

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

**Before  
J.A. MAKSYM, J.R. PERLAK, B.L. PAYTON-O'BRIEN  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**BRADLEY A. MORALES  
SERGEANT (E-5), U.S. MARINE CORPS**

**NMCCA 201000057  
GENERAL COURT-MARTIAL**

**Sentence Adjudged:** 2 October 2009.

**Military Judge:** Maj Robert G. Palmer, USMC.

**Convening Authority:** Commanding General, Marine Corps  
Recruit Depot, Eastern Recruiting Region, Parris Island,  
SC.

**Staff Judge Advocate's Recommendation:** LtCol E.R. Kleis,  
USMC.

**For Appellant:** LT Ryan Santicola, JAGC, USN.

**For Appellee:** Capt Mark Balfantz, USMC.

**23 November 2010**

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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 general court-martial convicted the appellant, pursuant to his pleas, of one specification of failure to obey a lawful general order, two specifications of false official statement, two specifications of adultery, and one specification of wrongfully receiving images and or videos of child pornography, in violation of Articles 92, 107, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 892, 907, and 934.

The military judge sentenced the appellant to confinement for eight years, forfeiture of all pay and allowances, reduction to pay grade E-1, and a dishonorable discharge. The convening authority (CA) approved the sentence as adjudged and, except for the dishonorable discharge, ordered the sentence executed.

The appellant alleges two errors on appeal: (1) that the military judge abused his discretion in denying the appellant's motion to suppress the fruits of the search conducted by the appellant's noncommissioned officer-in-charge; and (2) that the court-martial order fails to reflect the military judge's dismissal of Specification 1 under Charge II, and requires remand for new post-trial processing. This court also notes that Additional Charge III and the sole specification thereunder, alleging adultery, fails to state an offense. We take corrective action in our decretal paragraph. Following action on the remand as ordered therein, we will address the first assigned error and any supplemental assignments of error in the course of subsequent appellate review.

#### **Court-Martial Order**

The military judge entered the findings based on the guilty pleas of the appellant. Record at 181, 297. A matter involving multiplicity of the findings was litigated. The military judge ruled on the multiplicity motion, dismissing Specification 1 under Charge II. *Id.* at 307. We hold that appellant's second assigned error has merit, in that Court-Martial Order (CMO) 01-2010, dated 20 January 2010, correctly reflects that the appellant was found guilty of Specification 1 under Charge II by exceptions, but fails to note that that specification was subsequently dismissed by the military judge. RULE FOR COURTS-MARTIAL 1114(c)(1), MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.). The report of results of trial, incorporated and adopted in the recommendation of the staff judge advocate, also fails to reflect the military judge's dismissal of Specification 1 under Charge II. R.C.M. 1106(d)(3). We cannot conclude that the CA was properly advised on or understood the state of the charges prior to taking his action. On the face of these documents, and combined with the additional action taken below, the way forward falls outside the scope of minor administrative correction. See generally, *United States v. Crumpley*, 49 M.J. 538 (N.M.Ct.Crim.App. 1998).

#### **Adultery Specification**

At trial, the Government purported to prosecute the appellant for adultery under Additional Charge III and its specification. Record at 204, 252-57. Adultery under Article 134, UCMJ, contains the second element that, "at the time, the accused or the other person was married to someone else." MANUAL FOR COURTS-MARTIAL, UNITED STATES (2008 ed.), Part IV, ¶ 62b(2). Upon review, we find that the specification under Additional Charge III fails to state an offense for want of any factual allegation that either party named

in the specification was married.<sup>1</sup> “[I]n omitting an allegation of marriage from the specification, the Government omitted the quintessential hallmark of adultery . . . .” *United States v. King*, 34 M.J. 95, 97 (C.M.A. 1992). We find the specification fatally defective and take corrective action below.

### Conclusion

We set aside the conviction for the sole specification under Additional Charge III and dismiss Additional Charge III and its specification. Additionally, we set aside the CA's action and return the record to the Judge Advocate General for forwarding to an appropriate CA for new post-trial processing. After the processing is completed, the record of trial will be returned to this court for further review consistent with *Boudreaux v. United States Navy-Marine Corps Court of Military Review*, 28 M.J. 181 (C.M.A. 1989).

For the Court

R.H. TROIDL  
Clerk of Court

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<sup>1</sup> Under Additional Charge III, the specification reads: “In that Sergeant Bradley A. Morales, U.S. Marine Corps, Marine Corps Recruiting Station Montgomery, Alabama, Sixth Marine Corps District, Marine Corps Recruit Depot/Eastern Recruiting Region, Parris Island, South Carolina, on active duty, did, on divers occasions, at or near Prattville, Alabama, between on or about 1 November 2007 to on or about 31 December 2007, wrongfully have sexual intercourse with Ms. [CM], a woman not his wife.”