

IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

U N I T E D S T A T E S,)	FINAL BRIEF ON BEHALF OF
Appellee)	APPELLANT
)	
v.)	
)	Crim. App. Dkt. No. 20100479
)	
Private First Class (E-3))	USCA Dkt. No. 12-0597/AR
REGINALD D. HOLSEY,)	
United States Army,)	
Appellant)	

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v.) Crim. App. Dkt. No. 20100479
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) USCA Dkt. No. 12-0597/AR
Private First Class (E-3))
Reginald D. Holsey,)
United States Army)
)
Appellant)

TO THE JUDGES OF THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES:

Granted Issue

WHETHER THE MILITARY JUDGE ABUSED HIS
DISCRETION WHEN HE REJECTED APPELLANT'S PLEA
BASED UPON A NECESSITY DEFENSE THAT IS
NEITHER RECOGNIZED IN MILITARY COURTS NOR
APPLICABLE IN APPELLANT'S CASE.

Statement of Statutory Jurisdiction

The Army Court of Criminal Appeals ["Army Court"] had
jurisdiction over this matter pursuant to Article 66, Uniform
Code of Military Justice ["UCMJ"], 10 U.S.C. § 866 (2006). This
Honorable Court has jurisdiction over this matter under Article
67(a)(3), UCMJ, 10 U.S.C. § 867(a)(3) (2006).

Statement of the Case

On June 14, 2010, a military judge sitting as a special
court-martial tried Private First Class Reginald D. Holsey
(appellant). The military judge convicted appellant, contrary
to his plea, of desertion with the intent to remain away

permanently, in violation of Uniform Code of Military Justice (UMCJ) Article 85, 10 U.S.C. § 885 (2006). (JA 48).

The military judge sentenced appellant to be reduced to the grade of E-1, to forfeit \$964 pay per month for eleven months, eleven months confinement, and a bad conduct discharge. (JA 63). The convening authority approved the adjudged sentence. (JA 71).

On April 30, 2012, the Army Court summarily affirmed the findings and the sentence. (JA 1). On September 13, 2012, this Court granted appellant's Petition for Grant of Review and ordered briefs on the Granted Issue.

Statement of Facts

The appellant initially attempted to plead guilty to the lesser included offense of being absent without leave from on or about January 26, 2007 until on or about August 16, 2009. (JA 8). During the providence inquiry, however, the appellant indicated that he was prevented from returning to his unit because "I had my kids at the time" and had "no family to leave them with or anything like that." (JA 19).

As the appellant detailed the circumstances surrounding his return, he testified that he called his unit in 2009 prior to returning to inform them he was coming back. This prompted the military judge to ask if something prevented him from coming straight back after he called his unit, and appellant responded

he has "nowhere to . . . leav[e]" his children and "didn't have anyone to leave them with." (JA 19-20).

The military judge explained the concepts of duress and necessity to the appellant:

"Duress" means compulsion or coercion. It is when a third party causes you to do something against your will by the use of either physical force or psychological coercion. Closely related to that is the defense of necessity, where the outside force is not a third-party but is simply the pressure of the circumstances.

. . . .

Now, for the defense of necessity, the pressure of the circumstances must have, one, caused you to believe that your actions were necessary, and two, your belief that your actions were necessary must have been reasonable, and there must have been no alternative that would have caused some lesser harm.

(JA 20-21).

The military judge asked appellant if he believed either the defense of duress or necessity applied in his case. (JA 21). The military judge did not inform appellant that the necessity defense was unavailable in the military. He also failed to tell appellant that the offense of absence without leave was complete when appellant absented himself from his unit, and that any potential defense must have existed at the time of appellant's absence. Based on the military judge's

partial explanation, the appellant stated that he believed necessity applied. (JA 21).

The military judge immediately informed the trial counsel that she should be prepared to proceed with her case. (JA 21). He then called a recess for approximately an hour and a half. When the military judge returned, he addressed the appellant:

PFC Holsey, when the court was last in session, we discussed the defense of necessity, and you indicated to the Court - which is your right - that you believe the defense of necessity applies in your case. And that being the case, the Court will not accept your plea of guilty as provident.

And let me just say a few words about the defense of duress, as well as the defense of necessity. Necessity is a defense of justification. It exculpates a nominally unlawful act to avoid a greater evil. Duress is a defense of excuse. It excuses a threatened or coerced actor. Duress and necessity are separate affirmative defenses, and the defense of necessity is not recognized in military law according to *United States v. Banks*, 37 M.J. 700 (A.C.M.R. 1993).

However, at least two cases indicate that the common law defense of necessity, which may be broader than the defense of duress, may apply to the military, *United States v. Rockwood*, 52 M.J. 98 (C.A.A.F. 1999) and *United States v. Olinger*, 50 M.J. 365 (1999).

Necessity has arguably been recognized and applied *de facto* to the defenses of AWOL and escape from confinement but always under the name of duress.

There are several cases that discuss such a situation: *United States v. Guzman*, 3 M.J. 740 (N.C.M.R. 1977) and *United States v. Wilson*, 30 C.M.R. 630, and that's a 1960 Navy Board of Review case. Those are just a couple of cases that address it.

That being the state of the law, which discusses both duress and necessity, the Court will not accept your plea as provident, and the Court's prepared to hear from the government on the findings portion of the case at this time.

(JA 22-23).

The military judge rejected appellant's plea without providing him the opportunity to clarify his initial, uninformed opinion that he may have had a necessity defense. (JA 23). He did not provide further explanation of the elements of the defense, nor seek any additional information to determine if or when the defense may have been applicable to the defendant during his absence. Then, the military judge immediately proceeded with the trial.¹ (JA 23). The defense did not call any witnesses to testify about the defense of necessity, or any circumstances surrounding appellant's absence that might have

¹ The rejection of the guilty plea precipitated a slipshod contested trial on desertion, particularly the elements appellant's guilty plea would have addressed. The government did not call any individuals on the merits who served in appellant's unit at any point during his absence, or any other witnesses that could testify that appellant was in fact a member of the charged unit and/or was ever actually absent without leave. The government introduced three different DA form 4187s as substantive proof of appellant's absence despite their failure to lay the proper foundation or cite an appropriate hearsay exception for these documents. (JA 25-33)

implicated the defense as the judge articulated. The trial defense attorney did not elicit any testimony concerning necessity from any witnesses, and presented no evidence on the matter.

The appellant testified during the contested portion of the trial, but his testimony focused exclusively on challenging the government's position that his absence was terminated by apprehension. (JA 34-47). He did not emphasize his children or difficulty providing care for them at any point on direct examination. He did not testify that his children were the reason he left the military, or that providing care for them somehow prevented him from returning to military control. The military judge made no further inquiry into the matter, and did not address the concept of necessity—or its possible applicability in appellant's case—with PFC Holsey or any other witness at any point during the contested portion of the trial. At the conclusion of the findings portion of the trial, the military judge found appellant guilty of desertion with intent to remain away permanently terminated by apprehension. (JA 48).

Summary of Argument

The military judge abused his discretion when he rejected appellant's guilty plea based on appellant's uninformed "belief" that a necessity defense existed in his case. The only factual basis for appellant's supposed necessity defense was his

inability to return to the unit nearly two and a half years after the offense of absence without leave was complete. The military judge had no facts before him that suggested that any external force necessitated appellant's absence. Had the military judge accurately described the availability of a necessity defense, in the military and under the facts of this case, appellant would have been in a position to make an informed decision regarding that defense. The military judge abused his discretion when he rejected appellant's plea based on a defense that is not recognized in the military nor raised by appellant's statements during the providence inquiry.

Argument

WHETHER THE MILITARY JUDGE ABUSED HIS DISCRETION WHEN HE REJECTED APPELLANT'S PLEA BASED UPON A NECESSITY DEFENSE THAT IS NEITHER RECOGNIZED IN MILITARY COURTS NOR APPLICABLE IN APPELLANT'S CASE.

1. For a military judge to reject a guilty plea based on an affirmative defense, the appellant must reasonably raise the question of that defense.

A military judge's acceptance of a guilty plea is reviewed for an abuse of discretion. *United States v. Eberle*, 44 M.J. 374, 375 (C.A.A.F. 1996); *United States v. Rogers*, 59 M.J. 584, 585 (Army Ct. Crim. App. 2003). Rule for Court-Martial (R.C.M.) 910(e) prohibits a military judge from accepting a plea of guilty "without making such inquiry of the accused as shall

satisfy the military judge that there is a factual basis for the plea."

If an accused "sets up a matter inconsistent with the plea," the military judge must reject the guilty plea as improvident. Article 45, UCMJ. "A necessary corollary to this requirement is that the accused set up something that is *truly inconsistent* with his plea" before it is deemed improvident. *United States v. Logan*, 47 C.M.R. 1, 2 (C.M.A. 1973) (emphasis added); see *United States v. Penister*, 25 M.J. 148, 152 (C.M.A. 1987) ("A military judge may not arbitrarily reject a guilty plea.").

If an accused raises the question of an affirmative defense, furthermore, it is "incumbent upon the military judge to make a more searching inquiry to determine the accused's position on the apparent inconsistency with his guilty plea." *United States v. Timmons*, 45 C.M.R. 249, 253 (C.M.A. 1972). But see *United States v. Axelson*, 65 M.J. 501, 516 (Army Ct. Crim. App. 2007) ("a military judge's responsibilities regarding affirmative defenses, in both guilty plea and contested cases, are limited to those listed in R.C.M. 916 and 920, and to those recognized by this court and our superior courts.").

The mere possibility of a defense, however, is insufficient to overturn a guilty plea. *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991). "For an accused's testimony in the

providence inquiry to rise to the level of inconsistency contemplated by Article 45, the testimony must have 'reasonably raised the question of a defense.'" *United States v. Roane*, 43 M.J. 93, 99 (C.A.A.F. 1995) (emphasis added) (citation omitted). In *Logan* the Court of Military Review (C.M.R.) reasoned that "while we necessarily adhere to the mandate of Article 45, the intent of that article is fully met by requiring some substantial indication of direct conflict between the accused's plea and his following statements." 47 M.J. at 3. Further, this court has recognized that "this rule is rooted, in part, in our respect for that obvious tactical decision by the accused and his counsel to forgo possible defenses that they know in all likelihood will not persuade the fact finder." *Roane*, 43 M.J. at 99.

2. The common law defense of necessity is not recognized in military courts.

Although the affirmative defenses of justification and coercion/duress are included in the Manual for Courts-Martial, there is no mention of a necessity defense. R.C.M. 916. The common law defense of necessity "traditionally covered the situation where physical forces beyond the actor's control rendered illegal conduct the lesser of two evils." *United States v. Bailey*, 444 U.S. 394, 410 (1980). This Court has

deliberately refrained from broadening the parameters of R.C.M.

916, noting that:

The ramifications of an individual choosing to commit an illegal act, in order to avoid what they perceive to be a greater harm, are drastically different in the military than they are in civilian life. In civilian life, innocent individuals may be adversely affected by the commission of an illegal act. In the military, however, the consequences may be much greater. Such a decision affects an individual's shipmates, the safety and efficiency of the ship, as well as the effectiveness of the mission. Ultimately, the consequences may extend to the severity of the action.

United States v. Olinger, 50 M.J. 365, 366 (C.A.A.F. 1999).²

In *United States v. Rockwood*, this Court expressly declined to formally adopt the necessity defense.³ 52 M.J. 98 (C.A.A.F. 1999). However, this Court gave a fair amount of consideration and tacit approval to an instruction the military judge gave, which provided that:

"participation in the offense must have been caused by a well grounded apprehension that . . . [a third party] would immediately die or would immediately suffer serious bodily harm . . . [and] the amount of compulsion, coercion or force must have been sufficient to have caused an officer who was faced with the same situation and who was of normal strength and courage, to act. The fear which caused [the accused] to commit the offense must have been fear of death or serious

² Citing *United States v. Olinger*, 47 M.J. 545, 551 (N-M. Ct. Crim. App. 1999).

³ This Court deemed the issue of proper instruction on necessity "moot" based on other facts and circumstances. 52 M.J. at 114.

bodily injury and not simply fear of injury to reputation or property, or to bodily injury less severe than serious bodily harm. The threat and resulting fear must have continued throughout the commission of the offense.

Id. at 113. This Court concluded that "in our view, a necessity instruction was in fact given, and the military judge formulated the instruction in a manner that comported well with general civilian criminal law." *Id.* at 114. Thus, even if this Court were to recognize the defense of necessity, there must be a reasonable fear of serious harm that exists at the outset of the charged offense, and remains present for the entire duration of the crime—all of which must be balanced against the "evil" of the offense committed.

The military judge was aware that the necessity defense "is not recognized in military law." (JA 22). Despite that fact, and the Army Court's holding in *United States v. Banks*,⁴ the military judge abused his discretion and rejected the appellant's plea.

The two cases the military judge cited for the proposition that "necessity has arguably been recognized and applied *de facto* to the defenses of AWOL and escape from confinement but

⁴ The Army Court observed that "the benefit of rejecting the necessity defense goes to the core of discipline within a military organization. In no other segment of our society is it more important to have a single enforceable set of standards." *United States v. Banks*, 37 M.J. 700, 702 (A.C.M.R. 1993).

always under the name duress," do not support his position. Both *United States v. Guzman* and *United States v. Wilson* discuss the traditional defense of duress, as defined in the applicable Manual for Courts-Martial.⁵ *United States v. Guzman*, 3 M.J. 740 (N.M.C.M.R. 1977); *United States v. Wilson*, 30 C.M.R. 630 (N.M.B.R. 1960). The appellants in both cases argued that they had acted out of fear of "immediate death or serious injury," consistent with the accepted definition of duress, although neither appellant suggested that their absence was the result of coercion from physical or natural sources. *Banks*, 37 M.J. at 701.

3. The military judge abused his discretion in rejecting the plea regardless of whether the necessity defense applied.

The military judge's rejection of the appellant's plea was arbitrary and inappropriate because he misapplied the law and failed to develop the necessary facts. Even as far back as *Logan*, this Court has dismissed the notion that "rejection of

⁵ In *Wilson*, the court recognized that evidence raising the defense of duress would have to show (a) a threat of death or serious bodily harm; (b) to be executed immediately; (c) unless the accused complied with the threatener's demand that the accused commit the offense now on trial; and (d) that the accused committed the offense under the direct compulsion of the threat, and without any opportunity to avoid committing the crime and still escape the threatened penalty." *Wilson*, 30 C.M.R. 630, 636 (N.M.B.R. 1960). In *Guzman*, the court defined the defense of duress and noted that the degree of duress "is a reasonably grounded fear on the part of the actor that he would be immediately killed or would immediately suffer bodily injury if he did not commit the act." *Guzman*, 3 M.J. 740, 742 (N.M.C.M.R. 1977).

the plea or reversal must follow from the mere possibility of conflict between a guilty plea and the accused's statements." *Logan*, 47 C.M.R. at 3. Here, the only statement the appellant made that could be considered inconsistent with the plea was his mistaken belief that the necessity defense applied in his case based on the difficulty he faced securing care for his children in preparation of his return to duty. (JA 21). Moreover, the appellant's statements concerning care for his children pertained to conditions in existence in 2009, two years after appellant originally left without proper authority. (JA 19-20).

The appellant's statements concerning his reason for not returning to his unit in August of 2009 were not inconsistent with his plea. The appellant had already established that he had no defense to his absence when he departed without leave in 2007. (JA 15-16). The military judge's discussion of the defenses of duress and necessity focused on the appellant's actions nearly two and a half years after the offense was complete:

MJ: Was it in the year 2009 that you called [your unit]?

ACC: Yes, sir.

MJ: So you called your unit to say you were on your way back; is that right?

ACC: Yes, sir.

MJ: Did something prevent - and you did not come straight back; is that right?

ACC: No, sir.

MJ: Is there something that prevented you from returning?

ACC: Yes, sir.

MJ: And what was that?

ACC: I had my kids at the time, sir, and I had nowhere to - of leaving them, sir - no family to leave them with or anything like that, sir.

(JA 19-20).

Following this discussion with the appellant, the military judge explained the offenses of duress and necessity. He did not explain that the defense must have existed at the time the offense was committed. (JA 21). As a result of the military judge's explanation, the appellant was left with the impression that his inability to return to his unit as planned constituted a defense.

Appellant's opinion that necessity applied to his case, based as it was on the military judge's erroneous suggestion that the defense was somehow available, was utterly uninformed. The appellant did not have an adequate opportunity to consult with his attorney concerning the applicability of the defense. (JA 21-23). The military judge's error in this respect was twofold: he inappropriately introduced the necessity defense into

a providence inquiry that was empty of any facts that would support it, and then essentially invited the appellant to speculate as to whether it applied without the benefit of counsel. Although the military judge took a short recess, he inexplicably failed to provide the appellant with the opportunity to revisit his belief that the necessity defense applied. (JA 22-23)

Thus, even if this Court formally adopts the necessity defense, appellant's conduct and the surrounding circumstances elicited during the providence inquiry did not satisfy the conventional definition of this defense that other federal jurisdictions apply.

4. Assuming the common law defense of necessity applied, the appellant's assertion that he was prevented from returning to his unit after a two and a half year long absence because he had no one to watch his kids did not raise that defense.

Assuming *arguendo* that this court applies the necessity defense contemplated in *Rockwood*, appellant's actions simply do not "reasonably raise" the question of this defense as required by *Roane*. 43 M.J. at 99. First, unauthorized absence is an instantaneous offense, "complete at the instant an accused absents himself or herself without authority." *Manual for Courts-Martial, United States*, (2008 ed.) pt. IV, ¶10.C.(8). "Duration of the absence is a matter in aggravation for the purpose of increasing the maximum punishment for the offense."

Id. As a result, the status of absence without leave "is not changed by an inability to return through sickness, lack of transportation facilities, or other disabilities." *Id.*

In the appellant's case, the offense was committed on January 26, 2007 when he left Fort Eustis and drove to Miami, Florida. (JA 15). The appellant testified that he left "because I wanted to" and that his decision to leave was made freely. (JA 16). The appellant did not indicate that he believed his absence was justified or otherwise excusable. (JA 13-20). Thus, the offense was complete, and the facts supporting the military judge's basis for raising the defense simply did not exist during the commission of the crime.

Even if this court concludes that unauthorized absence is a continuing offense (beyond the "instant" that an accused goes absent), the military judge did not elicit evidence in the providence inquiry of any facts or circumstances in existence at the time of appellant's initial departure that could arguably implicate the necessity defense. *Bailey* and *Rockwood* require the harm the defendant seeks to avoid to be present at the outset of the offense, and to remain throughout the individual's conduct. *Bailey*, 44 U.S. 394; *Rockwood*, 52 M.J. 98.

Second, appellant's situation plainly fails to meet the basic substantive requirements needed to implicate the necessity defense. Even if this Court were to presume that the

circumstances the military judge cited as a basis for necessity did in fact operate at all times necessary to trigger the defense, they fall well short of the "evils" traditionally required by courts applying this defense. *Bailey*, 444 U.S. at 410. By raising the defense of necessity, the military judge necessarily inferred that appellant was faced with the dilemma of 1) choosing to abide by the law and leave his children without adequate care; or 2) committing the offense of AWOL in order to look after his children. However, this reasoning is legally and logically flawed.

Although the concept of an affirmative legal obligation to be present at given times and locations is generally unique to the military, this does not preclude this Court from evaluating the "choice of evils" appellant faced, and conducting an analysis informed by civilian jurisdictions. See generally *Bailey*, 444 U.S. 394 (necessity defense not available to defendants who claimed they escaped from prison to avoid poor living conditions and abusive treatment but did not turn themselves in to authorities after leaving prison); *Nelson v. State*, 597 P.2d 977 (Alaska 1979) (defense of necessity not available to defendant who misappropriated dump truck and front-end loader in effort to remove his truck from mud because lawful alternatives were available and harm sought to be avoided did not outweigh harm of illegal actions); *State v. Romano*, 809 A.2d

158, 163 (N.J.Super. 2002) (common law necessity defense applied to defendant who drove while impaired to "escape a brutal, and possibly deadly" physical attack).

Further, in *Rockwood*, this court suggested just how stringent the standard for the necessity defense might be if military courts adopted it, providing that "there may indeed be unusual situations in which an assigned duty is so mundane, and the threat of death or grievous bodily harm is so clearly defined and immediate that consideration might be given to a duress or necessity defense." 52 M.J. at 114. In the instant case, there was absolutely no mention of anything in the providence inquiry to remotely suggest that appellant, his children, or any other individual faced any threat of harm, let alone a harm significant enough to implicate the necessity defense as other jurisdictions have applied it, and as contemplated by this court.

Regardless of the exact legal standard or balancing test when evaluating the necessity defense, common sense dictates that appellant did not—and could not reasonably have deemed to have—face an actual "choice of evils." Single parenthood and military service are not mutually exclusive. No evidence was adduced at trial to suggest that the appellant could not have simply brought his children with him to Fort Eustis and worked out childcare arrangements that were compatible with his

military obligations. Army Regulation 600-20 specifically contemplates single parents, and makes provisions for ensuring that a Soldier's children are adequately cared for, or alternatively that the Soldier is administratively separated in order to look after them. Army Reg. 600-20, Army Command Policy, para. 5-5 (March 18, 2008).

5. The military judge's arbitrary rejection of appellant's plea deprived him of a source of mitigation and forced him to proceed without an opportunity to adequately explore and develop the defense of necessity.

The appellant attempted to plead guilty without the benefit of a plea agreement to demonstrate his willingness to accept responsibility for his misconduct. "Apart from any pretrial agreement, there may be substantial advantages from a plea of guilty - such as speedier disposition of the case and providing a means for demonstrating that the accused repents and is suitable for rehabilitation." *Shepardson v. Roberts*, 14 M.J. 354, 357 (C.M.A. 1983). The Military Judge's Benchbook describes a plea of guilty as a "matter in mitigation" based on the "time, effort, and expense to the government" that are typically saved. U.S. Dep't of Army, Pam. 27-9, *Legal Services: Military Judge's Benchbook*, 1072 (Jan. 1, 2010).

Both the appellant and his defense counsel had considered his plea as a potential source of mitigation. In his opening statement, defense counsel argued that:

The appellant does not contest the fact that he was absent from his unit. He attempted to plead guilty to that. He wants to plead guilty to that. He wants to take responsibility for what he did.

(JA 24).

The appellant reiterated during his unsworn statement that he wanted to apologize for being absent without leave. (JA 56). During sentencing, defense counsel focused on the appellant's potential for rehabilitation, arguing that the appellant "is a good Soldier" who had performed well in the year since his return. (JA 60). He emphasized that the appellant was sorry for leaving his unit and that he had learned from his past mistakes. (JA 62). The appellant's guilty plea would have provided the military judge with tangible evidence of the appellant's remorse and maturity.

In addition to stripping appellant of the advantages of his attempted guilty plea, the military judge compounded the problem by proceeding immediately into a fully contested desertion trial without giving either side an opportunity to explore or develop the necessity defense the military judge spontaneously introduced. After initially raising the notion of a potential necessity defense during the providence inquiry, the military judge instructed the government to be prepared to proceed with its case, and then took a recess for approximately ninety minutes. (JA 21).

When the military judge called the court back to order, he recited his legal reasoning for applying the defense of necessity, and then summarily rejected appellant's guilty plea. (JA 22-23). He did not afford the appellant the chance to discuss this newly adopted defense—and its attendant tactical and strategic impact on his case—with his attorney. Instead, the military judge directed the government to proceed with their case, leaving the appellant and his attorney in the wake of a broken guilty plea, a novel theory of defense, and not the slightest opportunity to discuss the implications or tailor their case accordingly.

By rejecting the appellant's guilty plea, the military judge denied him a valuable source of mitigation. The military judge improperly injected the necessity defense into the appellant's providence inquiry and then invited the appellant to assess the applicability of the defense based on a partial explanation of the law. The appellant, having had no meaningful opportunity to consult his defense attorney, was forced to make a split second decision that irrevocably shaped the outcome of his court-martial.

Conclusion

The military judge's decision to arbitrarily adopt the defense of necessity is particularly egregious in this case, where there is no factual basis for doing so. There were no

facts before the military judge to suggest, much less establish, that the appellant had a necessity defense to being absent without leave. The appellant, furthermore, was unaware that the defense of necessity was unavailable at the time he suggested it applied in his case. The military judge did not attempt to describe the state of the law until after he had rejected the appellant's plea and did not provide the appellant with a chance to clarify his initial response. As a result, the military judge improperly applied the necessity defense, and abused his discretion by rejecting appellant's guilty plea in the absence of a reasonably available defense.

WHEREFORE, appellant requests that this Honorable Court grant his petition for review.



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USCAAF No. 26450

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I certify that a copy of the forgoing in the case of United States v. Holsey, Crim. App. Dkt. No. 20100479, Dkt. No. 12-0579/AR, was delivered to the Court and Government Appellate Division on October 26, 2012.



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