IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES, *Appellee*	)	BRIEF ON BEHALF OF THE UNITED STATES
v.	)	Crim. App. No. 32771
Senior Airman (E-5) **ANN R. MARIN PEREZ,** United States Air Force *Appellant.*	)	USC Dkt. No. 25-0238/AF
	)	29 December 2025

BRIEF ON BEHALF OF THE UNITED STATES

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

ISSUE PRESENTED

WHETHER THE AIR FORCE COURT OF CRIMINAL APPEALS ERRED WHEN IT AFFIRMED A CONVICTION THROUGH EXCEPTIONS AND SUBSTITUTIONS AFTER FINDING THAT "THE MILITARY JUDGE ERRED IN ACCEPTING APPELLANT'S PLEA TO THE SPECIFICATION AS DRAFTED."

INTRODUCTION

After gaining NM's trust as a housekeeper, Appellant stole several pieces of gold and diamond jewelry from NM and sold those pieces to various pawn shops. (JA at 32-33.) Appellant received a total of $1,650 from the sale of the jewelry. (JA at 078.) After recovering six pieces of jewelry, NM had the items appraised. They were valued at $21,300. (JA at 21.) As a result of her theft, Appellant was charged with larceny of property of a value of "about $21,300." . (JA at 18-19).

Appellant entered into a plea agreement and agreed to plead guilty to stealing jewelry of a value of about $21,300. (JA at 52-55.) Appellant entered into a stipulation of fact and stipulated to the appraised value of the stolen jewelry. (JA at 20-23.) During her Care inquiry, Appellant affirmed the appraised value. (JA at 72; JA at 77-79; JA at 84-85.) After findings, but prior to sentencing, Appellant submitted Defense Exhibit N, which appeared to contradict the stipulated value by asserting that the stolen jewelry was valued significantly less than the original appraised, charged amount of about $21,300. (JA at 50.) The Air Force Court of Criminal Appeals (AFCCA) determined "there is a substantial basis to question whether the value of the stolen property was 'about $21,300' as charged." (JA at 7.) The Air Force Court concluded "the military judge erred in accepting Appellant's plea to the specification as drafted." (JA at 7.)

Appellant now seeks absolution from an inconsistency she created. After agreeing to plead guilty to larceny of "about $21,300," Appellant purposefully introduced evidence questioning the specific, stipulated value. The Air Force Court properly resolved this issue by affirming the conviction and narrowing the finding to "more than $1,000"—a value Appellant expressly agreed was correct, even after introducing Defense Exhibit N. Appellant now requests that this honorable Court ignore her expressed statements and set aside the findings and

sentence. This Court should decline because the Air Force Court acted within its authority to prevent an undeserved windfall for Appellant.

STATEMENT OF STATUTORY JURISDICTION

The Air Force Court of Criminal Appeals reviewed this case under Article 66(d), UCMJ. This Court has jurisdiction over this matter under Article 67(a)(3), UCMJ.

RELEVANT AUTHORITIES[1]

Article 45, UCMJ, 10 U.S.C. § 845(a), provides, in relevant part:

> (a) Irregular and Similar Pleas. If an accused after arraignment makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if he fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though he had pleaded not guilty.
>
> (c) A variance from the requirements of this article is harmless error if the variance does not materially prejudice the substantial rights of the accused.

Article 66, UCMJ, 10 U.S.C. § 866 (2022), provides, in part:

> (d) Duties.

[1] Unless otherwise noted, all references to the UCMJ and Rules for Courts-Martial (R.C.M.) are to the Manual for Courts-Martial, United States (2019 ed) (MCM). The government agrees with Appellant that the amendment to Article 66(d)(1) enacted by section 539E of the National Defense Authorization Act for Fiscal Year 2022, Pub. L. No. 117-81, § 539E, 135 Stat. 1541, 1700 (2021) does not apply to this case. (App. Br. at 3.)

(1) Cases appealed by accused.

(A) In general. In any case before the Court of Criminal Appeals under subsection (b), the Court may act only with respect to the findings and sentence as entered into the record under section 860c of this title (article 60c). The Court may affirm only such findings of guilty as the Court finds correct in law, and in fact in accordance with subparagraph (B).

(B) Factual sufficiency review.

(i) In an appeal of a finding of guilty under subsection (b), the Court may consider whether the finding is correct in fact upon request of the accused if the accused makes a specific showing of a deficiency in proof.

(ii) After an accused has made such a showing, the Court may weigh the evidence and determine controverted questions of fact subject to-

(I) appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence; and

(II) appropriate deference to finding of fact entered into the record by the military judge.

(iii) If, as a result of the review conducted under clause (ii) the Court is clearly convinced that the finding of guilty was against the weight of the evidence, the Court may dismiss, set aside, or modify the finding, or affirm a lesser finding.

. . . .

Rule for Courts-Martial (R.C.M) 910 provides, in part:

. . . .

(e) Determining accuracy of plea. The military judge shall not accept a plea of guilty without making such inquiry of the accused as shall satisfy the military judge that there is

> a factual basis for the plea. The accused shall be questioned under oath about the offenses
> . . . .
>
> (h) Later action.. . . .
>
> (2) Statements by accused inconsistent with plea. If after findings but before the sentence is announced the accused makes a statement to the court-martial, in testimony or otherwise, or presents evidence which is inconsistent with a plea of guilty on which a finding is based, the military judge shall inquire into the providence of the plea. If, following such inquiry, it appears that the accused entered the plea improvidently or through lack of understanding of its meaning and effect a plea of not guilty shall be entered as to the affected charges and specifications.

STATEMENT OF THE CASE

Appellant was convicted, consistent with her plea agreement, at a special court-martial, of one charge and one specification of larceny, in violation of Article 121, UCMJ, 10 U.S.C. § 921. (JA at 103.) The military judge sentenced Appellant to four months confinement, reduction to the grade of E-1, and a bad conduct discharge. (JA at 163.) The adjudged sentence was within the parameters of the plea agreement which set a minimum confinement term of 30 days and a maximum of 300 days. (JA at 14.) The convening authority took no action on the findings or sentence but waived all automatic forfeitures for a specified period for the benefit of Appellant's dependents. (JA at 17.)

On appeal, the Air Force Court determined that a post-findings defense exhibit created a substantial basis to question the "$21,300" value. (JA at 7.)

Exercising its authority under Article 66(d), UCMJ, the Air Force Court affirmed the finding by "excepting the words and figures 'about $21,300' and substituting therefor the words 'more than $1,000.'" (Id.) The court then reassessed the sentence and determined Appellant would have received the same sentence for the modified offense. (JA at 8.)

STATEMENT OF FACTS

Appellant's Crimes

In late 2022 or early 2023, after obtaining approval for off-duty employment, Appellant was hired by a company that provides home cleaning services. (JA at 20.) Consistent with her duties, Appellant was tasked with cleaning the home of NM. (Id.) On at least one occasion, while Appellant was cleaning in NM's bedroom, Appellant stole several pieces of gold and diamond jewelry from a jewelry box on NM's dresser. (Id.) Appellant then sold the jewelry to multiple pawn shops within the local area. (JA at 21.)

On 10 March 2023, NM realized that some of her jewelry was missing. (Id.) The next morning, NM reported the missing jewelry to law enforcement. (Id.) The local police department ran a computer search of Appellant's name after receiving NM's report. (Id.) The search revealed that Appellant pawned the stolen items to multiple pawn shops in the local area between 15 February 2023 and 13

March 2023. (Id.) Except for two pieces, NM ultimately recovered her missing jewelry from the local pawn shops. (Id.)

On 23 March 2023, Appellant was interviewed by law enforcement. (JA at 162.) During that interview, Appellant confessed to stealing the jewelry from NM's home. (Id.)

Original Appraisal

On 29 June 2023, NM had her recovered jewelry appraised by Jeweler's Loupe, Inc. in Dover Delaware. (Id.) The owner, DL, appraised the six recovered pieces. (Id.) As part of his appraisal, DL produced an appraisal report for NM's insurance company assessing the total value of the six recovered pieces at $21,300. (Id.) In his report, DL detailed the instruments and methods used to assess the value of the recovered pieces and stated "[a]ll values are based on my best judgment [sic] as retail replacement prices." (JA at 41-46.)

Appellant's Plea Offer

On 10 December 2023, Appellant submitted a plea agreement offer. (JA at 52-55.) Within Appellant's offer, she acknowledged, "I understand . . . and I am aware I have a legal and moral right to plead not guilty and to leave the prosecution with the burden of proving my guilt beyond a reasonable doubt by legal and competent evidence." (JA at 52.) Understanding the above, Appellant offered to plead to the following:

> CHARGE: Violation of the UCMJ, Article 121
>
> Specification: In that STAFF SERGEANT ANN R. MARIN PEREZ did, within the continental United States, between on or about 24 February 2023 and on or about 11 March 2023, steal jewelry, of a value of about $21,300.00, the property of [NM].

(Id.)

Appellant offered, "I assert that I am, in fact, guilty of the offense to which I am offering to plead guilty, and I understand that this agreement permits the Government to avoid presentation in court of *sufficient legal and competent evidence to prove my guilt beyond a reasonable doubt*." (JA at 53) (emphasis added). Appellant affirmed, "[n]o person or persons made any attempt to force or coerce me into making this offer or to plead guilty." (Id.) Lastly, Appellant indicated that she understood that her plea could be withdrawn prior to, but not after, sentencing. (JA at 54.)

Stipulation of Fact

On 18 December 2023, Appellant signed the Stipulation of Fact. (JA at 20-24.) The Stipulation of Fact was admitted into evidence. (JA at 73.) In the stipulation, Appellant admitted "each and every element of the Charge and its Specification [is] true," including the "jewelry was of a value of $21,300." (JA at 22.) Within the Stipulation of Fact, under the sub-heading "Final Stipulations," Appellant agreed and stipulated that the statements in the stipulation—such as the

jewelry's value—are "uncontradicted fact." (Id.) Lastly, in the stipulation, Appellant certified that she reviewed the stipulation and its accompanying attachments in their entirety, the contents were true, and she entered into the stipulation voluntarily. (Id.) Additionally, during the plea colloquy with the military judge, the following exchange took place:

> MJ: Is everything in the stipulation true?
>
> ACC: Yes, Your Honor.
>
> MJ: Is there anything in the stipulation that you do not wish to admit is true?
>
> ACC: No, Your Honor.
>
> MJ: Do you agree under oath that the matters contained in the stipulation are true and correct to the best of your knowledge and belief?
>
> ACC: Yes, Your Honor.

(JA at 72.)

Initial Care Inquiry

During the Care inquiry, the military judge explained each element of the offense along with the relevant definitions. (JA at 75-77.) Appellant then described in her own words, why she was guilty:

> On [24 February 2023], while I was inside [NM]'s home cleaning, I took jewelry belonging to [NM]…I took these items [] from [NM]'s dresser while I was cleaning her residence. After I [was] done cleaning [NM]'s that day, I left [with] [NM]'s jewelry and drove back to my home

> where I kept the jewelry for a few days. I brought [NM]'s jewelry to a local pawn shop and [] told the pawn shop I was getting rid of the jewelry on behalf of my mother. At [the] pawn shop, I received [] $1,650 for all the jewelry and *therefore I do believe and admit that [NM]'s jewelry was a greater value of $1,000*.

(JA at 77-78) (emphasis added). When discussing the value of the items,

Appellant admitted:

> My attorney discussed with me the evidence uncovered by the pawn shop *to include weight, style, and carats*. I recognized them by the description of the evidence and photos included in evidence. These items, as I took those — sorry — and these items that I took from [NM]'s home, I do not know their exact value [] *but I received approximately $1,650 from the pawn shop so I believe that exceeds $1,000*.

(JA at 79) (emphasis added). During the Care inquiry, Appellant acknowledged

that she has no professional experience in appraising jewelry and the following:

> MJ: So, you did not know the value of the — of the property at the time that you took it?
>
> ACC: Yes — or no, I didn't know the value.
>
> MJ: Okay. And I understand that you — when you pawned it you received $1,650, but within the stipulation of fact there is an appraisal that was done by someone who is a professional of appraising jewelry and he lists the value of the property at $21,300. *Have you had an opportunity to kind of look at that appraisal and discuss that appraisal with your defense counsel*?
>
> ACC: Yes, Your Honor.

> MJ: And based upon your discussions with defense counsel and having an opportunity to review that evidence, *are you confident that that is the value of the property that you took*?
>
> And I realize you don't have any personal knowledge but, you know, just — knowing that this individual's professional — do you have confidence in that appraisal that — that that was the value of the property? So, you can just talk with your defense counsel.
>
> [The accused consulted with her defense counsel.]
>
> ACC: Yes, Your Honor.
>
> MJ: So, just to make sure because there was a little bit of a break there, you — based upon — again, you don't have personal knowledge, *but based upon reviewing the evidence and discussing with your defense counsel, you are confident that the value of the property was about $21,300*?
>
> ACC: Yes, Your Honor.

(JA at 84-85) (emphasis added). Appellant again affirmed the value of the jewelry. (Id.) When asked by the military judge whether any additional inquiry was necessary, both parties confirmed no further discussion was warranted. (JA at 87.)

Prior to Guilty Finding

The military judge accepted the plea agreement. (JA at 100.) Before entering findings, the military judge directed Appellant to consult with her defense counsel to confirm that she wanted to maintain her guilty plea. (JA at 102.) After consulting with counsel, Appellant confirmed that she still wanted to plead guilty.

(Id.) The military judge asked Appellant if she understood the meaning and effect of her guilty plea and that she maintained the legal right to plead not guilty and to place upon the government the burden of proving [her] guilt beyond a reasonable doubt." (JA at 101.) Appellant answered in the affirmative. (Id.) The military judge found Appellant "knowingly, intelligently, and consciously waived [her] rights against self-incrimination, to a trial of facts by a court-martial . . ." and Appellant's plea was provident. (JA at 102.) Prior to entering findings, the military judge advised Appellant that she "may request to withdraw [her] guilty plea at any time before the sentence is announced, and if [she had] a good reason for [the]request, [the court would] grant it." (JA at 102.) Appellant did not withdraw her guilty plea. (Id.)

Reopened Care Inquiry

During its sentencing case, the defense counsel introduced Defense Exhibit N, a document titled, "Jewelry Valuation Memorandum" from DL, the individual who performed the original appraisal for NM. (JA at 125.) Over the Government's objection, Defense Exhibit N was admitted into evidence. (JA at 126; JA at 128.) In relevant part, after summarizing the pieces of jewelry previously appraised, the memorandum included the following statement:

> The appraised value of each of the pieces of jewelry does not reflect the exact cost of how much each piece [] of jewelry would be listed and sold for on the market *today*. Instead, the appraised value combines several insurance

> factors and *doubles the proposed value of the jewelry* to reflect inflation and other factors. As such, the appraised value listed for each of the items has been inflated and the actual value of each of the pieces is less. Therefore, although combined the total appraised value in my report is $21,300, I can confidently tell all parties that there is an argument to be made that the jewelry is not worth that much and the value is less.

(JA at 50) (emphasis added). Based upon Defense Exhibit N, the military judge, *sua sponte*, reopened the Care Inquiry to address the value of the stolen property:

> MJ: [Mr. DL] stands by his appraisal and he explains what goes into appraisal and *doesn't say specifically what the current market value would be*. Says that there is some inflation that goes into evaluation and that — it's a little — it's a little wishy washy. "So, I can confidently tell you that there's an argument to be made that the property may be worth less."[2] Not that it is worth less, but there's an argument to be made and so there is some on that. The government — and the government has charged it as a value *of about $21,300 so it doesn't have to be exactly $21,300* and the court has information indicating [phonetic] is not $21,300 but is not clear asking what the exact dollar amount is. So there is a little bit of confusion on that issue. So I kind of wanted to address that.
>
> MJ: Let me ask [Appellant] first, [] are you confident, based upon your discussion with counsel, reviewing the evidence in this case, *that the value of the property was at least $1,000 or greater*?
> ACC: Yes, sir.
>
> MJ: So that's the statutory as far the breakdown in the military. It's less than a $1000 or — a $1000 or less or

[2] The quoted statement matches the last sentence of the last paragraph of Mr. DL's memorandum verbatim, suggesting that the military judge was likely reading from the memorandum rather than using his own words. (JA at 141.)

more than $1000, and so I may not have asked the questions though. *So you agree that it's more than $1000 in price*?

ACC: Yes, Your Honor.

MJ: And so that satisfies that the charge about, again, the court has information that says we don't know that's exactly what it was but the government charged you about amount as opposed to the exact amount. And I don't have enough — the letter doesn't provide any amount as to what may be otherwise be legitimate argument [would be for someone] [phonetic]. So, I think given that[,] in order to plead provident, you don't have to plead to an offense of more than $1000 and there is evidence that the property has value of $21,300 or that there could be some question, but again, with the about amount, I think that the plea is still provident based upon that but I just wanted to check. Trial Counsel, do you have any concerns or questions about that?

DTC: Your Honor, nothing further from the government on that.

MJ: Okay and Defense Counsel, anything further or are you— let me ask first, anything further?

DC1: No, Your Honor.

MJ: And are you satisfied that [your] [] client's plea is provident based upon this additional information.

DC1: Yes, Your Honor.

MJ: Okay. And, [Appellant], are you — you still want to stay with your plea?

ACC: Yes, Your Honor.

(JA at 141-143.)

SUMMARY OF THE ARGUMENT

The Air Force Court of Criminal Appeals acted properly and within its statutory authority when it affirmed a conviction for the factually and legally supported offense of larceny of property valued at "more than $1,000."

First, the Air Force Court's action was a permissible "narrowing" of the specification under this Court's precedent in United States v. English, 79 M.J. 116 (C.A.A.F. 2019). The court did not change the legal theory of the crime—the theft of jewelry from a single victim. It simply reduced the value to conform to the undisputed evidence in the record, an action explicitly endorsed by English and routinely practiced by the service courts. Additionally, Appellant invited the error of which she now complains by introducing evidence contradicting the stipulation of fact and plea inquiry, and she should be prohibited from benefiting from that error by receiving a new trial.

Second, the affirmed offense is a quintessential lesser-included offense (LIO) of the offense charged. Under the controlling elements test, larceny of property valued at "more than $1,000" is necessarily included in larceny of property valued at "about $21,300." The core elements of the crime are identical; only the degree of the sentencing aggravator[3] is different. Appellant's due process

[3] Value is not an element of the crime of larceny, but rather is an aggravating factor used to determine the maximum permissible sentence. MCM, part IV, ¶ 46.e.(1).

concerns are unfounded, because her conviction was factually anchored to the items stolen, providing both notice and protection from future prosecution.

Finally, if this Court finds a procedural flaw in the Air Force Court's method, the only just remedy is a remand to determine if any LIO may be affirmed, not an automatic dismissal and a rehearing. Setting aside the conviction of an Appellant who twice admitted her guilt under oath to the affirmed offense would represent an unjust windfall and a miscarriage of justice. This Court should affirm the decision below.

ARGUMENT

THE AIR FORCE COURT PROPERLY EXERCISED ITS APPELLATE AUTHORITY WHEN IT AFFIRMED A CONVICTION FOR THE LESSER, FACTUALLY SUPPORTED OFFENSE OF LARCENY OF PROPERTY VALUED AT "MORE THAN $1,000."

Standard of Review

The scope of an appellate court's authority is a legal question this Court reviews de novo. United States v. Bennitt, 74 M.J. 125, 128-29 (C.A.A.F. 2015)

Law and Analysis

A. The Air Force Court's Action Was a Permissible "Narrowing" of the Larceny Specification that Fully Complied with this Court's Precedent in United States v. English.

Appellant's central claim is that the Air Force Court engaged in an improper "substitution" that contravened this Court's holding in English. (App. Br. at

20.) But Appellant reads and applies English too narrowly. In English, this Court preserved a Court of Criminal Appeals' (CCA's) ability to narrow the scope of a conviction by using exceptions and substitutions, provided the conviction was not affirmed on a legal theory different from the one presented at trial. Id. at 122. There, the accused was charged with sexual assault by a specific type of force—"grabbing [the victim's] head with his hands." Id. at 119. Finding no evidence supporting that specific act, the CCA nonetheless affirmed the conviction by substituting a generic and different theory of "unlawful force," effectively convicting the appellant of a crime for which he was never charged and never defended. Id. at 120. This Court rightly found such a *broadening* of the specification violated due process. Id. Appellant's reading of English fails to appreciate the critical distinction between impermissibly broadening a legal theory and permissibly narrowing a factual allegation.

Mindful of the Court's holding on due process in Chiarella v. United States, 445 U.S. 222, 236 (1980) (finding that "[an appellate court] cannot affirm a criminal conviction on the basis of a theory not presented to the jury"), this Court in English was careful to preserve the exact powers exercised here. Crucially, this Court clarified:

> [T]his holding does not call into question our decisions that permit a CCA to *narrow* the scope of language in a specification to affirm only so much as is correct in law and fact. Where the CCA narrows the charging language

> rather than broadening it, such a change does not run afoul of the due process concerns implicated here.

Id. at 122, n.5 (emphasis in original).

This Court previously examined the limits of narrowing the scope of a specification in United States v. Rodriguez, 66 M.J. 201 (C.A.A.F. 2008). In Rodriguez, this Court upheld a CCAs decision "to strike 'on divers occasions' from a specification and affirm only one instance of the offense." 66 M.J. at 203. In United States v. Piolunek, this Court again confronted this issue when upholding the CCA's finding that only nineteen of twenty-two images in a child pornography prosecution were factually and legally sufficient. 74 M.J. 107, 112 (C.A.A.F. 2015). Applying the "general verdict rule,"[4] this Court reaffirmed that CCAs are permitted to "narrow the scope of an appellant's conviction to conduct it deems "legally and factually sufficient." Id.

That is precisely what occurred here. The Air Force Court did not alter the legal theory of the crime that Appellant was charged with, pleaded guilty to, and was convicted of—the theft of jewelry from the same victim. The court narrowed the value from a high, disputed amount of "about $21,300" to "more than $1,000"—a value included within the original charge and unequivocally supported

[4] "The longstanding common law rule is that when the factfinder returns a guilty verdict on an indictment charging several acts, the verdict stands if the evidence is sufficient with respect to any one of the acts charged." Rodriguez, 66 M.J. at 204.

by the pawn shop receipts. (JA at 21; JA at 142.) And, most importantly, this was a value supported by Appellant's repeated, sworn testimony. (Id.) This is a textbook example of a permissible narrowing, not a broadening.

To understand the limits of a CCA's power to narrow a specification, it is also helpful to define "broadening." In English, this Court affirmed that a CCA has no authority "to except language from a specification in such a way that creates a broader or different offense than the one charged at trial." 79 M.J. at 119. English was clear that excepting does not offend the Court, but an impermissible *purpose*—creating a broader or different offense that was not on the charge sheet—does. In examining cases where CCAs have rejected amendments to specifications, a clear pattern emerges.

For example, in United States v. Roberts, the appellant was convicted of child endangerment. No. ARMY 20130609, 2020 CCA LEXIS 177, at *2 (A. Ct. Crim. App. May 27, 2020) (unpub. op.). There, the government proceeded under a theory that the appellant "failed to give food to" a minor victim. Id. at *3. After finding the government failed to present *any* evidence contradicting the victim's testimony that he was, in fact, fed, the Army Court of Appeals declined to broaden the theory of criminality by adding the adverb "adequately" to the specification. (Id.)

Similarly, in United States v. Morrow, the appellant was convicted of absence without leave despite the government introducing no evidence that the appellant was required to be at a specific building. No. ACM 39634, 2020 CCA LEXIS 361, at *32-33 (A.F. Ct. Crim. App. Oct. 1, 2020) (unpub. op.). In finding the charge legally and factually insufficient, the Air Force Court rejected the "Government's proposal . . . to broaden the scope of the charged offense from an absence from a *particular* building to an absence from an *entire* Air Force base." Id. at *36 (emphasis added). These cases establish that "broadening" occurs when an appellate court affirms a conviction on a theory not encompassed by the charge sheet. This often happens when the government's evidence is insufficient to support the original charge, and the CCA is asked to affirm on a legal or factual basis of the offense. It is evident that a CCA impermissibly broadens a finding only when it affirms an offense not encompassed by the original charged offense.

i. The Air Force Court's Action Aligns with the Settled and Routine Practice of Service Courts.

The service courts routinely engage in the exact type of narrowing that occurred here to conform specifications to the facts established at trial or during a providence inquiry. Frequently, this involves appellate courts striking superfluous or unproven factual allegations. For instance, citing English, in United States v. Murphy, the Army court narrowed an assault specification by striking the words "arm" and "neck" after the government conceded no evidence supported an assault

on those body parts. No. ARMY 20230517, 2025 CCA LEXIS 339, at *18-19 (A. Ct. Crim. App. July 22, 2025) (unpub. op.). Similarly, in United States v. Zimmer, the CCA excepted the language "putting her on a bed" from a specification to conform to the evidence admitted at trial. No. ARMY 20200671, 2023 CCA LEXIS 1, at *25-26 (A. Ct. Crim. App. Jan. 4, 2023) (unpub. op.), *aff'd* 83 M.J. 443 (C.A.A.F. 2023).

In United States v. Taylor, the Air Force Court, also citing English, narrowed the charged end date of a drug use specification to conform to the appellant's admissions during his providence inquiry, striking one date and substituting another. No. ACM S32574, 2019 CCA LEXIS 345, at *2-4 (A.F. Ct. Crim. App. Aug. 29, 2019) (unpub. op.). Likewise, in United States v. Pearson, the Navy-Marine Corps Court of Criminal Appeals (NMCCA) narrowed a specification for possessing "digital images" of child pornography to "a digital image" after finding only one of the charged images met the legal definition. 81 M.J. 592, 609 (N-M. Ct. Crim. App. 2021).

Crucially, this appellate power includes both deletions and substitutions that more precisely reflect the record—the very action taken in Appellant's case. In United States v. Brown, the Army court narrowed a specification by striking the word "breasts" from two separate specifications where the appellant was charged with committing sexual contact upon a victim's "thigh, breasts, and vaginal area."

No. ARMY 20160139, 2019 CCA LEXIS 514, at *5-6 (A. Ct. Crim. App. Dec. 23, 2019) (unpub. op.) Even more analogous to this case, in United States v. Haygood, the Army court affirmed a larceny conviction after striking the specific, technical model number alleged ("48 MA WL-C1") and substituting the more general language, "to take the box containing the said lasers," admitted by appellant during his plea inquiry. No. ARMY 20210530, 2022 CCA LEXIS 585, at *4-5 (A. Ct. Crim. App. Oct. 7, 2022) (unpub. op.).

These cases demonstrate that modifying a specification to align with the facts proven at trial or admitted in a plea inquiry is a standard and proper exercise of a CCA's appellate function under Article 66, UCMJ. The Air Force Court's action was not novel or erroneous, but routine. If the service courts can properly strike unproven body parts, substitute incorrect technical details with admitted facts, and change dates, then surely the Air Force Court acted properly when affirming only so much of the guilty finding by striking a stipulated, high, conflicting monetary value and substituting it with a lower, undisputed value to which Appellant herself confessed to under oath.

ii. By Introducing Conflicting Evidence, Appellant Invited the Very Error of which She Now Complains.

The routine power of a CCA to narrow a specification is even more compelling when narrowing is requested specifically by an appellant. In several cases, citing English, CCAs have exercised their authority to narrow a specification

at the appellant's request to conform the findings to the evidence. *See* United States v. Stanley, No. ARMY 20220618, 2024 CCA LEXIS 157, at *1-2 (A. Ct. Crim. App. Mar. 29, 2024) (unpub. op.) (removing "on one or more occasion" at appellant's request); *see also* United States v. Champion, No. ARMY 20230450, 2024 CCA LEXIS 304, at *1-2, n.2 (A. Ct. Crim. App. July 19, 2024) (unpub. op.) (striking one of two charged terminal elements at appellant's request).

Here, Appellant's actions had the same effect. It was Appellant who, after agreeing to plead guilty under a plea agreement to a value of about $21,300 and stipulating to a value of about $21,300, introduced Defense Exhibit N for the sole purpose of challenging that very value. By submitting Defense Exhibit N, suggesting an unspecified lower value that could have been half of the stipulated value, Appellant functionally asked the court to reject the higher value and consider a lesser one. Although Appellant could have withdrawn her guilty plea and litigated the charged value of the jewelry, she chose not to. Despite her agreement to plead guilty to the higher value, she created the very "factual discrepancy" that prompted the military judge to reopen the Care inquiry and ultimately led the Air Force Court to find the plea to the higher amount improvident. After the Care inquiry was reopened, Appellant consulted with defense counsel, affirmed the value of the stolen property was greater than $1,000, and reinforced her intent to plead guilty. (JA at 141-143.) Appellant now claims

prejudice from the court's decision to do exactly what her evidence invited: reject the $21,300 value and affirm a conviction based on a lower, factually unassailable value. Having successfully convinced the Air Force Court that the "about $21,300" value was questionable, Appellant should not be allowed to complain that the court accepted her invitation and narrowed the finding to a value she twice adopted under oath. "Appellant cannot create error and then take advantage of a situation of [her] own making." United States v. Raya, 45 M.J. 251, 254 (C.A.A.F. 1996). Indeed, "invited error does not provide a basis for relief." Id.

iii. The Air Force Court Did Not Exceed its Statutory Authority Because it Acted Under Article 66, UCMJ, Not R.C.M. 918.

Appellant primarily argues the Air Force Court exceeded its statutory authority by using "exceptions and substitutions" to affirm the findings, asserting this power is reserved for the trial-level factfinder under R.C.M. 918(a)(1). (App. Br. at 24.) This argument confuses the distinct roles of trial and appellate courts and misidentifies the source of the CCA's power.

While the Government acknowledges that R.C.M. 918(a)(1) governs the actions of a factfinder at trial, the Air Force Court did not act under this rule. As the Court's opinion makes clear, its action was premised on its broad appellate authority granted by Article 66(d), UCMJ, to "affirm only such findings of guilty . . . as the Court finds correct in law . . ." (JA at 8) (citing Article 66(d), UCMJ). This statutory mandate necessarily includes the power to narrow a finding to the

evidence presented in the record, which is precisely what the Air Force Court did. To narrow a finding to one encompassed by the original charge sheet is to approve "only such finding [] of guilty . . . as the Court finds correct in law . . ." (Id.) The Air Force Court reviewed the record, identified the portion of the finding that was factually unassailable (that the value was "more than $1,000") and supported a provident plea to larceny, and affirmed that portion. As the Court said itself, "To be clear, we amend and affirm only so much of the finding of guilty of the lone specification as finds that . . . Appellant . . . did . . . steal jewelry, of a value of more than $1,000.00 . . ." (Id.) This was not a trial-level "substitution;" it was a quintessential appellate function.

Appellant further claims that "narrowing" a specification, as permitted by English, is limited to *striking* language, not substitutions. (App. Br. at 26.) Appellant bases this novel theory on this Court's citation to Piolunek and Rodriguez as examples of narrowing. (Id.) But this reads a limitation into English that does not exist. This Court never stated these examples were the *only* permissible examples of narrowing. And Appellant provides no authority to support such a restrictive interpretation. In fact, the established practice of the service courts proves the contrary. Appellate courts routinely substitute language to conform a specification to the record. For example, the Air Force Court's precedent in United States v. Hale, illustrates this principle with

particular force. In Hale, the Court determined the specification was facially defective because it alleged an offense outside the court-martial's jurisdiction. 77 M.J. 598, 607 (A.F. Ct. Crim. App. 2018), *aff'd*, 78 M.J. 268 (C.A.A.F. 2019). Rather than dismissing the conviction, the Air Force Court exercised its authority under Article 66(c), UCMJ, to "amend the specification to align with the dates of jurisdiction" by excepting an incorrect date and substituting the correct date. Id. at 611. The amended timeframe was within the timeframe originally on the charge sheet. Id. The logic of Hale applies with equal, if not greater, force here. If narrowing may be applied to correct a foundational *jurisdictional* defect and save a conviction, the same tool can be used here to correct a non-elemental *value* aggravator to conform to the undisputed evidence in the record.

Hale demonstrates that substituting language to achieve factual accuracy is a standard and proper component of a CCA's authority to "narrow" a finding under Article 66, UCMJ. The Air Force Court did not exceed its authority; it acted squarely within it. At trial, the Government's theory was that Appellant stole jewelry of a value of "more than $1,000"—specifically "about $21,300." Appellant stipulated and adopted the value of $21,300. Evidence was introduced and admitted, valuing the jewelry at $21,300. Despite the Air Force Court finding the guilty plea improvident, the theory advanced by the Government never changed. Mindful of its authority, the Air Force Court narrowed the value in the

specification from the higher, stipulated amount—about $21,300—to a lesser amount, consistent with the evidence—"more than $1,000." Both amounts have evidentiary support, and consistent with the cases cited here, applying English, the Air Force Court's narrowing neither contradicted the theory presented to the trier of fact nor was without evidentiary support. As Appellant concedes, one of the options available to a CCA, based on the "factual discrepancy over the element of value" and *this* record is a "narrowing" of the offense consistent with English, 79 M.J. at 120. (App. Br. at 24.) The Air Force Court made its choice, exercised its authority narrowly, and this Court should decline Appellant's invitation to hold the Air Force Court's ruling was inconsistent with English.

The Air Force Court's decision also did not contravene United States v. Lubasky, a litigated case, liberally cited throughout Appellant's brief, but factually distinct from the case here. 68 M.J. 260 (C.A.A.F. 2010). In Lubasky, this Court examined "whether a variance as to ownership in larceny cases is fatal if there is legally sufficient evidence that appellant still committed a larceny of property." Id. at 261, n.1. There, the CCA substituted the original victim of the larceny for another victim, which changed the scope of the theory presented to the factfinder. Id. at 265. Changing the victim amends an essential element of the offense and thus the core legal theory, which, like in English, is impermissible. Similar facts are not before the Court here and so Appellant's reliance on Lubasky is misplaced.

Here, the scope of the theory considered by the factfinder and affirmatively adopted by Appellant, did not change. The Air Force Court determined there was sufficient evidence in the record to find that "under any scenario . . . the value of the stolen jewelry was substantially in excess of $1,000." (JA at 7.) There are no statements from Appellant or evidence contradicting this factual finding in the record, and the Air Force Court was correct in their determination.

Next, Appellant argues that the Air Force Court committed the same error as the CCA in English by removing the specific stipulated value, which "rendered the value any conceivable number over $1,000, including an amount over 'about $21,300' because 'a value of more than $1,000' has no upper limit." (App. Br. at 30.) Phrased another way, Appellant asserts that the Air Force Court allowed the Government to proceed under a theory not charged or presented to the factfinder by substituting a specific value with a generic value. But the upper limit, stipulated to by the parties in the record, was $21,300. No evidence was introduced in the record of the stolen items exceeding $21,300 in value. Thus, contrary to Appellant's assertion, the Air Force Court's substitution did not create an "indeterminate, generic value," but a confined, minimum value—more than $1,000, but not less—and the record established a maximum value—$21,300.

Here, the Air Force Court's actions align with other CCAs who narrowed a specification from what Appellant termed—a specific to generic specification. *See*

Haygood, 2022 CCA LEXIS at *4-5 (affirming a larceny conviction after striking the *specific* model alleged ("48 MA WL-C1") for *general* language, "to take the box containing the said lasers," admitted by appellant during his plea inquiry.) As Appellant concedes, the true test is not whether a specification was narrowed from the specific to generic, but whether an appellate court affirmed "an included offense on a theory not presented to the trier of fact." (App. Br. at 30; English, 79 M.J. at 121 (quoting Chiarella, 445 U.S. at 236)). Here, the government proceeded under the noticed theory as charged. This fact was recognized at least, in part, by the Air Force Court when it determined "under any scenario . . . the value of the stolen jewelry was substantially in excess of $1,000." (JA at 7.) Appellant now asks this Court to find error because the stipulated, specific amount was substituted for a generic, lesser amount, despite overwhelming evidentiary support, and the Government proceeding under the noticed theory. This Court should decline Appellant's invitation.

iv. Appellant's Repeated, Sworn Admissions Provided an Undisputed Factual Predicate for the Affirmed Finding.

Next, Appellant seeks absolution from her expressed statements in the Care inquiry by asserting that she "never agreed that the value of the jewelry was 'substantially in excess of $1,000'" and "consistently hedged the value." (App. Br. at 31.) The record proves otherwise.

First, in her signed Stipulation of Fact, Appellant admitted that the "jewelry was of a value of $21,300" and agreed the value was an "uncontradicted fact." (JA at 22.) Second, during the initial Care inquiry, after being confronted with the $21,300 appraisal, Appellant was asked directly if she was "confident that the value of the property was about $21,300?" (JA at 85.) She consulted with counsel and answered, under oath, "Yes, Your Honor." (Id.) To stipulate to, and affirm a value of $21,300 is, by definition, to agree that the value is "substantially in excess of $1,000."

Appellant's assertion that she only admitted to a value of $1,650 contradicts the record. While she mentioned the $1,650 pawn shop proceeds, her admissions went much further. The Stipulation of Fact and the plea colloquy cannot be segregated; they must be considered together to understand the full context of her plea. United States v. Watson, 71 M.J. 54, 58 (C.A.A.F. 2012); United States v. Sweet, 42 M.J. 183, 185-86 (C.A.A.F. 1995). When assessed together, the Air Force Court's factual finding was not error, but an acknowledgment of the undisputed record, where Appellant adopted an uncontradicted fact—the value of the stolen items exceeded $1,000.

Finally, Appellant's argument that her plea was involuntary because she was not advised on every nuance of "value" and its sentencing implications is not compelling. As this Court recognized in United States v. Barton, value "is not a

complex legal element," and [a]n understanding of [value] does not require an intricate application of law to fact." 60 M.J. 62, 66 (C.A.A.F. 2004). Thus, even if the military judge failed to readvise Appellant of the implications of a narrowed value, Appellant suffered no prejudice. This is particularly true because Appellant's maximum punishment was limited by both her plea agreement and the jurisdictional limits imposed by the special court-martial. (JA at 53; JA at 87-88.) Further, considering the admission of Defense Exhibit N, there was no possibility that the military judge would sentence Appellant under a belief that the value exceeded the charged amount—$21,300. After receiving the full benefit of her bargain, Appellant's attempt to now assert prejudice from a modification in her favor, rings hollow.

- **The Court's Action Did Not Circumvent Care because the Judge Properly Explained the Elements**

Next, Appellant argues that narrowing is inappropriate in this case. (App. Br. at 33.) Specifically, Appellant asserts that "swapping out the specific charged value with any specific lower value, like $1,650 circumvents Care." (Id.)

The arguments previously advanced have equal force here. Swapping the specific charged value with a lower specific value does not circumvent Care. Appellant stipulated that each and every element in the charge and specification, including the charged value, was true and she certified that she entered into the stipulation voluntarily. (JA at 22.) The military judge advised Appellant "[a] plea

of guilty is equivalent to a conviction" and "the strongest form of proof known to the law." (JA at 67.) The military judge explained each element along with the relevant definitions. (JA at 75-77.) Appellant then described *in her own words*, why she was guilty. (JA at 77-78.) Prior to findings, Appellant adopted the charged value—about $21,300—twice and confirmed she understood the effect of her guilty plea. (JA at 84-85, 101.) After findings, Appellant agreed that "the value of the property was at least $1,000 or greater." (JA at 141-143.) Appellant was on notice of, and adopted the charged value in the specification, while establishing the factual predicate for the charged offense. "The factual predicate is sufficiently established if the factual circumstances *as revealed by the accused []* objectively support [the] plea." United States v. Faircloth, 45 M.J. 172, 174 (C.A.A.F. 1996) (quoting United States v. Davenport, 9 M.J. 364, 367 (C.M.A. 1980)) (emphasis added). Therefore, the Air Force Court's action of narrowing the specification in accordance with the factual predicate established through Appellant's own words did not circumvent Care but embraced it.

Next, Appellant asserts that she was never properly advised on "the definition of value, or how [value] related to the charge and the facts of her case, especially after [Defense Exhibit N]." (App. Br. at 34.) Citing United States v. Saul, No. 24-0098, 2025 CAAF LEXIS 578, at *6-7 (C.A.A.F. July 21, 2025), Appellant argues that a "military judge must explain each of the elements of an

offense to the accused and question the accused to ensure that the accused's acts or omissions constitute the offense to which the accused is pleading guilty." (App. Br. at 34.) In Saul, this Court set aside a specification after finding Appellant's guilty plea improvident because Appellant's *repeated* statements during the Care inquiry cast doubt on his intent.

Here, while it appears the military judge failed to define "value" during the reopened Care inquiry, the omission, in *this* case, should not be fatal. Critically, Defense Exhibit N, while appearing to question the *total* value of the stolen jewelry, did not question that the jewelry was of a "value of more than $1,000." This matters because the application of law to fact, here, only changes if the "value" of the larceny is $1,000 or less because a lesser value affects the maximum punishment. Further, Appellant affirmed the stipulated value and made no expressed statements during the Care inquiry contradicting the value. In contrast, in Saul, the appellant's statements during the Care inquiry directly contradicted the element of specific intent, and the military judge never resolved whether the appellant had the necessary specific intent to be guilty of willful destruction of nonmilitary property. 2025 CAAF LEXIS 578, at *13.

To the extent Appellant argues the military judge's failure to define "value," despite Appellant's affirmance, required the military judge to enter a plea of not guilty, under Article 45(a), UCMJ, Appellant only partially addresses the issue by

disregarding Article 45(c), UCMJ. (App. Br. at 34; Saul at *14-15). In Saul, this Court concluded that [b]ecause a substantial inconsistency between Appellant's plea and his express statements was unresolved, Article 45(a), UCMJ, required the military judge to enter a plea of not guilty. Saul, 2025 CAAF LEXIS 578, at *14-15. However, Saul did not address Article 45(c), UCMJ, which provides, "[a] variance from the requirements of this article is harmless error if the variance does not materially prejudice the substantial rights of the accused." Here, neither the Air Force Court nor Appellant directly addressed Article 45(c) and whether the military judge's acceptance of Appellant's guilty plea materially prejudiced Appellant.

While unclear, Appellant appears to assert some form of prejudice now by arguing her plea was involuntary because value affects sentencing, and the change in value fundamentally changed the severity of her offense. (App. Br. at 34.) While value affects sentencing, those concerns are absent or mitigated here where Appellant's maximum punishment was expressly limited by the plea agreement and the special court-martial forum; a limitation proposed by Appellant. (JA at 053.) Larceny of property of a value less than $1000 carries a maximum punishment of a bad conduct discharge and 1 year of confinement, while larceny of nonmilitary property of a value over $1000 carries a maximum punishment of five years confinement and a dishonorable discharge. MCM, part IV, ¶ 64.d.(1)(a),

(1)(c)). Appellant's plea agreement, however, limited her possible punishment to a reduction to E-1, forfeiture of two-thirds pay per month for 12 months, confinement for 12 months, and bad conduct discharge. (JA at 88.) Additionally, the military judge discussed the maximum punishment with Appellant as required. (JA at 87-88.) Appellant was on notice of her sentencing exposure, and her exposure did not increase after the Air Force Court narrowed the specification.

v. The Precise Monetary Value Is Not a Material Fact Requiring Reversal Because It Is Not an Essential Element of Larceny, and Appellant Suffered No Prejudice.

Appellant asserts that the specific value of the stolen jewelry was a "material fact," and the Air Force Court's modification of that fact constitutes reversible error. (App. Br. at 18.) This is not the law. A fact is "material" when it is essential to the finding of guilt. Here, from a statutory perspective, the only material facts regarding value were that the property had *some* value, thereby making its theft a crime. From a sentencing perspective, the only material fact was that the jewelry's value exceeded the President's threshold for punishment. The record is unequivocal on both points. The evidence established a clear "floor" value of more than $1,000 and a "ceiling" of $21,300 (the appraisal) (JA at 21, 78.) A value of $1,650 is substantially above the $1,000 threshold for the aggravated offense; thus, any debate about the *exact* value between those two figures is legally

immaterial to the finding of guilt for larceny of property valued at "more than $1,000."

Historically, the law has treated the concept of "value" broadly, recognizing everything from "thieves value," United States v. Gordon, 638 F.2d 886, 889 (5th Cir. 1981), to the intrinsic value of stolen urine, United States v. Batiste, 11 M.J. 791 (A.F.C.M.R. 1981). This Court itself noted in Barton that value "is not a complex legal element . . . [that] require[s] an intricate application of law to fact." 60 M.J. at 65. The only legally material question here was whether the stolen jewelry had a value exceeding the sentence aggravator of $1,000.[5] Appellant twice admitted it did. Any debate about whether the precise value was $1,650, $21,300, or some value in between, is immaterial to the sufficiency of the affirmed larceny conviction.

This is neither a case where the government failed to prove any value, nor a case where the value hovered ambiguously around a threshold. Appellant was never at risk of being convicted on a theory not presented. The theory was always the theft of the jewelry items. Whether their collective value was $21,300 or

[5] Where the value is $1,000 or less, the statute authorizes a bad conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year. MCM, Part IV 64.d.(1)(a). For non-military property valued at more than $1,000, the statute authorizes a dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years. MCM, Part IV 64.d.(1)(c).

$1,650, the value was always "more than $1,000." Because the precise dollar amount is not a material element of the offense, the modification by the Air Force Court was proper, and Appellant suffered no prejudice to her due process rights.

- **Appellant's Due Process Rights Were Not Violated Because the Conviction Was Anchored to the Concrete Act of Stealing Jewelry, not to the Abstract Value of the Stolen Jewels.**

Appellant's argument that her due process rights were violated rests on the flawed premise that her conviction is for a boundless, abstract monetary value. She contends that by affirming a conviction for larceny of "more than $1,000," the Air Force Court created a finding with "no upper limit," theoretically exposing her to punishment for stealing $1M worth of jewelry. (App. Br. at 30.) However, Appellant ignores the specific, concrete facts that have anchored this case from its inception.

First, Appellant's right to notice under the Due Process Clause of the Fifth Amendment was fully satisfied. The cornerstone of due process is notice of the offense one must defend against. United States v. Tunstall, 72 M.J. 191, 192 (C.A.A.F. 2013). At every stage of these proceedings, Appellant was on notice that she was defending against the theft of jewelry belonging to NM. Appellant's conviction was always factually constrained by the evidence in the record, which established a clear evidentiary floor of more than $1,000 (the pawn receipts) and an evidentiary ceiling of $21,300 (the appraisal). Appellant was never at risk of

being convicted on a theory that she stole a million dollars' worth of property because there was zero evidence to support such a finding. Her defense was premised upon the theft of jewelry, and her guilty finding is the result of her conviction for that theft.

Second, her protection against double jeopardy is secure. The Double Jeopardy Clause provides a shield against subsequent prosecution for the *same offense*. U.S. CONST. AMEND. V. Here, the "offense" is the criminal act of stealing jewelry from NM between February and March 2023. The identity of the stolen property—not the fluctuating description of its value—provides the bulwark against future prosecution. The Government is forever barred from prosecuting Appellant again for the theft of those particular items, regardless of whether their value is described as "about $21,300," "more than $1,000," or "$1,650." The specification, coupled with the detailed record, makes clear the precise misconduct for which she was placed in jeopardy, fully satisfying the Due Process Clause's protective purpose. This Court looks to the entire record to determine double jeopardy protection, United States v. Dear, 40 M.J. 196, 197 (C.M.A. 1994), and the allegation of time and date in the specification is generally sufficient to protect against re-prosecution. United States v. Resendiz-Ponce, 549 U.S. 102, 108 (2007). Ultimately, Appellant's constitutional arguments are untethered from the record. Her conviction is not for an abstract number, but for the concrete, proven

act of stealing jewelry, an act to which she repeatedly and providently confessed. Appellant's due process rights were, and remain, fully protected.

Critically, this Court must not lose sight of the fact that this is a guilty plea case. A guilty plea is not a mere procedural formality; it is a "solemn admission in open court that [the accused] is in fact guilty." Barton, 60 M.J. at 66. As this Court wisely cautioned in Barton, appellate courts should not engage in hyper-technical review of such pleas, especially when the facts admitted are straightforward. Id. at 65. Appellant's attempt to unravel her conviction by elevating a semantic debate about value over her own solemn admissions should be rejected.

Here, when a potential conflict arose, the military judge did what was required: he stopped the proceedings and reopened the Care inquiry to ensure a factual basis for the plea. He did not gloss over the issue but confronted it directly. Focusing on the undisputed floor value of the stolen items, he asked Appellant, under oath, if she was confident "that the value of the property was at least $1,000 or greater?" (JA at 142.) Her response was unequivocal: "Yes, sir." (Id.) He then confirmed she still wished to maintain her plea, and again she responded, "Yes, Your Honor." (JA at 143.) Appellant was afforded a clear opportunity to contest the value and withdraw her plea. Instead, she consciously chose to affirm her guilt for the very offense she now stands convicted of.

B. The Air Force Court Properly Found Appellant Guilty of a Lesser-Included Offense, and this Court Can Affirm that Conviction in the Interest of Judicial Economy.

An appellate court is statutorily empowered to "affirm . . . a lesser included offense." Article 66(f)(1)(A)(i), UCMJ. Appellant contends there was no LIO to larceny that could be affirmed. (App. Br. at 37.) But this argument is built on the faulty premise that a specific monetary value is an essential element of larceny. It is not.

The primary tool for determining an LIO is the "elements test," which asks if the elements of the lesser offense are a subset of the elements of the greater offense. United States v. Armstrong, 77 M.J. 465, 469-70 (C.A.A.F. 2018). The test ensures that an accused has fair notice of the offense they must defend against. United States v. Wilkins, 71 M.J. 410, 413-14 (C.A.A.F. 2012).

The elements of larceny are: (a) a wrongful taking, obtaining, or withholding; (b) of certain property; (c) from the possession of the owner or any other person; (d) with the intent to permanently deprive or defraud. MCM, pt. IV, ¶ 46.b.(1). The Government must also prove "[t]hat the property was of a certain value, or of some value," but this is for punishment, not for establishing guilt of the underlying offense. Id. at ¶ 46.b.(1)(e). *See also* United States v. Frost, 46 C.M.R. 233 (C.M.A. 1973) (holding "10 USCS § 921 requires as element of larceny that object of larceny be of some value, thus, specific value alleged in given case is not

element of larceny but rather matter in aggravation which controls maximum permissible punishment."). As this Court clarified, for larceny under Article 121, "[t]he value of the property is not an element of the offense." United States v. Jones, 78 M.J. 37, 41 (C.A.A.F. 2018). The core elements are the wrongful taking of property from another with the intent to permanently deprive. MCM, pt. IV, ¶ 46.b.(1). Value is an aggravating factor used to determine the maximum permissible sentence. Id. at ¶ 46.e.(1).

Applying the elements test here is straightforward: The core elements of larceny are identical for both the charged and affirmed offenses. The aggravating factor of value is merely reduced. To prove a value of "about $21,300," the Government *necessarily* had to prove the property was worth "more than $1,000." Here, prior to findings, Appellant adopted the charged value—about $21,300—twice. (JA at 84-85.) After findings, Appellant agreed that "the value of the property was at least $1,000 or greater." (JA at 141-143.) The Air Force Court determined the Government satisfied their burden, in part, in finding, there was sufficient evidence in the record to find that "under any scenario . . . the value of the stolen jewelry was substantially in excess of $1,000." (JA at 7.) Logically, any amount under the charged amount is a lesser included offense. By establishing, through sufficient evidence that the value of the stolen jewelry was substantially in

excess of $1,000, the Government absorbed as a lesser included offense, any value below the charged stipulated value—$21,300.

Other service courts have taken similar action in nearly identical circumstances. In United States v. Wood, the Army Court of Criminal Appeals found a plea to larceny of property over $500 improvident but affirmed the LIO of larceny of property under $500. 2008 CCA LEXIS 525, *1-2 (A. Ct. Crim. App. Sep. 24, 2008) (unpub. op.). Likewise, in United States v. Broaden, the CCA affirmed only the LIO of conspiracy to commit larceny of "some value" where the providence of a plea to conspiracy to commit larceny of over $500 was questionable. 2016 CCA LEXIS 480, *2 (A. Ct. Crim. App. Aug. 3, 2016) (unpub. op.). These cases demonstrate a commonsense settled practice of affirming factually supported, lesser-value larceny offenses. Under Appellant's reasoning, larceny of property of "some value" could also not be an LIO of larceny of property over $500, because "some value" could theoretically include a value of one million dollars or more. Appellant's argument fails because even though "some value" (like "more than $1000") could theoretically include some astronomical value, an accused can only be sentenced based on the facts established in the record.

C. Should This Court Find a Procedural Error, the Proper Remedy is to Remand to The Air Force Court for a Lesser-Included Offense Analysis, because a Set-Aside Would Be a Windfall for an Admitted Thief.

If this Court finds that a value exceeding $1,000 is not an LIO "of about $21,300," then the record should be returned to the Air Force Court to consider whether there is an LIO that can be affirmed. A dismissal of the charge would be an unjust windfall for an Appellant who, by her own sworn admissions, is guilty of a serious offense.

The law of LIOs exists precisely for this scenario: to ensure a just conviction where the evidence fails to prove a greater aggravating factor but overwhelmingly proves the underlying offense and a lesser degree of aggravation. Appellant's plea was provident as to the affirmed offense. Appellant stood before a military judge under oath and admitted to the essential facts of her crime not once, but twice. (JA at 76-85; JA at 141-43.) If, however, this Court determines "more than $1,000" is not an LIO of "about $21,300," this Court should remand the case back to the Air Force Court to determine whether there are other potential LIO's that can be affirmed. For example, the lower court could affirm the lesser included offense involving a value of "more than $1,000 but less than $21,300" or a value of "between $1,001 and $21,300."

Pursuant to a plea agreement with the convening authority, Appellant agreed to plead guilty to larceny of jewelry of a value of "about $21,300," in exchange for

a cap on her possible sentence. She stipulated to that value in a Stipulation of Fact that was not supposed to be contradicted. If Appellant wanted to plead guilty to a lesser value, she could have negotiated with the convening authority to do so. If Appellant wanted to litigate the value of the jewelry, she could have withdrawn from her plea agreement at any time and done so; she chose not to. To set aside this conviction entirely would reward an accused for creating a post-findings conflict and then using that conflict to secure a new trial because was unhappy with her adjudged sentence. Such a result does not "promote justice" or "assist in maintaining good order and discipline," the foundational principles of the military justice system. MCM, Preamble, Part I. Should this Court find a procedural flaw in *how* the Air Force Court reached its correct and just conclusion, the proper remedy is to remand the case back to the Air Force Court with instructions to perform the specific LIO analysis this Court deems necessary, preserving judicial economy and preventing a miscarriage of justice.

CONCLUSION

The Air Force Court of Criminal Appeals acted properly and within its statutory authority to affirm a conviction for an offense that was factually and legally supported by the record and to which Appellant repeatedly admitted her

guilt. For the foregoing reasons, the United States respectfully requests that this Honorable Court affirm the decision of The Air Force Court of Criminal Appeals.

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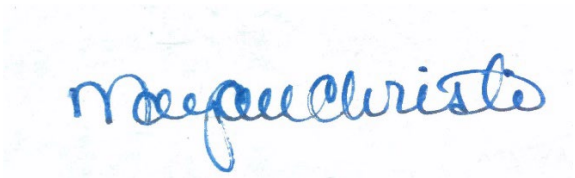

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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was transmitted by electronic means to the Court and the Air Force Appellate Defense Division on 29 December 2025.

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CERTIFICATE OF COMPLIANCE WITH RULE 24(d)

This brief complies with the type-volume limitation of Rule 24(c) because: This brief contains 10,949 words. This brief complies with the typeface and type style requirements of Rule 37.

/s/ Donnell Wright, Capt, USAF

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Dated: 29 December 2025