UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

No. ACM 23045

UNITED STATES
Appellee

v.

Matthew B. ERICSON
Senior Airman (E-4), U.S. Air Force, *Appellant*

Appeal from the United States Air Force Trial Judiciary[1]

Decided 17 December 2024

Military Judge: Bradley J. Palmer.

Sentence: Sentence adjudged 31 March 2023 by SPCM convened at Altus Air Force Base, Oklahoma. Sentence entered by military judge on 24 April 2023: Hard labor without confinement for 1 month.

For Appellant: Major Nicole J. Herbers, USAF; Major Spencer R. Nelson, USAF.

For Appellee: Lieutenant Colonel J. Pete Ferrell, USAF; Major Jocelyn Q. Wright, USAF; Captain Morgan L. Brewington, USAF; Mary Ellen Payne, Esquire.

Before RICHARDSON, MASON, and KEARLEY, *Appellate Military Judges*.

Judge MASON delivered the opinion of the court, in which Senior Judge RICHARDSON and Judge KEARLEY joined.

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[1] Appellant appeals his conviction under Article 66(b)(1(A), Uniform Code of Military Justice (UCMJ). 10 U.S.C. § 866(b)(1)(A) (*Manual for Courts-Martial, United States* (2024 ed.)).

This is an unpublished opinion and, as such, does not serve as precedent under AFCCA Rule of Practice and Procedure 30.4

MASON, Judge:

A special court-martial composed of officer and enlisted members convicted Appellant, contrary to his pleas, of one specification of accessing a government computer with an unauthorized purpose, in violation of Article 123, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 923.[2,3] Appellant was sentenced to one month of hard labor without confinement. The convening authority took no action on the findings or sentence.

Appellant raises three issues on appeal: (1) whether the Statement of Trial Results and entry of judgment must be modified to accurately reflect the disposition of all referred charges; (2) whether the Appellant's conviction is legally and factually sufficient; and (3) whether the military judge abused his discretion in admitting the wire intercept audio when law enforcement obtained the recording in violation of the governing regulation.

We have carefully considered issue (3) above and find it does not require discussion or relief. *See United States v. Matias,* 25 M.J. 356, 361 (C.M.A. 1987). We direct modification of the entry of judgment as requested in our decretal paragraph. As to the remaining issues, we find no error materially prejudicial to Appellant's substantial rights and affirm the findings and sentence.

I. BACKGROUND

Appellant met CL in October 2019 through social media. They connected quickly and got along well. They continued to talk every day for the next several months. In February or March 2020, CL visited Appellant at his on-base residence.

Appellant was a member of the security forces squadron and had access to the Oklahoma Law Enforcement Telecommunication System (OLETS). This program was used by security forces to conduct law enforcement operations and installation access control checks. Appellant's commander testified that

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[2] Unless otherwise noted, all other references in this opinion to the UCMJ and Rules for Courts-Martial are to the *Manual for Courts-Martial, United States* (2019 ed.).

[3] Appellant was found not guilty of five specifications of domestic violence, in violation of Article 128b, UCMJ, 10 U.S.C. § 928b; one specification of dereliction of duty, in violation of Article 92, UCMJ, 10 U.S.C. § 892; two specifications of communicating a threat, in violation of Article 115, UCMJ, 10 U.S.C. § 915; and two specifications of disorderly conduct, in violation of Article 134, UCMJ, 10 U.S.C. § 934.

this system is for official use during investigations, traffic stops, and "things of those natures [sic]." A representative from the security forces reports and analysis section also testified. She stated that members utilizing the system were required to acknowledge that they were not using the system for unjustifiable reasons, meaning something other than for a criminal justice investigation or criminal justice employment. She clarified that using the system to search an intimate partner was an improper use.

Appellant admitted to running background checks on CL on multiple occasions. Later in their relationship, he told CL that before he came to visit her on their first date, he had run one.[4] He also told CL that he ran another one before she visited him on base. He informed her of the results of the background checks.

Appellant also admitted to his friend during a recorded conversation that he ran background checks on CL. He stated that he did that on his "own account." In this conversation, Appellant also asserted that he did so while he was training other unit members on how to utilize OLETS. While Appellant was discussing this with his friend, he implied that there was no way to prove the case against him because the report generations were not logged and that investigators "will start looking at everybody." He said, "[T]hat means everyone is going down . . . . I think the commander will get fired or something, you know, if anything."

The convening authority referred, amongst the other charges and specifications, seven specifications under Charge I, alleging domestic violence, in violation of Article 128b, UCMJ. Prior to arraignment, one of those specifications was withdrawn and dismissed. In the initial Article 39a, UCMJ, 10 U.S.C. § 839a, session, also prior to arraignment, trial defense counsel filed a motion for relief due to an unreasonable multiplication of charges. This motion pertained to the remaining six specifications of Charge I. The parties agreed that a satisfactory remedy to the matter would be the merging of two specifications. Consistent with the parties' recommendation, the military judge merged Specification 5 of Charge I with Specification 4 of Charge I.

Appellant was then arraigned on all the remaining charges and specifications. This did not include the previously existing seventh specification of Charge I or Specification 5 of Charge I as both of those specifications were dismissed at the time of arraignment.

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[4] The record is unclear exactly when he ran this background check on CL. Taking the evidence in its entirety, it appears to have occurred between October 2019 and February 2020.

After trial, a Statement of Trial Results and entry of judgment were prepared. Neither of these included reference to the previously existing seventh specification of Charge I. Further, they indicated with regards to Specification 5 of Charge I that Appellant pleaded not guilty and that the finding was "Dismissed with prejudice and merged with Spec[ification] 4 for unreasonable multiplication of charges."

II. DISCUSSION

A. Legal and Factual Sufficiency

1. Law

We review issues of legal and factual sufficiency de novo. *United States v. Washington*, 57 M.J. 394, 399 (C.A.A.F. 2002) (citation omitted). "Our assessment of legal and factual sufficiency is limited to the evidence produced at trial." *United States v. Rodela*, 82 M.J. 521, 525 (A.F. Ct. Crim. App. 2021) (citation omitted).

"The test for legal sufficiency is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *United States v. Robinson*, 77 M.J. 294, 297–98 (C.A.A.F. 2018) (citation omitted). "[T]he term 'reasonable doubt' does not mean that the evidence must be free from any conflict . . . ." *United States v. King*, 78 M.J. 218, 221 (C.A.A.F. 2019) (citation omitted). "[I]n resolving questions of legal sufficiency, we are bound to draw every reasonable inference from the evidence of record in favor of the prosecution." *United States v. Barner*, 56 M.J. 131, 134 (C.A.A.F. 2001) (citations omitted). Thus, "[t]he standard for legal sufficiency involves a very low threshold to sustain a conviction." *King*, 78 M.J. at 221 (alteration in original) (citation omitted).

"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, [we are] convinced of the [appellant]'s guilt beyond a reasonable doubt.'" *Rodela*, 82 M.J. at 525 (second alteration in original) (quoting *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987)). "In conducting this unique appellate role, we take 'a fresh, impartial look at the evidence,' applying 'neither a presumption of innocence nor a presumption of guilt' to 'make [our] own independent determination as to whether the evidence constitutes proof of each required element beyond a reasonable doubt.'" *United States v. Wheeler*, 76 M.J. 564, 568 (A.F. Ct. Crim. App. 2017) (alteration in original) (quoting *Washington*, 57 M.J. at 399), *aff'd*, 77 M.J. 289 (C.A.A.F. 2018).

In order to convict Appellant of accessing a government computer with an unauthorized purpose as alleged in the Specification of Charge III, the

Government was required to prove that between on or about 1 March 2020 and on or about 21 April 2022, at or near Altus Air Force Base, Oklahoma, Appellant intentionally accessed a government computer with an unauthorized purpose, and that he thereby obtained protected information, to wit: law enforcement records of CL from such government computer. *See* 10 U.S.C. § 923(a)(2); *Manual for Courts-Martial, United States* (2019 ed.), pt. IV, ¶ 69.b.(2).

2. Analysis

Appellant challenges the legal and factual sufficiency of his conviction for accessing a government computer with an unauthorized purpose on two grounds.

First, Appellant argues that the evidence did not show that he did so during the charged timeframe. The Government charged Appellant with accessing a government computer with an unauthorized purpose on a singular occasion during the timeframe of between on or about 1 March 2020 and on or about 21 April 2022. The evidence shows that on at least two occasions, Appellant utilized OLETS to run a background check on CL. The first time that occurred before their first date is not clearly between on or about 1 March 2020 and on or about 21 April 2022. The second occasion clearly occurred within this timeframe.

Appellant next argues that he had an authorized purpose when he accessed CL's information in OLETS. He argues that his responsibilities within security forces permitted him to utilize the system this way to: (1) determine whether CL should be given a base access pass; and (2) train other personnel. We are not persuaded. The evidence in this case supports a rational factfinder's determination that Appellant's utilization of OLETS to process a base access pass was a subterfuge for running a background check on his date, an unauthorized purpose. Further, we are ourselves convinced that Appellant did not have an authorized purpose when he did so.

Appellant's argument that training other personnel permitted him to run another background check on CL does not undermine his conviction either. Appellant's commander testified as to the proper uses of the system. Training other unit members using a real person's information to gain that person's private information was not an enumerated use. Moreover, Appellant's statements to his friend remove doubt as to whether Appellant himself recognized the wrongfulness of his actions.

Viewing all the evidence offered at trial, the members rationally and reasonably found the essential elements of the offense beyond a reasonable doubt. Moreover, after taking a fresh, impartial look at the evidence, we ourselves are convinced that the evidence constitutes proof of each required element beyond a reasonable doubt.

B. Statement of Trial Results and Entry of Judgment Errors

1. Law

Proper completion of post-trial processing is a question of law this court reviews de novo. *United States v. Sheffield*, 60 M.J. 591, 593 (A.F. Ct. Crim. App. 2004).

Rules for Courts-Martial (R.C.M.) 1101(a) and 1111(b) set forth the contents of the Statement of Trial Results and entry of judgment respectively. Regarding findings, each charge and specification referred to trial must be included. R.C.M. 1101(a)(1); R.C.M. 1111(b)(1).

A Court of Criminal Appeals "may modify a judgment in the performance of their duties and responsibilities." R.C.M. 1111(c)(2).

2. Analysis

Appellant points out two errors with the Statement of Trial Results and the entry of judgment. Specifically, he correctly asserts that neither of these documents include reference to the previously existing seventh specification originally referred to trial as Specification 7 of Charge I. Further, the documents indicate with regards to Specification 5 that Appellant pleaded not guilty and that the finding was "Dismissed with prejudice and merged with Spec[ification] 4 for unreasonable multiplication of charges" when in fact, Appellant never entered a plea to this specification as it was dismissed prior to arraignment.

Both Appellant and Appellee urge us to exercise our authority to modify these documents by ordering correction of these errors. We do so in our decretal paragraph below.

III. CONCLUSION

The findings and sentence, as entered, are correct in law and fact, and no error materially prejudicial to the substantial rights of Appellant occurred. Articles 59(a) and 66(d), UCMJ, 10 U.S.C. §§ 859(a), 866(d). We modify the entry of judgment to: (1) reflect that Specification 7 of Charge I was referred to trial and dismissed prior to arraignment; and (2) correct Specification 5 of Charge I to reflect that no plea was entered on that specification as it was dismissed prior to arraignment. R.C.M. 1112(c)(2).

Accordingly, the findings and sentence are **AFFIRMED**.

FOR THE COURT

Carol K. Joyce

CAROL K. JOYCE
Clerk of the Court