

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.

Mathew B. Tully is an Iraq War veteran and founding partner of the law firm Tully Rinckey PLLC. Email questions to askthelawyer@militarytimes.com

. The information in this column is not intended as legal advice.

“He took on this case with vigor and ZERO FEAR of the government!”

"LITERALLY THE BEST MONEY I EVER SPENT!!!! The USAF charged my son with Article 92, Violate General Order and Article 128, Simple Assault. I spoke to many attorneys who said to me, "Your son will be convicted of the Simple Assault because putting lotion on someone's face is considered an assault as it is an unwanted touch." They all wanted me to work on a plea deal with the government that ended with my son being discharged, spending time in the brig and having a federal conviction for the rest of his life. Knowing that this just didn't warrant a federal conviction, bad conduct discharge and time in the brig, I was on a search to find an attorney who would look at this case for what it was: a couple of 19-21 year-old immature young men horse playing. I was looking for someone who would say something different; someone who would be able to look at the case from more than one view. When I spoke to Mr. Rinckey, I thought I was going to get the same ole speech, but to my surprise, I IMMEDIATELY felt at ease and I knew right then that he was going to be my attorney (not sure if he knew it at this time). He took on this case with vigor and ZERO FEAR of the government! He wanted them to know that this was NOT going to go away with any plea deal! And he went to work! Then, LITERALLY 2 DAYS BEFORE trail the government added an additional charge, which was Article 134, Unlawful Entry. Mr. Rinckey stayed focused, developed a plan, and off to trail we went. He was so prepared, calm and at ease. I remember him saying to me, "I am ready to try this case." And yesterday – 14 APR 2016 – my son was found NOT GUILTY on ALL CHARGES AND SPECIFICATIONS!!! Yesss!!! You know, it's always hard to find money for an attorney, but I learned one thing with this case. Although I thought we couldn't afford an attorney, the truth of the matter was that we couldn't afford NOT TO HAVE an attorney. I only wish I had found Mr. Rinckey sooner, but that's okay. I have found my ATTORNEY for life," Y.W. on Founding Partner on Greg Rinckey, Esq.

Prior results do not guarantee similar outcomes.

"Well Informed Legal Advice" – G.C.

Received sound and well informed legal advice. Responses were timely and extremely relevant. – G.C. on client relations attorney Derrick T. Hogan

“Great Service” – E.S.

I want to thank you all for the great service rendered [to] myself and family. - E.S. on Client Relations Attorney Derrick Hogan

"High Regard" – R.E.M.

"Your firm held my best interests with high regard... I thank you for your efforts." - R.E.M.

“Prompt and Efficient” – K.B.

"Prompt and efficient in processing claim, all correspondence handled in prompt and efficient manner." – K.B.

“Impressed” – W.W.

"As a retired heavy user of attorneys, I'm impressed with your concerns and your efforts to stay in touch with your clients. Its damned good management aligned with top notch expertise." – W.W.

"Excellent Service" – J.R.

"Excellent service, very professional, and understanding and considerate of clients needs. Attorney was very approachable and there was a very good comfort level." – J.R.

"Full Service" – K.M.

"I like the fact the office is close enough to where I work and live and that it is a full service practice, not just estate planning." – K.M.

"Professional and Informative" – J.H.

"Professional and informative... I was pleased with the handling of the case. I was treated as a person, and kept abreast of all aspects of the case. Thank you all." – J.H.

"Thanks So Much" – J.D.

"Without your firm, I would not have known of my claim. Thanks so much!" – J.D.

"Gets Results" – F.P.

"Most certainly – The firm gets results!" – F.P.

“Outstanding” – M.P.

“Results are outstanding.” – M.P.

“Quite Satisfied” – R.W.

“I am quite satisfied with the services your office has provided.” – R.W.

“Exceptional Legal Services” – A.S.

“Your firm, Tully Rinckey, has provided and continues to provide me with prompt, keen, exceptional legal services. After the initial consult, I felt relieved that I had the representation from Tully Rinckey... I have found a new found hope with Tully Rinckey...” – A.S.

“Absolute Best” – R.H.

“My attorney was the absolute best I could ever have hoped for. A pure professional in every sense of the word. She was very mindful of my financial expenditure and still was able to represent me very well in my court case.” – R.H.

“Outstanding Service” – A.R.

“Outstanding service, true professional.” – A.R.

“Top Notch” – V.W.

“My attorney was top notch. Very pleasant and helpful.” – V.W.

“Very Thankful” – C.P.

“Very thankful for the help and guidance I received from your law firm. Because of your law firm I was able to return to work with all my back benefits.” – C.P.

“Ideal Choice” – D.H.

“My attorney knew exactly the approach to take and was the ideal choice. She was extremely responsive. She was clear, balanced, and open to our views and feelings. She made it clear she was there for us and ready to answer questions.” – D.H.

“Very Satisfield” – D.D.

“I was very satisfied with the services provided which were completed in a very timely and professional manner.” – D.D.

“Excellent” – B.M.

“Your firm provides excellent & free service to federal workers and NG/USAR members.” – B.M.