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Filed January 23, 2026

**TO THE JUDGE ADVOCATE GENERAL OF THE
UNITED STATES AIR FORCE**

UNITED STATES,
Appellee,

v.

Senior Airman (E-4)
JONATHON V. TYSON,
United States Air Force,
Appellant.

Case No. ACM 40617

Tried by General Court-Martial at Minot Air Force Base,
North Dakota, on August 9, 2023 (arraignment), and December 11, 2023 (trial)

PETITION FOR A NEW TRIAL

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**TO THE JUDGE ADVOCATE GENERAL OF THE
UNITED STATES AIR FORCE:**

Senior Airman Jonathon V. Tyson, by and through undersigned counsel, petitions for a new trial pursuant to Article 73, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 873; Rule for Courts-Martial (R.C.M.) 1210; and Department of the Air Force Instruction (DAFI) 51-201, *Administration of Military Justice*, Section 24G (January 9, 2026).¹

The convening authority took action on January 19, 2024. SrA Tyson filed an assignment of errors brief with the Air Force Court of Criminal Appeals (AFCCA) on August 29, 2025. The Government filed a response to his assignments of error brief on October 28, 2025. SrA Tyson subsequently filed a reply brief on November 9, 2025. The AFCCA has not yet issued a decision in his case and his case remains pending appellate review by the AFCCA. Consequently, this petition shall be referred to the AFCCA for action. *See* 10 U.S.C. § 873; R.C.M. 1210(e). Pursuant to R.C.M. 1210(c)(1)-(9), SrA Tyson provides the following information:

1. **Name, service number, and current address of SrA Tyson:** Jonathon V. Tyson, 240-89-

¹ DAFI 51-201, ¶ 24.25.1, provides that an “accused may submit only one petition for new trial for the same reason within the three-year limitation period.” This suggests an accused may file multiple petitions for new trial if premised on different rationales. SrA Tyson expressly preserves his right to file additional petitions for new trial concerning matters not addressed in this petition, including fraud on the court.

6341 (social security number); 1547629341 (DoD ID). SrA Tyson currently lives at 578 Pope Farm Rd, Stantonsburg, North Carolina 27883.

2. **Date and location of trial:** SrA Tyson was arraigned on August 9, 2023, and tried from December 11 to 16, 2023, at Minot Air Force Base, North Dakota.

3. **Type of court-martial and title of the Convening Authority:** SrA Tyson was tried by a general court-martial convened by the Commander, Headquarters Eighth Air Force (AFGSC).

4. **Request for the new trial:** SrA Tyson requests a new trial as to the findings relating to Specifications 1, 4, 5, 7, 8, and 9 of the Charge (Article 128b, UCMJ, 10 U.S.C. § 928b).²

5. **The sentence, as approved by the Convening Authority:** Reduction to the grade of E-1, confinement for one year, and a bad-conduct discharge.

6. **A brief description of any finding or sentence believed to be unjust:** A general court-martial composed of officer and enlisted members convicted SrA Tyson, contrary to his pleas, of six specifications of domestic violence relating to MR, SrA Tyson's ex-girlfriend. MR was the only source of evidence; she provided testimony, photos, videos, and text messages claiming SrA Tyson physically harmed her. There were no eyewitnesses to any physical abuse. MR's allegations arose after about a four-month period wherein SrA Tyson was trying to break up with MR and evict her from his on-base house.

The defense theory at trial was that MR made up the allegations. She either intentionally fabricated the bruises—through self-harm or some other means—or lied about the source of the injuries. But the experts at trial opined that the bruises MR took photos of, and later that law enforcement took photos of, were not likely from self-harm. Furthermore, the military judge

² The panel acquitted SrA Tyson of three other domestic violence specifications involving MR, the named victim. For Specifications 7 and 8, SrA Tyson was found guilty by exceptions and substitutions.

excluded the only possible evidence at the time of MR's willingness to, or knowledge of, self-harm: a 2014 domestic violence incident with her former husband, Technical Sergeant (TSgt) Anthony Coluzzi.³ In that incident, MR claimed that TSgt Coluzzi cut himself across the eye with a key to frame her for domestic violence.

Since SrA Tyson's conviction, MR dated another individual, Mr. Austin Frank. When that relationship began to sour, MR threatened Mr. Frank that she would fabricate domestic violence charges against him: "*I'm actually going to set it up so that way it's going to look like you hit me and I'm going to call the cops and it's going to get really ugly really quick because that's what you deserve for fucking with me bro.*" Appendix A, Clip 1 – May #2 trimmed (static added during cuts) [hereinafter Clip 1] at 3:02-3:15 (emphasis added). She announced, "*I'm going to have my brother pinch the fuck out of me. As soon as I touch down in Minot, Imma call the cops and be like this man literally just fucking hit me and threw me around his fucking apartment -- er his house.*" *Id.* at 3:24-3:34 (emphasis added). She later claimed Mr. Frank hit her and she had photos. Appendix A, Clip 4 – Nov . 2 [hereinafter Clip 4] at 00:00-00:41. She repeatedly threatened to get her revenge, ruin his life, and make him pay for breaking up with her. *See generally* Appendix A (referencing Clips 1 through 10). She also attempted to extort him for breaking up with her. *Id.* Mr. Frank gave these recordings to his mother, Mrs. Lisa Frank, who provided them to SrA Tyson's appellate defense counsel. Appendix B, Decl. Lisa Frank [hereinafter Decl. L. Frank]; Appendix C, Decl. Austin Frank [hereinafter Decl. A. Frank].

Based on these facts, SrA Tyson's convictions for domestic violence are unjust. The defense theory at trial was that MR fabricated every allegation, but there was no evidence that MR

³ In Petitioner's brief before the AFCCA, TSgt Coluzzi is referred to as "SSgt AC." Br. on Behalf of Appellant at 4, *United States v. Tyson*, No. ACM 40617 (Aug. 29, 2025). TSgt Coluzzi has promoted since Petitioner's AFCCA filings.

would self-harm, fabricate allegations, or receive help from someone else to frame SrA Tyson to get what she wanted. This new evidence that was not available at the time of trial now gives the fact finder a grossly different impression of MR's credibility—the dispositive issue in this case.

7. **A full statement of the newly discovered evidence or fraud upon the Court that is relied upon for the remedy sought:** The twelve recordings reflecting MR planning or otherwise threatening to frame Mr. Frank are provided on a single disc. Appendix A (one disc).

Title	Length	Source
Clip 1 – May #2 trimmed (static added during cuts)	8:06 minutes	Mrs. Lisa Frank (see Decl. L. Frank)
Clip 2 – May #4 edited ⁴ trimmed	2:18 minutes	
Clip 3 – May # 6 trimmed (static added during cuts)	25:18 minutes	
Clip 4 – Nov . 2	1:40 minutes	
Clip 5 – Nov. 3	12:06 minutes	
Clip 6 – Nov 10 trimmed	7:23 minutes	
Clip 7 – Nov 14	00:51 seconds	
Clip 8 – Nov. 18 trimmed	3:11 minutes	
Clip 9 – Nov 33 trimmed	2:25 minutes	
Clip 10 – Nov 50 and Nov 51 (combined)	2:49 minutes	
Clip 11 – New Recording 2 Rodrigo and Elizabeth Ruiz trimmed	9:11 minutes	
Clip 12 – Anthony Coluzzi trimmed (static added during cuts)	14:31 minutes	

⁴ The original recording provided to appellate defense counsel was titled, "May #4 edited." All audio files attempt to reflect the same base file names (e.g., "May #4 edited," or "Nov 33") that existed at the time the recordings were provided to appellate defense counsel. Identified modifications (i.e., "trimmed," "static added during cuts," "combined") are noted.

Due to the length and number of recordings, SrA Tyson is only submitting the recordings and portions therein that are most relevant to the petition for a new trial and that provide context. Any clip with the words “trimmed” indicates that the recording was cut by appellate defense counsel. Any recording with the words “static added during cuts” means that multiple sections of the recording were cut and then combined by appellate defense counsel. Static was added into the recording to indicate where portions of the recording were cut. Appendix A, Clip 10 – Nov 50 and Nov 51 (combined) [hereinafter Clip 10] contains two short recordings that appellate defense counsel combined into one clip because of their related content. All original recordings are maintained by appellate defense counsel. Upon request, appellate defense counsel is willing to provide the untrimmed versions of the recordings and any other recordings in her possession that were provided by Mrs. Lisa Frank but that were not submitted.

8. **Affidavits pertinent to the matters in subsection (c)(7):** A sworn statement from Mr. Austin Frank, MR’s ex-boyfriend, is appended to this filing, wherein he attests that he recorded conversations between himself and MR and can provide context and relevant information about those recordings. Decl. A. Frank. The twelve recordings appended to this petition provide the context he would discuss, which is why his declaration is focused on the foundation and creation of recordings rather than the detailed specifics of his relationship with MR. *See* R.C.M. 1210(c) (permitting the form of the petition to vary by not including certain items so long as there is an explanation). But in the declaration, he does assert that he never harmed MR. Decl. A. Frank. A sworn statement from MSgt Kelci Richardson, the former Expeditionary Defense Paralegal at Al Udeid Air Base, Qatar, is appended to this filing, which attests that she was present during an interview with TSgt Coluzzi. Appendix D, Decl. MSgt Kelci Richardson [hereinafter Decl. MSgt Richardson]. MSgt Richardson recounts how TSgt Coluzzi denied MR’s claim that he would

always push MR into walls, scream at her, and throw things and how he did not scratch himself with a key in 2014. *Id.* A sworn statement from Ms. Lisa Frank, the mother of Mr. Frank, is appended to this filing, which attests to the veracity of the recordings and how she became involved in SrA Tyson's case. Decl. L. Frank.

9. **Affidavits related to new testimony:** The same affidavits concerning the recordings capture the new testimony that would be provided at a new trial. Many of the recordings cover the facts and context that Mr. Frank would provide at trial about his relationship with MR. *See generally* Appendix A (referencing all the recordings). This is why his declaration is tailored to the recordings rather than specific details of the relationship. *See* R.C.M. 1210(c) (permitting the form of the petition to vary by omitting certain items so long as there is an explanation). Additionally, the statement by TSgt Coluzzi would be used to impeach MR for her previous untrue statements about her relationship with him, which was excluded at trial originally. Mil. R. Evid. 404(b), 608(c); *see* Br. on Behalf of Appellant at 11-25, *United States v. Tyson*, No. ACM 40617 (Aug. 29, 2025) (arguing that evidence of MR's previous domestic violence incident involving TSgt Coluzzi was improperly excluded). Due to his apparent, on-going affiliation with MR, an affidavit from TSgt Coluzzi was not sought. *See* Appendix A, Clip 3 – May # 6 trimmed (static added during cuts) [hereinafter Clip 3] at 5:32-5:36 (suggesting some sort of on-going relationship with TSgt Coluzzi); Appendix A, Clip 12 - Anthony Coluzzi trimmed (static added during cuts) [hereinafter Clip 12] (revealing MR was supposed to be taking care of his dogs, "the girls," and they were still in communication). Rather, the defense paralegal that witnessed his post-trial interview is included, which swears that TSgt Coluzzi denied hurting MR in the interview.

In accordance with A.F. Ct. Crim. App. R. 21(c), SrA Tyson has incorporated herein his brief in support of the petition. He does not intend to file a separate brief.

Brief in Support of the Petition**I. Introduction**

SrA Tyson pleaded not guilty to domestic violence offenses involving his then-girlfriend, MR, but he was nevertheless convicted. MR was the only source of evidence and the defense theory at trial was that she fabricated the allegations. Approximately one year after SrA Tyson's court-martial, she threatened her new boyfriend, Austin Frank, with the following: "I'm actually going to set it up so that way it's going to look like you hit me and I'm going to call the cops and it's going to get really ugly really quick because that's what you deserve for fucking with me bro." Clip 1 at 3:02 – 3:15. She told Mr. Frank that she was "going to have [her] brother pinch the fuck out of [her]" and then she would later "call the cops and be like this man literally fucking hit me and threw me around his fucking apartment." *Id.* at 3:24-3:34. She threatened him with other allegations as well, such as "almost stabb[ing]" her, and throwing a knife or scissors at her. Clip 1 at 4:22-4:50. She claimed that Mr. Frank would "get in a lot of trouble" for "hitting her," of which she asserted she had pictures to support. Clip 4 at 00:00-00:41. All of MR's claims against Mr. Frank arose because he had broken up with her. *See generally* Appendix A (referencing all clips). On top of threatening him with false domestic violence allegations, she repeatedly demanded money from him and insisted she would go away peacefully if he just paid her. *See* Clip 1; Clip 3; Appendix A, Clip 5 – Nov. 3 [hereinafter Clip 5]; Appendix A, Clip 9 – Nov 33 trimmed [hereinafter Clip 9].

At the time of SrA Tyson's trial, the only available evidence that MR self-harmed or fabricated allegations and injuries was excluded by the military judge. The excluded evidence involved a domestic violence incident from 2014 with her former husband, TSgt Anthony Coluzzi. MR told law enforcement that TSgt Coluzzi (1) cut himself across the eye with a key to frame her as the aggressor and (2) was "always push[ing her] against walls" and "throw[ing] things" at her.

Post-Trial Submission of Matters—*United States v. SrA Johnathon [sic] V. Tyson* [hereinafter Post-Trial Submission], Attach. 1 at 6 (Dec. 26, 2023). In a post-trial interview following the discovery of the new evidence concerning Mr. Frank, TSgt Coluzzi stated MR's accusations from 2014 were not true. Decl. MSgt Richardson.

Based on this newly discovered evidence, it is clear that MR has a habit, common plan or scheme, and modus operandi of lying about and fabricating domestic violence allegations, as seen before, during, and after SrA Tyson's court-martial. This new evidence, if considered by the court-martial in the light of all other pertinent evidence, would probably produce a substantially more favorable result for SrA Tyson. A new trial is required.

II. Statement of Facts

A. Before MR met SrA Tyson, she accused her former husband of domestic violence and learned that whoever presents with a visible injury will be labeled a victim.

MR was involved in an on-base domestic violence incident in 2014 with her then-husband, TSgt Coluzzi. Post-Trial Submission, Attach 1 at 6. When law enforcement arrived, she reported that TSgt Coluzzi had taken a key across his eye to make it seem like she injured him. *Id.* Trial defense counsel attempted to cross-examine MR about this incident. R. at 722. The defense asserted that MR had a motive to fabricate the allegations against SrA Tyson because she was previously exposed to a different domestic violence incident where she learned that whoever presents with an injury will be labeled the victim. *See* R. at 746 (“And it goes to her knowledge as well . . . about what happens when one of the parties in a domestic violence incident has a cut. . . . that the person with a cut is presumed to be the victim of the other person. Whether it be mutual, or exclusive.”). The theory of relevance focused on self-harm, that the person who has a cut would *not* be labeled as the abuser. *See* R. at 747 (“Essentially, this is her explaining away the cut on his face with self-harm — she's not responsible.”). There was extensive back and forth with the

military judge on this theory until defense counsel asserted, “[MR] may have knowledge, or this perception, that when there is an active bleeding cut – that impacts how law enforcement reacts to a situation.” R. at 747-52.

The military judge excluded this evidence, finding it both irrelevant under Mil. R. Evid. 401 and that it would not pass the Mil. R. Evid. 403 balancing test. R. at 756-57.

During the same incident, MR also reported to law enforcement that TSgt Coluzzi would “always push[] me against walls, scream[] at my face, and throw[] things at me.” Post-Trial Submission, Attach. 1 at 6. In a post-trial interview with TSgt Coluzzi, he denied MR’s allegations. Decl. MSgt Richardson. He did not cut himself across the eye with a key or “always push” MR into walls or “throw things” at her. *Id.*

TSgt Coluzzi knew nothing about the allegations MR made against SrA Tyson. *Id.* He stated that he was previously interviewed by the trial defense team, but by August 2025, he could not recall what he told the defense team. *Id.*

B. MR accused SrA Tyson of numerous domestic violence offenses, for which she was the only source of evidence.

At trial, MR testified that her relationship with SrA Tyson turned physically abusive from late April 2022 to April 2023. R. at 535-50. She broadly asserted SrA Tyson would grab her, threaten her, point his gun at her, and destroy her things. *See, e.g.*, 536, 570, 600.⁵ She said he would kick and punch her. R. at 536.⁶ Every time they would argue, which she claimed was every

⁵ Some of this testimony is the basis for Specifications 8 and 9 of the Charge, alleging divers property destruction and divers communication of threats. Charge Sheet at 3. SrA Tyson was convicted of these specifications. R. at 1157.

⁶ Some of this testimony is the basis for Specifications 4 and 5 of the Charge, alleging “kicking” and “punching” separately and on divers occasions. Charge Sheet at 1. SrA Tyson was convicted of these specifications. R. at 1157.

day in this approximately 365-day period, he would punch her in the left arm. R. at 536, 570; *see* Charge Sheet at 1 (showing Specification 5 alleges “punching arms”). She provided photos of bruises from May 2022, July 2022, and February 2023 (Pros. Exs. 8-11, 19), stating the bruises were from SrA Tyson doing something to her. R. at 538-49, 814-15.

For the first set of photos taken in May 2022, MR stated she went to the hospital for “chest pains,” asserting broadly “that day he had, kicked me, punched me — and it hurt really bad to breathe. So that’s why I went to get it checked out.” R. at 537-40, 799. Photos and videos she took that day showed a large bruise on her leg. R. at 798-99; Pros. Ex. 8 at 4; Pros. Ex. 10. That day, when MR went to the hospital, SrA Tyson learned MR had been lying about her age; he overheard MR telling the nurses the year she was born. R. at 636, 798-99. There is no evidence MR reported physical abuse at the hospital and there are no photos or medical documentation of injuries to her chest. MR also convinced SrA Tyson she had *not* lied about her age. R. at 642-43.

In July 2022, there was a disagreement about going to a local fair. R. at 549. MR claimed photos of bruises she took at the time were caused by SrA Tyson “grabbing [her] arm.” *Id.*

On October 31, 2022, SrA Tyson and MR got engaged, but the engagement was short-lived for SrA Tyson. R. at 527; *see* Pros. Ex. 17 (calling her his “ex” by February 2023). At some point between summer 2022 and December 2022, SrA Tyson found out about MR’s real age again. R. at 648-50;⁷ Clip 12 at 4:13-4:30. Some point after learning that MR had still been lying to him about her age, in late December 2022 or early January 2023, SrA Tyson told MR that she had four months to get out of his house. Pros. Ex. 16 at 7. He called her his “desperate ex” in late February.

⁷ The trial defense counsel attempted to show he discovered her age in December 2022 when MR got pulled over with SrA Tyson driving home from Christmas vacation, but MR stated he was aware of her real age “like, over the summer” of 2022. R. at 649-50.

Pros. Ex. 17. But MR stayed in SrA Tyson's house with him until April 14, 2023. *See* Pros. Ex. 16; R. at 527.

From late 2022 to April 2023, the relationship further devolved. Pros. Ex. 16. SrA Tyson wanted the engagement ring back. R. at 613; Pros. Ex. 16 at 34. He expressed how much he disliked MR. *Id.*; R. at 584-85 (describing in open court Pros. Ex. 15, which is sealed, but transcribed here); Pros Ex. 12. And SrA Tyson was seeing other women. Pros. Ex. 16 at 3, 10, 12, 24-25; Pros. Ex. 17. MR stated the February 2023 bruise photos she took (Pros. Ex. 19) was around the time she followed SrA Tyson to another woman's house, but then he "escaped out of the window" from MR when she banged on the door. R. at 811-14. In videos MR took of SrA Tyson damaging property in the house, SrA Tyson demanded that MR leave his house and called her names or verbally berated her. Pros. Ex. 12; R. at 584-85 (describing in open court Pros. Ex. 15, which is sealed, but transcribed here). He "want[ed] [MR] out." Pros. Ex. 16 at 11. She told no one of the physical abuse. And she still did not leave the house. R. at 527.

At the end of the four-month-period MR was given to leave SrA Tyson's house, MR made a wide variety of allegations, including her "stuff" and phone being destroyed (R. at 321, 585-86). Then, the relationship exploded on 14 April 2023. The order of events and what occurred that day are somewhat unclear.

In the morning, SrA Tyson got home from work. R. at 371, 567. MR called into her work saying SrA Tyson was destroying her "stuff." R. at 296. She said she was safe (*id.*), and never asserted she was scared or hurt despite later testifying (1) that she had already been grabbed and "thrown around" that morning (R. at 595) and (2) that SrA Tyson had grabbed her by the neck about a day earlier (R. at 601). R. at 320-21. Concerned about MR, members of her work and members of SrA Tyson's unit showed up at SrA Tyson's house. R. at 300. When they rang the

doorbell, MR effectively later claimed she was saved by the bell, testifying that SrA Tyson stopped strangling her in that very moment. R. at 602.⁸

But no domestic violence claims were relayed to the members of the unit when they arrived, and MR took some time answering the door. R. at 302-03, 337-38. When she did, they could see she had bruises on her legs and she appeared upset and disheveled. R. at 302. They told her to go get SrA Tyson. R. at 303. She was gone for a few minutes. R. at 338. When she returned, she said he did not want to come and speak to them. R. at 385-86. They sent her back upstairs to him. R. at 338. She was gone for several minutes again. R. at 338. This time, when she came back, she had a fresh cut on her leg.⁹ R. at 339. At some point, the members noticed the cut and pulled her out of the house. R. at 339, 387-88. At that point, MR was put in a car with her male supervisor. R. at 305. There, she said she did not want to get anyone in trouble and “just wanted him to stop destroying her stuff.” R. at 305.

Law enforcement arrived and SrA Tyson was arrested and immediately put into pretrial confinement. R. at 401-03; Department of Defense (DD) Form 2707, *Confinement Order* (Apr. 14, 2023). DNA evidence was taken but it only showed what was expected: MR and SrA Tyson lived together and she had recently been around unidentifiable men, i.e., the male servicemembers who came to SrA Tyson’s house. R. at 864-65, 871-74. The DNA evidence was inconclusive for, if not contradictory to, any allegation of domestic violence. *See, e.g.*, R. at 876 (showing MR’s DNA was not on SrA Tyson’s hands).

⁸ This allegation of strangulation was the underlying basis of Specification 1 of the Charge, of which SrA Tyson was convicted. *Compare* Charge Sheet at 1, *with* R. at 1157.

⁹ MR claimed this cut came from SrA Tyson slicing her with scissors when she went to tell him to come downstairs. R. at 604, 711-19. SrA Tyson was acquitted of this allegation. *Compare* Charge Sheet at 1, *with* R. at 1157.

Photos of MR were taken over the next few days to document bruise progression. There were marks on her neck, which experts said were likely not self-caused. R. at 995-96. But there was also a photo provided by MR showing a red mark on her neck, which she claimed came from SrA Tyson when he pinched her in February 2023. R. at 814-15; Pros. Ex. 19 at 1. An expert noted the similarities between the pinch marks in February 2023 and the strangulation marks in April 2023. R. 1003-05. All the pictures that MR provided or that law enforcement took on or near 14 April 2023 required MR to explain the source of them. The experts could not age the bruises, explain where they came from, or what caused them. R. at 943, 997-1003, 1011.

MR continued living in SrA Tyson's house on base (without him) until mid-2023. R. at 76-77, 765. She had been using a contractor identification card to access base. R. at 73-77.

C. Evidence at trial revealed that MR was not a truthful person or credible witness.

No one testified that MR was a truthful person. Instead, an Air Force officer from the medical group testified MR did not have a character for truthfulness. R. at 968. This officer also strongly insinuated MR was involved in a health data incident, suggesting MR misused patient data. R. at 971-72. Furthermore, it was undisputed at trial that MR lied about her age repeatedly. *E.g.*, R. at 637-43, 798-800, 807-08, 845-47, 915, 918-20. She also lied about being enrolled in Family Advocacy. R. at 577.

MR held herself out as married to SrA Tyson, despite evidence to the contrary. MR testified that she believed she was married to SrA Tyson because he gave her a ring and had her sign some paperwork. R. at 553-55. But MR could not identify her wedding anniversary. R. at 645. There was no wedding, no social media posts, no videos, no selfies, and no enrollment into DEERs or any other military system that would indicate she was his dependent or that a marriage occurred. R. at 643-45. Notably, MR had been enrolled before and understood the military dependent system

by virtue of her marriage to TSgt Coluzzi. R. at 645-46. Despite all this, MR held herself out as married to SrA Tyson; she even told the people she worked with she was married to SrA Tyson. R. at 558, 660. At trial, MR claimed that she only found out she was not married in April 2023 because someone checked her status and told her. R. at 850. But in February 2023, amid SrA Tyson telling MR to get out of his house, she had called SrA Tyson her fiancé, not husband, in text messages. Pros. Ex. 17.

Telling her co-workers that she was married was not the only false impression of the relationship MR gave. Her co-workers also thought she was enrolled in the Family Advocacy Program, but she was not. R. at 577. She had lied. *Id.* She also told people at the medical group that SrA Tyson destroyed her stuff and they were having “marital issues.” R. at 307, 321. But she never told her co-workers any physical violence occurred, despite taking pictures of bruises ostensibly caused by SrA Tyson since April 2022.

The defense impeached MR on these numerous topics: “lying about her age, accessing [SrA Tyson’s] social media and email accounts after his arrest, mistakenly believing she and [SrA Tyson] were married, inconsistencies in her testimony and statements she made to investigators or prior testimony, and improbabilities of her recitation of the charged offenses.” U.S. Resp. to Assignments of Error at 23, *United States v. Tyson*, No. ACM 40617 (Oct. 28, 2025). MR also had many motives to fabricate: “anger at breaking up, alleged infidelities, embarrassment, revenge, and MR previously slapping [SrA Tyson] or ‘snapping’ emotionally during arguments.” *Id.* at 23-24.

There were also Facebook messages between MR and SrA Tyson in the days leading up to 14 April 2023. Pros. Ex. 16. There, MR initially asserted that SrA Tyson had just been “silently” terrorizing her for three months. Pros. Ex. 16 at 6. MR accused SrA Tyson of infidelity and using

her for sex. Pros. Ex. 16 at 3-8, 10. But then, she accused him of hitting her and doing something to her rib within the past day. Pros. Ex. 16 at 8. She invited him to “go round [two].” Pros. Ex. 16 at 26. A video of SrA Tyson and MR from 13 April 2023 (R. at 701), the same timeframe as these texts, only included an accusation of him breaking her phone—no physical abuse. R. at 699; *see* R. at 823 (discussing the phone in the video); R. at 1134 (discussing in open court Def. Ex. A, which is sealed, but the content of which is described on the record). Based on her actions, MR did not appear in any pain nor did she allege any pain. R. at 699, 703. Rather, she was focused on her phone not working and got very upset that SrA Tyson recorded her. R. at 699-701. She accused him of revenge pornography¹⁰ and demanded that he delete the video. *Id.* This was the only evidence provided of SrA Tyson documenting what was happening in the relationship—as opposed to MR. *See* R. at 702 (discussing SrA Tyson is the one recording MR’s behavior). Everything else came from MR or was explained by MR—including the Facebook messages. Pros. Exs. 7-14, 16, 18-20; *see* R. at 582-85 (discussing and transcribing in open court Pros. Ex. 15, a video MR took that the military judge sealed).

When MR continued to bring up over Facebook messages her allegation of SrA Tyson recently hurting her, SrA Tyson said, “Take me to court.” Pros. Ex. 16 at 17. She continued asserting he abused her, and his response was: “Take me to court bitch,” followed by, “You’re wasting your time.” Pros. Ex. 16 at 25. Less than ten seconds later, MR wrote, “All of the pictures and video I have will never be dismissed,” followed with, “You have no marks on you but everything is on me.” *Id.* She asserted that she would “deal with him” the next morning. *Id.* at 39. The next morning, SrA Tyson was arrested for domestic violence. DD Form 2707, *Confinement*

¹⁰ SrA Tyson was not charged with any offense for this conduct. It is unclear why MR made this allegation other than to intimidate SrA Tyson into deleting the video.

Order (Apr. 14, 2023).

D. After SrA Tyson was convicted, MR manipulated, threatened, and fabricated domestic violence allegations against another boyfriend.

After SrA Tyson was convicted, MR entered into a dating relationship with Mr. Austin Frank. Mr. Frank attempted to break up with MR in 2024 when she refused to show him “bare minimum respect,” seemingly a reference to MR continuously being mean toward Mr. Frank’s family. *See generally* Appendix A (referencing all clips). In various recordings made by Mr. Frank, MR says the following:

“I’m actually going to set it up so that way it’s going to look like you hit me and I’m going to call the cops and it’s going to get really ugly really quick because that’s what you deserve for fucking with me bro.”

- Clip 1 at 3:02-3:15.

“I’m going to have my brother pinch the fuck out of me. As soon as I touch down in Minot, Imma call the cops and be like this man literally just fucking hit me and threw me around his fucking apartment -- er his house.”

- Clip 1 at 3:24-3:34.

“Cause remember that one time where you almost stabbed me? Yeah, that’ll probably happen again. . . . You threw scissors at me and stuff.”

- Clip 1 at 4:22-4:44.

“I’ll deal with you Tuesday.”

- Clip 3 at 00:26-00:30.

“Just writing down ideas for what I’m going to do on Tuesday. . . . I’m not telling you. . . . I’m just tired, you know, tired of being treated like shit by men. So, I’m, I’m literally taking you down, each one of you down, one by one so.”

- Clip 3 at 3:05-3:43.

“Cops can’t help you for the shit that I’m going to pull out—I’m going to tell about work. I’m going to start something—on a case against you for sexual harassment and abuse.”

- Clip 3 at 19:32-19:41.

“I hope you know you’re gonna get in a lot of trouble. . . . I hope you know for the time you fucking hit me! Yeah! Yeah! You wanna go there! Yes you did, yes you did! I have pictures! I have pictures. . . . You wanna do what the fuck I say or do you want me to get you in trouble?”

- Clip 4 at 00:16-00:33.

“I will get my revenge ten-fold.”

- Appendix A, Clip 6 – Nov 10 trimmed [hereinafter Clip 6] at 1:03-1:06.

“I am going to fucking kill you, you bitch. . . . I’m going to fucking kill you. I’m going to fucking kill you. Mark my words, I’m going to fucking murder you.”

- Clip 6 at 4:05-4:17.

“You will pay for everything you’ve done to me, I want you to know that. . . . You will pay—you will pay—you will pay for everything you’ve done to me, I want you to know that.”

- Appendix A, Clip 7 – Nov 14 [hereinafter Clip 7] at 00:10-00:22.

MR repeatedly states that Mr. Frank will “pay,” either money for “wasting a year” of her life or in “another” way. *See generally* Appendix A (referencing Clips 1-10 made by Mr. Frank). She also accuses him of being the reason she has to start a new life and for her not having a home or a job. *Id.*

Mr. Frank repeatedly denies all allegations of abuse. *See generally* Appendix A (referencing all recordings); Decl. A. Frank. At one point, when Mr. Frank confronts MR about threatening him and “trying to falsely . . . accuse [him] of a crime,” MR responds, “That’s what—that’s crazy cause that’s exactly what [SrA] Jonathon [Tyson] was saying, only for him to be found guilty of the crime.” Appendix A, Clip 8 – Nov. 18 trimmed [hereinafter Clip 8] at 2:14-2:35.

Mr. Frank began recording MR after she threatened him around New Year’s Eve (31 December 2024). Decl. A. Frank; Decl. L. Frank; *see* Appendix A, Clip 11 - New Recording 2 Rodrigo and Elizabeth Ruiz trimmed [hereinafter Clip 11] at 4:11-4:23 (recounting how New Year’s Eve was the first time MR tried to threaten Mr. Frank with false allegations). His mother, Mrs. Lisa Frank, lent Mr. Frank an old iPhone, which he used to record various conversations with

MR over 2024. Decl. L. Frank. He provided those recordings to Mrs. Frank for safekeeping. *Id.*; Decl. A. Frank. Mrs. Frank believes she has approximately forty recordings in total. Decl. L. Frank. Mr. Frank has more. Decl. A. Frank.

After MR began threatening her son, Mrs. Frank began looking into MR. Decl. L. Frank. She found SrA Tyson's court-martial records and contacted him. *Id.* SrA Tyson's appellate defense counsel, Major Samantha Castanien, contacted Mrs. Frank. *Id.* Mrs. Frank provided several recordings to Major Castanien. *Id.* Mrs. Frank did not provide all the recordings to Major Castanien, only the ones that mentioned domestic violence or SrA Tyson. *Id.* Mrs. Frank is happy to provide all recordings upon request. *Id.*

III. SrA Tyson is entitled to a new trial based on newly discovered, exculpatory evidence.

A petitioner may request a new trial "on the grounds of newly discovered evidence or fraud on the court." Article 73, UCMJ, 10 U.S.C. § 873. For petitions based on newly discovered evidence, the petition must satisfy three prongs:

- (A) The evidence was discovered after trial;
- (B) The evidence is not such that it would have been discovered by the petitioner at the time of trial in the exercise of due diligence; and
- (C) The newly discovered evidence, if considered by the court-martial in the light of all other pertinent evidence, would probably produce a substantially more favorable result for the accused.

R.C.M. 1210(f)(2).

SrA Tyson satisfies each of these prongs. This newly discovered evidence did not exist at the time of SrA Tyson's court-martial nor could it have been discovered through due diligence. Based on all the circumstances, this evidence would have dramatically reshaped the landscape of

his trial and probably would have produced a substantially more favorable result. Because of this, a new trial is warranted.

A. The evidence was not discovered by SrA Tyson until over a year after his trial when a witness located him about MR making false allegations of domestic violence.

Evidence of events occurring after trial qualify as newly discovered evidence within the meaning of Article 73, UCMJ, and R.C.M. 1210(f)(2). *See, e.g., United States v. Luke*, 69 M.J. 309, 312 (C.A.A.F. 2011) (noting how the evidence did not exist at the time of trial); *Harris v. United States*, No. 2020-05, 2021 CCA LEXIS 44, at *12 (A.F. Ct. Crim. App. Feb. 4, 2021) (same). Here, there is no doubt that the newly discovered evidence was not discovered by SrA Tyson, or any of his attorneys, until 2025. None of this new evidence even existed at the time of SrA Tyson's court-martial. Mrs. Frank found SrA Tyson after her son, Austin Frank, became MR's latest target for threats and domestic violence allegations. Decl. L. Frank. Mrs. Frank disclosed the recordings, which only existed after SrA Tyson was convicted on December 15, 2023. *See* Decl. A. Frank (showing he began recording in 2024). Therefore, SrA Tyson satisfies the first prong. R.C.M. 1210(f)(2)(A).

B. Neither SrA Tyson nor his counsel could have discovered this evidence prior to trial because it did not exist until after his court-martial.

The newly discovered evidence in this case occurred after SrA Tyson's trial. MR began accusing Mr. Frank of domestic violence in early 2024, only a few weeks after SrA Tyson was convicted of similar allegations. Decl. A. Frank. Even still, SrA Tyson's attorneys did everything they could to obtain similar evidence that MR fabricated the allegations or had a motive to manipulate the evidence. R. at 746-52. But the military judge excluded the only evidence on this point at trial: the allegations made by MR about her former-husband, TSgt Coluzzi. R. at 756-57.

Because the evidence did not exist despite defense's best efforts to find anything comparable, SrA Tyson satisfies the second prong. R.C.M. 1210(f)(2)(B).

C. The newly discovered evidence would have probably produced a substantially more favorable result because SrA Tyson would likely not have been convicted.

In considering the potential impact of newly discovered evidence, the pertinent inquiry is “whether a different court-martial might have reached a result more favorable to the accused in light of arguments defense counsel might have brought to bear with knowledge of [the new evidence] as well as the differences in the testimony of the [witnesses].” *United States v. Harris*, 61 M.J. 391, 398 (C.A.A.F. 2005). An example of such evidence is “noncumulative, uncontradicted impeachment evidence which [is] relevant not only to a material issue in this case but the dispositive issue in this case – the victim’s credibility.” *United States v. Williams*, 37 M.J. 352, 357 (C.A.A.F. 1993) (citations omitted). “Impeachment can be defined as an attack on the credibility or believability of a witness. In general, it is a process of explaining away a witness’ testimony as to the existence of a fact at issue in a trial.” *United States v. Banker*, 15 M.J. 207, 210 (C.M.A. 1983).

Here, the new evidence goes to the heart of the case: MR’s credibility. At trial, the senior defense counsel said it best: “Members, make no mistake. This case is about false allegations.” R. at 1106. Every allegation relied on MR being credible and her allegations being true. The newly discovered evidence further discredits MR, casting doubt on all her testimony. The newly discovered evidence also shows MR’s habit, common scheme or plan, and modus operandi of accusing her male partners of domestic violence to get what she wants. Finally, the newly discovered evidence does not stand in isolation. The allegations against SrA Tyson sit between two other false allegations of domestic violence: the 2014 domestic violence allegation against TSgt Coluzzi and now the year-long threats and domestic violence allegations against Mr. Frank.

The newly discovered evidence makes the excluded evidence about TSgt Coluzzi more relevant and creates bookends for the allegations MR levied against SrA Tyson. Since MR's statements to Mr. Frank are admissible as exceptions to hearsay to impeach her and to prove MR's plan, scheme, habit, and modus operandi, attacking MR's narrative with her repeated false allegations occurring over a ten-year period across multiple men would probably have produced a substantially more favorable result for SrA Tyson in that he likely would not have been convicted of most, if not all, of the offenses.

1. The newly discovered evidence casts doubt on all of MR's testimony.

Every allegation against SrA Tyson relied on MR's narrative of events. If MR is not a credible witness, then the Government would not be able to prove the domestic violence offenses because the entire case rested on her testimony. There were no eyewitnesses, no medical evidence, no forensic evidence, nothing independent of MR to corroborate her version of events. The case solely relied on MR's testimony and the photos and videos she provided.

Moreover, the photos and videos MR provided are suspect considering the new evidence. MR was caught on recording admitting she was planning to frame Mr. Frank for domestic violence. She asserted she would have her brother "pinch the fuck out of [her]," and then she would call the police and blame Mr. Frank. Clip 1 at 3:24-3:34. This alone is enough for a new trial in SrA Tyson's case. The entire defense theory was that MR fabricated the allegations in one way or another. Now, it is even more clear that MR is willing and capable of framing someone by fabricating evidence.

But her plan to frame Mr. Frank was not the only comment she made that is relevant to her credibility at a new trial. She claimed to have pictures of when he hit her. Clip 4 at 00:16-00:33. She threatened Mr. Frank that she would "deal with him on Tuesday," and told him she

was tired of being treated like “shit” by men so was “taking them down one by one.” Clip 3 at 00:26-00:30, 3:07-3:43. Not only does this last comment implicate SrA Tyson on its face, MR made clear in a different recording that calling her a liar is not going to work because she got away with this before. Specifically, when Mr. Frank confronted MR about threatening him and “trying to falsely . . . accuse [him] of a crime,” MR responded, “That’s what—that’s crazy cause that’s exactly what [SrA] Jonathon [Tyson] was saying, only for him to be found guilty of the crime.” Clip 8 at 2:14-2:35.

What MR did to Mr. Frank mirrored what she did to SrA Tyson: she framed both men in an attempt to get what she wanted. MR did not want these relationships to end. As SrA Tyson’s trial and these new recordings demonstrate, MR is not self-sufficient. She relies on her male partners for money and housing. For SrA Tyson, her financial and physical instability were presented as credibility problems and motives to fabricate. Broadly, MR lied about key aspects of her life that would have triggered a loss in benefits or a loss of stability, for example, her age and her marital status. R. at 637-43, 798-800, 807-08, 845-47, 915, 918-20 (lying about age); R. at 643-47 (lying about marital status—or at least exhibiting an incredible amount of ignorance). As a result of her untrue claim of being SrA Tyson’s wife and thus a “military spouse,” she received hiring preferences (R. at 648), on-base housing (R. at 630-31, 661), monetary benefits (Pros. Ex. 16 at 3 (showing SrA Tyson pays the bills)), and gifts—to include an engagement ring (R. at 648). MR used SrA Tyson to maintain a certain lifestyle, and when he ended their relationship, she was looking at the prospect of being homeless and jobless. *See* R. at 517, 529, 658 (detailing how she was not from the area and could not stay with her ex-husband). This was in early January 2023, which coincided with MR’s escalation of allegations and “corroborating” photo and video evidence. The other photographic “corroborating evidence” was similarly associated with other

incidents that could have led to a breakup, such as SrA Tyson learning MR's real age. *See R.* at 636, 642-43, 798-99 (discussing the hospital visit for "chest pains" and when SrA Tyson learned about her age during the visit); *Pros. Ex. 8* at 4 (showing bruise on leg); *Pros. Ex. 10* (video showing bruises on leg).

Mr. Frank's evidence shows how these credibility concerns in SrA Tyson's trial were indicators of fabrication, as MR began claiming she was a victim of domestic violence for both men. *Compare Pros. Ex. 16* at 5-8, 10, 12, 25 (showing MR claiming domestic violence against SrA Tyson), *with Clip 1* at 4:22-4:44 (alleging Mr. Frank threw scissors at her), *and Clip 4* at 00:16-00:33 (alleging Mr. Frank hit MR and she had pictures). The last text message she sent to SrA Tyson before he was arrested was "I'll deal with you in the morning." *Pros. Ex. 16* at 39. MR threatened Mr. Frank the same way: "I'll deal with you Tuesday." *Clip 3* at 00:26-00:30. For both men, she threatened she had proof of domestic violence through photos and bruises. *Pros. Ex. 16* at 25; *Clip 4* at 00:16-00:33. But now, the mere fact MR admitted she would fabricate those bruises makes everything MR testified to in SrA Tyson's trial unbelievable—and makes the defense's theory very believable.

If the members had the benefit of the newly discovered evidence, SrA Tyson would likely not have been convicted because there was otherwise no evidence of physical abuse independent of MR. Every specification that SrA Tyson was convicted of had the same defect: MR generally lacked credibility and the "corroborating evidence" relied on MR's bare-bones description of it. *See Reply Br. on Behalf of Appellant* at 1-6, *United States v. Tyson*, No. ACM 40617 (Nov. 9, 2025) (discussing for six pages MR's credibility concerns that span all the offenses). MR provided minimal testimony for every allegation of domestic violence. *See Br. on Behalf of Appellant* at 25-51, *Tyson*, No. ACM 40617 (arguing legal or factual sufficiency (or both) for each specification

and showing the lack of specific testimony on each offense). Lack of detail makes sense when the conduct did not happen. Rather, MR was matching preexisting bruise photos to plausible allegations. Her lack of detail coupled with her lack of credibility support a finding that the alleged misconduct did not happen. Furthermore, there were no witnesses to any abuse and no outcry witnesses. There was no medical evidence admitted other than for the strangulation allegation. But that medical evidence, coupled with the forensic evidence, contradicted her account of strangulation. *See* R. at 942 (revealing she had no trouble swallowing and no medical injury other than a bruise on her neck); R. 1003-05 (noting the “pinch marks” from February 2023 looked similar to the “strangulation marks” in April 2023); R. at 876 (revealing SrA Tyson did not have MR’s DNA on his hands and SrA Tyson’s DNA could not be specifically identified on MR’s neck).

No expert could date any bruise or attribute it to any particular source. While the experts foreclosed self-harm, now, with MR’s willingness to fabricate domestic violence allegations, self-harm is not the only explanation. She could have gotten a bruise from anywhere or anyone and then blamed it on SrA Tyson. For example, MR testified that one photo showed a mark left by SrA Tyson pinching her neck. R. at 814-15. One of the experts at trial agreed that the so-called “pinch mark” was similar to the marks in the photos supposedly supporting that SrA Tyson strangled MR. R. 1003-05. Considering MR explained to Mr. Frank that she would just have her brother “pinch the fuck out of [her]” to create bruises to match a domestic violence allegation, nothing MR testified to at SrA Tyson’s trial is credible anymore—if it ever was. Clip 1 at 3:24-3:34.

The new recordings show MR knows how to, and is willing to, plan out a false case of domestic violence to get what she wants. Her trial narrative is even more unreliable now, as are the photos and the context of the video evidence. MR had recorded snippets of SrA Tyson

destroying her things, but not of him hurting her. Pros. Exs. 12-14; *see* R. at 582-85 (describing in open court Pros. Ex. 15, which is sealed, but transcribed here). Even in Defense Exhibit A,¹¹ where she confronted him about damaging her phone, she made no allegation about him physically harming her. R. at 699-701. On top of lacking any allegations of violence, the video exhibit supports what the new evidence supports: MR's bias, motive, plan, scheme, habit, and modus operandi. After failing to get what she wanted and losing control of what was happening, in the video, MR removed her shirt and showed her breasts (R. at 699, 702, 825), telling SrA Tyson that the partial nudity she just initiated made the video "revenge pornography," requiring its wholesale deletion. R. at 699-700. This was a clear example of MR manipulating the narrative, highlighting a motive to fabricate that the new evidence supports. *See also* R. at 791 (showing that, when asked if she reset SrA Tyson's Facebook and searched on his laptop how to delete Snapchat, MR responded simply with: "I don't recall doing that").

MR treated SrA Tyson and Mr. Frank in the same way. She used both men to maintain a certain lifestyle, and when they ended the relationship, she was looking at the prospect of being homeless and jobless. *See* R. at 517, 529, 658 (detailing how she was not from the area and could not stay with her ex-husband); Clip 9 (blaming Mr. Frank for her life choices). Her response to instability and lack of control in both relationships was to fabricate domestic violence allegations. *See* Pros. Ex. 16 at 5-8, 10, 12, 25 (showing MR claiming domestic violence); Appendix A, Clip 2 – May #4 trimmed (revealing how she could not wait to take Mr. Frank down and make his life hell); Clip 6 (including threats about getting revenge against Mr. Frank). The last text message she sent to SrA Tyson before he was arrested was "I'll deal with you in the morning." Pros. Ex. 16 at

¹¹ The exhibit itself is sealed, but the contents and events are discussed openly on the record and that information is what is cited herein.

39. She repeatedly told Mr. Frank the same: “I’ll deal with you Tuesday,” comments she prefaced with false allegations of abuse, including to have her brother “pinch the fuck” out of her to support her narrative. Clip 3 at 00:26-00:30; *see generally* Clip 1 (containing threats to frame Mr. Frank). The newly discovered evidence bolsters the original defense theory by demonstrating that MR is calculated enough to harm herself or lie about injuries to frame SrA Tyson when she does not get what she wants—or even just for revenge.

2. The recordings of MR falsely accusing Mr. Frank also increased the probative value of the excluded evidence related to TSgt Coluzzi, which, if admitted, probably would have changed the outcome of the trial.

MR also accused her ex-husband, TSgt Coluzzi, of self-harm when police were called to their on-base home in 2014. Post-Trial Submission, Attach. 1 at 6. There, MR asserted that TSgt Coluzzi drug a key across his eye to make it look like *he* was a victim of *her* assaults. *Id.* MR was arrested for domestic violence. *Id.* At trial, the defense attempted to admit evidence of the 2014 domestic violence incident to show how MR knew how to manipulate law enforcement with physical evidence of abuse, i.e., bruises and bleeding cuts. R. at 746-52. The military judge excluded this evidence. R. at 756-57.

Now, it is even clearer that manipulating law enforcement was exactly what MR was doing. As demonstrated by the new evidence, MR knew bruises and pictures of injuries would convince law enforcement that she was a domestic violence victim. She planned to get her brother to “pinch the fuck out of [her]” to create a narrative that matched Mr. Frank “thr[owing her] around his fucking . . . house.” Clip 1 at 3:24-3:34. She claimed she had pictures to support her allegation that Mr. Frank hit her and would “get him in trouble” if he did not “do what the fuck [she] say[s].” Clip 4 at 00:16-00:33. This knowledge is mirrored in SrA Tyson’s case as well. Before she reported him to law enforcement, she asserted, “All of the pictures and video I have will never be

dismissed,” followed with, “You have no marks on you but everything is on me.” Pros. Ex. 16 at 25.

Her awareness of how to manipulate law enforcement is seen in the incident with TSgt Coluzzi, as the defense asserted at trial. She knew his cut would tell law enforcement she was a perpetrator, so she attempted to cast it as self-harm. Post-Trial Submission, Attach. 1 at 6. TSgt Coluzzi denied ever taking a key across his eye, which would mean MR’s framing to the police of the source and severity of the injury evinced her intent to weaponize what would otherwise be strong evidence against her. Decl. MSgt Richardson. The newly discovered evidence undermines MR’s credibility while supporting the defense theory of admissibility. Thus, the newly discovered evidence impacts the erroneous ruling by the military judge and creates a trickle-down effect through the trial. *See* Br. on Behalf of Appellant at 11-25, *Tyson*, No. ACM 40617 (discussing how the military judge erred in excluding the 2014 domestic violence evidence to show MR’s intent and motive to fabricate). Specifically, had the military judge had the advantage of this additional information, she likely would have admitted the evidence. The evidence from the TSgt Coluzzi incident, along with evidence from Mr. Frank, would probably have resulted in a different result because it shows MR as a person who fabricates evidence to control her relationships and partners.

More than this, MR asserted that TSgt Coluzzi “always” pushed her into walls and threw things at her. Post-Trial Submission, Attach. 1 at 6. The defense did not attempt to admit this evidence at trial. But the newly discovered evidence shows that MR has a habit, plan or scheme, and modus operandi of accusing men of vague, non-stop, and round-the-clock domestic violence allegations to avoid consequences. *See, e.g., id.* (claiming TSgt Coluzzi “always” pushed her and threw things at her); R. at 536 (accusing SrA Tyson of beating her every day); Clips 1, 4 (showing,

when combined, that MR accused Mr. Frank of multiple domestic violence allegations). Her allegations are also a form of control whereby she controls law enforcement and her male partner to get what she wants. *Id.*; compare Clip 4 at 00:16-00:33 (“You wanna do what the fuck I say or do you want me to get you in trouble?”), with Pros. Ex. 16 at 12 (“Like if you get a domestic violence charge on you that’s heavy[.] . . . And I’m keeping you from that so fucking respect me[.]”). She casts herself as a victim and when that does not work, she escalates. Based on the fact TSgt Coluzzi did not face any court-martial or adverse actions due to an allegation from MR, it is clear she did not have to escalate to the levels that she did with SrA Tyson or Mr. Frank to get TSgt Coluzzi to do what she wanted. Furthermore, he still appears under her influence. Clip 3 at 5:32-5:36 (suggesting an on-going relationship with TSgt Coluzzi). But when SrA Tyson and Mr. Frank attempted to break up with her, MR went after both men. Furthermore, there is now evidence that MR has been fabricating domestic violence allegations for over a decade. TSgt Coluzzi denied MR’s allegations of harming her. Decl. MSgt Richardson. So did Mr. Frank. Decl. A. Frank. And SrA Tyson pleaded not guilty, all the while asserting in text messages for her to “take him to court” because she could not prove the allegations. R. at 120; Pros. Ex. 16 at 17, 25. None of these men have ever admitted they harmed MR. Yet, she is “taking them down one by one.” Clip 3 at 3:05-3:43. In SrA Tyson’s case, it worked.

The old domestic violence allegations coupled with the newly discovered evidence show that SrA Tyson’s case does not stand in isolation. TSgt Coluzzi is another victim of MR’s lies, as is Mr. Frank. SrA Tyson falls in between these false allegations, creating the pattern and revealing MR’s habit, plan or scheme, and mode of operation. The newly discovered evidence, on its own, is a sufficient basis for a new trial because it eviscerates MR’s credibility, the source of all the evidence in this case. But it also impacts the admissibility of other evidence that trial defense

counsel attempted to admit and could have admitted had the defense had the new evidence. The newly discovered evidence shows exactly what the defense was attempting to argue regarding the 2014 incident: MR knew an injured person would be considered a victim. This knowledge fueled her motive, means, and intent to fabricate domestic violence allegations. Based on the newly discovered evidence, the result of this evidentiary issue would have been different, the 2014 domestic violence incident would have been before the members, and altogether, SrA Tyson probably would not have been convicted had the newly discovered evidence been available at the time of his court-martial.

3. The evidence would be admissible under various hearsay exceptions, as impeachment evidence, and as evidence of habit, plan, modus operandi, intent, and motive. And the probative value of the evidence far outweighs any prejudicial effect.

The newly discovered evidence would be admissible at a new trial for several reasons. First, it is either an exception to hearsay or nonhearsay. Second, the evidence is relevant as evidence of any, or all, of the following: MR's bias, habit, plan, scheme, motive, intent, and modus operandi. And third, the evidence passes the Mil. R. Evid. 403 balancing test.

a. The statements are admissible as exceptions to hearsay or as nonhearsay.

First, most, if not all of MR's statements relevant to her fabricating allegations would be admissible for their truth under Military Rule of Evidence (Mil. R. Evid.) 803(3) as statements of then-existing mental, emotional, or physical condition:

"I'm actually going to set it up so that way it's going to look like you hit me and I'm going to call the cops and it's going to get really ugly really quick because that's what you deserve for fucking with me bro."

- Clip 1 at 3:02-3:15.

"I'm going to have my brother pinch the fuck out of me. As soon as I touch down in Minot, Imma call the cops and be like this man literally just fucking hit me and threw me around his fucking apartment -- er his house."

- Clip 1 at 3:24-3:34.

“I’ll deal with you Tuesday.”

- Clip 3 at 00:26-00:30.

“I’m just tired, you know, tired of being treated like shit by men. So, I’m, I’m literally taking you down, each one of you down, one by one so.”

- Clip 3 at 3:05-3:43.

“Cops can’t help you for the shit that I’m going to pull out—I’m going to tell about work. I’m going to start something—on a case against you for sexual harassment and abuse.”

- Clip 3 at 19:32-19:41.

“I hope you know you’re gonna get in a lot of trouble. . . . I hope you know for the time you fucking hit me! Yeah! Yeah! You wanna go there! Yes you did, yes you did! I have pictures! I have pictures. . . . You wanna do what the fuck I say or do you want me to get you in trouble?”

- Clip 4 at 00:16-00:33.

“I will get my revenge ten-fold.”

- Clip 6 at 1:03-1:06.

“You will pay for everything you’ve done to me, I want you to know that. . . . You will pay—you will pay—you will pay for everything you’ve done to me, I want you to know that.”

- Clip 7 at 00:10-00:22.

This hearsay exception “generally allows evidence of one’s present state of mind and future intent or plans.” *United States v. Zolnosky*, No. ACM 38103, 2013 CCA LEXIS 751, at *3-4 (A.F. Ct. Crim. App. Aug. 13, 2013). “It generally does not permit evidence of present memory or belief to prove the existence of a past condition or fact. It thus follows the traditional distinction between statements of present status, including forward-looking statements that do not present memory problems, and backwards-looking statements that do.” *Id.* (quoting Stephen A. Saltzburg, et al., *Military Rules of Evidence Manual* § 803.02[4][a], at 8-72 (6th ed. 2006)). Each one of the statements above would qualify as MR’s present state of mind, her plans, her motive, or her intent. She is announcing she is going to frame Mr. Frank for domestic violence and how. Each is a forward-looking statement that reveals what MR plans to do to Mr. Frank and thus, would be

admissible for its truth—MR planned and intended to frame Mr. Frank for domestic violence.

Alternatively, various statements would be admissible as nonhearsay for circumstantial evidence of state of mind:

“Cause remember that one time where you almost stabbed me? Yeah, that’ll probably happen again. . . . You threw scissors at me and stuff.”

- Clip 1 at 4:22-4:44.

“I am going to fucking kill you, you bitch. . . . I’m going to fucking kill you. I’m going to fucking kill you. Mark my words, I’m going to fucking murder you.”

- Clip 6 at 4:05-4:17.

“Impeachment through circumstantial evidence of a declarant’s state of mind and the Mil. R. Evid. 803(3) exception represent ‘two separate purposes for which [evidence] may be admitted: (1) showing bias—an impeachment method *which is not* hearsay, and (2) showing state of mind—a hearsay *exception* under Rule 803(3).” *United States v. Reyes*, 78 M.J. 831, 834 (A. Ct. Crim. App. 2019) (quoting *United States v. Gentle*, 361 Fed. Appx. 575, 580 (5th Cir. 2010)). The above two statements would be admissible to show MR’s bias, motive, intent, or similar mental processes toward Mr. Frank, as relevant to prove bias under near-identical circumstances concerning SrA Tyson. She was willing and able to frame Mr. Frank for domestic violence because he broke up with her. Her vitriolic statements and veiled threats do not have to be true to demonstrate how much she hated him and was willing to destroy Mr. Frank’s life with false allegations. Ultimately, the most critical statements would be admitted for their truth—that MR intended to frame Mr. Frank and that she did make false allegations of domestic violence—while others would come in as impeachment to further reveal her bias, motive, and intent to make false allegations of domestic violence.

- b. The newly discovered evidence is relevant under Mil. R. Evid. 401 because it has a tendency to show MR fabricated the allegations against SrA Tyson, raising reasonable doubt on all the charged offenses.**

With the statements admissible under a hearsay exception or as nonhearsay,¹² their relevance all go towards impeaching MR, showing her motive to fabricate the allegations against SrA Tyson, and her habit, plan, scheme, and/or modus operandi.¹³ *See supra* at 20-29 (discussing how the evidence would impact SrA Tyson's case). The defense theory at trial was always that MR fabricated the allegations and manipulated the narrative. Without reiterating everything contained in section III.C.1, *supra*, the newly discovered evidence has a more than reasonable tendency to show that MR fabricated the allegations against SrA Tyson to manipulate him into staying with her and out of revenge for breaking up with her, mirroring the circumstances under which she accused Mr. Frank of domestic violence. Mil. R. Evid. 401; *see* Mil. R. Evid 608(c) (permitting extrinsic evidence to prove a witness's "bias, prejudice, or any motive to mispresent"). Furthermore, as asserted above, III.C.2, *supra*, MR has a habit, plan, scheme, and/or modus operandi of accusing men of domestic violence offenses to get what she wants. Thus, the new evidence would also be admissible evidence under Mil. R. Evid. 404(b)(2) or 406. These various theories of relevance all work to impeach MR's testimony and the photos and videos she provided, casting substantial doubt on every allegation. *See supra* at 20-29. Without MR as a credible

¹² There are also shorter statements that are admissible as excited utterances under Mil. R. Evid. 803(2), *e.g.*, Clip 5, while others are admissible as nonhearsay for effect on the listener, but these additional statements captured in the recordings are not the primary focus for this Petition. *See, e.g.*, Clip 8 at 2:14-2:35 ("That's what—that's crazy cause that's exactly what Jonathon was saying, only for him to be found guilty of the crime."). SrA Tyson reserves the right to admit other statements in these recordings at any subsequent hearing or new trial.

¹³ SrA Tyson reserves the right to offer these statements under any or all these bases. For the Petition, all are raised because they all offer a basis for admissibility. But in the event a new trial is granted, SrA Tyson reserves the right to adjust his trial strategy to either raise all these bases or narrow them.

witness, the Government has no case, highlighting the materiality and impact of this newly discovered evidence.

c. The relevance of the newly discovered evidence is not substantially outweighed by the considerations outlined in Mil. R. Evid. 403.

Finally, the evidence would be admissible under Mil. R. Evid. 403, a rule of inclusion. “Although *relevant*, evidence *may* be excluded if its probative value is *substantially outweighed* by the danger of unfair prejudice, confusion of the issues, or misleading the members, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” *United States v. Banker*, 60 M.J. 216, 223 (C.A.A.F. 2004) (quoting Mil. R. Evid. 403). The balancing test favors admissibility. *Id.* The burden is on the Government to show why MR’s plot to frame Mr. Frank would be inadmissible for the articulated relevant purposes. *Id.*

Here, the Government cannot meet that burden. The newly discovered evidence would require, at most, three witnesses to testify: Mr. Austin Frank, Mrs. Lisa Frank, and TSgt Anthony Coluzzi. TSgt Coluzzi’s testimony could be reduced to a stipulation of expected testimony due to how narrow it is. He only needs to testify that MR falsely accused him of domestic violence and self-harm in 2014, as he did in his post-trial interview. Decl. MSgt Richardson. Mrs. Frank would be brief, and possibly not necessary. She would testify similarly to how a law enforcement agent would testify regarding chain of custody by explaining how she got the recordings, whether any were edited, and how they were moved between all relevant parties.

Mr. Frank’s testimony would require more, specifically that he attempted to break up with MR (as relayed in the various recordings) and he would need to testify about the various recordings, to include laying the foundation, authenticating them, and then providing some context. He would not be duplicative of those recordings. The main recordings that are critical for a new hearing are listed above: Clips 1, 3, 4, 6, 7. The complete set of recordings (Clips 1-12) and

their full content would not likely come in, nor are they being argued as such here.¹⁴ Rather, twelve recordings of various lengths have been provided for context about Mr. Frank's relationship with MR. *See, e.g.*, Clip 11 (providing context to the relationship through Mrs. Frank recounting what has happened). Much of the context surrounding the main statements in the recordings—as listed above—would be testimony from Mr. Frank at a new hearing, rather than admitting the more narrative and contextual recordings, such as Clip 11.

The significance of this evidence is not substantially outweighed by the time it would take to present this evidence, nor would it mislead or confuse the members. Mr. Frank's situation came directly after SrA Tyson's, has numerous similarities, and is not cumulative to any other evidence in the record. Even the 2014 incident is not cumulative because it is a necessary bookend to show how MR operates when confronted with a perceived existential crisis. Because the newly discovered evidence is admissible for the truth of the matters asserted therein, is relevant, and the probative value is not substantially outweighed by the danger of unfair prejudice, SrA Tyson is entitled to a new trial because this new and admissible evidence, in light of all other pertinent evidence, would produce a substantially more favorable result in that SrA Tyson probably would not be convicted. R.C.M. 1210(f)(2)(C).

IV. Conclusion

MR's words are damning: "I'm actually going to set it up so that way it's going to look like you hit me and I'm going to call the cops and it's going to get really ugly really quick because that's what you deserve for fucking with me bro." Clip 1 at 3:02-3:15. "I'm going to have my

¹⁴ To be sure, all these recordings would be admissible wholesale if there were no objections. For purposes of this Petition, the focus is on the most critical statements and how they are admissible if objected to. SrA Tyson does not, nor is he intending to, waive any argument not presented in this Petition as a basis for admissibility nor is he waiving his right to offer and admit additional statements captured in these recordings if a new trial is authorized.

brother pinch the fuck out of me. As soon as I touch down in Minot, Imma call the cops and be like this man literally just fucking hit me and threw me around his fucking apartment -- er his house.” *Id.* at 3:24-3:34. MR had the means, the intent, the motive, and the knowledge to fabricate domestic violence allegations a year after “taking [SrA Tyson] down” for the same allegations. Clip 3 at 3:05-3:43. The only evidence that SrA Tyson committed any domestic violence against MR came from MR herself. The newly discovered evidence eviscerates the Government’s case against SrA Tyson. This new evidence, if considered by the court-martial in the light of all other pertinent evidence, would likely produce a substantially more favorable result for SrA Tyson—a full acquittal. Therefore, a new trial is warranted.

Respectfully submitted at the request of Petitioner,



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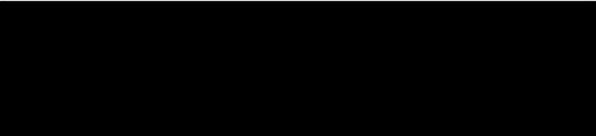
(240) 612-4770

Counsel for Petitioner

DECLARATION

I, Major Samantha M. Castanien, a person possessing power of attorney for Senior Airman Jonathon V. Tyson, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the information in the foregoing Petition for New Trial is true and correct.

Executed on this 23th Day of January, 2026, by



SAMANTHA M. CASTANIEN, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
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Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770



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

In re Jonathon V. TYSON	)	Misc. Dkt. No. 2026-02
Senior Airman (E-4))	
U.S. Air Force)	
<i>Petitioner</i>)	
)	
	)	NOTICE OF
	)	DOCKETING
)	
)	

Pursuant to Article 73, Uniform Code of Military Justice, 10 U.S.C. § 873, a Petition for a New Trial in the above-styled case, dated 23 January 2026, was received by the court on 23 January 2026 for newly discovered evidence. Accompanied with this petition was Petitioner’s “Brief in Support of the Petition.”

Accordingly, it is by the court on this 23d day of January, 2026,

ORDERED:

The case has been assigned Misc. Dkt. No. 2026-02 and referred to a Special Panel for review. The Special Panel in this matter shall be constituted as follows:

JOHNSON, JOHN C., Colonel, Chief Appellate Military Judge
DOUGLAS, KRISTINE M., Colonel, Senior Appellate Military Judge
MCCALL, KRISTIN K.B., Colonel, Appellate Military Judge

Pursuant to Rule 21(c) of the Joint Rules of Appellate Procedure for Courts of Criminal Appeals, the Respondent may file an answer within 30 days after filing of the petition. A reply may be filed by Petitioner not later than 7 days after the filing of Respondent’s answer. *See* JT. CT. CRIM. APP. R. 21(c).



FOR THE COURT

[Redacted signature block]

JACOB B. HOEFERKAMP, Capt, USAF
Chief Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' OPPOSITION
<i>Appellee,</i>	)	TO PETITION FOR NEW TRIAL
)	
v.	)	Before Special Panel
)	
Senior Airman (E-4)	)	No. ACM 40617
JONATHON V. TYSON	)	Misc. Dkt. No. 2026-02
United States Air Force)	
<i>Appellant.</i>	)	23 February 2026

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

ISSUE PRESENTED

**WHETHER PETITIONER IS ENTITLED TO A NEW TRIAL
BASED ON NEWLY DISCOVERED EVIDENCE OF MR'S
POST-TRIAL BEHAVIOR WITH A SUBSEQUENT
BOYFRIEND.**

STATEMENT OF CASE

Petitioner was charged with one Charge and nine specifications of domestic violence in violation of Article 128b, Uniform Code of Military Justice (UCMJ). (*Entry of Judgment*, ROT, Vol. 1.) A panel of officer and enlisted members, found Petitioner guilty, contrary to his pleas, of six specifications and acquitted him of the remaining three specifications. (Id.) The members sentenced Petitioner to reduction in grade to E-1, one year of confinement, and a bad-conduct discharge. (Id.) The military judge credited Petitioner with 246 days of pre-trial confinement credit. (Id.) The convening authority took no action on the findings or sentence. (*Convening Authority Decision on Action*, ROT, Vol. 1.)

STATEMENT OF FACTS

Investigation into Petitioner's domestic violence and ongoing abuse of MR began on 14 April 2023, when MR called out from work for the third day in a row. (R. at R. at 56, 594-95.) This triggered her leadership to arrive at the on-base house she shared with Petitioner for a welfare check. (R. at 299.) MR was surprised when they arrived. (Id.) MR's leadership, Capt AR, attempted to make contact with Petitioner, who refused to come to the door, and AR eventually noticed a cut on MR's leg and a bruise on her thigh. (R. at 302, 604.) Capt AR removed MR from the house and contacted security forces, who responded to the incident. (R. at 603.) Ultimately, Petitioner was arrested and MR was treated at a local hospital. (R. at 606.) MR's injuries were documented by law enforcement that same day and in the days following, including photographs of bruising on her neck, arms, and body. (Pros. Exs. 2, 3, 4.) MR participated with law enforcement and testified at trial regarding the domestic violence, for which Petitioner was convicted. Several other witnesses were called to testify at trial, including Capt AR, responding security forces patrolmen, and experts.

Convicted offenses between MR and Petitioner¹

At trial, Petitioner was convicted of domestic violence in violation of Article 128b, Uniform Code of Military Justice (UCMJ) by: strangling MR on 14 April 2023 (Specification 1), kicking and punching MR on divers occasions between 1 May 2022 and 14 April 2023 (Specifications 4-5), destroying MR's cell phone on or about 12 April 2023 with the intent to threaten or intimidate MR (specification 7), destroying MR's property on divers occasions between 1 December 2022 and 14 April 2023 with the intent to threaten or intimidate MR

¹ Additional facts, discussion, and argument pertaining to these convicted offenses are contained in the United States' Answer to Assignments of Error at 25-58.

(Specification 8), and communicating threats to MR on divers occasions with the intent to threaten or intimidate MR between 1 December 2022 and 14 April 2023 (specification 9). (*Entry of Judgment*, ROT, Vol. 1.) At trial, MR and other witnesses substantially testified regarding the convicted offenses.

Regarding Specification 1, MR testified that Petitioner had put his hands around her neck on multiple occasions, including 14 April 2023, and had applied force to the point where she thought she was going to die. (R. at 601.) Additionally, Office of Special Investigations (OSI) Agent KB testified to MR visibly shaking and having multiple bruises across her body, including on her neck and jaw, on 14 April 2023. (R. at 460.) Dr. NS, an expert in the field of forensic psychology and intimate partner violence, testified to patterns of coercive control and opined that the pattern in MR and Petitioner's relationship had hallmarks of intimidation and coercion of Petitioner upon MR. (R. at 898-902.) Trial defense counsel called Dr. EL, an expert in the field of forensic pathology, who testified to the mechanics of strangulation and confirmed the photographs taken by law enforcement at the hospital of MR's injuries on 14 April 2023 showed bruising and abrasions on MR's neck and that MR's medical records reflected she experienced "choking." (R. at 935-942.)

Regarding Specifications 4-5, MR testified to multiple incidents where Petitioner would kick her legs with his feet and punch her arms with his hand during physical altercations. (R. at 536-59.) Photos taken of MR's injuries on 14 April 2023 further showed bruising to her arms, legs, and torso in various stages of healing. (Pros. Exs. 2, 18.) Dr. TH, an expert in the field of forensic pathology, testified in the Government's rebuttal case and confirmed that the injuries were consistent with repetitive blunt force trauma over a period of time. (R. at 994.) Dr. TH also opined that these injuries were not consistent with self-inflicted injuries. (R. at 995-96.)

Regarding Specifications 7-8, MR testified that Petitioner smashed her cell phone on one occasion and destroyed her property on multiple occasions. (*See* R. at 562, 583-86.)

Additionally, abundant video evidence was presented showing Petitioner had destroyed her property. Prosecution Exhibit 12 shows that Appellant broke MR's candle holder. Prosecution Exhibit 13 displays Appellant stabbing the icemaker with a knife. Prosecution Exhibit 14 reveals Appellant destroying MR's cellphone charger with pliers. Additionally, photographs of the crime scene taken in April 2023 showed the level of destruction to MR's property – including cut-up bags, clothes, shoes, and other household items. (*See* Pros. Ex. 5.) Further, the video evidence showed Petitioner in a state of wrath, destroying MR's property while hurling insults and making additional threats, including, “get your goddamn purse or I'm gonna fuck that shit up” and “get the fuck outta here, bitch. Or I'm gonna pour every goddamn thing out. I don't have time for it. Now get the fuck out of this goddamn bathroom. I ain't got time for you, fucking fat ass goddamn hog” and “squeal again you stupid fucking bitch. I'll break the goddamn neck off. Squeal a-fucking-gain, you stupid whore. Do it. Yea, you fucking dumb bitch.” (Pros. Exs. 12, 15; R. at 562, 583-84.) Dr. NS linked this evidence as an ongoing pattern of intimidation and coercive control by Petitioner against MR. (R. at 902.)

Regarding Specification 9, MR testified that Appellant made threats to her life on multiple occasions, including “I'm going to have to kill you” and “I'm going to blow your brains out” and “I'll have to kill you, it's the only way” or words to that effect. (R. at 570, 601-2.) Circumstantial evidence, including the videos referenced in the paragraph above, supported that Petitioner had a history of making threats and slinging insults at MR during verbal altercations. (Pros. Ex. 12-14.) Additionally, his use of weapons and breaking objects demonstrated an intent to cause physical harm – either to MR, her property, or both.

2014 incident between MR and TSgt AC²

On 14 April 2023, MR was surprised when Capt AR and the first sergeant arrived at the house and was worried because she thought they may take Petitioner away. (R. at 595, 721.) At trial, MR clarified that she was also afraid on that day of being taken to the hospital or otherwise split apart from Appellant. (Id.) Following this clarification, trial defense counsel attempted to question MR about a previous domestic violence incident between MR and her former spouse, TSgt AC³, from 2014 [2014 incident]. (R. at 722.)

During a hearing pursuant to Article 39(a), UCMJ, trial defense counsel articulated a theory of motive to fabricate under Military Rule of Evidence (M.R.E.) 608(c). (R. at 724-25.) Trial defense counsel asked MR proposed questions and called Mr. AC, who was one of the security forces patrolmen who responded to the 2014 incident, to provide additional facts for consideration by the military judge. (R. at 722-741.) MR testified that she had no recollection of the 2014 incident other than security forces arriving at her house. (R. at 725-26.) MR did not recall a physical altercation, did not recall denying injuring TSgt AC, did not recall being detained, and did not recall being cited for battery. (Id.) MR testified she had never been removed or barred from on-base housing and, following the 2014 incident, continued living with TSgt AC for approximately 8 years. (R. at 728-29.) Mr. AC had a vague recollection of the 2014 incident, initially believing that MR had a cut rather than TSgt AC. (R. at 732-33.) However, after his recollection was refreshed with the incident report, Mr. AC clarified that his partner had taken MR's statement. (R. at 740-41.) Mr. AC testified: 1) MR made a statement

² Additional facts and discussion on this incident are included in the United States' Answer to Assignments of Error at 11-25.

³ At trial, and in Petitioner's Assignments of Error and the United States' Answer, now-TSgt AC is referred to as SSgt AC. He is referred to here, throughout, as TSgt AC to reflect his current rank.

that TSgt AC had scratched himself with a key; 2) both MR and TSgt AC were agitated; 3) Both MR and TSgt AC admitted to pushing or shoving one another; and 4) both MR and TSgt AC were detained and transported away from the house in separate patrol cars by security forces. (R. at 734-43.) Mr. AC was unaware of the outcome of the incident, did not recall ever warning MR about potential barment from base, and had determined that both MR and TSgt AC were mutual aggressors in the situation. (R. at 744-45.)

Trial defense counsel argued that the 2014 incident mirrored the charged misconduct because MR presented with a cut on her leg after her leadership arrived at the house on 14 April 2023. (R. at 747.) Trial defense counsel further argued that the 2014 incident mirrored, through role reversal, the charged misconduct. (R. at 748-49.) The military judge rejected this argument, finding that trial defense counsel failed to establish a real and direct nexus for the 2014 incident to the charged offenses. (R. at 756.) The military judge found that as MR did not recall the incident, it would not have been on her mind when her leadership showed up to the house, and would not have carried a motive to fabricate an additional incident nearly 10 years later. (Id.) Ultimately, this—coupled with the factual differences between the 2014 incident and the charged offenses, the low probative value, and the danger of confusing issues, creating a trial within a trial, and that members would misuse the evidence beyond its limited purpose—led the military judge to exclude the evidence under M.R.E. 403, 404(b)(2), and 608(c). (R. at 757-59.)

ARGUMENT

APPELLANT HAS FAILED TO MEET HIS HIGH BURDEN TO WARRANT A NEW TRIAL.

Standard of Review

This Court reviews requests for new trials using the rubric of Article 73, UCMJ, and R.C.M. 2010(f)(2). See United States v. Sztuka, 43 M.J. 261, 268 (C.A.A.F. 1995) (“The determination whether sufficient grounds exist under R.C.M. 1210(f)(2) for ordering a new trial rests with the authority considering the petition.”) This Court has the prerogative to weigh this post-trial evidence “in terms of credibility as well as materiality.” United States v. Bacon, 12 M.J. 489, 492 (C.M.A. 1982) (quotation omitted). This Court is also “free to exercise” fact finding authority under Article 66(d), UCMJ, when reviewing petitions for a new trial. Id. (citation omitted).

Law

A petitioner may request a new trial under Article 73, UCMJ, on the grounds of newly discovered evidence or fraud on the court. But a new trial “shall not be granted” for newly discovered evidence unless the petition shows that:

- (A) The evidence was discovered after the trial;
- (B) The evidence is not such that it would have been discovered by the petitioner at the time of trial in the exercise of due diligence; and
- (C) The newly discovered evidence, if considered by a court-martial in the light of all other pertinent evidence, would probably produce a substantially more favorable result for the accused.

R.C.M. 1210(f)(2); see also United States v. Luke, 69 M.J. 309 (C.A.A.F. 2011).

CAAF has further recognized that when considering a petition for a new trial, courts of criminal appeals “have a prerogative of weighing testimony at trial against the post-trial evidence

to determine which is credible.” United States v. Rios, 48 M.J. 261, 267-68 (C.A.A.F. 1998) (citing Bacon, 12 M.J. at 492). In the pursuit of any credibility determination, reviewing courts “[do] not determine whether the proffered evidence is true; nor does it determine historical facts. It merely decides if the evidence is sufficiently believable to make a more favorable result probable.” United States v. Brooks, 49 M.J. 64, 69 (C.A.A.F. 1998). Further, reviewing courts must look to “the importance of the issue for which the evidence was offered in relation to the other issues in this case; the extent to which this issue is in dispute; and the nature of other evidence in the case pertaining to this issue.” United States v. Johnson, 61 M.J. 195, 199 (C.A.A.F. 2005) (quoting United States v. Colon-Angueira, 16 M.J. 20, 26 (C.M.A. 1983)) (quoting United States v. Dorsey, 16 M.J. 1, 6 (C.M.A. 1983)).

To show a new trial is warranted, the “burden is heavier than that borne by an appellant during the normal course of appellate review.” Bacon, 12 M.J. at 491 (citations omitted). “[T]he provisions of Article 73 are not designed to permit an accused to relitigate general matters which were presented below and decided adversely to him.” Id. at 492. And a petitioner should not “be granted a new trial merely because his trial tactics failed.” Id. Thus, requests for a new trial are “generally disfavored” and are “granted only if a manifest injustice would result absent a new trial.” United States v. Hull, 70 M.J. 145, 152 (C.A.A.F. 2011) (quoting United States v. Williams, 37 M.J. 352, 356 (C.M.A. 1993)).

Analysis

Petitioner argues that these recordings are exculpatory, admissible at trial, and would probably change the findings to be substantially more favorable for Petitioner, thus a new trial is warranted. (Pet. Br. at 18-33). These conclusions fall short of meeting Petitioner’s heavy burden to show that a manifest injustice would result without a new trial. As demonstrated

below, the recordings are not exculpatory, not admissible at trial, and would do nothing to change the landscape of evidence that supports Petitioner's convictions. While this evidence meets the first two prongs under R.C.M. 1210(f) because it arose completely post-trial and could not have been discovered prior to trial, it ultimately fails the third prong.

Petitioner has failed to demonstrate that this additional evidence, in the light of all other pertinent evidence, would probably produce a substantially more favorable result. *See* R.C.M. 1210(f)(2)(C). First, the evidence cited by Petitioner does not relate directly to the offenses for which Petitioner was convicted. Second, this evidence would not be admissible under M.R.E. 404(b), 608(c), or 803. This evidence is also cumulative to other credibility evidence raised at trial, presents a danger of unfair prejudice, delay, confusing the issues, and creating a trial within a trial, falling short of admissibility under M.R.E. 403. Further, this evidence would not have affected the military judge's decision to suppress evidence regarding the 2014 incident. For these reasons, Petitioner has failed to meet his burden, and a new trial should not be granted.

A. The evidence is irrelevant because it encompasses entirely post-trial matters and does not relate directly to Petitioner's convicted offenses.

The new evidence proffered by Petitioner encompasses statements of MR in a separate relationship, under separate and distinct circumstances, and during a separate and distinct time that does not overlap or intertwine whatsoever into the offenses for which Petitioner was convicted. Put simply, whatever the situation between MR and AF, it is distinguishable from the domestic violence MR suffered from Petitioner. Following the analysis in Johnson, new evidence is insufficient grounds for a new trial where it (1) does not offer some new version of the facts presented at trial; (2) is merely additional impeachment material for a record already saturated with credibility challenges; (3) has an ambiguous effect; or (4) is largely cumulative to support defense theories raised at trial. *See* 61 M.J. at 200-201.

First, these recordings do not offer some new version of the facts presented at trial. They do not shed light on what happened during the convicted offenses, do not contradict the abundant evidence presented at trial, and do not reveal an alternative narrative that was blocked or unexplored at trial. At trial, Petitioner enjoyed a full and fair defense, meaningful cross-examination of witnesses, and raised questions as to the source of MR's injuries and credibility. Petitioner now seeks to rehash these failed trial tactics with irrelevant evidence in the hopes of achieving a different result. *See Bacon*, 12 M.J. at 491. These recordings relate solely to MR's later interactions with a different partner, different relationship, different context, and different time. Evidence of this entirely post-trial conduct cannot retroactively rewrite the facts of the convicted offenses and certainly cannot retroactively overcome the corroborating evidence – including photographs and video evidence – which supported the convictions.

Petitioner cites to *United States v. Williams*, 37 M.J. 352 (C.M.A. 1993) as an example of newly discovered evidence sufficient to trigger a new trial. However, in *Williams*, the new evidence discovered was testimony of an additional witness whose testimony directly contradicted several portions of the victim's testimony and established new defense theories of consent, lack of credibility, and motive to fabricate. *Id.* at 357-361. This evidence was directly tied to the time, place, and manner of the charged offenses. That is not the situation here. Petitioner argues that MR's behavior with AF “mirrored what she did to SrA Tyson: she framed both men in an attempt to get what she wanted.” (Pet. Br. at 22). However, at trial, MR testified that she didn't want to be separated from Petitioner and didn't want to get him into trouble. (R. at 613-14, 721-22.) Certainly there was nothing at trial alleging that MR offered to leave Petitioner alone if he would pay her, as Petitioner contends MR did to AF. (Pet. Br. at 17).

Other than Petitioner's theory that MR made a false report and is generally not credible, MR's statements and behavior with AF are distinct from MR's statements and behavior with Petitioner.

Appellant has excised ten quotations from MR contained in the recordings and relies on those quotations to show that MR "manipulated, threatened, and fabricated domestic violence allegations against another boyfriend." (Pet. Br. at 16-17). However, none of the quotations relied on by Petitioner actually establish that MR ever fabricated false allegations or actually filed a false report against AF, much less against Petitioner.

In the recordings, MR specifically accused AF of committing domestic violence against her. Namely, she confronted AF about hitting her (Clip 4 at 00:16-00:33; Clip 5 at 00:29-00:31) and about throwing scissors at her (Clip 1 at 4:41-4:44). She did not merely suggest that she was going to frame AF for committing domestic violence when nothing had ever occurred. Other than AF's denials, there is nothing to establish that MR was lying about AF hitting her or throwing scissors at her. Additionally, these quotations came during heated arguments over other matters, such as infidelity and MR's property. MR's statement "I'll deal with you Tuesday" appears to be in reference to her attempting to get her property—including her car—back from AF following Memorial Day Weekend. (Clip 3 at 00:26-00:30). Petitioner speculates MR 'dealing' with AF meant she intended to execute a false report on that date—however that is not supported by the surrounding circumstances. It is further just as likely that MR was mentally preparing herself for additional conflict on the next date she was available to see or communicate with AF. As a final matter, these recordings were all during significantly charged conversations, to the point where MR stated "I hate you so bad, I'm having a panic attack." (Clip 6 at 00:06-00:10).

Petitioner's theory that MR falsified her injuries and falsified the domestic violence allegations against Petitioner was not supported by the evidence at trial, and this new evidence does not change that outcome. Because the recordings here do not offer any new factual account of the underlying domestic violence incidents for which Petitioner has been convicted, they fail at the threshold.

Second, these recordings of MR are merely additional impeachment material in a record already saturated with credibility challenges. As discussed at length in the United States' Answer to Petitioner's Assignments of Error, these credibility challenges were meaningful—however, ultimately unpersuasive to the factfinder. (Ans. Br. at 17-24). Petitioner attacked MR's credibility, arguing she fabricated the allegations, raised the idea that her injuries came from other sources, and even called witnesses to establish MR's character for untruthfulness. (R. at 968, 1106-27.) However, trial was not a one-on-one testimonial battle, as Petitioner now avers. *See Johnson*, 61 M.J. at 201. Substantial additional evidence was presented at trial which corroborated MR's testimony and injuries, including photos, videos, eyewitness testimony from 14 April 2023, and expert testimony. (*See* Pros. Exs. 2-5, 10-20; R. at 281-509, 855-1007.) The factfinder received, evaluated, and weighed all the evidence presented and came to a rational and reasonable conclusion—which included acquitting Petitioner of some allegations and convicting him of others. (*Entry of Judgment*, ROT, Vol. 1.) The findings at trial already encompassed a credibility determination of MR in the face of direct indicators of dishonesty. Based on the evidence raised at trial, a reasonable factfinder could have concluded that MR was lying, obtained her injuries from other sources, and fabricated all allegations against Petitioner. *Johnson*, 61 M.J. at 201. However, taking *all* evidence presented into context, the panel rejected these theories and found Petitioner guilty beyond a reasonable doubt for specifications 1, 4, 5, 7,

8, and 9 of the Charge in violation of Article 128b, UCMJ, for domestic violence. Because these recordings are merely additional impeachment material on the same credibility challenges presented at trial, and are not direct evidence of credibility to the charged offenses, this new evidence does not satisfy the requirements under R.C.M. 1210(f)(2)(C) and grounds for a new trial do not exist.

Third, the effect of the recordings—assuming they are relevant or admissible at all—is ambiguous and does not clearly support Petitioner’s innocence. These recordings do not establish that MR fabricated the allegations against Petitioner, do not contain any admission of perjury, and do not contradict or deny the facts as established at trial. “In general, post-trial changes in a witness’s testimony are not viewed favorably and must be viewed with extreme suspicion.” United States v. Anderson, 2017 CCA LEXIS 382, *1 (A.F. Ct. Crim. App. May 31, 2017). Where perjury has not been admitted or confessed, “simple inaccuracies or inconsistencies are not considered materially false and do not necessitate a new trial.” Id.

Only one portion of the recordings proffered by Petitioner even mention him in passing. During portion, AF accuses MR of “trying to falsely accuse [him] of a crime, [he] start[s] feeling less bad” about how he is treating her, and MR states, “that’s crazy because that’s exactly what [Petitioner] was saying, only for him to be found guilty of the crime.” Appendix A, Clip 8 – Nov. 18 trimmed at 2:20-2:34. The information there is accurate: Petitioner denied harming MR and was nevertheless found guilty at a court-martial for harming MR. Nothing in these statements is exculpatory to Petitioner, but rather repeats the trial findings. At most, these recordings show that in a later relationship, MR made statements during multiple arguments—statements that may or may not have been serious, truthful, or reflective of her conduct in the past.

Petitioner argues that the recordings establish MR's habit, scheme, or plan to fabricate domestic violence allegations against partners, generally. (Pet. Br. at 20). This tenuous position is discussed further in sections B and C below. However, here, it is sufficient to point out that Petitioner fails to recognize that MR's statements bolster her credibility as a survivor of domestic violence who was fed up with being hit, threatened, treated poorly, and gaslit by men who have harmed her and are claiming ignorance or denying their actions. This was demonstrated when MR stated, "I'm just tired, you know, tired of being treated like shit by men." Clip 3 at 3:39-3:41. Throughout the recordings, MR also confronted AF about hitting her (Clip 4 at 00:16-00:33; Clip 5 at 00:29-00:31), for throwing scissors at her (Clip 1 at 4:41-4:44), for sexual harassment at work (Clip 3 at 19:38-19:41), for calling her names (Clip 3 at 15:53-15:55), and for stealing her car (Clip 5 at 00:29-00:31). MR stated that she "tried giving [AF] opportunity to be peaceful" after he had thrown scissors at her, but he "didn't want to." (Clip 1 at 4:49-5:02). Additionally, at several points throughout the recordings, AF invites MR to "keep threatening him" and "good luck" if she wants to physically fight him. (*See generally*, Clip 3).

Petitioner's conclusion that the recordings demonstrate MR admitting to making a false report against Petitioner is speculative. MR's statements in the recordings took place during ongoing disagreements with AF about breaking up, her property, and whether AF had cheated on MR, to name a few. MR never admitted that AF had not harmed her, never admitted to falsifying injuries, never admitted to filing a false report, and never admitted to lying to law enforcement. What is not speculative is that MR was engaging in emotional arguments with AF following their breakup and was tired of AF denying his own wrongdoing throughout their relationship. R.C.M. 1210(f)(2)(C) requires that new evidence have a probable, not speculative,

impact on the verdict. These recordings' ambiguous content cannot meet this standard and invite conjecture rather than provide clarity. As a result, they further fail to meet the requirements to trigger a new trial.

Finally, the recordings are cumulative of defense theories already presented to the members and would not probably result in a substantially more favorable result for Petitioner. As discussed above, Petitioner's defense rested substantially on the theory that MR was lying and fabricated the allegations. Petitioner argued that MR was a liar, a manipulator, and her word was not to be trusted. (*See* R. at 1106-27.) These recordings do not introduce a new theory, but rather echo the same narrative Petitioner advanced at trial—a narrative that was ultimately rejected by the factfinder after appropriate weighing of all available evidence. Adding fuel to an already failed trial tactic does not undermine the verdict or establish grounds for a new trial. Further, under the guise raised by Petitioner, any future bad acts a victim may commit in separate circumstances would trigger a new trial—even where there is no direct nexus to the convicted offenses. Such a standard would be absurd.

The recordings do not meet the legal standard for a new trial because they do not relate to the convicted offenses, are cumulative, speculative, and ambiguous, and are not likely to produce a different outcome at trial. Thus, this Court should reject the petition.

B. The evidence is not admissible under the rules of evidence.

Petitioner further argues that the hearsay recordings would be admissible at trial under various hearsay exceptions, impeachment evidence, and as evidence of habit, plan, modus operandi, intent, and motive to fabricate false domestic violence allegations. (Pet. Br. at 29-32). However, this evidence is weak and irrelevant, taking it out of the running for admissibility for any purpose. Further, assuming some minimal relevance, it is insufficient to pass the barriers to

admissibility under the rules of evidence because the recordings are (1) insufficient to establish a logical nexus to the charged offenses; (2) insufficient to establish habit under M.R.E. 406; (3) insufficient to establish plan, modus operandi, intent, or motive under M.R.E. 404(b); (4) do not further any motive to fabricate the allegations against Petitioner; and (5) any probative value is substantially outweighed by the danger of unfair prejudice, confusing the issues, misleading the members, and is needlessly cumulative – falling short of admissibility under M.R.E. 403.

First, the recordings are not relevant under M.R.E. 401 because they do not make any fact of consequence more or less probable. Relevance requires a logical nexus to the proffered evidence and a fact in dispute. The recordings fail at the threshold because they concern MR's statements in a later relationship, with an entirely different partner and in circumstances wholly removed from the convicted offenses. Moreover, they occurred after trial, so there is no way that they could have affected or influenced MR's testimony at the time of her trial. Nothing in the recordings addresses what happened on the dates of the specifications, contradicts MR's testimony or other admitted evidence, or impeaches the verdict. MR's statements to AF does not make it more or less likely that she fabricated the allegations against Petitioner. As discussed above, MR's behavior with Petitioner did not include verbal threats to falsify injuries or obtain payments from him to stay quiet. Quite the contrary, on multiple occasions throughout their relationship, MR stated she did not want to get Petitioner in trouble. (R. at 613-14.) These recordings have no bearing on the truth of the events at issue and thus are irrelevant. Irrelevant evidence is not admissible at trial. *See* M.R.E. 401, 402(b).

Even assuming this evidence was admissible under a hearsay exception, Petitioner has failed to establish how there is a logical connection between that purpose for admission and the facts of this case. Petitioner argues that these statements are admissible under M.R.E. 803(3) as

a then-existing mental, emotional, or physical condition, or a state of mind for intent, motive, or plan. (Pet. Br. at 29-31). However, Petitioner has failed to establish a logical connection of how MR's state of mind regarding her post-trial relationship with AF – statements made weeks or months after Petitioner's conviction – have anything to do with any pre-trial state of mind regarding her relationship with Petitioner. In a hypothetical future where MR actually made an allegation against AF, and where that allegation moved forward to trial, these recordings may be analyzed under exceptions to hearsay, and may be relevant to her motive to fabricate allegations against AF; however, facially they have nothing to do with Petitioner whatsoever and do not mirror pretrial behavior or statements of MR regarding Petitioner's abuse.

Second, this evidence is insufficient to support a theory of habit under M.R.E. 406. “Habit describes one's regular response to a repeated specific situation.” United States v. Holman, 680 F.2d 1340, 1351 (11th Cir. 1982). While a precise formula for establishing a habit is not universally recognized, an adequacy of sampling and uniformity of response are controlling considerations. Id. (quoting Reyes v. Missouri Railroad Co., 589 F.2d 791, 794 (5th Cir. 1979)). Two patently dissimilar situations that are separated in time, place, circumstances, and partner, are insufficient to establish habit. For example, as described below in section C, the 2014 incident between MR and AC took place nearly a decade before the charged offenses against Petitioner and MR had little to no recollection about the incident at all. The 2014 incident involved MR and AC acknowledging they were mutual combatants, AC called law enforcement, both MR and AC were detained, and MR and AC continued in their marriage for approximately 8 more years. In contrast, regarding Petitioner's convicted offenses, the investigation into Petitioner began when MR's leadership arrived, uninvited at the house MR shared with Petitioner in the midst of a physical altercation in April 2023. MR had fresh injuries

and did not admit to being a mutual combatant. MR described in great detail at trial about how Petitioner repeatedly hit, kicked, punched, strangled, and threatened to kill MR over the course of their relationship. MR took videos of Petitioner destroying – or threatening to destroy – her property on multiple occasions. Despite this ongoing abuse and fear, MR testified that she initially did not want to get Petitioner in trouble or be separated from him. Further contrasted from either situation is MR confronting AF over the phone about AF previously hitting her, throwing scissors at her, harassing her, and stealing her car. MR confronts AF and – for the first time across any of these relationships – stated her willingness to get AF into trouble. These are three separate and distinct circumstances in complex and volatile relationships over the course of a decade. These incidents are distinct and do not suggest “a regular response to a repeated specific situation that has become semi-automatic.” See Leonhard v. Nationwide Mut. Ins. Co., 499 F.3d, 419, 442 (5th Cir. 2007) (internal quotations omitted.) Similarly, there is no evidence to establish “a specific reaction to a specific set of stimuli that is reflexive, repeated, and invariable in nature.” See Pursley v. Dretke, 114 Fed. Appx. 360, 634 (5th Cir. 2004). Thus, this evidence does not constitute habit and fails under M.R.E. 406.

Third, the recordings are insufficient to establish plan, scheme, or modus operandi of accusing men of domestic violence offenses to “get what [MR] wants.” (Pet. Br. at 32). This evidence would surely fail admissibility under the test established in United States v. Reynolds, 29 M.J. 105 (C.M.A. 1989): (1) whether the evidence reasonably supports a finding by the factfinder that the witness committed prior crimes, wrongs, or acts; (2) whether any fact of consequence is made more or less likely by the existence of this evidence; and (3) whether the probative value is substantially outweighed by the danger of unfair prejudice? Id. at 109. If evidence proffered under M.R.E. 404(b) fails any of these three prongs, it is inadmissible. See

United States v. Cousins, 35 M.J. 70, 74 (C.M.A. 1992). As to the first prong, the recordings do not establish that MR actually ever falsified injuries or filed a false report of domestic violence. As discussed above, this evidence has no direct nexus to the convicted offenses. And, as discussed further below, it certainly fails the balancing test under M.R.E. 403. This evidence fails all three prongs of the Reynolds test and would be inadmissible on multiple grounds. This is a thinly veiled attempt by Petitioner to admit impermissible character evidence and argue that MR is, was, and always shall be a person of bad character and perpetually acts in accordance with that character. Specifically, that she asked AF to compensate her for “wasting a year of [her] life” and said she was going to “murder” AF while she was in the throes of a “panic attack.” (*See generally* Clip 1, Clip 6). Petitioner seeks to leverage MR’s reactions, statements, and emotionally charged arguments with AF to support his theory that MR is a bad person and cannot be trusted. This is precisely the scheme M.R.E. 404 is designed to exclude.

Fourth, the evidence is insufficient to establish motive to fabricate any allegations against Petitioner, thus would not be admissible under M.R.E. 608(c). If anything, these recordings may demonstrate bias, prejudice, or motive to misrepresent allegations against AF, not Petitioner. Again, these recordings are separate from the convicted offenses in time, place, circumstances, manner, and partner and do not contradict or impeach evidence presented at trial. This evidence similarly fails under this theory of admissibility.

Fifth, any probative value is substantially outweighed by the danger of unfair prejudice, confusing the issues, misleading the members, and is needlessly cumulative. Thus, any theory of admissibility would fail under the M.R.E. 403 balancing test. The language proffered by Petitioner and the invasive nature of the recordings in the midst of arguments between MR and AF are highly prejudicial and have very limited—if any—probative value. Their admission

would confuse the issues regarding who is on trial, who the allegations are against, and who MR allegedly made threats to. It would no doubt result in a trial-within-a-trial to determine whether MR was telling the truth about allegations against AF, to then be able to evaluate whether she was telling the truth about Petitioner. This trial-within-a-trial would further waste time and mislead members because MR's relationship and statements to AF are separate and distinct from her relationship with Petitioner – and occurred in the months following Petitioner's trial. Additionally, this evidence invites a factfinder to judge MR's character based on unrelated, later conduct and speculate about the dynamics of her relationship with AF. Finally, as discussed above, this evidence is merely cumulative of defense theories of credibility already explored and developed at trial.

Petitioner has failed to demonstrate how this evidence would be admissible at trial under the pertinent rules for evidence. If the evidence is inadmissible, it cannot be considered in the light of all other pertinent evidence. If it cannot be considered at a future trial, it certainly cannot produce a substantially more favorable result for Petitioner. Thus, Petitioner has failed to meet his burden under R.C.M. 1210(f)(2)(C) and a new trial should not be granted.

C. The evidence would not have affected the military judge's ruling regarding the decade-old domestic violence incident between MR and AC.

As discussed at length in the United States' Answer to Assignments of Error, the military judge did not abuse her discretion in excluding the 2014 domestic violence incident between MR and AC. (Ans. Br. at 11-24). Rather, the military judge received all pertinent evidence, including MR's testimony on the matter in a hearing outside the presence of the panel, properly applied a balancing test under M.R.E. 403, put reasonable limits on cross-examination, and did not prevent Petitioner from raising his defense theories at trial.

Petitioner now argues that the subsequent arguments with AF make the prior 2014 incident with TSgt AC admissible. (Pet. Br. at 20-21). Petitioner is mistaken. These recordings do not solve the issues with the 2014 incident that warranted its exclusion, namely that: (1) MR did not recall the 2014 incident, other than law enforcement arriving at the house; (2) MR and TSgt AC both admitted to being mutual combatants; and (3) trial defense counsel failed to establish a logical nexus between the 2014 incident and the charged offenses. Additionally, the military judge considered that MR appeared to have suffered no real consequences as a result of the 2014 incident with AC such that she would have a motive to fabricate an additional incident 10 years later. (R. at 756.) If MR didn't recall the incident at trial, it could not have been on her mind or evidence of a decade-long motive to fabricate false allegations against men. The military judge also found the facts of the 2014 incident and the charged offenses to be factually dissimilar—further cementing the lack of a logical nexus. (R. at 756-757.)

Petitioner consistently avers that MR made false allegations against TSgt AC, himself, and now AF; and that this pattern establishes an ongoing motive to fabricate that persisted from 2014 to the present. (Pet. Br. at 21.) However, this theory is not supported by the evidence. First, Petitioner argues that MR made false allegations against TSgt AC when she reported that AC cut himself, blamed MR, and called law enforcement, leading to MR's arrest in 2014. However, there is no sufficient evidence to prove this was a lie other than TSgt AC's self-serving denial. Further, MR did not call law enforcement, make a report, make fraudulent embellishments, or recall the details of the incident. The military judge summarized trial defense counsel's argument of admissibility as, "you're asking me to take a portion of [MR's] statement from a 10-year old incident, out of context, in order to establish further evidence of a motive to fabricate you've already established?" (R. at 749.) The recordings do nothing to cure the

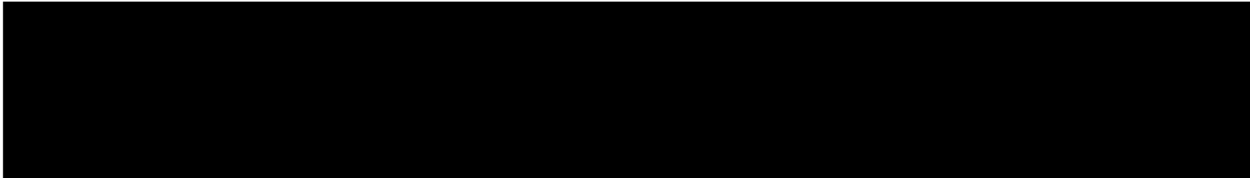
deficiencies regarding the 2014 incident—thus the 2014 incident would still be inadmissible and properly excluded.

As a final matter, the three circumstances with MR involving TSgt AC, Petitioner, and AF respectively are factually dissimilar and do not establish a “plan, scheme, habit, or modus operandi” as argued by Petitioner now. (Pet. Br. at 21). During the 2014 incident between MR and TSgt AC, MR did not call law enforcement or threaten to call law enforcement, and both MR and TSgt AC admitted to putting hands on each other and were both detained by security forces. (R. at 734-43.) During the incidents involving Petitioner, MR provided ample evidence of multiple injuries and destruction of property by Petitioner, spanning nearly a year of their relationship. (See R. at 516-616; 793-841.) Further, MR testified that she was initially hoping not to get Petitioner in trouble or to be separated from him. (R. at 613-14; 721-22.) Notably, in April 2023, MR never called law enforcement and did not ask her command to come to the house. She was surprised when they arrived. (R. at 299.) It is absurd to believe that MR was somehow able to fake the extensive bruising on her body to present to leadership or law enforcement that she did not know was coming. It is even more absurd to believe that MR was somehow able to fake the extensive bruising to her body that she documented throughout her relationship with Petitioner which would perfectly the future injuries Petitioner inflicted on her in April 2023. The circumstances between MR and AF clash with the circumstances between Petitioner and MR as separate and distinct, and the circumstance with AF is further separate and distinct from either prior relationship, where MR demonstrated a desire to “get [someone] in trouble” for the first time in any of the three relationships. (See Clip 4 at 00:29-00:33). Simply put, there is no pattern established by the facts which would tend to show a persistent motive to

fabricate false allegations of domestic violence. Thus, the recordings would have had no effect on the exclusion of the 2014 incident and would not have changed the outcome at trial. A new trial is not warranted and should not be granted.

CONCLUSION

Petitioner has not met his heavy burden to show entitlement to a new trial. Petitioner failed to show the evidence would probably produce a substantially more favorable result if considered in the light of all other pertinent evidence. No manifest injustice would result from this Court denying the petition. For these reasons, the United States respectfully requests that this Honorable Court deny Petitioner's request for a new trial.

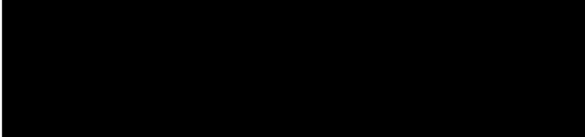


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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force
Appellate Defense Division on 23 February 2026.



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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	PETITIONER’S MOTION
<i>Appellee/Respondent,</i>	)	FOR ENLARGEMENT
	)	OF TIME ON REPLY BRIEF
	)	FOR PETITION FOR NEW
	)	TRIAL (FIRST)
v.)	
	)	Before Special Panel
)	
Senior Airman (E-4)	)	Misc. Dkt. No. 2026-02
JONATHON V. TYSON,	)	No. ACM 40617
United States Air Force,)	
<i>Appellant/Petitioner.</i>	)	23 February 2026

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

Pursuant to Rule 23.3(m) of this Court’s Rules of Practice and Procedure,¹ Petitioner/Appellant, Senior Airman (SrA) Jonathon V. Tyson, hereby moves for an enlargement of time to file his reply brief for his petition for new trial. SrA Tyson requests an enlargement for seven (7) days, which will end on **9 March 2026**.

Procedural History

While this is SrA Tyson’s first enlargement of time regarding his petition for new trial, SrA Tyson’s record of trial, pending Article 66, Uniform Code of Military Justice (UCMJ), review,

¹ This Court’s rules allow “[u]pon motion and for good cause shown, the Court may grant an enlargement of time to file a brief, motion, motion response, or other filing permitted under these rules.” A.F. Ct. Crim. App. R. 23.3(m)(1). A petitioner is permitted to file a reply brief for a petition for new trial “no later than 7 days after the filing of the respondent’s answer.” A.F. Ct. Crim. App. R. 21(c). Thus, this Court’s rules permit the brief enlargement of time request here, raised via motion and coupled with a showing of good cause.

has been docketed before this Court since 5 June 2024. From the date of docketing to the present date, 628 days have elapsed.² On the date requested, 642 days will have elapsed.

On 15 December 2023, a general court-martial convened at Minot Air Force Base, North Dakota, consisting of officer and enlisted members, found SrA Tyson, contrary to his pleas, guilty of one charge and six specifications of domestic violence in violation of Article 128b, UCMJ. R. at 1, 117, 120, 1157. Consistent with his pleas, SrA Tyson was acquitted of three specifications of domestic violence, in violation of Article 128b, UCMJ. R. at 117, 120, 1157. On 16 December 2023, the panel of officer and enlisted members sentenced SrA Tyson to be reduced to the grade of E-1, to be confined for one year, and to be discharged with a bad conduct discharge. R. at 1241-42. The convening authority took no action on the findings or sentence and denied SrA Tyson's requests for (1) suspension, commutation, or reduction of the adjudged reduction in pay grade and (2) waiver of automatic forfeitures. Convening Authority Decision on Action – *United States v. Senior Airman Jonathon Tyson* (Jan. 19, 2024). SrA Tyson is not currently confined.

SrA Tyson filed his assignment of errors brief on August 29, 2025, wherein he raised eleven issues through counsel and two issues personally. Br. on Behalf of Appellant. The trial transcript was 1,244 pages long and the electronic record of trial was three volumes containing twenty-five Prosecution Exhibits, fourteen Defense Exhibits, one Court Exhibit, and seventy-one Appellate Exhibits. The Government filed a response on October 28, 2025. SrA Tyson subsequently filed a reply brief on November 9, 2025.

A petition for new trial was filed on 23 January 2026, and was based on new evidence discovered after SrA Tyson's court-martial that implicated all six of his convictions. Because this

² SrA Tyson raised a post-trial delay issue (sentence to docketing delay). Br. on Behalf of Appellant at 77-80. But he did not raise any post-trial delay issues centered on post-docketing appellate delay or timing of this Court's review.

Court had not issued a decision yet in SrA Tyson’s case or otherwise lost jurisdiction, the petition was referred to this Court on the same date. The Government filed its answer to the petition for new trial today, 23 February 2026.

Undersigned Counsel’s Obligations and Good Cause Shown

Undersigned counsel is currently assigned 15 cases; 11 cases are pending before this Court (7 cases are pending AOE’s; 1 case is pending a petition for new trial), 2 cases are pending before the United States Court of Appeals for the Armed Forces (CAAF), and 2 cases are pending before the Supreme Court of the United States (2 cases are pending filing an individual petition for a writ of certiorari). Undersigned counsel has one priority over completing SrA Tyson’s reply brief for his petition for new trial: *United States v. Marin Perez*, USCA Dkt. No. 25-0238/AF. Oral argument is scheduled for this Wednesday, 25 February 2026. Between now and oral argument, undersigned counsel is preparing, while also participating in two additional moots for another member of the Appellate Defense Division. Following her oral argument, undersigned counsel is on leave from 27 February 2026 to 1 March 2026 because of family in town. Undersigned counsel intends to work on SrA Tyson’s reply following oral argument (25-26 Feb.), but will not be able to complete the brief or route it through peer and leadership review, an Appellate Defense Division requirement, before the current deadline, 2 March 2026. This short enlargement of time is necessary to allow counsel to fully review the Government’s answer, research any issues, draft and write a reply that presents argument in a manner helpful to this Court,³ route the brief through

³ “It often takes longer to effectively write something shorter. . . . This concept is axiomatic. At least one . . . website attributes it to ‘the French mathematician and philosopher Blaise Pascal[,]’ who, in 1657, wrote . . . ‘I have made this longer than usual because I have not had time to make it shorter.’” *Alexander v. Meiling*, No. 3:16-cv-00572-MMD-CLB, 2023 U.S. Dist. LEXIS 137752, at *5-6 (D. Nev. Aug. 7, 2023) (quoting Quote Investigator, *If I Had More Time, I Would Have Written a Shorter Letter* (Apr. 28, 2012), <https://perma.cc/M66G-ZPAC>.)

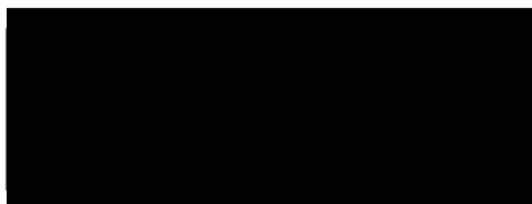
peer and leadership review, and finalize the brief.

SrA Tyson was advised of his right to a timely appeal, which is still on-going. SrA Tyson was advised of the request for this enlargement of time. SrA Tyson was provided an update on the status of undersigned counsel's progress on his petition for new trial reply brief and undersigned counsel's schedule and priorities. SrA Tyson has provided limited consent to disclose a confidential communication with counsel wherein he consented to the request for this enlargement of time.

Through no fault of SrA Tyson, undersigned counsel has been unable to begin SrA Tyson's reply brief for his petition for new trial and without this EOT, will be unable to complete the reply before the current deadline. This brief EOT will ensure undersigned counsel can provide SrA Tyson effective assistance of counsel for the intertwined matters pending before this Court.

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

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 Air Force Government Trial and Appellate Operations Division on 23 February 2026.



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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,)	UNITED STATES' NON-
	)	OPPOSITION TO APPELLANT'S
<i>Appellee,</i>	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.)	
	)	Before a Special Panel
Senior Airman (E-4))	
JONATHON V. TYSON,	)	Misc. Dkt. No. 2026-02
United States Air Force	)	No. ACM 40617
<i>Appellant</i>)	
	)	25 February 2026

**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 does not oppose to Appellant's Motion for Enlargement of Time to file a Reply Brief for Petition for New Trial in this case.

WHEREFORE, the United States respectfully requests that this Court approve Appellant's enlargement 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 Air Force
Appellate Defense Division on 25 February 2026.



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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, <i>Respondent/Appellee,</i>)	REPLY TO UNITED STATES’ OPPOSITION TO PETITION FOR NEW TRIAL
)	
v.	)	Before Special Panel
)	
	)	Misc. Dkt. No. 2026-02
)	
Senior Airman (E-4) JONATHON V. TYSON, United States Air Force, <i>Petitioner/Appellant.</i>	)	No. ACM 40617
)	
	)	9 March 2026

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

Senior Airman (SrA) Jonathon V. Tyson, Petitioner/Appellant, pursuant to Rule 21(c) and this Court’s February 26, 2026 order,¹ files this Reply to the United States’ Opposition to Petition for New Trial, Feb. 23, 2026 [hereinafter Ans.]. In addition to the arguments in his petition for new trial and accompanying brief, Petition for New Trial, Jan. 23, 2026, SrA Tyson submits the following additional arguments.

I. SrA Tyson is entitled to a new trial because his case is analogous to *United States v. Sztuka*.

United States v. Sztuka, 43 M.J. 261, (C.A.A.F. 1995), provides a helpful framework for this Court due to its factual similarities to this case. Any factual distinctions are insignificant due to the strength of the newly discovered evidence here. Combined, *Sztuka* and the newly discovered evidence analyzed in context dictates that a new trial is warranted.

¹ On February 26, 2026, this Court granted a seven-day enlargement of time to file a reply in this case, making the due date March 9, 2026.

A. The newly discovered evidence parallels that in *Sztuka*, while also being more material and credible.

In *Sztuka*, the Court of Appeals for the Armed Forces (CAAF) determined the appellant had met her “heavy burden” of demonstrating that “the newly discovered evidence, if considered by a court-martial in light of all other pertinent evidence, would probably produce a substantially more favorable result for the accused.” 43 M.J. at 262 (quoting Rule for Courts-Martial (R.C.M.) 1210(f)(2)(C)). There, the appellant tested positive for marijuana, but she did not know how. *Id.* at 263. She believed her husband had framed her. *Id.* This theory was based on several things: her asking for a divorce shortly before testing positive; her husband vacillating between being furious and pleading to not breakup; her husband asserting “You are going to get hammered. I am going to make sure of it;” and that her husband fed her food—which was atypical—and did not have any himself. *Id.* at 262-64. But her husband made a sworn statement that he had smelled marijuana on his wife’s person and seen a bag of it in her bathroom. *Id.* at 263-64. His statements had provided the basis for the probable-cause-based urinalysis that had resulted in her positive test. *Id.* at 264. After the appellant was convicted, she moved for a new trial based on statements made by her ex-husband to his “paramour.” *Id.* The paramour revealed that the appellant’s husband admitted to her that he surreptitiously drugged the appellant to make the appellant test positive on a drug test, an action that was prompted by the appellant’s desire to annul their marriage. *Id.* The CAAF determined that this new evidence, in light of all pertinent evidence—including evidence not used at the court-martial—warranted a new trial. *Id.* at 271.

The post-trial admission from *Sztuka* is comparable to the newly discovered evidence here and requires the same result: a new trial. Both here and in *Sztuka*, the defense presented a theory of framing and false allegations for the offenses at trial, but were unsuccessful. *Id.* at 264; *see* R. at 1106 (“SDC: Members, make no mistake. This case is about false allegations.”). And in both

cases, the credibility of the spurred partner was at issue. In *Sztuka*, the husband’s sworn statement, supported by a positive urinalysis, countered any defense theory that he framed his wife. 43 M.J. at 263-64. Here, MR’s narrative of an abusive relationship, as interpreted by the experts and coupled with the photographs she explained, countered the framing theory. These parallels reveal the same weakness in both cases: the key, foundational witness had a strong motive to fabricate and credibility issues. *See Sztuka*, 43 M.J. at 264-66 (covering the husband’s motives and credibility problems); Reply Br. on Behalf of Appellant at 1-6, Nov. 9, 2025 (summarizing MR’s credibility problems for all offenses).

As in *Sztuka*, only post-trial did the necessary exonerating information appear. The newly discovered evidence shows that MR would self-harm, either through “setting it up” or having someone else cause bruising on her. Pet. for New Trial, Appendix A, Clip 1 – May #2 trimmed (static added during cuts) [hereinafter Clip 1] at 3:02-3:34. Having this information to impeach MR, at minimum, would impact her credibility, the dispositive issue in this case. *See* Reply Br. on Behalf of Appellant at 2-3 (citing Br. on Behalf of Appellant at 25-51, Aug. 29, 2025) (explaining how MR’s testimony impacted the elements). The newly discovered evidence would also counter some of the expert testimony, which included one expert’s statement that they had not heard of self-inflicted blunt trauma (R. at 956-57) and another expert’s testimony that was predicated entirely on MR’s narrative (R. at 891-905). The persuasive value of MR’s testimony and both experts’ would be diminished by this new evidence. All of this offers a new version of the facts at trial that MR had not just the motive to “set up” SrA Tyson, but the knowledge, means, and modus operandi to do so.

MR’s testimony at trial was also similar to the husband’s in *Sztuka*: she “frequently claimed that [she] could not remember at convenient points in the questioning; often evaded answering

difficult questions and ultimately did so, if at all, only when doggedly pursued by defense . . . ; and on occasion, after repeated and focused questioning by defense counsel, ultimately acknowledged what earlier [she] had denied.” *Sztuka*, 43 M.J. at 265; *see* R. at 1117 (summarizing that MR testified to “I don’t know,” “I don’t remember,” or “it was such a blur” over eighty-seven times, eighty-two of which were during cross-examination). As with *Sztuka*, “this was a trial that came down to a single question: Who did the members believe.” *Sztuka*, 43 M.J. at 269 (quoting *United States v. Singleton*, 41 M.J. 200, 204-05 (1994)). The Government’s entire case rested on MR being credible. There were no eyewitnesses, no conclusive forensic evidence, and only one piece of evidence that could be used as Military Rule of Evidence (Mil. R. Evid.) 404(b) “consciousness of guilt.” *See* R. at 1072 (instructing the members that for the strangulation offense² they could consider as consciousness of guilt that SrA Tyson did not come down to answer the door). Contrary to the Government’s summary of the evidence, there was no Mil. R. Evid. 404(b) theory permitted regarding a “history of making threats and slinging insults” and using “weapons and breaking objects” as “intent to cause physical harm – either to MR, her property, or both.” *Ans.* at 4; *see* R. at 1041-46 (denying a *Hyppolite*-esque³ instruction). Thus, there were no all-encompassing bad acts masquerading as intent or motive to bolster the Government’s case or MR. Rather, the Government’s entire case rested on MR being credible.

While having the same effect as the new evidence in *Sztuka*, the newly discovered evidence here is more material. At least in *Sztuka*, there was some evidence at trial that the husband had knowledge about using marijuana to drug people’s food. *See Sztuka*, 43 M.J. at 264 (showing that the husband had an article titled, “Truth in Drug Testing,” with handwritten notes suggesting the

² The instruction also permitted consciousness of guilt for two other offenses, but SrA Tyson was acquitted of those. R. at 1072.

³ *United States v. Hyppolite*, 79 M.J. 161 (C.A.A.F. 2019).

husband had knowledge about drugging someone with food). Here, there was only a hypothesis that was supported by various motives that MR would self-harm or frame someone for domestic violence—but which lacked the same sort of initial action on those motives that were seen in *Sztuka*. *Id.* Now, though, there are undeniable statements from MR herself to prove the defense’s theory.

Not only is the qualitative gap closed by the new evidence here more substantial than in *Sztuka*, the new evidence in this case is also more reliable, without the credibility concerns at play in *Sztuka*. *See* 43 M.J. at 266-67 (summarizing the lower court’s view of the credibility issues). There, the husband, drunk and crying, admitted he drugged the appellant to another person. *Id.* at 264. But that other person had her own motive to fabricate that cut against the new evidence she was providing; she was the husband’s ex-“paramour” and was only repeating something the husband had told her. *Id.* Here, there are no issues with veracity. The audio captures MR’s own plan from her own mouth as she explains it to AF, her boyfriend at the time. Clip 1 at 3:02-3:34. She threatens to “set it up” to look like AF hit her and then, going a step further, explains how: by having her brother “pinch the fuck out of [her].” *Id.*

B. The escalation and context of MR’s statements make it irrelevant that MR did not explicitly admit she framed SrA Tyson.

It is inconsequential that MR’s plans are directed at someone other than SrA Tyson and that she does not admit that she orchestrated the same plans against SrA Tyson due to two contextual reasons.

First, the progression of MR’s conversation with AF reveals her plot to frame him *first*, then, when that appears to fail, a pivot to supposed prior domestic violence. MR claims she’s “taking . . . down” the men who “treated [her] like shit” “one by one.” Pet. for New Trial, Appendix A, Clip 3 – May # 6 trimmed (static added during cuts) [hereinafter Clip 3] at 3:05-3:43. At the

point MR says this, she has already admitted a willingness and ability to fabricate a domestic violence allegation to frame AF for breaking up with her—not for abusing her. *Compare* Clip 1 at 3:02-3:15 (explaining, first, how she is going to frame him), *with* Clip 3 at 3:05-3:43 (announcing, subsequently, how she is taking men down one by one). The progression of the conversation reveals that, as MR fails to get what she wants, she escalates from revealing an impending plot to *frame* AF to asserting that she is *already* a domestic violence victim from him, of which she purportedly had pictures supporting. Pet. for New Trial, Appendix A, Clip 4 – Nov. 2 [hereinafter Clip 4] at 00:16-00:33. If she was abused all along, she would have started with the latter. Thus, the Government’s theory that MR was abused by AF falls flat. *See* Ans. at 14 (arguing the recordings capture true allegations of AF abusing MR). Since MR also stockpiled pictures of SrA Tyson purportedly hurting her for nearly a year (*e.g.*, R. at 540-41), the newly discovered evidence supports that MR used the same tactic against both men. *Compare* Pros. Ex. 16 at 25 (“All of the pictures and video I have will never be dismissed;” “You have no marks on you but everything is on me.”), *with* Clip 4 at 00:16-00:33 (“I hope you know you’re gonna get in a lot of trouble. . . . for the time you fucking hit me! . . . I have pictures! I have pictures. . . . You wanna do what the fuck I say or do you want me to get you in trouble?”).

Second, MR explicitly lumps AF and SrA Tyson together as AF begins to deny MR’s allegations of domestic violence. Specifically, when AF denied the allegations of domestic violence that MR threatened him with, MR replies that such denials did not work for SrA Tyson. Pet. for New Trial, Appendix A, Clip 8 – Nov. 18 trimmed [hereinafter Clip 8] at 2:14-2:35. The vengeful husband’s words in *Sztuka* that “You are going to get hammered” and “I am going to make sure of it” mirror MR’s comments to SrA Tyson and AF about “dealing with” them.

Compare Pros. Ex. 16 at 39 (“I’ll deal with you in the morning.”), *with* Clip 3 at 00:26-00:30 (“I’ll deal with you Tuesday.”).

In minimizing the identical language, the Government ignores the context for “deal with” regarding AF. In the same clip, about three minutes later, MR announced that she was writing down all the things she would do to AF on Tuesday, not “mentally preparing herself for additional conflict on the next day she was available to see or communicate with AF,” as the Government guesses. Ans. at 11. The benign interpretation provided by the Government is contradicted by MR’s own explanation: “Just writing down ideas for what I’m going to do on Tuesday. . . . I’m not telling you. . . . I’m just tired, you know, tired of being treated like shit by men. So, I’m, I’m literally taking you down, each one of you down, one by one so.” Clip 3 at 3:05-3:43. She was writing down how to “take [AF] down.” That is what “dealing with him” meant. And MR used the same language with SrA Tyson the night before she called her supervisor to report he was destroying her things. R. at 296; Pros. Ex. 16 at 39.

C. Between *Sztuka*’s similarities, the weight and materiality of the evidence here, and the extent of the evidence not before the panel members, a new trial is warranted.

The eerie similarities between SrA Tyson’s case and AF’s situation are not coincidences. The newly discovered evidence supports the theory that what MR did to AF is what she also did to SrA Tyson. She planned to frame him for domestic violence if she did not get what she wanted: SrA Tyson to stay with her. The Government highlights that MR testified she did not want to get SrA Tyson in trouble or be separated from him. *E.g.*, Ans. at 16 (citing R. at 613-14). But the Government misses the broader point about this testimony. MR’s need for security but desire for revenge is identical in both situations, AF’s and SrA Tyson’s. MR did not want to lose her stability; that is why she lied about her age, her marriage, and her dependent status with SrA Tyson. *See* Pet. for New Trial at 22 (citing portions of the record where MR lied to maintain her status). She wanted

to maintain these relationships because they suited her. The moment the breakup occurred and MR was obligated to leave, the domestic violence allegations began—with both men.

With SrA Tyson, the catalog of uncorroborated pictures and videos transformed into a manipulation tactic that worked as MR’s collateral to maintain her relationship with SrA Tyson. The same is seen with AF. MR informed AF that she had pictures depicting bruises caused by him, and caveated her threat of false allegations with a command to “do what the fuck I say.” Clip 4 at 00:16-00:33. MR wanted to stay with these men for her own security and when these men resisted, she “literally [took them] down, each one of [them] down, one by one.” Clip 3 at 3:05-3:43. MR’s desire for security with SrA Tyson and her subsequent desire for revenge and framing him can both be true, particularly where she had already regained security with AF at the time of SrA Tyson’s trial. *See* Pet. for New Trial, Appendix C (showing AF began dating MR in mid-2023, which was only a few months after the incident with SrA Tyson in April 2023). But the significance here that the Government overlooks is that the new evidence depicts a different version of MR under identical circumstances that the members did not see.

The evidence that was *not* before the panel includes, amongst others, the following:

1. MR previously accused her ex-husband of habitual domestic violence when she was being accused of wrongdoing;⁴
2. MR alleged that her ex-husband scratched himself with a key across his eye to make it look like she injured him;⁵
3. MR asserted that she would have her brother “pinch the fuck out of” her to frame the man she started dating right after SrA Tyson for domestic violence;⁶
4. MR threatened the same man with a sexual harassment case at work;⁷

⁴ Post-Trial Submission of Matters—*United States v. SrA Johnathon [sic] V. Tyson* [hereinafter Post-Trial Submission], Attach. 1 at 6 (Dec. 26, 2023).

⁵ Post-Trial Submission, Attach. 1 at 6.

⁶ Clip 1 at 3:24-3:34.

⁷ Clip 3 at 19:32-19:41.

5. MR screamed at the same man: “You wanna do what the fuck I say or do you want me to get you in trouble?”;⁸
6. MR claimed she was taking down each man who treated her like shit “one by one;”⁹ and
7. When confronted with a denial of her false allegations, MR asserted that SrA Tyson denied allegations too, but was found guilty anyway.¹⁰

This evidence, coupled with MR’s evasiveness, coyness, and equivocation on the stand casts her in a different light for the factfinder that also would have affected other witness testimony, namely the experts. *See United States v. Williams*, 37 M.J. 352, 357-58 (C.A.A.F. 1993) (discussing how expert testimony relied on the named victim’s narrative and the named victim withheld critical pieces of information); R. at 898-903 (showing the source of the expert’s testimony relied on MR’s testimony and the videos MR captured). As in *Sztuka*, “the defense could be expected to contend that the [audio] reveals a scheming, manipulative character,” 43 M.J. at 269, rather than MR being painted as a victim of coercive control. *See* R. at 891-893, 898-903 (discussing “coercive control”). The audio recordings capturing MR’s behavior toward AF show MR “as the kind of person who might be fully capable of doing what” the defense at trial could only theorize: framing SrA Tyson with false allegations. *Sztuka*, 43 M.J. at 270. Therefore, as in *Sztuka*, a new trial should be authorized.

II. SrA Tyson’s petition for new trial is distinguishable from *United States v. Johnson*.

In *United States v. Johnson*, the newly discovered evidence and fraud on the court-martial dealt with collateral matters or matters that were cumulative to evidence admitted at trial. 61 M.J.

⁸ Clip 4 at 00:16-00:33

⁹ Clip 3 at 3:05-3:43

¹⁰ Clip 8 at 2:14-2:35.

195, 198-201 (C.A.A.F. 2005). That is not the case here. *Contra* Ans. at 9-15 (using *Johnson*'s four-part analysis as a framework to contest the grounds for a new trial).

First, the evidence “offer[s] some new version of the facts presented at trial.” *Johnson*, 61 M.J. at 201. Specifically, MR self-harmed or got someone to hurt her to frame SrA Tyson. The factual account at trial is changed by this new evidence because the new evidence eliminates MR's credibility—the key issue in this case. The Government's argument that the new evidence must actually show MR admitted she made up the allegations against SrA Tyson is misplaced. Ans. at 11.¹¹ Rather, the defense theory about MR framing SrA Tyson is now viable for every offense because MR was willing to frame a different male partner: AF.

Everything flowed from MR. As was the case at trial and on appeal, the parties disagree about the strength of the “corroborating evidence” in this case. As detailed in the Reply Brief on Behalf of Appellant, MR's lack of credibility infected every piece of evidence she had to explain. Reply Br. on Behalf of Appellant at 3-5. But the Government, now and in its Answer to Assignments of Error, Oct. 28, 2025, “does not address the fact the ‘corroboration’ it relies on comes from MR or required her testimony. Such a glaring omission is telling: when all of the evidence for the convictions relied on MR's narrative, her testimony must be credible to sustain a conviction beyond a reasonable doubt.” Reply Br. on Behalf of Appellant at 5. The new evidence makes her testimony unbelievable, which damages most, if not all, of the “corroborating evidence” in this case.

¹¹ Had such admissions occurred, fraud on the court would have been appropriate. *See Turpiano v. United States*, Misc. Dkt. No. 2017-09, 2018 CCA LEXIS 307, at *5-6 (A.F. Ct. Crim. App. June 21, 2018) (discussing how fraud on the court typically requires “confessed or proved perjury”).

This makes this case distinct from *Johnson*. In *Johnson*, SrA Tyson made no incriminating statements. *Johnson*, 61 M.J. at 201. Even for the property damage, the required intent element was proved through MR's testimony of the relationship as interpreted by the Government's expert. R. at 898-903. Where the defense did not have evidence revealing MR's knowledge and ability to frame SrA Tyson for domestic violence, the members convicted SrA Tyson.¹² But the newly discovered evidence transforms the evidentiary landscape.

Second, the additional evidence for impeachment here goes beyond that in *Johnson* to undermine MR's entire narrative, the sole narrative in this case. *Johnson*, 61 M.J. at 201. The Government views this case as analogous to *Johnson*, but it fails to recognize that *Johnson* relied on how material the credibility concerns were. *Johnson* emphasized that a "reasonable fact-finder could have concluded" the witnesses were all "lying, in varying degrees," but that did not matter where the appellant had made admissions. 61 M.J. at 201. Here, in seeking to draw a similar parallel for what a "reasonable factfinder could have concluded," the Government makes a factual statement that concedes factual sufficiency: "[b]ased on the evidence raised at trial, a reasonable factfinder could have concluded that MR was lying, obtained her injuries from other sources, and fabricated all allegations against Petitioner." Ans. at 12 (citing *Johnson*, 61 M.J. at 201). The breadth of this statement reveals that without the newly discovered evidence, the Government agrees that a reasonable factfinder would have acquitted SrA Tyson. This Court should conclude the same for its factual sufficiency analysis. *See* Br. on Behalf of Appellant at 25-51 (raising legal sufficiency, factual sufficiency, or both for each offense). But if this Court concludes otherwise,

¹² As explained in the Brief on Behalf of Appellant and the Reply Brief on Behalf of Appellant, *this Court*, though, should not be so convinced. *See* Br. on Behalf of Appellant at 25-51 (raising legal sufficiency, factual sufficiency, or both for each offense); Reply Br. on Behalf of Appellant at 1-13 (same). If this Court were convinced though, the newly discovered evidence compels a new trial.

the Government's statement still reveals how material MR's credibility was to this case. The Government's caveat immediately after that "taking *all* evidence presented in context, the panel rejected these theories" is meaningless because it is not tied to anything or grounded in a comparison to *Johnson*. Ans. at 12. There are no admissions in this case and MR's credibility was the dispositive issue and affected the only narrative the Government had.

The pictures, the videos, the expert testimony, all of it, is undermined by the fact MR admitted she was capable and willing to frame AF, approximately one year after "dealing with" SrA Tyson, for similar offenses with similar "evidence," i.e., pictures she of bruises she apparently saved. *See* Clip 4 at 00:16-00:33 (claiming to have pictures supporting her allegations that AF hit her). Unlike *Johnson*, the new evidence does not merely impeach MR on something the defense already had in evidence, nor is it fighting against any admissions by SrA Tyson. *See Johnson*, 61 M.J. at 201 (discussing how all the witnesses had credibility concerns, but the appellant had also admitted the conduct). Instead, the new evidence is material to impeaching MR far beyond what the defense was able to do at trial.

Third, there is nothing ambiguous about the statements here. MR told AF she was going to frame him because he "fuck[ed] with [her]": "I'm actually going to set it up so that way it's going to look like you hit me and I'm going to call the cops and it's going to get really ugly really quick because that's what you deserve for fucking with me bro." Clip 1 at 3:02-3:15. She planned to exact revenge because he wanted to break up with her, no other reason. Clip 1 at 00:00-00:57 (revealing that MR was upset that AF broke up with her right before her birthday). And she told him how she was going to frame him: "I'm going to have my brother pinch the fuck out of me." Clip 1 at 3:24-3:34. There is nothing ambiguous here.

Later, MR laments that men keep “treat[ing] her like shit,” so she is “literally taking [them] down, each one of [them] down, one by one.” Clip 3 at 3:05-3:43. She makes no connection with this statement to domestic violence; she is not taking them down because they physically hurt her, but rather because they broke up with her. *Compare* Clip 1 at 00:00-00:57 (discussing the breakup between MR and AF), *with* Pros. Ex. 16 at 7 (showing SrA Tyson telling MR she had four months to get out of his house), *and* Pros. Ex. 17 (depicting SrA Tyson calling MR the “desperate ex”). MR makes that clear when she names SrA Tyson. When AF confronts MR about threatening him and “trying to falsely . . . accuse [AF] of a crime,” MR responds, “That’s what—that’s crazy cause that’s exactly what [SrA] Jonathon [Tyson] was saying, only for him to be found guilty of the crime.” Clip 8 at 2:14-2:35. She does not deny the allegation was false, but rather announces that she got away with making a false allegation before. MR has a playbook, and there is nothing ambiguous about it.

The Government assists this conclusion by highlighting that “MR’s statements in the recordings”—i.e., her threats to fabricate claims of abuse against AF—“took place during on-going disagreements with AF about breaking up, her property, and whether AF had cheated on MR, to name a few.” Ans. at 14. MR’s domestic violence allegations against SrA Tyson also took place during on-going disagreements about breaking up, her property, and whether SrA Tyson had cheated on MR, to name a few. *See* R. at 757 (summarizing the defense’s cross-examination of MR wherein the defense adduced MR’s motives, “to include anger at breaking up, alleged infidelities, pending separation, and a variety of other issues”). The Government fails to confront *at all* MR’s plan to “have [her] brother pinch the fuck out of her” and her expressed intent to frame AF for domestic violence. *Compare* Clip 1 at 3:02-3:34 (revealing her threat to frame AF), *with* Ans. at 11, 14, 19 (revealing the only citations to Clip 1 are about MR’s claim AF threw scissors

at her and her panic attack where she says she will murder AF). But in MR's words, when men "fuck[] with [her]," she "takes [them] down." Clip 1 at 3:02-3:15; Clip 3 at 3:05-3:43. Her allegations with AF escalate over the various clips, but everything starts with her plot to "set it up so that way it's going to look like [AF] hit [MR]." Clip 1 at 3:02-3:15. There is nothing ambiguous about MR's plans and nothing to support the Government's contention that MR is acting like a "survivor of domestic violence." Ans. at 14. Rather, under this Court's prerogative to weigh the testimony at trial against the post-trial evidence to determine which is credible, MR's plan, scheme, intent, and modus operandi to levy false allegations is clear.

Finally, the evidence is not cumulative. As the Government recites, the experts opined the injuries were *not* from self-harm. Ans. at 3 (citing R. at 995-96). But that is now contradicted by MR's own statements. She was willing and able to frame AF, her new boyfriend, by getting her brother to "pinch the fuck out of her." Clip 1 at 3:24-3:34. She goes on to tell AF that she got away with similar allegations against SrA Tyson. *See* Clip 8 at 2:14-2:35 (highlighting to AF that his denials would not work since SrA Tyson's didn't). But at trial, there was no actual evidence MR would self-harm. The only evidence about MR having the knowledge to self-harm to manipulate a narrative was excluded. *See* Br. on Behalf of Appellant at 11-25 (discussing the 2014 domestic violence incident wherein MR claimed her husband at the time tried to frame *her*). The defense only had a "figment of a theory that MR" knew how to or would be willing to self-harm or fabricate injuries to manipulate the narrative. Br. on Behalf of Appellant at 22. Now, the newly discovered evidence makes the excluded evidence more relevant, while also demonstrating that MR had the means, knowledge, and willingness to frame someone for domestic violence. Because *Johnson* is inapposite, this Court should authorize a new trial based on newly discovered evidence.

III. The newly discovered evidence is admissible.

SrA Tyson primarily rests on his Petition for New Trial for why the evidence is admissible. Pet. for New Trial at 29-34. However, the Government presents a misunderstanding of evidentiary principles, the theory of relevance, and the significance of MR's memory "lapses" to counter admissibility.

First, a "logical connection between [the hearsay exception] and the facts of the case" is not required for the newly discovered evidence to be admissible because relevance and hearsay are separate and distinct parts of the admissibility analysis. *Contra* Ans. at 16. "Hearsay evidence is often relevant. . . . [but] [t]hat certain out-of-court statements may be *relevant* does not dispose of the question whether they are *admissible*." *Tome v. United States*, 513 U.S. 150, 163-64 (1995) (emphasis added). This, of course, makes sense because relevant evidence is admissible unless a rule of evidence prohibits it. Mil. R. Evid. 402. That rule, as applicable here, is Rule 802, which provides "hearsay is not admissible unless" another rule of evidence permits it. Mil. R. Evid. 802. The Government does not contest that Rule 803(3)'s hearsay exception applies here. *See* Ans. at 16-17 (omitting any discussion of Mil. R. Evid. 803's applicability). Rather, the Government claims victory based on its misunderstanding of fundamental evidentiary principles, asserting a requirement that the exception and the evidence's relevance be connected, despite no foundation in, or citation to, the text of any rule or case law. *Id.* The newly discovered statements are admissible because (1) they are relevant under Mil. R. Evid. 401 as they have some tendency to impeach MR's credibility and demonstrate her bias, habit, motive, intent, plan, scheme, or modus operandi, and (2) they fall under a hearsay exception, Mil. R. Evid. 803(3), or otherwise qualify as nonhearsay.

Second, it is irrelevant whether MR went through with her plan to falsely accuse AF of domestic violence to law enforcement. What matters is that MR had the knowledge, the ability, the willingness, and the motive to falsely accuse the person endeavoring to break up with her of domestic violence. Clip 1 at 3:02-3:34. What MR said to AF over a thirty second audio recording is sufficient to grant a new trial:

I'm actually going to set it up so that way it's going to look like you hit me and I'm going to call the cops and it's going to get really ugly really quick because that's what you deserve for fucking with me bro. . . . I'm going to have my brother pinch the fuck out of me. As soon as I touch down in Minot, Imma call the cops and be like this man literally just fucking hit me and threw me around his fucking apartment -- er his house.

Id. MR's statements cast doubt on MR's narrative about her relationship with SrA Tyson, when the same motivations behind her threats to AF existed here: a breakup, being alone, being kicked out of a home, and revenge for all the above. MR's lack of credibility in SrA Tyson's case is bolstered by MR's statements to AF claiming to have pictures of bruises. Clip 4 at 00:16-00:33. The same kind of evidence appeared at SrA Tyson's trial. *E.g.*, R. at 540-41.

The Government asserts MR is not making false allegations, but that she is being victimized again, this time by AF. Ans. at 14. But the Government's theory cannot be reconciled with MR's behavior here due to the sequence of her actions. She begins with a plot to frame AF for domestic violence; she was going to "set it up" so that it looks like AF hit her. Clip 1 at 3:02-3:15. Then she levies purported past allegations of domestic violence only *after* she announced she was going to frame him and *after* the threat failed to get the reaction she wanted. Clip 1 at 4:22-4:44; Clip 3 at 19:32-19:41; Clip 4 at 00:16-00:33. And then those claims suddenly have pictures to accompany them. Clip 4 at 00:16-00:33. If MR had prior domestic violence claims and evidence, it does not make sense for her to threaten to fabricate allegations as the first move. MR's tactic is obvious, and it was done before in SrA Tyson's case, as MR heavily implied. *See* Clip 8

at 2:14-2:35 (“[T]hat’s crazy cause that’s exactly what [SrA] Jonathon [Tyson] was saying, only for him to be found guilty”); *see* Pros. Ex. 16 at 3-8 (revealing how, before MR levied domestic violence allegations, she claimed she was being “silently terrorized” and only upset about infidelity and being used for sex).

The Government’s narrative to dismiss the significance of this evidence in its Rule 403 analysis ignores the context and the timeline of escalation. The greatest indicator of MR’s veracity is the first three and a half minutes of the first clip: she would ruin a man’s life with domestic violence allegations over a breakup. Clip 1. The members deserve to know this information, regardless of whether MR is telling the truth about any other domestic violence allegations against AF. Those allegations do not have to be true for Clip 1’s first thirty seconds to be relevant and admissible here. For any other statements suggesting past domestic violence, the benefit of nonhearsay comes into play; there is no trial within a trial where the evidence cannot be evaluated for the truth but only used for bias or impeachment. *See* Pet. for New Trial at 31 (discussing admissibility of statements that are not hearsay where they reveal circumstantial state of mind). That MR would even say the other statements contained in the newly discovered evidence is enough and does not devolve the trial into a determination about whether “MR was telling the truth about allegations against AF.” Ans. at 20. Thus, the Government’s argument about this evidence not passing Rule 403’s minimal muster is also unpersuasive. Ans. at 19-20; *see United States v. Banker*, 60 M.J. 216, 223 (C.A.A.F. 2004) (“[Rule] 403 is a rule of inclusion.”).

Finally, MR’s “lack of memory” regarding the 2014 domestic violence incident is another credibility hurdle the Government must overcome on direct appeal and now here. This is because MR’s repeated and convenient memory lapses are yet another example of MR manipulating the narrative. *See Sztuka*, 43 M.J. at 265 (analyzing how the new evidence impacted the credibility of

an evasive witness). MR’s testimony that she did not recall the 2014 incident—and others at trial—is incredible when reviewing the record. Prior to the Article 39(a), Uniform Code of Military Justice (UCMJ), hearing on the 2014 incident with her ex-husband, MR said she could not remember what she had just testified about. *Compare* R. at 713 (“I’m not sure what I said yesterday.”), *with* R. at 722 (being confronted about the 2014 incident); *see also* R. at 1117 (summarizing that MR said a version of “I don’t remember” more than eighty-seven times throughout trial). Upon review of the newly discovered evidence, MR’s “lack of memory” becomes even more incredible. The Government’s steadfast belief in MR’s self-serving claims, despite all the evidence of her incredibility, belies its ultimate argument against a new trial. Ans. at 21. And such belief would be inconsistent with this Court’s requirement to “make a credibility determination” as to whether “the evidence is sufficiently believable to make a more favorable result probable.” *United States v. Luke*, 69 M.J. 309, 314 (C.A.A.F. 2011) (quoting *United States v. Brooks*, 49 M.J. 64, 69 (C.A.A.F. 1998)).¹³ When reviewing MR’s credibility issues at trial against her own statements that she would frame a man for domestic violence because he broke up with her, this Court should be convinced that the newly discovered evidence would be sufficiently believable to make a more favorable result probable.

¹³ The Government states “[t]his Court is also ‘free to exercise’ fact finding authority under *Article 66(d)*, UCMJ, when reviewing petitions for a new trial.” Ans. at 7 (quoting *United States v. Bacon*, 12 M.J. 489, 492 (C.M.A. 1982)) (emphasis added). *Bacon* was predicated on the old Article 66(c), UCMJ, standard. 12 M.J. at 492 (citing 10 U.S.C. § 866(c)). To the extent there is any question about whether the new Article 66(d), UCMJ, construct impacts how this Court can review a petition for new trial, this Court can save such a concern for another case. No issues arise here because the trigger for factual sufficiency has been met in SrA Tyson’s assignments of error brief. *See* Br. on Behalf of Appellant at 25-51 (asserting factual insufficiency for every offense and meeting the necessary trigger requirements under Article 66(d)(1)(B)(i), UCMJ). Thus, this Court is “free to exercise . . . [its] fact finding power” and determine MR was not a credible witness and made more so by the newly discovered evidence.

IV. Conclusion

As at trial, the Government disparages the defense argument to obfuscate what is a concerning pattern developing in its case: MR is not a credible witness and she fabricated the allegations. *See* R. at 1128 (capturing the trial counsel accusing the defense of gaslighting MR when defense’s argument centered on MR’s lack credibility); R. at 1131 (calling out to the panel to stop the defense from continuing to gas light MR); Br. on Behalf of Appellant at 62-64 (arguing prosecutorial misconduct for improper argument, to include disparaging defense counsel and the defense theory). It is not “absurd,” i.e., “ridiculously unreasonable, unsound, or incongruous” or “extremely silly or ridiculous,”¹⁴ to argue that a woman who admitted to planning to frame a male partner for domestic violence would have the knowledge, means, or motive to do the exact same thing to a different male partner under similar circumstances. *Contra* Ans. at 22 (employing the word “absurd” to characterize the defense argument). It is not “even more absurd” to argue that a woman who saved pictures of bruises to manifest a domestic violence allegation in one relationship when it suited her would do the same thing in an earlier relationship under what even she admits are similar circumstances. *Id.* To obtain a new trial, SrA Tyson does not have to prove beyond a reasonable doubt that he would be acquitted. He does not have to prove that MR reported false domestic violence allegations against AF. He does not need a smoking gun to prove that manifest injustice has occurred here. Rather, he must only demonstrate that the newly discovered

¹⁴ *Absurd*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/absurd> (last visited Mar. 4, 2026).

evidence about MR *probably* would produce a substantially more favorable result in light of all other pertinent evidence. He has. Therefore, this Court should order a new trial.

Respectfully submitted,



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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 Air Force Government Trial and Appellate Operations Division on 9 March 2026.

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