UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class JUSTIN L. CASTEEL
United States Air Force

ACM 35237

23 October 2003

Sentence adjudged 20 April 2002 by GCM convened at McGuire Air Force Base, New Jersey. Military Judge: Thomas G. Crossan.

Approved sentence: Confinement for 18 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott and Captain Jennifer K. Martwick.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Lance B. Sigmon, and Captain Matthew J. Mulbarger.

Before
VAN ORSDOL, PRATT, and MALLOY
Appellate Military Judges

OPINION OF THE COURT

PRATT, Senior Judge:

In April 2002, the appellant was tried by a general court-martial composed of officer and enlisted members at McGuire Air Force Base (AFB), New Jersey. He pleaded not guilty to a drug charge and three specifications alleging use of marijuana on divers occasions, one-time use of heroin, and one-time use of lysergic acid diethylamide (LSD), in violation of Article 112a, UCMJ, 10 U.S.C. § 912a. He was ultimately acquitted of the LSD offense, but was found guilty of the marijuana and heroin offenses

and sentenced to confinement for 18 months, forfeiture of all pay and allowances, and reduction to airman basic.[1]

The appellant assigns three errors for our review: (1) His conviction for heroin use cannot be sustained because the only evidence is the uncorroborated testimony of an unreliable accomplice; (2) His conviction for divers uses of marijuana cannot be sustained because his confession to that offense was not adequately corroborated; and (3) His conviction must be set aside due to prosecutorial misconduct. After careful evaluation and consideration, we hold that these assertions are without merit and affirm.

I. Background

The principal witness against appellant on the heroin and marijuana offenses was Airman Basic B whose cooperation with investigators and prosecutors was secured through a pretrial agreement (PTA) entered into in conjunction with his own court-martial in August 2001. Airman B's court-martial sentence included 22 months confinement, so he benefited significantly from his PTA "cap" of 12 months confinement. Within just a few days of his court-martial, Airman B met with investigators and, pursuant to his PTA, ultimately executed separate sworn written statements detailing drug activity by each of six other airmen (RB, GP, MM, AL, BH, and the appellant). Thereafter, as criminal actions were initiated against each of the six airmen, Airman B was called upon to give immunized testimony in each case, in fulfillment of his PTA.

In the present case, Airman B's testimony was central because he was the only testifying witness to the appellant's alleged use of heroin, and his testimony was the only corroboration of the appellant's confession to using marijuana. Airman B testified extensively in connection with a defense motion to suppress the confession, and later at trial before the members on both offenses. Pertinent to the issues before us on appeal, he described an occasion in December 2000 when the appellant and MM came to his apartment and used marijuana with him, and another occasion in July 2001 when he, the appellant and MM snorted heroin in the appellant's dorm room on McGuire AFB.

Understandably, the defense sought to discredit Airman B on several fronts, primarily relating to his memory and his general credibility. At his own trial, Airman B was convicted only of growing ("manufacturing") marijuana, distributing marijuana on two occasions, and possessing a trace amount of ketamine.[2] However, his post-trial immunized cooperation disclosed his more widespread involvement with drugs, including extensive sale of drugs for profit and frequent use of numerous drugs (marijuana, heroin, ecstasy, LSD, cocaine, ketamine, crystal methamphetamine, and others) throughout the

[1] Although the convening authority approved the sentence as adjudged, the Air Force Clemency and Parole Board subsequently remitted confinement in excess of 16 months.
[2] A powerful hallucinogen widely used as an animal tranquilizer by veterinarians.

periods at issue. Acknowledging that he had exhibited memory problems in the various judicial proceedings in which he testified, Airman B attributed these problems partly to the considerable volume and frequency of his drug use. In addition, he testified in several different proceedings about his perception of memory degradation in the aftermath of a serious car accident in the Spring of 2001 in which he reportedly suffered severe head trauma.

In the first two judicial proceedings at which Airman B was called to testify in January 2002--the court-martial of RB and the Article 32, UCMJ, hearing[3] of AL--Airman B testified that he no longer had any memory of the drug-related events that he had cited to investigators in his August 2001 written statements implicating RB and AL. Similarly, although Airman B was able to remember most of his earlier allegations in the next two trials by court-martial--that of GP in February 2002 and, notably, that of the appellant in April 2002--by the time of the Article 32, UCMJ investigations for charges against the last two subjects (MM and BH) in June 2002, Airman B testified that he could not remember a single incriminating fact about either accused. Indeed, by then he claimed he could not even remember giving the statements to investigators the prior August 2001.

As to general credibility, citing this evidence of memory failure and unreliability, the appellant asserts that the reason Airman B had considerably fewer memory problems during his (the appellant's) trial was because the government had engendered a motive to fabricate. After Airman B's memory lapses during the first proceeding involving RB, government attorneys are said to have essentially pulled Airman B aside, expressed their distinct displeasure with his degree of "cooperation," and threatened to terminate the benefits of his PTA and/or to extend his temporary confinement in the local, undesirable county jail versus returning him to the more distant and desirable military confinement facility. It was only during the early stages of appellant's trial that Airman B came to a full understanding that, since the convening authority had already acted on his case, his PTA "deal" for lesser confinement could no longer be reversed. The defense argues, that these "threats" by the government created a powerful incentive for Airman B to testify in accordance with his earlier sworn statement to investigators.

And finally, adding to his credibility problems, the defense elicited admissions from Airman B that he had lied to the military judge in an unsworn statement at his own trial[4], in an attempt to favorably influence his sentence. He also admitted that he had stolen drugs from another airman and subsequently lied to the airman in denying that he had done so.

[3] A hearing pursuant to Article 32, UCMJ, 10 U.S.C. § 832.

[4] Specifically, in his unsworn statement, he told the judge that, despite the government's efforts to portray him as such, he was not a drug dealer. Airman B now admits that, although he still does not like the term "drug dealer," he certainly fit the definition.

II. Analysis

A. Heroin Offense

In his first assigned error, the appellant asserts that the evidence is legally and factually insufficient to sustain his conviction for using heroin because the only evidence was the "uncorroborated and inherently suspect" testimony of an accomplice, Airman B. The test for legal sufficiency of the evidence is whether, considering the evidence in the light most favorable to the prosecution, a rational fact finder could have found all the essential elements beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307 (1979); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). 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 accused's guilt beyond a reasonable doubt." *Reed*, 54 M.J. at 41 (citing *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987)). As to accomplice testimony, it is well established that such testimony, even if apparently credible and corroborated, should be considered with great caution. *United States v. Bigelow*, 57 M.J. 64 (C.A.A.F. 2002); *United States v. Gillette*, 35 M.J. 468 (C.M.A. 1992); Rule for Courts-Martial (R.C.M.) 918(c), Discussion. However, even the uncorroborated testimony of an accomplice can sustain a conviction unless it is incredible or unreliable on its face. *United States v. Williams*, 52 M.J. 218 (C.A.A.F. 2000); *United States v. Bermea*, 30 F.3d 1539, 1552 (5th Cir. 1994). Applying these standards to the case sub judice, and after careful review of the evidence in the record of trial, we find the evidence both legally and factually sufficient to support the appellant's conviction for use of heroin.

At trial, the defense did a good job of attacking the credibility and reliability of Airman B's testimony. All the various foibles, circumstances and pressures impacting Airman B, including those delineated hereinabove,[5] arguably affecting his motives, his credibility, and the reliability of his memory, were quite thoroughly and convincingly[6]

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[5] One of the matters cited by the appellant in his clemency submissions to the convening authority and on appeal was *not* before the members at trial, namely the evidence of Airman B's testimony at proceedings that occurred ***after*** the appellant's trial. As noted earlier, in two such proceedings within two months of appellant's trial, involving MM and BH, Airman B testified that he no longer had any memory of reported offenses whatsoever. While the appellant asserts that this information further undermines Airman B's credibility as to the charges against the appellant, we hasten to note that, in conducting our review for factual and legal sufficiency, we are limited to evidence that was presented at trial. *United States v. Dykes*, 38 M.J. 270 (C.M.A. 1993); *United States v. Bethea*, 46 C.M.R. 223 (C.M.A. 1973); Article 66(c), UCMJ, 10 U.S.C. § 866(c). Even if we were permitted to consider these post-trial matters, we would most likely conclude that Airman B had become more comfortable with his legal insulation and decided he could feign memory loss for MM and BH, rather than conclude that he had fabricated testimony at the appellant's trial.

[6] Airman B did not need much prodding to acknowledge the panoply of drugs he ingested, the effect of various drugs on his memory and perceptions, his belief that his prior accident-induced head trauma had added to his memory difficulties, and the existence of the various pressures he felt at various times from investigators and prosecutors. Ironically, his willingness to readily admit his memory difficulties and the pressures upon him probably bolstered his credibility concerning those things that he claimed he did remember and about which he asserted he was, indeed, testifying truthfully.

litigated. All these adverse factors were openly examined during Airman B's testimony, were placed squarely before the members, and were argued vigorously by defense counsel. In each instance, however, the adverse information was countered by trial counsel's examination of Airman B. Through that questioning, Airman B addressed his memory lapses and the inconsistencies in some of his prior statements, explaining that the statements he made to investigators about the six airmen (including the appellant) were true to the best of his knowledge at the time they were made, but that his memory had faded since then, more in some instances than others. He also acknowledged an understanding that his PTA sentence "cap" could no longer be taken away and that his only continuing risk was from perjury. Essentially, trial counsel elicited Airman B's testimony that, despite all the reportedly coercive circumstances and memory difficulties, he did indeed remember the events surrounding the appellant's use of heroin and his testimony was, in fact, truthful.

The court members had the opportunity to consider and evaluate Airman B's testimony and, importantly, his demeanor in giving that testimony. With appropriate instructions from the military judge concerning accomplice testimony and general guidance on assessing evidence and testimony, the members ultimately found the appellant guilty of using heroin.[7] On balance, we find that there is ample evidence in the record from which a rational factfinder, considering the evidence in the light most favorable to the prosecution, could have found all the essential elements of the offense of heroin use by appellant beyond a reasonable doubt. *Jackson*, 443 U.S. at 319*; Reed*, 54 M.J. at 41. Indeed, having weighed the evidence, we too are convinced beyond a reasonable doubt of the appellant's guilt. *Reed*, 54 M.J. at 41.

B. Marijuana Offense

In his second assignment of error, the appellant argues that his conviction for use of marijuana must be set aside because it is based upon a confession for which there is inadequate corroboration. The appellant asserts that the military judge should have found Airman B's testimony insufficient to corroborate the appellant's confession and, thus, should have suppressed it.

Here again, Airman B's testimony is at issue, as it is the sole source of corroboration. In addition to the general attack on Airman B's credibility and the reliability of his memory, the appellant argues that Airman B's testimony--that he saw the appellant smoke marijuana on one occasion in his [Airman B's] apartment in December 2000--does not corroborate the appellant's October 2001 written and oral statements admitting use of marijuana "between 3-5 times throughout the last 18 months," with MM in his on-base dormitory room "[a]lmost every time." In his oral statement to

[7] Although certainly not dispositive of the issue, it is noteworthy that the members acquitted the appellant of the charged LSD offense, thus displaying their ability and willingness to apply evidentiary standards and the standard of proof to the evidence before them.

investigators, the appellant repeated his admission to using marijuana with MM, but specifically denied ever using marijuana with Airman B. However, Airman B testified that, on one occasion in December 2000, MM, the appellant and a third airman came to his off-base apartment. After Airman B sold marijuana to MM, Airman B smoked some marijuana and witnessed the appellant and MM do the same. Further, Airman B testified that he often sold marijuana to MM, either at his off-base apartment or in the on-base parking lot that serves the dormitories of MM and the appellant, and that the appellant was often with MM when those sales took place.

After hearing extensive testimony and argument on this motion, the military judge made findings of fact wherein he found that: (1) The appellant made written and oral statements to investigators (as described above); (2) The appellant smoked marijuana in Airman B's apartment on the occasion and in the manner described in Airman B's testimony; and (3) Airman B sold marijuana to MM on a regular basis, sometimes in the parking lot of MM's dormitory, and sometimes in the presence of the appellant. Based on these findings, the judge noted that the appellant had access and opportunity to use marijuana during the charged time frame, MM's dorm room is not the only place he smoked marijuana, and the use witnessed by Airman B occurred within the time period the appellant admits to using marijuana. From these facts, the judge ruled that there was sufficient corroboration of the essential elements of the accused's confessions, and denied the motion to suppress his written and oral confessions.

Whether corroborative evidence is sufficient to support the admissibility of a confession is a question for the military judge at trial. Mil. R. Evid. 304(g)(2). Thereafter, the triers of fact assess the amount and quality of the corroborative evidence in deciding what weight to give to the confession. On appeal, in reviewing the military judge's ruling on the motion to suppress, we apply a "clearly erroneous" standard to the judge's findings of fact, and review his legal conclusion concerning corroboration de novo. *United States v. Ayala*, 43 M.J. 296, 298 (C.A.A.F. 1995); *United States v. Baldwin*, 54 M.J. 551, 553 (A.F. Ct. Crim. App. 2000), *aff'd*, 54 M.J. 464 (C.A.A.F. 2001). It is well settled that the evidence proffered as corroboration of a confession need not establish each element of the offenses admitted, but rather need only raise "an inference of the truth" as to the essential facts contained in the confession. *United States v. Maio*, 34 M.J. 215, 217 (C.M.A. 1992); *United States v. Rounds*, 30 M.J. 76 (C.M.A. 1990); Mil. R. Evid. 304(g). Generally speaking, the purpose of this evidentiary requirement is to establish the trustworthiness of the confession, i.e., to prevent convictions based upon false confessions. *Smith v. United States*, 348 U.S. 147, 153 (1954). Thus, the quantum of evidence necessary to raise that inference of truth has been described as "slight," *United States v. Yeoman*, 25 M.J. 1, 4 (C.M.A. 1987), and even "very slight," *United States v. Melvin*, 26 M.J. 145, 146 (C.M.A. 1988). Applying these standards to the case sub judice, we hold that the military judge's findings of fact are amply supported by the evidence. The only finding in serious contention is that Airman B saw the appellant use marijuana, along with MM, during the charged period. After

hearing extensive evidence concerning this event and concerning Airman B's credibility or lack thereof, the military judge obviously found Airman B credible on this point. Having reached the same conclusion, we readily hold that the judge's factual findings are well within the range of the evidence permitted under the "clearly erroneous" standard.

In light of those factual findings and the rationale articulated by the military judge, we further hold that the military judge did not err in determining that the appellant's confession was adequately corroborated. The evidence before the court clearly demonstrated that the appellant was a close friend of MM's, often in his company when MM frequently bought marijuana from Airman B. Airman B's testimony concerning the use of marijuana at his off-base apartment describes just such an occasion during the charged time frame, and establishes appellant's willingness to use marijuana. The evidence further establishes that sales of marijuana to MM, again in the appellant's presence, also occurred on base near the dormitories in which MM and the appellant resided. This factual backdrop provides an ample inference that appellant was telling the truth when he confessed to smoking marijuana 3-5 times, "almost every time" with MM in MM's dorm room. The underlying purpose of the requirement for corroboration has been met. *Maio*, 34 M.J. at 218; *Rounds*, 30 M.J. at 81. Finally, with the confession properly before the court along with the corroborative testimony of Airman B, we hold the appellant's conviction of the marijuana offense both factually and legally sufficient. *Jackson*, 443 U.S. at 319*; Reed*, 54 M.J. at 41.

C. Prosecutorial Misconduct

In his final assignment of error, the appellant contends that his convictions must be set aside due to prosecutorial misconduct. As noted earlier, this assertion stems from Airman B's testimony that government attorneys[8], dissatisfied with his apparent inability to remember incriminating events during testimony in a prior trial, made "threats" to Airman B. The appellant asserted at trial, and again on appeal, that these "threats" fatally undermine Airman B's credibility. In this assignment of error, he also asserts that they constitute prosecutorial misconduct warranting the setting aside of his convictions.

Prosecutorial misconduct can be defined as "action or inaction by a prosecutor in violation of some legal norm or standard, e.g., a constitutional provision, a statute, a Manual rule, or an applicable professional ethics canon." *United States v. Meek*, 44 M.J. 1, 5 (C.A.A.F. 1996) (citing *Berger v. United States*, 295 U.S. 78, 88 (1935)). If we find

[8] The identity of these attorneys was never clearly established. A fair reading of the testimony suggests that neither the trial counsel nor assistant trial counsel in the appellant's trial participated in the purported "threats" to Airman B. Instead, it appears that Airman B is referring to other attorneys in the McGuire AFB legal office and/or an attorney from the 21st Air Force legal office which services the General Court-Martial Convening Authority. If these government attorneys engaged in misconduct seeking to wrongfully influence Airman B's testimony at the appellant's trial, we believe such behavior would fall properly within the rubric of "prosecutorial misconduct" even though those attorneys are not prosecutors, per se, assigned to the appellant's case.

prosecutorial misconduct, we must then determine whether it resulted in prejudice to the appellant, *Id*. (citing *United States v. Hasting*, 461 U.S. 499 (1983)), and considering all the facts of a particular case, whether such prejudice was harmless, *Id*. (citing *United States v. Morrison*, 449 U.S. 361, 365 (1981)).

We need not tarry long on the issue of prejudice when, as here, the assertion is that the prosecutorial misconduct resulted in the lynchpin witness giving false testimony without which the convictions clearly would not have been achieved or sustainable. In this setting, prejudice is inherent. However, we do not reach the issue of prejudice unless and until we find both prosecutorial misconduct and its alleged effect--false testimony. In this case, we find neither.

It is an unfortunate reality of drug cases that the government must often rely, sometimes exclusively, on the testimony of witnesses who are themselves involved in drug activity. Frequently, such witnesses constitute "accomplices" as their knowledge of the events in issue derives from the fact that they themselves were co-actors. Our system of justice does not dismiss these witnesses out of hand, although it does recognize that their interests may well diverge from an altruistic search for truth. Hence, our well-established axiom that accomplice testimony should be evaluated with great caution. Recognizing both the inescapable need for such witnesses and their foreseeable unwillingness to cooperate, the government has developed various means of "incentivizing" such witnesses to provide information, both inside and outside the courtroom, i.e., during the investigative stage and at trial. Those means include, as in this case, PTAs and immunization, coupled with the deterrence of possible perjury prosecution. Ideally, this combination produces truthful testimony that will enable successful prosecution of drug offenders.[9]

In the present case, the underlying facts of this issue were not very well developed at trial. Airman B testified freely about the displeasure of government attorneys in the aftermath of his testimony in a prior proceeding. He recounts statements they allegedly made with regard to the viability of his PTA "deal" with the convening authority and the possibility of him being assigned to a less desirable confinement facility. In a different case, we might find it necessary to order a further fact-finding hearing to fully explore precisely who said what to Airman B, in what setting, in what words, with what intent, etc. After all, one man's "threat" is another man's "leverage." Was there "pressure" applied to Airman B in this case by government attorneys? The answer is very likely

[9] Do we simply presume that these "positive pressures" always work to produce the truth? No, that is why our justice system readily allows such incentives to be fully exposed to the factfinders and why the judge instructs members concerning their responsibility to consider the motives and interests of each witness and the circumstances under which they are testifying, and to be especially careful in evaluating accomplice testimony and immunized testimony. Ultimately, it is for the factfinders to determine the credibility of such witnesses, and the weight to give testimony in fulfillment of the factfinders' responsibility to find the accused not guilty unless they are convinced of his or her guilt beyond a reasonable doubt.

"yes." Airman B had made sworn statements about drug activity by several airmen and, when called to testify against the first two of them, he suffered what seemed to be a sudden lapse of memory. In the context of such circumstances, this lapse of memory can be indicative of the reluctance of such witnesses to testify against their fellow drug offenders in fulfillment of their PTA bargain. When that seems to be occurring, it is neither surprising nor improper for government attorneys to remind the witness of his/her bargain and to firmly encourage him/her to fulfill the bargain in good faith or suffer the lawful consequences of failing to do so. In these situations, the key question is whether the "pressure" applied to the witness was designed to, or in any case did, incite false testimony or, rather, whether it served to induce a reluctant witness to provide truthful testimony.

Taking Airman B's account at face value, clearly he was "pressured" by his desire for the benefits of a PTA. Yet he was also clearly "pressured" by his desire to avoid a possible prosecution for perjury by ensuring that he testified truthfully. Did the application of this "pressure," these "threats," constitute prosecutorial misconduct? Again, the answer to that question revolves around a series of factors tied to the manner, method, content, and intent of the government attorneys who applied it.[10] As alluded to earlier, the requisite question in this case is whether whatever "pressure" was applied to Airman B resulted, by design or otherwise, in false testimony which prejudiced the appellant. Our reading of the testimony convinces us that it did not.

In the course of this trial, in testifying on motions in Article 39(a), UCMJ, sessions[11] and before the members on the merits, Airman B was examined several times about deals, "threats," and motives impacting his testimony. The following exchanges between Airman B and the circuit trial counsel (CTC) address the impact of the "threats" he described:

> CTC: Can you recall what I said to you about the only thing that could get you in trouble at trial?
>
> WIT: Was not telling the truth.
>
> CTC: Can you recall what I said as far as whether or not if you can or can't remember, or remember stuff in one way or the other, whether or not that is okay as long as it's the truth?

[10] While it is permissible for government representatives to insist that an immunized witness give information to investigators and testimony in judicial proceedings, and to use the "pressure" of PTAs and the "threat" of perjury prosecutions to effect compliance, great care must be taken to emphasize that the desired object of such "goading" is the truth, whether or not it benefits the government's case. Thus, as in this case, the trial counsel is well advised to make it abundantly and repeatedly clear to the reluctant witness that the only danger for the witness lies in giving less than truthful information or testimony.

[11] Sessions held outside the presence of the court members pursuant to Article 39(a), UCMJ, 10 U.S.C. §839(a).

WIT: I'm not sure of your exact words.

CTC: Can you paraphrase your understanding of what your testimony---

WIT: To tell the judge that I can't answer that question.

CTC: Okay. And as far as if you can or can't remember something, what are you supposed to do?

WIT: Tell the judge that I can or cannot remember it.

CTC: Okay. And can you also recall whether or not I gave you any warning about making stuff up one way or the other to help one side or another?

WIT: Yes, ma'am. To be honest to both sides or that you wanted a fair trial for Airman Casteel.

Later in the trial, testifying before the members, after defense counsel elicited extensive testimony about Airman B's memory difficulties at prior proceedings and the perceived "threats" by government attorneys to testify in conformance with prior statements, Airman B had this exchange with the CTC:

CTC: When you signed those statements [about the six airmen], were they the truth?

WIT: To the best of my knowledge, yes, ma'am.

CTC: Now, in regards to Airman Casteel and in regards to his use of marijuana, back in August did you say something about Airman Casteel smoking pot in a car by your [apartment]?

WIT: Yes, ma'am.

CTC: Okay. But do you remember that now?

WIT: Yes, ma'am.

CTC: And do you remember it now that Airman Casteel was not smoking pot in the car?

WIT: That's correct.

CTC: Now, has anybody done anything - in that whole time I talked to you preparing for trial, have I ever tried to get you to go back and say you saw him smoking it?

WIT: No, ma'am.

CTC: So if you forgot, any pressures to re-remember?

WIT: No, ma'am.

. . . .

CTC: The defense counsel brought up the word "gun;" you were under the gun. Can you tell us what you feel about being under the gun to testify here today, now, to these jurors?

WIT: I understand now that my 12-month sentence cannot be extended. I understand it's my end of the bargain to be here testifying.

CTC: So even if you had a big memory lapse and couldn't remember anything today, you'd still be out of jail in 62 days?

WIT: Sixty days, that's correct.

As discussed earlier and as reflected in these exchanges, the circuit trial counsel presented testimony from which the triers of fact could conclude, despite whatever competing pressures may be at play, that Airman B understood the importance and even self-interest in testifying truthfully. Judging by the verdicts and the rulings on motions, both the court members and the military judge ultimately concluded that he did so. Having reached the same conclusion, we find neither prosecutorial misconduct nor, in any event, prejudice to the appellant. *Meek*, 44 M.J. at 5.

III. Conclusion

The approved findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the accused occurred. Article 66(c), UCMJ; *Reed*, 54 M.J. at 41. Accordingly, the approved findings and sentence are

AFFIRMED.

OFFICIAL

HEATHER D. LABE
Clerk of Court