

UNITED STATES ARMY COURT OF MILITARY REVIEW

United States v. Frazier

14 M.J. 773 (1982) · Decided September 29, 1982

SUMMARY

The court reviewed convictions for offering violence to a superior commissioned officer, disrespect, and willful disobedience. It held that prior convictions for housebreaking and grand larceny were admissible for impeachment under Military Rule of Evidence 609(a)(1), while possession of marihuana was inadmissible but harmlessly waived by the failure to object. The court also found the evidence sufficient to support the offering-violence conviction and directed correction of the promulgating order to state that no previous convictions were considered.

CASE DETAILS

COURT	United States Army Court of Military Review
WRITING FOR THE COURT	Naughton
JURISDICTION	USA
DECIDED	September 29, 1982
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appellant appealed convictions by a military judge sitting as a general court-martial. The appeal challenged the admission of prior civilian convictions for impeachment, the sufficiency of the evidence supporting the Article 90 conviction, and the content of the general court-martial promulgating order.
STANDARD OF REVIEW	The court reviewed the evidentiary rulings for waiver and prejudice under the Military Rules of Evidence, evaluated the sufficiency of the evidence beyond a reasonable doubt, and considered the promulgating-order issue as an administrative matter.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Frazier v. United States

TOPICS

- court martial
- military law
- evidence
- impeachment
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Frazier's prior civilian convictions for housebreaking, grand larceny, and possession of marihuana were admissible to impeach his credibility under Military Rule of Evidence 609.
2. Whether the evidence was sufficient to support the conviction for offering violence against a superior commissioned officer under Article 90, UCMJ.
3. Whether the general court-martial promulgating order could reflect that the military judge considered Frazier's prior civilian convictions.

HOLDINGS

1. Convictions for housebreaking, grand larceny, and possession of marihuana do not automatically qualify under Military Rule of Evidence 609(a)(2) merely because they are criminal convictions; the phrase "dishonesty or false statement" is limited to offenses involving an element of untruthfulness, deceit, or falsification bearing on the likelihood that the accused will testify untruthfully.
2. The housebreaking and grand-larceny convictions were admissible under Rule 609(a)(1), and the absence of an explicit on-the-record balancing finding did not require reversal because defense counsel failed to make a specific, timely objection and affirmatively declined to object.
3. Admission of the prior marihuana-possession conviction was error because it satisfied neither Rule 609(a)(1) nor Rule 609(a)(2), but the error was waived by the failure to make a timely and specific objection and did not constitute plain error.
4. The evidence was sufficient beyond a reasonable doubt to establish that Frazier offered violence against Captain Houston by intentionally committing an act that placed her in reasonable apprehension of immediate bodily harm.
5. A promulgating order may reflect an accused's prior civilian or military convictions, but it may not state that convictions introduced before findings were considered by the military judge during presentencing proceedings. The order was corrected to state: "(No previous convictions considered)."

KEY QUOTATIONS

"We believe that the Military Rule should be construed to restrict the convictions involving "dishonest or false statement" to those convictions involving some element of untruthfulness or falsification which would tend to demonstrate that an accused would be likely to testify untruthfully." (at 778)

"We find beyond a reasonable doubt that Captain Houston actually and reasonably apprehended she would suffer immediate bodily injury from the appellant, and therefore, the evidence of record is amply sufficient to support the appellant's conviction of offering violence to his superior commissioned officer." (at 780)

FACTUAL BACKGROUND

During a counseling session at Moncrief Army Hospital concerning his disobedience of an order, Frazier repeatedly interrupted the supervising officer, used profanity, left his chair, rushed toward her desk, leaned over

it, and shook a fist while shouting. The officer testified that she felt threatened and feared that Frazier would strike her, and other witnesses described him as tense, intimidating, and angry. During cross-examination, Frazier acknowledged prior civilian convictions for housebreaking, grand larceny, and possession of marihuana; defense counsel withdrew an initial unspecified objection and did not specifically object to the evidence.

PROCEDURAL HISTORY

Frazier was convicted, contrary to his plea, of offering violence to a superior commissioned officer and, pursuant to his pleas, of disrespect toward and willful disobedience of the same officer. The convening authority approved a dishonorable discharge, one year of confinement at hard labor, forfeiture of all pay and allowances, and reduction to E-1. The Army Court of Military Review affirmed the findings and sentence but issued a correcting certificate directing that the promulgating order state that no previous convictions were considered.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

No remand was ordered. The court issued a correcting certificate directing that the promulgating order state: "(No previous convictions considered)."

CASES CITED

- United States v. Smith, 551 F.2d 348, 362-63 (D.C. Cir. 1976)
- Government of Virgin Islands v. Toto, 529 F.2d 278 (3d Cir. 1976)
- United States v. Hayes, 553 F.2d 824 (2d Cir. 1977)
- United States v. Preston, 608 F.2d 626, 639 (5th Cir. 1978)
- United States v. Mahone, 537 F.2d 922 (7th Cir. 1976)
- United States v. Hawley, 554 F.2d 50 (2d Cir. 1977)
- United States v. Fountain, 642 F.2d 1083 (7th Cir. 1981)
- United States v. Cunningham, 638 F.2d 696 (4th Cir. 1981)
- United States v. Hendershot, 614 F.2d 648 (9th Cir. 1980)
- United States v. Crawford, 613 F.2d 1045 (D.C. Cir. 1979)
- United States v. Seamster, 568 F.2d 188 (10th Cir. 1978)
- United States v. Long, 574 F.2d 761, 766 (3d Cir. 1978)
- United States v. Beaudion, 11 M.J. 838 (ACMR), petition denied, 12 M.J. 181 (CMA 1981)
- United States v. Head, 46 C.M.R. 709 (ACMR 1972)
- United States v. Bianco, 419 F. Supp. 507 (E.D. Pa. 1976), aff'd mem., 547 F.2d 1164 (3d Cir. 1977)
- United States v. Carden, 529 F.2d 443 (5th Cir. 1976)
- United States v. Fearwell, 595 F.2d 771 (D.C. Cir. 1978)
- United States v. Ashley, 569 F.2d 975 (5th Cir. 1978)

- United States v. Papia, 560 F.2d 827 (7th Cir. 1977)
- Government of Virgin Islands v. Toto, 529 F.2d 278 (3d Cir. 1976)
- United States v. Trejo-Zambrano, 582 F.2d 460 (9th Cir. 1978)
- United States v. Ortiz, 553 F.2d 782 (2d Cir. 1977)
- United States v. McLister, 608 F.2d 785 (9th Cir. 1979)
- United States v. Gross, 603 F.2d 757 (9th Cir. 1979)
- United States v. Hastings, 577 F.2d 38 (8th Cir. 1978)
- United States v. Thompson, 559 F.2d 552 (9th Cir. 1977)
- United States v. Barnes, 622 F.2d 107, 110 (5th Cir. 1980)
- United States v. Cook, 10 M.J. 138 (CMA 1981)