

Thursday, October 8, 2009

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*United States v. Medina*

The appellant was convicted by members with enlisted representation, contrary to his plea, of one specification of aggravated sexual assault upon a substantially incapacitated person in violation of Article 120 of the Uniform Code of Military Justice, 10 U.S.C. § 920. The charge arose from allegations that the appellant inserted his finger into the vagina of a fellow Marine while she was passed out due to intoxication. The issue to be argued before the court is:

WHETHER APPELLANT'S CONVICTION UNDER ARTICLE 120, UCMJ, MUST BE SET ASIDE BECAUSE THE STATUTE UNCONSTITUTIONALLY REQUIRED APPELLANT TO DISPROVE AN ELEMENT OF THE OFFENSE BEFORE HE COULD RAISE A DEFENSE TO THE CHARGE, IN VIOLTAION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT.

The court asked counsel to focus their arguments on the question of whether the statute is constitutional "as applied" to the facts of this case.