

Ask the Lawyer: Dangerous, Stupid Acts can Lead to Charge of Reckless Endangerment

By Mathew B. Tully

Q:

If I do something dangerous — and a little stupid — but no one gets hurt, will I still get in trouble?

A:

Stupid and dangerous conduct is a recipe for a charge of reckless endangerment in violation of Article 134 of the Uniform Code of Military Justice.

Usually, reckless endangerment charges are brought up in cases involving firearms or motor vehicles, and no one has to get hurt or die for the perpetrator to be convicted.

As the Manual for Courts-Martial notes, reckless endangerment involves conduct that is “wrongful and reckless or wanton” and that could cause someone else to be killed or seriously injured.

A service member does not have to intend to hurt someone. However, if it is “foreseeable” or “probable” that someone’s injury would be a consequence of such action that is not legally justifiable, then the member would violate Article 134.

For example, pointing a loaded weapon at someone as a joke or to intimidate would recklessly endanger the person toward whom the barrel is pointed. That’s what happened to an airman first class in *U.S. v. Martinez* (2011). After a bunkmate called him a derogatory name, the airman loaded his M9 pistol, chambered a round, and pointed the gun at the bunkmate for a few seconds.

For this conduct, the airman was convicted of failing to obey a firearm safety regulation in violation of Article 92 and reckless endangerment. He was sentenced to a dishonorable discharge, reduction in grade, three months of confinement (later reduced to two months), and monthly forfeiture of \$933 for three months.

He claimed this sentence was too severe, but the Air Force Court of Criminal Appeals found it to be appropriate.

A round does not have to be chambered for a firearm to be deemed a dangerous weapon. The Navy-Marine Corps Court of Criminal Appeals reached that conclusion in *U.S. v. Banks* (2003), which involved a sailor who pleaded guilty to, among other things, reckless endangerment for waving a loaded pistol around a room while drunk at a party.

He later claimed his plea to this charge was improvident, because at the time of the incident,

his pistol was not a dangerous weapon because a round was not chambered. The appeals court declined to grant relief.

Service members charged with reckless endangerment should consult with a military law attorney. Depending on the circumstances, a lawyer could challenge the charge by showing there was no way the member could have known the conduct might have led to another person's injury, or by showing that the conduct did not endanger anyone.

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