

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
BROOKHART, PENLAND, and MORRIS
Appellate Military Judges

UNITED STATES, Appellee
v.
Specialist JORGE G. MARTINEZCOLON
United States Army, Appellant

ARMY 20210071

Scott Z. Hughes, Military Judge

NOTICE OF HEARING

TO: Appellate Defense Counsel: William E. Cassara
Captain Tumentugs D. Armstrong, JA

Appellate Government Counsel: Captain Cynthia A. Hunter, JA
Major Mark A. Robinson, JA

Notice is hereby given that a hearing in this case before the United States Army Court of Criminal Appeals, Panel 3 has been set for Thursday, 09 March 2023 at 1100. Argument will be heard on the following issues:

1. WHETHER SPECIFICATION I OF CHARGE I MUST BE SET ASIDE BECAUSE APPELLANT WAS CHARGED WITH SEXUAL ASSAULT “ON ONE OR MORE OCCASION;” THE GOVERNMENT PRESENTED EVIDENCE THAT THE MISCONDUCT OCCURRED ON MORE THAN ONE OCCASION; THE MILITARY JUDGE FOUND APPELLANT NOT GUILTY OF THE WORDS “OR MORE” WITHOUT SPECIFYING WHICH INCIDENT FORMED THE BASIS OF THE CONVICTION, RENDERING AN AMBIGUOUS VERDICT WHICH THIS COURT CANNOT REVIEW FOR FACTUAL SUFFICIENCY UNDER ARTICLE 66(d), UCMJ.

2. WHETHER THE MILITARY JUDGE ABUSED HIS DISCRETION IN PERMITTING THE GOVERNMENT, OVER DEFENSE OBJECTION, TO PRESENT EVIDENCE PURSUANT TO MIL. R. EVID. 413 BECAUSE THE GOVERNMENT FAILED TO PROVIDE ADEQUATE NOTICE OF THE “SEXUAL OFFENSE” THAT WAS SUPPOSED TO HAVE BEEN COMMITTED AND FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT ANY “SEXUAL OFFENSE” WAS, IN FACT, COMMITTED.

The parties shall file four copies of the Joint Appendix no later 1 March 2023.

Panel Composition: Senior Judge BROOKHART, Judge PENLAND, and Judge MORRIS.

Date: 16 December 2022



DANIEL G. BROOKHART
Colonel, JA
Senior Judge, Panel 3

CF: JALS-DAD JALS-TJ
 JALS-GAD JALS-CCO
 JALS-CR3 JALS-CCC