

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

Updated from document provided at the March 2016 meeting. This is in response to the Panel's request for additional information at the January 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. *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

5. *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.