



DEPARTMENT OF THE AIR FORCE
AIR FORCE LEGAL OPERATIONS AGENCY

4 November 2011

MEMORANDUM FOR AIR FORCE COURT OF CRIMINAL APPEALS

FROM: AFLOA/JAJG

SUBJECT: Record of Trial – Article 62 Appeal, First Lieutenant Patrick T. Burke

1. From 11 to 13 October 2011, a general court-martial was convened at Dyess Air Force Base in the case of United States v. Burke. The accused faced charges of drunk driving under Article 111 (Specification of Charge I), wrongful appropriation of a motor vehicle under Article 121 (Specification of Charge II), assault consummated by a battery upon a civilian woman under Article 128 (Specification 1 of Charge III), assault upon a male commissioned officer under Article 128 (Specification 2 of Charge III), and leaving the scene of a motor vehicle accident under Article 134 (Specification of Additional Charge). Documents and testimony concerning the accused's actions and mental state were presented from both parties. Although the accused's defense counsel specifically only asserted the defense of mental responsibility for Specification 1 of Charge III (R. at Vol. 3, p. 187), the military judge made a bifurcated legal determination that the accused was "not guilty only by reason of lack of mental responsibility" of all charges and specifications. (R. at Vol. 3, p. 217; App. Ex.)

2. On the same day, 13 October 2011, the military judge convened a post-trial hearing pursuant to R.C.M. 1102A and ordered the accused immediately released from any mental health commitment required by the UCMJ following a determination of not guilty only by reason of lack of mental responsibility. (R. at Vol. 3.) On 15 October 2011, the trial counsel filed a notice of appeal to notify the military judge that it would be appealing his ruling terminating the proceedings, and it is attached to the record of trial.

3. Pursuant to Article 62, R.C.M. 908, and Rule 21 of the Court of Criminal Appeals Rules of Practice and Procedure, the United States files the attached relevant portion of the record of trial in the above case and notifies this Honorable Court of the United States' consideration of an appeal of the military judge's legal ruling.

for 

DON M. CHRISTENSEN, Colonel, USAF
Chief, Government Trial and
Appellate Counsel Division

Attachment:
Record of Trial

cc: AFLOA/JAJA
AFLOA/JAJM

**DEPARTMENT OF THE AIR FORCE
UNITED STATES AIR FORCE TRIAL JUDICIARY**

UNITED STATES

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) **NOTICE OF APPEAL**

v.

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) **DATED 15 OCTOBER 2011**

**1ST LT PATRICK T. BURKE
9TH BOMB SQUADRON (ACC)
DYESS AFB, TX**

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The Government respectfully files the following notice of Appeal, pursuant to UCMJ Art. 62 and Rule for Courts-Martial 908 (b).


1. The Government intends to appeal the order or ruling of the Military Judge that terminated the proceedings.
2. The Military Judge's ruling affects the charges and specifications.
3. The Government does not make this appeal for purposes of delay.
4. Before filing this notice, trial counsel has consulted with AFLOA/JAJG and the Staff Judge Advocate of the Convening Authority, as required by paragraph 8.15 of Air Force Instruction 51-201, *Administration of Military Justice*, dated 21 December 2007. Both the Convening Authority and his Staff Judge Advocate have approved this appeal.

Respectfully submitted,


DUSTIN B. KOUBA, Capt, USAF
Trial Counsel

CERTIFICATE OF SERVICE

I certify that the Military Judge's ruling referenced above was issued at approximately 1500 hours on 13 October 2011. I caused a copy of this notice of appeal to be served, via electronic mail, at approximately 1700 hours on 15 October 2011, on the Military Judge, Lt Col Matthew Van Dalen, and Defense Counsel, Mr. Neal Puckett and Capt Ranae Doser-Pascual.


DUSTIN B. KOUBA, Capt, USAF
Trial Counsel