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Ask the Lawyer: Ignorance of illegal drug can be defense

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Q. Can service members be convicted of wrongfully using an illegal drug even if they didn't know they were taking a controlled substance?

A.

As far as the Uniform Code of Military Justice is concerned, ignorance may be bliss — but only in certain specific circumstances.If a service member does not have knowledge of "the presence of the controlled substance," he or she cannot be said to have used such a substance, according to the Manual for Courts-Martial. In other words, if you don't know you're taking Ecstasy or oxycodone — say, someone slips the drug into your drink when you're not looking — then you haven't committed that offense.But troops who receive or find a substance without being informed of its controlled status, and who intentionally make no attempt to learn its nature, can run afoul of Article 112a of the UCMJ.Under the so-called doctrine of "deliberate ignorance" or "deliberate avoidance," anyone "who consciously avoids knowledge of the presence of a controlled substance or the contraband nature of the substance is subject to the same criminal liability as one who has actual knowledge," according to the Manual.The U.S. Navy-Marine Corps Court of Criminal Appeals found the deliberate ignorance doctrine could apply to the Marine Corps lance corporal in U.S. v. Cody C. Collier (2013) who repeatedly chewed bubblegum laced with THC, the psychoactive ingredient in marijuana.Three separate urinalysis tests over a month had Collier testing positive for THC. His wife, an admitted marijuana user, had purchased the gum, which he found in his truck.The appeals court ruled that the court-martial judge did not abuse his discretion by instructing jury members on the deliberate avoidance doctrine, and Collier's conviction of three specifications of wrongful use of marijuana was upheld.In its ruling, the appeals court cited another, older case in which it said this deliberate avoidance instruction was not warranted, U.S. v. Andrew P. Rodriguez (1997), which involved a Marine Corps private who tested positive for methamphetamine after his friend spiked his beer while they were at a club.Rodriguez was convicted of a single Article 112a violation. The appeals court overturned that conviction, noting there was no evidence to show Rodriguez knew a foreign substance had been placed in his beer or that it was methamphetamine. The court said "no high probability existed at all" that he was aware the friend had spiked his drink.Although the

appeals court found that lack of evidence sufficient in itself to reverse Rodriguez’s conviction, it said the lower court’s error on the deliberate avoidance instruction also would have been grounds to set aside the Marine’s conviction and order a rehearing, had it come to that.