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

Before
R.Q. WARD, B.L. PAYTON-O'BRIEN, J. R. MCFARLANE
Appellate Military Judges

UNITED STATES OF AMERICA

v.

ROLAND J. DELVA
ENGINEMAN THIRD CLASS (E-4), U.S. NAVY

NMCCA 201200446
GENERAL COURT-MARTIAL

Sentence Adjudged: 14 June 2012.
Military Judge: CDR Douglas Barber, JAGC, USN.
Convening Authority: Commander, Navy Region Mid-Atlantic, Norfolk, VA.
Staff Judge Advocate's Recommendation: LCDR S.J. Gawronski, JAGC, USN.
For Appellant: Capt Michael Berry, USMC; Capt David Peters, USMC.
For Appellee: Maj Crista Kraics, USMC.

28 May 2013

OPINION OF THE COURT

THIS OPINION DOES NOT SERVE AS BINDING PRECEDENT, BUT MAY BE CITED AS PERSUASIVE AUTHORITY UNDER NMCCA RULE OF PRACTICE AND PROCEDURE 18.2.

PER CURIAM:

A panel of members with enlisted representation sitting as a general court-martial convicted the appellant, contrary to his pleas, of one specification each of false official statement and sexual assault, in violation of Articles 107 and 120, Uniform Code of Military Justice, 10 U.S.C. §§ 907 and 920. The appellant was sentenced to confinement for 10 months and a bad-conduct discharge. The convening authority approved the

sentence as adjudged and, except for the punitive discharge, ordered it executed.

In the sole assignment of error, the appellant alleges that the military judge erred by admitting the appellant's first statement to the Naval Criminal Investigative Service (NCIS), which the appellant alleges was taken in contravention of his Article 31(b), UCMJ, rights. Specifically, the appellant alleges that NCIS erred when it failed to stop his interrogation after he denied involvement in the sexual assault, because that denial should have led NCIS to suspect him of making a false official statement and triggered separate warnings under Article 31(b).

Background

In September of 2011, the appellant and several other members of the USS GUNSTON HALL (LSD 44) gathered at a local bar to farewell one of the ship's officers. After the party, the appellant and several other Sailors were invited to LT D's nearby apartment, where appellant eventually ended up sleeping on the couch. Later that night, the appellant entered LT D's bedroom, laid down in her bed behind her, and sexually assaulted her while she was sleeping. During the assault, LT D never turned around to face her assailant, although she tentatively identified the appellant based on his voice and other factors. The next morning LT D reported the assault to her chain of command, which led to an NCIS investigation.

During the course of its investigation, NCIS interrogated the appellant regarding the assault. Prior to the interrogation, the appellant was advised of his rights under Article 31(b), UCMJ, and told he was suspected of "Rape, Assault, and Other Misconduct" in violation of Article 120, UCMJ. Prosecution Exhibit 2 at 1. The appellant waived his rights and denied any sexual contact with LT D. After the interrogation, the appellant voluntarily provided a DNA sample. Subsequent testing of the appellant's DNA sample, completed weeks later, showed that it matched a DNA sample taken from LT D's underwear.

After NCIS learned of the DNA match, the appellant was interrogated again. He was advised of his rights under Article 31(b), UCMJ, provided a cleansing warning, and again informed that he was suspected of violating Article 120, UCMJ. However, despite the denials the appellant had made during his previous interview that were seemingly contradicted by the DNA match, he

was not told that he was also suspected of making a false official statement in violation of Article 107, UCMJ. The appellant waived his rights, and admitted to penetrating LT D both digitally and with his penis.

The appellant was charged with a variety of offenses, to include making a false official statement under Article 107, UCMJ, for his denial during the initial interview. During the trial, the appellant moved to suppress his statement from the second interrogation based on an insufficient rights advisement. The military judge granted that motion in part, and suppressed the portion of the second statement that involved discussion of the appellant's previous false statement. The remaining portion of the second statement was admitted. The appellant did not challenge the admissibility of the first statement, which the military judge allowed into evidence.

Analysis

We review the military judge's decision to admit the appellant's first statement for plain error. *United States v. Eslinger*, 70 M.J. 193, 197-98 (C.A.A.F. 2011) ("Failure to object to the admission of evidence at trial forfeits appellate review of the issue absent plain error."). To show plain error the appellant must demonstrate: (1) the existence of error; (2) that the error was plain; and (3) that the error materially prejudiced a substantial right. *United States v. Humphries*, 71 M.J. 209, 214 (C.A.A.F. 2012). We find no error in the military judge's admission because the appellant was adequately warned under Article 31(b), UCMJ, and Fifth Amendment jurisprudence.

The purpose of the Article 31(b), UCMJ, rights advisement prior to interrogation is "'to orient [the accused] to the transaction or incident in which he is allegedly involved.'" *United States v. Simpson*, 54 M.J. 281, 284 (C.A.A.F. 2000) (quoting *United States v. Rice*, 29 C.M.R. 340, 342 (C.M.A. 1960)). However "'the nature of the charge need not be spelled out with the particularity of a legally sufficient specification.'" *Id.* (quoting *United States v. Davis*, 24 C.M.R. 6, 8 (C.M.A. 1957)). Instead, the rights advisement is adequate if "the accused knows the general nature of the charge." *Id.* Ultimately, the Article 31(b) rights advisement is meant to prevent the Government from coercing a statement from an accused, and is "designed to ensure that military service personnel have an unfettered choice of when to speak and when to remain silent during interrogation." *United States v. Kelley*, 48 M.J. 677, 680 (A.C.C.A. 1998), *set aside and remanded on*

other grounds, 51 M.J. 336 (C.A.A.F. 1999).

In this case, the appellant does not challenge the adequacy of the initial rights advisement, but rather urges us to find that those warnings became inadequate once he denied the sexual assault. Specifically, the appellant asks us to hold that the agents should have stopped the interview at that point to tell him he was suspected of making a false official statement in violation of Article 107, UCMJ. Appellant's Brief of 23 Jan 2013 at 7. We decline to do so. As was stated by our sister court in *United States v. Kelly*,

> To require military law enforcement officials to halt an interrogation under circumstances similar to those presented here, in order to advise a subject that he or she is now suspected of false swearing, could be "injurious to legitimate law enforcement" and "come at a substantial cost to society's legitimate and substantial interest in securing admissions of guilt." [*Moran v.] Burbine*, 475 U.S. [412,] 427 [1986]. Any such prophylactic rule would do little or nothing to prevent the evil of coerced statements, even in the military where the nature of our society requires constant vigilance against coerced self-incrimination. *See United States v. Duga*, 10 M.J. 206 (C.M.A. 1981); *United States v. Armstrong*, 9 M.J. 374 (C.M.A. 1980). *See also United States v. Raymond*, 38 M.J. 136, 139 (C.M.A. 1993).

48 M.J. at 681. Accordingly, we hold that where adequate Article 31(b), UCMJ, warnings have been provided, and the questioning is limited to the offenses for which the suspect was warned, a suspect is not entitled to a renewed warning for a false official statement upon his false denial.

Conclusion

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) Uniform Code of Military Justice. The findings and

the sentence as approved by the convening authority are affirmed.

For the Court

R.H. TROIDL
Clerk of Court