

Wednesday, 13 February 2013

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*United States v. Oakley*

Panel Two: B.L. Payton-O'Brien, J.R. McFarlane, R.Q. Ward  
Appellate Military Judges

For Appellant: Col Dwight Sullivan, USMCR; LT Kevin Quencer,  
JAGC, USN

For Appellee: Capt Samuel Moore, USMC

Location: The George Washington University Law School

A general court-martial composed of officer members with enlisted representation convicted Appellant, contrary to his pleas, of one specification of aggravated sexual assault and one specification of indecent act, in violation of Article 120, UCMJ, 10 U.S.C. § 920. The members sentenced Appellant to reduction to pay grade E-1, forfeiture of all pay and allowances, confinement for three months, and a bad-conduct discharge. The Convening Authority approved the sentence as adjudged, and except for the bad-conduct discharge, ordered it executed.

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

Whether the Military Judge erred in this Article 120 case when he distinguished between evidence of consent and the defense of consent by instructing the members that the Defense had the initial burden to prove evidence of consent by a preponderance of the evidence and only then would the burden shift to the Government to prove beyond a reasonable doubt that the defense of consent did not exist.

**Wednesday, 27 February 2013**

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***United States v. West***

**Panel Three: J.R. Perlak, M.D. Modzelewski, C.K. Joyce  
Appellate Military Judges**

**For Appellant: LCDR Brandon Boutelle, JAGC, USN**

**For Appellee: LT Philip Reutlinger, JAGC, USN**

A military judge, sitting as a special court-martial, convicted the appellant, pursuant to her pleas, of one specification of conspiracy, two specifications of violating a lawful general order, one specification of drunken operation of a vehicle, one specification of wrongful possession of a controlled substance, and two specifications of adultery, in violation of Articles 81, 92, 111, 112a, and 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. §§ 881, 892, 911, 912a, and 934. The military judge sentenced the appellant to reduction to pay grade E-1, confinement for six months, forfeiture of two-thirds pay per month for six months, and a bad-conduct discharge. In accordance with a pretrial agreement, all confinement in excess of time served was converted to restriction, and the adjudged forfeitures were suspended for 12 months. The remainder of the sentence was approved.

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

- I. WHETHER THE APPELLANT'S PRETRIAL CONFINEMENT AT A CIVILIAN DETENTION CENTER VIOLATED ARTICLE 13, UCMJ.
- II. WHETHER THE APPELLANT'S PRETRIAL CONFINEMENT IN THE BARRACKS DUTY HUT VIOLATED ARTICLE 13, UCMJ.
- III. DOES THE PROVISION OF THE PRETRIAL AGREEMENT IN WHICH THE GOVERNMENT PROMISES TO REMOVE THE APPELLANT FROM CONFINEMENT AND SUBJECT HER TO "A LESSER FORM OF PRETRIAL RESTRAINT" AFTER SHE TESTIFIES AGAINST A CO-CONSPIRATOR (¶16.A OF APPELLATE EXHIBIT IV) VIOLATE PUBLIC POLICY?
- IV. IF THAT PROVISION VIOLATES PUBLIC POLICY, WHAT IS THE PROPER REMEDY?