

IN THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

UNITED STATES,)	
<i>Appellee,</i>)	FINAL BRIEF ON BEHALF
)	OF THE UNITED STATES
v.)	
)	
Senior Airman (E-4))	USCA Dkt. No. 12-0320/AF
CHADRICK L. CAPEL,)	
USAF,)	Crim. App. Dkt. ACM S31819
<i>Appellant.</i>)	

FINAL BRIEF ON BEHALF OF THE UNITED STATES

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<i>Appellant.</i>)	

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

ISSUE PRESENTED

WHETHER THE EVIDENCE IS LEGALLY SUFFICIENT TO SUSTAIN APPELLANT'S CONVICTION FOR MAKING A FALSE OFFICIAL STATEMENT, ARTICLE 107, UCMJ, UNDER THIS COURT'S DECISION IN UNITED STATES v. TEFFEAU, 58 M.J. 62 (C.A.A.F. 2002) AND UNITED STATES v. DAY, 66 M.J. 172 (C.A.A.F. 2008).

STATEMENT OF STATUTORY JURISDICTION

The Air Force Court of Criminal Appeals (AFCCA) reviewed this case under Article 66(c), UCMJ, 10 U.S.C. § 866(c) (2006). This Court has jurisdiction to review this case under Article 67(a)(3), UCMJ, 10 U.S.C. § 867(a)(3) (2008).

STATEMENT OF THE CASE

Appellant's statement of the case is accepted with the exception of his assertion that the Air Force Court of Criminal Appeals did not analyze whether the statement was official. Rather, the Court specifically held, "[t]he evidence shows that the appellant did, on or about 3 December 2009, sign an **official**

document, the Valdosta Police Department Witness Statement.”
United States v. Capel, ACM S31819, unpub. op. at 6 (A.F. Ct. Crim. App. 16 December 2011) (emphasis added); (J.A. at 6.).
Appellant was apparently convinced that his statement was official before the Air Force Court of Criminal Appeals as he did not argue such a claim to the lower Court. This Court specified the issue.

STATEMENT OF THE FACTS

In August of 2009, Appellant was assigned to the 23rd Component Maintenance Squadron at Moody Air Force Base, Georgia. At that time, his supervisor and rater was SSgt Troy Addison. (J.A. at 99.) Appellant and SSgt Addison had been coworkers and friends for approximately eight years. (Id.)

On 23 August 2009, Appellant spent the night at SSgt Addison’s off base residence. (J.A. at 100.) That evening, SSgt Addison left his wallet on the kitchen counter. (J.A. at 101.) Appellant slept on SSgt Addison’s recliner in the living room. (Id.) When SSgt Addison awoke the next morning, Appellant was gone. (J.A. at 102.)

Approximately six days later, SSgt Addison went onto his computer and checked his banking account. (Id.) He noticed that there were transactions on his account that he had not paid or authorized. (Id.) Suspecting Appellant, SSgt Addison contacted Verizon (one of the transactions he did not authorize) and was able to confirm that Appellant’s cell phone account had

a balance at that time equal to the transaction that was placed against SSgt Addison's banking account. (J.A. at 105.) SSgt Addison then reported these crimes to the shop chief and first sergeant. (J.A. at 107.) They ordered SSgt Addison to have no contact with Appellant and advised him to report Appellant's crimes to the Valdosta Police Department (VPD). (J.A. at 108-09.)

SSgt Addison reported Appellant's crimes to VPD. Further investigation by Detective Renfroe of the VPD revealed that Appellant used SSgt Addison's credit card to pay for bills and make purchases at a variety of online stores. (J.A. at 152-54.) Based on this investigation, Detective Renfroe conducted a subject interview of Appellant. Appellant arrived at the police station to be interviewed in his military uniform. (J.A. at 344.) During the course of the interview, Appellant made several exculpatory statements of varying levels of falsity. (J.A. at 344-404.) After the oral portion of the interview was completed, Appellant drafted and signed a written statement regarding the allegation that he wrongfully used SSgt Addison's card. (J.A. 405-06.) In that statement Appellant wrote, "I did not under any circumstances use his card for any purpose." (J.A. at 406.)

Additional facts necessary to the disposition of the case are set forth in the argument below.

SUMMARY OF THE ARGUMENT

Appellant's conviction under Article 107, UCMJ is legally sufficient where the circumstances surrounding the statement illustrate that the false statement was official considering that military authorities were involved in the case from the beginning through the use of no contact orders; military authorities directed the military victim to report Appellant's crime to civilian law enforcement; the statement was signed while Appellant was in uniform; and the military had a substantial interest in the underlying investigation because not only were both Appellant and the victim military members of the same unit, they were supervisor-subordinate.

ARGUMENT

APPELLANT'S FALSE STATEMENT THAT HE DID NOT STEAL HIS MILITARY SUPERVISOR'S CREDIT CARD INFORMATION AND USE IT TO BUY GOODS AND SERVICES WAS OFFICIAL UNDER ARTICLE 107, UCMJ.

Standard of Review

The test for legal sufficiency of the evidence is whether, considering the evidence in the light most favorable to the prosecution, any reasonable fact-finder could have found all the essential elements beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 318-19 (1979); United States v. Day, 66 M.J. 172, 173-74 (C.A.A.F. 2008); United States v. Turner, 25 M.J. 324, 324 (C.M.A. 1987).

Law and Analysis

A conviction for signing a false official statement requires proof beyond a reasonable doubt that: (1) the accused signed a certain official statement; (2) the statement was false in certain particulars; (3) the accused knew it to be false at the time of signing it; and (4) the false statement was made with the intent to deceive. Manual for Courts-Martial, United States part IV, para. 31.b. (2008 ed.) (MCM). "Official documents and official statements include all documents and statements made in the line of duty." Id. at para. 31(c)(1).

A statement is "official" within the meaning of Article 107 where the false statement is made concerning any matter within the jurisdiction of any department or agency of the United States, as interpreted liberally by the federal courts, consistent with 18 U.S.C. § 1001 (2006). Day, 66 M.J. at 174 citing United States v. Jackson, 26 M.J. 377, 378 (C.M.A. 1988). This Court has recognized that the scope of Article 107, UCMJ is even more expansive than its civilian counterpart because the primary purpose of military criminal law—to maintain morale, good order, and discipline—has no parallel in civilian criminal law. United States v. Tefteau, 58 M.J. 62, 68-9 (C.A.A.F. 2003); See United States v. Harrison, 26 M.J. 474, 474-76 (C.M.A. 1988).

In this case, Appellant's false official statement was signed and provided to a civilian police detective. This fact does not, in and of itself, support a conclusion that Appellant's statement was not official. This Court has rejected any absolute rule that statements to civilian law enforcement officials can never be official within the meaning of Article 107. Teffeau, 58 M.J. at 69. Rather, a statement can be official when the subject matter of the civilian police investigation is of interest to the military and within the jurisdiction of the courts-martial system. Id. citing Solorio v. United States, 483 U.S. 435 (1987).

This Court has stated that the critical distinction between official and unofficial statements centers on whether the statements relate to the official duties of either the speaker or the hearer, and whether those duties fall within the scope of the UCMJ's reach. Day, 66 M.J. at 174. Applying the first part of this test to the facts of this case, Appellant's false statements to Detective Renfroe sufficiently relate to his military duties. At the beginning of the interview, Appellant was asked if he knew SSgt Troy Addison. (J.A. at 344.) Appellant responded, "Yes, Sir. He's my supervisor." (Id.) Appellant was then confronted with allegations of stealing his military supervisor's credit card information so that he could steal goods and services. (J.A. at 351.) Appellant, while

wearing his United States Air Force uniform, sat in the police station interview room and signed a statement professing, "I did not under any circumstances use his card for any purpose."

(J.A. at 406.) From the very beginning, this case arose from the relationship between Appellant and the victim, Appellant's military supervisor.

Moreover, prior to the involvement by civilian law enforcement, military authorities were taking action in this case.¹ After SSgt Addison first reported Appellant's crimes to his shop chief and first sergeant, but before he reported them to the VPD, SSgt Addison's military supervisors directed him to report Appellant's crimes to VPD and ordered him to have no contact with Appellant. (J.A. at 109.) Subsequently, Appellant was ordered to have no contact with SSgt Addison. (J.A. at 194.) As a result of the investigation, the unit manning schedule changed to ensure that Appellant and SSgt Addison were no longer on the same shift. (Id.) Undeterred though, Appellant attempted to speak to SSgt Addison on base at the

¹ Appellant asserts that the record is silent on whether military authorities ever conducted their own investigation or inquired into Detective Renfroe's investigation. (App. Br. at 15.) However, SSgt Addison appears to have testified that all the time he "invested" with military investigators was while he was on a duty status and not on permissive TDY status. (J.A. at 122.) Evaluating this evidence in the light most favorable to the government, as is required at this stage of the case, it appears that a military investigation did occur at some point. Additionally, obviously military authorities inquired into Detective Renfroe's investigation as this case was preferred and referred to trial by court-martial and Detective Renfroe testified at trial. (J.A. 10-12, 149.)

shoppette and even at the unit.² (J.A. at 108-11, 194.) Thus, this investigation and the statements made by Appellant to the civilian law enforcement were sufficiently related to and in fact, quite disruptive to his military unit.

Regarding the second part of this Court's test articulated in Day, Appellant's crimes clearly fall within the scope of the UCMJ's reach. In fact, Appellant was properly prosecuted by court-martial for the very same crimes that were being investigated and that he was confronted with, resulting in his assertion of the false official statement. The entire objective in Detective Renfroe interviewing Appellant was to investigate SSgt Addison's complaint that Appellant was wrongfully purchasing goods and services with SSgt Addison's banking information. (J.A. at 151.) Ultimately, Appellant was prosecuted and properly convicted under Articles 121 and 134, UCMJ for doing just that. (J.A. at 24-26.)

It is important to note, as this Court did in Teffeau, the substantial military interest in this investigation and prosecution. Appellant incorrectly advances the proposition that there was a lack of proof as it relates to this interest.³

² Appellant was not prosecuted for violation of a no contact order. However, Appellant testified under direct examination that the contact he had with SSgt Addison was probably contact that he should not have made. (J.A. at 194.)

³ Appellant references assertions by trial counsel to illustrate a "lack of military interest" in the investigation. (App. Br. at 15.) However, Appellant correctly notes that counsel's assertions are not evidence. Here,

(App. Br. at 16.) Contrary to Appellant's assertions, the evidence on this point was overwhelming. Appellant committed the crime of false official statement while in his military uniform. (J.A. at 344.) That statement related to military crimes committed against his military supervisor, a noncommissioned officer in the United States Air Force. (Id.) One of the crimes under investigation was actually witnessed by another Airman to whom Appellant lied when the Airman confronted Appellant about it. (J.A. at 50-53.) Investigation and prosecution of these crimes go to the very heart of preservation of good order and discipline in Appellant's unit, the United States Air Force and the armed forces in general. It is this need to preserve good order and discipline that provided the basis for this Court to recognize the expansive view in interpreting the official nature of statements like Appellant's here. Teffeau, 58 M.J. at 69 citing United States v. Solis, 46 M.J. 31, 34 (C.A.A.F. 1997); See also United States v. Smith, 44 M.J. 369, 372 (C.A.A.F. 1996); United States v. Hagee, 37 M.J. 484, 485 (C.M.A. 1993). The substantial military interest in this case emphasizes the legal sufficiency of Appellant's conviction.

as the issue is legal sufficiency, counsel's assertions are irrelevant to this appeal.

Examining Appellant's conduct in light of the language and purposes of Article 107, Appellant's signed false statement was official. Appellant's statement was official within the meaning of Article 107 where the false statement was made concerning any matter within the jurisdiction of any department or agency of the United States, as interpreted liberally by the federal courts, consistent with 18 U.S.C. § 1001 (2006). Day, 66 M.J. at 174. Clearly, Appellant's statement was regarding crimes under the jurisdiction of the UCMJ. See Articles 121, 134, UCMJ. Therefore, they were official statements under Article 107, UCMJ and Appellant's conviction for false official statement should be affirmed.

CONCLUSION

WHEREFORE, the United States respectfully requests this Honorable Court uphold AFCCA's ruling affirming the findings and sentence.



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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to Appellate Defense Division, on 27 June 2012.

A handwritten signature in black ink, appearing to read "B. C. Mason" with a long horizontal flourish extending to the right.

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