

## Ask the Lawyer: You Can't Take Military Property - Even Temporarily

By Mathew B. Tully

Question:

How bad would it be if I used some military equipment from work to do odd jobs at home?

Answer:

Every so often I come across a newspaper article about a bomb squad being called to a house because someone found a World War II-era grenade in his grandfather's basement.

While some may shrug off such episodes as a colorful reminder of Grandpa's Army days, the military does not look kindly on those who steal its property. In fact, the maximum jail time for larceny of military property is double that for larceny of nonmilitary property.

Here's a basic rule of thumb: Just because you used it while on duty or even bought it — not necessarily with your personal funds — doesn't mean you can take it. This rule applies as much to office supplies as it does to night-vision goggles.

Article 121 of the Uniform Code of Military Justice defines the offense of larceny and wrongful appropriation as the wrongful taking, obtaining or withholding of any money, personal property or article of value from an owner by any means possible.

If a service member took something intending to permanently deprive or defraud the owner of the stolen property's use or benefit, the crime is larceny. If the intent to deprive or defraud was temporary, the crime is wrongful appropriation.

However, military courts have found that service members who take property with the incorrect but honest belief they have a legal right to it don't violate Article 121.

That's what happened in a 1988 case, *U.S. v. Turner*.

The case involved an Army captain who worked at a German motor pool and was having engine trouble with his Dodge van. A parts clerk provided the captain with engines to be installed in the van.

The captain was told the engine was not government property when, in fact, it was. He was later found guilty of violating Article 121. But the Court of Military Appeals found the captain should have been afforded a mistake-of-fact defense because he "honestly believed he was lawfully entitled to take the engines as gifts or favors from his parts clerk."

More recently, the Navy-Marine Corps Court of Criminal Appeals found in *U.S. v. Brooks* that this affirmative defense did not apply to a Marine lance corporal who took a government computer from a government warehouse to his barracks' room.

He claimed to have “an honest belief that the computer was garbage” because it was sitting on a shelf collecting dust. However, the court rejected the lance corporal’s mistake-of-fact claim and upheld his conviction.