

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
POND, MORRIS, and ARGUELLES
Appellate Military Judges

UNITED STATES, Appellee
v.
Master Sergeant KELVIN R. CURRY
United States Army, Appellant

ARMY 20240073

ORDER

WHEREAS:

On 15 February 2024, an enlisted panel, sitting as a general court-martial, convicted appellant, contrary to his pleas, of one specification of child endangerment by culpable negligence, in violation of Article 119b, Uniform Code of Military Justice, 10 U.S.C. § 919b [UCMJ]. The military judge sentenced appellant to perform hard labor without confinement for three days, to confinement for three days, and to receive a reprimand. Appellant's case is now pending review before this court pursuant to Article 66, UMCJ.

On 16 August 2024, appellant submitted his brief contesting the factual sufficiency of his conviction for child endangerment through culpable negligence, in violation of Article 119b, UCMJ. In part, appellant contends that parental discipline was an affirmative defense to child endangerment and, as such, the Government was required to refute the defense of parental discipline beyond a reasonable doubt.

NOW, THEREFORE, IT IS ORDERED:

1. No later than 7 March 2025, appellate government counsel shall provide a brief responsive to the following questions:
 - a. In light of the fact that our superior court precedent addresses the parental discipline defense in the context of the use of force and/or the amount of force used (*see e.g. United States v. Brown*, 26 M.J. 148 (C.M.A. 1988); *United States v. Robertson*, 36 M.J. 190 (C.M.A. 1992); *United States v. Rivera*, 54 M.J. 489 (C.A.A.F. 2001)), can such a defense apply in a case where the use of physical force is not alleged?
 - b. Does the fact that the child endangerment offense requires a specific mens rea of either design or culpable negligence, as opposed to an

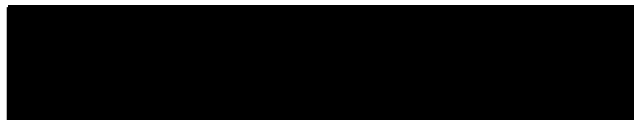
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assault offense which requires only general intent, preclude the application of the parental discipline defense to the offense of child endangerment?

2. No later than 14 March 2025, appellate defense counsel shall provide a reply brief.

DATE: 28 February 2025

FOR THE COURT:



JAMES W. HERRING
Clerk of Court

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