

**UNITED STATES NAVY-MARINE CORPS
COURT OF CRIMINAL APPEALS
WASHINGTON, D.C.**

**Before
J.K. CARBERRY, B.L. PAYTON-O'BRIEN, M.D. MODZELEWSKI
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**BRANDON E. CHUTE
LANCE CORPORAL (E-3), U.S. MARINE CORPS**

**NMCCA 201100410
GENERAL COURT-MARTIAL**

Sentence Adjudged: 20 May 2011.

Military Judge: LtCol Robert Q. Ward, USMC.

Convening Authority: Commanding General, 2d Marine
Logistics Group, Camp Lejeune, NC.

Staff Judge Advocate's Recommendation: Maj J.R. Cherry,
USMC.

For Appellant: CAPT Salvador A. Dominguez, JAGC, USN.

For Appellee: CAPT Martin A. Grover, JAGC, USN; LT Benjamin
J. Voce-Gardner, JAGC, USN.

31 October 2011

OPINION OF THE COURT

**THIS OPINION DOES NOT SERVE AS BINDING PRECEDENT, BUT MAY BE CITED AS
PERSUASIVE AUTHORITY UNDER NMCCA RULE OF PRACTICE AND PROCEDURE 18.2.**

PER CURIAM:

After careful consideration of the record and the pleadings of the parties, we conclude that the findings and the sentence are correct in law and fact and that no error materially prejudicial to the substantial rights of the appellant was committed. However, we concur with the parties that there is an error in the court-martial order and will order corrective

action in our decretal paragraph. Arts. 59(a) and 66(c), Uniform Code of Military Justice, 10 U.S.C. §§ 859(a) and 866(c).

The court-martial order incorrectly reflects that the appellant was found guilty of Specification 2 under Charge II. The military judge dismissed Specification 2. The new promulgating order will reflect that Specification 2 of Charge II was dismissed. The findings and sentence as approved by the convening authority are affirmed.¹

For the Court

R.H. TROIDL
Clerk of Court

¹ To the extent that the convening authority's action purports to direct that the punitive discharge will be executed after final judgment it is a legal nullity. See *United States v. Tarniewicz*, __ M.J. __, No. 201100158, 2011 CCA LEXIS 150 (N.M.Ct.Crim.App. 30 Aug 2011).