

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES,

Appellee

v.

Master Sergeant (E-8)
ANDREW D. STEELE
United States Army
Appellant

**MOTION FOR SUPPLEMENTAL
CITATION OF AUTHORITY**

Docket No. ARMY 20170303

Tried at Joint Base Lewis-McChord, Washington, on 2 March, 21 April, 16-19 May, 4 October 2017, 23 January 2020, 3 April 2020, 8 September 2020, 25 September 2020, 21-23 October 2020, before a general court-martial appointed by Commander, Headquarters, 7th Infantry Division, Colonel J. Harper Cook and Lieutenant Colonel Matthew Fitzgerald, Military Judges, presiding over sentence rehearing.

COMES NOW the undersigned appellate defense counsel, under Rule 23.4 of this court's Rules of Appellate Procedure, and move to file supplemental citations of authority in the above-captioned case.

United States v. Ballan, 71 M.J. 28, 33 (C.A.A.F. 2012) ("This decision is consonant with *United States v. Miller*, 67 M.J. 385 (C.A.A.F. 2009), which rejected both the doctrine of 'implied elements,' and the corollary notion that the terminal element of 'prejudicial to good order and discipline' or service discrediting was 'inherent' in every enumerated offense. *See id.* at 388-89.") should be considered to evaluate the plain language of the text of the statute in this

case. The fact that junior-enlisted soldiers were involved in the middle-of-the-night events is irrelevant to the potential indecency because consideration of their status is not inherent in the statute. Fraternization and indecent conduct bearing on the service and good order, as well as like crimes, are preempted by other offenses.

United States v. Choate, 32 M.J. 423, 427 (C.M.A. 1991) is binding precedent on this court that “simple nudity in and of itself is not a crime even if it occurs in the presence of others.”

Both of these cases were discovered in preparing for oral argument. Per the court’s rules, this motion is filed five business days prior to argument.

PANEL NO. 4

MOTION FOR SUPPLEMENTAL
CITATIONS OF AUTHORITY

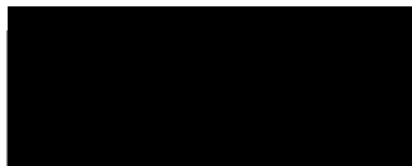
GRANTED: 

DENIED: _____

DATE: 25 MAR 2022



LAUREN M. TEEL
Captain, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division



IAN P. SMITH
Captain, Judge Advocate
Appellate Defense Counsel
Defense Appellate Division

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was electronically submitted to Army
Court and Government Appellate Division on March 22, 2022.



MICHELLE L.W. SURRATT
Paralegal Specialist
Defense Appellate Division

