

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

**Before  
J.A. MAKSYM, L.T. BOOKER, J.R. PERLAK  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**TODD A. SOUCIE  
CORPORAL (E-4), U.S. MARINE CORPS**

**NMCCA 200900687  
SPECIAL COURT-MARTIAL**

**Sentence Adjudged:** 2 September 2009.

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

**Convening Authority:** Commanding Officer, Weapons Training Battalion, Training Command, Quantico, VA.

**Staff Judge Advocate's Recommendation:** LtCol J.L. Gruter, USMC.

**For Appellant:** Capt Jeffrey Liebenguth, USMC.

**For Appellee:** CDR Paul Bunge, JAGC, USN; LT Brian Burgtorf, JAGC, USN.

**9 September 2010**

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

PER CURIAM:

A special court-martial, composed of a military judge sitting alone, convicted the appellant, pursuant to his pleas, of one specification of making and uttering a check with the intent to deceive and one specification of impersonating an official in violation of Articles 123a and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 923a and 934.<sup>1</sup> The military judge

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<sup>1</sup> The Government withdrew, with prejudice, one specification of violating Article 134, UCMJ. Record at 97.

sentenced the appellant to a reduction to pay grade E-1, a fine of \$10,000.00, confinement for ten months, and a bad-conduct discharge. The convening authority approved the sentence as adjudged and, except for the bad-conduct discharge, ordered the sentence executed.

The appellant alleged six errors on appeal and this Court specified an additional issue.<sup>2</sup> The Government concedes that Charge I must be set aside because it fails to state an offense under Article 123a, UCMJ. Government Brief of 29 Mar 2010 at 11. We agree and proceed to evaluate the sole remaining specification of impersonating an official of the Government of the United States.

After carefully considering the record of trial, oral argument, and the pleadings of the parties, we conclude that the military judge erred in failing to adequately inquire into the prospective defense of duress.

### Providence Inquiry

We review a military judge's decision to accept a guilty plea for an abuse of discretion. *United States v. Shaw*, 64 M.J. 460, 462 (C.A.A.F. 2007) (citing *United States v. Eberle*, 44 M.J.

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<sup>2</sup> I. APPELLANT PLED GUILTY TO MAKING AND UTTERING A BAD CHECK. MAKING A CHECK MEANS TO WRITE AND SIGN A CHECK. UTTERING A CHECK MEANS TO TRANSFER OR OFFER TO TRANSFER A CHECK TO ANOTHER. APPELLANT DID NOT SIGN THE CHECK AND ONLY FAXED A COPY OF THE CHECK TO ANOTHER. DID HE MAKE AND UTTER A CHECK?

II. UNDER *UNITED STATES V. WADE*, USING A BAD CHECK WITH INTENT TO DECEIVE AND FOR THE PURPOSE OF OBTAINING A THING OF VALUE IS NOT AN ARTICLE 123A, UCMJ, OFFENSE. THE MILITARY JUDGE ACCEPTED APPELLANT'S GUILTY PLEA TO VIOLATING ARTICLE 123A, UCMJ, FOR USING A BAD CHECK WITH INTENT TO DECEIVE AND FOR THE PURPOSE OF OBTAINING A THING OF VALUE. DID THE MILITARY JUDGE ABUSE HIS DISCRETION?

III. APPELLANT PLED GUILTY TO HAVING AN INTENT TO DEFRAUD. INTENT TO DEFRAUD REQUIRES SPECIFIC INTENT TO OBTAIN A THING OF VALUE. THE MILITARY JUDGE FOUND THAT A REAL ESTATE AGENT'S CONTINUATION OF THE PROCUREMENT PROCESS FOR A HOME TO BE A THING OF VALUE, AND THAT APPELLANT HAD SPECIFIC INTENT TO DEFRAUD THE AGENT OF IT. DID THE MILITARY JUDGE ABUSE HIS DISCRETION?

IV. APPELLANT PLED GUILTY TO IMPERSONATING GOVERNMENT OFFICIALS. GOVERNMENT OFFICIALS ARE THOSE ELECTED OR APPOINTED TO STATUTORILY CREATED OFFICES. DID APPELLANT IMPERSONATE GOVERNMENT OFFICIALS WHEN HE MERELY PRETENDED TO BE VETERANS AFFAIRS EMPLOYEES?

V. APPELLANT MISREPRESENTED TO A REAL ESTATE AGENT THAT HE HAD THE MONEY TO BUY A HOME. THIS MISREPRESENTATION BROUGHT NO BENEFIT TO APPELLANT AND CAUSED NO HARM TO THE AGENT OR THE SELLER SHE REPRESENTED. IS A \$10,000 FINE, A BAD-CONDUCT DISCHARGE, AND TEN MONTHS CONFINEMENT AN INAPPROPRIATELY SEVERE SENTENCE UNDER SUCH CIRCUMSTANCES?

VI. IF A FINE IS GROSSLY DISPROPORTIONATE TO THE GRAVITY OF AN ACCUSED'S OFFENSES, IT VIOLATES THE EIGHTH AMENDMENT'S EXCESSIVE FINES CLAUSE. IS APPELLANT'S \$10,000 FINE GROSSLY DISPROPORTIONATE TO THE GRAVITY OF HIS OFFENSES CONSIDERING HIS CONDUCT DID NOT RESULT IN ANY MONETARY OR PHYSICAL DAMAGES OR BRING HIM ANY BENEFIT?

Court Specified: WHETHER THE MILITARY JUDGE ERRED IN ACCEPTING THE APPELLANT'S GUILTY PLEA WITHOUT INQUIRING INTO THE PROSPECTIVE DEFENSE OF DURESS, WHICH MAY HAVE BEEN RAISED WHEN THE APPELLANT STATED DURING PROVIDENCY: "I FOUND OUT [MY GIRLFRIEND] WAS PREGNANT AND SHE WAS THREATENING TO GET RID OF THE BABY IF I DIDN'T PURCHASE THIS HOUSE FOR HER."

374, 375 (C.A.A.F. 1996)). A decision to accept a guilty plea will be set aside if there is a substantial basis in law or fact for questioning the guilty plea. *United States v. Inabinette*, 66 M.J. 320, 322 (C.A.A.F. 2008). Should an accused establish facts raising a possible defense, the military judge has a duty to inquire further and resolve those matters inconsistent with the plea or reject the plea. *United States v. Phillippe*, 63 M.J. 307, 310 (C.A.A.F. 2006); see Art. 45(a), UCMJ. A failure to do so constitutes a substantial basis in law and fact for questioning the guilty plea. See *Phillippe*, 63 M.J. at 311. However, "[a] 'mere possibility' of such a conflict is not a sufficient basis to overturn the trial results." *Shaw*, 64 M.J. at 462.

The question this court faces is whether or not the appellant's statements raised a possible defense of duress and, in so doing, undermined the providency of his plea. We find that the appellant's statements to the military judge raised a possible defense which, under the facts of this case, mandated further inquiry by the military judge prior to acceptance of the plea.

During the providence inquiry, the appellant told the military judge that he "wasn't thinking straight at all" when he committed the offense, and he confirmed that his actions were undertaken in order "to buy time." Record at 63. Moments later, he told the military judge "I found out [my girlfriend] was pregnant and she was threatening to get rid of the baby if I didn't purchase this house for her." *Id.* The military judge inquired further and asked, "She's holding you hostage. I mean, not literally, emotionally she was holding you hostage; is that right?" *Id.* The appellant responded, "yes, sir"; no further inquiry was made into the appellant's statement or his response to the military judge's question. *Id.* These statements and responses as a whole raise the specter of the possible defense of duress or coercion -- an affirmative defense recognized in RULE FOR COURTS-MARTIAL 916(h), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.).

The appellant's statements and responses advanced some of the elements required in order to establish the affirmative defense of duress or coercion. These statements indicate that: (1) the appellant was under apprehension, fearful of harm to his unborn child, and (2) that he committed his acts in order to buy more time, indicating some immediacy in his mind as to the prospective threat. Whether the appellant's apprehension was reasonable, the harm immediate, or the opportunity existed to avoid committing the act are questions that required additional inquiry from the military judge. Minus additional facts to resolve the conflict, we can only speculate and, as such, cannot be confident that the appellant was not under duress or otherwise coerced into committing the acts to which he pled guilty. There remains a substantial question of law or fact to question the

appellant's plea of guilt which can only be satisfied by additional inquiry by the trial judge below.

**Conclusion**

Accordingly, we set aside the findings of guilty and the sentence. We dismiss Charge I and its sole specification, and authorize a rehearing as to Charge II and Specification 2 thereunder, and the sentence.

For the Court

R.H. TROIDL  
Clerk of Court