

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

**Before
J.K. CARBERRY, M.D. MODZELEWSKI, M. FLYNN
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**ANTHONY J. DISERIO
PRIVATE FIRST CLASS (E-2), U.S. MARINE CORPS**

**NMCCA 201100314
SPECIAL COURT-MARTIAL**

Sentence Adjudged: 30 March 2011.

Military Judge: LtCol G.W. Riggs, USMC.

Convening Authority: Commanding Officer, Combat Logistics
Regiment 27, 2d Marine Logistics Group, Camp Lejeune, N.C.

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

For Appellant: CAPT Johnathan W. Bryan, JAGC, USN.

For Appellee: Capt Samuel C. Moore, USMC.

14 February 2012

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:

A military judge sitting as a special court-martial convicted the appellant, pursuant to his pleas, of one specification each of failing to obey a lawful general order and receiving stolen property, in violation of Articles 92 and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 892 and 934. The appellant was sentenced to five months confinement, reduction to pay grade E-1, and a bad-conduct discharge. The convening

authority approved the findings and the sentence as adjudged. The pretrial agreement did not affect the sentence.

The appellant's sole assigned error is that, pursuant to *United States v. Fosler*, 70 M.J. 225 (C.A.A.F. 2011), Specification 1 of the Additional Charge, receiving stolen property, fails to state an offense because it does not allege the terminal element of Article 134. We disagree.

The appellant's case is significantly distinguishable from *Fosler*: (1) the appellant did not challenge the adequacy of the specification at trial; (2) he pled guilty to the specification; (3) the military judge ensured that the appellant understood the terminal elements of the offense; (4) the appellant provided a factual basis establishing that he was guilty of conduct prejudicial to good order and discipline, or of a nature to bring discredit upon the armed forces; and, (5) the appellant stipulated that his conduct was "to the prejudice of good order and discipline in the armed forces, or was of a nature to bring discredit upon the armed forces." Prosecution Exhibit 1 at 3. Accordingly, we resolve the assigned error adverse to the appellant. *United States v. Hackler*, ___ M.J. ___, No. 201100323, 2011 CCA LEXIS 371 (N.M.Ct.Crim.App. 22 Dec 2011).

After careful consideration of the record, 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 was committed. Arts. 59(a) and 66(c), UCMJ. The findings and the sentence are affirmed.

For the Court

R.H. TROIDL
Clerk of Court