

Tuesday, 10 August 2010

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United States v. Fosler

A panel of members with enlisted representation sitting as a general court-martial convicted appellant, contrary to his plea, of adultery in violation of Article 134, UCMJ, 10 U.S.C. § 934. He was sentenced to thirty days confinement, reduction to pay grade E-1, forfeiture of all pay and allowances, and a bad-conduct discharge. The government's adultery specification was drafted as follows: "In that Lance Corporal James N. Fosler, U.S. Marine Corps, Marine Corps Security Force Regiment, on active duty, a married man, did, at or near Naval Station Rota, Spain, on or about 26 December 2007, by wrongfully having sexual intercourse with [SK], a woman not his wife." The issue to be argued before the court is:

I. WHETHER AN ARTICLE 134 CHARGE FAILS TO STATE AN OFFENSE IF THE TERMINAL ELEMENT IS NOT EXPRESSLY ALLEGED IN THE CHARGE.

Monday, 30 August 2010

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United States v. Collins

A general court-martial composed of officer and enlisted members convicted the appellant, contrary to his pleas, of one specification of aggravated sexual assault, one specification of burglary, and one specification of adultery, in violation of Articles 120(c), 129 and 134, UCMJ, 10 U.S.C. §§ 920(c), 929, and 934. The appellant was sentenced to three years of confinement, reduction to the pay grade of E-1, and a dishonorable discharge. The Convening Authority approved the adjudged sentence, and except for the dishonorable discharge, ordered it executed. The issues to be argued before the Court are:

I. WHETHER THE JUDGE ERRED IN ALLOWING EVIDENCE OF UNCHARGED CONDUCT UNDER MIL. R. EVID. 413 WHERE THERE WAS INSUFFICIENT STRENGTH OF PROOF THAT THE UNCHARGED CONDUCT HAD

ACTUALLY OCCURRED AS WELL AS INSUFFICIENT EVIDENCE THAT THE UNCHARGED CONDUCT QUALIFIED AS SEXUAL CONTACT.

II. WHETHER THE APPELLANT RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL UNDER THE SIXTH AMENDMENT WHERE HIS DEFENSE COUNSEL FAILED TO IDENTIFY AND CALL WITNESSES WHO WERE EITHER PRESENT AT THE TIME THE ALLEGED UNCHARGED CONDUCT OCCURRED OR WHO HAD PERSONAL KNOWLEDGE OF THE COMPLAINING WITNESS' HISTORY OF FALSE REPORTING OF ALLEGED SEXUAL ASSAULTS.

III. WHETHER THE EVIDENCE IS FACTUALLY INSUFFICIENT TO SUSTAIN A CONVICTION FOR AGGRAVATED SEXUAL ASSAULT, WHERE THE EVIDENCE ADDUCED AT TRIAL DOES NOT SUPPORT A FINDING THAT THE ALLEGED VICTIM WAS SUBSTANTIALLY INCAPACITATED.