

**UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

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**UNITED STATES**

**v.**

**Staff Sergeant ANDREA L. REEVES  
United States Air Force**

**ACM 34730**

**26 September 2003**

Sentence adjudged 1 June 2001 by GCM convened at Lackland Air Force Base, Texas. Military Judge: Steven A. Hatfield.

Approved sentence: Dishonorable discharge, confinement for 3 years, forfeiture of all pay and allowances, and reduction to E-1.

Appellate Counsel for Appellant: Major Terry L. McElyea, Captain Antony B. Kolenc, and Frank J. Spinner.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Lance B. Sigmon, and Lori M. Jemison (legal intern).

Before

**BRESLIN, MOODY, and GRANT  
Appellate Military Judges**

**OPINION OF THE COURT**

**MOODY, Judge:**

The appellant was tried by general court-martial at Lackland Air Force Base (AFB), Texas. She was found guilty, in accordance with her pleas, of three specifications of violating a lawful general regulation, in violation of Article 92, UCMJ, 10 U.S.C. § 892. The appellant was found guilty, contrary to her pleas, of one specification of violating a lawful general regulation, in violation of Article 92, UCMJ, and one specification of obstruction of justice, in violation of Article 134, UCMJ, 10 U.S.C. § 934. The court-martial, consisting of officer and enlisted members, sentenced her to a dishonorable discharge, confinement for 6 years, forfeiture of all pay and allowances, and a reduction to E-1. The convening authority approved only so much of the sentence as

called for a dishonorable discharge, confinement for 3 years, forfeiture of all pay and allowances, and a reduction to E-1. The appellant submitted one assignment of error challenging the factual and legal sufficiency of the obstruction of justice charge. Finding no errors prejudicial to the appellant's substantial rights, we affirm.

The appellant was a technical school instructor at Lackland AFB. During the times alleged in the specifications, she engaged in sexual conduct with trainees, in violation of applicable lawful general regulations prohibiting unprofessional relationships between trainees and faculty. One of the trainees with whom the appellant engaged in sexual conduct was Airman Basic (AB) F. On 15 August 2002, the appellant was notified that the Air Force Office of Special Investigations (OSI) had identified her as a subject in an investigation into such unprofessional relationships. According to AB F, on several occasions beginning after the middle of August 2003, the appellant telephoned AB F at her duty location at Minot AFB, North Dakota, and told her "not to talk to OSI, not to tell them anything." This series of communications by the appellant to AB F formed the basis of the obstruction of justice offense.

The appellant now contends that the evidence is factually and legally insufficient to support her conviction for obstruction of justice. Specifically, the appellant maintains that advising AB F, who was under investigation for related offenses, to contact the Area Defense Counsel and "not to tell the OSI anything" was not unlawful.

We may affirm only those findings of guilty that we find are correct in law and fact and that we determine, on the basis of the entire record, should be approved. Article 66(c), UCMJ, 10 U.S.C. § 866(c). The test for legal sufficiency is whether any rational trier of fact, when viewing the evidence in the light most favorable to the government, could have found the appellant guilty of all elements of the offense, beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *United States v. Reed*, 54 M.J. 37, 41 (2000). Our superior court has determined that the test for factual sufficiency is whether, after weighing the evidence and making allowances for not having observed the witnesses, this Court is convinced of the appellant's guilt beyond a reasonable doubt. *Reed*, 54 M.J. at 41 (citing *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987)).

Obstruction of justice is punished under Article 134, UCMJ. The elements of the offense are: (1) That 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 prejudicial to good order and discipline or service discrediting. *Manual for Courts-Martial, United States (MCM)*, Part IV, ¶ 96(b) (2000 ed.). "[T]he overriding concern of this provision of military law is the protection of 'the administration of justice in the military system.'" *United States v. Guerrero*, 28 M.J. 223, 227 (C.M.A. 1989); *United States v. Asfeld*, 30 M.J. 917, 926

(A.C.M.R. 1990). Our superior court has held that encouraging an accomplice not to cooperate with authorities can constitute an obstruction of justice. *See United States v. Williams*, 29 M.J. 41 (C.M.A. 1989). An obstruction of justice can also be any use of bribery or intimidation to delay or prevent communication of information relating to a criminal offense to investigators. *MCM*, Part IV, ¶ 96(c).

The appellant relies upon *Asfeld* for the proposition that mere concealment of a criminal act is not in itself an obstruction of justice. In that case, the accused communicated indecent language to the victim in a telephone conversation. During that same conversation, the victim told the accused that she was going to report him, to which he replied, “Don’t report me.” The Army Court of Military Review reversed the accused’s conviction on the grounds that, as the victim had no duty to report the phone call in the first place, the accused’s efforts to dissuade her from doing so were merely to forestall discovery of his offense rather than impede the administration of justice. The court concluded that both a wrongful act and criminal intent were missing. *Asfeld*, 30 M.J. at 928. The appellant asserts that the facts of her own case are qualitatively the same. Because AB F was herself suspected of wrongdoing, she had the right under Article 31, UCMJ, 10 U.S.C. § 831, to remain silent. By advising AB F to say nothing, the appellant asserts that she was merely recommending a course of action which was legally permissible and, therefore, not wrongful within the meaning of Article 134, UCMJ.

Our superior court has explicitly not addressed the correctness of *Asfeld*. *United States v. Barner* 56 M.J. 131, 135 (2001). However, unlike that case, in the case *sub judice* there was, at the time appellant began the series of communications to AB F, an ongoing OSI investigation of which the appellant was aware. By telling AB F to say nothing to investigators, the appellant was performing an act, the nature of which would be to frustrate the purpose of the investigation. This is the sort of interfering conduct proscribed by the Article 134, UCMJ, obstruction of justice offense.

While admittedly there is nothing wrongful about recommending someone to take advantage of the legal protections afforded by the UCMJ, the evidence paints the appellant’s actions in a less charitable light. She called AB F at her duty section repeatedly, to such an extent that AB F eventually told her to stop. AB F testified that she would reply to the appellant that she had told the OSI nothing “[b]ecause that’s what [the appellant] was expecting to hear.” In addition, AB F testified that, during one of these conversations, AB F mentioned her financial problems. According to this testimony, the appellant volunteered to deposit \$200.00 in AB F’s bank account and subsequently made good on that offer. These actions evidence an intent to influence the outcome of the investigation. As such, they were directed toward a “sinister” rather than benign end, and were, therefore, wrongful. *Barner*, 56 M.J. at 136.

We find that there is sufficient evidence to convince a rational trier of fact beyond a reasonable doubt that the appellant is guilty of the offense of obstruction of justice in violation of Article 134, UCMJ, and that the case is, therefore, legally sufficient. Furthermore, weighing all the evidence admitted at trial and mindful of the fact that we have not heard the witnesses, this Court is convinced beyond a reasonable doubt that the appellant is guilty of the offense.

The findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred. Article 66(c), UCMJ; *Reed*, 54 M.J. at 41. Accordingly, the findings and sentence are

AFFIRMED.

OFFICIAL

FELECIA M. BUTLER, TSgt, USAF  
Chief Court Administrator