

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES,

Appellee

**BRIEF ON BEHALF OF
APPELLEE**

v.

Docket No. ARMY 20230516

Staff Sergeant (E-6)

QUINTAN G. BRASSFIELD,

United States Army,

Appellant

Tried at Fort Eustis, Virginia, on 1 August and 26–28 September 2023, before a general court-martial convened by the Commander, Headquarters, U.S. Army Center for Initial Military Training and Fort Eustis, Colonel Adam S. Kazin, Military Judge, presiding.

TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Assignments of Error¹

**I. WHETHER APPELLANT’S CONVICTIONS FOR
THE CHARGE AND ITS SPECIFICATIONS ARE
LEGALLY AND FACTUALLY SUFFICIENT
WHERE THE GOVERNMENT FAILED TO
DISPROVE THE PARENTAL DISCIPLINE
DEFENSE BEYOND A REASONABLE DOUBT.**

**II. WHETHER THE MILITARY JUDGE APPLIED
AN INCORRECT LEGAL STANDARD IN FINDING
THE USE OF FORCE WAS OBJECTIVELY
UNREASONABLE AND EXCESSIVE FORCE**

¹ The government has reviewed the matters submitted by appellant pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), and respectfully submits that they lack merit. Should this court consider any of these matters meritorious, the government requests notice and an opportunity to file a supplemental brief addressing the claimed error. *Id.* at 437 (“We will expect the Courts of Military Review to specify issues and request briefs of those issues which they believe are deserving of that increased attention.”).

**SOLELY ON EXTREME PAIN WITHOUT AN
ACCOMPANYING DEFINITION IN HIS SPECIAL
FINDINGS.**

Statement of the Case

On 28 September 2023, a military judge sitting as a general court-martial convicted appellant, contrary to his pleas, of two specifications of domestic violence, in violation of Article 128b, Uniform Code of Military Justice, 10 U.S.C. § 928b (2019) [UCMJ]. (R. at 304; Statement of Trial Results [STR]). On the same day, the military judge sentenced appellant to a reduction to the grade of E-5 and confinement for 14 days per specification, to run consecutively, for a total of 28 days. (R. at 372; STR). On 17 October 2023 the convening authority took no action, and on 8 November 2023, the military judge entered judgment. (Action; Judgment). Appellant elected to appeal pursuant to Article 66(b)(1)(A), UCMJ.

Statement of Facts

Appellant is the father of twin sons, ■■■ and ■■■, the victims in this case. (R. at 34, 36, 80, 81). In early or mid-January 2022, then-11-year-olds ■■■ and ■■■ stole money from their stepmother and lied about it when questioned by appellant. (R. at 38, 40, 85, 86, 226). Appellant's wife investigated, learned the boys had stolen the money, and appellant again confronted the twins a couple of days later after school, on or about 7 January. (R. at 40, 86, 227–28). One of the boys confessed they had stolen the money, and appellant ordered them into their

respective bedrooms, told them to undress down to their underwear, and await their punishment. (R. at 40, 86, 229–30).

A. The beatings.

Appellant punished ■ first. (R. at 41). “He told me to face the wall,” ■ told the court-martial. (R. at 89). Wielding a “belt² . . . folded [over on itself],” and yelling at ■ for his shameful behavior, appellant whipped ■ with the folded end “like, a lot.” (R. at 89). ■ went to the ground and appellant “whipped [him] some more,” striking his back, legs, and arms. (R. at 89). Appellant beat ■ for three or four minutes as ■ listened to his brother screaming and crying, and then appellant moved to ■’s room, where ■ heard “[his] brother saying ‘oh, no. No. No,’ and then after that, screams.” (R. at 41–42, 89–90).

■ initially hid under a blanket until appellant told him to move the blanket and turn around. (R. at 235–36). Starting before ■ had turned over and then continuing once he complied, appellant whipped ■ much in the same manner as

² ■ described the belt as “a very thick, leather Army belt.” (R. at 89). ■ described it as “a tannish, brown . . . military belt, like a really hard one.” (R. at 42). The government’s expert witness testified that the twins’ injuries were consistent with a “tan Army belt” after examining the assistant trial counsel’s belt the day before trial. (R. at 195–96). Appellant testified that he used a cloth, non-military belt: “I have this drawer full of belts and reached in there, grabbed one – didn’t matter which one. They’re all cheap belts from, you know that – that come on the shorts that I buy.” (R. at 233–34). This was the first time appellant had ever whipped his sons with a belt. (R. at 47, 96, 232).

he did his twin brother, grasping both ends of the belt and hitting him with the looped end. (R. at 42–43). For four to five minutes appellant struck [REDACTED] on his arm, wrist, nipple, back, and face, yelling at [REDACTED] about how ashamed he should be and asking where the rest of the money was. (R. at 42–44, 77, 91).

Appellant returned to [REDACTED]’s room and asked the same question. (R. at 44, 91). Upon telling appellant that he and his brother had used the rest of the money, appellant again struck [REDACTED] “a few times” on his legs and arms, “but not over ten.” (R. at 92, 93). “A few moments later, [appellant] dragged [REDACTED] into [REDACTED]’s room and then asked [them] the same question at the same time and then beat [them].” (R. at 45–46, 92). According to the twins’ testimony, appellant then forbade them from leaving their rooms for the rest of the day, to include for dinner or using the bathroom. (R. at 46–47, 94–95). [REDACTED] testified that he urinated in his room³ that evening “because [he] was scared that [appellant or his stepmother] might hit me again or even kill me” if he violated his father’s order not to leave his room. (R. at 94–95). [REDACTED] and appellant both testified that neither appellant nor his wife checked on the boys for the remainder of the night. (R. at 95–96, 260–61).

B. The injuries.

[REDACTED] testified that appellant’s punishment of him was “the worst beating [he]

³ [REDACTED] testified that he both urinated in his pants on the evening he was confined to his room (R. at 94), and that he drank his own urine because he was not allowed to leave to use the bathroom or get anything to drink. (R. at 99, 115).

ever took” and left “bruises and swelling” on his back, legs, and arms. (R. at 90, 93). ■■■ testified that appellant’s beatings of him left him in pain “everywhere” and caused “some marks on [his] wrist, and it was bleeding . . . and [his] face was, like, swollen up a little, and it was also kind of bleeding.” (R. at 45). Although ■■■ testified that some of his friends at school saw marks from the abuse on his body in the weeks that followed (R. at 113), Army Criminal Investigation Division (CID) was not notified until 28 January 2022. (R. at 63–64, 123, 130). On or about that date, CID agents interviewed the boys and took photographs of the injuries received at the hands of their father.⁴ (R. at 49–50, 100, 124, 131, 133). Follow-up photographs were taken several days later, on or about 2 February 2022. (R. at 136).

Ms. TA was called by the government as an expert witness in the field of forensic nursing and testified to her extensive experience in treating pediatric abuse patients. (R. at 140–45). Ms. TA reviewed the initial and follow up photos taken by CID on 28 January and 2 February 2022, respectively, in conjunction with the photo log provided by CID to verify which boy they belonged to, what part of the

⁴ Although appellant elicited testimony that the boys engaged in “horseplay,” “tag,” sports, etc., (R. at 51–53, 103, 114), and testified himself to the same effect (R. at 217, 221, 223–24, 247–48), both ■■■ and ■■■ testified that they only directed CID to injuries inflicted by their father on the night of the beatings with the belt. (R. at 49–50, 100). These were the only marks on the twins that CID took photos of, with the potential exception of “maybe . . . stretch marks” on ■■■. (R. at 49–50, 100).

body, and which date they were taken. (R. at 152–53, 191).

Ms. TA testified to observing five specific injuries to ■■■: on his left wrist, his abdominal area, his chest cavity, his outer left thigh, and his posterior left thigh. (R. at 154, 159–67; Pros. Ex. 3). Ms. TA testified to observing eleven⁵ specific injuries to ■■■: two on his upper right arm, his upper left shoulder, his mid-to-right back area, the small of his back, his right flank (described as two specific injuries due to an interruption in the bruising), his left abdominal area, his upper left thigh, and his upper right arm. (R. at 169, 171–79; Pros. Ex. 4). With respect to each boy, Ms. TA testified to the healing bruises or abrasions she observed, summarizing the process:

when you have an injury or you have an abrasion or a bruise, . . . it exceeds the capacity of the skin to absorb the velocity or the -- the force that is inflicted on it and/or the elasticity of the skin, and the skin will either tear, or it will disrupt the vascular bed underneath the skin, and it will cause hemorrhage into the skin, which results in your bruising or your contusion.

(R. at 161; *see also* R. at 181–82). Ms. TA described the discoloration associated with each injury, and that some of the injuries occurred to the skin directly above vital organs. (R. at 153–169, 169–82). Ms. TA testified how each injury matched the “pattern” of being struck with a belt; how some of the injuries transcended

⁵ Although Ms. TA mentioned observing eleven injuries on ■■■, only ten were described during her testimony and marked on the accompanying diagram. (Pros. Ex. 4).

multiple “planes,” or areas of the body, consistent with abusive behavior; and were inconsistent with accidental injury, playing sports, or tag. (R. at 153–55, 159–62, 165–66, 169, 171–78, 179–80).

Assignment of Error I

WHETHER APPELLANT’S CONVICTIONS FOR THE CHARGE AND ITS SPECIFICATIONS ARE LEGALLY AND FACTUALLY SUFFICIENT WHERE THE GOVERNMENT FAILED TO DISPROVE THE PARENTAL DISCIPLINE DEFENSE BEYOND A REASONABLE DOUBT.

Standard of Review

This court reviews questions of legal and factual sufficiency de novo.

United States v. Rosario, 76 M.J. 114, 117 (C.A.A.F. 2017). “The test for legal sufficiency is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Id.* “When applying this test for legal sufficiency, [appellate courts are] ‘bound to draw every reasonable inference from the evidence . . . in favor of the prosecution.’” *United States v. Nicola*, 78 M.J. 223, 226 (C.A.A.F. 2019) (quoting *United States v. McGinty*, 38 M.J. 131, 132 (C.M.A. 1993)).

In courts-martial where, as here, every finding of guilty is for an offense that occurred on or after 1 January 2021, this court applies the version of Article 66(d)(1)(B), UCMJ, as amended by the National Defense Authorization Act for

Fiscal Year 2021, in performing its factual sufficiency review. Under that standard, this court may consider whether a finding is factually sufficient “upon request of the accused if the accused makes a specific showing of a deficiency in proof.” Pub. L. No. 116-283, § 542(b), 134 Stat. 3611–12. “Once appellant makes a specific showing of a deficiency in proof, [this court] will conduct a de novo review of the controverted questions of fact.” *United States v. Scott*, __ M.J. ___, ARMY 20220450, at *4 (Army Ct. Crim App. 14 Mar. 2024).

However, even as amended, Article 66(d) still requires that in weighing the evidence, this court give “appropriate deference to the fact that the trial court saw and heard the witnesses and evidence.” UCMJ, Article 66(d)(1)(B)(ii) (2021). As this Court recently elaborated:

we emphasize that our role in a factual sufficiency review is not to substitute ourselves for the factfinder and decide what verdict we would have rendered. To the contrary, Article 66(b)(ii) expressly cabins our discretion by requiring that we give deference to both: (1) the fact that the factfinder saw and heard the witnesses and other evidence; and (2) the military judge’s findings of fact.

United States v. Coe, __ M.J. ___, ARMY 20220052, at *14–15 (Army Ct. Crim. App. 1 Feb. 2024) (recon) ([en banc](#)). Only if, after review, this court is “clearly convinced that the finding of guilty was against the weight of the evidence, the Court may dismiss, set aside, or modify the finding, or affirm a lesser finding.” UCMJ, Article 66(d)(1)(B)(iii) (2021).

Law

To find the accused guilty of Specifications 1 and 2 of The Charge, the government was required to prove, beyond a reasonable doubt:

- (1) That on or about 7 January 2022, at or near Fort Eustis, Virginia, appellant committed an act of violence, to wit: bodily harm to [REDACTED] by striking [REDACTED] with a belt against his body;
- (2) That the bodily harm was done unlawfully;
- (3) That the bodily harm was done with force or violence;
- (4) That at the time of the violence offense, [REDACTED] was an immediate family member of appellant; and
- (5) That at the time, [REDACTED] was under the age of 16 years.

UCMJ, art.128b; 10 U.S.C. §128b; *Manual for Courts-Martial, United States* (2024 ed.) pt. IV, ¶¶ 77.b.(2), 78a.b.(1); (App. Ex. XI).

When raised by an accused at court-martial, the parental discipline defense requires the government to further prove its inapplicability beyond a reasonable doubt. *United States v. Rivera*, 54 M.J. 489, 490 (C.A.A.F. 2001). The Court of Appeals for the Armed Forces (CAAF) applies the standards set forth in the Model Penal Code (MPC) to define parental discipline. *See id.* at 491; *see also United States v. Robertson*, 36 M.J. 190, 191 (C.M.A. 1992); *United States v. Brown*, 26 M.J. 148, 150 (C.M.A. 1988). Under the MPC and CAAF precedent, the use of force by parents against their children is justifiable if both:

(a) the force is used for the purpose of safeguarding or promoting the welfare of the minor, including the prevention or punishment of his misconduct; and

(b) the force used is not designed to cause or known to create a substantial risk of causing death, serious bodily injury, disfigurement, extreme pain or mental distress or gross degradation

Rivera, 54 M.J. at 491; *see also Brown*, 26 M.J. at 150. As this court wrote in a recent opinion, “[t]he question is whether [this court is] clearly convinced the finding[s] of guilty, which required the military judge to reject appellant’s parental discipline defense beyond a reasonable doubt, [were] against the weight of the evidence.” *United States v. Robinson*, ARMY 20220043, 2023 CCA LEXIS 235, at *6 (Army Ct. Crim. App. 2 Jun. 2023) ([summ. disp.](#)) (citation omitted).

Argument

Drawing every reasonable inference from the evidence in favor of the government, and viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. The government further refuted the parental discipline defense at trial by demonstrating that the force appellant used was unreasonable and excessive, as it should have been known by appellant to create a substantial risk of, at least, extreme pain. This court should thus be clearly convinced of the findings of guilty, affirm appellant’s convictions as legally and factually sufficient, and affirm the sentence.

A. Appellant's convictions are legally sufficient.

Drawing every reasonable inference in favor of the government and viewing the evidence in the light most favorable to the government, a rational trier of fact could have not only found appellant guilty beyond a reasonable doubt of all elements of the violent offenses against each 11-year-old son, but also that he exceeded the scope of parental discipline and thus, the defense did not apply. Appellant, ■■■, and ■■■ all testified that appellant instructed the boys to remove their clothing prior to receiving their punishment. (R. at 40, 88, 230). ■■■ testified this was “the worst beating [he] ever took” and ■■■ testified he was in pain “everywhere.” (R. at 45, 90). Both boys testified to hearing each other scream in pain. (R. at 41, 44, 90, 91). After the beatings ended, the boys were confined to their rooms—and even though they were not literally “locked in,” as ■■■ described, he was so frightened to come out to use the bathroom that he either urinated in his pants, drank his own urine, or both. (R. at 94, 99, 110, 115).

The whip marks appellant left on his boys were still visible three weeks after they were beaten, and then five days later, when follow-up photographs were taken. The government's expert, Ms. TA, testified to the discoloration of each boys' skin from the healing bruises and abrasions, how the injuries were caused by the use of a belt with such force or velocity that it exceeded the skin's ability to absorb the blows, causing tears to the skin or blood vessels beneath the skin, and

that some of the injuries occurred near vital organs. (R. at 147–95).

Based on the foregoing, a rational factfinder could have reasonably inferred the force used by appellant was known to create a substantial risk of causing extreme pain. Further, instructing the boys to strip to their underwear and striking them with a belt near vital organs, a rational factfinder could have reasonably inferred that appellant’s beating was known to create a substantial risk of serious bodily injury or mental distress. Finally, a rational factfinder could have found that the defense of parental discipline did not apply beyond a reasonable doubt. *See Brown*, 26 M.J. at 150–51 (upholding appellant’s conviction, and rejecting his claim of reasonable conduct, when “the punishment was severe enough to produce welts and bruising” and “numerous blows were administered to the child and each one produced a physical reaction.”).

Accordingly, appellant’s convictions for domestic violence by committing violent offenses against his twin 11-year-old sons are legally sufficient.

B. Appellant’s convictions are factually sufficient.

As the military judge correctly found, appellant’s use of force against his twin sons was for a proper purpose—namely, “for the purpose of safeguarding or promoting the welfare of the children, including the punishment of the children’s misconduct, namely the stealing of money from their stepmother, and the repeated lies.” (R. at 305–06; App. Ex. XI). *See Brown*, 26 M.J. at 150. However, the

subjective question is only half the analysis. As this court recently wrote,

Proper parental motive and a lack of design to cause the requisite harms, however, are not absolute bars to conviction under the parental discipline defense. Courts must also analyze whether “the force used is . . . known to create a *substantial risk* of causing death, serious bodily injury, disfigurement, *extreme pain* or mental distress or gross degradation. . . .”

Robinson, 2023 CCA Lexis 235, at *7 (quoting *Brown*, 26 M.J. at 150) (emphasis added in *Robinson*).

Ms. TA testified at length to each of the bruises or abrasions still visible in the photographs three weeks after they were inflicted. Such injuries would only occur, she testified, when the force used exceeds the force or velocity the skin can absorb. She further testified that some of the injuries on each boy were near vital organs. Both [REDACTED] and [REDACTED] testified to the extreme pain they felt from the beatings, hearing each other scream out in pain when it was their brother’s turn, and their fear of being beaten further. Similar to this court’s finding in *Robinson*, the force used on [REDACTED] and [REDACTED] “should have been known by appellant to create a substantial risk of extreme pain” to each boy. *Robinson*, 2023 CCA Lexis 235, at *8. In light of the above, this court should not be “clearly convinced the finding[s] of guilty, which required the military judge to reject appellant’s parental discipline defense beyond a reasonable doubt, [were] against the weight of the evidence.” *Id.* at *9.

Assignment of Error II

WHETHER THE MILITARY JUDGE APPLIED AN INCORRECT LEGAL STANDARD IN FINDING THE USE OF FORCE WAS OBJECTIVELY UNREASONABLE AND EXCESSIVE FORCE SOLELY ON EXTREME PAIN WITHOUT AN ACCOMPANYING DEFINITION IN HIS SPECIAL FINDINGS.

Additional Facts

During an R.C.M. 802 session before the second day of trial, the military judge asked counsel whether they would be requesting that he make special findings in accordance with R.C.M. 918(b). (R. at 210). The defense made such a request at the close of evidence, prior to argument. (R. at 264–65). After announcing his general findings, the military judge announced his special findings, in relevant part, as follows:

The Court considered the accused's claim of parental discipline. The prosecution's burden of proof to establish the guilt of the accused extends to the issue of parental discipline. In order to meet the element of unlawfulness, the government must prove beyond a reasonable doubt that the accused's acts were not within the authority of parental discipline, whether the force used was unreasonable or excessive.

A parent does not ordinarily commit a criminal offense by inflicting corporal punishment upon a child, subject to his parental authority, because such parental authority includes the right to discipline a child. The corporal punishment must be for the purpose of safeguarding or promoting the welfare of the child, including the prevention or punishment of the child's misconduct. And

the force used may not be unreasonable or excessive.

Unreasonable or excessive force is that designed to cause or known to create a substantial risk of causing death, serious bodily injury, disfigurement, extreme pain, extreme mental distress, or gross degradation.

The Court finds that the accused's subjective intent in inflicting corporal punishment upon his children, as alleged in the Specifications of The Charge, was for the purpose of safeguarding or promoting the welfare of the children, including the punishment of the children's misconduct, namely the stealing of money from their stepmother, and the repeated lies.

However, the Court finds, in the context of all the evidence and beyond a reasonable doubt, the force used was objectively unreasonable and excessive. The evidence that supports this finding includes, but is not limited to, the accused's directing his children to remove their clothing before striking them, the nature and extent of injuries to the children's bodies, the locations of the injuries on their bodies, and the extreme pain described by the children.

Because the government demonstrated beyond a reasonable doubt that the defense of parental discipline does not apply, the accused's actions were unlawful.

(R. at 305–06; App. Ex. XI).

Standard of Review

“Special findings for an ultimate issue of guilt or innocence are subject to the same appellate review as a general finding of guilt, while other special findings are reviewed for clear error.” *United States v. Truss*, 70 M.J. 545, 545 (Army Ct.

Crim. App. 2011). Questions of legal sufficiency are reviewed de novo.⁶ *United States v. Rosario*, 76 M.J. 114, 117 (C.A.A.F. 2017).

Law and Argument

Appellant offers two reasons for rejecting the military judge’s special findings: first, because he applied a “reasonableness” standard rather than one of “excessive,” and second, he failed to define “extreme pain” and thus, incorrectly applied that term to the twins’ injuries. (Appellant’s Br. 22). Appellant’s argument fails on both grounds.

A. The military judge applied the correct legal standard of objective reasonableness.

Appellant contends that the standard of objective reasonableness is incorrect: “Notably, the [MPC] does not demand that the force be reasonable.” (Appellant’s Br. 18). This is the same argument advanced, and rejected, by the appellant in *Ruiz*—curiously cited by appellant. *United States v. Ruiz*, ARMY 20210541, 2023 CCA Lexis 76, at *3 (Army Ct. Crim. App. 14 Feb. 2023) ([summ. disp.](#)). “Our superior court sees it differently,” wrote the court in *Ruiz*, in response to this argument. *Id.* (citing *Rivera*, 54 M.J. at 491, “for the principle of ‘contextual

⁶ Despite appellant’s cited de novo standard of review, he seems to suggest this court should evaluate the military judge’s special findings under an abuse of discretion. (*Compare* Appellant’s Br. 17 *with* Appellant’s Br. 22). The government agrees that whether the military judge applied the correct legal standard to the evidence in determining guilt should be reviewed de novo.

reasonableness in determining when proper parental motive turns to criminal anger, or necessary force becomes a substantial risk of substantial bodily harm.”); *see also United States v. Thompson*, ARMY 20140974, 2021 CCA LEXIS 624, at *7 (Army Ct. Crim. App. 17 Nov. 2021) ([mem. op.](#)) (same).⁷ The law “predictably . . . criminalizes a parent’s use of force that an objective person would view as unreasonable.” *Ruiz*, 2023 CCA Lexis 76, at *3; *see also* Dep’t of Army, Pam. 27-9, Legal Services: Military Judges’ Benchbook, para. 5-16 (29 Feb. 2020) (“ . . . the force used may not be unreasonable or excessive. Unreasonable or excessive force is that designed to cause or known to create a substantial risk of causing death, serious bodily injury, disfigurement, extreme pain, extreme mental distress, or gross degradation.”).

Objective reasonableness is clearly established as the correct standard for evaluating proper parental discipline.

B. The military judge applied the correct standard of “extreme pain.”

In asking this court to follow the Hawaii Supreme Court’s decision in *State v. Deleon*, 813 P.2d 1382, 1384 (Haw. 1991), appellant overstates the Army Court of Military Review’s (ACMR) reliance on that case in *United States v. Scofield*, 33

⁷ *See also Brown*, 26 M.J. at 150–51 (analyzing, in part, whether the government proved beyond a reasonable doubt that the force Brown used in punishing his stepson “was unreasonable” and finding, “with respect to reasonableness, . . . some evidence which could support a finding of unreasonable conduct.”).

M.J. 857 (A.C.M.R. 1991), and ignores this court’s recent opinion in *Robinson*.

The *Deleon* court looked to the surrounding terms of “death, serious bodily injury, disfigurement, extreme mental distress, or gross degradation,” in attempting to discern what the state legislature meant by “extreme pain.” *Deleon*, 813 P.2d at 1384. Summarizing the *Deleon* court’s application of that phrase, this court’s predecessor in *Scofield* wrote, “[a]lthough the daughter testified in [*Deleon*] that she was in pain for one and one-half hours, and medical authorities found welts and bruises that lasted a week, the [*Deleon*] court reasoned that ‘extreme pain’ had not been inflicted.” *Scofield*, 33 M.J. at 861. Comparing the *Deleon* court’s analysis to the case before it, the *Scofield* court observed, “[e]vidence presented during sentencing clearly indicated that the injuries were not excessive. . . . The pediatrician who testified about [the child’s] condition was unable to say unequivocally that her bruises were serious.” *Id.* at 863. The court then determined that the military judge should have re-opened the providence inquiry to establish “that the injuries suffered by the children were excessive, or that the force used to administer punishment was known to cause or to create a substantial risk of excessive injury.” *Id.* at 863–64. Finding the colloquy insufficient to show that appellant acted with “unlawful force or violence,” and without a stipulation of fact to fall back on, the ACMR set aside *Scofield*’s pleas, returned the case to the convening authority, and authorized a rehearing. *Id.* at 860, 862, 864.

In the case at bar, however, the evidence did clearly establish that appellant acted with unlawful force or violence—namely, that the force used exceeded the standard of objective reasonableness. The bruises on [REDACTED] and [REDACTED] were still visible three weeks after the beatings, and remained so another five days later when the boys returned for follow-up photographs. Appellant ordered his sons down to their underwear, whipped each of them as the other listened to his twin brother screaming and crying in pain, inflicted pain “everywhere” on [REDACTED] and “the worst beating ever” according to [REDACTED], and scared them so much that [REDACTED] testified to urinating in his pants and/or drinking his urine for fear of being caught using the restroom. (R. at 40–42, 44–45, 88–91, 94, 99, 115, 229–30).

Appellant also misstates the record as to whether either of the boys bled from the beatings. (“[There are no] indications other than bruising, especially since both boys contradict each other with the alleged bleeding, and then told CID they were not bleeding.” Appellant’s Br. 24). Appellant is only half correct. [REDACTED] testified to bleeding on his wrist and added that his face was “kind of bleeding.” (R. at 45). This was corroborated by [REDACTED]. (R. at 110). And, contrary to appellant’s contention that the boys “told CID they were not bleeding,” [REDACTED] made no such statement:

Civilian Defense Counsel (CDC): But you also did not tell [CID] that you were bleeding at all from the injuries that you -- that you were saying that you had. Do you remember that?

■: I -- yeah, because -- because they were already healed up at the time.

CDC: Okay. So you obviously weren't bleeding that day.

■: I wasn't bleeding that day, but I was bleeding the -- the -- the day prior to -- when I --

CDC: You were bleeding -- you were bleeding when?

■: When -- when I -- when the incident happened.

CDC: Okay. Did you tell anybody that you were bleeding when the incident happened?

■: I told -- I told [■] because he also was bleeding a little.

CDC: Okay. But when you were talking with the law enforcement, you didn't tell them that at the time you were bleeding, right?

■: It was -- it wasn't that bad, but I was bleeding a little, yeah.

CDC: Well -- and that's not what I'm asking you. So what I'm asking you is about whether you told the law enforcement agent that you were bleeding.

■: I don't -- no, I didn't tell them I was bleeding.

(R. at 66–67). Although ■ testified that ■ was bleeding, ■ denied that he bled. (R. at 110). In contrast, Scofield told the military judge during his plea inquiry that neither of his children bled when he punished them, which, uncontradicted by any stipulation of fact, the court took at face value. *Scofield*, 33 M.J. at 862–63. And perhaps most significantly, unlike the government expert in

Scofield, Ms. TA was able to testify unequivocally to the severity of the injuries appellant inflicted on his sons. (*See generally* R. at 147–95).

This case is remarkably similar to *Robinson*, decided by this panel not a year ago and yet notably absent from appellant’s brief. 2023 CCA Lexis 235. There, appellant punished her five-year-old daughter by first ordering her to undress to sports bra and underwear, and then whipping her with a cell phone charging cord or thin belt fifteen times—once for each school disciplinary infraction that occurred while appellant was away at training. *Id.* at *2. The marks were noticed by the girl’s father five or six days later and reported to law enforcement. *Id.* at *3. Although the young victim only testified to being “whooped” by her mom for not “being good in school,” and that the “whooping” hurt, the government’s expert in pediatric abuse put the evidence into context. *Id.* He testified that the marks were inconsistent with normal play, accidental injuries, or routine parental discipline, but rather that the multiple marks on multiple parts of the victim’s body concerned him for “excessive parental discipline” and “would have caused a significant amount of pain” in a typical person. *Id.* at *4. While this court found that Robinson’s discipline of her child was done for a proper purpose and not “*designed* to cause ‘death, serious bodily injury, disfigurement, extreme pain or mental distress or gross degradation,’” the whipping, evidence of which still visible nearly a week later, nevertheless “should have been known by appellant to create a

substantial risk of extreme pain.” *Id.* at *7–8 (emphasis in original). The court then affirmed appellant’s conviction as legally and factually sufficient, noting, “we are not clearly convinced the finding of guilty, which required the military judge to reject appellant’s parental discipline defense beyond a reasonable doubt, was against the weight of the evidence.” *Id.* at *9. Given the similarities between *Robinson* and the case at bar, this court should arrive at the same conclusion.

Finally, appellant understates the military judge’s special findings, claiming the military judge “based his entire finding of ‘excessive’ on the subjective statements of [REDACTED] and [REDACTED] of ‘extreme pain.’” (Appellant’s Br. 25). Yet the military judge found appellant guilty of using excessive and objectively unreasonable force supported by other evidence, “[including, but not limited to, appellant] directing his children to remove their clothing before striking them, the nature and extent of injuries to the children’s bodies, [and] the locations of the injuries on their bodies.” (R. at 306; App. Ex. XI). The military judge applied the correct standard in finding the parental discipline defense inapplicable beyond a reasonable doubt.

Appellant’s argument that the force used by a parent need not be objectively reasonable (Appellant’s Br. 18), and his request that this court hold “extreme pain” to be “synonymous with deadly force,” (Appellant’s Br. 26), fail as unsupported by precedent from this court, its predecessor, and its superior court.

Conclusion

WHEREFORE, the government respectfully requests that this Honorable
Court affirm the findings and the sentence.



KALIN P. SCHLUETER
LTC, JA
Branch Chief, Government
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CERTIFICATE OF SERVICE

UNITED STATES v. QUINTAN G. BRASSFIELD, ARMY 20230516

I certify that a copy of the foregoing was sent via electronic submission to
the Defense Appellate Division at [REDACTED]
[REDACTED] on the 25th day of March, 2024.

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