

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
KERN, YOB, and ALDYKIEWICZ
Appellate Military Judges

UNITED STATES, Appellee
v.
Private E2 CHRISTOPHER B. WILLIAMS
United States Army, Appellant

ARMY 20110265

U.S. Army Medical Department Center and School
Thomas Berg, Military Judge
Lieutenant Colonel Randolph Swansiger, Staff Judge Advocate

For Appellant: Major Richard E. Gorini, JA; Captain Richard M. Gallagher, JA.

For Appellee: Pursuant to A.C.C.A Rule 15.2, no response filed.

31 January 2012

SUMMARY DISPOSITION ON RECONSIDERATION

Per Curiam:

A military judge, sitting as a special court-martial, convicted appellant, pursuant to his pleas, of one specification of absence without leave [hereinafter AWOL], one specification of failure to go to his appointed place of duty, one specification of going from his appointed place of duty, two specifications of violation of a lawful general order, five specifications of making a false official statement, and one specification of wrongful use of cocaine, in violation of Articles 86, 92, 107, and 112a, Uniform Code of Military Justice, 10 U.S.C. §§ 886, 892, 907 and 912a [hereinafter UCMJ]. Appellant was sentenced to a bad-conduct discharge, confinement for four months, and reduction in rank to Private E1. This case came before us for review pursuant to Article 66, UCMJ.

On 30 November 2011, this Court issued an opinion in this case affirming the findings and sentence. On 24 January 2012, on its own motion, this Court vacated its earlier decision.

LAW AND DISCUSSION

Specification 2 of Charge II alleges a false official statement to Ms. KM, a civilian nurse at Brooke Army Medical Center (BAMC), to wit: "I did not seek treatment earlier because I had been mugged and kidnapped and they just let me go

today,” or words to that effect. During the providence inquiry, appellant acknowledged the official nature of the statement. Applying the factors articulated in *United States v. Tefteau*, 58 M.J. 62, 68-69 (C.A.A.F. 2003) and *United States v. Day*, 66 M.J. 172, 174-75 (C.A.A.F. 2008) to the facts elicited during appellant’s colloquy with the military judge and to the stipulated facts in Prosecution Exhibit 1, the statement to Ms. KM qualifies as an official statement.

The following factors support finding an “official statement” with regards to Specification 2 of Charge II: the statement was made when appellant was not yet suspected of any criminal activity (i.e., he was the alleged victim of a kidnapping vice an AWOL returnee); the statement was made on post in a military hospital; the statement was made to a nurse employed by the Army; the question asked by the nurse triggering appellant’s response related to the nurse’s official on-post duties; the question about prior treatment or lack thereof is consistent with a line of duty determination notwithstanding the lack of any ongoing line of duty investigation; Ms. KM, at the time of the questioning, was in the performance of her official Army duties; present during the questioning was SSG G, appellant’s noncommissioned officer (NCO) escort; Ms. KM was aware of appellant’s military status; the statement related to an alleged crime that occurred on post and committed by two suspected civilians, an offense of interest to both civilian and military authorities; and appellant’s statement could have and did subject him to criminal liability in the military justice system for various offenses in addition to his false official statement (i.e., the statement established his absence from his unit subjecting him to prosecution under Article 86 in addition to Article 107). Additionally, at the time of the making of the statement, appellant should have known that his statement would trigger a criminal investigation by the military authorities, a fact confirmed when appellant was interviewed by a Fort Sam Houston detective while still in the hospital.

CONCLUSION

On consideration of the entire record, we hold the findings of guilty and the sentence as approved by the convening authority are correct in law and fact. Accordingly, the findings of guilty and the sentence are AFFIRMED.



FOR THE COURT:

A handwritten signature in black ink, appearing to read "Joanne P. Tetreault Eldridge".

JOANNE P. TETREAUULT ELDRIDGE
Deputy Clerk of Court