

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

**Before  
C.L. REISMEIER, J.K. CARBERRY, B.L. PAYTON-O'BRIEN  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**WILEY J. PUFFENBARGER  
SERGEANT (E-5), U.S. MARINE CORPS**

**NMCCA 201100222  
SPECIAL COURT-MARTIAL**

**Sentence Adjudged:** 9 February 2011.

**Military Judge:** CAPT Tierney M. Carlos, JAGC, USN.

**Convening Authority:** Commanding Officer, Headquarters and Service Battalion, Marine Corps Base, Quantico, VA.

**Staff Judge Advocate's Recommendation:** LtCol Chris Greer, USMC.

**For Appellant:** Capt Michael D. Berry, USMC.

**For Appellee:** LT Kevin D. Shea, JAGC, USN.

**10 November 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:

Contrary to his pleas, the appellant was convicted by a special court-martial, composed of a military judge alone, of one specification of larceny in violation of Article 121, Uniform Code of Military Justice, 10 U.S.C. § 921. The appellant was

sentenced to confinement for 90 days and a bad-conduct discharge. The convening authority approved the sentence.<sup>1</sup>

The appellant has submitted one assignment of error: that the evidence is insufficient to support the findings of guilty. After considering the pleadings and oral arguments of the parties, as well as the entire record of trial, we conclude that the findings and the sentence are correct in law and fact and that no error materially prejudicial to the substantial rights of the appellant was committed. Arts. 59(a) and 66(c), UCMJ.

The appellant was found in possession of thousands of rounds of ammunition, to include rounds of 7.62 blanks, 5.56 blanks, 9-millimeter ball and marking, and 12-gauge slug and shot, all contained within 10 ammunition canisters in the basement of his private residence. At trial, the appellant testified that he and his unit returned from an exercise in the midst of a severe snowstorm on 18 December 2009. Personnel were securing because road conditions were deteriorating rapidly. In the confusion, ammunition canisters were left in the unit's spaces rather than secured in the armory. The appellant testified that after returning his government vehicle, he found himself alone in the unit's spaces with the unsecured ammunition. Although not personally responsible for the ammunition, the appellant testified that he removed the ammunition from the locked building on base. He then "secured" it at his personal residence, because he did not want anyone in his unit to get into trouble for failing to secure the ammunition. The appellant testified that he failed in his attempt to contact some personnel from his unit, and then took all 10 boxes home. The appellant testified that he took ammunition boxes on only that one occasion, and that his intent was to secure the ammunition until the next scheduled exercise in March 2010. At that point, the appellant claimed, he intended to return the ammunition and avoid detection.

The appellant did not, however, return the ammunition. In January 2010, the appellant and his family moved and he moved the ammunition to his new residence. In March 2010, the appellant deployed, returning on 5 September 2010. On 9 September 2010, the ammunition was seized at the appellant's residence.

The appellant argues that the evidence was insufficient to support the finding of guilty beyond a reasonable doubt, claiming

---

<sup>1</sup> To the extent that the convening authority's action purports to direct that the punitive discharge will be executed after the final judgment it is a legal nullity. See *United States v. Tarniewicz*, 70 M.J. 543, (N.M.Ct.Crim.App. 2011).

that it failed to establish intent to steal. As support for his argument, the appellant notes that he had no personal firearms, most of the ammunition was blank, he has high moral character, he had no training in handling ammunition, he had no intent to do anything but return the ammunition in a way that would safeguard his fellow Marines, and his short-notice deployment deprived him of the chance to return the ammunition. We have considered his argument and the entire record, and respectfully disagree.

The tests for factual and legal sufficiency are well-known, as is the ability to rely upon circumstantial evidence of guilt. *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987). We need not recite them again here. The Government submitted evidence sufficient to sustain the conviction. In his brief, as he did at trial, the appellant makes much of the fact that the Government proved its case through circumstantial evidence and reliance on an ammunition inventory control system with doubtful reliability. Reasonable doubt does not require that the evidence be free from conflict. *United States v. Rankin*, 63 M.J. 552, 557 63 M.J. 552, 557 (N.M.Ct.Crim.App. 2006) (citing *United States v. Lips*, 22 M.J. 679, 684 (A.F.C.M.R. 1986)), *aff'd*, 64 M.J. 348 (C.A.A.F. 2007). After reviewing the evidence, we find that a "rational trier of fact could have found the essential elements of the crime [of which the appellant was found guilty] beyond a reasonable doubt." *United States v. Brown*, 65 M.J. 227, 229 (C.A.A.F. 2007) (quoting *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). We, too, are convinced of his guilt beyond a reasonable doubt.

Contrary to the appellant's claims, the ammunition found in his basement originated from more than the single December 2009 exercise. As the Officer-in-Charge of the Ammunition Supply Point (ASP) testified, some of the ammunition found in the appellant's basement had been removed from the distribution inventory in May 2009 -- six months prior to the date the appellant claims he obtained the ammunition from the ASP -- because it was found to be unsafe, causing misfeeds and misfires. The meaning of that testimony is unmistakable when read in context of the entire record.

The appellant removed ammunition from a secured, locked building on a Marine Corps base. He removed ammunition that originated from at least two different exercise allocations. He transferred it to the basement of his residence, and then moved it to a second residence, where it remained for nearly 10 months. Despite his claims that he was merely trying to avoid anyone getting into trouble, he took no subsequent steps to alert

anyone, including those persons in his unit he claims to have been trying to protect by "securing" the ammunition at home. Based on this record, we find that the evidence is sufficient to sustain the conviction.

**Conclusion**

The findings and the sentence are affirmed.

For the Court

R.H. TROIDL  
Clerk of Court