

**UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

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**UNITED STATES**

**v.**

**First Lieutenant JEFFREY T. HRINDA  
United States Air Force**

**ACM 35987**

**27 January 2006**

Sentence adjudged 21 October 2003 by GCM convened at Los Angeles Air Force Base, California. Military Judge: Anne L. Burman (sitting alone).

Approved sentence: Dismissal and confinement for 100 days.

Appellate Counsel for Appellant: Colonel Carlos L. McDade, Major Sandra K. Whittington, and Captain Christopher S. Morgan.

Appellate Counsel for the United States: Lieutenant Colonel Gary F. Spencer, Major John C. Johnson, and Major Michelle M. McCluer.

Before

**BROWN, MOODY, and FINCHER  
Appellate Military Judges**

**PER CURIAM:**

We have examined the record of trial, the assignment of errors, and the government's answer thereto. The appellant was convicted of two specifications of assault consummated by a battery and one specification of conduct unbecoming an officer by being drunk and disorderly in a public place, wherein he communicated "insulting and defamatory language" to two named individuals, in violation of Articles 128 and 133, UCMJ, 10 U.S.C. §§ 928, 933. The military judge, sitting alone as a general court martial, sentenced the appellant to a dismissal and 100 days confinement. The convening authority approved the sentence adjudged.

The appellant has alleged that the military judge erred by permitting the government to rebut a defense exhibit. The exhibit consisted of a copy of a performance report completed on the appellant while he was an enlisted member of the United States Navy, which documented good duty performance by the appellant. The military judge admitted in rebuttal a document showing that, during the period of time covered by the

performance report, the appellant had received nonjudicial punishment under Article 15, UCMJ, 10 U.S.C. § 815, for the offense of drunk and disorderly conduct and failure to obey a lawful order.

We conclude that the Article 15, UCMJ, constituted proper rebuttal evidence. The prosecution complied with the requirements of Air Force Instruction (AFI) 51-201, *Administration of Military Justice*, ¶ 8.5.1. (2 Nov 1999), by offering all the performance reports “maintained in accordance with Air Force directives.” We have found no reason to conclude that Air Force directives provide for the maintenance of performance reports of sister services. See AFI 36-2608, *Military Personnel Records System*, Table A2.1 (14 May 2003). Therefore, we conclude that the admission of this rebuttal evidence did not contravene the policy set forth in AFI 51-201. See generally *United States v. Wingart*, 27 M.J. 128 (C.M.A. 1988). Additionally, a certification memorandum indicating it was a true copy of the original maintained by the Navy Personnel Command was signed by the records custodian and attached to the Article 15, UCMJ. As such, we conclude that it qualifies as a business record under Mil. R. Evid. 803(6). Therefore, we hold that the military judge did not err in admitting the document.

Even if it was error, however, we note that the military judge stated that, should counsel for either side use the Article 15, UCMJ, as a basis for their sentencing argument, she would “look very carefully at what weight to give it.” Insofar as neither counsel relied on this document in their arguments, we conclude that the document did not materially affect the judge’s deliberations on sentence and that any error was harmless.

We have examined the remaining assignments of error and find them to be without merit. We hold that the charges and specifications are not multiplicitous, insofar as each contains elements not intrinsic to the other. See *United States v. Teters*, 37 M.J. 370, 377 (C.M.A. 1993). Furthermore, applying the criteria in *United States v. Quiroz*, 55 M.J. 334, 337 (C.A.A.F. 2001), we hold that this case does not evidence an unreasonable multiplication of charges. Finally, the sentence adjudged and approved is not inappropriately severe. See *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988).

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

LOUIS T. FUSS, TSgt, USAF  
Chief Court Administrator