

# UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before  
COOK, GALLAGHER, and HAIGHT  
Appellate Military Judges

**UNITED STATES, Appellee**  
**v.**  
**Staff Sergeant ALVARO GARCIA, JR.**  
**United States Army, Appellant**

ARMY 20080839

Headquarters, U.S. Army Basic Combat Training Center of Excellence  
Kirsten V. Brunson, Military Judge  
Lieutenant Colonel Matthew P. Ruzicka, Acting Staff Judge Advocate

For Appellant: Colonel Mark Tellitocci, JA; Lieutenant Colonel Matthew M. Miller, JA; Major Timothy W. Thomas, JA; Major Jonathan F. Potter, JA (on brief).

For Appellee: Major Christopher B. Burgess, JA; Major LaJohnne A. White, JA; Captain Christopher B. Witwer, JA (on brief).

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30 August 2012

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SUMMARY DISPOSITION ON REMAND  
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Per Curiam:

An enlisted panel, sitting as a general court-martial, convicted appellant, contrary to his pleas, of two specifications of bribery in violation of Article 134, Uniform Code of Military Justice, 10 U.S.C. § 934 (2006) [hereinafter UCMJ].\* Appellant was sentenced to confinement for one year, forfeiture of all pay and allowances for one year, and reduction to the grade of Private E-1. The convening authority approved the adjudged sentence.

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\* Appellant was found not guilty of one specification alleging violation of a lawful regulation and one specification of graft.

This case was previously submitted to this court for review pursuant to Article 66, UCMJ. On 12 April 2011, we issued an opinion in this case, affirming the findings of guilty and the sentence. On 21 September 2011, our superior court vacated our decision and returned the record of trial to The Judge Advocate General of the Army for remand to this court for consideration in light of *United States v. Fosler*, 70 M.J. 225 (C.A.A.F. 2011). On 17 February 2012, we issued a decision in this case, affirming the findings of guilty and the sentence. On 10 July 2012, our superior court reversed our decision and returned the record of trial to The Judge Advocate General of the Army for remand to this court for further consideration in light of *United States v. Humphries*, 71 M.J. 209 (C.A.A.F. 2012). Consequently, appellant's case is again before this court for review under Article 66, UCMJ.

### DISCUSSION

Appellant was charged with and convicted of the two following bribery specifications in violation of Article 134, UCMJ:

In that Staff Sergeant Alvaro Garcia, Jr., US Army, on active duty, being at the time a non-commissioned officer at the 2nd Brigade, 87th Division S-4 office, did at or near San Juan, Puerto Rico, between on or about 23 July 2006 and 27 July 2006, wrongfully ask from SE, owner of Preferred Corporate Housing, a contracting company engaged in procuring lodging for government employees, the sum of approximately \$18,000, with intent to have his action influenced with respect to the awarding of an Army contract, an official matter in which the United States was and is interested, to wit: an Army contract to provide temporary lodging for Service Members[.];

In that Staff Sergeant Alvaro Garcia, Jr., US Army, on active duty, being at the time a non-commissioned officer at the 2nd Brigade, 87th Division S-4 office, did at or near Orlando, Florida, on divers occasions between on or about 25 July 2006 and 16 August 2006, wrongfully ask from KF, an employee with Wynne Residential Corporate Housing, a contracting company engaged in procuring lodging for government employees, the sum of between approximately \$10,800 and \$16,200 with intent to have his action influenced with respect to the awarding of an Army contract, an official matter in which the United States was and is interested, to wit: an Army contract to provide temporary lodging of Service Members.

The elements of a crime under clause 1 or 2 of Article 134, UCMJ are that (1) the accused engaged in certain conduct, and (2) that the conduct was prejudicial to good order and discipline or service discrediting. See *Manual for Courts-Martial, United States* (2008 ed.), pt. IV, ¶ 66.b(1)(e).

“The Government must allege every element expressly or by necessary implication, including the terminal element.” *Fosler*, 70 M.J. at 232. Each specification specifically mentions the armed forces and repeatedly implies the need for the orderly and proper administration of military contracts with the civilian community. In light of *Humphries*, even if these specifications do not allege the terminal elements by necessary implication, the question remains whether the defect resulted in material prejudice to appellant’s substantial right to notice. This question is answered by a close review of the record to determine if “notice of the missing element is somewhere extant in the trial record, or whether the element is ‘essentially uncontroverted.’” *Humphries*, 71 M.J. at 215-16 (citing *United States v. Cotton*, 535 U.S. 625, 633 (2002)).

*Humphries* was a rape and forcible sodomy case with a “throw-away charge” of adultery. In stark contrast, this case, as specifically conceded by both parties, was about the bribery charges and the appellant’s greed. Unlike *Humphries*, the bribery charges were not only mentioned in opening statements, they were the focus. Unlike *Humphries*, evidence was presented and witnesses testified solely for purposes of proving the elements of the bribery charges, to include the terminal elements.

During the government’s case-in-chief, testimony was elicited regarding the effect appellant’s conduct had not only on the good order and discipline required by the administration of the contracting system but more specifically on whether the charged conduct was service discrediting. For example, two civilian witnesses testified about their responses upon being solicited by a soldier for what they perceived to be a bribe. One, Mr. RL, felt the bribe was unjustified due to the fact that appellant was a government employee, was already receiving a government salary, and was yet asking for additional money to be paid out of the witness’s personal commission. He reluctantly agreed to pay the bribe in order to keep doing business with the Army. The other, Ms. SE, testified that she was “uncomfortable and taken aback” by what she perceived to be appellant’s “unethical” request for money. Clearly, the witness was troubled by appellant’s opinion that “if [he’s] getting the best deal for the Soldiers, [he] should get something out of the deal, too.”

In short, contrary to *Humphries*, in this case, the specific language of the bribery specifications coupled with the government’s entire case-in-chief reasonably placed appellant on notice that the Government was pursuing convictions under the theories that appellant’s conduct was prejudicial to good order and discipline and of

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a nature to bring discredit upon the armed forces. Appellant was on notice and it was certainly no surprise as to what he must defend against.

**CONCLUSION**

On consideration of the entire record and in light of *United States v. Humphries*, 71 M.J. 209 (C.A.A.F. 2012), we hold the findings of guilty and the sentence as approved by the convening authority correct in law and fact. Accordingly, the findings of guilty and the sentence are AFFIRMED.

FOR THE COURT:

A handwritten signature in black ink, appearing to read 'Joanne P. Tetreault Eldridge', is written above the printed name.

JOANNE P. TETREAULT ELDRIDGE  
Acting Clerk of Court