

IN THE UNITED STATES ARMY
FIRST JUDICIAL CIRCUIT

UNITED STATES)

v.)

MANNING, Bradley E., PFC)
U.S. Army, (b) (7)(C))
Headquarters and Headquarters Company, U.S.)
Army Garrison, Joint Base Myer-Henderson Hall,)
Fort Myer, VA 22211)

**DEFENSE MOTION FOR
DIRECTED VERDICT:
ARTICLE 104**

DATED: 4 July 2013

RELIEF SOUGHT

1. COMES NOW PFC Bradley E. Manning, by counsel, pursuant to applicable case law and Rule for Courts Martial (R.C.M.) 917(a), requests this Court to enter a finding of not guilty as to the Specification of Charge I.

STANDARD

2. A motion for a finding of not guilty should be granted when, viewing the evidence in the light most favorable to the prosecution, there is an "absence of some evidence which, together with all reasonable inferences and applicable presumptions, could reasonably tend to establish every essential element of an offense charged." R.C.M. 917(d).

ARGUMENT

3. In the Court's ruling on the Defense motion to dismiss the Article 104 offense for failure to state an offense, the Court indicated:

If, at trial, the Government does not prove the accused knew that by giving intelligence by indirect means, he actually knew he was giving intelligence to the enemy, the Court will entertain appropriate motions. Appellate Exhibit 81.

The Government has failed to adduce evidence which, together with all reasonable inferences and applicable presumptions, shows that PFC Manning had "actual knowledge" that by giving information to WikiLeaks, he was giving information to an enemy of the United States. Accordingly, the Defense requests that the Court grant this R.C.M. 917 motion for Charge I.

4. According to the Court's instructions:

“Knowingly” requires actual knowledge by the accused that by giving the intelligence to the 3rd party or intermediary or in some other indirect way, that he was actually giving intelligence to the enemy through this indirect means. This offense requires that the accused had a general evil intent in that the accused had to know he was dealing, directly or indirectly, with an enemy of the United States. “Knowingly” means to act voluntarily or deliberately. A person cannot violate Article 104 by committing an act inadvertently, accidentally, or negligently that has the effect of aiding the enemy.

The Government’s evidence fails to show in any way that by giving information to WikiLeaks, PFC Manning had *actual* knowledge that he was giving information to the enemy.

5. The Government has introduced evidence that in his training, PFC Manning was told that the enemy uses the internet generally. The Government has not proffered any evidence, however, which shows that in his training, PFC Manning was told that a particular enemy looks at or uses the WikiLeaks website. In fact, Mr. Moul, who trained PFC Manning, testified that he had *never heard* of WikiLeaks prior to PFC Manning’s arrest in this case. *See* Testimony of Mr. Moul. CPT Fulton testified that the only types of websites that intelligence analysts were warned about were social networking sites such as Facebook. *See* Testimony of CPT Fulton. None of the evidence elicited by the Government regarding PFC Manning’s training, construed in the light most favorable to the Government, shows that PFC Manning had the *actual knowledge* that is required under Article 104. Similarly, the Government has introduced no evidence to suggest that PFC Manning was somehow independently aware that the enemy uses WikiLeaks. Mr. Johnson testified that his forensic investigation of PFC Manning’s computer revealed no searches for the enemy, anything related to terrorism, or anything remotely anti-American. *See* Testimony of Mr. Johnson.

6. The Government also attempts to show that PFC Manning had actual knowledge that the enemy uses WikiLeaks by evidence and testimony related to the Army Counter-Intelligence Center (ACIC) report charged in Specification 15 of Charge II. The Government has adduced forensic evidence that PFC Manning’s computer accessed the report multiple times between December of 2009 and April of 2010. The Government seeks to use the ACIC report to show that PFC Manning had actual knowledge that the enemy uses WikiLeaks and therefore, that by giving information to WikiLeaks, PFC Manning was giving information to the enemy. The Government’s evidence, taken in the light most favorable to the Government cannot support a finding that PFC Manning had actual knowledge that the enemy uses WikiLeaks.

7. First, the title of the report is “Wikileaks.org – An Online Reference to Foreign Intelligence Services, Insurgents, or Terrorist Groups?” The question mark obviously denotes that the question is something that the U.S. government does not have an answer to. If the government had actual knowledge that the enemy uses WikiLeaks, then the title of the report would be “Wikileaks.org – An Online Reference to Foreign Intelligence Services, Insurgents, or Terrorist Groups.” without a question mark. If the U.S. government does not have actual knowledge of the enemy’s use of the WikiLeaks website, then neither can PFC Manning.

8. Second, the Government has introduced evidence that the report says that “In addition, it must also be presumed that foreign adversaries will review and assess any DoD sensitive or classified information posted to the Wikileaks.org Web site.” *See* ACIC Report. The very nature of a presumption is that a person does not know whether something is true or not true. The fact that PFC Manning should have presumed something may go to whether he was negligent or reckless, but it does not go to whether he had actual knowledge under Article 104.

9. Third, the Government’s focus on one small section ignores the plain limitation laid out in the ACIC document under the section entitled “Intelligence Gaps.” In the ACIC document, the author readily admits that an intelligence gap is “Will the Wikileaks.org Web site be used by FISS, foreign military services, foreign insurgents, or terrorist groups to collect sensitive or classified US army information posted to the Wikileaks.org Web site?” Ms. Glenn confirmed that an intelligence gap is something that is not able to be confirmed, or it would not be listed in that section. *See* Testimony of Ms. Glenn. Additionally, multiple unit witnesses testified during the Government’s case that an intelligence gap is something that we *do not have actual knowledge of*. If one had actual knowledge of something, it would not be called an intelligence gap.

10. The Government also introduced testimony from Mr. Lamo where the Government sought to introduce various of PFC Manning’s admissions. During cross-examination of this Government witness, the Defense elicited (and the Government did not dispute) evidence as to PFC Manning’s state of mind. At one point, Mr. Lamo asked PFC Manning why he did not sell the information to a foreign government and “get rich off it[.]” In response, PFC Manning expressly disclaimed any intent to help any enemy of the United States:

[B]ecause it’s public data . . . it belongs in the public domain . . . information should be free . . . it belongs in the public domain . . . *because another state would just take advantage of the information . . . try and get some edge . . . if it’s out in the open . . . it should be a public good.*

See Prosecution Exhibit 30. PFC Manning’s state of mind and professed motive for releasing the charged documents to WikiLeaks belies any argument that PFC Manning had actual knowledge that by giving information to WikiLeaks, he was giving information to the enemy. Indeed, PFC Manning refused to sell the information to another country, even though he could have financially benefitted by doing so, because he did *not* want an enemy of the United States to “take advantage of the information[.]” *Id.* The chat logs show that since PFC Manning did not intend to aid the enemy, he also did not knowingly give intelligence information to the enemy.

11. In the end, the Government’s evidence indicated that PFC Manning spoke, via computer, with two witnesses about the charged offenses as he was committing them or immediately after the fact. During these times, PFC Manning never once mentioned AQ, AQAP, UBL, Adam Gadahn, or any potential enemy that has ever, at any time, been identified by the Government. Based upon the chat logs with Mr. Lamo, it is clear that PFC Manning’s focus was on getting certain information to the American public in order to hopefully spark change and reform. There is, simply put, no evidence before this Court that PFC Manning ever possessed the “general evil intent” that must be shown in order to sustain a finding of guilt under Article 104. At most, the

Government has introduced evidence which might establish that PFC Manning “inadvertently, accidentally, or negligently” gave intelligence to the enemy. This is not sufficient to prove an Article 104 offense. *See United States v. Olson*, 20 C.M.R. 461, 464 (A.B.R. 1955) (Article 104 “does require a general evil intent in order to protect the innocent who may commit some act in aiding the enemy inadvertently, accidentally, or negligently.”). Accordingly, the Article 104 offense must be dismissed.

CONCLUSION

12. In light of the foregoing, the Defense requests this Court grant the requested R.C.M. 917 motion for Charge I (the Article 104 offense).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. E. Coombs', with a long horizontal flourish extending to the right.

DAVID EDWARD COOMBS
Civilian Defense Counsel