

**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.

**STEPHEN P. CHATFIELD
LIEUTENANT JUNIOR GRADE (O-2), U.S. NAVY**

**NMCCA 200602256
GENERAL COURT-MARTIAL**

Sentence Adjudged: 9 February 2006.

Military Judge: CAPT Daniel O'Toole, JAGC, USN.

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

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

For Appellant: LT Janelle M. Lokey, JAGC, USN.

For Appellee: Capt Geoffrey Shows, USMC.

10 April 2008

OPINION OF THE COURT

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.

GEISER, Senior Judge:

A general court-martial with officer members convicted the appellant, contrary to his pleas, of indecent assault, in violation of Article 134, Uniform Code of Military Justice, 10 U.S.C. § 934. The appellant was sentenced to a dismissal. The convening authority approved the sentence as adjudged

The appellant raises two assignments of error. First, he asserts that the military judge erred when he failed to suppress the appellant's inculpatory statement to civilian police. Second, the appellant argues that the evidence of guilt was legally and factually insufficient.

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 materially prejudicial to the substantial rights of the appellant was committed. Arts. 59(a) and 66(c), UCMJ.

Background¹

On 14 October 2004, the appellant was stationed onboard USS AUSTIN (LPD 4). On that date, the AUSTIN was conducting a port call in Mayport, Florida. During the evening and early morning hours of 13-14 October 2004, the appellant and several other junior officers temporarily assigned to AUSTIN rented a hotel room in Jacksonville Beach, Florida as a collective launching pad for their evening liberty. Early in the evening, the officers divided into two groups. One group, which included the appellant, attended a concert at a bar within walking distance of the hotel. The other group, which included the victim, Ensign (ENS) R, went to another nearby bar.

At approximately 0100, the victim became "rather intoxicated" and walked back to the hotel with Lieutenant (junior grade)(LTJG) Hedval. Record at 335. The two officers went into the bedroom which contained two beds. The victim got under the covers in one of the beds, removed her pants, and fell asleep. LTJG Hedval fell asleep on the other bed. At some point, another officer, LTJG Buckner, returned to the room and went to sleep on the bed occupied by the victim. The victim was under the covers on one side of the bed and LTJG Buckner slept on top of the covers on the other side.

Sometime after 0230, LTJG Hedval was awakened by the arrival of three other officers, including the appellant. They talked for a short time and then two of the officers pulled out a sofa bed in the other room and went to sleep. The appellant initially laid "down on the floor" but later moved up to lay at the foot of LTJG Hedval's bed "kind of perpendicular" to LTJG Hedval. *Id.* at 604. At some point LTJG Buckner, who had been sleeping on the other side of the bed from the victim, went to the bathroom. When he returned, he found the appellant sleeping in his place. LTJG Buckner unsuccessfully attempted to wake the appellant by shaking his leg and ultimately laid down on the other side of the victim on the same bed.

LTJG Buckner was subsequently awakened by movement of the bed. He observed that the appellant was under the covers up close behind the victim with his arm around her and that he was touching her breast "inappropriately." *Id.* at 345-47. Specifically, LTJG Buckner observed that the victim's breast was exposed and that the appellant's hand was on top of her breast,

¹ The factual summary was drawn from the military judge's essential findings of fact and from testimony during the suppression motion. Appellate Exhibit XIX.

massaging it. *Id.* at 346-348. LTJG Buckner woke up the victim, who expressed confusion, *Id.* at 350, pulled up her underwear, *Id.* at 507, and rolled out of the bed, *Id.* at 350. LTJG Buckner observed the appellant "roll over on his back...pull up his shorts and button them." *Id.* at 350. The victim put on her pants and went out on the balcony.

LTJG Buckner and LTJG Hedval both followed the victim out onto the balcony. The victim asked what was going on and LTJG Buckner told the victim what he'd observed. She mentioned that she felt like "something had been inside of me" like she'd been "penetrated" with something. *Id.* at 507. LTJG Buckner, LTJG Hedval, and the victim left the hotel shortly thereafter and returned to the ship where the victim went to medical to get "checked out." *Id.* at 367. Later that day, the victim reported the incident to the local police.

Detective Amonette of the Jacksonville Beach, Florida, police department was assigned to investigate the incident. He went to the hospital and interviewed the victim and the two witnesses. Following this, the detective phoned the appellant's executive officer (XO), explained the allegation and asked, if possible, to interview the appellant. *Id.* at 19. The XO indicated that he would tell the appellant "that you'd like to talk to him."

After speaking with the detective, the XO briefed the commanding officer (CO) who agreed that the command would "let the civilian authorities take their action." *Id.* at 86. The XO testified that he did not believe the allegations required command action under the UCMJ. The XO tasked a department head to go find the appellant and let him know that the police would like to talk to him. The XO further told the department head that, if the appellant was willing to talk to the police, the XO would work out a plan so no one on the crew would know what was going on. *Id.* at 88. The XO subsequently received word that the appellant wanted to go talk to the police. *Id.* at 92. In order to conceal their reason for leaving the ship, the XO, chaplain, the appellant's department head and the appellant left the ship together telling the deck watch that they were going to dinner.

The XO drove the group to the Jacksonville Beach police department and walked with the appellant into the station. At no time during the 20 minute drive did the appellant express any misgivings about speaking to the police. The plan was for the appellant to speak to the police and for the other three to go to dinner down the street from the station. The XO asked the appellant to call when he was through, but the detective offered to drop him at the restaurant to save time once they were done talking. The XO agreed.

The detective testified that the appellant did not appear to be in custody when he arrived with his XO. The XO testified that the appellant was not in custody but was present because he

voluntarily wanted to talk to the police. The detective and the appellant went to the detective's office and spoke informally. Although not explicitly told he was free to leave, the appellant was not handcuffed or told he was under arrest or sequestered in an interrogation room. The appellant agrees that the record does not support a finding that coercive police tactics were used.

During the interview, which lasted less than an hour, the appellant initially stated that he had been drinking a lot and did not remember very much but that he was pretty sure he didn't have sex with anyone. The appellant was asked to reduce his statement to writing which he did. After writing his statement, the detective told the appellant that they had conducted a forensic examination of the victim. The detective asked if there was any reason that the appellant's DNA might show up. The appellant said it was possible his DNA would be there because he "rubbed her down below." *Id.* at 32. The appellant also opined that he might have penetrated the victim with his finger based on how his finger smelled that morning. The detective asked the appellant to amend his initial written statement which the appellant did. Following a brief telephone call to the State's Attorney, the appellant was arrested for indecent assault.

Suppression of Inculpatory Statement

The appellant argues that the military judge abused his discretion when he denied the appellant's timely motion to suppress his inculpatory verbal and written statements to the Jacksonville Beach police. Specifically, the appellant asserts that the military judge erred when he concluded that the appellant was "not in custody" when he was questioned by Detective Amonette of the Jacksonville Beach Police Department and was, therefore, not entitled to *Miranda* warnings.² The appellant also argues that his statements were not voluntary.

A military judge's denial of a motion to suppress an inculpatory statement is reviewed for an abuse of discretion. *United States v. Pipkin*, 58 M.J. 358, 360 (C.A.A.F. 2003). We give deference to a military judge's findings of fact unless they are clearly erroneous. *Id.* The voluntariness of a confession is, however, a question of law that we review *de novo*. *United States v. Bubonics*, 45 M.J. 93, 94 (C.A.A.F. 1996). The burden is on the Government to prove, by a preponderance of the evidence, that a confession is voluntary. *Id.* at 95.

We find that the military judge's findings of fact were not clearly erroneous and we adopt them as our own. Appellate Exhibit XIX. The appellant does not contend that Detective Amonette engaged in any coercive tactics during the interview at issue and there is no evidence that the detective did so. The essence of the appellant's argument is that he perceives he was, in effect, directed by his XO to participate in the interview

² *Miranda v. Arizona*, 384 U.S. 436, 444 (1966)

with Detective Amonette. He contends that the fact that he was ordered to participate in the interview makes the interview "custodial" for purposes of *Miranda*.³

The standard for determining whether an individual is in custody is whether, viewed objectively from the perspective of the individual, a reasonable person would perceive there was a deprivation of freedom of action in any significant way. *Thompson v. Keohane*, 516 U.S. 99, 112 (1995). Having carefully reviewed the record and the military judge's findings of fact, we agree with the military judge that a reasonable person would not have perceived that the appellant was deprived of his freedom of choice whether or not to participate in the requested interview with Detective Amonette.

According to the military judge, who had an opportunity to directly observe the demeanor of the witnesses, the XO's testimony was "forthright and responsive... and highly credible."⁴ The XO testified that he sent word to the appellant that the police wanted to interview him. He further sent word that, if the appellant elected to speak with the police, the XO would help facilitate the interview in a manner that would not lead to embarrassing questions or rumors onboard the ship.⁵ Both the XO and the appellant testified that, at no point, did the XO personally order, direct, or otherwise pressure the appellant into participating in the interview or making a statement. While the appellant testified that the circumstances were such that he reasonably perceived that he had no option but to participate, we note that the military judge found the appellant's testimony "unconvincing."⁶

While there was no direct evidence how the XO's message was delivered by the department head, there is evidence that the XO heard back up the chain of command that the appellant was willing to participate in the interview. There is also evidence that the XO was going significantly out of his way to ensure the appellant's privacy. The appellant's silence during the ride to the police station, his failure to object or even raise the issue of non-participation with any of his superiors at any point, and the fact that the appellant was a 36-year-old Naval officer with 12 years of active and reserve experience makes the appellant's subsequent claim of coercion unpersuasive.

³ Detective Amonette testified on the motion that he believed he gave the appellant his *Miranda* rights but could not be sure. We note that subsequently when the detective testified on the merits he indicated that his notes reflected that he had, in fact, *Mirandized* the appellant.

⁴ AE XIX at 5.

⁵ *Id.* at 3.

⁶ *Id.* at 5.

We find that a reasonable person in the appellant's position would not have perceived that his freedom of action was in any way curtailed by the XO's attempts to facilitate what the XO clearly believed was a voluntary choice by the appellant to participate in the interview with Detective Amonette. We further find that the Government has met its burden to show, by a preponderance of the evidence, that the appellant's statements were voluntary. We find, therefore, that the military judge did not abuse his discretion when he denied the appellant's motion to suppress his statements to the Jacksonville Beach police.

Legal and Factual Sufficiency

The appellant contends that the evidence against him was legally and factually insufficient to prove his guilt beyond a reasonable doubt. Specifically, the appellant asserts two flaws in the Government's case. The first involves admission of the appellant's statements to the Jacksonville Beach police which we resolved above. Secondly, the appellant asserts that there was no evidence that the appellant's penetration of the victim's vagina with his finger was done with the specific intent to "gratify his sexual desires." Appellant's Brief of 1 Feb 2007 at 23.

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 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 appellant not only inserted his finger into the victim's vagina but LTJG Buckner testified he saw the appellant fondling her breast while tucked in close behind her under the covers. Further, when the two emerged from the bed, the appellant was seen pulling up and buttoning his shorts and the victim discovered that her underwear had been pulled down. Members could reasonably construe this circumstantial evidence in light of their own life experience and conclude that the appellant acted to gratify his sexual desires. 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).

Conclusion

The findings and the approved sentence are affirmed.

Judge KELLY and Judge COUCH concur.

For the Court

R.H. TROIDL
Clerk of Court