

Wednesday, 28 September 2011

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United States v. McGuire

A panel of officer members sitting as a general court-martial convicted the appellant, contrary to his pleas, of two specifications of conduct unbecoming an officer and two specifications of fraternization, violation of Uniform Code of Military Justice Articles 133 and 134, 10 U.S.C. §§ 933 and 934. The convening authority approved the adjudged sentence of confinement for 4 years, and a dismissal from the Marine Corps.

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

- I. WHETHER SPECIFICATION 1 OF CHARGE II, FAILS TO STATE AN OFFENSE? (THE SPECIFICATION ALLEGED THE APPELLANT ENGAGED IN CONDUCT UNBECOMING AN OFFICER TO WIT: BY WRONGFULLY ENGAGING IN SEXUAL ACTIVITY WITH CORPORAL K, USMC, WHILE HE KNEW OR SHOULD HAVE KNOWN THAT CORPORAL K WAS SO SIGNIFICANTLY INTOXICATED AND MENTALLY AND PHYSICALLY IMPAIRED AS A RESULT OF SAID INTOXICATION THAT A REASONABLE OFFICER IN THE NAVAL SERVICE WOULD HAVE RECOGNIZED THAT THERE WAS A SUBSTANTIAL LIKELIHOOD THAT HE WAS INCAPABLE OF KNOWINGLY AND VOLUNTARILY CONSENTING TO SEXUAL ACTIVITY.)
- II. WHETHER THE MILITARY JUDGE ERRED WHEN HE DETERMINED THAT THE MAXIMUM PUNISHMENT FOR SPECIFICATION 1 OF CHARGE II WAS SEVEN YEARS AND INSTRUCTED THE MEMBERS ACCORDINGLY?
- III. WHETHER AN ARTICLE 134 SPECIFICATION THAT DOES NOT EXPRESSLY ALLEGE EITHER OF THE POTENTIAL TERMINAL ELEMENTS FAILS TO STATE AN OFFENSE?