characteristic of an erroneous practice which is likely to recur." *Id.* (quoting *United States v. Labella*, 15 M.J. 228, 229 (C.M.A. 1983) (citations omitted) (internal quotation marks omitted)).

Assignment of Error I

THE MILITARY JUDGE ERRED IN DETERMINING R.C.'S MENTAL HEALTH DIAGNOSES, TREATMENTS, AND PRESCRIPTIONS ARE NOT PRIVILEGED RECORDS OF COMMUNICATIONS DESPITE AMENDMENTS TO MIL. R. EVID. 513(a) CONTAINED IN EXEC. ORDER 14130 DATED 20 DECEMBER 2024.

Law

In *United States v. Mellette*, the Court of Appeals for the Armed Forces considered a prior version of Mil. R. Evid. 513(a) when it held that diagnoses and treatment (including prescriptions) were not privileged communications. 82 M.J. 374 (C.A.A.F. 2022).

On 20 December 2024, Executive Order 14130 added language to the rule. Military Rule of Evidence 513(a) as amended now provides,

> A patient has a privilege to refuse to disclose or prevent any other person from disclosing confidential communication, *including records of such communications*, made between the patient and a psychotherapist or an assistant to the psychotherapist, in a case arising under the UCMJ, if such communication was made for the purpose of diagnosis or treatment of the patient's mental or emotional condition.

See Exec. Order No. 14130. 89 Fed. Reg. 105343, 105364 (20 Dec. 2024) (emphasis added). The Executive Order added the language italicized above.

Argument

Petitioner contends the military judge committed clear and indisputable error in concluding that Executive Order 14130 did not expand Mil. R. Evid. 513(a) protections to include diagnoses, treatments, and prescriptions.[1]

The plain language of the statute does not clearly support petitioner's interpretation that the President intended to include diagnoses, treatments, and prescriptions. The added language is "records of such communications," not "diagnoses, treatments, and prescriptions." Contrary to petitioner's related claim that the military judge treated the language in the Florida statute as a requirement for how the President must amend the language to broaden protections (Pet. Supp. Br. 8), the military judge acknowledged the possibility of the new amendment overruling *Mellette*. (App. Ex. XX, p. 10). But a plain reading of the text shows that it does not explicitly include diagnoses, treatments, or prescriptions.

Although there is no drafter's analysis for the amended rule, three days after the Executive Order took effect, the President signed a bill wherein Congress directed the Secretary of Defense to analyze the advisability of modifying rule 513 to include diagnoses and treatments as confidential communications subject to the psychotherapist-patient privilege. *See* Pub. L. No. 118–59, 138 Stat. 1908, Sec.

[1] Executive Order 14130 took effect on 20 December 2024 and applies in this case because arraignment occurred on 13 February 2025 after the date of this order. *See* Executive Order 14130, sec. 3. No party at trial disputes its application.

569E; *see also* Sec. 544, Senate Rept. No. 118–188 (8 Jul. 24). This suggests the President did not contemplate including "diagnoses, treatments, and prescriptions" within the meaning of "records of such communications."

Arguably, instead, the added language codifies *Mellette*. There, the Court explained that "documents that are not themselves communications may be partially privileged to the extent that those records memorialize or otherwise reflect the substance of privileged communications." 82 M.J. at 379. Thus, "records of such communications" can be fairly understood to mean "those records memoraliz[ing] or otherwise reflect[ing] communications."

Petitioner asserts a diagnosis reveals the summation of confidential communications. (Petitioner's Supp. Br., pp. 10–11). But the fact that a psychotherapist also informs the patient which diagnosis the DSM-5 says their symptoms meet does not render the diagnosis itself privileged; it is not memorializing actual communications. Instead, the military judge, relying upon definitions in *Mellette*, fairly characterized those communications as underlying facts, not the diagnosis itself. *See* 82 M.J. at 380. (Findings, Conclusions, and Ruling: Motion to Compel Mental Health Records, 19 March 2025, p. 6).

Moreover, the Air Force Court of Criminal Appeals recently found that "the added language merely enumerated the unremarkable clarification that the privilege prohibits the disclosure. . . . This additional language did not change the

nature or definition of confidential communications. It simply addressed the form in which that communication may be retransmitted." *In re DD* (*U.S. v. Williams*), Misc. Dkt. No. 2025-02, __ CCA LEXIS ____ (A.F. Crim. Ct. App. 21 Mar. 2025) (mem op.). Accordingly, *Mellette*'s holding still applies. Thus, this court should find the military judge committed no error, clear or indisputable.

Assignment of Error II

THE MILITARY JUDGE FAILED TO FOLLOW THE PROCEDURES OUTLINED IN MIL. R. EVID. 513(e)(4) PRIOR TO ORDERING PRODUCTION OF R.C.'S MENTAL HEALTH DIAGNOSES, PRESCRIPTIONS RELATED TO SUCH DIAGNOSES, AND DATES OF ANY MEDICAL OR MENTAL TREATMENTS FROM R.C.'S MENTAL HEALTH RECORDS.

Law and Argument

Military Rule of Evidence 513(e)(4) provides:

> Any production or disclosure permitted by the military judge under this rule must be narrowly tailored to only the specific records of communications, or portions of such records or communications, *that meet the requirements for one of the enumerated exceptions to the privilege under subdivision (d) of this Rule* and are included in the stated purpose for which the records or communications are sought under subdivision (e)(1)(A) of this Rule.

(emphasis added).[2] There are seven enumerated exceptions to the privilege under Mil. R. Evid. 513(d).

Nevertheless, Mil. R. Evid. 513(e)(4) applies to privileged material. Logically, there is no need to determine whether an exception to the privilege exists if there is no privilege. Because the military judge correctly determined petitioner's mental health diagnoses, treatments, and prescriptions were not privileged, there was no need for the military judge to determine whether defense's request met a Mil. R. Evid. 513(d) exception to the privilege.

If this court determines those records are privileged, Mil. R. Evid. 513(e)(4) expressly dictates procedures the military judge must follow. Given the current procedural posture and signed subpoena for petitioner's records (App. Ex. XXV) signaling imminent release, the issuance of a writ would be appropriate under the circumstances. Accordingly, if the court finds Executive Order 14130 supersedes *Mellette* insofar as its holding that Mil. R. Evid. 513(a) protections exclude records of diagnoses, treatment, and prescription, the court should order the military judge to follow the procedures in Mil. R. Evid. 513(e)(4) to determine whether any exceptions apply.

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[2] The italicized language in Mil. R. Evid. 513(e)(4) mirrors language in Mil. R. Evid. 513(e)(3). In *H.V.Z.*, the CAAF stated that the procedures in Mil R. Evid. 513(e)(3) only apply when the moving party seeks production or admission of mental health records that are protected from disclosure by the psychotherapist-patient privilege in Mil. R. Evid. 513(a). 85 M.J. at 15.

Assignment of Error III

THE MILITARY JUDGE ERRED WHEN HE CONDUCTED IN CAMERA REVIEW OF NON-RESPONSIVE MATERIALS CONTAINED IN R.C.'S MENTAL HEALTH RECORDS IN VIOLATION OF HIS ORDER DATED 12 MAY 2025.

Additional Facts

On 28 May 2025, petitioner's SVC filed a Motion for Recusal. (App. Ex. XXVIII). On 28 May 2025, LTC Heimann denied the request. (App. Ex. XXIX, p. 3). On 29 May 2025, Colonel (COL) Thomas P. Hynes replaced LTC Heimann as the military judge in this case pursuant to a permanent change of station move. (Petitioner's Writ of Mandamus and Motion to Stay, dated 30 May 2025, pp. 1–2, 8; Petitioner's Supp. Br. 1; App. Ex. XXIX, n.2; R. at 249).

Law and Argument

The government respectfully submits this issue is moot. First, Colonel Hynes became the military judge of record on 29 May 2025. (Petitioner's Writ of Mandamus and Motion to Stay, dated 30 May 2025, pp. 1–2, 8; Petitioner's Supp. Br. 1; App. Ex. XXIX, n.2; R. at 249). Second, Petitioner explicitly declines to raise LTC Heimann's recusal in the Supplemental Briefing. (Petitioner's Supp. Br. n.10). Thus, even assuming arguendo LTC Heimann committed clear and indisputable error as petitioner contends, no other relief is warranted.

Conclusion

WHEREFORE, the government respectfully requests this court deny petitioner's writ.



VY T. NGUYEN
MAJ, JA
Branch Chief, Government Appellate Division



RICHARD E. GORINI
COL, JA
Chief, Government Appellate Division

CERTIFICATE OF SERVICE

In Re R.C. (U.S. v. Coleman) (MISC 20250284)

I hereby certify that an electronic copy of the foregoing motion, was sent via electronic submission to Mr. Christopher W. Genrich at [redacted], CPT Kyla M. Nichols at [redacted], and the Defense Appellate Division at [redacted] on this 30th day of June, 2025.

[redacted]
VY T. NGUYEN
MAJ, JA
Branch Chief, Government
Appellate Division

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