

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

**Before
C.L. REISMEIER, J.A. MAKSYM, R.Q. WARD
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**CHRISTOPHER K. LAWSON
PRIVATE FIRST CLASS (E-2), U.S. MARINE CORPS**

**NMCCA 201200043
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 30 September 2011.

Military Judge: Col Deborah McConnell, USMC.

Convening Authority: Commanding Officer, Marine Wing
Communications Squadron 28, MACG 28, 2d MAW, U.S. Marine
Corps Forces Command, Cherry Point, NC.

Staff Judge Advocate's Recommendation: Col S.C. Newman,
USMC.

For Appellant: LT Ryan Mattina, JAGC, USN.

For Appellee: Capt Crista Kraics, USMC.

28 June 2012

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 special court-martial composed of members with enlisted representation convicted the appellant, contrary to his pleas, of one specification of violating a lawful general regulation, and one specification of using provoking speech, in violation of Articles 92 and 117, Uniform Code of Military Justice, 10 U.S.C. §§ 892 and 917. Members sentenced the appellant to a bad-

conduct discharge. The convening authority approved the sentence as adjudged and ordered it executed.

The appellant raised one assignment of error, arguing that the evidence was legally and factually insufficient to sustain the conviction for using provoking speech. After careful consideration of the record and the pleadings of the parties, 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.

On 6 May 2011, the appellant entered the unlocked barracks room of Private First Class (PFC) W at night after PFC W had fallen asleep. The appellant and PFC W were strangers. When she awoke, PFC W, surprised by the intrusion, told the appellant he had the wrong room and to leave. The appellant responded by saying, "No. No, I don't - no, I'm not leaving." Record at 150. He seemed to PFC W to be under the influence of alcohol.

The two stood about a foot to 18 inches apart as PFC W again told the appellant he had entered the wrong room, asking him to leave. Again, the appellant said no. She then asked for his name. The appellant replied "Chris." She asked him what unit he was with. The appellant replied with something that had a "28" in it. PFC W then addressed the appellant by his first name, informing him that he needed to leave. The appellant responded by saying, "Look, chick, I'm not trying to rape you or anything, so you just need to chill out, you know, why can't we just hang out? You know, we can just chill or whatever." *Id.* at 152. During this exchange, the appellant told PFC W that he was not leaving unless she called PMO.

PFC W testified that the appellant's statement that he was not there to rape her made her angry and somewhat intimidated, given that she had made no references to rape. Wondering to herself why he would bring that up, she departed the room to get assistance in removing the appellant.

The tests for factual and legal sufficiency are well-known. *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). We need not recite them again here. We conclude that the Government submitted evidence sufficient to sustain the conviction.

The salient question presented is whether the appellant's words, "the only way I'm leaving is if you call PMO [Provost

Marshal's Office]," spoken to PFC W, were provoking under the circumstances. Despite the fact that PFC W responded in a low-key, non-confrontational manner, her actual response is not determinative of the question. The question is whether the appellant's words were words a reasonable person would expect to induce a breach of the peace under the circumstances. *United States v. Adams*, 49 M.J. 182, 184-85 (C.A.A.F. 1998); *United States v. Davis*, 37 M.J. 152, 154 (C.M.A. 1993).

The appellant entered the room of a sleeping PFC W in the middle of the night. He was an uninvited stranger. He awoke her with the intrusion and refused to leave when asked to do so. He then stated that he was not there to rape PFC W, injecting a reference to a sexual assault that was off-putting to the PFC. The appellant then claimed that his removal would require the presence of the authorities - authorities who obviously were not present in the room. In context, we conclude that the appellant's comment, with the threatening overtones, is the type of language a reasonable person would expect to induce a breach of the peace. In fact, a reasonable person would expect that the listener would feel a rather strong urge to immediately and forcibly remove the speaker from the room.

After reviewing the evidence, we find that a "rational trier of fact could have found the essential elements of the crime [of which the appellant was found guilty] beyond a reasonable doubt." *United States v. Brown*, 65 M.J. 227, 229 (C.A.A.F. 2007) (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). We, too, are convinced of his guilt beyond a reasonable doubt. Accordingly, we affirm the findings and sentence as approved by the convening authority.

For the Court

R.H. TROIDL
Clerk of Court