

**UNITED STATES NAVY-MARINE CORPS  
COURT OF CRIMINAL APPEALS  
WASHINGTON, D.C.**

**Before  
W.L. RITTER, J.F. FELTHAM, E.S. WHITE  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**KRYSTAL A. ESPOSITO  
AVIATION BOATSWAIN'S MATE AIRMAN RECRUIT (E-1), U.S. NAVY**

**NMCCA 200700348  
SPECIAL COURT-MARTIAL**

**Sentence Adjudged:** 30 November 2006.

**Military Judge:** CAPT Michael McGregor, JAGC, USN.

**Convening Authority:** Commanding Officer, USS GEORGE  
WASHINGTON (CVN 73).

**Staff Judge Advocate's Recommendation:** LCDR M.A. Larrea,  
JAGC, USN.

**For Appellant:** LT Darrin MacKinnon, JAGC, USN.

**For Appellee:** Capt Geoffrey Shows, USMC.

**11 March 2008**

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**OPINION OF THE COURT**  
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**AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.**

WHITE, Senior Judge:

A military judge sitting as a special court-martial convicted the appellant, contrary to her pleas, of making a false official statement and larceny, in violation of Articles 107 and 121, Uniform Code of Military Justice, 10 U.S.C. §§ 907 and 921.<sup>1</sup> The appellant was sentenced to ten months confinement, forfeiture of \$800 pay per month for ten months, and a bad-conduct

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<sup>1</sup> The appellant was acquitted of a second specification of both false official statement and larceny.

discharge. The convening authority approved the sentence as adjudged.

After considering the record, the appellant's ten assignments of error<sup>2</sup> and brief, the Government's answer, and the appellant's reply, we conclude the findings and sentence are correct in law and fact, and no error materially prejudicial to the substantial rights of the appellant was committed. Arts. 59(a) and 66(c), UCMJ.

## I. Background

The appellant was assigned to sea duty on board USS GEORGE WASHINGTON (CVN 73). Shortly after reporting on board, the ship's Personnel Office called the appellant in to update her Record of Emergency Data, NAVPERS 1070/602, commonly referred to as a "Page 2". In the course of the appellant's visit to the Personnel Office, it appeared she might be entitled to Basic Allowance for Housing (BAH) at the "without dependents" rate. She had indicated on her Page 2 that she was married to an active duty service member, with an address in Virginia Beach, Virginia. A military records check confirmed her husband was also assigned to sea duty. Under governing regulations, a service member married to another service member is entitled to BAH at the "without dependents" rate when both are E-5 or below, both are permanently assigned to a ship or afloat squadron, neither has

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<sup>2</sup> The appellant's ten assignments of error are:

- I. There is no underlying crime. AR Esposito could not be found guilty under the facts of this case of making a false official statement to receive BAH funds that she was entitled to.
- II. The Government failed to prove beyond a reasonable doubt that AR Esposito made a false official statement by signing the Page 13.
- III. AR Esposito did not intend to deceive when she purportedly "certified" her address.
- IV. The Page 13 entry may not trigger criminal sanctions for a false official statement because it does not even purport to "certify" the address.
- V. The "obsolete" Page 13 document was used arbitrarily against AR Esposito based on an administrator's "hunch" that something was "funny" about her address, violating her right to equal protection and due process.
- VI. The "obsolete" and poorly written Page 13 document cited the wrong Navy BAH policy and was void-for-vagueness.
- VII. The Page 13 Entry was a contract between the Government and AR Esposito in which rules of contract construction govern including the construing ambiguities against the party preparing the contract and the admissibility of contemporaneous comments of administrative personnel as to the meaning of ambiguous terms and the intent of the parties.
- VIII. The military judge erred when he denied the defense motion to suppress the Page 13 entry because it violated Art. 31(b) UCMJ and established testimonial hearsay in violation of *Crawford v. Washington*.
- IX. The Government did not prove beyond a reasonable doubt that AR Esposito stole money from her shipmates by transferring their funds into her NFCU account.
- X. The military judge erred when he permitted the introduction of bank records without proper foundation.

dependents, and the member does not reside in government quarters. See Appellate Exhibit X.

While the appellant was in the Personnel Office, the clerk assisting her brought a question to the supervisory first class petty officers in the office. One of them thought the address on the appellant's Page 2 looked funny because it included a suite number. He had also heard unspecified rumors about the appellant that caused him to be suspicious of the address. He advised the clerk to have the appellant execute an Administrative Remarks page, NAVPERS 1070/613, commonly referred to as a "Page 13," as a secondary means of verifying the appellant's address and eligibility for BAH. Subsequently, the appellant executed the Page 13 containing the false official statement of which she is convicted. That Page 13 includes, *inter alia*, the statement, "I certify that I have met the following criteria: . . . B. Share the same household. . . ." In context, this refers to sharing a household with her military spouse. The document also contains her address, and a statement the member maintains a residence in the Norfolk area. Prosecution Exhibit 2. This Page 13 was filed in the appellant's service record. No one in the Personnel Office reported the appellant to the authorities for any offense.

At trial, the appellant moved to suppress the Page 13 on the grounds she was not advised of her Article 31(b), UCMJ, rights before being asked to execute that document. The military judge denied the motion, finding the Personnel Office staff had not acted for a law enforcement purpose, but for the legitimate administrative purposes of verifying and documenting the appellant's entitlement to BAH.

Independent of the false official statement charge, the appellant was also convicted of larceny of \$2,256.00 in currency from the Navy Federal Credit Union (NFCU). The evidence established someone called the NFCU customer service line on various occasions, and directed transfers of money from the NFCU accounts of two Sailors acquainted with the appellant into the appellant's NFCU account. The evidence also established the sort of personal information NFCU operators are trained to elicit to identify callers, and various ways by which the appellant was, or might be, familiar with such personal information about her two shipmates whose accounts were debited.

## **II. Discussion**

### **A. Assignments of error related to the larceny**

The appellant argues the military judge erred in admitting NFCU transaction records because they lacked adequate foundation as business records. This allegation is without merit. We review a military judge's decision to admit evidence over defense objection for abuse of discretion. *United States v. Mason*, 59 M.J. 416, 420 (C.A.A.F. 2004)(citing *United States v. Ayala*, 43 M.J. 296, 298 (C.A.A.F. 1995)). In case of a business record,

it is sufficient if the witness laying the foundation is generally familiar with the entity's record-keeping system. *United States v. Garces*, 32 M.J. 345, 347-48 (C.M.A. 1991); *United States v. Duncan*, 30 M.J. 1284, 1288 (N.M.C.M.R. 1990). Here, the witness was clearly familiar with, and described, the process by which the information in the NFCU database came to be recorded, how he had produced the exhibits from that database, and that the exhibits were an accurate reflection of the information in the database. His testimony clearly established this information was collected at or near the time of the events recorded, by a person with knowledge, in the course of a regularly conducted business activity, and that it was the regular practice of the business to make such a record. These exhibits were properly admitted.

The appellant also argues the evidence is factually insufficient to prove her guilt, beyond a reasonable doubt, of larceny. The test for factual sufficiency is whether, after weighing all the evidence in the record of trial and recognizing we did not see or hear the witnesses as did the trial court, this court is convinced of the appellant's guilt beyond a reasonable doubt. *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987); *see also* Art. 66(c), UCMJ. A "reasonable doubt" is not a mere possible or fanciful doubt, but rather "a doubt that would cause a reasonable person to hesitate to act." *Victor v. Nebraska*, 511 U.S. 1, 20 (1994)(citing *Holland v. United States*, 348 U.S. 121, 140 (1954)). After reviewing the record, we are satisfied, beyond a reasonable doubt, that the appellant is guilty of larceny.

#### **B. Assignments of error related to the false official statement**

The appellant argues the military judge erred by failing to suppress PE 2, the Page 13, because the statement it contains was elicited in violation of her rights under Article 31(b), UCMJ, and by admitting it without proper authentication.<sup>3</sup>

As noted above, we review the military judge's decision to admit evidence over defense objection for abuse of discretion. Likewise, we review the denial of a motion to suppress evidence for abuse of discretion. *United States v. Rodriguez*, 60 M.J. 239, 246 (C.A.A.F. 2004)(citing *United States v. Monroe*, 52 M.J. 326, 330 (C.A.A.F. 2000)). "In reviewing a ruling on a motion to suppress, we consider the evidence in the light most favorable to the prevailing party." *United States v. Reister*, 44 M.J. 409, 413 (C.A.A.F. 1996)).

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<sup>3</sup> The appellant also argues that PE 2 was erroneously admitted because it contained testimonial hearsay prohibited by *Crawford v. Washington*, 541 U.S. 36 (2004). This argument is completely without merit. *Crawford* concerns a criminal defendant's right to confront the witnesses against her. It has no bearing on the admissibility of the accused's own statement.

We concur with the military judge's factual finding that the Personnel Office staff did not have a law enforcement purpose in requesting that the appellant execute a Page 13, and that their purpose was purely administrative. We also concur with his conclusion that the statement on the Page 13 was not elicited in violation of the appellant's Article 31(b) rights.

We are further satisfied that PE 2, the Page 13, was properly authenticated. MILITARY RULE OF EVIDENCE 901(b)(3), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2005 ed.) permits the trier of fact, in this case the military judge, to authenticate an exhibit by reference to authenticated specimens of handwriting, as was done here. The appellant presents no authority for the asserted proposition that only documents *already* admitted on other grounds may be compared. Further, it is completely acceptable to obtain handwriting and signature exemplars for comparison from public records and official files. See *United States v. Mangan*, 575 F.2d 32, 41-42 (2d Cir. 1978); *Scharfenberger v. Wingo*, 542 F.2d 328, 336-37 (6th Cir. 1976).

A number of the appellant's other assignments of error amount to claims, variously stated, that the evidence was legally and factually insufficient to find her guilty, beyond a reasonable doubt, of making a false official statement.<sup>4</sup>

As noted above, the test for factual sufficiency is whether, after weighing all the evidence in the record of trial and recognizing we did not see or hear the witnesses as did the trial court, this court is convinced of the appellant's guilt beyond a reasonable doubt. *Turner*, 25 M.J. at 325; *see also* Art. 66(c), UCMJ. The test for legal sufficiency is whether, after reviewing the evidence in the light most favorable to the Government, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *United States v. Thompson*, 50 M.J. 257, 258 (C.A.A.F. 1999); *Turner*, 25 M.J. at 325. After reviewing the record, we are satisfied that the evidence in this case is both legally and factually sufficient to convict the appellant of making a false official statement.

There is strong circumstantial evidence the appellant signed PE 2. Additionally, the testimony of the petty officers from the ship's Personnel Office established the officiality of the statement, and the testimony of the appellant's husband established the falsity of the statement that the appellant shared a household. Finally, the evidence concerning the

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<sup>4</sup> As part of that argument, the appellant asserts that, because she was entitled to BAH (an assertion that is far from clear), any false statement on the Page 13 was not material. This argument fails because materiality of the false statement is not an element of Article 107. *United States v. Solis*, 46 M.J. 31, 34 (C.A.A.F. 1997)(citing *United States v. Hutchins*, 18 C.M.R. 46, 51 (C.M.A. 1955)).

circumstances surrounding the making of this statement proved the appellant's intent to deceive.

We have considered the remainder of the appellant's assignments of error as well, and find them to be without merit. See *United States v. Matias*, 25 M.J. 356, 361 (C.M.A. 1987).

### **III. Conclusion**

We affirm the findings and sentence, as approved by the convening authority.

Chief Judge RITTER and Senior Judge FELTHAM concur.

For the Court

R.H. TROIDL  
Clerk of Court