Wednesday, February 11, 2009

1400

United States v. Craig

The appellant was convicted, pursuant to his pleas, of one specification each of receipt, possession and distribution of child pornography, in violation of 18 U.S.C. § 2252A(a)(2) and (a)(5), as assimilated under Article 134, Uniform Code of Military Justice, 10 U.S.C. § 934. The charges arose out of the appellant allegedly having received images and videos of child pornography through file sharing software, which he configured to allow others to access on his computer. There were no facts disclosed during the providency inquiry that anyone received images from the appellant's computer. The issues to be argued before the court are:

> I. WHETHER THE APPELLANT'S GUILTY PLEA TO DISTRIBUTION OF CHILD PORNOGRAPHY WAS IMPROVIDENT, AS THERE WAS NO EVIDENCE THAT APPELLANT DELIVERED ANY UNLAWFUL IMAGES TO ANYONE?
>
> II. WHETHER THE MILITARY JUDGE COMMITTED PLAIN ERROR WHEN HE DID NOT DECLARE *SUA SPONTE* THAT THE OFFENSES OF RECEIVING AND POSSESSING CHILD PORNOGRAPHY WERE MULTIPLICIOUS?

In a footnote the court indicated that counsel should be prepared to argue how, if at all, the decision of the Court of Appeals for the Armed Forces decision in *United States v. Kuemmerle*, __ M.J. __, No. 08-0448 (C.A.A.F. Jan. 8, 2009) impacts the first assignment of error.

Wednesday, February 25, 2009

1000

United States v. Garner

The appellant was convicted, pursuant to his pleas, of one specification each of attempting to communicate indecent language to a minor, and violating 18 U.S.C. § 2422(b) by attempting to use interstate commerce to persuade, entice, and induce a minor to engage in illegal sexual activity, in violation of Articles 80 and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 880 and 934. The charges arose out of the appellant's communication online with an undercover police officer, whom he believed to be a 14 year-old girl. The issues to be argued before the court are:

> I. APPELLANT COULD NOT PLEAD GUILTY TO A CHARGE OF ATTEMPTED ENTICEMENT OF A MINOR FOR SEXUAL ACTIVITY BECAUSE HE DID NOT TAKE A "SUBSTANTIAL STEP" TO ENGAGE IN ACTUAL SEXUAL ACTIVITY WITH THE PURPORTED MINOR.

II. APPELLANT'S GUILTY PLEAS WERE IMPROVIDENT WHERE THEY WERE BASED ON A SUBSTANTIAL MISUNDERSTANDING AS TO THE MAXIMUM SENTENCE HE FACED.

III. WHETHER THE APPELLANT WAS CAPABLE OF KNOWINGLY PLEADING GUILTY TO CHARGE II, GIVEN THAT IT ENCOMPASSES VIOLATIONS OF THREE CRIMINAL STATUTES AND THAT THE MILITARY JUDGE EXPLAINED TO THE APPELLANT THAT HE WAS PLEADING GUILTY UNDER BOTH CLAUSE 2 AND 3 OF ARTICLE 134, THE LATTER AS A LESSER INCLUDED OFFENSE. *See United States v. Medina*, 66 M.J. 21 (C.A.A.F. 2008).

IV. WHETHER WORDS ALONE ARE SUFFICIENT TO SATISFY THE "SUBSTANTIAL STEP" ELEMENT OF AN ATTEMPT, IF THEY AMOUNT TO "GROOMING." *Compare United States v. Gladish*, 536 F.3d 646 (7th Cir. 2008), *with United States v. Goetzke*, 494 F.3d 1231 (9th Cir. 2007).