

Wednesday, 13 February 2013

1200

United States v. Oakley

Panel Two: B.L. Payton-O'Brien, J.R. McFarlane, R.Q. Ward
Appellate Military Judges

For Appellant: Col Dwight Sullivan, USMCR; LT Kevin Quencer,
JAGC, USN

For Appellee: Capt Samuel Moore, USMC

Location: The George Washington University Law School

A general court-martial composed of officer members with enlisted representation convicted Appellant, contrary to his pleas, of one specification of aggravated sexual assault and one specification of indecent act, in violation of Article 120, UCMJ, 10 U.S.C. § 920. The members sentenced Appellant to reduction to pay grade E-1, forfeiture of all pay and allowances, confinement for three months, and a bad-conduct discharge. The Convening Authority approved the sentence as adjudged, and except for the bad-conduct discharge, ordered it executed.

The issue to be argued before the Court is as follows:

Whether the Military Judge erred in this Article 120 case when he distinguished between evidence of consent and the defense of consent by instructing the members that the Defense had the initial burden to prove evidence of consent by a preponderance of the evidence and only then would the burden shift to the Government to prove beyond a reasonable doubt that the defense of consent did not exist.