

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

**Before  
J.R. PERLAK, J.K. CARBERRY, M.D. MODZELEWSKI  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**CHRISTOPHER P. BREEDLOVE  
LANCE CORPORAL (E-3), U.S. MARINE CORPS**

**NMCCA 201100628  
SPECIAL COURT-MARTIAL**

**Sentence Adjudged:** 23 September 2011.

**Military Judge:** LtCol Nicole K. Hudspeth, USMC.

**Convening Authority:** Commanding Officer, Combat Logistics  
Regiment 25, 2d Marine Logistics Group, Camp Lejeune, NC.

**Staff Judge Advocate's Recommendation:** Capt I.D. Pedden,  
USMC.

**For Appellant:** CAPT Johnathan Bryan, JAGC, USN.

**For Appellee:** Mr. Brian K. Keller, Esq.

**28 February 2012**

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**OPINION OF THE COURT**  
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**THIS OPINION DOES NOT SERVE AS BINDING PRECEDENT, BUT MAY BE CITED AS  
PERSUASIVE AUTHORITY UNDER NMCCA RULE OF PRACTICE AND PROCEDURE 18.2.**

PER CURIAM:

A military judge sitting as a special court-martial convicted the appellant, pursuant to his pleas, of five specifications of larceny, in violation of Article 121, Uniform Code of Military Justice, 10 U.S.C. § 921. The appellant was sentenced to 90 days confinement, reduction to pay grade E-1, and a bad-conduct discharge. The convening authority (CA) approved the sentence as adjudged.

Although not raised on appeal, we note an error in the record that requires corrective action. Among the pleas to the larceny specifications, two are multiplicitious for both findings and sentencing, requiring a consolidation of the specifications and reassessment of the sentence. Having considered our modified findings and the entire record of trial, we conclude that the consolidated findings and reassessed sentence are correct in law and fact, and that no error materially prejudicial to the substantial rights of the appellant remains. Arts. 59(a) and 66(c), UCMJ.

### **Background**

The appellant entered three personal vehicles belonging to fellow Marines and stole items from those vehicles. From Sergeant K's and Private First Class K's vehicles, the appellant stole both their personal property and issued gear. The Government charged the larcenies from these two vehicles as thefts of personal property from the individual Marines and thefts of military property, for a total of four specifications.

### **Discussion**

When 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, Part IV, ¶ 46c(1)(h)(ii). The specifications, as alleged and pled to by the appellant, were multiplicitious, as the larceny from each vehicle should properly have been charged as one offense, and not two.

Absent plain error, a multiplicity claim is waived by an unconditional guilty plea, as was entered in this case. *United States v. Hudson*, 59 M.J. 357, 358-59 (C.A.A.F. 2004) (citing *United States v. Heryford*, 52 M.J. 265, 266 (C.A.A.F. 2000)).

Reviewing the matter for plain error and mindful of the Court of Appeals for the Armed Forces' holding in *United States v. Savage*, 50 M.J. 244, 245 (C.A.A.F. 1999) (citing *Ball v. United States*, 470 U.S. 856 (1985)), we find there was error, that it was plain and obvious, and that there was prejudice in the form of additional convictions for larceny. *Id.*

Pursuant to our authority under Article 66(c) UCMJ, we grant relief by consolidation of Specifications 1 and 2 under Charge II into a single specification as follows:

In that Lance Corporal Christopher P. Breedlove, U.S. Marine Corps, Combat Logistics Regiment 25, 2d Marine Logistics Group, Camp Lejeune, North Carolina, did, at or near Camp Lejeune, North Carolina, on or about 19 May 2011, steal: (1) a Tom Tom GPS unit with power cord; (2) a pair of rubber Muck brand boots; (3) a set of Nikon brand binoculars with lanyard; (4) a Blackberry brand Curve cell phone; (5) a Blackberry brand Curl flip cell phone; (6) a Shakespeare brand Tiger fishing rod; (7) a Shakespeare spinning reel; and (8) a trailer plug, of a value of less than \$500.00, the property of Sergeant [MRK], Jr. U.S. Marine Corps, and a set of ESS brand eye shield kit, military property, of a value of less than \$500.00, the property of the U.S. Government.

Similarly, we consolidate Specifications 3 and 4 under Charge II into a single specification as follows:

In that Lance Corporal Christopher P. Breedlove, U.S. Marine Corps, Combat Logistics Regiment 25, 2d Marine Logistics Group, Camp Lejeune, North Carolina, did, at or near Camp Lejeune, North Carolina, on or about 19 May 2011, steal (1) M40 Gas Mask with Carrier; (2) a Woodland MARPAT in color assault pack; (3) a medium long Gortex jacket; and (4) a medium long Gortex trouser, military property, of a value of less than \$500.00, the property of the U.S. Government, and (6) a Gerber multi-tool; and (7) a Sylvania brand MP3 player, of a value of less than \$500.00, the property of Private First Class [BGK], U.S. Marine Corps.

The permissible maximum confinement remains the same - the jurisdictional maximum for a special court-martial; and we find that there has not been a dramatic change in the sentencing landscape. *See United States v. Buber*, 62 M.J. 476, 479 (C.A.A.F. 2006). Reassessing the sentence, we find that the facts are precisely the same, with a total of five larceny specifications now consolidated into three. We are confident that the military judge would have imposed, and that the CA would have approved, the sentence actually imposed and approved. *See United States v. Cook*, 48 M.J. 434, 438 (C.A.A.F. 1998).

**Conclusion**

As modified and reassessed herein, the findings and the approved sentence are affirmed.

For the Court

R.H. TROIDL  
Clerk of Court