UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class RODNEY D. FORD
United States Air Force

ACM 34601

2 April 2002

Sentence adjudged 22 March 2001 by GCM convened at Langley Air Force Base, Virginia. Military Judge: Mark L. Allred.

Approved sentence: Bad-conduct discharge, confinement for 15 days, forfeiture of $695.00 pay per month for one month, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott and Major Patricia A. McHugh.

Appellate Counsel for the United States: Colonel Anthony P. Dattilo, Lieutenant Colonel Lance B. Sigmon, and Major Martin J. Hindel.

Before

SCHLEGEL, PECINOVSKY, and LOVE
Appellate Military Judges

OPINION OF THE COURT

LOVE, Judge:

At a general court-martial, a military judge convicted the appellant, in accordance with his plea, of wrongful use of 3,4-methylenediox-N-ethylamphetamine, or some derivative thereof, more commonly known as ecstasy. Article 112a, UCMJ, 10 U.S.C. § 912a. His approved sentence consisted of a bad-conduct discharge, confinement for 15 days, forfeiture of $695.00 pay for one month, and reduction to airman basic. The appellant contends that the trial judge erred in denying appellant's challenge for cause against a court member based upon implied bias. We disagree and affirm.

I. FACTS

The appellant was a 21-year-old, jet-engine apprentice assigned to Langley Air Force Base (AFB), Virginia. One evening, while in his on-base dormitory, some friends offered him a tablet of ecstasy. After taking it, he experienced the physical effects of the drug. A few hours later, he took a second tablet of the same drug. He was identified as an illegal drug user during a large drug investigation.

The drug investigation at Langley AFB generated media attention. Numerous articles were published in base, local, and even national newspapers. Defense counsel was aware of this fact and, because the appellant elected to be sentenced by court members, he conducted individual voir dire of each court member to determine the extent of his or her exposure to the media coverage. During the voir dire of Col B, the following exchange occurred:

> DC: Do you remember, sir, if I could focus your attention on the two or three articles that you read, do you remember what the summary of those articles was?
>
> MBR: Again, other than just generally that there had been a drug bust that involved a sizeable number of individuals, some of whom were at Langley. None of the specifics stick out.
>
> ….
>
> DC: Sir, you mentioned that you had seen these media articles and news clips involving personnel at Langley and the big drug bust you were talking about. What, if any, impact would that have on you, personally?
>
> MBR: Well, probably I guess some embarrassment that something like that would be in the local media about the Air Force. And not only about the Air Force, but about the base that I was stationed at.
>
> DC: Sir, can you talk a little bit about what impact, if any that you're aware of, this had on your unit?
>
> MBR: On my individual unit?
>
> DC: Yes, sir.
>
> MBR. None. None directly.

DC: Does that mean that you believe there was some indirect impact, sir?

MBR: Well, I suspect the same kind of indirect impact I felt myself on other members.

DC: Sir, do you recall if you had any conversations with individuals in your family or unit regarding the media attention that we're speaking of?

MBR: Yes, I spoke with my wife about it.

DC: Do you remember the general nature of the conversation?

MBR: That it was too bad; that it was an unfortunate incident. That it was, quite frankly, a bad thing for the Air Force and for Langley Air Force Base.

DC: Just one more question, sir. Have you taken any action in your unit in response to the media attention that Langley has received regarding this drug?

MBR: No.

DC: No further questions, thank you, sir. Thank you, your Honor.

Based on this exchange, the defense counsel argued that Col B's responses indicated that he was implicitly biased against the appellant because of his reaction to the media exposure. The judge denied the motion, finding that Col B also indicated on voir dire that he could completely disregard everything he had heard or read about the incident and that it would have no bearing on his judgment whatsoever. The judge specifically found no indication of actual or implied bias.

II. CHALLENGE FOR CAUSE

Our standard of review of a judge's decision on a challenge for cause is whether he clearly abused his broad discretion in failing to apply the liberal-grant mandate. *United States v. Napoleon*, 46 M.J. 279 (1997); *United States v. Dinatale*, 44 M.J. 325 (1996); *United States v. Mosqueda*, 43 M.J. 491 (1996).

Rule for Courts-Martial (R.C.M.) 912(f)(1)(N) provides that a court member shall be excused for cause whenever it appears that the member should not sit as a member in the interest of having the court free from substantial doubt as to legality, fairness, and impartiality. One of the examples set out in the Discussion is when a member has a "decidedly friendly or hostile attitude" toward a party.

On questions of actual bias, which exists when the member has a personal belief or attitude that will not yield to the evidence and the military judge's instructions on the law, the decisions of the military judge are given great deference. *Napoleon*, 46 M.J. at 283. *See United States v. Reynolds*, 23 M.J. 292, 294 (C.M.A. 1987). However, less "deference" is paid on questions of implied bias, which are reviewed through the eyes of the public using an objective test focusing on the appearance of fairness. *Napoleon*, 46 M.J. at 283. "'[I]nnocuous prior knowledge of the facts of a case' [is] not *per se* disqualifying." *Napoleon*, 46 M.J. at 283 (quoting *United States v. Lake*, 36 M.J. 317, 324 (C.M.A. 1993)). Instead, the question is whether the court member can set aside what he or she has heard and decide the case fairly and impartially. *United States v. Rockwood*, 48 M.J. 501, 511 (Army Ct. Crim. App. 1998), *aff'd*, 52 M.J. 98 (1999). "[A]ctual bias is viewed subjectively, 'through the eyes of the military judge or the court members,' implied bias is viewed objectively, 'through the eyes of the public.'" *United States v. Schlamer*, 52 M.J. 80, 93 (1999) (citing *United States v. Daulton*, 45 M.J. 212, 217 (1996)). "[W]hen there is no actual bias, 'implied bias should be invoked rarely.'" *United States v. Armstrong*, 54 M.J. 51, 54 (2000) (quoting *United States v. Rome*, 47 M.J. 467, 469 (1998)).

Applying that standard to the facts of this case, we think it abundantly clear that Col B's statements did not suggest any bias. A career military officer's expression of dismay, embarrassment, or disappointment in response to media coverage of possible widespread illegal drug use among fellow service members is normal. It would be unrealistic to expect a professional military member to be indifferent or blasé about this type of news. An understandable and reasonable reaction to news of a crime does not, per se, constitute disqualification to serve as a panel member. Likewise, mere distaste for a given offense does not disqualify a member from service on a court-martial. *United States v. Dale*, 42 M.J. 384, 385 (1995). We believe a reasonable layperson would not be troubled by the thought of Col B serving as a panel member. In fact, his conscientiousness in speaking honestly about his reaction suggests a person with integrity and strength of character—exactly the type of member a layperson would want to impose a court-martial sentence.

The approved findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred. Article 66(c), UCMJ;

United States v. Turner, 25 M.J. 324, 325 (C.M.A. 1987). Accordingly, the approved findings and sentence are

AFFIRMED.

Judge PECINOVSKY did not participate.

OFFICIAL

FELECIA M. BUTLER, TSgt, USAF
Chief Court Administrator