

**WESTERN JUDICIAL CIRCUIT
NAVY-MARINE CORPS TRIAL JUDICIARY**

UNITED STATES)	GENERAL COURT-MARTIAL
)	
v.)	
)	
MUNOZ, Eduardo)	STIPULATION OF FACT
Staff Sergeant,)	
U.S. Marine Corps)	
XXX-XX-4510)	

Introduction

The following facts are hereby agreed to between Trial Counsel and Defense Counsel, with the express consent of the Accused, Staff Sergeant Eduardo Munoz, U.S. Marine Corps. Staff Sergeant Munoz understands that this document may be used in conjunction with his pleas of guilty under the pretrial agreement in this case in three ways. First, the military judge may use it to determine whether the accused is guilty. Second, the military judge may use it in selecting an appropriate sentence. Third, the reviewing authorities and, if applicable, the appellate courts may use it when reviewing the case for factual sufficiency, legal error, and appropriateness of the sentence.

Jurisdiction

Staff Sergeant Munoz is currently on active duty with the United States Marine Corps and is assigned to First Recruit Training Battalion, Recruit Training Regiment, Marine Corps Recruit Depot San Diego. Staff Sergeant Munoz first enlisted in the U.S. Marine Corps on or about 14 July 1999 and remained on active duty until on or about 24 October 2003. Staff Sergeant Munoz received his DD 214 discharge papers, thereafter reenlisting in the U.S. Marine Corps on or about 21 May 2004, and he has remained enlisted continuously since that time to the

present. Staff Sergeant Munoz most recently reenlisted on 17 August 2007 for a period of four years and 10 months. At all times during the events described below, Staff Sergeant Munoz was on active duty with the U.S. Marine Corps.

Background

Recruit Jonathan Locicero arrived at Marine Corps Recruit Depot San Diego on or about 7 September 2010 to begin recruit training; he was initially assigned to Platoon 2145, Company G, Second Recruit Training Battalion, but was dropped on or about training day #2 (T-2) due to a burst appendix. Recruit Locicero thereafter resumed training with Platoon 1030, Company B, First Recruit Training Battalion, on or about November 2010. Staff Sergeant Munoz, then Sergeant Munoz, was assigned as a drill instructor for Platoon 1030 until 25 November 2010, when he was promoted to Staff Sergeant and moved to Platoon 1029, Company B, First Recruit Training Battalion.

Beginning when Recruit Locicero joined Platoon 1030, Staff Sergeant Munoz took a special interest in him. During the first week after joining Platoon 1030, Recruit Locicero became a squad leader, but soon after injured his knee and was removed as squad leader by Staff Sergeant Munoz to spare him further potential injury. Staff Sergeant Munoz then began a consistent and dedicated effort to talk with, provide counseling to, and give emotional support to Recruit Locicero regarding completion of his training despite being injured. At no time did Recruit Locicero solicit this special attention from Staff Sergeant Munoz. The attention given to Recruit Locicero by Staff Sergeant Munoz was unique among the recruits of Platoon 1030 and went beyond the normal mentoring taught at Drill Instructor School and typically provided by drill instructors to recruits.

While still a drill instructor for Platoon 1030, almost every night Staff Sergeant Munoz would visit Recruit Locicero after lights out, waking up Recruit Locicero in his rack and talking with him about how he was coping with his knee injury and what his family situation was like at home. Recruit Locicero mentioned that he did not have a father figure at home; Staff Sergeant Munoz took this information and proceeded to purposefully form a special bond with Recruit Locicero. Staff Sergeant Munoz would hold Recruit Locicero's hands while he cried, discussed personal family and life issues with him, and provided Recruit Locicero with Tylenol while he was in his rack after lights out. Staff Sergeant Munoz's regular visits to talk with Recruit Locicero after lights out and providing pain relievers to him was in direct contravention to his duties as a drill instructor as codified in Depot Order 1510.30M, Standard Operating Procedures for Recruit Training. These visits were anywhere between 20 minutes and 45 minutes in duration.

The regular nightly visits to Recruit Locicero continued even after Staff Sergeant Munoz was promoted and moved to Platoon 1029; Staff Sergeant Munoz would continue to wait until after light out, sometimes several hours afterwards, and proceed to enter the barracks of Platoon 1030 onboard Marine Corps Recruit Depot San Diego without notifying the drill instructors for Platoon 1030 so his actions would not be discovered, wake up Recruit Locicero, and discuss personal issues with him. When Platoon 1030 moved up to Weapons and Field Training Battalion at Camp Pendleton for the second phase of recruit training, Staff Sergeant Munoz would still seek out Recruit Locicero and continue his nightly visits that lasted as long as 45 minutes. On one occasion while at Camp Pendleton, Staff Sergeant Munoz kissed Recruit Locicero on the forehead before leaving the squad bay to reinforce the special relationship that he had purposefully established with Recruit Locicero.

On the night of 6 December 2010, Staff Sergeant Munoz entered the barracks of Platoon 1030 at Camp Pendleton and woke up Recruit Locicero at approximately 2100 hours. Recruit Locicero was on the top rack and Staff Sergeant Munoz climbed on the railing of the bottom rack so he could be face-to-face with Recruit Locicero. Staff Sergeant Munoz first noticed a minor cut on Recruit Locicero's forehead, climbed down off the rack, went into the Whiskey Locker, retrieved first aid ointment and a band-aid, and applied them to Recruit Locicero's forehead. Staff Sergeant Munoz then spent the next 20-30 minutes talking to Recruit Locicero about the training cycle, how he was coping with the new drill instructor that replaced Staff Sergeant Munoz, and general personal issues. During this time, Recruit Locicero was lying on his back with his head turned towards Staff Sergeant Munoz, who was standing on the rail of the bottom rack. The blanket covering Recruit Locicero was pulled down, exposing his upper torso. Recruit Locicero was wearing underwear, green PT shorts, green t-shirt, sweat bottoms, and a sweat top.

After 20-30 minutes of talking with Recruit Locicero, Staff Sergeant Munoz proceeded to put his left hand under the sweat top and t-shirt of Recruit Locicero, making skin-to-skin contact with Recruit Locicero's stomach. Staff Sergeant Munoz placed his right hand on Recruit Locicero's forehead and began rubbing Recruit Locicero's bare stomach. Staff Sergeant Munoz then proceeded to move his left hand up Recruit Locicero's torso, placing his hand on Recruit Locicero's bare chest and touching Recruit Locicero's nipple. Recruit Locicero then began to get scared that Staff Sergeant Munoz was touching him and forcibly removed Staff Sergeant Munoz's hand by grabbing his arm and pulling it out from under his shirt. Staff Sergeant Munoz next asked Recruit Locicero why he had been dropped from training previously; Recruit Locicero responded "this recruit's appendix burst Drill Instructor and this recruit had to have surgery". Staff Sergeant Munoz asked Recruit Locicero to see the scars, one of which was

located directly below his bellybutton, another one located on his left side below his bellybutton, and a third scar located near his pubic region. Even though Recruit Locicero did not respond, as he was afraid to do so because of Staff Sergeant Munoz's position as a drill instructor that was senior to him in both rank and billet, Staff Sergeant Munoz moved his hands back towards Recruit Locicero's stomach anyway and began feeling around for the appendix scars on his bare skin. Staff Sergeant Munoz placed his hand underneath Recruit Locicero's underwear, making skin-to-skin contact with his genitals. Staff Sergeant Munoz enjoyed overpowering Recruit Locicero with his position as a drill instructor and continued to touch Recruit Locicero with the intent to abuse and humiliate him. Recruit Locicero again immediately and forcibly removed Staff Sergeant Munoz's hand from under his pants and was scared to do anything else at that time. However, after Recruit Locicero removed Staff Sergeant Munoz's hand, he again placed it on Recruit Locicero's thigh, but this time on the outside of his clothing. Staff Sergeant Munoz proceeded to again touch the groin and genitals of Recruit Locicero from the outside of his clothing, while at the same time telling Recruit Locicero that he might not be back the next night because he was attending the Senior Drill Instructor Course. Staff Sergeant Munoz then placed both of his hands on either side of Recruit Locicero's face, turning his head so Staff Sergeant Munoz could have eye-to-eye contact with him approximately twelve (12) inches from his face, placed his finger on Recruit Locicero's lips, said goodnight, and departed the squad bay.

After Staff Sergeant Munoz departed the squad bay, Recruit Locicero immediately got out of the rack and alerted the Platoon 1030 Guide, Recruit Derek Fyksen, about Staff Sergeant Munoz touching his genitals. Recruit Fyksen advised Recruit Locicero that he needed to report the incident to the Platoon 1030 Senior Drill Instructor, Sergeant Francisco Reyes, but Recruit Locicero was scared to report the incident and went back to the rack. The next morning, on or

about 7 December 2010, Recruit Locicero attempted to continue with training, but began to cry during square away time and Recruit Fyksen demanded that he inform Sergeant Reyes immediately. Both Recruit Locicero and Recruit Fyksen proceeded to report the incident to Sergeant Reyes.

On or about 8 December 2010, Staff Sergeant Munoz was instructed by First Sergeant Sean Farrow to report to Sergeant Major Donald Williams, First Recruit Training Battalion Sergeant Major. Sergeant Major Williams informed Staff Sergeant Munoz that a recruit had made a criminal allegation against him and that he was ordered stay away from all Bravo Company personnel, specifically any drill instructors or recruits, until an investigation was completed. However, on or about 10 December 2010, Staff Sergeant Munoz willfully defied the Sergeant Major's order and proceeded to enter the barracks area at Weapons and Field Training Battalion, Camp Pendleton. At approximately 2230 hours, Staff Sergeant Munoz walked up the back stairwell to the Platoon 1030 squad deck and called for firewatch by name; Recruit Jacob Dilello was on duty as the back post firewatch and approached Staff Sergeant Munoz. At this time, Recruit Paul LeBarton was coming to relieve Recruit Dilello as the back post firewatch and Staff Sergeant Munoz pulled him into the conversation as well. Recruit Brandon Alley was also on firewatch at this time and noticed the back post was unattended; when he looked out the back hatch, he saw Staff Sergeant Munoz talking with Recruit Dilello and Recruit LeBarton and was immediately pulled into the conversation by Staff Sergeant Munoz.

Staff Sergeant Munoz informed all three recruits that he was not supposed to be at the Bravo Company barracks, that he was being investigated for something that happened in Platoon 1030, and they should not tell anyone that he had been there. Staff Sergeant Munoz then asked who else was on duty at that time and discovered that Recruit Locicero was also on duty. Staff

Sergeant Munoz then told the three recruits on the back stairwell that it may have been Recruit Locicero who was responsible for the trouble he was in and that he wanted to speak with Recruit Locicero. Recruit LeBarton then went to find Recruit Locicero, who was in the Whiskey Locker; Recruit Locicero told Recruit LeBarton that he would not speak with Staff Sergeant Munoz and that he would inform the platoon staff if Staff Sergeant Munoz tried to enter the Platoon 1030 squad bay. Recruit LeBarton returned to the back stairwell and informed Staff Sergeant Munoz that he should not enter the squad bay. Staff Sergeant Munoz stated that he had to talk with Recruit Locicero because he held Staff Sergeant Munoz's career and family life in his hands. The recruits again reiterated that he should not enter the squad bay and Staff Sergeant Munoz instructed them not to let anyone know that he had been on the premises. Staff Sergeant Munoz also told Recruit LeBarton to say that Recruit Locicero was lying if Recruit Locicero reported that he had been there.

Charge I, Specification 1 – Violation of Article 92, UCMJ: Violation of a Lawful Order

(1) Staff Sergeant Munoz voluntarily admits that on or about 8 December 2010, he was issued a lawful order to stay away from any personnel from Bravo Company, specifically any drill instructors or recruits, by Sergeant Major Donald Williams, First Recruit Training Battalion Sergeant Major, a member of the armed forces senior in rank to him.

(2) Staff Sergeant Munoz voluntarily admits that said order was a lawful order, in that it was designed to protect the integrity of an ongoing investigation regarding recruit abuse allegations. Staff Sergeant Munoz is aware that investigations regarding alleged recruit abuse are serious matters that encompass commander's critical information requirements (CCIRs) and that his chain of command is required pursuant to the Standard Operating Procedure governing the conduct of recruit training to ensure that all such allegations are investigated thoroughly and

impartially. Staff Sergeant Munoz voluntarily admits and believes that said order was not contrary to the Constitution, the laws of the United States, any other lawful superior orders, or beyond the authority of Sergeant Major Williams to issue.

(3) Staff Sergeant Munoz voluntarily admits he had full knowledge and understanding of said order immediately after it was given and at all times thereafter. Staff Sergeant Munoz acknowledges that he was physically present when Sergeant Major Williams instructed him to stay away from all Bravo Company personnel and there was no ambiguity in the Sergeant Major's instructions.

(4) Staff Sergeant Munoz voluntarily admits he had a duty to obey said order, having come from Sergeant Major Williams, a member of the armed forces superior in rank to him. Staff Sergeant Munoz is aware that Sergeant Major Williams is the senior-ranking enlisted Marine at First Recruit Training Battalion, Recruit Training Regiment, Marine Corps Recruit Depot San Diego – the unit to which Staff Sergeant Munoz is assigned. As such, Staff Sergeant Munoz recognizes that Sergeant Major Williams works directly for the Battalion Commander, Lieutenant Colonel Thomas McCann, USMC, and is directly responsible for all enlisted personnel within First Recruit Training Battalion. Staff Sergeant Munoz believes that Sergeant Major Williams has direct authority to issue orders to subordinate personnel and that said personnel, to include Staff Sergeant Munoz, have a duty to obey any lawful orders issued by the Sergeant Major.

(5) Staff Sergeant Munoz voluntarily admits that he failed to obey Sergeant Major Williams's order by driving to Weapons and Field Training Battalion, onboard Camp Pendleton, California, and approaching the recruit barracks of Platoon 1030 on or about 10 December 2010. Staff Sergeant Munoz further admits that he willfully violated Sergeant Major Williams's order

by talking directly with Recruit Dilello, Recruit LeBarton, and Recruit Alley on the night of 10 December 2010. The said named recruits were all members of Platoon 1030, Bravo Company, First Recruit Training Battalion, and were specifically covered by Sergeant Major Williams's direct order.

(6) Staff Sergeant Munoz voluntarily admits and believes that he had no legal justification or excuse for willfully disobeying Sergeant Major Williams's order and that he could have followed the order if he wanted to. No one forced or coerced Staff Sergeant Munoz into disobeying the order to stay away from Bravo Company personnel and Staff Sergeant Munoz fully believes he is guilty of the offense as charged.

Charge I, Specification 2 – Violation of Article 92, UCMJ: Violation of a Lawful General Order

(1) Staff Sergeant Munoz voluntarily admits and believes that at all times during the offenses charged there was in effect a certain lawful general order, specifically Depot Order 1510.30M, dated 27 July 2006, entitled "Standard Operating Procedures for Recruit Training". Depot Order 1510.30M was issued by then Brigadier General John M. Paxton, Jr., in his capacity as the Commanding General, Marine Corps Recruit Depot San Diego and Staff Sergeant Munoz voluntarily admits and believes that then Brigadier General Paxton Jr. was authorized to issue that order as a flag officer in command.

(2) Staff Sergeant Munoz further believes that Depot Order 1510.30M retained its character as a general order despite a transfer of command from then Brigadier General Paxton through to Marine Corps Recruit Depot San Diego's current Commanding General, Major General Ronald L. Bailey, USMC. Staff Sergeant Munoz voluntarily admits and believes that

Depot Order 1510.30M has not expired by its own terms, has not been rescinded by separate action, and has remained in effect at all times during the offenses charged.

(3) Staff Sergeant Munoz believes and admits that Depot Order 1510.30M was a lawful general order issued in effect on 6 December 2010 and all times thereafter. Staff Sergeant Munoz believes that the order was reasonably necessary to safeguard and protect the morale, discipline, and usefulness of the Marine Corps, preserve unit readiness, prevent and deter recruit abuse by Recruit Training Regiment personnel, and was reasonably necessary to protect the health and welfare of recruits attending recruit training. Staff Sergeant Munoz voluntarily admits and believes the order applied to him on or about 6 December 2010 and that said order was not contrary to the Constitution, the laws of the United States, any other lawful superior orders, or beyond the authority of then Brigadier General Paxton Jr. to issue.

(4) Staff Sergeant Munoz voluntarily admits he had a duty to obey Depot Order 1510.30M, having come from the Commanding General of Marine Corps Recruit Depot San Diego and being applicable to all personnel within the command. Staff Sergeant Munoz admits and believes that he was given extensive and detailed training on Depot Order 1510.30M, both at Drill Instructor's School prior to assuming duties as a drill instructor with Platoon 1030 and by his chain of command while engaged in his duties thereafter. Staff Sergeant Munoz admits that his chain of command stressed on countless occasions the need to strictly adhere to the requirements of Depot Order 1510.30M and that violations thereof may result in adverse action. Staff Sergeant Munoz admits and believes that Depot Order 1510.30M outlined clear and unambiguous policies for conducting recruit training and established a clear duty that he was required to obey.

(5) Staff Sergeant Munoz voluntarily admits that he failed to obey Depot Order 1510.30M, specifically Paragraph 2 of Section 3007, on or about 6 December 2010, by touching Recruit Jonathan Locicero on his genital area for the purpose of abusing and humiliating Recruit Locicero. At no time was Staff Sergeant Munoz attempting to correct Recruit Locicero's position or movement, adjust the arrangement of Recruit Locicero's clothing or equipment, conduct a demonstration of authorized training, prevent or attend to an injury of Recruit Locicero, or as a matter of self defense. To the contrary, it was Staff Sergeant Munoz's intent to use his position as a drill instructor to abuse and humiliate Recruit Locicero by touching his genitals, which is not an exception to Paragraph 2, Section 3007 of Depot Order 1510.30M.

(6) Staff Sergeant Munoz voluntarily admits and believes that he had no legal justification or excuse for willfully disobeying Depot Order 1510.30M and that he could have followed the order if he wanted to. No one forced or coerced Staff Sergeant Munoz into disobeying the order and Staff Sergeant Munoz fully believes he is guilty of the offense as charged.

Charge III, Specification 3 – Violation of Article 120, UCMJ: Wrongful Sexual Contact

(1) Staff Sergeant Munoz voluntarily admits and believes that on or about 6 December 2010, he had sexual contact with Recruit Jonathan Locicero by placing his hands down the pants of Recruit Locicero and rubbing his genital area to include the genitals, groin, and inner thigh.

(2) Staff Sergeant Munoz voluntarily admits and believes that said sexual contact was an intentional and direct touching of Recruit Jonathan Locicero's genitals, groin, and inner thigh, and that said touching was done with the intent to use his position as a drill instructor to abuse and humiliate Recruit Locicero. Staff Sergeant Munoz voluntarily admits that he felt empowered by his seniority over Recruit Locicero and the special position of trust and authority that a drill

instructor has over recruits; Staff Sergeant Munoz wanted to demonstrate that he could wrongfully touch Recruit Locicero's genital area and there was nothing Recruit Locicero could do about it. Staff Sergeant Munoz voluntarily admits that he developed a close relationship with Recruit Locicero, would visit him after the rest of the platoon had gone to sleep, and proceeded to touch his body and genitals while he lay helpless in his rack. Staff Sergeant Munoz acknowledges that he abused his position as a Staff Sergeant of Marines and a drill instructor to effectuate the unlawful touching and to place Recruit Locicero in fear while he proceeded to touch his body and genitals without permission.

(3) Staff Sergeant Munoz admits and believes that said sexual contact was done with unlawful force or violence in that each touching was without the consent of Recruit Locicero. Staff Sergeant Munoz voluntarily admits that at no time did Recruit Locicero permit such touching, either expressly or tacitly, and at no time was Staff Sergeant Munoz under the mistaken belief that Recruit Locicero had consented to said touching. To the contrary, Staff Sergeant Munoz acknowledges that Recruit Locicero removed Staff Sergeant Munoz's hand from his body several times in an effort to prevent further unlawful touching, but Staff Sergeant Munoz persisted and continued to touch his body without consent.

(4) Staff Sergeant Munoz voluntarily admits and believes that he had no legal justification, excuse, or lawful authorization for his wrongful sexual contact with Recruit Locicero and that he could have avoided it if he wanted to. No one forced or coerced Staff Sergeant Munoz into having wrongful sexual contact with Recruit Locicero and Staff Sergeant Munoz fully believes he is guilty of the offenses as charged.

Charge V, Sole Specification – Violation of Article 134, UCMJ: Obstruction of Justice

(1) Staff Sergeant Munoz voluntarily admits that on or about 10 December 2010 he wrongfully asked Recruit Paul LeBarton to lie if questioned about Staff Sergeant Munoz being present at the Bravo Company barracks on or about 10 December 2010. Staff Sergeant Munoz believes and acknowledges that said act was unlawful, in that he specifically intended to influence a potential witness regarding an ongoing investigation.

(2) Staff Sergeant Munoz admits and believes he was being investigated by his chain of command for potential recruit abuse involving Recruit Locicero and that possible criminal proceedings might be forthcoming. Staff Sergeant Munoz has seen other drill instructors investigated for potential recruit abuse and is aware that criminal proceedings, to include non-judicial punishment and courts-martial charges, can be an outcome of such investigations if substantiated. Staff Sergeant Munoz has been briefed on countless occasions regarding the prohibition against unlawful touching of recruits and is aware through his training at Drill Instructor School on the Standard Operating Procedures for Recruit Training that any such allegations are thoroughly and impartially investigated by the chain of command in all instances. Staff Sergeant Munoz admits that he had every reason to believe that his unlawful touching of Recruit Locicero would be investigated and that criminal proceedings might be an outcome of that investigation.

(3) Staff Sergeant Munoz voluntarily admits that his intent in telling Recruit LeBarton to lie if asked about him being present on or about 10 December 2010 at the Bravo Company barracks and to say that Recruit Locicero was lying if Recruit Locicero reported that Staff Sergeant Munoz had been there was to impede or obstruct the due administration of justice. Staff Sergeant Munoz did not want his chain of command to become aware that he had willfully

and purposefully violated the order of Sergeant Major Williams to stay away from Bravo Company personnel so that he would not be charged with such an offense.

(4) Staff Sergeant Munoz voluntarily admits and believes that under the circumstances his conduct was prejudicial to good order and discipline in the armed forces in that a Staff Sergeant of Marines was attempting to cover up an offense punishable under the UCMJ and was using his direct subordinates to effectuate his crime. Said conduct directly impairs the integrity of the chain of command, imparts a bad example of drill instructors to recruits, and undermines the effective conduct of recruit training.

(5) Staff Sergeant Munoz voluntarily admits and believes that he had no legal justification or excuse for asking Recruit LeBarton to lie and that he could have avoided doing so if he wanted to. No one forced or coerced Staff Sergeant Munoz into asking Recruit LeBarton to lie and Staff Sergeant Munoz fully believes he is guilty of the offenses as charged.

 3 FEB 11

J. W. TORRESALA Date
Capt, USMC
Senior Trial Counsel

 3 Feb 11

C. P. HUR Date
Capt, USMC
Detailed Defense Counsel

 3 Feb 11

E. MUNOZ Date
SSgt, USMC
Accused