Wednesday, 12 October 2011

Outreach Argument to be held at United States Naval Academy

1215

United States v. Redd

Appellant plead and was found guilty of two specifications of violating a lawful order, in violation of Article 92, Uniform Code of Military Justice by having consensual sexual relations with others on his ship. The general court-martial, composed of members with officer and enlisted representation, convicted the appellant, contrary to his pleas, of rape, aggravated sexual contact, indecent exposure, and adultery in violation of Articles 120 and 134, UCMJ. The members sentenced the appellant to five years confinement, total forfeitures, reduction to the pay grade of E-1, and a dishonorable discharge.

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

I. IN A PROSECUTION FOR FORCIBLE RAPE OR AGGRAVATED SEXUAL CONTACT UNDER ARTICLE 120(A)(1) OR 120(E), THE GOVERNMENT MUST PROVE THAT THE ACCUSED TOOK "ACTION TO COMPEL SUBMISSION" OR "ACTION TO OVERCOME OR PREVENT RESISTANCE" OF ANOTHER. THESE ARE WORDS OF SPECIFIC INTENT. DID THE MILITARY JUDGE ERR BY OMITTING THIS LANGUAGE FROM HIS INSTRUCTION ON THE ELEMENTS OF THESE OFFENSES, THEREBY FREEING THE GOVERNMENT OF ITS BURDEN TO PROVE SPECIFIC INTENT?

II. MISTAKE OF FACT AS TO CONSENT IS A DEFENSE TO A SPECIFIC INTENT CRIME WHEN THAT MISTAKE IS HONEST, YET UNREASONABLE. THE MILITARY JUDGE INSTRUCTED THE MEMBERS THAT MISTAKE OF FACT AS TO CONSENT WAS A DEFENSE TO FORCIBLE RAPE AND AGGRAVATED SEXUAL CONTACT ONLY IF THE MISTAKE WAS REASONABLE UNDER THE CIRCUMSTANCES. WAS THIS INSTRUCTION ERROR?

III. WHETHER THE EVIDENCE IS FACTUALLY AND LEGALLY SUFFICIENT TO SUSTAIN AIRMAN REDD'S CONVICTIONS FOR FORCIBLE RAPE AND AGGRAVATED SEXUAL CONTACT.

IV. A SPECIFICATION IS CONSTITUTIONALLY DEFICIENT IF IT DOES NOT ALLEGE ALL OF THE ELEMENTS OF THE CHARGED OFFENSE AND FAIRLY INFORM THE ACCUSED OF WHICH HE MUST DEFEND. AIRMAN REDD'S FORCIBLE RAPE AND AGGRAVATED SEXUAL CONTACT SPECIFICATION

OMITTED THE FIRST HALF OF THE STATUTORY DEFINITION OF FORCE. WERE THESE SPECIFICATIONS CONSTITUTIONALLY DEFICIENT?

Tuesday, 18 October 2011

1000

United States v. Hackler

This case is being considered in the wake of the opinion of the Court of Appeals for the Armed Forces in *United States v. Fosler*, 70 M.J. 225 (C.A.A.F. 2011).

The issue to be argued before the Court, sitting *en banc*, is the following:

WHETHER A BREAKING RESTRICTION SPECIFICATION, UNDER ARTICLE 134, CLAUSE 1 OR 2, THAT FAILS TO EXPRESSLY ALLEGE EITHER POTENTIAL TERMINAL ELEMENT STATES AN OFFENSE UNDER THE SUPREME COURT'S HOLDINGS IN *UNITED STATES v. RESENDIZ-PONCE* AND *RUSSELL v. UNITED STATES*, AND THE COURT OF APPEALS FOR THE ARMED FORCES' OPINION IN *UNITED STATES v. FOSLER*, 70 M.J. 225 (C.A.A.F. 2011), IN THIS CASE, WHERE THE APPELLANT PLED GUILTY, ENTERED INTO A PRETRIAL AGREEMENT WITH THE CONVENING AUTHORITY, WAS PROPERLY INFORMED OF THE ELEMENTS OF THE OFFENSE --INCLUDING THE TEMINAL ELEMENTS-- BY THE MILITARY JUDGE, DID NOT OBJECT AT TRIAL TO THE SPECIFICATION AS DRAFTED, AND ADMITTED TO ALL OF THE ELEMENTS OF THE OFFENSE DURING THE PROVIDENCE INQUIRY? *Cf. United States v. Harvey*, 484 F.3d 453 (7th Cir. 2007); *United States v. Cox*, 536 F.3d 723 (8th Cir. 2008); *United States v. Awad*, 551 F.3d 930 (9th Cir. 2009).