

**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.**

**ISRAEL CARROMERO  
PRIVATE FIRST CLASS (E-2), U.S. MARINE CORPS**

**NMCCA 200602334  
SPECIAL COURT-MARTIAL**

**Sentence Adjudged:** 9 June 2006.

**Military Judge:** LtCol Christopher Greer, USMC.

**Convening Authority:** Commanding Officer, Marine Corps  
Combat Service Support Schools, Training Command, Camp  
Lejeune, NC.

**Staff Judge Advocate's Recommendation:** Col R.C. Harris,  
USMC.

**For Appellant:** LT Darrin MacKinnon, JAGC, USN.

**For Appellee:** Maj James Weirick, USMC.

**5 February 2008**

-----  
**OPINION OF THE COURT**  
-----

**AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.**

GEISER, Senior Judge:

A military judge sitting as a special court-martial convicted the appellant, consistent with his pleas, of two specifications of failure to go to his appointed place of duty, disrespect to a superior commissioned officer, three specifications of disrespect to a staff noncommissioned officer, disobeying a lawful order, dereliction of duty, and carrying a concealed weapon, in violation of Articles 86, 89, 91, 92, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 886, 889, 891, 892, and 934. He was also convicted, contrary to his pleas,

of larceny and indecent assault, in violation of Articles 121 and 134, UCMJ, 10 U.S.C. §§ 921 and 934. The appellant was sentenced to confinement for eight months, forfeiture of \$800.00 pay per month for a period of eight months, reduction to pay grade E-1, and a bad-conduct discharge. The convening authority (CA) subsequently changed the finding of guilty to indecent assault to a finding of guilty to the lesser included offense of assault consummated by a battery in violation of Article 128, UCMJ, 10 U.S.C. § 928. The CA then approved the sentence as adjudged.

The appellant raises five assignments of error. He first asserts that the military judge erred by failing to suppress statements the appellant made to his chain of command regarding the offenses. Second, he avers that the disrespectful language alleged in connection with Charge II (disrespect to a superior commissioned officer) was not, in fact, disrespectful but rather was "honest and candid." Third, the appellant argues that the disrespectful deportment alleged in Charge III (rolling eyes, looking away, clenching fists, while at attention) was *de minimis* and that punishment for this offense should be set aside under our Article 66(c), UCMJ, sentence appropriateness authority. Fourth, the appellant asserts that the evidence of Charge V (larceny) was legally and factually insufficient. Finally, the appellant asserts that his command violated his due process rights by "intimidating him, harassing him, piling-on charges, and maliciously prosecuting him" instead of simply separating him from the service.<sup>1</sup>

We have examined the record of trial, the appellant's brief and assignments of error, the Government's response, and the appellant's reply. We conclude that the findings and the 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.

Most of the appellant's first three assignments of error relate to charges and specifications to which he entered unconditional pleas of guilty. Record at 147-48. An unconditional guilty plea "'waives any objection, whether or not previously raised, insofar as the objection relates to the factual issue of guilt of the offense(s) to which the plea was made.'" *United States v. Garlick*, 61 M.J. 346, 351 (C.A.A.F. 2005)(Baker, J., concurring)(quoting RULE FOR COURTS-MARTIAL 910(j), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2002 ed.)). We note that with regard to suppression of the appellant's inculpatory statements, the military judge specifically advised the appellant that one of the consequences of his unconditional guilty pleas was to "give up your right to appeal those [suppression] decisions." Record at 152. The appellant acknowledged the military judge's warning and persisted in his guilty pleas.

---

<sup>1</sup> This last assignment of error was raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

The only objection which the appellant did not waive by his unconditional guilty pleas was one made to the admission of his 20 January 2006 incriminating written statement relating to the larceny charge to which the appellant pled not guilty. Prosecution Exhibit (PE) 7. Having carefully reviewed the record of trial, we agree with the military judge that the statement was voluntary and admissible. Appellate Exhibit XV. While there may have been raised voices or yelling involved in the taking of the statement, we are not convinced the appellant was so fragile as to have these actions render his ultimate statement "involuntary." This is particularly true given the fact that the appellant was left alone and undisturbed while he wrote the statement, and that the statement produced, while admitting that he attempted to hide the stolen bag in a dryer, does not admit the actual theft.<sup>2</sup>

With regard to the disrespect specifications, we note that the appellant acknowledged under oath that the language he used to a superior commissioned officer was, in fact, disrespectful. Record at 168. Regarding his claim on appeal that his disrespect towards two staff noncommissioned officers (NCO's) was somehow *de minimis*, the appellant acknowledged both on the record and under oath that his conduct was disrespectful, and that it was intended to be disrespectful. Record at 171, 174. Purposefully disrespectful words or actions directed to superior NCO who are attempting to carry out their duties are not now -- nor have they ever been -- a *trifle* or *de minimis*. The appellant's first three assignments of error are wholly without merit and frivolous.

### Legal and Factual Sufficiency

The appellant asserts that the evidence was legally and factually insufficient to support the military judge's finding of guilt to the Specification under Charge V alleging that the appellant stole a backpack containing various items of personal property from a fellow Marine. The appellant's argument lacks any reference whatsoever to supporting legal precedent and merely reiterates claims made in his prior sworn statement. PE 7. In essence, the appellant states that some other unidentified Marine actually stole the bag and dumped it in the appellant's room. Rather than simply turning the bag into his class leader, the evidence demonstrated that the appellant disobeyed a very specific order not to return to the barracks and that he acknowledged thereafter attempting to hide the stolen bag in a dryer when he became aware a search was going to be conducted. Notwithstanding his guilty actions, the appellant continues to assert that he was nothing more than an "innocent bystander."

---

<sup>2</sup> The appellant's statement blames the theft on "another Marine" who was unknown to the appellant but who, for whatever reason, mysteriously appeared in the appellant's barracks room doorway, threw the stolen bag on the floor, and scurried away stating, "Fool, I'm running late for formation, let me leave this with you and I'll pick it up later." We agree with the appellant that his story is "kind of fishy." PE 7.

The tests for legal and factual sufficiency are well known. *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). This court is convinced that a rational fact finder could have found the appellant guilty of this offense. We, too, are convinced beyond a reasonable doubt of the appellant's factual guilt to Charge V and the specification.

### **Conclusion**

The appellant's remaining assignment of error is without merit. The findings and the approved sentence are affirmed.

Judge KELLY and Judge COUCH concur

For the Court

R.H. TROIDL  
Clerk of Court