

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

**Before
J.R. PERLAK, J.K. CARBERRY, M.D. MODZELEWSKI
Appellate Military Judges**

UNITED STATES OF AMERICA

v.

**EDUARDO MUNOZ
STAFF SERGEANT (E-6), U.S. MARINE CORPS**

**NMCCA 201100517
GENERAL COURT-MARTIAL**

Sentence Adjudged: 9 June 2011.

Military Judge: LtCol Stephen F. Keane, USMC.

Convening Authority: Commanding General, Marine Corps
Recruit Depot/Western Recruiting Region, San Diego, CA.

Staff Judge Advocate's Recommendation: LtCol S.M. Sullivan,
USMC.

For Appellant: CAPT Johnathan W. Bryan, JAGC, USN.

For Appellee: CAPT M. Claudette Wells, JAGC, USN; LT
Benjamin J. Voce-Gardner, JAGC, USN.

28 February 2012

OPINION OF THE COURT

**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 military judge sitting as a general court-martial convicted the appellant, consistent with his pleas, of failing to obey a lawful order, violating a lawful general order, wrongful sexual contact, and obstruction of justice in violation of Articles 92, 120, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 892, 920, and 934. The military judge sentenced

the appellant to confinement for seventeen months, reduction to pay grade E-1, forfeiture of all pay and allowances, and a bad-conduct discharge. Pursuant to a pretrial agreement, the convening authority (CA) approved the sentence as adjudged, but suspended all confinement in excess of nine months.

The appellant's sole assigned error is that, pursuant to *United States v. Fosler*, 70 M.J. 225 (C.A.A.F. 2011), the sole specification of Charge V (obstruction of justice) fails to state an offense because the specification does not allege the terminal element of Article 134. We disagree.

The specification reads:

In that Staff Sergeant Eduardo Munoz, United States Marine Corps, while on active duty, did at or near Camp Pendleton, on or about 10 December 2010, wrongfully impede an investigation in the case of sexual assault allegations against himself, by asking potential witnesses their knowledge of the investigation and asking them to lie should they be questioned.

The appellant's case is significantly distinguishable from *Fosler* because: (1) the appellant did not challenge the adequacy of the specification at trial; (2) he pled guilty to the specification; (3) the appellant stipulated that he asked a recruit to lie and that his conduct was prejudicial to good order and discipline;¹ (4) the military judge ensured the appellant understood the terminal element of the offense; and, (5) during the providence inquiry, the appellant stated that, as a drill instructor, he asked three recruits to lie for him during an investigation into his own misconduct, and admitted that his conduct was both prejudicial to good order and discipline and of a nature to bring discredit upon the armed forces.² Accordingly, we resolve the assigned error adverse to the appellant. See *United States v. Hackler*, __ M.J. __, No. 201100323, 2011 CCA LEXIS 371 (N.M.Ct.Crim.App. 22 Dec 2011).

¹ Prosecution Exhibit 1, at 12-14.

² Record at 51-54.

After careful consideration of the record and the pleadings of the parties, we affirm the findings and the sentence as approved by the convening authority.

For the Court

R.H. TROIDL
Clerk of Court