

IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES,)	REPLY 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 HONORABLE, THE JUDGES OF THE UNITED STATES
COURT OF APPEALS FOR THE ARMED FORCES:**

Pursuant to Rule 19 of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby submits his reply to the government’s answer.

The government alleges that “preventing JW from calling the police for assistance in leaving the house is different than the conduct of preventing JW from calling the police to report his criminal behavior.” Gov. Br. at. 5. This distinction is irrelevant. Novel Article 134 offenses may not cover the same ground as enumerated Art. 134 offenses and may not drop 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, a servicemember commits the offense of obstruction of justice when:

- (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.

J.W.’s subjective intentions, or those of any purported victim, are not among the elements of this offense.

The government argues that Appellant’s actions were not “by force or threat of force delaying or preventing communication of information relating to a violation of any criminal statute” because J.W.’s subjective desire to obtain police assistance was somehow different from her desire to report a crime. Gov. Br. at 7 citing MCM, pt. IV, ¶ 96.c. This is a distinction without a difference. If, as the government alleges, appellant’s actions prevented J.W. from obtaining police assistance, they also prevented her from reporting a crime. It is impossible to see how J.W. could have informed law enforcement of her need for assistance without also alerting law enforcement to the existence of a crime. “Actual

obstruction of justice is not an element of (the) offense (of obstruction of justice).”
MCM, pt. IV, ¶ 96.c. Whether J.W. intended to report a crime is therefore not relevant. Preventing law enforcement from learning of the commission of a crime is sufficient; whether subsequent prosecution would occur is not an element. J.W.’s intentions were therefore irrelevant. Art. 134, UCMJ obstruction of justice covers any hinderance of the reporting of acts constituting crimes, irrespective of the victim’s desired outcome from that reporting.

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). Here, obstruction of justice covers the same ground as the novel offense. The novel offense in this case therefore fails to state an offense. 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

Certificate of Compliance

1. This Supplement complies with the type-volume limitation of Rule 24 because it is three pages.

2. This Supplement 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.

Certificate of Filing and Service

I certify that a copy of the foregoing in the case of *United States v. Gleason*, Army Dkt. No. 20150379, USCA Dkt. No. 18-0305/AR was delivered to the Court and a copy served on opposing counsel on December 16, 2018.



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