

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
FLOR, POND, and STEELE
Appellate Military Judges

UNITED STATES, Appellee
v.
First Lieutenant ELIJAH M. BALDWIN
United States Army, Appellant

ARMY 20250141

Headquarters, 8th Theater Sustainment Command
Rebecca L. Farrell, Military Judge
Lieutenant Colonel Jennifer M. Healy, Staff Judge Advocate

For Appellant: Robert Feldmeier, Esquire (on brief and reply brief).

For Appellee: Colonel Richard E. Gorini, JA; Major Stephen L. Harmel, JA;
Captain Matthew C. Whear, JA (on brief).

24 September 2026

SUMMARY DISPOSITION

This opinion is issued as an unpublished opinion and, as such, does not serve as precedent.

FLOR, Chief Judge:

An officer panel, sitting as a general court-martial, convicted appellant, contrary to his pleas, of three specifications of attempt to patronize a prostitute, one specification of attempted extramarital sexual conduct, and one specification of conduct unbecoming an officer, in violation of Articles 80 and 133, Uniform Code of Military Justice, 10 U.S.C. §§880 and 933 [UCMJ].¹ The military judge sentenced appellant to thirty days of confinement and to be reprimanded.

Appellant raises two assignments of error, only one of which merits discussion, but no relief: whether appellant's conviction for attempted extramarital sexual conduct is a lesser included offense of, and therefore multiplicitious with, his

¹ The panel acquitted appellant of two further specifications under Article 80, UCMJ.

conviction for conduct unbecoming an officer. We find that it is not, but, as the government conceded, that appellant's conviction for conduct unbecoming an officer is multiplicitious with his convictions for attempted patronization of a prostitute. We therefore provide appropriate relief in our decretal paragraph.²

BACKGROUND

In 2023, appellant was stationed at Fort Shafter, Hawaii with his wife and family. While there, between October and November 2023, appellant used online platforms typically associated with sex workers to locate and arrange meetings with different women advertising sexual services.

At trial, appellant ultimately was found guilty of four specifications of attempt under Article 80 with the underlying offense of Article 134: three specifications of attempted patronization of a prostitute on three separate instances on 6, 25, and 26 October 2023 (Charge I, Specifications 3-5), and one specification of attempted extramarital sexual conduct on one or more occasions for the same time period (Charge I, Specification 6). Additionally, appellant was convicted of one specification of Article 133, conduct unbecoming an officer, for the same charged language as the attempted patronization of a prostitute—"attempt to wrongfully entice or procure a person not his spouse to engage in a sexual act with the accused in exchange for money"—and also covering the same time period—"between on or about 6 October 2023 and on or about 5 November 2023" (Charge II).

After findings and before sentencing, the military judge *sua sponte* raised the issue of unreasonable multiplication of charges for the purposes of sentencing in relation to Charge I and Charge II. The military judge stated:

While nothing prohibits the Government from charging Article 133 or charging an attempt of extramarital sexual conduct in addition to the other offenses, the question this Court is addressing is how that impacts sentencing. The maximum punishment . . . is nearly doubling in this case for no additional criminal acts. They also overexaggerate the accused's criminality where they are identical conduct to [Specifications] 3 through 5.

The court found no evidence of prosecutorial overreaching but merged Specification 5 with Specification 6 of Charge I and the Specification of Charge II with

² Appellant's claim of legal and factual insufficiency regarding the Article 133 offense is rendered moot by our decision. We have given full and fair consideration to appellant's other challenges regarding legal and factual sufficiency and determine they merit neither discussion nor relief.

Specification 4 of Charge I for sentencing “to accurately reflect the three instances of criminal conduct for which the accused was convicted that supported all five specifications and their authorized punishments.” The military judge confirmed that all guilty findings remained. Appellant did not raise the issue of multiplicity at trial.

LAW AND DISCUSSION

This court reviews de novo whether an offense is a lesser included offense of another. *United States v. Arriaga*, 70 M.J. 51, 54 (C.A.A.F. 2011). Where one offense is a lesser included offense of the other, the offenses are multiplicitous and one must be dismissed. *United States v. Cardenas*, 80 M.J. 420, 424 (C.A.A.F. 2021). “When the underlying conduct is the same, a service-discredit or disorder under Article 134 is a lesser-included offense of conduct unbecoming under Article 133.” *United States v. Cherukuri*, 53 M.J. 68, 71 (C.A.A.F. 2000); *see also United States v. Palagar*, 56 M.J. 294, 296 (C.A.A.F. 2002) (“When a specific offense is also charged as a violation of Article 133, this Court has treated the specific offense as a lesser-included offense.”). This analysis extends not only to completed Article 134 offenses, but to attempted Article 134 offenses charged under Article 80. *See United States v. Norwood*, 71 M.J. 204, 207 (C.A.A.F. 2012). Therefore, we conclude that when the underlying conduct is the same, an attempted Article 134 offense charged under Article 80 is also a lesser included offense of Article 133.

Multiplicity claims “are forfeited by failure to make a timely motion to dismiss, unless they rise to the level of plain error.” *United States v. Coleman*, 79 M.J. 100, 102 (C.A.A.F. 2019) (internal citations omitted). To prevail under plain error review, appellant must demonstrate: “(1) there was error, (2) the error was plain and obvious, and (3) the error materially prejudiced a substantial right of the accused.” *United States v. Jones*, 78 M.J. 37, 44-45 (C.A.A.F. 2018) (internal citation and quotation omitted). “Where the error is constitutional . . . the government must show that the error was harmless beyond a reasonable doubt to obviate a finding of prejudice.” *United States v. Tovarchavez*, 78 M.J. 458, 462 (C.A.A.F. 2019).

Where appellant is charged for multiple violations of the same statute, appellant can demonstrate plain error “by showing that the specifications are ‘facially duplicative,’ that is factually the same.” *United States v. Heryford*, 52 M.J. 265, 266 (C.A.A.F. 2000) (citations omitted). To determine whether specifications are factually duplicative, courts look to the “language of the specifications and ‘facts apparent on the face of the record.’” *Id.* While a judge may order concurrent sentencing for charges that are unreasonably multiplied, in contrast, the remedy for multiplicity is “dismissal of the multiplied offense.” *United States v. Campbell*, 71 M.J. 19, 23 (C.A.A.F. 2012). “Whether two offenses are facially duplicative is a

question of law that we will review de novo.” *United States v. Pauling*, 60 M.J. 91, 94 (C.A.A.F. 2004).

In determining whether charges are multiplicitious, we first look at whether the charges are based on separate acts; if not, then whether Congress has made an “overt expression of legislative intent” regarding whether charges should be viewed as multiplicitious for the same act; and third, if no such intent is present, whether each statute requires proof of an element not contained in the other. *United States v. Coleman*, 79 M.J. 100, 103 (C.A.A.F. 2019); *Blockburger v. United States*, 284 U.S. 299, 305 (1932), (“where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of an additional fact which the other does not” (internal citations omitted)); *see also United States v. Teters*, 37 M.J. 370 (C.A.A.F. 1993); *see also United States v. Neblock*, 45 M.J. 191, 197 (C.A.A.F. 1996).

We find that appellant’s three convictions for attempted patronization of a prostitute in Charge I, Specifications 3-5, are lesser included offenses of his conviction for conduct unbecoming an officer in Charge II and are therefore multiplicitious. Given that these specifications are multiplicitious, we find that the military judge’s remedy at trial—ordering concurrent sentencing and not dismissal—was plain error and prejudiced appellant. *See Campbell*, 71 M.J. 19 at 23.

At trial, the military judge properly found that appellant was found guilty of three distinct criminal acts that formed the basis for all five of the specifications for which he was found guilty at trial. Applying the three-part test from *Coleman*, appellant’s guilty finding for conduct unbecoming an officer (Charge II) encapsulates the same acts separately charged as attempted patronization of a prostitute (Charge I, Specifications 3-5). In Charge II, appellant was convicted of “on more than one occasion, attempt[ing] to wrongfully entice or procure a person not his spouse to engage in a sexual act in exchange for money and that, under the circumstances, these acts constituted conduct unbecoming an officer and gentleman” on or about 6 October 2023 and 5 November 2023. In Specifications 3-5 of Charge I, appellant was convicted of attempted patronization of a prostitute—attempting to wrongfully entice or procure a person not his spouse to engage in a sexual act with the accused in exchange for money and that such conduct was service discrediting—on three separate instances. The record demonstrates that both charges are based on the same underlying misconduct—the attempted patronization of a prostitute—on 6, 25, and 26 October 2023.

Second, neither the respective statute in Article 134 nor 133 contains express congressional intent for cumulative punishment. *See Cherukuri*, 53 M.J. at 71. Third, the offense of attempt to patronize a prostitute in Charge I contains no element that requires additional proof not found in the conduct unbecoming an

officer offense in Charge II. “When the *underlying conduct* is the same, a service-discredit or disorder under Article 134 is a lesser-included offense of conduct unbecoming under Article 133.” *Cherukuri*, 53 M.J. at 71 (emphasis added). The *Blockburger/Teters* elements test therefore renders these specifications multiplicitious with Charge II. We therefore grant the government’s request to dismiss the Specification of Charge II and Charge II to remedy the issue of multiplicity present here. *See Cardenas*, 80 M.J. at 424, (“[A]n appellate court may remedy multiplicity error by either permitting the government to elect which conviction to dismiss or by making the election itself.”)

Contrary to appellant’s argument, however, we find that appellant’s conviction for attempted extramarital sexual conduct in Charge I, Specification 6, is not a lesser included offense of conduct unbecoming an officer in Charge II. Though the conduct at issue, attempted patronization of a prostitute, remains the same for both offenses, each offense requires proof of an element the other does not. Extramarital sexual conduct requires “that at the time, the accused was married to someone else, which he knew” while the offense of patronizing a prostitute requires that “the accused compelled, induced, enticed, or procured such person to engage in a sexual act in exchange for money or other compensation.” *Manual for Courts-Martial, United States* (2024 ed.) pt. IV, paras. 99.b.(2) and 106.b.(2).

Given the remedy of dismissal of the multiplicitious charge, we must determine whether our “broad discretion” allows us to reassess appellant’s sentence instead of ordering a rehearing. *United States v. Winckelmann*, 73 M.J. 11, 12 (C.A.A.F. 2013). Based on our experience, and with the aid of a confinement sentence segmented by the military judge for each specification as well as the military judge’s consolidation of the dismissed charge with Charge I Specification 4 for sentencing, we are confident that even with the dismissal of the Specification of Charge II, the military judge would have imposed at least thirty days of confinement and a reprimand.

CONCLUSION

The findings of guilty of the Specification of Charge II and Charge II are set aside and that specification and charge are DISMISSED. The remaining findings of guilty are AFFIRMED. The sentence is AFFIRMED.³

³We order three corrections to the Entry of Judgment. First, the “Date Judgment Entered” block should reflect 01 May 2025. Second, the “ACCA Case Number” should read “20250141.” Third, the language in the written reprimand should be inserted into the Entry of Judgment as required by Rule for Court-Martial [R.C.M.] 1111(b)(3)(D).

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Senior Judge POND and Judge STEELE concur.

FOR THE COURT:

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JAMES W. HERRING, JR. *JWH*
Clerk of Court