

**UNITED STATES NAVY-MARINE CORPS  
COURT OF CRIMINAL APPEALS  
WASHINGTON, D.C.**

**Before  
K.J. BRUBAKER, D.C. KING, A.Y. MARKS  
Appellate Military Judges**

**UNITED STATES OF AMERICA**

**v.**

**JOSE D. DOMINGO  
SENIOR CHIEF ELECTRICIAN'S MATE (E-8), U.S. NAVY**

**NMCCA 201400408  
GENERAL COURT-MARTIAL**

**Sentence Adjudged:** 8 July 2014.

**Military Judge:** CAPT B.L. Payton-O'Brien, JAGC, USN.

**Convening Authority:** Commander, Navy Region Southwest, San Diego, CA.

**Staff Judge Advocate's Recommendation:** CDR D.J. Jones, JAGC, USN; **Addendum:**  
LCDR J.E. Dowling, JAGC, USN.

**For Appellant:** LT Christopher C. McMahon, JAGC, USN.

**For Appellee:** Capt Cory A. Carver, USMC; LT Amy Freyermuth, JAGC, USN; Maj  
Suzanne M. Dempsey, USMC.

**14 April 2016**

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**OPINION OF THE COURT**  
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**THIS OPINION DOES NOT SERVE AS BINDING PRECEDENT, BUT MAY BE CITED AS PERSUASIVE  
AUTHORITY UNDER NMCCA RULE OF PRACTICE AND PROCEDURE 18.2.**

**PER CURIAM:**

A general court-martial consisting of officer members convicted the appellant, contrary to his pleas, of one specification each of aggravated sexual assault, abusive sexual contact, and adultery, in violation of Articles 120 and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 920 and 934.<sup>1</sup> The members sentenced the appellant to confinement for eight years and a dishonorable discharge. The convening authority approved the sentence as adjudged.

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<sup>1</sup> The appellant was acquitted of one specification of assault consummated by a battery in violation of Article 128, UCMJ, 10 U.S.C. § 928.

On 29 December 2015, this court set aside the findings of guilty to Charge I and Specifications 1 and 2 thereunder, and the sentence. The remaining findings were affirmed. On 10 February 2016, this court granted the appellant's motion for reconsideration solely with respect to the appellant's adultery conviction and accepted the appellant's Summary Supplemental Assignment of Error.

The appellant cited *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) and argued that his adultery conviction denied him the equal protection of the law in violation of the Due Process clause of the Fifth Amendment to the United States Constitution. In accordance with our holding in *United States v. Hackler*, 2016 CCA LEXIS 168 (N.M.Ct.Crim.App. Mar. 16, 2016), we summarily reject the assigned error.

The findings of guilty to Charge III and its sole specification, adultery in violation of Article 134, UCMJ, are affirmed. The findings of guilty to Charge I and Specifications 1 and 2 thereunder, and the sentence are set aside. The record is returned to the Judge Advocate General for remand to an appropriate convening authority with a rehearing authorized.

For the Court

R.H. TROIDL  
Clerk of Court

