

**IN THE U.S. NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS
WASHINGTON NAVY YARD
WASHINGTON, D.C.**

BEFORE

E.E. GEISER

F.D. MITCHELL

J.G. BARTOLOTTA

UNITED STATES

v.

**Rayshaw L. WILLIAMS
Captain (O-3), U. S. Marine Corps**

NMCCA 200600739

Decided 27 February 2007

Sentence adjudged 20 January 2005. Military Judge: R.S. Chester. Review pursuant to Article 66(c), UCMJ, of General Court-Martial convened by Commander, Marine Corps Base, Camp Pendleton, CA.

LT DARRIN MACKINNON, JAGC, USN, Appellate Defense Counsel
LT MARK HERRINGTON, JAGC, USN, Appellate Government Counsel

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.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 negligently damaging military property, two specifications of willfully damaging private property, reckless driving, robbery using a firearm, and assault with a means likely to cause death or grievous bodily harm, in violation of Articles 108, 109, 111, 122, and 128, Uniform Code of Military Justice, 10 U.S.C. §§ 908, 909, 911, 922, and 928. The appellant was sentenced confinement for four years and a dismissal. The convening authority approved the sentence as adjudged.

The appellant's single assignment of error asserts that the evidence regarding the robbery specification was legally and factually insufficient to prove that the appellant intended to permanently deprive the Government of the stolen currency. We have examined the record of trial, the assignment of error, and the Government's response. We conclude that the findings and sentence are correct in law and fact and that no error materially prejudicial to the substantial rights of the appellant was committed. Arts. 59(a) and 66(c), UCMJ.

Background

The appellant, a Marine Corps captain, robbed a female teller in the cash office onboard the Marine Corps Recruit Depot (MCRD), San Diego, California, at gunpoint, of \$1,240.00. He was seen to run from the building, jump into his black BMW, and attempt to drive quickly off the base. A witness noted the commotion and the appellant's attempt to flee. The witness placed his vehicle in front of the appellant's BMW in an attempt to block the appellant's escape. The appellant rammed the witness' vehicle out of the way, maneuvered around it, and sped off. The witness followed the appellant in his vehicle and testified the BMW ran two stop signs and reached speeds of up to 60 mph.¹

As the appellant's vehicle approached MCRD, Gate 2, attempting to exit the base, security personnel, previously advised of the robbery, stood between the concrete barriers in the roadway and attempted to get the vehicle to stop. The appellant ignored yelled orders to stop and nearly struck one of the gate guards; who managed to get out from in front of the BMW at the last minute. The appellant struck two additional vehicles waiting to exit the base before he was effectively blocked by a truck from further progress. Security officers surrounded the vehicle with weapons drawn and ordered the appellant from the vehicle. After several such orders, the appellant finally emerged from the car and was restrained. The stolen money was found in a bag stuffed under the front seat and the appellant's handgun was found on the passenger side floor.² Record at 210-22.

At trial, the appellant acknowledged robbing the cash office and the various other offenses but denied that he intended to permanently deprive the Government of the stolen funds. He testified that the entire episode had been an attempt to commit "suicide by cop." *Id.* at 394. The appellant offered evidence that he was in the process of losing his family due to a gambling and sex addiction, that his gambling and clinical depression had interfered with his work such that he received a career-ending fitness report and that he had decided that death was preferable to his life. *Id.* at 379-93. In support, the defense offered expert testimony that the appellant suffered from various mental disorders including a major depressive disorder with suicidal ideations, a gambling addiction, and a sexual addiction. *Id.* at 456, 461.

Legal/Factual Sufficiency

In essence, the appellant asserts that he did not intend to retain the stolen funds permanently because he fully expected to

¹ The base speed limit in the areas covered was 20 mph. Record at 174.

² The appellant testified that he had little or no memory of the events described by the witnesses. Record at 398-427.

be shot dead sometime during the robbery/flight and that the Government would then recover the money. He asserts that the evidence of intent was insufficient to prove otherwise beyond a reasonable doubt. We disagree.

The test for legal sufficiency is whether, considering the evidence in the light most favorable to the Government, any rational trier of fact could have found the elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987); *United States v. Reed*, 51 M.J. 559, 561-62 (N.M.Crim.Ct.App. 1999), *aff'd*, 54 M.J. 37 (C.A.A.F. 2000); *see also* Art. 66(c), UCMJ.

The test for factual sufficiency is whether, after weighing all the evidence in the record of trial and recognizing that we did not see or hear the witnesses, this court is convinced of the appellant's guilt beyond a reasonable doubt. *Turner*, 25 M.J. at 325; *see also* Art. 66(c), UCMJ.

There are seven elements to the offense of robbery but the appellant only contests the evidence relative to the issue of intent. The offense of robbery requires, *inter alia*, "that the taking of the property by the [appellant] was with the intent permanently to deprive the person robbed of the use and benefit of the property." MANUAL FOR COURTS-MARTIAL, UNITED STATES (2002 ed.), Part IV, ¶ 47b(6).

Evidence adduced at trial included a security videotape of the robbery. Prosecution Exhibit 3. In the video, the appellant is seen pointing a handgun at two tellers, attempting to pull the slide back on the handgun to make the weapon ready to fire, pointing to certain large denomination bills in the cash drawer and at one point reaching over the counter to grab the money and quickly walk from the office. The video also shows the appellant wearing dark glasses and a ball-cap pulled low over his head both of which serve to obscure his features. The victim teller testified that the appellant was clearly agitated and repeatedly yelled at her to hurry, insisting that he wasn't "joking." Record at 276. She also testified that he told her he "just got out of jail a week ago." *Id.* at 277.

As noted above, the appellant was observed fleeing the area at an excessively high rate of speed, evading several attempts to block his flight, and ignoring security personnels' orders to stop and get out of the vehicle. The evidence also showed that the appellant suffered from a "gambling addiction" which involved his routinely leaving work during lunchtime to play cards for money in Mexico. Although the appellant denied that the gambling affected him financially, the Government introduced evidence that the appellant had overdrawn his account on at least 7 occasions for a total of \$1,320.00. He also had at least one outstanding loan for \$945.00. *Id.* at 418-19. The most recent overdraft was only three days prior to the robbery. *Id.* at 425.

The evidence above is not necessarily inconsistent with the appellant's evidence that he suffered from significant depression with suicidal ideations arising from occurrences in his life over the preceding several years. We note that the particular negative events cited by the appellant and his expert witness were separated from the robbery by a minimum of several months.³ At issue is not whether the appellant was depressed and had considered suicide in the months or years preceding the robbery, but rather whether on the day of the robbery his specific intent was to end his life. There is ample evidence that his intent was to steal money to temporarily alleviate the gambling-induced stress in his life.

Considering the evidence adduced at trial in the light most favorable to the Government, we find that a rational trier of fact could have found beyond a reasonable doubt that the appellant intended to permanently deprive the Government of the stolen money. *Jackson*, 443 U.S. at 318-19; *Turner*, 25 M.J. at 325; *Reed*, 51 M.J. at 561-62; *see also* Art. 66(c), UCMJ. In addition, after weighing all the evidence in the record of trial and recognizing that we did not see or hear the witnesses, this court is convinced of the appellant's guilt beyond a reasonable doubt. *Turner*, 25 M.J. at 325; *see also* Art. 66(c), UCMJ.

Conclusion

The approved findings and sentence are affirmed.

Judge MITCHELL and Judge BARTOLOTTA concur.

For the Court

R.H. TROIDL
Clerk of Court

³ The appellant testified that he'd been fired as division adjutant for incompetence in December 2003; that he was concerned his wife and child were going to leave him beginning in early 2004; and that he'd received a negative fitness report in February 2004. The robbery occurred on 6 April 2004. Record at 379-85.