

Tuesday, 8 October 2013 (rescheduled from 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?