

Law:

14. Abandonment of a conspiracy is an affirmative defense. In other words, even if a conspiracy exists, if the plan to commit a crime is affirmatively abandoned, the members of the conspiracy are no longer criminally liable for the conspiracy. Affirmative acts inconsistent with the object of a conspiracy and communicated in a manner reasonably calculated to reach co-conspirators have been regarded as sufficient evidence to establish withdrawal or abandonment from a conspiracy. *See U.S. v. U.S. Gypsum Co.*, 438 U.S. 422, 464-465 (1978). Further, a conspiracy terminates when there is affirmative evidence of abandonment to disavow or defeat the object of the conspiracy. *See U.S. v. Jimenez Recio*, 537 U.S. 270, 272 (2003).

Argument:

15. The LON allegation cannot be met by any evidentiary standard because: 1) there is insufficient evidence of a conspiracy; and 2) even if there was a conspiracy, it was appropriately abandoned. Cadet Hannigan never conspired to obstruct justice nor did he prevent AFOSI from discovering information related to the investigation. Cadet Hannigan told the team multiple times to tell the truth. There is both a lack of proof and a lack of any evidence to indicate that Cadet Hannigan instructed individuals to delete text messages. Finally, the other members of the swim team were truthful with AFOSI the entire time and were never vague.

16. There were three meetings leading up to the initiation of AFOSI's investigation of the swim team. The first meeting was held based upon the recommendation of 2nd Lt F that the team should meet to discuss the potential of an AFOSI investigation. Even if there were discussions about how to approach an OSI investigation, the evidence does not establish that Cadet Hannigan was the one who directly told the team to be vague or to be selective with the information provided to AFOSI. Further, even if an individual drew such a conclusion,

Cadet Hannigan's actions after this meeting are inconsistent with any conspiracy to obstruct justice because he told the team to tell the truth multiple times. This affirmative evidence is described and portrayed beyond a reasonable doubt from the swim team's LOR responses, which shows that Cadet Hannigan abandoned any idea of conspiring to obstruct justice. If Cadet Hannigan was trying to obstruct justice, why would he tell his teammates multiple times to tell the truth?

