

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

**Before  
E.E. GEISER, R.G. KELLY, R.E. VINCENT  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**RAHEEM G. GREEN  
CORPORAL (E-4), U.S. MARINE CORPS**

**NMCCA 200800005  
SPECIAL COURT-MARTIAL**

**Sentence Adjudged:** 1 June 2007.

**Military Judge:** Maj Brian E. Kasprzyk, USMC.

**Convening Authority:** Commanding Officer, Combat Logistics Regiment 15, 1st Marine Logistics Group, MarForPac, Camp Pendleton, CA.

**Staff Judge Advocate's Recommendation:** LtCol T.J. Enge, USMC.

**For Appellant:** LT Heather L. Cassidy, JAGC, USN.

**For Appellee:** Maj J.S. Stephens, USMCR; Capt G.S. Shows, USMC.

**28 August 2008**

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**AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.**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

A special court-martial with enlisted representation convicted the appellant, contrary to his pleas, of failing to obey a lawful order, violation of a lawful general order, use of ecstasy, assault and battery, three specifications of indecent assault, and indecent language, and in violation of Articles 92, 112a, 128, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 892, 912a, 928, and 934. The appellant was sentenced to confinement for four months, reduction to pay grade E-1, forfeiture of \$867.00 pay per month for a period of four months,

and a bad-conduct discharge. The convening authority (CA) approved the sentence as adjudged

On appeal, the appellant first asserts that the evidence was legally and factually insufficient to support the guilty finding to Specification 5 of Charge IV (indecent language). He also avers that his conviction of Specification 2 of the Second Additional Charge (sexual harassment) and his convictions of Specifications 3, 4 and 5 of Charge IV (indecent assaults/ language) reflect an unreasonable multiplication of charges (UMC). We have considered the record of trial, the appellant's brief and assignments of error and the Government's response. We find 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. See Arts. 59(a) and 66(c), UCMJ.

### Legal and Factual Sufficiency

The appellant asserts that there was insufficient evidence that his utterance of "mmmm-mmmm-mmmm" while pulling down the top of a female Marine's blouse and skivvie shirt in order to expose her breasts to his view constituted indecent language. In essence, the appellant argues that his sound was not "language" insofar as it was not a word one might find in the dictionary and that, in any case, his sound was subject to "any number of meanings." Appellant's Brief and Assignments of Error of 4 Mar 2008 at 9. 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 is no requirement that the "language" at issue be an actual word. We are satisfied that any utterance which meets the Manual's definition of indecency is sufficient.<sup>1</sup> We agree with the appellant that the indecency of a word or sound must be evaluated in the context in which it is made. The appellant asserts that his sound could have been expressing "satisfaction or even disgust." Appellant's Brief at 9. Whether approving or disapproving, the sound clearly related to the appellant's non-consensual and assaultive viewing of his co-worker's breasts. In this context, we are hard-pressed to think of any possible

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<sup>1</sup> MANUAL FOR COURTS-MARTIAL, UNITED STATES (2005 ed.), Part IV, ¶ 89(c).

meaning for the appellant's expression that is not "grossly offensive to modesty, decency, or propriety ... because of its vulgar, filthy, or disgusting nature."<sup>2</sup>

We are convinced that a rational fact finder could have found that the appellant's expression was indecent and that the appellant was guilty of Specification 5 of Charge IV (indecent language). We, too, are convinced beyond a reasonable doubt that the appellant's expression was indecent and that he was factually guilty of this offense.

### **Unreasonable Multiplication of Charges**

In his second assignment of error, the appellant contends that the members' findings of guilt to Specifications 3, 4, and 5 of Charge IV (indecent assaults/language) and the finding of guilty to Specification 2 of the Second Additional Charge (sexual harassment) constitute an unreasonable multiplication of charges. Appellant's Brief at 12.

Unreasonable multiplication of charges is a separate and distinct concept from multiplicity. See *United States v. Quiroz*, 55 M.J. 334, 337 (C.A.A.F. 2001). While multiplicity is based on the constitutional and statutory prohibitions against double jeopardy, the doctrine of unreasonable multiplication of charges stems from "those features of military law that increase the potential for overreaching in the exercise of prosecutorial discretion." *Id.*

This court applies five factors in evaluating a claim of unreasonable multiplication of charges:

- 1) Did the accused object at trial that there was an unreasonable multiplication of charges and/or specifications?
- 2) Is each charge and specification aimed at distinctly separate criminal acts?
- 3) Does the number of charges and specifications misrepresent or exaggerate the appellant's criminality?
- 4) Does the number of charges and specifications unreasonably increase the appellant's punitive exposure?
- 5) Is there any evidence of prosecutorial overreaching or abuse in the drafting of the charges?

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<sup>2</sup> *Id.*

See *United States v. Quiroz*, 57 M.J. 583 (N.M.Ct.Crim.App. 2002)(en banc), *aff'd*, 58 M.J. 183 (C.A.A.F. 2003)(summary disposition)); *accord Quiroz*, 55 M.J. at 339 ("this approach is well within the discretion of [this court] to determine how it will exercise its Article 66(c) powers."). Applying these factors to the appellant's case, we find that there has not been an unreasonable multiplication of charges.

We first note that the appellant did not object at trial, which significantly weakens his argument on appeal. *United States v. Butcher*, 56 M.J. 87 (C.A.A.F. 2001). With regard to the second factor, the appellant asserts and the Government concedes that the specific misconduct underlying the three Article 134 offenses and the Article 92 offense are identical.<sup>3</sup> Similar conduct notwithstanding, the Government asserts that the challenged specifications reflect two separate victims. Specifically, the female Marine was the direct victim of the indecent assault and language specifications; while the Navy's interest in good order and discipline was compromised in the latter disobedience offense. We are not persuaded by the Government's argument.

All three of the Article 134 offenses include a requirement that the Government prove beyond a reasonable doubt that the charged criminal conduct is prejudicial to good order and discipline or of a nature to bring discredit on the Armed Forces. The Government is as much a victim of the three Article 134 indecent assault and language specifications as it is under the Article 92 offense. We find, therefore, that this factor weighs in favor of the appellant.

The appellant was convicted of failing to obey a military protective order (MPO), assault and battery on a subordinate Marine, three separate specifications of indecent assault on a female Marine, indecent language directed at the female Marine, the use of ecstasy, and violating the sexual harassment provision of a lawful general regulation. In this context, we do not find that the number of charges and specifications misrepresent or exaggerate the appellant's criminality. We also note that the appellant's maximum punishment was limited to the jurisdictional maximum of a special court-martial. We find, therefore, that the appellant's punitive exposure was not unreasonably increased.

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<sup>3</sup> Specification 3 of Charge IV (indecent assault) alleges the appellant assaulted the victim by "**grabbing and pulling down (victim's) camouflage blouse and skivvie shirt...exposing her breasts to his view...**" Specification 4 of Charge IV (indecent assault) alleges the appellant rubbed "**his pelvis against (victim's) buttocks...**" Specification 5 of Charge IV (indecent language) asserts that the appellant communicated indecent language to (victim), to wit: "~~mmmmmm-mmmmm-mmmmm~~." Specification 2 of the 2nd Additional Charge (sexual harassment) avers that the appellant's sexual harassment consisted, of "**grabbing and pulling down (victim's) camouflage blouse and skivvie shirt and exposing her breasts to his view; orally communicating to (victim)...verbal comments, to wit "~~mmmmmm-mmmmm-mmmmm~~"...and rubbing his pelvis against (victim's) buttocks...**"

Finally, there is no evidence of prosecutorial overreaching or abuse in the drafting of the charges.

Considering the record of trial in the context of the five *Quiroz* factors, we find that the balance tips in favor of the Government and that the charges asserted did not reflect an unreasonable multiplication of charges. Art. 66(c), UCMJ. Even assuming, *arguendo*, that Specification 2 of the Second Additional Charge did reflect an unreasonable multiplication of charges, we are satisfied that, absent Specification 2 of the Second Additional Charge (sexual harassment), the adjudged sentence for the remaining offenses would have been at least the same as that adjudged by the members and approved by the CA. *United States v. Moffeit*, 63 M.J. 40, 42 (C.A.A.F. 2006); *United States v. Eversole*, 53 M.J. 132, 133 (C.A.A.F. 2000); *United States v. Cook*, 48 M.J. 434, 438 (C.A.A.F. 1998); *United States v. Peoples*, 29 M.J. 426, 428 (C.M.A. 1990); and *United States v. Sales*, 22 M.J. 305, 307-08 (C.M.A. 1986).

The findings and approved sentence are affirmed.

Senior Judge VINCENT and Judge KELLY concur.

For the Court

R.H. TROIDL  
Clerk of Court