

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ARMED FORCES**

UNITED STATES,  
Appellee

v.

Sergeant (E-5)  
**MARIO I. LOPEZ**  
United States Army,  
Appellant

) BRIEF ON BEHALF OF  
) APPELLEE  
)  
)  
)  
) Crim. App. Dkt. No. 20140973  
)  
) USCA Dkt. No. 16-0487/AR  
)

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**Statement of Statutory Jurisdiction**

The United States Army Court of Criminal Appeals (Army Court) reviewed this case pursuant to Article 66(b), Uniform Code of Military Justice, 10 U.S.C. § 866(b)(2012) [hereinafter UCMJ]. The statutory basis for this Court’s jurisdiction is Article 67(a)(3), UCMJ, 10 U.S.C. § 867(a)(3)(2012).

## **Statement of the Case**

An officer panel sitting as a general court-martial tried Sergeant (SGT) Mario I. Lopez (Appellant) on October 15, November 18, and December 18 and 19, 2014. The officer panel convicted Appellant, contrary to his plea, of rape and indecent liberties with a child, in violation of Article 120, UCMJ, 10 U.S.C. § 920 (2007). (JA 006-009). The panel found SGT Lopez not guilty of aggravated sexual assault and forcible sodomy under Articles 120 and 125, UCMJ, 10 U.S.C. §§ 920 and 925 (2007).

The officer panel sentenced Appellant to reduction to E-1, forfeiture of all pay and allowances, confinement for five years, and a dishonorable discharge. The convening authority deferred the forfeitures from 2 January 2015 until 19 March 2015, Appellant's expiration term of service (ETS) date, but otherwise approved the findings and sentence as adjudged.

On 5 April 2016, the Army Court affirmed the findings of guilty and the sentence. (JA 001). On 27 April 2016, Appellant petitioned this Honorable Court for review, and this Court granted review for the issue specified above on 21 September 2016.

## Statement of Facts

### A. Specification 1 of Charge I: Rape by Force.

Appellant and CL were married 18 September 2001. (JA 020). In 2011, SGT Lopez, CL, and CL's four children, NM, IM, JDM, and JM, lived on post at Camp George, Korea. (JA 021, 036). In July 2010 CL told SGT Lopez that she no longer wanted to have sexual relations with him because of marital issues. (JA 023). This abstinence continued until 17 April 2011, the date of the assault. (JA 024). NM described CL and SGT Lopez's relationship as not very loving, very distant, and arguing most of the time. (JA 082). As the months continued to pass where no sexual relations were occurring, SGT Lopez became more and more hostile toward CL. (JA 024). He started making comments such as if CL "didn't perform sexually for him, he would have to stop treating [CL] like a lady." (JA 024). On 17 April 2011, SGT Lopez told CL that "if [she] would agree to perform for him sexually, then he would provide the necessary means for [her] to get" items from the commissary. (JA 025-026). CL told SGT Lopez that this comment made her feel "like a prostitute." (JA 026). In response, SGT Lopez said that he knew "what this sounds like." (JA 026).

Later that evening while in bed together, SGT Lopez "started pulling [CL] close to him, not gently, but strongly, and [she] reminded him" that her refusal to have sexual relations with him was still ongoing. (JA 028). Despite her protests,

SGT Lopez penetrated CL vaginally while holding her down. (JA 034). CL described SGT Lopez's grip as "[v]ery strong. [She] tried three times to get up and move, all while telling him no, to get off of [her], and at the third attempt [she] knew [she] was not going to be able to move." (JA 034).

That same night, NM, who was seventeen at the time, walked by CL and SGT Lopez's room and heard CL say "get off of me." (JA 082). She just "thought they were arguing." (JA 083). JDM heard "crying and moaning" coming from CL's room and described them as "sad noises." (JA 102).

The next morning, CL did "a Google search on the computer about spousal rape." (JA 036-037). CL then contacted Chaplain (CH) Dillard, whom she knew from chapel services. (JA 038-039). CH Dillard described CL as "...unusually subdued....Her demeanor was unusually flat, talking in almost a whisper, shaking. It was very different than [he'd] see her before." (JA 096).

After she spoke with CH Dillard, CL spoke with a victim advocate and had a medical examination. (JA 040). The doctor who performed the examination, Major (MAJ) Williams, testified that CL explained that SGT Lopez "pulled her towards him and then turned her around and kind of was pressing her up against the bed, and holding her against the bed with his body, and then she said that when she realized that he wasn't going to stop, then she started crying and was saying no...it became penile/vaginal intercourse, and then he did ejaculate in her." (JA

108). Both parties stipulated that SGT Lopez's DNA was found in CL. (JA 185). Major Williams saw bruising on CL's inner thigh, red marks that looked like finger marks on her right shoulder, a scratch on her left upper back, and a scratch on her right lower back. (JA 110-111). CL's demeanor during the examination was "teary eyed, as if she was in shock, and just teary eyed, had a flat effect [sic] face like that." (JA 113). Major Williams further opined that "As far as the [redness] and bruising and things like that, it's more consistent with her---what she explained...as far as what happened, the history." (JA 115). Major Williams testified that she does not normally find bruising on different parts of the body with regular consensual sexual intercourse. (JA 117-118).

Later that same day, NM found CL's internet search history. (JA 084).

[NM]: ...my brother was on the computer, and he asked me if my mom had ever---had asked me whether I heard anything last night, and so we were wondering why she asked him that, and I got on the computer. I was watching my shows, and I deleted my history, because I know my mom doesn't like me watching shows on her computer, so I saw when I was deleting my history that she had been looking up spousal rape sites, like how to deal with it, who to go to, and so I gathered that [SGT Lopez] had probably raped her by the evidence that I found that day.

....

Q: What did you think when you saw that and you thought what may have happened?

[NM]: I just thought about what my brother had asked me, and just kind of put two and two together. I kind of hoped that I was, you know, over thinking it, but I didn't think I

was, because there's no other reason for those websites to be up there.

...

[NM]: ...[CL] got home....She asked me and my brother into her room, and we had a conversation about it. She wasn't going to tell me, so I just told her what I found out and what I think happened, and she told us after that, you know, what really happened.

(JA 084-085). NM described CL's demeanor during this conversation as "very worn out. She was fidgety. She was nervous, and she was really, really tired, and I'd never seen her that stressed out before." (JA 087).

On 19 April 2011, CL made an unrestricted report to criminal investigation command (CID). (JA 042). Special Agent (SA) Miller testified that during this interview, at the beginning "[CL] was fine, but after she had to divulge certain information, she cried. She was a little emotional." (JA 099). CL later declined to participate in the prosecution while in Korea because she "didn't feel emotionally ready to pursue" it at the time and because she had "a health issue that was a paramount concern at that time." (JA 073). Further, the timeline for prosecuting was "rather indefinite. They did kind of allude to the fact that [she] could be there another year, but it was kind of putting it out indefinite[ly]." (JA 073). CL left Korea in October 2011 and the pair got divorced in January 2013. (JA 045).

There were two witnesses who described CL as being untruthful. (JA 139, 153). Defense counsel argued that CL is not truthful and got her children to lie to

support her story by saying: “Now, the two children who are still very close to CL low and behold, they heard something to support her story.” (JA 191, 193).

Finally, defense counsel speculated as to “why CL falsely claimed rape” but ultimately concluded that: “She’s a liar, who knows. There is no point trying to rationalize those thoughts.” (JA 193-194).

**B. Specification 3 of Charge I: Indecent Liberties with a Child.**

JM is the youngest child of CL born in 1998. (JA 047). He lived with CL and SGT Lopez from 2008-2011. (JA 043, 047). Of the four children, JM was closest to SGT Lopez. (JA 048). In 2012, around February, CL found JM “on [her] computer looking at pornography.” (JA 049, 060). When she confronted JM about it, he told CL that SGT Lopez introduced him to pornography and watched it with him while they were in Korea. (JA 049, 120). JM explained that SGT Lopez “described sex and pornography” to him when he was ten years old in 2008 when this first occurred. (JA 331-332). JM said they would watch pornography together “maybe at most once a week, maybe twice a month, three times a month....Maybe forty or fifty” times while living with SGT Lopez. (JA 123). The pornography included vaginal, oral, and anal sex with different numbers of people up to “about six girls, three guys.” (JA 122-123). “[SGT Lopez] said not to tell my mom or my brother or sister, because it was a thing between me and him.” (JA 128).

After CL caught JM watching pornography, she confronted SGT Lopez:

[CL]: ...it took several minutes of [JM] insisting, recounting events of what had happened and saying you remember you did this with me, and so finally Sergeant Lopez started calming down and acting like he was going towards admission.

Q: What does that mean to you, acting?

[CL]: Well, in the sense where it kind of ended with him saying [JM] if I did anything wrong, then I---you know, I apologize, and I knew from living with him, instead of coming out and saying yes, I did this and I was wrong---

DC: Objection.

MJ: Basis?

DC: Human lie detector testimony.

MJ: I'm going to overrule the objection based on the witness's interactions with the accused as husband and wife.

Q: So ma'am, you said that Sergeant Lopez, the accused, said if I did anything---He was talking to [JM]?

[CL]: Yes.

Q: If I did anything to you, [JM] then I'm sorry. Is that what you---

[CL]: Yes.

Q: You testified before the objection.

[CL]: Yes.

Q: And to you after ten years of marriage, what did that mean?

[CL]: That meant that he was loosely admitting guilt without coming out and saying it, because he said things like that to me before.

Q: The accused has said things like that to you before?

[CL]: Yes, so I knew what that meant, and that was the thing I needed to know, because I really was trying to feel out who was telling the truth here. I wanted to get to the bottom of it and resolve this with my son.

(JA 051-052). CL described JM as “very ashamed, and he was afraid. He was afraid of confronting Sergeant Lopez, but I was pretty proud of him on the phone, because he named events, you know, he went in detail explaining, but he was very ashamed....” (JA 054). JM testified that he had a better relationship with SGT Lopez than with CL and that he thought CL was not a truthful person. (JA 137, 139). CL reported the incident to police in October of 2012. (JA 060).

Defense counsel addressed in closing argument CL’s confrontation of SGT Lopez. “She talked about how she called Sergeant Lopez, who denied it, until he makes some general apology, and she is so incensed by this, she waits until October, nearly half a year later to report.” (JA 189). Government counsel argued in rebuttal: “...remember that CL testified that she confronted Sergeant Lopez about this, and he said on the phone if I did anything wrong, I’m sorry, and we asked her after your ten years of marriage, what does that mean to you, that Sergeant Lopez knew he did something wrong. Another way we know he did something wrong is he told [JM] don’t tell anyone.” (JA 196).

## Summary of Argument

This Court should affirm the Army Court because these two statements are not human lie detector testimony. Even if these two statements constituted impermissible human lie detector testimony, Appellant was not materially prejudiced by these two statements.

## Argument

WHETHER THE MILITARY JUDGE ERRED BY ADMITTING THE TESTIMONY OF APPELLANT'S WIFE, MRS. CL, WHO TESTIFIED THAT APPELLANT'S APOLOGY TO HIS STEPSON MEANT THAT APPELLANT WAS "LOOSELY ADMITTING GUILT" TO CRIMINAL CONDUCT, AND BY ALSO ADMITTING THE TESTIMONY OF MS. NM, WHO TESTIFIED THAT APPELLANT "HAD PROBABLY RAPED" HIS WIFE BECAUSE MRS. CL HAD RECENTLY RESEARCHED "SPOUSAL RAPE" ON THE INTERNET.

## Standard of Review

"Human lie detector testimony is inadmissible." *United States v. Whitney*, 55 M.J. 413, 415 (C.A.A.F. 2001). A military judge's decision to admit evidence is reviewed for abuse of discretion. *United States v. Kasper*, 58 M.J. 314, 318 (C.A.A.F. 2003).

"Where an Appellant has not preserved an objection to evidence by making a timely objection, that error will be forfeited in the absence of plain error. To demonstrate that relief is warranted under the plain error doctrine, an Appellant

must show that: (1) there was error; (2) the error was plain or obvious; and (3) the error was materially prejudicial to his substantial rights.” *United States v. Brooks*, 64 M.J. 325, 328 (C.A.A.F. 2007) (citations omitted).

### **Law and Analysis**

Human lie detector evidence is elicited when a witness provides an opinion as to whether [a] person was truthful in making a specific statement regarding a fact at issue in the case. There is no litmus test for determining whether a witness has offered human lie detector evidence. If a witness does not expressly state that he believes a person is truthful, we examine the testimony to determine if it is the functional equivalent of human lie detector testimony. Testimony is the functional equivalent of human lie detector testimony when it invades the unique province of the court members to determine the credibility of witnesses, and the substance of the testimony leads the members to infer that the witness believes the victim is truthful or deceitful with respect to an issue at trial. Human lie detector evidence is inadmissible at a court-martial because it is a fundamental premise of our criminal trial system [that] the [panel] is the lie detector and [d]etermin[es] the weight and credibility of witness testimony.

*United States v. Martin*, 75 M.J. 321, 324-325 (C.A.A.F. 2016) (citations omitted)

(internal quotation marks omitted).

#### **A. Testimony of NM regarding CL’s internet research of spousal rape.**

##### **1. NM did not provide impermissible human lie detector testimony or the functional equivalent.**

NM’s testimony was not human lie detector testimony or the functional equivalent because NM was merely explaining why she confronted her mother,

CL, about what had happened the night before. On 17 April 2011, NM heard her mother, CL, say “get off.” (JA 082). The next day, NM’s brother told her that CL asked him if he heard anything the night before. (JA 083). Then, while NM was clearing the browser history on CL’s computer, she discovered that CL had searched websites about spousal rape. (JA 084). NM says that she used these three clues to deduce what had occurred. (JA 084). Later that evening when CL spoke to NM and her brother about what happened the night before, NM says that her mother was hesitant to say what happened. (JA 085). NM said what she assumed had happened and that prompted CL to tell her “what really happened.” (JA 085).

NM’s testimony is similar to that of the husband of the victim in *Martin*. *Martin*, 75 M.J. 321. Sergeant Martin digitally penetrated the victim while she and her husband were asleep in a guest room. *Id.* at 323. The victim’s husband testified on direct exam that “just the way she has been since then, then I know it wasn’t me [who digitally penetrated her]. She wouldn’t be acting the way she does nowadays, like, if it would have been me. Even if it was something that she wasn’t expecting from me she wouldn’t be acting that way.” *Id.* at 324. The court determined that this testimony “did not rise to the level of actual human lie detector testimony, nor did it constitute the functional equivalent....” *Id.* at 325.

Just as the husband used his common sense to put two and two together from his observations of the victim after she was assaulted by SGT Martin, here NM used the context clues that she observed to come to a conclusion. NM then used that conclusion to encourage her mother to reveal what had happened. As in *Martin*, the statement by NM is not impermissible human lie detector testimony or the functional equivalent.

**2. Sergeant Lopez was not materially prejudiced by this testimony.**

Even if NM's testimony was human lie detector testimony or the functional equivalent, defense counsel failed to object at trial. Since human lie detector testimony is impermissible, then allowing such testimony is error. Further, it would be clear or obvious error because the "condemnation of human lie detector testimony easily predates Appellant's trial." *United States v. Knapp*, 73 M.J. 33, 37 (C.A.A.F. 2014). However, Appellant was not materially prejudiced.

When there is error in the form of improper human lie detector testimony, the court must review "the entirety of the evidence, to include the victim's credible, persuasive testimony" in order to determine if the improper testimony had "a substantial influence on the findings." *Whitney* 55 M.J. at 416. Here, Appellant's main argument at trial was that CL had a character for being untruthful and that she was lying about the sexual encounter being non-consensual. (JA 193). It appears that the panel believed this argument to be true to an extent as

they split the charge sheet. (JA 006-009). The panel did not find SGT Lopez guilty of the digital penetration or the anal sex, neither of which had any direct corroboration to CL's version of events. (JA 009).

However, the panel found SGT Lopez guilty of rape. (JA 009). CL's claim of rape was corroborated by several pieces of evidence. The first piece of evidence is the stipulation that SGT Lopez's DNA was found in CL's vagina. (JA 185). Second is the close proximity between the incident on the night of 17 April 2011 to the report to CH Dillard on the morning of 18 April 2011, the medical examination later on 18 April 2011, and the unrestricted report to CID on 19 April 2011. (JA 034, 038, 040, 042). Next is CL's demeanor when discussing the assault as described by CH Dillard, MAJ Williams, NM, and SA Miller. (JA 087, 096, 099, 113). Major Williams talked about bruising and redness that corroborated CL's version of events. (JA 115). Further, two of CL's children said they heard indicators of a struggle the night of the assault. (JA 82, 102). Lastly, NM's discovery of CL's spousal rape internet search history which corroborated CL's testimony about researching spousal rape. (JA 084, 036-037). All of this evidence was more dispositive than NM's testimony about coming to the conclusion that CL had been raped. (JA 271).

Further, in *Kasper* and *Whitney*, the witnesses who provided the impermissible human lie detector testimony were CID Special Agents. *United*

*States v. Whitney*, 55 M.J. 413 (C.A.A.F. 2001) and *United States v. Kasper*, 58 M.J. 314 (C.A.A.F. 2003). The concern in these two cases was that “a trained investigator, who had interrogated many suspects, applied [their] expertise in concluding that this suspect was lying” would have significant impact on the panel’s findings. *Kasper* at 319. In *Brooks*, the witness who gave impermissible human lie detector testimony was recognized as an expert clinical psychologist. *Brooks* 64 M.J. at 327. The expert witness “suggested that there was better than a ninety-eight percent probability that the victim was telling the truth.” *Id* at 329. The court found that “[t]his testimony provided a mathematical statement approaching certainty about the reliability of the victim’s testimony....[which] goes directly to the core issue of the victim’s credibility and truthfulness.” *Id*.

Here, NM was a lay witness and did not have any special training or experience in determining truthfulness. NM was merely discussing her observations of her mother. This testimony does not rise to the level of human lie detector testimony or the functional equivalent.

The only portion of NM’s testimony that was arguably impermissible was: “so I gathered that [SGT Lopez] had probably raped her by the evidence that I found that day.” (JA 84). The use of the term “rape” has been found to represent “an improper conclusion of fact and law on the part of a witness.” *United States v. Marshall*, 6. C.M.R. 54, 58 (C.M.A. 1952). However, the defense did not object to

this testimony at trial and instead attacked NM's credibility saying that "of course" NM is going to support her mother since she lives with her and is close to her. (JA 193). NM's testimony about all of her observations including hearing her mother tell SGT Lopez to get off her, seeing the internet browser history, and seeing her mother's demeanor as well as her description of confronting CL with this evidence and CL admitting what happened were proper testimony. Further, NM could have testified that CL told her she was raped by SGT Lopez as a prior consistent statement under Mil. Rule Evid. 801(d)(1)(B) to rebut defense's express and implied charge that CL recently fabricated the allegation. (JA 005). Therefore, in the scope of NM's testimony, this one line did not prejudice SGT Lopez. This one line is small and buried amongst otherwise permissible testimony which was highly favorable to the government.

There is no prejudice in this case because NM's testimony did not play a "central role" in the trial; rather it was "a building block of circumstantial evidence." *Kasper* 58 M.J. at 319. Even if NM's testimony that she "gathered that [SGT Lopez] had probably raped [CL]," it was not impermissible human lie detector testimony or the functional equivalent. Though the use of the term "rape" was impermissible, SGT Lopez was not materially prejudiced by this one very small piece of circumstantial evidence.

## **B. Testimony of CL regarding SGT Lopez's apology to NM.**

### **1. CL did not provide human lie detector testimony or the functional equivalent.**

CL's testimony was not human lie detector testimony or the functional equivalent because CL was merely relaying an admission by SGT Lopez. CL explained that at first SGT Lopez denied the allegations by JM. However, as JM used specific facts and circumstances to confront SGT Lopez, CL felt that based on her experience with SGT Lopez, that he was admitting the misconduct. (JA 052). Admissions are commonly allowed into evidence against the accused under Mil. Rule Evid. 801(d)(2). (JA 005). If SGT Lopez had told CL, "Yes, I watched pornography with JM," CL would have been able to testify about what SGT Lopez admitted. In CL's mind and based on her ten years of marriage to SGT Lopez, this exchange was an admission and that is what she relayed to the court; an admission by SGT Lopez regarding his involvement in showing pornography to JM. Thus, this testimony is proper and not impermissible human lie detector testimony or the equivalent.

### **2. Even if CL's testimony was impermissible, the error was harmless.**

Even if this was human lie detector testimony, or otherwise inadmissible, and the judge abused his discretion in allowing this testimony, the error was harmless. Just as above, if this testimony was erroneously allowed, this court must review "the entirety of the evidence, to include the victim's credible, persuasive

testimony” in order to determine if the improper testimony had “a substantial influence on the findings.” *United States v. Whitney*, 55 M.J. 413, 416 (C.A.A.F. 2001). JM testified at trial that he watched pornography forty to sixty times with SGT Lopez from 2008-2011 while JM was between ten and twelve. (JA 120, 123, 129). JM also testified that CL was not a truthful person. (JA 139). Had the panel believed JM and not CL, they still could have found SGT Lopez guilty of indecent liberties. Defense’s main argument at trial was not that SGT Lopez never watched pornography with JM, but instead that JM had exaggerated what happened. Even if defense’s argument was true, a less egregious situation of watching pornography with JM only twice still fully supports a conviction as charged.

Lay witnesses are generally not permitted to testify about subjective interpretations unless a jury would be incapable of interpreting the communication on their own. *United States v. Byrd*, 60 M.J. 4, 7 (C.A.A.F. 2004). Here, SGT Lopez’s comment “if I did anything wrong, then I-you know, I apologize” is a “facially coherent communication” for which the “general prohibition of lay opinion testimony” would apply. *Id.*, (JA 51). If CL had stopped after testifying about SGT Lopez’s admission, there would have been no error. However, she went on to explain: “That meant that he was loosely admitting guilt without coming out and saying it, because he said things like that to me before” and “so I knew what that meant, and that was the thing I needed to know, because I really

was trying to feel out who was telling the truth here. I wanted to get to the bottom of it and resolve this with my son.” (JA 51-52). These two specific statements should have been excluded. However, the remainder of CL’s testimony was proper and highly unfavorable to the defense.

In evaluating whether this testimony prejudiced SGT Lopez, this court must weigh “(1) the strength of the Government’s case, (2) the strength of the defense case, (3) the materiality of the evidence in question, and (4) the quality of the evidence in question.” *Id.* at 10.

The government’s case on this charge was strong. JM testified in great detail about the length and type of pornography that he watched with SGT Lopez. (JA 122-123). JM might arguably have had a motive to fabricate at the time of the original outcry to avoid getting in trouble with CL. (JA 135). However, at the time of trial, JM did not live with his mother. (JA 136). JM testified that he had a better relationship with SGT Lopez than with his mother. (JA 137). Further, instead of saying JM was lying, defense argued: “It’s like a game of telephone where the stories progress. It’s not like he was lying....it’s reasonable that JM could have walked in to Sergeant Lopez watching porn, but is it reasonable that he spent over a hundred hours” watching pornography with SGT Lopez without anyone noticing. (JA 190-191). The defense is only trying to negate the “intent to arouse the sexual desire” of SGT Lopez element of the offense rather than negate that the event occurred. (JA 007). This is a weak defense position, especially relative to the strength of the government’s evidence.

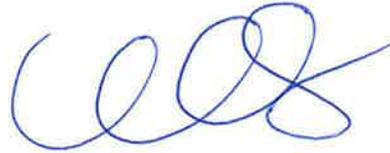
In *Byrd*, this court found that the military judge erroneously allowed Mrs. Byrd to testify as to “her lay opinions concerning Appellant’s meaning when he wrote the...six passages.” *Id.* at 10. However, the error was found to be harmless because the passages were of limited materiality compared to Mrs. Byrd’s other testimony. Further, this testimony was not “a focal point of the case.” *Id.* Just as in *Byrd*, this evidence was not the focal point of the case and the materiality of CL’s impermissible interpretation of SGT Lopez’s statements was limited. CL’s interpretation of SGT Lopez’s comments did not play a “central role” in the trial, rather it was “a building block of circumstantial evidence.” *Kasper* 58 M.J. at 319. CL’s credibility had already been attacked regarding the other charges and specifications. JM’s testimony was the key evidence on this issue. In fact, JM’s testimony was more compelling because he said that he liked SGT Lopez more than his mother and because JM told the panel that he thought CL was an untruthful person. (JA 137, 139). Further, the very reason the interpretation was impermissible is that it would be obvious to the panel what SGT Lopez meant when he said “if I did anything wrong, then I-you know, I apologize.” (JA 51). This also demonstrates why CL’s improper interpretations are not material; because it was obvious to the panel what SGT Lopez meant. To the extent that CL’s testimony influenced the findings on this charge, it was SGT Lopez’s own words “if I did anything wrong, then I-you know, I apologize,” that prejudiced the defense.

**Conclusion**

Wherefore, the United States respectfully requests that this Honorable Court affirm the decision of the Army Court.



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CERTIFICATE OF SERVICE AND FILING

I certify that the foregoing was transmitted by electronic means to the court ([efiling@armfor.uscourts.gov](mailto:efiling@armfor.uscourts.gov)) and contemporaneously served electronically on appellate defense counsel, on November 16, 2016.



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