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

**UNITED STATES**,

*Appellee*

v.

**Beto L. VALDEZ, Jr.**
Private (E-1)
U.S. Marine Corps

*Appellant*

**SUPPLEMENT TO PETITION FOR GRANT OF REVIEW**

Ct. Crim. App. Dkt. No. 202300141

USCA Dkt. No. 25-0035/MC

**TO THE HONORABLE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES:**

Benjamin E. Doskocil
LCDR, JAGC, USNR
Appellate Defense Counsel
Navy-Marine Corps Appellate Review Activity
1254 Charles Morris St., SE
Bldg. 58, Suite 100
Washington, DC 20374
Tel: (202) 685-8506
Benjamin.e.doskocil.mil@us.navy.mil
C.A.A.F. Bar No. 38100

Arthur L. Gaston III
CAPT, JAGC, USN
Appellate Defense Counsel
Navy-Marine Corps Appellate Review Activity
1254 Charles Morris St., SE
Bldg. 58, Suite 100
Washington, DC 20374
(202) 685-7299
arthur.l.gaston2.mil@us.navy.mil
C.A.A.F. Bar No. 37756

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## Issue Presented

**DID THE MILITARY JUDGE ABUSE HER DISCRETION BY ALLOWING THE UNSWORN VICTIM IMPACT STATEMENT TO PROVIDE, OVER DEFENSE OBJECTION, "A DETAILED DESCRIPTION OF VARIOUS INCIDENTS OF DOMESTIC VIOLENCE AND SEXUAL ASSAULT TO WHICH APPELLANT HAD *NOT* PLEADED GUILTY"[1]?**

## Statement of Statutory Jurisdiction

The lower court had jurisdiction over this matter under Article 66(b)(3), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866(b)(3) (2019). Appellant invokes this Court's jurisdiction under Article 67(a)(3), UCMJ, 10 U.S.C. § 867(a)(3) (2019).

## Statement of the Case

A general court-martial composed of a military judge convicted Appellant, consistent with his pleas, of three specifications of domestic violence in violation of Article 128b, UCMJ. The military judge sentenced Appellant to 36 months' confinement, reduction to E-1, and a dishonorable discharge. R. at 123.

On September 26, 2024, the lower court affirmed the findings and sentence. *United States v. Valdez*, No. 202300141, slip op. (N-M. Ct. Crim. App. Sept. 26,

[1] *United States v. Valdez*, No. 202300141, slip op. at 4 (N-M. Ct. Crim. App. Sept. 26, 2024) (emphasis added).

2024). Appellant timely petitioned this Court for review on November 25, 2024.

## Statement of Facts

At his general court-martial, Appellant pleaded and was found guilty of three discrete specifications of domestic violence against H.M.J., a woman with whom he had been in an on-and-off romantic relationship at Camp Lejeune, North Carolina. Specifically, he pleaded guilty to striking her in the leg, striking her with an open hand, and putting an unloaded pistol in her mouth. R. at 56.

During the presentencing hearing, H.M.J. provided an unsworn victim impact statement for consideration by the military judge. Defense objected to parts of the unsworn statement as beyond the scope of "victim impact" pursuant to R.C.M. 1001(c). R. at 80-82. The military judge overruled the objection, telling the defense counsel: "So here is what we are going to do: I'm going to allow her to read her unsworn statement and then, I'm going to allow you to rebut it." R. at 82.

H.M.J. then read her unsworn statement to the court in its entirety, which comprised of nearly thirteen pages within the Record of Trial. R. at 83-95. While part of the statement addressed the offenses to which Appellant had pleaded guilty, it also lodged a litany of other grievances at Appellant, spanning their years-long relationship. R. at 83-95. H.M.J. repeatedly alleged new offenses that fell months, or even years, before or after the conduct to which Appellant had pleaded guilty. *Id.* Within the first three sentences alone, she described that her relationship with

Appellant had lasted for "several years," implying that he abused her throughout that time. R. at 83. She later described how "he held a lit cigarette near [her] face threatening [her], and . . . physically abused [her] on multiple occasions prior to leaving Camp Lejeune." R. at 84. She stated that "during the weeks following the days-long assault, the abuse stop[ped] being so sexual and transformed into savagery." R. at 91. She then alleged, in gruesome detail, repeated acts of strangulation by Appellant, telling the court she thought she was going to die on more than one occasion. R. at 91. She also alleged some of the acts resulted in injury. R. at 91.

Notably, when the Government previously tried to admit evidence of these same alleged acts during its case in aggravation under R.C.M. 1001(b)(4), the military judge excluded the evidence because "there [was] no time element." R. at 66. The military judge also prohibited the Government from admitting portions of Prosecution Exhibit 2, an NCIS summary Results of Interview of H.M.J. R. at 69-72, 75-76, 79, and 116. Finding the evidence inadmissible, the military judge "line[d]-out" portions of paragraphs 7, 8, and 10 within Prosecution Exhibit 2, which included statements regarding non-consensual sexual acts, vaginal penetration with the back of a knife, and details about Appellant allegedly strangling H.M.J. R. at 69-72, 75-76, 79.

Consistent with those rulings, the military judge also excluded Prosecution Exhibit 3's reference to an alleged admission by the Appellant where he allegedly stated, "I raped you, I raped you plenty" during a recorded phone call. R. at 69-72. The military judge also denied the admission of various photographs of a steak knife and a set of kitchen knives within Prosecution Exhibit 7, which she found "not relevant." R. at 75-76. She further denied admission of Prosecution Exhibit 8, which was evidence of what the government alleged to be a sexual assault against H.M.J. involving the handle of a knife. R. at 79.

Despite these rulings, by the end of her lengthy unsworn statement under R.C.M. 1001(c), H.M.J. had emotionally described nearly all the information that the military judge had specifically excluded under R.C.M. 1001(b)(4). R. at 93. H.M.J. described how Appellant "admitted to hurting me and raping me." *Id.* She quoted the text message that the military judge had found inadmissible as evidence in aggravation. R. at 93. In that portion of her statement to be considered under R.C.M. 1001(c), H.M.J. stated: "I remember him saying the words, "I raped you. I raped you in the morning, I raped you plenty." R. at 93.

At the conclusion of H.M.J.'s victim impact statement, the military judge summarily stated, "Defense, you said you had some objections. I don't see anything objectionable about that." R. at 95. After the military judge's approval of the victim impact statement, the Government then freely made use of the

statement's contents during its sentencing argument. R. at 121-23. The trial counsel argued Appellant should be punished based on the "prolonged course of conduct." R. at 122. He stated that Appellant "carried this conduct over multiple months, multiple settings." R. at 121. And he argued in terms of a sentence that "the only thing at this point is prolonged confinement. Just like his prolonged abuse of Sergeant H.M.J." R. at 123.

The lower court, in reviewing the issue, found that H.M.J.'s unsworn statement was permitted to provide "a detailed description of various incidents of domestic violence and sexual assault to which Appellant had *not* pleaded guilty." *Valdez*, No. 202300141, slip op. at 4 (emphasis added). But the lower court concluded such additional crimes were properly considered as "a continuing course of conduct" and "a continuation of the physical assaults Appellant committed upon her." *Id.* at 9 (citing *United States v. Nourse*, 55 M.J. 229, 229 (C.A.A.F. 2001)). The lower court was also "confident" the matters had no effect on the sentence since the military judge, in light of her evidentiary rulings, "did not consider [H.M.J.'s] statement *as evidence*." *Id.* at 10.

**There is Good Cause to Grant Review**

This Court should grant review in this matter to provide crisp, clear guidance on the limits of "victim impact" under R.C.M. 1001(c), and to identify how judges must hold the line on what is allowed. R.C.M. 1001(c) is a separate and distinct

section of the broader R.C.M. 1001, which covers what a military judge may consider when determining an appropriate sentence for crimes of which an accused has been found guilty. R.C.M. 1001. A relatively new update to these rules, R.C.M. 1001(c) covers a crime victim's right to be reasonably heard and defines "victim impact" as "any financial, social, psychological, or medical impact on the crime victim directly relating to or arising from the offense of which the accused has been found guilty." R.C.M. 1001(c)(2)(B).

This Court should settle whether the standard for what may be considered under R.C.M. 1001(c) by a military judge is synonymous with the standard used for evidence in aggravation under R.C.M. 1001(b)(4). Those rules read differently, and a clear standard is needed for military judges and legal practitioners that sets limits precluding a victim from describing a vast cosmos of other bad acts of a defendant under R.C.M. 1001(c). As this Court has observed, unsworn victim impact statements "are not delivered under oath, the victim making the unsworn statement is not considered a 'witness' for purposes of Article 42(b), UCMJ,10 U.S.C. § 842(b), the victim may not be cross-examined by either trial or defense counsel, and unsworn statements are not subject to the Military Rules of Evidence." *United States v. Harrington*, 83 M.J. 408, 419 (C.A.A.F. 2023) (citing *United States v. Tyler*, 81 M.J. 108, 112 (C.A.A.F. 2021); R.C.M. 1001(c)(1), (c)(5)(A)). Therefore, the military judge bears the duty to ensure the content of

such statements stays within the scope of R.C.M. 1001(c). *Tyler*, 81 M.J. at 112. This court should grant review to assist military judges and practitioners with carrying out this important duty, to ensure justice is executed properly, and most important, to make sure an accused is sentenced only for the crimes of which he was found guilty.

The lower court's decision has created a split within its own court. In the case of *In Re A.J.W.*, 80 M.J. 737 (N.M.C.C.A. 2021), a different panel of the lower court outlined the duties that a military judge must carry out when determining what is allowed to be presented under R.C.M. 1001(c).

> [First], the military judge must make an individualized decision about each person who seeks to exercise the right to be reasonably heard under Article 6b, to ensure he or she is a "crime victim" under R.C.M. 1001(c)(2)(A) as a result of an offense of which the accused has been found guilty. Second, the scope of the "victim impact" sought to be introduced is limited by how that term is defined under R.C.M. 1001(c)(2)(B), which is restricted to impact "directly relating to or arising from the offense of which the accused has been found guilty." Third, if the victim impact statement can be interpreted more broadly than the rules allow, the military judge must take action to either limit the statement, as the military judge did in this case, or clearly instruct the members (or state on the record in a judge-alone trial) how the statement will be interpreted, in order to ensure both compliance with the rules and that the accused is only sentenced for the offenses of which he was found guilty.

*Id.* at 744. The above framework highlights that R.C.M. 1001(c) does not create an open forum [for crime victims] to express statements that are not otherwise permissible under R.C.M. 1001. *See United States v. Roblero*, No.

ACM 38874, 2017 CCA LEXIS 168, at *18 (A.F. Ct. Crim. App. Feb. 17, 2017).

The lower court's analysis is misguided in this regard. *See Valdez*, slip op. at 9. Contrary to what the lower court found, the vast array of physical and sexual abuses described by H.M.J. were neither "a continuing course of conduct" nor "a continuation of the physical assaults Appellant committed upon her." *Id*. at 9. Rather, H.M.J.'s victim impact statement claimed she was repeatedly raped, described a "days long rampage of terror," and alleged that "during the weeks following the days-long assault, the abuse stop being so sexual and transformed into savagery." R. at 90-91. She further referenced other assaults *months and years prior*, when "he held a lit cigarette near my face threatening me, and . . . physically abused me on multiple occasions prior to leaving Camp Lejeune." R. at 84. And she did so after the military judge had already excluded evidence of repeated alleged strangulation attempts by the Appellant under R.C.M. 1001(b)(4), stating "there's no time element" in sustaining the defense objection to such evidence in aggravation. R. at 66.

The type of additional allegations H.M.J. made in her impact statement should not be considered part of a continuous course of conduct under R.C.M. 1001(c) (or any other rule), especially where the crimes to which Appellant pleaded guilty amounted to strictly physical assaults that lasted a matter of seconds

to minutes, at most, in total. A significant portion of the highly inflammatory matters presented by H.M.J. through an unsworn statement, and considered by the military judge at sentencing, were neither circumstances surrounding the offenses to which Appellant pleaded guilty, nor of the same course of conduct, nor of the same type of offense. R. at 82-95. The military judge, when applying R.C.M. 1001(b)(4) during the Government's admission of exhibits into evidence, specifically kept evidence of past and future rape and sexual assault allegations out of sentencing evidence. R. at 69-72, 75-76, 79, and 116.

Yet, as stated above, despite her rulings under R.C.M. 1001(b)(4), the table turned nearly 180 degrees under R.C.M. 1001(c), when the military judge considered the victim's statement that covered nearly all of the same prejudicial evidence she had previously denied admitting into sentencing evidence. The military judge erred when she considered H.M.J.'s statements that "the [appellant] used sex toys and his own body at the same time for what seemed like hours and hours," and "every time I begged him to stop he would choke – slam my head down and tell me to shut up." She even allowed H.M.J. to elaborate in painstaking detail the alleged forcible penetration of her vagina with a knife, the evidence of which, again, had been found inadmissible under R.C.M. 1001(b)(4). R. at 89-90. And regardless of her prior rulings under R.C.M. 1001(b)(4), the military judge

stated on the record that she did not see "anything objectionable" about H.M.J.'s lengthy statement under R.C.M. 1001(c). R. at 95.

## Conclusion

WHEREFORE, this Honorable Court should grant review and set aside the lower court's decision.

Respectfully submitted.

/s/
Benjamin E. Doskocil
LCDR, JAGC, USNR
Appellate Defense Counsel
Navy-Marine Corps Appellate
Review Activity
1254 Charles Morris St, SE
Washington Navy Yard, D.C. 20374
Tel: (202) 685-8506
Benjamin.e.doskocil.mil@us.navy.mil
C.A.A.F. Bar No. 38100

/s/
Arthur L. Gaston III
CAPT, JAGC, USN
Appellate Defense Counsel
Navy-Marine Corps Appellate
Review Activity
1254 Charles Morris St., SE
Bldg. 58, Suite 100
Washington, DC 20374
(202) 685-7299
arthur.l.gaston2.mil@us.navy.mil
C.A.A.F. Bar No. 37756

## List of Appendices

A. *United States v. Valdez* No. 202300141, slip op. (N-M. Ct. Crim. App. September 26, 2024).

## Certificate of Compliance

1. This Supplement complies with the type-volume limitation of Rule 21(b) because it contains less than 9,000 words.
2. This Supplement complies with the type-style requirements of Rule 37 because it has been prepared with monospaced typeface using Microsoft Word with 14 point, Times New Roman font.

## Certificate of Filing and Service

I certify that on December 16, 2024, the foregoing was delivered electronically to this Court, and that copies were electronically delivered to Appellate Government Counsel.

/s/

Benjamin E. Doskocil
LCDR, JAGC, USNR
Appellate Defense Counsel
Navy-Marine Corps Appellate Review Activity
1254 Charles Morris St, SE
Washington Navy Yard, D.C. 20374
Tel: (202) 685-8506
Benjamin.e.doskocil.mil@us.navy.mil
C.A.A.F. Bar No. 38100

# United States Navy–Marine Corps Court of Criminal Appeals

Before
HOLIFIELD, KIRKBY, and de GROOT
Appellate Military Judges

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**UNITED STATES**
*Appellee*

**v.**

**Beto L. VALDEZ Jr.**
Sergeant (E-5), U.S. Marine Corps
*Appellant*

**No. 202300141**

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Decided: 26 September 2024

Appeal from the United States Navy-Marine Corps Trial Judiciary

Military Judge:
Andrea C. Goode

Sentence adjudged 14 February 2023 by a general court-martial convened at Marine Corps Base Camp Pendleton, California, consisting of a military judge sitting alone. Sentence in the Entry of Judgment: reduction to E-1, confinement for 36 months, and a dishonorable discharge.[1]

For Appellant:
*Lieutenant Commander Benjamin E. Doskocil, JAGC, USN*

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[1] Appellant was credited with 137 days of pretrial confinement.

For Appellee:
*Lieutenant Michael A. Tuosto, JAGC, USN*
*Lieutenant Lan T. Nguyen, JAGC, USN*

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**This opinion does not serve as binding precedent, but may be cited as persuasive authority under NMCCA Rule of Appellate Procedure 30.2.**

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PER CURIAM:

A general court-martial convicted Appellant, pursuant to his pleas, of three specifications of domestic violence, in violation of Article 128b, Uniform Code of Military Justice (UCMJ).[2]

Appellant asserts two assignments of error (AOEs), which we summarize as follows: (1) the military judge abused her discretion when she considered the entirety of the victim's impact statement during sentencing; and (2) Appellant's adjudged sentence of three years' confinement for Charge I, Specification 4, was inappropriately severe. We find no prejudicial error and affirm.

## I. BACKGROUND

Appellant met the victim, Sergeant (Sgt) Juliet,[3] while the two were stationed together at Camp Lejeune in 2017. Over the next five years and several changes of duty stations, Appellant and Sgt Juliet maintained an intimate relationship. In late March 2022, while in Appellant's barracks room, Appellant slapped Sgt Juliet on her leg after a disagreement. The slap left a "handprint mark and some bruises."[4]

On 15 April 2022, Sgt Juliet received a Snapchat video from another Marine. It depicted the Marine and Sgt Juliet engaged in sexual intercourse. After seeing the video, Appellant decided to leave the bar they were in and began

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[2] 10 U.S.C. § 928b.

[3] All names in this opinion, other than Appellant, counsel, and the military judge, are pseudonyms.

[4] Pros. Ex. 1 at 4.

"pushing [Sgt Juliet] to go because she wasn't moving fast enough."[5] Appellant pushed Sgt Juliet so hard she fell to her knees, scraping and bruising her legs.

Once seated in Appellant's car, the two were discussing the video when Appellant became angry and punched Sgt Juliet in the left eye. Over the next few days, Sgt Juliet "developed a severe black eye."[6] Roughly a week later, after experiencing headaches, Sgt Juliet went to medical and was diagnosed with a concussion.[7]

Between 15 April 2022 and 19 June 2022, Appellant and Sgt Juliet were arguing at Appellant's on-base residence. As the argument escalated, Appellant went to the garage, retrieved a pistol, "racked [the pistol's slide] back to make sure it was clear," and told Sgt Juliet to open her mouth.[8] He then placed the pistol in her mouth. When the military judge asked Appellant why he did this, he replied, "To strike fear[.]"[9]

For these incidents, the Government charged Appellant with three specifications of violating Article 128b, UCMJ. The Government additionally charged Appellant with a fourth specification of domestic violence and a single specification of sexual assault under Article 120, UCMJ. At trial, if convicted of all charges, Appellant faced forty-six years and six months of confinement.[10]

Appellant ultimately agreed to plead guilty to the three incidents of domestic violence described above. Although Appellant faced a maximum of thirteen years' confinement for pleading guilty to the three specifications, under the terms of a plea agreement he faced only a period of confinement ranging from twenty-four to thirty-six months.[11] The convening authority also agreed to withdraw and conditionally dismiss the remaining domestic assault and sexual assault specifications. Also in the plea agreement was Appellant's acknowledgment that Sgt Juliet could provide a victim impact statement pursuant to *United States v. Terlep*.[12]

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[5] R. at 32.

[6] Pros. Ex. 1 at 7.

[7] Pros. Ex. 1 at 7.

[8] R. at 42-43.

[9] R. at 43.

[10] Appellate Ex. I at 2-4.

[11] R. at 46.

[12] 57 M.J. 344 (C.A.A.F. 2002).

During the Government's presentencing case, the military judge sustained trial defense counsel's objection to several items of evidence offered in aggravation. First, she excluded documentation regarding the domestic violence and sexual assault specifications to which Appellant pleaded not guilty.[13] Second, the military judge excluded a portion of a recorded telephonic conversation between Appellant and Sgt Juliet, in which the latter brought up allegations of sexual assault and Appellant responded, "I raped you, I raped you plenty[.]"[14] Third, the military judge ruled irrelevant an image of a steak knife allegedly held by Appellant while sexually assaulting Sgt Juliet.[15] Finally, the military judge excluded in its entirety a video purported to depict Appellant sexually assaulting Sgt Juliet while holding the steak knife.[16]

After the military judge excluded this evidence, but before Sgt Juliet began reading her statement, trial defense counsel objected to portions of the expected statement.[17] In response, the military judge distinguished between a victim impact statement and evidence in aggravation, stating that, "[a statement offered under] R.C.M. 1001c is not evidence, it is a matter as to be considered. Which is significantly different."[18] When asked what the specific objection was, trial defense counsel responded, "So the objection would be that some of the continuing course of conduct that she's going to [. . .] talk about, related to charges that were not before the court, were not charged, he's not pled guilty. Totally separate and apart from the court-martial, Your Honor."[19] In overruling the objection, the military judge stated, "I'm going to allow her to read her unsworn and then I'm going to allow you to rebut it."[20]

Sergeant Juliet proceeded to read her victim impact statement to the military judge, providing a detailed description of various incidents of domestic violence and sexual assault to which Appellant had not pleaded guilty. Specifically, she described being sexually assaulted by Appellant after returning to

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[13] R. at 69-72, 75-76, 79, and 166.

[14] R. at 69-72.

[15] R. at 75-76.

[16] R. at 79.

[17] R. at 82.

[18] R. at 82.

[19] R. at 82.

[20] R. at 82.

his home following the 15 April 2022 pushing/punching incident. She also described additional acts of domestic violence during the same encounter.

Sergeant Juliet next described how, at some point after the initial alleged—but uncharged—sexual assault, she took a knife from the kitchen and hid it in a couch cushion. According to Sgt Juliet's victim impact statement, Appellant saw the knife in the cushion, told Sgt Juliet to remove her pants, and "dragged the sharp tip of the knife on the outside of [her] genitals."[21] She also described how "[Appellant] turned the knife around and put the handle inside [her]."[22] Sergeant Juliet's statement described Appellant filming the incident and, while holding the knife, forcing Sgt Juliet to put Appellant's penis in her mouth. Next, Sgt Juliet stated that, after Appellant "realized [she] wasn't going to do [fellatio] the way he wanted, [Appellant] started to rape [Sgt Juliet] again."[23] She described the incident as a "day's long rampage of terror[.]"[24]

Later in the five-page victim impact statement, Sgt Juliet described being strangled by Appellant. She concluded her statement by mentioning the recorded phone call describing how Appellant stated, "I raped you. I raped you in the morning, I raped you plenty."[25]

When Sgt Juliet finished her statement, the military judge said, "I really appreciate that. Defense, you said you had some objections. I don't see anything objectionable about that."[26]

In response, trial defense counsel offered in rebuttal text messages from 15 and 18 April 2022 evidencing that Appellant and Sgt Juliet engaged in "rape-fantasy play[.]"[27] These texts were admitted into evidence. Additionally, trial defense counsel offered a command investigation, dated 28 November 2022, in which an investigating officer opined that Sgt Juliet violated the Navy's fraternization policy, issued unlawful orders, provided false official statements,

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[21] R. at 90.

[22] R. at 90.

[23] R. at 90.

[24] R. at 90.

[25] R. at 93.

[26] R. at 95.

[27] R. at 96.

engaged in extramarital conduct, and violated the Marine Corp's sexual harassment policy, among other alleged instances of misconduct. This, too, was admitted into evidence.

Trial counsel argued for a total of 36 months' confinement, while trial defense counsel requested the military judge award a "dishonorable discharge, reduction [to] E-1, and 24 months of confinement."[28] Ultimately, the military judge sentenced Appellant to 24 months' confinement each for Specifications 1 and 2 of Charge I, and 36 months' confinement for Specification 4 (the assault with the pistol) of Charge I, to run concurrently, reduction to E-1, and a dishonorable discharge.

Additional facts necessary to resolve Appellant's AOEs are discussed below.

## II. DISCUSSION

### A. The military judge did not abuse her discretion by considering the entirety of Ms. Juliet's victim impact statement.

Appellant argues the military judge abused her discretion by considering Sgt Juliet's unsworn description of incidents of sexual assault and domestic violence of which Appellant was not convicted. Appellant asserts that certain portions of the statement exceeded the scope of what is permissible under R.C.M. 1001(c).

*1. Standard of Review and Law*

"We review a military judge's decision to allow a victim to present an unsworn victim impact statement for abuse of discretion."[29] "The abuse of discretion standard is a strict one, calling for more than a mere difference of opinion. The challenged action must be arbitrary, fanciful, clearly unreasonable, or clearly erroneous."[30]

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[28] R. at 123. Trial defense counsel specifically requested Appellant receive 24 months of confinement, to run concurrently, for each of the three specifications.

[29] *United States v. Miller*, 82 M.J. 788, 791 (N-M. Ct. Crim. App. 2022) (citing *United States v. Hamilton*, 78 M.J. 335, 340 (C.A.A.F. 2019) (recognizing that victim impact statements are not evidence but applying the same standard of review to their admission)).

[30] *United States v. Lloyd*, 69 M.J. 95, 99 (C.A.A.F. 2010) (citations and internal quotation marks omitted).

A victim impact statement is not evidence.[31] Nor does it constitute witness testimony.[32] It is not offered into evidence by the Government, but "introduced by the victim[.]"[33] Accordingly, "the question is not whether the information contained in the victim impact statement is 'relevant,' or even whether a Mil. R. Evid. 403 balancing test is required[.]"[34] Instead, the concern is "whether the statement is within the proper 'scope' of R.C.M. 1001A, or its successor, R.C.M. 1001(c)."[35]

Pursuant to R.C.M. 1001(c)(3), the contents of victim impact statements may only include matters in mitigation and "victim impact," with the latter defined to include "any financial, social, psychological, or medical impact on the crime victim *directly relating to or arising from* the offense of which the accused has been found guilty."[36] "A victim's statement should not exceed what is permitted under R.C.M. 1001(c)(3)," and "[u]pon objection by either party or *sua sponte*, a military judge may stop or interrupt a victim's statement that includes matters outside the scope of R.C.M. 1001(c)(3)."[37] "While the military judge is the gatekeeper for unsworn victim statements, an accused nonetheless has a duty to state the specific ground for objection in order to preserve a claim of error on appeal."[38]Although "directly relating to or arising from the same offense" is not defined in R.C.M. 1001(c), we have previously looked to how the President defines admissible "evidence in aggravation" in R.C.M. 1001(b).[39] Within this context, uncharged misconduct may be offered in aggravation if it "is directly related to or resulting from the offenses of which the accused has

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[31] *United States v. Tyler*, 81 M.J. 108, 112 (C.A.A.F. 2021).

[32] *United States v. Barker*, 77 M.J. 377, 382 (C.A.A.F. 2018).

[33] *In re A.J.W.,* 80 M.J. 737, 744 (N-M. Ct. Crim. App. 2021) (citing *Hamilton*, 78 M.J. 335).

[34] *In re A.J.W.*, 80 M.J. at 744.

[35] *Id*.

[36] R.C.M. 1001(c)(2)(B) (emphasis added). Pursuant to R.C.M. 925, the accused was sentenced under "the Rules for Court Martial in effect prior to December 28, 2023." It is, however, worth noting for practitioners that the 2024 edition of the Rules for Court Martial has eliminated the word "directly" for purposes of R.C.M. 1001(c).

[37] R.C.M. 1001(c)(5)(B), Discussion.

[38] *Tyler*, 81 M.J. at 113.

[39] *United States v. Campos*, No. 202200246, 2024 CCA LEXIS 87, *26 (N-M Ct. Crim. App. Feb. 29, 2024), *rev. granted*, No. 24-0138/MC, 2024 CAAF LEXIS 469 (C.A.A.F., Aug.15, 2024 (mem.)).

been found guilty."[40] This type of evidence is admissible when it demonstrates "a continuous course of conduct involving the same or similar crimes, the same victims, and a similar situs within the military community, [e.g.], the service-member's home."[41] Such evidence demonstrates "the true impact of the charged offenses on the [victims]."[42]

Logic supports applying this definition to an unsworn victim impact statement. Rule for Courts-Martial 1001(c) provides that the victim of a crime "has the right to be reasonably heard" concerning "any financial, social, psychological, or medical impact on the crime victim directly relating to or arising from the offense of which the accused has been found guilty." As we recently stated in *United States v. Campos*, "[t]his right would prove illusory if it did not include the ability to describe circumstances necessary for the sentencing authority to understand the true impact of the crime on the victim."[43]

Furthermore, judges are "presumed to know the law and apply it correctly."[44] Absent clear evidence to the contrary, we will assume the military judge did not sentence Appellant on any improper basis.[45]

*2. Analysis*

Appellant directs our attention to *United States v. Hamilton*, in which the Court of Appeals for the Armed Forces determined the military judge abused his discretion by not adequately distinguishing between evidence admitted in aggravation and an unsworn victim impact statement.[46] But the circumstances in the present case are substantially different. In *Hamilton*, the victims did not

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[40] R.C.M. 1001(b)(4).

[41] *United States v. Mullens*, 29 M.J. 398, 400 (C.M.A. 1990); *see also United States v. Nourse*, 55 M.J. 229, 232 (C.A.A.F. 2001) ("when uncharged misconduct is part of a continuous course of conduct involving similar crimes and the same victims, it is encompassed within the language 'directly relating to or resulting from the offenses of which the accused has been found guilty' under RCM 1001(b)(4).").

[42] *Nourse*, 55 M.J. at 231.

[43] 2024 CCA LEXIS 87 at *25-26.

[44] *United States v. Bridges*, 66 M.J. 246, 248 (C.A.A.F. 2008) (citation omitted).

[45] *Id*.

[46] 78 M.J. 335, 338-340 (C.A.A.F. 2019).

present their statements in-person, and the statements were offered and admitted as prosecution exhibits.[47]

Here, Sgt Juliet made her statement in-person and at the proper time—after the Government's case in aggravation but before the Defense had the opportunity to present its case in extenuation and mitigation. Moreover, the statement was correctly marked as an appellate exhibit, rather than a prosecution exhibit.[48] Most importantly, the military judge clearly stated that "R.C.M. 1001c is not evidence," but rather "a matter as to be considered."[49]

And it was proper to consider the statement. We find the matters contained in Sgt Juliet's unsworn statement describe a continuing course of conduct.[50] The sexual assaults she described were a continuation of the physical assaults Appellant committed upon her. They immediately followed upon their return to Appellant's barracks room after he punched her. While domestic assault and sexual assault fall under different articles of the UCMJ and involve different elements, we will consider them "similar crimes" under the circumstances presented. Both acts involved the violent physical abuse of an intimate partner. Taken together, they convey the true impact of the acts of domestic violence to which Appellant pleaded guilty.

But even were we to determine otherwise by finding that parts of the victim impact statement were outside the scope of R.C.M. 1001(c) and that those matters were improperly referenced by trial counsel in the sentencing argument, we are confident this did not impact the military judge's sentencing decision. The military judge properly identified that Sgt Juliet's victim impact statement was not evidence and allowed Appellant to rebut the statement. And the military judge specifically did not consider evidence of the uncharged incidents of domestic violence and sexual assault, including Appellant's statement that he raped Ms. Juliet, when the Government attempted to introduce the evidence

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[47] *Id*. at 338-39.

[48] Appellate Ex. IV.

[49] R. at 82. *See Tyler*, 81 M.J. at 112.

[50] *See generally Nourse*, 55 M.J. at 229. If *evidence* of uncharged misconduct is admissible when part of a continuing course of conduct, it follows that similar *non-evidence* in victim impact statements may be considered in assessing the full impact of Appellant's crimes.

in aggravation.[51] Therefore, we are confident the military judge did not consider Ms. Juliet's statement *as evidence*.

What evidence the military judge did consider more than explains the sentence she imposed. The Government presented a strong case in aggravation: the detailed stipulation of fact describing, *inter alia*, how Sgt Juliet had no reason to know the pistol he placed in her mouth was not loaded; photographs of Sgt Juliet's many bruises and "severe black eye;"[52] the medical diagnosis of her concussion; and Appellant's own callous statements from the recorded conversation between him and Sgt Juliet. In contrast, Appellant's case was relatively weak, involving mostly service records and a few character letters. We are therefore convinced that, even if the military judge did improperly consider parts of Sgt Juliet's statement, it did not result in prejudice to Appellant.

**B. Appellant's sentence was not inappropriately severe.**

Appellant argues his sentence was inappropriately severe. Specifically, Appellant asserts that three years' confinement is inappropriately severe punishment for Charge I, Specification 4. Again, we disagree.

*1. Standard of Review and Law*

We review sentence appropriateness de novo.[53] This Court may only affirm "the sentence or such part or amount of the sentence as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved."[54] In exercising this function, we seek to ensure that "justice is done and that the accused gets the punishment he deserves."[55] Our review requires an "individualized consideration of the particular accused on the basis of the nature and seriousness of the offense and the character of the offender."[56] In making this assessment, we analyze the record as a whole.[57]

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[51] R. at 69-72, 75-76, 79, and 166.

[52] Pros. Ex. 1 at 7.

[53] *United States v. Lane*, 64 M.J. 1, 2 (C.A.A.F. 2006).

[54] Article 66(d)(1), UCMJ.

[55] *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988).

[56] *United States v. Snelling*, 14 M.J. 267, 268 (C.M.A. 1982) (citation and internal quotation marks omitted).

[57] *Healy*, 26 M.J. at 395-97.

*2. Analysis*

Appellant maintains three years' confinement is inappropriately severe "for an offense that did not result in any physical injury and lasted mere seconds in time."[58] We disagree with this anodyne description of the event.

We need only point to Appellant's stipulation of fact. In Appellant's own words, Sgt Juliet had "no reason to know" that the pistol was unloaded and looked "terrified" as it was inserted into her mouth.[59] Appellant put the pistol in her mouth because he was "angry and did not know how to express [his] emotions."[60] He sought to "scare" her with a "deadly weapon."[61]

For placing the pistol in Ms. Juliet's mouth, Appellant was facing a maximum punishment of six years' confinement, reduction to E-1, forfeiture of all pay and allowances, and a dishonorable discharge.[62] But by the terms of his plea agreement, Appellant faced only 24 to 36 months' confinement.[63] Appellant specifically bargained for these parameters and the military judge sentenced him within that range. Having received the benefit of his bargain--to include a reduced limitation on punishment and the withdrawal and conditional dismissal of other serious charges and specifications--he now asks for more. This we decline to give. "[A]lthough not dispositive, when an accused who is represented by competent counsel bargains for a specific sentence, that is strong evidence that the sentence is not inappropriately severe and it will likely not be disturbed on appeal."[64] Reviewing the entirety of the record and giving individualized consideration to both the seriousness of the offense and Appellant's character, we find the sentence in this case is not inappropriately severe.

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[58] Appellant's Brief at 21.

[59] Pros. Ex. 1 at 10.

[60] Pros. Ex. 1 at 11.

[61] Pros. Ex. 1 at 11.

[62] Appellate Ex. I at 3-4.

[63] Appellate Ex. I at 8.

[64] *United States v. Avellaneda*, 84 M.J. 656, 663 (N-M. Ct. Crim. App. 2024).

## III. CONCLUSION

After careful consideration of the record and briefs of appellate counsel, we have determined that the findings and sentence are correct in law and fact and that no error materially prejudicial to Appellant's substantial rights occurred.[65]

However, we note that the Entry of Judgment (EOJ) does not sufficiently summarize the specifications to which Appellant pleaded guilty or accurately reflect the disposition of the charges and specifications.[66] Although we find no prejudice, Appellant is entitled to have court-martial records that correctly reflect the content of his proceeding.[67] In accordance with R.C.M. 1111(c)(2), we modify the EOJ and direct that it be included in the record.

The findings and sentence are **AFFIRMED**.

FOR THE COURT:

MARK K. JAMISON
Clerk of Court

[65] Articles 59 & 66, UCMJ.

[66] *United States v. Wadaa*, 2024 CCA LEXIS 148, __ M.J. __ (N-M. Ct. Crim. App., April 25, 2024).

[67] *United States v. Crumpley*, 49 M.J. 538, 539 (N-M. Ct. Crim. App. 1998).

# United States Navy–Marine Corps
# Court of Criminal Appeals

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| **UNITED STATES**<br><br>**v.**<br><br>**Beto L. VALDEZ, Jr.**<br>**Sergeant (E-5)**<br>**U.S. Marine Corps**<br>***Accused*** | **NMCCA NO. 202300141**<br><br>**ENTRY OF JUDGMENT**<br><br>***As Modified on Appeal***<br><br>**26 September 2024** |

On 14 February 2023, the Accused was tried at Marine Corps Base Camp Pendleton, California, by a general court-martial, consisting of a military judge sitting alone. Military Judge Andrea C. Goode presided.

## FINDINGS

The following are the Accused's pleas and the Court's findings to all offenses the convening authority referred to trial:

**Charge I:** **Violation of Article 128b, Uniform Code of Military Justice, 10 U.S.C. § 928b.**

*Plea:* Guilty.

*Finding:* Guilty.

**Specification 1:** **Between on or about 1 March 2022 and on or about 31 March 2022, commit a violent offense against an intimate partner.**

*Plea:* Guilty.

*Finding:* Guilty.

**Specification 2:** **On or about 15 April 2022, commit a violent offense against an intimate partner.**

*Plea:* Guilty except for the words "(b) pushing the head of Sergeant H.M.J. with the hands of the Accused."

*Finding:* Guilty except for the words "(b) pushing the head of Sergeant H.M.J. with the hands of the Accused."

**Specification 3:** **Between on or about 15 April 2022 and on or about 18 April 2022, on divers occasions, commit a violent offense against an intimate partner.**

*Plea:* Not Guilty.

*Finding:* Withdrawn.

**Specification 4:** **Between on or about 15 April 2022 and on or about 19 June 2022, commit a violent offense against an intimate partner.**

*Plea:* Guilty.

*Finding:* Guilty

**Charge II:** **Violation of Article 120, Uniform Code of Military Justice, 10 U.S.C. § 920.**

*Plea:* Not Guilty.

*Finding:* Withdrawn.

**Specification:** **Between on or about 15 April 2022 and on or about 18 April 2022, commit sexual assault by placing the person in fear.**

*Plea:* Not Guilty.

*Finding:* Withdrawn.

## SENTENCE

On 14 February 2023, a military judge sentenced the Accused to the following:

**Reduction to pay grade E-1.**

**Confinement for a total of three years.**

*Specification 1: confinement for two years.*

*Specification 2: confinement for two years.*

*Specification 4: confinement for three years.*

*Confinement will run concurrently.*

*Appellant received 137 days of pretrial confinement credit.*

**Dishonorable Discharge.**

FOR THE COURT:

MARK K. JAMISON
Clerk of Court