UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class DENNIS C. CUFFIA
United States Air Force

ACM S30177

17 March 2004

Sentence adjudged 19 July 2002 by SPCM convened at Malmstrom Air Force Base, Montana. Military Judge: Kurt D. Schuman (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 4 months, forfeiture of $350.00 pay per month for 4 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, and Captain James M. Winner.

Appellate Counsel for the United States: Colonel LeEllen Coacher and Lieutenant Colonel Lance B. Sigmon.

Before

STONE, MOODY, and JOHNSON-WRIGHT
Appellate Military Judges

OPINION OF THE COURT

MOODY, Judge:

The appellant was convicted, in accordance with his pleas, of one specification of willful damage to non-military property; two specifications of willful damage to military property; and one specification of dereliction of duty by the underage consumption of alcohol, in violation of Articles 109, 108, and 92, UCMJ, 10 U.S.C. §§ 909, 908, 892. He was convicted, contrary to his plea, of one specification of willful damage to non-military property, in violation of Article 109, UCMJ. The special court-martial, consisting of a military judge sitting alone, sentenced the appellant to a bad-conduct discharge, confinement for 4 months, forfeiture of $350.00 pay per month for 4 months, and reduction to E-1. The convening authority approved the sentence as adjudged. The appellant has submitted two assignments of error: (1) That the plea of guilty to willful

damage to military property by smearing paint on a dormitory door was improvident; and (2) That the evidence is legally and factually insufficient to sustain the conviction of willful damage to non-military property by jumping up and down on the roof of a car. Finding no error, we affirm.

I. Background

The appellant was a member of the Security Forces Squadron assigned to Malmstrom Air Force Base, Montana. On the evening of 10 November 2001, the appellant, who was under 21 years of age, consumed alcohol to the point of intoxication. While under the influence of alcohol, he destroyed the rear window of a fellow member's truck by beating it with a skateboard, damaged the screen covering a window in an Air Force dormitory, smeared face paint on a door of the dormitory, and climbed onto the roof of another member's car. Damage to the car was estimated in an amount over $100.00.

II. Providence of the guilty plea

The standard of review for the providence of a guilty plea is whether there is a "'substantial basis' in law and fact for questioning the guilty plea." *United States v. Milton*, 46 M.J. 317, 318 (C.A.A.F. 1997) (quoting *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991)). If the "factual circumstances as revealed by the accused himself objectively support that plea," the factual predicate is established. *United States v. Faircloth*, 45 M.J. 172, 174 (C.A.A.F. 1996) (quoting *United States v. Davenport*, 9 M.J. 364, 367 (C.M.A. 1980)). We review a military judge's decision to accept a guilty plea for an abuse of discretion. *United States v. Eberle*, 44 M.J. 374 (C.A.A.F. 1996).

The crime of willful damage to military property contains the following elements:

> (a) That the accused, without proper authority, damaged . . . certain property in a certain way . . . ;
>
> (b) That the property was military property of the United States;
>
> (c) That the damage . . . was willfully caused by the accused . . . and
>
> (d) That the property was of a certain value or the damage was of a certain amount.

Manual for Courts-Martial, United States (MCM), Part IV, ¶ 32(b) (2000 ed.). "[T]he word 'damage' must be reasonably construed to mean any change in the condition of the property which impairs its operational readiness." *United States v. Peacock*, 24 M.J. 410, 411 (C.M.A. 1987). Such damage does not have to be permanent in nature. *United*

States v. Daniels, 56 M.J. 365, 369 (C.A.A.F. 2002). "As a general rule, the amount of damage is the estimated or actual cost of repair by the [government agency] normally employed in this work . . . ." *MCM*, Part IV, ¶ 32(c)(3).

The appellant contends that the military judge did not elicit a sufficient factual predicate as to whether he actually damaged the door. During the providence inquiry, the appellant stated that he had smeared paint on the door of a friend. He acknowledged that the paint was "greasy" and that it gave the appearance of grafitti. The military judge continued questioning the appellant:

> MJ: [T]he damages we're talking about are essentially the costs involved in washing it off the . . . door?
>
> ACC: Yes, Sir.
>
> MJ: And the paint [on the door] wasn't damaged to such an extent that it would require repainting?
>
> ACC: No, Your Honor.
>
> MJ: It might be a little discolored or maybe some smears that you can see through there. It was changed in some way, I would assume, right?
>
> ACC: Are we talking about that night or after it was—
>
> MJ: No, afterwards. After they cleaned it up, they opted not to repaint it, so it wasn't damaged to a significant degree, but . . . there was some damage?
>
> ACC: Yes, minimal.
>
> MJ: Okay. And obviously less than $100?
>
> ACC: Yes, Your Honor.
>
> MJ: [D]oes either side feel it's necessary to inquire any further into the elements of this offense?
>
> [Defense Counsel] DC: No, Your Honor.

We find in the providence inquiry no substantial basis to question the providence of the plea. *United States v. Care*, 40 C.M.R. 247 (C.M.A. 1969). The military judge began the inquiry with a correct statement of the law. He then elicited the appellant's admission that he had in effect placed graffiti on part of a military building, which changed it in some way. The appellant stipulated that the damage was "greater than $1.00 but less than $100.00." The fact that the damage was minimal and of a temporary nature is not relevant. We hold that the facts objectively support the plea and that the military judge did not abuse his discretion by accepting it.

III. Factual and legal sufficiency

We resolve the remaining issue adversely to the appellant. Photographs of the automobile taken after the incident in question, as well as the stipulation of expected testimony of the owner as to the extent of the damage, corroborate the testimony of the eyewitness that she saw the appellant "bouncing on the roof of the vehicle," and leaving dents on it. Viewing the evidence in the light most favorable to the government, we hold that a rational trier of fact could have found the appellant guilty of all elements of willful damage to non-military property beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Furthermore, after weighing the evidence and making allowances for not having observed the witnesses, this Court is convinced of the appellant's guilt beyond a reasonable doubt. *Reed*, 54 M.J. at 41 (citing *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987)).

IV. Conclusion

The findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred. Article 66(c), UCMJ, 10 U.S.C. § 866(c); *Reed*, 54 M.J. at 41 (C.A.A.F. 2000). Accordingly, the findings and sentence are

AFFIRMED.

OFFICIAL

FELECIA M. BUTLER, TSgt, USAF
Chief Court Administrator