

COMMANDER, NAVAL BASE
SAN DIEGO, CALIFORNIA 92132-5100

STAFF JUDGE ADVOCATE'S OFFICE

10 May 1995

Before a special court-martial which convened at Southwest Judicial Circuit Courthouse, Naval Station, San Diego, California, pursuant to my convening order 006:gy/3730 of 3 October 1994, as amended by serial N00JM:gy/3209R of 20 March 1995, was arraigned and retried by order of Commander, Naval Base San Diego Supplementary General Court-Martial Order Number 13-94 of 24 October 1994:

Hospital Corpsman Chief Ronald J. Spsychala, U. S. Navy, (b) (6)
(b) (6), Transient Personnel Unit, Naval Station, San Diego,
California

The accused was arraigned on the following offenses and the following findings or other dispositions were reached.

Charge: Article 134 Plea: NG. Finding: NG.
Specification: Commit indecent acts on a male under 16 years of age, on or before 13 May 1991. Plea: NG. Finding: NG.

Findings of not guilty having been adjudged on 24 March 1995, no further action is required in accordance with R.C.M. 1107(b)(4).

(b) (6)

Commander, U. S. Navy
By direction of J. S. Walker
Rear Admiral, U. S. Navy
Commander, Naval Base San Diego

IN THE U.S. NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS
WASHINGTON NAVY YARD
WASHINGTON D.C.

BEFORE

DAVID C. LARSON

EDWIN W. WELCH

J.E. DOMBROSKI

UNITED STATES

v.

Ronald J. SPYCHALA, (b) (6)
Hospital Corpsman Chief (E-7), U.S. Navy

NMCM 92 02025

Decided 28 August 1995

Sentence adjudged 28 April 1992. Military Judge: P.F. Roberts. Review pursuant to Article 66(c), UCMJ, of General Court-Martial convened by Commander, Naval Base San Francisco, San Francisco, CA.

LT L. HIGDON MACPHEE, JAGC, USNR, Appellate Defense Counsel
Maj. LAURA L. SCUDDER, USMC, Appellate Government Counsel

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.

PER CURIAM:

This case is once again before the Court for review. In our initial review, we set aside the findings of guilty to Charge I (forcible sodomy with a child), to Specification 1 of Charge II (indecent acts with a child), and the sentence. We affirmed the findings of guilty to Specifications 3 and 4 of Charge II (firearm possession violations) and to Charge II. We dismissed Charge I and its specification but authorized a rehearing for the offense alleged in Specification 1 of Charge II and the sentence. *United States v. Sychala*, 40 M.J. 647 (N.M.C.M.R. 1994).

After our decision, the convening authority ordered a rehearing on the allegation of indecent acts with a child. In the same order, the convening authority approved a sentence of no punishment for the affirmed findings of guilty to Specifications 3 and 4 of Charge II, thereby removing those offenses from further sentencing consideration by the court-martial should the appellant be found guilty at the rehearing. See Supplementary

General Court-Martial Order Number 13-94 of 24 October 1994. On 24 March 1995, the appellant was found not guilty of indecent acts with a child at the rehearing and the record was returned to the Court for further review.

In his initial pleading, the appellant raised 15 assignments of error. In our prior decision, besides finding merit in Assignment of Error V, we found that Assignments of Error IX and XI-XV were without merit. *Spychala*, 40 M.J. at 651. We declined to address Assignments of Error I-IV, VI-VIII and X at that time. *Id.* at 649.

We find that our prior dismissal of Charge I, the appellant's acquittal of the charge of indecent acts with a child at the rehearing, and the convening authority's approval of no punishment as to Specifications 3 and 4 of Charge II render the remaining assignments of error moot. Accordingly, the sentence of no punishment is affirmed.

(b) (6)

DAVID C. LARSON, Chief Judge

(b) (6)

EDWIN W. WELCH, Senior Judge

(b) (6)

J.E. DOMBROSKI, Judge

5815
24 Mar 95

From: LT M. G. McCartin, JAGC, USNR, Trial Counsel, Naval Legal Service Office Detachment, Naval Air Station North Island
To: Commander, Naval Base San Diego, California
Subj: REPORT OF RESULTS OF TRIAL BY SPECIAL COURT-MARTIAL ICO HMC RONALD J. SPYCHALA, USN, (b) (6)
Ref: (a) R.C.M. 1101, MCM, 1984
Encl: (1) Trial Counsel Feedback Information Sheet

1. Per reference (a), the following information is provided. The trial by special court-martial in the subject case was completed on 24 March 1995. The presiding military judge was CAPT K.R. Vienna, JAGC, USN and the defense counsel was LT J.W. McMullen, JAGC, USNR, and Mr. Barry O. Bernstein.

2. The pleas and findings were as follows:

CHARGES	PLEAS	FINDINGS
Charge: Violation of UCMJ, Art. 134	NG	NG
Spec: On or about 13 May 1991, commit indecent acts upon the body of (b) (6) a male under 16 years of age, not the spouse of said HMC Spychala, by using his hands and mouth to fondle and touch the penis of the (b) (6), with intent to arouse and gratify the sexual desires of the said HMC Spychala.	NG	NG

3. The findings were adjudged by a court composed of members.

4. Please complete enclosure (1) and return it to this command, attention Senior Trial Counsel, as soon as possible.

(b) (6)

M. G. McCARTIN
LT, JAGC, USNR
TRIAL COUNSEL

Copy to:
Naval Consolidated Brig, Miramar
Senior Trial Counsel
Command Services
Defense Counsel
Trial Counsel Case File

RECORD OF TRIAL

OF

SPYCHALA, Ronald J.
(Last Name, first, middle)

(b) (6)
(SSN)

E-7
(Rank/rate)

U. S. Navy
(Organization & Armed Force)

TPU, NAVSTA, SAN DIEGO CA.
(Ship or Station)

BY

SPECIAL COURT-MARTIAL

CONVENED BY
COMMANDER NAVAL BASE
SAN DIEGO, CALIF.

TRIED AT

SOUTHWEST JUDICIAL CIRCUIT COURTHOUSE
BLDG ONE, NAVAL STATION, SAN DIEGO, CA.

ON

28, 31 October 1994
8 November 1994
5 & 19 January 1995
6, 16, 20, 21, 22, 23 and 24 March 1995



PROCEEDINGS OF A SPECIAL COURT-MARTIAL

The court came to order at 1512 hours, 28 October 1994, at the Southwest Judicial Circuit Courthouse, Building 1, Naval Station, San Diego, California, pursuant to the following orders:



DEPARTMENT OF THE NAVY
COMMANDER NAVAL BASE
937 NO. HARBOR DR.
SAN DIEGO, CALIFORNIA 92132-5100

IN REPLY REFER TO:

FOCT 24 1994

SUPPLEMENTARY GENERAL COURT-MARTIAL ORDER NUMBER 13-94

In the foregoing general court-martial case of Hospital Corpsman Chief Ronald J. Spychala, U. S. Navy, (b) (6), as promulgated in General Court-Martial Order Number 06-92, Commander, Naval Base San Francisco, dated 7 August 1992, and in Supplementary General Court-Martial Order Number 06-94, Commander, Naval Base San Diego, dated 20 July 1994, which promulgated the decision of the U. S. Navy-Marine Corps Court of Military Review, NMCM 92 02025 decided on 6 June 1994, transmitted on 29 June 1994, and received at Commander, Naval Base San Diego, on 8 July 1994, a sentence of no punishment is approved only for the affirmed findings relating to Specifications 3 and 4 under Charge II. No further action is ordered or shall be taken with respect to those specifications. As to the remaining alleged offense, a rehearing is ordered.

(b) (6)

F. K. HOLIAN
Rear Admiral, U. S. Navy
Commander, Naval Base San Diego
Commander

Distribution:

Original:

Original Record of Trial

Duplicate Original:

Service Record of Accused

Certified Copies:

PRES NC&PB Arlington VA

BUPERS (PERS 83)

OIC PERSUPPDET NAS MIRAMAR SDIEGO (CODE 35)

CO NAVCONBRIG NAS MIRAMAR SDIEGO (CODE 14)

Copies of Record of Trial (1 each)

Plain Copies:

COMNAVBASE San Francisco

CO TPU San Diego

Defense Counsel - LCDR Horrigan

Trial Counsel - LT McCartin/LT Bloomfield

Accused

Case File

SUPPCMO File

"Certified to be a True Copy"

(b) (6)

LT, JAGC, USN





DEPARTMENT OF THE NAVY
COMMANDER NAVAL BASE
937 NO. HARBOR DR.
SAN DIEGO, CALIFORNIA 92132-5100

IN REPLY REFER TO:

JUL 20 1994

SUPPLEMENTARY GENERAL COURT-MARTIAL ORDER NUMBER 06-94

In the foregoing general court-martial case of Hospital Corpsman Chief Ronald J. Spychala, U. S. Navy, (b) (6), as promulgated in General Court-Martial Order Number 06-92, Commander, Naval Base San Francisco, dated 7 August 1992, the U. S. Navy-Marine Corps Court of Military Review, NMCM 92-2025, decided on 6 June 1994, set aside the findings of guilt of the Specification under Charge I, Specification 1 under Charge II, and the sentence. Charge I and its specification were dismissed and the remaining findings of guilt were affirmed. By my further action, a rehearing may be ordered in this case; however, no decision about a possible rehearing has yet been made by me. As a result of the decision of the Navy-Marine Corps Court of Military Review, the accused is required by law to have immediately restored all rights, privileges, and property of which the accused may have been deprived. The accused will be credited with all time lost while in confinement, as well as all pay and all leave that would have been accrued during his confinement period. While it also now appears by operation of this action that the accused's period of active obligated service may have expired, the accused will be retained in legal hold pending further inquiry and my decision as to a possible rehearing in this case.

(b) (6)

F. K. HOLIAN
Rear Admiral, U. S. Navy
Commander, Naval Base San Diego
Commander

Distribution:

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Copies of Record of Trial (1 each)

Plain Copies:

CNB San Francisco - Convening Authority

CO TPU San Diego

Defense Counsel

- CAPT Dean, USMC, NLSO San Francisco

- LT Harrison, USNR, NLSO Southwest

Brig Counselor - Mr. Harris

Accused

SUPPCMO File



DEPARTMENT OF THE NAVY
COMMANDER NAVAL BASE
937 NO. HARBOR DR.
SAN DIEGO, CALIFORNIA 92132-5100

IN REPLY REFER TO:
5817
Ser N00JM:gy/3209R
20 Mar 95

My special court-martial convening order serial 006:gy/3730 dated 3 October 1994 in the case of Hospital Corpsman Chief Petty Officer Ronald J. Spsychala, U. S. Navy, (b) (6), is hereby amended appointing the following members:

- Commander (b) (6), U. S. Navy
- Commander (b) (6), U. S. Navy
- Lieutenant (b) (6), U. S. Navyal Reserve
- Lieutenant (b) (6), U. S. Navy
- Chief Warrant Officer Two (b) (6), U. S. Navy

20 Mar 95
2.25

The following members are relieved:

- Captain (b) (6), U. S. Navy
- Commander (b) (6), U. S. Navy
- Major (b) (6), U. S. Marine Corps
- Lieutenant (b) (6), U. S. Navy
- Lieutenant Junior Grade (b) (6), U. S. Navy

(b) (6)

J. S. WALKER
Rear Admiral, U. S. Navy
Commander, Naval Base San Diego

CERTIFIED TO BE A TRUE COPY

(b) (6)

LNC(SW) USN



DEPARTMENT OF THE NAVY
COMMANDER NAVAL BASE
937 NO. HARBOR DR.
SAN DIEGO, CALIFORNIA 92132-5100

IN REPLY REFER TO:
5817
Ser 006:gy/3730
3 Oct 94

Pursuant to authority contained in Section 0120, Manual of the Judge Advocate General of the Navy, a special court-martial is hereby convened with the following members, and shall meet on the day of this order or as soon thereafter as practicable, at Navy-Marine Corps Trial Judiciary, San Diego, California. The court-martial will be constituted as follows:

Captain (b) (6), U. S. Navy
Commander (b) (6), U. S. Navy
Major (b) (6), U. S. Marine Corps
Lieutenant (b) (6), U. S. Navy
Lieutenant Junior Grade (b) (6) U. S. Navy

(b) (6)

F. K. HOLIAN
Rear Admiral, U. S. Navy
Commander, Naval Base San Diego

"Certified To Be A True Copy"

(b) (6)

LT, JAGC, USN

PERSONS PRESENT

CAPT R. A. Smith, JAGC, USN, MILITARY JUDGE;
LT M. G. McCartin, JAGC, USNR, TRIAL COUNSEL;
LT J. W. McMullen, JAGC, USNR, DEFENSE COUNSEL;
HMC Ronald J. Spychala, USN, ACCUSED;
LN1 (b) (6), USN, COURT REPORTER, previously sworn.

The members were absent.

(Note: This ROT transcribed by the lead reporter for this case, (b) (6), NLSO-SW, San Diego. Due to findings of NG having been reached in this case, the ROT is transcribed and provided in accordance with RCM 1103(e).

-oOo-

The court-martial was properly convened and the convening orders found to be correct. The information on page 1 of the charge sheet was determined to be correct, as amended. The charge had not been referred to any other court-martial.

The accused was appearing in a complete and appropriate uniform for trial.

Military counsel for both sides, as well as civilian counsel at subsequent sessions, stated their legal qualifications and status as to oaths. No counsel had acted in any prohibitive capacity and LT McMullen was the only military counsel detailed to this case.

The accused was informed of his counsel rights and stated he would desire that LT McMullen remain on the case and that he, the accused, had retained Mr. (b) (6) as civilian counsel. (Mr. (b) (6) was subsequently relieved by the accused and replaced by Mr. Barry Bernstein, Attorney at Law. Both Mr. (b) (6) and Mr. Bernstein presented Notice of Appearances which were duly marked as Appellate Exhibits and can be found attached to this record of trial. LT McMullen and Mr. Bernstein then proceeded to represent the accused for the duration of the trial.)

The military judge then stated his legal qualifications and status as to oath. There was no voir dire or challenge of the military judge.

The accused was then advised of his forum selection rights and after indicating he understood those rights elected to reserve forum selection to a later date.

The accused was then arraigned on the following charge and specification:

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI) SPYCHALA, Ronald J.		2. SSN (b) (6)	3. GRADE OR RANK HMC	4. PAY GRADE E-7
5. UNIT OR ORGANIZATION Commanding Officer Transient Personnel Unit, Naval Station, San Diego			6. CURRENT SERVICE	
			8. INITIAL DATE 7 Nov 88	9. DATE(S) IMPOSED 5 yrs as extended
7. PAY PER MONTH			9. DATE(S) IMPOSED	
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL	9. DATE(S) IMPOSED	
\$2,582.70	NONE	\$2,582.70	N/A	
			8. INITIAL DATE	
			9. DATE(S) IMPOSED	
			N/A	

II. CHARGES AND SPECIFICATIONS

10. CHARGE: **I** VIOLATION OF THE UCMJ, ARTICLE **125**

SPECIFICATION: *with drawn 24 OCT 94*
 In that Hospital Corpsman Chief Petty Officer Ronald J. Spychala, U.S. Navy, Marine Corps Security Force Battalion, Pacific, Mare Island Naval Shipyard, Vallejo, California, on active duty, did, on or before 13 May 1991, commit sodomy with (b) (6) a child under the age of 16 years, by force and without the consent of the said (b) (6).

Charge ~~II~~: Violation of the UCMJ, Article 134 *quid.*

Specification 2: In that Hospital Corpsman Chief Petty Officer Ronald J. Spychala, U.S. Navy, Marine Corps Security Force Battalion, Pacific, Mare Island Naval Shipyard, Vallejo, California, on active duty, did, on or before 13 May 1991, commit indecent acts upon the body of (b) (6) a male under 16 years of age, not the spouse of said Hospital Corpsman Chief Petty Officer Ronald J. Spychala, by using his hands *and mouth* to fondle and touch the penis of the said (b) (6), with the intent to arouse and gratify the sexual desires of the said Hospital Corpsman Chief Petty Officer Ronald J. Spychala.

(Continued on Page 2)

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI) (b) (6)	b. GRADE Cpl	c. ORGANIZATION OF ACCUSER MCSFBn, Pac, MINSY
(b) (6)		e. DATE 9/12/09

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 9 day of DEC, 19 91, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

(b) (6)

 Typed Name of Officer

MCSFBn, Pac, MINSY

 Organization of Officer

Captain, U.S. Marine Corps

 Grade

Legal Officer

 Official Capacity to Administer Oath

(b) (6)

 Signature

(See R.C.M. 307(b)—must be commissioned officer)

12.

On 9 DEC, 19 91, the accused was informed of the charges against him/her and of the name(s) of the accuser(s) known to me (See R.C.M. 308 (a)). (See R.C.M. 308 if notification cannot be made.)

(b) (6)

Typed Name of Immediate Commander

MCSFBn, Pac, MINSY, Vallejo, CA
Organization of Immediate Commander

Captain, U.S. Marine Corps

(b) (6)

Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13.

The sworn charges were received at 1430 hours, 9 DEC 19 91 at MCSFBn, Pac, Mare Island
Designation of Command or

Naval Shipyard, Vallejo, CA 94592

Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE ¹ Commanding Officer

(b) (6)

Typed Name of Officer

Adjutant

Official Capacity of Officer Signing

Captain, U.S. Marine Corps

(b) (6)

Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY

b. PLACE

c. DATE

Commander, Naval Base San Diego

San Diego, California

24 October 1994

Referred for trial to the special court-martial convened by my special court-martial
convening order serial 006:gy/3730 dated 3 October 1994

_____ 19 _____, subject to the following instructions:² Rehearing of
charge previously tried by general court-martial convened by CNB San Francisco,
GCMCO #01-92 dated 7 Jan 92, pursuant to NMCM 92 02025 decided 6 Jun 94, and my
SUPPCMOs #06-94 dated 20 Jul 94 and #13-94 dated 24 Oct 94.

By _____ of _____
Command or Order

F. K. HOLIAN

Typed Name of Officer

Commander

Official Capacity of Officer Signing

Rear Admiral, U. S. Navy

(b) (6)

Signature

15.

On 25 October, 19 94, I (caused to be) served a copy hereof on ~~(caused)~~ the above named accused.

A. H. BLOOMFIELD

Typed Name of Trial Counsel

I.T. JAGC, USNR

Grade or Rank of Trial Counsel

(b) (6)

Signature

FOOTNOTES: 1 - When an appropriate commander signs personally, inapplicable words are stricken.
2 - See R.C.M. 601(e) concerning instructions. If none, so state.

Eleven subsequent sessions were held during the course of this trial which concluded with members arriving at a finding of Not guilty as to the charge and specification on 24 March 1995.

Jurisdiction was established over the accused. As a finding of not guilty was arrived at, no further transcript is provided in accordance with RCM 1103(e.)

The court adjourned at 1700 hours, 24 March 1995.

AUTHENTICATION PAGE

3 Apr 1995
(Date)

(b) (6)

M. G. MC CARTIN
LT JAGC USNR

Trial Counsel

6 Apr 1995
(Date)

(b) (6)

J. W. MC MULLEN
LT JAGC USNR

Defense Counsel

AUTHENTICATION OF RECORD OF TRIAL

10 APR 95
(Date)

(b) (6)

R. A. SMITH
CAPT JAGC
U. S. Navy
Military Judge

10 April 95
(Date)

(b) (6)

K. R. VIENNA
CAPT JAGC
U. S. Navy
Military Judge

