

United States Navy-Marine Corps Court of Criminal Appeals

UNITED STATES

Appellee

v.

Andrew M. CARRION

Lance Corporal (E-3), U.S. Marine Corps

Appellant

No. 201800118

Appeal from the United States Navy-Marine Corps Trial Judiciary.

Decided: 15 April 2019.

Military Judge:

Lieutenant Colonel Jeffrey V. Munoz, USMC.

Sentence adjudged 8 January 2018 by a special court-martial convened at Marine Corps Base Camp Pendleton, California, consisting of a military judge sitting alone. Sentence approved by convening authority: reduction to E-1, confinement for 12 months, and a bad-conduct discharge.

For Appellant:

Lieutenant Commander Jacqueline M. Leonard, JAGC, USN.

For Appellee:

Lieutenant Jonathan Todd, JAGC, USN.

**This opinion does not serve as binding precedent, but
may be cited as persuasive authority under NMCCA
Rule of Practice and Procedure 30.2.**

Before WOODARD, FULTON, and GERDING,
Appellate Military Judges.

Judge GERDING delivered the opinion of the Court, in which Chief Judge WOODARD and Senior Judge FULTON joined.

GERDING, Judge:

A military judge, sitting as a special court-martial, convicted the appellant, in accordance with his pleas, of willfully disobeying a superior commissioned officer, assault consummated by a battery, communicating a threat, and disorderly conduct, in violation of Articles 90, 128, and 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. §§ 890, 928, and 934 (2016). The military judge sentenced the appellant to 12 months' confinement, reduction to pay grade E-1, and a bad-conduct discharge. The convening authority approved the sentence as adjudged.

The appellant submitted this case without assignment of error. However, after reviewing the record of trial, we specified the following issue:

Whether the appellant's plea to Article 134 (disorderly conduct) was provident when the military judge did not elicit evidence that appellant's conduct inside his home was witnessed by—or affected the peace and quiet of—any person or how his arrest outside his home was disorderly?

We find no prejudicial error and affirm

I. BACKGROUND

In August 2017, the appellant assaulted his wife, M.P., by pushing her to the ground and pressing his knee against her back. In response, the appellant's commanding officer issued a military protective order (MPO) prohibiting the appellant from having contact with M.P. and from going within 500 feet of their shared on-base residence. The appellant violated the MPO in September and October 2017 multiple times by texting M.P., communicating threats to M.P., assaulting M.P., and returning to their residence.

On 22 October 2017, the appellant went to the shared residence in violation of the MPO. He was angry at M.P. and "tore up" the house. He turned over couches, threw laundry around the bedroom, broke glass wall decorations, and left an angry note for M.P. During the time the appellant was destroying things in the residence, M.P. was not there. The appellant left and immediately sent insulting, profane, and threatening text messages to M.P., including messages describing what he had just done.

About an hour after the appellant left, M.P. and a civilian friend returned and saw the damage the appellant caused. M.P. called base police to report the incident. Base police responded and arrested the appellant, who had re-

turned to the residence. The appellant was charged with violating the MPO, threatening M.P., and disorderly conduct. The appellant pleaded guilty to all offenses alleged against him, including disorderly conduct based on his actions at the shared residence on 22 October 2017.

II. DISCUSSION

Before accepting a guilty plea, a military judge must ensure the plea is supported by a factual basis. Article 45(a), UCMJ; *United States v. Care*, 18 C.M.A. 535, 537 (C.M.A. 1969); RULE FOR COURTS-MARTIAL (R.C.M.) 910(e), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2016 ed.) (MCM.). The military judge must elicit sufficient facts to satisfy every element of the offense in question, and we review a military judge’s decision to accept a plea of guilty for an abuse of discretion. *United States v. Inabinette*, 66 M.J. 320, 322 (C.A.A.F. 2008) (citation and internal quotation marks omitted). We review questions of law arising from the guilty plea *de novo*. *Id.* We may reject a guilty plea only if there is a substantial basis in law or fact to question the plea. *Id.*

The elements of disorderly conduct in violation of Article 134, UCMJ, are:

- (1) That the accused was drunk, disorderly, or drunk and disorderly on board ship or in some other place; and
- (2) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

MCM, Part IV, ¶ 73.b. The explanation section for the offense of disorderly conduct states:

Disorderly conduct is conduct *of such a nature* as to affect the peace and quiet of persons who *may* witness it and who *may* be disturbed or provoked to resentment thereby. It includes conduct that endangers public morals or outrages public decency and any disturbance of a contentious or turbulent character.

Id. at ¶ 73.c(2) (emphasis added).

We agree with the government that, under a plain reading of the offense’s elements and explanation, it is not necessary for a person’s disorderly actions to be witnessed as occurring in order to amount to disorderly conduct. Conduct that “endangers public morals or outrages public decency” and “any disturbance of a contentious or turbulent character” is sufficient to be considered

disorderly. The gravamen of disorderly conduct under Article 134 is that a person acts in a disorderly manner and someone is thereby disturbed.

Here, the appellant acted in a disorderly manner that disturbed M.P. He engaged in a disturbance of a contentious or turbulent character by overturning furniture, throwing laundry around the bedroom, and breaking things in an angry rage. Although M.P. did not see the appellant tear up the home, the appellant texted her immediately after he “tore up” their home, told her what he had done, and threatened her. M.P. arrived home soon thereafter and witnessed the aftermath of the appellant’s conduct. The record demonstrates that the appellant’s conduct disturbed M.P. Although not necessary to prove the offense, the appellant clearly intended his conduct to disturb M.P., and his actions had the desired effect. She called base police to report the damage to her home and had to clean up their home after the appellant “tore it up.”

We interpret MCM ¶ 73.c(2)’s explanation of disorderly conduct to mean that the appellant’s conduct was of such a nature as to affect the peace and quiet of a witness who “may” witness and “may” be disturbed or provoked to resentment thereby. This portion of the Manual’s explanation speaks to the nature of the conduct—not the contemporaneous result. If conduct of this nature prejudices good order and discipline, or is also of a nature to bring discredit upon the armed forces, the offense is complete.

The military judge did not abuse his discretion in accepting the appellant’s guilty plea to disorderly conduct. The military judge properly advised the appellant of the elements of disorderly conduct and the applicable definitions. The appellant admitted that his actions fit the elements and definitions. The United States Supreme Court has characterized a guilty plea as “more than a confession which admits that the accused did various acts” but rather an “admission that he committed the crime charged against him.” *United States v. Broce*, 488 U.S. 563, 570 (1989) (citation and internal quotation marks omitted). By pleading guilty, the appellant admitted that his actions were disorderly and disturbed M.P. and amounted to the offense of disorderly conduct under Article 134, UCMJ. We find no substantial basis in law or fact to question the appellant’s plea.

III. CONCLUSION

After careful consideration of the record and briefs of appellate counsel, we have determined that the approved findings and sentence are correct in law and fact and that no error materially prejudicial to Appellant’s substantial rights occurred. Arts. 59 and 66, UCMJ. Accordingly, the findings and sentence as approved by the convening authority are **AFFIRMED**.



FOR THE COURT:

A handwritten signature in blue ink that reads "Rodger A. Drew, Jr." with a stylized flourish at the end.

RODGER A. DREW, JR.
Clerk of Court