IN THE U.S. NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS
WASHINGTON NAVY YARD
WASHINGTON, D.C.

BEFORE

C.L. CARVER **W.L. RITTER** **R.W. REDCLIFF**

UNITED STATES

v.

Timothy COLEMAN
Staff Sergeant (E-6), U.S. Marine Corps

NMCCA 200201739 Decided 27 April 2004

Sentence adjudged 18 January 2002. Military Judge: F.A. Delzompo. Review pursuant to Article 66(c), UCMJ, of Special Court-Martial convened by Commanding Officer, Headquarters Battalion, Marine Air Ground Task Force Training Command, Twentynine Palms, CA.

LT COLIN KISOR, JAGC, USNR, Appellate Defense Counsel
LT FRANK GATTO, JAGC, USNR, Appellate Government Counsel

CARVER, Senior Judge:

A military judge, sitting as a special court-martial, convicted the appellant, contrary to his pleas, of obstruction of justice, in violation of Article 134, Uniform Code of Military Justice, 10 U.S.C. § 934.[1] The appellant was sentenced to a bad-conduct discharge, confinement for 120 days, and reduction to pay grade E-1. There was no pretrial agreement. The convening authority approved the sentence as adjudged, but, in an act of clemency, suspended confinement over 100 days.

The appellant avers that the evidence is insufficient to support the conviction and the sentence was too severe.

After carefully considering the record of trial, the appellant's assignments of error, and the Government's response, we conclude that the findings and sentence are correct in law and fact and that no error materially prejudicial to the substantial

[1] The appellant was found not guilty of violating a general regulation to report offenses that came to his knowledge.

rights of the appellant was committed. Arts. 59(a) and 66(c), UCMJ.

Sufficiency of the Evidence for Obstruction of Justice

We will discuss the assignments of error in reverse order. In his second assignment of error, the appellant contends that the evidence adduced at trial is both factually and legally insufficient to support a conviction for the crime of obstruction of justice. We disagree.

A. Facts

The appellant joined the U.S. Marine Corps in 1988 and was assigned a disbursing Military Occupation Specialty. After about 12 years of serving in various disbursing and other billets, including that of recruiter, he transferred to Twentynine Palms, California, in May of 2000, and was detailed as the senior staff noncommissioned officer-in-charge (SNCOIC) of the travel section of the Comptroller Directorate.

Shortly after his arrival, the appellant testified that he took an interest in one of his travel clerks, Lance Corporal (LCpl) Ranzy, and became his mentor. However, over the next few months, the professional relationship became a personal one. In fact, LCpl Ranzy came to the appellant's house on five or six occasions after work to watch television and drink beer.

In June, Private First Class (PFC) Morales checked into Twentynine Palms. PFC Morales was promoted to lance corporal before the trial. LCpl Ranzy assisted in filing LCpl Morales' travel claim, but, in so doing, LCpl Ranzy improperly designated his own personal bank account to receive the claim, which totaled about $880.00. This fraud was not discovered until September. Both LCpl Ranzy and LCpl Morales testified that there was no agreement to have the monies deposited in LCpl Ranzy's account.

In July, LCpl Ranzy committed some other misconduct and was relieved of his travel clerk duties. Later, the finance officer and the comptroller saw the appellant with LCpl Ranzy in a fast food restaurant while LCpl Ranzy was supposed to be on restriction. The two officers counseled the appellant not to "hang" with LCpl Ranzy because that would be improper fraternization. Nonetheless, LCpl Ranzy continued to talk to the appellant after hours and to visit with the appellant at his house.

On Friday, 8 September 2000, another travel clerk was examining LCpl Morales' original travel claim and supplemental dependent's travel claim when he discovered that the proceeds had been directed into LCpl Ranzy's personal account. The clerk brought the matter to the attention of the finance officer, Chief Warrant Officer-2 (CWO-2) Parrnelli, who checked and rechecked

the paperwork. CWO-2 Parrnelli then talked to LCpl Morales, ascertained that he had not authorized anyone else to receive his travel claim, and advised him that he would receive his travel claim in full. CWO-2 Parrnelli also notified the comptroller and the finance chief, Master Sergeant (MSgt) Robles. In addition, she referred the matter to the Criminal Investigative Division (CID) for criminal investigation.

The appellant was assigned to the rifle range that day. When he got back to the office about noon, CWO-2 Parrnelli and MSgt Robles briefed the appellant on the allegation, since he was the SNOIC of the travel section where LCpl Ranzy had worked. They also showed him the paperwork regarding the transfer of funds into LCpl Ranzy's account. CWO-2 Parrnelli told the appellant that she had referred the matter to CID for investigation. CWO-2 Parrnelli and MSgt Robles both told the appellant not to discuss this matter with anyone, especially not with LCpl Ranzy. CWO-2 Parrnelli testified that she specifically told the appellant not to talk to LCpl Ranzy because of her earlier counseling not to fraternize with LCpl Ranzy.

Sometime that same day, a first sergeant called LCpl Ranzy into his office and advised him that he was suspected of travel claim fraud and gave him his rights. The first sergeant asked LCpl Ranzy if he wanted to talk to her. The record does not reflect if LCpl Ranzy agreed to answer questions about the allegation.

Shortly thereafter, LCpl Ranzy received a phone message from the appellant. He then drove to the appellant's home and discussed the situation with him. LCpl Ranzy told the appellant that he needed to find the Marine who filed the travel claim. LCpl Ranzy used his telephone to obtain LCpl Morales' phone number, but was unable to contact him while he was at the appellant's house. LCpl Ranzy then left the appellant's house. Shortly thereafter, he called LCpl Morales. As part of a ruse, he told LCpl Morales that he was Staff Sergeant Jones (a fictitious name) and that he wanted to meet LCpl Morales at a nearby 7-11 Store. LCpl Morales was new to the Marine Corps and he was suspicious of meeting an unknown staff sergeant at a convenience store. He told his wife that if he was not back in 30 minutes to call his unit SNCOIC.

At the 7-11, LCpl Ranzy recognized LCpl Morales and waved him down. LCpl Ranzy got into LCpl Morales' car and identified himself. LCpl Morales did not remember him. LCpl Ranzy then explained that he had done the wrong thing by taking his travel claim. He said that he would pay him back completely, but only had $250.00 right now. He asked LCpl Morales to do him a favor by saying that he had authorized the travel funds to be paid to LCpl Ranzy. LCpl Morales said that he would like to help, but he said that he would not want to get into any trouble over this. He said that it would not make any sense if he went back now and

said that he totally forgot that he had agreed to give his travel claim funds to LCpl Ranzy.

LCpl Ranzy then called the appellant. He told the appellant that he had the Marine with him that he had made the switch with. The appellant told LCpl Ranzy that LCpl Ranzy should not be talking to him. LCpl Ranzy said that LCpl Morales had a couple of good questions and to please talk with him. Without waiting for an answer, he then handed the phone to LCpl Morales. On the telephone, the appellant told LCpl Morales that he was a staff sergeant and that LCpl Morales did not need to know his name.

During a short conversation, the appellant said that LCpl Ranzy had gotten into some trouble and that LCpl Morales could really help him get out of this by saying that he had loaned him the money. LCpl Morales said okay, as long as he did not get into any trouble. The appellant said that he would not get into any trouble. Then the appellant asked, "If I'm interrogating you, what would you tell me?" Record at 98. LCpl Morales said that he would tell the truth. The appellant responded "the truth is good as long as you don't forget to say that you loaned Lance Corporal Ranzy the money." *Id*. LCpl Morales said that he did not remember the conversation word for word, but he did remember the conversation. *Id.* at 108.

After the telephone conversation, LCpl Ranzy wrote up an "I owe you" document stating that he owed LCpl Morales the funds. Each signed it. LCpl Morales would not take a partial payment of $250.00. Later, LCpl Morales discarded his copy of the agreement. Over the weekend, LCpl Morales was temporarily assigned to Tucson, Arizona, to play on the unit soccer team. He thought about the incident all weekend. Although he had not been threatened, he became scared for his own safety. On Monday morning, LCpl Morales reported the conversation up his chain of command to his master sergeant. The master sergeant testified that, when reporting the incident, LCpl Morales appeared nervous and a little bit scared.

The appellant testified he was innocent and that he had not told LCpl Morales to lie. He testified that he was LCpl Ranzy's mentor and that his relationship remained primarily professional. He did admit, however, that LCpl Ranzy came to his house on occasion and drank beer with him. He also admitted that he was counseled in July about fraternization with LCpl Ranzy, but continued to see him after hours. He said that on 8 September, he was briefed by CWO-2 Parrnelli and MSgt Robles about the allegations and viewed the paperwork. He knew that CID was investigating and he was very disappointed in LCpl Ranzy's behavior. But, he said that he did not remember anyone tell him not to speak to LCpl Ranzy about it. He denied that he left a phone message for LCpl Ranzy. He denied that LCpl Ranzy came over to his house that afternoon. He did admit receiving a telephone call from LCpl Ranzy. He said that LCpl Ranzy told him that he (LCpl Ranzy) was suspected of travel fraud, but that he

had legally taken the money because they had an agreement. He testified that LCpl Ranzy then asked him to speak to LCpl Morales on the telephone. He testified that he asked LCpl Morales, "[D]id him and Lance Corporal Ranzy have an agreement, that once he took the money out of his account, he would pay him back." Record at 135. LCpl Morales said yes. The appellant thought that LCpl Morales seemed scared. LCpl Morales told him that he did not want to get into any trouble. The appellant testified that he told him that he was not in trouble, that LCpl Ranzy took his money, that LCpl Ranzy is the one in trouble, and that all he needed to do was to tell the truth.

LCpl Ranzy admitted that he had been convicted at a court-martial for the travel claim fraud and that he had a prior nonjudicial punishment. MSgt Smith testified that he was LCpl Morales' supervisor for the last 12 months and that LCpl Morales was truthful. MSgt Robles testified that the appellant worked for her from April to September of 2000 and that she did not believe he was truthful. Ms. Smith, GS-11, testified that the appellant worked for her from September of 2000 until May of 2001 and that she did not believe that he was truthful. Mr. Gutierrez, GS-13, testified that the appellant worked for him for the last 5 1/2 to 6 1/2 months and that he believed that the appellant was truthful. SSgt Thomas testified that he had known the appellant for 13 1/2 years and that he believed that the appellant was truthful. However, he admitted that he had not served with the appellant since 1990 and had not seen him since a chance meeting in 1992.

B. Legal Standards

The test for legal sufficiency is whether, considering the evidence in the light most favorable to the Government, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987); *United States v. Reed*, 51 M.J. 559, 561-62 (N.M.Ct. Crim.App. 1999); *see also* Art. 66(c), UCMJ.

The test for factual sufficiency is whether, after weighing all the evidence in the record of trial and recognizing that we did not see or hear the witnesses, as did the trial court, this court is convinced of the appellant's guilt beyond a reasonable doubt. *Turner*, 25 M.J. at 325; *see also* Art. 66(c).

The elements of obstruction of justice, Article 134, UCMJ, as tailored to the allegation, are found in the MANUAL FOR COURTS-MARTIAL, UNITED STATES (2002 ed.), Part IV, ¶ 96(b):

> (1) That the accused told a witness, LCpl Morales, to make false statements to investigators;

(2) That the accused did so in the case of LCpl Ranzy against whom the accused had reason to believe that there were or would be criminal proceedings pending;

(3) That the act was done with the intent to impede the due administration of justice; and

(4) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

C. Discussion

The issue is whether the appellant told LCpl Morales to lie to investigators when he spoke to him on the telephone. There is little question that, at the time of the conversation, the appellant was aware that LCpl Ranzy was a suspect in a travel claim fraud and that a criminal investigation into the allegations was ongoing.

Clearly, there was competent evidence supporting each of the elements of the offense. Thus, we find that the evidence is legally sufficient to support the conviction.

Further, based upon on our careful review of the entire record, we find we are convinced beyond a reasonable doubt of the appellant's guilt.

Sentence Appropriateness

In his other assignment of error, the appellant asserts that his sentence, especially the bad-conduct discharge, is inappropriately severe for a Marine who served honorably for over 13 years. We decline to grant relief.

"Sentence appropriateness involves the judicial function of assuring that justice is done and that the accused gets the punishment he deserves." *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988). This requires "'individualized consideration' of the particular accused 'on the basis of the nature and seriousness of the offense and character of the offender.'" *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982)(quoting *United States* v. *Mamaluy*, 10 C.M.A. 102, 106-07, 27 C.M.R. 176, 180-81 (1959)).

We have carefully considered the appellant's honorable and lengthy service without disciplinary action. Nonetheless, we view his misconduct as quite serious. Obstruction of justice undermines and strikes at the heart of the judicial system. Here, the appellant used his grade as a staff sergeant to convince a junior Marine to lie to investigators in an attempt to cover up the criminal behavior of a former subordinate who had become his personal friend.

After reviewing the entire record, we find that the sentence is appropriate for this offender and his offense. *Healy,* 26 M.J. at 395-96; *Snelling*, 14 M.J. at 268. Granting sentence relief at this point would be to engage in clemency, a prerogative reserved for the convening authority. *Healy*, 26 M.J. at 395-96.

Conclusion

Accordingly, the findings of guilty and sentence, as approved by the convening authority, are affirmed.

Senior Judge RITTER concurs.

For the Court

R.H. TROIDL
Clerk of Court

Judge REDCLIFF did not participate in the decision of this case.