

# UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before  
SMAWLEY, EWING, and PARKER  
Appellate Military Judges

**UNITED STATES, Appellee**  
**v.**  
**Master Sergeant ANDREW D. STEELE,**  
**United States Army, Appellant**

ARMY 20170303

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ORDER  
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WHEREAS:

On appellant's first review, we affirmed the findings, set aside the sentence, and authorized a sentence rehearing. Appellant's sentence rehearing is now before us again for review under Article 66, Uniform Code of Military Justice [UCMJ]. On 12 October 2021, appellant filed a brief on the sentence rehearing with matters submitted pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982). Appellant asserts two assignments of error addressing the findings in his *Grostefon* matters, with appellant's first assignment of error challenging the constitutionality of Article 120c, UCMJ. Government appellate counsel elected not to file a brief in response to appellant's assignments of errors asserted in his *Grostefon* matters.

NOW THEREFORE, IT IS ORDERED:

On its own motion, this Court orders appellate government counsel to provide their response to the following specified issues:

I.

WHETHER THIS COURT HAS DISCRETION TO CONSIDER AN ASSIGNMENT OF ERROR CHALLENGING THE FINDINGS WHEN: (1) APPELLANT FAILED TO RAISE IT DURING HIS FIRST APPEAL BEFORE THIS COURT; AND (2) THIS COURT ONLY REMANDED APPELLANT'S CASE FOR A SENTENCE REHEARING.

II.

WHETHER INDECENT EXPOSURE, ARTICLE 120c, UCMJ, IS  
UNCONSTITUTIONALLY VAGUE.

Government appellate counsel shall file a brief on the specified issues no later than thirty days from the date of this order. Appellant may file a reply brief no later than fourteen days after appellee's brief.

DATE: 22 November 2021

FOR THE COURT:

TALBERT, JOSEPH P. Digitally signed by  
TALBERT, JOSEPH P. PRESTON

PRESTON DATE: 2021.11.22 11:46:36  
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JOSEPH P. TALBERT  
Assistant Deputy  
Clerk of Court

CF: JALS-DA  
JALS-GA  
JALS-CCR  
JALS-CCZ  
JALS-CR4