

**UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

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**UNITED STATES**

**v.**

**Airman JEREMY J. GRAWAY**  
**United States Air Force**

**ACM S32029**

**28 March 2013**

Sentence adjudged 2 December 2011 by SPCM convened at Kirtland Air Force Base, New Mexico. Military Judge: Scott E. Harding.

Approved sentence: Bad-conduct discharge, confinement for 5 months, forfeiture of \$978.00 pay per month for 6 months, and reduction to E-1.

Appellate Counsel for the Appellant: Major Anthony D. Ortiz and Captain Christopher D. James.

Appellate Counsel for the United States: Colonel Don M. Christensen; Major Roberto Ramirez; and Gerald R. Bruce, Esquire.

Before

**GREGORY, HARNEY, and SOYBEL**  
Appellate Military Judges

This opinion is subject to editorial correction before final release.

**PER CURIAM:**

Before a special court-martial, the appellant entered mixed pleas of guilty to one specification of cocaine use and not guilty to one specification of D-Amphetamine use, in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. The military judge found him guilty in accordance with his guilty plea, and a panel of officer and enlisted members convicted him of the litigated specification. The court sentenced him to a bad-conduct discharge, confinement for six months, forfeiture of \$978 per month for six months, and reduction to the grade of E-1. The convening authority reduced the confinement to five months and otherwise approved the sentence adjudged. The appellant argues that the military judge erred by denying a challenge for cause against an enlisted security forces member.

At trial, the appellant challenged an enlisted panel member who was assigned to security forces on the basis that he would give more weight to Investigator G, a security forces member who was expected to testify. The court member stated that he did not know the prospective witness, but he had heard of him. The member also stated that he recognized the special expertise of police officers acquired through training and experience, but he would treat a police officer just like any other witness:

Q: Okay. You will apply the same standards then to—when Investigator [G] testifies you will apply the same standards in evaluating his credibility as any other witness?

A: Absolutely, sir.

The military judge entered extensive findings, considered the liberal grant mandate, and denied the challenge. Investigator G testified briefly in sentencing, and neither the defense nor the court members had any questions for him.

A member shall be excused for cause whenever it appears that the member “[s]hould not sit as a member in the interest of having the court-martial free from substantial doubt as to legality, fairness, and impartiality.” Rule for Courts-Martial 912(f)(1)(N). This rule applies to both actual and implied bias. *United States v. Daulton*, 45 M.J. 212, 217 (C.A.A.F. 1996). The test for actual bias is whether the member “will not yield to the evidence presented and the judge’s instructions.” *United States v. Napoleon*, 46 M.J. 279, 283 (C.A.A.F. 1997), *quoted in United States v. Schlamer*, 52 M.J. 80, 92 (C.A.A.F. 1999) (citations and internal quotation marks omitted). With implied bias, we focus on the perception or appearance of fairness of the military justice system as viewed through the eyes of the public. *United States v. Rome*, 47 M.J. 467, 469 (C.A.A.F. 1998); *United States v. Dale*, 42 M.J. 384, 386 (C.A.A.F. 1995). Simply stated, “[i]mplied bias exists ‘when most people in the same position would be prejudiced.’” *Daulton*, 45 M.J. at 217 (quoting *United States v. Smart*, 21 M.J. 15, 20 (C.M.A. 1985)). For both types of challenges, military judges must apply the liberal grant mandate which recognizes the unique nature of the court member selection process. *United States v. Downing*, 56 M.J. 419, 422 (C.A.A.F. 2002). We review a military judge’s ruling on a challenge based on actual bias for abuse of discretion; we review challenges based on implied bias with less deference than abuse of discretion, by using an objective standard of public perception. *Id.*

Applying the standards described above, we find the military judge did not err in denying the challenge for cause. The responses of the challenged member clearly show that he had no bias that would influence his evaluation of Investigator’s G’s brief testimony, and any reasonable member of the public would not perceive unfairness in his remaining on the panel.

*Conclusion*

The approved findings and the sentence are correct in law and fact and no error prejudicial to the substantial rights of the appellant occurred. Article 66(c), UCMJ, 10 U.S.C. § 866(c). Accordingly, the approved findings and the sentence are

AFFIRMED.



FOR THE COURT

A handwritten signature in cursive script, appearing to read "Laquitta J. Smith".

LAQUITTA J. SMITH  
Appellate Paralegal Specialist