

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

**Before  
B.L. PAYTON-O'BRIEN, J.R. MCFARLANE, G.G. GERDING  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**CHRISTOPHER W. LAMBERT  
LANCE CORPORAL (E-3), U.S. MARINE CORPS**

**NMCCA 201200458  
GENERAL COURT-MARTIAL**

**Sentence Adjudged:** 8 August 2012.

**Military Judge:** CDR Charles Stimson, JAGC, USN.

**Convening Authority:** Commanding General, 1st Marine  
Division (REIN) Camp Pendleton, CA.

**Staff Judge Advocate's Recommendation:** Maj V.G. Laratta,  
USMC.

**For Appellant:** CDR Howard Liberman, JAGC, USN.

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

**28 March 2013**

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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 general court-martial convicted the appellant, pursuant to his pleas, of one specification of conspiracy, one specification of failure to go to his appointed place of duty, two specifications of violating a lawful general order, two specifications of larceny, and one specification of housebreaking, in violation of Articles 81, 86, 92, 121, and 130, Uniform Code of Military Justice, 10 U.S.C.

§§ 881, 886, 892, 921, and 930. The military judge sentenced the appellant to confinement for one year, reduction to pay grade E-1, and a bad-conduct discharge. The convening authority approved the sentence as adjudged.

This record was submitted to this court without assignment of error. Upon review, we find that corrective action is necessary, which we will take in our decretal paragraph. Following our corrective action, 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 remains. Arts. 59(a) and 66(c), UCMJ.

### **Larceny of Items from Different Owners**

We find that the facts underlying Specifications 10 and 11 of Charge V support only a single specification of larceny. The stipulation of fact and the providence inquiry reveal that the appellant discovered an unlocked office while he was on patrol on board Marine Corps Base, Camp Pendleton, California on 28 January 2012. He conspired with another Marine to return to the office after duty in order to steal items in the room. The appellant and the other Marine later reentered the office and took numerous items from the room, some of which were the personal property of Mr. JG and others which were military property.

The Manual for Courts-Martial specifically states that "[w]hen 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* (2008 ed.), Part IV, ¶ 46c(1)(h)(ii); *see also United States v. Harris*, 53 M.J. 514, 522 (N.M.Ct.Crim.App. 2000), *aff'd*, 54 M.J. 433 (C.A.A.F. 2001); *United States v. Lepresti*, 52 M.J. 644, 653 (N.M.Ct.Crim.App. 1999). Accordingly, the appellant is guilty of only one specification of larceny with respect to the items he took from the office of Mr. JG, because he committed the theft of all of the items at the same time and place. The fact that the items belonged to different owners, with some being personal property and some being military property, does not change this analysis.

### **Sentence Reassessment**

Having consolidated the two specifications under Charge V, we conclude that there has not been a dramatic change in the

penalty landscape.<sup>1</sup> *United States v. Buber*, 62 M.J. 476, 479 (C.A.A.F. 2006). Applying the analysis set forth in *United States v. Sales*, 22 M.J. 305 (C.M.A. 1986) and *United States v. Moffeit*, 63 M.J. 40 (C.A.A.F. 2006), and carefully considering the entire record, we are satisfied beyond a reasonable doubt that the military judge would have adjudged a sentence no less than that approved by the convening authority in this case. Accordingly, no further action is deemed necessary.

### Conclusion

Specification 10 of Charge V is amended by adding the following after the word "Military": "and steal 'The Pacific' DVD Collection Set, iPod Charger, 3 Computer Mice, 3 USB Cords, Cell Phone, a Projector, (10) Challenge Coins, 1stBn/5thMarReg Quilt, Dummy Cord, (USB cord) Phone Charger, Gigaware A/B Switch, Red Tool Box, Belkin USB Hubs, 2 Motorola Walkie-Talkies, Drive/Drill Bit Set, USB Light, Goo Gone and General Dynamics Laptop, of a value greater than \$500.00, the property of Mr. [JG]." Specification 11 of Charge V is dismissed. The findings of guilty as to Specification 10 of Charge V as amended, the remaining guilty findings, and the sentence are affirmed.

For the Court

R.H. TROIDL  
Clerk of Court

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<sup>1</sup> We note that the military judge stated an incorrect maximum punishment to the appellant of confinement of 34 years and one month. Record at 21. The correct maximum confinement was 29 years and 1 month. In light of our merger of Specification 10 and 11 of Charge V, the new maximum punishment is 24 years and 1 month. The military judge only sentenced the appellant to one year of confinement, which was even less than the confinement limitation provision in the PTA. Therefore, the appellant was not prejudiced by the military judge's incorrect maximum punishment calculation.