

Wednesday, 24 February 2016 (1300)

United States v. Chikaka

**Before the Court, Panel 2: Senior Judge Fischer
Senior Judge King
Judge Campbell**

For Appellant: Maj M. Brian Magee, USMC

For Appellee: Capt Matthew M. Harris, USMC

A panel of members with enlisted representation sitting as a general court-martial convicted Appellant contrary to his pleas, of attempted abusive sexual contact, orders violations, wrongful sexual contact, abusive sexual contact, obstructing justice, indecent language, and adultery in violation of Articles 80, 92, 120, and 134, UCMJ, 10 U.S.C. §§ 880, 892, 920, and 934 (2012). The members sentenced the appellant to a reduction to pay grade E-1, twelve years' confinement, forfeiture of all pay and allowances, and a dishonorable discharge. The Convening Authority approved the sentence as adjudged and, except for the punitive discharge, order it executed.

The Court granted oral argument on two of Appellant's Assignments of Error:

I. ONLY RELEVANT EVIDENCE IS ADMISSIBLE. OVER DEFENSE OBJECTION, THE MILITARY JUDGE ADMITTED ON THE MERITS "OPERATION RESTORE VIGILANCE," A CAMPAIGN PLAN TO "FULLY OPERATIONALIZE THE COMMANDANT'S GUIDANCE" FROM THE HERITAGE TOUR; A PHOTO OF THE COMMANDANT POSING WITH AN ACCUSER'S GRANDFATHER AS SENTENCING EVIDENCE; AND THEN ALLOWED APPELLANT'S COMMANDING OFFICER TO TESTIFY THAT IT WAS IMPORTANT FOR THE MEMBERS TO ADJUDGE A HARSH SENTENCE IN THIS CASE. DID THE MILITARY JUDGE ABUSE HIS DISCRETION?

II. DISJUNCTIVE PLEADING IS IMPROPER BECAUSE IT CREATES AMBIGUITY AND MAY FAIL TO INFORM AN ACCUSED OF WHAT HE MUST DEFEND AGAINST. HERE, THE GOVERNMENT CHARGED 18 SPECIFICATIONS WITH ALTERNATE THEORIES OF LIABILITY, ALL PLEADED DISJUNCTIVELY TO CREATE 65 POSSIBLE THEORIES OF LIABILITY. DID THE MEMBERS' GENERAL VERDICT OF GUILT WITHOUT EXCEPTIONS OR SUBSTITUTIONS CREATE AN AMBIGUOUS VERDICT THAT PREVENTS THIS COURT FROM REVIEWING THIS CASE FOR FACTUAL SUFFICIENCY?