UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman PRINCE E. GOODRIDGE
United States Air Force

ACM 34519

9 April 2002

Sentence adjudged 8 February 2001 by GCM convened at Peterson Air Force Base, Colorado. Military Judge: Steven A. Hatfield.

Approved sentence: Bad-conduct discharge, confinement for 33 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott and Captain Patrick J. Dolan.

Appellate Counsel for the United States: Lieutenant Colonel Lance B. Sigmon and Captain Matthew J. Mulbarger.

Before

SCHLEGEL, ROBERTS, and PECINOVSKY
Appellate Military Judges

OPINION OF THE COURT

SCHLEGEL, Senior Judge:

The appellant, consistent with his pleas, was convicted of conspiring to commit larceny, wrongfully using lysergic acid diethylamide (LSD) and methylenedioxymethamphetamine (ecstasy), wrongfully introducing ecstasy and marijuana onto a military installation, six specifications of larceny, three specifications of breaking and entering, and unlawful entry, in violation of Articles 81, 112a, 121, 129, and 130, UCMJ, 10 U.S.C. §§ 881, 912a, 921, 929, 930. His approved sentence included a bad-conduct discharge, confinement for 33 months, forfeiture of all pay and allowances, and reduction to E-1. The appellant argues the judge erred by failing to grant a challenge for cause against a court member for implied bias. We find no abuse of discretion and affirm the findings and sentence.

The appellant was assigned to the 721st Security Forces Squadron at Cheyenne Mountain Air Force Station (AFS), Colorado, but lived in a dormitory at Peterson Air Force Base (AFB), Colorado. The majority of his offenses occurred on Peterson AFB, and that is where the appellant's court-martial took place.

The appellant elected to be sentenced by court members. In response to a general voir dire question about prior knowledge of the case, one of the court members, the deputy commander for the 721st Support Group, indicated that he knew about an investigation involving a number of different squadrons within the support group, but did not know any specifics. During individual questioning by defense counsel, the court member said he had a working relationship with the appellant's commander but that they never talked about the case. When asked about his prior knowledge, the court member stated that he learned from the Air Force Office of Special Investigations (AFOSI) that "they had an ongoing investigation against a whole bunch of people." He said the AFOSI provided numbers of individuals by squadron but no other information. In response to a follow-up question from the judge, the court member indicated the AFOSI said "the less we knew, the better." However, he did acknowledge that the appellant's commander sent him an e-mail containing a link to an on-line newspaper article about the case. The court member said the appellant's name was in the article but it did not contain other significant facts. He said that he would disregard the article and sentence the appellant only on the facts admitted in court.

The appellant challenged this court member on the basis of actual and implied bias. The justification was that he was an accuser, his relationship with the appellant's commander, his position as the deputy commander of the support group, and the fact that he read a newspaper article about the case. The judge in denying the challenge said,

> Based on [the member's] answers during individual voir dire, I find that he has no knowledge of the specific aspects of this case; has never exercised a command function or role in the 721st Support Group; does not know this accused; did not talk with the accused's squadron commander about the specifics of this case; and while exposed to an article that was in the paper today that was sent to him by the squadron commander, does not remember specifics of that article nor does he believe that anything contained in that article will affect his ability to sit as a court member.

After the challenge for cause was denied, the appellant used his peremptory challenge against this court member and properly preserved this issue for our review. The appellant contends the judge should have granted the challenge based on implied bias.

"[A]ctual bias is viewed subjectively, 'through the eyes of the military judge or the court members, [and] 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)), *cert. denied*, 529 U.S. 1005 (2000). A judge's decision on a challenge based on actual bias is given great deference. *United States v. Napoleon*, 46 M.J. 279, 283 (1997). *See United States v. Reynolds*, 23 M.J. 292, 294 (C.M.A. 1987). Less deference is afforded a judge on questions of implied bias. *Napoleon*, 46 M.J. at 283. We review the judge's decision in denying a challenge for cause for an abuse of discretion. *United States v. Thompson*, 50 M.J. 257, 259 (1999). A court member's "'innocuous 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)). When a court member has some prior knowledge of the case, the question is whether the 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). "[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)).

Our review of the charge sheet and pretrial papers discloses absolutely no evidence this court member acted as an accuser in this case. Article 1(9), UCMJ, 10 U.S.C. § 801(9); Rule for Courts-Martial (R.C.M.) 912(f)(C. Furthermore, neither Article 25(a), UCMJ, 10 U.S.C. § 825(a), nor R.C.M. 912(f), disqualifies an officer who occupies a command position from serving as a court member for the trial of someone from a subordinate unit. *Cf. United States v. Dinatale*, 44 M.J. 325 (1996); *United States v. Dale*, 42 M.J. 384 (1995)

This leaves us with whether the court member's relationship with the appellant's commander, his generic knowledge that an investigation of subordinate units was being conducted, or his reading of a newspaper article about the case required his disqualification under R.C.M. 912(f)(1)(N). We fail to see how the fact that the appellant's commander had a working relationship with the court member is a basis for disqualification. The commander of a security forces unit on any Air Force base has a working relationship with a number of individuals. Does that mean they would all be disqualified from serving as a court member for the court-martial of a security forces member? We think not, unless as a result of that relationship the court member possesses a bias in the case to the degree that he or she has a preconceived opinion about the guilt or innocence of the accused, or the sentence that should be adjudged. *Cf. United States v. Ai*, 49 M.J. 1, 5 (1998) (prior professional work relationship with witness not disqualifying where court member would not favor the witness' testimony); *United States v. Hamilton*, 41 M.J. 22 (C.M.A. 1994) (court members who were former legal assistance clients of trial counsel not disqualified). The court member here said he had not spoken with the appellant's commander about the case and indicated that his working relationship with the commander would not affect his ability to be fair and impartial. We also note the appellant's commander did not testify during the trial.

The information the court member received from the AFOSI is also insufficient to raise a question about his fairness and impartiality. All he knew was that a number of individuals from subordinate squadrons were being investigated and that depending on the outcome they would be unable to perform their jobs in the high security environment of Cheyenne Mountain. He was given no definite information about the matters or individuals being investigated. Knowledge of this vague information is not disqualifying.

Finally, we hold that the court member's reading of a newspaper article about the case did not disqualify him. Although the article contained the appellant's name, the court member said it contained no other specific information. He also promised that he would only consider evidence presented in court in determining the appellant's sentence. The facts in this case show that this court member knew even less about the case than the member in *Napoleon* where our superior court found that his knowledge was so "limited and general" that the judge did not abuse his discretion in denying a challenge for implied bias. *Napoleon*, 46 M.J. at 283.

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.

OFFICIAL

FELECIA M. BUTLER, TSgt, USAF
Chief Court Administrator