

Thursday, 11 May 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. Betancourt, NMCCA No. 201500400

Before Panel 2 of the Court: Senior Judge Campbell
Judge Rugh
Judge Hutchison

For Appellant: LT R. Andrew Austria, JAGC, USN

For Appellee: LCDR Jeremy R. Brooks, JAGC, USN

A panel of officer and enlisted members sitting as a general court-martial convicted the appellant, contrary to his pleas, of one specification of aggravated sexual contact and two specifications of assault consummated by a battery; in violation of Articles 120 and 128, UCMJ, 10 U.S.C. § 920 and 928 (2012). The military judge also convicted the appellant, pursuant to his pleas, of one specification of conspiracy to commit assault, two specifications of violating a lawful general order, two specifications of signing a false record, one specification of cocaine use, one specification of possession of cocaine with intent to distribute, one specification of possession of methamphetamine with intent to distribute, one specification of larceny, one specification of forgery, and one specification of assault consummated by a battery; in violation of Articles 81, 92, 107, 112a, 121, 123, and 128, UCMJ, 10 U.S.C. §§ 881, 892, 907, 912a, 921, 923, and 928 (2012). The members sentenced the appellant to five years' confinement, reduction to pay grade E-1, total forfeiture of pay and allowances, and a dishonorable discharge. The convening authority approved the sentence as adjudged and, except for the dishonorable discharge, ordered the sentence executed.

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

- I. A SEARCH AUTHORIZATION MUST CONTAIN PROBABLE CAUSE AND MUST DESCRIBE WITH PARTICULARITY THE PLACE TO BE SEARCHED, AND THE PERSONS OR THINGS TO BE SEIZED. THE SEARCH AUTHORIZATION DID NOT AUTHORIZE THE SEARCH AND SEIZURE OF THE APPELLANT'S CELLPHONE DATA, NOR DID IT LIST WITH PARTICULARITY THE PLACES TO BE SEARCHED ON THE APPELLANT'S CELLPHONE OR LIST ANY SEARCH PROTOCOLS. IN HER RULING, THE MILITARY JUDGE FAILED TO ADDRESS THE SEARCH OF THE APPELLANT'S CELLPHONE DATA. DID THE MILITARY JUDGE ABUSE HER DISCRETION WHEN SHE FAILED TO SUPPRESS THE SEARCH RESULTS OF THE APPELLANT'S CELLPHONE DATA?**
- II. WHETHER THE GOVERNMENT'S OVERLY-EXPANSIVE SEARCH OF THE APPELLANT'S TRIAL DEFENSE COUNSEL'S OFFICE AMOUNTED TO UNLAWFUL COMMAND INFLUENCE?**

III. WHETHER THE GOVERNMENT COMMITTED PROSECUTORIAL MISCONDUCT WHEN IT EXECUTED AN OVERLY-EXPANSIVE SEARCH OF DEFENSE COUNSEL SPACES AT MARINE CORPS BASE CAMP PENDLETON?