UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Staff Sergeant JOHN E. CRAFTER
United States Air Force

ACM 35476

28 September 2005

Sentence adjudged 19 December 2002 by GCM convened at Seymour Johnson Air Force Base, North Carolina. Military Judge: Kevin P. Koehler.

Approved sentence: Bad-conduct discharge, confinement for 4 months, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, and Major James M. Winner.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Robert V. Combs, Major Shannon J. Kennedy, and Major John C. Johnson.

Before

BROWN, MOODY, and FINCHER
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignments of error, and the government's reply thereto. We conclude that the Secretary of the Air Force did not divest the commander of Ninth Air Force (Provisional) of authority to convene general-courts-martial. *See United States v. Hardy*, 60 M.J. 620 (A.F. Ct. Crim. App. 2004), *rev. denied*, 60 M.J. 459 (C.A.A.F. 2005). Therefore, we hold that that this commander was authorized to refer this case to trial as well as take final action and perform other convening authority duties.

We conclude that Specification 2 of Charge I, alleging a violation of the Joint Ethics Regulation, "contains the elements of the offense intended to be charged, and

sufficiently apprises" the appellant of what was required to answer the Charge. *United States v. Sell*, 11 C.M.R. 202, 206 (C.M.A. 1953). Therefore, we hold that it properly states an offense. *See* Article 92, UCMJ, 10 U.S.C. § 892; Department of Defense 5500.7-R, *The Joint Ethics Regulation*, Chapter 5, ¶ 5-400(a) (30 Aug 1993). Furthermore, we hold that the evidence is both legally and factually sufficient to support Specification 2 of Charge I, as well as the Specification of Charge II, which alleges false official statement. *See* Article 107, UCMJ, 10 U.S.C. § 907; *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987); *United States v. Walters*, 58 M.J. 391, 395 (C.A.A.F. 2003).

The appellant alleges that the military judge erred by permitting the prosecution to introduce testimony concerning the appellant's invocation of his rights under the Fifth Amendment of the Constitution and Article 31, UCMJ, 10 U.S.C. § 831. The trial defense counsel did not object to this testimony. We have examined the record of trial and the appellate filings and conclude that the trial defense counsel articulated to the military judge a defensible tactical reason for not objecting. We conclude, under the circumstances, that the judge did not err in allowing this testimony to be elicited. Even if there was error, however, we are satisfied beyond a reasonable doubt that the error did not operate to the material prejudice of the substantial rights of the appellant. *See Chapman v. California*, 386 U.S. 18, 24 (1967).

The appellant alleges that the military judge permitted the introduction of "human lie detector" testimony. One such instance occurred during trial defense counsel's cross-examination of a prosecution witness, a Security Forces investigator. The trial defense counsel asked if the appellant had "seem[ed] pretty truthful insofar as the information you received?" The investigator replied, "For the most part he seemed pretty truthful. There were certain facts we hit on . . . He was kind of defensive as far as his body posture and the way he was speaking to us." We have examined the record of trial and conclude that this colloquy was part of a defense strategy to convince the panel that the appellant was not hiding the truth from the authorities, in hopes of lending credibility to his claims of duress and buttressing his denial of having made a false official statement. We conclude that neither this testimony, nor the other matters which the appellant asserts to have been "human lie detector" evidence, contravened the policy described in *United States v. Kasper*, 58 M.J. 314 (C.A.A.F. 2003). In any event, we conclude that the evidence did not operate to the material prejudice of the appellant and, therefore, did not constitute plain error. *See United States v. Powell*, 49 M.J. 460, 464 (C.A.A.F. 1998).

We have considered the arguments by trial counsel, both on findings as well as sentencing, which the appellant alleges were improper. We conclude that the trial defense counsel's failure to object waived any error. *See* Rule of Court-Martial 1001(g); *United States v. Sherman*, 32 M.J. 449, 449 (C.M.A. 1991). In any event, even if improper, the arguments did not materially prejudice the substantial rights of the appellant. *United States v. Baer*, 53 M.J. 235, 237 (C.A.A.F. 2000).

The appellant has alleged he received ineffective assistance of counsel. We have applied the criteria set forth in *United States v. Ginn*, 47 M.J. 236, 248 (C.A.A.F. 1997) and conclude that we can resolve this issue without additional factfinding. Examining the appellate filings and the record as a whole we resolve this error adversely to the appellant. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). Finally, after examining the record in light of the factors outlined in *United States v. Dollente*, 45 M.J. 234, 242 (C.A.A.F. 1996), we hold that the appellant is not entitled to relief under the cumulative error doctrine.

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 approved findings and sentence are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE
Clerk of Court