

Wednesday, 14 August 2013

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United States v. Brown

Before Panel 2 of the Court

For Appellant: LT Carrie E. Theis, JAGC, USN

For Appellee: LT Lindsay P. Geiselman, JAGC, USN

A panel of members with enlisted representation sitting as a general court-martial convicted the appellant, contrary to his pleas, of one specification of abusive sexual contact, one specification of forcible sodomy, and one specification of unlawful entry, in violation of Articles 120, 125, and 134, UCMJ, 10 U.S.C. §§ 920, 925, and 934 (2006). The members sentenced the appellant to two years confinement and a bad-conduct discharge. The Convening Authority approved the sentence as adjudged and, except for the bad-conduct discharge, ordered it executed.

The issues to be argued before the Court are as follows:

I. WHETHER ARTICLE 125, UCMJ, SODOMY, IS UNCONSTITUTIONALLY VAGUE ON ITS FACE AND AS APPLIED TO APPELLANT?

II. IN ARTICLE 125, UCMJ, FORCE IS A FUNCTIONAL ELEMENT THAT THE GOVERNMENT MUST PROVE BEYOND A REASONABLE DOUBT. THE STATUTE CONTAINS NO DEFINITION OF FORCE BUT A PARALLEL PROVISION IN ARTICLE 120 CONTAINS A DEFINITION OF FORCE WHICH EXPRESSLY DOES NOT INCLUDE SITUATIONS WHERE THE VICTIM IS SUBSTANTIALLY INCAPABLE OF DECLINING PARTICIPATION. HERE, APPELLANT WAS IMPROPERLY FOUND GUILTY OF AN ACT OF SODOMY NOT WITHIN THE KNOWN DEFINITION OF FORCE. WAS APPELLANT'S CONVICTION FOR FORCIBLE SODOMY LEGALLY AND FACTUALLY SUFFICIENT?