

times to different people. And to the extent there is corroborating evidence, the evidence supports both versions.

But there is one example where the victim has made a demonstrably false or misleading statement, and she has made it multiple times. A1C Quintello has consistently made it part of her narrative that when she arranged to stay at TSgt Yates' house, she was under the impression that he would be gone because he was going on leave to visit his kids, but that his plans later changed. She was clearly intending to give the false impression that he changed his plans so he could spend time with her and that she only asked to stay there because she thought the house would be vacant. She even expressed the view that he changed his plans as part of a well-thought out plan that he developed to have sex with her. But the evidence proves this to be false. The Facebook messages unequivocally prove that he made it very clear from the outset that he would be home when she came to stay, at least until January 30. She knew very well that he was going to be home, as he said "We'll be under the same roof for a few days i guess." She responded: "Okay that's fine". And he reminded her later that he would be home and off of work during her visit. In fact, they had extensive, playful discussions about where she would sleep and whether he was willing to alternate between the couch and the bed. The Facebook messages also indicate a plan on the part of both parties to keep her presence at his house secret from her husband because he disapproved of their friendship and to keep it secret from others to avoid having "people talk." So, it appears to me that A1C Quintello realized that people would have trouble believing her rape account if they knew that she had essentially invited herself to stay with TSgt Yates for several days when she knew he would be home; thus, she decided to intentionally lie to make her rape account more plausible. Unfortunately, these misrepresentations had the opposite effect, seriously damaging her overall credibility. While the fact that she misrepresented this fact does not mean that she was not sexually assaulted, there is no doubt that a skilled defense counsel will be able to exploit these misleading statements to effectively impeach her credibility.

I note that TSgt Yates' did plans change at one point, and he decided not to go out of town and to shorten his leave, but the evidence proves that he changed his leave plans before A1C Quintello arrived and informed her of this. In fact, it was A1C Quintello who, just hours before her scheduled arrival on January 27, asked if she could stay with TSgt Yates two days longer because she was unable to get a flight out on February 1 as she originally planned.

Nor does the evidence support that TSgt Yates had any plan to get in A1C Quintello's pants. To the contrary, he specifically told her not to wear revealing clothing around his house, so he would not be tempted by her, as reflected in this exchange:

*TSgt Yates: BTW, spandex and booty shorts are not authorized"*

*A1C Quintello: Why not?*

*TSgt Yates: Im going to be on leave those few days you're here SOOOOOOOOO i'd rather you not make me think like a man around you.*

(PHO Ex 7)

(4) I recommend the charge and its specification be disposed of as follows: I do not recommend referral of this charge, or any other sexual assault charge, to a General Court-Martial, or any other Court-Martial. I recommend the charge and specification be dismissed.

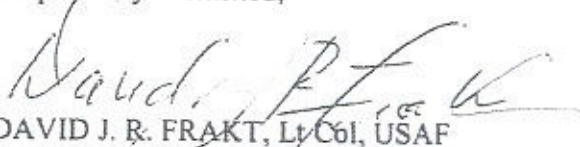
**p. Conclusion:**

The reason for my recommendation is that I consider it to be a virtual certainty that any sexual assault charge will result in an acquittal. Although the victim's account is credible, the accused's account is equally credible, if not more so. In my opinion, based on 22 years of experience as an Air Force JAG, and extensive experience as a prosecutor and defense counsel, there is no way that the government will be able to prove a sexual assault occurred beyond a reasonable doubt. Furthermore, I believe that a court-martial is likely to further traumatize the victim, as she will be subjected to a difficult and embarrassing cross-examination and impeachment of her character and credibility through other evidence, only to result in an acquittal which could be personally devastating. While there is some appeal in the idea of giving a person who claims to be a victim "her day in court," when the outcome is so likely to be unsatisfying to the victim, and the trial process so hard on both the victim and the accused, we must consider whether we would be advancing the goals of the military justice system by pursuing this prosecution. While some level of administrative discipline may be appropriate to punish TSgt Yates for his poor judgment, I do not believe a General Court-Martial is the right disposition for this case.

**q. Chronology:**

4 November 2016. – Appointed Preliminary Hearing Officer  
10 November 2016. – Set date and time for hearing  
19 November 2016. – Hearing began at 0905. Hearing ended at 1330.  
19-20 December 2016 – Wrote report.  
20 December 2016 – Completed report. Delivered to SJA at 1700.

Respectfully submitted,

  
DAVID J. R. FRAKT, Lt Col, USAF  
Preliminary Hearing Officer

MEMORANDUM FOR AFTC/CC

FROM: 96 TW/CC

SUBJECT: Recommendation for Disposition – *United States v. TSgt Damion Yates*

1. In accordance with Rule for Court-Martial 404, and Air Force Instruction 51-201, I am forwarding the case of TSgt Damion Yates to you for your action. The accused is charged with one charge and a specification of sexual assault when the other person is incapable of consenting, in violation of Article 120, Uniform Code of Military Justice (UCMJ). Pursuant to Article 32, UCMJ, the Preliminary Hearing Officer (PHO) found there was no probable cause to believe the accused committed the offense charged, but found there was probable cause to believe that the accused committed a different offense under Article 120, UCMJ. Specifically, he found probable cause for charging either sexual assault by causing bodily harm or sexual assault upon a sleeping or unconscious person. However, the PHO recommended that no charges related to sexual misconduct be referred to trial by court-martial due to his concerns regarding the alleged victim's credibility and the highly likely result of an acquittal.
2. I have consulted with my SJA and reviewed the attached PHO Report. I agree with the PHO's recommendation. I conclude there is insufficient evidence to refer this case to trial by court-martial. Accordingly, I recommend that the charge and specification be dismissed without prejudice and that the case be returned to 96 LRS/CC for whatever action he deems appropriate.
3. I have attached a list of proposed court members, should you decide to refer the case to trial. The nominated members satisfy the criteria set forth in Article 25, UCMJ.

CHRISTOPHER P. AZZANO  
Brigadier General, USAF  
Commander

9 Attachments:

1. Proposed Court Members
2. Proposed Court Member Data Sheets
3. Charge Sheet & 1st Indorsement w/Atchs, 3 Nov 16
4. 96 TW/JA Advice w/o Atchs, 12 Jan 17
5. PHO Appointment Memo w/o Atchs, 4 Nov 16
6. PHO Report w/Atchs, 20 Dec 16
7. Accused & Defense Counsel Receipts for PHO Report
8. Notice of Opportunity to Submit Views on Disposition Memo, 21 Dec 16
9. Victim's Written Submission, 29 Dec 16



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS, AIR FORCE TEST CENTER (AFMC)  
EDWARDS AIR FORCE BASE, CALIFORNIA

MEMORANDUM FOR AFTC/CC

JAN 30 2017

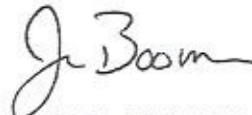
FROM: AFTC/JA

SUBJECT: Pretrial Advice, *United States v. TSgt Damion Yates*, \*\*\*-\*\*-4601, 96th Logistics Readiness Squadron, Eglin AFB, Florida

1. The accused, TSgt Damion Yates, is charged with one specification of sexual assault when the other person is incapable of consenting, in violation of Article 120, Uniform Code of Military Justice (UCMJ). The charge and specification was preferred on 3 November 2016. A preliminary hearing under Article 32, UCMJ was conducted on 19 November 2016. On 20 December 2016, the preliminary hearing officer (PHO) did not find probable cause to support the charge of sexual assault. On 25 January 2017, the 96 TW/CC, the Special Court-Martial Convening Authority, forwarded the charge with a recommendation that the charge and specification be dismissed without prejudice and that the case be returned to the 96 LRS/CC for whatever action he deems appropriate.
2. Pursuant to Rule for Courts-Martial 406 and Article 34, UCMJ, I provide you the following advice:
  - a. The charge and specification is generally in proper form.
  - b. The charge and specification alleges an offense under the UCMJ.
  - c. The charge and specification is warranted by the evidence contained in the documents listed below as attachments.
  - d. The accused is on active duty in the United States Air Force. I am satisfied a court-martial would have jurisdiction over the accused and the offense charged.
3. The PHO concluded that, upon review of the evidence, to include, inter alia, the videotaped interviews, written statements of the accused and the victim, and the numerous communications between the two parties and other parties, and after a credibility assessment of the parties involved, the charge and specification was not supported by probable cause. The PHO also determined that probable cause could be met for sexual assault by bodily harm or sexual assault upon a sleeping or unconscious person. However, the PHO ultimately recommended that no charge of sexual assault be referred to court-martial and that the charge be dismissed. The 96 TW/JA recommended that the charge be forwarded with a recommendation for referral to trial by general court-martial.
4. On 21 December 2016, the 96 TW/JA notified the victim, A1C Quintello, and her Special Victim's Counsel, of her opportunity to submit views on the disposition of the sexual assault

allegation in her case. AIC Quintello provided a statement saying she believes trial by court-martial is appropriate and she is willing to participate at trial.

5. The 96 TW/CC forwarded the charge to you with a recommendation that the charge and specification be dismissed without prejudice and that the case be returned to the 96 LRS/CC for whatever action he deems appropriate. I concur. I agree with the PHO's recommendation and I do not recommend that the charge and specification be referred to a general court-martial. I recommend dismissal of the charge and specification without prejudice, and that the case be returned to the 96 LRS/CC.



JANE E. BOOMER, Colonel, USAF  
Staff Judge Advocate

8 Attachments:

1. Memorandum for AFMC/CC
2. Charge Sheet
3. 1st Indorsement to Charge Sheet with Attachments
4. Preliminary Hearing Officer Appointment Letter and Report with Attachments
5. Receipts for Preliminary Hearing Officer's Report
6. SPCMCA's Forwarding of Charges without Attachments
7. 96 TW/JA's Recommendation without Attachments
8. Notice to Victim to Submit Views and Victim's Statement



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS 96TH TEST WING (AFMC)  
EGLIN AIR FORCE BASE FLORIDA

31 January 2017

MEMORANDUM FOR SrA JOHANNA L. QUINTELLO

FROM: 96 TW/JA (Colonel Michael W. Taylor)

SUBJECT: Notification of Major General David A. Harris's Decision to Forward the Case of  
TSgt Damion Yates to General Ellen M. Pawlikowski for Review

1. Colonel Jane E. Boomer has recommended that all charges and specifications against  
TSgt Damion Yates should not be referred for trial by court-martial.  
Major General David A. Harris has decided not to refer any charges to a court-martial.  
Major General Harris is forwarding the case to General Ellen M. Pawlikowski for the review  
required by the 2014 National Defense Authorization Act, Section 1744(d).
2. If you have any questions about this process, you may contact Ms. Nancy Blakely at  
850-882-8038 or Capt Simon M. Caine at 850-882-8310. You may also consult with a legal  
assistance attorney or your Special Victims' Counsel.

MICHAEL W. TAYLOR, Colonel, USAF  
Staff Judge Advocate

cc:  
Special Victim's Counsel

1st Ind, SrA Johanna L. Quintello

Feb 17 2017

MEMORANDUM FOR 96 TW/JA, Colonel Michael W. Taylor

I understand that Major General David A. Harris has decided not to refer any charges against  
TSgt Damion Yates to trial by court-martial. I understand that the allegations against TSgt Yates  
are being forwarded to General Ellen M. Pawlikowski for review.

SrA Johanna L. Quintello



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS, AIR FORCE TEST CENTER (AFMC)  
EDWARDS AIR FORCE BASE, CALIFORNIA

MEMORANDUM FOR AFMC/CC

JAN 30 2017

FROM: AFMC/CC

SUBJECT: Reasons for Decision Not to Refer Charge to Trial by General Court-Martial,  
TSgt Damion Yates, 96th Logistics Readiness Squadron, Eglin AFB, Florida

1. After reviewing the Article 32 Preliminary Hearing Report, the Pretrial Advice of my Staff Judge Advocate pursuant to Article 34, UCMJ, the statements the victim made during the course of the criminal investigation against TSgt Damion Yates, and considering the views submitted by the victim, I have decided not to refer the charge against TSgt Yates to trial by general court-martial.

2. I have decided not to refer the charge against TSgt Yates to trial by general court-martial because the Article 32 Preliminary Hearing Officer recommended not referring the charge to trial, the 96 TW/CC recommended not referring the charge to trial, the Pretrial Advice of my Staff Judge Advocate did not recommend referring the charge to trial, and I have concluded that a general court-martial is not appropriate in this case. I intend to dismiss the charge without prejudice and return the case to the 96 LRS/CC for whatever action he deems appropriate.

A handwritten signature in black ink, appearing to read "David A. Harris", is positioned above the typed name.

DAVID A. HARRIS  
Major General, USAF  
Commander



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS AIR FORCE MATERIEL COMMAND  
WRIGHT-PATTERSON AIR FORCE BASE OHIO



23 February 2017

MEMORANDUM FOR AFTC/CC

FROM: AFMC/CC

SUBJECT: Review of Convening Authority Decision Not to Refer Charges –  
TSgt Damion Yates, 96th Logistics Readiness Squadron, Eglin AFB, Florida

1. A sexual assault allegation against Technical Sergeant Damion Yates has been forwarded to me for review pursuant to Section 1744(d) of the Fiscal Year 2014 National Defense Authorization Act. I have reviewed the case file, which includes the following:

- a. DD Form 458, Charge Sheet, dated 3 Nov 16, with 1st Indorsement
- b. AFOSI ROI, dated 5 Oct 16; Article 32 Preliminary Hearing Officer (PHO) report w/ attachments, dated 20 Dec 16, and the associated PHO appointment letter, dated 4 Nov 16
- c. A certification the victim was notified of the opportunity to express views on disposition for consideration by the convening authority, dated 21 Dec 16
- d. Victim's statements to AFOSI and Chain of Command
- e. Victim's Statement on Disposition, dated 29 Dec 16, and Victim's request for a new Article 32 hearing, dated 17 Feb 17
- f. AFTC/JA Article 34 Pretrial Advice, dated 30 Jan 17
- g. GCMCA's statement regarding decision not to refer any charges for trial by court-martial, dated 30 Jan 17
- h. A certification the Victim of the alleged sexual assault offense was informed of the convening authority's forwarding of the case for review, dated 31 Jan 17
- i. Other documents to include: Recordings of Victim's and Subject's AFOSI Interviews and the Article 32 hearing, SPCMCA's Disposition Recommendation, dated 25 Jan 17, 96 TW/JA's Legal Review, dated 12 Jan 17

2. I find that, in making the decision not to refer charges to trial by court-martial, you considered the statements provided by the victim during the course of the criminal investigation against TSgt Yates and you considered the views expressed by the victim, as to the disposition of the alleged sexual assault offense. I further find the victim was properly notified that I would be conducting this review.

ELLEN M. PAWLIKOWSKI  
General, USAF  
Commander



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS AIR FORCE MATERIEL COMMAND  
WRIGHT-PATTERSON AIR FORCE BASE OHIO



MEMORANDUM FOR AFTC/CC

FEB 23 2017

FROM: AFMC/CC

SUBJECT: U.S. v. TSgt Yates

I hereby forward to you for action as you deem appropriate the attached SVC request addressed to all reviewing authorities.

ELLEN M. PAWLIKOWSKI  
General, USAF  
Commander

Attachment:

Victim Request for New Preliminary Hearing, dtd 17 Feb 17, w/ 2 attachments



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS AIR FORCE TEST CENTER (AFMC)  
EDWARDS AIR FORCE BASE, CALIFORNIA

MEMORANDUM FOR CAPT SARAH D. ROGERS

FEB 27 2017

FROM: AFTC/CC

SUBJECT: Denial of Request for a New Preliminary Hearing, *United States v. TSgt Damion Yates*, 96th Logistics Readiness Squadron, Eglin AFB, Florida

On 23 February 2017, the AFMC/CC forwarded me your request for a new preliminary hearing, dated 17 February 2017. In your request, you highlighted evidence the parties agreed not to consider that was referenced on page 12 of the report. You also highlighted comments the PHO made that you believe called into question his impartiality. I did not consider or rely on this evidence and these comments in making my decision on referral in this case. Your request for a new preliminary hearing is denied. My decision not to refer the charge and specification against TSgt Yates to trial by general court-martial stands.

A handwritten signature in cursive script, which appears to read "David A. Harris", is positioned above the typed name.

DAVID A. HARRIS  
Major General, USAF  
Commander



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS AIR FORCE TEST CENTER (AFMC)  
EDWARDS AIR FORCE BASE, CALIFORNIA



MEMORANDUM FOR AFTC/JA

FEB 27 2017

FROM: AFTC/CC

SUBJECT: Dismissal of Charge, *United States v. TSgt Damion Yates*, 96th Logistics Readiness Squadron, Eglin AFB, Florida

In accordance with Rule for Courts-Martial 407, as the General Court-Martial Convening Authority, I hereby dismiss the charge and specification from the charge sheet (DD Form 458), dated 3 November 2016, in the case of *United States v. TSgt Damion Yates*.

DAVID A. HARRIS  
Major General, USAF  
Commander