

IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

U N I T E D S T A T E S,) FINAL BRIEF ON BEHALF OF
Appellee) APPELLANT
)
v.)
) Crim. App. Dkt. No. 20130284
Specialist (E-4))
Henry L. Williams, III,)
United States Army,) USCA Dkt. No. 15-0140/AR
Appellant)

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Statement of Statutory Jurisdiction

The Army Court of Criminal Appeals (Army Court) had jurisdiction over this matter pursuant to Article 66, Uniform Code of Military Justice, 10 U.S.C. § 866 (2012) [hereinafter UCMJ]. This Honorable Court has jurisdiction over this matter under Article 67(a)(3), UCMJ, 10 U.S.C. § 867(a)(3) (2012).

Statement of the Case

On March 19, 2013, a military judge sitting as a general court-martial convicted Specialist (SPC) Henry L. Williams, contrary to his pleas, of two specifications of larceny, in violation of Article 121, UCMJ, 10 U.S.C. § 921 (2006). The

military judge convicted SPC Williams, consistent with his pleas, of failure to go to his appointed place of duty, willfully disobeying a superior commissioned officer, willfully disobeying a noncommissioned officer (two specifications), false official statement, wrongful use of marijuana, larceny (two specifications), housebreaking (two specifications), and bigamy in violation of Articles 86, 90, 91, 107, 112a, 121, 130, and 134, UCMJ, 10 U.S.C. §§ 886, 890, 891, 907, 912a, 930, 934 (2006).

The military judge sentenced SPC Williams to be confined for eighteen months and to be discharged from the service with a bad-conduct discharge (BCD). The military judge credited SPC Williams with 123 days of confinement credit against the sentence to confinement. In accordance with a pretrial agreement, the convening authority approved only so much of the sentence as provides for fifteen months of confinement and a BCD, and approved 123 days of confinement credit against the sentence to confinement.

On August 28, 2014, the Army Court affirmed the findings and sentence. (JA 11). Specialist Williams was notified of the Army Court's decision and petitioned this Court for review on October 29, 2014. On April 30, 2015, this Honorable Court granted appellant's petition for review.

Statement of Facts

In Specifications 1 and 2 of Charge VI, SPC Williams was charged with stealing money of a value greater than \$500.00 from Private First Class (PFC) BI and SPC JA. (JA 18). At trial, the government's theory was that SPC Williams perpetrated these larcenies by using PFC BI's and SPC JA's debit card information, without their knowledge or permission, to obtain goods and services. (JA 27-28, 116-18).

At trial, PFC BI testified that he was notified by a fraud agency of suspicious purchases made using his checking account at Boulder Valley Credit Union (BVCU). (JA 57). Private First Class BI contacted several of the merchants listed on his account statement and obtained a receipt from Pizza Hut listing SPC Williams as the purchaser of the food. (JA 59-60, 133). Specialist Williams also used PFC BI's information to obtain food from several other restaurants and made two purchases at Verizon wireless totaling \$2,269.51. (JA 62, 131-32). The government did not establish whether these Verizon purchases were for goods or services. (JA 62, 121-25).

The purchase amount of each transaction was debited from PFC BI's checking account at BVCU. (JA 58). Once PFC BI confirmed the fraudulent nature of the transactions, BVCU provided the account with a provisional credit. (JA 77). The government presented no evidence that the bank or the merchants

ultimately suffered any loss, except for PFC BI's claim that BVCU "was not refunded that money." (JA 77). BVCU charged PFC BI \$33.00 in overdraft fees as a result of the transactions. (JA 64, 131).

Specialist JA testified that he checked his BB&T checking account and noticed two pending transactions with Computergeeks.com that he did not authorize. (JA 35). When SPC JA called Computergeeks.com, the merchant had already flagged the attempted transactions as fraudulent and stopped processing the order. (JA 40). Computergeeks.com did not ship any merchandise. (JA 53). As a result, the card-issuing bank delivered no funds to the merchant and cancelled the pending transactions. (JA 47, 53). While the transactions were pending the bank temporarily prevented SPC JA from fully accessing his account, delaying his ability to make a car payment. (JA 51). Specialist JA ultimately regained full access to the checking account, but the bank also charged him \$70.00 in overdraft fees. (JA 51).

At the close of the government's presentation of evidence on the merits, the defense moved for a finding of not guilty under Rule for Court-Martial [hereinafter R.C.M.] 917. (JA 80). Citing the Manual for Courts-Martial and *United States v. Lubasky*, defense counsel argued that the evidence showed the merchants or the banks were the victims of the larceny, not the

individual account-holders. (JA 80). Defense counsel also argued that there was no evidence of an actual taking with respect to Specification 2 of Charge VI (SPC JA) because "no items were delivered by the merchant and no funds were lost by the banking institution. The larceny was never complete." (JA 80).

In response, the trial counsel argued:

He took the . . . debit card information . . . of [SPC JA] and then [PFC BI's] account. He then used it to purchase items for his own benefit. That purchase was an immediate debit from his—from [SPC JA] and the [PFC BI's] account. So immediate that they were charged overdraft fees. The money was immediately taken out of their account—he stole money from them. It's no different than him reaching into their wallet, taking money from them, and then using it to make purchases for his own benefit. Therefore, they are proper victims in this case because SPC Williams stole money from them from their account.

(JA 81-82).

The military judge denied the motion. (JA 85). The military judge cited the Manual for Courts-Martial but found "that this language is not mandatory and alternative charging theories remain available if warranted by the facts." (JA 84). The military judge further found that SPC Williams obtained access to the soldier's accounts by stealing their debit card information and used that information to purchase goods and services. (JA 84-85). "Both testified that the money was

actually taken out of their accounts; with [PFC BI], I believe he stated it was not returned; [SPC JA] said it was later returned. However, the fact that money stolen is later returned does not then transform it from a larceny into an innocent taking." (JA 85). It is unclear what facts the military judge relied upon to find that money "was not returned" to PFC BI, as PFC BI never testified to that effect. (JA 55-79).

Summary of Argument

Pursuant to his executive authority to narrow the interpretation of UCMJ provisions, the President promulgated the general rule that a fraudulent debit transaction to obtain goods or money charged under Article 121, UCMJ, is "usually a larceny of those goods from the merchant offering them" or "a larceny of money from the entity presenting the money" This rule must be given effect because it is an accurate interpretation of the law and reflects the realities of commercial banking and electronic transactions. Here, the evidence showed SPC Williams obtained goods from merchants under false pretenses, not money from the account-holders as alleged. Thus this Court's straightforward application of the general rule in *Gaskill* and *Endsley* should control. Although this Court in *Lubasky* and *Cimball Sharpton* recognized special situations warranting departure from this general rule, no such circumstances exist in this case.

Argument

Standard of Review

Legal sufficiency is reviewed de novo. *United States v. Green*, 68 M.J. 266, 268 (C.A.A.F. 2010). Legal sufficiency requires courts to review the evidence in the light most favorable to the government. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *United States v. Turner*, 25 M.J. 324 (C.M.A. 1987). If any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, the evidence is legally sufficient. *Id.*

Law and Argument

a. Specialist Williams' case requires a straightforward application of the general rule that a fraudulent debit transaction to obtain goods is a larceny of those goods from the merchant.

The President may narrow the interpretation of UCMJ provisions. *United States v. Davis*, 47 M.J. 484, 486 (C.A.A.F. 1998). "Where the President unambiguously gives an accused greater rights than those conveyed by higher sources, this Court should abide by that decision unless it clearly contradicts the express language of the Code." *Id.* Exercising this executive authority, the President prescribed a narrowing of Article 121 in the prosecution of larceny cases involving electronic transactions. Debit and other electronic fund transactions may

not be the basis of a larceny against the account-holder absent special circumstances.

Credit, Debit, and Electronic Transactions. Wrongfully engaging in a credit, debit, or electronic transaction to obtain goods or money is an obtaining-type larceny by false pretense. Such use to obtain goods is usually a larceny of those goods from the merchant offering them. Such use to obtain money or a negotiable instrument (e.g., withdrawing cash from an automated teller or a cash advance from a bank) is usually a larceny of money from the entity presenting the money or a negotiable instrument. For the purpose of this section, the term 'credit, debit, or electronic transaction' includes the use of an instrument or device, whether known as a credit card, debit card, automated teller machine (ATM) card or by any other name, including access devices such as code, account number, electronic serial number or personal identification number, issued for the use in obtaining money, goods, or anything else of value.

Manual for Courts-Martial, United States (2008 ed.) [hereinafter *MCM*], pt. IV, ¶46.c.(1)(i)(vi). This Court has found the President's explanation of Article 121, UCMJ, to be an accurate interpretation of the law. *United States v. Lubasky*, 68 M.J. 260, 263-64 (C.A.A.F. 2010); *United States v. Cimball Sharpton*, 73 M.J. 299, 301 (C.A.A.F. 2014).

Recently, this Court applied the general rule found in the President's interpretation of Article 121, UCMJ, and summarily dismissed larceny specifications in two guilty-plea cases for the same error SPC Williams now asserts. In *United States v.*

Gaskill, the accused pled guilty to committing larceny against three other soldiers by using their debit cards to make unauthorized retail purchases. ARMY 20110028, 2013 CCA LEXIS 605, at *2-3 (Army Ct. Crim. App. 12 Aug. 2013) (summ. disp.).¹ As in this case, the facts presented at trial focused upon the accused taking money from the alleged victim's bank accounts through electronic transactions. *Id.* The Army Court affirmed the findings and the sentence because it was "satisfied from the record as a whole that appellant understood his plea to the charged larceny offenses and understood how the law related to the facts of his case." *Id.* at *3. Reversing the Army Court's decision and applying the President's general rule, this Court found "that the proper victim . . . was the merchant who provided the goods and services upon false pretenses, not the debit cardholder/Soldier." *Gaskill*, 73 M.J. at 207.²

Similarly, in *United States v. Endsley*, the accused pled guilty to committing larceny against SPC DT to make purchases of food and merchandise. 73 M.J. 909, 910 (Army Ct. Crim. App. 2014). The facts presented at trial in *Endsley* also focused on the account-holder as the victim, with no discussion on the record of whether the merchants suffered a loss. No. 15-

¹ A copy of the Army Court's unpublished decision in *United States v. Gaskill* is included at JA 135.

² A copy of this Court's order in *United States v. Gaskill* is included at JA 139.

0202/AR, 2015 CAAF LEXIS 52, at *1 (C.A.A.F. Jan. 14, 2015) (summ. disp.).³ In the Army Court's opinion affirming the findings and the sentence, the court expressed "difficulty reconciling *Gaskill* with *Lubasky* or *Cimball Sharpton*." *Endsley*, 73 M.J. at 911. This difficulty remains as demonstrated by the Army Court's decision affirming SPC Williams' larceny convictions here. But any difficulty is easily resolved upon a close examination of the President's rule, *United States v. Lubasky*, 68 M.J. 260 (C.A.A.F. 2010), and *United States v. Cimball Sharpton*, 73 M.J. 299 (C.A.A.F. 2014).

b. There are no special circumstances in SPC Williams' case warranting an alternative charging theory and departure from the President's general rule.

While *Gaskill* and *Endsley* involved straightforward applications of the President's interpretation, this Court recognized exceptions to the general rule in *Lubasky* and *Cimball Sharpton*. In *Lubasky*, after acknowledging the general rule that a debit transaction charged under Article 121, UCMJ, is "'usually a larceny of those goods from the merchant offering them,'" (quoting *MCM* pt. IV, para. 46.c(1)(h)(vi) (2002 ed.)) (emphasis in original), this Court noted "alternative charging theories remain available if warranted by the facts." 68 M.J. at 263-64 (citing Drafter's Analysis at A23-15). *Lubasky* was,

³ A copy of this Court's order in *United States v. Endsley* is included at JA 140.

in part, a special case warranting an alternative charging theory and departure from the President's general rule. There, the government's decision to allege the debit account-holder as the larceny victim was legally sufficient due to the accused's fiduciary relationship with her. *Id.* at 264.

Lubasky and the elderly victim, Ms. Shirley, shared a joint bank account with the understanding that all funds in the account would be used for the victim's support. *Id.* at 262. This Court noted that Lubasky obtained access to this joint account by "false pretenses—representing to Shirley that he would use her funds in the manner she authorized—with the actual intent to use the funds for his own purposes instead." *Id.* at 264. Thus this Court recognized the importance of ascertaining the victim of the false pretense. Lubasky was a joint owner of the account with authority to use it, so when he obtained goods and money using this account there were no false pretenses at the point of sale/transaction with the merchants or the bank. Instead, the false pretenses were between Lubasky and the account-holder based on their bilateral agreement on how funds withdrawn from the joint account may be used. *Id.* When Lubasky exceeded the limits of this fiduciary relationship by diverting the funds he withdrew and goods he bought for his personal use, he obligated Ms. Shirley to pay and she suffered the ultimate financial loss. *Id.* However, because Lubasky possessed the

authority to spend money from the account, neither the bank nor the merchants, as innocent third-parties, suffered a loss by relying on this authority. See *Id.*

In *United States v. Cimball Sharpton*, this Court highlighted the importance of ascertaining the person or entity suffering the financial loss. 73 M.J. at 302. *Cimball Sharpton* was another special situation warranting an alternative charging theory. There, this Court again reiterated the general rule. *Id.* at 301. This Court then clarified that, "as in *United States v. Lubasky*, the victim of the [debit card] larceny is the person or entity suffering the financial loss or deprived of the use or benefit of the property at issue." *Id.* at 302 (citing *Lubasky*, 68 M.J. at 263-64).

The accused in *Cimball Sharpton* was an authorized government purchase card (GPC) holder "enabling her to purchase medical supplies for the Air Force hospital at Keesler Air Force Base in Mississippi." *Id.* *Cimball Sharpton*, however, wrongfully purchased numerous retail items with her GPC for her personal use. *Id.* at 300. The Air Force paid the card-issuing bank in full for the unauthorized purchases per its contractual obligation. *Id.* at 301, 301 n.2. Because the Air Force was obligated to pay for the charges, "[n]o other party suffered financially as a result of Appellant's actions." *Id.* at 302. For this reason, the government properly alleged the Air Force

as the victim of Cimball Sharpton's larcenies because the Air Force, not the merchants or the bank, "suffered the financial loss." *Id.* The holding in "*Lubasky* is fully consistent with . . ." that in *Cimball Sharpton. Id.*

The special circumstances in *Lubasky* and *Cimball Sharpton* illustrate appropriate exceptions to the President's general rule on larcenies involving electronic transactions. In both cases, the thieves exceeded the limits of an agency relationship with the account-holders resulting in an actual loss to the charged victim. In contrast, this Court relied on and solidified the general rule in *Gaskill* and *Endsley* where no agency relationship existed between the thieves and account-holders. In those cases, either the merchants or the banks suffered the loss, not the account-holders.

Like *Gaskill* and *Endsley*, the false pretenses in this case occurred at the point of sale with the merchants, where Specialist Williams used PFC BI's and SPC JA's account information pretending he had authority to do so. In PFC BI's case this false pretense succeeded in deceiving the merchants into delivering their goods. But it is impossible to tell from the record whether the merchant, the bank, or the account-holder ultimately suffered the financial loss because the government presented insufficient evidence on the matter. PFC BI's testimony on cross-examination indicates that he received a

provisional credit to his account. (JA 77). PFC BI then asserts that the bank was never refunded the money. (JA 77). Follow-up questions from counsel and the military judge failed to clarify the meaning of a "provisional credit" and whether it was ever converted to a full credit. But if the bank was never refunded the money, as PFC BI asserted, then neither PFC BI nor the merchants could have been held financially liable for the larceny. Thus, the record is, at best, inconclusive as to whether PFC BI suffered any loss. Nonetheless, the military judge in his R.C.M. 917 motion erroneously concluded that PFC BI's money "was not returned." (JA 85).

In SPC JA's case, the wary merchant successfully recognized the false pretense and refused to deliver the goods. Specialist Williams apparently obtained nothing from the merchant or the bank, and again the government presented no evidence as to how the merchant or the bank suffered a loss.⁴ What is clear from the record is that SPC JA did not suffer a taking at the hands of SPC Williams, as he received a full credit to his account. (JA 51).

⁴ In fact, this specification presents an additional layer of concern because nobody suffered a tangible loss in the transaction. The account-holder and the bank expended no money and the merchant delivered no goods. At most, the evidence suggests an attempted larceny occurred, but of computers from Computergeeks.com, not money from SPC JA.

Specialist Williams' case presents no *Lubasky*- or *Cimball Sharpton*-type special situations, is no different from *Gaskill* and *Endsley*, and requires a straightforward application of the general rule. Specialist Williams took PFC BI's and SPC JA's debit card information without their knowledge. He had no fiduciary relationship with them and therefore no authority to use the account information. Consequently, there were no false pretenses between him and the charged victims, he took nothing tangible from them, and they suffered no tangible loss. If the President's rule on electronic transactions is to be given any deference, this Court must apply it here and dismiss these two larceny specifications.

Granted, both SPC JA and PFC BI suffered collateral consequences as a result of SPC Williams' fraudulent dealings with these merchants. The bank charged PFC BI and SPC JA administrative fees as a result of the transactions. (JA 51, 64, 131). The bank temporarily prevented SPC JA from fully accessing his account while the fraudulent transactions were pending, affecting his ability to make a car payment. (JA 51). But both banks ultimately accounted for the fraudulent nature of the transactions and credited SPC JA, and likely PFC BI, with the full amount of the purchases. (JA 51, 77). These facts are insufficient to establish the alleged offenses as SPC Williams was not charged with causing temporary errors in bank account

ledgers or with causing the loss of money through administrative fees imposed by third parties.

Moreover, the financial loss at issue is that accruing at the time the crime is complete. A larceny is complete once the perpetrator is satisfied with the location of the items stolen. *United States v. Whitten*, 56 M.J. 234, 237 (C.A.A.F 2002).

Thus, once SPC Williams obtained the goods and services he purchased using the information, his crimes were complete. That banks later imposed fees against SPC JA's and PFC BI's accounts may be relevant in aggravation on sentencing, but is immaterial to the elements of larceny.

The Army Court relied on these collateral inconveniences in affirming the findings and sentence here. For example, in its discussion of the facts, the Army Court stated:

ComputerGeeks.com suffered no financial loss. Because the merchant did not fulfill appellant's orders, BB&T provided no money to the merchant. However, aware of the pending transactions, BB&T did render unavailable to SPC JA the associated monetary amounts (including shipping and handling costs). As a result, SPC JA temporarily lost \$755.10, permanently lost \$70 in bank overdraft fees, and did not have sufficient funds to make his monthly car payment with his BB&T account.

(JA 5). Thus, according to the court, "PFC BI and SPC JA were actual victims in this case. Appellant caused the movement of their money from their control, intending to permanently deprive

them and actually depriving them of its use and benefit." (JA 8). The Army Court thereby equated the bank's imposition of administrative fees and erroneous accounting for the fraudulent transactions to a movement of tangible property. This logic is flawed because it is based on a failure to appreciate the nature of electronic transactions and settled commercial legal principles, which underlie the President's rule.

c. The nature of banking transactions demonstrates why the President's general rule on electronic transaction larcenies is an accurate statement of the law.

The prosecution's approach at trial, the military judge's acceptance of that approach, and the Army Court's decision all demonstrate a fundamental misunderstanding of the relationship between banks and their depositors. At trial, the trial counsel argued SPC Williams' larceny was comparable to physically removing funds from the alleged victims' wallets. (JA 82). The military judge in his R.C.M. 917 ruling stated that "money was actually taken out of their accounts." (JA 85). The Army Court endorsed this theory when it referred to "the movement of money from their control." (JA 8). But this analysis incorrectly assumes that the bank served as the custodian of the specific funds PFC BI and SPC JA deposited in their checking accounts, and that SPC Williams actually took those specific funds when the bank disbursed them to merchants or made them temporarily unavailable to the account-holders.

Money deposited with a bank is not akin to identifiable cash sitting in a tangible box specifically earmarked for individual account-holders. Instead, as a matter of law, the funds held on deposit by a bank are presumed to be the exclusive property of the bank. This is a well-settled legal principle crucial to the "business of banking." *Bank of Republic v. Millard*, 77 U.S. 152, 155 (1870). The Supreme Court long ago determined "that the relation of banker and customer, in their pecuniary dealings, is that of debtor and creditor." *Id.* (citing *Marine Bank v. Fulton Bank*, 69 U.S. 252 (1865); *Thompson v. Riggs*, 72 M.J. 663 (1866)). Once a bank receives a deposit the funds belong to the bank as a debtor who "agrees to discharge these debts by honoring the checks which the depositors shall from time to time draw on [it]." *Id.* Absent a specific agreement to the contrary, banks do not hold funds in trust or establish fiduciary relationships with depositors. *Id.* at 156. See also *In re Bennett Funding Group*, 146 F.3d 136, 139 (2d Cir. 1998) ("Ordinarily, . . . when a depositor deposits funds into a general account he parts with title to the funds in exchange for a debt owed to him by the bank, thereby establishing a standard debtor-creditor relationship"); *In re Multiponics, Inc.*, 622 F.2d 725, 728 (5th Cir. 1980) (stating that funds deposited with a bank are presumed to create a debtor-creditor relationship absent evidence that the funds are

held in a special account or trust); *Miller v. Wells Fargo Bank International Corp.*, 540 F.2d 548, 560 (2d Cir. 1976) ("Money deposited in a general account at a bank does not remain the property of the depositor").

The President's rule on charging electronic transactions reflects this basic legal principle. The Drafter's Analysis recognizes two military justice cases as authority for the rule: *United States v. Duncan*, 30 M.J. 1284 (N.M.C.M.R. 1990), *variance analysis abrogated by Lubasky*, 68 M.J. at 264-65, and *United States v. Jones*, 29 C.M.R. 651 (A.B.R. 1960), *variance analysis abrogated by Lubasky*, 68 M.J. at 264-65. In *Duncan*, the Navy Court recognized that "[i]t is well established that a depositor of a bank or similar depository has no ownership rights in any specific monies of the depository, their relationship being one of creditor to debtor, not bailor to bailee nor beneficiary to fiduciary." *Duncan*, 30 M.J. at 1289, *citing Jones*, 29 C.M.R. at 653. In *Jones*, the Army Court stated, "It is a fundamental rule of banking law that the case of a general deposit of money in a bank, the moment the money is deposited it becomes the property of the bank, and the bank and the depositor assume the legal relation of debtor and creditor." *Jones*, 29 C.M.R. at 653. The *Jones* court cited *United States v. Soppa* as authority for its holding. *Id.* In *Soppa*, the Air Force Court set aside findings of guilty to a larceny of money

allegedly stolen from a unit welfare fund because the money was the property of the bank and not of the depositor as charged. 4 C.M.R. 619, 621-22 (A.F.B.R. 1952). Instead, the unit welfare fund was simply one of many creditors to the bank. *Id.*

As a creditor, depositors have no possessory interest in a bank's actual funds. Depositors, instead, own debt which the bank recognizes as a liability. *Delaware v. New York*, 507 U.S. 490, 503-04 (1993). Thus, the status of a depositor/creditor is that of an "owner of intangible personal property." *Id.* at 504. See also Benjamin M. Owens-Filice, *Where's the Money Lebowski?—Charging Credit and Debit Card Larcenies Under Article 121, UCMJ*, Army Lawyer, Nov. 2014, at 7-9.

Article 121, UCMJ, does not proscribe the theft of intangible property. As this Court held in *United States v. Mervine*, Article 121, UCMJ, adopts the common law requirement "that the object of the larceny be tangible and capable of being possessed." 26 M.J. 482, 484 (C.M.A. 1988). The President also excluded the non-possessory property interest created by a debtor-creditor relationship from the ambit of Article 121, UCMJ. *Id.* Specifically,

The taking, obtaining, or withholding must be of specific property. A debtor does not withhold specific property from the possession of a creditor by failing or refusing to pay a debt, for the relationship of debtor and creditor does not give the

creditor a possessory right in any specific money or other property of the debtor.

Id. (quoting *MCM*, pt. IV. ¶ 46.c.(1)(b)).

The Army Court's decision wholly ignores the debtor-creditor relationship created by bank deposits and the exclusion of intangible property from Article 121, UCMJ. This, in turn, blinded the Army Court to the significance of the President's explanation of credit, debit, and electronic transactions in *MCM*, pt. IV, ¶46.c.(1)(i)(vi). Once one understands the legal relationship between banks and depositors, it becomes apparent why "[w]rongfully engaging in a credit, debit, or electronic transaction to obtain goods or money . . . is usually a larceny of those goods from the merchant [or entity] offering them."

Id. This is because, absent evidence of a fiduciary relationship between the depositor and the bank or between the depositor and the accused upon withdrawal, the depositor has no possessory interest in the specific funds at issue. Therefore, alleging the merchant as the victim of a larceny by false pretenses is generally the only sure means of establishing a violation of Article 121, UCMJ, under these circumstances.

In this case, the evidence is legally insufficient to conclude that SPC JA or PFC BI had a fiduciary relationship with their banks or SPC Williams. The evidence only establishes that the soldiers deposited funds in checking accounts which, based

on established commercial legal principles, presumptively made them creditors of the bank. Any funds distributed by the bank resulting from SPC Williams' false pretenses were the exclusive property of the bank. Any debits against SPC JA's or PFC BI's accounts by the bank resulted only in a temporary decrease in the value of their debt interests, not the taking of their tangible property. These decreases in account balances were but collateral consequences of SPC Williams wrongfully obtaining or attempting to obtain goods and services from merchants, and were improperly relied upon by the Army Court to affirm his convictions for taking money from the account-holders. Thus, the evidence is legally insufficient to establish a larceny of money from SPC JA or PFC BI.

Conclusion

WHEREFORE, SPC Williams respectfully requests that this Honorable Court set aside and dismiss Specifications 1 and 2 of Charge VI.



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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing in the case of *United States v. Williams*, Army Dkt. No. 20130284, USCA Dkt. No. 15-0140/AR, was electronically filed with both the Court and Government Appellate Division on May 20, 2015.


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