

IN THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

UNITED STATES,)	APPELLANT'S REPLY TO
<i>Appellee,</i>)	UNITED STATES' FINAL BRIEF
v.)	
)	USCA Dkt. No. 11-0526/AF
Senior Airman (E-4))	
KODY T. WEEKS,)	Crim. App. No. 37535
USAF,)	
<i>Appellant.</i>)	

**TO THE HONORABLE, THE JUDGES OF THE UNITED STATES
COURT OF APPEALS FOR THE ARMED FORCES:**

COMES NOW Appellant, by and through undersigned counsel,
and pursuant to Rule 19(a) (7) (B) of this Honorable Court's Rules
of Practice and Procedure and files this reply to the United
States' final brief.

Standard of Review

The United States cites *United States v. Inabinette*, 66
M.J. 320, 322 (C.A.A.F. 2008) for the proposition that a
"military judge's acceptance of a guilty plea upon an erroneous
view of the law is reviewed for an abuse of discretion." Grant
Answer at note 4. In fact, *Inabinette* says that "any ruling
based on an erroneous view of the law also constitutes an abuse
of discretion." 66 M.J. at 322.

Forgery by Making versus Forgery by Uttering

Appellant understands the distinction between Article
123(1) and 123(2) and that he was charged with only the latter.
Grant Answer at 9. The problem, however, is that forgery by
uttering presupposes forgery by making. Because in this case

the making and uttering were simultaneous and inseparable, charging only uttering did not resolve the issue. See *MCM*, Part IV, ¶ 48(c)(1) (2008 ed.) (explaining that “three elements are common to both aspects of forgery” including “a writing falsely made or altered”). The issue is not whether Appellant was the maker, but whether an instrument was falsely made, by anyone. It is not a crime to utter what was not falsely made.

Electronic Transactions

Appellant is indeed “hung up on the fact” that the transactions in question were electronic. Grant Answer at 12. That was the issue upon which this Court granted review. The United States, by contrast, seems more interested in proving that other forms of media can support a forgery conviction than addressing whether electronic media can do so. *Id.* at note 8. Notably lacking are cases of forgery by electronic media. *Id.* This seems to be an issue of first impression for this Court.

The United States relies on a passage from *United States v. Thomas*, 25 M.J. 396, 400 (C.M.A. 1988), to draw the conclusion that “the only relevant question” is “whether the writing, whatever it might be, has” what *Thomas* calls “apparent [legal] efficacy[.]” *Id.* at 400 (quoting *United States v. Strand*, 20 C.M.R. 13 (1955)). That does not follow.

The passage cited from the *Thomas* opinion addresses the meaning of “legal” prejudice required by Article 123, as opposed

to other forms of prejudice that fraudulent acts might cause. *Thomas* and *Strand* overturned forgery convictions based on the statute's narrow definition of "legal" prejudice and a strict interpretation of that definition. *Thomas*, 25 M.J. at 399-400 (finding a fraudulent commander's letter recommending appellant for a loan was not forgery); *Strand*, 20 C.M.R. at 18 (finding a letter to appellant's wife falsely informing her he was dead was not forgery though the letter could have been used to collect life insurance benefits). *Thomas* and *Strand* neither address the question at issue nor support the assertion that "apparent [legal] efficacy" is "the only relevant question." If anything, *Thomas* and *Strand* support Appellant's position that Article 123 should be strictly construed.

WHEREFORE, Appellant requests that this Honorable Court set aside Charge II and its Specification.

Respectfully Submitted,



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