

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES

**REPLY BRIEF ON BEHALF
OF APPELLANT**

Appellee

v.

Docket No. ARMY 20200347

Private First Class (E-3)
AUSTIN C. HAMILTON
United States Army

Appellant

Tried at Joint Base Lewis-McChord, Washington, on 20 February, 15 May, and 22-26 June 2020, before a general court-martial appointed by Commander, 7th Infantry Division, Colonel Joseph Keeler, Military Judge, presiding.

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

Statement of the Case

Appellant's brief was filed on 7 May 2021. The government's Brief on Behalf of Appellee was filed on 7 September 2021. This is appellant's reply.

Statement of Facts

Appellant relies on the Statement of Facts from his 7 May 2021 Brief on Behalf of Appellant.

Additional Argument

III.

**THE FACTS CHARGED IN SPECIFICATION 5 OF CHARGE I ARE
INSUFFICIENT AS A MATTER OF LAW TO SUPPORT A CONVICTION
OF AGGRAVATED SEXUAL CONTACT**

The appellant's conviction for aggravated sexual assault is legally insufficient as a matter of law. The affected specification alleged a touching of the alleged victim's "chest" with intent to arouse using unlawful force. (Charge Sheet).

The 2019 MCM specifically provides the following statutory definition pertaining to such a charge:

"sexual contact" means touching, or causing another person to touch, either directly or through the clothing, the vulva, penis, scrotum, anus, groin, breast, inner thigh, or buttocks of any person, with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person. Touching may be accomplished by any part of the body or an object.

MCM, pt. IV, ¶60.a.(g)(2).

The Government's brief alleges that the specification is not deficient because "... the term "chest" in this context is the functional equivalent of the term "breast," which is included in the definition of "sexual contact." (Gov't Br. 28).

This argument is fundamentally flawed. First, the Government cites to Merriam-Webster to support their contention that the "chest" is the "functional equivalent," of the "breast." In reality, the dictionary definitions of the term "chest" range from "the front surface of a person's or animal's body between the

neck and the abdomen” to “thorax, especially the part of the human body enclosed by the ribs and sternum.” *See* Oxford Language Dictionary and Merriam-Webster Online Dictionary.

To the opposite, the term “breast” is defined by these same sources as: “either of the pair of mammary glands extending from the front of the chest in pubescent and adult human females and some other mammals.” *See* Merriam-Webster Online Dictionary.

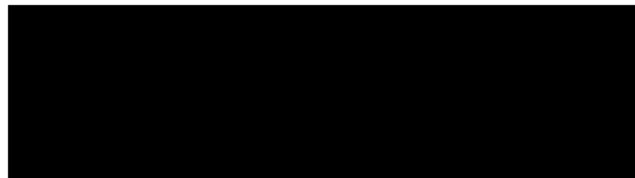
Suffice to say, the Government’s argument that “chest” means “breast” flies in the face of a simple anatomic and definitional reality: the breast is one specific part of the greater chest area, which encompasses a vastly wider area of the body. Furthermore, the fact that the Government chose to use the term “chest” in lieu of the actual term provided in the statute reveals that they did not consider these two terms analogous. The written terminology is plain and obvious, and it is not susceptible to multiple meanings as the Government contends.

The Government additionally cites to *United States v. Dunton*, NMCCA 201300148, 2014 CCA LEXIS 333, at *2 n.1 (N.M. Ct. Crim. App. 29 May 2014) for the contention that the term “chest” can be used in place of “breast” in an aggravated sexual contact specification. (Gov’t Br. 28). That case apparently involved an AOE relating to the use of the word “chest” in an aggravated assault specification, but there was no discussion of such in the court’s opinion.

This question regarding the required wording of an aggravated sexual assault specification is one that has not been squarely addressed by this Court, and this case presents a clear opportunity to ensure that the appellant and all others similarly situated are given the proper constitutional notice to any charge which they are forced to defend.

This court should dismiss the affected specification and order a rehearing on sentence.

Respectfully Submitted,



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ANDREW R. BRITT
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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was electronically submitted to the
Army Court and Government Appellate Division on 14 September 2021.



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