

Friday, 24 March 2017 (1000)
U.S. Navy-Marine Corps Court of Criminal Appeals Courtroom
Washington Navy Yard
1254 Charles Morris Street SE, Washington, DC 20374

United States v. Andrews, NMCCA No. 201600208

Before Panel 2 of the Court: Chief Judge Glaser-Allen
Senior Judge Campbell
Judge Hutchison

For Appellant: LT Jacob Meusch, JAGC, USN

For Appellee: LT Robert Miller, JAGC, USN

In a mixed-plea case, a panel of officer and enlisted members sitting as a general court-martial convicted the appellant, contrary to his pleas, of one specification of sexual assault, in violation of Article 120, UCMJ, 10 U.S.C. § 920 (2012). The military judge also convicted the appellant, pursuant to his pleas, of one specification of unauthorized absence, one specification of flight from apprehension, one specification of making a false official statement, one specification of wrongful use of marijuana, and one specification of larceny, in violation of Articles 86, 95, 107, 112a, and 121, UCMJ, 10 U.S.C. §§ 886, 895, 907, 912a, and 121 (2012). The members sentenced the appellant to confinement for thirty-six months, reduction to pay grade E-1, forfeiture of \$1,616.00 pay per month for thirty-six months, and a dishonorable discharge. The convening authority approved forfeitures of \$1,566.90 pay per month for thirty-six months and the remainder of the sentence as adjudged.

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

- I. THE TRIAL COUNSEL AND ASSISTANT TRIAL COUNSEL MAY NOT MAKE IMPROPER ARGUMENT TO THE MEMBERS. DURING CLOSING ARGUMENT THE TRIAL COUNSEL AND ASSISTANT TRIAL COUNSEL INVENTED ADMISSIONS, REPEATEDLY CALLED SN ANDREWS A LIAR, ACCUSED THE DEFENSE COUNSEL OF NOT BELIEVING THEIR CLIENT, MADE INFLAMMATORY ARGUMENTS, AND MISSTATED THE LAW. WAS THIS PROSECUTORIAL MISCONDUCT?**