

**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.**

**ANTHONY D. HANEY  
FIRE CONTROL TECHNICIAN THIRD CLASS (E-4), U.S. NAVY**

**NMCCA 200700142  
GENERAL COURT-MARTIAL**

**Sentence Adjudged:** 5 May 2006.  
**Military Judge:** LCDR Robert Klant, JAGC, USN.  
**Convening Authority:** Commander, Navy Region Southwest, San Diego, CA.  
**Staff Judge Advocate's Recommendation:** CDR Noreen A. Hagerty-Ford, JAGC, USN.  
**For Appellant:** Terri R. Zimmermann; Maj Richard Belliss, USMC.  
**For Appellee:** LT Frank Gatto, JAGC, USN; LT Justin Dunlap, JAGC, USN.

**5 October 2007**

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**OPINION OF THE COURT**  
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**AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.**

GEISER, Senior Judge:

Contrary to his pleas, the appellant was convicted by a general court-martial composed of officer members of carnal knowledge, two specifications of indecent acts upon a female under age 16, and disorderly conduct, in violation of Articles 120 and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 920 and 934. The appellant was sentenced to a dishonorable discharge, confinement for seven years, forfeiture of all pay and allowances, and reduction to pay grade E-1. The convening authority approved the sentence as adjudged.

The appellant raises three assignments of error. First, he asserts that the military judge improperly failed to suppress incriminating remarks made by the appellant to watchstanders. Second, he avers that the military judge improperly deprived him of his right to present a good military character defense when the military judge denied the appellant's motion in limine regarding an allegation that he killed cats. Finally, the appellant asserts that the findings were not properly announced at the conclusion of the case-in-chief.

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

### **Failure to Suppress Incriminating Statements**

The appellant filed a motion to suppress certain potentially incriminating statements<sup>2</sup> made by the appellant in the presence of two watchstanders at the Navy Region Southwest Transient Personnel Unit's (TPU) restricted barracks. Appellate Exhibit XIV. The essence of the appellant's argument is that he was questioned by one of the watchstanders regarding his misconduct without having been advised of his Article 31(b), UCMJ, rights. When considering a motion to suppress a statement on the ground that rights' warnings were not given, we review the military judge's findings of fact using a clearly-erroneous standard and his conclusions of law *de novo*. *United States v. Cohen*, 63 M.J. 45, 49 (C.A.A.F. 2006).

When a questioner is acting in an unofficial capacity and the person questioned does not perceive the questioning as more than casual conversation, warnings are not required. *United States v. Duga*, 10 M.J. 206, 210 (C.M.A. 1981). The parties do not contest the military judge's finding that, while the female watchstander held positional authority over the appellant and was standing a quarterdeck watch which included certain law enforcement or disciplinary duties, she was not acting pursuant to such duties when she asked the appellant about his alleged misconduct. AE XXV at 3. We accept those findings and

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<sup>1</sup> The appellant's motion for oral argument is denied.

<sup>2</sup> The appellant exchanged brief pleasantries with a female watchstander as he passed through the Transient Personnel Unit quarterdeck. Out of what she described as "curiosity," the watchstander asked the appellant why he was in the restricted barracks. The appellant replied that he had been accused of rape. In response to her follow-on questions, the appellant made admissions implying that he and the victim engaged in some form of sexual contact, albeit, "consensual" and that he knew the victim was 11 years old at the time. Appellate Exhibit XXV (Findings and Ruling on Defense Motion to Suppress Statements of the Accused) at 2.

conclusions as well. At issue is the appellant's perception of his conversation with the female watchstander.

At trial, the Government presented the testimony of the two watchstanders who heard the appellant's admissions. The military judge found that the female watchstander to be "young, unsophisticated, non-assertive, outgoing, and extremely casual in the manner she treats others." *Id.* He further found that her questions were prompted more by curiosity than by any official duty to interrogate the appellant and that both the appellant and her male co-watchstander were physically unintimidating. *Id.* Having considered the female watchstander's testimony regarding her previous informal contacts with the appellant as he passed by on the quarterdeck, both watchstanders' description of the circumstances leading up to and surrounding the appellant's admissions, and the other evidence presented, the military judge concluded that the appellant "did not perceive the inquiry as involving anything more than a casual conversation." He found, therefore, that the Government met its burden of showing the statements were not obtained in violation of Article 31(b), UCMJ or otherwise involuntary. *Id.* We find the evidence supports the military judge's determination and that he did not abuse his discretion by declining to suppress the appellant's admissions.

We note that the appellant's appellate brief included an evidentiary declaration executed by the appellant over one year after his trial which purports to offer additional factual information relevant to his suppression motion which he elected not to present at trial. We decline to consider such evidence in any way. While the appellant has an absolute right to remain silent at trial, he may not subsequently evade the evidentiary consequences of his tactical decision not to testify by slipping his testimony under the appellate court's door long after trial. The appellant's right to remain silent is a shield that prevents the Government from forcing him to provide evidence against himself. It may not, however, be used as a sword to tactically disadvantage the Government by denying the prosecution its legitimate opportunity to cross-examine the appellant or otherwise present evidence challenging the appellant's factual assertions.

### Conclusion

We find no merit to the appellant's remaining assignments of error. Accordingly, we affirm the findings and the sentence.

Judge KELLY and Judge COUCH concur

For the Court

R.H. TROIDL  
Clerk of Court