

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
TOZZI, CAMPANELLA, and CELTNIIEKS
Appellate Military Judges

UNITED STATES, Appellee
v.
Private (E-2) EVAN M. EVERETT
United States Army, Appellant

ARMY 20140865

U.S. Army Intelligence Center of Excellence and Fort Huachuca
Timothy P. Hayes, Jr., Military Judge
Colonel Joseph A. Keeler, Staff Judge Advocate

For Appellant: Lieutenant Colonel Charles D. Lozano, JA; Major Christopher D. Coleman, JA; Captain J. David Hammond, JA (on brief).

For Appellee: Colonel Mark H. Sydenham, JA; Major John K. Choike, JA; Captain Robyn M. Chatwood, JA (on brief).

28 April 2016

SUMMARY DISPOSITION

Per Curiam:

A military judge sitting as a special court-martial convicted appellant, pursuant to his pleas, of one specification of wrongful appropriation and one specification of larceny in violation of Article 121, Uniform Code of Military Justice, 10 U.S.C. § 921 (2012) [hereinafter UCMJ]. The military judge sentenced appellant to a bad-conduct discharge and confinement for ten months. Pursuant to a pretrial agreement, the convening authority approved the findings and only so much of the sentence as provides for a bad-conduct discharge and confinement for seven months.

This case is before us for review pursuant to Article 66, UCMJ. Appellant raises one assignment of error to this court that merits discussion and relief.

The military judge found appellant guilty of Specification 2 of The Charge, larceny of funds with a value of more than \$500, the property of Bank of America, N.A. [hereinafter Bank of America], between on or about 27 June 2014 and on or

about 8 July 2014. Consistent with the error assigned by appellant, our examination of the record finds evidence to support the allegation that appellant stole funds from Bank of America, but the value of the funds stolen during the transaction at issue was less than \$500. The government concedes this point and agrees with appellant that Specification 2 of The Charge should be amended to reflect a value of less than \$500. We provide relief in our decretal paragraph.

CONCLUSION

Upon consideration of the entire record, the court affirms only so much of the finding of guilty of Specification 2 of The Charge as finds that:

[Appellant], U.S. Army, did, at or near Fort Huachuca, Arizona, between on or about 27 June 2014 and on or about 8 July 2014, steal funds, of a value of less than \$500, the property of Bank of America, N.A.

The remaining findings of guilty are AFFIRMED.

Reassessing the sentence on the basis of the error noted, the entire record, and in accordance with the principles of *United States v. Winckelmann*, 73 M.J. 11, 15-16 (C.A.A.F. 2013), the sentence as approved by the convening authority is AFFIRMED. All rights, privileges, and property, of which appellant has been deprived by virtue of that portion of the findings set aside by this decision, are ordered restored.



FOR THE COURT:

A handwritten signature in black ink, which appears to read "Malcolm H. Squires, Jr.", is written over the printed name.

MALCOLM H. SQUIRES, JR.
Clerk of Court