

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

**Before  
J.A. MAKSYM, J.R. PERLAK, B.L. PAYTON-O'BRIEN  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**BRADLEY A. MORALES  
SERGEANT (E-5), U.S. MARINE CORPS**

**NMCCA 201000057  
GENERAL COURT-MARTIAL**

**Sentence Adjudged:** 2 October 2009.

**Military Judge:** Maj Robert G. Palmer, USMC.

**Convening Authority:** Commanding General, Marine Corps  
Recruit Depot, Eastern Recruiting Region, Parris Island,  
SC.

**Staff Judge Advocate's Recommendation:** LtCol E.R. Kleis,  
USMC.

**For Appellant:** LT Ryan Santicola, JAGC, USN.

**For Appellee:** Capt Mark Balfantz, USMC.

**21 April 2011**

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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:

This case is before us for a second time. In our initial decision, we set aside the adultery conviction as defective under Article 134, Uniform Code of Military Justice, 10 U.S.C. § 934. Additionally, we returned the case to the Judge Advocate General for remand to the convening authority (CA) for new post-trial processing to rectify defects in the court-martial order (CMO) assigned as error by the appellant, with instructions to then return the record to us for completion of appellate review. See *Boudreaux v. United States Navy-Marine Corps Court of Military Review*, 28 M.J. 181 (C.M.A. 1989). With corrective action having

been taken, the case is before us without any new assignment of error. However, there remains a search and seizure ruling by the military judge claimed as error in the appellant's initial brief.

A military judge sitting as a general court-martial convicted the appellant, pursuant to his pleas, of one specification of failure to obey a lawful general order, two specifications of false official statement, one remaining specification of adultery, and one specification of wrongfully receiving images and/or videos of child pornography, in violation of Articles 92, 107, and 134, UCMJ, 10 U.S.C. §§ 892, 907, and 934. The military judge sentenced the appellant to confinement for eight years, forfeiture of all pay and allowances, reduction to pay grade E-1, and a dishonorable discharge. The CA, in his second action, has again approved the sentence as adjudged and, except for the dishonorable discharge, ordered the sentence executed.

### **Motion to Suppress**

Prior to entering pleas, the appellant unsuccessfully moved to suppress evidence containing child pornography obtained from an external storage device, based on the Fourth Amendment. Appeal of that ruling has been memorialized as a term of the appellant's pretrial agreement with the CA and has been preserved for this appeal under RULE FOR COURTS-MARTIAL 910(a)(2), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.).

We apply an abuse of discretion standard in reviewing the decision of the military judge in denying the motion to suppress. The military judge's facts are reviewed under a clearly erroneous standard and his conclusions of law are reviewed *de novo*. *United States v. Monroe*, 52 M.J. 326, 330 (C.A.A.F. 2000). Further, we assess the military judge's ruling mindful of what has occurred in the trial below: ". . . 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) (citations omitted).

Reviewing the military judge's ruling *de novo*, we are reminded that the Fourth Amendment's protections against unreasonable searches and seizures are triggered when the Government engages in a quest for evidence of a crime. The threshold facts of this case distinguish themselves readily, revealing a private actor engaged in a personal quest for information relating to her spouse's infidelity. The facts relied upon by the military judge and amply developed within the record are not clearly erroneous. They establish that the appellant's spouse was lawfully in possession of marital property in the form of an external data storage device and, with technical assistance from acquaintances, was successful in retrieving data, some of it incriminating, from that device. The data included child pornography, which the appellant's spouse reported to military law enforcement personnel. While there were

clearly periods of exclusive use of the device by the appellant, the circumstances surrounding its purchase and history of the device upon his return from deployment, becoming a fixture in the marital home, support the holding that the appellant's spouse at all pertinent times had common authority over the external storage device. At all times germane to the perfecting of evidence in this case, she had both common authority and sole physical possession of the device. On the facts before us and certainly when viewed in a light most favorable to the Government, we hold that the military judge did not abuse his discretion in denying the appellant's motion to suppress.

### **Conclusion**

This remaining assignment of error is without merit. No error materially prejudicial to the appellant remaining, the findings and the sentence are affirmed. Arts. 59(a) and 66(c), UCMJ.

For the Court

R.H. TROIDL  
Clerk of Court