

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

**Before
C.L. REISMEIER, F.D. MITCHELL, D.O. HARRIS
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**JOSEPH A. GRASSO
SERGEANT (E-5), U.S. MARINE CORPS**

**NMCCA 201000628
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 11 August 2010.

Military Judge: CAPT Terry Ganzel, JAGC, USN.

Convening Authority: Commanding Officer, Marine Combat Training Battalion, School of Infantry (WEST), Training Command, Camp Pendleton, CA.

Staff Judge Advocate's Recommendation: LtCol J.L. Gruter, USMC.

For Appellant: LCDR Anthony Yim, JAGC, USN.

For Appellee: Mr. Brian Keller, Esq.

28 February 2011

OPINION OF THE COURT

**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, consistent with his pleas, of two separate specifications of larceny in violation of Article 121, Uniform Code of Military Justice, 10 U.S.C. § 921. The appellant was sentenced to confinement for ten months, reduction to pay grade E-1, and a bad-conduct discharge. The convening authority approved the sentence as adjudged, but suspended all confinement in excess of 120 days in accordance with the pretrial agreement.

The appellant's offenses involved two separate withdrawals from a credit union account in the name of another service member. The specifications allege that the appellant stole U.S. currency from the service member, not from the credit union. Although not raised by the appellant, we have considered the possibility of a fatal variance between the pleadings and the admissions of ownership with respect to the U.S. currency. We conclude that the appellant was not misled, and that his conviction for these offenses bars further prosecution for the same acts. Accordingly, we find no possible prejudice to the substantial rights of the appellant and conclude that any variance was not fatal. See generally *United States v. Craig*, 24 C.M.R. 28, 30 (C.M.A. 1957).¹

After a thorough review of the record, we are satisfied that no error materially prejudicial to the substantial rights of the appellant occurred, and we therefore affirm the findings and the approved sentence. Arts. 59(a) and 66(c), UCMJ.

For the Court

R.H. TROIDL
Clerk of Court

¹ As we said 21 years ago:

It is well established that a depositor of a bank or similar depository has no ownership rights in any specific monies of the depository, their relationship being one of creditor to debtor, not bailor to bailee nor beneficiary to fiduciary. *United States v. Jones*, 29 C.M.R. 651 (ABR), petition denied, 30 C.M.R. 417 (C.M.A. 1960). Thus, the currency wrongfully taken or obtained by the appellant was the property, not of the cardholder, but most likely of the financial institution that owned and operated the ATM terminal which dispensed the currency to the appellant. Fortunately for the Government, so long as accused are not misled, variances as to ownership in larceny cases are not fatal and may be disregarded.

United States v. Duncan, 30 M.J. 1284, 1289 (N.M.C.M.R. 1990).