IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee*, v. Senior Airman (E-4) **CHYRON L. TALLEY,** United States Air Force, *Appellant*.	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME (FIRST)** Before Panel No. 1 No. ACM 40828 28 July 2025

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Pursuant to Rule 23.3(m)(1) and (2) of this Court's Rules of Practice and Procedure, Appellant hereby moves for his first enlargement of time to file Assignments of Error. Appellant requests an enlargement for a period of 60 days, which will end on **9 October 2025**. The record of trial was docketed with this Court on 11 June 2025. From the date of docketing to the present date, 47 days have elapsed. On the date requested, 120 days will have elapsed.

WHEREFORE, Appellant respectfully requests that this Court grant the requested enlargement of time.

Respectfully submitted,

[redacted]

SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
(240) 612-4770
[redacted]

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 28 July 2025.

[redacted]

SAMANTHA M. CASTANIEN, Capt, USAF
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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 1
Senior Airman (E-4) **CHYTRON L. TALLEY,** United States Air Force, *Appellant.*	)	No. ACM 40828
	)	28 July 2025

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file Assignment of Error in this case.

WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.

[redacted]

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 28 July 2025.

VANESSA BAIROS, Maj, USAF
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UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40828**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Chyron L. TALLEY	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
Appellant	)	**Panel 1**

On 28 July 2025, counsel for Appellant submitted a Motion for Enlargement of Time (First), requesting an additional 60 days to submit Appellant's assignments of error. The Government opposes the motion.

The court has considered Appellant's motion, the Government's opposition, case law, and this court's Rules of Practice and Procedure.

Accordingly, it is by the court on this 30th day of July, 2025,

ORDERED:

Appellant's Motion for Enlargement of Time (First) is **GRANTED**. Appellant shall file any assignments of error not later than **9 October 2025**.

Each request for an enlargement of time will be considered on its merits. Appellant's counsel is advised that any subsequent motions for enlargement of time shall include, in addition to matters required under this court's Rules of Practice and Procedure, statements as to: (1) whether Appellant was advised of Appellant's right to a timely appeal, (2) whether Appellant was provided an update of the status of counsel's progress on Appellant's case, (3) whether Appellant was advised of the request for an enlargement of time, and (4) whether Appellant agrees with the request for an enlargement of time.

FOR THE COURT

[redacted]

AGNIESZKA M. GAERTNER, Capt, USAF
Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee*,	)	**MOTION TO EXAMINE SEALED MATERIALS**
v.	)	Before Panel No. 1
Senior Airman (E-4) **CHYRON L. TALLEY,** United States Air Force, *Appellant*.	)	No. ACM 40828 28 July 2025

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Pursuant to Rule for Courts-Martial (R.C.M.) 1113(b)(3)(B)(i) and Rules 3.1(c) and 23.3(f)(1) of this Court's Rules of Practice and Procedure, undersigned counsel hereby move to examine the following sealed materials: transcript pages 31-48 (closed hearing on Mil. R. Evid. 412 motions), Appellate Exhibits XII-XIX (Mil. R. Evid. 412 motions and attachments), and Appellate Exhibit XXI (ruling on Mil. R. Evid. 412 motions).

In accordance with R.C.M. 1113(b)(3)(B)(i), which requires a colorable showing that examining these materials is reasonably necessary to fulfill appellate counsel's responsibilities, undersigned counsel assert that viewing the referenced materials is reasonably necessary to assess whether there are any issues regarding evidence offered under Mil. R. Evid. 412. All parties to the trial had access to the exhibits listed above.

While this Court has "a broad mandate to review the record unconstrained by an appellant's assignments of error, that broad mandate does not reduce the importance of adequate representation." *United States v. May*, 47 M.J. 478, 481 (C.A.A.F. 1998). "Independent review is not the same as competent appellate representation." *Id*. The sealed materials here must be reviewed for counsel to provide "competent appellate representation." *Id*. Viewing these exhibits is reasonably necessary to determine whether Appellant is entitled to relief due to errors during

any portion of the proceedings—before, during, or after trial. Counsel cannot fulfill their duty to provide effective assistance of counsel without first reviewing the complete record of trial. Therefore, undersigned counsel's examination of the sealed materials is reasonably necessary to fulfill their responsibilities in this case.

WHEREFORE, Appellant respectfully requests this Court grant this motion.

Respectfully submitted,

[redacted]
SCOTT R. HOCKENBERRY
Civilian Appellate Defense Counsel
Daniel Conway and Associates
12235 Arabian Place,
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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 28 July 2025.

[redacted]
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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Senior Airman (E-4) **CHYRON L. TALLEY,** USAF, *Appellant.*	)	UNITED STATES' RESPONSE TO APPELLANT'S MOTION TO EXAMINE SEALED MATERIALS Panel No. 1 ACM 40828 28 July 2025

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States responds to Appellant's Motion to Examine Sealed Materials. The United States does not object to Appellant's counsel reviewing the exhibits and transcript pages, which appear to have been reviewed by both parties at trial, so long as the United States can also review the sealed portions of the record as necessary to respond to any assignment of error that references the sealed materials. The United States respectfully requests that any order issued by this Court also allow counsel for the United States to view the sealed materials.

WHEREFORE, the United States respectfully responds to Appellant's motion.

[redacted]

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations
Military Justice and Discipline Directorate
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[redacted]

MARY ELLEN PAYNE
Associate Chief
Government Trial and Appellate Operations
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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 28 July 2025.

VANESSA BAIROS, Maj, USAF
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UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40828**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Chyron L. TALLEY	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
Appellant	)	**Panel 1**

On 28 July 2025, counsel for Appellant submitted a Motion to Examine Sealed Materials. Specifically, Appellant requests permission to examine the following materials sealed by the Military Judge: transcript pages 31–48; Appellate Exhibits XII–XIX and XXI. Appellant further avers that all parties to the trial had access to these exhibits. The Government did not oppose Appellant's request on the condition that they would be permitted to view the same materials in answering Appellant's assignment of error.

Upon review of the record, the court identified the following materials were also sealed in the record: Apellate Exhibits VI–VII and the closed session audio. The court further authorizes counsel to examine these materials.

Appellate counsel may examine sealed materials released to counsel at trial "upon a colorable showing . . . that examination is reasonably necessary to a proper fulfillment of the appellate counsel's responsibilities." Rule for Courts-Martial 1113(b)(3)(B)(i).

The court has considered Appellant's motion, the Government's response, and this court's Rules of Practice and Procedure. The court finds Appellant's counsel has made a colorable showing that review of the sealed materials is necessary to fulfill counsel's responsibilities.

Accordingly, it is by the court on this 30th day of July, 2025,

ORDERED:

Appellant's Motion to Examine Sealed Materials is **GRANTED**.

Appellate defense counsel and appellate government counsel may view **transcript pages 31–48 and the corresponding audio; Appellate Exhibits VI, VII, XII–XIX and XXI**.

To view the sealed materials, counsel will coordinate with the court.

No counsel will photocopy, photograph, or otherwise reproduce this material and will not disclose or make available its contents to any other individual without this court's prior written authorization.

FOR THE COURT

[redacted]

AGNIESZKA M. GAERTNER, Capt, USAF
Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*	)	**NOTICE OF APPEARANCE**
v.	)	Before Panel No. 1
Senior Airman (E-4) **CHYRON L. TALLEY** United States Air Force *Appellant*	)	No. ACM 40828 5 August 2025

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Pursuant to Rules 12 and 13 of this Honorable Court's Rules of Practice and Procedure, the undersigned, an attorney admitted to practice before this Court, hereby enters his appearance as an appellate counsel for the appellant in the above-captioned case.

Respectfully submitted,

[redacted]

JOHN M. FREDERICKS, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
(240) 612-4770
[redacted]

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 5 August 2025.

[redacted]
JOHN M. FREDERICKS, Capt, USAF
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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES
Appellee,

v.

Senior Airman (E-4)
CHYRON L. TALLEY,
United States Air Force
Appellant

BRIEF ON BEHALF OF APPELLANT

Before Panel No. 1

No. ACM 40828

15 August 2025

TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

Assignments of Error

I. WHETHER THE SPECIFICATION OF CHARGE II IS LEGALLY AND FACTUALLY INSUFFICIENT DUE TO THE CHARGING SCHEME.

II. WHETHER THE SPECIFICATION OF CHARGE II IS FURTHER FACTUALLY INSUFFICIENT DUE TO WEAKNESSES IN THE EVIDENCE, TO INCLUDE INHERENT IMPROBABILITIES IN THE ACCUSATION, A TOTAL LACK OF CORROBORATION, A DELAYED REPORT THAT WAS ONLY MADE AFTER A MOTIVE TO FABRICATE AROSE, THE NAMED VICTIM'S ADMITTED ATTEMPT TO LEVERAGE HER ACCUSATIONS INTO A DESIRED OUTCOME, APPELLANT'S CREDIBLE DENIAL, AND THE FAILURE OF THE GOVERNMENT TO DISPROVE MISTAKE OF FACT AS TO CONSENT.

III. WHETHER THE SPECIFICATION OF CHARGE I IS FACTUALLY INSUFFICIENT DUE TO THE GOVERNMENT'S FAILURE TO DISPROVE SELF-DEFENSE.

IV. WHETHER THE MILITARY JUDGE ERRED BY EXCLUDING EVIDENCE UNDER MIL. R. EVID. 412.

Statement of the Case

On 25 November 2024 and 24-26 February 2025, Appellant was tried by a general court-martial (Military Judge alone) at Nellis Air Force Base, Nevada. Appellant was convicted, contrary to his pleas, of one specification of sexual assault in violation of Article 120, UCMJ, 10 U.S.C. § 920 and one specification of domestic violence in violation of Article 128b, UCMJ, 10 U.S.C. § 928b. (R. at 208). The military judge sentenced Appellant to be reprimanded, reduced to the grade of E-1, confined for 18 months, and dishonorably discharged. (R. at 248). The convening authority took no action on the findings or sentence. (Convening Authority Decision on Action, 11 March 2025).

Statement of Facts

Appellant's convictions arise from accusations made by his wife, LP, in the aftermath of their marital separation. (R. at 152, 166-67). The evidentiary presentation was very short. (R. at 85-180; Pros. Ex. 1-2). The Government called only two witnesses: an OSI agent to enter portions of Appellant's videotaped statement to OSI (R. at 85; Pros. Ex. 1) and the named victim (R. at 124).

Regarding the sexual assault charge, LP described a sexual encounter on 3 October 2023, Appellant's birthday, where the married couple began having sex consensually in something resembling a "doggy style" position with LP's face down on the bed. (R. at 142-43). After consensual penetration, LP reported that she withdrew consent due to discomfort. (R. at 143). LP reported that she told Appellant to stop three times. (R. at 144). LP testified that Appellant continued to have sex with her but suggested using a pillow under her for comfort. (R. at 144-45). LP's testimony on this point was somewhat vague – LP testified she believed Appellant had made the comment about the pillow, but wasn't sure at what point in the encounter, and concluded "I don't remember." (R. at 145-46). LP reported that she began crying and then Appellant stopped. (R. at 145-46). Thereafter, the two laid down together and LP apologized because she felt bad Appellant did not get to finish. (R. at 147). Thereafter, they resumed consensually having sex to completion. (R. at 147). LP reported that she did not remember if she had ever spoken to Appellant about this event afterwards. (R. at 147). Appellant denied sexually assaulting LP. (R. at 91). He stated that, on a handful of occasions during the marriage, LP requested sex to stop after it began consensually and that in every instance he had stopped when requested. (R. at 91). Appellant denied any specific memory of the sexual encounter described by LP as occurring on the charged date (which was his birthday). (R. at 91-92).

Regarding the domestic violence charge (about 1-2 weeks prior to the sexual assault charge), LP struck Appellant with a lamp. (R. at 94-95, 135).[1] In response, Appellant turned and slapped LP in the face (the charged act). (R. at 95, 138). LP described hitting Appellant with the lamp because she was angry about something he said. (R. at 135). Appellant described trying to withdrawal, but being blocked by LP, then pushing past her before being struck with the lamp. (R. at 94). Appellant described the slap as self-defense, after he had repeatedly, but to no avail, asked LP to stop hitting him and stop throwing things at him. (R. at 94). After an undefined period of time, LP again became angry at something Appellant said and grabbed another object to hit him with (the object is described as both a lunch box and a bag). (R. at 98, 141). Appellant grabbed the object from LP and her nail was torn in the struggle, causing her to go to the ER. (R. at 98, 141). NOTE: this incident was not charged, presumably because it was obviously self-defense.

On 30 October 2023, Appellant left the marital home. (R. at 152). LP was upset that he had left. (R. at 153). A few days after Appellant left, LP reported him to the authorities. (R. at 152). LP acknowledged that even after reporting him, she wanted to reconcile with him, and texted him about wanting to reconcile with him.

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[1] Appellant reported LP had also thrown a hefty glass candle at him. (R. at 94, 101). LP denied throwing the candle, though she acknowledged hitting him with the lamp. (R. at 132). LP also acknowledged some lack of memory about the event. (R. at 132, 135).

(R. at 152). Specifically, LP texted Appellant that she would not get him in trouble but she did not want to do things alone or have their child not have a dad. (R. at 153-54).

Argument

I. WHETHER THE SPECIFICATION OF CHARGE II IS LEGALLY AND FACTUALLY INSUFFICIENT DUE TO THE CHARGING SCHEME.

Standard of Review

Issues of legal and factual sufficiency are reviewed de novo. *United States v. Washington*, 57 M.J. 394, 399 (C.A.A.F. 2002) (citation omitted); *see also United States v. Harvey,* 85 M.J. 127 (C.A.A.F. 2024). (discussing new factual sufficiency standard).

Law and Analysis

The Specification of Charge II alleged that Appellant "did . . . commit a sexual act upon [LP], by penetrating her vulva with his penis, without her consent." (Charge Sheet).

The resolution of this issue hinges on the interpretation of the word "penetrating" as used in the charging language. If, as Appellant submits, this word means *entry*, then the evidence is clearly insufficient, because LP testified that the entry occurred consensually. (R. at 142-43). Post-penetration, LP reported that she withdrew consent due to discomfort. (R. at 143). That is why these types of

withdrawn consent cases are commonly referred to as a "post-penetration" sexual assault cases. *See, e.g.*, *State v. Flynn*, 329 P.3d 429 (Kan. 2014) (repeatedly referring to such cases as "post-penetration" withdrawal of consent cases).

The best interpretation of "penetrating" refers to the act of entry. Black's Law Dictionary defines "penetration" as: "The *entry* of the penis or some other part of the body or a foreign object into the vagina or other bodily orifice." PENETRATION, Black's Law Dictionary (11th ed. 2019) (emphasis added). Ballentine's Law Dictionary similarly defines penetration as: "The *entry* of the private part of the male, at least to some extent, in the private part of the female." PENETRATION, Ballentine's Law Dictionary (3rd ed. 2010) (emphasis added). These definitions also fit common usage. For example, an aircraft is said to penetrate controlled airspace when it *enters* the airspace. As another example, as pointed out above, the very type of accusation here – withdrawn consent – are commonly referred to as "post-penetration" cases. The charging language further indicates the specific act of entry by modifying the statutory language and specifying that Appellant committed a sexual act upon LP "by penetrat*ing* her vulva. . ." (Charge Sheet) (emphasis added).

If the Court agrees the charging language indicated entry, the evidence is definitionally legally and factually insufficient because the *entry* in this case was indisputably consensual.

WHEREFORE, Appellant respectfully requests this Honorable Court set aside the finding of guilty as to The Specification of Charge II.

II. WHETHER THE SPECIFICATION OF CHARGE II IS FURTHER FACTUALLY INSUFFICIENT DUE TO WEAKNESSES IN THE EVIDENCE, TO INCLUDE INHERENT IMPROBABILITIES IN THE ACCUSATION, A TOTAL LACK OF CORROBORATION, A DELAYED REPORT THAT WAS ONLY MADE AFTER A MOTIVE TO FABRICATE AROSE, THE NAMED VICTIM'S ADMITTED ATTEMPT TO LEVERAGE HER ACCUSATIONS INTO A DESIRED OUTCOME, APPELLANT'S CREDIBLE DENIAL, AND THE FAILURE OF THE GOVERNMENT TO DISPROVE MISTAKE OF FACT AS TO CONSENT.

Standard of Review

Adopted from A.E. I.

Law and Analysis

Appellant's conviction on this specification is drastically against the weight of the evidence.

The accusation itself contains inherent improbabilities. LP reported that Appellant sexually assaulted her for an extended period of time, but then afterwards *she* apologized to *him* and reinitiated sex. (R. at 142-47). This is hardly consistent with the extremely aggressive version of LP painted elsewhere in the record. After this ostensibly very significant event, there was no indication LP ever brought it up

to Appellant, or mentioned it in any of her many thousands of pages of text messages. (R. at 147).

Layered on top of the inherent improbabilities in the accusation, there was a complete lack of corroborating evidence. There was no forensic evidence, contemporaneous statements, or admissions by Appellant. There was no supporting expert testimony. There was no character evidence to support LP's truthfulness. The government submitted nothing more than about five pages of completely uncorroborated testimony. This testimony also lacked detail in places, with LP disclaiming memory of important details, such as when Appellant had responded to her request to stop. (R. at 145-47).

While this hardly a solid foundation for a sexual assault prosecution, it gets much worse when the accusation timeline is considered. About a month after the charged sexual assault, Appellant left the marital home.[2] LP acknowledged, naturally enough, being upset by Appellant's leaving. (R. at 153). And only a few days later, LP reported Appellant. (R. at 152). This is a strong motive to fabricate that arose directly before LP's report. She made no mention of the supposed sexual

[2] The sexual assault was alleged to have occurred on 3 October 2023 (charge sheet; R. at 142-143) and appellant left the marital residence on 30 October 2023 (R. at 152).

assault to anyone for about a month, but then as soon as she became upset at Appellant for leaving, she came up with this accusation.

Even more notably, LP acknowledged attempting to leverage the power of her accusations into her desired outcome of a reconciliation. LP acknowledged she wanted to reconcile with Appellant (R. at 152) and acknowledged messaging Appellant – after reporting him – that she would stop getting him in trouble if she did what she wanted: reconcile with her. (R. at 152-54). This blatant attempt to leverage her accusations – and the legal process – into her desired outcome should give this Court great pause.

Layered on top of these significant weaknesses in the affirmative evidence, there was also direct evidence that the accusation was untrue, in the form of Appellant's OSI interview where Appellant denied sexually assaulting LP. (R. at 91-92). Appellant's denials are made more credible by his seeming candor in the interview. For example, he openly admitted the other accusation: that he slapped LP. (R. at 94). By contrast, he flatly denied the sexual accusations. (R. at 91-92). Appellant was also very candid and open about sharing evidence, to include providing his phone, PIN number, and consenting to a forensic copy resulting in about 10,000 pages of text messages between him and LP. (R. at 111).

Finally, the government failed to disprove mistake of fact as to consent. LP gave little detail about the volume of her post-penetration requests to stop, or

whether Appellant heard and understood them. Uncertainty about Appellant's perspective is increased by the fact that LP was facing away from Appellant with her head down on the bed. (R. at 142-143). At some point, LP testified Appellant suggested using a pillow under her for comfort. (R. at 145-46). The vagueness of LP's testimony on this point is concerning – with her testifying that she believed he had made the comment about the pillow, but wasn't sure at what point in the encounter, and her conclusion on the topic, "I don't remember." (R. at 145-46). This is particularly important, as the details of appellant's response to the request to stop is critical. This evidence failed to preclude the possibility that Appellant thought this had resolved the discomfort, which was the only reason for LP's request to stop. LP also reported that when she began crying, Appellant *did* stop. (R. at 146-47). This further raises the possibility that Appellant did not previously understand that she wanted to stop. The possibility of mistake of fact as to consent is further raised by Appellant's statements to OSI. Appellant openly acknowledged that, on a handful of occasions during the marriage, LP requested sex to stop after it began consensually and that in every instance he had stopped when requested. (R. at 91). This evidence is sufficient to raise a reasonable mistake of fact as to consent defense which the government failed to disprove through the vague testimony of LP.

The concept of guilt beyond a reasonable doubt is too precious to endorse the conclusion that this evidence met that high burden. This Court should find

Appellant's conviction factually insufficient.

WHEREFORE, Appellant respectfully requests this Honorable Court set aside the finding of guilty as to The Specification of Charge II.

III. WHETHER THE SPECIFICATION OF CHARGE I IS FACTUALLY INSUFFICIENT DUE TO THE GOVERNMENT'S FAILURE TO DISPROVE SELF-DEFENSE.

Standard of Review

Adopted from A.E. 1.

Law and Analysis

The Government certainly presented sufficient evidence that the charged act – a slap to the face – occurred. Appellant openly admitted as much to OSI. (R. at 95). However, the evidence squarely raised – and the government failed to disprove – the affirmative defense of self-defense. It was equally uncontested that LP had struck Appellant *with a lamp* immediately before the charged slap, and that he only slapped her in response to her much greater assault on him. (R. at 94-95, 135, 138).

Appellant credibly reported to OSI that he was trying to remove himself from the situation, but LP was preventing him from leaving. (R. at 94). Then, when he pushed passed her, she dramatically escalated by throwing a hefty glass candle at him and then striking him with the lamp. (R. at 94-95). Appellant reported that he was afraid – reasonably enough – of serious injury or brain damage. (R. at 95) ("[S]he could have hit me in the head; knocked me out; gave me brain damage").

It was only in response to this reasonable fear that he struck LP, with the intention of getting her to stop assaulting her. (R. at 95). LP's subsequent actions further reinforce the dynamic of her as the aggressor – after the charged assault she again picked up another object and attempted to strike Appellant with it. (R. at 98, 141).

While the situation was no doubt volatile and messy, the law makes reasonable allowance for the use of physical force to stop an imminent threat. The specific elements of self-defense are that the accused "(A) Apprehended, upon reasonable grounds, that bodily harm was about to be inflicted wrongfully on the accused; and (B) Believed that the force that accused used was necessary for protection against bodily harm, provided that the force used by the accused was less than force reasonably likely to produce death or grievous bodily harm." R.C.M. 916(e)(3).

The first element is clearly met. It is undisputed that LP was actively attacking Appellant with a lamp. (R. at 94-95, 135).[3] There was no suggestion by LP or the Government that this infliction of bodily harm *by LP* was anything other than wrongful. In this context, Appellant's report that he apprehended bodily harm – and serious bodily harm at that, was completely logical. (R. at 95) ("[S]he could have hit me in the head; knocked me out; gave me brain damage"). Appellant further

[3] There was also evidence that LP had sent text messages to appellant, admitting to throwing a lamp at him and admitting to "hitting him multiple times." (R. at 114).

reported that he had already attempted to withdraw. (R. at 94).

The second element has two parts. The force used in self-defense must not be reasonably likely to produce death or grievous bodily harm. R.C.M. 916(e)(3)(B). This seems uncontested, there was no indication that the slap was of anywhere near that magnitude.[4] Finally, Appellant must have believed the force used was necessary for protection against bodily harm. R.C.M. 916(e)(3)(B). This seems to be the only aspect of self-defense that was genuinely in dispute and the government woefully failed to disprove it. Appellant directly stated that he felt his actions were in self-defense. (R. at 94). Appellant reported that he had tried to withdraw first. (R. at 94). Appellant also described repeatedly, but to no avail, asking LP to stop hitting him and to throwing things at him. (R. at 94). Appellant averred: "I provided her multiple times, to stop putting her hands on me. Uh, to, to not throw a lamp at me." (R. at 95). It was only after these repeated attempts to stop LP's severe assault on him that Appellant resorted to slapping LP, simultaneously telling her that it was not OK. (R. at 95).[5] Appellant further reported that he had never put his hands on LP before (R. at 95) including when LP assaulted him with "just [LP's] hands," at which point he simply fended her off but did not put hands on her (R. at 94). It was only

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[4] In the unlikely event the Government contests this point, Appellant will brief it further in reply.

[5] The transcript records Appellant saying, "I told her *I* wasn't okay." (R. at 95). The video itself (Pros. Ex. 1) sounds like "I told her *it* wasn't okay."

when she began attacking him with objects that he believed he had to put her hands on her to stop her dangerous actions. (R. at 94-95). Appellant repeated his belief that his actions were justified a few minutes later:

> I still feel like I was justified, because, like I, I warned you several times; I told you not to put your hands on me. Like, I told you not to throw the lamp. And you still did it. Like, like, what, at what point is it going to take for her to, like, realize it's not okay for her to put her hands on me?

(R. at 96).

The Government failed to disprove that Appellant believed his actions were necessary to stop LP's unlawful assault on him. To the contrary, the evidence outlined above strongly supports such a conclusion. Indeed, it could be interpreted that Appellant's response was *insufficient* to stop LP's assault, given that, right afterwards, she resumed her assault on him by attempting to strike him with a lunchbox. (R. at 97-98; 141).

Of note, there is no requirement that the accused's belief that the force used was necessary for protection be reasonable. R.C.M. 916(e)(3)(B).[6] This is notable because the government repeatedly suggested in closing that self-defense did not apply because Appellant's response was not reasonable:

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[6] The only reasonableness requirement is that the accused reasonably apprehended that bodily harm was about to be inflicted on the accused. R.C.M. 916(e)(3)(A)

> So, whether that lamp, weighs 2 pounds, weighs 15 pounds, we know that his response going back to the self-defense test, it's just not reasonable. It's not reasonable because he is turned and he's facing away his 5'3" pregnant wife, when a lamp hits him on the back shoulder.

(R. at 186). On the next page the government repeated: "Just because he says that it's self-defense does not make it self-defense, does not make it reasonable under the circumstances." (R. at 187). Shortly thereafter the government again argued: "this is not reasonable." (R. at 188). However, this is not what the self-defense test requires. The second element of self-defense (that the accused's belief that the force was necessary) is a subjective one and reasonableness is not the standard. R.C.M. 916(e)(3)(B); *see also* R.C.M. 916(e)(1) Discussion ("The test for the second element is entirely subjective.").[7] [8] Under the legally correct subjective test, Appellant repeatedly and credibly told OSI he subjectively believed his actions were

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[7] Appellant would certainly submit that his response was reasonable given LP's much more severe attack on him, but that is not the legal standard.

[8] The Government also seemed to argue the erroneous legal concept that Appellant's actions had to be proportional to qualify as self-defense: "And let's talk about the rule of proportionality as it is applied to self-defense. A slap, a slap, is never, proportional, to any threat." (R. at 186). R.C.M. 916(e)(3) contains no proportionality requirement. Indeed, the Benchbook expressly disclaims such a requirement: "In protecting (himself) (herself), the accused is not required to use the same amount or kind of force as the attacker. However, the accused may not use force which is likely to produce death or grievous bodily harm." (Military Judge's Benchbook, 5-19-2 (accessed 7 August 2025). Frankly, trial defense counsel seemed to adopt this same legally erroneous idea, albeit contending, of course, that Appellant's actions were proportionate. (R. at 197, 199).

necessary to prevent an ongoing assault, and the government presented no evidence to disprove this perfectly valid hypnosis that would exclude guilt.

WHEREFORE, Appellant respectfully requests this Honorable Court set aside the finding of guilty as to The Specification of Charge I.

IV. WHETHER THE MILITARY JUDGE ERRED BY EXCLUDING EVIDENCE UNDER MIL. R. EVID. 412.

Standard of Review

This Court reviews a military judge's ruling on whether to exclude evidence pursuant to [Mil. R. Evid.] 412 for an abuse of discretion. *United States v. Ellerbrock*, 70 M.J. 314, 317 (C.A.A.F. 2011) (citing *United States v. Roberts*, 69 M.J. 23, 26 (C.A.A.F. 2010)). Findings of fact are reviewed for clear error and conclusions of law are reviewed de novo. *Id.* (citing *Roberts*, 69 M.J. at 26).

Additional Background

Law and Analysis

While the overarching standard is abuse of discretion, it is hard to apply deference to a ruling that glosses over or wholesale omits discussion of the core issue. When a military judge does not make clear rulings on the record, his or her rulings are entitled to less deference. *United States v. Finch*, 79 M.J. 389, 397 (C.A.A.F. 2020); *see also United States v. Flesher*, 73 M.J. 303, 311 (C.A.A.F. 2014) ("If the military judge fails to place his findings and analysis on the record, less deference will be accorded.").

Where proffered evidence is constitutionally required, appellate courts test for prejudice by determining whether the error was harmless beyond a reasonable doubt. *Ellerbrock*, 70 M.J. at 318 (citations omitted). For example, where, as here, erroneous restriction of cross-examination is "a constitutional error, which means [appellate courts] must test the error to see if it was harmless beyond a reasonable doubt . . . " *Id.* at 320 (citation omitted). The Government's case was extraordinarily weak already. The Government cannot show beyond a reasonable doubt that the exclusion of this important evidence was harmless beyond a reasonable doubt. Appellant respectfully requests that the Government concede that, if error is found, prejudice exists.

Finally, it warrants noting that trial defense counsel's litigation of this issue was less than exemplary and, frankly, may well have crossed the line into ineffectiveness. A good deal of the litigation focused on the fact that trial defense counsel failed to comply with the military judge's deadlines. The written motion also failed to comprehensively address these issues and trial defense counsel essentially made an oral expansion of the argument during the subsequent motions hearing, incorporating material from a different motion under Mil. R. Evid. 404(b). (R. at 37-41). The chaotic presentation made what should have been a simple

argument rather difficult to follow. Nevertheless, the trial defense counsel eventually managed to articulate its position, and it was incumbent upon the military judge to decide the issue based on the merits of the evidentiary issue, rather than the quality of the Defense presentation.[9] *See, e.g.*, *Leonhardt*, 76 M.J. at 827 (noting that though defense counsel "inartfully stated" its position, the Defense presentation was sufficient to raise the relevant issue of post-assault consensual conduct being relevant to show the charged acts were consensual).

WHEREFORE, Appellant respectfully requests this Honorable Court set aside the finding of guilty as to The Specification of Charge II.

Conclusion

WHEREFORE, Appellant respectfully requests this Honorable Court set aside the findings of guilty and the sentence.

[redacted]

[redacted]

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[9] The Government waived its timeliness objection during oral argument and when defense counsel attempted to address the issue of timeliness the military judge cut it off and instructed defense counsel to get to the substance of the issue. (R. at 37).

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 14 August 2025.

[redacted]

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*	)	**MOTION TO FILE UNDER SEAL**
v.	)	Before Panel No. 1
Senior Airman (E-4) **CHYRON L. TALLEY** United States Air Force *Appellant*	)	No. ACM 40828 14 August 2025

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Pursuant to Rules 13.2(b), 17.2(b), and 23.3(o) of this Honorable Court's Rules of Practice and Procedure, Appellant, by and through counsel, moves to file under seal the following portions of the Brief on Behalf of Appellant: the additional background and portions of the law and analysis sections for Assignment of Error IV found on pages 16-21. These portions address multiple sealed appellate exhibits (Appellate Exs. VI, XII, XVIII, XIX, XXI) and their attachments, as well as sealed portions of the transcript (Trial Tr. at 31-48).

The above referenced portions will be delivered in hard copy to the Court, the Government Trial and Appellate Operations Division, and the Military Justice Law and Policy Division. The unsealed filing, redacted to identify which portions have been filed under seal in accordance with Rule 17.2(b), is being filed separately via email on 14 August 2025.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant this motion to file under seal.

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 14 August 2025.

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Senior Airman (E-4) **CHYRON L. TALLEY** United States Air Force *Appellant.*	)))))))))	UNITED STATES' MOTION FOR AN ENLARGEMENT OF TIME Before Panel No. 1 No. ACM 40828 21 August 2025

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Pursuant to Rule 23.3(m)(5), the United States respectfully requests an 18-day enlargement of time, to respond in the above captioned case. This case was docketed with the Court on 9 June 2025. Since docketing, Appellant has been granted one enlargement of time for 60 days, until 9 October 2025. Appellant filed his brief with this Court on 15 August 2025.

This is the United States' first request for an enlargement of time. As of the date of this request, 73 days have elapsed since docketing. The United States' response brief for issues raised by Appellant is currently due 15 September 2025. If the enlargement of time is granted the United States' response will be due 3 October 2025, and 116 days will have elapsed since docketing.

There is good cause for the enlargement of time in this case. Before Appellant filed his brief in this case, undersigned counsel had mandatory training days, a holiday weekend, and approved temporary duty (TDY) orders to act as Defense Counsel in a robust General Court-Martial, United States v. DiFalco at Nellis AFB, NV, subject to the following schedule:

a. 26-28 August 2025: JAJG's Mandatory Newcomers' Appellate Training;

b. 29 August-1 September 2025: JAJG Family Day and Labor Day Holiday Weekend;

c. 2 September 2025: TDY travel from JB Andrews, MD to Nellis AFB, NV;

d. 3-7 September 2025: General Court-Martial final trial preparation;

e. 8-19 September 2025: Currently docketed trial, with high likelihood of running beyond 19 September 2025 due to litigating 6 Charges with 17 specifications and examining over 30 noticed witnesses;

e. 21 September 2025: Return travel from Nellis AFB, NV to JB Andrews, MD;

f. 23 September 2025: Mandatory Court of Appeals of the Armed Forces orientation training; and

g. 25-26 September 2025: Mandatory Joint Appellate Advocacy Training.

Additionally, undersigned counsel is currently preparing an answer brief for United States v. Corliss, No. ACM 40656, due on 8 September 2025. As a result, undersigned counsel has not been able to begin working on the answer brief in this case and will not be able to begin working until 22 September 2025. This case is undersigned counsel's first priority following completion of the General Court-Martial indicated above. Due to office workload, there is no other appellate government counsel to work on the specified issue and file a brief sooner. JAJG currently has 8 pending answer/specified issue briefs before this Court; 2 pending CAAF answers; 1 pending Article 62 appeal; among other deadlines.

Due to mandatory trainings and TDY, undersigned counsel will lose approximately 20 calendar days between the date of this filing and 15 September 2025. Following 15 September 2025, due to the docketed court and mandatory trainings, undersigned counsel will lose approximately 9 calendar days between 15 September 2025 and the requested enlargement date of 3 October 2025. In other words, the request for an additional 18 days will ensure the undersigned counsel has 9 days to dedicate her full attention to preparing the answer brief and

for leadership review before filing. The requested enlargement date of 3 October 2025 is also 6 days prior to the previously granted enlargement of time until 9 October 2025 provided to Appellant and will not cause additional delays beyond what was contemplated when Appellant's original enlargement of time was granted by this Honorable Court.

WHEREFORE, the United States respectfully requests this Court grant the United States' motion.

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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Appellate Defense Division on 21 August 2025.

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee* v. Senior Airman (E-4) **CHYRON L. TALLEY** United States Air Force *Appellant*	)))))))))	**APPELLANT'S RESPONSE TO UNITED STATES' MOTION FOR ENLARGEMENT OF TIME (FIRST)** Before Panel No. 1 No. ACM 40828 22 August 2025

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

In accordance with Rule 23.2 of this Court's Rules of Practice and Procedure, Appellant responds to the United States' motion for a first enlargement of time and **does not** oppose the motion. Appellant asserts his right to speedy appellate review and opposes any extensions in excess of the eighteen days requested for the Government's briefing.

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 22 August 2025.

[redacted]

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**CONSENT MOTION TO ELECTRONICALLY TRANSMIT SEALED MATERIAL**
v.	)	Before Panel No. 1
Senior Airman (E-4) **CHYRON L. TALLEY** United States Air Force *Appellant.*	)	No. ACM 40828 3 October 2025

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

Pursuant to this Honorable Court's Rules of Practice and Procedure, the United States moves for permission to accomplish service of certain sealed material to Appellant's civilian appellate counsel, Mr. Scott R. Hockenberry, through secure electronic transmission.

Specifically, the Government requests to electronically submit via DoD SAFE portions of its Answer discussing material which was ordered sealed at trial. This document is subject to the United States' Motion to File Under Seal, which is being simultaneously filed with this Court.

While the Government may easily serve a hard copy of the sealed materials on military appellate defense counsel through physical means, the same is not feasible concerning civilian appellate defense counsel, whose practice is not located on Joint Base Andrews.

Transmitting the sealed filings via DoD SAFE is the most time-efficient and secure method for service to Appellant's civilian appellate defense counsel. Undersigned counsel has consulted with Appellant's counsel, who has no objection to this motion.

WHEREFORE, the United States respectfully requests this Court grant the United States' consent motion to electronically serve the aforementioned sealed materials on civilian appellate defense counsel via DoD SAFE.

[redacted]

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CERTIFICATE OF FILING AND SERVICE

I certify that an electronic copy of the foregoing was electronically sent to the Court and served on the Air Force Appellate Defense Division on 3 October 2025.

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	UNITED STATES'ANSWER TO ASSIGNMENTS OF ERROR
v.	)	Before Panel No. 1
Senior Airman (E-4) **CHYRON L. TALLEY** United States Air Force *Appellant.*	)	No. ACM 40828 3 October 2025

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

ISSUES PRESENTED

I.

WHETHER THE SPECIFICATION OF CHARGE II IS LEGALLY AND FACTUALLY INSUFFICIENT DUE TO THE CHARGING SCHEME.

II.

WHETHER THE SPECIFICATION OF CHARGE II IS FURTHER FACTUALLY INSUFFICIENT DUE TO WEAKNESSES IN THE EVIDENCE, TO INCLUDE INHERENT IMPROBABILITIES IN THE ACCUSATION, A TOTAL LACK OF CORROBORATION, A DELAYED REPORT THAT WAS ONLY MADE AFTER A MOTIVE TO FABRICATE AROSE, THE NAMED VICTIM'S ADMITTED ATTEMPT TO LEVERAGE HER ACCUSATIONS INTO A DESIRED OUTCOME, APPELLANT'S CREDIBLE DENIAL, AND THE FAILURE OF THE GOVERNMENT TO DISPROVE MISTAKE OF FACT AS TO CONSENT.

III.

WHETHER THE SPECIFICATION OF CHARGE I IS FACTUALLY INSUFFICIENT DUE TO THE GOVERNMENT'S FAILURE TO DISPROVE SELF-DEFENSE.

IV.

WHETHER THE MILITARY JUDGE ERRED BY EXCLUDING EVIDENCE UNDER MIL. R. EVID. 412.

STATEMENT OF CASE

The United States generally agrees with Appellant's statement of the case.

STATEMENT OF FACTS

During findings, the government called two witnesses: the named victim and spouse of Appellant at the time of the charged offenses, LP, and the OSI lead case agent who conducted Appellant's interview. (R. at 85; 124.) Regarding the sexual assault charge, LP testified that Appellant requested a specific sexual position on his birthday, 3 October 2023, which involved LP being facedown on the bed with her legs hanging over the edge of the bed. (R. at 142-143.) Consensual intercourse began, however LP testified that after five strokes she experienced pain and asked Appellant to stop. (R143-144). LP clarified that stroking is the action of Appellant's penis going in and out, while pounding requires harder force. (R. at 173.) Appellant held onto LP's hips or thighs and increasing the forcefulness of penetration after LP had asked him to stop. (R. at 144.) LP repeatedly asked for Appellant to stop and around the third or fifth time she asked him to stop, Appellant recommended she put a pillow under herself. (R. at 144-146.) LP continued to ask him to stop, saying Appellant was hurting her and hurting the baby—since she was pregnant at the time of this offense. (Id.)

However, Appellant did not stop and increased the force of penetration for about ten minutes until LP began to cry. (R. at 145.) Once LP began to cry, Appellant withdrew and lay on the bed next to her. (Id.) LP apologized to Appellant due to her belief that consenting to sexual activity was her duty as a wife. (R. at 147.) This belief was reinforced by repeated comments Appellant made during their relationship of "it's not rape because you are my wife."

(Id.) Following LP's apology, she and Appellant began consensual sexual intercourse again, until Appellant finished. (Id.)

Regarding the domestic violence charge, LP testified that during a verbal altercation on 22 September 2023, Appellant began pushing or shoving her to the ground, prompting her to try to push him off (R. at 132). She denied picking up a candle but admitted to grabbing a small lamp she had purchased, weighing approximately two pounds with a hollow metal base. (Id.). After hearing Appellant say something offensive while turning away, LP reacted by striking him on the back of the shoulder with the lamp, then placing it down. (R. at 135–137). On cross-examination, LP acknowledged it was possible she had thrown the lamp. (R. at 160). LP testified that she was retreating as Appellant turned and quickly closed the distance between them. (R. at 135–137). Appellant slapped her across the face with his hand (R. at 137–138). LP stated he struck her twice—once with his palm and once with the back of his hand—on opposite sides of her face (R. at 138–140). LP heard the smacking sound of the impact and felt pain for several minutes afterward (R. at 138, 140). According to LP, Appellant appeared angry and aggressive as he approached her (R. at 137–138).

Following the slaps, the altercation continued into the kitchen, where Appellant made a remark LP described as "really disgusting, really awful." (R. at 141). In response, LP grabbed a bag and attempted to strike Appellant. He intervened, pulled the bag out of LP's grip, breaking LP's fingernail and causing it to bleed. (Id.) The couple sought medical treatment at the Emergency Room at Centennial Hills Hospital (R. at 156–157.) Appellant left the marital home and requested a divorce around 30 October 2023. (R. at 152). LP reported both the sexual assault and domestic violence to law enforcement a few days later. (Id.) She testified to

experiencing conflicting emotions—feeling isolated and pregnant—and was torn between wanting to reconcile and wanting to move on. (R. at 153–154, 172).

Appellant consented to being questioned by OSI on 21 February 2024. (R. at 122.) Appellant stated the allegation of sexual assault caught him off guard and upset him. (R. at 104.) He was confident he and LP had engaged in sex on his birthday, but could not recall any details. (R. at 92.) Appellant denied continuing to engage in sexual acts after LP had asked to stop during the entirety of their relationship. (R. at 91.)

Appellant admitted to slapping LP after she threw a lamp at him. (R. at 95). He stated that LP was approximately 6–7 feet away when he saw her holding the lamp. (Id.) He warned her not to hit him, turned to sit on the couch, and then felt the lamp strike him. (R. at 107). Although Appellant claimed he acted in self-defense, he also expressed anger that LP had thrown an object that could have struck his head. (R. at 95). Appellant acknowledged he was physically capable of restraining LP, likely due to their significant size difference—he stood about 6'2" and weighed over 200 pounds, while LP was approximately 5'3" and 130 pounds. (R. at 95, 125–126). After catching the lamp before it hit the couch (R. at 107), Appellant approached LP and slapped her, stating that throwing objects was unacceptable. (R. at 95).

Additional facts are included as needed below.

ARGUMENT

I.

THE CHARGING SCHEME OF THE SPECIFICATION OF CHARGE II IS LEGALLY AND FACTUALLY SUFFICIENT

Standard of Review

Issues of legal sufficiency are reviewed de novo. United States v. Washington, 57 M.J. 394, 399 (C.A.A.F. 2002). "The Court may affirm only such findings of guilty as the Court finds

correct in law, and in fact in accordance with subparagraph (B)." 10 U.S.C. § 866(d)(1)(A). Factual sufficiency is reviewed using the following standard if every finding of guilty is for an offense occurring on or after 1 January 2021[1]:

> (i) In an appeal of a finding of guilty under subsection (b), the Court may consider whether the finding is correct in fact upon request of the accused if the accused makes a specific showing of a deficiency in proof.
>
> (ii) After an accused has made such a showing, the Court may weigh the evidence and determine controverted questions of fact subject to—
>
> > (I) appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence; and
> >
> > (II) appropriate deference to findings of fact entered into the record by the military judge.
>
> (iii) If, as a result of the review conducted under clause (ii), the Court is clearly convinced that the finding of guilty was against the weight of the evidence, the Court may dismiss, set aside, or modify the finding, or affirm a lesser finding.

10 U.S.C. § 866(d)(1)(B).

Law and Analysis

Appellant argues that because the entry of Appellant's penis into LP's vulva was consensual, the charged language of "by penetrating her vulva with his penis, without her consent" is legally and factually insufficient. (App. Br. at 5-6.) This argument fails. Initial agreement to engage in sexual acts is not a point-of-no-return. It is well settled in law that consent may be withdrawn at any time and, once consent is revoked, the sexual act must cease. United States v. Hunt, No. ACM 40563, 2025 CCA LEXIS 215, at *14 (A.F. Ct. Crim. App. May 16, 2025); United States v. Rouse, 78 M.J. 793, 794-95 (A. Ct. Crim. App. 2019). In

[1] National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, Section 542(b), 134 Stat. 3611-12

situations of withdrawn consent, "consent—and nothing else—separates innocent from wrongful conduct." Hunt, 2025 CCA LEXIS 215, at *15.

The relevant sexual act here is the penetration, however slight, of Appellant's penis into LP's vulva without consent. 10 U.S.C. §920(b), (g)(1)(A). The concept of penetration in law and by common sense is not limited to physical entry alone, but the continued inserted presence of the penis into the vulva. Appellant conflates the definition of the noun, penetrat*ion*, (App. Br. at 6.) with the progressive or continuous verb tense on the charge sheet, penetrat*ing*. The verb tense denotes an ongoing action, not a single point of entry. Common usage of the verb 'penetrate' includes to pass into or through, or to gain access to.[2] Appellant's argument limiting penetration to the point of entry alone fundamentally undermines a victim's right to withdraw consent at any time. Further, this argument contradicts the plain language of 10 U.S.C. § 920(g)(7)(A), which defines consent as "freely given agreement to the conduct at issue." The conduct at issue here, the active penetration of Appellant's penis into LP's vulva, continued after LP no longer agreed to be penetrated.

"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. Robinson, 77 M.J. 294, 297-98 (C.A.A.F. 2018) (quoting United States v. Rosario, 76 M.J. 114, 117 (C.A.A.F. 2017)). "[I]n resolving questions of legal sufficiency, we are bound to draw *every reasonable inference* from the evidence of record in favor of the prosecution." United States v. Barner, 56 M.J. 131, 134 (C.A.A.F. 2001) (emphasis added). Using the light most favorable to the prosecution and

[2] Penetrate, MERRIAM-WEBSTER.COM, https://www.merriam-webster.com/dictionary/penetrate (last visited Oct. 2, 2025).

employing every reasonable inference from the evidence of record, the specification of Charge II is legally sufficient. A reasonable factfinder could have found that Appellant was still penetrating LP's vulva at a time when she had withdrawn consent.

Turning to factual sufficiency, the test is established under 10 U.S.C. § 866(d)(1)(B). Under subparagraph (i), Defense has failed to make a specific showing of a deficiency in proof. Appellant has not shown any weakness in the evidence that penetration occurred after LP withdrew consent. Appellant's argument that "penetration" only occurs once, at the very beginning of sexual intercourse is unsupported by the law.

However, even if a deficiency of proof were sufficiently raised, the finding of guilty is factually sufficient under subparagraphs (ii)-(iii). LP testified that sexual intercourse began as consensual, however after approximately five strokes, she repeatedly verbally withdrew consent due to pain or discomfort until Appellant responded that she could use a pillow to resolve the pain or discomfort. LP declined and continued to ask Appellant to stop while he continued penetrating her vulva with his penis with increasing force until LP began to cry. LP described strokes as Appellant's penis going in and out of her vagina and clarified that pounding was with more force than stroking. The required elements of sexual assault without consent are met through LP's testimony alone. Accordingly, this Court should not be clearly convinced that the findings of guilt were against the weight of the evidence and should deny Appellant relief under this assignment of error.

II.

THE SPECIFICATION OF CHARGE II IS FACTUALLY SUFFICIENT, BECAUSE THE EVIDENCE SUPPORTED CONVICTION, AND NO DEFENSE OF MISTAKE OF FACT AS TO CONSENT EXISTED.

Standard of Review

The United States incorporates the standard of review set forth in issue I.

Law and Analysis

The Government proved sexual assault beyond a reasonable doubt through LP's testimony and Appellant's OSI interview. LP's testimony also proved that any mistake of fact as to consent was not reasonable under all the circumstances, overcoming the defense and supporting the finding of guilty.

A. Appellant has not shown a deficiency of proof in the government's case to trigger a factual sufficiency review.

Appellant has not demonstrated a specific deficiency of proof in the findings of these specifications. Our sister service found that a "general disagreement with a verdict" or with a conclusion of a factfinder is insufficient to establish a deficiency of proof. *See* United States v. Valencia, 85 M.J. 529, 535 (N-M Ct. Crim. App. 2024). "[M]inor inconsistencies in the victim['s] testimony" likewise does not "establish a specific deficiency of proof." United States v. Brassfield, 85 M.J. 523, 528 (A. Ct. Crim. App. 2024).

The crux of Appellant's factual sufficiency argument is alleged improbabilities, lack of corroboration, delayed reporting, LP's initial desire to reconcile, the government's failure to disprove mistake of fact as to consent, and Appellant's assertion that his own denial was more credible than LP's testimony at trial. (App. Br. at 7-10.) Appellant, however, never characterizes any of these issues as a "specific deficiency in proof." 10 U.S.C. § 866(d)(1)(B).

Alleged Improbabilities

Appellant emphasizes inherent improbabilities of the facts as established at trial, specifically that (1) LP apologized after Appellant stopped the sexual assault and reinitiated intercourse; and (2) that LP never confronted Appellant over text message following the offense.

(App. Br. at 7). However, these are not inherent improbabilities, but rather counterintuitive victim behavior explained by the totality of the circumstances. LP described a mistaken belief, reinforced by Appellant's comments, that consenting to or engaging in sex was her duty as a wife and didn't count as rape. LP felt bad for not fulfilling her perceived duty, leading to her apologizing, turning over, and reengaging in consensual sexual intercourse to Appellant's completion.

The totality of the circumstances, including LP's complex and conflicting emotions about the charged offenses, their separation and divorce, the state of her pregnancy, and the belief reinforced by Appellant of her wifely duty to submit to sex were all explored at trial and reasonably explain the minor inconsistencies Appellant now raises on appeal. Appellant's argument amounts to a general disagreement with the verdict and should not be enough to trigger a factual sufficiency review. Valencia, 85 M.J. at 535.

Corroboration

Appellant argues a complete lack of corroborating evidence, namely no forensic evidence, contemporaneous statements, admissions by Appellant, evidence of LP's truthfulness, and no expert testimony. (App. Br. at 8). First, corroboration is not required to support a guilty verdict. LP's testimony alone could sustain a guilty conviction so long as each element of the charges were met. United States v. Rodriguez-Rivera, 63 M.J. 372, 383 (C.A.A.F. 2006). Further, while Appellant gave no specific admissions of sexual assault, he did corroborate that sexual intercourse happened between himself and LP on 3 October 2023 during his OSI interview. Since a guilty verdict can be legally supported by the testimony of one witness, the lack of corroborating evidence alone cannot be enough to constitute a specific deficiency in proof and trigger a factual sufficiency review. Valencia, 85 M.J. at 535.

Delayed Reporting

The marital issues between LP and Appellant persisted until on or about 30 October 2023 when Appellant left the marital home. LP expressed complex and conflicting emotions, both wanting to reconcile and wanting the marriage to end. Appellant initiated divorce proceedings in November 2023, and the divorce was finalized in August 2024. LP specified that she did not make the report because Appellant had filed for divorce. The same belief and mindset which led to LP feeling bad about not fulfilling her perceived duty as a wife to submit to sexual acts explains the delayed reporting and not confronting Appellant afterward. After all, if she knew Appellant would not see the incident as sexual assault, why would she confront him? Similarly, if she believed it was her duty to submit, it would take time for her to realize what happened was assault and make the decision to report. As to the timing of reporting, the Defense attempted to raise a motive to fabricate due to divorce proceedings. However, LP clarified that she made the report to law enforcement separately from any divorce proceedings.

This claim does not amount to a specific deficiency of proof and only amounts to a general disagreement with the verdict. Thus, it is not enough to trigger a factual sufficiency review. Id.

LP's conflicting emotions and desire to reconcile

Appellant also argues that a text message sent by LP to Appellant after she reported him was LP leveraging her power to a desired outcome. (App. Br. at 9.) At trial, the text messages in question were, "Please I won't get you in trouble but I can't do this alone. I don't want our baby to not have a dad," and "Please come home". (R. at 154-155). LP was also questioned regarding texting Appellant's Aunt, Shannon Elkins, to ask Appellant intent what his intent was for their marriage. (R. at 155-156.) Specifically, LP was confronted with a text she sent Ms.

Elkins, "He could file for charges as well." (R. at 156.) Appellant argues this as an indication of LP's criminality in striking Appellant with a lamp. (App. Br. at 11, 14.) LP responded that the text was taken out of context, but did remember sending the text. (R. at 156.)

On redirect examination, LP clarified that her emotions were all over the place at the time of those text message, both wanting to reconcile and not wanting to reconcile. (R. at 172). LP explained she was feeling the weight of being alone and pregnant while also being afraid of Appellant because he had hurt her when she reached out to Ms. Elkins. (Id.) Using common sense and knowledge of human nature, LP's fluctuating emotional state makes sense. She was in the midst of pregnancy, domestic violence, sexual assault, participating in the law enforcement investigation, and divorce all at the same time. It is reasonable that she had moments where she desired reconciliation and to have a strong marriage to support her child. LP did not offer to recant her statement or refuse further participation in the investigation so long as Appellant came home. She made no offer promising never to call the police or report him again so long as he never put hands on her again. Finally, her statement to Ms. Elkins bolsters her credibility by showing that she was well aware she had also made mistakes during the marriage and was willing to admit them.

LP's testimony did not include embellishments or allegations of extreme physical force, use of weapons, verbal threats, or intoxication, which this Court has recognized as potential hallmarks of concocted details of a manufactured allegation. United States v. Soloshenko, No. ACM 40581, 2025 CCA LEXIS 358, at *23 (A.F. Ct. Crim. App. July 31, 2025). Like in Soloshenko, LP admitted to non-self-serving details that added to her credibility, such as her conflicting emotions, desire to reconcile, and the text messages sent both to Appellant and Ms. Elkins. Id. This Court should take a similar view here and find LP's testimony credible. LP's

testimony alone could sustain a guilty conviction so long as each element of the charges were met. Rodriguez-Rivera, 63 M.J. at 383. Again, Appellant's argument amounts to a general disagreement with the verdict and should not be enough to trigger a factual sufficiency review. Valencia, 85 M.J. at 535.

Disproval of mistake of fact as to consent

Appellant also claims that the Government did not disprove that he had a reasonable mistake of fact as to consent. (App. Br. at 9-10.) He argues that LP's testimony regarding Appellant's comment to use a pillow was overly vague, which is simply not the case. LP specifically recalled that she began asking Appellant to stop penetrating her after the fifth stroke, and approximately the third or fifth time she asked him to stop, he made the comment about the pillow. LP vocally demonstrated nonconsent at least three to five times before Appellant responded. Appellant did not stop, despite LP declining to use a pillow and telling Appellant that he was hurting her and their baby. Appellant only stopped intercourse several minutes later when LP began to cry. Appellant's assertion on appeal that some *possibility* arose indicating Appellant did not understand that she wanted to stop (App. Br. at 10) is simply not reasonable and should not be used by this Court as evidence of reasonable mistake of fact as to consent. Repeated requests to stop, that intercourse is causing pain, and that intercourse was hurting his unborn child does not raise a reasonable misperception that LP was consenting. Further, his statement regarding the pillow demonstrates that (1) he heard LP's withdrawal of consent; (2) understood LP was expressing pain or discomfort; (3) had the ability to stop the sex act; (4) disregarded LP's pleas to stop; and (5) continued penetrating LP's vulva with his penis for several more minutes.

Consent is a "freely given agreement to the conduct at issue by a competent person." 10 U.S.C. § 920(g)(7)(A); *see also* United States v. McDonald, 78 M.J. 376, 379 (C.A.A.F. 2019). Mistake of fact as to consent requires that, "the ignorance or mistake must have existed in the mind of the accused and must have been *reasonable under all the circumstances*." R.C.M. 916(j)(1) (emphasis added). Continuing in vaginal intercourse after LP repeatedly withdrew consent even though Appellant both heard and acknowledged her desire to stop was unreasonable. The fact that Appellant did stop once LP began to cry is perhaps mitigation for consideration on sentencing, but it does not establish the defense of mistake of fact.

LP's testimony did not include embellishments or allegations of extreme physical force, use of weapons, verbal threats, or intoxication, which this Court has recognized as potential hallmarks of concocted details of a manufactured allegation. Soloshenko, 2025 CCA LEXIS at *23. LP's testimony alone could sustain a guilty conviction so long as each element of the charges were met. Rodriguez-Rivera, 63 M.J. at 383. Again, Appellant's argument amounts to a general disagreement with the verdict and should not be enough to trigger a factual sufficiency review. Valencia, 85 M.J. at 535.

Appellant's denial

Appellant relies on his own version of events as captured in his OSI interview to support this, claiming his own denial is more credible than LP's in-court testimony. (App. Br. at 9). Appellant's acknowledgement of previous incidents where he did cease sexual acts when LP withdrew consent has no bearing on whether or not this particular sexual assault happened, consistent with LP's testimony. Further, Appellant never denied or established that his repeated assertions to LP, "it's not rape because you're my wife," were untrue.

Appellant's words "it's not rape because you're my wife," demonstrates his entitlement and expectations for sexual submission. When confronted by OSI, Appellant was upset by the accusation. Appellant denied having sexually assaulted LP, but corroborated that he and LP engaged in sex on 3 October 2023. First, if Appellant believed that it was impossible to sexually assault a spouse due to their status as a spouse, it is reasonable that he would be surprised by this allegation. Second, Appellant was not under oath at the time of his OSI interview and had a motive to self-serve by minimizing his own actions. Third, LP's credibility was not meaningfully attacked at trial. She acknowledged where she did not remember minor details, such as whether her feet were on the ground during the assault. She clarified that she had not told OSI about the forcefulness of Appellant's vaginal penetration (pounding verses stroking) because she had not been asked specifically. She also admitted where she couldn't recall the exact position of Appellant's hands or whether her feet were touching the floor. (R. at 162-163.) Appellant's denial during his own OSI interview is not sufficient to overcome the credible, sworn testimony of LP at trial.

LP's testimony alone could sustain a guilty conviction so long as each element of the charges were met. Rodriguez-Rivera, 63 M.J at 383. Appellant's argument amounts to a general disagreement with the verdict and should not be enough to trigger a factual sufficiency review. Valencia, 85 M.J. at 535. Appellant has not demonstrated a deficiency of proof, and this Court should not conduct a factual sufficiency review of his conviction for sexual assault.

B. The Government provided evidence for each element of the offense, demonstrating that Appellant committed sexual assault without consent and did not have a reasonable mistake of fact as to consent.

If this Court finds that Appellant did meet his burden to allege a specific deficiency in proof, it should not grant Appellant relief. As captured in section A above, the government

presented evidence beyond a reasonable doubt to show that Appellant committed sexual assault without consent. Both direct and circumstantial evidence supports the finding of guilty.

While the government has a heavy burden of persuasion, it need not prove a case to its "mathematical certainty." United States v. Kloh, 27 C.M.R. 403, 406 (C.M.A. 1959). The Government may meet its burden of proof with direct or circumstantial evidence. *See generally* United States v. Maxwell, 38 M.J. 148, 150-51 (C.M.A. 1993). Here, LP provided substantial direct evidence of the charges, which proved the case beyond a reasonable doubt.

"'[A]ppropriate deference' when a CCA 'weigh[s] the evidence and determine[s] controverted questions of fact'" implies "that the degree of deference will depend on the nature of the evidence at issue." United States v. Harvey, 85 M.J. 127, 130 (C.A.A.F. 2024). "For example, a CCA might determine that the appropriate deference required for a court-martial's assessment of the testimony of a fact witness, whose credibility was at issue, is high because the CCA judges could not see the witness testify. Id. at 131. This Court should follow the example offered in Harvey and give high deference to the factfinder's assessment of LP. As the main witness at trial, LP's testimony was found to be credible, based on the military judge's verdict.

LP's testimony alone could have sustained a guilty conviction so long as each element of the charges were met. Rodriguez-Rivera, 63 M.J. at 383. Appellant's own statements corroborated that Appellant and LP engaged in sexual intercourse on his birthday. Appellant generally denied the allegation of sexual assault, but was not able to specifically refute that: (1) Appellant told LP many times "it's not rape because you're my wife"; (2) Appellant heard LP's statements of discomfort and suggested using a pillow; and (3) that sexual intercourse continued after LP expressed a desire to stop.

Inconsistencies in testimony alone are not sufficient to overturn a finding of guilty. For example, LP's testimony did not include embellishments or allegations of extreme physical force, use of weapons, verbal threats, or intoxication, which this Court has recognized as potential hallmarks of concocted details of a manufactured allegation. Soloshenko, 2025 CCA LEXIS at *23. Like in Soloshenko, LP admitted to non-self-serving details that added to her credibility, such as: (1) apologizing to Appellant after the sexual assault; (2) engaging in consensual sex with Appellant immediately after the assault; (3) not remembering whether her feet were on the ground during the sexual assault; (4) misremembering whether Appellant suggested she use a pillow after the third or fifth time she asked him to stop; (5) confirming consensual sexual encounters continued after the sexual assault; 6) expressing a desire for reconciliation and acknowledging that Appellant could have reported her as well. This Court should take a similar view here and find LP's testimony credible, especially given the significant deference this Court owes to the military judge's credibility determination – since he had the opportunity to observe both LP and Appellant testify. Id.

The trial evidence and testimony proved beyond a reasonable doubt that Appellant committed a non-consensual sexual act by penetrating LP's vulva with his penis. The record further demonstrated that any claimed mistake of fact as to consent was patently unreasonable under the circumstances. Accordingly, this Court should not be clearly convinced that the findings of guilt were against the weight of the evidence and should deny Appellant relief on this assignment of error.

III.

THE SPECIFICATION OF CHARGE I IS FACTUALLY SUFFICIENT BECAUSE APPELLANT FAILED TO MEET SELF-DEFENSE CRITERIA UNDER R.C.M. 916(E)(3).

Standard of Review

The United States incorporates the standard of review set forth in issue I.

Law and Analysis

Appellant argues that slapping LP was appropriate self-defense because it was in response to her assault upon him. (App. Br. at 11). Simply because Appellant *felt* he was acting in self-defense or believed his actions were justified does not mean that self-defense existed. Self-defense is not absolute and must meet requirements as contained in Rule for Courts Martial (R.C.M.) 916(e)(3). Namely, that the accused, "(A) Apprehended, upon reasonable grounds, that bodily harm was about to be inflicted wrongfully on the accused; and (B) believed that the force that the accused used was necessary for protection against bodily harm." Id. When a theory of self-defense is raised, the burden is on the government to prove beyond a reasonable doubt that the defense does not exist. R.C.M. 916(b)(1). Appellant has failed to demonstrate a deficiency of proof, and this Court should not conduct a factual sufficiency review of his conviction for domestic violence. However, if this Court finds that Appellant has sufficiently demonstrated a deficiency of proof, any theory of self-defense fails because the Government proved beyond a reasonable doubt that the defense of self-defense did not exist.

A. Appellant has not shown a deficiency of proof in the government's case to trigger a factual sufficiency review.

The facts and circumstances surrounding the Specification of Charge I for domestic violence were fully explored at trial. First, Appellant discussed the incident in detail during his OSI interview. He described an ongoing verbal altercation with LP, which escalated to LP throwing a candle toward the corner of their living room, and later throwing a lamp at him, which struck him on his back. (R. 103-107.) Appellant told OSI he caught the lamp before it hit the couch (R. at 107) and then turned, approached LP (who was approximately 6-7 feet away),

slapped her, and told her it wasn't okay. (R. at 95; 107.) Appellant explained that, by throwing objects, LP *could have* hit him in the head or caused serious injury. (Id.) (emphasis added). When asked what happened right after he was hit with the lamp, Appellant explained to OSI, "if it's just your hands, like, I'm more than capable of fending you off, just, you know, keeping you off of me. But when you start like throwing objects at me […] I was turned around, she could have hit me in the head […] so I went over there and I slapped her." (R. at 95.). Appellant also described another incident later that same evening where LP picked up a lunchbox and attempted to hit him with it. The two struggled until Appellant pulled the bag from LP's hand, which broke LP's fingernail and Appellant took her to the emergency room. (R. at 98.)

LP testified regarding the verbal altercation and specifically denied throwing a candle. LP admitted to holding the lamp, weighing approximately 2 pounds, and striking Appellant with it. She stated he was facing away from her after saying something awful, and she reacted by hitting him with the lamp on the back of his shoulder, setting the lamp down, and retreating away from Appellant. (R. at 135-136.) LP testified she was 2-3 feet away from Appellant when he turned, closed the distance, and slapped her twice on each side of her face, first with the front of his hand and second with the back of his hand. (Id.) LP testified that she heard the sound of the slap against her face and could feel it for several minutes afterward. (R. at 138, 140.) LP also testified regarding the incident with the lunchbox, describing grabbing the lunchbox and trying to hit Appellant with it after he said something really disgusting to her. (R. at 141).

At trial, the defense counsel made the same arguments for self-defense as is raised on Appeal. Appellant asserts that self-defense was not disproved beyond a reasonable doubt because he apprehended bodily harm was about to be inflicted upon him by LP and that the force used was necessary for protection against bodily harm. (App. Br. at 12); *see also* R.C.M.

916(e)(3). Ultimately, Appellant's claims of self-defense fall flat in the face of the totality of the circumstances. While LP's testimony alone could sustain a guilty conviction so long as each element of the charges were met (Rodriguez-Rivera, 63 M.J. at 383), the guilty finding is further corroborated by Appellant's own recitation to OSI.

First, Appellant reasonably did not perceive LP as a threat, given the contrast between Appellant's height and weight—over 6 feet and over 200 pounds—compared to LP's height and weight—5'3" and approximately 130 pounds. Appellant's confidence in being able to fend someone off so long as they are unarmed demonstrates he had no reasonable apprehension of bodily harm from LP before she picked up the lamp. Indeed, Appellant saw LP pick up the lamp, told her not to throw it, and then turned his back to sit on the couch. He did not turn his back to run away or to shield himself from some imminent threat. By his words and actions, he did not have a reasonable apprehension of bodily harm when he turned.

Second, Appellant did not describe any worry of bodily harm until *after* the lamp struck him. Whether LP's testimony that she struck Appellant with the lamp and then set the lamp down, or Appellant's statements that LP threw the lamp and he caught it after it struck him, LP no longer had access to an object by which to imminently inflict bodily harm upon him. Additionally, LP was standing either 2-3 or 6-7 feet away, out of arm's reach for either of them, as Appellant had to approach LP to slap her. By the facts established by both LP and Appellant, after the lamp struck Appellant on his back, there was no longer reasonable grounds to apprehend imminent bodily harm. Appellant emphasized that LP *could have* struck him in the head, causing significant injury—however that's not what happened, and LP did not possess any additional object by which to even attempt to strike him in the head.

Third, the force Appellant used against LP was not necessary for protection against bodily harm. Appellant closed the distance between himself and LP and slapped her in retaliation and to teach her a lesson. As discussed above, there were no reasonable grounds to believe bodily harm was about to be inflicted upon him and, therefore, use of force was not necessary for protection against bodily harm. Further, Appellant communicating to LP that throwing objects was unacceptable in the same moment that he slapped her demonstrates that the force he used was in retaliation and to censure LP for her bad behavior. By Appellant's own words and actions, slapping LP was not to protect himself.

Appellant has not demonstrated a deficiency of proof, and this Court should not conduct a factual sufficiency review of his conviction for sexual assault. Appellant's argument amounts to a general disagreement with the verdict and is not enough to trigger a factual sufficiency review. Valencia, 85 M.J. at 535.

B. The Government provided evidence for each element of the offense, demonstrating that Appellant committed domestic violence and proved self-defense did not exist.

Even if this Court concludes that Appellant satisfied his burden to allege a specific deficiency in proof, relief should still be denied. As detailed in section A above, the government presented compelling evidence establishing beyond a reasonable doubt that Appellant committed domestic violence and that the defense of self-defense did not exist. Direct testimony from both LP and Appellant corroborates the finding of guilt and unequivocally refutes the claim of self-defense.

While the government has a heavy burden of persuasion, it need not prove a case to its "mathematical certainty." Kloh, 27 C.M.R. at 406. The Government may meet its burden of proof with direct or circumstantial evidence. Maxwell, 38 M.J. at 150-51. Here, Appellant and LP provided direct evidence of the charges, which proved the case beyond a reasonable doubt.

"'[A]ppropriate deference' when a CCA 'weigh[s] the evidence and determine[s] controverted questions of fact'" implies "that the degree of deference will depend on the nature of the evidence at issue." Harvey, 85 M.J. at 130. This Court should follow the example offered in Harvey and give high deference to the factfinder's assessment of both LP and Appellant.

Appellant agrees, "the Government certainly presented sufficient evidence that the charged act – a slap to the face – occurred. Appellant admitted as much to OSI." (App. Br. at 11.) Appellant only contends that the evidence supports his claim of self-defense and that the government failed to disprove it beyond a reasonable doubt. (Id.) This argument is ineffective. The record demonstrates that the defense of self-defense was thoroughly rebutted at trial through the evidence presented and the totality of the circumstances, which established guilt beyond a reasonable doubt.

When self-defense is raised, the burden is on the government to prove beyond a reasonable doubt that the defense does not exist. R.C.M. 916(b)(1). Self-defense is defined in two parts, that the accused: (1) apprehended, upon reasonable grounds, that bodily harm was about to be inflicted wrongfully on the accused; and (2) believed that the force used was necessary for protection against bodily harm, provided that the force used was less than force reasonably likely to produce death or grievous bodily harm. R.C.M. 916(e)(3). Both prongs were addressed and disproven beyond a reasonable doubt at trial.

The first prong of self-defense was not satisfied because Appellant lacked reasonable grounds to fear imminent bodily harm. After Appellant was struck by the lamp, LP was no longer a threat—she was out of arm's reach, was disarmed, and was actively retreating. Any danger of immediate harm had clearly subsided. The second prong also fails, as the force used

by Appellant was not necessary to prevent bodily harm. Rather than acting in self-defense, Appellant slapped LP in retaliation and to chastise her for her conduct.

Giving due deference to the military judge—who observed the witnesses firsthand—and to the findings of fact, this Court should not be clearly convinced that the guilty verdict was contrary to the weight of the evidence. Accordingly, Appellant is not entitled to relief under this assignment of error.

IV.

THE MILITARY JUDGE DID NOT ABUSE HIS DISCRETION BY EXCLUDING EVIDENCE UNDER MIL. R. EVID. 412.

Additional Facts

Standard of Review

Law and Analysis

CONCLUSION

For these reasons, the United States respectfully requests that this Honorable Court deny Appellant's claims and affirm the findings and sentence in this case.

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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 3 October 2025.

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee* v. Senior Airman (E-4) **CHYRON L. TALLEY** United States Air Force *Appellant*	)	**APPELLANT'S MOTION FOR ENLARGEMENT OF TIME OUT OF TIME TO FILE REPLY BRIEF** Before Panel No. 1 No. ACM 40828 8 October 2025

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Pursuant to Rule 23.3(m)(1), (4), and (7) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time out of time to file a reply to the Government Answer, filed on 3 October 2025. Appellant requests an enlargement for a period of five days, which will end on **15 October 2025**. The record of trial was docketed with this Court on 11 June 2025. From the date of docketing to the present date, 119 days have elapsed. On the date requested, 126 days will have elapsed.

On 24 through 26 February 2025, Appellant was tried by a general court-martial composed of a military judge alone at Nellis Air Force Base, Nevada. Trial Tr. 19, 25, 248. Appellant was found guilty, contrary to his pleas, of one charge and one specification of domestic violence in violation of Article 128b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 928b and one charge and one specification of sexual assault in violation of Article 120, UCMJ, 10 U.S.C. § 920. Trial Tr. 10, 76, 208; Electronic Record of Trial (eROT) Vol 1, *Entry of Judgment* (Mar. 17, 2025).

The military judge sentenced Appellant to a reprimand, reduction in pay grade to E-1, confinement for eighteen months (served consecutively), and a dishonorable discharge. Trial Tr.

248; eROT Vol 1, *Entry of Judgment* (Mar. 17, 2025). The convening authority took no action on the findings or sentence but waived automatic forfeitures for a period of six months, or release from confinement, or expiration of term of service, whichever is sooner. eROT Vol 1, *Convening Authority Decision on Action* (Mar. 11, 2025).

The trial transcript is 248 pages long. The electronic record of trial contains seven Prosecution Exhibits, six Defense Exhibits, and twenty-four Appellate Exhibits. Appellant is currently confined.

Appellant was advised of his right to a timely appeal. Appellant has been provided an update of the status of counsel's progress on his case. Appellant was advised of the request for this enlargement of time. Appellant has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

Civilian appellate defense counsel (Mr. Scott Hockenberry) and undersigned counsel have been unable to complete their review of the Government's Answer due to the pending Consent Motion to Electronically Transmit Sealed Materials to civilian appellate defense counsel. Today, undersigned counsel was able to physically transfer their sole physical copy of the requested-to-be-sealed portions of the Government's Answer to civilian appellate defense counsel, which will enable counsel to complete their review of the Government's Answer and submit a reply. Upon civilian appellate defense counsel's review of the requested-to-be-sealed portions of the Government's Answer today, counsel determined they will need additional time to draft a reply. This constitutes good cause for the out-of-time filing. An enlargement of time is necessary to allow counsel to fully review the Government's Answer and provide a response.

WHEREFORE, Appellant requests that this Court grant the requested enlargement of time for good cause shown.

Respectfully submitted,

JOHN M. FREDERICKS, Capt, USAF
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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Appellate Government Division on 8 October 2025.

[redacted]
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UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40828**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Chyron L. TALLEY	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
Appellant	)	**Panel 1**

On 14 August 2025, Appellant filed his assignments of error brief with the court. On 21 August 2025, the Government moved this court for an enlargement of time for 60 days, to end on 9 October 2025, which was unopposed and we granted.

On 3 October 2025, the Government filed its answer to Appellant's assignments of error brief. On this same date, the Government also moved this court to file portions of its answer under seal. In addition, on this same date, the Government moved this court, with Appellant's consent, to authorize government appellate military counsel to transmit said sealed portions of its answer to Appellant's civilian appellate defense counsel, Mr. Scott R. Hockenberry.

On 8 October 2025, Appellant filed an enlargement of time out of time for a period of five days, to end on 15 October 2025, to review the Government's answer and file a reply brief.

The court has considered the Government's motion and Appellant's consent thereto, Appellant's motion for an enlargement of time out of time, and this court's Rules of Practice and Procedure.

Accordingly, it is by the court on this 9th day of October, 2025,

ORDERED:

Appellee's Consent Motion to Electronically Transmit Sealed Materials to Mr. Scott R. Hockenberry is **GRANTED**.

Government appellate military counsel is permitted to scan a hardcopy of the materials under seal pending this court's final ruling on Government's motion to file under seal; transfer scanned copies of said sealed materials to a password-protected or encrypted DVD; and transmit sealed materials encrypted or password-protected to Mr. Hockenberry via DoD SAFE. Government military appellate counsel must label any DVD copies with Appellant's

name, ACM number, the date, and the language "CUI – sealed materials under R.C.M. 1113," and place it in a sealed envelope containing the same identifying information.

Except as authorized above, no counsel will photocopy, photograph, or otherwise reproduce this material and will not disclose or make available its contents to any other individual without this court's prior written authorization.

Further, appellate defense counsel and appellate government counsel are authorized to retain copies of same in their possession until completion of this court's Article 66, UCMJ, 10 U.S.C. § 866, review of Appellant's case, to include the period for reconsideration in accordance with JT. CT. CRIM. APP. R. 31. After this period, appellate defense counsel and appellate government counsel shall destroy any retained copies of the sealed materials in their possession.

It is further ordered:

Appellant's Motion for Enlargement of Time Out of Time to File Reply Brief is **GRANTED IN PART**. Appellant shall file his reply not later than **17 October 2025**.

FOR THE COURT

[redacted]

CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES
Appellee,

v.

Senior Airman (E-4)
CHYRON L. TALLEY,
United States Air Force
Appellant

REPLY BRIEF ON BEHALF OF APPELLANT

Before Panel No. 1

No. ACM 40828

15 October 2025

TO THE HONORABLE, THE JUDGES OF THE
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

Appellant, Senior Airman (SrA) Chyron L. Talley, pursuant to Rule 18(d) of this Honorable Court's Rules of Practice and Procedure, files this Reply to the Appellee's Answer, dated 3 October 2025 (Gov. Br.). In addition to the arguments in his opening brief, filed on 15 August 2025, Appellant submits the following additional arguments.

I. WHETHER THE SPECIFICATION OF CHARGE II IS LEGALLY AND FACTUALLY INSUFFICIENT DUE TO THE CHARGING SCHEME.

1. If the Charging Language Means Entry the Evidence is Insufficient

It was uncontested at trial and on appeal that the entry was accomplished with consent. As such, this Court's resolution of the textual interpretation issue of the word "penetration" will be dispositive on this assignment of error.[1]

2. Competing Interpretations

The crucial question, therefore, is whether the charging language means entry as Appellant, Black's, and Ballantine's suggest, or whether, as the Government suggests, it is an "ongoing action." (Gov. Br. at 6).

The Government states, without citation, that "The concept of penetration in law and by common sense is not limited to physical entry alone, but the continued inserted presence of the penis into the vulva." (Gov. Br. at 6). But the Government makes no attempt to reconcile this contention with Black's and Balentine's legal dictionaries, which both define "penetration" as entry. *See* (Appellant's Br. at 6);

[1] The Government does argue, as addressed below, that the failure of the charging language to conform to the conduct alleged does not constitute a specific showing of a deficiency of proof. While appellant disagrees, the resolution of textual interpretation issue will still be dispositive, as resolution in appellant's favor would clearly result in a finding of legal insufficiency.

PENETRATION, Black's Law Dictionary (11th ed. 2019); PENETRATION, Ballentine's Law Dictionary (3rd ed. 2010).

While the Government neither acknowledges nor analyzes the definitions from the two leading law dictionaries, it cites to an online lay dictionary for the proposition that the "verb tense denotes an ongoing action, not a single point of entry." (Gov. Br. at 6) (citing Penetrate, MERRIAM-WEBSTER.COM, https://www.merriam-webster.com/dictionary/penetrate). But their cited dictionary itself does not say it is an "ongoing action" – that is, at best, the Government's interpretation. To the contrary, the dictionary the Government cites to includes, amongst other definitions, "to enter by overcoming resistance," a definition similar to that found in Black's and Balentine's. *Id.*

Appellant's definition is better supported than the Government's. Appellant cites the two leading law dictionaries, both of which solidly support his position. The Government cites only a lay dictionary, which does not particularly support its position, and, though omitted by the Government, also contains a definition very much in line with those from Black's and Balentine's. This Court should find the former citations more authoritative.

At the very least, the meaning is ambiguous – in which case Appellant should prevail under the rule of lenity. *See generally United States v. Davis*, 139 S. Ct. 2319, 2333 ("[T]he rule of lenity's teaching [is] that ambiguities about the breadth

of a criminal statute should be resolved in the defendant's favor."). When the Government wishes to criminalize conduct, it must be clear in its language, and it is a central concept of criminal law that ambiguities in the language of criminal prohibitions to be resolved in favor of the defendant.

3. Appellant Does Not Argue that Post-Penetration Sexual Assault Cannot be Criminalized

Significant portions of the Government's answer focus on the question of whether post-penetration sexual assault cannot be criminalized at all. *See* (Gov. Br. at 5-7). This is "straw manning." Appellant does not argue that post-penetration sexual assault cannot be criminalized. Appellant's argument is more limited. Namely, that the charging language charged entry and, on these facts, the entry was accomplished consensually.

The Government likely had the opportunity to match the charging language to the facts. Article 120, UCMJ specifically provides multiple definitions, and the Government could have chosen one that fit. Appellant will not specifically analyze the validity of every charging scheme the Government could have used. The only issue here is that the evidence did not fit the charging scheme the Government selected. As the CAAF has stated, even where the "evidence at trial establishes the commission of a criminal offense by the accused," the proof must "conform strictly with the offense alleged in the charge." *United States v. English*, 79 M.J. 116, 121 (C.A.A.F. 2019) (quotation marks and citations omitted).

4. Standard of Review (Legal Sufficiency)

In places, the Government seems to imply that the prosecution-friendly legal sufficiency standard of review requires this Court to draw inferences in its favor with respect to the ambiguity as to the meaning of the charging language. (Gov. Br. at 6-7). But this standard applies to evaluating evidence, not to questions of textual interpretation. When a question of legal sufficiency is based solely on a matter of textual interpretation, a de novo standard of review is called for. Indeed, as noted above, as the rule of lenity requires ambiguities to be resolved in favor of the defendant.

5. Specific Showing of a Deficiency in Proof

As a threshold matter regarding factual sufficiency, the Government argues that Appellant has not made specific showing of a deficiency in proof sufficient to trigger further review under the new factual sufficiency standard. (Gov. Br. at 7). The Government repeats similar arguments – *a lot* – throughout its brief. (Gov. Br. at 7, 10, 14, 17, 20).

The victim acknowledging that the charged act (entry) occurred consensually certainly constitutes a specific showing of a deficiency in proof. That's a pretty significant deficiency! Of course, this issue rests on the resolution of a question of textual interpretation, but Appellant is aware of no authority that this Court's factual sufficiency authority cannot address questions that involve textual interpretation.

That said, given the nature of the textual interpretation issue, there is significant overlap between the legal and factual sufficiency analysis – if the charging language means "entry" then the proof is also legally insufficient.

WHEREFORE, Appellant respectfully requests this Honorable Court set aside the finding of guilty as to The Specification of Charge II and Charge II.

II. WHETHER THE SPECIFICATION OF CHARGE II IS FURTHER FACTUALLY INSUFFICIENT DUE TO WEAKNESSES IN THE EVIDENCE, TO INCLUDE INHERENT IMPROBABILITIES IN THE ACCUSATION, A TOTAL LACK OF CORROBORATION, A DELAYED REPORT THAT WAS ONLY MADE AFTER A MOTIVE TO FABRICATE AROSE, THE NAMED VICTIM'S ADMITTED ATTEMPT TO LEVERAGE HER ACCUSATIONS INTO A DESIRED OUTCOME, APPELLANT'S CREDIBLE DENIAL, AND THE FAILURE OF THE GOVERNMENT TO DISPROVE MISTAKE OF FACT AS TO CONSENT.

1. Specific Showing of a Deficiency in Proof

The Government again argues that Appellant has not made a specific showing of a deficiency in proof sufficient to trigger further review. (Gov. Br. at 8). Immediately thereafter, the Government cites at least six deficiencies in proof that Appellant raised in his original brief. (Gov. Br. at 8) (citing Appellant's Br. at 7-10). Despite acknowledging that Appellant raised these deficiencies, the Government objects that "Appellant . . . never characterizes any of these issues as a 'specific deficiency in proof.'" (Gov. Br. at 8) (citing 10 U.S.C. § 866(d)(1)(B)).

The Government's contention seems to be that an appellant has to use the words "specific deficiency in proof" when identifying each weakness or failure in the evidence. Appellant is aware of no authority for such a requirement. This Court recently reached factual sufficiency review after an appellant "generally challenge[d] the believability of [the victim's] testimony." *United States v. Edwards*, No. ACM S32787, 2025 LX 136076, at *6 (A.F. Ct. Crim. App. 24 Apr. 2025). To the extent this Court feels an appellant must use these exact words, Appellant will take this opportunity to state that the weaknesses and contradictions in the evidence constitute "specific deficiencies in proof."

2. Improbabilities in LP's Accusations

As raised in Appellant's opening brief, LP reported that Appellant sexually assaulted her, but immediately afterwards *she* apologized to *him* and reinitiated sex. (Appellant's Br. at 7-8; R. at 142-47). Appellant also pointed out that these sheepish actions seemed inconsistent with the extremely aggressive and violent version of LP painted elsewhere in the record and that there was no indication LP ever brought up the sexual assault Appellant, or mentioned it in any of her thousands of pages of subsequent text messages (Appellant's Br. at 7-8; R. at 147).

The Government objects that "these are not inherent improbabilities, but rather counterintuitive victim behavior . . . ." (Gov. Br. at 8-9). This is simply a different description of the same thing. "Counterintuitive" behavior is

counterintuitive because it seems improbable. For example, it is both counterintuitive and improbable that a sexual assault victim would apologize to her assailant and initiate sex immediately after being sexually assaulted.

The Government seems to be asking this Court to negate this evidence based on expert-like considerations about counterintuitive victim behavior, but the Government did not call an expert at trial and this Court's review is limited to the evidence presented at trial. *United States v. Beatty*, 64 M.J. 456, 458 (C.A.A.F. 2007) (citations omitted). This would have been a likely case for the Government to call an expert, but the Government chose not to do so and is limited to the record as developed below.

3. Lack of Corroboration

The Government largely concedes the lack of any corroboration. (Gov. Br. at 9). The Government does posit that Appellant corroborated the sexual act itself. While the Government does not provide a citation, this presumably refers to this line from Appellant's OSI interview:

> [OSI AGENT]: Okay. Do you recall having sex on your birthday last year?
>
> ACC: I'm sure I did. But I don't recall it, no.

(R. at 92). This is hardly bombshell corroboration. The fact that Appellant probably had sex with his wife is completely unremarkable and does little to advance the

Government's case. It illustrates the weakness of the case that this is the best corroboration the Government has.

The Government then posits that "the lack of corroborating evidence *alone* cannot be enough to constitute a specific deficiency in proof and trigger a factual sufficiency review." (Gov. Br. at 9) (emphasis added). Appellant is aware of no authority for such a proposition, but regardless this case involves much more than "the lack of corroborating evidence *alone*". It involves a lack of corroboration evidence along with numerous other weaknesses in the evidence.

4. Delayed Reporting

The Government concedes that there was a delayed report, which of course is obvious from the record. (Gov. Br. at 10). The Government then makes a number of excuses for the delayed report – some of which are quite illustrative of the importance of the erroneously denied Mil. R. Evid. 412 evidence discussed in Assignment of Error IV. Some of the Government's arguments also venture towards expert-like considerations that were not presented via expert testimony at trial. In any case, the fact that the Government can articulate a possible explanation for the victim's seemingly inconsistent actions does not meet its high burden to prove guilt beyond a reasonable doubt.

5. Attempt to Leverage Accusation

As argued in Appellant's opening brief, LP acknowledged she wanted to reconcile with Appellant (R. at 152) and acknowledged messaging Appellant – after reporting him – that she would stop getting him in trouble if she did what she wanted: reconcile with her. (R. at 152-54).

The Government posits that LP's "emotions were all over the place at the time of those text message[s]." (Gov. Br. at 11). That may be true, but it does not reduce the underlying credibility concern. LP did not report Appellant contemporaneously, but rather only reported him after he left her, and then – after reporting him – told him she would not get him in trouble if he did what she wanted.

The Government suggests that LP's messages did not contain an explicit "offer" or "promise." (Gov. Br. at 11). The text messages were not formal contract couched in legalese, but the intent of the messages was clear. As the Government does not seem to dispute, LP's point was that she would not get Appellant in trouble if he did what she wanted – and, by implication, she *would* get him in trouble if he didn't. This dynamic should give this Court significant pause.

6. Mistake of Fact as to Consent

The Government does not dispute, or even address, Appellant's arguments that (1) LP gave little detail about the volume of her post-penetration requests to stop, or whether Appellant heard and understood them; (2) uncertainty about

Appellant's perspective is increased by the fact that LP was facing away from Appellant with her head down on the bed; (3) Appellant's statements to OSI further raised the specter of mistake of fact as to consent; and (4) Appellant's cessation of sex when LP began to cry raised the possibility that Appellant did not previously understand that she wanted to stop. (Appellant's Br. at 9-10; R. at 91, 142-143, 146-47).

The Government focuses its Answer primarily on Appellant's suggestion that they use a pillow under LP for comfort. (Gov Br. at 12). As argued in Appellant's opening brief, LP's imprecise testimony on this point raised the possibility of mistake of fact as to consent. (Appellant's Br. at 10). After all, LP testified that the only reason she withdrew consent was due to discomfort. Appellant then offered a solution to resolve the discomfort. As such, the timing and circumstances of Appellant's statement about the pillow were important. The Court can evaluate this brief testimony on its own – Appellant simply posits that this testimony was not particularly precise on an important point. Indeed, LP's testimony could be read to say that *all* her requests to stop preceded the pillow comment and, after the pillow comment, her next indication of nonconsent was crying – at which point Appellant promptly stopped. (R. at 144-46).

In any event, the combination of these factors, most of which the Government does not refute at all, raises a reasonable mistake of fact as to consent defense which

the Government failed to disprove through the vague testimony of LP.

7. Appellant's Denial

The Government chose to enter Appellant's denial into evidence, making this a "he said, she said" case of sorts. The Government suggests that factual insufficiency would have to be predicated on a conclusion that Appellant's "denial is more credible than LP's in-court testimony." (Gov. Br. at 13). That, of course, is not the standard. The defense is not required to present "more credible" evidence of innocence than the Government presents of guilt. The beyond a reasonable doubt standard is much more demanding. If the evidence supports a "fair and rational" conclusion besides guilt, that is enough for reasonable doubt. To be clear, Appellant's position is that his voluntary, candid, consistent statement to OSI – supported by willingly consenting to presentation of corroborating cell phone evidence – *was* more credible than LP's testimony. But such a conclusion is not necessary to find factual insufficiency.

The Government notes that "Appellant never denied or established that his repeated assertions to LP, 'it's not rape because you're my wife,' were untrue." But OSI never asked Appellant whether he made such statements, and it would have been very odd if he had denied them spontaneously. The fact that Appellant did not deny statements he was never asked about adds nothing to the Government's case. That said, Appellant voluntarily turned over thousands of pages of text messages to

OSI and these messages do not support LP's accusations that Appellant held such views or made such statements. *See* (R. at 115).

The Government goes on to argue that Appellant's "surprise" when OSI brought up the accusation of sexual assault may have been due to his supposed view that one cannot sexually assault their spouse. (Gov. Br. at 14). Apparently, the Government is arguing that Appellant's surprise at the accusation was some sort of corroboration that he committed the underlying offense. This argument is difficult to follow, but a more straightforward explanation for Appellant's surprise is simply that he was surprised by the accusation because it was untrue and therefore unexpected.

WHEREFORE, Appellant respectfully requests this Honorable Court set aside the finding of guilty as to The Specification of Charge II and Charge II.

III. WHETHER THE SPECIFICATION OF CHARGE I IS FACTUALLY INSUFFICIENT DUE TO THE GOVERNMENT'S FAILURE TO DISPROVE SELF-DEFENSE.

1. The Government Concedes LP was Criminally Attacking Appellant

A triggering condition for self-defense is a wrongful battery or anticipated wrongful battery. R.C.M. 916(e)(3). As pointed out in Appellant's original brief, there was no suggestion at trial, either by LP or the Government, that her assault on Appellant was anything other than a wrongful criminal battery. (Appellant's Br. at 12). The Government on appeal does not contest this either.

2. Apprehension of Bodily Harm (First Element)

The first element of self-defense requires that the accused "Apprehended, upon reasonable grounds, that bodily harm was about to be inflicted wrongfully on the accused." R.C.M. 916(e)(3). The Government seems to add to this requirement, arguing that Appellant did not truly "perceive LP as a threat" because he was bigger than her. (Gov. Br. at 19). Self-defense does not require perception of a threat – only apprehension of bodily harm. Bodily harm can, of course, be "slight," though, on the facts of this case, Appellant reasonably described apprehension of significant bodily harm, given that LP was attacking him with dangerous objects. (R. at 95) ("[S]he could have hit me in the head; knocked me out; gave me brain damage").

The Government next objects that "Appellant did not describe any worry of bodily harm until *after* the lamp struck him." (Gov. Br. at 19) (emphasis in original). It is difficult to understand why the Government thinks this helps their case. Appellant did not strike LP until "*after* the lamp struck him." As such "*after* the lamp struck him" is exactly the relevant time to evaluate the self-defense factors. The fact that Appellant did not strike LP until he apprehended bodily harm strongly supports a claim of self-defense.

Finally, the Government suggests that Appellant did not apprehend bodily harm because, after LP struck him with the lamp, "LP did not possess any additional object" to attack him with. (Gov. Br. at 19). There is some ambiguity in the record

as to whether LP threw the lamp at Appellant, or hit him with it like a club, in which case she may have still had the lamp available, though the best reading does seem to indicate that she threw the lamp. *See* (R. at 94-95, 132, 135, 139, 160). But regardless of whether she still had that *particular* object available, the Government's argument would only be persuasive if there were no other objects available. Indeed, after the charged assault LP again picked up another object and attempted to strike Appellant with it. (R. at 98, 141). Prior to the lamp, Appellant described LP throwing a hefty glass candle, though she denied it. (R. at 94, 101, 132). The Government cannot carry its beyond a reasonable doubt burden by suggesting, without evidence, that the lamp was the only available object, particularly where the evidence at trial indicated LP assaulted Appellant with different objects before and after the lamp.

3. Belief that the Force Used was Necessary for Protection Against Bodily Harm (Second Element)

The Government then posits that "the force Appellant used against LP was not necessary for protection against bodily harm." (Gov. Br. at 20). This is an inaccurate recitation of the standard. The second element of self-defense requires "that the accused . . . *[b]elieved* that the force that accused used was necessary for

protection against bodily harm . . . ." R.C.M. 916(e)(3). This is a subjective standard not, as the Government seems to suggest here, an objective one.[2] [3]

The record contains a volume of evidence that Appellant believed his actions were necessary to stop LP's assaults on him. *See* (Appellant's Br. at 13-14; R. at 94-96). The Government suggests that Appellant's true motivation was "retaliation" or to "teach [LP] as lesson." (Gov. Br. at 20). This is not particularly supported by the record – at least not beyond a reasonable doubt. Appellant repeatedly stated that his motivation was to get LP to stop attacking him. The Government may have a theory as to Appellant's subjective motivations, but it did not prove it beyond a reasonable doubt.

4. Specific Showing of a Deficiency in Proof

Finally, the Government again argues that this Court should not conduct a factual sufficiency review at all, because "Appellant has not demonstrated a deficiency in proof." The Government does not elaborate on why it feels that the failure to disprove self-defense is not a qualifying deficiency in proof.[4]

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[2] To be fair, the Government correctly quotes the subjective standard elsewhere in it's brief. (Gov. Br. at 17, 21).

[3] While the standard is subjective, there is a strong argument Appellant's response was objectively *insufficient* to stop LP's assault, given that, shortly afterwards, she resumed her assault on him by attempting to strike him with another object. (R. at 97-98; 141).

[4] It is possible that this argument was included in this assignment of error by mistake, as it duplicates verbatim sentences from the prior assignment to error and concludes

This Court recently considered the affirmative defense of self-defense in a factual sufficiency review after the appellant claimed that "he punched [the victim] in self-defense after she bit him on the chest." *Edwards*, No. ACM S32787, 2025 LX 136076, at *6, 16. The Government does not explain why that was a specific showing of a deficiency in proof but the showing here is not.

WHEREFORE, Appellant respectfully requests this Honorable Court set aside the finding of guilty as to The Specification of Charge I and Charge I.

IV. WHETHER THE MILITARY JUDGE ERRED BY EXCLUDING EVIDENCE UNDER MIL. R. EVID. 412.

---

that "this Court should not conduct a factual sufficiency review of his conviction for *sexual assault*." (Gov. Br. at 20) (emphasis added). It was the prior specification that dealt with sexual assault – this specification deals with a physical assault.

WHEREFORE, Appellant respectfully requests this Honorable Court set aside the finding of guilty as to The Specification of Charge II and Charge II.

Conclusion

WHEREFORE, Appellant respectfully requests this Honorable Court set aside the findings of guilty and the sentence.

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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 15 October 2025.

[redacted]

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Senior Airman (E-4) **CHYRON L. TALLEY,** United States Air Force *Appellant.*	)))))))))	UNITED STATES' MOTION TO FILE PORTIONS OF ANSWER BRIEF UNDER SEAL Before Panel No. 1 No. ACM 40828 3 October 2025

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Pursuant to Rules 13.2(b), 17.2(b), and 23.3(o) of this Court's Rules of Practice and Procedure, the United States moves to file under seal the following portions of its Answer to the Assignments of Error: pages 22-30.[1] In a partially-sealed filing dated 15 August 2025, Appellant raised one assignment of error which relied on Mil. R. Evid. 412 matters and closed hearings that were sealed by the military judge at trial. (*See* App. Br. at 16-21.) The United States' answer responding to these issues contains reference to and discussion of the underlying sealed matters, and is therefore required to be filed under seal pursuant to Rule 17.2(b). Counsel for the United States cannot properly respond to Appellant's assignments of error without citation to these materials.

[1] The sealed portions of these documents will be delivered via hard copy to the Court and the Appellate Defense Division today

WHEREFORE, the United States respectfully requests that this Honorable Court grant this motion to file under seal.

[redacted]
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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court, the Air Force Appellate Defense Division, and civilian counsel on 3 October 2025.

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*	)	**MOTION TO FILE UNDER SEAL**
v.	)	Before Panel No. 1
Senior Airman (E-4) **CHYRON L. TALLEY** United States Air Force *Appellant*	)	No. ACM 40828 15 October 2025

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Pursuant to Rules 13.2(b), 17.2(b), and 23.3(o) of this Honorable Court's Rules of Practice and Procedure, Appellant, by and through counsel, moves to file under seal the following portions of the Reply Brief on Behalf of Appellant: Assignment of Error IV found on pages 17-23. These portions address multiple sealed appellate exhibits (Appellate Exs. XVIII, XIX, XXI) and sealed portions of the Government's Answer (Gov. Br. at 22, 24-29).

The above referenced portions will be delivered in hard copy to the Court, the Government Trial and Appellate Operations Division, and the Military Justice Law and Policy Division. The unsealed filing, redacted to identify which portions have been filed under seal in accordance with Rule 17.2(b), is being filed separately via email on 15 October 2025.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant this motion to file under seal.

Respectfully submitted,

[redacted]

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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 15 October 2025.

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	**APPELLANT'S MOTION FOR**
Appellee	)	**ORAL ARGUMENT OUT OF**
	)	**TIME**
v.	)	
	)	Before Panel No. 1
Senior Airman (E-4)	)	
CHYRON L. TALLEY	)	No. ACM 40828
United States Air Force	)	
Appellant	)	15 October 2025

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Pursuant to Rules 23 and 25 of this Honorable Court's Rules of Practice and Procedure, Appellant, Senior Airman Chyron L. Talley, hereby moves for oral argument on the following issues:

II.

WHETHER THE SPECIFICATION OF CHARGE II IS FURTHER FACTUALLY INSUFFICIENT DUE TO WEAKNESSES IN THE EVIDENCE, TO INCLUDE INHERENT IMPROBABILITIES IN THE ACCUSATION, A TOTAL LACK OF CORROBORATION, A DELAYED REPORT THAT WAS ONLY MADE AFTER A MOTIVE TO FABRICATE AROSE, THE NAMED VICTIM'S ADMITTED ATTEMPT TO LEVERAGE HER ACCUSATIONS INTO A DESIRED OUTCOME, APPELLANT'S CREDIBLE DENIAL, AND THE FAILURE OF THE GOVERNMENT TO DISPROVE MISTAKE OF FACT AS TO CONSENT.

IV.

WHETHER THE MILITARY JUDGE ERRED BY EXCLUDING EVIDENCE UNDER MIL. R. EVID. 412.

This motion is submitted out of time for good cause. Civilian appellate defense counsel received the sealed portion of the Government's Answer on 8 October 2025, discussing Assignment of Error IV. After reviewing the sealed portions of the Government's Answer through the holiday weekend and while drafting a responsive reply, undersigned counsel was able to make an informed decision whether to request oral argument. This motion was made within seven days of civilian appellate defense counsel's receipt of the sealed portions.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant the motion for argument.

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 15 October 2025.

[redacted]

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	OPPOSITION TO MOTION FOR ORAL ARGUMENT
v.	)	Before Panel No. 1
Senior Airman (E-4) **CHYRON L. TALLEY** United States Air Force *Appellant.*	)	No. ACM 40828 22 October 2025

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

Pursuant to Rules 23(c) and 25 of this Court's Rules of Practice and Procedure, the United States opposes Appellant's motion for oral argument, filed 15 October 2025. Appellant requests oral argument on two issues: 1) whether the specification of Charge II is further factually insufficient due to weaknesses in the evidence, to include inherent improbabilities in the accusation, a total lack of corroboration, a delayed report that was only made after a motive to fabricate arose, the named victim's admitted attempt to leverage her accusations into a desired outcome, Appellant's credible denial, and the failure of the Government to disprove mistake of fact as to consent; and 2) whether the military judge erred by excluding evidence under Mil. R. Evid. 412. Appellant provides no argument for how oral arguments would assist this Court in deciding any of these issues.

Oral argument is not necessary to clarify the questions presented. The facts necessary to resolve Appellant's assignments of error are plainly set out in the record of trial. The issues are also not so novel to require oral argument for this Court's decision. Both issues indicated above are discussed at length in all briefs, and all the facts necessary for this Court to decide the issue are contained in the record. There is nothing novel about assessment of factual sufficiency nor

about alleged error for exclusion of evidence under Mil. R. Evid. 412. This Court is adequately equipped to review the record, the briefs, applicable case law, and come to its own conclusion on the appropriate outcome.

There is little more that could be said in oral argument that has not already been said in the pleadings presented at trial, during the motions hearing at trial, or in the appellate briefs. Moreover, there has not been a recent change in the law such that oral argument would provide clarification to the issues in Appellant's case. For the above outlined reasons, this Court should deny the request for oral argument in this case.

WHEREFORE, the United States respectfully requests this Court deny Appellant's request for oral argument.

[redacted]
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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 22 October 2025.

[redacted]

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UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40828**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Chyron L. TALLEY	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
Appellant	)	**Panel 1**

On 15 October 2025, Appellant moved this court to hear oral argument in the above-captioned case. Appellee opposes the motion. Upon Appellant's motion, oral argument is hereby ordered on the following issues:

I.

WHETHER THE EVIDENCE IN SUPPORT OF THE SPECIFICATION OF CHARGE II IS FACTUALLY SUFFICIENT, AND WHETHER THE GOVERNMENT DISPROVED MISTAKE OF FACT AS TO CONSENT.

II.

WHETHER THE MILITARY JUDGE ERRED BY EXCLUDING EVIDENCE UNDER MIL. R. EVID. 412.

Accordingly, it is by the court on this 3d day of November, 2025,

ORDERED:

Appellant's Motion for Oral Argument is **GRANTED** as specified above.

Oral argument on the issues will be heard in the courtroom of the United States Air Force Court of Criminal Appeals, located at 1500 West Perimeter Road, Suite 1900, Joint Base Andrews – Naval Air Facility Washington, Maryland, at a time and date to be set by future order of this court.

FOR THE COURT

[redacted]

CAROL K. JOYCE
Clerk of the Court

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40828**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Chyron L. TALLEY	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
Appellant	)	**Panel 1**

On 3 November 2025, this court ordered oral argument in the above-captioned case on the following issues:

I.

WHETHER THE EVIDENCE IN SUPPORT OF THE SPECIFICATION OF CHARGE II IS FACTUALLY SUFFICIENT, AND WHETHER THE GOVERNMENT DISPROVED MISTAKE OF FACT AS TO CONSENT.

II.

WHETHER THE MILITARY JUDGE ERRED BY EXCLUDING EVIDENCE UNDER MIL. R. EVID. 412.

Accordingly, it is by the court on this 12th day of November, 2025,

ORDERED:

Oral argument on the issues will be heard at **1000 hours, on Thursday, 22 January 2026**, in the courtroom of the United States Air Force Court of Criminal Appeals, located at 1500 West Perimeter Road, Suite 1900, Joint Base Andrews – Naval Air Facility Washington, Maryland.

FOR THE COURT

[redacted]

CAROL K. JOYCE
Clerk of the Court

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40828**
Appellee	)	
	)	
v.	)	
	)	**NOTICE OF PANEL**
Chyron L. TALLEY	)	**CHANGE**
Senior Airman (E-4)	)	
U.S. Air Force	)	
Appellant	)	

It is by the court on this 15th day of December, 2025,

ORDERED:

The record of trial in the above-styled matter is withdrawn from Panel 1 and referred to a Special Panel for appellate review.

The Special Panel in this matter shall be constituted as follows:

GRUEN, PATRICIA A., Colonel, Senior Appellate Military Judge
PERCLE, DAYLE P., Lieutenant Colonel, Appellate Military Judge
MORGAN, CHRISTOPHER S., Colonel, Appellate Military Judge

This panel letter supersedes all previous panel assignments.

FOR THE COURT

[redacted]

JACOB B. HOEFERKAMP, Capt, USAF
Chief Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES ***Appellee*** v. **CHYRON TALLEY** **Senior Airman (E-4)** ***Appellant***	**NOTICE OF REPRESENTATION OF L.P.** No. ACM 40828

TO THE HONORABLE, THE JUDGES OF

THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

To the Clerk of this Court and all parties of record, the undersigned notifies the Court of her representation of named victim L.P. in *United States v. Talley*. As the named victim of Appellant's crimes, L.P. holds statutory rights as codified at Article 6b, U.C.M.J. Among those rights at Article 6b(a)(2)(D) as a victim of an offense under the U.C.M.J., L.P. has "(2) The right to reasonable, accurate, and timely notice of any of the following: (D) A ***post-trial* motion, filing, or hearing that may address the finding or sentence of a court-martial with respect to the accused, unseal privileged or private information of the victim, or result in the release of the accused**." Article 6b(a)(3) continues to say L.P. has "(3) The right not to be excluded from any public hearing or ***proceeding described in paragraph (2)*** [a post-trial hearing] unless the military judge [. . .] after receiving clear and convincing evidence, determines that testimony [. . .] would be materially altered if the victim heard other testimony at that

hearing or proceeding."

Ms. Devon Wells is detailed Appellate Victim's Counsel for L.P. Pursuant to Rule 12.2, Ms. Devon Wells notifies this Court. A substantive Notice of Representation is attached hereto as an attachment.

Respectfully Submitted,

[redacted]
N
Counsel for L.P.
Chief, Appellate and Outreach, Victims' Counsel
Military Justice and Discipline Directorate
Department of the Air Force
[redacted]
New York 4453205
C.A.A.F. Bar Number 37640

CERTIFICATE OF FILING AND SERVICE

I certify that on 15 January 2026, the foregoing was electronically filed with the Court and served on all relevant parties via email at the following addresses:

[redacted]

DEVON A. R. WELLS, GS-14, DAF CIVILIAN
Counsel for L.P.
Chief, Appellate and Outreach, Victims' Counsel
Military Justice and Discipline Directorate
Department of the Air Force
[redacted]
New York 4453205
C.A.A.F. Bar Number 37640

DEPARTMENT OF THE AIR FORCE
MILITARY JUSTICE AND DISCIPLINE DIRECTORATE
VICTIMS' COUNSEL DIVISION

15 January 2026

MEMORANDUM FOR AFCCA

FROM: AF/JAJS (Ms. Devon A. R. Wells)

SUBJECT: Appellate Victims' Counsel (VC) Notice of Representation – Ms. L.P.
United States v. Talley

1. This notice is to inform you that I represent and have an attorney-client relationship with L.P., a named victim in the case of *U.S. v. Talley*. I am representing Ms. L.P. to ensure her rights are accorded throughout the appellate process, to file pleadings as appropriate, to receive notifications of any unsealing of L.P.'s privileged or private information, and to assess the merits of filing a brief as *amicus curiae*.

2. If you have any questions, please contact Ms. Devon Wells at commercial [redacted]

[redacted]

[redacted]

DEVON A. R. WELLS, GS-14, USAF
Victims' Counsel

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*	)	**NOTICE OF APPEARANCE OF GOVERNMENT COUNSEL**
v.	)	Before Special Panel
Senior Airman (E-4) **CHYRON TALLEY,** United States Air Force *Appellant*	)	No. ACM 40828
	)	15 January 2026

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

The undersigned hereby enters appearance as counsel for the United States in the above captioned case pursuant to Rule 12, Air Force Court of Criminal Appeals Rules of Practice and Procedure. The undersigned counsel will appear as second chair for the United States.

[redacted]

MATTHEW D. TALCOTT, Colonel, USAF
Chief
Government Trial & Appellate Operations Division
Military Justice & Discipline Directorate
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Appellate Defense Division on 15 January 2026.

CATHERINE D. MUMFORD, Capt, USAF
Appellate Government Counsel
Government Trial & Appellate Operations Division
Military Justice & Discipline Directorate
United States Air Force
(240) 612-4800

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40828**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Chyron L. TALLEY	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
Appellant	)	**Special Panel**

On 3 November 2025, this court ordered oral argument in the above-captioned case on the following issues:

I.

WHETHER THE EVIDENCE IN SUPPORT OF THE SPECIFICATION OF CHARGE II IS FACTUALLY SUFFICIENT, AND WHETHER THE GOVERNMENT DISPROVED MISTAKE OF FACT AS TO CONSENT.

II.

WHETHER THE MILITARY JUDGE ERRED BY EXCLUDING EVIDENCE UNDER MIL. R. EVID. 412.

On 12 November 2025, the court issued its scheduling order. Oral argument on the issues remains scheduled for 1000 hours, on Thursday, 22 January 2026, in the courtroom of the United States Air Force Court of Criminal Appeals, located at 1500 West Perimeter Road, Suite 1900, Joint Base Andrews – Naval Air Facility Washington, Maryland.

However, upon review of the issues identified above, the court orders a closed hearing session for Issue II.

Accordingly, it is by the court on this 12th day of January, 2026,

ORDERED:

Counsel for Appellant and counsel for Appellee will argue Issue I in an open hearing session before the court, with an allotted 15 minutes each; Appellant may still reserve time for rebuttal argument.*

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* If counsel do not use the entire time for Issue I, it may carry over to Issue II.

Upon completion of argument on Issue I, counsel for Appellant and counsel for Appellee will argue Issue II in a closed hearing session before the court, with an allotted 15 minutes each; Appellant again may reserve time for rebuttal argument. Only the appellate judges, court administrative personnel, and counsel of record will remain in the courtroom during this closed hearing session.

FOR THE COURT

[redacted]

CAROL K. JOYCE
Clerk of the Court

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40828**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Chyron L. TALLEY	)	
Senior Airman (E-4)	)	
U.S. Air Force	)	
Appellant	)	**Special Panel**

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On 12 January 2026, this court amended its scheduling order to inform the parties that the court would be closed for oral argument relating to Issue II.

On 15 January 2026, victim's counsel, Ms. Devon A.R. Wells, submitted a Notice of Representation to the court, stating that she is the "detailed Appellate Victim's Counsel for L.P.," the victim in the above-styled case. As a result of this notice, the court amends it 12 January 2026 oral argument order as indicated below.

Accordingly, it is by the court on this 20th day of January, 2026,

ORDERED:

The court's instructions in its 12 January 2026 order remain the same, to include the appellate judges, court administrative personnel, and counsel of record (*i.e.*, counsel for Appellant and Appellee) will remain in the courtroom during the closed hearing session.

For the limited purpose of this oral argument hearing, the court permits Ms. Devon A.R. Wells, victim's counsel, to observe the closed hearing session.

FOR THE COURT

CAROL K. JOYCE
Clerk of the Court