

Thursday, 14 April 2016 (1000)

United States v. Valladares-Garcia

**Before the Court, Panel 2: Chief Judge Brubaker
Senior Judge Fischer
Judge Rugh**

For Appellant: LT Rachel E. Weidemann, JAGC, USN

**For Appellee: LCDR Justin C. Henderson, JAGC, USN
Capt Matthew M. Harris, USMC**

A panel of members with enlisted representation sitting as a general court-martial convicted appellant, contrary to his pleas, of making a false official statement, sodomy, and adultery in violation of Articles 107, 125, and 134, UCMJ, 10 U.S.C. §§ 907, 925, and 934 (2012). The members sentenced appellant to two years' confinement, forfeiture of all pay and allowances, reduction to pay grade E-1, and a bad-conduct discharge. The Convening Authority approved the sentence as adjudged and, except for the punitive discharge, ordered the sentence executed.

The Court granted oral argument on two of Appellant's Assignments of Error:

I

THE FIFTH AND SIXTH AMENDMENTS GIVE APPELLANT A SUBSTANTIAL RIGHT TO FAIR NOTICE OF THE CHARGE AGAINST HIM. CHARGE II (CONSENSUAL SODOMY) FAILS TO EXPRESSLY ALLEGE A MARCUM FACTOR AND THEREFORE FAILS TO STATE AN OFFENSE. THE GOVERNMENT FAILED TO CURE THE DEFECT BY NOT PROVIDING NOTICE THROUGH THE PRESENTATION OF EVIDENCE. SHOULD CHARGE II BE DISMISSED?

II

THE GOVERNMENT MUST PROVE EACH ELEMENT OF AN OFFENSE BEYOND A REASONABLE DOUBT. HERE, THE GOVERNMENT FAILED TO INTRODUCE SUFFICIENT EVIDENCE TO PROVE CHARGE III (ADULTERY). SPECIFICALLY, THE GOVERNMENT FAILED TO INTRODUCE SUFFICIENT EVIDENCE THAT SEXUAL INTERCOURSE OCCURRED BETWEEN APPELLANT AND MS. MM OR THAT THE APPELLANT'S ALLEGED ADULTERY WAS PREJUDICIAL TO GOOD ORDER AND DISCIPLINE OR

**HAD A TENDENCY TO BRING THE ARMED SERVICES
IN TO DISREPUTE OR LOWER IT IN THE PUBLIC
ESTEEM. IS THE ADULTERY CONVICTION LEGALLY
AND FACTUALLY SUFFICIENT?**