IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES Appellee	)	REPLY ON BEHALF OF APPELLANT
v.	)	Crim.App. Dkt. No. 20050703
AARON R. STANLEY Sergeant (E-5), U.S. Army Appellant	)	USCA Dkt. No. 11-0143/AR

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES
COURT OF APPEALS FOR THE ARMED FORCES

Additional Statement of the Case

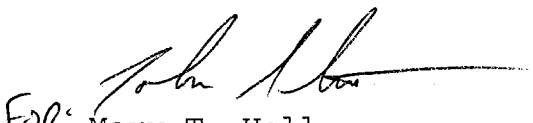
Appellant filed his brief, pursuant to Rule 25 of this Honorable Court's Rules of Practice and Procedure, on May 2, 2011. Appellee filed an answer brief, captioned as a response brief, on June 15, 2011. Appellant files this reply pursuant to Rule 25 of this Honorable Court's Rules of Practice and Procedure.

Argument as to Standard of Review

Appellee argues that Appellant forfeited review of the granted issue because he failed to object to the self-defense instructions provided to the panel, and that this purported forfeiture triggers a plain error analysis. Appellee's Brief at 9. However, this argument not only disregards, but fails to acknowledge, long-standing jurisprudence by this Court.

Although R.C.M. 920(f) states that failure to object to an instruction before the members close for deliberations constitutes waiver in the absence of plain error, this Court has long held that neither waiver nor forfeiture apply to instructions regarding affirmative defenses, which are among the mandatory instructions listed in R.C.M. 920(e). United States v. Taylor, 26 M.J. 127, 128 (C.M.A. 1988)(waiver rule in R.C.M. 920(f) applies only to instructions listed in R.C.M. 920(e)(7), not to affirmative defenses); United States v. Gutierrez, 64 M.J. 374 (C.A.A.F. 2007)(if affirmative defense is reasonably raised by evidence, military judge must instruct on affirmative defense unless the defense has affirmatively waived the instruction; waiver does not exist simply because defense fails to request the instruction). See also United States v. Miller, 54 M.J. 85 (C.A.A.F. 2000)(as to failure to object to sentencing instruction, waiver is inapplicable to mandatory instructions listed in R.C.M. 920; R.C.M. 1005(f)'s waiver rule does not create forfeiture of review of a mandatory instruction).

The standard of review as previously stated by Appellant is the one that should be applied by this Court: a *de novo* review, applying a harmless error analysis in determining the prejudice caused by the erroneous instructions provided by the military judge. United States v. Wolford, 62 M.J. 418 (C.A.A.F. 2006).



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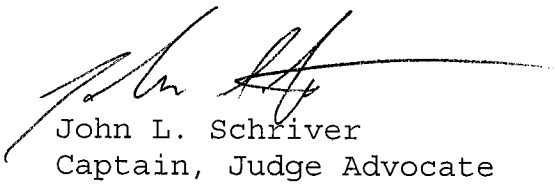

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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the forgoing in the case of United States v. Stanley, Crim. App. Dkt. No. 20050703, Dkt. No. 11-0143/AR, was delivered to the Court and Government Appellate Division on June 24, 2011.

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