

FY12-14 Case Summaries: CAAF Decisions on Adult Sexual Assault Offenses

Provided in response to the Panel's request for additional information at the Jan. 22, 2016 meeting

FY14

1. *U.S. v. Elespuru*, 73 M.J. 326 (Jul 15, 2014)

Accused was convicted by general court-martial of aggravated sexual assault and assault consummated by battery. The United States Air Force Court of Criminal Appeals affirmed. Petition for review was granted, the United States Court of Appeals for the Armed Forces, Ryan, J., held that: 1) accused waived multiplicity claim, but 2) convictions for both abusive sexual contact and wrongful sexual contact could not stand. Affirmed in part, and reversed in part.

2. *U.S. v. Flesher*, 73 M.J. 303 (Jul 8, 2014)

Accused pleaded guilty to two specifications of furnishing alcohol to a minor but not guilty to aggravated sexual assault and burglary. A general court-martial with enlisted members found accused not guilty of burglary but guilty of sexual assault and sentenced accused to confinement for seven years, forfeiture of all pay and allowances, reduction to grade of E-1, and a dishonorable discharge. The United States Army Court of Criminal Appeals affirmed. Review was granted, the United States Court of Appeals for the Armed Forces, Ohlson, J., held that: 1) military judge did not act within bounds of his discretion when he authorized sexual assault response coordinator to testify as an expert witness, and 2) error in admitting testimony of sexual assault response coordinator as expert testimony was material, warranting reversal of finding of guilty of aggravated sexual assault.

3. *U.S. v. Knapp*, 73 M.J. 33 (Jan 15, 2014)

Accused was convicted by general court-martial of aggravated sexual assault. The United States Air Force Court of Criminal Appeals affirmed. Review was granted, the United States Court of Appeals for the Armed Forces, Stucky, J., held that: 1) improper "human lie detector" testimony usurped court members' role in determining witness credibility, and 2) plain error in admission of such testimony warranted reversal.

FY 13

4. *LRM v. Kastenberg*, 72 M.J. 364 (Jul 18, 2013)

In general court-martial of accused charged with rape and sexual assault, the court, Joshua E. Kastenberg, J., limited named victim's right to be heard in hearings on evidentiary matters. Named victim petitioned for extraordinary relief in nature of writ of mandamus. The United States Air Force Court of Criminal Appeals denied petition for lack of jurisdiction. Issues were certified for review, and the United States Court of Appeals for the Armed Forces, Baker, C.J., held that: 1) Air Force Court of Criminal Appeals had jurisdiction; 2) named victim had standing; 3) issue was ripe; 4) named victim had right to be heard through counsel at the hearings; but 5) mandamus was not appropriate.

5. *U.S. v. Whitaker*, 72 M.J. 292 (Jun 18, 2013)

Accused was convicted by general court-martial on his plea of guilty of sodomy. The United States Coast Guard Court of Criminal Appeals reversed on ground that accused's plea was improvident. Question was certified, and the United States Court of Appeals for the Armed Forces held that: 1) in providency inquiry, military judge was not required to explain why accused's conduct was subject to criminal sanction, and 2) plea was otherwise provident.

6. *U.S. v. Jasper*, 72 M.J. 276 (Jun 4, 2013)

Accused was convicted by general court-martial of indecent conduct, indecent acts, knowingly possessing child pornography, persuasion and enticement of sexually explicit conduct, knowingly receiving child pornography, and obstruction of justice. The United States Army Court of Criminal Appeals affirmed. Review was granted, and the United States Court of Appeals for the Armed Forces, Ryan, J., held that: 1) alleged victim waived clergy privilege protecting her statements; 2) military judge's erroneous ruling, excluding statements, violated accused's rights to confrontation and due process; and 3) error was not harmless.

7. *U.S. v. Tunstall*, 72 M.J. 191 (May 23, 2013)

Accused was convicted by special court-martial of aggravated sexual assault, adultery, and indecent acts. The United States Air Force Court of Criminal Appeals affirmed. Review was granted, and the United States Court of Appeals for the Armed Forces held that: 1) military judge instructed on offense which was not "lesser included" offense, but 2) accused was not prejudiced by failure of adultery specification to state terminal element. Affirmed in part, reversed in part, and remanded.

8. *U.S. v. Solomon*, 72 M.J. 176 (May 8, 2013)

Accused was convicted by general court-martial, G.L. Simmons and Stephen F. Keane, JJ., of violating a lawful general order, wrongful use of a controlled substance, abusive sexual contact, indecent conduct, drunk and disorderly conduct, and obstruction of justice. The United States Navy-Marine Corps Court of Criminal Appeals set aside and dismissed general article specifications, and affirmed the remaining findings. Review was granted, the United States Court of Appeals for the Armed Forces, Stucky, J., held that: 1) determination that probative value of evidence regarding prior sexual assaults of which accused had been acquitted outweighed its prejudicial effect was abuse of discretion, and 2) error in admitting such evidence was not harmless.

FY 12

9. *U.S. v. Stewart*, 71 M.J. 38 (Mar 6, 2012)

Accused was convicted by general court-martial of aggravated sexual assault. The United States Navy-Marine Corps Court of Criminal Appeals affirmed. Review was granted, and the United States Court of Appeals for the Armed Forces, Erdmann, J., reversed, holding that Navy-Marine Corps Court of Criminal Appeals impermissibly affirmed finding of guilty based on conduct for which members had found accused not guilty.