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**UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES**

UNITED STATES
Appellee

v.

Ann R. MARIN PEREZ, Staff Sergeant
United States Air Force, Appellant

No. 25-0238
Crim. App. No. S32771

February 25, 2026—Decided September 29, 2026

Military Judge: Charles E. Wiedie Jr.

For Appellant: *Major Samantha M. Castanien* (argued); *Megan P. Marinos*, Esq.

For Appellee: *Captain Donnell D. Wright* (argued); *Colonel Matthew D. Talcott*, *Major Morgan Christie*, and *Mary Ellen Payne*, Esq. (on brief).

Judge HARDY delivered the opinion of the Court, in which Chief Judge MAGGS, Judge OHLSON, Judge SPARKS, and Judge JOHNSON joined.

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Appellant pleaded guilty to stealing jewelry valued at about \$21,300. A military judge sitting as a special court-martial convicted Appellant, consistent with her pleas, of one specification of larceny in violation of Article 121, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 921 (2018). The United States Air Force Court of Criminal Appeals (AFCCA) affirmed Appellant’s conviction but was troubled by an apparent factual inconsistency between Appellant’s guilty plea and evidence about the value of the stolen jewelry introduced by the defense during presentencing. *United States v. Marin Perez*, No. ACM S32771, 2025 CCA LEXIS 266, at *5-9, 2025 WL 1672888, at *2-3 (A.F. Ct. Crim. App. June 13, 2025) (unpublished). The AFCCA resolved this factual inconsistency by affirming the finding of guilty by exceptions and substitutions—striking the words “about \$21,300.00” from the specification and replacing them with “more than \$1,000.00.” *Id.* at *11-14, 2025 WL 1672888, at *4-5 (citing *United States v. English*, 79 M.J. 116, 122 n.5 (C.A.A.F. 2019)).

Before this Court, Appellant challenges the AFCCA’s decision affirming her conviction by exceptions and substitutions as exceeding a service court’s authority under Article 66, UCMJ, 10 U.S.C. § 866 (2018).¹ Appellant argues that under Article 66, UCMJ, and this Court’s decision in *English*, 79 M.J. at 116, the only option available to the AFCCA in the face of the factual inconsistency was to set aside her finding of guilt and the sentence and to authorize a sentence rehearing. We need not address this argument because it disregards the specific instructions Congress provided for appellate review of guilty pleas in Article 45, UCMJ, 10 U.S.C. § 845 (2018).

¹ Congress amended Article 66, UCMJ, in the National Defense Authorization Act for Fiscal Year 2022, Pub. L. No. 117-81, § 539E(d), 135 Stat. 1541, 1703 (2021). Those amendments do not apply to this case because Appellant’s offense occurred prior to December 27, 2023, the effective date of those amendments. *Id.* § 539E(f), 135 Stat. 1541, 1706.

Although Article 66, UCMJ, generally defines the jurisdiction and authority to act of the Courts of Criminal Appeals (CCAs), Article 45, UCMJ, primarily governs the CCAs' review of the providence of guilty pleas. Article 45(a), UCMJ, prohibits a military judge from entering a guilty plea into the record if the accused raises matters inconsistent with the plea, as the AFCCA believed happened in this case with respect to the value of the jewelry. However, the article also states that any variance from its requirements is "harmless error if the variance does not materially prejudice the substantial rights of the accused." Article 45(c), UCMJ. Because we conclude that the military judge's failure to resolve the factual inconsistency about the jewelry's value did not prejudice any of Appellant's substantial rights, that failure was harmless error. Accordingly, we set aside the decision of the AFCCA and affirm the findings of guilty to the charge and its specification as entered into the record by the military judge. The record is returned to the Judge Advocate General of the Air Force for remand to the lower court for a new sentencing review under Article 66, UCMJ.

I. Background

Appellant was a staff sergeant on active duty in the United States Air Force. Due to financial strain, Appellant sought off-duty employment at a local cleaning company. As part of her employment, Appellant cleaned NM's residence every two weeks over the course of a few months. During this time, Appellant wrongfully took six pieces of jewelry from a jewelry box on NM's dresser and sold the jewelry to various pawn shops. When NM noticed the missing jewelry, she reported the theft to the Delaware State Police (DSP). DSP investigators interviewed Appellant who confessed to stealing NM's jewelry after being informed of and voluntarily waiving her rights.

The Government charged Appellant with one specification of larceny in violation of Article 121, UCMJ. In relevant part, the specification alleged that Appellant stole "jewelry, of a value of about \$21,300.00, the property of

[NM].” Prior to trial, Appellant entered into a plea agreement with the convening authority, where she agreed to plead guilty to the charge and specification in exchange for limitations on her sentence. During the initial *Care* inquiry,² the military judge and Appellant engaged in the following exchange regarding the value of the stolen jewelry:

MJ: Okay. And I understand that you—when you pawned [the jewelry] 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?

[Appellant]: 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?

[Appellant]: Yes, Your Honor.

Prior to entering any findings, the military judge confirmed again with Appellant that she wanted to plead guilty. Appellant consulted with her trial defense counsel and then confirmed. The military judge accepted Appellant’s plea as provident and found Appellant guilty of the charge and specification as drafted.

During presentencing, trial defense counsel introduced a memorandum prepared by the same jeweler who conducted the appraisal of NM’s jewelry. The memorandum stated, in relevant part:

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 [t]oday. Instead, the appraised

² *United States v. Care*, 18 C.M.A. 535, 40 C.M.R. 247 (1969).

United States v. Marin Perez, No. 25-0238/AF
Opinion of the Court

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.

After the introduction of the memorandum, the military judge voluntarily reopened the *Care* inquiry based on his concerns that the jeweler's statements cast doubt on the exact value of the stolen jewelry. In the course of the reopened *Care* inquiry, the military judge explicitly asked Appellant:

MJ: . . . Let me ask you first, [Appellant], are you confident, based on your discussion with counsel, reviewing the evidence in the case, that the value of the property was at least \$1000 or greater?

[Appellant]: Yes, sir.

. . . .

MJ: . . . So you agree that it's more than \$1000 in price?

[Appellant]: Yes, your Honor.

The military judge concluded, "I think that the plea is still provident based upon that but I just wanted to check." Both the Government and trial defense counsel confirmed that they did not believe any further discussion was warranted. Later, when asked again by the military judge whether she still wanted to "stay with [her] plea," Appellant responded in the affirmative. The military judge sentenced Appellant to a bad-conduct discharge, confinement for four months, and reduction to the grade of E-1.

On appeal, Appellant challenged the providence of her guilty plea and the appropriateness of her sentence. The AFCCA held that the military judge erred in accepting Appellant's guilty plea to the specification as drafted. *Marin*

Perez, 2025 CCA LEXIS 266, at *11, 2025 WL 1672888, at *4. The lower court agreed with Appellant that it was unclear whether the value of the stolen jewelry was about \$21,300 as charged. *Id.*, 2025 WL 1672888, at *4. However, the AFCCA determined that it could affirm the finding of guilty to the specification “by excepting the words and figures ‘about \$21,300.00’ and substituting therefor the words ‘more than \$1,000.00’” *Id.* at *12, 2025 WL 1672888, at *4. Relying on this Court’s decisions in *English*, 79 M.J. at 122 n.5, and its authority under Article 66(d), UCMJ,³ the AFCCA cited with approval its decision in *United States v. Hale*, 77 M.J. 598 (A.F. Ct. Crim. App. 2018), where it held that service courts have “the authority to make exceptions and substitutions to the findings on appeal, ‘so long as [they] do not amend a finding on a theory not presented to the trier or fact.’” 2025 CCA LEXIS 266, at *12, 2025 WL 1672888, at *5 (alteration in original) (quoting *Hale*, 77 M.J. at 607). Finally, the AFCCA reassessed Appellant’s sentence and left it unchanged: a bad-conduct discharge, confinement for four months, and reduction to E-1. *Id.* at *13-14, 2025 WL 1672888 at *5.

We granted review on the following issue:

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.”

United States v. Marin Perez, 86 M.J. 366 (C.A.A.F. 2025) (order granting review).

II. Standard of Review

The scope of an appellate court’s authority is a legal question this Court reviews de novo. *English*, 79 M.J. at

³ Under the version of Article 66(d)(1), UCMJ, applicable in this case, the AFCCA “may affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as the [AFCCA] finds correct in law and fact and determines, on the basis of the entire record, should be approved.”

121. Appellate military courts review a military judge’s decision to accept a guilty plea for an abuse of discretion. *United States v. Navarro Aguirre*, 86 M.J. 43, 52 (C.A.A.F. 2025). A military judge abuses his discretion when there is a substantial basis in law or fact to question the guilty plea. *Id.* “Even if a guilty plea is later determined to be improvident, a reviewing court may grant relief only if it finds that the military judge’s error in accepting the plea ‘materially prejudice[d] the substantial rights of the accused.’ Article 45(c), UCMJ.” *United States v. Moratalla*, 82 M.J. 1, 4 (C.A.A.F. 2021) (alteration in original). This Court assesses de novo the harmlessness of errors in applying Article 45, UCMJ. *United States v. Hasan*, 84 M.J. 181, 215 (C.A.A.F. 2024), *cert. denied*, 145 S. Ct. 1470 (2025).

III. Discussion

In this case, Appellant’s arguments and the Government’s responses center around a CCA’s authority (or lack thereof) under Article 66, UCMJ, to affirm a conviction by exceptions and substitutions, and the precise meaning of this Court’s decision in *English*, 79 M.J. at 116. But, as this Court stated in *United States v. Barton*, “[w]e cannot lose sight that this is a *guilty plea* case.” 60 M.J. 62, 65 (C.A.A.F. 2004) (emphasis added). This Court has long emphasized that an appellate court’s review in a guilty plea case focuses on the *providence* of the plea, as determined by Article 45, UCMJ, Rule for Courts-Martial (R.C.M.) 910, and our predecessor court’s foundational decision in *Care*. *United States v. Felder*, 59 M.J. 444, 445 (C.A.A.F. 2004); *see also United States v. Faircloth*, 45 M.J. 172, 174 (C.A.A.F. 1996) (noting that because the accused pleaded guilty, a disputed factual issue “must be analyzed in terms of the providence of the plea, not sufficiency of the evidence”). With this principle in mind, we turn to Appellant’s arguments.

A. Larceny and the Value of the Stolen Jewelry

In the *Manual for Courts-Martial, United States* (2019 ed.) (*MCM*), the President has specified the following four

elements for the offense of larceny in violation of Article 121, UCMJ:

(a) That the accused wrongfully took, obtained, or withheld certain property from the possession of the owner or any other person;

(b) That the property belonged to a certain person;

(c) That the property was of a certain value, or of some value, and

(d) That the taking, obtaining, or withholding by the accused was with the intent permanently to deprive or defraud another person of the use and benefit of the property or permanently to appropriate the property for the use of the accused or for any other person other than the owner.

MCM pt. IV, para. 64.b.(1).⁴ The President has further specified that servicemembers who are convicted of larceny of non-government property shall face higher maximum sentences if the value of the stolen goods exceeds \$1,000. *MCM* pt. IV, para. 64.d.(1)(c).

In the stipulation of fact, Appellant admitted that she took jewelry from NM's home with the intent to permanently deprive NM of the jewelry and sold the jewelry to various pawn shops for a total of \$1,650. During the reopened *Care* inquiry, Appellant repeatedly affirmed that the value of the jewelry exceeded \$1,000. Based on these admissions, her additional supporting statements during the *Care* inquiry, and the other evidence proffered by the Government, there is no question that Appellant's guilty plea established that she committed a larceny in violation of Article 121, UCMJ, and that her crime qualified for the higher maximum punishment.⁵

⁴ Unless otherwise noted, all references in this opinion to the R.C.M. and Part IV of the *MCM* are to the *MCM* (2019 ed.).

⁵ We are mindful that this higher maximum punishment is circumscribed by the statutory limitations of a special court-martial—the forum at which Appellant's misconduct was adjudicated. *See* Article 19(a), UCMJ, 10 U.S.C. § 819(a) (2018).

The only uncertainty in this case relates to the precise value of the stolen jewelry. Appellant repeatedly describes the value of the jewelry as a critical element of her offense, but this characterization conflates three different purposes that the concept of value performs in this case.

First, as defined by the President, whether the stolen property “was of a certain value, *or of some value*” is an element of the offense of larceny. *MCM* pt. IV, para. 64.b.(1)(c) (emphasis added). Second, because the President has authorized more severe sentences when the value of stolen property is more than \$1,000, *MCM* pt. IV, para. 64.d.(1)(c), whether the value of the jewelry exceeds \$1,000 is a sentencing factor. *See Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000) (holding that any fact that increases the prescribed range of penalties to which a criminal defendant is exposed must be proven beyond a reasonable doubt). Finally, whether the value of the jewelry was “about \$21,300.00” was a fact charged by the Government and written into the specification to which Appellant pleaded guilty.

Appellant’s statements about the value of the jewelry during the reopened *Care* inquiry ensured the providence of her guilty plea with respect to the first two of these purposes: the elements of larceny and the sentence aggravator. Appellant repeatedly agreed that the value of the stolen jewelry was at least \$1,000. This satisfied the value element of larceny by establishing that the jewelry was “of some value” and triggered the higher maximum punishment by establishing that the value of the stolen property exceeded \$1,000.

The potential problem in this case arises with respect to the third purpose: the fact that Appellant specifically pleaded guilty to larceny of property worth “about \$21,300.00.” Neither party disputes the AFCCA’s conclusion that there was a substantial basis to question whether the value of the property stolen by Appellant was “about \$21,300.00” as charged and pleaded. The military judge should have resolved this inconsistency, either by: (1) establishing the value of the jewelry to be about \$21,300; or

(2) modifying the specification with the consent of the parties to eliminate any inconsistency if the evidence supported a lesser value. To the military judge's credit, he did reopen the *Care* inquiry after the defense's sentencing memorandum cast doubt on the accuracy of the \$21,300 valuation. But although the military judge established that the value of the jewelry exceeded \$1,000 during the reopened *Care* inquiry, he did not ask Appellant whether she agreed that the value of the stolen jewelry was about \$21,300, nor did he modify the specification.

In the eyes of the AFCCA, the military judge's additional questions during the reopened *Care* inquiry did not resolve the inconsistency about the jewelry's value. The lower court noted that "it is questionable . . . whether the military judge ever resolved whether there was an inconsistency between Appellant's guilty plea and the information contained in the [memorandum] as to the value of the stolen jewelry." *Marin Perez*, 2025 CCA LEXIS 266, at *11, 2025 WL 1672888, at *4. The critical question presented in this case is what the AFCCA was authorized to do when presented with this factual inconsistency about the jewelry's value.

Citing this Court's precedent in *English* and *United States v. Lubasky*, 68 M.J. 260, 264 (C.A.A.F. 2010), Appellant argues that the only option available to the AFCCA under its Article 66 authority was to set aside the findings and the sentence. But this argument disregards the fact that this is a guilty plea case governed primarily by Article 45, UCMJ, R.C.M. 910, and our decision in *Care*.

Article 45(a), UCMJ, prohibits a military judge from accepting a guilty plea from an accused under specific circumstances, including when the defense raises matters inconsistent with the accused's plea. Interpreting this provision, this Court has instructed that, "[i]f an accused 'sets up matter inconsistent with the plea' at any time during the proceeding, the military judge must either resolve the apparent inconsistency or reject the plea." *United States v. Garcia*, 44 M.J. 496, 498 (C.A.A.F. 1996) (quoting Article 45(c), UCMJ). Thus, we agree with the AFCCA that it

was an error for the military judge to accept Appellant's guilty plea and enter it into the record in the face of a factual inconsistency between the language of the specification (and thus Appellant's guilty plea) and the memorandum submitted by the defense during the sentencing proceedings.

But even though the military judge erred by accepting the plea in violation of Article 45(a), UCMJ, that is not the end of the providency analysis. The article further states: "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 45(c), UCMJ (emphasis added). Under this provision, Congress specifically authorized appellate courts to affirm a military judge's acceptance of a guilty plea—without any exceptions or substitutions—if the military judge's failure to resolve the inconsistency amounted to harmless error. Although the AFCCA did not follow this course, we can affirm the military judge's acceptance of the guilty plea under Article 45(c), UCMJ, if the unresolved variance did not materially prejudice Appellant's substantial rights.

B. Harmless Error

Appellant argues that the error here cannot be harmless because the inconsistency created a material conflict over an element or material fact. Appellant notes that the specification accuses her of stealing jewelry worth "about \$21,300.00," not six pieces of jewelry, or two necklaces, three bracelets, and a pair of earrings, thus making the value a critical aspect of this case. Appellant further asserts that if the jewelry was actually worth less than \$21,300, she could have bargained for a better plea agreement and argues that the potential inflation of the jewelry's value fundamentally changed the severity of her offense. We are not persuaded.

First, as noted above, the critical question to satisfy the elements of larceny was whether the stolen jewelry was "of some value," and the decisive question with respect to sentencing was whether the value of the stolen jewelry

exceeded \$1,000. *MCM* pt. IV, para. 64.d.(1)(c). Appellant's statements during the reopened *Care* inquiry answered both these questions.

Second, Appellant was sentenced by the military judge who was fully aware of what Appellant stole and the issues surrounding the true value of the jewelry. Attachments to the stipulation of fact included photographs of the six pieces of jewelry, itemized receipts from the pawn shops, and written descriptions of the six pieces by a professional jeweler. Furthermore, it was the military judge himself who flagged the apparent inconsistency regarding the jewelry's value during presentencing, reopened the *Care* inquiry, and directly addressed the jewelry's value with the parties. The military judge told the parties that it was not clear what the exact value of the jewelry was and stated that "there's an argument to be made that the property may be worth less [than \$21,300]." Given the military judge's attention to and understanding of the issue, we find no reason to believe that he erroneously over-sentenced Appellant based on a mistaken view of the jewelry's value.

For these reasons, we conclude that the military judge's failure to resolve the factual variance between Appellant's plea of guilty to larceny of jewelry worth "about \$21,300.00" and the military judge's apparent finding that the jewelry was worth less than that amount constituted harmless error.

IV. Conclusion

The decision of the United States Air Force Court of Criminal Appeals is set aside. The findings of guilty to the charge and its specification as entered into the record by the military judge are affirmed. The record is returned to the Judge Advocate General of the Air Force for remand to the lower court for a new sentencing review under Article 66, UCMJ, 10 U.S.C. § 866 (2018).