

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

---

**UNITED STATES**

**v.**

**Airman First Class DUSTIN A. DREES  
United States Air Force**

**ACM 37942**

**21 November 2012**

Sentence adjudged 11 March 2011 by GCM convened at Peterson Air Force Base, Colorado. Military Judge: Scott E. Harding (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 8 years, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for the Appellant: Major Anthony D. Ortiz.

Appellate Counsel for the United States: Colonel Don M. Christensen; Major Roberto Ramirez; and Gerald R. Bruce, Esquire.

Before

**STONE, GREGORY, and HARNEY  
Appellate Military Judges**

This opinion is subject to editorial correction before final release.

**PER CURIAM:**

A general court-martial composed of military judge alone convicted the appellant in accordance with his pleas of: (1) one specification of absence without leave, in violation of Article 86 UCMJ, 10 U.S.C. § 886; (2) two specifications of violating lawful orders, in violation of Article 92, UCMJ, 10 U.S.C. § 892; (3) two specifications of aggravated sexual assault on a child, in violation of Article 120, UCMJ, 10 U.S.C. § 920; (4) one specification of abusive sexual contact with a child, in violation of Article 120, UCMJ; (5) one specification of indecent liberties, in violation of Article 120, UCMJ; (6) one specification of aggravated sexual assault, in violation of Article 120, UCMJ; (7) one specification of sodomy with a child, in violation of Article 125, UCMJ, 10 U.S.C. § 925; (8) one specification of forcible sodomy, in violation of Article 125, UCMJ; and (9) two

specifications of obstructing justice, in violation of Article 134, UCMJ, 10 U.S.C. § 934. The court sentenced him to a dishonorable discharge, confinement for eight years, forfeiture of all pay and allowances, and reduction the grade of E-1. A pretrial agreement capped confinement at 11 years, and the convening authority approved the sentence adjudged. The appellant assigns as error that the two specifications of obstructing justice in violation of Article 134, UCMJ, fail to state an offense by omitting the terminal element.

Whether a charge and specification state an offense is a question of law that we review de novo. *United States v. Crafter*, 64 M.J. 209, 211 (C.A.A.F. 2006) (citations omitted). “A specification states an offense if it alleges, either expressly or by [necessary] implication, every element of the offense, so as to give the accused notice and protection against double jeopardy.” *Id.* at 211 (citing *United States v. Dear*, 40 M.J. 196, 197 (C.M.A. 1994)); *see also* Rule for Courts-Martial 307(c)(3). In *United States v. Fosler*, 70 M.J. 225 (C.A.A.F. 2011), 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 allege the terminal element of either Clause 1 or 2.

While failure to allege the terminal element of an Article 134, UCMJ, offense is error, in the context of a guilty plea, the error is not prejudicial where the military judge correctly advises the appellant of all the elements and the plea inquiry shows that the appellant understood to what offense and under what legal theory he was pleading guilty. *United States v. Ballan*, 71 M.J. 28, 34-36 (C.A.A.F. 2012), *cert. denied*, \_\_\_ S. Ct. \_\_\_ (U.S. 25 June 2012) (No. 11-1394). During the plea inquiry, the military judge advised the appellant of each element of the charged Article 134, UCMJ, specifications, including the terminal elements. The appellant acknowledged his understanding of the elements and explained how his misconduct violated the terminal elements. Therefore, as in *Ballan*, the appellant here suffered no prejudice to a substantial right: he knew under what clause he was pleading guilty and clearly understood how his conduct violated the terminal element of Article 134, UCMJ.

### *Conclusion*

The findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred. Article 66(c), UCMJ, 10 U.S.C. § 866(c);

*United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the findings and the sentence are

AFFIRMED.

OFFICIAL



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

STEVEN LUCAS  
Clerk of the Court