

Friday, 18 December 2009

0800

United States v. Wood

A Military Judge sitting as a general court-martial convicted the appellant, contrary to his pleas, of violating a lawful general order and rape, in violation of Articles 92 and 120, UCMJ, 10 U.S.C. §§ 892 and 920. The Military Judge sentenced the appellant to reduction to pay grade E-1, two years confinement, and a dishonorable discharge. The issues to be argued before the court are:

I. WHETHER THE GOVERNMENT'S EVIDENCE WAS FACTUALLY INSUFFICIENT TO SUSTAIN A CONVICTION FOR RAPE WHERE, *INTER ALIA*, THE ALLEGED VICTIM TESTIFIED THAT SHE WAS NOT DRUNK BUT THE PROSECUTOR ARGUED IN CLOSING THAT SHE WAS ACTUALLY EXTREMELY DRUNK AND, THEREFORE, COULD NOT CONSENT.

II. WHETHER IN A PROSECUTION FOR RAPE, APPELLANT'S RIGHT TO DUE PROCESS WAS VIOLATED WHERE THE GOVERNMENT ADVANCED MULTIPLE INCONSISTENT THEORIES PRIOR TO AND AT TRIAL: 1) THAT THE ALLEGED VICTIM WAS NOT INCAPACITATED AND DID NOT CONSENT; 2) THAT THE ALLEGED VICTIM WAS NOT DRUNK BUT WAS INCAPACITATED AS A RESULT OF BEING DRUGGED BY APPELLANT AND THEREFORE COULD NOT CONSENT; AND 3) THAT THE ALLEGED VICTIM WAS SO DRUNK THAT SHE WAS INCAPACITATED AND COULD NOT CONSENT.

III. WHETHER APPELLANT'S RIGHT TO DUE PROCESS WAS VIOLATED WHERE THE PROSECUTION SUPPRESSED PHOTO AND TESTIMONIAL EVIDENCE FAVORABLE TO THE DEFENSE THAT WAS MATERIAL TO BOTH GUILT AND PUNISHMENT.

IV. WHETHER THE GOVERNMENT'S EVIDENCE WAS FACTUALLY INSUFFICIENT TO SUSTAIN A CONVICTION FOR WRONGFULLY PROVIDING A PERSON UNDER THE AGE OF TWENTY-ONE AN ALCOHOLIC BEVERAGE.