

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

**BEFORE**

**E.G. GEISER**

**J.G. BARTOLOTTA**

**J.L. FALVEY**

**UNITED STATES**

**v.**

**Joseph R. BURNHAM  
Private First Class (E-2), U.S. Marine Corps**

NMCCA 200700233

Decided 18 July 2007

Sentence adjudged 13 September 2006. Military Judge: R.G. Johnson. Staff Judge Advocate's Recommendation: LtCol J.R. Woodworth, USMC. Review pursuant to Article 66(c), UCMJ, of Special Court-Martial convened by Commanding Officer, Aviation Maintenance Squadron Two, Marine Aviation Training Support Group-21, Naval Air Station, Pensacola, FL.

LT GREGORY MANZ, JAGC, USN, Appellate Defense Counsel  
LCDR JORDAN A. THOMAS, JAGC, USN, Appellate Government Counsel  
LT JUSTIN E. DUNLAP, JAGC, USN, Appellate Government Counsel

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.

FALVEY, Judge:

A special court-martial composed of a military judge alone convicted the appellant, contrary to his pleas, of conspiracy to commit larceny, unauthorized absence (UA), and larceny (four specifications), in violation of Articles 81, 86, and 121, Uniform Code of Military Justice, 10 U.S.C. §§ 881, 886, and 921. The sentence adjudged by the court-martial and approved by the convening authority included a bad-conduct discharge, confinement for eight months, forfeiture of \$500 pay per month for eight months, and reduction to pay grade E-1.

In three assignments of error, the appellant alleges the following:

- I. THE MILITARY JUDGE ERRED WHEN HE DENIED THE APPELLANT'S MOTION TO DISMISS UNDER ARTICLE 10, UCMJ.

II. THE POST-ARRAIGNMENT WITHDRAWAL OF CHARGES ON 12 JULY 2006 AND THE RE-REFERRAL OF THE SAME CHARGES ON 18 AUGUST 2006 WAS IMPROPER PURSUANT TO RULE FOR COURTS-MARTIAL 604.

III. THE MILITARY JUDGE COMMITTED PLAIN ERROR BY NOT FINDING THAT SPECIFICATIONS 1-4 OF CHARGE IV CONSTITUTED AN UNREASONABLE MULTIPLICATION OF CHARGES.

We have carefully considered the record of trial, the appellant's assignments of error, and the Government's response.<sup>1</sup> We conclude that the appellant's conviction for four specifications of larceny for what amounted to two larcenies was an unreasonable multiplication of charges. This determination requires corrective action on the findings and sentence, which we will take in our decretal paragraph. Following our corrective action, we find that no error materially prejudicial to the appellant's substantial rights remains. Arts. 59(a) and 66(c), UCMJ.

### **Facts**

The appellant was assigned to Marine Aviation Training Support Group TWENTY-ONE (MATSG-21), located at Naval Air Station, Pensacola, Florida. On the evening of 9 May 2006, the appellant and two fellow MATSG-21 Marines, Private (Pvt) RH and Pvt FR, were playing pool at a local pool hall when they decided to go UA together. Realizing that they had no money, they agreed to leave the next day after Pvt RH had money wired to him. The appellant then took Pvt FR to a civilian friend's house to spend the night while he and Pvt RH went to the barracks to get the appellant's belongings. Later that night, the appellant and Pvt RH awakened Pvt FR and told her there had been a change in plans and that they were leaving that night. They soon left Pensacola for Philadelphia in the appellant's truck which was loaded with a large quantity of personal property. At 0400, on 10 May 2006, the appellant's roommate and suitemate realized that someone had entered their rooms during the night and had taken their entertainment systems, movies, videos, a wallet, a ring, a pocket watch, an Armed Forces identification card, and other property. They also noticed that all of the appellant's belongings were gone.

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<sup>1</sup> On 6 June 2007, the appellant moved for oral argument on the above issues. We hereby deny that motion finding "the facts and legal arguments are adequately presented in the briefs and the record, and the decisional process [will] not be significantly aided by oral argument." N.M.Ct.Crim.App. Rule 4-7.2.c.

The appellant, Pvt RH, and Pvt FR only made it as far as Florence, South Carolina. On 11 May 2006, they went to a K-Mart in Florence where local police apprehended Pvt RH and Pvt FR for shoplifting. The appellant, who had been waiting in his truck, was apprehended nearby. In the process of the appellant's apprehension, the contents of his truck were inventoried revealing a large quantity of personal property matching the description of items reported stolen from the appellant's roommate and suitemate. The appellant was returned to military control and was placed in pretrial confinement on 17 May 2006.

The charges against the appellant were first referred to a special court-martial on 12 June 2006. The alleged charges included violations of Articles 86 (UA), 92 (disobeying a lawful order), and 121 (four specifications of larceny). The appellant was arraigned on these charges on 23 June 2006 and a trial date was set for 7 July 2006. Between these two dates, however, the newly assigned trial counsel reviewed the charges and the underlying investigation and determined that additional charges should be considered and that the choice of forum should be reconsidered. On 30 June 2006, the appellant was notified of the Government's intent to have the charges withdrawn from a special court-martial. Apparently convinced by the trial counsel, the convening authority subsequently withdrew and dismissed the charges (12 July 2006) and submitted the newly preferred charges to an Article 32, UCMJ, pretrial investigation (14 July 2006). These charges included the same charges on which the appellant had been arraigned on 23 June 2006, but also included charged violations of Article 81 (two specifications of conspiracy to commit larceny) and Article 129 (two specifications of burglary).

On 31 July 2006, a joint Article 32 pretrial investigation hearing was held, involving the appellant and Pvt RH, his alleged co-conspirator. On 8 August 2006, the Article 32 investigating officer recommended that the charges be referred to a special court-martial. On 18 August 2006, the charges were referred to a special court-martial. These charges were substantially the same as the charges originally referred on 12 June 2006, with the only difference being the addition of a charge of violation of Article 81 (one specification of conspiracy to commit larceny). The appellant was served these charges on 18 August 2006 and requested a trial date of 22 August 2006. The appellant was arraigned on 22 August 2006. During his arraignment, the appellant requested the earliest possible trial date, but the Government was unprepared to proceed because some of its witnesses were not available. Although trial counsel apparently indicated that she would be ready to proceed the week of 28

August 2006, the trial judiciary docket did not permit trial until 11 September 2006. The appellant was tried on 11-13 September 2006.

### **Speedy Trial**

The appellant's first assignment of error alleges that the military judge erred in failing to grant a defense motion to dismiss for denial of the appellant's Article 10, UCMJ, right to a speedy trial. We review the military judge's decision that the appellant was not denied his Article 10, UCMJ, rights *de novo*. *United States v. Cooper*, 58 M.J. 54, 57 (C.A.A.F. 2003). We agree with the military judge that the appellant was not denied his right to a speedy trial under Article 10, UCMJ.

Once an accused is placed in pretrial confinement, immediate measures must be taken to notify him of the charges against him and either bring him to trial or dismiss the charges. Art. 10, UCMJ. Although the Government is required to exercise reasonable diligence in bringing an accused to trial, proof of constant motion is not necessary. *United States v. Kossman*, 38 M.J. 258, 262 (C.M.A. 1993). Moreover, "[b]rief periods of inactivity in an otherwise active prosecution are not unreasonable or oppressive." *Cooper*, 58 M.J. at 58 (quoting *United States v. Tibbs*, 35 C.M.R. 322, 325 (C.M.A. 1965)). Finally, although the conclusion that an accused received a speedy trial is a legal question reviewed *de novo*, "[t]he military judge's findings of fact are given 'substantial deference and will be reversed only for clear error.'" *United States v. Doty*, 51 M.J. 464, 465 (C.A.A.F. 1999)(citations omitted).

In analyzing a speedy trial issue, we are required to consider the following factors: (1) the length of the delay; (2) the reasons for the delay; (3) the assertion of the right to speedy trial; and (4) the existence of prejudice. *United States v. Birge*, 52 M.J. 209, 212 (C.A.A.F. 1999)(citing *Barker v. Wingo*, 407 U.S. 514, 530 (1972)). We will also consider, as did the *Birge* court, the following specific factors: (1) did the appellant enter pleas of guilty, and if so, was it pursuant to a pretrial agreement?; (2) was credit awarded for pretrial confinement on the sentence?; (3) was the Government guilty of bad faith in creating the delay?; and (4) did the appellant suffer any prejudice to the preparation of his case as a result of the delay? *Id.*

After taking evidence and considering the parties' briefs, the military judge concluded that the Government acted with

reasonable diligence to bring this case to trial. Record at 122. It is this conclusion that we review *de novo*. Having carefully examined the record of trial, including the extensively litigated pretrial motion, and applying the foregoing factors, we agree with the military judge that the Government exercised "reasonable diligence" in both bringing charges against the appellant and bringing him to trial. See *Kossman*, 38 M.J. at 262. Accordingly, we do not afford the appellant relief.

As noted above, this same issue was the subject of a pretrial motion and was extensively litigated. Record at 40-124; Appellate Exhibits III and IV. Although the appellant and the Government did not stipulate to a chronology of events, the military judge found the chronologies submitted by each party contained within Appellate Exhibits III and IV (and its addendum), to be consistent with each other and adopted those chronologies as accurate statements of the steps taken to bring the appellant's case to trial. Record at 122. These chronologies list all the events in the progression of the appellant's court-martial, including all of the investigative efforts, collateral actions, and pretrial preparation that occurred during the processing of the charges against the appellant. Review of these chronologies reveals the following significant events:

Date	Significant Event	Elapsed Days	Cum. Elapsed Days
17 May 2006	Pretrial Confinement	--	--
25 May 2006	Request for legal services	8	8
7 Jun 2006	CID investigation received	13	21
7 Jun 2006	Defense 1st speedy trial request	--	--
12 Jun 2006	Charges preferred/referred to SPCM	5	26
23 Jun 2006	Arraignment on charges referred on 12 Jun 2006	11	37
12 Jul 2006	Charges withdrawn/dismissed w/o prejudice with a view toward submission to Art. 32 pretrial investigation	19	56
14 Jul 2006	Charges preferred/referred to Art. 32 pretrial investigation	2	58
17 Jul 2006	CA appoints IO	3	61
31 Jul 2006	IO conducts joint Art. 32 pretrial investigation	14	75
1 Aug 2006	Defense request for a speedy trial (#2)	1	76

8 Aug 2006	IO submits Art. 32 report recommending trial by SPCM	7	83
18 Aug 2006	Charges referred to SPCM	10	93
18 Aug 2006	Defense requests trial date of 22 Aug 2006.	--	93
22 Aug 2006	Arraignment on charges referred on 18 Aug 2006.	4	97
22 Aug 2006	Defense requests to proceed to trial. Government indicates witnesses not present and requests trial to be scheduled for week of 28 Aug 2006. Trial scheduled for 11 Sep 2006 based on Military Judge's next availability.		
11 Sep 2006	Government's Opening Statement/ Begin Government's Case-in-Chief	19	117
13 Sep 2006	Sentence Announced	2	119

In reaching his conclusion that the Government acted with reasonable diligence, the military judge found that the case was "a complicated case . . . that . . . involves numerous actors, numerous alleged offenses that occurred over several states resulting in the alleged apprehension of the accused and the others outside the area of the duty station. . . ." Record at 122. The military judge further found that "there [were] issues as to the respective responsibility of each of the actors for the charged offenses," and "information was being developed over time based in part on the investigation and based in part on interviews with the parties themselves." *Id.* at 123. Moreover, he found that the trial counsel was involved with two other serious cases requiring "extended trips to remote locations." *Id.* Finally, the military judge found no evidence of "game playing . . . or foot dragging by the government." *Id.* at 122. We find the military judge's substantial findings of fact are supported by the record and are not clearly erroneous. We adopt them as our own. *Doty*, 51 M.J. at 465.

There are two periods of delay in the processing of the appellant's case requiring specific comment. The first is the delay between the appellant's pretrial confinement (17 May 2006) and the preferral of charges (12 June 2006), totaling 26 days. The second period of delay is between the first arraignment (23 June 2006) and preferral of new charges (14 July 2006), totaling 21 days.

Regarding the first of these delays, from pretrial confinement to preferral of charges, the complete scope and

nature of his criminal behavior was not entirely obvious when the appellant was initially apprehended and placed in pretrial confinement. The appellant was placed in pretrial confinement on 17 May 2006. The appellant has not asserted that he was denied a hearing as required by RULE FOR COURTS-MARTIAL 305(i), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2005 ed.), and an opportunity to challenge the basis for his confinement. On 25 May 2006, the appellant's command submitted a request for legal services requesting charges be drafted for referral to a special courts-martial. Finally, on 12 June 2006, charges were preferred and referred to a special courts-martial, and a copy of the sworn charges was served on the appellant. Although "not a model of processing a case," Record at 122, proof of constant motion is not necessary and "[b]rief periods of inactivity in an otherwise active prosecution are not unreasonable or oppressive.'" *Cooper*, 58 M.J. at 58 (citations omitted).

Regarding the second of these delays, from the first arraignment to preferral of new charges, the military judge found that "new evidence was developed . . . of potential obstruction [of justice] by the accused . . . whether they played out or not, the allegations were before the trial counsel and required analysis on the part of the trial counsel and the convening authority. . . ." Record at 123.

The overall processing of the appellant's charges reflects the evolving nature of the information available and the eventual realization that the appellant's involvement may have been deeper than first thought, prompting an appropriate reconsideration of the charges and forum through submission of the charges to an Article 32 pretrial investigation. Moreover, resolution of the charges against the appellant was complicated by the parallel processing of charges against the others involved.

We also note that the Government proceeded expeditiously once the original charges were withdrawn and new charges preferred, and the appellant was fully credited for pretrial confinement served. Other than pretrial confinement, the appellant has not alleged, nor do we find, any specific prejudice resulting from the complained of delay.

We conclude that the Government's movement of this matter toward trial was reasonably diligent. Moreover, we cannot find any evidence to support a claim that the appellant was prejudiced in any way by the timetable on which this case proceeded. Therefore, we find no violation of Article 10, UCMJ, and decline to grant relief.

## Improper Withdrawal

The appellant's second assignment of error alleges that the post-arraignment withdrawal of charges on 12 July 2006 and the re-referral of the same charges on 18 August 2006 was improper pursuant to R.C.M. 604. R.C.M. 604(a) provides that the convening authority may, for any reason, withdraw charges any time before findings are announced. Under R.C.M. 604(b), charges which have been withdrawn may be referred to another court-martial "unless withdrawal was for an improper reason." In other words, charges may be referred to another court-martial if the withdrawal was for a proper reason. In this context, our superior court has interpreted "proper" to mean "a legitimate command reason that does not 'unfairly' prejudice an accused in light of the particular facts of a case." *United States v. Underwood*, 50 M.J. 271, 276 (C.A.A.F. 1999).

In *United States v. Koke*, 32 M.J. 876 (N.M.C.M.R. 1991), *aff'd*. 34 M.J. 313 (C.M.A. 1992), we had the opportunity to discuss R.C.M. 604(b) and the nature of a proper referral of previously withdrawn charges. We noted that, "[a] convening authority may rerefer charges following withdrawal only where there was good cause for the withdrawal." *Koke*, 32 M.J. at 880 (citations omitted). In determining whether good cause existed, "[t]he stage of the trial at which withdrawal occurs is important" and "good cause in the context of R.C.M. 604(b) is a sliding standard that becomes more difficult as the stages of the trial progress." *Id.* By way of illustration, *Koke* provides that, "[a]fter arraignment, . . . a case may be withdrawn . . . if the convening authority receives additional charges and a higher level of court-martial . . . [is] contemplated." *Id.* Recognizing that the decision to withdraw and re-refer charges is within the convening authority's discretion, *Koke* provides a non-exclusive list of factors indicative of whether a withdrawal and re-referral after arraignment is for a proper reason. *Id.* at 881. We can fairly summarize these factors as requiring consideration of whether there is "a legitimate command reason that does not 'unfairly' prejudice an accused in light of the particular facts of a case." *Underwood*, 50 M.J. at 276.

In this case, the charges were withdrawn to permit a "reconsideration of the seriousness of the charges." Record at 3. As noted above, after the appellant's original arraignment, the newly assigned trial counsel reviewed the charges and the underlying investigation, and concluded that additional charges should be considered and the choice of forum reconsidered. Apparently trial counsel was able to convince the convening

authority to reconsider the seriousness of the charges and submit them to an Article 32 pretrial investigation. The convening authority eventually referred substantially the same charges to a special court-martial.

Our review of the record of trial fails to reveal any indication that the Government was acting in bad faith or was attempting to interfere with the appellant's exercise of any rights. The appellant mischaracterizes the Government's actions as the result of sloppy drafting and a difference of opinion between the initial and successor trial counsel regarding charging decisions. Instead, the Government's actions seem to be driven by its intent to ensure that all appropriate charges were brought against the appellant in the appropriate forum. Such intent is not improper.

The appellant notes that the Discussion of R.C.M. 604 enumerates various reasons for proper re-referral of charges withdrawn before arraignment including "receipt of additional charges, . . . [and] reconsideration by the convening authority . . . of the seriousness of the offenses." He further notes that the Discussion to R.C.M. 604 provides no similar enumeration for charges withdrawn after arraignment and merely indicates that charges "may be referred to another court-martial under some circumstances. For example, it is permissible to refer charges which were withdrawn pursuant to a pretrial agreement if the accused fails to fulfill the terms of the agreement." R.C.M. 604, Discussion. The appellant argues that the lack of an enumeration of reasons justifying re-referral of charges withdrawn after arraignment should be read as to not permit re-referral for any of the reasons listed for charges withdrawn before arraignment. We disagree. It is clear that the enumerated list justifying pre-arraignment withdrawal is merely illustrative and non-exclusive and that other reasons may be proper under the circumstances. Similarly, the propriety of withdrawal and re-referral after arraignment is circumstance dependent and not limited to the single example listed.

Finally, we note that the appellant asserts and we find no specific prejudice from the withdrawal and re-referral of charges. The charges remained before a special court-martial. Despite the delay associated with the withdrawal and re-referral, the appellant did not serve any additional period of confinement. Finally, there is no evidence that the appellant's ability to present an appropriate defense was prejudiced. Record at 124. We also note that the appellant did not object to the withdrawal and re-referral of his charges at trial.

In our view, the convening authority's decision to withdraw the charges to permit reconsideration of both the nature and disposition of the charges against the appellant is "a legitimate command reason" and, under the circumstances of this particular case, it did not "unfairly prejudice" the appellant.

#### **Unreasonable Multiplication of Charges (UMC)**

In the appellant's third assignment of error, he asserts that the military judge committed plain error by not finding that the four specifications of Charge IV constituted an unreasonable multiplication of charges. The appellant argues that the military judge should have found Specifications 1-4 of Charge IV were an unreasonable multiplication of charges because the alleged larcenies all occurred at the same time and in the same barracks suite. The appellant avers that this court should consolidate Specifications 1 through 4 of Charge IV into a single specification and reassess the sentence.

What is substantially one transaction should not be made the basis for UMC. R.C.M. 307(c)(4), Discussion. In determining whether there is UMC, this court considers five factors: (1) Did the accused object at trial; (2) Are the charges aimed at distinctly separate criminal acts; (3) Do the charges misrepresent or exaggerate the appellant's criminality; (4) Do the charges unreasonably increase the appellant's punitive exposure; and, (5) Is there any evidence of prosecutorial overreaching or abuse in the drafting of the charges and specifications? *United States v. Quiroz*, 57 M.J. 583, 585-86 (N.M.Ct.Crim.App. 2002)(*en banc*), *aff'd*, 58 M.J. 183 (C.A.A.F. 2003)(summary disposition).

In considering these factors, we grant appropriate relief if we find "the 'piling on' of charges so extreme or unreasonable as to necessitate the invocation of our Article 66(c), UCMJ, authority (to affirm only such findings of guilty and so much of the sentence as we find correct in law and fact and determine, on the basis of the entire record, should be approved)." *Id.* at 585; *see also United States v. Foster*, 40 M.J. 140, 144 n.4 (C.M.A. 1994).

Applying the *Quiroz* factors to the facts of this case, we first find that the appellant did not object at trial to an unreasonable multiplication of charges. While objections not made at trial are usually deemed waived, R.C.M. 905(e), this court has a statutory obligation to affirm only such findings of guilty and the sentence it believes, on the basis of the entire

record, should be approved. *United States v. Joyce*, 50 M.J. 567, 568-69 (N.M.Ct.Crim.App. 1999)(citing Art. 66(c), UCMJ).

Regarding whether the specifications are aimed at distinctly separate criminal acts, the appellant correctly notes that, "[w]hen a larceny of several articles is committed at substantially the same time and place, it is a single larceny even though the articles belong to different persons." MANUAL FOR COURTS-MARTIAL, UNITED STATES (2005 ed.), Part IV, ¶46(c)(1)(h)(ii). Review of the record of trial reveals that on or about 10 May 2006, the appellant entered adjoining barracks rooms (161 and 163) and stole property of various individuals and the U.S. Government within minutes of each other. For these actions, the appellant was convicted of four separate larcenies broken down by the victim of the crime. The appellant argues that these actions should have been charged as a single specification of larceny as the "suite" from which the property was taken was substantially the same place. The Government concedes that the property taken from each individual barracks room should have been charged within a single specification, and, therefore, that Specifications 1 and 2 should have been consolidated into a single specification and Specifications 3 and 4 should have been consolidated into a single specification. The Government disagrees, however, with the characterization of the adjoining barracks rooms as the same place for purposes of Article 121. Although these rooms were attached by a common bathroom, each barracks room had its own private entry door which could be locked and windows facing the outer walkway, as well as its own room number designation. Moreover, there was evidence adduced at trial that indicates that the appellant and/or his co-conspirator gained entry to the barracks rooms to commit the larcenies through these windows.

Third, as charged, the four specifications do somewhat exaggerate the appellant's criminality. The appellant was convicted of four separate larcenies broken down by the victim of the crime, however, more appropriately, he should have been convicted of two larcenies broken down by location. Some argument can be made that these larcenies also occurred at "substantially" the same time. We disagree. It appears each barracks room was entered separately through its window facing the outer walkway. Before entering each room, the appellant had the opportunity to reflect on his actions and choose to refrain. He chose instead to commit each criminal act. In our view, this brief passage of time and opportunity to reflect justifies treating the appellant's conduct as two separate larcenies. Finally, there is no indication of prosecutorial bad faith.

Accordingly, we find the appellant's conviction for four specifications of larceny to be an unreasonable multiplication of charges. When a single larceny is improperly charged as multiple specifications, the appropriate remedy is consolidation of the specifications and reassessment of the sentence. We will take corrective action below.

### Conclusion

In view of the above, we find the appellant's conviction of four specifications of violations of Article 121, UCMJ, to be an unreasonable multiplication of charges. We hereby consolidate Specifications 1 and 2 of Charge IV into a single specification,<sup>2</sup> and Specifications 3 and 4 of Charge IV into a single specification.<sup>3</sup> Accordingly, the supplemental promulgating order should reflect that the appellant stands convicted, *inter alia*, of two specifications of violations of Article 121, UCMJ. As corrected, we find the approved findings of guilty correct in law and fact and they are affirmed. Arts. 59(a) and 66(c), UCMJ.

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<sup>2</sup> "In that Private First Class Joseph R. Burnham, U.S. Marine Corps, Aviation Maintenance Squadron Two, Marine Aviation Training Support Group 21, Naval Air Station, Pensacola, Florida, on active duty, did, at or near Pensacola, Florida, on or about 10 May 2006, steal one (1) U.S. Armed Forces Identification Card, bearing the likeness of Private First Class Brandon L. Regan, U.S. Marine Corps, military property of the the U.S. Government of a value less than \$500.00, U.S. currency, one (1) Navy Federal Credit Union Share Check Card, one (1) Xbox 360, one (1) Xbox 360 wireless controller, one (1) black leather identification card holder, and one (1) social security card, of a combined value of about \$385.00, U.S. currency, the property of Private First Class Brandon L. Regan, U.S. Marine Corps."

<sup>3</sup> "In that Private First Class Joseph R. Burnham, U.S. Marine Corps, Aviation Maintenance Squadron Two, Marine Aviation Training Support Group 21, Naval Air Station, Pensacola, Florida, on active duty, did, at or near Pensacola, Florida, on or about 10 May 2006, steal one (1) Sony Playstation Portable, one (1) 512-megabyte memory stick media card, two (2) black, Allison Fischer Series pool cues, one (1) black pool cue case, of a combined value of about \$635.00, U.S. currency, the property of Private First Class Antony R. Nasser, U.S. Marine Corps, and one (1) Playstation 2 power cord, of a value of about \$20.00, U.S. currency, the property of Lance Corporal Brett M. Crossland, U.S. Marine Corps."

Applying the principles of *United States v. Cook*, 48 M.J. 434 (C.A.A.F. 1998), *United States v. Peoples*, 29 M.J. 426 (C.M.A. 1990), and *United States v. Sales*, 22 M.J. 305 (C.M.A. 1986), we reassess and affirm the sentence as adjudged and approved below.

Senior Judge GEISER and Judge BARTOLOTTA concur.

For the Court

R.H. TROIDL  
Clerk of Court