

Wednesday, 6 June 2012

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United States v. Perry

Panel Two: B.L. PAYTON-O'BRIEN, J.A. MAKSYM, R.Q. WARD
Appellate Military Judges

For Appellant: LT Gregory Morison, JAGC, USN

For Appellee: Capt Dave Roberts, USMC

A general court-martial composed of members with enlisted representation convicted appellant, contrary to his pleas, of one specification of aggravated sexual assault and obstruction of justice, in violation of Articles 120 and 134, UCMJ, 10 U.S.C. §§ 920 and 934. The members sentenced the appellant to 36 months of confinement, reduction to pay grade to E-1, total forfeitures of all pay and allowances, and a dishonorable discharge. The Convening Authority approved the sentence as adjudged and, except for the punitive discharge, ordered it executed.

The issue to be argued before the Court is as follows:

- I. WHETHER THE MILITARY JUDGE ERRED WHEN INSTRUCTING THE MEMBERS ON THE ELEMENTS OF AGGRAVATED SEXUAL ASSAULT BY GIVING THE BENCHBOOK INSTRUCTION FOR SUBSTANTIAL INCAPACITATION?

Thursday, 7 June 2012

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United States v. Hickerson

Panel Two: B.L. PAYTON-O'BRIEN, J.A. MAKSYM & R.Q. WARD,
Appellate Military Judges

For Appellant: LT Daniel LaPenta, USN

For Appellee: Maj Paul Ervasti, USMC

A panel of members with enlisted representation sitting as a general court-martial convicted the appellant, contrary to his pleas, of one specification of transferring obscene material over the internet, one specification of attempting to entice a minor to engage in sexual activity, two specifications of possessing child pornography, and one specification of receiving child pornography, all in violation of Article 134, UCMJ, 10 U.S.C. § 934. The members sentenced the appellant to twenty years of confinement, reduction to pay grade E-1, total forfeiture of all pay and allowances, and a dishonorable discharge. The Convening Authority approved the sentence as adjudged, and, except for the punitive discharge, ordered the sentence executed.

The issues to be argued before the Court are as follows:

- I. WHETHER SPECIFICATION 2 OF THE CHARGE STATES AN OFFENSE UNDER CLAUSE 3 OF ARTICLE 134, UCMJ, AND IF THE SPECIFICATION FAILS TO STATE AN OFFENSE, WHETHER THIS COURT MAY AFFIRM A FINDING OF GUILTY UNDER EITHER CLAUSE 1 OR 2 OF ARTICLE 134, UCMJ?
- II. WHETHER, IN THE EVENT THE COURT FINDS THAT THE EVIDENCE WAS LEGALLY OR FACTUALLY INSUFFICIENT TO AFFIRM THE FINDINGS OF GUILTY TO SPECIFICATIONS 4, 6, AND 7 OF THE CHARGE UNDER CLAUSE 3 OF ARTICLE 134, UCMJ, THE COURT MAY AFFIRM FINDINGS OF GUILTY UNDER EITHER CLAUSE 1 OR 2 OF ARTICLE 134, UCMJ?

Wednesday, 20 June 2012

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United States v. Key

Panel Two: C.L. REISMEIER, B.L. PAYTON-O'BRIEN, & J.A. MAKSYM,
Appellate Military Judges

For Appellant: LT Daniel LaPenta, USN

For Appellee: LT Joseph Moyer, USN

A military judge, sitting as a general court-martial convicted the appellant, contrary to his pleas, of one specification of violation of a lawful general order, in violation of Article 92, UCMJ, 10 U.S.C. § 892, one specification of aggravated sexual assault, in violation of Article 120, UCMJ, 10 U.S.C. § 920, one specification of an indecent act, in violation of Article 120, UCMJ, 10 U.S.C. § 920, one specification of adultery in violation of Article 134, UCMJ, 10 U.S.C. § 934, and one specification of obstruction of justice, in violation of Article 134, UCMJ, 10 U.S.C. § 934. The military judge sentenced the appellant to seven years confinement, reduction to pay grade E-, and a dishonorable discharge. The Convening Authority approved the sentence as adjudged, and, except for the punitive discharge, ordered the sentence executed.

The issues to be argued before the Court are as follows:

WHETHER THE MILITARY JUDGE ABUSED HIS DISCRETION IN EXCLUDING THE ALLEGED VICTIM'S SEXUALLY SUGGESTIVE LANGUAGE TO A CO-ACTOR MOMENTS BEFORE THE APPELLANT ENGAGED IN SEXUAL ACTIVITY WITH THE ALLEGED VICTIM?

ASSUMING THE MILITARY JUDGE ABUSED HIS DISCRETION, WAS THE ERROR WAS HARMLESS?

Wednesday, 27 June 2012
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United States v. Lawanson

Panel Two: B.L. PAYTON-O'BRIEN, J.A. MAKSYM, R.Q. WARD
Appellate Military Judges

For Appellant: LT Kevin Quencer, JAGC, USN
For Appellee: Capt Crista Kraics, USMC

Appellant is the accused in a general-court martial. He has been accused of one specification of rape and one specification of aggravated sexual assault, in violation of Article 120, UCMJ, 10 U.S.C. §§ 920. His case is before the Court on a Petition for Extraordinary Relief in the Nature of a Writ of Mandamus.

The issue to be argued before the Court is as follows:

I. WHETHER THE COURT-MARTIAL JURISDICTION OVER THE APPELLANT HAS TERMINATED?