IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES, Appellee	)	GOVERNMENT FINAL BRIEF
v.	)	
Specialist (E-4) **MALCOLM R. TURNER** United States Army, Appellant	)	Crim. App. Dkt. No. 20160131
	)	USCA Dkt. No. 19-0158/AR

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Granted Issue:

> WHETHER THE SPECIFICATION OF CHARGE I ALLEGING AN ATTEMPTED KILLING FAILS TO STATE AN OFFENSE BECAUSE IT DOES NOT EXPLICITLY, OR BY NECESSARY IMPLICATION, ALLEGE THE ATTEMPTED KILLING WAS UNLAWFUL.

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

Granted Issue

WHETHER THE SPECIFICATION OF CHARGE I ALLEGING AN ATTEMPTED KILLING FAILS TO STATE AN OFFENSE BECAUSE IT DOES NOT EXPLICITLY, OR BY NECESSARY IMPLICATION, ALLEGE THE ATTEMPTED KILLING WAS UNLAWFUL.

Statement of Statutory Jurisdiction

The United States Army Court of Criminal Appeals (Army Court) reviewed this case pursuant to Article 66(b), Uniform Code of Military Justice, 10 U.S.C. § 866(b) [hereinafter UCMJ]. The statutory basis for this Court's jurisdiction is Article 67(a)(3), UCMJ.

Statement of the Case

On March 4, 2016, a panel composed of officer and enlisted members

convicted Appellant, contrary to his pleas, of one specification of attempted murder, one specification of conspiracy to commit premeditated murder, one specification of maiming, and one specification of obstruction of justice, in violation of Articles 80, 81, 124, 134, UCMJ, 10 U.S.C. § 880, 881, 924, 934. (JA 20).

The panel sentenced Appellant to reduction to E-1, forfeiture of all pay and allowances, confinement for life without the eligibility of parole, and a dishonorable discharge. (JA 2). The convening authority approved the sentence as adjudged and credited Appellant with 599 days against his sentence of confinement. (JA 21).

On November 30, 2018, the Army Court dismissed Specification 1 of Charge IV (obstruction of justice), conditionally dismissed The Specification of Charge II (maiming), and affirmed the remaining findings and sentence. (JA 18). The Army Court also specifically addressed Appellant's *Grostefon* claim that the military judge abused his discretion by failing to dismiss The Specification of Charge I, Attempted Murder.[1] (JA 14-16). The Army Court found the military judge did not err when he denied Appellant's motion to dismiss for failure to state an offense. (JA 16).

[1] *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982)

Appellant petitioned this Court for review on January 29, 2019. This Court granted Appellant's petition on July 16, 2019. (JA 1).

Statement of Facts

Appellant engaged in a sexual relationship, in Korea, with the victim, Specialist (SPC) CSG, which ended when Appellant admitted that he was married. (JA 3). Specialist CSG left for Fort Campbell, Kentucky, where she gave birth to Appellant's son in October 2013, and married another man. (JA 3).

Appellant left for Fort Carson, Colorado, with his spouse Sergeant (SGT) Turner. When SGT Turner discovered Appellant had an illegitimate child, she sent him numerous texts. (JA 4). These texts alternated between relaying fictional threats against their family that she had concocted and accusing Appellant of not wanting to kill SPC CSG. (JA 3). Appellant responded by reassuring SGT Turner that he had purchased bullets and would "handle" SPC CSG. (JA 3).

In October 2014, Appellant requested from SPC CSG her address under the guise of facilitating a future visit with his son. (JA 4). Despite her hesitation about the unforeseen nature of Appellant's request, SPC CSG conferred with her husband and subsequently provided Appellant with her address. (JA 4).

Subsequently, Appellant traveled with SGT Turner from Colorado to Tennessee and made an unannounced appearance at SPC CSG's apartment on January 1, 2015. (JA 4). Appellant scanned the apartment upon being invited in

and asked SPC CSG if her husband was home. (JA 5). Appellant then asked to use the bathroom, from where he texted his spouse and provided SPC CSG's apartment number. (JA 4).

SGT Turner joined Appellant in SPC CSG's apartment and left their daughter in the car. (JA 4). Appellant and his spouse then took turns interrogating and accusing SPC CSG of various misdeeds. (JA 4). SPC CSG placed Appellant's son onto the couch before voicing her displeasure with the allegations. (JA 4). The exchange ended with Appellant saying to SPC CSG, "[y]ou think you're bad huh? You think you're bad?" (JA 4).

Appellant shot SPC CSG with three .40 caliber hollow point bullets, ammunition that is "specifically designed to expand on impact . . . and inflict maximum damage to tissue." (JA 6). The first hollow point struck SPC CSG's arm so violently that she spun around as the second hollow point tore into her back. (JA 4). The second hollow point shattered SPC CSG's rib and scapula and hit her lung and heart sac, before exiting through her chest. (JA 4, R. at 391). The final hollow point went through SPC CSG's head, as it bore into the back of her cheek, flew through her mouth, obliterated her teeth, and perforated the front of her cheek. (SJA 77). The second and third hollow points eventually lodged themselves into the couch upon which Appellant's infant son sat. (JA 4). Appellant and SGT Turner then sprinted out of the apartment. (JA 4).

During the trial, Appellant's trial defense team argued that he was legally justified when he shot SPC CSG three times because he was acting in self-defense. (JA 14). During the instructions on findings, the military judge instructed the panel that in order to find Appellant guilty of attempted premeditated murder, they must find the act "was done with the specific intent to kill [SPC CSG]; that is, to kill without justification or excuse." (SJA 79). Further, the military judge told the panel, "[t]he killing of a human being is unlawful when done without legal justification or excuse." *Id*.

The military judge also instructed the panel that, "[t]he evidence has raised the issue of self-defense" as a complete defense to the offense (and lesser included offenses) alleged in Charge I. (SJA 80). The military judge explained that self-defense required Appellant to have held an objectively reasonable belief that death or grievous bodily harm was about to be inflicted upon him and an actual belief that the amount of force he used was required to protect against that perceived threat. (SJA 81). Appellant did not object to the military judge's instructions as printed and read to the panel. (SJA 78).

Despite Appellant's self-defense theory, the panel found Appellant guilty of all Charges and specifications. (JA 35). Immediately after being convicted, Appellant moved to dismiss The Specification of Charge I for failure to state an offense. (JA 65). Appellant's defense counsel argued because the specification

used the word "kill" instead of "murder," it failed to allege the killing was unlawful. (JA 66). This motion only came after trial, to include presentation of evidence, instructions, closing arguments, and the findings of the court. (JA 35, 68).

The military judge made the following pertinent findings of fact:

> On 23 September 2015, the Article 32 hearing officer . . . in his memorandum of findings lists attempted premeditated murder as the violation of Article 80 he investigated, as to The Specification of Charge I. Paragraph 1 of the same memo lists . . . as the accused's representatives at the hearing . . . [t]he same two defense counsel that have been seated on either side of the accused as his representatives at this trial. The very first voir dire question on the proposed voir dire questions by the defense . . . reads, "One of the offenses alleged in this case is attempted premeditated murder."

(JA 70, 71).

The military judge denied Appellant's post-trial motion to dismiss The Specification of Charge I, concluding:

> It is overwhelming that the defense was properly on notice, that what they were defending the accused against was a charge of attempted premeditated murder. The defense said so in its own voir dire questions. It was written in the Article 32 officer's findings for which both defense counsel were present. There is simply no question that the accused was on notice as to what he was being charged with and what he was defending himself against.

(JA 73-74).

The military judge further noted, "that neither in argument or by any substantive evidence has the defense claimed any prejudice." (JA 72). The military judge also noted that, "[a]t trial, Appellant's counsel conceded that he had not been hampered in his presentation for trial by the perceived deficiency in the specifications." *Id*.

Summary of Argument

The law does not require that a specification be drafted with absolute precision. *United States v. Bryant*, 30 M.J. 72, 74 (C.M.A. 1990). Rather, a specification is legally sufficient if it provides the accused with fair knowledge of the charge against which he must defend and adequately alleges the facts necessary to protect the accused against double jeopardy. *United States v. Fosler*, 70 M.J. 225, 229 (C.A.A.F. 2011). The language in the challenged specification necessarily implies that it was unlawful for Appellant to attempt to murder his infant son's mother.

This Court should decline Appellant's invitation to impose an absolute precision requirement in the drafting of charges. (Appellant's Br. 22). The application of *Fosler*'s UCMJ Article 134 terminal element analysis to inchoate offenses would result in uncertainty. Instead, this Court should reject Appellant's 'gotcha' trial strategy by adhering to its inchoate offense jurisprudence and affirming the Army Court's decision.

Standard of Review

A military appellate court reviews the sufficiency of a specification de novo. *United States v. Humphries*, 71 M.J. 209, 212 (C.A.A.F. 2012). A specification, when challenged at trial, will be reviewed more narrowly on appeal. *Fosler*, 70 M.J. at 231-32; *see also Bryant*, 30 M.J. at 73. Specifically, a military judge's denial of a motion to dismiss for failure to state an offense is reviewed for harmless error. *Humphries*, 71 M.J. at 213 n.5.

Law and Analysis

The military is a notice-pleading jurisdiction. *United States v. Sell*, 3 C.M.A. 202, 206 (C.M.A. 1953). "A specification is sufficient if it alleges every element of the charged offense expressly or by *necessary implication*." R.C.M. 307(c)(3) (emphasis added); *see also Bryant*, 30 M.J. at 73. Generally, "[a] charge and specification will be found sufficient if they, 'first contain the elements of the offense charged and fairly inform a defendant of the charge against which he must defend, and second, enable him to plead an acquittal or conviction in bar of future prosecutions for the same offense.'" *Fosler*, 70 M.J. at 229 (quoting *Hamling v. United States*, 418 U.S. 87, 117 (1974)).

When an accused is charged with an attempt, "the government need only allege the elements of the inchoate offense." *United States v. Norwood*, 71 M.J. 204, 205 (C.A.A.F. 2012); *see also Wong Tai v. United States*, 273 U.S. 77, 81

(1927). For inchoate offenses, it is not essential to the validity of the charge that the offense is charged with technical precision. *See Bryant*, 30 M.J. at 74. "Practical rather than technical consideration govern the validity of the charge." *Id.* (internal quotations and citations omitted). "However, sufficient specificity is required so that an accused is aware of the nature of the underlying target or predicate offense . . . ." *Norwood*, 71 M.J. at 207. A valid specification must allege every element of the charged offense expressly or by necessary implication and protect the accused from double jeopardy. *Bryant*, 30 M.J. at 73.

1. *Fosler* Does Not Control in Enumerated Article Cases

In *Fosler*, this Court determined whether the trial judge erred when he denied the Appellant's motion to dismiss for failure to state an offense. *Fosler*, 70 M.J. at 228. Similar to the instant case, *Fosler* was a contested case where the appellant challenged the specification at trial.[2] *Id*. at 231. This Court found that although the specification contained an allegation of adultery, a citation to Article 134, UCMJ, and the word "wrongfully," it did not necessarily imply which of Article 134's three clauses appellant was alleged to have violated.[3] *Fosler*, 70 M.J.

[2] The Specification read: "In that [appellant] . . . on active duty, a married man, did, at or near Naval Station, Rota, Spain , on or about 26 December 2007, . . . wrongly hav[e] sexual intercourse with [SK], a woman not his wife." *Fosler*, 70 M.J. at 227.

[3] Commonly referred to as the "terminal element," the three clauses are that the appellant's conduct was: (1) to the prejudice of good order and discipline; (2) of a nature to bring discredit upon the armed forces; or (3) a crime or offense not

at 231. This Court reversed the trial judge's decision after finding that the deficient specification failed to provide constitutionally required notice. *Fosler*, 70 M.J. at 233.

Prior to *Fosler*, the Government was not required to plead the terminal element. *United States v. Mayo*, 12 M.J. 286, 293 (C.M.A. 1982)(affirming Article 134, UCMJ, conviction despite Government's failure to allege the terminal element, finding that omission of the terminal element had judicial sanction); *United States v. Marker*, 3 C.M.R. 127, 134 (U.S.C.M.A. 1952) (finding that the terminal element was "traditionally permissible surplusage."). When this Court decided *Fosler*, it specifically overruled cases, such as *Mayo* and *Marker*, which contradicted this Court's revised Article 134, UCMJ, jurisprudence. *Fosler*, 70 M.J. at 233. In doing so, the Court implicitly curtailed *Fosler's* holding to its Article 134, UCMJ, jurisprudence.

In the eight years since *Fosler* was decided, this Court has exclusively applied *Fosler's* holding to cases involving allegedly deficient Article 134, UCMJ specifications. *See, e.g. United States v. Goings*, 72 MJ 202, 208 (C.A.A.F. 2013) (upholding conviction after applying *Fosler* to an allegation of Article 134, UCMJ, indecent conduct, and finding that the "record clearly demonstrates that

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capital. *Fosler*, 70 M.J. at 226 (quoting Article 134, UCMJ) (internal quotation omitted).

Appellant[:] (1) was put on notice that the Government intended to prove that his conduct was both prejudicial to good order and discipline and service discrediting[;] and[,] (2) defended himself against those theories of guilt."); *United States v. Gaskins*, 72 M.J. 225, 230 (C.A.A.F. 2013) (citing "the sage reminder from *Fosler* that the elements of *Article 134*, UCMJ, are distinct and non-fungible.") (emphasis added). Subordinate courts have followed this precedent and have similarly exclusively applied it to Article 134, UCMJ cases. *See e.g. United States v. Lofton*, 2013 CCA LEXIS 653, 10 (A.F. Ct. Crim. App. July 15, 2013) (stating *Fosler* " . . . required the Government to allege the terminal element of an Article 134, UCMJ, offense with greater specificity than had been permitted in the past.").

The amendments to Rules for Courts-Martial (R.C.M.) 307's discussion portion provide further evidence of the consensus regarding *Fosler's* limited applicability. R.C.M. 307 (2012). Following *Fosler*, R.C.M 307's discussion portion was amended to caution military justice practitioners to " . . . expressly allege at least one of the three terminal elements . . . " in order to state an offense *under Article 134*. (R.C.M. 307(c)(3)).

The present case shares *Fosler's* procedural posture and likewise involves a less than perfectly precise specification. Appellant alleges that these superficial parallels invite a similar conclusion and result; however, Appellant was not

charged with a violation of Article 134, UCMJ. Rather, Appellant was charged with violating Article 80, UCMJ, when he *attempted* to kill with premeditation, the mother of his infant son. (JA 24). This singular, but crucial, fact puts this case outside of *Fosler's* ambit and lodges it squarely within the Court's inchoate offense jurisprudence. Simply put, this is not a case where an entire element was not pleaded. Indeed, all required elements were pleaded. The only quibble Appellant has is with the substitution of the more precise term "murder" for that of "kill."

Appellant highlights that neither the military judge nor the ACCA used *Fosler*'s holding in making their respective determinations. (Appellant's Brief 6, 18). It is highly likely that this was a purposeful omission as both courts recognized that *Fosler* was not the most appropriate framework to apply to the alleged error in this case. *See United States v. Turner*, 2018 CCA LEXIS 593, (A. Ct. Crim. App. Nov. 30, 2018)(applying *Norwood* and *Wong Tai*; (JA 69-74)(applying *United States v. Watkins*, 21 M.J. 208 (C.M.A. 1986), *United States v. Russell*, 47 M.J. 412 (C.A.A.F. 1998), *United States v. Crafter*, 63 M.J. 326 (C.A.A.F. 2006), *United States v. Ballan*, 71 M.J. 28 (C.A.A.F. 2012)).

2. The Specification Expressly Alleged or Necessarily Implied the Elements of the Charged Offense

The challenged specification sufficiently states an offense because it expressly alleged all elements of the offense of attempted murder. Assuming

arguendo that inclusion of the word kill instead of the word murder did not expressly state the element, it certainly implied it. Accordingly, the challenged specification states an offense and thus relief is unwarranted. The appellant in *Bryant* posed a nearly identical question to the one before this Court: Whether a specification that omits words of criminality fails to state an offense under the UCMJ. *Bryant*, 30 M.J. at 73. *Bryant* was a contested case involving an in trial challenge to a specification alleging an inchoate offense. *Id*. (challenged specification did not allege that the appellant's attempted distribution of a controlled substance was wrongful). Although this Court noted that the appellant was entitled to a more critical review of the specification by virtue of his challenge at trial, this Court nonetheless found that the specification was legally sufficient. *Id*. at 73-74.

In affirming the Army Court of Military Review's ruling, this Court concluded that technical precision when drafting specifications of inchoate offenses is not essential to the validity of the resulting criminal charge. *Bryant*, 30 M.J. at 74. Indeed, practical, rather than technical considerations govern the validity of the charge. *Id.* (internal quotations and citations omitted). This Court found that alleging a conspiracy to distribute controlled substances and referencing the UCMJ sufficiently alleged the wrongfulness of the appellant's conduct and provided the appellant with adequate notice. *Id*.; *See also United States v.*

Brecheen, 27 M.J. 67, 69 (C.M.A. 1988) (citing the lack of lawful justification in reasonably construing the wrongfulness of attempting to distribute LSD); *United States v. Simpson*, 25 M.J. 865, 866 (1988 CMR LEXIS 190) (finding that the allegation of dates, the facts of the offense, and that the 'offense' was deleterious to the health, morale, and readiness of the unit necessarily implied the conduct's wrongfulness).[4]

This Court has explicitly held that *Bryant*'s analytical framework "applies equally" to specifications alleging attempted UCMJ violations. *Norwood*, 71 M.J. at 207. In *Norwood*, the appellant challenged his guilty plea conviction of Article 80, UCMJ, attempted adultery by claiming that the specifications failed to allege "all the elements of the target or predicate offenses." *Id*. at 206 (internal quotation omitted). This Court affirmed the Navy Marine Court of Appeals' ruling and stated that when an accused is charged with an attempt, "the government need only allege the elements of the *inchoate offense*." *Id*. at 205 (emphasis added).

Appellant's analysis of the elements for murder under Article 118, UCMJ, instead of elements of *attempted* murder under Article 80, UMCJ, conflates the requirements for charging a completed offense with those charging an inchoate

[4] Unlike the present case, both *Simpson* and *Brecheen* involve appellants who pleaded guilty at trial and then only challenged the specifications on appeal.

offense. This is the very approach that this Court proscribed in *Norwood*. *Id*. at 205.

The challenged specification sufficiently alleges each element of attempted murder. The elements of attempted murder are: "(1) the appellant did an overt act; (2) the act was done with specific intent to commit an offense under the code; (3) the act was more than mere preparation; and (4) the act apparently tended to effect the commission of the intended offense." (JA 15); (Article 80, UCMJ). The Specification of Charge I reads: Appellant, did at or near Clarksville, Tennessee, on or about 1 January 2015, attempt to kill with premeditation, SPC CSG by means of shooting her with a loaded firearm and causing grievous bodily harm. (JA 24).

Addressing each of the required attempt elements in turn, the specification alleges an overt act: That Appellant shot SPC CSG with a loaded firearm. *Id*. Next, the specification alleges a specific intent: That Appellant attempted to kill with premeditation. *Id*. Additionally, the specification alleges that the act amounted to more than mere preparation: That Appellant shot SPC CSG with a firearm. *Id*. Lastly, the specification alleges that the act apparently tended to effect the commission of the intended offense: SPC CSG suffered grievous injuries because Appellant shot her with a firearm. (JA 6).

Finally, the specification sufficiently alleged words of criminality. Appellant's arguments that killing may sometimes be lawful are unavailing. It is

of no moment that a deployed Soldier may lawfully use force to kill an enemy combatant. Such a scenario is antithetical to Appellant's premediated attempt to kill his infant son's mother over a child support dispute. Simply put, there is no doubt that the specification notified Appellant that he was charged with an unlawful attempt to kill. (JA 3).[5] The specification alleges that Appellant attempted to kill with premeditation while in Clarksville, Tennessee. (JA 24). SPC CSG's Clarksville apartment is thousands of miles away from the battlefields to which Appellant alludes. Furthermore, the specification alleges that Appellant attempted to kill *SPC* CSG, a title that expressly indicates that the alleged victim is a fellow Soldier and thus was an unlawful target for Appellant's .40 caliber hollow point rounds. "In the context of the charge and the wording of the specification, the word distribute could only have been interpreted as a wrongful one." *Simpson*, 25 M.J., at 866. Similarly, in the instant case, the words "attempt to kill with premeditation" can only be interpreted as an unlawful taking of another's life. (JA 24).

3. The Specification Fairly Informed Appellant of the Charge against Him

Appellant's pretrial and trial strategy dispel any doubt whether the specification fairly informed him of the nature of the allegation against him.

[5] "What started as a dispute over $200 a month in child support payments turned into a conspiracy between [A]ppellant and his wife to murder his ex-girlfriend and mother of his child." (JA 3).

Appellant's own pretrial motions stated that he was charged with attempted premeditated *murder* and his first proposed *voir dire* question began "One of the offenses alleged in this case is attempted premediated *murder*." (JA 13, 14). At trial, Appellant advanced a theory of self-defense, an implicit acknowledgment of the otherwise unlawful nature of attempting to kill his infant son's mother. (JA 14). Appellant's theory of self-defense belies his belated challenges of the specification.

Appellant made no objection to the trial judge's instructing the panel that one of the elements of attempted premeditated murder is that the conduct "was done with specific intent to kill; that is to kill without justification or excuse." *Id* (alteration omitted). Accordingly, there is no doubt that the specification fairly informed Appellant that he was to defend against an unlawful, premeditated killing. *See, e.g. Simpson*, M.J., at 866; *United States v. Resendiz-Ponce*, 549 U.S. 102, 108 (2007).

4. The Specification Will Allow Appellant to Plead Conviction in Bar of Future Proceedings

The specification alleged a specific date, place, intent, victim identity, and overt act. "It follows ineluctably that the facts [found] gave the [A]ppellant full notice of the offense alleged against him and that he is fully protected from a further prosecution based on those same facts. The pleading, therefore is sufficient to withstand challenges at the appellate level." *Simpson*, 25 M.J., at 866.

5. The Motion to Dismiss was Correctly Denied Even under a Heightened Notice Requirement

Assuming *arguendo* that *Fosler* controls in enumerated Article cases *and* that this Court's holding in *Norwood* is not applied, the trial judge nevertheless correctly denied Appellant's motion to dismiss. The Court in *Fosler* found that, "[F]or the purposes of Article 134, UCMJ, it is important for the accused to know whether [the offense in question is] a crime or offense not capital under clause 3, a 'disorder or neglect' under clause 1, conduct proscribed under clause 2, or all three." *Fosler*, 70 M.J. at 230 (quoting *United States v. Medina*, 66 M.J. 21, 26 (C.A.A.F. 2008).

Article 118, UCMJ contains four separate clauses under which an accused may be convicted of murder: (1) premeditated murder; (2) intent to kill or inflict great bodily harm; (3) act inherently dangerous to another; and (4) during certain offenses. (Article 118, UCMJ). The challenged specification alleges that Appellate " . . . attempted to kill with premeditation . . . ." (JA 24). The specification if not expressly, then by necessary implication, informed Appellant that he was accused of violating Article 118, UCMJ's first clause. The challenged specification satisfied *Fosler's* heightened notice requirement by informing " . . . the accused [that] [the offense in question is] a crime . . . under clause 1." *See Fosler*, 70 M.J. at 230. Accordingly, Appellant was on notice of the crime against which he had to defend.

Additionally, the specification alleges that Appellant attempted to kill SPC CSG in Clarksville, Tennessee. (JA 24). Clarksville, Tennessee is not an active war zone, nor is SPC CSG, a fellow Soldier, an enemy combatant. These facts, when rationally and reasonably considered, necessarily imply that Appellant's attempt to kill his infant son's mother was unlawful.

6. Appellant is not Entitled to Relief Absent Error

Even if this Court found that the military judge erred, the error was harmless beyond a reasonable doubt. Here, like the Army Court found in *Bryant*:

> While the [A]ppellant did plead not guilty and did challenge the specification at trial, he utterly failed then, as he does now, to show that he was not properly on notice of the criminal nature of his alleged conduct or that he will not be protected from a further prosecution. It is not enough to merely object; the [A]ppellant must go further and in stating the reasons for his objection[,] he must show how he has been prejudiced and why he should be entitled to relief. As noted above, he did not do so either at trial or in his pleadings before this court."

Bryant, 28 M.J. 504 *, 1989 CMR LEXIS 105.

Appellant is not entitled to relief because the challenged specification gave him full notice that he was charged with an attempted premeditated murder. During trial, Appellant's theory of self-defense explicitly acknowledges the alleged unlawful nature of his attempt to kill his infant son's mother. Finally, the facts alleged in specification, as well as the

evidence within the trial record, would effectively protect Appellant against subsequent prosecution for the same offense.

Conclusion

Wherefore, the United States respectfully requests that this Honorable Court affirm the Army Court's decision.

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CERTIFICATE OF FILING AND SERVICE

I certify that the foregoing was transmitted by electronic means to the court (***efiling@armfor.uscourts.gov***) and contemporaneously served electronically on appellate defense counsel, on September 23, 2019.

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