

IN THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

UNITED STATES,) ANSWER TO PETITION FOR
Appellant/Cross-Appellee,) GRANT OF REVIEW
)
v.)
) USCA Dkt. No. 14-6010/AF
Senior Airman (E-4))
AARON M. BUFORD, USAF,) Crim. App. No. 2013-26
Appellee/Cross-Appellant.)

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

ISSUES PRESENTED

I.

**WHETHER THE MILITARY JUDGE ABUSED HER
DISCRETION BY SUPPRESSING EVIDENCE FROM THE
DELL LAPTOP, HEWLETT-PACKARD LAPTOP, AND
CENTON FLASH DRIVE.**

II.

**THE AIR FORCE COURT OF CRIMINAL APPEALS ERRED
BY FINDING A.B. CONSENTED TO LAW
ENFORCEMENT'S SEARCH OF THE CENTON THUMB
DRIVE AND THE DELL LAPTOP.¹**

STATEMENT OF STATUTORY JURISDICTION

The Air Force Court of Criminal Appeals (AFCCA) reviewed this case pursuant to Article 62, Uniform Code of Military Justice (UCMJ). This Honorable Court has jurisdiction to review the issues in this case under Article 67(a)(2) and 67(a)(3), UCMJ respectively.

¹ Appellee/Cross-Appellant (Appellee) requested this Court to grant review of this issue on the same day (18 July 2014) Appellant/Cross-Appellee (the United States) submitted its TJAG certification and brief on Issue I.

STATEMENT OF THE CASE

Appellee is charged with one charge and one specification of committing an indecent act with a minor, in violation of Article 120, UCMJ, and one charge and six specifications relating to receipt, possession (on three separate devices: a Dell laptop, a Hewlett-Packard (HP) laptop, and a Centon flash drive), access, and distribution of child pornography, in violation of Article 134, UCMJ. (J.A. at 25-26.) The charges and specifications were preferred on 11 July 2013 and referred to a general court-martial on 8 August 2013. (Id.)

On 17 September 2013, Appellee, through his trial defense counsel, filed a motion to suppress evidence of child pornography contained on three electronic devices: The Dell laptop, HP laptop, and Centon flash drive. Appellee alleged that the evidence was obtained in violation of the Fourth Amendment and Appellee's statutory rights under the UCMJ. The government responded on 24 September 2013 by articulating several theories of admissibility for the electronic evidence, and by refuting any alleged constitutional or statutory violations.

On 3 October 2013, general court-martial proceedings began, and a motions hearing commenced on the same day. (J.A. at 28.) On 5 October 2013, the military judge granted the defense motion to suppress, issuing written findings of fact and conclusions of

law. (J.A. at 99.) On 7 October 2013, the government filed a motion to reconsider the ruling, and also requested an opportunity to present additional evidence on the motion. (J.A. at 183-90.) On the same day, the military judge allowed the presentation of additional evidence and an evidentiary hearing again commenced. (J.A. at 99.)

On the evening of 7 October 2013, after the reconsideration motion hearing was closed, the military judge denied the government's motion for reconsideration. (J.A. at 191-95.) The military judge issued written findings of fact and conclusions of law addressing the motion for reconsideration, as well as partly addressing the additional evidence presented by the government. (Id.) In her written findings, the military judge again ordered that "evidence resulting from the search and seizure of the Dell laptop, the HP laptop and the Centon thumb drive [be] suppressed." (Id.)

The government served a notice of appeal on the military judge and trial defense counsel on 8 October 2013. On 4 April 2014, the Air Force Court of Criminal Appeals (AFCCA) ordered that the "Government's appeal is denied as to the suppression of evidence from the Hewlett-Packard (HP) laptop." (J.A. at 9.) AFCCA granted the Government's appeal, however, with respect to the suppression of evidence from the Dell laptop and Centon thumb drive. (Id.) With respect to the HP laptop, AFCCA found

that "the probable cause necessary to warrant a search cannot be based on illegally obtained information or evidence" and "the search warrant used for the search" was "based on information obtained by A1C RM's unconstitutional search of the appellee's Facebook and e-mail accounts." (J.A. at 7.) The government moved for reconsideration because the HP laptop contained the evidence necessary to effectively prosecute Appellee. (J.A. at 10.) AFCCA denied the government's motion on 9 May 2014.

The Air Force Judge Advocate General Certified the following issue on 8 July 2014:

WHETHER THE MILITARY JUDGE ABUSED HER DISCRETION BY SUPPRESSING EVIDENCE FROM THE DELL LAPTOP, HEWLETT-PACKARD LAPTOP, AND CENTON FLASH DRIVE.

On the same day, Appellee petitioned for review of the following issue:

THE AIR FORCE COURT OF CRIMINAL APPEALS ERRED BY FINDING A.B. CONSENTED TO LAW ENFORCEMENT'S SEARCH OF THE CENTON THUMB DRIVE AND THE DELL LAPTOP.

ARGUMENT & CONCLUSION

Because the issue (Issue II), as framed by Appellee, is completely encompassed by the certified issue, the United States would request that this Court deny Appellee's request as unnecessary. The issue of consent with respect to the Dell laptop and Centon thumb drive was also discussed in the United States' 8 July 2014 brief on the issue certified and will be a

necessary step in this Court's analysis of the certified issue.
Therefore, this Court should deny Appellee's request.



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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 18 July 2014 via electronic filing.

A handwritten signature in cursive script, appearing to read "Tom Alford".

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