UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman JOSHUA W. HUDDLESTON
United States Air Force

ACM 36875

19 November 2007

Sentence adjudged 7 June 2006 by GCM convened at Eielson Air Force Base, Alaska. Military Judge: James B. Roan (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 42 months, and reduction to E-1.

Appellate Counsel for the Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Lieutenant Colonel Darla G. Orndorff, Captain Christopher L. Ferretti, and Captain Phillip T. Korman.

Appellate Counsel for the United States: Colonel Gerald R. Bruce, Major Matthew S. Ward, and Captain Jason M. Kellhofer.

Before

WISE, BRAND, and HEIMANN
Appellate Military Judges

PER CURIAM:

In accordance with his pleas,[1] the appellant was convicted of two specifications of violating a no contact order issued by a superior commissioned officer, one specification of reckless driving, two specifications of assault and battery, and one specification of communicating a threat, in violation of Articles 90, 111, 128, and 134, UCMJ, 10 U.S.C. §§ 890, 911, 928, 934. Contrary to his pleas, the appellant was convicted of two specifications of aggravated assault, one specification of disorderly conduct, and one specification of obstructing justice, in violation of Articles 128 and 134, UCMJ, 10

[1] Some of which were conditional to preserve the multiplicity motions for appeal.

U.S.C. §§ 928, 934. The approved sentence consists of a bad-conduct discharge, confinement for 42 months, and reduction to E-1.[2]

The issue raised on appeal is whether the reckless driving specification (Charge I, Specification) and the assault with a means likely to produce death or grievous bodily harm (Charge II, Specification 1) are multiplicious, an unreasonable multiplication of offenses, or multiplicious for sentencing. The motion was raised at trial, litigated, and denied.

Background

On or about 30 Sep 05, the appellant and Staff Sergeant (SSgt) L decided to go out drinking after work and they requested Airman First Class (A1C) C to be their designated driver. As the evening progressed, the appellant wanted to continue the evening by going to a strip club but the other two did not want to join him. SSgt L went home and A1C C got out of the vehicle, returned the keys to the appellant,[3] and started walking to a friend's house. The appellant drove along side A1C C trying to convince him to change his mind. When this failed, the appellant drove away, made a u-turn, angled the SUV right at A1C C, and proceeded to drive straight for A1C C. A1C C moved out of the way and the appellant changed direction to aim at A1C C. These facts form the basis for the aggravated assault offense.

As the appellant was approaching A1C C in his vehicle, he started to weave back and forth, lost control of the SUV, and went over the railroad tracks into the woods. These facts form the basis for the reckless driving offense.

The military judge found the actions to be separate and distinct and cited *United States v. Yoakum*, 8 M.J. 763, 771 (A.C.M.R. 1980) for its discussion on the differing offenses of aggravated assault and reckless driving.

Discussion

Issues of multiplicity are reviewed de novo. *United States v. Roderick*, 62 M.J. 425, 431 (C.A.A.F. 2005). Issues of unreasonable multiplication of offenses are reviewed for abuse of discretion. *United States v. Pauling*, 60 M.J. 91, 95 (C.A.A.F. 2004).

Examining the disparate elements of the Article 111, UCMJ, offense and the Article 128, UCMJ, offense, as well as the distinct and separate facts needed to establish the appellant's guilt of each, we conclude the offenses are not multiplicious. *United*

[2] With deferment and waiver of automatic forfeitures.
[3] A1C C was driving the appellant's vehicle throughout the evening.

States v. Teters, 37 M.J. 370, 376-77 (C.M.A. 1993). Furthermore, we see no evidence of prosecutorial overreach in the government's charging decision and find the military judge did not abuse his discretion. *United States v. Quiroz*, 55 M.J. 334, 338-39 (C.A.A.F. 2001). There was no unreasonable multiplication of charges here.

Rules for Courts-Martial 906(b)(12) and 1003(c)(1)(C) discuss multiplicity for sentencing. The offenses were not of a single impulse or intent and as such, are separately punishable offenses and not multiplicious for sentencing.

Conclusion

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 findings and sentence are

AFFIRMED.

OFFICIAL

STEVEN LUCAS, GS-11, DAF
Clerk of the Court