

Wednesday, 9 November 2011

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United States v. Weller

A military judge sitting as a general court-martial convicted the appellant, pursuant to his plea, of one specification of negligent discharge of a firearm, in violation of Article 134, UCMJ, 10 U.S.C. § 934. The military judge also convicted the appellant, contrary to his plea, of one specification of assault with a dangerous weapon (loaded firearm), in violation of Article 128, UCMJ, 10 U.S.C. § 928. The appellant was sentenced to eighteen months confinement, reduction to pay grade E-1, total forfeitures, and a bad-conduct discharge. The convening authority approved the sentence as adjudged and, except for the bad-conduct discharge, ordered the sentence executed.

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

- I. TO PROVE ASSAULT, THE GOVERNMENT NEEDED TO SHOW THAT APPELLANT ACTED WITH CULPABLE NEGLIGENCE RATHER THAN SIMPLY A LACK OF DUE CARE. WAS APPELLANT'S CONVICTION FOR ASSAULT WITH A DEADLY WEAPON FACTUALLY INSUFFICIENT, UNDER A CULPABLE NEGLIGENCE STANDARD?

- II. IN ARTICLE 128, UCMJ, CONGRESS CRIMINALIZED TWO TYPES OF ASSAULTS - OFFER AND ATTEMPT - "WHETHER OR NOT THE ATTEMPT OR OFFER IS CONSUMMATED." APPELLANT WAS CHARGED WITH ASSAULT BY BATTERY, OFFER OR ATTEMPT WAS NOT SPECIFIED. EVEN ASSUMING THE FACTS MOST FAVORABLE TO THE GOVERNMENT, WAS APPELLANT'S CONVICTION FOR ASSAULT WITH A DEADLY WEAPON LEGALLY INSUFFICIENT?

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United States v. Tearman

A panel of members sitting as a special court-martial convicted the appellant, contrary to his plea, of wrongful use of marijuana, in violation of Article 112A, UCMJ. The members sentenced the appellant to reduction in pay grade to E-1 and a bad-conduct discharge. The Convening Authority approved the sentence as adjudged.

At trial, the Government introduced a report generated by the Navy Drug Screening Lab, San Diego, but did not introduce the cover sheet to the report. The appellant moved to exclude

the entire report and all chain-of-custody documents and report annotations that were not machine generated. The military judge denied the appellant's motion.

The assigned error before the Court is the following:

- I. IN LIGHT OF THE UNITED STATES SUPREME COURT'S RULING IN *MELENDEZ-DIAZ V. MASSACHUSETTS*, DO THE ADMISSION OF REPORTS AND THEIR ANNOTATIONS GENERATED BY ABSENT, UNTESTED NAVY DRUG LAB TECHNICIANS IN VIOLATION OF APPELLANT'S SIXTH AMENDMENT CONFRONTATION RIGHT OF CONSTITUTE AN ABUSE OF DISCRETION.

Specifically, the parties are ordered to address this assignment of error in light of *United States v. Sweeney*, 70 M.J. 296 (C.A.A.F. 2011).