

Wednesday, 10 January 2012

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*United States v. Escocheasanchez*

Panel Two: B.L. Payton-O'Brien, J.R. McFarlane, R.Q. Ward  
Appellate Military Judges

For Appellant: Mr. William Cassara; LT Ryan Mattina, JAGC, USN

For Appellee: Major Crista D. Kraics, USMC

A general court-martial composed of officer members with enlisted representation convicted Appellant, contrary to his pleas, of one specification of aggravated sexual assault, one specification of attempted aggravated sexual assault, two specifications of indecent act, one specification of indecent exposure, one specification of wrongful sexual contact, and two specifications of obstruction of justice in violation of Articles 120 and 134, UCMJ, 10 U.S.C. §§ 920 and 934. The members sentenced Appellant to reduction to pay grade E-1, forfeiture of all pay and allowances, confinement for 15 years, and a dishonorable discharge. The Convening Authority approved the sentence as adjudged, and except for the dishonorable discharge, ordered it executed.

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

WHETHER ARTICLE 120(C) IS UNCONSTITUTIONAL AS APPLIED WHEN THE MILITARY JUDGE (1) REQUIRED APPELLANT TO PROVE THE AFFIRMATIVE DEFENSES OF CONSENT AND MISTAKE OF FACT AS TO CONSENT BY A PREPONDERANCE OF THE EVIDENCE; (2) DETERMINED THAT THE DEFENSES HAD BEEN PROVED BY A PREPONDERANCE OF THE EVIDENCE; AND THEN (3) FAILED TO DISMISS THE CHARGES *SUA SPONTE* AS REQUIRED BY RULE FOR COURTS-MARTIAL 917.