UNITED STATES NAVY-MARINE CORPS
COURT OF CRIMINAL APPEALS
WASHINGTON, D.C.

Before
D.E. O'TOOLE, V.S. COUCH, P.G. STRASSER
Appellate Military Judges

UNITED STATES OF AMERICA

v.

RALEIGH J. WHITE, JR.
LANCE CORPORAL (E-3), U.S. MARINE CORPS

NMCCA 200800558
SPECIAL COURT-MARTIAL

Sentence Adjudged: 25 March 2008.
Military Judge: Maj Charles Hale, USMC.
Convening Authority: Commanding Officer, 3d Battalion, 12th Marines, 3d Marine Division (-)(REIN), Okinawa, Japan.
Staff Judge Advocate's Recommendation: LtCol K.J. Brubaker, USMC.
For Appellant: LCDR Thomas Belsky, JAGC, USN.
For Appellee: LT Timothy Delgado, JAGC, USN; Capt Mark Balfantz, USMC.

31 July 2009

OPINION OF THE COURT

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.

STRASSER, Judge:

A military judge, sitting as a special court-martial, convicted the appellant, contrary to his pleas, of two specifications of making a false official statement and one specification of larceny, in violation of Articles 107 and 121, Uniform Code of Military Justice, 10 U.S.C. §§ 907 and 921. The military judge also convicted the appellant, pursuant to his pleas, of disrespect to a superior noncommissioned officer, willfully disobeying the same superior noncommissioned officer, and drunk and disorderly conduct, in violation of Articles 91 and 134, UCMJ. The approved sentence includes confinement for 120 days, reduction to pay grade E-1, and a bad-conduct discharge.

The appellant now raises the following assignments of error: (1) that the evidence is legally and factually insufficient to sustain his conviction for the false official statements and larceny; and (2) that the military judge erred in accepting the appellant's plea of guilty to the charge of willfully disobeying a superior noncommissioned officer when the facts suggested that the appellant was intoxicated and the military judge failed to resolve any inconsistency in the record. Appellant's Brief of 23 Oct 2008 at 1.

Upon consideration of the record of trial and the pleadings of the parties, 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 occurred. Arts. 59(a) and 66(c), UCMJ.

Background

The facts relevant to the appellant's convictions arise from two distinct series of events. The charges for false official statements and larceny relate to the appellant's conduct between 2004 and 2007, while the facts relevant to the charges for disrespect and disobedience to a superior noncommissioned officer and drunk and disorderly conduct relate to the appellant's actions on a specific date in 2007. Record at 17, 25, 56; Prosecution Exhibit 1 at 2-4.

I. Facts for False Official Statements and Larceny

The appellant was married in 2004 in St. Louis, Missouri, and, shortly thereafter, the appellant's wife relocated from St. Louis to live with him at his assigned duty station of Bridgeport, California. PE 1 at 3. However, six months after the marriage, the appellant and his wife separated, the appellant's wife returning to live in St. Louis while he remained in Bridgeport. *Id*. at 4. The appellant and his wife continued living apart, although the appellant visited his wife and daughter several times in St. Louis. *Id.* In 2006, the appellant was transferred to Okinawa, Japan, on a "Dependent-Restricted" tour and immediately changed his BAH and Cost of Living Allowance (COLA) entitlement data to reflect a San Francisco, California, address for his wife. PE 1 at 4; PE 2 at 1; PE 5 at 1; Record at 90.

The appellant provided a statement to a special agent of the Naval Criminal Investigative Service which included multiple exculpatory factual statements. It is these statements that are alleged to be false by the Government. The appellant was convicted of stealing $8,910.00 in extra pay as a result of his false designation of San Francisco as his wife's address rather than her true address of St. Louis, Missouri.

II. Facts for Disrespect and Disobedience of a Superior Non-Commissioned Officer and Drunk and Disorderly Conduct

On 2 August 2007, the appellant was involved in a verbal and physical altercation outside a club in Japan at approximately 2400 after a night of heavy drinking. Upon apprehension by the military police, the appellant was ordered by the Command Duty Officer (CDO) to return to his barracks room and leave his door unlocked. Record at 26. In response, the appellant stated words to the effect of "[f***] that ... I'm not leaving my door unlocked because somebody is going to steal my [s***]." *Id.* The appellant then returned to his room and locked his door, contrary to the CDO's order to leave his door unlocked. *Id.* at 36.

Standard of Review

This court considers *de novo* the factual and legal sufficiency of a finding of guilty in those cases referred to it. Art. 66(c), UCMJ; *United States v. Washington*, 57 M.J. 394, 399 (C.A.A.F. 2002)(citing *United States v. Cole*, 31 M.J. 270, 272 (C.M.A. 1990)). We review the military judge's decision to accept a guilty plea for an abuse of discretion. *United States v. Inabinette*, 66 M.J. 320, 322 (C.A.A.F. 2008).

Discussion

I. Factual Sufficiency for False Official Statement and Larceny Conviction

The test for factual sufficiency is whether, "after weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses," this court is convinced of the appellant's guilt beyond a reasonable doubt. *United States v. Turner*, 25 M.J. 324, 325 (C.M.A.1987). The evidence in the record amply supports the appellant's false official statements and his fraudulent intent in claiming and collecting San Francisco BAH while his wife maintained a residence in St. Louis, including his frequent travel to St. Louis to visit his wife and daughter.

We are convinced beyond a reasonable doubt that all of the elements of the offenses of false official statement and larceny were proven.

II. Providence of Guilty Plea

The appellant asserts that the military judge erred in accepting his guilty plea because the facts suggested a defense of voluntary intoxication that was not resolved. A guilty plea will be rejected on appeal only where the record of trial shows a substantial basis in law or fact for questioning the plea. *Inabinette*, 66 M.J. at 322. Because the issue is one of the adequacy of the military judge's inquiry and not with the legal

aspects of the military judge's duties, we apply an abuse of discretion standard. *Id.*

If "either during the plea inquiry or thereafter . . . circumstances raise a possible defense, a military judge has a duty to inquire further to resolve the apparent inconsistency." *United States v. Phillippe*, 63 M.J. 307, 310-11 (C.A.A.F. 2006). This inquiry should include a concise explanation of the defense and "[o]nly after the military judge [makes] this inquiry can he then determine whether the apparent inconsistency or ambiguity has been resolved." *Id.* at 310; *United States v. Pinero*, 60 M.J. 31, 34 (C.A.A.F. 2004).

Voluntary intoxication is not a defense, but may negate the specific intent required for some offenses. *United States v. Peterson*, 47 M.J. 231, 233 (C.A.A.F. 1997); *see* RULE FOR COURTS-MARTIAL 916(l)(2), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.); MANUAL FOR COURTS-MARTIAL, UNITED STATES, Part IV, ¶ 15c(4) (referencing ¶ 14c(2)(f)). The potential defense of voluntary intoxication does not arise simply because the appellant was drinking or was even intoxicated. In order for voluntary intoxication to be raised as a defense, "the intoxication must be to such a degree that the accused's mental faculties are so impaired that a specific intent cannot be formed." *United States v. Yandle*, 34 M.J. 890, 892 (N.M.C.M.R. 1992)(citing *United States v. Bright*, 20 M.J. 661 (N.M.C.M.R. 1985)). In ascertaining the effects of intoxication on an accused pleading guilty, courts generally recognize that they "have no way of knowing the exact extent intoxication may have interfered with [an] accused's normal mental processes," but they give weight to an accused's ability to recount the circumstances and events leading to the charges during the providency inquiry. *United States v. Lacy*, 27 C.M.R. 238, 240 (C.M.A. 1959).

In the case before us, the military judge's colloquy with the appellant revealed that the appellant was intoxicated at the time of the offense, but also revealed that he was able to recite many of the facts of the relevant night and morning, stating to the military judge that he understood the order despite his intoxication. Record at 39. The appellant even recollected for the military judge the rationale for the order to leave his door unlocked and stated that his disobedience was the result of a freely made decision. *Id.* at 37-39. The military judge did probe as to whether the appellant believed he had a legal justification or excuse for his disobedience and we are satisfied that the any inconsistencies presented during the appellant's inquiry were satisfactorily resolved. *Id.* at 39.

For these reasons, we are satisfied that the military judge did not abuse his discretion in accepting this guilty plea and that there is no substantial basis in law or fact to overturn the guilty plea.

Conclusion

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

Chief Judge O'TOOLE and Senior Judge COUCH concur.

For the Court

R.H. TROIDL
Clerk of Court