UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
MORRIS, BURGESS, and JUETTEN
Appellate Military Judges

UNITED STATES, Appellee
v.
Specialist SARAH H. THORNTON
United States Army, Appellant

ARMY 20250210

Headquarters, Fort Stewart
Benjamin W. Hillner, Military Judge
Lieutenant Colonel Joseph W. Shaha, Special Trial Counsel

For Appellant: Colonel Frank E. Kostik, Jr., JA; Lieutenant Colonel Kyle C. Sprague, JA; Major Peter M. Ellis, JA (on brief and reply brief).

For Appellee: Colonel Richard E. Gorini, JA; Major Stephen L. Harmel, JA; Lieutenant Jacob Jones, JA; Captain Andrew T. Bobwoski, JA; (on brief).

5 October 2026

SUMMARY DISPOSITION

This opinion is issued as an unpublished opinion and, as such, does not serve as precedent

JUETTEN, Judge:

Appellant pled guilty to threatening to kill her husband and brandishing a loaded shotgun at him. On appeal, she claims the military judge erred in accepting her plea without first addressing the defense of automatism. We disagree and affirm appellant's findings and sentence.

A military judge, sitting as a general court-martial, found appellant guilty, pursuant to her plea, of one specification of domestic violence, in violation of Article 128b, Uniform Code of Military Justice, 10 U.S.C. § 928b.[1] The military

[1] In accordance with appellant's plea agreement, two specifications of communicating a threat and four other specifications of domestic violence, in violation of Articles 115 and 128b, UCMJ, were dismissed.

judge sentenced appellant to a bad-conduct discharge and to be reduced to the grade of E-1.[2]

BACKGROUND

In January 2024, appellant and her husband got into fight over her husband's lack of support with household chores, including childcare. Appellant subsequently took her husband's shotgun and approached her husband with it, asking him to leave their home. During the ensuing conversation, appellant held the loaded shotgun in a collapsed low-ready position[3] or loosely by her side and threatened to kill appellant. Appellant did not point the shotgun at her husband, and she eventually surrendered the weapon to him.

During appellant's providence inquiry, appellant stated she was "overwhelmed," being the mother to an approximate five-month-old, a full-time student, and a full-time soldier. Based on this response, the military judge asked, "were you able to control your emotions and your actions on [the date of the charged misconduct]?" Appellant responded, "I was able to control it. It was just that night," and later, "I couldn't that night." After several additional queries by the military judge resulted in similar responses from appellant, the military judge stated:

> I'm going to give you a moment just a second. So, [appellant] and here's . . . the reason I'm asking all these questions. Everything we – we talk about gets recorded on these microphones and it gets transcribed by [the court reporter] . . . . And once all this is done, your case gets reviewed by an appellate court and they check to make sure that what you told me actually meets the legal definition of a crime. I can see your reactions and I can see your sincerity in what you're saying. I can also see, and I understand based on the nature of these questions, that these are not easy questions. I understand this is not an easy topic.
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> Nonetheless, what I see and what I can observe, people reading this record after the fact, they can't see it and they can't observe it. So I agree with [defense counsel] that some of this one is – is a byproduct of the . . . questions

[2] We have given full and fair consideration to the other matters raised by appellant, both through counsel and pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), and determine they warrant neither discussion nor relief.

[3] *See* Training Circular 3-22.9, Rifle and Carbine, para. 6-9 (13 May 2016).

> and topic . . . – and two these – these elements and definitions these are written by lawyers, which means that they're not clear all the time. So, what I'm going to do is I'm going to take a recess. . . . and I'll give your attorneys time to . . . talk this through, because I – I agree there appears to be just a little bit of – a little bit of confusion.

Following the recess, the military judge asked appellant whether she was "physically or mentally unable to control [herself]" when she committed the charged acts. After appellant clarified that it was her emotions that led her to commit the alleged misconduct, the military judge once again asked, "Was this a regrettable act that you wish you had done differently, or one that you absolutely could not have done differently." Appellant responded "I do regret and I could [have] done differently, Your Honor."[4]

LAW & DISCUSSION

A military judge's decision to accept a plea of guilty is reviewed for an abuse of discretion. *United States v. Kim*, 83 M.J. 235, 238 (C.A.A.F. 2023) (citing *United States v. Inabinette*, 66 M.J. 320, 322 (C.A.A.F. 2008)). Under this standard, the court "must uphold a guilty plea unless there is a substantial basis in law and fact for questioning the plea." *United States v. Hiser*, 82 M.J. 60, 64 (C.A.A.F. 2022) (quoting *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991) (internal quotations omitted)). Under the "substantial basis" test, the court must 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." *United States v. Mortalla*, 82 M.J. 1, 3-4 (C.A.A.F. 2021) (citing *Inabinette*, 66 M.J. at 322). "If an accused sets up matters inconsistent with the plea at any time during the proceeding, the military judge must either resolve the apparent inconsistency or reject the plea." *Id.* at 4 (cleaned up).

An affirmative defense constitutes a matter "inconsistent with the plea" of guilty and therefore "the military judge must either resolve the apparent inconsistency or reject the plea." *E.g.*, *United States v. Phillippe*, 63 M.J. 307, 309 (C.A.A.F. 2006); *see also United States v. Logan*, 22 U.S.C.M.A. 349, 350 (1973) (noting that "the plea must be set aside if the accused's testimony reasonably raised the question of a defense."). Even then, "a reviewing court may grant relief only if

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[4] Appellant's stipulation of fact, entered into evidence pursuant to her plea agreement, also affirmatively disavowed any defenses, specifically stating, "[Appellant] knew what she did was wrong and voluntarily chose to engage in the wrongful conduct. . . . The [appellant] was aware of the nature of her actions as described . . . and the probable results of those actions. The [appellant] claims no defense to her actions."

it finds that the military judge's error in accepting the plea 'materially prejudice[d] the substantial rights of the accused.'" *Mortalla*, 82 M.J. at 4 (alteration in original) (quoting UCMJ, art. 45(c)).

> Military law recognizes the affirmative defense of automatism, which is "[a]ction or conduct occurring without will, purpose, or reasoned intention," "behavior carried out in a state of unconsciousness or mental disassociation without full awareness," and "[t]he physical and mental state of a person, who though capable of action, is not conscious of his or her actions."

United States v. Aguirre, 86 M.J. 43, 53 (C.A.A.F. 2025) (alterations in original) (quoting *United States v. Torres*, 74 M.J. 154, 156 n.3 (C.A.A.F. 2015)). Automatism negates the actus reus of the offense, not the mens rea of appellant, because an appellant "cannot be held criminally liable in a case where the actus reus is absent because [they] did not act voluntarily." *Id.* (quoting *Torres*, 74 M.J. at 157).

The military judge did not err in accepting appellant's plea. While the military judge did not explicitly discuss "automatism" by name with appellant, his questioning—whether appellant was in control of her body the night of the charged misconduct—cuts directly to the heart of the defense.[5] This questioning was correctly focused on whether appellant was able to control her actions the night of the charged misconduct—not whether her mens rea was affected—and was sufficient to disavow the application of the defense. *Id.* at 53. Appellant's final attestation—acknowledging control over her actions—clarified the inconsistencies of her prior admissions, the military judge's rationale for ordering the recess in the first place, coupled with the stipulation of fact appellant signed in which she waived all affirmative defenses, convinces us that appellant's initial answers were muddled by the emotional circumstances surrounding the guilty plea and confusion over legal definitions.[6]

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[5] We note that the military judge's discussion with appellant fairly captured the Military Judges' Benchbook definition of the defense. Dep't of Army, Pam. 27-9, Legal Services: Military Judges' Benchbook, para. 5-21 (29 Feb. 2020) ("An accused may not be held criminally liable for (his)(her) acts unless they are voluntary. An act is not voluntary if it is (a reflex or convulsion) (a bodily movement during unconsciousness or sleep) (_____).").

[6] In other words, this was not a situation where "counsel t[ook] hold of appellant's arms while the judge grab[bed] the ankles and together they drag[ged] appellant

(continued . . .)

CONCLUSION

On consideration of the entire record, the findings of guilty and the sentence are AFFIRMED.

Senior Judge MORRIS and Judge BURGESS concur.

FOR THE COURT:

[redacted]

JAMES W. HERRING, JR.
Clerk of Court

(. . . continued)
across the providence finish line." *United States v. Le*, 59 M.J. 859, 864 (Army Ct. Crim. App. 2004). Rather, this court is the beneficiary of the military judge who noted appellant's confusion, which was physically noticed but not otherwise captured on the record, and memorialized it appropriately for our review.