

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

**Before
C.L. REISMEIER, F.D. MITCHELL, R.E. BEAL
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**THOMAS R. LIRLEY
CORPORAL (E-4), U.S. MARINE CORPS**

**NMCCA 201000502
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 26 May 2010.

Military Judge: Maj Robert Palmer, USMC.

Convening Authority: Commanding Officer, Headquarters and
Headquarters Squadron, Marine Corps Air Station, Beaufort,
SC.

Staff Judge Advocate's Recommendation: Maj V.C. Danyluk,
USMC.

For Appellant: CAPT Edward Mallow, JAGC, USNR.

For Appellee: LT Kevin Shea, JAGC, USN.

27 January 2011

OPINION OF THE COURT

AS AN UNPUBLISHED DECISION, THIS OPINION DOES NOT SERVE AS PRECEDENT.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 two specifications of communicating threats and one specification of adultery, in violation of Article 134, Uniform Code of Military Justice, 10 U.S.C. § 934. The appellant was sentenced to confinement for eight months, forfeiture of \$964.00 pay per month for eight months, reduction to pay grade E-1, and a bad-conduct discharge. The convening authority approved the sentence as adjudged, but in accordance with the pretrial agreement, suspended adjudged forfeitures and confinement in excess of four months, and deferred and waived automatic forfeitures.

The appellant has submitted one assignment of error, claiming that the Charge and its three specifications fail to state offenses because they do not alleged the terminal element of Article 134, UCMJ. In *United States v. Fosler*, 69 M.J. 699 (N.M.Ct.Crim.App. 2010), this court addressed the question of the sufficiency of allegations arising under the enumerated Article 134 offense of adultery, noting that the terminal element is necessarily implied by a proper allegation of conduct and criminality. We follow our decision in *Fosler*, and 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. Arts. 59(a) and 66(c), UCMJ. The findings and sentence, as approved by the convening authority, are affirmed.

For the Court

R.H. TROIDL
Clerk of Court