

Thursday, 8 July 2010

United States v. Soucie

A military judge sitting as a special court-martial convicted the appellant, pursuant to his pleas, of making and uttering a check without sufficient funds, for procurement of a thing of value, with intent to deceive; and impersonating an official of the United States Government, in violation of Articles 123a and 134, UCMJ, 10 U.S.C. §§ 923a and 934. The appellant was sentenced to 10 months confinement, reduction to pay grade E-1, a fine of ten thousand dollars (\$10,000), and a bad-conduct discharge. The appellant emailed and called a real estate agent pretending to be employees from the VA and relating to the agent that the appellant had been approved for a loan through the VA. In explaining the reasons for his conduct, the appellant explained to the military judge that his girlfriend was pregnant and was threatening to get rid of the baby if he didn't buy the house for her. The appellant then acknowledged to the military judge that he was being held hostage emotionally. The issues to be argued before the court are:

I. WHETHER THE TERM "OFFICIAL OF A CERTAIN GOVERNMENT" IN ARTICLE 134, UCMJ, INCLUDES EMPLOYEES, AND IF IT DOES INCLUDE EMPLOYEES, WHETHER THE APPELLANT'S CONDUCT CONSTITUTES IMPERSONATION.

II. WHETHER THE MILITARY JUDGE ERRED IN ACCEPTING THE APPELLANT'S GUILTY PLEA WITHOUT INQUIRING INTO THE PROSPECTIVE DEFENSE OF DURESS, WHICH MAY HAVE BEEN RAISED WHEN THE APPELLANT STATED DURING PROVIDENCY: "I FOUND OUT [MY GIRLFRIEND] WAS PREGNANT AND SHE WAS THREATENING TO GET RID OF THE BABY IF I DIDN'T PURCHASE THIS HOUSE FOR HER."

Thursday, 29 July 0900

United States v. McMurrin

A military judge sitting as a general court-martial convicted the appellant, pursuant to his pleas, of one specification each of conspiracy to possess cocaine and wrongful use of cocaine, and two specifications of wrongfully impeding an investigation in violation of Articles 81, 112a, and 134, UCMJ, 10 U.S.C. §§ 881, 912a, and 934. Contrary to appellant's not guilty pleas, the military judge found appellant guilty of one specification each of a violation of a lawful order, the lesser included offense of negligent homicide (as an LIO of involuntary manslaughter, under Article 119, UCMJ), and wrongfully impeding an investigation in violation of Articles 92 and 134 UCMJ, 10

U.S.C. §§ 892, 934. The issues to be argued before the court are:

I. WHETHER APPELLANT'S CONVICTION FOR NEGLIGENT HOMICIDE UNDER ARTICLE 134, UCMJ, 10 U.S.C. § 934 (2006), AS A LESSER INCLUDED OFFENSE OF INVOLUNTARY MANSLAUGHTER UNDER ARTICLE 119, UCMJ, VIOLATES THE REQUIREMENTS OF DUE PROCESS AND ARTICLE 79, UCMJ. See *United States v. Jones*, 68 M.J. 465 (C.A.A.F. 2010), *United States v. Burlison*, ____, No. 09-258/NA (C.A.A.F. 18 May 2010). See also *United States v. Riley*, 58 M.J. 305, 311-12

(C.A.A.F. 2003), *United States v. Martinez*, 42 M.J. 327, 330 (C.A.A.F. 1995).

II. WHETHER THE APPELLANT'S ACTS OR OMISSIONS: (1) AMOUNTED TO SIMPLE NEGLIGENCE, AND (2) PLAYED A MATERIAL ROLE IN MMFR STEPHENS' DEATH.