

Friday, 16 September 2011

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United States v. Rheel

A military judge sitting as a general court-martial convicted the appellant, pursuant to his pleas, of committing indecent acts and writing indecent language in violation of Uniform Code of Military Justice Articles 120 and 134, 10 U.S.C. §§ 920 and 934. Specifically, the appellant sent both a picture of his genitals and a sexually provocative cellular phone text message to a nine-year-old girl. The appellant was sentenced to 18 months confinement, reduction to pay grade E-1, total forfeitures of all pay and allowances and a bad-conduct discharge.

The issues to be argued before the Court are the following:

- I. WHETHER, ARTICLE 120(K) UCMJ, INDECENT ACTS, IS UNCONSTITUTIONALLY VAGUE AND OVERBROAD? AND IF SO, CAN APPELLANT PLEAD GUILTY TO VIOLATING ARTICLE 120(K), UCMJ?

- II. A SPECIFICATION STATES AN OFFENSE ONLY IF IT ALLEGES, EITHER EXPRESSLY OR BY IMPLICATION, EVERY ELEMENT OF THE OFFENSE. THE "TERMINAL ELEMENT" OF ARTICLE 134, UCMJ, IS AN ELEMENT OF THE OFFENSE THAT MUST BE PROVED BEYOND A REASONABLE DOUBT. SPECIFICATION 2 OF CHARGE II DOES NOT ALLEGE THE TERMINAL ELEMENT OF ARTICLE 134, UCMJ. DOES THE SPECIFICATION FAIL TO STATE AN OFFENSE?