

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Senior Airman CHRISTOPHER M. MITCHELL
United States Air Force**

ACM 36331

24 August 2006

Sentence adjudged 3 March 2005 by GCM convened at Los Angeles Air Force Base, California. Military Judge: Anne L. Burman.

Approved sentence: Bad-conduct discharge, confinement for 5 months, and reduction to E-2.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Major Maria A. Fried, and Captain Christopher S. Morgan.

Appellate Counsel for the United States: Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Major Nurit Anderson.

Before

**ORR, MATHEWS, and THOMPSON
Appellate Military Judges**

PER CURIAM:

We have reviewed the record of trial, the appellant's assignment of error, and the government's reply thereto. The appellant complains that the military judge abandoned her impartial role through her questioning of a prosecution witness in sentencing. Her questions, the appellant alleges, laid the foundation for prejudicial information subsequently presented to the members in sentencing. Finding no error, we affirm.

Rule for Courts-Martial 801(c) and Military Rule of Evidence (Mil. R. Evid.) 614 both permit questioning by the military judge. Mil. R. Evid. 611(a) requires military judges to exercise "reasonable control over the mode and order of interrogating witnesses" in order, inter alia, to "avoid needless consumption of time" and to make

“presentation [of the evidence] effective for the ascertainment of the truth.” *Id.* The military judge, after several attempts by the assistant trial counsel to lay a foundation, made clear that she was intervening to save time and to keep the court-martial proceedings on track: “Mr. [S], *just to short-cut this*, have you, in the course of your work, received any information” (Emphasis added).

The trial defense counsel did not object to the military judge’s decision to briefly take an active role in the questioning of this witness, nor to any of her questions. We infer from this fact that the trial defense counsel saw no problem with the military judge’s actions. *See United States v. Hill*, 45 M.J. 245, 249 (C.A.A.F. 1996). Nor do we: considering the questions as a whole, and in the context of the entire trial, we find that the military judge acted properly and that her fairness and impartiality were never reasonably placed in doubt. *See United States v. Burton*, 52 M.J. 223, 226 (C.A.A.F. 2000). Moreover, we find no prejudice to the appellant. We have no doubt that the assistant trial counsel, who was trying the case along with a more senior judge advocate, would eventually have been able to lay a proper foundation.

The approved findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred. Article 66(c), UCMJ, 10 U.S.C. § 866(c); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the findings and sentence are

AFFIRMED.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF
Chief Court Administrator