

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

**Before
E.E. GEISER, J.K. CARBERRY, P.D. KOVAC
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**DAVID R. MORGAN
CHIEF STOREKEEPER (E-7), U.S. NAVY**

**NMCCA 200900557
GENERAL COURT-MARTIAL**

Sentence Adjudged: 14 July 2009.

Military Judge: CAPT Bruce W. MacKenzie, JAGC, USN.

Convening Authority: Commander, Submarine Group TWO, Naval Submarine Base New London, Groton, CT.

Staff Judge Advocate's Recommendation: CDR K.J. Golden, JAGC, USN; **Addendum:** CDR Barry L. Harrison, JAGC, USN.

For Appellant: Capt Jeffrey Liebenguth, USMC.

For Appellee: CDR Monique A.S. Allen, JAGC, USN; LT Brian C. Burgtorf, JAGC, USN.

30 March 2010

OPINION OF THE COURT

**IN ACCORDANCE WITH RULE 18.2, NMCCA RULES OF PRACTICES AND PROCEDURE, THIS
OPINION DOES NOT SERVE AS PRECEDENT.**

PER CURIAM:

A military judge sitting as a general court-martial convicted the appellant, pursuant to his pleas, of willful dereliction of duty, making a false official statement, willfully losing military property, stealing and wrongfully appropriating military property, and willfully altering a public record in violation of Articles 92, 107, 108, 121, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 892, 907, 908, 921, and 934.¹ The

¹ Charge III alleged the appellant "willfully" suffered the loss of "four 8GB Quickdrive USB 2.0 Flash Drives, among other various property." The other various properties were detailed in subparagraphs 3a thru 3p of a stipulation

approved sentence was confinement for 24 months, reduction to pay grade E-1, total forfeiture of pay and allowances, a fine of \$25,000.00, and a bad-conduct discharge.

The appellant asserts two assignments of error. First, he argues the \$25,000.00 fine was inappropriately severe because he was not unjustly enriched. A related second assignment of error is that the \$25,000.00 fine was grossly disproportionate to the gravity of his offenses, in violation of the excessive fines clause of the Eighth Amendment.

After carefully considering the record of trial and the pleadings of the parties, we conclude that the findings and sentence are correct in law and fact and that no error materially prejudicial to the substantial rights of the appellant was committed. See Arts. 59(a) and 66(c), UCMJ.

\$25,000.00 Fine

At the time of his offenses, the appellant was the chief storekeeper onboard USS HARTFORD (SSN 768). His duties included, *inter alia*, responsibility to properly enter requisition data into a computerized supply ordering/tracking system. His offenses involved the unauthorized purchase of various pieces of military property, including computer flash drives, aviator watches, divers' watches, laptop computers and LCD monitors, using command supply funds. His offenses included the falsification or omission of required data entries into the computerized supply system and failing to properly inventory and account for Navy property entrusted to his care. He specifically under-valued and mislabeled certain electronic items as "mattresses" or "KEM WIPES;" in order to avoid detection. Record at 39, 109.

The discussion section associated with RULE FOR COURTS-MARTIAL 1003(b)(3), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.), advises that fines should normally not be adjudged unless the accused was unjustly enriched by his offense. While a certain amount of unjust personal enrichment did occur in this case - a stolen watch and a wrongfully appropriated computer - such unjust enrichment is not a legal prerequisite to the imposition of a fine. *United States v. Stebbins*, 61 M.J. 366, 370 (C.A.A.F. 2005).

We have considered the record of trial, including the evidence of the appellant's prior military service and personal

of fact (Prosecution Exhibit 1). The military judge determined that only subparagraphs 3a, 3h, 3i, 3j, 3k, and 3m had been "willfully" lost. Record at 125. The remainder were "negligently" lost and considered as matters in aggravation. Record at 151. The military judge entered a general finding of guilty to Charge III but did not specifically announce his exceptions and substitutions with regard to PE 1. We find that this was not error and therefore no specific remedial action on our part is necessary.

circumstances as well as the nature and extent of the appellant's offenses. The gravamen of the appellant's offenses involved fiscal matters. Specifically, the appellant abused his position of financial trust and responsibility as the chief storekeeper onboard USS HARTFORD, resulting in the loss, theft, or wrongful appropriation of over \$50,000.00 worth of military property. His misconduct was exacerbated by the fact that he falsified military supply records and subsequently lied to an investigator to cover up his malfeasance. Record at 51, 107-17, 125; PE 1.

We find, therefore, that a fine of \$25,000.00 was not inappropriately severe for this offender and his offenses. See *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988); *United States v. Snelling*, 14 M.J. 267, 268, 14 M.J. 267, 268 (C.M.A. 1982); *United States v. Mamaluy*, 27 C.M.R. 176, 180-81 (C.M.A. 1959). We further find that the fine imposed did not violate the Eighth Amendment's prohibition against "excessive...fines." See *United States v. Bajakajian*, 524 U.S. 321, 337 (1998); *Stebbins*, 61 M.J. at 372-74.

Conclusion

The findings and approved sentence are affirmed.

For the Court

R.H. TROIDL
Clerk of Court