

Wednesday, 20 June 2012

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*United States v. Key*

Panel Two: C.L. REISMEIER, B.L. PAYTON-O'BRIEN, & J.A. MAKSYM,  
Appellate Military Judges

For Appellant: LT Daniel LaPenta, USN

For Appellee: LT Joseph Moyer, USN

A military judge, sitting as a general court-martial convicted the appellant, contrary to his pleas, of one specification of violation of a lawful general order, in violation of Article 92, UCMJ, 10 U.S.C. § 892, one specification of aggravated sexual assault, in violation of Article 120, UCMJ, 10 U.S.C. § 920, one specification of an indecent act, in violation of Article 120, UCMJ, 10 U.S.C. § 920, one specification of adultery in violation of Article 134, UCMJ, 10 U.S.C. § 934, and one specification of obstruction of justice, in violation of Article 134, UCMJ, 10 U.S.C. § 934. The military judge sentenced the appellant to seven years confinement, reduction to pay grade E-, and a dishonorable discharge. The Convening Authority approved the sentence as adjudged, and, except for the punitive discharge, ordered the sentence executed.

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

WHETHER THE MILITARY JUDGE ABUSED HIS DISCRETION IN EXCLUDING THE ALLEGED VICTIM'S SEXUALLY SUGGESTIVE LANGUAGE TO A CO-ACTOR MOMENTS BEFORE THE APPELLANT ENGAGED IN SEXUAL ACTIVITY WITH THE ALLEGED VICTIM?

ASSUMING THE MILITARY JUDGE ABUSED HIS DISCRETION, WAS THE ERROR WAS HARMLESS?