UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Airman First Class BRIAN E. WATERMAN JR.
United States Air Force

ACM S30137

30 July 2004

Sentence adjudged 2 May 2002 by SPCM convened at Spangdahlem Air Base, Germany. Military Judge: Thomas W. Pittman (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 2 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Beverly B. Knott, Major Terry L. McElyea, and Major Kyle R. Jacobson.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Lance B. Sigmon, and Major Eric D. Placke.

Before

PRATT, GENT, and MOODY
Appellate Military Judges

PER CURIAM:

We have examined the record of trial, the assignment of errors, and the government's reply thereto. The appellant assigns two errors for our consideration.

The appellant first asserts that his plea to wrongful appropriation of a government-owned VCR, in violation of Article 121, UCMJ, 10 U.S.C. § 921, was improvident. During the providence inquiry, the appellant told the military judge that he had developed the practice of "borrowing" the VCR from the dayroom and returning it. On 5 January 2002, after taking the VCR and not returning it for a few days, he noticed that the VCR had been replaced in the dayroom. He decided to keep the VCR until he could rent a "TV/VCR combo" on the next payday, 15 January 2002. The appellant admitted that he

intended to deprive the United States, the owner of the VCR, of its use. He also stated:

> [I] was under—people borrowed stuff from the dorm all the time, from the dayrooms, from people taking the couches, government couches out of the dayroom and putting them in their rooms. Honestly, I didn't know that it was wrong—wrong for me to do that, since it was such a common thing for people to do.
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> The military judge asked questions about this statement. He said:
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> [I] understood that you said you didn't know at the time that what you were doing was wrong, because other people were taking items from the dayroom or from the common areas and taking them back to their room, in essence borrowing them. Did you have authority to do this? Did you have anyone give you authority, like your supervisor or anyone else, did they tell you it was okay to do this, to take the VCR to your room?
>
> The appellant replied, "No, Sir."

The appellant's statement that he didn't know it was wrong to remove items from the dayroom contains no defense because ignorance or mistake of law is no defense. Rule for Courts-Martial 916(l)(1). Out of an abundance of caution, the military judge asked whether the appellant believed anyone had given him permission to deprive the government of the use of the VCR. The appellant informed the military judge that no one had done so. We are satisfied the military judge adequately explored this matter. *United States v. Outhier*, 45 M.J. 326, 331 (C.A.A.F. 1996). On the record before us, we find no substantial basis in law or fact for questioning the plea. *United States v. Jordan*, 57 M.J. 236 (C.A.A.F. 2002); *United States v. Prater*, 32 M.J. 433 (C.M.A. 1991).

The appellant next alleges that the evidence was factually and legally insufficient to sustain a guilty finding for housebreaking in Charge II, Specification 2, a violation of Article 130, UCMJ, 10 U.S.C. § 930. The specification alleged the appellant unlawfully entered a "storage locker" belonging to Airman First Class Hart with the intent to commit larceny. The appellant invites our attention to *United States v. Breen*, 36 C.M.R. 156 (C.M.A. 1966), where our superior court held that a service member's locker aboard a destroyer was not a proper subject for the offense of unlawful entry. While the specification in the case before us uses the term "locker," the record persuades us that the area was a storage room, properly the subject of an Article 130, UCMJ, violation. *United States v. Wickersham*, 14 M.J. 404, 407 (C.M.A. 1983). We hold that the evidence is legally and factually sufficient to sustain the finding of guilty to Charge II, Specification 2.

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 findings and sentence are

AFFIRMED.

OFFICIAL

ANGELA M. BRICE
Clerk of Court