UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Senior Airman RONALD C. RENFROE
United States Air Force

ACM 37736 (rem)

14 February 2012

Sentence adjudged 7 July 2010 by GCM convened at Seymour Johnson Air Force Base, North Carolina. Military Judge: Thomas A. Monheim (sitting alone).

Approved sentence: Bad-conduct discharge, confinement for 6 months, reduction to E-1, and a fine of $1,251.00.

Appellate Counsel for the Appellant: Lieutenant Colonel Gail E. Crawford and Major Daniel E. Schoeni.

Appellate Counsel for the United States: Colonel Don M. Christensen; Captain Erika L. Sleger; and Gerald R. Bruce, Esquire.

Before

ORR, ROAN, and HARNEY
Appellate Military Judges

UPON REMAND

PER CURIAM:

Pursuant to his pleas, the appellant was convicted at a general court-martial by a military judge alone of two specifications of larceny and one specification of unlawfully entering a non-commissioned officer's house, in violation of Articles 121 and 134, UCMJ, 10 U.S.C. §§ 921, 934. The adjudged sentence consisted of a bad-conduct discharge, 6 months of confinement, a fine of $1,800.00, reduction to Airman Basic, and 6 additional months of confinement in the event the fine was not paid. The convening

authority reduced the level of the fine to $1,251.00, disapproved the contingent confinement, and approved the remainder of the sentence as adjudged.

This Court previously affirmed the findings and sentence. *United States v. Renfroe*, ACM 37697 (A.F. Ct. Crim. App. 7 June 2011) (unpub. op.), *rev'd*, 70 M.J. 356 (C.A.A.F. 2011) (mem.). The Court of Appeals for the Armed Forces (CAAF) subsequently granted review of whether a specification that does not expressly allege the terminal element in a Clause 1 or 2 specification under Article 134, UCMJ, is sufficient to state an offense. *United States v. Renfroe*, 70 M.J. 276 (C.A.A.F. 2011) (order granting petition for review). On 21 September 2011, CAAF vacated our initial decision and remanded the appellant's case for consideration of the granted issue in light of *United States v. Fosler*, 70 M.J. 225 (C.A.A.F. 2011). *Renfroe*, 70 M.J. at 356. Having considered the granted issue in light of *Fosler*, and again having reviewed the entire record, we affirm.

Background

The specification at issue alleges the appellant unlawfully entered the house of a non-commissioned officer (NCO) in Goldsboro, North Carolina. The allegation did not expressly allege the terminal element of Article 134, UCMJ.

At trial, the appellant entered a plea of guilty to all charges and specifications. He did not object to the Article 134, UCMJ, charge and specification as failing to state an offense. During the providence inquiry, the military judge addressed the specification alleged under Article 134, UCMJ. The military judge properly advised the appellant of the elements of the charged offense to include Clauses 1 and 2 of Article 134, UCMJ, and defined these terms for the appellant.

The appellant admitted his guilt and affirmatively stated that he understood the elements and definitions of each offense and that, taken together, they correctly described what he did. In describing the unlawful entry allegations, he admitted to unlawfully going into the NCO's home. He expressly acknowledged, in response to the military judge's inquires, that his conduct was to the prejudice of good order and discipline in the armed services as well as service discrediting. The military judge found that the appellant's guilty plea to all the charges and specifications was voluntary and knowingly made.

Discussion

Whether a charge and specification state an offense is a question of law that we review de novo. *United States v. Crafter*, 64 M.J. 209, 211 (C.A.A.F. 2006) (citations omitted). "A specification states an offense if it alleges, either expressly or by [necessary] implication, every element of the offense, so as to give the accused notice and

protection against double jeopardy." *Id*. at 211 (citing *United States v. Dear*, 40 M.J. 196, 197 (C.M.A. 1994)); *see also* Rule for Courts-Martial 307(c)(3).

In *Fosler*, our superior court invalidated a conviction for adultery under Article 134, UCMJ, because the military judge improperly denied a defense motion to dismiss for failure to state an offense. *Fosler*, 70 M.J. at 233. This is because the charge and specification did not allege at least one of the three clauses of the second element of proof under Article 134, UCMJ, commonly known as the terminal element. *Id*. at 226-27. In setting aside the conviction, *Fosler* did not foreclose the possibility that a missing element could be implied, even the terminal element in an Article 134, UCMJ, offense. However, CAAF held that in contested cases where the sufficiency of the charge and specification are first challenged at trial, "we [will] review the language of the charge and specification more narrowly than we might at later stages" and "will only adopt interpretations that hew closely to the plain text." *Fosler*, 70 M.J. at 230, 232. Thus, at least given the particular circumstances contained in *Fosler*--a contested trial for adultery where the sufficiency of the charge and specification are first challenged at trial--the law will not find that the terminal element of Article 134, UCMJ, is necessarily implied. *Id*. at 230.

In guilty plea cases, however, where there is no objection at trial to the sufficiency of the charge and specification, our superior court has followed "the rule of most federal courts of liberally construing specifications in favor of validity when they are challenged for the first time on appeal." *United States v. Watkins*, 21 M.J. 208, 209 (C.M.A. 1986). Moreover, "[i]n addition to viewing post-trial challenges with maximum liberality, we view standing to challenge a specification on appeal as considerably less where an accused knowingly and voluntarily pleads guilty to the offense." *Id*. at 210 (citations omitted).

In the case before us, unlike in *Fosler*, the appellant pled guilty and made no motion at trial to dismiss the charge and specification for failure to state an offense. During the guilty plea inquiry, the appellant acknowledged his understanding of all the elements of the alleged crimes, including the terminal elements of Article 134, UCMJ, and he explained to the military judge why his conduct was prejudicial to good order and discipline and service discrediting. In this context, consistent with the reasoning in both *Fosler* and *Watkins*, we apply a liberal construction in examining the text of the charge and specification in this case. In doing so, we find that the terminal elements of the additional charge were necessarily implied, the appellant was on notice of what he needed to defend against, and he is protected against double jeopardy. Therefore, we find that the charge and specification under Article 134, UCMJ, is not defective for failing to state an offense.

Conclusion

Having considered the record in light of *Fosler*, as directed by our superior court, we again find that the approved 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

STEVEN LUCAS
Clerk of the Court