UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class KRISTINA M. PADDOCK
United States Air Force

ACM S30309

30 March 2004

Sentence adjudged 23 January 2003 by SPCM convened at Barksdale Air Force Base, Louisiana. Military Judge: Gregory E. Pavlik (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 135 days, forfeiture of $500.00 pay per month for 5 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, and Captain Jennifer K. Martwick

Appellate Counsel for the United States: Colonel LeEllen Coacher, Colonel Michael J. Cianci Jr., and Lieutenant Colonel Lance B. Sigmon.

Before

PRATT, GRANT, and CONNELLY
Appellate Military Judges

OPINION OF THE COURT

CONNELLY, Judge:

The appellant was convicted, consistent with her pleas, of one specification of larceny on divers occasions, in violation of Article 121, UCMJ, 10 U.S.C. § 921. Her approved sentence was a bad-conduct discharge, confinement for 135 days, forfeiture of $500.00 pay per month for 5 months, and reduction to E-1. The appellant alleges on appeal that her plea to larceny "on divers occasions" was improvident. The specification to which the appellant entered a guilty plea stated:

> In that AIRMAN FIRST CLASS KRISTINA M. PADDOCK, United States Air Force, 2d Maintenance Squadron, Barksdale Air Force Base, Louisiana, did, at or near Barksdale Air Force Base, Louisiana, on divers

occasions between on or about 20 September 2002 and on or about 25 September 2002, steal a computer and computer peripherals, of a value of more than $500.00, the property of Airman First Class [MP].

The military judge elicited the following information from the appellant during her providence inquiry. The appellant and the government entered into a stipulation of fact, which also laid out the facts and circumstances of the appellant's crime. The appellant lived in the dormitories on Barksdale Air Force Base, Louisiana. On 20 September 2002, the appellant went into her suitemate's room without her permission and removed computer equipment, specifically, a computer, monitor, keyboard, and computer peripherals from her suitemate's adjoining room. The appellant gained access to her suitemate's room through an open door in a shared bathroom. At the time she took this computer equipment, she intended to return it to her suitemate.

Approximately two days later, the appellant went back into her suitemate's dorm room without her permission and removed a printer so the appellant could print out some photographs for a friend. Again, the appellant took her suitemate's printer without her permission with the intent to return it. That night, when she tried to return the computer equipment, including the printer, she found the bathroom door locked and her access to the adjoining room denied. At that time, she formed the intent to permanently retain all of the computer equipment. She took the equipment to an off-base apartment. The appellant then assembled the computer, connected to an Internet provider, and used the equipment.

The appellant contends that while she may have wrongfully misappropriated computer equipment on two occasions, she formed the intent to permanently deprive the owner of the property on only one occasion – when the bathroom door was locked and her access to the adjoining room was barred. She argues that her plea is improvident because she is guilty of larceny on only one occasion, not on divers occasions. We disagree and affirm the findings and sentence.

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). In determining whether a guilty plea is provident, the test 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)); *United States v. Bickley*, 50 M.J. 93, 94 (C.A.A.F. 1999).

It is well established that larceny requires: (1) That the accused wrongfully took, obtained or withheld property from another person; (2) That the property belonged to

another person; (3) That the property was of some value; and (4) That the accused had the intent to permanently deprive another person of the use and benefit of that property. *Manual for Courts-Martial, United States (MCM)*, Part IV, ¶ 46(b)(1) (2002 ed.). When a person takes property but does so "without a concurrent intent to steal," that person has committed a larceny "if an intent to steal is formed after the taking or obtaining and the property is wrongfully withheld with that intent." *MCM*, Part IV, ¶ 46(c)(1)(f)(i). "It is clear that larceny is committed when an intent to permanently deprive the owner of property of its use and benefit is formed at any time after the event, even when the original taking . . . was done with the intent to return it . . . ." *United States v. Lee*, 37 M.J. 1020, 1021 (A.F.C.M.R. 1993) (citing *United States v. Vardiman*, 35 M.J. 132 (C.M.A. 1992); *United States v. Moreno*, 23 M.J. 622 (A.F.C.M.R. 1986), *pet. denied*, 24 M.J. 348 (C.M.A. 1987); *United States v. Cox*, 37 M.J. 543 (N.M.C.M.R. 1993); *MCM*, Part IV, ¶ 46(c)(1)(f)(i).

This is not a case where a larceny of several items is committed at substantially the same time and place. The appellant wrongfully took computer equipment from her suitemate on two distinct and different occasions, approximately two days apart. Even though she initially did not have the requisite intent to permanently deprive her suitemate of the computer equipment on either occasion, her intent to steal the equipment was formed at a later time when she was unable to return the property and decided to keep it for her use and benefit. We hold that the military judge did not abuse his discretion when he found the appellant guilty of larceny on divers occasions. The appellant's plea is provident.

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); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the approved findings and approved sentence are

AFFIRMED.

OFFICIAL

FELECIA M. BUTLER, TSgt, USAF
Chief Court Administrator