

Voluntary Manslaughter

If you find the accused not guilty of the offense alleged, you should next turn to a consideration of the lesser included offense of assault with intent to commit voluntary manslaughter in violation of Article 134. In order to find the accused guilty of this lesser offense you must be satisfied by legal and competent evidence beyond reasonable doubt:

(a) That, on or about 16 March 1968, between 0830 hours and 1230 hours, at or near a ditch in the eastern section of My Lai (4), Son My Village, Quang Ngai Province, Republic of Vietnam, the accused attempted to do bodily harm to thirty (30) Vietnamese Nationals, more or less;

(b) That he did so by shooting at them with an M-16 rifle;

(c) That such act was with unlawful force or violence;

(d) That, at the time, the accused intended to commit voluntary manslaughter; and

(e) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

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The court is further advised that an "assault" is an attempt, with unlawful force or violence, to do bodily harm to another, whether or not the attempt is consummated. An act of force or violence is unlawful if done without legal justification or excuse. An "attempt to do bodily harm" is an overt act which amounts to more than mere preparation and is done with apparent present ability to do bodily harm to another. The act must be without the lawful consent of the persons affected.

The court is further advised that in order to convict the accused of the offense of assault with intent to commit voluntary manslaughter, a showing that the accused merely intended to inflict great bodily harm will not suffice. The prosecution must prove beyond reasonable doubt that the accused specifically intended to kill the thirty (30)

Vietnamese Nationals, more or less.

The offense alleged and this lesser offense differ in that the offense alleged requires, as an essential element, that you be satisfied beyond a reasonable doubt that the accused intended to commit murder, whereas the lesser included offense does not include such element, but it does require that you be satisfied beyond a reasonable doubt that the accused intended to commit voluntary manslaughter. The court is further advised that the intended offense of voluntary manslaughter is committed when a person, with intent to kill, unlawfully kills a human being in the heat of sudden passion caused by adequate provocation. The presence of this provoked passion reduces to voluntary manslaughter an offense that would otherwise be murder, but it is not a justification or excuse for killing.

US v Pitts, 12 USCMA 634, 31 CMR 220 (1962)