

Prosecution Instruction No.

Wilful Discharge of Firearm Under Such Circumstances

As to Endanger Life

If you find the accused not guilty of the offense alleged, or of the lesser included offense of assault with intent to commit voluntary manslaughter, or of the lesser included offense of assault inflicting grievous bodily harm, or of the lesser included offense of assault with a dangerous weapon, or of the lesser included offense of assault upon a child under the age of sixteen years, you should next turn to a consideration of the lesser included offense of ~~assault~~ willful discharge of firearm under such circumstances as to endanger life in violation of Article 134. In order to find the accused guilty of this lesser included 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 discharged a firearm, to wit: an M-16 rifle;
- (b) That such discharge was willful and wrongful;
- (c) That such discharge was under circumstances such as to endanger human life; and
- (d) 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.

The court is further advised that the term "willfully" means the doing of an act knowingly and purposely, specifically intending the natural and probable consequences thereof. The term "under circumstances such as to endanger human life" refers to a reasonable potentiality for harm to human beings in general. It is not required that human life be in fact endangered but that, from the facts and circumstances surrounding a wrongful discharge of a weapon, it may be justifiably inferred that the act was unsafe to human life in general.

The offense alleged and this lesser offense differ in that the offense alleged requires, as an essential element, that you be

satisfied beyond reasonable doubt that the accused attempted to do to thirty (30) Vietnamese Nationals, more or less, bodily harm; that he did so by shooting at them with an M-16 rifle; that such act was with unlawful force or violence; that, at the time, the accused intended to commit murder; whereas the lesser included offense does not include such element, but it does require you to be satisfied beyond reasonable doubt that the accused discharged a firearm; that such discharge was willful and wrongful; and that such discharge was under circumstances such as to endanger human life.

US v Pifer, 15 USCMA 271, 35 CMR 243