

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

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

NATANYAH GANZ  
Captain, Judge Advocate  
Appellate Government Counsel  
Government Appellate Division  
U.S. Army Legal Services Agency  
9275 Gunston Road  
Fort Belvoir, VA 22060  
(703) 693-0786  
Natanyah.ganz.mil@mail.mil  
U.S.C.A.A.F. Bar No. 36930

ERIC K. STAFFORD  
Lieutenant Colonel, Judge Advocate  
Deputy Chief, Government  
Appellate Division  
U.S.C.A.A.F. Bar No. 36897

STEVEN P. HAIGHT  
Colonel, Judge Advocate  
Chief, Government  
Appellate Division  
U.S.C.A.A.F. Bar No. 31651

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

UNITED STATES,	)	BRIEF ON BEHALF OF APPELLEE
Appellee	)	
	)	
v.	)	
	)	Crim. App. Dkt. No. 20150379
Staff Sergeant (E-6)	)	
<b>MICHAEL C. GLEASON,</b>	)	USCA Dkt. No. 18-0305/AR
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 (Army Court) reviewed this case pursuant to Article 66, Uniform Code of Military Justice, 10 U.S.C. § 866 (2012) [hereinafter UCMJ]. This Honorable Court exercises jurisdiction over this matter pursuant to Article 67(a)(3), UCMJ, 10 U.S.C. § 867 (a)(3) (2012).

**Statement of the Case**

On 13-14 and 26-29 May 2015, an officer panel sitting as a general court-martial convicted appellant, contrary to his pleas, of two specifications of aggravated assault, six specifications of assault consummated by a battery, one

specification of adultery, and one specification of wrongfully interfering with an emergency call, in violation of Articles 128 and 134, UCMJ. (JA 5-8). The panel sentenced appellant to reduction to the grade of E-1, seven years of confinement, and a dishonorable discharge. (JA 8). The convening authority approved the adjudged sentence and credited appellant with 146 days of confinement credit. (JA 9).

On 30 April 2018, the Army Court set aside the finding of guilty to Specification 2 of Charge III, but affirmed the sentence. (JA 3). On 3 May 2018, appellant filed a motion for reconsideration of the Army Court's 30 April 2018 decision. *United States v. Gleason*, ARMY 20150379 (Army Ct. Crim. App. 22 May 2018) (order). The Army Court granted appellant's motion for reconsideration and adopted its "previous opinion in all respects." *Id.* On 4 July 2018, appellate defense counsel filed a Petition for Grant of Review. On 12 October 2018, this Honorable Court granted review.

### **Statement of Facts**

Specification 1 of Charge III alleges appellant did: "on or about 2 March 2014, knowingly and wrongfully interfere with Private First Class J.W.'s ability to place an emergency phone call by taking her telephone from her when she went to

call the police . . . .” (JA 9). Appellant raised failure to state an offense for the first time on appeal.<sup>1</sup>

On 5 March 2014, Special Agent (SA) Courtney Downs conducted and video recorded an interview with JW in which JW recounted the incident which forms the basis of Specification 1 of Charge III and this assignment of error. (App. Ex. XI). At trial, JW testified the events of 2 March 2014 began at a restaurant where she was eating and drinking alcohol with some friends. (JA 30-31, 44). JW testified she did not remember how many drinks she had that day. (JA 54). However, she told SA Downs that at the end of the evening friends drove her to appellant’s house (where JW was living) because she had been drinking. (App. Ex. XI).<sup>2</sup> Once at appellant’s house, JW grabbed her uniform and tried to leave the house. (JA 49). JW testified appellant did not want her to leave. (JA 49). She and appellant then began arguing and screaming at each other over her desire to leave. (JA 33). In her interview, JW said: “Every time we fought it’s because I was trying to leave, he wouldn’t let me leave.” (App. Ex. XI).<sup>3</sup> JW testified appellant clotheslined her, jumped on top of her, and stuck his fingers down her throat. (JA 33). When he got off of her, JW testified: “I got up and I hit him in his

---

<sup>1</sup> At the time of appellant’s trial, failure to state an offense was a non-waivable ground for a motion to dismiss. *See* Rule for Courts-Martial [hereinafter R.C.M.] 907(b)(1)(B) (2012 ed.); however, under the current rules, it is a waivable ground. *See* R.C.M. 907(b)(2)(E) (2016 ed.).

<sup>2</sup> Found in video at approximately 12:10:44.

<sup>3</sup> Found in video at approximately 12:13:21.

face with a closed fist, and then he took me to the floor and put me in another choke hold . . . .” (JA 34). After appellant got off of her again, JW described herself as “hysterical” and said she “wanted to die.” (JA 34; App. Ex. XI<sup>4</sup>). JW testified appellant then put a loaded gun to her face and asked her if she “really wanted to die.” (JA 35).

In her interview, JW described the incident which forms the basis of Specification 1 of Charge III:

After he pointed the gun at me, I said I was ‘calling the cops so I can get my stuff and I can leave.’ And he grabbed my phone and he took it from me and he’s like, ‘I’m not giving you your phone or your keys,’ he said, ‘you’ve been drinking.’ I said, ‘I don’t need my keys, I just want my phone so I can get out of here - so I can call someone to come pick me up.’ He was like, ‘you’re not calling anybody. I want you to stay here and sleep it off.’

(App. Ex. XI).<sup>5</sup>

JW then walked out of the house and down the street, but appellant followed her in his truck and told her if she got in the truck and came back to his house, she could have her phone and keys back. (JA 40). JW complied with appellant’s request and when they got back to the house, appellant returned her phone and keys. (JA 40). JW then parked across the street and called a friend who called another friend to come pick her up and drive her to the friend’s house. (JA 40-41).

---

<sup>4</sup> Found in video at approximately 12:12:21.

<sup>5</sup> Found in video at approximately 12:13:25.

JW did not call the police that night. (JA 41). The next day, JW reported the incident to her section noncommissioned officer. (JA 41).

### **Standard of Review**

“The question of whether a specification states an offense is a question of law, which this Court reviews de novo.” *United States v. Crafter*, 64 M.J. 209, 211 (C.A.A.F. 2006). If the specification is “barred by pt. IV, para. 60.c.(6)(c) . . . [it] fails to state an offense under the UCMJ.” *United States v. Reese*, 76 M.J. 297, 303 (C.A.A.F. 2017).

### **Summary of Argument**

Appellant’s conduct of interfering with JW’s ability to place an emergency call was not obstruction of justice; therefore, the government properly charged a novel general disorder offense.

### **Law and Argument**

Appellant’s conduct was not obstruction of justice: the conduct of 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.<sup>6</sup> “If conduct by an accused does not fall under any of the listed

---

<sup>6</sup> Many states recognize the differing nature of this conduct and have separate laws for obstructing justice and interfering with emergency calls. *See e.g.*, Tenn. Code Ann. § 65-21-117 (2014) (“An individual commits an offense if the individual knowingly prevents another individual from placing a telephone call to 911 or from requesting assistance in an emergency from a law enforcement agency, medical facility, or other agency or entity the primary purpose of which is to provide for the safety of individuals.”).

offenses for violations of Article 134 in this Manual (paragraphs 61 through 113 of the Part), a specification not listed in this Manual may be used to allege the offense.” *Manual for Courts-Martial* [hereinafter *MCM*], pt. IV, ¶ 60.c.(6)(c). This means that “the government may not charge a general disorder offense if the offense is otherwise listed as an Article 134, UCMJ, offense.” *United States v. Guardado*, 77 M.J. 90, 91 (C.A.A.F. 2017). “In other words, if an offense is ‘already listed *inside* [Article 134’s] framework,’ it may not be charged as a ‘novel’ general disorder.” *Id.* at 94 (quoting *Reese*, 76 M.J. at 302 (emphasis and alterations in original)). “The doctrine of preemption is inapplicable to this situation . . . .” *Id.*

At the time the government charged this offense, there was no evidence that JW was trying to call the police to report appellant’s criminal behavior. Rather, JW had been drinking and was engaged in a physical altercation with appellant over her attempts to leave his house. (JA 34, 49; App. Ex. XI). JW specifically stated in her interview, she wanted the police to intervene “so I can get my stuff and leave.” (App. Ex. XI). Essentially, JW wanted somebody to come pick her up, whether that was the police or some other third party. She even told appellant, “I just want my phone so I can get out of here – so I can call someone to come pick me up.” (App. Ex. XI). Moreover, after appellant returned JW’s phone and keys, she did not call the police to report appellant’s assault, she called a friend to come

retrieve her. (JA 40-41; App. Ex. XI). This is further evidence that JW's reason for calling the police was to leave the house, as opposed to reporting criminal behavior. JW attempted to use the police as emergency responders, to assist her in an ongoing situation, not as an agency to which she intended to report a crime. Because JW was not attempting to report a crime, appellant's conduct could not have been "by force or threat of force delaying or preventing communication of information relating to a violation of any criminal statute . . . ." as appellant argues. *MCM*, pt. IV, ¶ 96.c.

Contrary to appellant's argument, the government did not charge a novel general disorder to avoid the intent requirement associated with obstruction of justice. (Appellant's Br. 5). Rather, the government charged this novel offense because appellant engaged in unique misconduct, distinct from obstruction of justice. As a result, the government charged a less-serious offense and accepted the lesser maximum punishment of four months' confinement compared to five years' confinement for obstructing justice. *MCM*, App'x 12; *see also* R.C.M. 1003(c)(1)(B)(i) ("For an offense not listed in Part IV of this Manual which is included in or closely related to an offense listed therein the maximum punishment shall be that of the listed offense . . . ."). Cases may exist in which interfering with a call to police would constitute obstructing justice. *See United States v. Finsel*, 36 M.J. 441, 444 (C.M.A. 1993 (quoting *United States v. Gussen*, 33 M.J. 736, 738

(A.C.M.R. 1991)) (“Where an allegedly obstructionist act anticipates a criminal justice function and is intended to subvert or corrupt that function, ‘an act may or may not amount to an obstruction of justice, depending upon the circumstances.’”). However, there are also cases in which interfering with a call to police, an ambulance, or other first responder for assistance in an emergency does not constitute obstructing justice as the interference may have nothing to do with efforts to corrupt the administration of the processes of justice. In these types of cases, the government should be allowed to charge the less severe and unique crime of interfering with an emergency call as the government correctly did here.

## Conclusion

Wherefore, the United States respectfully requests that this Honorable Court affirm the findings and sentence in this case.



NATANYAH GANZ  
Captain, Judge Advocate  
Appellate Government  
Counsel  
U.S.C.A.A.F. Bar No. 36930



ERIC K. STAFFORD  
Lieutenant Colonel, Judge Advocate  
Deputy Chief, Government  
Appellate Division  
U.S.C.A.A.F. Bar No. 36897



STEVEN P. HAIGHT  
Colonel, Judge Advocate  
Chief, Government  
Appellate Division  
U.S.C.A.A.F. Bar No. 31651

**CERTIFICATE OF COMPLIANCE WITH RULE 24 AND 37**

1. This brief complies with the type-volume limitation of Rule 24(c) because this brief contains less than 14,000 words.
2. This brief complies with the typeface and style requirements of Rule 37 because this brief has been typewritten in 14-point font with proportional, Times New Roman typeface using Microsoft Word Version 2013 and is less than ten pages of text.

A handwritten signature in dark ink, appearing to read 'Natanyah Ganz', is positioned above the printed name.

NATANYAH GANZ  
Captain, Judge Advocate  
Attorney for Appellee  
December 14, 2018

## **CERTIFICATE OF FILING AND SERVICE**

I certify that the foregoing was transmitted by electronic means to the court (efiling@armfor.uscourts.gov) and contemporaneously served electronically on Mr. Robert a. Feldmeier, civilian appellate defense counsel, and the Defense Appellate Division, on December 13, 2018.

A handwritten signature in black ink, appearing to read "Daniel L. Kane", is positioned above the typed name and title.

Senior Paralegal Specialist  
Office of The Judge Advocate  
General, United States Army  
Government Appellate Division  
9275 Gunston Road  
Fort Belvoir, VA 22060-5546  
(703) 693-0822