

Thursday, 26 June 2014 (1000)

United States v. Hinojos

**Before Panel 3 of the Court: Senior Judge Mitchell
Judge Jamison
Judge Fischer**

For Appellant: CAPT Tierney M. Carlos, JAGC, USN

For Appellee: Capt Matthew M. Harris, USMC

A panel of members, sitting as a general court-martial, convicted the appellant, contrary to his pleas, of one specification of Aggravated Sexual Assault and one specification of Abusive Sexual Contact, both in violation of Article 120, Uniform Code of Military Justice, 10 U.S.C. § 920 (2006). The members sentenced the appellant to a dishonorable discharge and seven years confinement. The convening authority approved the adjudged sentence and, except for the dishonorable discharge, ordered it executed.

The sole issue to be argued before this Court is as follows:

- I. **WHETHER THE MILITARY JUDGE ABUSED HIS DISCRETION BY ALLOWING THE GOVERNMENT'S DNA EXPERT TO TESTIFY AT TRIAL, OVER DEFENSE OBJECTION, THAT DNA RECOVERED FROM THE VICTIM'S UNDERWEAR MATCHED A DNA SAMPLE TAKEN FROM THE APPELLANT, WHEN THE GOVERNMENT OFFERED NO INDEPENDENT EVIDENCE THAT A DNA SAMPLE WAS EVER TAKEN FROM THE APPELLANT, NOR ANY CHAIN OF CUSTODY LINKING THE TESTED SAMPLE TO THE APPELLANT.**