

Wednesday, 08 August 2012

1000

United States v. Brown

**Panel Two: B.L. Payton-O'Brien, M.D. Modzelewski, R.Q. Ward
Appellate Military Judges**

For Appellant: LT Gregory Morison, JAGC, USN

For Appellee: LT Joseph Moyer, JAGC, USN

Appellant was tried before a general court-martial composed of members with officer and enlisted representation. Contrary to his pleas, he was found guilty of one specification of rape of a child, one specification of aggravated sexual assault of a child, two specifications of child endangerment, and three specifications of indecent liberties with a child, in violation of Articles 120 and 134, UCMJ, 10 U.S.C. §§ 920 and 934. Appellant was sentenced to reduction to pay grade E-1, confinement for forty-five years, and a dishonorable discharge. The Convening Authority approved the sentence as adjudged, and except for the dishonorable discharge, ordered it executed.

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

WHETHER APPELLANT WAS DENIED HIS DUE PROCESS RIGHT TO A FAIR TRIAL WHEN THE MILITARY JUDGE ALLOWED A VICTIM ADVOCATE TO ACCOMPANY THE COMPLAINING WITNESS TO THE WITNESS STAND DURING HER TESTIMONY AND ANNOUNCED TO THE MEMBERS THAT THE ATTENDANT WAS THE VICTIM'S "ADVOCATE"?

WHETHER THE TESTIMONY OF THE NURSE PRACTITIONER WHO CONDUCTED A SEXUAL ASSAULT FORENSIC EXAM ON THE COMPLAINING WITNESS SHOULD HAVE BEEN EXCLUDED?

Thursday, 30 August 2012

1000

United States v. Smith

Panel Three: J.R. Perlak, M.D. Modzelewski, R.Q. Ward
Appellate Military Judges

For Appellant: Mr. Frank Spinner
LT Toren Mushovic, JAGC, USN

For Appellee: Maj William Kirby, USMC

A general court-martial composed of members with enlisted representation convicted appellant, contrary to his plea, of one specification of aggravated sexual assault in violation of Article 120, UCMJ, 10 U.S.C. § 920 (2006). The members sentenced appellant to reduction to pay grade E-1, confinement for 30 days, and a bad-conduct discharge. The Convening Authority approved the sentence as adjudged and, except for the punitive discharge, ordered it executed.

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

I. WHETHER THE MILITARY JUDGE DENIED APPELLANT'S FIFTH AND SIXTH AMENDMENT RIGHTS TO PRESENT A DEFENSE BY LIMITING THE SCOPE OF A DEFENSE EXPERT'S TRIAL TESTIMONY.

II. WHETHER THE MILITARY JUDGE DENIED APPELLANT'S SIXTH AMENDMENT RIGHT OF CONFRONTATION BY LIMITING THE DEFENSE COUNSEL'S CROSS-EXAMINATION OF THE COMPLAINING WITNESS, EVEN WHEN TRIAL COUNSEL DID NOT MAKE AN OBJECTION.