

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

**Before  
E.E. GEISER, L.T. BOOKER, J.K. CARBERRY  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**IAN S. DAVIS  
LANCE CORPORAL (E-3), U.S. MARINE CORPS**

**NMCCA 200900406  
SPECIAL COURT-MARTIAL**

**Sentence Adjudged:** 10 February 2009.

**Military Judge:** LtCol Thomas J. Sanzi, USMC.

**Convening Authority:** Commanding Officer, Marine Aviation Logistics Squadron 13, Marine Aircraft Group 13, 3d Marine Aircraft Wing, MarForPac, Yuma, AZ.

**Staff Judge Advocate's Recommendation:** LtCol Kurt J. Brubaker, USMC.

**For Appellant:** LCDR Edward T. George, JAGC, USN.

**For Appellee:** LT Sergio F. Sarkany, JAGC, USN.

**15 December 2009**

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**AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.**

PER CURIAM:

A military judge sitting as a special court-martial convicted the appellant, consistent with his pleas, of conspiracy to steal and sell military property, wrongfully disposing of military property, larceny of military property, and, wrongful receipt of military property, in violation of Articles 81, 108, 121, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 881, 908, 921, and 934. The military judge sentenced the appellant to confinement for 90 days, reduction to pay grade E-1, to forfeit

\$900.00 pay per month for 4 months, and a bad-conduct discharge. The convening authority approved the sentence.

The appellant now asserts that the military judge became a partisan advocate for the Government by asking questions of a Government sentencing witness. After carefully considering the parties' briefs and examining the record of trial, we are convinced 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 occurred. Arts. 59(a) and 66(c), UCMJ.

### **Background**

From May 2008 to September 2008, the appellant conspired to steal and sell, stole, traded, and sold various forms of live military ordnance obtained from live-fire ranges at Marine Corps Air Ground Combat Center, Twentynine Palms, California. During the sentencing portion of his court-martial, the trial counsel called Major D to testify as to appellant's ability to maintain his Military Occupational Specialty (MOS) in light of the offenses of which the appellant was found guilty. Record at 64-65. When trial counsel asked Major D "How would those charges impact his job?", the defense counsel objected. Defense counsel cited a lack of foundation as Major D did not have any personal knowledge of the appellant. *Id.* at 65. The objection was sustained and the military judge directed the trial counsel to inquire "More about how the witness knows about this MOS I guess, the accused's MOS." *Id.*

The trial counsel did as suggested and, in response to the question, Major D began to recount his level of interaction with the appellant. *Id.* at 66. It appears that the witness was confused and was responding to defense counsel's earlier assertion that ". . . he barely even knew who Lance Corporal Davis was much less his ability." *Id.* at 65. At this point, the military judge interjected and asked 11 foundational questions of the witness. The questions were limited to Major D's past service as an enlisted Marine in the same MOS as the appellant, his supervisory responsibilities as a Marine Corps gunnery sergeant within that MOS, the total number of years he served within the MOS, and the duties generally assigned within the MOS. Defense counsel did not object to any of the 11 questions asked by the military judge.

### **Impartiality of Military Judge**

Initially, we note that there is a strong presumption that a military judge is impartial in the conduct of a judicial proceeding. *United States v. Quintanilla*, 56 M.J. 37, 44 (C.A.A.F. 2001). Nonetheless, when a military judge's impartiality is challenged on appeal, the test is "whether, 'taken as a whole in the context of this trial,' a court-martial's 'legality, fairness, and impartiality' were put into

doubt by the military judge's questions." *United States v. Ramos*, 42 MJ 392, 396 (C.A.A.F. 1995). The test is objective, judged from the standpoint of a reasonable person observing the proceedings. *Id.*

We have carefully reviewed the military judge's questions at issue and the entirety of the record, and find no evidence from which a reasonable person would doubt the court-martial's legality, fairness, or impartiality. The questions asked by the military judge were limited to benign foundational matters and were asked only after the witness appeared confused and provided an unresponsive answer to trial counsel's question. Record at 65. Moreover, the defense counsel's failure to object to the questions asked by the military judge suggests that the defense counsel believed that the military judge remained impartial. *United States v. Burton*, 52 M.J. 223, 226 (C.A.A.F. 2000).

Finally, the military judge's actions throughout the court-martial convince us that he was impartial. In particular, we note the military judge's dismissal, *sua sponte*, of Charge I,<sup>1</sup> and his consideration, of Specifications 1 and 2 of Charge II as one offense for sentencing purposes as evidence that the military judge was not a partisan advocate for the Government and his questions did not place the fairness, legality, or impartiality of the court-martial in doubt. Record at 108, 110.

The supplemental court-martial order will reflect that Charge I was dismissed, thereby correcting an error in the original court-martial order. The findings and the approved sentence are affirmed.

For the Court

R.H. TROIDL  
Clerk of Court

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<sup>1</sup> The appellant pled guilty to and was initially found guilty of Charge I and despite trial defense counsel specifically stating to the military judge that Charge I was not multiplicitious with Specification 1 to Charge III for findings, the military judge dismissed Charge I. (Record at 61, 110).