

Tuesday, 22 October 2013

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*United States v. GYSGT M*

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

**For Appellant: LT Myers, JAGC, USN**

**For Appellee: Maj Ervasti, USMC**

This case is before us on a Government interlocutory appeal, pursuant to Article 62(a), Uniform Code of Military Justice, 10 U.S.C. § 862(a), and RULE FOR COURTS-MARTIAL 908, MANUAL FOR COURTS-MARTIAL, UNITED STATES (2012 ed.). The appellee, Gunnery Sergeant M, U.S. Marine Corps, is currently charged with, *inter alia*, sexual assault against the alleged victim, in violation of Article 120, Uniform Code of Military Justice, 10 U.S.C. § 920.

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

- I. DID THE MILITARY JUDGE ERR IN FINDING THAT CAAF'S DECISION IN *UNITED STATES V. HUTCHINS* COMPELLED THE CONCLUSION THAT GYSGT M STATEMENT MUST BE SUPPRESSED, BECAUSE GYSGT M DID NOT INITIATE FURTHER COMMUNICATION WITH LAW ENFORCEMENT AFTER HE HAD INVOKED HIS RIGHT TO COUNSEL?
- II. EVEN ASSUMING ARGUENDO THAT GYSGT M'S STATEMENT MUST BE SUPPRESSED, DID THE MILITARY ERR IN RULING THAT THE PHYSICAL DNA EVIDENCE MUST ALSO BE SUPPRESSED?