UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman Basic TREVOR L. BAGLEY
United States Air Force

ACM S31876

30 November 2012

Sentence adjudged 28 September 2010 by SPCM convened at Robins Air Force Base, Georgia. Military Judge: Terry A. O'Brien (sitting alone).

Approved sentence: Bad-conduct discharge and confinement for 11 months.

Appellate Counsel for the Appellant: Captain Shane A. McCammon (argued); Lieutenant Colonel Gail E. Crawford; and Captain Nathan A. White.

Appellate Counsel for the United States: Major Jamie L. Mendelson (argued); Colonel Don M. Christensen; Lieutenant Colonel Linell A. Letendre; and Gerald R. Bruce, Esquire.

Before

ORR, ROAN, and HARNEY
Appellate Military Judges

OPINION OF THE COURT

This opinion is subject to editorial correction before final release.

ORR, Chief Judge:

In accordance with his pleas, a military judge sitting as a special court-martial convicted the appellant of one specification of larceny and three specifications of unlawful entry, in violation of Articles 121 and 134, UCMJ, 10 U.S.C. §§ 921, 934, respectively. Contrary to his pleas, the military judge convicted him of one specification of willfully damaging military property and one specification of violating a lawful general regulation, in violation of Articles 108 and 92, UCMJ, 10 U.S.C. §§ 908, 892,

respectively. The adjudged and approved sentence consisted of a bad-conduct discharge and confinement for 11 months.

The appellant alleges three errors on appeal: (1) Whether the military judge erred in finding that an Air Force Guidance Memorandum was a lawful general regulation; (2) Whether the military judge abused his discretion by admitting into evidence the appellant's confessional stipulation without first ensuring the appellant understood that, by admitting to material elements of the offense, he had relieved the Government of its burden to prove the offenses against him beyond a reasonable doubt; and (3) Whether the unlawful entry specifications fail to state offenses because they alleged violations of Article 134, UCMJ, but failed to allege any of the terminal elements of Article 134, UCMJ. Finding no prejudicial error, we affirm.

Background

As noted above, the appellant was charged, pled not guilty to, and convicted of, inter alia, one specification of violating a lawful general regulation, in violation of Article 92(1), UCMJ. The regulation at issue is a 9 June 2010 Air Force Guidance Memorandum (hereinafter the Guidance Memorandum) modifying Air Force Instruction (AFI) 44-121, *Alcohol and Drug Abuse Prevention and Treatment (ADAPT) Program* (22 April 2010). The Guidance Memorandum added an additional provision to AFI 44-121, prohibiting the "possession of any intoxicating substance . . . if done with the intent to use in a manner that would alter mood or function." It provided that:

> These substances include, but are not limited to, controlled substance analogues (e.g. designer drugs such as 'spice' that are not otherwise controlled substances); inhalants, propellants, solvents, household chemicals, an other substances used for "huffing"; prescription or over-the-counter medications when used in a manner contrary to their intended medical purpose or in excess of the prescribed dosage; and naturally occurring intoxication substances (e.g., Salvia divinorum).

The Guidance Memorandum further stated that, "compliance with this Memorandum is mandatory" and that, "[f]ailure to comply with the prohibitions contained in this paragraph is a violation of Article 92, UCMJ." The Guidance Memorandum was signed by Lieutenant General (Lt Gen) Green, the Surgeon General of the Air Force. The appellant was charged with violating this regulation by wrongfully possessing JWH-250, a controlled substance analogue and synthetic cannabinoid agonist known as "Tropical Haze."

At trial, without objection from the appellant, the military judge took judicial notice of the existence of the Guidance Memorandum and AFI 44-121. Trial counsel also asked the military judge to take judicial notice of two other documents: (1) Air Force Form (AF Form) 673; and (2) Page 14 of AFI 33-360, *Publications and Forms*

Management (18 May 2006). Trial counsel cited AFI 33-360 for the proposition that once an AF Form 673 is signed, "the information therein is by order of the Secretary of the Air Force." Although the trial defense counsel did not object "to the court taking judicial notice of the documents themselves," he did "object to the contention that the order issued in AFI 44-121 is a lawful order." In support of his argument, trial defense counsel submitted copies of 10 U.S.C. § 8579[1] and 10 U.S.C. § 8067[2] and argued during closing arguments that, as a medical officer, Lt Gen Green was not authorized to issue the order contained in the Guidance Memorandum. The military judge stated, "Okay. Whether or not it meets the definition of a lawful general regulation that is a question of law for me to determine. So I will consider all of this." The military judge ultimately found the appellant guilty of the Article 92, UCMJ, charge, thereby implicitly finding that the Guidance Memorandum was a lawful general regulation.

Respecting the same specification, the appellant entered into a stipulation of fact. It provided that the appellant was assigned a room on Robins Air Force Base; that his room was searched, whereby a container labeled "Tropical Haze" and a "smoking pipe containing residue" was found in the room; and that a trace amount of plant material in the container and the residue in the smoking pipe tested positive for the presence of a synthetic cannabinoid agonist, which is similar to a substance that causes a euphoric and intoxicating effect. The Government introduced additional evidence to prove up the charge, including the testimony of the dorm manager and the investigator who searched the appellant's room.

Lawfulness of Regulation

The appellant avers that the Guidance Memorandum to AFI 44-121 is not a lawful general order for purposes of Article 92(1), UCMJ, because it was not issued by a "competent authority"; specifically, that its issuer, the Air Force Surgeon General, is not: (a) a General Court-Martial Convening Authority (GCMCA), (b) the appellant's commander, or (c) a commander superior to either (a) or (b). He further argues that the Guidance Memorandum is irregular on its face.

In response, the Government contends that the law presumes the Guidance Memorandum's mandates to be lawful, and the appellant has failed to meet his burden of rebutting this presumption. It further submits that the Guidance Memorandum is a general regulation because it was issued by the Air Force Surgeon General (as the approving official) by order of the Secretary of the Air Force (SECAF). It urges that the Guidance Memorandum did not have to be personally signed by the SECAF; instead, all

[1] 10 U.S.C. § 8579 provides that, "An officer designated as a medical, dental, veterinary, medical service, or biomedical sciences officer or as a nurse is not entitled to exercise command because of rank, except within the categories prescribed in subsection (a), (b), (c), (d), (e), (f), or (i) of section 8067 of this title, or over persons placed under his charge."

[2] 10 U.S.C. § 8067 identifies the categories referenced in 10 U.S.C. § 8579, to include professional designations related to medical, dental, veterinary, medical service, nursing, and other specialty functions.

that was required, in accordance with AFI 33-360, ¶ 1.2.7.1.2, was for the Surgeon General to sign the AF Form 673, thereby "confirm[ing] that the information therein is by order of the SECAF." The Government continues that the procedures used in AFI 33-360 to promulgate the Guidance Memorandum represent a lawful delegation of the SECAF's "signature authority," and that the Surgeon General merely performed the ministerial duty of publishing the Guidance Memorandum by order of the SECAF. Finally, the Government urges that AFI 33-360 represents the SECAF's considered directive for promulgating guidance under his authority, and that, when an approving official acts in accordance with AFI 33-360, the resulting publication is by order of SECAF, who is empowered to issue general regulations.

A general order or regulation is lawful unless it is contrary to the Constitution, the laws of the United States, or lawful superior orders or if, for some other reason, it is beyond the authority of the official issuing it. *Manual for Courts–Martial, United States* (*MCM*), Part IV, ¶ 16c(1)(c) (2008 ed.); *see also id*. at ¶ 14c(2)(a)(i), (iii) (providing that "[a]n order requiring the performance of a military duty or act may be inferred to be lawful" and that "[t]he commissioned officer issuing the order must have authority to give such an order. Authorization may be based on law, regulation, or custom of the service."); *United States v. Deisher*, 61 M.J. 313, 317 (C.A.A.F. 2005) (stating that "[t]he essential attributes of a lawful order include: (1) issuance by competent authority - a person authorized by applicable law to give such an order; (2) communication of words that express a specific mandate to do or not do a specific act; and (3) relationship of the mandate to a military duty.").

The appellant concedes that the Guidance Memorandum communicated words that expressed a specific mandate to do or not do a specific act and that the specific mandate bore a relationship to a military duty. Thus, the only issue bearing on the lawfulness of the order is whether it was issued by "competent authority."

The appellant argues that the presumption of lawfulness and regularity normally given to orders and regulations applies only if the order is lawful and regular on its face, which he submits that the Guidance Memorandum in this case is not regular on its face by virtue of its noncompliance with AFI 33-360, as follows:

(1) it does not contain language that it was issued by order of the SECAF or that Lt Gen Green was authorized to issue punitive orders, as required by AFI 33-360, ¶ 2.12.5.2.13.3;

(2) it does not specify, in its opening paragraph, which parts of the publication contain punitive provisions, as required by AFI 33-360, ¶ ¶ 2.17.1.2 and 2.17.1.3.; and

(3) it does not end with the following verbatim sentence: "The directions of this memorandum become void after 180 days have elapsed from the date of this

memorandum, or upon publication of an Interim Change or rewrite of the affected publication, whichever is earlier," as required by AFI 33-360, ¶ 2.12.5.2.13.2.

The appellant argues that, under *Deisher* and *United States v. Ayers*, 54 M.J. 85 (C.A.A.F. 2000), his submission of these facial flaws effectively returns the burden to the Government to prove the lawfulness of the order. We disagree. A close reading of *Deisher* and *Ayers* reveals the appellant has misunderstood the meaning of those cases.

Neither *Deisher* nor *Ayers* holds that a regulation's facial irregularity relieves the appellant of his burden to disprove its presumptive lawfulness. *Deisher* simply reiterates the proposition that an order is presumed to be lawful, and the accused bears the burden of rebutting the presumption. *Deisher*, 61 M.J. at 317 (citing *United States v. Hughey*, 46 M.J. 152, 154 (C.A.A.F. 1997)). *Ayers* provides more useful guidance.

Ayers involved a regulation proscribing certain relationships between permanently assigned military personnel and Initial Entry Training Soldiers that was "promulgated for the commander" of the U.S. Army Combined Arms Support Center and Fort Lee, who was the general court-martial convening authority for [the *Ayers*] case." *Ayers*, 54 M.J. at 90. Ayers asserted that the Government failed to prove that the commander personally issued the regulation and challenged the authority of the official authenticating the regulation to do so. The *Ayers* Court stated that a GCMCA "is authorized to publish general orders and regulations," and that "[i]t is not necessary for the commander issuing a general regulation to sign it personally," and that "[a]n official document, such as the regulation at issue . . . is entitled to a presumption of regularity if it appears regular on its face." *Id*. at 90-91 (internal citations omitted). The *Ayers* Court did not hold that an official document is entitled to the presumption *only if* it appears regular on its face. Indeed, in support of its position, the *Ayers* Court cited *United States v. Johnson*, 28 C.M.R. 196, 202 (C.M.A. 1959), which, in turn, provides that:

> When an 'official record' is offered in evidence, and it appears that it was prepared by a military person charged by regulation with the duty of doing so, it will be presumed that it was prepared in accordance with regulations, and by one who knew, or had the duty to know or to ascertain the truth of, the facts or events recorded . . . . If it can be shown that the data reported are inaccurate, or even that the source of the reporting officer's information was not 'reliable,' these are matters for the defense to bring forward.

Johnson, 28 C.M.R. at 202 (quoting *United States v. Coates*, 10 C.M.R. 123 (C.M.A. 1953)) (internal citations omitted). Here, it appears that the Guidance Memorandum to AFI 44-121 was prepared by a military person (Lt Gen Green) charged by regulation with the duty of doing so (AFI 33-360, ¶ ¶ 1.2.7, 1.2.7.1.2, which is by order of the SECAF). Thus, it will be presumed to have been prepared in accordance with regulations, and the burden remains with the appellant to show that the information it contains is inaccurate or that the source of the information was unreliable.

Furthermore, although the Guidance Memorandum does not contain language that Lt Gen Green was signing or issuing the Guidance Memorandum "for" the SECAF or some other duly authorized commander, it does reference AFI 44-121 and clearly notifies its reader that it serves to "immediately chang[e] AFI 44-121." It therefore can fairly be understood by its reader that it should be read together with AFI 44-121, which is, as the appellant points out, "emblazoned" with the SECAF's seal and language that it is "BY ORDER OF THE SECRETARY OF THE AIR FORCE." Accordingly, to prevail in his appeal, the appellant must overcome the presumption that the Guidance Memorandum was issued by competent authority.

The appellant complains that there is no evidence that the Guidance Memorandum was ever coordinated through, signed by, or otherwise directed by the SECAF himself or some other duly authorized person, and it therefore was never "issued by competent authority." Overall, the appellant essentially submits that, because the Guidance Memorandum standing alone is devoid, on its face or through its coordination, of any reference to the SECAF or some other duly authorized commander, it is merely Lt Gen Green's order; and since Lt Gen Green does not qualify as any of the authorities listed under *MCM*, Part IV, ¶ 16c(1)(a), the Guidance Memorandum lacks competent authority to make it lawful. We disagree for two reasons.

First, the alleged failure was not that the appellant disobeyed Lt Gen Green's order, but that he "violated a general regulation, to wit: Air Force Guidance Memo to [AFI] 44-121." For the purposes of Article 92(1), UCMJ:

> ***General*** *orders or* ***regulations are*** [A] ***those*** *orders or* ***regulations generally applicable to an armed force*** *which are* ***properly published by*** *the President or* ***the Secretary*** *of Defense, of Homeland Security, or* ***of a military department***, and [B] those orders or regulations generally applicable to the command of the officer issuing them throughout the command or a particular subdivision thereof which are issued by: (i) an officer having general court-martial jurisdiction; (ii) a general or flag officer in command; or (iii) a commander superior to (i) or (ii).

MCM, Part IV, ¶ 16c(1)(a) (emphasis added). As emphasized in the above-quoted language, Article 92, UCMJ, makes a distinction between: (A) the failure to obey a general regulation and (B) the failure to obey an order of a commanding officer. The appellant was charged with the violation of a general regulation – thus it is irrelevant that Lt Gen Green is not authorized to exercise command.

Second, the Guidance Memorandum was not "issued" by Lt Gen Green, but by the SECAF, as confirmed and published by Lt Gen Green via the AF Form 673 and the administrative procedures set out in AFI 33-360. AFI 33-360, issued by Order of the SECAF, provides that: "Official Air Force publications . . . are the only approved

vehicles for issuing official Air Force policy and/or guidance. Air Force publications are either directive or non-directive in nature." *Id.* at ¶ 1.1.1. Additionally, guidance memoranda to those publications are clearly contemplated as proper appendages, effective on their respective publication dates.[3] *Id.* at ¶ 1.1.3.1. Accordingly, guidance memoranda are proper vehicles for the issuance of the SECAF's policies or orders. Furthermore, paragraphs 1.2.7. and 1.2.7.1.2 provide that approving officials at the Headquarters of the Air Force are heads of functional two-letter/digit offices and that, in signing the AF Form 673, they "confirm[ ] that the information therein is by order of the SECAF or Commander/Director, as appropriate." This procedure is legally sound as "[i]t is not necessary for the commander issuing a general regulation to sign it personally." *Ayers*, 54 M.J. at 90; *see also United States v. Bartell*, 32 M.J. 295, 296-97 (C.M.A. 1991) (quoting *United States v. Breault*, 30 M.J. 833, 837 (N.M.C.M.R. 1990)) ("So long as 'the decisional authority, which is discretionary in nature, remains with the commander . . . the signature authority, which is delegated, is wholly ministerial in nature.'").

In accordance with case law and AFI 33-360, the fact that the AF Form 673 was accomplished satisfies the requirement that the Guidance Memorandum's proscriptions were ordered by the SECAF. It is thereby presumptively lawful, which the appellant challenges by merely alleging that the Government did not produce evidence of proper authorization by a person listed under *MCM*, Part IV, ¶ 16c(1)(a). Because the appellant has not affirmatively shown how the Guidance Memorandum was not issued by competent authority,[4] he has not met his burden. Accordingly, the Guidance Memorandum must be presumed to have been issued by competent authority, and we affirm his conviction for violating its proscriptions.

The Stipulation of Fact

The appellant additionally avers that the military judge erred by failing to adequately advise him prior to admitting the Stipulation of Fact into evidence; specifically, he argues that the document amounted to a confessional stipulation, making it error for the military judge to omit advice that the Government bore the burden of proving up each element of the offense and that the appellant was thereby not required to admit to those elements via the stipulation. Because we conclude that the stipulation is not confessional in nature, the military judge did not abuse her discretion.

[3] Air Force Instruction (AFI) 33-360, *Publications and Forms Management*, ¶ 1.1.3.1 (18 May 2006) states: "The publication date is the effective date; Air Force publications, to include AF Policy Memorandums and Guidance Memorandums, are not considered effective until they are released to users in accordance with this Instruction. The publishing activity (AFDPO, Publication Manager, or OPR in rare instances when local websites are used) adds the date to the publication to reflect the day the publication is actually released to users (placed on formal website). The date the approving official signs the AF Form 673, *Air Force Publication/Form Action Request*, may not be the effective date of the publication."

[4] For example, he has not shown that the established procedures were not followed here, how that process is not a valid method for publishing punitive regulations, or that other Guidance Memoranda did bear the SECAF's seal or otherwise stated they were by his order or direction.

A military judge's decision to admit evidence is reviewed on appeal for an abuse of discretion. *United States v. Johnson*, 46 M.J. 8, 10 (C.A.A.F. 1997). The military judge's decision must be "arbitrary," "clearly unreasonable," or "clearly erroneous" to warrant reversal. *United States v. Travers*, 25 M.J. 61, 62 (C.M.A. 1987). "Before accepting any stipulation in evidence, the military judge must be satisfied that the parties consent to its admission." Rule for Courts-Martial (R.C.M.) 811(c). Before accepting a confessional stipulation into evidence, the military judge must give certain advice to the accused in order to assure that the accused knowingly and intelligently waives his right not to, in effect, judicially confess to the charged crime. *United States v. Bertelson*, 3 M.J. 314, 315-16 (C.M.A. 1977); *see also* R.C.M. 811(c), Discussion. A confessional stipulation is described as one which "establishes, directly or by reasonable inference, every element of a charged offense" to which "the defense does not present evidence to contest any potential remaining issue on the merits." *See* R.C.M. 811(c), Discussion; *Bertelson*, 3 M.J. at 315 n.2 ("[A] 'confessional stipulation' is a stipulation which practically amounts to a confession. . . . [I]t constitutes a de facto plea of guilty . . . something less than a full admission by the accused of all of the elements of the charge would not be inconsistent with a plea of not guilty, for a stipulation can only be inconsistent if the accused admitted to all the conduct charged."). Thus, a stipulation practically amounts to a confession for purposes of *Bertelson* only "when it establishes directly or by reasonable inference, *every* element of a charged offense and when the defense does not present evidence to contest any potential remaining issue on the merits." *United States v. Honeycutt*, 29 M.J. 416, 419 (C.M.A. 1990) (quoting R.C.M. 811(c), Discussion).

A corollary to this proposition is that a stipulation is not confessional in nature where all the elements of the offense were not included in the stipulation of fact. *United States v. Kepple*, 27 M.J. 773, 776, 780 (A.F.C.M.R. 1988), *aff'd*, 30 M.J. 213 (C.M.A. 1990) (holding that "the stipulation of fact was not confessional" because it "did not conclusively establish" the intent element for a crime of desertion); *see also United States v. Dixon*, 45 M.J. 104, 107 (C.A.A.F. 1996) (finding the stipulation was not confessional since the element of intent was not expressly admitted therein); *United States v. Long*, 3 M.J. 400, 402 (C.M.A. 1977) (holding that the "stipulation did not practically amount to a confession" because the appellant did not stipulate to wrongfulness of the drug-possession charge). Moreover, the rule does not apply where an accused presents evidence actively "contest[ing] an issue going to guilt which is not foreclosed by the stipulation." R.C.M. 811(c), Discussion; *see also United States v. Dulus*, 16 M.J. 324, 327 (C.M.A. 1983) (holding that the "stipulation did not amount practically to a judicial confession," as the appellant strongly argued that he was not in possession of the automobile where contraband items were discovered (internal quotation marks and citations omitted)).

In the case sub judice, the appellant was charged with and pled not guilty to violating a lawful general regulation under Article 92(1), UCMJ, to wit: AFI 44-121, as

amended by the Guidance Memorandum. To establish the offense, the Government was required to prove that:

> (1) There was in effect a certain lawful general regulation, to wit: the Guidance Memorandum to AFI 44-121, stating in part that, "The possession of any intoxicating substance . . . if done with the intent to use in a manner that would alter mood or function, is also prohibited";
>
> (2) That the appellant had a duty to obey such regulation;
>
> (3) That between on or about 5 August 2010 and on or about 13 August 2010, at or near Robbins Air Force Base, Georgia, the appellant violated this lawful general regulation by wrongfully possessing JWH-250, a controlled substance analogue and synthetic cannabinoid agonist known as Tropical Haze with the intent to use it in a manner that would alter his mood or function.

See MCM, Part IV, ¶ 16b(1).

The Stipulation, in relevant part, provided the following facts:

> (1) That the appellant was assigned to reside in Building 780, Room 137;
>
> (2) That Investigator EJ, 78th Security Forces Investigations, seized certain items from the appellant's room;
>
> (3) That those items included a container labeled "Tropical Haze" and a smoking pipe containing residue;
>
> (4) That the "Tropical Haze" container and the smoking pipe were found between the mattress and box spring of the bed in the appellant's room;
>
> (5) That the United States Army Criminal Investigation Laboratory (USACIL) received the pipe with residue and the "Tropical Haze" container which contained a trace amount of plant material;
>
> (6) That USACIL analyzed the pipe with residue and the trace amount of plant material which "revealed the presence of a synthetic cannabinoid agonist (JWH-250) believed to have biological activity similar to that of delta-9-tetrahydrocannabinol";
>
> (7) That the JWH-250 causes a euphoric, intoxicating effect, similar to that of marijuana; and

(8) That "although JWH-250 will produce an intoxicating effect, there are no known scientific tests to confirm whether any amount of JWH-250, including the amount found in [the appellant's room], would produce an intoxicating effect."

Nothing in the stipulation served to admit or establish that the appellant had knowledge of the presence of the JWH-250 in between his mattress and box spring, or that he had the requisite intent to alter his mood or function by possessing the JWH-250. Additionally, throughout the defense's opening statement, its cross-examination of the Government witnesses, and in closing argument, the appellant contested the elements of knowing possession and intent to alter mood or function. Therefore, it is clear that even the defense did not view the information in the stipulation to establish, directly or by reasonable inference, a prima facie case against the appellant as to the Specification of the Additional Charge. As a result, we find that the Stipulation of Fact did not constitute a confessional stipulation, and the military judge was not required to conduct a *Bertelson* inquiry. The finding of guilty as to the Additional Charge is, therefore, affirmed.

Legal Sufficiency of the Article 134, UCMJ, Offenses

Whether a specification states an offense is a question of law we review de novo. *United States v. Crafter*, 64 M.J. 209, 211 (C.A.A.F. 2006). Our superior court recently held that a failure to allege the terminal element of an Article 134, UCMJ, offense is error, but, in the context of a guilty plea, the error is not prejudicial where the military judge correctly advises the appellant of all the elements and the providence inquiry shows that the appellant understood to what offense and under what legal theory he was pleading guilty. *United States v. Ballan*, 71 M.J. 28, 35 (C.A.A.F. 2012), *cert. denied*, __ S. Ct. __ (U.S. 25 June 2012) (No. 11-1394).

In the case at bar, during the providence inquiry concerning the three unlawful entry specifications charged under Article 134, UCMJ, the military judge described and defined the Clause 1 and 2 terminal elements and asked the appellant whether he believed his conduct was either prejudicial to good order and discipline or service discrediting. The appellant acknowledged understanding all the elements, and explained to the military judge why he believed his conduct was both prejudicial to good order and discipline as well as service discrediting. Upon a close review of the record and the totality of the circumstances in this case, we find that, as with the appellant in *Ballan*, the appellant here suffered no prejudice to a substantial right; he knew he was pleading guilty to the charged offense with the clear understanding that his conduct violated both possible variants of the terminal element of the Article 134, UCMJ, offense.

Appellate Delay

The overall delay of more than 540 days between the time the case was docketed at the Air Force Court of Criminal Appeals and completion of review by this Court is facially unreasonable. Because the delay is facially unreasonable, we examine the four

factors set forth in *Barker v. Wingo*, 407 U.S. 514, 530 (1972): (1) the length of the delay, (2) the reasons for the delay, (3) the appellant's assertion of the right to timely review and appeal, and (4) prejudice. *United States v. Moreno*, 63 M.J. 129, 135-36 (C.A.A.F. 2006). When we assume error but are able to directly conclude that any error was harmless beyond a reasonable doubt, we do not need to engage in a separate analysis of each factor. *See United States v. Allison*, 63 MJ. 365, 370 (C.A.A.F. 2006). This approach is appropriate in the appellant's case. Having considered the totality of the circumstances and the entire record, we conclude that any denial of the appellant's right to speedy post-trial review and appeal was harmless beyond a reasonable doubt.[5]

Conclusion

Having considered the record in its entirety, we find that 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.

Chief Judge Orr participated in this decision prior to his retirement.

OFFICIAL

STEVEN LUCAS
Clerk of the Court

[5] We note this Court approved twelve requests from the appellant for an enlargement of time in this case. Additionally, we approved the appellant's request for oral argument.