

IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES,)	BRIEF ON BEHALF
Appellee)	OF APPELLANT
)	
v.)	Crim. App. Dkt. No. 20150379
)	
)	USCA Dkt. No. 18-0305/AR
Staff Sergeant (E-6))	
MICHAEL C. GLEASON,)	
United States Army,)	
)	
)	
Appellant)	

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

ISSUE PRESENTED

**WHETHER THE ARMY COURT ERRED BY
AFFIRMING A NOVEL SPECIFICATION
COVERED BY AN ENUMERATED ART. 134,
UCMJ OFFENSE.**

Statement of Statutory Jurisdiction

The Army Court of Criminal Appeals (ACCA) had jurisdiction over this matter pursuant to Article 66, Uniform Code of Military Justice, 10 U.S.C. § 866 (2012) [hereinafter UCMJ]. This Honorable Court has jurisdiction over this matter under Article 67(a)(3), UCMJ, 10 U.S.C. § 867(a)(3)(2016).

Statement of the Case

On May 13-14 and 26-29, 2015, a military judge and a panel consisting of officer members sitting as a general court-martial tried Staff Sergeant (SSG) Michael C. Gleason at Fort Hood, Texas. Contrary to his pleas, the panel convicted SSG Gleason of two specifications of aggravated assault, one specification of assault consummated by a battery, one specification of adultery, and one specification of a general disorder, in violation of Articles 128 and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 928, 934 (2012)[hereinafter UCMJ]. The panel acquitted SSG Gleason of five specifications of aggravated assault in violation of Article 128, UCMJ, 10 U.S.C. § 928, but convicted him of the lesser included offense of assault in violation of Article 128, UCMJ, 10 U.S.C. § 928. The Military Judge granted the Defense's unopposed motion and entered a finding of not guilty as to one specification of aggravated assault in violation of Article 128, UCMJ, 10 U.S.C. § 928 pursuant to Rule for Courts-Martial [hereinafter R.C.M.] 917. The panel acquitted SSG Gleason of one specification of sexual assault, two specifications of aggravated assault and four specifications of assault in violation of Articles 120 and 128, UCMJ, 10 U.S.C. §§ 920, 928.

The panel sentenced SSG Gleason to seven years confinement, reduction to the grade of E-1, and a dishonorable discharge. The convening authority approved the adjudged sentence.

On April 30, 2018, the Army court summarily affirmed the sentence and findings, except as to Specification 2 of Charge III, which it set aside. *United States v. Gleason*, 2018 CCA LEXIS 216 (A Ct. Crim. App. April 30, 2016)(sum. disp.)(Appendix A). On May 22, 2018, the Army court granted SSG Gleason's motion for that court to reconsider its decision as to Specification 1 of Charge III, but declined to grant to him any further relief. *United States v. Gleason*, Order (A. Ct. Crim. App. May 22, 2018)(Appendix B). On October 12, 2018, this honorable court granted appellant's petition for review as to the specified issue.

Statement of Facts

The facts necessary to dispose of this matter are included in the argument below.

Summary of Argument

The Army Court erred in affirming the novel specification at issue here because the novel specification covers the same ground as a presidentially-enumerated offense, but lessens the burden of proof by stripping away presidentially-enumerated elements.

Argument

**THE ARMY COURT ERRED BY AFFIRMING A
NOVEL SPECIFICATION COVERED BY AN
ENUMERATED ART. 134, UCMJ OFFENSE.**

Standard of Review

Whether a court-martial had subject matter jurisdiction is a question of law that appellate courts review *de novo*. *United States v. Melanson*, 53 M.J. 1, 2 (C.A.A.F. 2000) (citation omitted).

Analysis

This court should set aside and dismiss the findings for Specification 1 of Charge III because it is a novel specification which fails to state an offense. A novel offense which covers the same ground as an enumerated Article 134 offense fails to state an offense. *United States v. Reese*, 76 M.J. 297, 302 (C.A.A.F. 2017). Novel Article 134 offenses may not cover the same ground as enumerated Art. 134 offenses and may not be crafted in a manner which omits elements of enumerated Article 134 offenses. “Such action barred under pt. IV, ¶ 60.c.(6)(c)” of the *Manual for Courts-Martial, United States* [hereinafter MCM](2012 ed.) and “raises important due process concerns.” *United States v. Guardado*, 77 M.J. 90, 98-99 (C.A.A.F. 2017).

Here, the government drafted a general Article 134 offense which eliminated elements of the Presidentially-enumerated offense of obstruction of justice.

The general disorder offense which the government drafted required only that the panel find:

“(1) That on or about 2 March 2014, at or near Killeen, Texas, Private First Class Jessica Walker attempted to

- place a request for assistance to an emergency fire, law enforcement, or medical agency;
- (2) That the accused knowingly and wrongfully interfered with that individual's ability to place the request for assistance; and
 - (3) Such conduct was to the prejudice of good order and discipline in the Armed Forces, or of a nature to bring discredit upon the Armed Forces.”

(R. at 784-85).

By contrast, the offense which the President defined requires the government to prove:

- (1) the accused wrongfully did a certain act;
- (2) that the accused did so in the case of a certain person against whom the accused had reason to believe there were or would be criminal proceedings pending;
- (3) That the act was done with the intent to influence, impede, or otherwise obstruct the due administration of justice; and
- (4) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

MCM, pt. IV, ¶ 96.

Private J.W. testified that SSG Gleason took her cellphone when she told him that she would call the police following an assault. (JA at 36). The gravamen of the general article offense here is that SSG Gleason attempted to prevent Private J.W. from reporting to law enforcement the assault which he had committed against her. This new offense covers the same ground as obstruction of justice, which squarely punishes “force or threat of force delaying or preventing

communication of information relating to a violation of any criminal statute of the United States...” *Id.* at ¶ 96.c. This new offense eliminates the President’s requirement that the “act was done with the intent to influence, impede, or otherwise obstruct the due administration of justice,” M.C.M., pt. IV, ¶ 96(b), and substitutes instead a less burdensome proof requirement, devoid of proof of intent. (JA at 84-85). This is the exact practice which *Guradado* and *Reese* prohibit — dropping an element and charging the same conduct under the general article. This court should set aside and dismiss renumbered Charge III, Specification 1.



ROBERT FELDMEIER
Civilian Appellate Defense Counsel
THE LAW OFFICES OF TRIESCHMANN
AND FELDMEIER
3201 Edwards Mill Rd, Suite 141-454
Raleigh, North Carolina 27612
P: 336-416-2479
robert.a.feldmeier@gmail.com
CAAF Bar No. 35622

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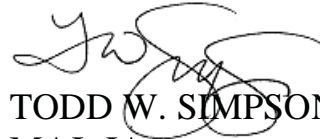
1. This Brief complies with the type-volume limitation of Rule 24 because it does not exceed 30 pages.
2. This Brief complies with the type style requirements of Rule 37 because it has been prepared with a monospaced typeface using Microsoft Word 2016 with 14 point, Times New Roman font.



ROBERT FELDMEIER
Civilian Appellate Defense Counsel
**THE LAW OFFICES OF TRIESCHMANN
AND FELDMEIER**
3201 Edwards Mill Rd, Suite 141-454
Raleigh, North Carolina 27612
P: 336-416-2479
robert.a.feldmeier@gmail.com
CAAF Bar No. 35622

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing in the case of *United States v. Gleason*, Docket No. ARMY 20150379, USCA Dkt. No. 18-0305/AR, was electronically filed with the Court and the Government Appellate Division on November 15, 2018.



TODD W. SIMPSON
MAJ, JA
Chief, Branch 1
Defense Appellate Division
(703) 695-9851
USCAAF Bar No. 36876