

Wednesday, 18 September 2013

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United States v. Gilbreath

**Before Panel 3 of the Court: Chief Judge Modzelewski
Senior Judge Mitchell
Judge Fischer**

For Appellant: LT Jared A. Hernandez, JAGC, USN

For Appellee: LT Ian D. MacLean, JAGC, USN

A general court-martial, consisting of members with enlisted representation, convicted the appellant, contrary to his plea, of one specification of larceny of military property of a value in excess of \$500 in violation of Article 121, UCMJ, 10 U.S.C. §921 (2012). Corporal (Cpl) Gilbreath was sentenced to a reduction to pay grade E-1, to forfeit all pay and allowances, and a bad-conduct discharge. The Convening Authority approved the sentence as adjudged, and except for the bad-conduct discharge, ordered it executed.

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

- I. **ARTICLE 31(B) WARNINGS MUST BE GIVEN BEFORE REQUESTING ANY STATEMENT FROM A SUSPECT SUBJECT TO THE UCMJ. HERE, SGT M SUSPECTED THAT CPL GILBREATH, A RESERVIST, COMMITTED LARCENY WHILE ON ACTIVE DUTY. SGT M QUESTIONED CPL GILBREATH ABOUT THE LARCENY WITHOUT AN ART 31(B) WARNING. THE MILITARY JUDGE RULED THAT BECAUSE CPL GILBREATH WAS A READY RESERVIST AT THE TIME OF QUESTIONING, HE WAS SUBJECT TO PUNISHMENT BUT NOT PROTECTION UNDER THE UCMJ. DID THE MILITARY JUDGE ERR?**

- II. **WHILE ACTING AS COMMANDING OFFICER, CAPTAIN C SUSPECTED CPL GILBREATH OF LARCENY AND ORDERED SGT M TO INVESTIGATE. SGT M THEN UTILIZED HIS SUBORDINATES IN A PLOY TO CONTACT AND AGGRESSIVELY QUESTION CPL GILBREATH ABOUT THE LARCENY WITHOUT AN ART 31(B) WARNING. DID THE MILITARY JUDGE ERR WHEN HE HELD THAT SGT M WAS NOT ACTING IN A DISCIPLINARY FUNCTION AND THAT**

CPL GILBREATH DID NOT PERCEIVE THE QUESTIONING
TO BE OFFICIAL?

Wednesday, 25 September 2013

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United States v. Dougherty

Panel Two: R.Q. Ward, J.R. McFarlane, K.M. McDonald
Appellate Military Judges

For Appellant: LT Gabriel K. Bradley, JAGC, USN

For Appellee: LT Ian D. Maclean, JAGC, USN

A panel of members with enlisted representation, sitting as a general court-martial, convicted the appellant on 14 September 2012, contrary to his pleas, of aggravated sexual contact, abusive sexual contact, wrongful sexual contact, and forcible sodomy, in violation of Articles 120 and 125, Uniform Code of Military Justice, 10 U.S.C. §§ 920 and 925. The members sentenced the appellant to confinement for 371 days, forfeiture of all pay and allowances, reduction to pay grade E-1, and a bad-conduct discharge. The convening authority approved the sentenced as adjudged, and except for the punitive discharge, ordered it executed.

The issue to be argued before the Court is as follows:

- I. **THE CONSTITUTION PROTECTS AN ACCUSED'S RIGHT TO PRESENT HIS OWN WITNESSES TO ESTABLISH A DEFENSE. HERE, AFTER INTERROGATION BY NCIS, APPELLANT CONFESSED TO SEXUAL ASSAULT. THE DEFENSE SOUGHT TO CHALLENGE THE WEIGHT OF THE CONFESSION THROUGH TESTIMONY BY A FORENSIC PSYCHOLOGIST SAYING APPELLANT HAS A SUGGESTIBLE PERSONALITY THAT MAKES HIM ESPECIALLY SUSCEPTIBLE TO COERCIVE INTERROGATION TACTICS. BUT THE MILITARY JUDGE EXCLUDED THIS TESTIMONY. DID THIS VIOLATE APPELLANT'S CONSTITUTIONAL RIGHT TO PUT ON A DEFENSE?**