

Friday, 16 September 2011

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United States v. Rheel

A military judge sitting as a general court-martial convicted the appellant, pursuant to his pleas, of committing indecent acts and writing indecent language in violation of Uniform Code of Military Justice Articles 120 and 134, 10 U.S.C. §§ 920 and 934. Specifically, the appellant sent both a picture of his genitals and a sexually provocative cellular phone text message to a nine-year-old girl. The appellant was sentenced to 18 months confinement, reduction to pay grade E-1, total forfeitures of all pay and allowances and a bad-conduct discharge.

The issues to be argued before the Court are the following:

- I. WHETHER, ARTICLE 120(K) UCMJ, INDECENT ACTS, IS UNCONSTITUTIONALLY VAGUE AND OVERBROAD? AND IF SO, CAN APPELLANT PLEAD GUILTY TO VIOLATING ARTICLE 120(K), UCMJ?
- II. A SPECIFICATION STATES AN OFFENSE ONLY IF IT ALLEGES, EITHER EXPRESSLY OR BY IMPLICATION, EVERY ELEMENT OF THE OFFENSE. THE "TERMINAL ELEMENT" OF ARTICLE 134, UCMJ, IS AN ELEMENT OF THE OFFENSE THAT MUST BE PROVED BEYOND A REASONABLE DOUBT. SPECIFICATION 2 OF CHARGE II DOES NOT ALLEGE THE TERMINAL ELEMENT OF ARTICLE 134, UCMJ. DOES THE SPECIFICATION FAIL TO STATE AN OFFENSE?

Sunday, 18 September 2011

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United States v. Dominique

A military judge sitting as a general court-martial convicted the appellant, pursuant to his pleas, of an orders violation, false official statement, conspiracy to commit larceny, and of wrongful appropriation. The convening authority approved a sentence of 8 months confinement, reduction in rate to E-1, and a bad conduct discharge from the United States Marine Corps.

The specified issue before the Court is the following:

- I. WHETHER AN ACCUSED MAY BE CONVICTED OF AN "IMPLICIT"

CONSPIRACY WHERE THERE IS NO EVIDENCE OF EITHER A WRITTEN OR ORAL MEETING OF THE MINDS, BUT RATHER WHERE APPELLANT'S PARTICIPATION IN THE CONSPIRACY IS LIMITED TO KNOWLEDGE THAT HIS "CO-CONSPIRATORS" ARE BREAKING THE LAW AND HIS OMISSION OF ACTION IN PREVENTING THEIR ILLEGAL ACTIVITIES.

Wednesday, 28 September 2011

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United States v. McGuire

A panel of officer members sitting as a general court-martial convicted the appellant, contrary to his pleas, of two specifications of conduct unbecoming an officer and two specifications of fraternization, violation of Uniform Code of Military Justice Articles 133 and 134, 10 U.S.C. §§ 933 and 934. The convening authority approved the adjudged sentence of confinement for 4 years, and a dismissal from the Marine Corps.

The issues to be argued before the Court are the following:

- I. WHETHER SPECIFICATION 1 OF CHARGE II, FAILS TO STATE AN OFFENSE? (THE SPECIFICATION ALLEGED THE APPELLANT ENGAGED IN CONDUCT UNBECOMING AN OFFICER TO WIT: BY WRONGFULLY ENGAGING IN SEXUAL ACTIVITY WITH CORPORAL K, USMC, WHILE HE KNEW OR SHOULD HAVE KNOWN THAT CORPORAL K WAS SO SIGNIFICANTLY INTOXICATED AND MENTALLY AND PHYSICALLY IMPAIRED AS A RESULT OF SAID INTOXICATION THAT A REASONABLE OFFICER IN THE NAVAL SERVICE WOULD HAVE RECOGNIZED THAT THERE WAS A SUBSTANTIAL LIKELIHOOD THAT HE WAS INCAPABLE OF KNOWINGLY AND VOLUNTARILY CONSENTING TO SEXUAL ACTIVITY.)
- II. WHETHER THE MILITARY JUDGE ERRED WHEN HE DETERMINED THAT THE MAXIMUM PUNISHMENT FOR SPECIFICATION 1 OF CHARGE II WAS SEVEN YEARS AND INSTRUCTED THE MEMBERS ACCORDINGLY?
- III. WHETHER AN ARTICLE 134 SPECIFICATION THAT DOES NOT EXPRESSLY ALLEGE EITHER OF THE POTENTIAL TERMINAL ELEMENTS FAILS TO STATE AN OFFENSE?