

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

**Before  
J.A. MAKSYM, J.R. PERLAK, J.E. STOLASZ  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**JUSTIN GEYER  
PRIVATE (E-1), U.S. MARINE CORPS**

**NMCCA 201000398  
SPECIAL COURT-MARTIAL**

**Sentence Adjudged:** 5 April 2010.

**Military Judge:** Maj Stephen F. Keane, USMC.

**Convening Authority:** Commanding Officer, 3d Assault Amphibian Battalion, Marine Corps Base, Camp Pendleton, CA.

**Staff Judge Advocate's Recommendation:** LtCol H.D. Russell, USMCR.

**For Appellant:** CAPT Diane L. Karr, JAGC, USN.

**For Appellee:** Capt Samuel C. Moore, USMC.

**15 February 2011**

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**OPINION OF THE COURT**  
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**IN ACCORDANCE WITH RULE 18.2, NMCCA RULES OF PRACTICE AND PROCEDURE, THIS  
OPINION DOES NOT SERVE AS PRECEDENT.**

PER CURIAM:

A military judge sitting as a special court-martial convicted the appellant pursuant to his pleas of three specifications of failing to obey a lawful order, three specifications of destruction of property, one specification of wrongful appropriation, one specification of assault consummated by battery, one specification of communicating a threat, and two specifications of reckless endangerment in violation of Articles 92, 109, 121, 128, and 134, Uniform Code of Military Justice, 10

U.S.C. §§ 892, 909, 921, 928, and 934. The appellant was sentenced to seven months confinement, forfeiture of \$850.00 pay per month for seven months, and a bad-conduct discharge. The convening authority (CA) disapproved the adjudged forfeitures, and otherwise approved the adjudged sentence. Pursuant to a pretrial agreement, the CA suspended all confinement in excess of time served plus 5 days for the period of confinement served plus 12 months thereafter.

The appellant asserts that his guilty pleas to reckless endangerment were not provident because there was no factual basis to show that his conduct was likely to cause death or grievous bodily harm.<sup>1</sup> After carefully considering the parties' briefs and reviewing the record of trial, we are convinced 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 occurred. Arts. 59(a) and 66(c), UCMJ.

"During a guilty plea inquiry the military judge is charged with determining whether there is an adequate basis in law and fact to support the plea before accepting it. *United States v. Prater*, 32 M.J. 433, 436 (C.M.A. 1991). 'A military judge's decision to accept a guilty plea is reviewed for an abuse of discretion.' *United States v. Eberle*, 44 M.J. 374, 375 (C.A.A.F. 1996) . . . ." *United States v. Inabinette*, 66 M.J. 320, 321-22 (C.A.A.F. 2008)(additional citations omitted).

After considering the appellant's admissions during the providence inquiry, we are utterly convinced that his conduct clearly was of a nature and likely to cause death or grievous bodily harm to the other occupants of the vehicle and find no substantial basis in law or fact to question his guilty pleas. *Id.* at 322; Record at 54, 55, 57, 61. In this case, the avoidance of death or grievous bodily harm was simply the result of fortuitous good fortune. There is simply no plausible basis for finding error in this case. We find the assigned error is without merit and warrants no further comment. *United States v. Matias*, 25 M.J. 356, 361 (C.M.A. 1987).

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<sup>1</sup> The issue is raised pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

**Conclusion**

Accordingly, we affirm the findings and the sentence as approved by the CA.

For the Court

R.H. TROIDL  
Clerk of Court