

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
FLEMING, PENLAND, and SCHLACK
Appellate Military Judges

UNITED STATES, Appellee
v.
Specialist ROY A. WORDLAW
United States Army, Appellant

ARMY 20230235

ORDER

WHEREAS:

On 27 April 2023, an enlisted panel sitting as a general court-martial convicted appellant, contrary to his pleas, two specifications of sexual assault and one specification of assault consummated by battery in violation of Articles 120 and 128, Uniform Code of Military Justice, 10 U.S.C. §§ 920 and 928 [UCMJ]. The military judge sentenced appellant to ten years confinement and a dishonorable discharge. Appellant's case is now pending review before this Court pursuant to Article 66, UMCJ.

On 14 May 2024, appellant filed a brief alleging *inter alia* he received ineffective assistance of counsel during his court-martial proceedings when his defense counsel, Captain Mark J. Dannog and Captain Alexander A. Tucker, failed to move to introduce evidence of prior consensual sexual activity between appellant and the victim, and failed to seek expert assistance in either the field of forensic psychology or of forensic toxicology.

In reviewing the record and appellant's allegations of ineffectiveness, we conclude that affidavits from appellant's trial defense counsel are required to address appellant's allegations.

NOW, THEREFORE, IT IS ORDERED:

1. Appellate government counsel shall obtain affidavits from Captain Mark Dannog and Captain Alexander Tucker addressing allegations of ineffective assistance of counsel during appellant's case. At a minimum, Captain Dannog and Captain Tucker shall answer the following questions:

- a. Given the victim's state of intoxication before, during, and after the alleged sexual assault, why was expert consultation in forensic

psychology or toxicology not requested during the pre-trial phase of your preparation?

- b. When forum selection was decided, why were there no attempts to obtain expert assistance in either of those fields to help educate the panel on the effects of alcohol on memory and/or the possible physical manifestations of someone experiencing alcohol-induced “black out” or “brown out?”
- c. Understanding that filing a pretrial motion under Mil. R. Evid. 412 does not bind a party to admitting said evidence at trial, what was the strategic reason for foreclosing that option with regard to the following evidence: (1) evidence of “sexting” in the days leading up to the alleged sexual assault between appellant and the victim to support a theory of consent and/or mistake of fact as to consent to the anal, vaginal, or both penetrative offenses; (2) evidence that appellant and victim routinely had consensual sex in a vehicle at the exact same location as where the alleged sexual assault occurred to support a theory of consent and/or mistake of fact as to consent to the charged specifications; (3) evidence that appellant and victim planned to have sexual intercourse on 18 July 2020, the night of the alleged offenses, to support a theory of consent and/or mistake of fact as to consent; (4) evidence of the prior consensual anal sex between appellant and victim to explain Prosecution Exhibit 2 wherein the victim seemingly agreed to anal sex (i.e. “Well do but I’ll lead it as last time”)?
- d. Why was the “rule of completeness” not utilized to compel the introduction of the text messages occurring temporally before, between, and after those included in Prosecution Exhibits 1 and 2?
- e. Why did defense not object to Prosecution Exhibits 1 & 2 in total, or in part, pursuant to Mil. R. Evid. 412, hearsay, or Mil. R. Evid. 403?
- f. Paragraph 2.b. of counsel’s 21 October 2022 “Defense Objections to Article 32 Preliminary Hearing Officer’s (PHO) Report, *United States v. SPC Roy Wordlaw*” notes that the victim acknowledged her intent to have sexual intercourse with appellant on the night of the charged misconduct. Why was the victim not cross-examined on this at trial?
- g. Was counsel advised to draft the 1 May 2023 Memorandum for Record titled “*United States v. SPC Roy Wordlaw* – Defense Counsel’s Decision Not to File Military Rule of Evidence (MRE) 412 Motion)? If so, provide details as to that guidance and by whom. If not, articulate why the memorandum was drafted.

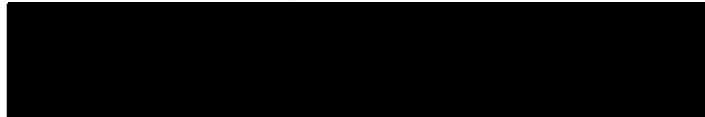
2. Captain Dannog and Captain Tucker shall attach any documents relevant to these questions not otherwise found in the record of trial.

3. Appellate government counsel shall obtain from Captain Dannog and Captain Tucker the foregoing affidavits, along with any other documents provided, and file them with this court not later than fourteen (14) days after the date of this order.

4. The government may provide Captain Mark Dannog and Captain Alexander Tucker any portion of the record that may assist them in their response, but may not provide them any sealed portion of the record absent further order of this court

DATE: 25 October 2024

FOR THE COURT:



J JAMES W. HERRING, JR. *o o*
Clerk of Court

CF: JALS-DA
JALS-GA
JALS-CCR
JALS-CR2