

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ARMED FORCES

UNITED STATES,

Appellee

v.

Carlton Wilder, Jr.  
Lance Corporal (E-3)  
United States Marine Corps,

Appellant

REPLY BRIEF ON BEHALF OF  
APPELLANT

Crim.App. Dkt. No. 201400118

USCA Dkt. No. 15-0087/mc

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

BREE A. ERMENTROUT  
Captain, JAG Corps, USN  
Appellate Defense Counsel  
Navy-Marine Corps Appellate  
Review Activity  
1254 Charles Morris Street SE  
Building 58, Suite 100  
Washington, D.C. 20374-5124  
Comm: (202) 685-7290  
Fax: (202) 685-7426  
bree.ermentrout@navy.mil  
Bar no. 31770

Pursuant to Rule 19(7)(b) of this Court's Rules of Practice and Procedure, Appellant files the following Reply to the Government's Answer:

**Issue Presented**

**WHETHER THE PROMULGATION OF R.C.M. 707 ABROGATED THE "SUBSTANTIAL INFORMATION" RULE ORIGINATED IN UNITED STATES v. JOHNSON, 23 C.M.A. 91 (C.M.A. 1974).**

The Government argues in its answer to Appellant's brief that events related to RR were unknown at the time of the IRO report. This is incorrect. Appellant concedes that its reliance on 18 USC §2252A was overly broad and that that statute relates only to child pornography, not the image of an adult penis. But Appellant does not agree with the Government's statement:

There is no reference in the Initial Review Officer's (IRO) Report to Appellant's indecent exposure to RR, either by an explanation of the underlying facts or by reference to the offense to which he was eventually charged.

(Appellee's Brief at 22.) While there is no explicit reference to RR in the report, given Appellant's confession, it strains belief that the IRO would not have known and considered the misconduct.

The Government further asserts that:

Additional Charge II for possession of child pornography was based on a date of possession November 13, 2012, that NCIS has not yet established at the initial time of confinement. (J.A. at 95, 114, 117.)

As was the case with the charges surrounding RR the necessary evidence to support these charges was discovered after Appellant had already been placed in pretrial confinement. (J.A. at 117, 135-136.)

(Appellee's Br. at 22-23). This is tantamount to suggesting that the Government cannot be held responsible for the substantial information it possessed on November 13--LCpl Wilder's own confession--because it did not have a trial-ready case on that date. This permits the same type of "dubious practice" the Government intimates would never happen. (Appellee's Br. at 21.)

Wherefore, Appellant respectfully requests that this Court grant the requested relief.



Bree A. Ermentrout  
CAPT, JAGC, USN  
Appellate Defense Counsel  
Navy-Marine Corps Appellate Review  
Activity  
1254 Charles Morris Street SE  
Bldg. 58, Suite 100  
Washington, D.C. 20374  
bree.ermentrout@navy.mil  
202-685-7290  
CAAF Bar No. 31770

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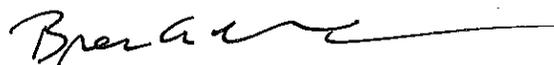
I certify that the foregoing was electronically delivered to this Court, and that a copy was electronically delivered to Deputy Director, Appellate Government Division, and to Director, Administrative Support Division, Navy-Marine Corps Appellate Review Activity, on June 15, 2015.



Bree A. Ermentrout  
CAPT, JAGC, USN  
Appellate Defense Counsel  
Navy-Marine Corps Appellate  
Review Activity  
1254 Charles Morris Street SE  
Bldg. 58, Suite 100  
Washington, D.C. 20374  
bree.ermentrout@navy.mil  
202-685-7290  
CAAF Bar No. 31770

**Certificate of Compliance**

This brief complies with the page limitations of Rule 24. This brief complies with the typeface and type style requirements of Rule 37 because it has been prepared in a monospaced typeface using Microsoft Word version 2013 with 12-point-Courier-New font.



Bree A. Ermentrout  
CAPT, JAGC, USN  
Appellate Defense Counsel  
Navy-Marine Corps Appellate  
Review Activity  
1254 Charles Morris Street SE

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