

Thursday, 9 December 2015 (1000)

United States v. Zambrano

Before the Court, Panel 2.

For Appellant: Eric S. Montalvo, Esq. and David W. Warning,
JAGC, USN

For Appellee: LT Jetti L. Gibson, JAGC, USN

A military judge sitting as a special court-martial convicted the Appellant contrary to his pleas, of assault consummated by battery, in violation of Article 128, UCMJ, 10 USC § 928 (2012). The military judge sentenced the appellant to 125 days of confinement, reduction to pay grade E-1, and a bad conduct discharge. The convening authority approved the sentence as adjudged, and, except for the bad-conduct discharge, ordered the sentence to be executed.

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

- I. WHETHER THE EVIDENCE IS LEGALLY AND FACTUALLY SUFFICIENT.
- II. AN ACCUSED HAS A CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL. HERE, THE TRIAL DEFENSE COUNSEL FAILED TO INVESTIGATE POSSIBLY EXCULPATORY TEXT MESSAGES EXCHANGED BETWEEN ONE OF THE GOVERNMENT'S MAIN WITNESSES AND THE VICTIM, AS WELL AS WITNESSES WHO MIGHT HAVE IMPEACHED THE CREDIBILITY OF THE SAME WITNESS. WAS THE DEFENSE COUNSEL INEFFECTIVE?
- III. IN HIS SPECIAL FINDINGS THE MILITARY JUDGE FOUND THAT LANCE CORPORAL CANTON TALKED DIRECTLY TO THE VICTIM AFTER THE INITIAL REPORT OF THE ASSAULT QUESTIONING HER AS TO WHAT HAPPENED AND THAT "[T]HIS TESTIMONY SHOWS THAT LANCE CORPORAL CANTON APPEARED TO BELIEVE WHAT HE HEARD DIRECTLY FROM [THE VICTIM]." IS THIS ERROR BECAUSE IT CONSTITUTED IMPROPER "HUMAN LIE DETECTOR" EVIDENCE AND IF SO, DID IT MATERIALLY PREJUDICE A SUBSTANTIAL RIGHT OF THE APPELLANT?