

**UNITED STATES NAVY-MARINE CORPS
COURT OF CRIMINAL APPEALS
WASHINGTON, D.C.**

**Before
E.E. GEISER, R.G. KELLY, V.S. COUCH
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**CARLOS J. CRUZ-EUCEDA
BOATSWAIN'S MATE THIRD CLASS (E-4), U.S. NAVY**

**NMCCA 200602327
GENERAL COURT-MARTIAL**

Sentence Adjudged: 25 April 2006.

Military Judge: CDR Lewis Booker, Jr., JAGC, USN.

Convening Authority: Commander, Navy-Region, Mid-Atlantic,
Norfolk, VA.

Staff Judge Advocate's Recommendation: CDR F.T. Katz,
JAGC, USN.

For Appellant: Eugene R. Fidell; Brent C. Harvey; LT
Kathleen Kadlec, JAGC, USN.

For Appellee: Maj Brian Keller, USMC.

11 October 2007

OPINION OF THE COURT

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.

GEISER, Senior Judge:

A general court-martial with enlisted representation convicted the appellant, contrary to his pleas, of rape and indecent assault in violation of Articles 120 and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 920 and 934. The appellant was sentenced to confinement for fifteen years and a dishonorable discharge. The convening authority approved the sentence as adjudged.

We have carefully examined the record of trial, the appellant's six assignments of error,¹ the Government's response, and the appellant's reply brief. We conclude that the findings and the sentence are correct in law and fact, and no error materially prejudicial to the substantial rights of the appellant was committed. Arts. 59(a) and 66(c), UCMJ.²

Equal Protection Violation

The appellant asserts that his due process rights have been violated because military judges within the Department of the Navy are not assigned under a fixed term of office. We find this assignment of error without merit. *See Weiss v. United States*, 510 U.S. 163 (1994); *United States v. Loving*, 41 M.J. 213 (C.A.A.F. 1994); *United States v. Gaines*, 61 M.J. 689 (N.M.Ct.Crim.App. 2005), *aff'd* 64 M.J. 176 (C.A.A.F. 2006).

Sixth Amendment Right To Cross-Examine

At trial, the defense asserted the fact that the rape victim was married at the time of the incident and that there was a separation agreement in existence constituted a motive to fabricate the allegation of rape. The military judge permitted the defense team to ask the witness whether she was married at the time of the incident and whether she believed engaging in intercourse with the appellant would have an adverse affect on her divorce proceedings. Record 463-65. The appellant asserts that that he was denied his Sixth Amendment right to cross examine a witness when the military judge prohibited his counsel from inquiring more specifically concerning these motives to fabricate. Appellant's Brief and Assignment of Errors of 15 Feb 2007 at 28. We disagree.

¹ I. THE EQUAL PROTECTION COMPONENT OF THE FIFTH AMENDMENT DUE PROCESS (SIC) WAS VIOLATED BELOW AND IS BEING FURTHER VIOLATED NOW BECAUSE THE MILITARY JUDGES AND THE JUDGES OF THIS COURT SERVE WITHOUT THE PROTECTION OF A FIXED TERM OF OFFICE, WHEREAS THOSE IN THE ARMY AND COAST GUARD ENJOY SUCH PROTECTION BY REGULATION.

II. THE MILITARY JUDGE ABUSED HIS DISCRETION WHEN HE ALLOWED AN IMPROPER LAY OPINION DURING FINDINGS.

III. THE MILITARY JUDGE DENIED BM3 CRUZ-EUCEDA HIS SIXTH AMENDMENT RIGHT TO CROSS-EXAMINE AT2 [B] DURING FINDINGS.

IV. THE MILITARY JUDGE ABUSED HIS DISCRETION WHEN HE ALLOWED AN IMPROPER LAY OPINION DURING SENTENCING.

V. THE MILITARY JUDGE DENIED BM3 CRUZ-EUCEDA HIS SIXTH AMENDMENT RIGHT TO CROSS-EXAMINE AT2 [B] DURING SENTENCING.

VI. TRIAL COUNSEL'S IMPROPER COMMENTS IN HIS SENTENCING ARGUMENT WERE PLAIN ERROR THAT PREJUDICED BM3 CRUZ-EUCEDA'S RIGHT TO A FAIR SENTENCING.

² The appellant's motion for oral argument is denied.

We review a trial judge's evidentiary rulings for abuse of discretion. *United States v. Thompson*, 63 M.J. 228, 230 (C.A.A.F. 2006). A military judge has wide discretion to limit repetitive cross-examination or to prohibit cross-examination that may cause confusion. *United States v. James*, 61 M.J. 132, 136 (C.A.A.F. 2005). In the instant case, the military judge permitted the appellant to expose the two reasons the witness might have to fabricate when he allowed the defense to ask if she was married at the time of the incident, and whether she believed having intercourse with the appellant would have had an adverse effect on her divorce proceedings.³ That the appellant was not, thereafter, permitted to "hammer that point home" to the members did not affect his core constitutional right to cross-examination. *James*, 61 M.J. at 136.

Similarly, during sentencing defense counsel was limited in her questions concerning the rape victim's life experiences and mental health prior to the rape. Specifically, the rape victim testified that she was diagnosed with Post-Traumatic Stress Disorder (PTSD) following the rape. Trial defense counsel sought on cross examination to elicit prior allegations of sexual abuse by the witness which the members could then infer contributed to her PTSD. The trial judge ruled that questions regarding "specific allegations of specific types of abuse" were not allowed, but that general questions concerning the prior abuse could be posed. Record at 724. Trial defense counsel then proceeded to ask the witness about allegations of sexual abuse by her brother and both of her prior husbands. The witness was also questioned about cutting herself as a teenager. Record at 726.

We are hard pressed to find an abuse of discretion when trial defense counsel was given leeway to ask the witness about her motives to fabricate and prior traumatic incidents in her life which may have contributed to her PTSD, but was not allowed to dwell on them. Even assuming, *arguendo*, that the military judge erred, we find no prejudice and are confident the evidence the defense wished to bring to the members' attention was sufficiently presented to allow trial defense counsel to argue the point in her sentencing argument. We find these assignments of error to be without merit.

³ The defense asked the former question but not the latter.

Conclusion

The appellant's remaining assignments of error are without merit. The findings and the sentence approved by the convening authority are affirmed.

Judge KELLY and Judge COUCH concur.

For the Court

R.H. TROIDL
Clerk of Court