

**UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

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**UNITED STATES**

**v.**

**Senior Master Sergeant DAVID W. SHANTEAU  
United States Air Force**

**ACM 37969**

**13 December 2011**

Sentence adjudged 7 June 2011 by GCM convened at Buckley Air Force Base, Colorado. Military Judge: Scott E. Harding (sitting alone).

Approved sentence: Confinement for 7 years and reduction to E-4.

Appellate Counsel for the Appellant: Major Daniel E. Schoeni.

Appellate Counsel for the United States: Colonel Don M. Christensen.

Before

ORR, ROAN, and HARNEY  
Appellate Military Judges

This opinion is subject to editorial correction before final release.

PER CURIAM:

A general court-martial composed of a military judge sitting alone convicted the appellant in accordance with his pleas of one specification of rape and one specification of aggravated sexual contact, in violation of Article 120, UCMJ, 10 U.S.C. § 920; one specification of forcible sodomy, in violation of Article 125, UCMJ, 10 U.S.C. § 925; and one specification of adultery, in violation of Article 134, UCMJ, 10 U.S.C. § 934. The court sentenced the appellant to 7 years of confinement and reduction to E-4. The convening authority approved the sentence adjudged. The appellant assigned no specific errors, and we find no error that materially prejudiced a substantial right of the appellant. We will address, however, the legality of the guilty findings of adultery in light of our superior court's decision in *United States v. Fosler*, 70 M.J. 225 (C.A.A.F. 2011).

Additional Charge II alleges that the appellant committed adultery, in violation of Article 134, UCMJ. Although the specification does not expressly allege the terminal element under either clause one or two,<sup>1</sup> we do not find this omission fatal to the charge in this case. In *Fosler*, our superior court invalidated a conviction of adultery under Article 134, UCMJ, because the military judge improperly denied a defense motion to dismiss the specification on the basis that it failed to expressly allege the terminal element of either clause one or two. *Id.* at 233. While recognizing “the possibility that an element could be implied,” the Court stated that “in contested cases, when the charge and specification are first challenged at trial, we read the wording more narrowly and will only adopt interpretations that hew closely to the plain text.” *Id.* at 230. The Court implied that the result would have been different had the appellant not challenged the specification: “Because Appellant made an R.C.M. 907 motion at trial, we review the language of the charge and specification more narrowly than we might at later stages.” *Id.* at 232.

If an accused does not challenge a defective specification at trial, pleads guilty to it, and acknowledges understanding of all the elements after the military judge correctly explains those elements, the specification is sufficient to charge the crime. *United States v. Watkins*, 21 M.J. 208, 210 (C.M.A. 1986). Such is the case here. The appellant made no motion to dismiss the charge, pled guilty, acknowledged understanding all the elements, and explained to the military judge why he believed his conduct was prejudicial to good order and discipline and service discrediting. Under this posture of this case, we do not find the charged adultery under Article 134, UCMJ, deficient for failing to expressly allege the terminal element.

### *Conclusion*

The approved findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred.<sup>2</sup> Article 66(c), UCMJ, 10 U.S.C. § 866(c); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000).

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<sup>1</sup> Under Article 134, UCMJ, 10 U.S.C. § 934, the government must prove beyond a reasonable doubt that the accused engaged in certain conduct and that the conduct satisfied one of three criteria, often referred to as the “terminal element.” Those criteria are that the accused’s conduct was (1) to the prejudice of good order and discipline; (2) of a nature to bring discredit upon the armed forces; or (3) a crime of offense not capital.

<sup>2</sup> The Court notes the court-martial order (CMO), dated 12 July 2011, incorrectly indicates the appellant’s rank as “SENIOR MASTER,” when the rank should be “SENIOR MASTER SERGEANT.” We order the promulgation of a corrected CMO.

Accordingly, the approved findings and sentence are

**AFFIRMED.**

OFFICIAL



A handwritten signature in blue ink, appearing to read "S. Lucas", is written over a faint horizontal line.

STEVEN LUCAS  
Clerk of the Court