

**IN THE UNITED STATES ARMY COURT OF CRIMINAL APPEALS**

UNITED STATES

Appellee

**MOTION FOR  
RECONSIDERATION**

v.

Docket No. ARMY 20220431

Specialist (E-4)

**TATEM T. RESUTEK,**

United States Army,

Appellant

Tried at Fort Liberty, North Carolina, on 28 July, 9 August, 15 August, and 24-25 August 2022, before a general court-martial appointed by the Commander, Headquarters, Fort Liberty, Colonel J. Harper Cook, military judge, presiding.

TO THE HONORABLE, THE JUDGES OF THE  
UNITED STATES ARMY COURT OF CRIMINAL APPEALS

COMES NOW the undersigned appellate defense counsel, under Rule 31 of this court's Rules of Appellate Procedure, to request reconsideration of this court's 28 October 2024 decision. *United States v. Resutek*, Army 20220431, 2024 CCA LEXIS 459 (Army Ct. Crim. App. 28 Oct. 2024) (mem. op.). This court should reconsider because the *Care* inquiry was insufficient and not comprehensive enough to satisfy the specific intent element of fraudulently making worthless checks in violation of Article 123a, UCMJ.

**Statement of the Case**

On 24 August 2022, a military judge sitting as a general court-martial convicted appellant, pursuant to his pleas, of one specification of desertion, one specification of failure to go to his appointed place of duty, one specification of

absence without leave, one specification of failure to obey a lawful order, one specification of wrongful use of marijuana, and three specifications of fraudulently making worthless checks in violation of Articles 85, 86, 92, 112a, and 123a, UCMJ. (Charge Sheet; R. at 312). On 25 August 2022, in accordance with a plea agreement, the military judge sentenced appellant to reduction to E-1, 185 days of confinement, and a bad-conduct discharge. (R. at 522). Appellant received 187 days of confinement credit. (R. at 522).

On 28 October 2024, this court issued its decision, affirming the findings of guilty as to the worthless check offenses and marijuana use. *Resutek*, 2024 CCA LEXIS 459, at \*19. This court set aside the remaining findings of guilty and the sentence, holding that appellant set up matters inconsistent with his guilty pleas. *Id.* at \*1, 19. This court authorized a rehearing on the specifications and charges set aside and the sentence. *Id.*

In accordance with Rule 31 of this court's Rules of Appellate Procedure, appellant files this Motion for Reconsideration within the prescribed time limits required to ensure this court retains jurisdiction over the case. The Court of Appeals for the Armed Forces has not acquired jurisdiction over this case.

### **Grounds for Reconsideration**

In its decision, this court recognized that the military judge's discussion about voluntary intoxication in relation to the worthless check offenses was "barely

sufficient.” *Resutek*, 2024 CCA LEXIS 459, at \*17. This court should reconsider its decision because the *Care* inquiry was insufficient to satisfy the specific intent element, especially when appellant did not remember committing the acts and he raised the issue of voluntary intoxication.

#### **A. Fraudulently Making Worthless Checks, Article 123a, UCMJ**

Appellant pled guilty to Specifications 5, 6, and 7 of Charge IV for fraudulently making worthless checks in violation of Article 123a, UCMJ. Among other elements, this offense requires specific intent, “[t]hat the act was committed with intent to defraud.” *Manual for Courts-Martial, United States* (2019 ed.) [MCM], pt. IV, ¶ 70.b.(1)(c). “Intent to defraud” means “an intent to obtain, through a misrepresentation, an article or thing of value and to apply it to one’s own use and benefit or to the use and benefit of another.” *Id.* at ¶ 70.c.(14). This offense also requires knowledge, “[t]hat at the time of [the act] the accused knew that the accused . . . had not or would not have sufficient funds.” *Id.* at ¶ 70.b.(1)(d)

#### **B. Troubles During the *Care* Inquiry**

During the *Care* inquiry, appellant said he could not remember committing the acts, he was not testifying from his memory, and he was testifying based on his review of the evidence. (R. at 250-51). Appellant said the acts were overshadowed by his financial troubles and alcohol addiction. (R. at 250).

Appellant attempted to satisfy the specific intent element by repeating words from the definition of “intent to defraud”: “Sir, when I write out that check . . . . When I did that, that was a misrepresentation. There's no way for either my bank or AAFES to have known right then that it was a misrepresentation, except for the person that wrote it. And that was me.” (R. at 256-57). In a conclusory manner, appellant then agreed with the military judge that he committed the acts with the intent to defraud. (R. at 257-58).

The military judge did not have appellant distinguish the “misrepresentation” from the “intent to obtain.” The military judge then moved on to the knowledge element. (R. at 258).

### **C. Re-opening Providence to Discuss Voluntary Intoxication**

Before discussing the plea agreement with appellant, the military judge re-opened the providence inquiry to discuss voluntary intoxication. (R. at 278-79). The military judge told appellant voluntary intoxication could, in general, negate the specific intent or knowledge element of an offense. (R. at 278-79).

In the context of the worthless check offenses, the military judge explicitly discussed with appellant that voluntary intoxication could negate the knowledge element, a conversation that lasted several transcript pages. (R. at 279-82). However, the military judge did not similarly discuss the specific intent element with appellant.

#### **D. Insufficient Discussion of the Specific Intent Element**

While the military judge's discussion of voluntary intoxication and the knowledge element was more comprehensive, his discussion of voluntary intoxication and the specific intent element was insufficient and virtually nonexistent. This omission is especially critical in a case like this, where appellant had no memory of the charged acts.

While appellant answered no to the military judge's question whether appellant believed voluntary intoxication applied to his case, (R. at 282), that answer should be viewed with skepticism. It is not clear that appellant understood the nature of voluntary intoxication and its implications for his case. Appellant seemed to confuse voluntary intoxication with involuntary intoxication: "No, sir. My intoxication is absolutely voluntary. I am a recovering alcoholic." (R. at 282).

Appellant then told the military judge that his "daily use [of alcohol] didn't mean that I was completely wasted or blacked out during that time. (R. at 283). Appellant went on to say "there is no reason to why my drinking would have made it to where I didn't know the act was wrong. Or what I was doing when I was writing a check." (R. at 283). While these statements might speak to the capacity to form specific intent, that is not the same thing as actually forming specific intent.

While appellant seemed to believe he could have been guilty, the record does not make clear why he was convinced he was guilty. The military judge must

question the accused “about what he did or did not do” to “make clear the basis” for the military judge’s decision that “the acts or the omissions of the accused constitute the offense” to which the accused pled guilty. *United States v. Care*, 18 U.S.C.M.A. 535, 541, 40 C.M.R. 247, 253 (1969). As *Care* makes clear, it is not enough for the military judge to simply obtain the accused’s consent to the elements as defined. *Id.*

### Conclusion

Appellant respectfully requests this court grant this motion for reconsideration.

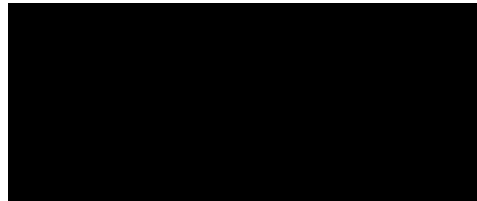
PANEL NO. 2

MOTION FOR  
RECONSIDERATION

GRANTED:

DENIED: \_\_\_\_\_

DATE: 10 January 2025



Robert W. Rodriguez  
Major, Judge Advocate  
Branch Chief  
Defense Appellate Division

## **Certificate of Filing and Service**

I certify that a copy of the foregoing was electronically submitted to the  
Army Court and Government Appellate Division on 27 November 2024.



Robert W. Rodriguez  
Major, Judge Advocate  
Branch Chief  
Defense Appellate Division

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**Date:** Friday, November 29, 2024 11:07:00 AM  
**Attachments:** [Resutek-20220431-Motion for Reconsideration \(241127\).pdf](#)

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Your pleading is in compliance with the Court's Rules of Practice and Procedure, and the pleading is accepted.

Very respectfully,

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