

**IN THE U.S. NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS  
WASHINGTON NAVY YARD  
WASHINGTON, D.C.**

**BEFORE**

**Charles Wm. DORMAN**

**R.C. HARRIS**

**R.W. REDCLIFF**

**UNITED STATES**

**v.**

**Lee A. DAVIS  
Fireman Apprentice (E-2), U.S. Navy**

NMCCA 200000604

Decided 20 May 2005

Sentence adjudged 3 September 1999. Military Judge: James P. Winthrop. Review pursuant to Article 66(c), UCMJ, of Special Court-Martial convened by Commander, Amphibious Group TWO, NAB, Little Creek, Norfolk, VA.

LT TRAVIS J. OWENS, JAGC, USNR, Appellate Defense Counsel  
LT FRANK L. GATTO, JAGC, USNR, Appellate Government Counsel

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.

REDCLIFF, Judge:

Contrary to his pleas, the appellant was convicted at a special court-martial composed of officer and enlisted members of violating a lawful general order by possessing drug abuse paraphernalia, false official statement (two specifications), wrongful appropriation, assault consummated by a battery, indecent assault (three specifications), using indecent language, and receiving stolen property. The appellant's offenses violated Articles 92, 107, 121, 128, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 892, 907, 921, 928, and 934. The members sentenced the appellant to 74 days confinement and a bad-conduct discharge. The convening authority approved the sentence as adjudged and ordered the entire sentence executed.<sup>1</sup>

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<sup>1</sup> The convening authority lacked the authority to order the appellant's punitive discharge executed. RULE FOR COURTS-MARTIAL 1113(c), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2000 ed.); *United States v. McGee*, 30 M.J. 1086, 1088 (N.M.C.M.R. 1989). Such an error is generally seen as harmless, especially where the staff judge advocate's recommendation correctly advises the convening authority of his limited powers with respect to ordering a sentence executed. See *United States v. Houston*, 48 M.J. 861, 863 (N.M.Ct.Crim.App. 1998). Nevertheless, the *ultra vires* error remains harmless, because that portion of the convening authority's action purporting to execute the

We have carefully considered the record of trial, the appellant's seven assignments of error,<sup>2</sup> and the Government's response. As discussed in greater detail below, we reject the appellant's assertions that the evidence offered at trial was insufficient to convict him of making false official statements or of committing an indecent assault and using indecent language. We also reject the appellant's assertion that two of the indecent assault specifications and the indecent language specification resulted from unlawful command influence. Finally, we find no merit in the appellant's contention that the military judge erred by failing to grant a challenge for cause against an enlisted member who had been the victim of theft.

Thus, we conclude that the findings and the sentence are correct in law and fact and that no error materially prejudicial to the substantial rights of the appellant was committed. Arts. 59(a) and 66(c), UCMJ.

### **Background**

The appellant's court-martial stemmed from his conduct while assigned to USS OAK HILL (LSD 51) during June and July of 1999. Sometime after 0130 on 10 July 1999, the vehicle of Engineman Fireman (ENFN) M, U.S. Navy, was burglarized. The vehicle's rear window was shattered, and ENFN M's \$2,000.00 custom-made stereo system was stolen. The break-in occurred in the enlisted parking

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appellant's bad conduct discharge amounts to a legal nullity. *United States v. Caver*, 41 M.J. 556, 565 (N.M.Ct.Crim.App. 1994). Finding no prejudice, we decline to provide relief based on this assignment of error.

<sup>2</sup> The appellant has raised seven assignments of error (AOEs):

I. THE EVIDENCE WAS INSUFFICIENT TO CONVICT ON CHARGE II, SPECIFICATION 1, WHERE EACH OF THE THREE STATEMENTS WAS EITHER NOT MADE, NOT FALSE OR NOT KNOWN TO BE FALSE.

II. CHARGE VI, SPECIFICATION 3, MUST BE AMENDED BECAUSE THE EVIDENCE WAS INSUFFICIENT TO PROVE ALL OF THE CHARGED LANGUAGE.

III. THE EVIDENCE WAS INSUFFICIENT TO CONVICT ON CHARGE VI, SPECIFICATIONS 5 AND 6, BECAUSE THE ALLEGED ACTS AND LANGUAGE WERE NOT INDECENT.

IV. THE EVIDENCE WAS INSUFFICIENT TO CONVICT ON CHARGE VI, SPECIFICATION 4, BECAUSE HITTING SOMEONE ON THE BUTTOCKS IS NOT AN INDECENT ACT.

V. THE CONVENING AUTHORITY ERRED BY PURPORTING TO ORDER APPELLANT'S DISCHARGE EXECUTED.

VI. UNLAWFUL COMMAND INFLUENCE RESULTED IN THE PREFERRAL OF SPECIFICATIONS UNDER CHARGE VI THAT WOULD NOT HAVE BEEN FILED ABSENT THE ILLEGAL INFLUENCE.

VII. THE MILITARY JUDGE ERRED BY REFUSING TO LIBERALLY GRANT THE CHALLENGE FOR CAUSE TO CHIEF MCCGRATH, WHO HAD BEEN THE VICTIM OF A THEFT LIKE THE CHARGED THEFT.

(For the sake of convenience and clarity, we will address these AOEs out of order).

lot adjacent to Pier 17 onboard Naval Amphibious Base ("NAB"), Little Creek, Virginia.

The ensuing investigation eventually focused on the appellant. During an interrogation by Special Agent C of the Naval Criminal Investigative Service (NCIS), the appellant stated: (1) "I was not involved in the theft of Engineman Fireman [M's] . . . car stereo equipment;" (2) "I was not in the parking lot near Pier 17 of NAB Little Creek a[t] the time of the theft;" and (3) "I was not with Engineman Fireman Recruit [ENFR] [J, U.S. Navy] . . . the night of the theft." (Charge II, Specification 1, False Official Statement).

At the conclusion of the interview, Special Agent C obtained the appellant's permission to conduct a consent search of the latter's apartment. When Special Agent C asked the appellant to take him to the apartment, the appellant stated, "I do not have the keys to my apartment on me." A pat-down search of the appellant revealed a set of keys, which prompted the appellant to say, "[T]he keys from my pocket are for my locker only." (Charge II, Specification 2, False Official Statement).

Upon arriving at the appellant's home, the keys found during the pat-down search opened the locked door of the appellant's apartment. The consent search of the apartment resulted in the recovery of several of the stolen stereo components taken from ENFN M's vehicle. (Charge VI, Specification 8, Receiving Stolen Property). A consent search of the appellant's vehicle brought about the recovery of another piece of stolen stereo equipment belonging to ENFN M, as well as a pipe that smelled of burnt marijuana (Charge I, Violating a Lawful General Order by possessing drug paraphernalia) and a hammer the appellant had removed from the OAK HILL without permission. (Charge IV, Specification 2, Wrongful Appropriation, lesser included offense of Larceny).

Subsequent inquiries made by an officer assigned to the OAK HILL and by the ship's master-at-arms revealed that the appellant had grabbed Fireman (FN) D, by the throat (Charge V, Assault Consummated By a Battery). On another occasion, the appellant grabbed Mess Management Specialist Seaman Recruit (MSSR) P, by the neck, pinned her against a bulkhead, bit her neck, and brushed against her breasts with his arm. (Charge VI, Specification 3, Indecent Assault).

The appellant also repeatedly grabbed MSSR P's buttocks (Charge VI, Specification 4, Indecent Assault), and engaged in identical conduct with FN D. (Charge VI, Specification 5, Indecent Assault). Finally, the appellant approached FN D on the OAK HILL's mess decks and said, "I'm going to stick my d... into your ear." (Charge VI, Specification 6, Indecent Language).

## Sufficiency of the Evidence

We are charged with determining both the legal and factually sufficiency of the evidence presented at trial. Art. 66, UCMJ; *United States v. Turner*, 25 M.J. 324, 324 (C.M.A. 1987). The test for legal sufficiency is "whether, considering the evidence in the light most favorable to the prosecution, a reasonable factfinder could have found all the essential elements beyond a reasonable doubt." *Id.* In contrast, the factual sufficiency test is "whether, after weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses, the [members of the reviewing court] are themselves convinced of the accused's guilt beyond a reasonable doubt." *Id.* at 325. In making these determinations, we are mindful that reasonable doubt does not mean the evidence must be free of conflict. *United States v. Reed*, 51 M.J. 559, 562 (N.M.Ct.Crim.App. 1999), *aff'd*, 54 M.J. 37 (C.A.A.F. 2000). Furthermore, as "factfinders [this court] may believe one part of a witness' testimony and disbelieve another." *United States v. Lepresti*, 52 M.J. 644, 648 (N.M.Ct.Crim.App. 1999).

### 1. False Official Statements

In his first assignment of error, the appellant contends that the evidence was insufficient to convict him of making false official statements as reflected by Charge II, Specification 1. He bases this argument on the premise that each of the three statements alleged in the specification were either not made by him or were not entirely false. Specifically, the appellant argues: (1) that since he was acquitted of larceny with respect to the stereo equipment, Charge IV, Specification 1, he could not be convicted of falsely stating, "I was not involved in the theft of . . . [ENFN] M's]] car stereo equipment," and of falsely stating that he was not in the Pier 17 parking lot "at the time of theft;" and, (2) that he never denied being with ENFR J on "the night of the theft."

The elements of false official statement are as follows: (1) that the accused made a certain official statement; (2) the statement was false; (3) the accused knew the statement was false at the time the statement was made; and (4) the false statement was made with the intent to deceive. MANUAL FOR COURTS-MARTIAL, UNITED STATES (1998 ed.), Part IV, ¶ 31b.

With respect to the appellant's denial of having any involvement in the theft of the stereo equipment, and his denial of being in the Pier 17 enlisted parking lot at about the time of the theft, the evidence revealed that the appellant was seen in the Pier 17 parking lot standing approximately 10 to 20 feet from the victim's vehicle at about 0200 hours. Furthermore, several items of stolen stereo gear, along with shards of broken glass, were recovered from the appellant's apartment. Other components of the stolen stereo were also found in his vehicle. Finally, the appellant's statement that he was in the parking lot during

the wee hours of a Saturday morning doing laundry directly contradicts his denial of being present in the parking lot when the theft occurred.

We reject the appellant's contention that he cannot be convicted of the aforementioned false statements because the members acquitted him of actually stealing the stereo equipment. This argument ignores the guilty finding returned by the members convicting the appellant of wrongful appropriation of the stereo equipment. Members may find an accused not guilty of a given offense for any number reasons that may not be readily apparent from simply reading the record. Indeed, the existence of inconsistent findings between different specifications is not a basis upon which to set aside an otherwise factually and legally sufficient conviction. See *Dunn v. United States*, 284 U.S. 390 (1932)(holding that consistency in findings is not necessary in criminal proceedings); *United States v. Snipes*, 18 M.J. 172 (C.M.A. 1984); *United States v. Harris*, 8 M.J. 52, 59 (C.M.A. 1979)(holding that inconsistent verdicts, whether from a military judge or panel of members, provide no grounds for reversal of a conviction). We find no inconsistency in the members' verdict. Here, the appellant's possession of recently stolen property certainly provides a basis to conclude that he was involved in its theft, and that his statement to the contrary, therefore, was false on its face. Based on our review of the entire record, we are satisfied beyond a reasonable doubt of the appellant's guilt as to this offense.

As for the statement that the appellant was not with ENFR J on the night of the theft, the appellant attempts to evade criminal liability by pointing to Special Agent C's testimony that the appellant told the Special Agent "he was never in the parking lot at the time of the theft nor was he with . . . [ENFR J]." Placing this testimony side by side with the specification, the appellant argues that he never uttered the particular false statement alleged, namely, "I was not with . . . [ENFR J] the night of the theft." Taking the Special Agent's testimony in context, however, we are satisfied that the Special Agent was relating that the appellant stated he was neither in the Pier 17 parking lot at the time of the theft, nor with ENFR J on the night in question. This assignment of error is without merit.

Although ENFR J testified for the defense that he was not with the appellant in the Pier 17 parking lot that evening, his account was contradicted by, Mess Management Specialist Third Class (MS3) P, U.S. Navy who placed ENFR J with the appellant in the parking lot at or very near the time of the theft. Additionally, the testimony of MS3 P was substantially corroborated by Radioman Third Class C, U.S. Navy, the parking lot sentry, who saw MS3 P speaking with two individuals. Moreover, since ENFR J testified for the defense that he was indeed with the appellant at a strip club earlier that evening, the evidence established that the two were together on the night

of the theft.<sup>3</sup> After considering the evidence in the light most favorable to the prosecution, and making allowances for not having personally observed the witnesses, see *Turner*, 25 M.J. at 324-25, we are convinced of the appellant's guilt beyond a reasonable doubt as to all three specifications of false official statement. Thus, this assignment of error is without merit.

## 2. Indecent Language

The appellant contends that the evidence was insufficient to convict him of Specification 6 of Charge VI because the language he used was not indecent. Specifically, the appellant contends that he was jesting when he told FN D, "I'm going to stick my d... in your ear."

To sustain this conviction the evidence must establish that the appellant: (1) communicated certain language to another certain person; (2) that such language was indecent; and (3) that, under the circumstances, such conduct 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, ¶ 89b.

Indecent language is defined as language that:

is grossly offensive to modesty, decency or propriety, or shocks the moral sense, because of its vulgar, filthy, or disgusting nature, or its tendency to incite lustful thought. Language is indecent if it tends reasonably to corrupt morals or incite libidinous thoughts. The language must violate community standards.

MCM, Par IV, ¶89c. Our superior court requires us to test "'whether the particular language is calculated to corrupt morals or excite libidinous thoughts.'" *United States v. Brinson*, 49 M.J. 360, 364 (C.A.A.F. 1998)(quoting *United States v. French*, 31 M.J. 57, 60 (C.M.A. 1990)). To determine whether a given statement is "calculated" to have a prohibited effect, we do not consider the language used in isolation, but rather look to the entire record of trial to determine the precise circumstances under which the statements were communicated. *Id.* at 364; *Caver*, 41 M.J. at 559.

Under the circumstances associated with the appellant's statement, we are convinced beyond a reasonable doubt of his guilt. Specifically, the appellant approached a female Sailor on

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<sup>3</sup> Contrary to the appellant's assertion, the last false official statement alleged in Charge II, Specification 1 charges that the appellant falsely denied being with ENFN J on "the night of the theft," not that he denied being with ENFN J at the time of the theft. The evidence proved the appellant's statement to be untrue and, thus, adequately supports the conviction.

the mess decks of a United States warship and said, "I'm going to stick my d... in your ear." That the appellant spoke these words is not disputed, but rather he argues that they cannot be considered indecent because they were said in jest between two friends. FN D, the Sailor on the receiving end of the appellant's comment, did not find the statement humorous because she told the appellant to "shut up" and called him "stupid." Record at 242. The record also contains considerable evidence that the appellant repeatedly assaulted FN D by grabbing her buttocks and on one occasion by choking her. Ample evidence also demonstrates that the appellant made similar repeated and unwelcome comments of a sexual nature to other female shipmates.

The appellant's statement, even if said in jest, contains language intended to convey a message of a prurient nature and runs contrary to the community standards existing between male and female Sailors on board a United States Navy ship. We find that the evidence of record is both legally and factually sufficient to support a finding, beyond a reasonable doubt, that the language used by the appellant was indecent. Thus, this assignment of error is without merit.

### 3. Indecent Assaults

Turning to the remaining portion of the appellant's third assignment of error, and joining it with the appellant's fourth assignment of error, we now address the argument that the appellant's repeated striking and/or grabbing MSSR P and FN D on the buttocks on numerous occasions (Charge VI, Specifications 4 and 5) was permissible "horseplay" as opposed to indecent assaults. The appellant's arguments are unpersuasive under the circumstances of this case.

To prove the appellant guilty of indecent assault, the Government must establish that: (1) the appellant assaulted a certain person not his spouse in a certain manner; (2) the appellant acted in this fashion with the intent to gratify his lust or sexual desires; and (3) under the circumstances, the conduct of the appellant 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, ¶ 63b.

The contact between the appellant and his purported victims constitutes an "assault" if the appellant "attempted or offered to do bodily harm to a certain person ... with unlawful force or violence." MCM, Part IV, ¶ 54b(1). Bodily harm is defined as "any offensive touching of another, however slight." MCM, Part IV, ¶ 54c(1)(a); see *United States v. Johnson*, 54 M.J. 67, 69 (C.A.A.F. 2000); *United States v. Bonano-Torres*, 31 M.J. 175, 180 (C.M.A. 1990).

In determining whether a given touching is indecent, we do not look solely at the nature of the physical contact itself, but rather, at the surrounding circumstances to see if the offender

acted with the intent to gratify his or her lust or sexual desires. *United States v. Cottrill*, 45 M.J. 485, 488 (C.A.A.F. 1997); *United States v. Sever*, 39 M.J. 1 (C.M.A. 1994)(holding that simply kissing a child can be an indecent assault depending upon the surrounding circumstances). In this case, the appellant's striking and/or grabbing of MSSR P's and FN D's buttocks was accompanied by comments insinuating that he knew the female Sailors wanted to have sex with him. Contrary to the appellant's assertions, this was not simply horseplay among shipmates, but rather a pattern of unlawful touching laced with sexually offensive overtones from which the evidence establishes, beyond a reasonable doubt, that the appellant acted with the intent to satisfy his own lust or sexual desires.

Additionally, we reject the appellant's related assertion that he should escape liability for his conduct because he stopped striking and/or grabbing his shipmates on the buttocks after they protested. In making this argument, the appellant alludes to the affirmative defense of honest mistake of fact as to consent. *See United States v. Greaves*, 40 M.J. 432, 433 (C.M.A. 1994). In such a defense, the question becomes whether, in view of the nature of the relationship between the appellant and his victims, a reasonable factfinder could conclude beyond a reasonable doubt that the repeated striking and/or grabbing of the buttocks of MSSR P and FN D was undertaken without the female Sailors' respective consent. *See Johnson*, 54 M.J. at 69.

We note that the record does not disclose any evidence that the appellant was close friends with either MSSR P or FN D, or that they regularly touched one another in the particular manner described above. There is likewise no evidence that the victims humored or encouraged the appellant's sexually offensive workplace behavior or in anyway actually signaled their consent. Simply put, we see nothing upon which the appellant could have mistakenly believed that his indecent conduct was welcomed by MSSR P or FN D. Given the evidence presented, we are satisfied beyond a reasonable doubt that the appellant indecently assaulted both MSSR P and FN D. This assignment of error is without merit.

#### **Fatal Variance**

The appellant contends that the guilty finding of Charge VI, Specification 3, the indecent assault on MSSR P, should be modified because the evidence revealed that he never pressed his face against MSSR P's face and because he grabbed the victim by the side of the neck rather than the back of the neck. We disagree.

Although not labeled as such, we view this assignment of error as a claim that the proof adduced at trial varied impermissibly from the specification as alleged. The military justice system is a "notice pleading jurisdiction" where the specification informs an accused of the offense against which he must defend and stands as a bar to future prosecution for the

same conduct. *United States v. Farano*, 60 M.J. 932, 934 (N.M.Ct.Crim.App. 2005)(quoting *United States v. Gallo*, 53 M.J. 556, 564 (A.F.Ct.Crim.App. 2000), *aff'd*, 55 M.J. 418 (C.A.A.F. 2001)). A variance between the specification as alleged and the evidence produced at trial will only prove fatal to a conviction where the appellant has been prejudiced, meaning he was either inadequately informed of the allegations leveled against him, or is left open to a future criminal sanction. *United States v. Dailey*, 37 M.J. 1078, 1080 (N.M.C.M.R. 1993).

The record reveals that the appellant did touch MSSR P's breasts with his arm, held MSSR P by the side of the neck, bit her, and pinned her against a bulkhead with his face so close to hers that she could see his eyes. Record at 209-13. While the evidence does not track perfectly with the specification, we find the slight deviation between the two to be *de minimus* and not resulting in any material prejudice to the appellant. Absent from the appellant's pleading is any claim that he was caught unaware as to the nature of the charge and specification. Nor is there any concern raised that his misconduct with MSSR P could give rise to another prosecution. This assignment of error is without merit.

#### **Unlawful Command Influence**

The appellant seeks to set aside Specifications 5 and 6 of Charge VI based upon alleged unlawful command influence. Specifically, the appellant argues that the convening authority exerted unlawful command influence over this case, causing the appellant to face two specifications of indecent assault that he would not have otherwise been charged.

Unlawful command influence, the mortal enemy of military justice, is an error of constitutional significance, which prevents our affirming of the findings or sentence unless we are persuaded beyond a reasonable doubt that each has not been affected by unlawful command influence. *United States v. Biagase*, 50 M.J. 143, 150 (C.A.A.F. 1999); *United States v. Thomas*, 22 M.J. 388, 393 (C.M.A. 1986).

From a procedural standpoint, the appellant bears the burden of raising the issue of unlawful command influence. *United States v. Stoneman*, 57 M.J. 35, 41 (C.A.A.F. 2002). While this threshold burden may be low, a bald assertion or speculation will not suffice. To properly raise the issue, the defense must bring forth "some evidence" and (1) show facts which, if true, constitute unlawful command influence; (2) show that the proceedings were unfair; and (3) show that unlawful command influence was the cause of the unfairness. *Biagase*, 50 M.J. at 150. Only after the defense meets this burden of proof will the Government face the task of proving beyond a reasonable doubt: (1) that the predicate facts do not exist; or (2) that the facts do not constitute unlawful command influence; or (3) that the unlawful command influence will not prejudice the proceedings or

did not affect the findings and sentence. *Stoneman*, 57 M.J. at 41 (citing *Biagase*, 50 M.J. at 151).

Prior to referring charges against the appellant to a special court-martial, but after placing him in pretrial confinement, the commanding officer of the OAK HILL called an all-hands assembly on the ship's flight deck to give farewell remarks. As part of his address, the commanding officer stated that two crewmen had been caught stealing from a shipmate and that thievery would not be tolerated. The captain also asserted that the guilty individuals would face hard time for their conduct. Finally, the captain discussed possible acts of sexual harassment and advised the crew that any person enduring such treatment should come forward. At no time was the appellant's name mentioned nor were the names of any possible victims. However, it was common knowledge among the ship's company that the appellant was suspected of the misconduct mentioned by the captain. According to the appellant, these remarks led to the referral of two specifications involving indecent assault and the use of indecent language.

The successor commanding officer of the OAK HILL referred charges against the appellant to a special court-martial, but withdrew the offenses without prejudice and forwarded them to his immediate superior-in-command, Commander, Amphibious Group TWO, who eventually became the convening authority. Prior to entry of the appellant's guilty pleas, the new commanding officer of the OAK HILL summoned all prospective witnesses and, in the presence of the appellant's trial defense counsel, explained that he (the captain) did not expect a particular outcome with respect to the appellant's court-martial. The captain further instructed the assembled witnesses to testify truthfully.

FA D, the victim alleged in Specifications 5 and 6 of Charge IV, was present during the captain's speech but testified that his comments impacted neither the statement she had previously provided to command investigators nor her testimony at the appellant's court-martial. In fact, all of the witnesses called with respect to the unlawful command influence motion stated that their prior captain's remarks had no bearing on their ability to tell the truth. Furthermore, the military judge issued a standing order that all defense witnesses were to be produced, and that any witness feeling pressure to color their testimony was to report such concerns to the court. Record at 53.

The record fully supports the findings of the military judge on the issue of unlawful command influence, and we adopt them as our own. Appellate Exhibit CII. We agree with the military judge that the appellant met the minimal burden placed on him of producing some evidence suggesting unlawful command influence. At the same time, we are likewise convinced that the Government proved beyond a reasonable doubt that no unlawful command influence existed. The conduct of the successor commanding

officer of the OAK HILL, as well as the Amphibious Group commander who ultimately referred the charges against the appellant, were appropriate under the circumstances for potential and eventual convening authorities. Both officers took effective action to stamp out even the appearance of unlawful command influence. As for the prophylactic standing order issued by the military judge, we find that any potential unlawful command influence that might have existed in this case had no possible effect on the appellant's court-martial. See *United States v. Rivers* 49 M.J. 434, 443 (C.A.A.F. 1998) (designating the military judge as the last guardian of the bridge over which unlawful command influence must not pass).

#### **Remaining Assignment of Error**

We reject the appellant's final assignment of error with respect to the military judge's denial of the appellant's challenge for cause of a member who, several years prior to the appellant's court-martial, had been the victim of a vehicle break-in. Based on the member's responses during *voir dire*, and his assurances that he would follow the military judge's instructions, we find neither actual nor implied bias on the part of the member in question and, thus, no abuse of discretion by the military judge. *United States v. Rome*, 47 M.J. 467, 469 (C.A.A.F. 1998); *United States v. Napoleon*, 46 M.J. 279, 283 (C.A.A.F. 1997); *United States v. White*, 36 M.J. 284, 287 (C.M.A. 1993). This assignment of error is without merit.

#### **Conclusion**

Accordingly, we affirm the findings and the sentence as approved by the convening authority.

Chief Judge DORMAN and Judge HARRIS concur.

For the Court

R.H. TROIDL  
Clerk of Court