

**UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

---

**UNITED STATES**

**v.**

**Airman First Class MICHAEL M. SIRUS JR.  
United States Air Force**

**ACM S30744**

**26 May 2006**

Sentence adjudged 3 August 2004 by SPCM convened at Barksdale Air Force Base, Louisiana. Military Judge: James L. Flanary.

Approved sentence: Bad-conduct discharge, confinement for 2 months, hard labor without confinement for 30 days, forfeiture of \$795.00 pay per month for 5 months, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Nikki A. Hall, Lieutenant Colonel Mark R. Strickland, Major James M. Winner, and Captain Anthony D. Ortiz.

Appellate Counsel for the United States: Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Major Jin-Hwa L. Frazier.

Before

**ORR, JOHNSON, and JACOBSON**  
Appellate Military Judges

**PER CURIAM:**

We have examined the record of trial, the assignment of error, and the government's reply thereto. The appellant asserts that his plea of guilty to larceny, in violation of Article 121, UCMJ, 10 U.S.C. § 921, was improvident because he did not permanently intend to keep the property. Finding no error, we affirm.

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. Jordan*, 57 M.J. 236, 238 (C.A.A.F. 2002) (citing *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991)). In order to establish an adequate factual basis for a guilty plea, "the military judge must elicit 'factual circumstances as revealed by the accused himself [that] objectively support that plea[.]'" *Jordan*, 57 M.J. at 238 (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, 375 (C.A.A.F. 1996).

The appellant's testimony during the *Care*<sup>1</sup> inquiry, and the stipulation of fact entered into between the parties, objectively support the appellant's acknowledgement that he committed larceny, when he took Airman (Amn) RB's property without his consent. Additionally, during the providence inquiry concerning burglary, in violation of Article 129, UCMJ, 10 U.S.C. § 929, the appellant stated that he entered Amn RB's room with the intent to commit larceny. Although the stipulation of fact states that the appellant intended to return the property to Amn RB at one time, he testified that he was holding the property for his accomplice, Amn DH, so that Amn DH could send the property to New Jersey. Even if we assume the appellant did not intend to permanently keep Amn RB's property for himself, he knew that Amn DH had no plans to return the property to its rightful owner. Under the facts and circumstances of this case, we are convinced, as the appellant was at trial, that his conduct violated Article 121, UCMJ. *See Manual for Courts-Martial, United States*, Part IV, ¶ 46b(1) (2005 ed.).<sup>2</sup> We conclude there is no basis to disturb the appellant's plea and therefore, hold his plea was provident.

We conclude 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 sentence are

AFFIRMED.

OFFICIAL

LOUIS T. FUSS, TSgt, USAF  
Chief Court Administrator

---

<sup>1</sup> *United States v. Care*, 40 C.M.R. 247 (C.M.A. 1969).

<sup>2</sup> The 2002 edition of the *Manual* was in effect during the processing of the appellant's case. This provision is unchanged in the 2005 edition.