

Wednesday, 8 May 2013

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United States v. Loya

**Panel Three: M.D. Modzelewski, E.C. Price, C.K. Joyce
Appellate Military Judges**

For Appellant: Capt Jason Wareham, USMC

For Appellee: LT Philip Reutlinger, JAGC, USN

A panel of members with enlisted representation, sitting as a special court-martial, convicted the appellant, contrary to his plea, of wrongful use of marijuana while receiving special pay under 37 U.S.C. § 310, in violation of Article 112a, Uniform Code of Military Justice, 10 U.S.C. § 912a. The members sentenced the appellant to forfeiture of \$994 per month for two months, reduction to pay grade E-1, confinement for two months, and a bad-conduct discharge. The convening authority approved the sentence as adjudged.

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

- I. WHEN EIGHT MINUTES PASSED BETWEEN THE COURT'S CLOSURE FOR DELIBERATIONS AND THE ANNOUNCEMENT THAT THE MEMBERS HAD REACHED A VERDICT, DID THE MILITARY JUDGE ABUSE HER DISCRETION BY DENYING THE DEFENSE REQUEST TO *VOIR DIRE* THE MEMBERS?
- II. DID THE MILITARY JUDGE PLACE THE FAIRNESS AND IMPARTIALITY OF THE COURT-MARTIAL INTO DOUBT WHEN SHE GUIDED THE TRIAL COUNSEL IN HIS ATTEMPTS TO ADMIT EVIDENCE?
- III. DID THE MILITARY JUDGE ABUSE HER DISCRETION BY ALLOWING THE GOVERNMENT TO RE-OPEN ITS CASE OVER DEFENSE OBJECTION AFTER BOTH SIDES HAD RESTED?

Thursday, 16 May 2013

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United States v. McMurrin

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

For Appellant: CAPT Paul LeBlanc, JAGC, USN
LT Gabriel Bradley, JAGC, USN

For Appellee: Maj Paul Ervasti, USMC

At the appellant's first trial, a military judge, sitting as a general court-martial, convicted the appellant, pursuant to mixed pleas, of conspiracy to possess cocaine, violation of an order, wrongful use of cocaine, obstruction of justice, and negligent homicide, in violation of Articles 81, 92, 112a, and 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. §§ 881, 892, 912a, and 934.¹ The military judge sentenced the appellant to forfeiture of all pay and allowances, reduction to pay grade E-1, confinement for 66 months, and a dishonorable discharge. The convening authority approved the sentence as adjudged.

On appeal, this Court: set aside the guilty findings for negligent homicide and violation of an order and dismissed these specifications; affirmed the remaining guilty findings; set aside the sentence; and authorized a rehearing on the sentence. The Court of Appeals of the Armed Forces affirmed this Court's decision.

The convening authority then brought a new charge against the appellant for negligent homicide in violation of Article 134, UCMJ, 10 U.S.C. § 934. At the second trial, officer members convicted the appellant, contrary to his plea, of negligent homicide. Based on the guilty finding to negligent homicide and the previously affirmed guilty findings, the members sentenced the appellant to forfeiture of all pay and allowances, reduction to pay grade E-1, confinement for 42 months, and a dishonorable discharge. The convening authority disapproved 99 days of confinement and approved the remaining sentence as adjudged.

¹ The appellant was originally charged with involuntary manslaughter in violation of Article 119, UCMJ, but the military judge only found the appellant guilty of the lesser-included offense of negligent homicide.

The issue to be argued before the Court is as follows:
WHETHER THE MILITARY JUDGE ERRED WHEN HE FOUND THAT THE COURT-
MARTIAL HAD JURISIDITION OVER THE NEGLIGENT HOMICIDE OFFENSE
DESPITE THIS COURT SETTING ASIDE THE PRIOR NEGLIGENT HOMICIDE
CONVICTION AND AUTHORIZING A REHEARING ON SENTENCE ONLY.

Wednesday, 22 May 2013

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United States v. Paris

Panel Three: M.D. Modzelewski, E.C. Price, C.K. Joyce
Appellate Military Judges

For Appellant: LT Gabriel Bradley, JAGC, USN

For Appellee: LCDR Keith Lofland, JAGC, USN
Capt Samuel Moore, USMC

A panel of members with enlisted representation, sitting as a special court-martial, convicted the appellant, contrary to his plea, of attempting to access, with the intent to view, child pornography in violation of Article 134, Uniform Code of Military Justice, 10 U.S.C. § 934. The members sentenced the appellant to reduction to the pay grade E-1 and a bad-conduct discharge. The convening authority approved the sentence as adjudged, and except for the punitive discharge, ordered it executed.

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

- I. WHETHER THE APPELLANT'S ENTRY OF TERMS INTO A SEARCH ENGINE WAS A "SUBSTANTIAL STEP" TOWARD THE COMMISSION OF THE OFFENSE.
- II. WHETHER THE EVIDENCE PROVED BEYOND A REASONABLE DOUBT THAT THE APPELLANT HAD THE SPECIFIC INTENT TO ACCESS WEBSITES CONTAINING CHILD PORNOGRAPHY.