

IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS

UNITED STATES,

Appellee

v.

Staff Sergeant (E-6)

PAUL M. MICHAUD.

United States Army,

Appellant

BRIEF ON BEHALF OF APPELLEE

Docket No. ARMY 20240020

Tried at Fort Bliss, Texas, on 18 January 2024, before a special court-martial appointed by the Commander, Headquarters, 1st Armored Division, Colonel Javier E. Rivera-Rosario, presiding.

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES ARMY
COURT OF CRIMINAL APPEALS

Assignments of Error

WHETHER THE MILITARY JUDGE ABUSED HIS DISCRETION WHEN HE ACCEPTED APPELLANT'S PLEA OF GUILTY TO THE SPECIFICATION OF CHARGE II WHEN HE FAILED TO DISCUSS AND HAVE APPELLANT DISAVOW DEFENSE OF PROPERTY.

Statement of the Case

On 18 January 2024, a military judge sitting as a special court-martial convicted appellant, in accordance with his pleas, of one charge and one specification of domestic violence, assault by strangulation, in violation of Article 128b, Uniform Code of Military Justice [UCMJ], and one charge and one specification of assault consummated by a battery in violation of Article 128,

UCMJ. 10 USC 128, 128b. (R. at 10, 78; Charge Sheet). The military judge sentenced appellant in accordance with the plea agreement to a bad conduct discharge. (R. at 90; Statement of Trial Results (STR). The military judge entered judgment on 15 February 2024. (Judgment).

Statement of Facts

Appellant's guilty pleas for assault stem from two separate incidents against two separate victims on 6 January 2024 and 7 January 2024, respectively. On the evening of 6 January 2024, ■■■, a close friend of appellant's wife, let herself into appellant's marital residence. (R. at 44). ■■■ was a frequent guest at the marital residence, and letting herself into the residence was normal. (R. at 44). Appellant asked ■■■ to leave and when she refused to leave, the appellant pushed ■■■ out of the front. (R. at 44). Per the appellant's own words, appellant intentionally threw ■■■ to the ground and pushed ■■■ out of the front door, causing injury to ■■■'s hand. (R. at 46-47; 50; Pros. Ex. 1, at 4).

Thereafter, sometime in the early morning of 7 January 2024, appellant confronted ■■■, appellant's wife, about spending the night at a family friend's house. (R. at 25-26). Appellant expressed concerns about infidelity and became upset. (R. at 19-20; 27). Without provocation, appellant got behind ■■■ and strangled ■■■ with his arm. (R. at 28-29; 34; Pros. Ex. 1, at 2). Appellant exerted

enough pressure to impair [REDACTED]'s breathing during the assault. While [REDACTED] tried to pull appellant's arm away, appellant's five-year old son walked into the bedroom and told appellant to stop. (R. at 30). [REDACTED] was crying and left the marital residence with their five-year old son. (R. at 31).

Appellant pleaded guilty to Charge I and Charge II. Regarding the specification of Charge I, appellant admitted he intentionally strangled [REDACTED] that he knew [REDACTED] was having difficulty breathing, and that he intended to apply pressure to [REDACTED]'s throat or neck. (R. at 32; 34; 40). Appellant admitted that he strangled [REDACTED] with unlawful force and violence using his arm on 7 January 2024 without any justification or excuse. (R. at 32-33; 40-41). Regarding the specification of Charge II, appellant admitted that he intentionally grabbed [REDACTED], threw her to the ground, and used more force than was necessary to remove [REDACTED] from his marital residence. (R. at 41-42).

Assignment of Error

WHETHER THE MILITARY JUDGE ABUSED HIS DISCRETION WHEN HE ACCEPTED APPELLANT'S PLEA OF GUILTY TO THE SPECIFICATION OF CHARGE II WHEN HE FAILED TO DISCUSS AND HAVE APPELLANT DISAVOW DEFENSE OF PROPERTY.

Standard of Review

“A military judge's acceptance of a guilty plea is reviewed for an abuse of discretion, whereas questions of law arising from the plea are reviewed de novo.” *United States v. Thompson*, 81 M.J. 824, 830 (Army Ct. Crim. App. 2021) (citation omitted). A military judge's failure to obtain an adequate factual basis for a guilty plea constitutes an abuse of discretion. *United States v. Moratella*, 82 M.J. 1, 3 (C.A.A.F. 2021). “A military judge abuses this discretion if he [or she] fails to obtain from the accused an adequate factual basis to support the plea—an area in which we afford significant deference.” *Thompson*, 81 M.J. at 830 (quotation marks and citation omitted). “In reviewing a military judge's acceptance of a plea for an abuse of discretion appellate courts apply a substantial basis test: Does the record as a whole show a substantial basis in law and fact for questioning the guilty plea.” *Thompson*, 81 M.J. at 830 (quotation marks, brackets, and citations omitted).

In determining whether a military judge abused his or her discretion, this court applies the "substantial basis" test. *Moratella*, 82 M.J. at 3-4. Specifically, we ask "whether there is something in the record of trial, with regard to the factual basis or the law, that would raise a substantial question regarding the appellant's guilty plea." *Moratella*, 82 M.J. at 4. That is, despite the existence of an otherwise adequate basis for a plea, "[i]f an accused 'sets up matter inconsistent with the plea' at any time during the proceeding, the military judge must either resolve the

apparent inconsistency or reject the plea." *Moratella*, 82 M.J. at 4. However, "a 'mere possibility' of conflict" is not enough, and we "giv[e] broad discretion to military judges in accepting [guilty] pleas . . . because [we recognize that] facts are by definition undeveloped in such cases." *Moratella*, 82 M.J. at 4.

Law

“Guilty pleas ‘must be analyzed in terms of providence of the plea, not sufficiency of the evidence.’” *Thompson*, 81 M.J. at 830 (quoting *United States v. Faircloth*, 45 M.J. 172, 174 (C.A.A.F. 1996)). “A guilty plea is provident if the facts elicited make out each element of the charged offense.” *Thompson*, 81 M.J. at 830 (quotation marks and citation omitted). “In assessing the providence of the plea, courts look to the entire record.” *Thompson*, 81 M.J. at 830.

Before accepting a guilty plea, a military judge must ensure that there is a factual basis for the accused's plea. R.C.M. 910(e), Manual Courts-Martial; *Moratella*, 82 M.J. at 3. “The factual predicate of a guilty plea is sufficiently established if the factual circumstances as revealed by the accused himself [or herself] objectively support that plea.” *Thompson*, 81 M.J. at 830 (quotation marks, brackets, ellipses and citations omitted); *Moratella*, 82 M.J. at 3. “[W]hen, either during the plea inquiry or thereafter, and in the absence of prior disavowals[,] circumstances raise a possible defense, a military judge has a duty to inquire further to resolve the apparent inconsistency.” *United States v. Shaw*, 64

M.J. 460, 462 (C.A.A.F. 2007) (ellipses and citation omitted). “When the accused raises a matter inconsistent with the plea, such as the making of a statement negating the *mens rea* required for guilt, the military judge must either resolve the inconsistency or reject the plea.” *Thompson*, 81 M.J. at 830 (citation omitted).

“Once the military judge has accepted a plea as provident and has entered findings based on it, an appellate court will not reverse that finding and reject the plea unless it finds a substantial conflict between the plea and the accused's statements or other evidence of record.” *Shaw*, 64 M.J. at 462 (quotation marks and citation omitted). “A mere possibility of such a conflict is not a sufficient basis to overturn the trial results.” *Shaw*, 64 M.J. at 462 (quotation marks and citation omitted). Even if a guilty plea is later determined to be improvident, a reviewing court may grant relief only if it finds that the military judge's error in accepting the plea “materially prejudice[d] the substantial rights of the accused.” Article 45(c), UCMJ; *Moratella*, 82 M.J. at 4.

A person is guilty of committing assault when he or she unlawfully and with force or violence does bodily harm to another person. Article 128, UCMJ. “A person may use non-deadly, reasonable, force to defend property from theft or trespass.” 1 Military Crimes and Defenses § 3.4 (2024). “[T]he accused may only use as much force as is reasonably necessary to remove an individual from his property after requesting that the individual leave and then allowing a reasonable

amount of time for the individual to leave.” *United States v. Davis*, 73 M.J. 268, 272 (C.A.A.F. 2014) (citations omitted). “If the person then refuses to leave, he [or she] becomes a trespasser and may not resist if only reasonable force is used to eject him [or her].” 1 Military Crimes and Defenses § 3.4 (2024). “If more force is used than is reasonably necessary to remove a trespasser, this force constitutes assault and battery.” *Davis*, 73 M.J. at 272 (citation omitted).

Argument

The military judge did not abuse his discretion in accepting appellant’s guilty plea because the military judge established a sufficient basis for appellant’s plea, and appellant’s statements were not inconsistent with the stipulation of facts or his plea. Appellant argues the record reasonably raised evidence of defense of property, which appellant never disclaimed, and the military judge failed to properly address defense of property, which would have constituted a complete defense to Charge II. (Appellant’s Br. at 6-7, 11). However, appellant’s plea colloquy directly refutes his arguments.

Appellant stated that [REDACTED] who is a close friend of appellant’s wife, came to the marital residence house frequently and let herself into appellant’s house, which was normal. (R. at 44). Appellant normally did not have a problem with [REDACTED] letting herself into appellant’s house. (R. at 44). Appellant described [REDACTED] as 5’3” and

“very small.” (R. at 48). Appellant stated he is 5’11” and weighs approximately 200 pounds. (R. at 48).

Appellant admitted that on the evening of 6 January 2024, he assaulted [REDACTED] by throwing [REDACTED] to the ground with his hands at his home. (R. at 41-22). Specifically, appellant stated that he intentionally grabbed [REDACTED], threw her to the ground to get [REDACTED] out of his house, and used more force than was necessary. (R. at 41-42). Appellant stated he asked [REDACTED] to leave and pushed [REDACTED] out of the front door when [REDACTED] refused to leave. (R. at 44). Appellant stated that he was not acting in self-defense when he threw [REDACTED] to the ground. (R. at 42). Appellant admitted he had no legal justification or excuse to throw [REDACTED] to the ground. (R. at 44).

Trial counsel asked the military judge to obtain additional clarification from appellant that he did not believe his property was in immediate danger of trespass or threat. (R. at 51-52). Specifically, trial counsel requested the following:

We would like a little bit more clarification that the accused did not believe that his property was in immediate danger of trespass or threat. Essentially a further inquiry stating that a reasonable, prudent person in the same situation would not have believed that his property was in immediate danger or unlawful interference, and the amount of force was more than enough needed for that situation.

(R. at 51-52).

Thereafter, the military judge conducted further inquiry of appellant. (R. at 52). The military judge asked appellant if, when he decided to push [REDACTED] out of his

house, he was doing so because he felt threatened by [REDACTED] upon which appellant answered no. (R. at 52). Appellant further stated he did not believe [REDACTED] posed a threat to appellant's safety and physical well-being in some way or form. (R. at 52-53). Appellant further stated he had other options than using force or violence against [REDACTED], such as calling [REDACTED]'s sister, the military police, or trying to talk through it with [REDACTED] without using force against [REDACTED]. (R. at 54-55). Both trial counsel and defense counsel concurred that the military judge elicited sufficient facts for Charge II and its specification. (R. at 55). Moreover, defense counsel stated that they explained to appellant a legal defense of self-defense and they did not think it applies in this case. (R. at 53). Finally, the Stipulation of Fact states, among other things, that appellant had no legal justification or excuse to throw [REDACTED] to the ground. (Pros. Ex. 1, 4-5).

Additionally, appellant's defense of property argument is wholly contradicted by his own statements to the military judge that he had other options than using force or violence against [REDACTED]. (R. at 54-55). Specifically, appellant posited to the military judge that instead of using violence to eject [REDACTED] from his property he could have called [REDACTED]'s sister or the MPs or tried to talk it through with [REDACTED]. (R. at 54). Appellant admitted to the court that he freely and voluntarily decided not to engage in those other courses of action and instead chose to use force and violence against [REDACTED]. (R. at 54-55). Even if appellant could have used

force to eject a trespasser, his colloquy unequivocally demonstrates appellant used excessive force.

Under these circumstances, the military judge was not required to discuss the defense of property defense and the military judge did not abuse his discretion accepting appellant's guilty plea. The defense of property defense has two parts: first, appellant must believe his property is in immediate danger of harm (trespass/theft), and second, appellant must actually believe the force used was necessary to protect the property. *Davis*, 73 M.J. at 271; see Dep't of Army, Pam. 27-9, Legal Services: Military Judges' Benchbook, para. 5-7 (29 Feb. 2020). Even though the military judge failed to discuss with appellant whether he felt his property was in danger, his unconditional admission that he had no justification or excuse for using force against █████ established a sufficient basis for the military judge to accept appellant's plea. Appellant's pleas were provident, and the military judge established a sufficient basis for appellant's plea which, when viewed in the full context of the colloquy, did not give rise to a substantial question of law or fact. Accordingly, the military judge did not abuse his discretion in accepting appellant's guilty pleas.

Conclusion

WHEREFORE, the government respectfully requests that this Honorable Court affirm the findings and sentence.

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CERTIFICATE OF SERVICE, U.S. v. MICHAUD (20240020)

I certify that a copy of the foregoing was sent via electronic submission to the
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