IN THE UNITED STATES COAST GUARD COURT OF CRIMINAL APPEALS

UNITED STATES, Appellee	)	3 November 2017
	)	U.S. ANSWER AND BRIEF
	)	Dkt. No. 1448 Case No. CGCMG 0352 Panel No. 26
v.	)	
Anthony J. LIVINGSTONE, First Class Cadet, U.S. Coast Guard, Appellant	)	Tried at Norfolk, VA by a general court-martial convened by Superintendent, Coast Guard Academy on 23 June, 29 July, and 26 October to 4 November 2016

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES COAST GUARD COURT OF CRIMINAL APPEALS

The United States, through undersigned counsel, submits this Answer and Brief in accordance with Rule 15 of this honorable Court's Rules of Practice and Procedure.

STATEMENT OF THE CASE

A general court-martial consisting of members convicted Appellant, contrary to his pleas, of two specifications under Article 120, UCMJ, 10 U.S.C. § 920 (2012) for sexually assaulting Cadet MF and Cadet RD, one specification under Article 127, UCMJ, 10 U.S.C. § 927 (2012) for extorting Cadet MF, and two specifications under Article 133, UCMJ, 10 U.S.C. § 933 for committing conduct unbecoming an officer in sending harassing and intimidating messages to Cadet MF and Cadet RD. R. at 1258. To address a defense motion alleging unreasonable multiplication of charges, the military judge conditionally dismissed Charge II, Specification 1 (alleging extortion as to Cadet MF). R. at 1322. The members sentenced Appellant to eight years

of confinement and a dismissal. R. at 1357. The convening authority approved the adjudged sentence. Convening Authority's Action of 15 Feb 17. Appellant's case now comes before this court for review under Article 66, UCMJ, 10 U.S.C. § 866.

STATEMENT OF FACTS[1]

A. Facts related to Cadet MF.

1. Sexual assault of Cadet MF.

In the fall of 2013 Cadet MF was a fourth class cadet at the Coast Guard Academy. R. at 387. Appellant was a third-class cadet who was in her company. R. at 393. Fourth class cadets were prohibited from being friends with upperclassmen; those who violated the rules against fraternization could be disenrolled from the Academy. R. at 391. Despite this prohibition, Cadet MF and Appellant developed a friendship, which developed into flirtation. R. at 396-7. Appellant and others had advised Cadet MF that the prohibition against third and fourth class cadets dating was not strictly enforced. R. at 398. After Thanksgiving break, Cadet MF and Appellant had consensual sex in his room. R. at 399. Cadet MF then became nervous about breaking the rules. *Id*. She texted Appellant. to tell him she wanted to discontinue the relationship until it was allowed. R. at 401. Appellant replied he didn't think that was necessary and was "really, really adamant about talking about it in person." R. at 401. Cadet MF went to Appellant's room as he requested. R. at 404. Appellant tried to hug and kiss her, but Cadet MF rebuffed his advances by turning her head, crossing her arms, and saying "no." R. at 405. Appellant then picked up Cadet MF and threw her onto his bed R. at 406. Appellant got on top of Cadet MF, took off her pants and underwear, pinned her shoulders, pried her legs apart, and put his penis in her vagina. R. at 48-409.

2. **Appellant's subsequent communications with Cadet MF**.

[1] Facts related to Assignment of Error II are discussed separately under seal.

After this incident, Cadet MF avoided Appellant. 411-412. Appellant, however, began sending Cadet MF messages on Snapchat, a messaging app, halfway through the spring semester of 2014. The messages consisted of photos of Cadet MF and upper-class males together, working on homework, with a text caption that said "saving this for your frat file" or "it looks like frat to me." R. at 414. Cadet MF felt threatened by those messages, and felt Appellant was "collecting things that I had done wrong to use against me in the future." R. at 414. These were the only types of messages Appellant sent Cadet MF during this time period. R. at 530. Cadet MF messaged Appellant to stop, and then eventually blocked him on the app so she would no longer get his messages. R. at 415. When, two years later, Cadet RD reached out to Cadet MF to encourage her to speak out about what Appellant had done, Cadet MF was still "nervous" because Appellant's Snapchat's indicating he was going to bring forward "all this stuff on me" had "scared [her] to death." Cadet MF explained that she did not report what had happened due to her fear of getting in trouble, which was heightened by Appellant's messages, and her fear of embarrassment. R. at 517. At trial, Appellant denied sending a photo of Cadet MF with other male classmates, and claimed he had "sent her a photo of my face with that caption 'looks like frat to me.'" R. at 1001. He claimed he sent it because he was jealous. R. at 1002.

B. Facts related to Cadet RD.

1. Sexual assault of Cadet RD

Cadet RD met Appellant in a math class during her third year at the Coast Guard Academy. R. at 576. They began dating in the spring semester of her third class year. R. at 577. Their dating relationship included sex. R. at 578. Although they broke up after a short while, they continued to hang out and have sex. R. at 579. Over the next year and a half, the two had periods where they were just friends and not having sex, periods where they were just friends and having

sex, and periods where they were dating and having sex. R. at 583. In August or September of their first-class year (2015), Appellant told Cadet RD that he had a girlfriend and that he wanted to make her a "serious, serious girlfriend" starting Columbus Day weekend. R. at 596. This meant Appellant was going to stop having sex with Cadet RD. R. at 596-7. Although Cadet RD was initially upset, the two continued to spend time together and have sex as before. R. at 597.

On September 25, 2015, Cadet RD returned to a near-empty barracks hall after spending the day with her parents during Parents' Weekend. R. at 603. Upon returning, she found a Facebook message from Appellant asking whether she was at the barracks that evening. R. at 607. Cadet RD told him she was, but that she was very tired. R. at 608. Appellant invited Cadet RD to his room to "cuddle," which Cadet RD interpreted as laying down and holding one another. R. at 609. Appellant then came to Cadet RD's room to ask her to go up to his room. R. at 611. They walked together to his room. R. at 611. Cadet RD lay on the bed, wearing shorts and a T-shirt, and eventually Appellant lay down next to her, and they cuddled and talked until she fell asleep. R. at 614. Cadet RD awoke to Appellant putting his hand in the front of her pants. R. at 615. Annoyed, she took his hand out and told him to stop. R. at 616. About 45 seconds to a minute later, Appellant tried again, with Cadet RD reacting in the same way. R. at 616-7. A minute later, Appellant tried again to put his hand down Cadet RD's pants, with her reacting the same way. R. at 617. Cadet RD asked Appellant to switch sleeping positions, and tried to go back to sleep. R. at 621. Appellant tried three or four more times to put his hand down the front of Cadet RD's pants, with Cadet RD telling him to stop. R. at 621. She fell asleep, and awoke to Appellant pulling down her shorts. R. at 621. Appellant then put his penis in her vagina. R. at 622.

Appellant had previously tried to get Cadet RD "in the mood" for sex in a similar way. R.

at 618. Cadet RD would communicate her consent by turning towards him, kissing him, and engaging in foreplay. R. at 619. On occasions when she did not want to engage in sex, she would "tell him to stop, maybe he'd try one more time and I'd tell him to stop again and then he'd get frustrated and just kind of roll over and was like, okay." R. at 619.

On this occasion, when Appellant began having sex with her, Cadet RD told him "I didn't like this and it felt weird." R. at 623. Appellant did not respond and continued penetrating her. R. at 624. Appellant then asked if he could "have it from the back," and Cadet RD replied "Mmmhmm. R. at 625. She then turned around so that her hands were under her and her legs were perpendicular to the bed. R. at 625. Appellant tried to kiss Cadet RD, but she said no. R. at 626. After Appellant ejaculated, Cadet RD testified he seemed angry with himself and apologized to her. R. at 627. Cadet RD then waited for Appellant to fall asleep to leave Appellant's room. R. at 627.

Appellant provided a different version of events. He testified that on September 25, 2015, Cadet RD came to his room, lay down in his bed, and he initiated touching her. R. at 1020. Appellant states Cadet RD did not tell him to stop, but rather said, "you're going to have to do all the work tonight." R. at 1021. He testified that Cadet RD participated in sex and never gave him any signs that she wanted to stop. R. at 1022. She did say "I don't feel anything" when he asked her whether she liked oral sex, and "go ahead, I'm numb" when he asked if she wanted him. R. at 1023. However, they were kissing and making eye contact as usual. R. at 1024. When he asked if he could "have it from the back now," Cadet RD responded "mm-hmm" and then changed positions to all-fours. R. at 1024. Appellant testified he and Cadet RD then went to sleep in his bed, and that he awoke when her alarm went off at 0400 the following morning and she departed. R. at 1026.

2. Appellant's subsequent communications with Cadet RD.

On the 26th and 27th of September, 2015, Appellant reached out to Cadet RD via text and email asking to speak with her. R. at 637. On September 27, 2015, Appellant emailed Cadet RD and asked her to talk "I know things between us are as bad as they have ever been. I've fucked up." P.E. 3. Cadet RD agreed to meet him in his room, where she told him she didn't like what had happened and she didn't want it, and Appellant apologized. R. at 639. Appellant testified that the conversation in his room had concerned the state of their relationship, and that he had apologized for putting sex before their friendship. R. at 1031. On September 30, 2015, Appellant texted Cadet RD, saying, "I feel horrible [Cadet RD]. I wish more than anything there was a way I could fix this. . . . All I can say is I hope no one ever hurts you, deceived you, and disrespected you like I have. . . . Do you hate me?" P.E. 6 at 2. She replied, "yes, you're a rapist." R. at 641. On October 7, 2015, Cadet RD advised Appellant that she "might be reporting [Appellant], Appellant replied with a long message, that included statements of, "I hate myself," "I deserve this," "I'm truly sorry for what I've done," and,

> "My hands started shaking when you sent me this message this morning because I know, should you make an unrestricted report, my career is over. If this is what you want then I understand. I hope you can have peace again one day because I never will knowing I've hurt you. I hope someone I am able to finish my time here if you'll allow it.

P.E. 6 at 2. Appellant also admitted "I feel like shit. Ive deeply harmed someone I care about. I am going to counseling as well because I need to understand and stop my problem." P.E. 6 at 3. Appellant testified that by "problem" he meant "having casual sex with [Cadet RD] but also dating a girl who was in Florida and I realized that was not upstanding." R. at 1034.

On October 8, 2015, Cadet RD told Appellant that he could either leave the Academy or she would report him. Appellant responded on October 9 with the following message:

> I did not sexually assault you. Dropping out as a firstie is not an option. We've signed a contract after that recommitment ceremony 2/c summer and cannot drop out for no reason. So should you choose to make an unrestricted report, i am going to fight it with every ounce of my being. Because after long and hard and painstaking deliberation I recall those events that night lucidly and i know, like i know my own name, that did not rape you. I recall you saying "go ahead, im numb", helping me take your clothes off, kissing me, and then willing changed positions with me. These are the facts. And should i be investigated these are the facts that i will relay to the investigator. In addition, this is merely a he said he said she said matter given that there are no witnesses and no evidence. Which according to the legal counsel i have consulted, will result in nothing because legal cannot make a case out of he said she said circumstances. **Other issues will be dug up in the investigation, like your inappropriate relationship and fraternization with Wesley.** Once the case is dropped, because it should be due to the fact i did not commit a crime nor is there evidence to prove the false allegations against me**, we will be masted for sexual misconduct in the barracks** and our futures left up to Capt Rivera. **The embarrassing details of our sex life and every dirty gross bit of our relationship will be dug up and publicized**. I am sorry for what has transpired between us. It is unfortunate, but at the end of the day i am innocent and your attempts to intimidate me into submission are unfounded and wrong. I am not writing this to discourage you from going forward, i am merely pointing out the facts. **In additional i will bring forth my own case of sexual assault by you on me the evening of mike francos incident that you came back drunk and began biting on me and grabbing me.** Ricky wad witness to that. From here on our if you wish to speak with me it must be through my victim advocate.

P.E. 6 at pg. 5 (emphasis added). Cadet RD responded "OK." *Id.* On 10 October, 2015, Appellant messaged his brother, discussing his concern that Cadet RD was going to report him for sexual assault. He stated that he had messaged her, and that she had responded "OK." He told his brother, "I think I sufficiently scared her off but im just not sure. Its still eatinf at me" [sic]. P.E. 5 at 1-2.

Cadet RD waited a week after this message to report Appellant's assault of her. R. at 650. She testified,

> I was thinking about it for a while, just because one, I now felt that even if I did come forward nothing would happen. I'd be putting another person's career on the line, like, kind of had nothing to do with this, and I felt like I was going to risk my career as well, because usually when you get a first class offense as a firsty you don't graduate.

R. at 650. By "another person," she was referring to a Coast Guard officer, with whom she had had a prohibited relationship. Cadet RD also received counseling from the chaplain between the time of the incident and the time of her report. R. at 642.

3. Credibility of Cadet R.D.

At trial, Cadet RD testified that the first person she told about the incident was her best friend, Cadet SC. R. at 629. She admitted she had told CGIS that her first report had been to a civilian friend instead R. at 658, 675. She also admitted she had told her civilian friend to untruthfully tell CGIS that *she* had been the first person Cadet RD told about the assault. R. at 754. Cadet RD explained that she had done this to prevent her cadet friend from getting in trouble for failing to report. R. at 660. Defense elicited information that Cadet RD had been investigated at the Coast Guard Academy for cheating and ultimately disciplined for using poor judgment in inappropriately using group homework assignments as references during a take home-exam. R. at 683, 737. Defense also elicited that Cadet RD had initially denied having a relationship with the Coast Guard officer, R. at 686, and that during her captain's mast, she had stated her relationship with Appellant was for ten months. R. at 692. Cadet RD explained the latter statement by stating had added the total number of months in which she had considered herself and Appellant to be "dating," which was ten months, despite the fact that their entire relationship including non-dating periods spanned 18 months. R. at 750-752.

Cadet SC, to whom Cadet RD had made an initial report, testified that Cadet RD had spoken to her the morning after the incident. R. at 770. Cadet RD's initial report, as recounted by Cadet SC, was largely consistent with Cadet RD's trial testimony, although RD provided additional details at trial. R. at 771. Cadet SC was also under the impression that Cadet RD had told yet another cadet about the assault before her. *Id*.

4. Credibility of Appellant.

Appellant admitted on cross-examination that in the last message he sent to Cadet RD, he, lied about having spoken to legal counsel and received certain advice, because he hadn't yet done so when he sent the message. R. at 1057. Appellant also admitted he lied to his current girlfriend about the status of their relationship in September 2015. R. 1075. Knowing that CGIS would search his email addresses, on October 21, 2015, Appellant made a chronology of what had occurred, according to him, and emailed it to himself. R. at 1080. That chronology was admitted into evidence and differed in some respects from Appellant's trial testimony. PE 13.

C. Testimony about victim behavior.

Major Ryan Chiarella, a forensic psychiatrist, testified as to common behaviors in persons who have been sexually assaulted by friends or acquaintances. These included delayed reporting, and not understanding that what had happened was a sexual assault. R. at 834-835. Dr. Chiarella also explained that while there was no typical response to sexual assault, some victims "literally shut down," going into a "disasociative state" where "their body is there but their mind is not present in the moment." R. at 839. This response is more common than fighting back, especially when the perpetrator is an acquaintance. R. at 842-43 Additionally, victims have little control over their response to a traumatic instances. R. at 841.

Other facts necessary to resolve the errors assigned are discussed below.

ERRORS

I. THE EVIDENCE WAS FACTUALLY SUFFICIENT TO PROVE BEYOND A REASONABLE DOUBT THAT APPELLANT SEXUALLY ASSAULTED CADET RD.

A. Standard of review.

This Court has a statutory mandate to conduct de novo review of both the legal and

factual sufficiency of a conviction. Art 66(c), UCMJ, 10 U.S.C. § 866(c). *United States v. Washington*, 57 M.J. 394, 399 (C.A.A.F. 2002).

B. Factual and legal sufficiency.

"The test for legal sufficiency is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *United States v. Gutierrez*, 73 M.J. 172, 175 (C.A.A.F. 2014). The appellate question for this legal sufficiency test is whether "a reasonable factfinder reading the evidence one way could have found all the elements of the offense beyond a reasonable doubt." *Id*. The test for a factual sufficiency review by the lower courts is "whether, after weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses, the members of the service court are themselves convinced of appellant's guilt beyond a reasonable doubt." *United States v. Oliver*, 70 M.J. 64, 68 (C.A.A.F. 2011). "'[R]easonable doubt' is not intended as fanciful or ingenious doubt or conjecture, but an honest, conscientious doubt suggested by the material evidence or lack of it in this case.... The proof must be such as to exclude not every hypothesis or possibility of innocence, but every fair and rational hypothesis except that of guilt." *United States v. Loving*, 41 M.J. 213, 281 (C.A.A.F. 1994). In conducting this review, this Court takes "a fresh, impartial look at the evidence," applying "neither a presumption of innocence nor a presumption of guilt" to "make its own independent determination as to whether the evidence constitutes proof of each required element beyond a reasonable doubt." *Washington*, 57 M.J. at 399.

C. The government proved beyond a reasonable doubt that Appellant sexually assaulted Cadet RD.

1. Offense of sexual assault.

In order to prove its case, the government was required to show, beyond a reasonable doubt, that Appellant (1) committed a sexual act upon Cadet RD by penetrating her vulva with his penis, and that (2) he did so by causing bodily harm to Cadet RD. 10 U.S.C. § 920(b)(1)(B), Article 120(b)(1)(B), UCMJ, MCM Pt. IV, ¶ 45.b(3)(b). Appellant agrees that sexual contact occurred and contests only the second element. Bodily harm is defined in the statute as "any offensive touching of another, however slight, including any nonconsensual sexual act or nonconsensual sexual contact." Article 120(g)(3). The term "consent" is defined as

> a freely given agreement to the conduct at issue by a competent person. An expression of lack of consent through words or conduct means there is no consent. Lack of verbal or physical resistance or submission resulting from lack of force, threat of force, or placing another person in fear does not constitute consent. A current or previous dating or social or sexual relationship by itself…shall not constitute consent.

Article 120(g)(8), UCMJ. Article 120(f) permits an accused to raise "any applicable defenses available under this chapter or the Rules for Court-Martial [sic]." R.C.M. 916(j), in turn, explains that:

> It is a defense to an offense that the accused held, as a result of ignorance or mistake, an incorrect belief of the true circumstances, such that, if the circumstances were as the accused believed them, the accused would not be guilty of the offense . . . [i]f the ignorance or mistake goes to [an] element requiring only general intent or knowledge, the ignorance or mistake must have existed in the mind of the accused and must have been reasonable under all the circumstances.

The government bears the burden of proving beyond a reasonable doubt that the defense did not exist. R.C.M. 916(b)(1).

2. The government proved beyond a reasonable doubt that Cadet RD did not consent.

The question at issue is whether the government proved that Cadet RD did not freely agree to have sex with Appellant, and that his conduct therefore was committed by causing her

bodily harm. Cadet RD testified to the words and conduct she used to express her lack of consent. Appellant tried six times to put his hand in Cadet RD's pants. R. at 611-622. Each time, Cadet RD expressed her non-consent by saying "no" or "stop," removing his hand, or both. *Id.* She awoke to Appellant pulling down her shorts and starting to have sex with her. There were no affirmative expressions of consent; instead she told Appellant she "didn't like this," and that "it feels weird." R. at 624, and then changed positions at Appellant's request. R. at 625. She testified was that she did not consent to having sex with Appellant, and had behaved in this way in hope of having it be over sooner. R. at 625. Even Appellant testified that Cadet RD was not responsive to the sexual activity, testifying that he heard her say, "I don't feel it" and that she was "numb," which were "uncharacteristic" responses compared to previous encounters with Cadet RD. P.E. at 2.

3. The government proved beyond a reasonable doubt that Appellant did not have a reasonable mistake of fact as to Cadet RD's consent.

Appellant contends the government failed to prove beyond a reasonable doubt that he was not reasonably mistaken as to Cadet RD's consent. App Br. at 21-22. However, the evidence shows that any mistake he now claims was not honest and reasonable under the circumstances. The mistake was not reasonable, because he was on notice through Cadet RD's words and behavior that she did not consent. The mistake was not honest because Appellant's subsequent apologies demonstrate a consciousness of guilt—a knowledge that what he did was wrong because Cadet RD did not consent. Despite evidence attacking the credibility of both Cadet RD and Appellant, the members found, as this court should, that the government proved its case beyond a reasonable doubt.

Cadet RD testified that she had refused Appellant's efforts to put his hand down her shorts at least six times before falling asleep. R. at 616-621. She awoke to Appellant pulling down her

pants and penetrating her with his penis. R. at 622. She told Appellant "I don't like it" and "it feels weird," R. at 623. Although she made the ambiguous noise "mm-hmm" and then shifted positions when he requested it, her previous words and conduct, and lack of participation (including refusing kissing) should have given Appellant notice that she did not consent to the sexual act. R. at 625-626.

Appellant's subsequent apologies show that he was not actually mistaken about Cadet RD's consent. Cadet RD testified that after he ejaculated, Appellant seemed angry with himself and apologized to her. When confronted by Cadet RD, who told him she didn't like what happened and didn't want it, Appellant again apologized. R. at 639; R. at 627. Appellant sent emails and messages saying that he "felt horrible," "fucked up," and "hope no one ever hurts you, deceived you, and disrespected you like I have." P.E. 3, P.E. 6 at 2. Even after Cadet RD called him a rapist and said she was planning to report him, he texted her, writing: "I hate myself," "I deserve this," and "I'm truly sorry for what I've done." P.E. 6 at 2.

Appellant testified to a different version of events. He testified that although Cadet RD expressed reluctance by saying "I'm numb" and "you're going to have to do all the work tonight," she never said "no" to any act, and instead kissed him and made eye contact during sex. R. at 1021-24. Despite trial defense counsel's efforts to discredit Cadet RD by showing she had misled CGIS in order to protect her cadet friend, that she hadn't initially been forthcoming with CGIS about the extent of her prohibited relationship, that her initial reports diverged somewhat from her trial testimony, and that she had once been the subject of an investigation about cheating, defense could not overcome the evidence supporting Cadet RD's testimony. R. at 660, 674, 737, 771. Appellant argues this Court should conclude Cadet RD was inventing the allegations in order to get back at Appellant for discontinuing their relationship. App. Br. at 24.

But the government showed that by coming forward, Cadet RD had risked expulsion from the academy, and actually did receive non-judicial punishment for her misconduct with Appellant and with the Coast Guard officer, issues that would have never been discovered but for her report. R. at 681. Appellant's own credibility came into serious question, with the government demonstrated that he lied to Cadet RD about whether he'd spoke to legal in an effort to "scare" her away from reporting, and that he had created a self-serving chronology of events which he emailed to himself twenty-six days after the assault. R. at 1057, and P.E. 13. And of course, Appellant's version of events claiming his remorse was due to unfaithfulness to his girlfriend is incongruent with the actual content of his series of apologies, and when those apologies were not accepted, the series of threats.

By demonstrating beyond a reasonable doubt both that Cadet RD did not consent to sex, and that Appellant did not have an honest and reasonable mistaken belief that she did, the government proved its case as to Charge I, Specification 2, beyond a reasonable doubt. The members had all of the evidence set out above, as well as the Military Judge's instructions which recited the statutory definition of consent, including its statement that a current or previous dating relationship by itself does not constitute consent, and found Appellant guilty. The specification is legally and factually sufficient, and this court should affirm the finding of guilty.

II. THE MILITARY JUDGE CORRECTLY RULED ON ADMISSIBILITY OF THE EVIDENCE UNDER M.R.E. 412[2]

III. THE EVIDENCE WAS FACTUALLY AND LEGALLY SUFFICIENT TO PROVE BEYOND A REASONABLE DOUBT THAT CADET 1/C LIVINGSTONE SENT ELECTRONIC MESSAGES TO CADET MF, AND THAT HIS CONDUCT WAS UNBECOMING OF AN OFFICER AND GENTLEMAN.

[2] Response filed separately under seal.

A. Factual Sufficiency.

For a discussion of the law and burdens applicable to this assignment of error, see *supra* at I.A and B.

B. Conduct unbecoming an officer encompasses a wide range of conduct which compromises a person's standing as an officer.

To prove its case as to Charge III, Specification 1, the United States had to prove beyond a reasonable doubt that (1) Appellant did certain acts, specifically, disgracefully and dishonorably communicating to Cadet MF, who was a witness to his own misconduct, messages of a harassing and intimidating nature, including electronic communications containing photos of [Cadet MF] with senior cadets, and the words "looks like frat to me," or words or communications to that effect, and (2) that, under the circumstances, the act constituted conduct unbecoming an officer and a gentleman. Charge Sheet, MCM Pt. IV ¶ 59.b.

The Manual for Courts-Martial explains that conduct unbecoming an officer includes conduct which "in dishonoring or disgracing the officer personally, seriously compromises the person's standing as an officer." MCM. ¶ 59.c.(1). Examples of this offense set out by the President include:

> knowingly making a false official statement; dishonorable failure to pay a debt; cheating on an exam; opening and reading a letter of another without authority; using insulting or defamatory language to another officer in that officer's presence or about that officer to other military persons; being drunk and disorderly in a public place; public association with known prostitutes; committing or attempting to commit a crime of moral turpitude; and failing without cause to support one's family.

MCM. ¶ 59.c.(3). In *United States v. Lofton,* 69 M.J. 386, 388 (C.A.A.F. 2011), the Court of Appeals for the Armed Forces (CAAF) found legally sufficient a conviction of conduct unbecoming an officer for an officer who made sexual comments to an enlisted woman and called her in order to establish a personal relationship. Although the woman was not personally

offended by the comments, and was not personally intimidated by them, she did think they were inappropriate and lost respect for the officer. *Id.* at 390. CAAF found that "we have no doubt that Appellant's actions disgraced him personally and as an officer such that they compromised his fitness to command and successfully complete the military mission." *Id.* In *United States v. Ashby,* 68 M.J. 108, 118, CAAF found that an officer could be found guilty for conduct unbecoming an officer when an officer he took steps to impede a foreign criminal investigation into fatal aircraft accident by concealing a videotape of the flight and providing it to another officer who destroyed it.

Appellant cites several Court of Criminal Appeals cases for the premise that minor misconduct should not be charged under Article 133. In *United States v. Shober,* 26 M.J. 501, 502-3 (A.F C.M.R. 1986), the Air Force Court of Military Review found that taking consensual nude photos which were not used for any illicit purpose was not conduct unbecoming an officer, but having sex with a subordinate civilian employee openly was, because it constituted "sexually exploiting" her. In *United States v. Clark,* 15 M.J. 594, 596, (A. C. M. R. 1983), the court set aside convictions under Article 133 for being 15 minutes late to formation, and for failing to obey an order to repair, but upheld a conviction under that article for desertion. Appellant also cites *United States v. Guaglione,* 27 M.J. 268, 271 (C.M.A. 1988), where the court found the accused did not commit conduct unbecoming an officer when he entered a legal house of prostitution while touring the city of Frankfurt with some enlisted soldiers. There was no evidence the accused had engaged in sexual acts, had been familiar with the enlisted persons he was with, or that he did this conduct while in uniform. *Id.*

C. The evidence is factually and legally sufficient to demonstrate that Appellant's conduct disgraced him personally, thus compromising his standing as an officer.

"An officer's conduct that disgraces him personally or brings dishonor to the military profession affects his fitness to command the obedience of his subordinates so as to successfully complete the military mission. That is the gravamen of the offense Congress proscribed in Article 133." *United States v. Forney*, 67 M.J. 271, 275 (C.A.A.F. 2009). Appellant argues that the evidence is legally and factually insufficient to show his conduct was "unbecoming." But the evidence presented demonstrated that his conduct disgraced him and compromised his standing as an officer.

In comparison to the cases Appellant cites, Appellant's conduct was not minor, in the nature of taking consensual, private nude photos or being 15 minutes late to physical training. Rather, he engaged in conduct that disgraced him as an officer, more similarly to the appellant in *Lofton.* Cadet MF testified that within the structure of the Coast Guard Academy, Appellant, a third-class cadet, was supposed to be a "role model" to fourth-class cadets such as Cadet MF. R. at 388. Role Models are supposed to "take the fourth class and help them make the transition from Swab Summer into the school year and make sure that they have everything they need." R. at 389. The government demonstrated that Cadet MF was a witness to a crime committed by Appellant. R. at 404 to 409. Evidence was presented that months later, he sent Cadet MF photographs of herself with upperclass male cadets with captions such as "looks like frat to me," or "for your frat file." R. at 414. These messages resulted in Cadet MF being afraid that if she reported Appellant's misconduct, he would try to get her in trouble. R. at 414, 517.

Appellant correctly cites *United States v. Diaz,* 69 M.J. 127, 136 (C.A.A.F. 2010) in that an accused's motives are relevant to a charge of Article 133. In that case, the accused was an officer who released classified government information with the honorable motive of fulfilling his responsibilities as a judge advocate. CAAF found that the military judge abused his

discretion by suppressing evidence of his motive. Unlike Diaz, Appellant had ample opportunity to explain his motive at trial. Also unlike Diaz, whose actions might have been seen as "foolish or inappropriate" but not "unbecoming or dishonorable" under the circumstances, neither the motives Appellant admitted nor the ones the fact-finder concluded were present were honorable. Even if a fact-finder were to believe Appellant that he simply intended to express jealousy, given his position as a "role model" for Cadet MF as a fourth-class cadet in the company, it is not difficult to conclude he acted disgracefully in highlighting these photos of Cadet MF with upperclass cadets, indicating he was saving evidence of misconduct for future use, whether to prevent her from reporting his misconduct or to retaliate against her for asking to delay their relationship, rather than counseling or helping her as a subordinate, or even reporting the suspected misconduct immediately. This conduct meets the standard of "cruelty" described in MCM Pt. IV ¶ 59.c, and causes loss of confidence in the officer by both an outside observer and by Cadet MF, who, rather than trusting an upperclassman "role model" felt "scared to death" by his comments. R. at 414. Even accepting for purposes of argument Appellant's version, there is no innocent explanation or motive when, in the uniquely pressurized environment of a service academy, an upper class cadet sends a message to a fourth class cadet in his company indicating she has engaged in an inappropriate, and punishable, relationship with himself.

Yet the conduct is even more clearly disgraceful and unbecoming because the fact-finders properly found Appellant guilty of sexually assaulting Cadet MF prior to the exchange of messages. Like in *Ashby,* conduct appearing to intimidate or frighten a crime victim reflect poorly on Appellant as an officer and discredit the Coast Guard. 68 M.J. at 119. In this context, the messages sent to Cadet MF appear lawless, unjust, cruel, and cowardly—precisely the type of behavior that "falls below the level of conduct expected for officers and seriously exposes him

to public opprobrium." *United States v. Rogers*, 54 M.J. 244, 256 (C.A.A.F.2000) (quoting William Winthrop, *Military Law and Precedents* 711–12 (2d ed.1920)).

The government proved beyond a reasonable doubt that Appellant committed conduct unbecoming an officer in violation of UCMJ Article 133 when he sent these messages to Cadet MF. This court should be convinced of the factual and legal sufficiency of this conviction.

IV. EVIDENCE WAS LEGALLY AND FACTUALLY SUFFICENT TO PROVE BEYOND A REASONABLE DOUBT THAT CADET I/C LIVINGSTONE SENT ELECTRONIC MESSAGES TO CADET RD AND THAT HIS CONUDCT WAS UNBECOMING AN OFFICER AND GENTLEMAN.

A. Legal and factual sufficiency.

For a discussion of the standard of review and applicable law related to factual and legal insufficiency claims, see *supra* at I.A and B.

B. Conduct unbecoming an officer encompasses a wide range of conduct which compromises a person's standing as an officer.

For a discussion of the law related to Article 133, Conduct Unbecoming an Officer, see *supra* at III.B.

C. The evidence is factually and legally sufficient to demonstrate that Appellant's conduct disgraced him personally, thus compromising his standing as an officer.

As discussed in III.C, supra, sending messages to Cadet RD was not minor misconduct of the sort that cannot be considered "unbecoming" under Article 133. After Cadet RD stated that she would report Appellant for sexual assault, Appellant sent her a lengthy text message, in which he denied sexually assaulting Cadet RD, and also:

- Falsely claimed he had spoken to a lawyer who told him that "legal cannot make a case out of he said she said circumstances."
- Told her that "other issues will be dug up in the investigation, like your

inappropriate relationship and fraternization with Wesley."

- Told her" "We will be masted for sexual misconduct in the barracks."
- Told her: "the embarrassing details of our sex life and every dirty gross bit of our relationship will be publicized."
- Promised to "bring forth my own case of sexual assault by you on me."

Despite claiming that he did not intend to discourage her from reporting, in a message sent to his brother the following day, Appellant said "I think I sufficiently scared her off." P.E. 5 at 1-2. The evidence showed that the message conveyed by Appellant, including false information, was designed to frighten and discourage a fellow cadet who wanted to come forward as a witness to a crime Appellant had committed. Unlike in *Diaz,* 69 M.J. at 136, Appellant's motives were not "foolish or inappropriate," but rather, they were "unbecoming and dishonorable," indeed calculated and intentional, under the circumstances: Appellant committed a crime, and then not only described some potential negative circumstances, but also lied about consulting with legal, and threatened to make a cross-claim against the witness, if she reported the offense.

This conduct meets the standard of "dishonesty, lawlessness, injustice and cruelty" described in MCM Pt. IV ¶ 59.b, and causes loss of confidence in the officer by an outside observer, who would have concerns about a future officer who is so devoted to his own self-preservation that he would lie, threaten to make cross-claims, and otherwise try to "scare off" a witness who intended to report a crime she had been a witness to. Had Appellant not lied to Cadet RD, had he not threatened to report her, and had he not plainly revealed his motivation of "scaring" her, the outcome might be different. But given this evidence, the government proved beyond a reasonable doubt that Appellant committed conduct unbecoming an officer when he sent the message in P.E. 5 at 1-2 to Cadet RD. Appellant's conduct as to RD "falls below the level of conduct expected for officers and seriously exposes him to public opprobrium." *United*

States v. Rogers, 54 M.J. 244, 256 (C.A.A.F.2000) (quoting William Winthrop, *Military Law and Precedents* 711–12 (2d ed.1920)). This court should be convinced of the factual and legal sufficiency of this conviction.

V. THE MILITARY JUDGE CORRECTLY INSTRUCTED THE MEMBERS ON CHARGE III.

A. Standard of Review.

The issue of whether the military judge gave the members proper instruction is a question of law, which this court reviews de novo. *United States v. Schroder*, 65 M.J. 49, 54 (C.A.A.F.2007). The related issue of which mens rea requirement applies is also reviewed de novo, using traditional rules of statutory construction. *United States v. Gifford*, 75 M.J. 140, 142–44 (C.A.A.F. 2016). Because Appellant did not object to the military judge's failure to instruct the members on a mens rea for conduct unbecoming an officer under Article 133, UCMJ, this Court reviews this issue for plain error. *United States v. Haverty*, 76 M.J. 199, 208 (C.A.A.F. 2017).

B. Military Judge's Instruction.

The military judge instructed the members as to both specifications of conduct unbecoming an officer and gentleman in violation of Article 133, UCMJ. As to Specification 1 of Charge III, he advised the members that they had to find beyond a reasonable doubt that Appellant had:

> Disgracefully and dishonorably communicate to Cadet MF, a witness to Cadet Livingstone's misconduct, messages of a harassing and intimidating nature including electronic communications containing photos of then Fourth Class Cadet MF with senior cadets and the words "looks like frat to me," or words or communications to that effect. And that under the circumstances these acts constituted conduct unbecoming an officer and a gentleman.
>
> Gentleman means both male and female commissioned officers, cadets, and midshipmen. Conduct unbecoming an officer and a gentleman means action or behavior in an official capacity which, in dishonoring or disgracing a person as an

> officer or cadet, seriously compromises the officer or cadet's character as a gentleman or action or behavior in an unofficial or private capacity which in dishonoring or disgracing the officer or cadet, personally seriously compromises that person's standing as an officer or cadet.
>
> There are certain moral attributes common to the ideal officer and perfect gentleman. A lack of which is indicated by acts of dishonesty, unfair dealing, indecency, indecorum, lawlessness, injustice or cruelty. Not everyone is or can be expected to be unrealistically high moral standards, but there is a limit of tolerance based on trust in, of the service and military necessity below which the personal standards of an officer, cadet, or midshipman cannot fall without seriously compromising the person's standing as an officer, cadet, or midshipman, or the person's character as a gentleman.
>
> This article prohibits conduct by commissioned officer, cadet, or midshipmen which, taking all the circumstances into consideration is thus compromising. Unbecoming means misbehavior more serious than slight and a material and pronounced character. It means conduct morally unfitting and unworthy rather than merely inappropriate or unsuitable misbehavior which is more than opposed to good taste or propriety….

R. at 1127-1128. The judge's instruction for Charge 3, Specification 2, related to Cadet RD, was identical, except that it described the conduct laid out in that specification.

C. This Court should not apply the analysis under *Elonis* to offenses under Article 133.

The Supreme Court and military courts have recognized Article 133 as a unique offense whose gravamen is not whether the accused committed any underlying crime, but whether the conduct meets the standard of conduct unbecoming an officer. "The primary business of the military is to fight and be ready to fight the nation's wars." *Parker v. Levy*, 417 U.S. at 743. "No question can be left open as to the right to command in the officer." *Id.* at 744. Military courts "have held on numerous occasions that conduct need not be a violation of any other punitive article of the Code, or indeed a criminal offense at all, to constitute conduct unbecoming an officer." *U.S. v. Forney,* 67 M.J. 271, 275

(C.A.A.F. 2009)(holding that possession of virtual child pornography, while constitutionally protected, still constituted the offense of conduct unbecoming an officer because such conduct disgraced the accused personally and compromised his fitness to command the obedience of his subordinates). Following this logic, it is not necessary for this court to focus on a particular mens rea requirement, but rather to inquire whether, as discussed in Assignment of Error III and IV, *supra*, the conduct at issue met the standard for conduct unbecoming an officer.

D. Even if *Elonis* were not inapplicable to offenses under Article 133, analysis of Congressional intent or under *Elonis* shows that Article 133 is a general intent crime.

1. To determine the mens rea for violation of Article 133, conduct unbecoming an officer, this Court looks first to Congressional intent.

To determine what, if any, mens rea the military judge should have stated in the member instructions, this Court must first determine the appropriate mens rea for offenses under Article 133, like this one, that do not subsume a different offense under the UCMJ. In *Elonis v. United States*, ––– U.S. ––––, 135 S.Ct. 2001, 192 L.Ed.2d 1 (2015), the Supreme Court explained that "Although there are exceptions, the general rule is that a guilty mind is a necessary element in the indictment and proof of every crime." 135 S.Ct. at 2009. Just because a statute is silent as to mens rea does not mean that a mens rea cannot be inferred. *Id.* However, courts must first look to legislative intent before inferring mens rea. *Id.* The court must construe the statute according to express or implied Congressional intent, including if Congress intended to purposefully omit a mens rea. *Gifford*, 75 M.J. at 142–44. If, however, the statue is silent regarding mens rea, and a court cannot discern the legislative intent, then the court can infer a mens rea by reading into the statute "only that mens rea which is necessary to separate wrongful conduct from otherwise

innocent conduct." *Elonis*, 135 S. Ct. at 2010.

The Supreme Court has recognized that some offenses, particularly those focused on "social betterment" or "proper care" rather than punishment, are "public welfare" offenses which require no mens rea. *United States v. Balint*, 258 U.S. 250, 252-53 (1922). While CAAF has rejected the idea that orders violations are general intent crimes because they are "public welfare offenses," it has made no such statement as to offenses under Article 133. *See Gifford*, 75 M.J. at 144.

"General intent" merely requires that an accused commit an act with knowledge of certain facts. *United States v. Caldwell*, 75 M.J. 276, 281 (C.A.A.F. 2016). As defined in *Black's Law Dictionary*, *supra* note 8, at 931, general intent involves "[t]he intent to perform an act even though the actor does not desire the consequences that result." In *Carter v. United States*, the Supreme Court held that the general intent requirement contained in a statute that criminalized the taking "by force and violence" items of value belonging to or in the care of a bank was sufficient. 530 U.S. 255, 269–70, 120 S.Ct. 2159, 147 L.Ed.2d 203 (2000). Similarly, in *Caldwell*, this Court held that a general intent mens rea was sufficient to prove maltreatment under Article 93, UCMJ. 75 M.J. at 282.

2. Congressional intent and the President's interpretation of the statute demonstrate that conduct unbecoming an officer is a general intent crime.

In 1950, Congress passed Article 133, which has remained unchanged for sixty-seven years indeed, as the Supreme Court has noted, it is has existed essentially unchanged in the military justice system since the founding of the United States. *Parker, v. Levy*, 417 U.S. 733, 745-46 (1974). In its present form, Article 133 provides: "Any commissioned officer, cadet, or midshipman who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct." 10 U.S.C. § 933. The purpose

of Article 133 is to criminalize acts that are dishonorable. The focus of Article 133, UCMJ, is the effect of the accused's conduct on his status as an officer. *United States v. Conliffe*, 67 M.J. 127, 132 (C.A.A.F. 2009). The test for a violation of Article 133, UCMJ, is "'whether the conduct has fallen below the standards established for officers.'" *Id*. (*quoting United States v. Taylor*, 23 M.J. 314, 318 (C.M.A. 1987)). A determination if the conduct charged is unbecoming of an officer includes "taking all the circumstances into consideration." MCM pt. IV, para. 59.c(2). "Such circumstances incorporate the concept of honor." *Id*. "[E]vidence of honorable motive may inform a factfinder's judgment as to whether conduct is unbecoming an officer." *Id*. The subjective motivation of an accused is relevant to a charge under Article 133, UCMJ. *United States v. Diaz*, 69 M.J. 127 (C.A.A.F. 2010). In other words, military courts have interpreted the words of the statute and the words of the President in the Manual for Courts-Martial, as requiring the accused to commit an action with knowledge that its results could be dishonorable – this is consistent with general intent.

3. Even if this Court does not rely on Congressional intent, it should determine that, like maltreatment, conduct unbecoming an officer is a general intent crime.

In *United States v. Caldwell*, CAAF held that in the context of a maltreatment offense under Article 93, UCMJ, general intent sufficiently separates lawful conduct from unlawful conduct. 75 M.J. at 281. CAAF relied on the fact that the offense required that, when viewed objectively under all circumstances, the actions of the accused were "unwarranted, unjustified, and unnecessary for any lawful purpose, and caused, or reasonably could have caused, physical or mental harm or suffering." *Id.* CAAF conclude that there is "no scenario where a superior who engages in the type of conduct proscribed under Article 93, UCMJ, can be said to have engaged

in innocent conduct." *Id.* This is because the purpose of Article 93, UCMJ is to protect the integrity of the superior-subordinate relationship. *Id.*

Likewise, in the context of conduct unbecoming an officer, the focus is whether the under the circumstances, the act constituted conduct unbecoming an officer and a gentleman. MCM Pt. IV ¶ 59.b. Such conduct, in turn is defined as conduct that, "in dishonoring or disgracing the officer personally, seriously compromises the person's standing as an officer." MCM. ¶ 59.c.(1). "An officer's conduct that disgraces him personally or brings dishonor to the military profession affects his fitness to command the obedience of his subordinates so as to successfully complete the military mission. That is the gravamen of the offense Congress proscribed in Article 133." *Forney,* 67 M.J. at 275. Like in *Caldwell,* there is no scenario where an officer who engages in conduct which is unbecoming an officer and gentleman can be said to have engaged in innocent conduct. *Caldwell,* 75 M.J. at 281. That is because the purpose of the offense is to protect the integrity of the officer corps in the military.

B. Even if there was error in the members' instruction, Appellant is not entitled to relief.

1. There was no error.

This Court "presume[s] that the panel followed the instructions given by the military judge." *United States v. Custis,* 65 M.J. 366, 372 (C.A.A.F. 2007). When the applicable mens rea is general intent, no further instruction is necessary because members can be presumed to apply general intent in their deliberations *Haverty* 76 M.J. at 208. Also, like in *Caldwell,* the military judge gave a detailed instruction that made clear that they were to consider Appellant's conduct "under all the circumstances." R. at 1127-1128. Like in *Caldwell,* the instructions can be reasonably construed to require the government to prove that Appellant knew that he was sending these particular electronic

communications to R.D. and to M.F., and that, under all the circumstances, such conduct was unbecoming an officer and gentleman. This established that Appellant had the requisite general intent mens rea. *Caldwell*, 75 M.J. at 281. Therefore, it was not error for the military judge not to provide further definition or direction on the general intent mens rea in the instructions.

2. The error was not plain or obvious.

Panel instructions are analyzed for plain error based on the law at the time of the appeal. *United States v. Harcrow*, 66 M.J. 154, 159 (C.A.A.F. 2008) (citing *Johnson v. United States*, 520 U.S. 461, 468, 117 S.Ct. 1544, 137 L.Ed.2d 718 (1997)). Still, both at the time of trial and presently, at the time of appeal, no military court has decided whether there is a specific mens rea that applies to offenses under Article 133 that do not subsume some other article. Although in *Gifford* and *Haverty*, this Court analyzed mens rea as to offenses under Article 92, the analysis in these cases is not applicable, much less dispositive, on the question of mens rea for the unique offense of conduct unbecoming an officer. Therefore, any error cannot be found plain or obvious. Although this Court had decided *Elonis* and *Gifford* at the time of the trial, no military court at the time had spoken as to what the mens rea for conduct unbecoming an officer was. Therefore, even if there was plain error, such error was not plain or obvious.

3. Even if there was plain error, this Court should affirm the findings.

In *United States v. Lopez*, CAAF adopted the Supreme Court's interpretation of the prejudice prong of the plain error test: "the appellant 'must show a reasonable probability that, but for the error, the outcome of the proceeding would have been different.'" 76 M.J. 151, 154 (C.A.A.F. 2017) (quoting *Molina-Martinez v. United States*, ––– U.S. ––––, 136 S.Ct. 1338, 1343, 194

L.Ed.2d 444 (2016)). In a recent opinion of the Army Court of Criminal Appeals, that court addressed whether there was an instructional error in the failure of the judge to give a specific mens rea instruction for a specification under Article 133. *United States v. Franks,* ___ M.J. _____ (A.C.C.A. 2017) *2017 WL 3816039.* Without specifically deciding whether there was error in not including a mens rea element in the instruction, ACCA determined that there was no prejudice based on (1) appellant being allowed to introduce evidence that his conduct was honorable; and (2) the military judge instructing that the appellant's conduct had to be "wrongful." *Id* at 10. In this case, the facts do not show that the result would have been different had the members been instructed on the appropriate mens rea. First, like in *Franks,* Appellant was allowed to present evidence that he did not intend negative consequences when sending messages to Cadet RD and Cadet MF; rather, he acted out of emotions such as jealousy and fear. Although, unlike in Frank, the military judge in Appellant's case did not instruct that the conduct had to be "wrongful," this does not change the result. Wrongful conduct is not an element of the offense as prescribed by Congress or the President. Rather, it is the effect of the conduct—that it is unbecoming an officer—that constitutes the gravamen of the offense. Even if this Court were to find a different mens rea applicable to this offense, the result would be the same. The evidence shows not only that Appellant intentionally sent electronic communications to Cadet RD and Cadet MF, which conduct was dishonorable, as is required under the general intent mens rea, but also showed that Appellant intended harm—to discourage reporting, shame, or frighten the women he sexually assaulted, which is inherently dishonorable conduct. Nothing would have changed had the military judge provided further explanation mens rea. Appellant would have still been convicted for his dishonorable conduct.

PRAYER FOR RELIEF

WHEREFORE, the United States prays that this honorable Court affirm the findings and sentence.

Respectfully submitted,

DATE: 3 Nov 2017

OHLEY.TERESA.ZAMBRANO.1266212603
Digitally signed by OHLEY.TERESA.ZAMBRANO.1266212603
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI, ou=USCG, cn=OHLEY.TERESA.ZAMBRANO.1266212603
Date: 2017.11.03 08:38:35 -04'00'

Tereza Z. Ohley
Lieutenant Commander, USCG
Commandant (CG-LMJ)
2703 Martin L. King Ave SE
Washington, DC 20593
202-372-3811
Tereza.Z.Ohley@uscg.mil

MCCLEARY.STEPHEN.P.1013993773
Digitally signed by MCCLEARY.STEPHEN.P.1013993773
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI, ou=USCG, cn=MCCLEARY.STEPHEN.P.1013993773
Date: 2017.11.03 09:22:29 -04'00'

Stephen P. McCleary
Appellate Government Counsel
Commandant (CG-LMJ)
2703 Martin L. King Ave SE
Washington, DC 20593
202-372-3734
Stephen.P.McCleary@uscg.mil

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was delivered to the Court and opposing counsel on 3 November 2017.

OHLEY.TERESA.ZAMBRANO.1266212603
Digitally signed by OHLEY.TERESA.ZAMBRANO.1266212603
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI, ou=USCG, cn=OHLEY.TERESA.ZAMBRANO.1266212603
Date: 2017.11.03 08:37:59 -04'00'

Tereza Z. Ohley
Lieutenant Commander, U.S. Coast Guard
Appellate Government Counsel
Commandant (CG-LMJ)
2703 Martin Luther King Jr. Ave. SE
Washington, D.C. 20593-7213
(202) 372-3811
tereza.z.ohley@uscg.mil