

Wednesday, 26 March 2014

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United States v. Henderson

Before Panel 2 of the Court

For Appellant: Capt David Peters, USMC

For Appellee: Capt Matthew Harris, USMC

In a mixed pleas case, a panel of officers sitting as a general court-martial convicted the appellant, contrary to his pleas, of one specification of attempted wrongful sexual contact and one specification of wrongful sexual contact, as a lesser-included offense to the charged offense of aggravated sexual assault, in violation Articles 80 and 120, UCMJ, 10 U.S.C. §§ 880, 920 (2008). The same panel convicted the appellant, pursuant to his plea, of one specification of fraternization, in violation of Article 92, UCMJ, 10 U.S.C. § 892 (2008). The members sentenced the appellant to confinement for three months, forfeiture of all pay and allowances, and dismissal from the naval service. The convening authority approved the sentence as adjudged and, except for the punitive discharge, ordered it executed.

The issue to be argued before the Court is:

WHETHER THE MILITARY JUDGE ABUSED HIS DISCRETION BY FAILING TO INSTRUCT THE MEMBERS ON CONSENT WHERE SOME EVIDENCE OF CONSENT WAS RAISED BY THE ALLEGED VICTIM'S TESTIMONY THAT SHE WILLINGLY

ACCOMPANIED THE APPELLANT TO A SECLUDED PART OF THE SHIP, THAT SHE KISSED THE APPELLANT CONSENSUALLY, AND THAT SHE DID NOT TELL THE APPELLANT TO STOP UNTIL AFTER THE APPELLANT LIFTED HER SHIRT AND BEGAN KISSING HER BREASTS?