UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class ADRIAN TORRES
United States Air Force

ACM 37623

2 October 2013

Sentence adjudged 23 September 2009 by GCM convened at Vandenberg Air Force Base, California. Military Judge: David S. Castro.

Approved Sentence: Bad-conduct discharge, confinement for 6 months, and reduction to E-1.

Appellate Counsel for the Appellant: Colonel Eric N. Eklund; Lieutenant Colonel Gail E. Crawford; Major Nicholas W. McCue; and Captain Christopher D. James.

Appellate Counsel for the United States: Colonel Don M. Christensen; Major Scott C. Jansen; Major Naomi N. Porterfield; Major Jason M. Kellhofer; and Gerald R. Bruce, Esquire.

Before

ROAN, HECKER, and MARKSTEINER
Appellate Military Judges

OPINION OF THE COURT

HECKER, Judge:

A general court-martial composed of officer members convicted the appellant, contrary to his pleas, of one specification of aggravated assault and three specifications of assault consummated by a battery, in violation of Article 128, UCMJ, 10 U.S.C. § 928. The adjudged sentence consisted of a bad-conduct discharge, confinement for 6 months, and reduction to E-1. The convening authority approved the sentence as adjudged. On

appeal, the appellant asserts the military judge erred by failing to instruct the panel that the government had the burden of proving the appellant acted voluntarily when he committed the aggravated assault. Finding no error that materially prejudices the appellant, we affirm.

Background

The appellant pled not guilty to four specifications of simple assault consummated by a battery and one specification of aggravated assault. The victim in each incident was the appellant's wife, Airman First Class (A1C) VG. The appellant was found guilty of three of the four simple assault specifications for pulling his wife by the hair and arm, grabbing her breast, and hitting her on the torso.[1] These acts occurred between March 2007 and January 2008. The aggravated assault specification stemmed from an incident at the couple's on-base residence in the morning hours of 13 May 2008, resulting in the appellant being convicted of "commit[ting] an assault . . . [on his wife] by choking her throat with his hands with a force likely to produce death or grievous bodily harm."

The appellant's wife testified at trial about the incident which occurred after they had a party at their on-base residence. The guests, including the appellant, became intoxicated. At around 0200, the couple went to bed while some of the couple's guests fell asleep elsewhere in the house. Later that morning the appellant's wife found him curled up on the floor at the foot of the bed, naked from the waist down. She shook him and told him she was leaving to drive some guests home but he did not respond. When she returned to the house around 30 minutes later, he had not moved. She shook him hard and told him to get up, but he did not respond.

After she crouched down in front of him and tried to lift and push him into a sitting position, he immediately "snapped awake," grabbed her, and threw her on the bed, without saying anything. He squeezed her head while punching her with his hand and, at one point held her throat with his fingers and hit her head against the headboard. After she coughed up blood which landed on the appellant's face, he looked in her eyes, asked her if she liked it and whether it felt good, and then licked her blood off his lips. A1C VG testified she had never seen her husband act like that before and "it was like—it was a different person, not my husband."

After she managed to hit him on the side of the head with the bedside phone, the appellant fell over and loosened his grip. She fled into the living room where several of the party guests were still present. The appellant came out of the bedroom and asked what happened to his wife. When a guest told him, "[you] beat the s*** out of her," he did not respond. A few minutes later the guest found him lying face down on the bed.

[1] The appellant was found not guilty of the fourth specification.

He was still there when military law enforcement arrived soon thereafter, and did not respond until he was shaken vigorously. The appellant asked where his wife was but did not respond to queries about whether he was okay.

During the defense case, trial defense counsel presented evidence of several seizure episodes the appellant had experienced prior to and after this May 2008 incident. The defense also called a board-certified neurologist who testified the appellant suffered from epilepsy and had experienced "generalized seizures" on multiple occasions. Several minutes into such a seizure, the brain floods itself with inhibitory neurotransmitters in an effort to stop its erratic activity. If that is successful, the patient will enter a "postictal period" for as long as 30 minutes, during which he is unresponsive, is no longer moving, and may appear to be sleeping or confused. Some patients may also engage in abnormal behaviors while in this state, such as removing their clothes, and a small subset may engage in "postictal violence" towards another person.

The neurologist testified it was possible the appellant had an epileptic seizure that morning which resulted in him curling up on the floor, and that his aggression towards his wife when roused by her, was a postictal violent response which did not constitute conscious and voluntary behavior on his part. Under cross-examination the expert noted it was "highly improbable" the appellant was in such a state because he walked out of the room and had a conversation with others soon thereafter. The government's expert agreed the appellant suffered from epilepsy but believed he was not in such a postictal state during this incident, due to the time lag between the apparent seizure and the assault, and because he did not engage in violent behavior each time he had a seizure.

After the government rested the parties apparently interviewed the experts during a recess and then discussed instructions with the military judge in what appeared to be an extensive Rule for Courts-Martial (R.C.M.) 802 session. When the parties came back on the record, the trial counsel stated he believed the postictal state evidence had raised a mental responsibility defense as both experts had agreed during those interviews that someone in such a state may have a mental disease or defect analogous to "delirium" (as found in the DSM IV[2]) and would be unable to appreciate the nature and quality of his acts and their wrongfulness.

The trial defense counsel stated he had not prepared for a mental responsibility defense because a pretrial sanity board had concluded epilepsy was not a severe mental disease or defect. He thus argued the instructions relative to mental responsibility (R.C.M. 916(k)) were inapplicable.[3] Instead, the defense argued the appellant's

[2] Am. Psychiatric Ass'n, Diagnostic and Statistical Manual of Mental Disorders, 4th ed. (1994).

[3] Rule for Courts-Martial 916(k)(1) states: "It is an affirmative defense to any offense that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was

"unconscious or semi-conscious" state following his seizure raised a reasonable doubt as to his ability to complete the *actus reus* of the offense. Accordingly, the defense offered a proposed instruction[4] about "voluntariness" relative to the offense:

> The evidence in this case has raised an issue [of] whether the acts alleged in the [aggravated assault specification] were committed voluntarily. An accused may not be held criminally liable for his actions unless they are voluntary. If the accused, due to a medical condition such as a seizure disorder, is incapable of acting voluntarily at the time of the offense, then his actions were involuntary, and he may not be found guilty of the offense . . . .
>
> You must consider all the relevant facts and circumstances that you have heard, including, but not limited to, the testimony of witnesses regarding A1C Torres' diagnosis with a seizure disorder, the testimony of witnesses regarding A1C Torres' demeanor and actions on 12 and 13 May 2008, A1C Torres' prior consumption of alcohol, other incidents of seizures, as well as the testimony of expert witnesses. You should, therefore, consider in connection with all the relevant facts and circumstances, evidence tending to show that the accused may, or may not, have been suffering from a medical condition resulting in his inability to act voluntarily at the time of the offense. . . . Unless, in light of all the evidence you are satisfied beyond a reasonable doubt that the accused, at the time of the alleged offense acted voluntarily, you must find the accused not guilty of that offense.
>
> This evidence was not offered to demonstrate or refute whether the accused is mentally responsible for his conduct. Lack of mental responsibility, that is, an insanity defense, is not an issue in this case. What is in issue is whether the government has proven beyond a reasonable doubt that the accused acted voluntarily.

After an overnight recess and another lengthy R.C.M. 802 session, the military judge concluded he had a duty, based on his review of military case law, to instruct on lack of mental responsibility because it had been raised by the expert witness testimony. Trial defense counsel asked the military judge to instead order a new sanity board with

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unable to appreciate the nature and quality or the wrongfulness of his or her acts. Mental disease or defect does not otherwise constitute a defense."

[4] The defense's proposed instruction came from a 2005 military law review article which discussed the admissibility of evidence relevant to an accused's voluntary acts, and referenced the history of an "unconsciousness or automatism" defense in the military justice system. *See* Major Jeremy A. Ball, *Solving the Mystery of Insanity Law: Zealous Representation of Mentally Ill Servicemembers*, ARMY LAW., Dec. 2005, at 1.

members experienced in evaluating postictal states in order to assess whether that constitutes a mental disorder and, if so, whether the appellant would have appreciated and understood the nature and wrongfulness of his conduct when in that state. Over the government's objection, the military judge ordered the sanity board and continued the case, advising he would allow the defense to reopen its case following that evaluation.

Based on a review of medical and court-martial records, the second sanity board (consisting solely of a board-certified neurologist) concluded the accused did not have a severe mental disease or defect (either permanent or temporary) or one that would have prevented him from appreciating the wrongfulness of his conduct. He did conclude "a postictal state can be characterized as a temporary mental disease or defect" but, in his opinion, the appellant was not experiencing such a state during the incident on 13 May 2008.

After a 60-day continuance, trial resumed in late September 2009 with all the original members present. After some preliminary instructions, the panel listened to recordings of all the witness testimony from the prior court session. Neither party elected to present additional evidence.

The military judge continued with his refusal to give the defense's instruction on voluntariness. He instead instructed the panel that the elements of aggravated assault with a force likely to produce death or grievous bodily harm are: (1) the appellant did bodily harm to A1C VG; (2) with a certain force by choking her throat with his hands; (3) with unlawful force or violence; and (4) the force was used in a manner likely to produce death or grievous bodily harm. The panel was further instructed that an act of force or violence "is unlawful if done without legal justification or excuse . . . ." The military judge also gave the standard instruction for mental responsibility, which included the presumption the appellant was mentally competent and that he bore the burden of establishing by clear and convincing evidence that he suffered from a severe mental disease or defect and was unable to appreciate the nature and quality or wrongfulness of his conduct during the incident in question.

In his closing argument, the trial defense counsel first argued the bodily harm suffered by the appellant's wife was not sufficient to constitute an "aggravated" assault. Acknowledging that well-directed episodes of postictal violence are very rare, he then argued they do occur and the appellant was experiencing one on 13 May 2008 when he interacted violently with his wife. In doing so, the trial defense counsel did *not* argue the appellant was not mentally responsible for his actions, and specifically told the members that was not an issue in the case. Instead, he argued the government had failed to meet its burden of proving the bodily harm suffered by A1C VG was done with "unlawful force or violence." Noting such conduct is only "unlawful" if done "without legal justification or excuse," the trial defense counsel contended the appellant had such a justification or

excuse as he was in a postictal state when the actions occurred. In contrast, the trial counsel argued the mental responsibility issue, stating the defense had failed to meet its burden of proving by "clear and convincing evidence" that the appellant was in a postictal state given that the defense expert had testified this was "highly improbable" and because he had not violently attacked anyone during his other seizure episodes.

The panel found the appellant guilty of the aggravated assault, as well as three of the four assaults consummated by a battery. On appeal, the appellant contends the military judge erred by failing to instruct the panel that the Government has the burden of proving the accused acted voluntarily when he committed the acts alleged in the aggravated assault specification.

Standard of Review

"The military judge has an independent duty to determine and deliver appropriate instructions." *United States v. Ober*, 66 M.J. 393, 405 (C.A.A.F. 2008). Whether a military judge properly instructed a panel is a question of law this Court reviews de novo. *United States v. Hibbard*, 58 M.J. 71, 75 (C.A.A.F. 2003). While trial defense counsel may request specific instructions from the military judge, the judge has substantial discretionary power in deciding on the instruction to give. *United States v. Damatta-Olivera*, 37 M.J. 474, 478 (C.M.A. 1993). His denial of such an instruction is reviewed for abuse of discretion. *United States v. Carruthers*, 64 M.J. 340, 345-46 (C.A.A.F. 2007).

In evaluating whether the military judge's failure to give the requested instruction constitutes an abuse of discretion, we apply a three-prong test to evaluate whether the failure to give a requested instruction is error: the instruction must be (1) "correct"; (2) "not substantially covered in the main instruction"; and (3) cover "such a vital point in the case that the failure to give it deprived the [appellant] of a defense or seriously impaired its effective presentation." *Carruthers*, 64 M.J. at 346 (quoting *United States v. Gibson*, 58 M.J. 1, 7 (C.A.A.F. 2003)) (original internal brackets omitted).

The Automatism Defense

"Criminal liability is normally based upon the concurrence of two factors, an evil-meaning mind and an evil-doing hand." *United States v. Bailey*, 444 U.S. 394, 402 (1980) (internal brackets and quotations marks omitted). Accordingly, a crime consists of two components—the *actus reus* (the required act or omission) and the *mens rea* (a particular mental state). *United States v. Thomas*, 65 M.J. 132, 133 (C.A.A.F. 2007); *United States v. Jones*, 68 M.J. 465, 471 (C.A.A.F. 2010).

The appellant contends he was in a postictal state following a seizure when he interacted with his wife on the day in question. Arguing his actions were a form of "automatism," the appellant claims his actions were not voluntary and he is not criminally responsible for them. He therefore requested an instruction that related to the *actus reus* of his offense (choking his wife's throat with his hands with unlawful force or violence). Specifically, he wanted the panel instructed that he could only be held criminally liable if the members found beyond a reasonable doubt that his conduct with his wife was voluntary, and that he must be found not guilty if he was incapable of acting voluntarily due to a medical condition such as a seizure disorder. At trial, he specifically argued against this condition being classified as a mental responsibility issue or as negating any *mens rea* associated with his crime.

Automatism is "[a]ction or conduct occurring without will, purpose, or reasoned intention, such as sleepwalking; behavior carried out in a state of unconsciousness or mental dissociation without full awareness." Black's Law Dictionary (9th ed. 2009). The term has been defined as:

> [C]onnoting the state of a person who, though capable of action, is not conscious of what he is doing. It is . . . equated with unconsciousness [or] involuntary action[,] and implies that there must be some attendant disturbance of conscious awareness. Undoubtedly automatic states exist[,] and medically they may be defined as conditions in which the patient may perform simple or complex actions in a more or less skilled or uncoordinated fashion without having full awareness of what he is doing.

Wayne R. LaFave, *Substantive Criminal Law* § 9.4(a) (2d ed. 2003) (citation omitted).

Automatism manifests itself in a range of conduct, including epileptic and postepileptic states, somnambulism (sleepwalking), or bodily movements that are not a product of the conscious or habitual effort or determination of the actor. *Id.* at § 9.4(b); *See* Eunice A. Eichelberger, Annotation, *Automatism or Unconsciousness as Defense to Criminal Charge*, 27 A.L.R.4th 1067, § 2 (1984) (current through 2012) (hereinafter "*Automatism*").

Criminal defendants sometimes raise the defense of automatism, contending their offenses occurred while they were unconscious or in an automatistic or a physical state (such as an epileptic seizure) which entailed a loss (including a temporary loss) of consciousness. *Automatism*, § 1a. Such a defense can be viewed from the perspective of *mens rea* or *actus reus* which, respectively, would relieve a defendant from criminal liability because he lacks a mental state required for the crime (including as part of a mental responsibility defense) or he failed to engage in an act (*i.e.*, a voluntary bodily movement). *Automatism*, §§ 2, 3(b)-(c).

The appellant's requested instruction has its origin in a footnote of a 1991 decision from our superior court. *United States v. Berri*, 33 M.J. 337, 341 n.9 (C.M.A. 1991). There, the accused presented expert testimony that he suffered from several mental health disorders which left him unable to appreciate the nature, quality or wrongfulness of his acts when he assaulted and attempted to murder a shipmate. *Id*. at 338-39. Noting that some of the witness testimony was about the accused's "consciousness" of his own actions, the court stated "'unconsciousness' itself can be asserted as a defense." *Id*. at 341 n.9. The court observed that at common law and in the Model Penal Code, lack of consciousness was considered part of the *actus reus* because criminal acts had to be voluntary (which implies consciousness). *Id*. The court also noted many jurisdictions instead treat unconsciousness or automatism as an affirmative defense. *Id.* Ultimately, however, the court did not decide how to treat "unconsciousness" under the Uniform Code of Military Justice due to the lack of clear evidence supporting this fact in the case. *Id*. Based on this footnote, several military appellants have attempted to shift the automatism defense from a *mens rea* focus to an *actus rea* focus, without success.

Our court addressed a similar defense-requested instruction in *United States v. Harvey*, 66 M.J. 585 (A.F. Ct. Crim. App. 2008) *rev. denied*, 67 M.J. 249 (C.A.A.F. 2009). There, the appellant admitted rubbing his fingers on his daughter's vagina, but contended it was an involuntary act caused by a disorder known as parasomnia, which an expert witness described as "unpleasant or undesirable . . . behaviors or experiences[] that occur predominately during the sleep period." *Id.* at 586. The defense claimed this phenomenon constituted "automatism" and thus was a special defense under the UCMJ relating to the *actus reus* of the offense. The military judge denied the appellant's request for an instruction, which, like the requested instruction in this case, would have advised the members a person is not guilty of an offense unless his conduct includes a "voluntary" act and that movements during unconsciousness or sleep are not "voluntary" acts. *Id.* at 587.

Noting that very few military cases had addressed the issue of unconscious acts, we rejected the idea that automatism related to *actus reus*. Instead, finding unconsciousness to be "one of the many disorders encompassed by the defense of insanity," we agreed with our sister court that "nothing in those [prior military] cases indicat[ed] that unconsciousness merits different consideration from that given any other mental disorder." *Harvey*, 66 M.J. at 587-88, citing *United States v. Riege*, 5 M.J. 938, 941 (N.C.M.R. 1978).

Notwithstanding the reference to an "*actus reus*" defense in the *Berri* footnote, military cases (most of which involve epilepsy) published in the 50-plus years prior to our *Harvey* decision do not contradict that case's rejection of an *actus reus* approach. *United States v. Campos*, 42 M.J. 253, 256-58 (C.A.A.F. 1995) (noting the accused

elected to raise his claustrophobia disorder as evidence of his lack of criminal *mens rea* when he assaulted a first sergeant and disobeyed orders); *United States v. Dock*, 40 M.J. 112, 120, 122-24 (C.M.A. 1994) (accused contended he was not mentally responsible for his actions because a seizure caused "automatic behaviors and then a fugue like state . . . and . . . postictal behavior" during which he could carry out sequences of events without any knowledge that he is doing so); *United States v. Rooks*, 29 M.J. 291, 292 (C.M.A. 1989) ("Along with most other jurisdictions, we have recognized that seizures attendant to epilepsy render an accused unable to form the *mens rea* required for conviction."); *United States v. Smedley*, 35 C.M.R. 146, 147 (C.M.A. 1964) (expert testimony that the accused committed the offense during an epileptic seizure which rendered him incapable of meeting the mental responsibility standards adequately raised an issue for the factfinder); *United States v. Olvera*, 15 C.M.R. 134, 138, 140 (C.M.A. 1954) ("an epileptic fugue [which can result in amnesia] would tend strongly to reflect an absence of criminal liability—because an epileptic, during a seizure, is ordinarily acting with virtually complete automatism" and thus raises the issue of mental responsibility); *United States v. Johnson*, 14 C.M.R. 143, 148-49 (C.M.A. 1954) ("an epileptic seizure which produces an offense would, of course, constitute a defense" and could negate criminal responsibility under military law if it rested on a determination that the accused could not distinguish right from wrong); *United States v. Ragan*, 10 C.M.R. 725, 728-729 (A.F.B.R. 1953); *United States v. Procopio*, 10 C.M.R. 844, 860 (A.F.B.R. 1953); *United States v. Axelson*, 65 M.J. 501, 515-16 (Army. Ct. Crim. App. 2007); *United States v. McGough*, 39 C.M.R. 475, 479 (A.B.R. 1968); *United States v. Burke*, 28 C.M.R. 604, 610 (A.B.R. 1959); *United States v. Riege*, 5 M.J. 938, 941 (N.C.M.R. 1978); *United States v. Aragon*, 1 M.J. 662, 666 (N.C.M.R. 1975); *United States v. Rush*, 13 C.M.R. 594, 601 (C.G.B.R. 1953).

No cases published since our *Harvey* decision change our conclusion.[5] We therefore reach the same conclusion today and reject the appellant's effort to apply the automatism defense in terms of his *actus reus*. Although the proposed instruction articulates logical principles similar to those followed by some civilian jurisdictions that recognize a distinct defense of automatism, it is not "correct" because it is inconsistent with military case law and precedent which has consistently applied the automatism defense in terms of *mens rea* and/or mental responsibility, along with its associated higher burden on the defense.[6] It is also significant that the second sanity board

[5] In a later decision, the Army Court of Criminal Appeals noted the lack of consensus in state courts about the legal status of a parasomnia defense and elected to not "go as far" as our *Harvey* decision, *United States v. Harvey*, 66 M.J. 585 (A.F. Ct. Crim. App. 2008) *rev. denied*, 67 M.J. 249 (C.A.A.F. 2009), in characterizing parasomnia as a disorder within the insanity defense. *United States v. Savage*, 67 M.J. 656, 661 n.6 (Army Ct. Crim. App. 2009). The *actus reus* issue was not implicated in that case, however.

[6] Many civilian jurisdictions approach the automatism or unconsciousness defense as a species of an insanity defense, while others recognize it as a distinct defense. *See* Eunice A. Eichelberger, Annotation, *Automatism or unconsciousness as defense to criminal charge*, 27 A.L.R.4th 1067, § 2 (1984) (current through 2012). In the latter jurisdictions, courts have distinguished between acts committed while unconscious and those resulting from a

concluded a postictal state can be a temporary mental disease or defect. Accordingly, the military judge did not abuse his discretion in refusing to give the defense-requested instruction.[7]

In *Harvey*, we also concluded that even if the UCMJ recognizes a special defense of automatism, no error occurred since the defense had failed to establish error under the other two prongs of *Carruthers*, 66 M.J. at 588. The appellant similarly fails here. The members were instructed that the prosecution had the burden of proving each of the elements beyond a reasonable doubt, including that the appellant's choking of his wife was unlawful (defined as "without legal . . . excuse") which, as argued by the defense, clearly goes to the question of the voluntariness or consciousness of his acts. Thus, the purpose of appellant's requested instruction was substantially met by the instructions given to the panel. Lastly, the appellant was provided the opportunity to present both the evidence of automatism and the argument to support his theory that he was not criminally responsible for his acts given his state during the incident. *Id*. As such, the military judge's failure to give the defense's specific instruction did not deprive the appellant of his opportunity to have the panel decide the issue of his criminal liability for the acts. *Id*.

Conclusion

The approved findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred.[8] Articles 59(a) and 66(c),

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mental disease or defect of the mind. *See*, *e.g.*, *Fulcher v. State*, 633 P.2d 142, 145-46 (Wyo. 1981) (observing that automatism "may . . . be manifest in a person with a perfectly healthy mind" and is not encompassed by plea of not guilty by reason of mental illness or deficiency); *State v. Caddell*, 215 S.E.2d 348, 360 (N.C. 1975) (noting defendant found not guilty by reason of unconsciousness is not subject to commitment to hospital for the mentally ill); *State v. Weatherford*, 416 N.W.2d 47, 55 (S.D. 1987) ("Although related, 'the defenses of insanity and unconsciousness are not the same in nature, for unconsciousness at the time of the alleged criminal act need not be the result of a disease or defect of the mind.'") (quoting *Caddell*, 215 S.E.2d at 360).

[7] We recognize that, based on the evidence adduced before the members at trial, the appellant failed to meet his burden for raising a mental responsibility defense. When trial began, the defense had received a sanity board report reflecting the appellant's epilepsy did not constitute a "severe mental disease or defect" and therefore did not pursue a mental responsibility defense. However, in interviews conducted during trial, both experts apparently told the parties that an epileptic individual in a postictal state may have a mental disease or defect and be unable to appreciate the nature and quality of his acts and their wrongfulness. A second sanity board concluded that although a postictal state can be characterized as a temporary mental disease or defect, the appellant does not have a severe mental disease or defect (either permanent or temporary) and he was not experiencing a postictal state during the incident on 13 May 2008. Facing these opinions in a court-martial involving a general intent crime, the defense was unable to raise a full mental responsibility defense and a partial mental responsibility defense was also not available.

[8] Though not raised as an issue on appeal, we note that the overall delay of more than 540 days between the time of docketing and review by this Court is facially unreasonable. *United States v. Moreno*, 63 M.J. 129, 142 (C.A.A.F. 2006). Having considered the totality of the circumstances and the entire record, we find that the appellate delay in this case was harmless beyond a reasonable doubt. *Id.* at 135-36 (reviewing claims of post-trial and appellate delay using the four-factor analysis found in *Barker v. Wingo*, 407 U.S. 514, 530 (1972)). *See also United States v. Harvey*, 64 M.J. 13, 24 (C.A.A.F. 2006); *United States v. Tardif*, 57 M.J. 219, 225 (C.A.A.F. 2002).

UCMJ, 10 U.S.C. §§ 859(a), 866(c). *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and sentence are

AFFIRMED.

FOR THE COURT

LEAH M. CALAHAN
Deputy Clerk of the Court