

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES**

UNITED STATES,)	REPLY BRIEF ON BEHALF OF
Appellee)	APPELLANT
)	
v.)	Crim. App. Dkt. No. 20150076
)	
Staff Sergeant (E-6))	USCA Dkt. No. 17-0224/AR
Jorge F. Acevedo,)	
United States Army,)	
Appellant)	

TO THE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE
ARMED FORCES:

Issue Granted

**WHETHER THE EVIDENCE IS LEGALLY
INSUFFICIENT TO SUPPORT A CHARGE OF
KIDNAPPING BY INVEIGLEMENT.**

Statement of the Case

On April 14, 2017, this Honorable Court granted Staff Sergeant (SSG) Acevedo's petition for review. On May 11, 2017 SSG Acevedo filed his brief. The appellee responded on May 19, 2017. This is SSG Acevedo's reply.

Argument

The government states in its brief that SSG Acevedo "physically assaulted PV2 AM by grabbing her arm" (Gov. Br., p. 9), but SSG Acevedo was charged with assaulting Ms. AM in that manner, (JA 4), and was acquitted of that charge. (JA 100). The government's argument that SSG Acevedo demonstrated willingness to use physical force to hold Ms. AM against her will by this alleged

assault is therefore contrary to the findings of the court martial. Similarly, the government claims that SSG Acevedo “coerced PV2 AM into returning to his residence to engage in sexual activity.” (Gov. Br., p. 11). This is a different theory of liability than what the government charged, namely, that SSG Acevedo tricked Ms. AM into going back to his apartment.

Moreover, none of the government’s theories of liability change the fact that Ms. AM had many opportunities to leave SSG Acevedo’s presence and did not. She did not give the taxi driver her address even though she knew SSG Acevedo had given the taxi driver his own. (JA 51). When Ms. AM told the appellant, outside his apartment, that she expected to enter his apartment and have sex with him, he asked her: “Are you okay with this? If not, you can get back in the cab and leave.” Ms. AM stated she was okay with it. (JA 36, 54-55). When SSG Acevedo went inside his apartment to see if his roommate was home or if “the coast was clear,” Ms. AM remained outside and did not walk away or call anyone to say she was in a place she didn’t want to be. (JA 55-56). Instead, when SSG Acevedo asked Ms. AM what would happen if she went inside with him, Ms. AM stated “we’re going to fuck.” (JA 36, 54). Ms. AM did these things not because of any “force, coercion, and false representations” (Gov. Br., p. 9), but because of her personal belief, which she never voiced to SSG Acevedo, that she could trade sex for silence regarding her underage drinking. (JA 53, 59).

The government argues that the appellant inveigled Ms. AM because he convinced her not to go home with Mr. Moore. (Gov. Br., p. 7). This is not inveiglement, however, because Ms. AM was aware they were going to walk to a cab stand, and once inside the cab she was aware that SSG Acevedo gave his own address to the taxi driver. The evidence is legally insufficient to find SSG Acevedo inveigled Ms. AM because she knew he provided his own address to the taxi driver and she did not provide her own address to the taxi driver when she had the opportunity. Her own testimony confirms she knew where they were going, and she tacitly assented to it.

The government argues that the appellant held Ms. AM against her will because he “had already physically assaulted PV2 AM by grabbing her arm and verbally threatened to tum her in for underage drinking.” (Gov. Br., p. 9). The appellant was, however, acquitted of assaulting Ms. AM by grabbing her arm. Further, he never stated that he would report her for underage drinking if she went home to the Defense Language Institute (DLI). Instead, he explicitly asked if she would rather take the taxi back to DLI when it reached his apartment. The evidence is legally insufficient to find SSG Acevedo held Ms. AM against her will because she declined to take any of the ample opportunities she had to return to DLI, leave SSG Acevedo’s presence, or use her cell phone to report she was in distress. Her own testimony shows she declined multiple opportunities to leave.

The government argues that the appellant showed specific intent to hold Ms. AM against her will because he grabbed her arm earlier in the night, held her hand in the taxi, and she was “afraid of physical harm.” (Gov. Br., p. 11). Again, SSG Acevedo was acquitted of grabbing Ms. AM’s arm in any harmful or offensive way. The fact that he held her hand is simply not objectively threatening. Ms. AM’s recollection of her subjective fear is not indicative of any intent by the appellant. The appellant cannot have known whether Ms. AM was afraid when his actions were not objectively threatening. Only the appellant’s actions, not Ms. AM’s feelings, are circumstantial evidence of his intent. The evidence is legally insufficient to find SSG demonstrated a specific intent to hold Ms. AM against her will because he explicitly asked her if she was okay entering his apartment with him, and suggested that she could take the taxi back to DLI if she preferred. By her own testimony, Ms. AM explicitly declined this suggestion and assented to entering SSG Acevedo’s apartment to have sex with him.

Under these facts, the government simply has not shown that SSG Acevedo kidnapped Ms. AM by inveiglement. She declined to give her own address to the taxi driver, she got out of the cab at SSG Acevedo’s apartment, she declined his offer to get back in the cab, she did not take the opportunity when she was alone outside his apartment to walk away or use her phone, and she entered his apartment with the intent of having sex with him. The question before this Court is not

whether SSG Acevedo's conduct was immoral, unethical, or illegal under any other article of the Code. The question before this Court is whether the conduct of the parties is legally sufficient to support a conviction of kidnapping, and it is not.

Conclusion

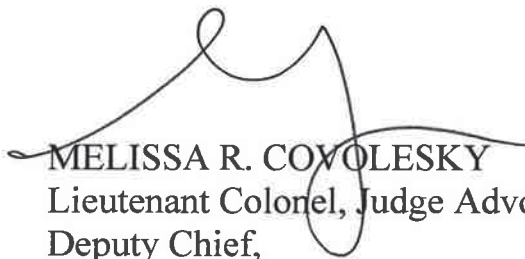
WHEREFORE, the appellant respectfully requests that this Honorable Court dismiss the finding of guilty as legally insufficient and set aside his sentence.



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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing in the case of *United States v. Acevedo*, Army Dkt. No. 20150076, USCA Dkt. No. 17-0224/AR, was electronically filed brief with the Court and Government Appellate Division on May 25, 2017.



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