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.

CORRY F. OLMOS
HOSPITALMAN THIRD CLASS (E-4), U.S. NAVY

NMCCA 201100133
SPECIAL COURT-MARTIAL

Sentence Adjudged: 7 December 2010.
Military Judge: Col Daniel Daugherty, USMC.
Convening Authority: Commanding Officer, Naval Hospital, Camp Lejeune, NC.
Staff Judge Advocate's Recommendation: LT Samantha Keck, JAGC, USN.
For Appellant: CDR Howard Liberman, JAGC, USN.
For Appellee: Mr. Brian K. Keller, Esq.

20 December 2011

OPINION OF THE COURT

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 two specifications of attempting to sell military property, one specification of conspiring to sell military property, two specifications of selling military property, and one specification of wrongfully receiving military property, in violation of Articles 80, 81, 108, and 134, Uniform Code of

Military Justice, 10 U.S.C. §§ 880, 881, 908, and 934. The appellant was sentenced to confinement for twelve months, reduction in pay grade to E-1, a $10,000.00 fine, and a bad-conduct discharge. The convening authority disapproved the fine, but otherwise approved the sentence.

This case is before us for a second time, following a grant of review and remand by the Court of Appeals for the Armed Forces (CAAF), directing us to reconsider our earlier ruling in light of the holding in *United States v. Fosler*, 70 M.J. 225 (C.A.A.F. 2011).

Directing our attention to the Article 134 offense in this case, we first note that the terminal element is not overtly pled in a specification alleging wrongful receipt of stolen military property. The specification was not challenged at trial. The appellant entered an unconditional guilty plea to this and every other charge and specification listed above, which collectively captured his role in obtaining stolen military medical and tactical supply items that he then sold commercially. Further, the appellant entered into a pretrial agreement with the convening authority and received the benefit of referral to a special court-martial and, apprised of the statutory elements on the record, he satisfactorily provided provident responses to this offense, with dialogue capturing the wrongfulness of the conduct under both clauses 1 and 2.

With this procedural posture, and consistent with the guidance provided by CAAF in *Fosler*, we find that the specification as pled does indeed state an offense and gives notice of the terminal element by necessary implication and we distinguish on that basis. Factors that clearly place the appellant on notice that the conduct to be defended against was prejudicial to good order and discipline are apparent from the descriptors in the specification itself, where the wrongfully received property was alleged as “various medical and tactical military supplies of a value greater than $500.00, military property of the United States.” Charge Sheet. The appellant was fully on notice of the conduct to be defended against and we decline to grant relief. *See United States v. Crafter*, 64 M.J. 209, 211 (C.A.A.F. 2006).

After careful reconsideration of the entire record, and specific reconsideration of the Article 134 offense in light of

Fosler, we again affirm the findings and sentence as approved by the convening authority. Art. 66(c), UCMJ.

For the Court

R.H. TROIDL
Clerk of Court