

UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

**Senior Airman KODY T. WEEKS
United States Air Force**

ACM 37535

30 March 2011

Sentence adjudged 20 June 2009 by GCM convened at Langley Air Force Base, Virginia. Military Judge: Stephen Woody (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 14 months, and reduction to E-1.

Appellate Counsel for the Appellant: Lieutenant Colonel Gail E. Crawford, Major Shannon A. Bennett, Major Grover H. Baxley, Major Anthony D. Ortiz, and Captain Phillip T. Korman.

Appellate Counsel for the United States: Colonel Don M. Christensen, Major John M. Simms, and Gerald R. Bruce, Esquire.

Before

**BRAND, ORR, and WEISS
Appellate Military Judges**

This opinion is subject to editorial correction before final release.

PER CURIAM:

In accordance with his pleas, the appellant was convicted of one specification of disobeying a noncommissioned officer, one specification of violating a no-contact order, one specification of larceny, and one specification of forgery, in violation of Articles 91, 92, 121, and 123, UCMJ, 10 U.S.C. §§ 891, 892, 921, 923. The adjudged and approved sentence consists of a bad-conduct discharge, confinement for fourteen months, and reduction to E-1.

On appeal, the appellant alleges that his guilty plea to Charge II and its specification is improvident because the appellant did not falsely make or alter a signature or writing, to constitute forgery. Finding no prejudicial error, we affirm.

Background

The appellant's cousin sent him a check for his birthday. The appellant decided to use the account number and routing number to create electronic checks to pay for his purchases at Best Buy. The appellant admitted that he would call and use the automated bill pay system to "create electronic checks by using account and router [sic] number, a specific check number and the amount of each check I wanted to create." The appellant further stated that he "provided [the] name and address for the checks. All other information was from the [victims]."

Discussion

"A military judge's decision to accept a guilty plea is reviewed for an abuse of discretion." *United States v. Eberle*, 44 M.J. 374, 375 (C.A.A.F. 1996). An accused may not plead guilty unless the plea is consistent with the actual facts of his case. Article 45(a), UCMJ, 10 U.S.C. § 845(a); Rule for Courts-Martial 910(e); *United States v. Moglia*, 3 M.J. 216, 218 (C.M.A. 1977). An accused may not simply assert his guilt; "the military judge must elicit '[facts] as revealed by the accused himself'" to support the plea of guilty. *United States v. Jordan*, 57 M.J. 236, 238 (C.A.A.F. 2002) (quoting *United States v. Davenport*, 9 M.J. 364, 367 (C.M.A. 1980)); *United States v. Outhier*, 45 M.J. 326, 331 (C.A.A.F. 1996). When there is "a substantial basis in law and fact for questioning the plea," the plea cannot be accepted. *United States v. Hardeman*, 59 M.J. 389, 391 (C.A.A.F. 2004). Additionally, our superior court has permitted the military judge to give weight to the defense evaluation of the evidence in borderline cases. *United States v. Harrow*, 65 M.J. 190, 205 (C.A.A.F. 2007).

Forgery by uttering, as charged in this case, includes the following elements: (1) that a certain signature or writing was falsely made or altered; (2) that the signature or writing was of a nature which would, if genuine, apparently impose a legal liability on another or change another's legal rights or liabilities to that person's prejudice; (3) that the accused uttered, offered, issued, or transferred the signature or writing; (4) that at such time the accused knew that the signature or writing had been falsely made or altered; and (5) that the uttering, offering, issuing, or transferring was with the intent to defraud. *Manual for Courts-Martial, United States (MCM)*, Part IV, ¶ 48.b.(2) (2008 ed.). Further, when defining "uttering," the Manual states, "A person need not personally be the maker or drawer of an instrument in order to violate this article if that person utters or delivers it." *MCM*, Part IV, ¶¶ 48.c.(7), 49.c.(4).

In the appellant's own words, "the checks were falsely made because the account information was not mine." The appellant also stated that "[a]nything I used the account information for was falsely made because it wasn't my account." The appellant made up check numbers and the amounts for each check. When the account owner was notified of the suspicious activity, the first thing she noticed was that the check numbers were lower than the numbers she was using. The appellant caused the checks to be falsely made and he uttered them. This is not a borderline case, the military judge did not abuse his discretion in accepting the appellant's guilty plea, and we are ourselves convinced of the appellant's guilt.

Conclusion

The findings and the 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



A handwritten signature in blue ink, appearing to read "S. Lucas", is written over the seal.

STEVEN LUCAS
Clerk of the Court