

**UNITED STATES COAST GUARD COURT OF CRIMINAL APPEALS  
Washington, DC**

**UNITED STATES  
v.  
James T. BECKERMANN**

**Chief Warrant Officer , U.S. Coast Guard, (Retired)**

**CGCMG 0036  
Docket No. 954  
18 March 1997**

General Court-Martial convened by Commander, Maintenance & Logistics Command, Atlantic. Tried at Washington Navy Yard, Washington, D.C., on 14-17 August 1989.

Military Judge:	CAPT Ronald H. Garvin, JAGC, USN
Trial Counsel:	CDR Arthur R. Butler, USCG
Assistant Trial Counsel:	LT Arne O. Denny, USCG
Detailed Defense Counsel:	LT David J. Martin, USCGR
Assistant Detailed Defense Counsel:	LCDR Gerald R. Wheatley, USCG
Appellate Defense Counsel:	LT Richard R. Beyer, USCGR
Assistant Appellate Defense Counsel:	LT Rachel E. Canty, USCGR
Appellate Government Counsel:	LCDR Bruce P. Dalcher, USCG

**BEFORE  
PANEL TWO**

**BAUM, FEARNOW, AND O'HARA**

Appellate Military Judges

Per Curiam:

This Court first reviewed this record of appellant's second trial on September 30, 1992, affirming the findings and sentence as approved by the convening authority. Thereafter, appellant's petition for review

to the then-Court of Military Appeals was denied on July 14, 1994. Later, after the Supreme Court decision in *U.S. v. Ryder*, \_\_\_ U.S. \_\_\_, 115 S.Ct. 2031, 132 L.Ed.2d 136, (1995), appellant applied for relief to the Court of Appeals for the Armed Forces in a pleading which that Court construed as a Petition for Extraordinary Relief. That petition was granted by an order which remanded the record of trial to this Court for another review in light of *U.S. v. Ryder*, 44 M.J. 9 (1996).

Appellant has assigned four errors, which the Government has answered, first by challenging the return of this record for further review as contrary to Article 76, UCMJ. The Government contends that review of this case became final under Article 76 upon the denial of discretionary review by the then Court of Military Appeals in July 1994. For that reason, the Government asserts that the instant appeal is unfounded and should be summarily denied. Whatever the merits may or may not be of the Government's contentions in this regard, the record is now before this Court for review under Article 66, UCMJ, by explicit direction of the Court of Appeals for the Armed Forces. Furthermore, we note from pleadings before that Court, which have been provided to us by the Government pursuant to our order, that the Government made a similar assertion to that Court before its order remanding this record for further review was issued. Accordingly, the Court of Appeals for the Armed Forces in its rejection of the Government's position by its remand of the record determined that review was not final under Article 76, UCMJ. We are bound by that decision.

In one of his assignments of error, Appellant urges that the appointment of the civilian member of this Court by the Secretary of Transportation was not in accord with the Appointments Clause of the Constitution and is therefore ineffective. The decision of the Court of Appeals for the Armed Forces in *U.S. v. Ryder, supra*, is dispositive of this issue, and appellant's claim of error is rejected for that reason, despite the pending review of this issue at the U.S. Supreme Court upon a grant of *certiorari* in *Edmond v. U.S.*, \_\_\_ U.S. \_\_\_, 117 S.Ct. 416 (1996). Appellant's other assignments of error were addressed by this Court when the case was last before us. We also deem these assigned errors to be without merit, finding nothing in appellant's brief that prompts us to depart from our earlier decision.

Having reviewed the record in accordance with Article 66, UCMJ, the findings and sentence are again determined to be correct in law and fact and on the basis of the entire record should be approved. Accordingly, the findings of guilty and sentence as approved below, are affirmed.

Chief Judge BAUM and Judge O'HARA concur. Judge FEARNOW did not participate in this decision.

For the Court

R. Hamish Waugh

Clerk of the Court