

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

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

**UNITED STATES OF AMERICA**

**v.**

**TERRANCE R. ALEXANDER  
SERGEANT (E-5), U.S. MARINE CORPS**

**NMCCA 201100672  
GENERAL COURT-MARTIAL**

**Sentence Adjudged:** 9 September 2011.

**Military Judge:** LtCol Robert Palmer, USMC.

**Convening Authority:** Commanding General, Training Command,  
Quantico, VA.

**Staff Judge Advocate's Recommendation:** LtCol J.L. Gruter,  
USMC.

**For Appellant:** LT Toren G. Muschovic, JAGC, USN.

**For Appellee:** LT Benjamin Voce-Gardner, JAGC, USN.

**31 October 2012**

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**OPINION OF THE COURT**  
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**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:

At a general court-martial, a military judge found the appellant guilty, pursuant to his pleas, of one specification of violating a lawful general order,<sup>1</sup> in violation of Article 92, Uniform Code of Military Justice, 10 U.S.C. § 892. A panel of

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<sup>1</sup> The general order in question, U.S. Navy Regulation, Art. 1165 (1990), prohibits fraternization. Prosecution Exhibit 3.

officer and enlisted members also found him guilty, contrary to his pleas, of one specification each of failing to obey a lawful order and adultery in violation of Articles 92 and 134, UCMJ, 10 U.S.C. §§ 892 and 934. The court-martial sentenced the appellant to reduction to pay grade E-2 and a bad-conduct discharge. The convening authority approved the sentence as adjudged.

The appellant now argues that the military judge failed to establish an adequate factual predicate for his guilty plea and that the guilty finding for adultery is factually insufficient. After consideration of the pleadings and the record of trial, we find no error materially prejudicial to the substantial rights of the appellant. Arts. 59(a) and 66(c), UCMJ.

### **Factual Background**

A married Marine sergeant (E-5), the appellant was assigned as a permanent staff member to a small Marine Corps Detachment located at Fort Gordon, Georgia. Private First Class (PFC) [B], then Private [B], also married, was assigned to the Detachment as a student attending the Satellite Communications school. During the providence inquiry, the appellant admitted to carrying on an inappropriate relationship with PFC [B]. He explained that their relationship was primarily through texting each other and that topics discussed may have initially been appropriate for their rank and billet. Ultimately, however, their communication over a two-month period became inappropriate, as they discussed a romantic relationship after PFC [B] graduated from the school. Record at 73-83. The military judge reviewed the Navy Regulation and its prohibitions in detail with the appellant. The appellant acknowledged that he understood the order and confirmed that his relationship with PFC [B] violated the terms of the order. *Id.*

After the military judge accepted the appellant's guilty plea, the Government proceeded with the contested portion of trial. PFC [B] testified that during their texting each other, the appellant asked her to send him semi-nude pictures of herself, and she in fact texted him photos of herself partially clothed. *Id.* at 425-26, Prosecution Exhibit 14. She also described going out on "dates" with the appellant and how they engaged in consensual sexual activity. The Government also presented DNA evidence that corroborated sexual intercourse between the appellant and PFC [B].

### **Providence Inquiry**

A military judge's decision to accept a guilty plea is reviewed for an abuse of discretion. *United States v. Inabinette*, 66 M.J. 320, 322 (C.A.A.F. 2008). A decision to accept a guilty plea will be set aside only where the record of trial shows a substantial basis in law or fact for questioning the plea. *Id.* Our determination focuses on the providence of the plea and not the sufficiency of the evidence, *United States v. Barton*, 60 M.J. 62, 64 (C.A.A.F. 2004), for the law requires only that "the factual circumstances as revealed by the [appellant] objectively support that plea," *United States v. Davenport*, 9 M.J. 364, 367 (C.M.A. 1980).

The appellant argues that the military judge failed to elicit a sufficient factual basis to support finding that he violated United States Navy General Regulation, Article 1165 (1990), which prohibits relationships that are unduly familiar, do not respect the differences in rank or grade and are prejudicial to good order and discipline or service discrediting. We disagree.

During the providence inquiry, the military judge explained each element of this offense. The appellant stated that he understood each element and the conduct prohibited by the order, taking time to explain why he believed his relationship with PFC [B] violated its terms. The appellant further explained to the military judge how his relationship with PFC [B] became inappropriately "personal" and that over a two-month period of frequent texting, they discussed personal topics and the possibility of a romantic relationship after PFC [B] graduated.

When the military judge asked the appellant if he violated the terms of this regulation, the appellant answered in the affirmative and explained in detail why he believed his conduct violated the regulation's terms. Nothing in the providence inquiry or in the remainder of the record for that matter contradicted the appellant's factual assertions. Although the Government now directs us to other portions of the record during the contested phase of trial, we need not delve further than the providence inquiry itself. This is not a case where the military judge merely gained the appellant's assent to a recitation of an element or conclusion of law. Compare *United States v. Jordan*, 57 M.J. 236, 239 (C.A.A.F. 2002) (holding that the appellant's assent to simple recitation of service discrediting element was insufficient), with *Barton*, 60 M.J. at 65 (holding the appellant's admission to value of property stolen in larceny case involved more than simply agreeing with a

legal conclusion). Nor do we have a case where subsequent statements from the appellant or facts later elicited raised a conflict with the appellant's earlier admissions during the providence inquiry. *United States v. Outhier*, 45 M.J. 326, 332 (C.A.A.F. 1996).

Under the facts of this case, we find that the appellant's response's objectively supported a violation of Navy Regulation, Article 1165. As was revealed during the contested portion of the trial, many more amplifying facts could have been added to provide a stronger basis for the military judge's decision to accept the plea, but we must find a substantial basis in law or fact for questioning that decision and we afford military judges significant deference in this regard. *Inabinette*, 66 M.J. at 322. Accordingly, nothing in the record presents us with a substantial basis for questioning the providence of the appellant's guilty plea.

#### **Legal Sufficiency**

We now turn to the appellant's next contention that the member's guilty finding to the adultery specification is factually insufficient. Article 66(c), UCMJ, requires a *de novo* review of the legal and factual sufficiency of each approved finding of guilt. *United States v. Washington*, 57 M.J. 394, 399 (C.A.A.F. 2002); Art. 66(c), UCMJ. The test for factual sufficiency is whether, "after weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses," this court is convinced of the appellant's guilt beyond a reasonable doubt. *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). In considering the record, the reviewing court must weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses. Art. 66(c), UCMJ.

The appellant argues that the Government failed to establish that his sexual relationship with PFC [B] was prejudicial to good order and discipline since both the appellant and PFC [B] were in failed marriages. Conduct that is prejudicial to good order and discipline includes conduct that has "an obvious, and measurably divisive effect on unit or organization discipline, morale, or cohesion, or is clearly detrimental to the authority or stature of or respect toward a servicemember." *MANUAL FOR COURTS-MARTIAL, UNITED STATES* (2008 ed.), Part IV, ¶ 62c(2).

Contrary to the appellant's argument, the measure of the effect on good order and discipline is not the strength of the parties' respective marriages, but rather the consequences of their adulterous act. The appellant's adulterous relationship with PFC [B] violated a Marine Detachment order which prohibited fraternization between permanent personnel and students. The appellant made concerted efforts to keep their illicit affair hidden from others within the Detachment. When PFC [B] discovered flirtatious texts from the appellant on another student's cell phone, she broke-off their relationship. Later that same evening, PFC [B] fell asleep in her barracks room from the effects of alcohol. She awoke to find the appellant on top of her engaged in sexual intercourse. She told him to leave and then fell back asleep. The next morning she confided in a fellow student some of the details of her affair with the appellant and his actions during the previous night. Her friend ultimately reported the matter to the command, an investigation ensued, and the commanding officer issued a military protective order to the appellant.

Viewing the record as a whole, we find that the appellant, a staff member, maintaining an adulterous relationship with a young female student while both were assigned to the Detachment, had a direct and palpable effect on the discipline of the unit, undermined the order especially important in a schoolhouse environment, and was detrimental to his stature as a noncommissioned officer. We therefore find the evidence factually sufficient for the guilty finding of adultery.

### **Conclusion**

Accordingly, the findings of guilty and the sentence are affirmed.

For the Court

R.H. TROIDL  
Clerk of Court