

**UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS**

UNITED STATES)	ACM 39071 (rem)
<i>Appellee</i>)	
)	
v.)	
)	ORDER
Xavier L. RICE)	
Staff Sergeant (E-5))	
U.S. Air Force)	
<i>Appellant</i>)	Panel 1

A general court-martial composed of officers convicted Appellant, contrary to his pleas, of three specifications of abusive sexual contact (Specifications 3, 4, and 5 of the Charge) and one specification of assault consummated by a battery (a lesser included offense of Specification 2 of the Charge) in violation of Articles 120 and 128, Uniform Code of Military Justice (UCMJ), 10 U.S.C. §§ 920, 928. The members sentenced Appellant to a bad-conduct discharge, 30 days of hard labor without confinement, and reduction to E-1. The convening authority approved the sentence as adjudged. This court affirmed the findings and sentence. *United States v. Rice*, No. ACM 39071, 2017 CCA LEXIS 745 (A.F. Ct. Crim. App. 21 Nov. 2017).

The United States Court of Appeals for the Armed Forces (CAAF) granted review on the following issue:

WHETHER THE COURT OF CRIMINAL APPEALS ERRED IN
DECIDING THAT A PROPENSITY INSTRUCTION IN VIOLA-
TION OF *UNITED STATES v. HILLS* WAS HARMLESS BE-
YOND A REASONABLE DOUBT BECAUSE IT DID NOT CON-
TRIBUTE TO THE VERDICT.

The CAAF summarily reversed our decision as to Specifications 3, 4, and 5 of the Charge and the sentence, set aside the findings of guilty as to Specifications 3, 4, and 5 of the Charge and the sentence, and affirmed the remaining findings. The summary disposition returned the record to the Judge Advocate General of the Air Force for remand to this court and expressly stated that this court may order a rehearing on Specifications 3, 4, and 5 of the Charge and the sentence. *United States v. Rice*, ___M.J.____, No. 18-0101, 2018 CAAF LEXIS 208 (C.A.A.F. 18 Apr. 2018).

Accordingly it is by the court on this 11th day of July, 2018,

ORDERED:

The record of trial is returned to The Judge Advocate General for remand to the convening authority for further action consistent with CAAF's decision; a rehearing as to Specifications 3, 4, and 5 of the Charge and the sentence is authorized. Article 66(e), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866(e).



FOR THE COURT

Carol K. Joyce

CAROL K. JOYCE
Clerk of the Court