IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES, Appellee	BRIEF ON BEHALF OF THE APPELLEE
v.	Crim. App. No. 1418
ERNEST M. RAMOS, Boatswain's Mate First Class (E-6), United States Coast Guard, Appellant	USCA Dkt. No. 17-0143/CG

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

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II. Issue Presented

WHETHER APPELLANT WAS ENTITLED TO ARTICLE 31(b), UCMJ, ADVISEMENTS AT ANY POINT DURING HIS INTERROGATION BY CGIS, AND IF SO, WHETHER HE WAS PREJUDICED BY THE ADMISSION OF ANY OF HIS STATEMENTS.

III. Statement of Statutory Jurisdiction

This Honorable Court has jurisdiction over this matter under Article 67(a)(3), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 867 (2012), because it is a case reviewed by the Coast Guard Court of Criminal Appeals (CGCCA) in which this Court has granted Appellant's petition for review. The CGCCA had jurisdiction over this case under Article 66(b)(1), UCMJ, 10 U.S.C. § 866 (2012).

IV. Statement of the Case

Appellant was convicted, contrary to his pleas, at a special court-martial composed of officer members of one specification of conspiracy to wrongfully manufacture and distribute marijuana, three specifications of making a false official statement, and one specification of wrongful possession of marijuana with intent to distribute, in violation of Articles 81, 107, and 112a, UCMJ, 10 U.S.C. §§ 881, 907, and 912a, respectively. The panel sentenced Appellant to confinement for ninety days, reduction in rank to E-3, and a bad conduct discharge. The convening authority approved the adjudged sentence on February 18, 2015.

The CGCCA reviewed the case and issued a decision on October 28, 2016. J.A. at 1-8. The CGCCA dismissed two specifications of making a false official statement—those that involved statements made to the Appellant's superior officers—because the evidence produced only proved that Appellant told those officers that he was "not on the paperwork," and those words were not sufficient to constitute words to the effect that he was not involved in the business. *Id.* at 4-5. The court affirmed the remaining findings and the sentence. *Id.* at 8. On February 16, 2017, this Court granted review of Appellant's petition.

V. Statement of Facts

In November of 2012, Washington Initiative 502 ("I-502") was approved by popular vote in the state of Washington, which provided for the legalization of small amounts of marijuana for adults and created a structure to license and regulate the growing of marijuana within the state. J.A. at 324. In February 2014, the Ramos's formed an LLC with Mr. Cameron Hart and his wife, civilians who moved to Washington for the sole purpose of starting a marijuana-growing business, pursuant to the recently-passed I-502 to establish a state-licensed marijuana growing and distribution business. *Id.* at 143. Only Mrs. Ramos and Mr. Hart appeared on the licensing paperwork because Appellant and Mrs. Hart were federal employees. *Id.* at 128. The Ramos's agreed to fund the business with about thirteen thousand dollars in start-up costs. *Id.* at 253. When the actual cost reached

over eighty-eight thousand dollars, the Ramos's told the Harts that they intended to withdraw from the business on April 7, 2014. *Id.* at 255. In response, Mr. Hart apparently said he would get his money back "one way or another" and told Appellant he was going to "show[] up at your job tomorrow." *Id.* at 256.

The following morning, when Appellant arrived at his unit, he relayed to his supervisors that there was a threat to his and his wife's safety. He described the situation to two officers in his chain of command, then to LT Nordhausen, the executive officer of the unit. *Id.* at 33-34. Appellant told LT Nordhausen that Mr. Hart had an "unsavory past" and had potentially killed somebody before. *Id.* at 37. LT Nordhausen asked him about the business and whether he had any seeds or marijuana in his possession, to which Appellant replied that he did not. *Id.* at 40, 47. LT Nordhausen contacted base security regarding the threat and then called a Coast Guard Investigative Service (CGIS) agent, who asked him to send Appellant to the CGIS office for an interview. *Id.* at 38, 43.

Special Agent (SA) Terry Stinson, the lead investigator on the case, and SA Helena Chavez interviewed Appellant to understand and mitigate the potential threat. SA Stinson was not initially aware that an "I-502," as Appellant called it during the interview, was a business dealing with recreational marijuana because it was new to him and to the state. *Id.* at 71. SA Stinson testified that Appellant "wasn't able to be specific on the type of threats . . . or what could potentially

happen from the threat." *Id.* SA Stinson noted that Appellant said Mr. Hart had threatened to go to his command, but he was not clear about whether that was to talk to the command or for violent reasons. *Id.* at 57. During the interview, the agents were able to identify Mr. Hart using contact information provided by Appellant and printing a picture that Appellant identified as him. *Id.* at 58-59. SA Stinson attempted to keep Appellant focused on the threat and not the business. *Id.* at 69. However, when Appellant discussed the LLC that he said was his wife's, he did so using the pronouns "we" and "ours." *Id.* After about forty-five minutes of interviewing Appellant, the agents decided to take a break to discuss their plan to end the interview at that time. *Id.* at 69-70.

During this break, SA Stinson was notified that Mr. Hart had independently called the CGIS office of his own accord and wished to speak with an agent. *Id.* at 59. Mr. Hart and his wife agreed to come to the office that day to speak with the agents about Appellant's role in the business. At this time, the CGIS agents concluded the interview with Appellant and sent him back to his unit with threat response tactics. *Id.* at 60. Appellant did not receive an Article 31(b), UCMJ, rights advisement at any time during this interview. 10 U.S.C. § 831 (2012).

On the same day, Mr. and Mrs. Hart went to the CGIS office to be interviewed and subsequently cooperated extensively with CGIS throughout the investigation of Appellant. The Harts informed the agents that the marijuana

plants were stored in Appellant's garage and agreed to participate in an undercover operation with a CGIS agent the following day. The Harts received Mrs. Ramos's permission to enter her garage with the CGIS agent, SA Jennings, posing as a buyer interested in purchasing the remaining marijuana and growing equipment inside. *Id.* at 66. Once inside, the trio collected marijuana and equipment, which was later admitted as physical evidence at trial, and recovered property belonging to the Harts from the Ramos's garage. *Id.* Mr. Hart also testified at length at the court-martial, describing the joint business venture and Appellant's role throughout. *Id.* at 129-248.

Prior to trial, the defense moved to suppress the statements Appellant made to the CGIS agents. *Id.* at 303-07. The military judge heard extensive testimony from SA Stinson during an Article 39(a), UCMJ, session on this and two other defense motions to suppress. SA Stinson's testimony alone accounts for sixty-four pages of the trial transcript. *Id.* at 51-114. The military judge also considered the CGIS agents' interview notes and SA Stinson's Memorandum of Activity about the interview as evidence on this motion. *Id.* at 314-25.

The military judge concluded that Article 31(b) did not apply to the conversation between CGIS agents and BM1 Ramos because the agents were not interviewing for a law enforcement or disciplinary purpose, but rather were

"focused on force protection." *Id.* at 330-33. In the military judge's ruling, he made the following findings of fact, in relevant part:

> During the interview the agents very quickly ascertained the name of Cameron Hart as the source of the threat. The agents also very quickly had retrieved two suspects from the Department of Motor Vehicle database. Not long into the interview, the agents suspected BM1 Ramos of violating the UCMJ for his involvement with marijuana. They continued to question BM1 Ramos about the threat and the business without advising him of his rights under Article 31(b) of the UCMJ . . . Although the CGIS agents had identified the source of the threat, they had a continuing duty to obtain contextual facts in order to gauge the severity of the threat and possible measures to mitigate the threat.

Id. at 328. The military judge also found that the agents asked no specific questions about the Appellant's involvement in the marijuana growing business or where the marijuana was kept. *Id.* The CGCCA found no error or abuse of discretion in the military judge's decision. *Id.* at 4.

VI. Summary of Argument

The military judge did not abuse his discretion in deciding that Appellant was not entitled to an Article 31(b) rights advisement during Appellant's interview with the CGIS agents because the interview was not for a law enforcement or disciplinary purpose. Rather, the questioning was in response to Appellant's self-reported fear of a threat against him and his wife, and done pursuant to CGIS's force protection role. The record and prevailing case law support the military judge's determination.

If this Court were to find that Appellant should have received an Article 31(b) rights advisement, then this Court should only grant relief as to the Article 107 conviction because Appellant was not prejudiced as to the Article 81 and Article 112a convictions. Although an involuntary statement cannot be the basis for a false official statement charge, Appellant was not prejudiced as to the other convictions because Appellant's business partner, Mr. Hart, provided extensive evidence, including physical evidence of marijuana from Appellant's home and hours of testimony at trial regarding their business arrangement, that made Appellant's own statements have little value to the Government's case. If this Court were to set aside the Article 107 conviction, it does not need to order a sentence rehearing because the adjudged sentence was entirely appropriate for the more serious, remaining convictions alone.

VII. Argument

A. Standard of review.

This Court should apply the nonconstitutional test for prejudice from *United States v. Kerr* because the facts and circumstances presented in this case do not rise to level of a violation of the Fifth Amendment of the Constitution. 51 M.J. 401, 405 (C.A.A.F. 1999) (addressing factors that give rise to a "custodial interrogation" such that it is considered to be a formal arrest and a constitutional issue may apply). Appellant was not in custody during the CGIS interview, which

would trigger Fifth Amendment *Miranda* protections. *Miranda v. Arizona*, 384 U.S. 436 (1966). Therefore, only the question of a statutory violation of Article 31, UCMJ, remains.

B. The military judge did not abuse his discretion in denying the defense motion to suppress statements.

Where there is a motion to suppress a statement on the grounds that an Article 31(b) rights advisement was not given, this Court reviews the military judge's findings of fact on a clearly erroneous standard and conclusions of law *de novo*. *United States v. Swift*, 53 M.J. 439, 446 (C.A.A.F. 2000). "A military judge abuses his discretion if his findings of fact are clearly erroneous or his conclusions of law are incorrect." *United States v. Gilbreath*, 74 M.J. 11, 17 (C.A.A.F. 2014). Thus, the "abuse of discretion standard is a strict one, calling for more than a mere difference of opinion." *United States v. McElhaney*, 54 M.J. 120, 130 (C.A.A.F. 2000).

Here, the military judge found that an Article 31(b), UCMJ, rights advisement was not required at any point during the CGIS agents' interview of Appellant because the agents were not acting in a law enforcement or disciplinary capacity at the time. J.A. at 333. Rather, the agents were attempting to assess the nature and severity of a possible threat to the safety of a Coast Guard member and his wife pursuant to one of CGIS' primary missions: supporting force protection. *Id.* at 345. The military judge's findings of fact and conclusions of law are clearly

delineated in his court order, rationally derived from extensive testimony at an Article 39(a) session, and consistent with prevailing case law, and thus, are not error.

1. Appellant was not entitled to an Article 31(b) rights advisement because CGIS was not performing a law enforcement or disciplinary investigation.

Under Article 31(b), UCMJ, a rights advisement is required when (1) a person subject to the UCMJ, to include "a knowing agent," (2) interrogates or requests any statement, (3) from an accused or person suspected of an offense, and (4) the statements regard the offense of which the person questioned is accused or suspected. *United States v. Jones*, 73 M.J. 357, 361 (C.A.A.F. 2014) (quoting *Swift*, 53 M.J. at 446). "Under Article 31(b)'s second requirement, rights warnings are required if 'the person conducting the questioning is participating in an official law enforcement or disciplinary investigation or inquiry.'" *Id.* Whether a questioner is acting in this capacity is determined by "assessing all the facts and circumstances at the time of the interview to determine whether the military questioner was acting or could reasonably be considered to be acting in an official law-enforcement or disciplinary capacity." *United States v. Cohen*, 63 M.J. 45, 50 (C.A.A.F. 2006) (quoting *Swift*, 53 M.J. at 446). Because it is clear that SA Stinson was subject to the UCMJ, suspected Appellant of a violation of the UCMJ at some point during the interview, and that statements Appellant gave pertained to the

offenses for which Appellant was suspected, the only question remaining is whether SA Stinson interrogated or requested any statement from Appellant. In this case, while the record plainly indicates that SA Stinson was questioning and requesting statements from Appellant, the protections of Article 31(b) are not triggered because SA Stinson was not asking questions in a disciplinary or law enforcement capacity.

Article 31(b) does not apply to *every* question or request for a statement. This Court stated in *Jones* that such a literal reading of Article 31 would have a "comprehensive and unintended reach into all aspects of military life and mission." 73 M.J. at 361. An Article 31(b) rights advisement is not required prior to official questioning focused on legitimate administrative issues related to a valid military mission. *Swift*, 53 M.J. at 446. It is only necessary when the questioner is acting in an official law enforcement capacity or conducting a disciplinary investigation or inquiry, which this Court determines by assessing all the facts and circumstances at the time of the interview and is judged by reference to a reasonable person in the interviewee's position. *Jones*, at 361.

Here, Appellant's interview with CGIS focused on the non-law-enforcement, non-disciplinary issue of force protection. That morning, Appellant approached his chain of command for help, stating that he and his wife were being threatened by a business partner, and disclosed that the nature of the business was

growing marijuana, a legal enterprise under Washington state law. J.A. at 33-35. His chain of command then contacted CGIS for assistance. *Id.* at 43. When the CGIS agents met with Appellant, they were confronted with a situation where a command asked CGIS to assess the potential risks to a member of their command arising out of a marijuana-growing business, which is hardly a typical request for a threat assessment.

This confusion is further evidenced by the information in the record indicating that the lead investigator did not know what Appellant meant when he was referring to an "I-502" LLC. *Id.* at 71-72. This information was important to assessing the nature of the threat because if the "business" were illicitly growing marijuana on a mountainside, presumably the business partner with whom Appellant's wife was engaged would pose a different threat potential than a person engaged in a regulated business for which Appellant's wife and Mr. Hart had to seek permission from state authorities to run. In addition, the "threats" described by Appellant were, at best, vague; that Mr. Hart would get his money back "one way or another" and knew where Appellant worked, thereby inhibiting the ability of the CGIS agents to effectively determine the nature of the threat at hand. *Id.* at 57, 71. In particular, Appellant did not want to discuss his wife's business, although that was clearly the source of the threats. He insisted that the business was his wife's, but that both of them were threatened and he used "we" and "our"

to describe the business. *Id.* at 69. In this confusing and far from typical situation, Appellant argues the agents should have immediately assessed that Article 31(b) rights advisements were required and that the length of the interview was an indication of an illicit purpose. App. Br. at 17. Rather, the military judge considered all of the facts and circumstances to determine that the interview was intended to carry out the task requested by Appellant's command: identify and mitigate any threat to the safety of Appellant and his wife.

2. The military judge applied the correct law.

The military judge made rational findings of fact and conclusions of law based on the evidence presented at the Article 39(a) session and an accepted view of prevailing case law. The cases relied on by the military judge are examples of this Court and its predecessor holding that an official's interrogation of a suspect did not require an Article 31(b) rights advisement because the questioning was not for a law enforcement or disciplinary purpose.

As cited by the military judge in this case, *Moses*, *Loukas*, and *Vail* demonstrate that this Court and its predecessor have held that an Article 31(b) rights advisement is not required for questioning designed to fulfill operational responsibilities. *United States v. Moses*, 45 M.J. 132 (C.A.A.F. 1996) (Naval Criminal Investigative Service agent's questioning during a standoff and hostage situation did not require a rights warning); *United States v. Loukas*, 29 M.J. 385

(C.M.A. 1990) (crew chief's questioning of accused about possible drug use midflight did not require a rights warning); *United States v. Vail*, 28 C.M.R. 358 (C.M.A. 1960) (officer asking about other stolen guns while apprehending a member amidst committing a theft did not require a rights warnings).

In *United States v. Guyton-Bhatt*, cited by Appellant, the Army Court of Criminal Appeals (ACCA) held that a judge advocate was not required to provide an Article 31(b) rights advisement prior to questioning appellant in his official capacity as a legal assistance attorney concerning appellant's alleged debt owed to a client. 54 M.J. 796, 802 (2001) (stating "[a]n official duty or responsibility to question a 'suspect,' for a purpose that is not primarily for disciplinary or law enforcement reasons, can negate the requirement for a rights advisement."). Furthermore, in *United States v. Smith*, the Army Court of Criminal Appeals held that the appellant's statements to an official during an Unscheduled Reclassification Board, after appellant's escape from confinement, did not require Article 31(b) rights warnings because the questioning was pursuant to a legitimate administrative investigation: whether to move appellant from medium custody to maximum security. 56 M.J. 653, 657-68 (A.C.C.A. 2001).

In *Bradley* and *Akbar*, also cited by Appellant, this Court provided further examples of when official questioning of a suspect does not trigger an Article 31(b) rights advisement. *United States v. Bradley*, 51 M.J. 437 (C.A.A.F. 1999);

United States v. Akbar, 74 M.J. 364 (C.A.A.F. 2015). In *Bradley*, this Court held that the appellant's commander was not acting in law enforcement or disciplinary role when he asked appellant whether charges had been filed against him for purposes of removing his security clearance. *Bradley*, at 442. In *Akbar*, an intelligence officer tasked with security following appellant's attack who questioned appellant was acting pursuant to a limited operational purpose, and "was not seeking to avoid Appellant's statutory or constitutional rights." *Akbar*, at 402 n. 23.

The case at hand is most similar to *Moses*, where a member of a military criminal investigation office (MCIO) was charged with completing an operational investigation and was not required to give an Article 31(b) rights advisement. This case refutes Appellant's argument that MCIO officials must provide a rights advisement prior to any questioning because they are presumed to be conducting a law enforcement inquiry. App. Br. at 16. The current test, which looks to all the facts and circumstances surrounding an MCIO official's questioning of a suspect to determine whether a rights advisement is necessary, is the more appropriate test. *See Jones*, 73 M.J. at 361.

Appellant's argument, which would essentially require CGIS agents to give an Article 31(b) advisement in all of their interactions with members of the armed forces, is unworkable and counterproductive. Particularly when dealing with threat

assessments, CGIS needs members who believe they have been threatened to speak freely to CGIS about the threat in order to perform threat assessments in their force protection responsibilities. That willingness is hampered if the agents have to give rights warnings before a threatened person speaks to them. And yet, the Government also has an interest in holding those who falsely request help for a purported threat accountable. As an analogy, if a Coast Guard member falsely reported they were threatened with a gun in a parking lot on base, which then prompted a lock down of the base and an extensive search, even though the questioning was originally done without a rights advisement and without the intent of determining if the reported threat were false, it is appropriate for the Government to hold someone who made such a false threat accountable given the consequences that followed from the false report.

Appellant's situation is similarly situated. As Appellant would have it, he was the innocent bystander in a business relationship gone wrong with an unscrupulous business partner who took he and his wife for $80,000 dollars. Mr. Hart's willingness to extensively participate in the investigation and trial would certainly seem to indicate a much different and less innocent role for Appellant, and one where Appellant's request for help regarding "threats" was more of an attempt to seek the protection of federal authorities as a shield for the consequences of his own inappropriate conduct.

In order for this Court of overturn the military judge's finding of fact, the findings must be clearly erroneous. That is not the case here. The military judge used the facts and circumstances as presented at the Article 39(a) session to decide that the CGIS agents were questioning Appellant in order to gauge and control an ongoing threat, and were not acting in an official law enforcement or disciplinary function, which would trigger an Article 31(b) rights advisement based on controlling case law in *Jones* and *Loukas*.

3. The CGIS agents' interview of Appellant did not have a mixed purpose.

A questioner may have official duties that legitimately encompass both administrative and law enforcement roles. *Swift*, at 444-46. However, the dispositive question is to determine whether the questioning was pursuant to a legitimate administrative function or an "attempt to obtain incriminating statements to be used against him at trial." *United States v. Moses*, 45 M.J. 132, 135 (C.A.A.F. 1996).

Appellant cited to *United States v. Cohen* to support his argument that he should have received rights advisement either before or during his questioning, but the case at hand is distinctly different and distinguishable. 63 M.J. 45 (C.A.A.F. 2006). In *Cohen*, this Court found a "mixed purpose" for the questioning, that it was both administrative and for law enforcement purposes, and held that an Article 31(b) rights advisement was required. *Id.* at 54. This Court held that the military

judge's finding that an inspector general (IG) had no criminal investigator or disciplinary duties that would require the IG to give a rights advisement to be clearly erroneous. *Id.* at 52. This Court noted that although the IG's responsibilities are primarily administrative, the IG was also responsible for investigating wrongdoing and reporting criminal violations to the appropriate office. *Id.*

This case is easily distinguishable from *Cohen* because there, the IG was involved with a criminal investigation from the start of his interaction with the appellant. When the Appellant in this case went to the CGIS office to be interviewed, he brought the LLC to the CGIS agents' attention by voluntarily self-reporting a threat. SA Stinson was not questioning for a "mixed purpose" as he attempted to identify and mitigate a threat, and SA Stinson even ended the interview when he believed Appellant may have begun to make admissions that could trigger a law enforcement investigation. J.A. at 69-70. Thus, the opinion in *Cohen* is not controlling in this case, and no Article 31(b) rights advisement was required where the questioner was not attempting to evade Appellant's rights.

C. Even if this Court finds that Appellant's unwarned statements should not have been admitted at trial, it should only grant relief as to the Article 107 conviction because Appellant was not prejudiced as to the Article 81 and Article 112a convictions.

The UCMJ and the MRE provide that a statement obtained without a rights advisement is akin to an involuntary statement and is inadmissible. *United States v. Gilbreath*, 74 M.J. 11, 18 (C.A.A.F. 2014); Article 31(d), UCMJ; MRE 304, 305.

Therefore, if this Court were to find that Appellant's statements to CGIS were in violation of Article 31, UCMJ, then the Article 107 conviction likely cannot stand, as the statement itself was the basis for the conviction. *See Swift*, 53 M.J. at 451-52. However, Appellant is not prejudiced as to the Article 81 and 112a convictions because Mr. Hart provided significant, independent evidence that corroborated Appellant's statements.[1]

"Error not amounting to a constitutional violation will be harmless if the factfinder was not influenced by it, or if the error had only a slight effect on the resolution of the issues of the case." *United States v. Muirhead*, 51 M.J. 94, 97 (C.A.A.F. 1999). To determine whether an appellant was prejudiced by an erroneous suppression ruling, this Court will look to (1) the strength of the government's case, (2) the strength of the defense case, (3) the materiality of the evidence in question, and (4) the quality of the evidence in question. *Gilbreath*, 74 M.J. at 18 (quoting *Kerr*, 51 M.J. at 405).

In this case, Appellant was not prejudiced by the admission of his statements because Mr. Hart provided corroborating evidence to the CGIS agents. The Harts worked closely with CGIS throughout the investigation of Appellant, even bringing a CGIS special agent to the Ramos's home as part of an undercover operation where all of the physical evidence in this case—i.e., garden shears,

[1] Appellant appears to have conceded this issue as any discussion of prejudice to the Article 81 and Article 112a convictions are not addressed in Appellant's brief.

marijuana seeds, and micron screen bags—was obtained. J.A. at 180-88. Mr. Hart testified in this case at both an Article 39(a) session and as part of the Government's case-in-chief at trial, revealing the same and substantially more information about their joint marijuana-growing business than what was gleaned from Appellant's statements. *Id.* at 59. The strength of the Government's case was very strong and independent of Appellant's statements, which rendered the Appellant's own statements non-material and of lesser quality than the detailed account from the business partner, Mr. Hart. In contrast, the defense presented relatively little evidence at trial, calling only a friend of the Ramos's who had spoken with Mrs. Ramos about the LLC and two Coast Guard Chief Warrant Officers to testify to Appellant's military character and character for truthfulness. Therefore, Appellant was not prejudiced by the introduction of his statements for the Article 81 or 112a convictions.

D. Even if this Court finds that Appellant should have received an Article 31(b) rights advisement prior to making statements to CGIS agents and he was prejudiced as to the Article 107 conviction, no sentence rehearing is necessary because Appellant's sentence was appropriate for the more serious convictions of Article 81 and Article 112a.

When a Court of Criminal Appeals reassesses a sentence due to some error in the proceedings, that court affirms, if it feels it can, only so much of the sentence as would have been imposed at the original trial absent the error; the Court of Appeals for the Armed Forces will not disturb that reassessment, except to prevent

obvious miscarriages of justice or abuses of discretion. *United States v. Eversole*, 53 M.J. 132, 133 (C.A.A.F. 2000). The CGCCA already reassessed the sentence when it dismissed two specifications of Article 107 charge and held that the dismissals "made no difference to the sentence." J.A. at 5.

In *Swift*, this Court found that even where the appellant was prejudiced by not receiving an Article 31(b) rights advisement and this Court dismissed a false official statement specification, the appellant was not prejudiced as to the adjudged sentence "in light of the remaining offenses and evidence" in that case. *Swift*, 53 M.J. at 455.

Similarly, here, the sentence adjudged is wholly appropriate even if it had been awarded for the Article 81 and 112a convictions alone. Without the Article 107 charge and its three specifications, the statutory maximum sentence for the remaining offenses is a sentence of confinement for 30 years, forfeiture of all pay and allowances, and a dishonorable discharge. J.A. at 20, 25. Based on the forum, Appellant could have received up to twelve months confinement, forfeiture of two-thirds pay for twelve months or a fine of the same amount, reduction to pay grade E-1, and a bad conduct discharge. In this case, Appellant was only sentenced to confinement for ninety days, reduction to E-3, and a bad conduct discharge. *Id.* at 17. Therefore, no further sentence reassessment is necessary even if the final specification of Charge II is dismissed.

VIII. Conclusion

The Appellant is entitled to no relief because the military judge did not abuse his discretion in denying the defense motion to suppress. As such, this Court should affirm the findings and sentence in this case.

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Certificate of Compliance

This brief complies with the type-volume limitation of Rule 24(c) because it contains 4,913 words. This brief complies with the typeface and type style requirements of Rule 37 because it has been prepared in Times New Roman 14-point typeface.

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Certificate of Service

I certify that a copy of the foregoing was electronically submitted to the Court on April 17, 2017, and that Appellant's counsel, LT Jason W. Roberts, was copied on the email at jason.w.roberts@navy.mil.

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