

Thursday, 30 August 2012

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United States v. Smith

Panel Three: J.R. Perlak, M.D. Modzelewski, R.Q. Ward
Appellate Military Judges

For Appellant: Mr. Frank Spinner
LT Toren Mushovic, JAGC, USN

For Appellee: Maj William Kirby, USMC

A general court-martial composed of members with enlisted representation convicted appellant, contrary to his plea, of one specification of aggravated sexual assault in violation of Article 120, UCMJ, 10 U.S.C. § 920 (2006). The members sentenced appellant to reduction to pay grade E-1, confinement for 30 days, and a bad-conduct discharge. The Convening Authority approved the sentence as adjudged and, except for the punitive discharge, ordered it executed.

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

I. WHETHER THE MILITARY JUDGE DENIED APPELLANT'S FIFTH AND SIXTH AMENDMENT RIGHTS TO PRESENT A DEFENSE BY LIMITING THE SCOPE OF A DEFENSE EXPERT'S TRIAL TESTIMONY.

II. WHETHER THE MILITARY JUDGE DENIED APPELLANT'S SIXTH AMENDMENT RIGHT OF CONFRONTATION BY LIMITING THE DEFENSE COUNSEL'S CROSS-EXAMINATION OF THE COMPLAINING WITNESS, EVEN WHEN TRIAL COUNSEL DID NOT MAKE AN OBJECTION.