

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

UNITED STATES <i>Appellee</i>	)	No. ACM _____
	)	
	)	
v.	)	
	)	
Sascha D. REESE Staff Sergeant (E-5) U.S. Air Force <i>Appellant</i>	)	<b>NOTICE OF DOCKETING</b>
	)	

On 31 October 2024, this court received a notice of direct appeal from Appellant in the above-styled case, pursuant to Article 66(b)(1)(A), Uniform Code of Military Justice, 10 U.S.C. § 866(b)(1)(A).

As of the date of this notice, the court has not yet received a record of trial in Appellant's case.

Accordingly, it is by the court on this 31st day of October, 2024,

**ORDERED:**

The case in the above-styled matter is referred to Panel 3.

**It is further ordered:**

The Government will forward a copy of the record of trial to the court forthwith.



FOR THE COURT



OLGA STANFORD, Capt, USAF  
Commissioner

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

**UNITED STATES,**  
Appellee,

v.

Airman First Class (E-3)  
**SASCHA D. REESE, USAF**  
Appellant.

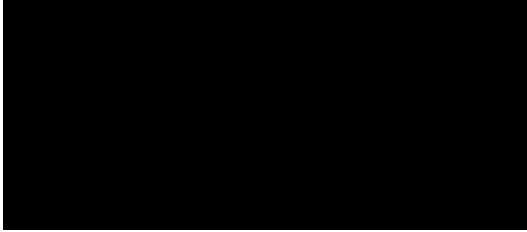
)  
) **UNITED STATES ANSWER TO**  
) **ASSIGNMENTS OF ERROR**  
)  
)  
) Before Panel No. 1  
)  
) No. ACM 24069  
)  
) 29 October 2025

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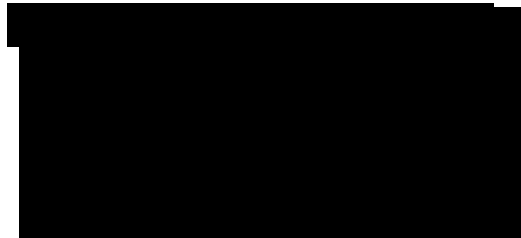
**TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE**  
**COURT OF CRIMINAL APPEALS**

---

KATE E. LEE, Maj, USAF  
Appellate Government Counsel



MARY ELLEN PAYNE  
Associate Chief



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

<b>UNITED STATES,</b>	)	UNITED STATES ANSWER TO
<i>Appellee,</i>	)	ASSIGNMENTS OF ERROR
	)	
v.	)	Before Panel No. 1
	)	
Airman First Class (E-3)	)	No. ACM 24069
<b>SASCHA D. REESE</b>	)	
United States Air Force	)	29 October 2025
<i>Appellant.</i>	)	

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

**ISSUES PRESENTED**

**I.**

**WHETHER THE FINDING OF GUILTY FOR RECKLESS DRIVING WAS LEGALLY AND FACTUALLY SUFFICIENT WHERE THE GOVERNMENT CONFLATED SEPARATE THEORIES OF LIABILITY.**

**II.**

**WHETHER THE FINDING OF GUILTY FOR RECKLESS DRIVING WAS FACTUALLY SUFFICIENT WHERE THE GOVERNMENT DID NOT PROVE BEYOND A REASONABLE DOUBT THAT APPELLANT CROSSED INTO THE OPPOSING LANE OF TRAFFIC.**

**III.**

**WHETHER THE FINDING OF GUILTY FOR RECKLESS DRIVING WAS LEGALLY AND FACTUALLY SUFFICIENT WHERE THE GOVERNMENT FAILED TO PROVE CULPABLE NEGLIGENCE.**

**IV.**

**WHETHER THE MILITARY JUDGE ERRED IN RULING THAT THE WITHHELD EVIDENCE ABOUT EE'S**

**ONGOING CIVIL LITIGATION WAS NOT MATERIAL  
NOR FAVORABLE.**

**V.**

**WHETHER THE MILITARY JUDGE ABUSED HIS  
DISCRETION BY ALLOWING THE GOVERNMENT TO  
PRESENT EVIDENCE OF APPELLANT'S DRIVING  
RECORD TO PROVE "MALICE AFORETHOUGHT"  
WHEN RECKLESS DRIVING REQUIRES NO SPECIFIC  
INTENT.**

**STATEMENT OF CASE**

On 22 March 2024, a special court-martial composed of officer and enlisted members convicted Appellant, contrary to her pleas, of one specification of reckless driving, in violation of Article 113, UCMJ. (*Entry of Judgment*, ROT, Vol. 1.) On 18 April 2024, the members sentenced Appellant to reduction in grade to E-3 and hard labor without confinement for 90 days. (Id.) After considering post-trial submissions, the convening authority took no action on Appellant's case. (*Convening Authority Decision on Action*, ROT, Vol. 1.)

**STATEMENT OF FACTS**

***The Crash***

In the pre-dawn hours on a weekend in May 2023, while driving her black BMW at approximately 100 km/h on a two-lane road where the speed limit was 70 km/h, Appellant approached a curve in the road. (R. at ; Pros. Ex. 5.) Instead of steering right to follow the curve, Appellant crossed into the opposite lane of traffic. (*See* Pros. Ex. 5; R. at 760, 767.)

Approaching the same curve, but from the other direction, was a white Toyota driven by EE. (R. at 532.) As EE approached the curve, he began to decelerate. (*See* Pros. Ex. 5.) When EE came around the curve, he was greeted by headlights and saw Appellant's car moving toward

him in his lane. (R. at 532-33.) Realizing that it was “already too late,” EE hoped to himself: “I hope that it will be over fast.” (R. at 534.)

The two vehicles collided headfirst. (See Pros. Ex. 1, 5.) On impact, EE’s car spun 180 degrees, while Appellant’s car hit the guardrail. (Id.) Data recovered from Appellant’s vehicle showed that in the five seconds preceding the collision, she had been speeding up from 99 to 102 km/h while steering straight and to the left instead of steering right to follow the curve.<sup>1</sup> (R. at 758; Pros. Ex. 5.) By contrast, data from EE’s vehicle showed that he had been gradually slowing down and steering left to follow the curve from his direction. (See Pros. Ex. 5.) A second before impact, EE braked hard (reducing his speed by 21 km/h) and shifted from steering left to steering right (a total difference of 84 degrees). (Pros. Ex. 5.)

Seconds Before Collision	Appellant		EE	
	Speed	Steering Input	Speed	Steering Input
-4.60	99 km/h	-2°	84 km/h	-3.0°
-4.10	99 km/h	0°	83 km/h	3.0°
-3.60	100 km/h	0°	82 km/h	1.5°
-3.10	101 km/h	-2°	82 km/h	4.5°
-2.60	101 km/h	-6°	81 km/h	3.0°
-2.10	101 km/h	0°	80 km/h	3.0°
-1.60	101 km/h	2°	79 km/h	6.0°
-1.10	101 km/h	0°	79 km/h	16.5°
-0.60	102 km/h	0°	69 km/h	57.0°
-0.10	102 km/h	46°	58 km/h	18.0°
<b>Impact (0.0)</b>	95 km/h	58°	58 km/h	-27.0°

(Pros. Ex. 5.)

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<sup>1</sup> Expert testimony established that steering inputs with a positive value indicate steering to the left, whereas inputs with a negative value indicate steering to the right. (See R. at 754-767.)

### *The Aftermath*

Upon arriving at the crash site, responding officers administered breathalyzers to both drivers. (R. at 430-432, 462, 472.) EE submitted to the test immediately, which confirmed that his estimated blood alcohol content (BAC) was 0.0. (R. at 462, 472.) Appellant, on the other hand, had several failed attempts. (R. at 451.) Only when officers told her that she would have to submit to a blood alcohol test if she did not consent to the voluntary breathalyzer did she blow into the device and register a BAC of 0.032 grams per 100 milliliters of blood (g/mL). (R. at 669.) Based on the results of the breathalyzer, as well as Appellant's initial attempts to subvert the test, the police decided to have her blood drawn by the emergency doctor on site. (R. at 460.) Subsequent testing of the blood confirmed that Appellant's blood alcohol content was 0.04 g/mL. (R. at 462, 646-47, 663.)

The collision resulted in injuries and varying degrees of hospitalization for all involved. EE, who had injuries to his skull, hips, and pelvis, spent a week in a wheelchair. (R. at 546.) JS, who had contusions to his lower limbs, was hospitalized for three days. (R. at 570.) The women who had been in the back of the Toyota, LJ and AE, suffered significant life-threatening injuries requiring surgical intervention and were hospitalized for an extended time. (R. at 583-86; 593-602; 723-27.)

### *The Evidence at Trial*

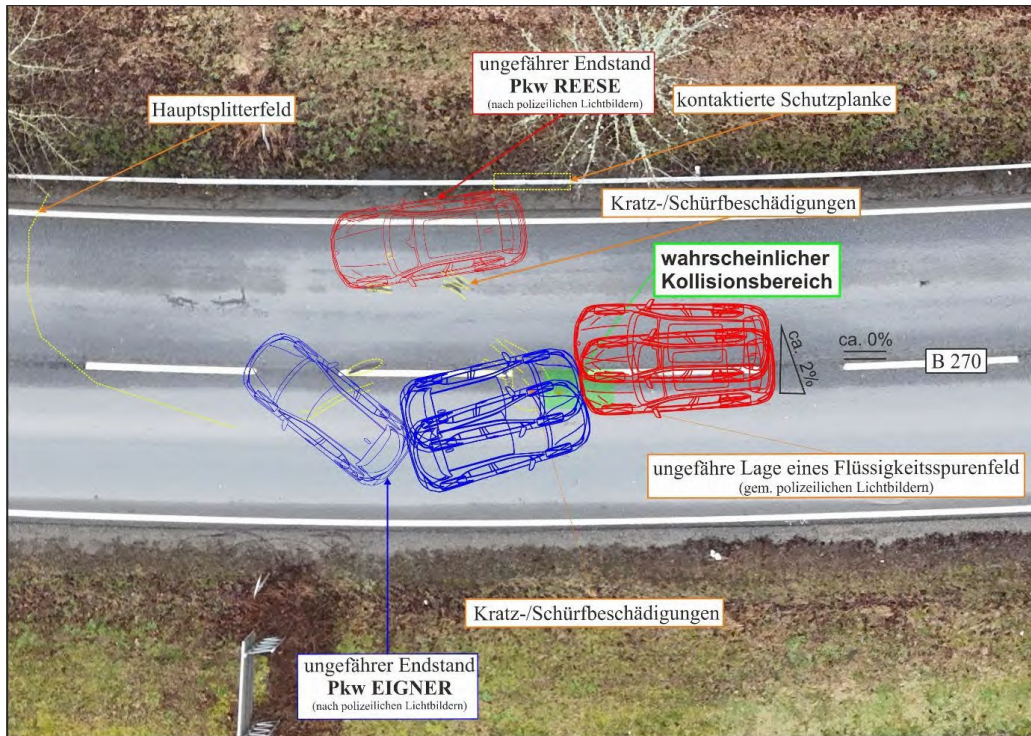
Appellant was charged with and tried for "physically control[ling] a vehicle, to wit: a passenger car, in a reckless manner by crossing into the opposing lane of traffic while going around a curve on a two-lane road" and injuring EE, JS, LJ, and AE. (*Charge Sheet*, ROT, Vol. 1.) At trial, three of the four occupants of the white Toyota testified about the moments

immediately preceding the collision.<sup>2</sup> (R. at 523-551, 558-578, 588-603.) EE, the driver of the Toyota, unequivocally testified that he never crossed into the other lane, and that Appellant's car "definitely was on [his] lane." (R. at 533-34.) According to EE, he saw Appellant's headlights as he came around the curve, and though he "realized very fast" that Appellant's car was in his lane, it was too late to successfully evade the car. (R. at 424, 429, 533-34, 549.) JS, who had been sitting in the front passenger seat, also testified that he saw headlights in their lane and that "the bigger portion of [Appellant's] car was in [their] lane." (R. at 562.) When asked about the positioning of EE's car, JS confirmed that it stayed in its lane: "We were in our lane between the two marks that limit our lane." (R. at 573.) LJ, one of the passengers in the back, testified that right before the crash, she heard one of the men say, "shit where did she c[o]me from," which prompted her to look up. (R. at 591.) When she did, it was "very bright." (R. at 591.) Though LJ did not know what the source of the light was at the time, she later deduced it came from headlights, since the inside of their car had been dark otherwise. (R. at 591.)

To further establish that Appellant crossed into EE's lane, the prosecution called an accident reconstruction expert, FH, and introduced data from both vehicles' event data recorders (EDRs). (R. at 734-787; Pros. Ex. 5.) FH testified that although he could not determine "the exact spot" where the collision occurred, he could ascertain a range, and opined that it must have occurred "in the middle of the road, slightly on the side of [EE]'s lane." (R. at 750, 766.)

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<sup>2</sup> The fourth occupant, AE, had no memory of the crash and testified primarily about her injuries. (R. 581-82.)



When asked if there was any evidence the collision occurred in Appellant’s lane, FH responded that there was “no clear evidence” supporting that scenario. (R. at 750.) He noted that data from Appellant’s car indicated she steered left before the crash, when she should have been steering right to follow the curve of the road. (R. at 760, 767.) FH also noted that EE’s steering inputs—which showed an 84 degree change in direction from the left to the right—could be indicative of a potential evasive maneuver. (See Pros. Ex. 5; R. at 786.)

In response, the defense called their own accident reconstruction expert, MS, who testified about his interpretation of the collision data. (R. at 791-861.) While MS’s estimations of the collision angle were slightly different, he did not have any “technically decisive” disagreements with FH’s findings. (R. at 814, 839.) In discussing the range of potential vehicle positions prior to impact, MS agreed that there was “no question” that Appellant’s car crossed into EE’s lane—it was just a matter of “how much.” (R. at 845-850; Pros. Ex. 5; Def. Ex. D.)

Additional facts necessary for resolution of the issues are incorporated below.

## ARGUMENT

### I.

#### **THE GOVERNMENT NEVER CONFLATED SEPARATE THEORIES OF LIABILITY, THEREFORE THERE ARE NO DUE PROCESS ISSUES AND APPELLANT’S CONVICTION IS LEGALLY SUFFICIENT.<sup>3</sup>**

##### *Standard of Review*

The test for legal sufficiency of the evidence is “whether, after viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” United States v. King, 78 M.J. 218, 221 (C.A.A.F. 2019) (internal citations omitted). This test does not require a court to ask whether it believes the evidence established guilt beyond a reasonable doubt, but rather, whether any rational factfinder could. United States v. Acevedo, 77 M.J. 185, 187 (2018). In applying this test, this Court is “bound to draw every reasonable inference from the evidence of record in favor of the prosecution.” United States v. Barner, 56 M.J. 131, 134 (C.A.A.F. 2001).

##### *Law*

Due process requires that criminal statutes “give people of common intelligence fair notice of what the law demands of them.” United States v. Davis, 139 S. Ct. 2319, 2325 (2019) (quotations omitted). “[T]he purpose of the fair notice requirement is to enable the ordinary citizen to conform his or her conduct to the law,” City of Chicago v. Morales, 527 U.S. 41, 58

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<sup>3</sup> Though styled as an issue of legal and factual sufficiency, Appellant’s assertion that the prosecution “conflated separate theories of liability” and violated her due process rights is akin to the claim in United States v. Mendoza, which our superior Court evaluated “through the narrow lens of legal sufficiency.” 85 M.J. 213, 221 (C.A.A.F. 2024). The Government’s analysis of Issue I is tailored to the legal question presented; to avoid duplicative analysis, the factual sufficiency of Appellant’s conviction is addressed in Issue II.

(1999), and to inform them “what offense and under what legal theory he will be tried and convicted.” United States v. Riggins, 75 M.J. 78, 83 (C.A.A.F. 2016) (internal quotation marks omitted). Thus, “the Government cannot...charge one offense under one factual theory and then argue a different offense and a different factual theory at trial.” Mendoza, 85 M.J. at 220 (prosecution may not prove sexual assault without consent by “merely” establishing that victim was incapacitated, since sexual assault on an incapacitated person is a separate theory of liability).

### *Analysis*

Citing Mendoza, Appellant claims the Government “charge[d] one offense under one factual theory and then argue[d] a different offense and a different factual theory at trial.” (App. Br. at 8.) According to Appellant, the Government was “focused on proving [she] drove recklessly because she was speeding and had alcohol in her system,” rather than proving that she crossed into the oncoming lane of traffic, and therefore “failed to prove the charged theory of liability.” (App. Br. at 7-9.)

This claim fails first and foremost because it is premised on a selective reading of the record that this Court should decline to adopt. United States v. Rounds, 30 M.J. 76, 80 (C.M.A. 1990) (appellate courts are not required to accept an appellant’s view of the record of trial). While the prosecution did indeed present and argue evidence related to Appellant’s speeding and blood alcohol content, this evidence was neither the crux of the case nor the means by which the prosecution attempted to prove the “actus reus” in question. To prove that Appellant crossed into the other lane, the prosecution presented eyewitness testimony about her car crossing into the opposite lane and expert testimony supporting the same conclusion—evidence that Appellant

pointedly ignores. *Cf. Mendoza*, 85 M.J. at 222 (noting that the prosecution cannot prove the absence of consent “by merely establishing that the victim was too intoxicated to consent”).

By nonetheless invoking *Mendoza* to suggest that the Government’s use of speeding and BAC evidence “conflate[s] separate theories of liability,” and Appellant simultaneously betrays her misunderstanding of both the *Mendoza* decision and what is relevant to proving recklessness. In stating that “the Government cannot...charge one offense under one factual theory and then argue a different offense and a different factual theory at trial,” our superior court never suggested that the prosecution would be guilty of switching theories of liability any time it presented evidence that could be relevant to another, uncharged theory. *See generally Mendoza*, 85 M.J. at 222. If that evidence relates to circumstances that must be considered in evaluating the charged theory of liability, as is the case here, the prosecution *should* be presenting it to the factfinder. *Id.* (factfinder is not barred from considering evidence of intoxication, given that consent or lack thereof must be evaluated based on “all the surrounding circumstances”). Such is the case here.

Much like how determining the existence of consent requires consideration of “all the surrounding circumstances,” 10 U.S.C. § 920(g)(7)(C), determining whether a person’s operation of a vehicle was reckless—i.e., “exhibit[ed] a culpable disregard of foreseeable consequences to others from the act or omission involved”—requires an evaluation of “all the circumstances”:

Recklessness is not determined solely by reason of the happening of an injury, or the invasion of the rights of another, nor by proof alone of excessive speed or erratic operation, but all these factors may be admissible and relevant as bearing upon the ultimate question: whether, *under all the circumstances*, the accused’s manner of operation or physical control of the vehicle, vessel, or aircraft was of that heedless nature which made it actually or imminently dangerous to the occupants, or to the rights or safety of others.

MCM, part IV, ¶ 51.c(7) (emphasis added).

In other words, “[t]o prove the culpably negligent nature of Appellant’s acts, the Government may, and often *must*, rely on the additional surrounding circumstances and the manner in which [she] committed them.” United States v. Cox, No. ACM 38885, 2017 CCA LEXIS 169, at \*4 (A.F. Ct. Crim. App. Feb. 22, 2017) (emphasis added). Thus, it was appropriate for—incumbent on, even—the prosecution to present evidence related to Appellant’s speeding and blood alcohol content to prove that her crossing into the other lane was culpably negligent. This evidence demonstrated that Appellant’s conduct was the result of more than just “simple negligence”—it showed that she crossed into the other lane not just because she was being inattentive, but because she was speeding on a dark, two-lane road after drinking, without regard to the “foreseeable consequences to others.” MCM, part IV, ¶ 51.c(7).

That the Government “did not allege” these circumstances in the specification does not mean it was precluded from presenting such evidence: “It is not necessary that all of the details that together establish that an act or omission rose to the level of culpable negligence be specifically alleged in a specification.” Cox, 2017 CCA LEXIS 169, at \*4-5. Appellant, who appears to disagree, implies that because of the Government’s decision not to allege such details, she is “left guessing whether she was convicted of reckless driving because the panel believed she crossed into the oncoming lane of traffic or because they believed she was speeding or impaired.” (App. Br. at 11) This Court should be unpersuaded. In instructing on the “actus reus,” the military judge admonished the members that to find Appellant guilty of reckless operation of a vehicle, they “must be convinced by legal and competent evidence, beyond a reasonable doubt...that [Appellant] physically controlled the vehicle in a reckless manner by crossing into the opposing lane of traffic while going around the curve on a two-lane road.” (R.

at 931-32.) At no point were the members instructed that they could convict Appellant based simply on the fact that she had been speeding or had alcohol in her blood. (R. at 929-934.) This Court should presume the members followed the military judge's findings instructions and convicted on the *single* theory of liability that was charged, argued, and instructed upon, since there is no evidence to the contrary. United States v. Stewart, 71 M.J. 38, 43 (C.A.A.F. 2012).

Ultimately, had the Government actually been conflating theories of liability—i.e., arguing “drunken operation of a vehicle” instead (*see* App. Br. at 11)—it would not have had to present the eyewitnesses’ testimony about Appellant’s car crossing the line, much less call an accident reconstruction expert to testify about the positioning of the cars. But it did, because it was only ever pursuing a single theory of liability—that Appellant “physically control[ed] a vehicle...in a reckless manner by crossing into the opposing lane of traffic while going around a curve on a two-lane road.” (*Charge Sheet*, ROT, Vol. 1). Viewing all the evidence on this matter in the light most favorable to the prosecution, King, 78 M.J. at 221, and drawing every reasonable inference in the Government’s favor, Barner, 56 M.J. at 134, any rational factfinder could have concluded—beyond a reasonable doubt—that Appellant crossed into the opposite lane. Acevedo, 77 M.J. at 187. Accordingly, her conviction is legally sufficient, and she is unentitled to relief.

## II.

### **THE FINDING OF GUILTY FOR RECKLESS DRIVING IS FACTUALLY SUFFICIENT BECAUSE THE WEIGHT OF THE EVIDENCE ESTABLISHES BEYOND A REASONABLE DOUBT THAT APPELLANT CROSSED INTO THE OPPOSING LANE OF TRAFFIC.**

#### *Standard of Review*

If every finding of guilty is for an offense occurring on or about 1 January 2021,<sup>4</sup> this Court reviews factual sufficiency only upon a “specific showing of a deficiency of proof.” 10 U.S.C. § 866(d)(1)(B)(i). When conducting such a review, this Court is required to give “appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence” as well as “appropriate deference to findings of fact entered into the record by the military judge.” 10 U.S.C. § 866(d)(1)(B)(ii); *see also* United States v. Downum, No. 24-0156, 2025 CAAF LEXIS 828, at \*13 (C.A.A.F. Sep. 30, 2025) (“[I]t is no longer appropriate to describe the service courts' standard of review when performing factual sufficiency review simply as ‘de novo.’”). “[T]he degree of deference will depend on the nature of the evidence at issue.” United States v. Harvey, 85 M.J. 127, 130 (C.A.A.F. 2024).<sup>5</sup> This Court has discretion to determine “what level of deference is appropriate.” *Id.* The Court may “dismiss, set aside, or modify the finding, or affirm a lesser finding” only if it is “clearly convinced that the finding of guilty was against the weight of the evidence.” 10 U.S.C. § 866(d)(1)(B)(iii).

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<sup>4</sup> National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, Section 542(b), 134 Stat. 3611-12.

<sup>5</sup> “For example, a CCA might determine that the appropriate deference required for a court-martial's assessment of the testimony of a fact witness, whose credibility was at issue, is high because the CCA judges could not see the witness testify. In contrast, when the CCA can assess documents, videos, and other objective evidence just as well as the court-martial, the CCA might determine that the appropriate deference required is low.” Harvey, 85 M.J. at 131.

### *Law*

For Appellant’s conviction for reckless driving in violation of Article 113, UCMJ, to be factually sufficient, the evidence must show:

- (1) That Appellant was in physical control of a vehicle, to wit, a passenger car;
- (2) That Appellant operated or physically controlled the vehicle in a reckless manner by crossing into the opposing lane of traffic while going around the curve on a two-lane road; and
- (3) That Appellant thereby caused the vehicle to strike and injure EE, JS, LJ, and AE.

See Manual for Courts-Martial, United States part IV, ¶ 51.b (2023 ed.) (MCM); (R. at 931-32.)

Proof beyond a reasonable doubt does not require corroboration from scientific evidence or eyewitness testimony—“[t]he testimony of only one witness may be enough.” United States v. Rodriguez-Rivera, 63 M.J. 372, 383 (C.A.A.F. 2006); Weiler v. United States, 323 U.S. 606, 608 (1945) (“Triers of fact in our fact-finding tribunals are, with rare exceptions, free in the exercise of their honest judgment to prefer the testimony of a single witness to that of many.”).

### *Analysis*

Here, Appellant challenges the factual sufficiency of her conviction on the grounds that “the Government did not prove beyond a reasonable doubt that [she] crossed into the opposing lane of traffic.” (App. Br. at 12.) This Court should be unpersuaded, because Appellant’s claims are premised on (1) a pointed ignorance of testimony from the occupants of the Toyota, who saw Appellant’s car in their lane; and (2) an erroneous understanding of the accident reconstruction data and expert testimony, which established that there was “no question” that Appellant crossed into the other lane.

To start, Appellant’s claim fails to account for eyewitness testimony from the individuals who would have had the best vantage point: the occupants of the other vehicle. Both EE and

JS—who were seated in the front of the Toyota and would have had an unobstructed view of the road—unequivocally testified that they saw Appellant’s headlights and observed her car in their lane. (R. at 533-34, 549, 562.) This testimony was corroborated by LJ, who recalled hearing the men exclaim in surprise and seeing a very bright light when she looked up from the backseat. (R. at 591.) In conjunction, their uncontroverted testimony establishes beyond a reasonable doubt that Appellant’s car crossed into their lane.

Appellant, for her part, summarily dismisses their testimony based on the fact that they were “rendered unconscious and unable to recall the moment of impact.” (App. Br. at 15.) This logical sleight of hand misses the point. That the witnesses lost consciousness on impact does *not* mean their memories of the moments before impact are unreliable—there is no evidence suggesting that EE’s or JS’s direct observations of Appellant’s car were suspect in any way. Indeed, perhaps because she is unable to point to any such evidence, Appellant instead implies that their testimony deserves less weight because they are “traumatized car accident victims,” whose testimony “cannot overcome the scientific testimony provided by both the Government and Defense experts.” (See App. Br. at 15.) This is problematic for two reasons. First, it effectively invites this Court to presume that a victim’s testimony is less probative based simply on their status as a victim—an untenable proposition. (Id.) And second, it suggests that the expert testimony in this case is favorable to Appellant, when in fact it *also* establishes that Appellant crossed into the other lane.

Although Appellant avers that “[n]either of the experts in the case could conclude that [she] crossed into the incoming lane of traffic,” (App. Br. at 15), this is inaccurate and relies on a skewed view of the evidence that this Court need not adopt. Rounds, 30 M.J. at 80. While neither expert could conclusively determine the “exact spot” on the road where the collision

occurred, both testified that the available data indicated Appellant’s car had crossed into EE’s lane. (R. at 750, 766, 845-850.) Though they could not rule out that part of EE’s car might also have been in Appellant’s lane “at the moment of collision,” this does not equate to a possibility that Appellant never crossed into EE’s lane in the moments preceding the crash. (R. at 758, 766, 786.) If anything, it would be consistent with the expert’s testimony that the position of EE’s car could be indicative of an unsuccessful evasive maneuver—which, given all the evidence, is the most likely explanation. (Pros. Ex. 5; R. at 778-779.) If someone is driving in the right lane on a two-lane road, sees a car coming at them in that same lane, and attempts to evade to the left (i.e., the empty lane) but is hit nonetheless, it would result in part of their car being in the other lane. Thus, the possibility that part of EE’s car was in Appellant’s lane at the time of impact *supports* the theory that Appellant crossed the center line.

Ultimately, the prosecution’s expert opined that “the collision *must* have occurred in the middle of the road, slightly on the side of [EE]’s lane.” (R. at 766) (emphasis added). Similarly, the defense expert opined that there was “*no question*” that Appellant’s car crossed into EE’s lane—it was just a question of “how much.” (R. at 849.) Put differently, “the scientific testimony provided by both the Government and Defense experts” corroborated the eyewitnesses’ testimony that Appellant’s car crossed into EE’s lane. (*See* App. Br. at 15.) Taken altogether, the witnesses’ testimony establishes beyond a reasonable doubt that Appellant’s car crossed into the other lane. Giving appropriately high deference to the factfinder’s assessment of this testimony since this Court “could not see the witness[es] testify,” *see Harvey*, 85 M.J. at 131, this Court should *not* be clearly convinced that the finding of guilty was against the weight of the evidence. Appellant’s conviction is factually sufficient, and he is unentitled to relief.

### III.

**THE EVIDENCE ESTABLISHES BEYOND A REASONABLE DOUBT THAT APPELLANT WAS CULPABLY NEGLIGENT, AND THE FINDING OF GUILTY FOR RECKLESS DRIVING IS LEGALLY AND FACTUALLY SUFFICIENT.**

#### *Standard of Review*

The United States incorporates the standards of review for legal and factual sufficiency previously set forth in Issues I and II.

#### *Law*

An accused's operation or physical control of a vehicle is reckless when it exhibits a "culpable disregard of foreseeable consequences to others from the act or omission involved." MCM, part IV, ¶ 51.c(7). Whether the consequences of an act are foreseeable is an objective assessment, United States v. Riley, 58 M.J. 305, 311 (C.A.A.F. 2003). "[W]hat is required is not that the accused be aware of the substantial risk he is creating, but only that a reasonable person would have realized the risk." United States v. Brown, 22 M.J. 448, 450 (C.M.A. 1986); *see also* United States v. Oxendine, 55 M.J. 323, 326 (C.A.A.F. 2001).

Because "[r]ecklessness is largely a relative matter," United States v. Statham, 25 C.M.R. 462, 464 (C.M.A. 1958), all the surrounding circumstances are "admissible and relevant" to answering the "ultimate question: whether, under all the circumstances, the accused's manner of operation or physical control of the vehicle...was of that heedless nature which made it actually or imminently dangerous to the occupants, or to the rights or safety of others. MCM, part IV, ¶ 51.c(7).<sup>6</sup> Relevant circumstances include, but are not limited to: driving in excess of the posted

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<sup>6</sup> Determining recklessness requires an evaluation of "whether, under all the circumstances, the accused's manner of operation or physical control of the vehicle...was of that heedless nature

speed limit, United States v. Cox, No. ACM 38885, 2017 CCA LEXIS 169, at \*7-8 (A.F. Ct. Crim. App. Feb. 22, 2017); failing to reduce speed, United States v. Sims, 21 C.M.R. 214, 219 (C.M.A. 1956); driving on the wrong side of the road, United States v. Grossman, 9 C.M.R. 36, 40 (C.M.A. 1953); speeding and driving straight in a turn lane, United States v. Cooper, No. ACM 40092 (f rev), 2023 CCA LEXIS 7, at \*21 (A.F. Ct. Crim. App. Jan. 11, 2023); alcohol consumption, United States v. Helems, No. 202100278, 2023 CCA LEXIS 72, at \*15 (N-M Ct. Crim. App. Feb. 10, 2023); road and traffic conditions, Statham, 25 C.M.R. at 464; or a combination thereof. *See, e.g., United States v. Brooks*, 64 M.J. 587, 594 (A. Ct. Crim. App. 2006).<sup>7</sup>

### *Analysis*

In alleging that the “Government did not prove [she] was culpably negligent,” Appellant avers that “there was no evidence that [she] was impaired”; that she was “not driving at a substantial and unjustifiably dangerous speed”; and that there is “no evidence to show that [she] intended to cross over into the oncoming lane.” (App. Br. at 18-19.) This, she contends, makes her case akin to United States v. McDuffie, in which this Court set aside a conviction for reckless operation of a vehicle based on the appellant “cross[ing] the center line into oncoming traffic.”

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which made it actually or imminently dangerous to the occupants, or to the rights or safety of others.” MCM, part IV, ¶ 51.c(7).

<sup>7</sup> Evidence that the appellant “avoided a police roadblock, sped through a traffic circle, drove the wrong way ... ran several stop signs, jumped a curb and roadway median, crossed over railroad tracks, struck a MP vehicle, sped through...parking lots, and almost struck several pedestrians,” was sufficient to establish reckless operation of a vehicle. Brooks, 64 M.J. at 594.; *cf. United States v. Lawrence*, 18 C.M.R. 855, 857 (A.F.C.M.R. 1955) (finding insufficient evidence of recklessness where there was no evidence of erratic operation of the vehicle, other traffic, poor visibility or hazardous road conditions, or speeding).

65 M.J. 631, 636 (A.F. Ct. Crim. App. 2007). This Court should be unpersuaded, for a close look at the facts of McDuffie reveals that this comparison is unavailing.

In McDuffie, this Court was not personally convinced that the appellant with “acted with a culpable disregard for the foreseeable consequences of his actions when...he crossed the center line into oncoming traffic while operating his vehicle,” because the *only* evidence offered to prove culpable negligence was the appellant’s sleep apnea diagnosis. 65 M.J. at 636. There was no other evidence of reckless behavior—the appellant had not been drinking, had been driving at the posted speed limit, and had not been “doing anything distracting in the car.” Id.

By contrast, the evidence of Appellant’s culpable negligence in this case is wide-ranging and implicates many of the circumstances deemed relevant by case law. To start, unlike the appellant in McDuffie, whose breath and blood were negative for alcohol, 65 M.J. at 636, Appellant was driving late at night with alcohol in her system. While her BAC (0.04 g/mL) was below the legal limit, it is still probative of recklessness, given “any amount of ethanol can certainly degrade – impair driving performance” by affecting motor skills as well as perception of time, distance, and speed. (R. at 666-67); *see also* United States v. Rapmund, No. ARMY 20170564, 2019 CCA LEXIS 404, at \*4-5 (A. Ct. Crim. App. Oct. 21, 2019) (citing expert’s testimony that “after the first drink, as soon as the alcohol reaches the brain, there's impairment”); *see also* Helems, 2023 CCA LEXIS 72, at \*15 (citing fact that appellant had consumed more than six beers, even though there was no BAC evidence, as relevant to culpable negligence).

Next, unlike the appellant in McDuffie, who was driving at the posted speed limit, 65 M.J. at 636, Appellant was driving at approximately 100 km/h in a 70 km/h zone. Appellant, for her part, suggests that she “was not driving at a substantial and unjustifiably dangerous speed.”

(App. Br. at 18.) Citing the defense expert’s testimony a person could “drive this corner [at] about 130 kilometers an hour and feel safe,” (R. at 833-34), she contends that she was “driving at a speed that was safe for the road.” (App. Br. at 18.) But this misses the point—the same expert testified that the posted speed limit was 70 km/h, that Appellant should have been going no faster than that, and that the collision might have been less severe if she had been following the speed limit. (R. at 852.) And while speed may not have been a “significant factor” in the actual cause of the collision, (R. at 770), it is still relevant to determining whether Appellant’s “manner of operation or physical control of the vehicle” was reckless. MCM, part IV, ¶ 51.c(7).

As the expert confirmed, it is “common sense” that the faster the speed, the greater the “collision energy.” (R. at 852.) Thus, the fact that Appellant sped up instead of slowing down as she approached the curve and did not adjust her steering as she went through it—thereby entering the opposite lane and slamming into another car—goes to show that the manner in which she crossed into the other lane “made it actually or imminently dangerous to the occupants, or to the rights or safety of others.” MCM, part IV, ¶ 51.c(7); *see Cooper*, 2023 CCA LEXIS 7, at \*21 (accused’s decision to “accelerate and drive well above the speed limit” was evidence of culpable negligence); Sims, 21 C.M.R. at 219 (C.M.A. 1956) (failure to reduce speed was relevant to finding of culpable negligence); Grossman, 9 C.M.R. at 40 (C.M.A. 1953) (evidence of speed and driving on the wrong side of the highway would support a finding of operating the car in a reckless manner). In other words, the fact that Appellant was traveling approximately 30 km/h faster than the posted limit on a curved road is indicative of culpable negligence under the circumstances. *See Cox*, 2017 CCA LEXIS 169, at \*7-8 (finding culpable negligence where appellant was driving over 100 mph on a curvy road where speed limit was 65 mph).

The fact there is “no evidence to show that [Appellant] intended to cross over into the oncoming lane of traffic,” (App. Br. at 19), only serves to underscore the recklessness of her conduct. Appellant did not have a good reason for crossing the center line. She was not doing it to pass another car, *cf. United States v. Walker*, 46 C.M.R. 1112, 1114 (A.F.C.M.R. 1973) (driving left of center to pass another vehicle was not culpably negligent because this practice was “not unusual when passing on a two-lane street”), or to avoid an obstacle in her own lane. *Cf. United States v. Smith*, 22 C.M.R. 568, 570 (A.C.M.R. 1956) (no culpable negligence where appellant swerved into other lane while trying to avoid stopped car in his own lane).

Viewing all the above evidence in the light most favorable to the prosecution, King, 78 M.J. at 221, and drawing every reasonable inference in the prosecution’s favor, Barner, 56 M.J. at 134, any rational factfinder could have found that Appellant’s conduct was culpably negligent. Acevedo, 77 M.J. at 187. Any reasonable person would have realized that the manner in which Appellant was operating her vehicle—speeding down a dark two-lane road at night, speeding up instead of slowing down while approaching a curve, and steering away from the curve instead of into it such that she entered the opposite lane of traffic—was “actually or imminently dangerous” to herself and anyone else that might be on the road. MCM, part IV, ¶ 51.c(7). And while this Court “may [not] conclude from the mere occurrence of the accident that it was precipitated by a culpably negligent or wanton operation of the vehicle,” Lawrence, 18 C.M.R. at 857, here, the fact that an injurious collision occurred validates the “substantial risk” that “a reasonable person would have realized.” Brown, 22 M.J. at 450. Accordingly, this Court should not be clearly convinced that the finding of guilty was against the weight of the evidence. Appellant’s conviction is legally and factually sufficient, and she is unentitled to relief.

#### IV.

**THE MILITARY JUDGE REASONABLY CONCLUDED THAT THE EVIDENCE ABOUT EE'S ONGOING CIVIL LITIGATION WAS NEITHER MATERIAL NOR FAVORABLE TO APPELLANT.**

*Additional Facts*

In late July 2023, while scheduling pretrial interviews with the prosecution, EE asked “whether it could somehow be arranged that the appraiser/expert that is handling his vehicle claim could examine the vehicle.” (App. Ex. XLVII, Atch. 3.) The prosecution disclosed this information to the defense in advance of trial. (Id.)

Less than a week before trial, the defense interviewed EE. (Id.; R. at 1083, 1086-88.) During the interview, trial defense counsel did not ask EE about any vehicle claims, financial loss, or insurance proceedings. (R. at 1087-88.) The next day, during their own pretrial interview with EE, trial counsel learned that EE’s insurance company and Appellant’s insurance company were litigating a civil suit in the German system. (App. Ex. XLVI, Atch. 5.) This was the first time the prosecution was “explicitly made aware” of an ongoing civil matter. (App. Ex. XLVII.) Trial counsel did not inquire further into the civil proceedings. (App. Ex. XLVI; App. Ex. XLVII.)

During the court-martial sentencing proceedings, EE testified that he was still paying for the damaged Toyota because his insurance claim was pending adjudication in civil court. (R. at 1020-1023.) Trial defense counsel, who had been unaware of the civil proceedings, then asked for an R.C.M. 802 conference. (R. at 1022.) During the ensuing recess, the parties learned that

there might be an accident reconstructionist involved.<sup>8</sup> (R. at 1023-25.) The next day, the defense moved to dismiss the case, alleging that the prosecution’s failure to disclose information regarding the German civil case constituted a violation of discovery rules and Brady v. Maryland, 373 U.S. 83, 87 (1963). (App. Ex. XLV.)

After receiving evidence and hearing arguments on the motion, the military judge denied the motion to dismiss. (App. Ex. LI.) The military judge found that the defense had failed to demonstrate prosecutorial misconduct; that the evidence was neither favorable nor material to Appellant; and that “the drastic remedy of dismissal with prejudice” was therefore unwarranted. (App. Ex. LI.)

In explaining his reasoning, the military judge began by noting that “while evidence of civil litigation *in* the government’s possession is discoverable and should have been turned over,” the government was “not required to dig further into the particularities of the civil litigation,” since “R.C.M. 701(a)(6) generally does not place on the government the duty to search for exculpatory evidence held by people or entities not under the control of the government.” (Id.) The judge opined that “civil litigation between insurance companies involving a car collision does not evince the existence of evidence that reasonably tends to be exculpatory”—thus, the prosecution’s failure to notify the defense of ongoing civil litigation did not constitute a violation of either R.C.M. 706(a)(6) or Brady. (Id.)

The judge went on to find that the civil litigation evidence was “not favorable” to Appellant, since it “merely reflects the common practice of competing insurance companies’ attempt to reach a monetary settlement during which disagreement over fault is expected.” (Id.)

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<sup>8</sup> Based on the record, it appears trial counsel did not learn about the reconstructionist until the same recess: “It sounds like the—that the accused might have an accident reconstructionist in her civil case; which would clearly not be our Brady obligation.” (R. at 1024.)

The military judge also found that the evidence was “not material” and that there was “[no] reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different.” (Id.) He explained his conclusion by stepping through the “considerable” evidence against Appellant and the marginal benefit that would have been gained from cross examining EE about the civil suit:

Evidence presented against [Appellant] was considerable: she was traveling at nearly 30 km over the speed limit; she had a BAC of 0.04 and smelled of alcohol; and three victims testified to seeing bright headlights; and [EE], the driver who had no alcohol in his system, stated he never left his traffic lane. Finally, had [EE]’s credibility been attacked on cross-examination regarding his economic interest in the civil litigation, the addition of this potential information would not have risen to meet the materiality standard.

(App. Ex. LI.)

The judge further noted that the testimony from the insurance company’s expert would have been “largely consistent” with the defense expert’s testimony that EE’s vehicle could have crossed into Appellant’s lane. (Id.) The judge went on to conclude that even though this “*might* have been helpful to defense,” no relief was warranted because there was “no reasonable probability” that the result of the proceeding would have been different had the evidence been disclosed. (Id.)

### ***Standard of Review***

This Court reviews a military judge’s rulings on discovery requests and remedies for discovery violations for an abuse of discretion. United States v. Stellato, 74 M.J. 473, 480 (C.A.A.F. 2015). The abuse of discretion standard calls for more than a “mere difference of opinion.” Id. (citing United States v. Wicks, 73 M.J. 93, 98 (C.A.A.F. 2014)). An abuse of discretion occurs: “when [the military judge’s] findings of fact are clearly erroneous, the court’s decision is influenced by an erroneous view of the law, or the military judge’s decision on the

issue at hand is outside the range of choices reasonably arising from the applicable facts and the law.” Stellato, 74 M.J. at 480 (citing United States v. Miller, 66 M.J. 306, 307 (C.A.A.F. 2008) (alterations in the original)).

### ***Law & Analysis***

The prosecution must disclose evidence that is favorable to an accused when such evidence is material to guilt or punishment. Brady v. Maryland, 373 U.S. 83, 87 (1963); see R.C.M. 701(a)(6). Evidence is “favorable” within the meaning of Brady if it is exculpatory, substantive, or capable of impeaching the government’s case, and “material” if there is a reasonable probability that the result of the proceeding would have been different had the evidence been disclosed. United States v. Behenna, 71 M.J. 228, 238 (C.A.A.F. 2012) (citations omitted). The likelihood of a different result must be great enough to “undermine[] confidence in the outcome of the trial.” Smith v. Cain, 565 U.S. 73, 75 (2012) (citing Kyles v. Whitley, 514 U.S. 419, 435-36 (1995)).

Appellant alleges that the military judge erred by concluding that evidence of the civil insurance suit was neither material nor favorable to her defense. For the reasons set forth below, her claim lacks merit, and she is unentitled to relief.

#### **A. The judge reasonably concluded that the civil litigation evidence was immaterial.**

In challenging the military judge’s conclusion that the civil litigation evidence was immaterial, Appellant contends that the judge “underestimated the materiality of the withheld evidence” and “failed to take into account what additional evidence the Defense could have discovered.” (App. Br. at 23-24.) The problem with this claim, however, is its entirely speculative nature. See Murphy v. Johnson, 205 F.3d 809, 914 (5th Cir. 2000) (claims of “potential exculpatory and material evidence are merely speculative” and “cannot support a

Brady claim”) (internal citations omitted). While Appellant is at liberty to muse about the evidence she might have discovered, “[t]he mere possibility that an item of undisclosed information might have helped the defense” is insufficient to establish materiality. United States v. Agurs, 427 U.S. 97, 109-10 (1976).

Appellant, for her part, claims that “[i]t is more than reasonably probable” that the outcome of her trial would have been different because the civil litigation evidence would have enabled her to:

- (1) [I]mpeach the Government’s “only sober eyewitness” to the accident based on a financial motive to fabricate;
- (2) impeach the alleged victim’s version of events with his own civil litigation expert<sup>9</sup> that said he caused the accident;
- (3) challenge the Government expert’s opinion with the civilian litigation expert; and
- (4) further support the Defense expert’s opinion.

(App. Br. at 24.)

This alternate universe proves unpersuasive. Even if Appellant impeached EE about an alleged “financial motive to fabricate,” it would neither change the fact that JS *also* testified that Appellant came into their lane nor negate the experts’ consensus that some part of her car crossed into EE’s lane. Additionally, there would be minimal value in “impeaching” EE’s testimony using a reconstructionist hired by Appellant’s insurance firm to testify in the civil suit, since the reconstructionist’s bias and motive to testify a particular way would immediately be apparent. Indeed, using the insurance company’s reconstructionist to challenge the prosecution’s expert could very well backfire, since he concluded that EE was at fault based solely on “photos and the scatter patterns of the wreck,” without inspecting the crash site, the vehicles, or the black

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<sup>9</sup> This mischaracterizes the evidence—as set forth in the military judge’s findings of fact, the accident reconstructionist involved in the civil suit was hired by the law firm representing *Appellant’s* insurance company, not EE’s. (App. Ex. LX.)

box data. (R. at 1096, 1099.) This fact—of which the military judge took note<sup>10</sup>—is significant. There was no evidence before the military judge about what “scatter pattern” analysis involved; whether the methodology has been tested or peer-reviewed; what the error rates and control procedures are; or whether it is a generally accepted technique in accident reconstruction. (See generally App. Ex. XLVI; R. at 1096-99.) In other words, there was no evidence that the reconstructionist’s opinion was scientifically reliable within the meaning of Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579, 595 (1993). Thus, the military judge very well may have excluded the reconstructionist’s testimony on this basis.

But even if he had not, it would make no difference. While the reconstructionist might have been able to “support” the defense expert, it would not change the fact that the defense’s own expert admitted that there was “no question” that Appellant’s vehicle crossed into the other lane to some degree. In light of the above, it was reasonable for the military judge—who considered all the same evidence—to conclude that there was no *reasonable* probability of a different outcome. Behenna, 71 M.J. at 238.

**B. The judge reasonably concluded that the civil litigation evidence was not favorable.**

In disagreeing with the military judge’s determination that the evidence was not favorable, Appellant once again cites the possibility that she could have impeached EE. (App. Br. at 25.) According to Appellant, EE is the “only witness who could testify that [she] was even the cause of the collision”—thus, “the existence of *any* evidence contradicting his assertion [would be] incredibly valuable.” (Id.) Besides being flawed for its total ignorance of the existence of other eyewitnesses, Appellant’s argument fails because impeachment evidence is

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<sup>10</sup> “The expert’s opinion was not based on electronic data recorder information of inspection on site.” (App. Ex. LI.)

only “favorable” if its disclosure and effective use “may make the difference between conviction and acquittal.” United States v. Bagley, 473 U.S. 667, 676 (1985); *but see* Kyles v. Whitley, 514 U.S. 419, 434 (1995) (“A ‘reasonable probability’ of a different result is accordingly shown when the government's evidentiary suppression ‘undermines confidence in the outcome of the trial.’). Here, as discussed above, any “impeachment” of EE would be offset by the prosecution’s wealth of other evidence. And any impeachment evidence would have been of limited probative value, given its biased source. As the judge noted in his findings of fact, the reconstructionist was hired by an attorney representing Appellant’s insurance company in a suit for monetary claims. (App. Ex. LI.) That attorney, the judge noted, was “not a neutral party.” (Id.) By extension, then, neither was the reconstructionist. Thus, the reconstructionist’s conclusion that EE was at fault—which was *not* based on an inspection of all the available data or evidence—is unsurprising given that he was retained by a non-neutral party, and unconvincing as a result. Accordingly, the military judge did not err by concluding that evidence from a civil insurance suit—in which “disagreement over fault is expected”—was neither exculpatory nor favorable within the meaning of Brady.

**C. Even if disclosure was required, there is no prejudice.**

Even if this Court finds that the military judge erred, Appellant is only entitled to relief if she can show prejudice by demonstrating that there is a “reasonable probability” of a different result. United States v. Roberts, 59 M.J. 323, 327 (C.A.A.F. 2004). The harmless beyond a reasonable doubt standard does not apply, given that Appellant concedes that she “did not make a specific request” for the civil litigation information, (App. Br. at 26), and there was no finding of prosecutorial misconduct.<sup>11</sup> (App. Ex. LI); *see* United States v. Roberts, 59 M.J. 323, 327

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<sup>11</sup> Even if this standard applied, for the same reasons discussed in the preceding sections, the failure to disclose would be harmless beyond a reasonable doubt.

(C.A.A.F. 2004). Though Appellant contends that the military judge erred by “summarily stat[ing] that the defense ‘failed to demonstrate prosecutorial misconduct,’” this assertion warrants minimal discussion given trial defense counsel’s own representations and the military judge’s findings of fact. (App. Br. at 26.) In arguing the motion to dismiss, trial defense counsel stated: “I don’t necessarily allege that this was purposeful misconduct.” (R. at 1121.) Based on counsels’ representations and the evidence presented, the military judge found as fact that (1) the defense “did not allege prosecutorial misconduct” in its written filing, though they argued it during the motions hearing; and (2) “no evidence was presented that trial counsel intentionally withheld evidence favorable to the defense, remained willfully ignorant of potentially favorable evidence to the defense, or engaged in gamesmanship.” (App. Ex. LI.) Later on, the military judge concluded that “the government was not required to dig further into the particularities of the civil litigation” because R.C.M. 701(a)(6) does not require the prosecution to search for evidence “held by people or entities not under the control of the government.” (Id.) Considering the above, it was reasonable for the military judge to find that the defense—as the moving party—had failed to establish prosecutorial misconduct. (Id.) The military judge’s ruling on the discovery issue fell within “the range of choices reasonably arising from the applicable facts and the law,” Stellato, 74 M.J. at 480, and he did not abuse his discretion. There was no reasonable probability of a different result, and Appellant is unentitled to relief.

V.

**THE MILITARY JUDGE DID NOT ABUSE HIS DISCRETION BY ALLOWING THE GOVERNMENT TO PRESENT EVIDENCE OF APPELLANT'S DRIVING RECORD TO PROVE STATE OF MIND.**

*Additional Facts*

Prior to trial, the prosecution notified the defense of its intent to introduce, *inter alia*, Appellant's driving record—which included six citations for speeding and one for running a red light—pursuant to Mil. R. Evid. 404(b) to prove state of mind and lack of accident or mistake. (App. Ex. at VIII, IX. ) The prosecution averred that the evidence “[made] it more likely that [Appellant] did not exceed the posted speed limit by accident or mistake, but rather due to a state of mind showing a culpable disregard for her own safety as well as the safety of others despite the foreseeable consequences of driving at excessive speeds.” (App Ex. XIX.) The defense unsuccessfully moved to exclude the evidence. (App. Ex. VIII.)

In denying the defense motion, the military judge cited United States v. Leonard, 439 F.3d 648, 651 (10th Cir. 2006)—in which the Tenth Circuit found that evidence of a defendant's history of traffic citations was properly admitted to establish “malice aforethought,” the mens rea at issue in that case—as persuasive authority for the proposition that a driving record could be admissible to show Appellant's “lack of care [while driving] and disregard for safety.” (App. Ex. XXXIII.) The military judge opined that Appellant's driving record “indicate[d] that despite being on notice of the dangers of speeding and unsafe movement, she continued drive in a manner that put herself and others at risk,” which “show[ed] she was aware of the dangers yet continued to drive irresponsibly.” (Id.) This, in turn, “[made] a fact of consequence more or less likely: that the Accused drove her car in a reckless manner on 21 May 2023,” which the judge noted was “an element the government must prove.” (Id.) In concluding that the evidence's

“high” probative value was “not substantially outweighed by the danger of unfair prejudice,” the military judge noted that the driving record was unlikely to “provoke an emotional response.” (App. Ex. XXXIII.)

After findings, the military judge instructed the members that they could only consider evidence of Appellant’s driving record “for the limited purpose of its tendency, if any, to prove the accused’s knowledge of the repercussions of unsafe driving.” (R. at 941.) The judge then warned them against impermissible uses: “You may not consider this evidence for any other purpose, and you may *not* conclude from this evidence that the accused is a bad person or has general criminal tendencies, and that the accused therefore committed the offenses charged.” (Id.) (emphasis added).

### ***Standard of Review***

A military judge’s decision to admit evidence under Mil. R. Evid. 404(b) will not be disturbed except for a clear abuse of discretion. United States v. Wilson, 84 M.J. 383, 390 (C.A.A.F. 2024). Reversal for an abuse of discretion requires “far more than a difference in . . . opinion.” United States v. Johnson, 49 M.J. 467, 473 (C.A.A.F. 1998) (internal quotation marks omitted) (citations omitted). To be invalidated on appeal, “[t]he challenged action must . . . be found to be “arbitrary, fanciful, clearly unreasonable,” or “clearly erroneous.” Id. “A military judge abuses his discretion when his findings of fact are clearly erroneous, the court's decision is influenced by an erroneous view of the law, or the military judge's decision on the issue at hand is outside the range of choices reasonably arising from the applicable facts and the law.” United States v. Miller, 66 M.J. 306, 307 (C.A.A.F. 2008).

### *Law & Analysis*

Mil. R. Evid. 404(b) is a “rule of inclusion,” United States v. Young, 55 M.J. 193, 196 (C.A.A.F. 2001), that permits the admission of evidence of other crimes, wrongs, or acts as long as: (1) the evidence “reasonably support[s] a finding by the court members that the appellant committed the prior crimes, wrongs, or acts”; (2) any “fact of consequence”—other than the accused’s propensity for wrongdoing—is made more or less probable by the existence of the evidence; and (3) the probative value is not substantially outweighed by the danger of unfair prejudice. United States v. Reynolds, 29 M.J. 105, 109 (C.M.A. 1989). The list of potential purposes in Mil. R. Evid. 404(b)(2) “is illustrative, not exhaustive.” United States v. Ferguson, 28 M.J. 104, 108 (C.M.A. 1989); *see also* United States v. Castillo, 29 M.J. 145, 150 (C.M.A. 1989) (“It is unnecessary...that relevant evidence fit snugly into a pigeon hole provided by [the rule].”). One permissible use of other acts evidence is as proof of “intent or mens rea,” United States v. Franklin, 35 M.J. 311, 316 (C.A.A.F. 1992); *see also* United States v. Wilson, 84 M.J. 383, 393 (C.A.A.F. 2024) (“[I]ntent is always at issue in a criminal case.”).

Here, in claiming error, Appellant takes issue with the military judge’s application of the second and third prongs of the Reynolds test. (App. Br. at 30-33.) For the reasons set forth below, Appellant’s claims are unavailing, and she is unentitled to relief.

#### **A. The driving record was admissible as evidence of Appellant’s knowledge regarding the repercussions of unsafe driving, which is relevant to proving recklessness.**

In attacking the military judge’s analysis under the second Reynolds prong, Appellant asserts that the judge “interpreted the theory of admissibility as ‘malice aforethought,’” and “conflate[d] the mens rea of reckless driving with a specific intent mens rea.” (App. Br. at 30-31.) According to Appellant, “[r]eckless driving is a strict liability offense” that “can be committed without a culpable mental state.” (App. Br. at 31.) Thus, Appellant implies, evidence

related to her state of mind was irrelevant and should have been inadmissible. (App. Br. at 30-31.) This claim fails because it mischaracterizes the judge’s ruling and misunderstands the law.

First, although the military judge referred to “malice aforethought” in his ruling, it was only in connection with his discussion of Leonard—a case in which malice aforethought was the applicable mens rea. (App. Ex. XXXIII.) In a subsequent paragraph, the military judge described the actual basis under which he was admitting the evidence: as proof that Appellant “on notice of the dangers of speeding and unsafe movement, [but] continued drive in a manner that put herself and others at risk,” which made a fact of consequence—the element of recklessness—more or less likely. (App. Ex. XXXIII.) This theory of admissibility was reflected in the judge’s instructions to the panel, which permitted them to use the driving record “for the limited purpose of its tendency, if any, to prove the accused’s knowledge of the repercussions of unsafe driving”—a fact that would be relevant to determining whether she operated her vehicle in a manner “which made it actually or imminently dangerous” to herself or others. (R. at 941.)

Second, notwithstanding Appellant’s suggestion to the contrary, reckless operation of a vehicle *does* require proof of a “culpable mental state.” (App. Br. at 31.) “The state of mind of an accused at the time he or she commits the act charged becomes an issue at trial when it is a contested element of an offense,” United States v. Franklin, 35 M.J. 311, 317 (C.M.A. 1992), and here, the prosecution had to prove beyond a reasonable doubt that Appellant’s conduct was reckless, i.e., “exhibit[ed] a *culpable* disregard of foreseeable consequences to others from the act or omission involved.” MCM, part IV, ¶ 51.c(7) (emphasis added). Since traffic citations “convey to the malefactor society’s considered view that the cited conduct is dangerous,” and “persistent violations” indicate “a conscious disregard for these considerations,” Leonard, F.3d at

651, evidence that Appellant had multiple violations was highly probative of her culpable mental state. That most of the violations related to speeding does not “diminish[] the value of this evidence.” (App. Br. at 32.) As discussed in Issue III, determining recklessness requires an evaluation of “whether, under all the circumstances, the accused’s manner of operation or physical control of the vehicle...was of that heedless nature which made it actually or imminently dangerous to the occupants, or to the rights or safety of others.” MCM, part IV, ¶ 51.c(7). Speed is one of those circumstances. Id. A factfinder could infer from Appellant’s history of speeding tickets that she “[knew] better than most” that her conduct was illegal and unsafe, continued to engage in it “in defiance of that risk,” and harbored this same disregard the night she sped into a corner, crossed into the opposite lane, and crashed into another car. Id.

Considering the above, the military judge’s decision to admit Appellant’s driving record as evidence of her knowledge of—and disregard for—the repercussions of unsafe driving was well “within the range of choices reasonably arising from the applicable facts and the law.” Miller, 66 M.J. at 307.

**B. The military judge reasonably concluded that the probative value was not outweighed by the danger of unfair prejudice.**

In challenging the military judge’s application of the third Reynolds prong, Appellant largely repeats the same arguments discussed above—thus, her claim fails for largely the same reasons. Other than a bald assertion that the admission of her driving record was “inherently prejudicial,” Appellant does not explain how she thinks the judge erred in his application of the balancing test required by the third Reynolds prong, or how she was prejudiced by the admission of this evidence. (See App. Br. at 32-33.) This Court should take Appellee’s silence for what it is—a tacit concession that the probative value was *not* outweighed by substantial risk of unfair prejudice.

As discussed above, the military judge fairly concluded that the evidence’s probative value was “high.” Evidence that Appellant repeated exceeded the speed limit and violated traffic regulations and continued to do so (despite being ticketed for it) made a fact of consequence—whether she acted with a “culpable disregard for the foreseeable consequences to others”—more likely than it would be without the evidence. In other words, this evidence was probative of Appellant’s mens rea at the time of the charged offense, and relevant to disprove any suggestion that her speed that night was an accident or an anomaly. And since Appellant’s mens rea was one of the only facts truly in question, evidence tending to prove that fact had significant probative value.

By comparison, the danger of unfair prejudice was minimal. The other acts (speeding tickets) were far less egregious than the charged conduct (a collision that caused life-threatening injuries to other people). *Cf. Munoz*, 32 M.J. at 364 (a strong possibility of prejudice existed based solely on the fact that the uncharged acts of sodomy were “clearly more egregious” than charged act of fondling). Thus, as the military judge noted, the evidence was unlikely to “provoke an emotional reaction” that might “lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged.” *United States v. Collier*, 67 M.J. 347, 354 (C.A.A.F. 2009). Considering the above, the military judge did not abuse his discretion in concluding that the probative value was not substantially outweighed by the danger of unfair prejudice.

**C. Even if the evidence was admitted in error, it did not materially prejudice Appellant.**

Assuming *arguendo* that this Court disagrees with the Government and reaches the issue of prejudice, Appellant’s claim still fails. “For nonconstitutional evidentiary errors, the test for prejudice ‘is whether the error had a substantial influence on the findings.’” *United States v. Kohlbeck*, 78 M.J. 326, 334 (C.A.A.F. 2019) (quoting *United States v. Fetrow*, 76 M.J. 181, 187

(C.A.A.F. 2017)). This Court evaluates prejudice from an erroneous evidentiary ruling by weighing (1) the strength of the Government's case, (2) the strength of the defense case, (3) the materiality of the evidence in question, and (4) the quality of the evidence in question. United States v. Kerr, 51 M.J. 401, 405 (C.A.A.F. 1999). Here, application of these factors shows that the challenged evidence did not have a substantial influence on the findings.

First, the prosecution case against Appellant was “strong and conclusive,” and therefore weighs against a finding of prejudice. United States v. Weeks, 20 M.J. 22, 25 (C.M.A. 1985). Uncontradicted eyewitness testimony from the occupants of the other car established that Appellant’s car was in their lane—an assertion that was further reinforced by the scientific testimony of the experts, who both agreed that the data indicated Appellant had crossed into the opposite lane. Data from Appellant’s vehicle established that she was driving 30km/h faster than the posted speed limit; sped up as she approached the curve instead of slowing down; and steered in the opposite direction of the curve she should have been following—strong evidence that she was operating her vehicle in a manner “which made it actually or imminently dangerous to the occupants, or to the rights or safety of others.” MCM, part IV, ¶ 51.c(7).

By contrast, the defense case was “feeble [and] implausible.” Id. The defense presented no evidence that decisively contradicted any of the prosecution’s evidence. Instead, the defense mounted a disjointed attack that relied on “suggestion and insinuation.” Kerr, 51 M.J. at 405. First, the defense suggested that it might have actually been EE who was at fault. (R. at 961-63.) Then the defense suggested that “[i]t’s also possible, members, that neither party did anything wrong.” (R. at 963.) The defense then pivoted again and insinuated that the eyewitnesses’ testimony was unreliable because they were victims: “[W]e can’t just rely on the testimony of trauma victims.” (R. at 963.) Then the defense switched course again and argued that

Appellant’s crossing into the other lane was “an accident..” (R. at 965.) This was not a strong defense case—it was grasping at straws. Accordingly, this factor weighs in favor of the Government.

The materiality and quality of the challenged evidence also weigh against a finding of prejudice. In examining materiality and quality of erroneously admitted evidence, this Court assesses “how much the erroneously admitted evidence may have affected the court-martial.” United States v. Washington, 80 M.J. 106, 111 (C.A.A.F. 2020). This assessment considers the “particular factual circumstances of each case”:

For example, we have previously considered such things as the extent to which the evidence contributed to the government’s case; the extent to which instructions to the panel may have mitigated the error; the extent to which the government referred to the evidence in argument; and the extent to which the members could weigh the evidence using their own layperson knowledge.

Id.

Here, the factual circumstances demonstrate that the challenged evidence, while probative, would not have decisively “affected the court-martial.” Id. To start, the extent to which the evidence contributed to the prosecution’s case was minimal. While evidence of Appellant’s driving record went towards proving recklessness, it did not serve as the sole evidence of that fact.

After the evidence’s admission, the military judge limited its material effect through his instructions, in which he discussed the limited permissible uses of the evidence and reminded the members that they could not “conclude from this evidence that the accused is a bad person or has general criminal tendencies, and that the accused therefore committed the offenses charged.” (R. at 941.)

Further offsetting the materiality of the challenged evidence is the prosecution's minimal use of it in closing argument. In an argument spanning 11 pages consisting of approximately 235 lines of the record, trial counsel's comments about Appellant's driving record comprised only 10 lines—a negligible 4% of the argument. (R. at 946-957.)

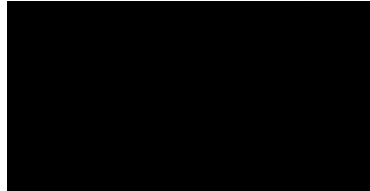
Finally, the driving record evidence was not complex. The members would have been fully capable of weighing the evidence using their layperson knowledge. And members using their common sense and knowledge of the ways of the world would not have convicted Appellant of reckless driving resulting in injury to others based on prior speeding tickets. *See* D.A. Pam. 27-1, para. 8-3-12

Taken altogether, these circumstances support a conclusion that the alleged error did not “substantially influence the findings.” Kohlbeck, 78 M.J. at 334. Accordingly, even if this Court finds that the military judge erred, Appellant is not entitled to relief.

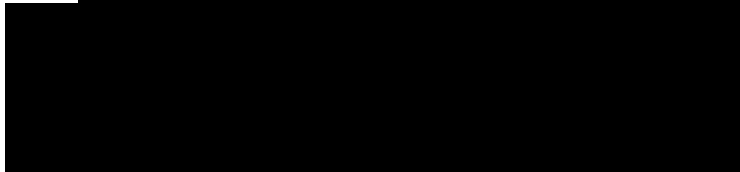
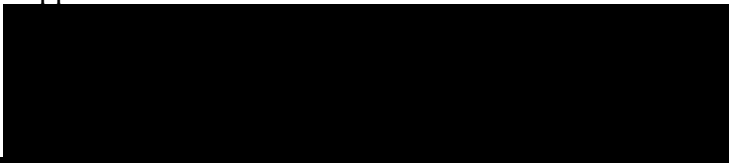
**WHEREFORE**, the United States respectfully requests that this Honorable Court affirm Appellant's conviction and sentence.

**CONCLUSION**

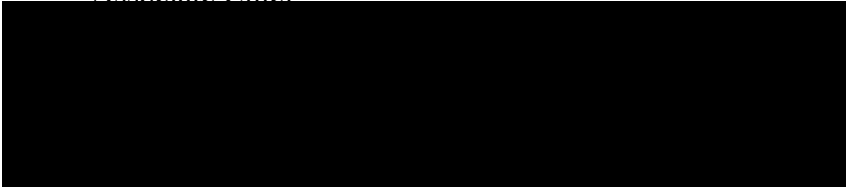
For these reasons, the United States respectfully requests that this Honorable Court deny Appellant's claims and affirm the findings and sentence in this case.



KATE E. LEE, Capt, USAF  
Appellate Government Counsel



MARY ELLEN PAYNE  
Associate Chief

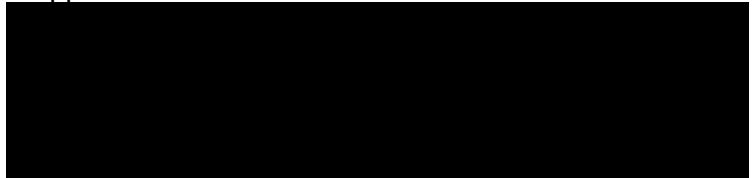


**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and the Air Force  
Appellate Defense Division on 29 October 2025.



KATE E. LEE, Capt, USAF  
Appellate Government Counsel



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

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**UNITED STATES,**  
*Appellee,*

v.

Staff Sergeant (E-5)  
**SASCHA D. REESE,**  
United States Air Force,  
*Appellant.*

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Before Panel No. 1

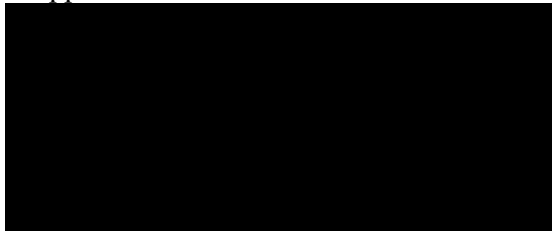
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**BRIEF ON BEHALF OF APPELLANT**

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JORDAN L. GRANDE  
Appellate Defense Counsel



*Counsel for Appellant*

## Assignments of Error

### I.

**Whether the finding of guilty for reckless driving was legally and factually sufficient where the Government conflated separate theories of liability.**

### II.

**Whether the finding of guilty for reckless driving was factually sufficient where the Government did not prove beyond a reasonable doubt that SSgt Reese crossed into the opposing lane of traffic.**

### III.

**Whether the finding of guilty for reckless driving was legally and factually sufficient where the Government failed to prove culpable negligence.**

### IV.

**Whether the military judge erred in ruling that the withheld evidence about E.E.'s ongoing civil litigation was not material nor favorable.**

### V.

**Whether the military judge abused his discretion by allowing the Government to present evidence of Staff Sergeant Reese's driving record to prove "malice aforethought" when reckless driving requires no specific intent.**

### **Statement of the Case**

Appellant, Staff Sergeant (SSgt) Sascha D. Reese, United States Air Force, was tried by a special court-martial of officer and enlisted members at Spangdahlem Air Base, Germany, from 11 through 12 March 2024, from 18 through 23 March 2024, and from 17 through 18 April 2024. R. at 1, 190-91, 201, 1066-67, 1310; Entry of Judgment (EOJ). Contrary to SSgt Reese's pleas, the panel found her guilty of one specification of reckless driving, in violation of Article 113 of the Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 913. R. at 191, 1006; EOJ. The members sentenced SSgt Reese to a reduction to the grade of E-3 and hard labor without confinement for ninety days. R. at 1309.

### **Statement of Facts**

In the early morning hours of 21 May 2023, SSgt Reese was traveling to her friend's house when she was involved in a two-vehicle accident on a dark road near Lohnweiler, Germany. R. at 417-18. SSgt Reese was driving her sport utility vehicle (SUV), when she approached a slight curve in the road. R. at 498, 742. The SUV collided head-on with a car coming from the opposite direction—a Toyota Corolla driven by E.E., with three passengers: A.E., L.J., and J.S.<sup>1</sup> R. at 526, 530-31, 732. The group in E.E.'s Corolla was returning home from a night at the club, and E.E. was the designated driver.<sup>2</sup> R. at 590.

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<sup>1</sup> All the occupants of the Corolla were German nationals. R. at 523-24, 588.

<sup>2</sup> E.E. was married to A.E. A.E. and L.J. were cousins. J.S. was L.J.'s boyfriend. R. at 524-26.

Just before the collision, both vehicles were approaching the curve (shown below in Pros. Ex. 7). The area of the accident had signs indicating a change of speed limit in both directions. R. at 755-56; Pros. Ex. 7.



In the direction that E.E. was traveling, the speed limit decreased, from sixty-two miles per hour (mph) to forty-three mph.<sup>3</sup> *Id.* In the direction that SSgt Reese was traveling, the speed limit increased, from forty-three mph to sixty-two mph.<sup>4</sup> R. at 756, 854-56. Five seconds prior to impact, E.E.'s vehicle was traveling between approximately fifty to fifty-two mph, R. at 755, and SSgt Reese's

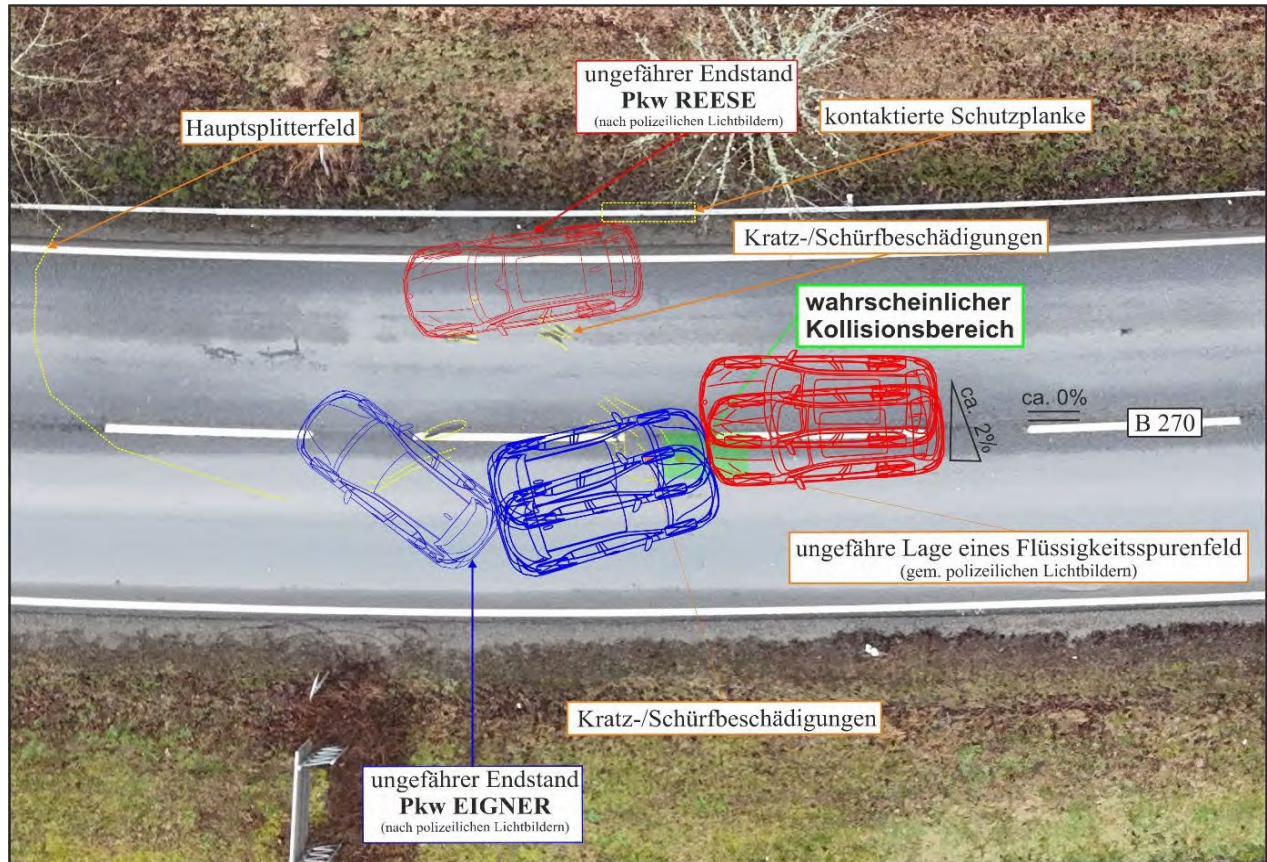
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<sup>3</sup> From hundred kilometers per hour (km/h) to seventy km/h. Discussions in the record regarding speed are expressed as km/h rather than mph. For the reader's benefit, this brief expresses speeds in mph with footnotes providing the conversion into km/h.

<sup>4</sup> From seventy km/h to one hundred km/h.

vehicle was traveling between approximately fifty-six to sixty-two mph.<sup>56</sup> Speed was not a factor in the accident, though it may have contributed to the significance of the injuries. R. at 766-67.

The two vehicles collided somewhere in the middle of the road,<sup>7</sup> and SSgt Reese’s vehicle ultimately hit the guardrail in her lane, while E.E.’s vehicle turned around 180 degrees. R. at 761-62; Pros. Ex. 7 at 36 (first image below); Def. Ex. D (second image below).

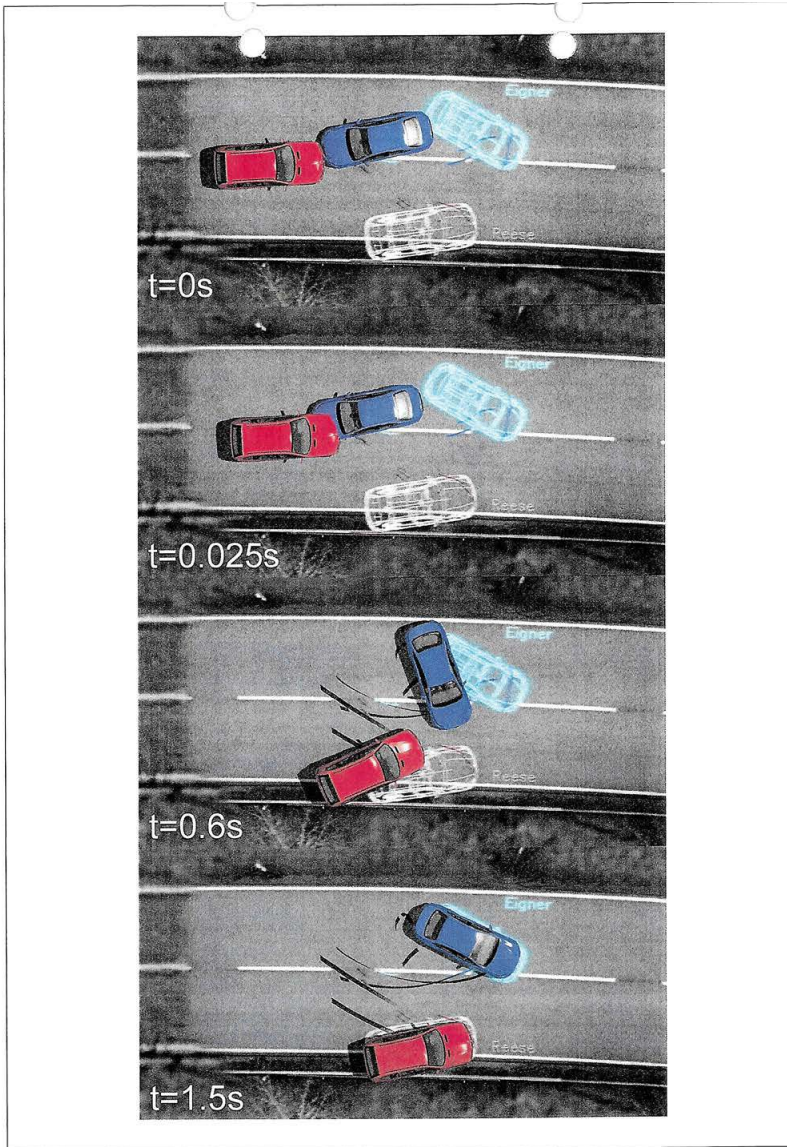


Pros. Ex. 7 at 36 (EE’s car in blue and SSgt Reese’s car in red).

<sup>5</sup> From ninety to one hundred km/h.

<sup>6</sup> The two accident reconstruction experts disputed the timing of these speed recordings. R. at 830-34.

<sup>7</sup> The area of impact was disputed at trial and could not be precisely determined by either expert because the accident was not originally treated as a crime scene and German police did not preserve it. R. at 765-66; 771-73; R. at 795-801. It is possible that SSgt Reese entered E.E.’s lane, but it is also possible that both entered each other’s lane. R. at 819-20, 823. The two accident reconstructionist experts disagreed about the angle of the collision, which slightly altered their respective conclusions about the area of collision. R. at 820-22. They also disagreed as to the timing of the collision as it related to the recording of the collision on the vehicles’ respective EDRs. R. at 830-34.



Page 1 of 1

Defense Exhibit D for ID  
 Page Offered 910  
 Page Admitted/Rejected 917

Def. Ex. D (EE’s car in blue and SSgt Reese’s car in red).

Data collected from the vehicles’ Event Data Recorder (EDR), commonly known as the “black box,” showed that E.E. turned suddenly to the left towards SSgt Reese’s lane just prior to the collision. R. at 739-40, 762-63, 972. Despite this finding, the data collected from the EDRs could not conclusively establish the cause of the crash. *Id.* But, E.E. told the officers responding to the scene that SSgt Reese had “mov[ed] on his [sic] lane” causing the accident. R. at 424. Both vehicles sustained

heavy damage, R. at 419; Pros. Ex. 1, and everyone sustained injuries. SSgt Reese was treated for pain in the hips and upper body at a German hospital and E.E. had bruising to the skull, pelvis, and spine.

When German police arrived on the scene of the accident, SSgt Reese was outside of her car and “visibly under shock and perplexed.” R. at 399-400. Because of “the severity of the accident” German police conducted a voluntary breathalyzer test on SSgt Reese and E.E. R. at 400-01. E.E.’s breathalyzer test indicated no presence of alcohol. R. at 429-30. German police did not suspect that SSgt Reese was intoxicated, but later “perceived” a “sweet smell” and noticed that SSgt Reese was “rinsing her mouth with water.”<sup>8</sup> R. at 401. It took several attempts for SSgt Reese to properly register a test on the breathalyzer, and she complained about not feeling well and appeared to be in shock during the initial attempts at the breathalyzer. R. at 401-403. Apparently, this was due to her hyperventilating and having “a panic attack.” R. at 406, 431, 452. SSgt Reese did not appear to be stumbling when walking nor was she slurring words. R. at 407. The officers did not conduct any field sobriety tests. *Id.* SSgt Reese also voluntarily submitted to a blood draw. R. at 459-60. Ultimately, SSgt Reese’s blood alcohol content (BAC) from the breathalyzer test was measured at between 0.032 and .04 grams per 100 milliliters of blood (g/mL) but could have been as low as .01 g/mL. R. at 668-71. SSgt Reese was charged with reckless driving by “crossing into the opposing lane of traffic while going around a curve on a two-lane road.” Charge Sheet.

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<sup>8</sup> One of the responding German police officers testified that the “extremely sweet smell” was “in combination with a slight alcoholic . . . food or beverage.” R. at 454-55. The smell was either “American sweets or alcohol beverage, or maybe a combination of that.” *Id.*

## Argument

### I.

**The finding of guilty for reckless driving was legally and factually insufficient where the Government conflated separate theories of liability.**

#### **Standard of Review**

This Court reviews issues of legal sufficiency de novo. *United States v. Harrington*, 83 M.J. 408, 414 (C.A.A.F. 2023) (citing *United States v. King*, 78 M.J. 218, 221 (C.A.A.F. 2019)). Article 66, UCMJ, allows this Court to review a conviction for factual sufficiency when an appellant 1) asserts an assignment of error 2) showing a specific deficiency in proof. *United States v. Harvey*, 85 M.J. 127, 130 (C.A.A.F. 2024).

#### **Law and Analysis**

##### **1. The Government was required to prove the actus reus it charged.**

“The test for legal sufficiency is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *United States v. Robinson*, 77 M.J. 294, 297-98 (C.A.A.F. 2018). “To prepare a defense, the accused must have notice of what the government is required to prove for a finding of guilty. The charge sheet provides the accused” such notice. *United States v. Armstrong*, 77 M.J. 465, 469 (C.A.A.F. 2018) (citation omitted). Here, the Government charged SSgt Reese with reckless driving by a specific actus reus: “crossing into the opposing lane of traffic while going around a curve on a two-lane road.” Charge Sheet. It did not charge her with reckless driving by speeding or being impaired by alcohol. *Id.* However, its entire case was focused on proving SSgt Reese drove recklessly because she was speeding and had alcohol in her system.

Since “[t]here is no dispute that the government controls the charge sheet,” SSgt Reese is entitled to rely on the specific actus reus that the Government alleged within the specification: “crossing into the opposing lane of traffic.” *United States v. Reese*, 76 M.J. 297, 301 (C.A.A.F. 2017).

As the Court of Appeals for the Armed Forces (CAAF) observed, the Government has “complete discretion” over how to charge an accused and the Government “accept[s] the risk” that an appellant may not be criminally liable based on how the charging scheme connects with the evidence. *United States v. Mader*, 81 M.J. 105, 109 (C.A.A.F. 2021). What is more, the Government cannot “charge one offense under one factual theory and then argue a different offense and a different factual theory at trial,” *United States v. Mendoza*, 85 M.J. 213, (C.A.A.F. 2024), but that is exactly what the Government did in this case. *See also United States v. Casillas*, \_\_\_ M.J. \_\_\_, No. 24-0089, 2025 CAAF LEXIS 692, at \*8 (C.A.A.F. Aug. 20, 2025). (“[T]he government must choose which Article 120 offense it intends to charge, give the accused notice of that choice in the charge sheet, and pursue that same offense at trial.”). In so doing, the Government “rob[bed] [SSgt Reese] of [her] constitutional ‘right to know what offense and under what legal theory she [would] be tried and convicted.’” *Id.* (quoting *United States v. Riggins*, 75 M.J. 78, 83 (C.A.A.F. 2016)).

## **2. The Government conflated separate theories of liability.**

The Government argued that SSgt Reese’s speed and the presence of alcohol in her system proved she drove recklessly, but it did not include speed or alcohol in the charged actus reus. Article 113, UCMJ articulates three separate theories of liability. The elements of reckless operation of a vehicle, Article 113, UCMJ, are:

- (1) That the accused was operating or in physical control of a vehicle, aircraft, or vessel; and
- (2) That while operating or in physical control of a vehicle, aircraft, or vessel, the accused—
  - (a) did so in a wanton<sup>9</sup> or reckless manner; or
  - (b) was drunk or impaired; or

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<sup>9</sup> Wanton “includes ‘reckless,’ but . . . may connote willfulness, or a disregard of probable consequences.” *MCM*, Part. IV, para. 51.c(8).

(c) the alcohol concentration in the accused's blood or breath equaled or exceeded the applicable limit . . . .

. . .

(3) That the accused thereby caused the vehicle, aircraft, or vessel to injure a person.

*Manual for Courts-Martial (MCM)*, Part. IV, para. 51.b.

The three theories of liability are separated by the disjunctive “or.” “In ordinary use the word ‘or’ . . . marks an alternative which generally corresponds to the word ‘either.’” *United States v. Sager*, 76 M.J. 158, 161 (C.A.A.F. 2017) (quoting Earl. T. Crawford, *The Construction of Statutes* § 188 (1940)). Just as the CAAF determined in *Sager* when interpreting Article 120, UCMJ, Article 113, UCMJ establishes separate theories of liability. Drunk or impaired driving is a separate theory of liability from reckless driving. *See Mendoza*, 85 M.J. at 219-221 (holding that the subsections of Article 120, UCMJ, separated by the disjunctive “or” establish separate theories of liability and, when conflated at trial, the Government violated appellant’s due process rights).

### **3. The Government’s case was centered around alcohol and speeding.**

The Government failed to prove the charged theory of liability for this offense. It charged a specific act it alleged was reckless: crossing into the oncoming lane of traffic. Charge Sheet. It did not allege that SSgt Reese drove recklessly by operating her vehicle at a certain speed, nor did it allege that she drove recklessly by having some amount of alcohol in her system. *Id.* But the Government spent most of its case arguing that SSgt Reese drove recklessly by speeding and because she had some amount of alcohol in her system. In opening, trial counsel stated, “This case is about four victims and how the accused . . . drove recklessly *by speeding with enough alcohol in her system to impair her judgment.*” R. at 381 (emphasis added). In closing argument, trial counsel argued similarly:

What does reckless mean? It doesn’t mean that the accused intended to harm the victims. It’s that *her actions, drinking before driving and speeding*, those were not accidental, and those were done when the accused knew full well that her actions could cause harm to herself and to others. And here they did. Her actions caused her to crash into the victim’s car.

R. at 947-48 (emphasis added).

During argument, the trial counsel answered his own question, “[W]hat evidence do we have of [SSgt Reese’s] reckless behavior?” with, “Because her blood alcohol content was .04.” R. at 948. The Government also focused a portion of its closing argument on the fact that SSgt Reese allegedly had several prior tickets for speeding and traffic violations in Germany.<sup>10</sup> R. at 949-50. Trial counsel discussed the timeline of SSgt Reese’s movements that night and stated that SSgt Reese, “must have been speeding the entire way.” R. at 950.

The Government called several witnesses to testify about alcohol found in SSgt Reese’s system on the night of the accident. It called two German police officers who responded to the scene and testified about how they administered a breathalyzer to SSgt Reese. R. at 396-499. It called Technical Sergeant (TSgt) K.W., a friend of SSgt Reese’s, to testify that SSgt Reese told TSgt K.W. that when the accident occurred, “There was alcohol in her system.” R. at 608. It called TSgt N.D. to testify similarly to TSgt K.W. It called a forensic toxicologist to talk about the effects of alcohol on “motor skills.” R. at 657-68.

The Government’s forensic toxicologist, Dr. J.W., also testified about “alcohol generally,” the effects of alcohol on motor skills, the effects of alcohol on psychological functions, how to interpret BAC, the Mellanby affect, his inspection of the lab that performed the blood alcohol analysis in SSgt Reese’s case, and other aspects of SSgt Reese’s case related to the BAC test. R. at 656-68. Specifically, Dr. J.W. testified that at a BAC of .04 g/mL (the BAC that Dr. J.W. alleged was reflected in SSgt Reese’s blood results from the night of the accident) there could be “impairment of one’s reaction time,” impairment of one’s “perception of speed,” and tiredness. R. at 666-67. Trial counsel then argued that Dr. J.W.’s testimony proved SSgt Reese was reckless. R. at 948. But contrary to the Government’s claim, recklessness could not be proved in this case by showing drunken operation of a vehicle or by speeding. The Government controls the charge sheet. The Government chose how

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<sup>10</sup> This issue is the subject of Issue V.

recklessness would be charged. And consequently, the Government chose how recklessness had to be proven. Here, to prove recklessness, the Government had to show that SSgt Reese acted with “culpable disregard of foreseeable consequences to others” by *crossing into the oncoming lane of traffic*. 10 U.S.C. § 933b(7), Charge Sheet. Ultimately, the Government’s case against SSgt Reese sounds like a case alleging drunken operation of a vehicle; but that is not the theory of liability it charged.

The Government was free to charge SSgt Reese with both reckless operation of a vehicle *and* drunken operation of a vehicle. It could have also simply drafted the language in the reckless driving charge to include that SSgt Reese drove recklessly by crossing into the oncoming lane of traffic, exceeding the posted speed limit, and/or driving with alcohol in her system. *See Mendoza*, 85 M.J. at 220 (“[N]othing prevents the Government from charging a defendant with offenses under inconsistent factual theories and allowing the trier of fact to determine [which theory of liability applies]”); *see also United States v. Morton*, 69 M.J. 12, 16 (C.A.A.F. 2010) (“[T]he Government is presumably cognizant of which offenses are supported by the evidence and which are not. In some instances there may be a genuine question as to whether one offense as opposed to another is sustainable. In such a case, the prosecution may properly charge both offenses . . .”).

But to do as the Government did here—charging one offense under a specific factual theory and then arguing a different offense and different factual theory at trial—robs SSgt Reese of her constitutional “right to know what offense and under what legal theory [she] will be tried and convicted.” *Riggins*, 75 M.J. at 83 (cleaned up). SSgt Reese, and this Court, are left guessing whether she was convicted of reckless driving because the panel believed she crossed into the oncoming lane of traffic or because they believed she was speeding or impaired. *See United States v. Crafter*, 64 M.J. 209, 211 (C.A.A.F. 2006) (The true test of the sufficiency of a specification is . . . whether it contains the elements of the offense intended to be charged, and sufficiently apprises the defendant of what he must be prepared to meet; and, in case any other proceedings are taken against him for a similar offense, whether the record shows with accuracy to what extent he may plead a former acquittal or conviction.”)

(cleaned up)).

Even if SSgt Reese’s conviction is legally sufficient, this Court should not be convinced that it is factually sufficient. For factual sufficiency, Article 66(d)(1)(B)(ii), UCMJ, directs this Court to “weigh the evidence and determine controverted questions of fact,” giving “appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence.” *Harvey*, 85 M.J. at 130. This Court does not have to give complete deference to the court-martial, and depending on the evidence, no deference may be appropriate. *See id* at 131. (“The statute affords the [court of criminal appeals (CCA)] discretion to determine what level of deference is appropriate.”). This Court can “weigh the evidence differently from how the court-martial weighed the evidence.” *Id.* at 131-32. This Court can be clearly convinced that that the finding of guilt in SSgt Reese’s case was against the weight of the evidence because the Government failed to prove the theory of liability it charged.

SSgt Reese was entitled to rely on the specification on the charge sheet as drafted, and the Government was bound to abide by it. *Reese*, 76 M.J. at 300-01; *United States v. English*, 79 M.J. 116, 120 (C.A.A.F. 2019) (holding that “[i]t is the government’s responsibility, by virtue of its control of the charge sheet, to place the accused on notice of the offense he must defend against”); *see also Morton*, 69 M.J. at 16; *United States v. Medina*, 66 M.J. 21, 26-27 (C.A.A.F. 2008). Because the Government argued a separate theory of liability than it charged, thereby violating SSgt Reese’s due process rights, the conviction is both legally and factually insufficient.

This Court should set aside the conviction, and dismiss the charge and specification with prejudice.

## II.

**The finding of guilty for reckless driving was factually insufficient where the Government did not prove beyond a reasonable doubt that SSgt Reese crossed into the opposing lane of traffic.**

### **Additional Facts**

The Government called an accident reconstruction expert, Mr. F.H., who testified to his

“conclusions about the collision angle and also the force and the energy of the impact” during the accident. R. at 734-786. Mr. F.H. examined the EDRs of both vehicles, markings left on the street from the accident, the police report, and the vehicles themselves to make these conclusions. R. at 765. Despite this evidence, Mr. F.H. testified that he could not determine “the exact spot on the road where the collision occurred.” R. at 750. He testified about “possible position[s]” of the vehicles upon impact and a “range” of where the accident may have occurred but could not make clear conclusions. R. at 750-52. Based off the black box from E.E.’s vehicle, he determined that E.E. was using the accelerator pedal 1.6 seconds before the crash, and that he turned sharply to the left (towards SSgt Reese’s lane). R. at 756-57.

Mr. F.H. determined that “the collision must have occurred in the middle of the road, slightly on the left side of [E.E.]’s lane.” R. at 766. But he could not “exclude that at the moment of the collision part of [E.E.]’s vehicle [was] also on [SSgt Reese’s] lane.” R. at 744. He admitted that some of the possible variations where the cars may have collided showed E.E.’s car more in SSgt Reese’s lane, rather than vice versa. *Id.* He also determined that speed was not a factor in the collision. R. at 766-67. He could not determine “which driver reacted first,” only that both of the drivers did react. R. at 769. Speed was insignificant based on the turn. R. at 770. Part of the reason that Mr. F.H. could not draw more conclusive opinions about the accident was because the police failed to provide a “detailed depiction or detailed photos.” R. at 773.

The Defense called its own accident reconstruction expert, Mr. M.S. R. at 791-861. He also testified that if the police investigation had produced more detailed or quality photos, the potential scope of the accident’s location “would be very, very much smaller.” R. at 801. After reviewing the same evidence, Mr. M.S. disagreed with the Government expert’s determination of the collision angle. He determined that the crash could have occurred in the middle of the road or slightly in either lane of traffic. R. at 823. Similar to the Government’s expert, he surmised that the accident was a result of both vehicles reacting to each other, and he could not determine which vehicle reacted first. R. at 823.

Put simply, he stated that “we don’t know what happened here,” and “[i]t’s just two cars heading in the same direction to each other in some kind of reaction.” R. at 824.

Neither expert could definitively conclude that SSgt Reese crossed into the opposing lane of traffic. At best, the Government’s expert determined that it was likely the crash occurred slightly in E.E.’s lane, but he also could not exclude that E.E. crossed into SSgt Reese’s lane. R. at 774. E.E. was the only witness who conclusively stated that SSgt Reese crossed over into his lane. R. at 533. E.E. testified that he “saw headlights” and “realized very fast that [SSgt Reese’s] car was in [his] lane.” R. at 533. E.E. also claimed that he never crossed into SSgt Reese’s Lane, however, this was contradicted by the Government’s own expert. R. at 533, 774. E.E. believed he was knocked out from the impact of the accident. R. at 534. Two of the passengers of E.E.’s vehicle<sup>11</sup> testified only that they saw lights heading toward them. R. at 562, 591. This is consistent with SSgt Reese coming around a slight curve in the dark of the night. J.S. testified that he “recognized headlights in [E.E.’s] lane” but that he “[could not] remember that [E.E.’s vehicle] crossed any lines of the lane.” R. at 562. He recalled that a “bigger portion of the vehicle was in [E.E.’s] lane,” but also stated that after seeing the headlights, the next thing he remembered was being “awake again in the car.” R. at 563. He had no memory of the impact. *Id.* He could not “exclude whether the headlights were also lightening the surrounding area.” R. at 572. J.S. testified only that she remembered the brightness of the headlights, but she only found out they were headlights days later. R. at 591-2. She had no memory of the impact of the accident. *Id.*

### **Standard of Review**

This Court reviews issues of factual sufficiency de novo. *Washington*, 57 M.J. at 399.

### **Law and Analysis**

The factual sufficiency case law cited in Issue I, *supra*, is also applicable for this issue and is

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<sup>11</sup> A.E. had no memory of the entire day of the accident and thus could not testify about the accident itself. R. at 581-82.

incorporated herein. The Government was not required to draft the specification as it did; it chose the theory of liability it to prove how SSgt Reese was reckless. *Cf. United States v. Fosler*, 70 M.J. 225, 229 (C.A.A.F. 2011) (observing that “[t]he military is a notice pleading jurisdiction”). Given its chosen theory of liability, that SSgt Reese drove recklessly by crossing into the oncoming lane of traffic, the Government was required to prove beyond a reasonable doubt that SSgt Reese did, in fact, cross into the oncoming lane of traffic. Its evidence, however, fell far short of proving this. Neither of the experts in the case could conclude that SSgt Reese crossed into the incoming lane of traffic. In fact, both determined that one possible version of events was that E.E. traveled into SSgt Reese’s lane. R. 774, 819-20, 823. Another possibility was that both drivers reacted to the oncoming headlights of the other vehicle, turned left, and traveled slightly into each other’s lane. This evidence is not enough to sustain the rigorous beyond a reasonable doubt standard that the Government was required to prove.

The testimony of the three witnesses in E.E.’s vehicle—each rendered unconscious and unable to recall the moment of impact—cannot overcome the reasonable doubt raised by the objective testimony of both accident reconstruction experts. Even if, drawing every reasonable inference in favor of the Government, it is presumed that SSgt Reese’s headlights were shining into E.E.’s lane, this is consistent with SSgt Reese coming around a dark curve at night while E.E.’s vehicle was traveling the opposite way. There is also no way to rule out the possibility that SSgt Reese could have legally been driving in the far left of her lane, and E.E. could have been legally driving in the far right of his lane. This could have led to a crash slightly on the side of E.E.’s lane. R. at 823-24. The testimony from three traumatized car accident victims about the positioning of SSgt Reese’s headlights simply cannot overcome the scientific testimony provided by both the Government and Defense experts.

E.E. was the only witness who testified with certainty that SSgt Reese traveled into his lane. His testimony, however, is unreliable because of his bias. He was motivated to blame SSgt Reese for the accident because, 1) to accept liability would mean he was responsible for the severe injuries of his family members; and 2) he had a financial motive that the Government failed to disclose to the Defense.

As SSgt Reese notes below in Issue IV, this makes it especially problematic that the Government failed to disclose evidence of the ongoing civil litigation related to this case. E.E. was motivated to testify that SSgt Reese was at fault in this case, despite neither expert testified with certainty about how or where in the road the accident occurred.

Because the evidence does not support the alleged fact that SSgt Reese “cross[ed] into the opposing lane of traffic while going around a curve on a two-lane road,” the conviction is factually insufficient. It was not enough for the Government to prove that SSgt Reese was allegedly speeding, nor that she had some amount of alcohol in her system—it had to prove the act that it charged. This situation is similar to what happened in *English*, 79 M.J. at 119. In *English*, the Government included a specific type of force in the charging language for an Article 120, UCMJ, offense: “grabbing her head with his hands.” 79 M.J. at 120. By “narrow[ing] the scope of the charged offense by alleging the particular type of force, [the Government] was required to prove the facts as alleged.” *Id.* (citing *Reese*, 76 M.J. at 300-01). And, since the Government failed to prove the overt act, the offense was factually insufficient requiring dismissal. *Id.* at 123. Here, the same result must occur because the Government did not prove “crossing into the opposing lane of traffic,” beyond a reasonable doubt. There are “potentially thousands of possibilities” of how the accident could have happened, and the Government did not rule out any of the other reasonable possibilities. R. at 859.

This Court should set aside the conviction, and dismiss the charge and specification with prejudice.

### III.

**The finding of guilty for reckless driving was legally and factually insufficient where the Government failed to prove culpable negligence.**

#### Standard of Review

This Court reviews issues of legal and factual sufficiency de novo. *Washington*, 57 M.J. at 399 (citing *United States v. Cole*, 31 M.J. 270, 272 (C.M.A. 1990)).

## Law and Analysis

The tests for legal and factual sufficiency provided in Issue I, *supra*, are also applicable to this issue. This Court cannot affirm SSgt Reese's finding of guilty because the evidence does not prove she was culpably negligent beyond a reasonable doubt.

### 1. The Government must prove culpable negligence.

The elements of reckless operation of a vehicle are cited in Issue I, *supra*. The physical control of a vehicle is reckless when, "[I]t exhibits a culpable disregard of foreseeable consequences to others from the act or omission involved. . . . It is operating or physically controlling a vehicle . . . with such a high degree of negligence that if death were caused, the accused would have committed involuntary manslaughter, at least. *MCM*, Part. IV, para. 51.c(7). Involuntary manslaughter by culpable negligence demonstrates "a degree of carelessness greater than simple negligence." *MCM*, Part. IV, para. 57.c(2)(a)(i). It requires "a negligent act or omission accompanied by a culpable disregard of foreseeable consequences to others." *Id.* Simple negligence, by comparison, is defined as "the absence of due care . . . which exhibits a lack of that degree of care of the safety of which a reasonably careful person would have exercised." *MCM*, Part. IV, para. 103.c(2).

This Court applies an objective test to determine whether the consequences of an act are foreseeable. *United States v. McDuffie*, 65 M.J. 631, 635 (A.F. Ct. Crim. App. 2007) (citing *United States v. Riley*, 58 M.J. 305, 311 (C.A.A.F. 2003); *United States v. Oxendine*, 55 M.J. 323, 326 (C.A.A.F. 2001)). "The test for foreseeability is 'whether a reasonable person, in view of all the circumstances, would have realized the *substantial and unjustifiable danger* created by his acts.'" *Oxendine*, 55 M.J. at 325 (quoting *United States v. Henderson*, 23 M.J. 77, 80 (C.M.A. 1986)) (emphasis added).

In *McDuffie*, this Court found the appellant's convictions for involuntary manslaughter and reckless operation of a vehicle were factually insufficient because this Court was "not convinced beyond a reasonable doubt that the appellant acted with a culpable disregard for the foreseeable

consequences of his actions” when he crossed the center line into oncoming traffic while operating his vehicle, killing a pregnant woman. 65 M.J. at 632, 637. In that case, this Court determined that the appellant’s operation amounted to simple negligence, rather than culpable negligence. *Id.* at 637. Further, “[E]xceeding the speed limit, . . . standing alone, may show nothing more than simple negligence . . . . Nor may we conclude from the mere occurrence of the accident that it was precipitated by a culpably negligent or wanton operation of the vehicle.” *United States v. Smith*, No. ACM 39816, 2021 CCA LEXIS 218, at \*32 (A.F. Ct. Crim. App. May 5, 2021) (quoting *United States v. Lawrence*, 18 C.M.R. 855, 857 (A.F.C.M.R. 1955) (citations omitted)).

## **2. The Government did not prove SSgt Reese was culpably negligent.**

Like *McDuffie*, there was no evidence that SSgt Reese was impaired, and the surrounding circumstances of the accident do not prove that she acted with culpable negligence. R. at 407. It was nighttime, but there was no inclement weather. R. at 528, 544; *Cf. Smith*, 2021 CCA LEXIS 218, at \*33-35 (finding the appellant culpably disregarded the foreseeable consequences of his actions and created an unjustifiable danger when excessively speeding “as much as 32 [mph] over the speed limit” on a two-lane residential road, while his view was obstructed by fog).

Moreover, SSgt Reese was not driving at a substantial and unjustifiably dangerous speed. R. at 833-34. This is contrary to *United States v. Cox*, where this Court found the appellant, an inexperienced driver, culpably negligent when he was speeding at 120 mph. No. ACM 38885, 2017 CCA LEXIS 169, at \*9 (A.F. Ct. Crim. App. Feb. 22, 2017). Even taken in the light most favorable to the Government, SSgt Reese was driving at a speed that was safe for the road. *Id.* The speed at which a “normal driver would drive . . . [that] corner without feeling unsafe” was about eighty-one mph.<sup>12</sup> R. at 833. SSgt Reese was driving at fifteen to eighteen mph<sup>13</sup> over the speed limit just before impact,

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<sup>12</sup> 130 km/hr.

<sup>13</sup> Approximately twenty-five to thirty km/hr.

however, speed was not a factor in the accident. R. at 766-67. At the point of impact, SSgt Reese was approximately five meters from where the speed limit changed from forty-three mph to sixty-two mph.<sup>14</sup> *Id.* There is no evidence that an approximately sixteen-foot<sup>15</sup> difference in speed zones rendered SSgt Reese’s speed at the point of impact unsafe. There is certainly no evidence that this speed amounted to “a culpable disregard of foreseeable consequences to others.” Art. 113(7). Driving at this speed did not objectively create a substantial and unjustifiable danger.

Moreover, the Government provided no evidence to show that SSgt Reese intended to cross over into the oncoming lane of traffic—the actus reus with which she was charged. In fact, common sense dictates that *even if* SSgt Reese did cross over into E.E.’s lane, which the Government failed to prove beyond a reasonable doubt, this was more than likely not intentional. Rather it was the result of encountering the oncoming headlights of E.E.’s vehicle at night. There is no testimony that SSgt Reese (1) was intentionally driving in the opposite lane of traffic, (2) was traveling at an unsafe speed like the appellant in *Cox*, or (3) displayed any signs of impairment. To find that SSgt Reese’s accidental crossing into the incoming lane of traffic amounted to “the operation of a vehicle with such high degree of negligence that if death were caused, she would have committed involuntary manslaughter,” would render drivers criminally culpable for almost any small driving error.

A review of the facts demonstrates the Government did not prove that SSgt Reese acted with “a degree of carelessness greater than simple negligence.” *MCM*, Part. IV, para. 57.c(2)(a)(i). Driving slightly above the speed limit is not sufficient to demonstrate culpable negligence and neither is the mere occurrence of the accident. *See Smith*, 2021 CCA LEXIS 218, at \*32 (citing *Lawrence*, 18 C.M.R. at 857). There are no attending circumstances that support sustaining this conviction.

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<sup>14</sup> From seventy km/hr to one hundred km/hr.

<sup>15</sup> Approximately five meters.

This Court should set aside the finding of guilty and sentence and dismiss the Specification and Charge with prejudice.

#### IV.

**The military judge erred in ruling that the withheld evidence about E.E.’s ongoing civil litigation was not material nor favorable.**

##### **Additional Facts**

After the verdict was announced, the Government called E.E. as its first sentencing witness. R. at 1018. E.E. testified on direct examination about how the accident impacted his life. R. at 1018-20. He claimed that he still had a financial obligation for the Corolla because he had not yet been paid out from the vehicle’s insurance. R. at 1020. On cross-examination, he clarified that there was an “ongoing civil case” related to the accident. R. at 1021. He told the Government that he had “commissioned a lawyer because of compensation payments for [his] car,” and that the following month there would be “a trial in the court.” *Id.* The Defense then requested an RCM 802 conference and notified the military judge that E.E.’s cross-examination was the first time it was made aware of a potential civil suit regarding E.E.’s vehicle. The Defense also learned that “the government had knowledge that an accident reconstructionist was involved in the civil hearing” who had determined E.E. was at fault for the accident. R. at 1021-23. The following morning, Defense filed a motion to dismiss for a discovery violation. Appellate Ex. XLV; R. at 1040. The military judge granted an unopposed Government motion for continuance. R. at 1067-68.

The Defense called three witnesses in support of its motion: SSgt Reese, Ms. E.H., (the Defense’s translator), and SrA E.L. (the Defense paralegal). SSgt Reese testified that she filed an insurance claim related to the accident, but she was never notified about civil litigation regarding the accident. R. at 1072-3. She was likewise unaware of experts outside of the instant case and was never made aware of pending civil litigation on the matter. *Id.* She was informed by her insurance company that they were unable to assess her vehicle because of the criminal investigation (this case). R. at 1073.

Ms. E.H. testified that she was present during the Defense's pre-trial interview with E.E, and that E.E. never informed the Defense that he had an attorney for an insurance claim for his vehicle. R. at 1083-85. He made no statements about his financial situation regarding his vehicle. *Id.*

SrA E.L. testified that she was present during the Defense's interview of Mr. F.—a German attorney in the civil insurance case for the accident. R. at 1091. The interview took place the day prior to the Article 39a, UCMJ, session. *Id.* The Defense was unaware of Mr. F. until it received the Government's response to the Defense's motion to dismiss. R. at 1091-92. Mr. F. stated that SSgt Reese was a witness in the case. R. at 1091-92. But neither Mr. F. nor the litigation team had ever contacted SSgt Reese because in the German civil system the court itself reaches out to witnesses; the attorneys do not. R. at 1092-94. The German court attempted to summon SSgt Reese in the civil case prior to the court-martial, through "Headquarters International Law at Ramstein Air Base." R. at 1094. But by the time of her court-martial, SSgt Reese was not notified of the request. *Id.* Mr. F. stated that his team hired an expert in the civil litigation case who concluded that "based on the photos and scatter patterns of the wreck," E.E. was at fault for the accident. R. at 1095-96. Mr. F. stated that SSgt Reese had provided a written statement to the insurance company about the accident. R. at 1096-97. In the statement, SSgt Reese said that "there was a curve in the road and that she was following the curve on the road, that she was met with high beams, blinded, and crashed." R. at 1097. Mr. F. stated that SSgt Reese "did not know and could not have known about the civil litigation case." R. at 1097.

The Defense argued that the withheld discovery impacted its ability to (1) impeach E.E. based on a financial motive, (2) call this third-party expert to testify about the scatter patterns and that expert's opinion about fault of the accident, and (3) impeach other witnesses in the case based on their involvement in the insurance litigation. R. at 1112-13. The Defense compared SSgt Reese's case to *McDuffie*, 65 M.J. at 635, SSgt Reese's case was a "very close call," So the "risk that a discovery violation" impacted the defense was high. R. at 1111-14. The Government conceded that it was aware of the existence of the civil matter since 13 March 2024 and withheld the subpoena for SSgt Reese. R.

at 1147-48. It disputed that it had an obligation under *Brady* to disclose the evidence of the civil litigation because it was not material evidence. R. at 1142-43. It also claimed that there was no reasonable probability of a different result if the members had known of this evidence. *Id.*

The military judge ruled against the Defense, finding that while “[e]vidence of civil litigation in the government’s possession is discoverable and should have been turned over pursuant to R.C.M. 701,” there was no evidence of prosecutorial misconduct. Appellate Ex. LI at 9. He then found that the evidence was not material. *Id.* He ruled that the evidence was “not favorable” to SSgt Reese and there was no reasonable probability that if the evidence had been properly disclosed, the result of the proceeding would have been different. *Id.* at 9-10. Specifically, the judge found that the evidence presented against SSgt Reese was “considerable.” *Id.* at 10. The judge determined that Mr. F. was “not a neutral party” and, regardless, the opinion of the expert who said the accident was E.E.’s fault overlapped the Defense’s expert’s testimony. *Id.* at 9-10. While this “additional testimony” that E.E. was at fault for the accident “might have been helpful to the defense,” the judge still held that there was no reasonable probability of a different outcome if the information had been disclosed to the defense. *Id.* at 10.

### **Standard of Review**

Military courts review discovery and disclosure process violations under a two-step analysis: (1) “determine[ing] whether the information or evidence at issue was subject to disclosure or discovery,” and (2) “if there was nondisclosure of such information, [testing] the effect of that nondisclosure on the appellant’s trial.” *United States v. Roberts*, 59 M.J. 323, 325 (C.A.A.F. 2004). Materiality is a question of law reviewed de novo. *Id.* at 326.

### **Law and Analysis**

“[T]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” *Brady v. Maryland*, 373 U.S. 83, 87 (1963). To establish a

*Brady* violation an appellant must show: (1) that the evidence at issue was favorable, either because of its exculpatory nature or value as impeachment evidence; (2) that the favorable evidence was suppressed, either intentionally or inadvertently, by the government; and (3) the failure to disclose resulted in prejudice. *Banks v. Dretke*, 540 U.S. 668, 691 (2004); *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999); *United States v. Hawkins*, 73 M.J. 605, 610 (A. Ct. Crim. App. 2014).

**1. The withheld evidence was material to SSgt Reese’s defense.**

“Evidence is material within the meaning of *Brady* when there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different.” *Cone v. Bell*, 556 U.S. 449, 469-70 (2009) (cleaned up). But to prove a *Brady* violation, SSgt Reese is not required to show that “the disclosure of the suppressed evidence would have resulted ultimately in the defendant’s acquittal.” *Kyles v. Whitley*, 514 U.S. 439, 434 (1995). She must only prove that the likelihood of a different result is great enough to “undermine confidence in the outcome of the trial.” *Id.* The Government withheld evidence that was exculpatory and had great impeachment value: it was aware that E.E. had an ongoing civil litigation case related to the car accident and it knew an expert in that case would testify that E.E. was at fault for the accident. The military judge underestimated the materiality of the withheld evidence. Resolution of this case does not turn on the defense that SSgt Reese mounted at trial. Rather, it turns on the impact the evidence, if properly disclosed, would likely have had on the outcome of trial. This is the analysis articulated by the Supreme Court in *Kyles v. Whitley*, where the Court overturned a conviction based not on the evidence that was introduced by the Defense in the record of trial, but on what the Defense could have done with the withheld information. 514 U.S. 419 (1995).

Here, the Government failed to disclose that E.E. had an on-going civil case regarding the accident. This case was scheduled for trial a month after SSgt Reese’s court-martial. Appellate Ex. LI at 1. Trial counsel was aware of this information since at least 13 March 2024. *Id.* Trial counsel was also aware of the existence of experts involved in the civil litigation before the members went into

deliberations on findings but still failed to disclose this information. R. at 1024 (indicating an “understanding” about an “accident reconstructionist”). The effect of the withheld evidence on the outcome of the case must be considered cumulatively. *Kyles*, 514 U.S. at 437. The Government was aware of this information before trial and failed to disclose it “as soon as practicable.” *See* R.C.M. 701(a)(6).

The Government’s withholding of exculpatory and impeachment evidence interfered with SSgt Reese’s right to mount a defense. Had the Defense been aware of this evidence, they would have been able to (1) impeach the Government’s “only sober eyewitness” to the accident based on a financial motive to fabricate; (2) impeach the alleged victim’s version of events with his own civil litigation expert that said he caused the accident; (3) challenge the Government expert’s opinion with the civilian litigation expert; and (4) further support the Defense expert’s opinion. It is more than reasonably probable that had SSgt Reese been able to mount such a defense in the face of the Government’s weak case, the outcome of his trial would have been different.<sup>16</sup> The military judge only analyzed the materiality of the existence of the civil litigation, but failed to take into account what additional evidence the Defense could have discovered had it been aware of the civil litigation.

## **2. The withheld evidence was favorable to the defense.**

The evidence at issue was favorable because of its exculpatory nature and impeachment value, but the military judge also erroneously held that evidence of the existence of this civil litigation was not favorable to the Defense. While the military judge recognized that “favorable information for the Accused may have resulted from the civil litigation,” he failed to factor this finding into his evaluation on the favorability of the evidence. *Id.* It should go without saying: withheld evidence will not appear in the record of trial, and the Defense should not be faulted for the fact that it can’t show the favorability

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<sup>16</sup> The legal and factual sufficiency issues raised above in Issues I through III highlight the weakness of the Government’s case.

of evidence that it never had the chance to explore. *Cf.* DONALD RUMSFELD, KNOWN AND UNKNOWN: A MEMOIR xiii (2011) (“[T]here are also unknown unknowns—the [things] we don’t know we don’t know.”) Had the Defense been aware that E.E. (and his three passengers by virtue of their familial connection to him) had a financial motive to claim that SSgt Reese was at fault for the accident, it would have had a basis to impeach his testimony. E.E. was the only sober witness in his car and the only witness during the entirety of the trial who definitively stated that SSgt Reese drove into his lane. The military judge even noted that E.E.’s testimony—that he testified to seeing bright headlights and “stated he never left his lane”—was part of the “considerable” evidence against SSgt Reese. Appellate Ex. LI at 10. The military judge’s dismissal of the favorability of this evidence to the defense ignores the fact that the Government was required to prove that SSgt Reese’s actions were the proximate cause of the injuries to the victims, and that E.E. was the only witness who could testify that SSgt Reese was even the cause of the collision.

Both experts testified that they could not conclude who was at fault for the accident. The military judge erred by diminishing the value of the expert opinion from the German civil case that E.E. was at fault for the accident. He claimed that this was simply “overlapping evidence” that the Defense had already produced through its expert. But this, too, is an inaccurate assessment of the evidence. The Defense’s expert testified that, “[E.E.]’s vehicle *could* have gone into [SSgt Reese]’s lane,” which is markedly different than the testimony of an expert who concluded that E.E. was *at fault* for the accident. Regardless, even the addition of a third expert—E.E.’s expert—who agreed with the Defense’s expert would have been helpful to the Defense’s case. There was, essentially one witness, E.E., who testified about proximate cause of the accident. This makes the existence of *any* evidence contradicting his assertion incredibly valuable, particularly when the Government had to prove this element beyond a reasonable doubt.

**3. The harmless beyond a reasonable doubt standard applies because the withholding constituted prosecutorial misconduct.**

While the Defense did not make a specific request for the withheld discovery, the harmless beyond a reasonable doubt standard still applies because the Government's withholding of the evidence was prosecutorial misconduct. In *United States v. Eshalomi*, 23 M.J. 12 (C.M.A. 1986), the Court of Military Appeals (CMA) suggested that when defense-requested information is withheld by the prosecution, a court should impose a heavier burden on the Government to sustain a conviction. Four years later, in *United States v. Hart*, 29 M.J. 407, 410 (C.M.A. 1990), the CMA court adopted the reasoning in *Eshalomi* to hold that where prosecutorial misconduct is present or where the Government fails to disclose discoverable information pursuant to a specific request, the appellant will be entitled to relief unless the Government can show that the failure to disclose is harmless beyond a reasonable doubt. *See also, Roberts*, 59 M.J. at 327 (concluding that shifting the burden to the government "reflects the broad nature of discovery rights granted the military accused under Article 46[, UCMJ, 10 U.S.C. § 846 (2012)]").

Here, the military judge erred when he found that no prosecutorial misconduct occurred. He did not analyze this issue, but rather summarily stated that the defense "failed to demonstrate prosecutorial misconduct." Appellate Ex. LI at 9. The CAAF opined on what level of discovery violation constitutes prosecutorial misconduct. In *Claxton*, it held that a failure to disclose the status of two witnesses as confidential informants (CI)—while harmless beyond a reasonable doubt—constituted "gross governmental misconduct." 76 M.J. at 361. Certainly, if a trial counsel's failure to disclose the identity of CIs constitutes prosecutorial misconduct, then trial counsel's failure to disclose evidence in its possession that suggested that the Government's only eyewitnesses to the accident had a financial motive to fabricate also constitutes prosecutorial misconduct. This holds true even without considering the additional layer of withheld evidence—that an expert in the civil litigation gave the opinion that the accident was E.E.'s fault. The prosecutor's conduct in SSgt Reese's case is undeniably worse than in *Claxton*—here there is no doubt that he was aware of the evidence, whereas in *Claxton* it was "unclear from the record" whether the trial counsel was aware of the withheld evidence. *Claxton*,

76 M.J. 356, 361. In SSgt Reese's case, the prosecutor admitted he was aware of the evidence. R. at 1024, 1147-48.

Under the CAAF's binding precedent articulated in *Robert*, the Government's violations of SSgt Reese's statutory discovery rights must be tested for harmlessness beyond a reasonable doubt. With the withheld information, the Defense could have changed the complexion of the trial. "A constitutional error is harmless when it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." *United States v. Chisum*, 77 M.J. 176, 179 (C.A.A.F. 2018) (quoting *Mitchell v. Esparza*, 540 U.S. 12, 17-18 (2003)). Here, the Government cannot meet this standard. The obvious utility of the withheld evidence was to show that E.E. (and his family members) had a motive to claim that SSgt Reese was the cause of the accident, not E.E. With this information, the Defense could have called into question the testimony of the Government's only sober eyewitness, and the only witness who definitively testified that SSgt Reese drove into the oncoming lane of traffic. Additionally, the Government acknowledged that it was aware of the accident reconstruction expert in the civil litigation case yet similarly failed to provide this evidence to the Defense. Had the Defense known about this third expert, it could have called that expert to explain his findings that E.E. was the cause of the accident. It could have challenged the Government's entire theory of how the accident occurred, a viable alternate theory that, at the very least, could have raised reasonable doubt in the eyes of the members. Each of these individual pieces of evidence on their own would have provided a basis for the defense to question the Government's case, but certainly, the cumulative effect of the defense presenting all the withheld evidence would have made a substantial impact in a weak Government case.

#### **4. SSgt Reese was prejudiced by the Government's discovery violations.**

Even if this Court determines that the harmless beyond a reasonable doubt standard does not apply, it should still find that SSgt Reese was prejudiced by the Government's withholding of the evidence. Prejudice arises when a discovery violation interferes with an accused's ability to mount a defense.

*United States v. Stellato*, 74 M.J. 473, 490 (C.A.A.F. 2015). “Because ‘*Brady* evidence’ has the twin requirement that the evidence be both favorable and material, a *Brady* violation is always prejudicial. . . . [T]here is no such thing as a harmless *Brady* violation. ‘Prejudice’ is baked into every *Brady* violation.” *United States v. Ellis*, 77 M.J. 671, 675 (A.C.C.A. 2018) (citation omitted).

There is little doubt that the Government’s withholding of this evidence resulted in prejudice. The nondisclosure of discoverable evidence impacted the outcome of SSgt Reese’s trial. First, the discovery violations resulted in the Defense not calling at least one key witness, the German expert who determined E.E. was at fault. This expert could have contradicted E.E., the Government’s key witness, and the Government’s expert. Few rights are more fundamental than the right to present witnesses in one’s defense and, because of the Government’s discovery violations, SSgt Reese was denied this right. Second, because the Defense did not know about the existence of the civil litigation, their ability to impeach E.E. and his family members on a financial motive bias, cross-examine the Government’s expert, and ultimately prepare and present their defense was compromised. As such, SSgt Reese is entitled to relief, and her conviction should be set aside.

This Court should set aside the conviction, and dismiss the charge and specification with prejudice.

## V.

**The military judge abused his discretion by allowing the Government to present evidence of Staff Sergeant Reese’s driving record to prove “malice aforethought” when reckless driving requires no specific intent.**

### **Additional Facts**

The Government provided a Military Rule of Evidence (MRE) 404(b) notice ahead of trial. Appellate Ex. VIII at 21-24. It sought to introduce SSgt Reese’s driving record, which included six instances of SSgt Reese driving over the speed limit while in various towns in Germany between June 2021 and December 2022, evidence that she had accumulated traffic points for speeding, and one instance of SSgt Reese driving through a red light. *Id.* It sought to introduce each of these pieces of

evidence as “evidence of [SSgt Reese]’s lack of care and disregard for her own safety and the safety of others despite her knowledge of the foreseeable consequences and that her conduct was illegal.” *Id.* The Government claimed that this evidence “makes it more likely that [SSgt Reese] possessed this knowledge and state of mind at the time of the charged offenses.” *Id.*

The military judge admitted SSgt Reese’s driving record over Defense’s objection. Appellate Ex. XXXIII. The Defense did not contest the first prong of the *Reynolds* test. Appellate Ex. VIII at 6. But the judge found that the second prong of the *Reynolds* test was met because SSgt Reese’s driving record showed her “lack of care while driving and disregard for safety (*i.e.* malice aforethought).” Appellate Ex. XXXIII at 4. The military judge analyzed *United States v. Leonard*, 439 F.3d 648 (10th Cir. 2006), a case where the defendant’s driving record was admissible to prove intent for second degree murder charges. He found that SSgt Reese’s driving record made it more likely that she drove in a reckless manner on the night of the accident more or less likely. Appellate Ex. XXXIII at 4. The third prong of the *Reynolds* test was met because the probative value of the driving citations was high and would not “provoke an emotional response in the panel members.” *Id.*

### **Standard of Review**

This Court reviews a military judge’s decision to admit or exclude evidence for an abuse of discretion. *United States v. Wilson*, 84 M.J. 383, 390 (C.A.A.F. 2024). “Military judges abuse their discretion (1) if the findings of fact upon which they predicate their ruling are not supported by the evidence of record; (2) if they use incorrect legal principles; or (3) if their application of the correct legal principles to the facts is clearly unreasonable.” *Id.*

### **Law and Analysis**

The uncharged acts that the military judge allowed the Government to introduce constituted impermissible propensity evidence. “[P]ropensity evidence is a generally impermissible form of character evidence in which members ‘prove a person’s character in order to show that on a particular occasion the person acted in accordance with the character.’” *United States v. Quezada*, 82 M.J. 54, 59

(C.A.A.F. 2021) (quoting M.R.E. 404(b)(1)). However, “[t]his evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.” M.R.E. 404(b)(2). Where M.R.E. 404(b) evidence is offered for a permissible, non-propensity purpose, the military judge “must conduct a M.R.E. 403 balancing test and exclude this otherwise admissible evidence ‘if its probative value is substantially outweighed by a danger of . . . unfair prejudice.’” *Wilson*, 84 M.J. at 390 (alteration in original) (quoting M.R.E. 403).

This Court reviews a military judge's decision to admit M.R.E. 404(b) evidence under a three-part test articulated in *United States v. Reynolds*: (1) does the evidence reasonably support a finding that the accused committed a specific act; (2) is a fact of consequence made more or less probable by the existence of this evidence; and (3) is the probative value of the evidence substantially outweighed by the danger of unfair prejudice? 29 M.J. 105, 109 (C.M.A. 1989). “If the admitted evidence fails to meet any of the factors laid out in *Reynolds*, the military judge will have erred,” and we “must then assess the prejudice, if any, resulting from that error.” *Wilson*, 84 M.J. at 391.

The military judge abused his discretion because the second and third prongs of the *Reynolds* test are clearly not met. The military judge’s reasoning was based on a flawed understanding of the law. Specifically, he (1) believed reckless driving to be a specific intent crime, when it is a general intent crime; and (2) misapprehended the actus reus charged—“crossing into the oncoming lane” versus “speeding.”

### **1. The judge erred when he analyzed the second prong of the *Reynolds* test.**

Uncharged acts may be relevant to a fact of consequence if they fall into one of the permitted exceptions outlined in MRE 404(b)(2). The military judge allowed the uncharged acts to come into evidence under what can best be interpreted as the theory of intent, though not specifically stated by the Government. The military judge interpreted the theory of admissibility as “malice aforethought.” Appellate Ex. XXXIII. This was an incorrect view of the law because it incorrectly conflates the mens

rea of reckless driving with a specific intent mens rea. But reckless driving has no specific intent element. The judge came to this improper conclusion because he was focused on *Leonard*, 439 F.3d 648. In *Leonard*, the defendant was charged with second-degree murder for killing a woman when he collided head-on with her vehicle after swerving into her lane. *Id.* at 649. Blood tests showed he had consumed Xanax, Valium, Soma, marijuana, and alcohol. *Id.* Malice aforethought is a required element of second-degree murder. *Id.* at 650-51. The appellate court determined that the district court did not abuse its discretion in admitting the defendant’s fifteen-year history of driving infractions (including drunk driving convictions) to establish malice aforethought, because it was a required element of the charge. *Id.* at 650-51. Even then, the Court in that case found the driving record showed “only slightly” that the defendant “acted with malice aforethought.” *Id.* at 651.

Unlike the defendant in *Leonard*, SSgt Reese was charged with reckless driving, which does not require a specific intent. Reckless driving is a strict liability offense, meaning it can be committed without a culpable mental state. Simply put, there was no intent element that the Government had to prove. The Government only had to prove that SSgt Reese possessed the general criminal intent to commit the actus reus. It had to show she had the intent to do the act that resulted in the alleged crime, not the intent to commit the crime itself. The Government had to prove beyond a reasonable doubt that SSgt Reese voluntarily committed the act it charged—crossing over into the oncoming lane of traffic.<sup>17</sup> Charge Sheet.

This leads to a second issue with the military judge’s ruling—the actus reus charged was not that SSgt Reese drove recklessly by speeding. All but one of the citations admitted under MRE 404(b) are for speeding, yet the Government did not allege that SSgt Reese committed the actus reus in this case by speeding. This greatly diminishes any probative value. Moreover, the judge determined that

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<sup>17</sup> As discussed in Issue II, the Government did not prove beyond a reasonable doubt that SSgt Reese crossed over into the oncoming lane of traffic. And, certainly, there was no evidence that she did so voluntarily.

SSgt Reese's driving record "indicates that despite being on notice of the dangers of speeding and unsafe movement, she continued [sic] drive in a manner that put herself and others at risk." Appellate Ex. XXXIII at 4. But a driving ticket for speeding does not put one on notice of the dangers of speeding. There was no evidence that SSgt Reese had any convictions for traffic offenses, nor that she had ever injured herself or another person while speeding on prior occasions. Without more context to these traffic tickets, SSgt Reese's speed, alone, does not demonstrate that SSgt was "put[ting] herself and others at risk." *Id.* at 4.

The uncharged acts that the military judge allowed the Government to introduce were nothing more than impermissible propensity evidence. The Government introduced the speeding tickets simply to paint SSgt Reese as an individual who violates the law. It wanted to show that because she had prior speeding tickets, she must have been speeding on the night of the accident. But one of the most "basic precepts of American jurisprudence" is that "an accused must be convicted based on evidence of the crime before the court, not on evidence of a general criminal disposition." *United States v. Hogan*, 20 M.J. 71, 73 (C.M.A. 1985). Here, too, it is worth noting that the Defense's own expert did not dispute the speed at which the Government claimed SSgt Reese was traveling before the accident. But both experts asserted that speed was not a factor in the accident, further diminishing the value of this evidence.

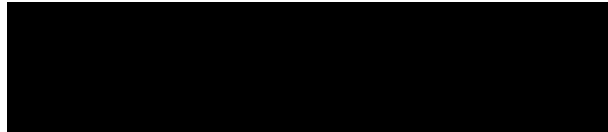
## **2. The judge erred when analyzing the third prong of the *Reynolds* test.**

The military judge's failure to consider the prejudicial nature of the evidence created error in his assessment under MRE 403. Although the military judge considered the uncharged acts to have substantial probative value, this was undermined by their nature as propensity evidence, their lack of connection to the charged actus reus, the fact that speed was not contested at trial, and the judge's misapprehension of the intent required for this charge. "The importance of a careful balancing arises from the potential for undue prejudice that is inevitably present when dealing with propensity evidence." *United States v. James*, 63 M.J. 217, 222 (C.A.A.F. 2006). "[T]he term 'unfair prejudice'

in the context of [Mil. R. Evid.] 403 ‘speaks to the capacity of some concededly relevant evidence to lure the *factfinder* into declaring guilt on a ground different from proof specific to the offense charged.’” *United States v. Collier*, 67 M.J. 347, 354 (C.A.A.F. 2009). Here, the military judge explicitly allowed the uncharged acts to come in to show that SSgt Reese “acted with malice aforethought,” an element not required by a charge of reckless driving. The military judge’s admission of this evidence for that impermissible use was inherently prejudicial.

This Court should conclude that the admission of the uncharged acts was an abuse of discretion and set aside the finding of guilty and the sentence.

Respectfully submitted,

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Appellate Defense Counsel

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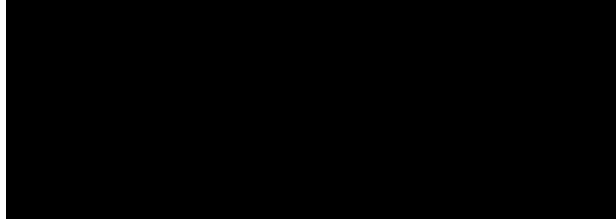
**CERTIFICATE OF FILING AND SERVICE**

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 8 September 2025.

Respectfully submitted,



JORDAN L. GRANDE, Maj, USAF  
Appellate Defense Counsel



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

UNITED STATES	)	No. ACM 24069
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Sascha D. REESE	)	
Staff Sergeant (E-5)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 3</b>

On 16 December 2024, counsel for Appellant submitted a Motion for Enlargement of Time (First) requesting an additional 60 days to submit Appellant’s assignments of error. The Government opposes the motion.

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

Accordingly, it is by the court on this 18th day of December, 2024,

**ORDERED:**

Appellant’s Motion for Enlargement of Time (First) is **GRANTED**. Appellant shall file any assignments of error not later than **28 February 2025**.

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



FOR THE COURT



OLGA STANFORD, Capt, USAF  
Chief Commissioner

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

<b>UNITED STATES,</b>	)	<b>APPELLANT’S MOTION</b>
<i>Appellee,</i>	)	<b>FOR ENLARGEMENT</b>
	)	<b>OF TIME (FIRST)</b>
v.	)	
	)	Before Panel No. 3
Staff Sergeant (E-5)	)	
<b>SASCHA D. REESE,</b>	)	No. ACM 24069
United States Air Force,	)	
<i>Appellant.</i>	)	16 December 2024

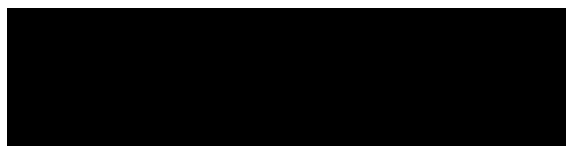
**TO THE HONORABLE, THE JUDGES OF THE UNITED STATES  
AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.3(m)(1) and (2) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file Assignments of Error. Appellant requests an enlargement for a period of 60 days, which will end on **28 February 2025**.

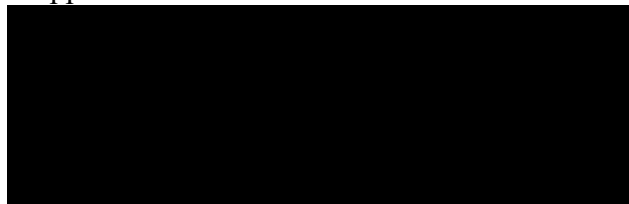
Appellant’s direct appeal was docketed with this Court on 31 October 2024. From the date of docketing to the present date, 46 days have elapsed. On the date requested, 120 days will have elapsed since docketing.

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

Respectfully submitted,

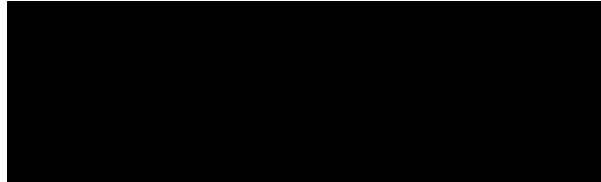


JORDAN L. GRANDE, Capt, USAF  
Appellate Defense Counsel

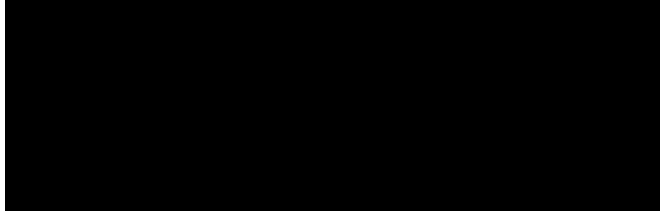


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I certify that the original and copies of the foregoing were sent via email to the Court and served on the Air Force Government Trial and Appellate Operations Division on 16 December 2024.



JORDAN L. GRANDE, Capt, USAF  
Appellate Defense Counsel



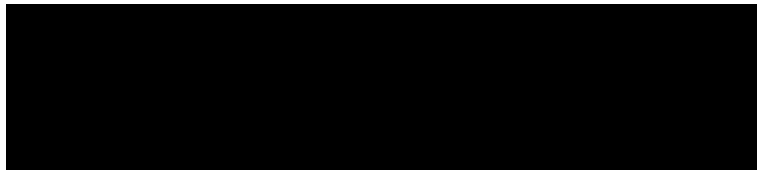
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Staff Sergeant (E-5)	)	ACM 24069
SASCHA D. REESE, USAF,	)	
<i>Appellant.</i>	)	Panel No. 3
	)	

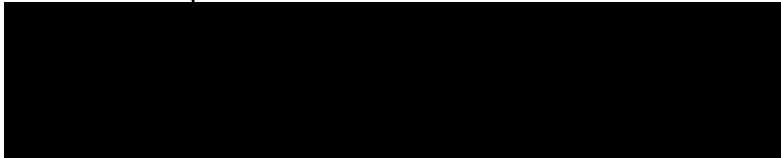
**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

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

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

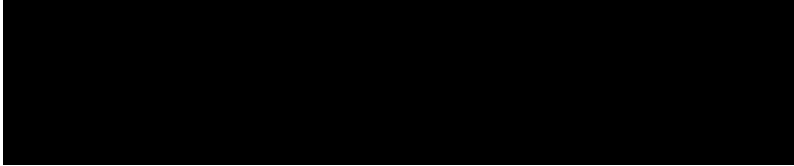


JENNY A. LIABENOW, Lt Col, USAF  
Director of Operations

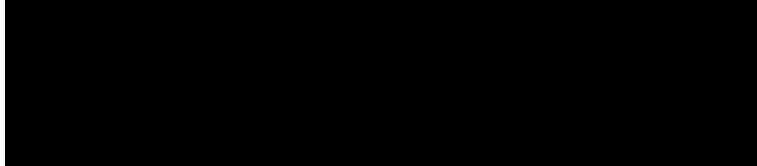


**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 16 December 2024.



JENNY A. LIABENOW, Lt Col, USAF  
Director of Operations



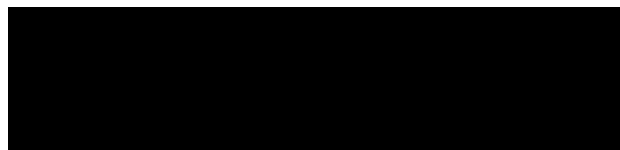


The record of trial consists of one E-ROT containing two volumes, with twelve Prosecution Exhibits, four Court Exhibits, fourteen Defense Exhibits, and fifty-six Appellate Exhibits. The transcript is 1310 pages long. Appellant is not currently confined. Undersigned counsel has not yet completed her review of the record for this case.

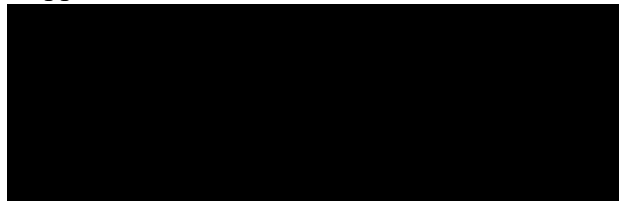
Through no fault of Appellant, undersigned counsel has been unable to prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to prepare a brief for Appellant's case. Appellant was advised of her right to a timely appeal. Appellant has been provided an update on the status of undersigned counsel's progress on this case. Appellant was advised of the request for this enlargement of time. Appellant provided limited consent to disclose a confidential communication with counsel wherein Appellant consented to the request for this enlargement.

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

Respectfully submitted,



JORDAN L. GRANDE, Capt, USAF  
Appellate Defense Counsel

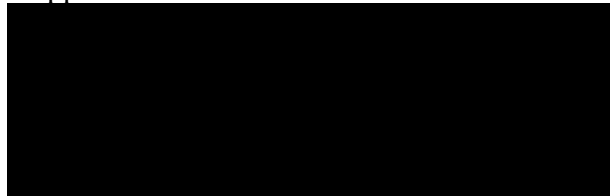


**CERTIFICATE OF FILING AND SERVICE**

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 18 February 2025.



JORDAN L. GRANDE, Capt, USAF  
Appellate Defense Counsel



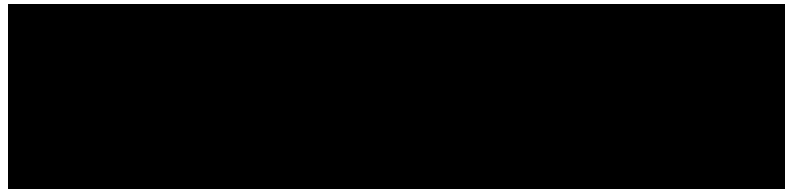
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Staff Sergeant (E-5)	)	ACM 24069
SASCHA D. REESE, USAF,	)	
<i>Appellant.</i>	)	Panel No. 3
	)	

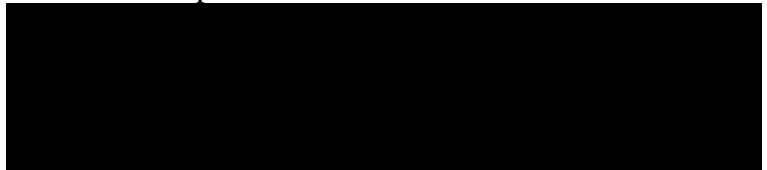
**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

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

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

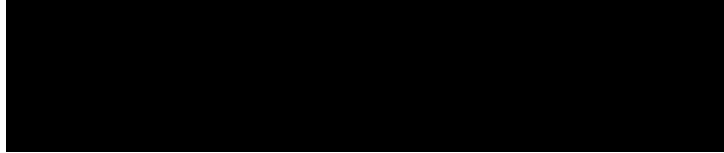


JENNY A. LIABENOW, Lt Col, USAF  
Director of Operations

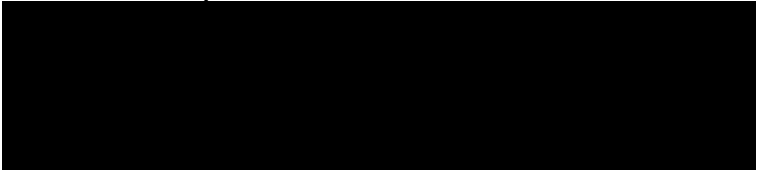


**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 20 February 2025.



JENNY A. LIABENOW, Lt Col, USAF  
Director of Operations



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

**UNITED STATES,**  
*Appellee,*

v.

Staff Sergeant (E-5)  
**SASCHA D. REESE,**  
United States Air Force,  
*Appellant.*

) **APPELLANT’S MOTION**  
) **FOR ENLARGEMENT**  
) **OF TIME (THIRD)**  
)  
) Before Panel No. 3  
)  
) No. ACM 24069  
)  
) 17 March 2025

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

Pursuant to Rule 23.3(m)(1) and (4) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file Assignments of Error. Appellant requests an enlargement for a period of 30 days, which will end on **29 April 2025**.

Appellant’s direct appeal was docketed with this Court on 31 October 2024. From the date of docketing to the present date, 137 days have elapsed. On the date requested, 180 days will have elapsed since docketing.

From 11 through 12 March 2024, from 18 through 23 March 2024, and from 17 through 18 April 2024, Appellant was tried by a Special Court-Martial composed of a panel of officer and enlisted members at Ramstein Air Base, Germany. R. 1, 190-91, 201, 1066-67, 1310. Appellant was convicted contrary to her pleas of one Charge with one Specification of reckless driving, in violation of Article 113, Uniform Code of Military Justice (UCMJ). R. at 191, 1006; Entry of Judgment. Appellant was acquitted of One Charge with Two Specifications of obstruction of justice, in violation of Article 131, UCMJ. R. at 191; Entry of Judgment. The members sentenced Appellant to be reduced to the grade of E-3 and to perform hard labor without confinement for 30 days. R. at 1309.



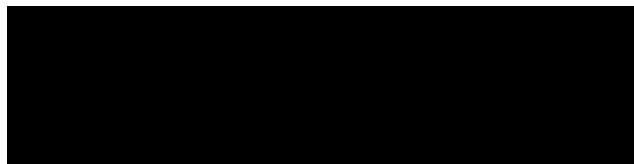
**GRANTED**  
**19 MAR 2025**

The record of trial consists of one E-ROT containing two volumes, with twelve Prosecution Exhibits, four Court Exhibits, fourteen Defense Exhibits, and fifty-six Appellate Exhibits. The transcript is 1310 pages long. Appellant is not currently confined. Undersigned counsel has not yet completed her review of the record for this case.

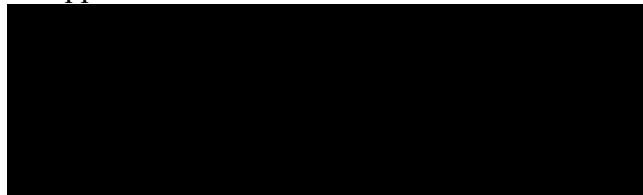
Through no fault of Appellant, undersigned counsel has been unable to prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to prepare a brief for Appellant's case. Appellant was advised of her right to a timely appeal. Appellant has been provided an update on the status of undersigned counsel's progress on this case. Appellant was advised of the request for this enlargement of time. Appellant provided limited consent to disclose a confidential communication with counsel wherein Appellant consented to the request for this enlargement.

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

Respectfully submitted,

A large black rectangular redaction box covering the signature of the undersigned counsel.

JORDAN L. GRANDE, Capt, USAF  
Appellate Defense Counsel

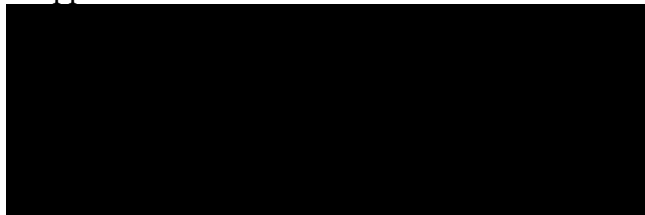
A large black rectangular redaction box covering the contact information of the undersigned counsel.

**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 17 March 2025.



JORDAN L. GRANDE, Capt, USAF  
Appellate Defense Counsel



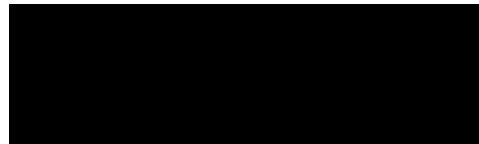
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
	)	Before Panel No. 3
Staff Sergeant (E-5)	)	
<b>SASCHA D. REESE,</b>	)	No. ACM 24069
United States Air Force,	)	
<i>Appellant.</i>	)	
	)	18 March 2025

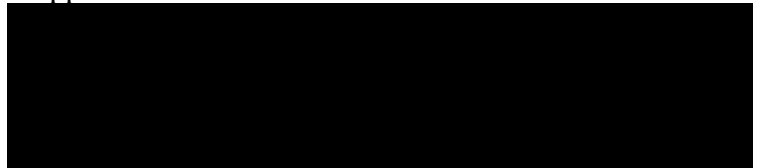
**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

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

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



VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel

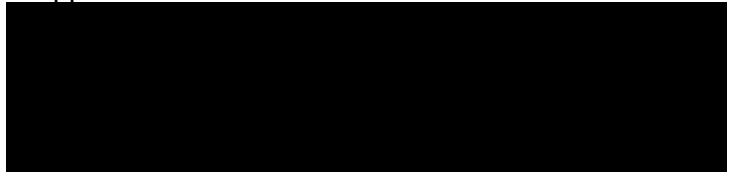


**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 18 March 2025.



VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel





The record of trial consists of one E-ROT containing two volumes, with twelve Prosecution Exhibits, four Court Exhibits, fourteen Defense Exhibits, and fifty-six Appellate Exhibits. The transcript is 1310 pages long. Appellant is not currently confined. Undersigned counsel has not yet completed her review of the record for this case.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel also provides the following information: Maj Grande is currently assigned 27 cases; 22 cases are pending before this Court (18 cases are pending AOE). Eight cases have priority over the present case:

1. *United States v. Gale*, ACM No. 202501 – Maj Grande is preparing for oral argument scheduled for 24 April 2025.
2. *United States v. Serjak*, USCA Dkt. No. 25-0120/AF; Crim.App. No. 40392 – The record of trial consists of twelve volumes, fourteen Prosecution Exhibits, ten Defense Exhibits, three Court Exhibits, and eighty-four Appellate Exhibits. The Government’s brief in support of this TJAG-certified issue is due to the CAAF by 24 April 2025, and undersigned counsel will then draft the Appellee’s Answer.
3. *United States v. Ledee-Nicholls*, ACM No. 40667 - The record of trial consists of one e-ROT with six volumes, three prosecution exhibits, 20 Defense Exhibits, and four Appellate Exhibits; the transcript is 122 pages long. Undersigned counsel is currently drafting the AOE.
4. *United States v. Boggs*, ACM No. 40678 – The record of trial consists of nine Prosecution Exhibits, one Defense Exhibit, and twenty-six Appellate Exhibits; the transcript is 161 pages long. Undersigned counsel has not yet completed her review of the record of trial in this case.

5. *United States v. Hedgepath*, ACM No. 40681– The record of trial consists of one ROT with four volumes, three Prosecution Exhibits, one Court Exhibit, three Defense Exhibits, and five Appellate Exhibits; the transcript is 115 pages long. Undersigned counsel has not yet completed her review of the record of trial in this case.
6. *United States v. Rockrich*, ACM No. 40666 – The record of trial consists of two Prosecution Exhibits, one Defense Exhibit, and sixteen Appellate Exhibits; the transcript is 96 pages long. Appellant is currently confined. Undersigned counsel has completed her review of the transcript for this case; but not the entire record.
7. *United States v. Hilson*, ACM No. 24063 – The record of trial consists of one E-ROT with two volumes. It contains two Prosecution Exhibits, one Court Exhibit, eight Defense Exhibits, and four Appellate Exhibits. The transcript is 156 pages long. Undersigned counsel has not yet completed her review of the record in this case.
8. *United States v. Fundis*, ACM No. 40689- The record of trial consists of six volumes, with eight Prosecution Exhibits, two Court Exhibits, eighteen Defense Exhibits, and eighteen Appellate Exhibits. The transcript is 377 pages long. Undersigned counsel has not yet completed her review of the record in this case.

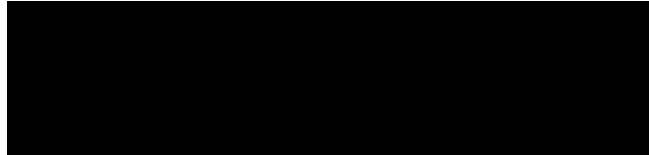
In addition to the aforementioned cases, Maj Grande qualified for and is running the Boston Marathon on 21 April 2025. She is taking three days of leave to travel to Boston and run the race.

Through no fault of Appellant, undersigned counsel has been unable to prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to prepare a brief for Appellant's case. Appellant was advised of her right to a timely appeal. Appellant has been provided an update on the status of undersigned counsel's progress on this case. Appellant was advised of the request for this enlargement of time. Appellant provided limited consent to disclose

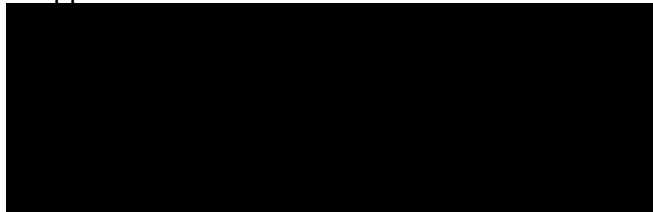
a confidential communication with counsel wherein Appellant consented to the request for this enlargement.

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

Respectfully submitted,

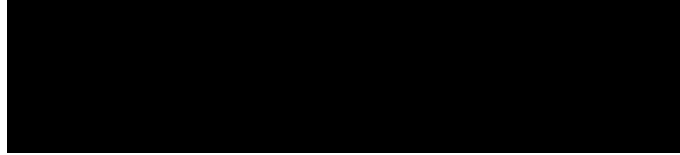
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JORDAN L. GRANDE, Maj, USAF  
Appellate Defense Counsel

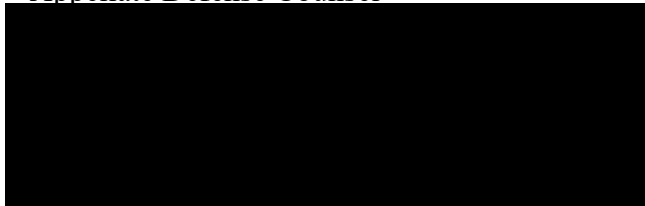
A large black rectangular redaction box covering the contact information area.

**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 20 April 2025.



JORDAN L. GRANDE, Maj, USAF  
Appellate Defense Counsel



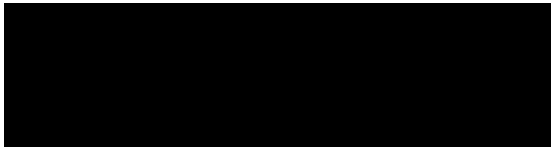
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
	)	Before Panel No. 3
Staff Sergeant (E-5)	)	
<b>SASCHA D. REESE,</b>	)	No. ACM 24069
United States Air Force,	)	
<i>Appellant.</i>	)	
	)	22 April 2025

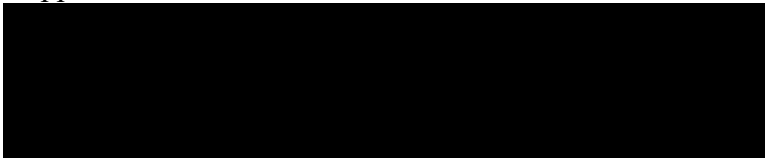
**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

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

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

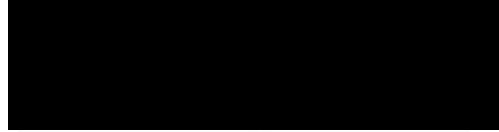


VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel

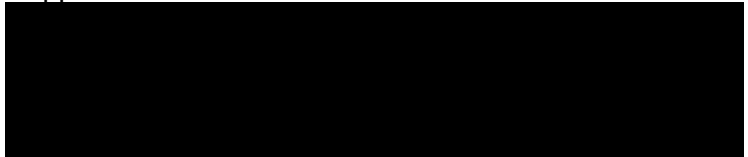


**CERTIFICATE OF FILING AND SERVICE**

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



VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,  
*Appellee,*

v.

Staff Sergeant (E-5)  
**SASCHA D. REESE,**  
United States Air Force,  
*Appellant.*

) **APPELLANT’S MOTION**  
) **FOR ENLARGEMENT**  
) **OF TIME (FIFTH)**  
)  
) Before Panel No. 1  
)  
) No. ACM 24069  
)  
) 19 May 2025

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

Pursuant to Rule 23.3(m)(1), (4), and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file Assignments of Error. Appellant requests an enlargement for a period of 30 days, which will end on **28 June 2025**.

Appellant’s direct appeal was docketed with this Court on 31 October 2024. From the date of docketing to the present date, 200 days have elapsed. On the date requested, 240 days will have elapsed since docketing.

From 11 through 12 March 2024, from 18 through 23 March 2024, and from 17 through 18 April 2024, Appellant was tried by a Special Court-Martial composed of a panel of officer and enlisted members at Ramstein Air Base, Germany. R. 1, 190-91, 201, 1066-67, 1310. Appellant was convicted contrary to her pleas of one Charge with one Specification of reckless driving, in violation of Article 113, Uniform Code of Military Justice (UCMJ). R. at 191, 1006; Entry of Judgment. Appellant was acquitted of One Charge with Two Specifications of obstruction of justice, in violation of Article 131, UCMJ. R. at 191; Entry of Judgment. The members sentenced Appellant to be reduced to the grade of E-3 and to perform hard labor without confinement for ninety days. R. at 1309.



**GRANTED**  
**21 MAY 2025**

The record of trial consists of one E-ROT containing two volumes, with twelve Prosecution Exhibits, four Court Exhibits, fourteen Defense Exhibits, and fifty-six Appellate Exhibits. The transcript is 1310 pages long. Appellant is not currently confined. Undersigned counsel has not yet completed her review of the record for this case.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel also provides the following information: Maj Grande is currently assigned 26 cases; 21 cases are pending before this Court (17 cases are pending AOE's). Six cases have priority over the present case:

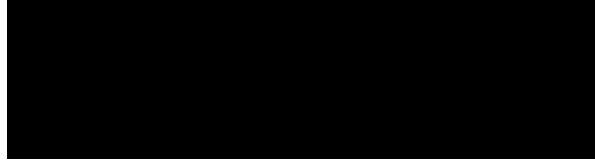
1. *United States v. Serjak*, USCA Dkt. No. 25-0120/AF; Crim.App. No. 40392 – The record of trial consists of twelve volumes, fourteen Prosecution Exhibits, ten Defense Exhibits, three Court Exhibits, and eighty-four Appellate Exhibits. Undersigned counsel traveled to Military Correctional Facility Miramar for a continued confinement hearing on 11-12 May 2025 and, pursuant to a CAAF order, is currently drafting a Reply to the Government's Answer to the CAAF's Show Cause Order. Additionally, undersigned counsel is drafting the Appellee's Answer to the Government's Brief on the certified issue.
2. *United States v. Boggs*, ACM No. 40678 – The record of trial consists of nine Prosecution Exhibits, one Defense Exhibit, and twenty-six Appellate Exhibits; the transcript is 161 pages long. Undersigned counsel is currently reviewing the record of trial in this case.
3. *United States v. Hedgepath*, ACM No. 40681– The record of trial consists of one ROT with four volumes, three Prosecution Exhibits, one Court Exhibit, three Defense Exhibits, and five Appellate Exhibits; the transcript is 115 pages long. Undersigned counsel has not yet completed her review of the record of trial in this case.

4. *United States v. Rockrich*, ACM No. 40666 – The record of trial consists of two Prosecution Exhibits, one Defense Exhibit, and sixteen Appellate Exhibits; the transcript is 96 pages long. Undersigned counsel has completed her review of the transcript for this case; but not the entire record.
5. *United States v. Hilson*, ACM No. 24063 – The record of trial consists of one E-ROT with two volumes. It contains two Prosecution Exhibits, one Court Exhibit, eight Defense Exhibits, and four Appellate Exhibits. The transcript is 156 pages long. Undersigned counsel has not yet completed her review of the record in this case.
6. *United States v. Fundis*, ACM No. 40689- The record of trial consists of six volumes, with eight Prosecution Exhibits, two Court Exhibits, eighteen Defense Exhibits, and eighteen Appellate Exhibits. The transcript is 377 pages long. Undersigned counsel has not yet completed her review of the record in this case. Civilian counsel assigned to this case will draft the AOE.

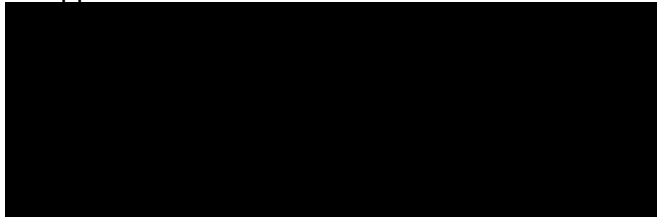
Through no fault of Appellant, undersigned counsel has been unable to prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to prepare a brief for Appellant's case. Appellant was advised of her right to a timely appeal. Appellant has been provided an update on the status of undersigned counsel's progress on this case. Appellant was advised of the request for this enlargement of time. Appellant provided limited consent to disclose a confidential communication with counsel wherein Appellant consented to the request for this enlargement.

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

Respectfully submitted,

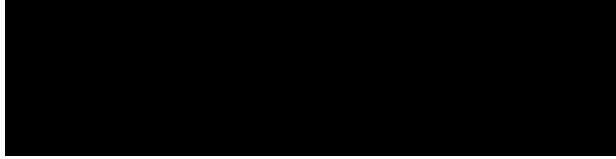


JORDAN L. GRANDE, Maj, USAF  
Appellate Defense Counsel

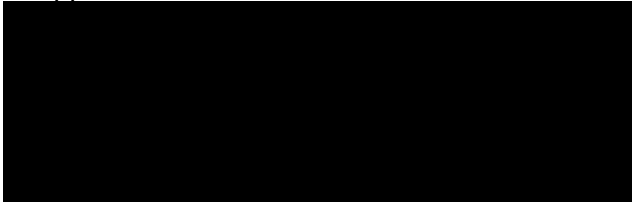


**CERTIFICATE OF FILING AND SERVICE**

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 19 May 2025.



JORDAN L. GRANDE, Maj, USAF  
Appellate Defense Counsel



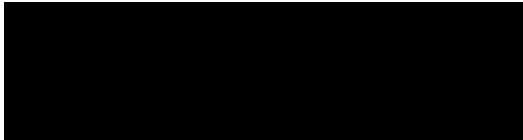
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
	)	Before Panel No. 1
Staff Sergeant (E-5)	)	
<b>SASCHA D. REESE,</b>	)	No. ACM 24069
United States Air Force,	)	
<i>Appellant.</i>	)	
	)	20 May 2025

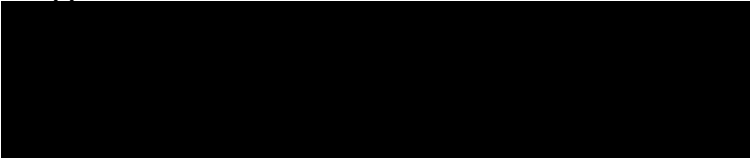
**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

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

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



VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel



**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 20 May 2025.



VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel



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

<b>UNITED STATES,</b>	)	<b>APPELLANT’S MOTION</b>
<i>Appellee,</i>	)	<b>FOR ENLARGEMENT</b>
	)	<b>OF TIME (SIXTH)</b>
v.	)	
	)	Before Panel No. 1
Staff Sergeant (E-5)	)	
<b>SASCHA D. REESE,</b>	)	No. ACM 24069
United States Air Force,	)	
<i>Appellant.</i>	)	18 June 2025

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

Pursuant to Rule 23.3(m)(1), (4), and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file Assignments of Error. Appellant requests an enlargement for a period of 30 days, which will end on **28 July 2025**.

Appellant’s direct appeal was docketed with this Court on 31 October 2024. From the date of docketing to the present date, 230 days have elapsed. On the date requested, 270 days will have elapsed since docketing.

From 11 through 12 March 2024, from 18 through 23 March 2024, and from 17 through 18 April 2024, Appellant was tried by a Special Court-Martial composed of a panel of officer and enlisted members at Ramstein Air Base, Germany. R. at 1, 190-91, 201, 1066-67, 1310. Appellant was convicted contrary to her pleas of one Charge with one Specification of reckless driving, in violation of Article 113, Uniform Code of Military Justice (UCMJ). R. at 191, 1006; *Entry of Judgment (EOJ)*. Appellant was acquitted of One Charge with Two Specifications of obstruction of justice, in violation of Article 131, UCMJ. R. at 191; *EOJ*. The members sentenced Appellant to be reduced to E-3 and to perform hard labor without confinement for ninety days. R. at 1309.



**GRANTED**  
**20 JUN 2025**

The record of trial consists of one E-ROT containing two volumes, with twelve Prosecution Exhibits, four Court Exhibits, fourteen Defense Exhibits, and fifty-six Appellate Exhibits. The transcript is 1310 pages long. Appellant is not currently confined. Undersigned counsel has not yet completed her review of the record for this case.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel also provides the following information: Maj Grande is currently assigned 30 cases; 26 cases are pending before this Court (22 cases are pending AOE). Five cases have priority over the present case:

1. *United States v. Ingram* - No. ACM S32781– The record of trials is three volumes consisting of two Prosecution Exhibits and four Appellate Exhibits. The transcript is 86 pages. On 6 June 2025, this Court ordered briefs on a specified issue, due not later than 20 June 2025. Undersigned counsel is finalizing the brief in this case.
2. *United States v. Hedgepeth*, ACM No. 40681– The record of trial consists of one ROT with four volumes, three Prosecution Exhibits, one Court Exhibit, three Defense Exhibits, and five Appellate Exhibits; the transcript is 115 pages long. Undersigned counsel is currently drafting this brief, due no later than 14 July 2025. Undersigned counsel does not anticipate asking for another EOT in this case.
3. *United States v. Rockrich*, ACM No. 40666 – The record of trial consists of two Prosecution Exhibits, one Defense Exhibit, and sixteen Appellate Exhibits; the transcript is 96 pages long. Undersigned counsel has completed her review of the record in this case.
4. *United States v. Hilson*, ACM No. 24063 – The record of trial consists of one E-ROT with two volumes. It contains two Prosecution Exhibits, one Court Exhibit, eight

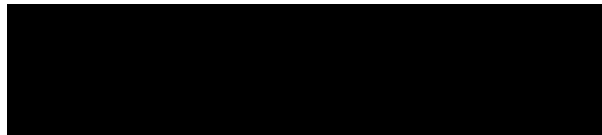
Defense Exhibits, and four Appellate Exhibits. The transcript is 156 pages long. Undersigned counsel has completed her review of the record in this case.

5. *United States v. Fundis*, ACM No. 40689- The record of trial consists of six volumes, with eight Prosecution Exhibits, two Court Exhibits, eighteen Defense Exhibits, and eighteen Appellate Exhibits. The transcript is 377 pages long. Undersigned counsel has not yet completed her review of the record in this case. Civilian counsel assigned to this case will draft the AOE.

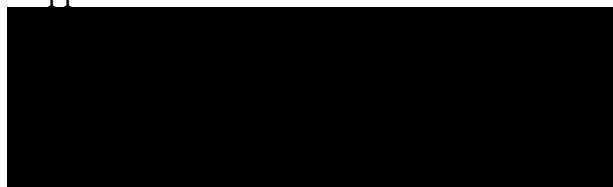
Through no fault of Appellant, undersigned counsel has been unable to prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to prepare a brief for Appellant's case. Appellant was advised of her right to a timely appeal. Appellant has been provided an update on the status of undersigned counsel's progress on this case. Appellant was advised of the request for this enlargement of time. Appellant provided limited consent to disclose a confidential communication with counsel wherein Appellant consented to the request for this enlargement.

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

Respectfully submitted,

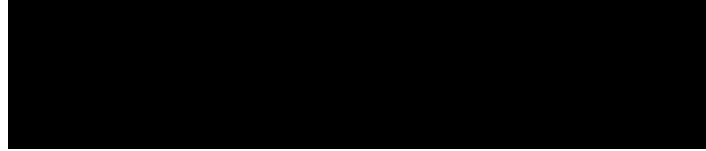


JORDAN L. GRANDE, Maj, USAF  
Appellate Defense Counsel

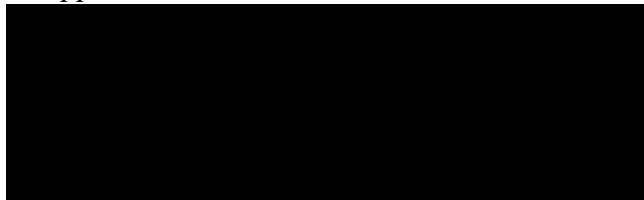


**CERTIFICATE OF FILING AND SERVICE**

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 18 June 2025.



JORDAN L. GRANDE, Maj, USAF  
Appellate Defense Counsel



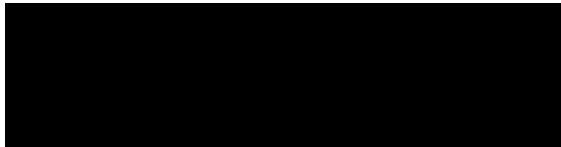
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
	)	Before Panel No. 1
Staff Sergeant (E-5)	)	
<b>SASCHA D. REESE,</b>	)	No. ACM 24069
United States Air Force,	)	
<i>Appellant.</i>	)	
	)	18 June 2025

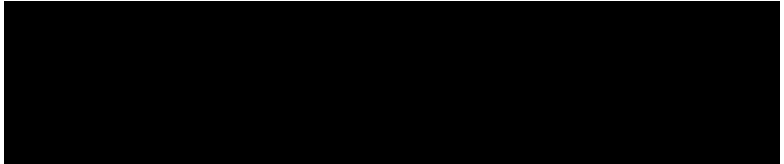
**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

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

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

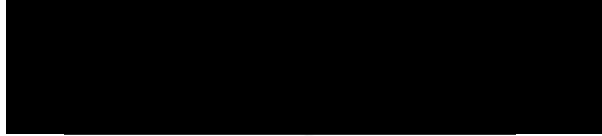


VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel

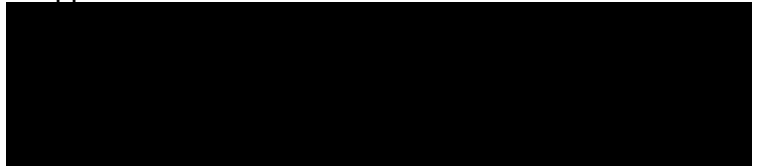


**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 18 June 2025.



VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION
<i>Appellee,</i>	)	FOR ENLARGEMENT
	)	OF TIME (SEVENTH)
v.	)	
	)	Before Panel No. 1
Staff Sergeant (E-5)	)	
<b>SASCHA D. REESE,</b>	)	No. ACM 24069
United States Air Force,	)	
<i>Appellant.</i>	)	20 July 2025

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

Pursuant to Rule 23.3(m)(1), (4), and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file Assignments of Error. Appellant requests an enlargement for a period of 30 days, which will end on **27 August 2025**.

Appellant’s direct appeal was docketed with this Court on 31 October 2024. From the date of docketing to the present date, 262 days have elapsed. On the date requested, 300 days will have elapsed since docketing.

From 11 through 12 March 2024, from 18 through 23 March 2024, and from 17 through 18 April 2024, Appellant was tried by a Special Court-Martial composed of a panel of officer and enlisted members at Ramstein Air Base, Germany. R. at 1, 190-91, 201, 1066-67, 1310. Appellant was convicted contrary to her pleas of one Charge with one Specification of reckless driving, in violation of Article 113, Uniform Code of Military Justice (UCMJ). R. at 191, 1006; *Entry of Judgment (EOJ)*. Appellant was acquitted of One Charge with Two Specifications of obstruction of justice, in violation of Article 131, UCMJ. R. at 191; *EOJ*. The members sentenced Appellant to be reduced to the grade of E-3 and to perform hard labor without confinement for ninety days. R. at 1309.



**GRANTED**  
**22 JULY 2025**

The record of trial consists of one E-ROT containing two volumes, with twelve Prosecution Exhibits, four Court Exhibits, fourteen Defense Exhibits, and fifty-six Appellate Exhibits. The transcript is 1310 pages long. Appellant is not currently confined. Undersigned counsel has not yet completed her review of the record for this case.

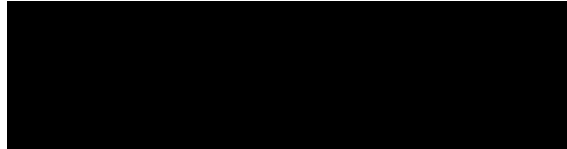
Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel also provides the following information: Maj Grande is currently assigned 31 cases; 24 cases are pending before this Court (19 cases are pending AOE). Two cases have priority over the present case:

1. *United States v. Hilson*, ACM No. 24063 – The record of trial consists of one E-ROT with two volumes. It contains two Prosecution Exhibits, one Court Exhibit, eight Defense Exhibits, and four Appellate Exhibits. The transcript is 156 pages long. Undersigned counsel has completed her review of the record in this case.
2. *United States v. Fundis*, ACM No. 40689- The record of trial consists of six volumes, with eight Prosecution Exhibits, two Court Exhibits, eighteen Defense Exhibits, and eighteen Appellate Exhibits. The transcript is 377 pages long. Undersigned counsel has not yet completed her review of the record in this case. Civilian counsel assigned to this case will draft the AOE.

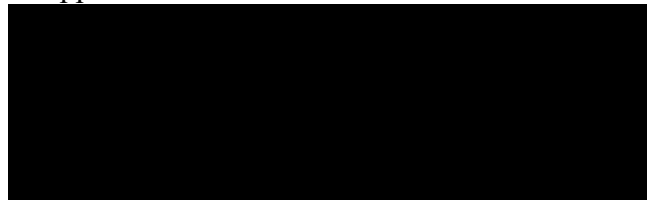
Through no fault of Appellant, undersigned counsel has been unable to prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to prepare a brief for Appellant's case. Appellant was advised of her right to a timely appeal. Appellant has been provided an update on the status of undersigned counsel's progress on this case. Appellant was advised of the request for this enlargement of time. Appellant provided limited consent to disclose a confidential communication with counsel wherein Appellant consented to the request for this enlargement.

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

Respectfully submitted,



JORDAN L. GRANDE, Maj, USAF  
Appellate Defense Counsel

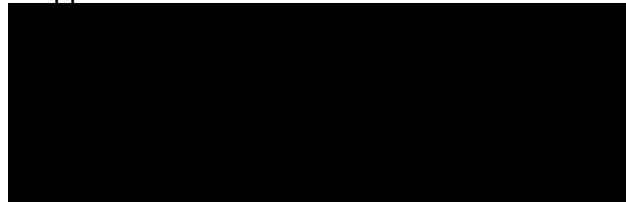


**CERTIFICATE OF FILING AND SERVICE**

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 20 July 2025.



JORDAN L. GRANDE, Maj, USAF  
Appellate Defense Counsel



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

UNITED STATES,	)	UNITED STATES’
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT’S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
Staff Sergeant (E-5)	)	Before Panel No. 1
<b>SASCHA D. REESE,</b>	)	No. ACM 24069
United States Air Force,	)	
<i>Appellant.</i>	)	
	)	21 July 2025

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

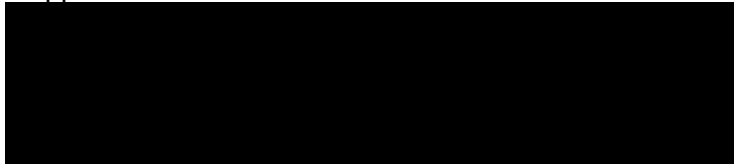
Pursuant to Rule 23.2 of this Court’s Rules of Practice and Procedure, the United States hereby enters its opposition to Appellant’s Motion for Enlargement of Time to file an Assignment of Error in this case.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant’s new delay request is granted, the defense delay in this case will be 300 days length. Appellant’s nearly year long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court’s appellate processing standards. Appellant has already consumed almost two thirds of the 18 month standard for this Court to issue a decision, which only leaves about 8 months combined for the United States and this Court to perform their separate statutory responsibilities.

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

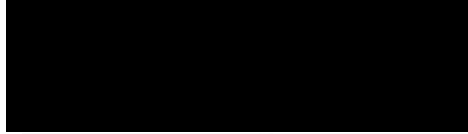


VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel



**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 21 July 2025.



VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel



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

**UNITED STATES,**  
*Appellee,*

v.

Staff Sergeant (E-5)  
**SASCHA D. REESE,**  
United States Air Force,  
*Appellant.*

) **APPELLANT’S MOTION**  
) **FOR ENLARGEMENT**  
) **OF TIME (EIGHTH)**  
)  
) Before Panel No. 1  
)  
) No. ACM 24069  
)  
) 18 August 2025

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

Pursuant to Rule 23.3(m)(1), (4), and (6) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file Assignments of Error. Appellant requests an enlargement for a period of ten days, which will end on **6 September 2025**.

Appellant’s direct appeal was docketed with this Court on 31 October 2024. From the date of docketing to the present date, 291 days have elapsed. On the date requested, 310 days will have elapsed since docketing.

From 11 through 12 March 2024, from 18 through 23 March 2024, and from 17 through 18 April 2024, Appellant was tried by a Special Court-Martial composed of a panel of officer and enlisted members at Ramstein Air Base, Germany. R. at 1, 190-91, 201, 1066-67, 1310. Appellant was convicted contrary to her pleas of one Charge with one Specification of reckless driving, in violation of Article 113, Uniform Code of Military Justice (UCMJ). R. at 191, 1006; *Entry of Judgment (EOJ)*. Appellant was acquitted of One Charge with Two Specifications of obstruction of justice, in violation of Article 131, UCMJ. R. at 191; *EOJ*. The members sentenced Appella and to the grade of E-3 and to perform hard labor without confinement for ninety c 9.



**GRANTED**  
**22 AUG 2025**

The record of trial consists of one E-ROT containing two volumes, with twelve Prosecution Exhibits, four Court Exhibits, fourteen Defense Exhibits, and fifty-six Appellate Exhibits. The transcript is 1310 pages long. Appellant is not currently confined. Undersigned counsel is currently drafting the AOE in this case and is requesting ten additional days given the below list of cases with priority over this case. Barring exceptional circumstances, undersigned counsel does not anticipate requesting an additional AOE in this case.

Pursuant to A.F. Ct. Crim. App. R. 23.3(m)(6), undersigned counsel also provides the following information: Maj Grande is currently assigned 29 cases; 25 cases are pending before this Court (18 cases are pending AOE's). Three cases have priority over the present case:

1. *United States v. Gale*, Misc. Dkt. No. 2025-01/ USCA Dkt. No 25-0237/AF- Undersigned counsel is working with civilian counsel to draft a Supplement to the Petition for Grant of Review in this Art. 62, UCMJ case, which is due to the Court of Appeals for the Armed Forces by 2 September 2025.
2. *United States v. Hedgepeth*, ACM No. 40681- The reply brief for this case is currently undergoing leadership review and will be filed with this Court by 19 August 2025.
3. *United States v. Fundis*, ACM No. 40689- The record of trial consists of six volumes, with eight Prosecution Exhibits, two Court Exhibits, eighteen Defense Exhibits, and eighteen Appellate Exhibits. The transcript is 377 pages long. Undersigned counsel has completed her review of the record in this case, however civilian counsel assigned to this case will draft the AOE.

Through no fault of Appellant, undersigned counsel has been unable to prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to prepare a brief for Appellant's case. Appellant was advised of her right to a timely appeal. Appellant has been

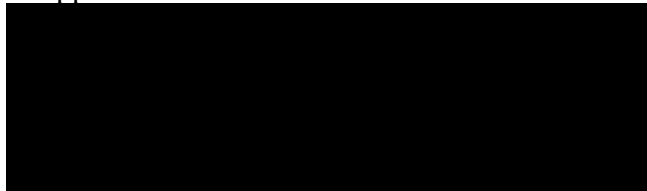
provided an update on the status of undersigned counsel's progress on this case. Appellant was advised of the request for this enlargement of time. Appellant provided limited consent to disclose a confidential communication with counsel wherein Appellant consented to the request for this enlargement.

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

Respectfully submitted,

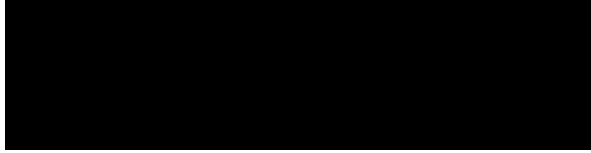


JORDAN L. GRANDE, Maj, USAF  
Appellate Defense Counsel

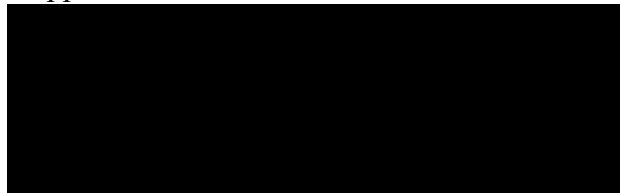


**CERTIFICATE OF FILING AND SERVICE**

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 18 August 2025.



JORDAN L. GRANDE, Maj, USAF  
Appellate Defense Counsel



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

<b>UNITED STATES,</b>	)	UNITED STATES'
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
Staff Sergeant (E-5)	)	Before Panel No. 1
<b>SASCHA D. REESE,</b>	)	No. ACM 24069
United States Air Force,	)	
<i>Appellant.</i>	)	19 August 2025
	)	

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

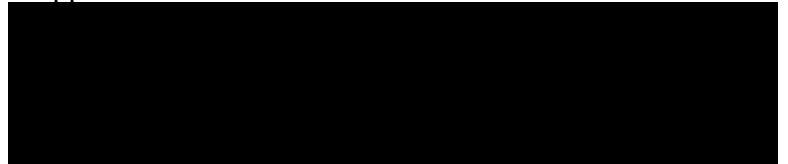
Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 310 days in length. Appellant's nearly year-long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two thirds of the 18-month standard for this Court to issue a decision, which only leaves about 8 months combined for the United States and this Court to perform their separate statutory responsibilities.

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

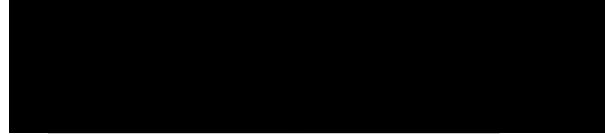


VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel

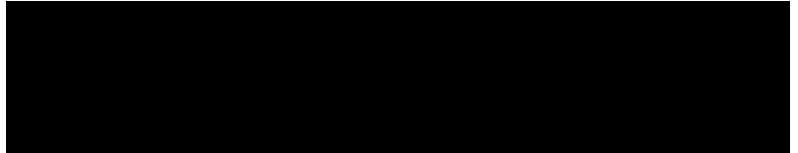


**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 19 August 2025.



VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel



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

<b>UNITED STATES</b> <i>Appellee</i>	)	<b>UNITED STATES' MOTION FOR ENLARGEMENT OF TIME (FIRST)</b>
	)	
v.	)	Before Panel No. 1
	)	
Staff Sergeant (E-5)	)	No. ACM 24069
<b>SASCHA D. REESE,</b>	)	
United States Air Force	)	30 September 2025
<i>Appellant</i>	)	

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

Pursuant to Rule 23.3(m)(5), the United States respectfully moves for a **21-day** enlargement of time to file its answer brief in this case, currently due 8 October 2025. The United States' requested due date is 29 October 2025. This is the United States' first request for an enlargement of time.

This case was docketed with the Court on 31 October 2024. Since docketing, Appellant has been granted eight (8) enlargements of time. Appellant filed his brief with this Court on 8 September 2025, and filed a motion to cite supplemental authority on 17 September 2025. As of the date of this request, 334 days have elapsed since docketing. On the date requested, 363 days will have elapsed.

There is good cause for the enlargement of time. Since Appellant's brief was filed on 8 September 2025, undersigned counsel has filed one brief at this Court (United States v. Armour, Misc. Dkt. No. 2025-10, *Article 62 Appeal*, 11 September 25), and two briefs at the Court of Appeals for the Armed Forces (United States v. Casillas, USCA Dkt. No. 24-0089, *Response to Petition for Reconsideration*, 17 September 2025; United States v. Menard, USCA Dkt. No. 25-*Answer Brief*, 23 September 2025). On 25 and 26 September 2025, undersigned counsel



**GRANTED**  
**3 OCT 2025**

was out of the office to attend the Joint Appellate Advocacy Training at Fort McNair, DC. In the coming weeks, undersigned counsel will be filing a reply brief in United States v. Armour (anticipated due date: 9 October 2025), participating in ten moot arguments (four as the advocate, six as a judge), and presenting oral argument at CAAF in United States v. Hennessy and United States v. Rocha on 21 and 22 October 2025, respectively. Additionally, the Government Trial & Appellate Operations Division (JAJG) will be closed on 10 October 2025 and 13 October 2025 for a family day and federal holiday, respectively.

Due to undersigned counsel's workload and schedule, she has not finished reviewing the record of trial in this case, which is 2,690 pages long and contains 11 prosecution exhibits, 14 defense exhibits, 57 appellate exhibits, and 4 court exhibits. And due to office workload, there is no other appellate government counsel who can work on the brief sooner. JAJG currently has at least 16 briefs with pending due dates before this Court and 3 briefs with pending due dates before CAAF. JAJG currently only has six active-duty appellate attorneys (two of whom were at temporary duty locations for the majority of the month of September), one civilian associate chief, and one active-duty division chief. The division's director of operations was reassigned out of the office in August 2025 and her replacement is not expected until the end of October 2025, which means that JAJG has one less supervisory attorney to conduct supervisory review of briefs. JAJG is also short one active-duty appellate counsel due to a reassignment without replacement earlier this summer. JAJG is leveraging Reserve support, but workload issues remain.

The additional time offered by this request will not only allow counsel to effectively represent the United States before this Court while also meeting her other ethical and

professional obligations, but also ensure sufficient time for supervisory review so that the division can file the most thorough, helpful brief possible.

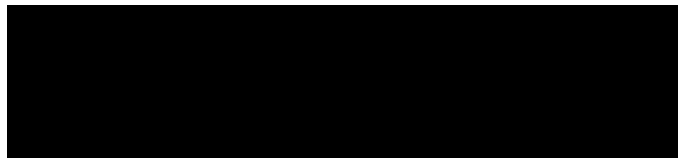
**WHEREFORE**, the United States respectfully requests this Honorable Court grant this motion for an enlargement of time.



KATE E. LEE, Maj, USAF  
Appellate Government Counsel

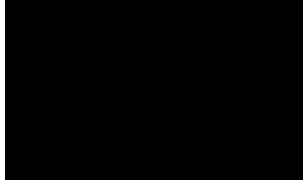


MARY ELLEN PAYNE  
Associate Chief

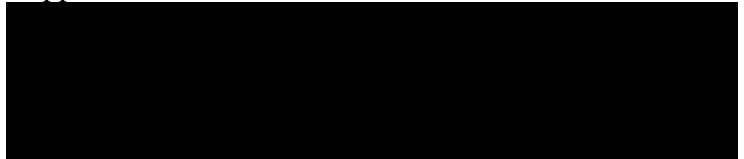


**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and the Appellate  
Defense Division on 30 September 2025.



KATE E. LEE, Maj, USAF  
Appellate Government Counsel,



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

UNITED STATES	)	No. ACM 24069
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Sascha D. REESE	)	
Staff Sergeant (E-5)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 1</b>

In view of the court’s selection of the above-captioned case to be heard as part of the court’s oral argument outreach program at the Syracuse University College of Law on 27 February 2026, the court invites the filing of *amicus curiae* briefs on the specified issues in support of Appellant or Appellee by law students from the Syracuse University College of Law acting under supervising attorneys. See JT. CT. CRIM. APP. R. 22(a); A.F. CT. CRIM. APP. R. 14.1(c). Such *amicus curiae* briefs will be filed in accordance with this court’s Rules of Practice and Procedure. See JT. CT. CRIM. APP. R. 13, 17, and this court’s accompanying rules.

Supervising attorneys will be deemed admitted *pro hac vice*, subject to filing an application setting forth required qualifications as directed by the court. JT. CT. CRIM. APP. R. 9(c). The Clerk of Court will provide the application.

Further, law students are invited to present oral argument relating to their briefs on the date specified above. See JT. CT. CRIM. APP. R. 22, 25.

Accordingly, it is by the court on this 15th day of January, 2026,

**ORDERED:**

Any *amicus curiae* briefs filed in support of Appellant or Appellee shall be filed with the court **not later than 18 February 2026**. Should law students need additional time to file their briefs, see A.F. CT. CRIM. APP. R. 23.3(m), *Motion for Enlargement of Time*, for guidance.

Students are reminded that names of victims and witnesses will be identified by initials only in their briefs and during oral argument.

While the court allots counsel of record for each side 30 minutes to present oral argument, A.F. CT. CRIM. APP. R. 25.2(b), the court affords law students **15 minutes** for each side to present oral argument on the specified issues.

FOR THE COURT



CAROL K. JOYCE  
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	APPELLANT’S MOTION
	)	FOR AN ENLARGEMENT
<i>Appellee,</i>	)	OF TIME (FIRST) OUT OF
	)	TIME TO FILE REPLY
	)	
v.	)	Before Panel 1
	)	
Airman First Class (E-3)	)	No. ACM 24069
<b>SASCHA D. REESE,</b>	)	
United States Air Force	)	30 October 2025
<i>Appellant.</i>	)	

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

Pursuant to Rule 23.3(m)(3), (6), and (7) of this Court’s Rules of Practice and Procedure, Appellant hereby moves for her first enlargement of time to file a reply brief to the Government’s Answer. Appellant requests an enlargement for a period of ten days, which will end on **15 November 2025**. Appellant’s direct appeal was docketed with this Court on 31 October 2024. From the date of docketing to the present date, 364 days have elapsed. On the date requested, 380 days will have elapsed.

This EOT is being filed out of time (OOT) because the undersigned did not receive the Government’s Answer until this morning, given that it was filed at 1147 on 29 October 2025. The Government’s Answer is 47 pages in length, and undersigned counsel anticipates a Reply that is, in turn, lengthy. Undersigned counsel also anticipates that the Government will file its Answer in *United States v. Castillo*, No. ACM 40705, today, and any Reply in that case will be due on 6 November 2025. Undersigned counsel requests this EOT due to the length of the anticipated reply and the time needed for leadership review of the Reply in this case and any

*Castillo.*



**GRANTED**  
**5 Nov 2025**

From 11 through 12 March 2024, from 18 through 23 March 2024, and from 17 through 18 April 2024, Appellant was tried by a Special Court-Martial composed of a panel of officer and enlisted members at Ramstein Air Base, Germany. R. at 1, 190-91, 201, 1066-67, 1310. Appellant was convicted contrary to her pleas of one charge with one specification of reckless driving, in violation of Article 113, Uniform Code of Military Justice (UCMJ). R. at 191, 1006; *Entry of Judgment (EOJ)*. The members sentenced her to be reduced to the grade of E-3 and to perform hard labor without confinement for ninety days. R. at 1309. Appellant is not confined.

The record of trial consists of one E-ROT containing two volumes, with twelve Prosecution Exhibits, four Court Exhibits, fourteen Defense Exhibits, and fifty-six Appellate Exhibits. The transcript is 1310 pages long.

Undersigned counsel is currently drafting the brief for *In re Landry*, Misc. Dkt. No. 2025-12, due to this Court on 3 November 2025, absent this Court granting the outstanding Motion to Stay the Briefing Schedule. Undersigned counsel also anticipates that the Government will file its Answer in *United States v. Castillo* today, and any Reply in that case will be due on 6 November 2025.

The enlargement is necessary to give undersigned counsel the opportunity to review the filing, prepare a reply brief, and route it for a leadership review. Appellant was advised of her right to a timely appeal, which serves to protect the Appellant. Appellant was advised of this specific request for enlargement of time and consents to it. Appellant was apprised of the status of this matter.<sup>1</sup>

**WHEREFORE**, Appellant respectfully requests that this Court grant the requested consent motion for an enlargement of time, out of time.

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<sup>1</sup> Appellant consented to this limited disclosure of attorney-client confidential communication.

Respectfully submitted,



JORDAN L. GRANDE, Maj, USAF  
Appellate Defense Counsel



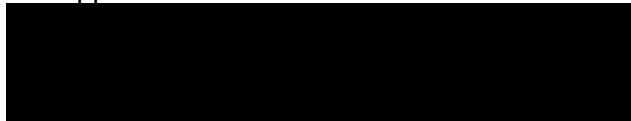
**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 30 October 2025.

Respectfully submitted,

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JORDAN L. GRANDE, Maj, USAF  
Appellate Defense Counsel

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

<b>UNITED STATES,</b>	)	UNITED STATES' NON-
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME TO FILE REPLY –
	)	OUT OF TIME
	)	
Airman First Class (E-3)	)	Before Panel No. 1
<b>SASCHA D. REESE,</b>	)	
United States Air Force,	)	No. ACM 24069
<i>Appellant.</i>	)	
	)	31 October 2025
	)	

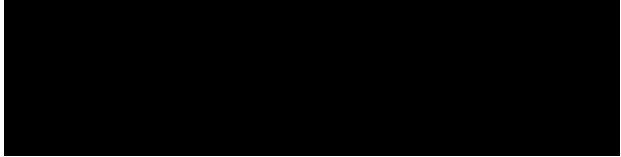
**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby does not oppose Appellant's Motion for Enlargement of Time, Out of Time, to file a reply brief in this case.

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

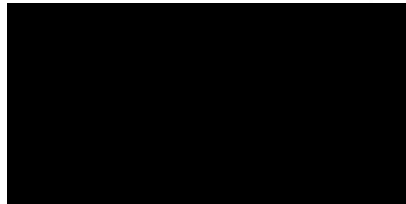


KATE E. LEE, Maj, USAF  
Appellate Government Counsel

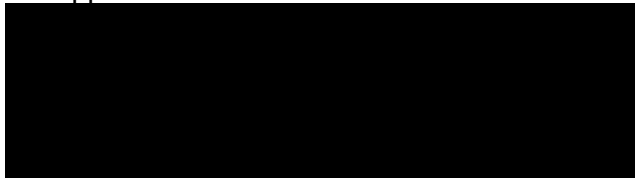


**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 31 October 2025.



KATE E. LEE, Maj, USAF  
Appellate Government Counsel



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

<b>UNITED STATES</b> <i>Appellee</i>	)	<b>MOTION TO CITE SUPPLEMENTAL AUTHORITY</b>
	)	
	)	
v.	)	Before Panel No. 1
	)	
Staff Sergeant (E-5)	)	Case No. ACM 24069
<b>SASCHA D. REESE</b>	)	
United States Air Force	)	
<i>Appellant</i>	)	17 September 2025

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

Pursuant to Rule 23.3(d) of this Court’s Rules of Practice and Procedure, Appellant, Staff Sergeant (SSgt) Sascha D. Reese, moves to cite as supplemental authority the decision by the United States Court of Appeals for the Armed Forces (CAAF) in *United States v. Roan*, \_\_ M.J. \_\_, USCA Dkt. No. 24-0104/AF (C.A.A.F. September 15, 2025).

This authority supports Issue IV raised in SSgt Reese’s brief filed on 8 September 2025. In that issue, SSgt Reese argued that the military judge erred when he held that the Government’s failure to disclose that E.E. (a named victim) had an on-going civil case<sup>1</sup> was neither a violation of *Brady v. Maryland*,<sup>2</sup> nor of Rule for Courts-Martial (RCM) 701. Specifically, SSgt Reese argued that the withheld evidence was both material and favorable, and the Government’s failure to disclose it violated *Brady*. In *Roan*, the CAAF unanimously held that this Court erred when it found that the withheld evidence in the appellant’s case was immaterial and there was no prejudice

---

<sup>1</sup> The civil case was insurance litigation over the fault of the car accident that was the subject of the  
<sup>2</sup> (1963).



**GRANTED**  
**25 SEP 2025**

to the appellant in violation of *Brady*. *Roan*, slip op. at 2, 7. There are significant similarities between *Roan* and SSgt Reese's Issue IV.

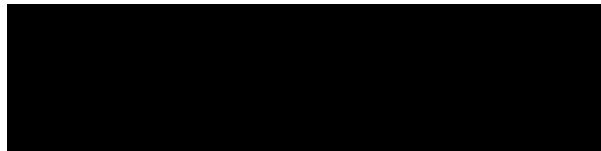
In *Roan*, just as the military judge did in SSgt Reese's case, this Court erroneously determined that the withheld evidence was not material under *Brady* because there was no reasonable probability of a different result. *Id.* at 7. In coming to that conclusion, this Court, 1) rejected the value of the withheld evidence; 2) rejected the importance of the evidence as general impeachment evidence; 3) found that even if there was a violation of *Brady*, there was no prejudice under a reasonable probability standard; and 4) found no prosecutorial misconduct reasoning that the prosecutor's actions were not knowing or intentional. *Id.* The CAAF held that this Court incorrectly analyzed the issue of materiality, and similarly, the military judge in SSgt Reese's case erroneously analyzed the *Brady* issue in her case. *Id.*, Brief on Behalf of Appellant at 23-27.

The CAAF's decision in *Roan* reaffirms the principles articulated in *Kyles v. Whitley*, 514 U.S. 419 (1995), that 1) in evaluating materiality of withheld evidence, "[t]he question is not what was raised at trial, but what could have been raised had this information been disclosed[;]" and 2) "all withheld evidence must be considered cumulatively." *Roan*, slip op. at 9; *Kyles*, 514 U.S. at 437. In SSgt Reese's case, the military judge failed to consider the cumulative effect of the evidence of the insurance litigation as impeachment evidence and evidence that could rebut the Government's theory that SSgt Reese was at fault for the accident. Just as the Government's case in *Roan* was threadbare, based solely on a positive urinalysis and the permissive inference of knowing and wrongful use, the evidence against SSgt Reese is, at best, minimal (as articulated in Issues I-III in the brief). *Roan*, slip op. at 4. The *Brady* violation in SSgt Reese's case is even more egregious than in *Roan*, because the prosecutor in SSgt Reese's case was not "willfully ignorant." *See id.* at 12. Rather, as the military judge in SSgt Reese's case acknowledged, the withheld

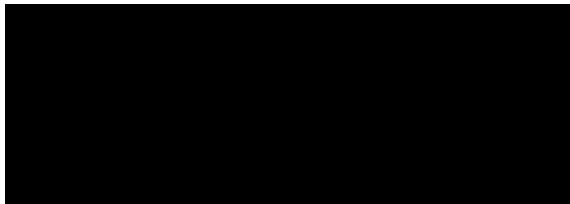
evidence was in the Government's possession and should have been turned over. Appellate Ex. LI at 9; *see Roan*, slip op. at 11-12. Just as the CAAF held in *Roan*, SSgt Reese's case is one in which, "the loss or destruction of evidence is . . . so critical to the defense as to make a criminal trial fundamentally unfair." *Roan*, slip op. at 12 (quoting *Arizona v. Youngblood*, 488 U.S. 51, 61 (1988) (Stevens, J., concurring in the judgment)).

**WHEREFORE**, SSgt Reese requests that this Court grant this Motion and consider the above-noted authority cited herein.

Respectfully Submitted,

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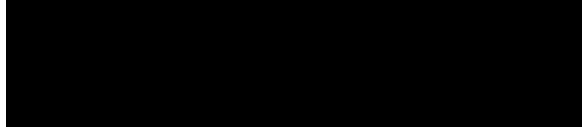
JORDAN L. GRANDE, Maj, USAF  
Appellate Defense Counsel

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Counsel for Appellant

**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were delivered by e-mail to the Court and served on the Government Trial and Appellate Operations Division on 17 September 2025.



JORDAN L. GRANDE, Maj, USAF  
Appellate Defense Counsel




IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	NOTICE OF APPEARANCE
<i>Appellee,</i>	)	
	)	
v.	)	
	)	Before Panel 1
Airman First Class (E-3)	)	
<b>Sascha D. Reese,</b>	)	No. ACM 24069
United States Air Force,	)	
<i>Appellant.</i>	)	25 February 2026

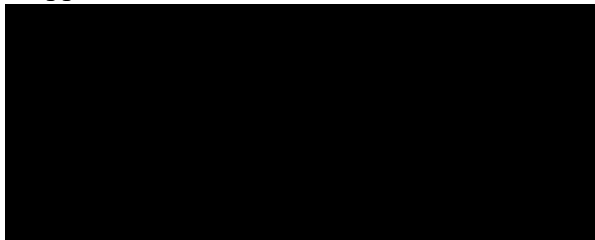
TO THE HONORABLE, THE JUDGES OF THE  
UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:

The undersigned hereby enters his appearance for Appellant in the above-captioned case pursuant to Rule 12 of the Joint Rules of Practice and Procedure for Courts of Criminal Appeals.

Respectfully submitted,




Dwight H. Sullivan  
Appellate Defense Counsel



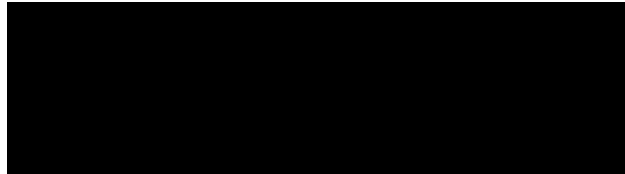
**CERTIFICATE OF FILING AND SERVICE**

I certify that the foregoing was sent via email to the Court and served on the Government Trial and Appellate Operations Division and amici on 25 February 2026.

Respectfully submitted,

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Dwight H. Sullivan  
Appellate Defense Counsel

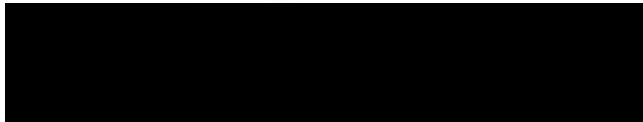
A large black rectangular redaction box covering contact information for Dwight H. Sullivan.

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

<b>UNITED STATES</b>	)	<b>NOTICE OF APPEARANCE OF</b>
<i>Appellee</i>	)	<b>GOVERNMENT COUNSEL</b>
	)	
v.	)	Before Panel No. 1
	)	
Airman First Class (E-3)	)	No. ACM 24069
<b>SASCHA D. REESE</b>	)	
United States Air Force	)	25 February 2026
<i>Appellant</i>	)	

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

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



REGINA HENENLOTTER, Maj, USAF  
Appellate Government Counsel

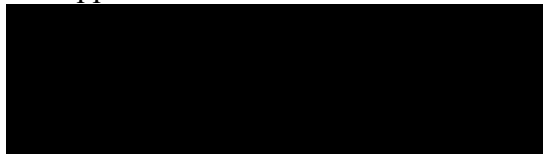


**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and the Appellate Defense Division on 25 February 2026.



REGINA HENENLOTTER, Maj, USAF  
Appellate Government Counsel

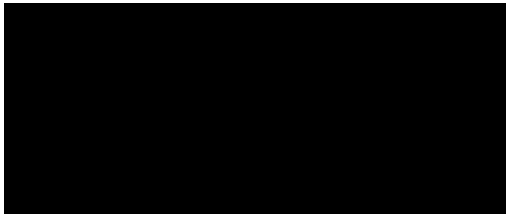


**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

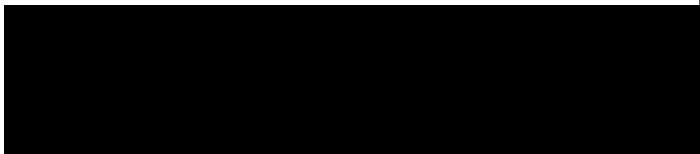
**UNITED STATES** ) **NOTICE OF APPEARANCE OF**  
*Appellee* ) **GOVERNMENT COUNSEL**  
)  
v. ) Before Panel No. 1  
)  
Airman First Class (E-3) ) No. ACM 24069  
**SASCHA D. REESE,** )  
United States Air Force ) 15 January 2026  
*Appellant* )

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

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



MATTHEW D. TALCOTT, Colonel, USAF  
Chief



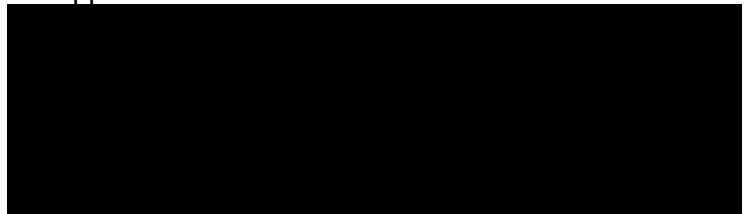
ion

**CERTIFICATE OF FILING AND SERVICE**

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



KATE E. LEE, Maj, USAF  
Appellate Government Counsel



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

UNITED STATES	)	No. ACM 24069
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>NOTICE OF PANEL CHANGE</b>
Sascha D. REESE	)	
Staff Sergeant (E-5)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	

It is by the court on this 6th day of May, 2025,

**ORDERED:**

That the Record of Trial in the above-styled matter is withdrawn from Panel 3 and referred to Panel 1 for appellate review.

This panel letter supersedes all previous panel assignments.



FOR THE COURT



Chief Commissioner

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

UNITED STATES	)	No. ACM 24069
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Sascha D. REESE	)	
Staff Sergeant (E-5)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 1</b>

Oral argument is hereby ordered on the following issues:

**I.**

**WHETHER THE FINDING OF GUILTY FOR RECKLESS DRIVING WAS ESTABLISHED BY FACTUALLY SUFFICIENT EVIDENCE THAT APPELLANT CROSSED INTO THE OPPOSING TRAFFIC LANE AND THAT THE SPEED FOR WHICH SHE DROVE HER VEHICLE OR BLOOD ALCOHOL CONTENT (BAC) WAS THE PROXIMATE CAUSE OF INJURY.\***

**II.**

**WHETHER THE MILITARY JUDGE ERRED IN RULING THAT WITHHELD EVIDENCE ABOUT THE ONGOING CIVIL LITIGATION INVOLVING EE, THE OTHER DRIVER, WAS NOT MATERIAL NOR FAVORABLE TO THE FACT FINDING IN APPELLANT'S CASE.**

Accordingly, it is by the court on this 15th day of January, 2026,

**ORDERED:**

Oral argument in the above-captioned case will be heard at **1100 hours on Friday, the 27th day of February 2026**, in the Melanie Gray Ceremonial

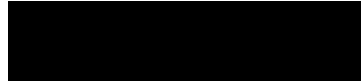
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\* Parties should be prepared to argue whether it was legally sufficient for the Government to use Appellant's BAC or the issue of exceeding the speed limit to prove reckless driving.

Courtroom, Syracuse University College of Law, Dineen Hall, 950 Irving Avenue, Syracuse, NY, 13244.



FOR THE COURT



CAROL K. JOYCE  
Clerk of the Court

IN THE UNITED STATES AIR FORCE

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COURT OF CRIMINAL APPEALS

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UNITED STATES,

*Appellee,*

v.

Staff Sergeant (E-5)

**SASCHA D. REESE,**

United States Air Force,

*Appellant.*

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Before Panel No. 1.

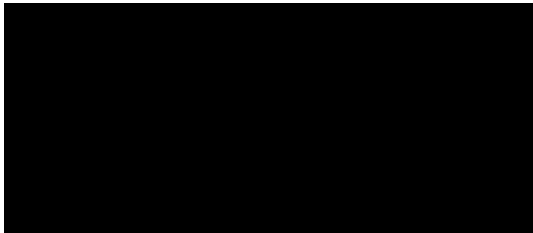
No. ACM 24069

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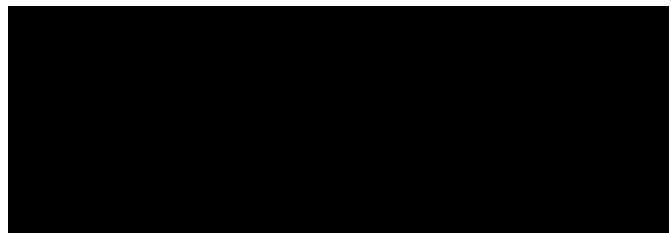
**BRIEF OF *AMICUS CURIAE* ON BEHALF OF APPELLEE  
THE SYRACUSE UNIVERSITY COLLEGE OF LAW**

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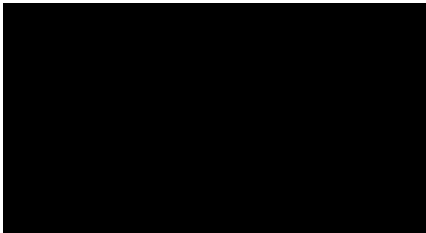
PIOTR BANASIAK  
SUPERVISING ATTORNEY



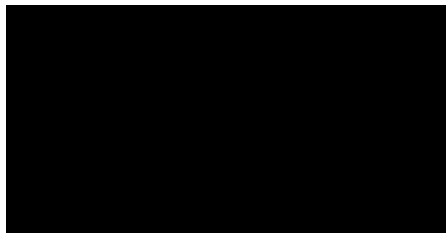
NATHAN ORNER  
STUDENT ATTORNEY



AVA M. DUSSMANN  
STUDENT ATTORNEY



HANNAH A. RICE  
STUDENT ATTORNEY



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**OTHER AUTHORITIES**

Air Force Safety Center Public Affairs. DAF Safety launches Motor Vehicle Awareness Survey to Assess Driver Attitudes (May 22, 2025) <a href="https://www.af.mil/News/Article-Display/Article/4195759/daf-safety-launches-motor-vehicle-awareness-survey-to-assess-driver-attitudes/#:~:text=Motor%20vehicle%20related%20mishaps%20are,excessive%20speed%20and%20reckless%20driving">https://www.af.mil/News/Article-Display/Article/4195759/daf-safety-launches-motor-vehicle-awareness-survey-to-assess-driver-attitudes/#:~:text=Motor%20vehicle%20related%20mishaps%20are,excessive%20speed%20and%20reckless%20driving</a> (last visited 13 Feb. 2026).....	11
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## STATEMENT OF APPELLEE'S INTEREST CURAIE<sup>1</sup>

*Amici* are Piotr Banasiak and law students Ava Dussmann, Hannah Rice and Nathan Orner. Ava Dussmann and Hannah Rice are both selected for the U.S. Air Force Judge Advocate General (JAG) program and actively participate in the Betty and Michael D. Wohl Veterans Legal Clinic at Syracuse University College of Law ("SUCOL"). SUCOL submits this brief in support of the Government.

The filing of this brief was invited by the Air Force Court of Criminal Appeals ("AFCCA"). The SUCOL, as part of the community outreach program, offers collaborative engagement between professors, practitioners, and students in supporting the main objectives of the program. The SUCOL's interest in Appellee's petition stems from our members' commitment to serving the legal interests of military servicemembers alongside the equal administration of justice between civilians and servicemembers, including those like the Appellant. As an educational institution whose members and students are servicemembers' advocates and scholars, *amici* SUCOL has an important interest in supporting the consideration of the issues before this Court. These issues include the governing principles surrounding factually sufficient evidence and the constitutional principles of *Brady v. Maryland* that govern materiality standards.

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<sup>1</sup> In compliance with Rule 22.1(d), briefs were signed in accordance with Rule 14.1(b), filed in accordance with Rule 17 and served in accordance with Rule 13.2. The parties' further consent to the filing of this amicus curiae brief upon invitation of this Court. No counsel authored, only the *amici* listed in the statement of interest. No party, counsel for a party or any person including *amici* made a monetary contribution intended to fund the preparation or submission of this brief.

## SUMMARY OF THE ARGUMENT

On 18 April 2024, a Special-Court Martial found Appellant guilty in violation of Article 113 and Specification 113-AC under the Uniform Code of Military Justice (“UCMJ”). On 21 May 2023, Appellant was driving her sport utility vehicle (“SUV”) when she approached a slight curve in the road. (R. 498; 742; App. Br.) The SUV collided with a Toyota Corolla driven by EE coming from the opposite direction. (R. 526).

The subsequent finding of guilty for reckless driving under Article 113 and Specification 113-AC was established by factually sufficient evidence in the record that the Appellant crossed into the opposing lane of traffic. After reviewing the physical evidence in conjunction with the Event Data Recorders (“EDRs”) from both respective vehicles, the expert testimony provided by *both* the prosecution and defense accident reconstruction experts was consistent with eyewitness testimony in establishing that the Appellant crossed into the opposing lane of traffic. In addition, the evidence established that Appellant’s excessive speed and blood alcohol content were a proximate cause of the injuries suffered by EE and the passengers in his vehicle.

Next, the military judge correctly rejected Appellant’s *Brady* claim, holding that the undisclosed evidence of EE’s civil litigation was neither material, because it did not create a reasonable probability of a different verdict, nor constitutionally favorable, as it offered no meaningful exculpatory or impeachment value sufficient to undermine confidence in the verdict.

## ARGUMENT

### **I. THE FINDING OF GUILTY FOR RECKLESS DRIVING WAS ESTABLISHED BY FACTUALLY SUFFICIENT EVIDENCE.**

Under Article 113 of the Uniform Code of Military Justice, the evidence must show the following to support a factually sufficient conviction for reckless driving:

- (1) That Appellant was in physical control of a vehicle, to wit, a passenger car;
- (2) That Appellant operated or physically controlled the vehicle in a reckless manner by crossing into the opposing lane of traffic while going around the curve on a two-lane road; and
- (3) That Appellant thereby caused the vehicle to strike and injure EE, JS, LJ, and AE. *See* Manual for Courts-Martial, United States pt.IV, ¶51.b. (2023 ed.) (MCM); (Ans. Br. at 13.)

The trial evidence amply supported each element of the charged offense. Evidence presented through both accident reconstruction experts' testimony, supported by data preserved through the EDRs within both vehicles and the consistent eyewitness testimony, was factually sufficient to show the Appellant crossed over into the opposing lane of traffic. Further, the Appellant's excessive speed and blood alcohol content ("BAC) were contributory proximate causes that led to the injury.

#### **A. Appellant recklessly crossed into the opposing lane of traffic.**

In an appeal of a finding of guilty, the court may consider the factual sufficiency if the accused can "make a showing of a deficiency in proof." 10 U.S.C. §866(d)(1)(B)(i). The court may give appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence. 10 U.S.C. §866(d)(1)(B)(ii)(I). Further, the court may "dismiss, set aside, or modify the finding, or affirm a lesser

finding” only if it is “clearly convinced that the finding of guilty was against the weight of the evidence.” 10 U.S.C. §866(d)(1)(B)(iii). The weight of the evidence meaning how “the CCA has just weighed it under subsection (B)(ii).” *United States v. Harvey*, 85 M.J. 127 (C.A.A.F. 2024). At court-martial, each party is entitled to the production of evidence which is relevant and necessary. R.C.M. 703(f)(1); *United States v. Bishop*, 76 M.J. 627,(A.F.C.C.A. 2 February 2017).

As indicated on the charge sheet and by opposing counsel, the Government charged the Appellant with reckless driving, to include the specific actus reus of “crossing into the opposing lane of traffic while going around the curve of a two-lane road.” (Ans. Br. at 13; App. Br. at 7.) The Government proved the actus reus explicitly through relevant and necessary evidence in the form of eyewitness testimony, corroborated by *both* accident reconstruction experts and the EDRs. Additionally, the Government established that the Appellant’s excessive speed and BAC when she was in physical control of her vehicle were the proximate cause of injury.

Appellant’s brief argues that while the Appellant was not charged with reckless driving by speeding or being impaired by alcohol, the Government’s “entire case was focused on proving” that Appellant drove recklessly because “she was speeding and had alcohol in her system.”(App. Br. at 7.) The Appellant’s brief further argues that the evidence was not enough to sustain the “rigorous” beyond a reasonable doubt standard that the Government was required to prove. (App. Br. at 15).

Appellant's argument is mistaken, because recklessness is a relative matter, and evidence of all the surrounding circumstances that made the operation dangerous, whether alleged or not, may be admissible. *MCM*, pt. IV, ¶51.c.(10). Ultimately, the Government met its burden to establish by factually sufficient evidence that Appellant crossed into the opposing lane of traffic.

**a. Expert witness testimony was consistent with eyewitness testimony that Appellant crossed into the opposing lane of traffic.**

The Government and defense counsel both introduced testimony and evidence from accident reconstruction experts; the trial court recognized both experts' qualifications. (R. at 738; 798.) Comprehensive evidentiary support was offered by accident reconstruction expert FH for the Government and MS for the defense. Moreover, the testimony offered by MS did not undermine, but enhanced the reliability of FH's conclusions. The defense did not object to FH's qualifications. (R. At 738).

In *United States v. Reveles*, the Government's accident reconstruction expert concluded that the appellant's vehicle was traveling 104-120 kilometers per hour (kmph) when he applied his brakes, whereas the defense accident reconstruction expert estimated speed before impact at 100 kmph. *United States. v. Reveles*, No. ACM 29029, 1993 CMR LEXIS \*196, at 4 (A.F.C.M.R. 27 April 1993). Even though they estimated different speeds, the defense expert concluded the speed to be in the range offered by the Government's expert.

Similarly, in this case, both the government and defense accident reconstruction experts testified as to the estimated *collision angle*. The defense

expert concluded the collision angle to be within the range offered by the Government's expert, thereby enhancing the reliability of the range itself. Thus, Appellant mistakenly argues that MS "disagreed with the Government expert's determination of the collision angle." (App. Br. at 13.)

Appellant's brief further argues that FH testified about a range where the accident may have occurred "but could not make a clear conclusion." (App. Br. at 13.) However, both experts testified to the clear conclusion of a specified range and the defense's own expert concurred with the estimated range of the collision angle. Considering the full context in the record, MS stated, "I come to the conclusion that the collision angle is approximately 9 degrees and then I review the report from [FH] and see that he's also in this range- he's also at 9 degrees." (R. at 815.) Even if MS concluded a range of 9 to 10 degrees and FH concluded a range of 9-19 degrees, they both still come to conclusions that are clearly within each other's ranges.

To reach his conclusion, the Government's expert analyzed the investigation file, both vehicles, airbag steering elements, the location of the accident, and the location of physical evidence (like traces) at the scene. (R. at 739; 746.) FH testified that according to his data, the collision "must have occurred in the middle of the road, slightly on the side of the [EE's] lane." (R. at 766.) FH further testified that there was no "clear evidence" that showed the collision occurred in Appellant's lane. (R. at 750.) Ultimately, FH testified that his findings are consistent with the eyewitnesses' testimony that Appellant came into their lane, and "this collision occurred in [EE's] lane." (R. at 786.) It is undisputed, and further noted in

Appellant's brief, that EE told the officers responding to the scene that Appellant had "mov[ed] on his [sic] lane" causing the accident. (R. at 424; App. Br. at 5.)

Appellant's brief attempts to undermine this consistency by asserting that EE's testimony is "unreliable because of his bias." (App. Br. at 15.) This argument ultimately offers no contradictory physical evidentiary support and relies solely on speculation. EE's account was not presented in isolation, and in fact was corroborated by objective event data, physical trace evidence, and expert reconstruction testimony.

MS *agreed* his ultimate determination was *not* inconsistent with what the "victims testified about, as far as [Appellant] coming into their lane." (R. at 857.) Eyewitness testimony can on its own be sufficient, but here expert witnesses provided reliable, consistent evidence to assist the factfinder to consider the weight of the surrounding circumstances. *See United States v. Rodriguez-Rivera*, 63 M.J. 372, 383 (C.A.A.F. 2006).

Finally, MS did not write a report detailing his conclusions but did his own research. (R. at 811-812.) MS testified that he reviewed FH's report and confirmed he had no disagreements with his report and no "technically decisive disagreements" with FH's conclusions. (R. at 839.) Even so, MS testified that their collision angles were within the same range. (R. at 815.) Ultimately, the expert testimony provided at trial was not only materially consistent between *both* experts but also between the eyewitness testimony provided by EE, the other driver at the time of the collision.

**b. Expert Witness Testimony was consistent regarding the analysis of the Event Data Recorders.**

FH collected data from both vehicles' EDRs and indicated that EDRs are a storage function in the airbag devices and modern vehicles that usually record "driving data in case of a collision or an event that is similar to a collision." (R. at 740.) FH further testified that he had information on the "moving conditions or speed behavior, the steering behavior and breaking behavior." (R. at 754.)

FH noted that data from Appellant's car indicated she steered left when she should have been steering right to follow the curve of the road. (R. at 760-767.) Conversely, data from EE's vehicle indicated that he was "steering left to follow the curve from his direction." (App. Br. at 3 and Prosecution Exhibit 5.)

MS, the defense expert even testified that he would do a similar procedure, "like the same" and "like [FH] did." (R. at 803.) MS testified that based on his review of the data, there was no question that Appellant's car came into EE's lane, just a matter of "how much." (R. at 849-850.) Appellant's brief argues that FH could not determine the "exact spot" where the collision occurred in the road and that FH could depict a "range" but could not make "clear conclusions." (App Br. at 13; R. at 750-52.) However, the depicted range is consistent with eyewitness accounts, and supports the finding that Appellant crossed into the opposing lane of traffic.

In sum, both parties' reconstruction experts relied on the same EDR data, applied substantially similar methodology, and reached materially consistent conclusions. There is no reasonable basis to challenge the factfinder's determination.

**B. The trial evidence established that Appellant's excessive speed and BAC level were the proximate cause of injury.**

The evidence also established that Appellant exceeded the speed limit and had a .04 BAC, impacting her ability to drive safely. Thus, these factors were a proximate cause of injury, a necessary element of reckless driving resulting in personal injury. *MCM*, pt. IV, ¶51.c.(9).

To be a proximate cause, the accused's actions need not be the sole cause of the injury, nor must they be the immediate cause of the injury, the latest in time and space preceding the injury. *Id.* A contributing cause is deemed proximate only if it plays a material role in the victim's injury. *Id.* Finally, the Appellant's actions in the form of drinking before driving and speeding are contributory factors not solely determinative but are *material* in the victim's injury. *Id.* at ¶51.c.(9).

Here, FH testified that based on the damage to both vehicles, they can form conclusions about the collision angle as well as the "force and energy of the impact." (R. at 745.) FH also testified that the faster someone is driving may decrease the "ability for them to react to avoid an accident." (R. at 784.) According to the EDR data, Appellant was driving "approximately 99 kilometers per hour" at 5 seconds before the collision where the speed limit was "70 kilometers per hour." (R. at 759-760). FH even testified that speed factored into this case "as a cause, technically not significantly." (R. at 766).

This testimony illustrates a contributory causal relationship between speed, and the subsequent actions appellant took that night, resulting in the collision and thus, a material contributory cause of the injury.

Appellant's brief further contends that speed was not a factor in the accident but may have contributed to the "significance of the injuries." (App. Br. at 4.) But even defense counsel opened the door to the discussion of speed with their own expert witness on direct stating in the record, "Okay. I want to discuss speed with you." (R. at 833.) MS testified that appellant could have been driving the curve at "130 kilometers an hour and feel safe." (R. at 833-834.) However, to "feel safe" and to actually drive safely are two materially distinct questions. Here, the undisputed speed limit was 70 kilometers per hour. (R. at 767; 851-852.) MS later testified in the affirmative that if Appellant was following the speed limit, there "wouldn't have been such a severe collision." (R. at 852.)

Dr. JW, the chief toxicologist at the Armed Forces medical examiner system at Dover Air Force Base, was called as a witness for the Government. (R. at 648-649.) He opined on the generally and widely known comparative legal limits regarding BAC between the United States, at 0.08 and Germany, at 0.05 converted to US standard. (R. at 659-661.) Dr. JW first laid the foundation regarding the scientific components of alcohol and, more specifically, ethanol. (R. at 675-658.) Then, Dr. JW testified that "we certainly" *do know* that "any amount of ethanol can certainly degrade-impair driving performance." (R. at 665-666.) This testimony establishes a scientific foundation for the effects of alcohol on driving ability, and supports the conclusion that Appellant's measurable BAC was, in fact, a contributing factor to her impaired driving performance.

Standing alone, excessive speeding may not be determinative, and BAC standing alone may not be determinative. However, in this case, the combination of those things, coupled with the time of day and layout of the two-lane road, made a serious accident reasonably foreseeable. Thus, while these distinct factors may not be solely determinative, they are nevertheless relevant facts surrounding the circumstances of the collision and were correctly admitted for the factfinder to consider.<sup>2</sup> *MCM*, pt. IV, ¶51.c.(7). Appellant’s excessive speed and BAC were thus a proximate cause to the injuries suffered by the victims as a result of the accident.

**C. The U.S. Air Force has an interest in promoting the safety of Appellant and similarly situated servicemembers.**

Motor vehicle related mishaps are the leading cause of preventable deaths within the Department of the Air Force. *See* Air Force Safety Center Public Affairs. DAF Safety launches Motor Vehicle Awareness Survey to Assess Driver Attitudes (May 22, 2025), <https://www.af.mil/News/Article-Display/Article/4195759/daf-safety-launches-motor-vehicle-awareness-survey-to-assess-driver-attitudes/#:~:text=Motor%20vehicle%20related%20mishaps%20are,excessive%20speed%20and%20reckless%20driving>. The leading factors in these traffic fatalities are “driving under the influence, excessive speed and reckless driving.” *Id.*

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<sup>2</sup> In reviewing a case for legally sufficient evidence, the Supreme Court stated the relevant question is “whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *United States v. Oliver*, 70 M.J. 64, 68 (C.A.A.F. 2011) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1973)). The test for legal sufficiency [the Jackson Standard] “gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.” *Id.* Here, factors like excessive speed and BAC were relevant; basic facts surrounding the circumstances that the trier of fact may draw reasonable inferences to ultimate facts.

The Air Force has promulgated different policies and agreements to prevent or reduce the frequency and severity of vehicular mishaps “involving the Department of the Air Force (DAF) personnel, equipment, and operations.” *See* Department of the Air Force Instruction 91-207, ¶1 (26 July 2019). Holding servicemembers accountable in the context of the military justice system likewise furthers those interests. The US and Germany also have special international agreements, including the NATO Status of Forces Agreements (“SOFAs”). Both Spangdahlem Air Base and similarly situated bases like Ramstein have readily accessible information for servicemembers regarding their legal status in overseas bases or posts, specifically Germany. *See generally* Spangdahlem Air Base., Fact Sheets, Status of Forces Agreement, <https://www.spangdahlem.af.mil/About-Us/Fact-Sheets/Article/293583/status-of-forces-agreement/> (last visited 15 Feb. 2026).; *see* Ramstein Air Base., Fact Sheets, Status of Forces Agreement <https://www.ramstein.af.mil/About/Fact-Sheets/Article/303721/status-of-forces-agreement/> (last visited 15 Feb. 2026). The Air Force has an interest, both domestic and overseas, in promoting the safety of military servicemembers and similarly situated personnel.

Spangdahlem Air Base, and various similarly situated bases, include weather status and ROADCONs on their websites that are meant to keep servicemembers and their families regularly updated on road conditions.<sup>3</sup> *See* Spangdahlem Air

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<sup>3</sup> The ROADCON system operates under three categories: ROADCON GREEN (normal driving for all vehicles), ROADCON AMBER (roads are moderately hazardous and drivers must exercise caution) and ROADCON RED (roads are very hazardous and drivers must exercise extreme caution.) (Id.)

Base., Weather Status Updates, <https://www.spangdahlem.af.mil/ROADCONS/> (last visited 13 Feb. 2026). Even if the ROADCON status was green on 21 May 2023, Appellant and similarly situated servicemembers are still put on notice to exercise caution on the roads due to any “potential hazards drivers may still encounter” and that drivers are still advised to “exercise caution” on the roads. *Id.*

The U.S. Air Force has an interest in promoting motor vehicle safety regarding all personnel and dependents to prevent motor vehicle-related mishaps, like the collision in this case for example. Not all circumstances where military servicemembers who have been charged with reckless driving also include factors like excessive speed or alcohol consumption. However, when the facts of a military servicemember’s case include factors such as these, they are material in considering all the circumstances to determine whether the accused’s manner of operation or physical control was, in fact, reckless.

**II. THE MILITARY JUDGE CORRECTLY RULED THAT EVIDENCE ABOUT THE ONGOING CIVIL LITIGATION INVOLVING EE, THE OTHER DRIVER, WAS NOT MATERIAL NOR FAVORABLE TO THE FACT FINDING IN APPELLANT’S CASE.**

The military judge did not err in ruling that evidence withheld about the ongoing civil litigation involving EE, the other driver, was not material nor favorable to the fact finding in Appellant’s case. Defense asserts a *Brady* violation, arguing that withheld evidence concerning EE’s ongoing civil litigation was favorable to the defense. (App. Br. at 23.) To prevail, however, Appellant must

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ROADCON GREEN indicates that even under normal driving conditions, it does not discount “potential hazards drivers may still encounter” and that drivers are still advised to “exercise caution” on the roads. (*Id.*)

satisfy the three-part Brady test: (1) the evidence at issue must be favorable to the accused, either because it is exculpatory or impeaching; (2) the evidence must have been suppressed by the Government; and (3) the appellant suffered prejudice. *Jells v. Mitchell*, 538 F.3d 478, 501 (6th Cir.2008); *Strickler v. Greene*, 527 U.S. 263, 281–82 (1999). The prejudice analysis evaluates the materiality of the evidence. *Jells*, 538 F.3d at 501-02. Specifically, “evidence is material under *Brady* if a reasonable probability exists that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” *Id.*

**A. The Judge reasonably concluded that the civil litigation evidence was immaterial, and therefore not prejudicial.**

The military judge reasonably concluded that the undisclosed civil litigation evidence was not material because its suppression does not create a reasonable probability of a different result. In light of the trial record, the proposed uses of the civil litigation evidence amount to speculative impeachment and cumulative expert disagreement, neither of which satisfies *Brady*’s demanding materiality standard.

Appellant claims that she could have used the evidence to:

- (1) Impeach the Government’s “only sober eyewitness” to the accident based on a financial motive;
- (2) impeach the alleged victim’s version of events with his own civil litigation expert that said he caused the accident;
- (3) challenge the Government expert’s opinion with the civil litigation expert; and
- (4) further support defense expert’s opinion. (App. Br. at 24.)

Military appellate courts have held that “if the defense did not make a discovery request...the accused will only be entitled to relief if he can show a ‘reasonable probability’ of a different outcome at trial, had the information been disclosed.”

Elizabeth Cameron Hernandez & Jason M. Ferguson, *The Brady Bunch: An*

*Examination of Disclosure Obligations in the Civilian Federal and Military Justice System*, 67 A.F. L. REV. 187, 199 (2011); Jells, 538 F.3d at 501; see also *United States v. Bagley*, 473 U.S. 667, 678 (1985) (“a constitutional error occurs...(if) suppression undermines confidence in the outcome of the trial.”).. It simply is not sufficient to claim that there is a reasonable *possibility* that testimony might have produced a different result; appellant’s burden is to establish a reasonable *probability* of a different result. *United States v. Hawkins*, 73 M.J. 605, 613 (A. Ct. Crim. App. 2014). Here, defense made no formal request for discovery, and the mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish materiality in the constitutional sense. App. Br. at 26; *United States v. Agurs*, 427 U.S. 97, 109-110 (1976). When determining if such suppressed evidence is material, a court must consider it collectively with all the evidence, not “item by item.” *Kyles v. Whitley*, 514 U.S. 419, 436 (1995).

Finally, *Brady* materiality is not satisfied by evidence that merely introduces the possibility of shared fault. *State ex rel. Robinson v. Vannoy*, 397 So. 3d 333, 363 (La. 2024). Evidence that merely suggests another party may share fault but does not negate the defendant’s culpability or undermine an essential element of the offense, is speculative and insufficient to establish materiality. *See Id.*, where the court found no *Brady* violation concerning allegedly undisclosed ballistics and serology evidence which the defendant argued would have supported an alternative

perpetrator theory, because the court found the evidence speculative and not material since it did not negate the defendant's guilt.

Here, the existence of civil litigation would not have materially advanced the defense's effort to impeach EE as the Government's "only sober eyewitness" based on financial motive. (App. Br. at 24.) The panel was already aware that the collision resulted in significant injuries requiring hospitalization. (R. at 563.) In a case involving serious bodily harm, the possibility of civil recovery is neither obscure nor surprising. The factfinder could reasonably infer that financial consequences might follow such an accident without being expressly told that litigation was ongoing.

More importantly, EE was not the sole evidentiary foundation for the Government's case. Their testimony regarding lane position was corroborated by other occupants of the vehicle and by objective event data recorder evidence. Additional impeachment for bias rarely creates a reasonable probability of acquittal. (App. Br. at 5.) At most, disclosure of civil litigation would have provided an additional avenue of cross-examination on motive. *Brady*, however, does not constitutionalize every incremental impeachment opportunity; rather, it protects against suppression that undermines "confidence in the verdict." *Strickler v. Greene*, 527 U.S. 263, 290 (1999). Here, the cumulative record forecloses any such conclusion.

Second, the civil litigation expert's opinion allegedly attributing fault to EE does not render suppressed evidence material. The defense already presented its own accident reconstruction expert at trial and fully litigated competing

interpretations of the collision dynamics. Gov. at 6. The panel heard expert disagreement regarding collision angle, steering input, and the precise lane positioning of the cars at the time of impact. (App. Br. at 13-14); (App. Br. at 6.) Introducing an additional expert opinion from collateral civil proceedings would have been cumulative of the defense theory already presented: that the accident could have occurred in the middle of the roadway or that EE may have contributed to the collision. *Brady* materiality is not established by the mere addition of another expert who offers a slightly different apportionment of fault, particularly where the Government's expert testified that the collision occurred slightly in EE's lane and the defense expert conceded that Appellant's vehicle crossed the center line to some degree. The withheld opinion would not negate an essential element of the offense; it would merely repackage an alternative narrative the panel had already considered and rejected.

Third, the civil expert's conclusions would not have materially undermined the Government's reconstruction expert. The defense had full opportunity to cross-examine the Government expert and to present its own expert critique. The panel heard that the precise point of impact could not be definitively established and that various collision scenarios were possible. (R. at 762.) The addition of a civil expert's opinion would not transform that evidentiary landscape. The Supreme Court has consistently held that suppressed impeachment evidence is not material where it is cumulative of evidence already before the factfinder. *Bagley*, 473 U.S. at 678. Because the defense already challenged the Government expert's methodology and

conclusions, the civil litigation materials would have added marginal force at most, and certainly not a reasonable probability of a different outcome.

Fourth, the withheld materials would not have meaningfully strengthened the defense expert's testimony. The defense expert testified that the exact collision point could not be conclusively determined and that multiple possibilities existed. (R. at 762). That theory was squarely presented to and considered by the panel. (*Id.*) Given the corroborated eyewitness testimony, vehicle data, and expert concessions, the incremental persuasive value of a civil expert's opinion does not approach constitutional materiality.

Many have been advocating for a less strict materiality standard. It has been argued that the traditional way courts define Brady *materiality* (asking whether suppressed evidence would have created a "reasonable probability" of a different outcome) is rooted in *probabilistic thinking* that doesn't accurately reflect how trials actually work. See Riley E. Clifton, *A Material Change to Brady: Rethinking Brady v. Maryland, Materiality, and Criminal Discovery*, 110 J. CRIM. L & CRIMINOLOGY 307, 310 (2020). Instead of focusing on statistical probability, some suggest adopting an *explanatory model* ("explanationism") that views a trial as a contest between competing explanations of what happened. See Sara Womble, *Two Steps Closer to Brady's Abandoned Promise: The Fourth Circuit's Cumulative Materiality Test for Brady and Napue Claims*, 66 B.C. L. REV. 2101, 2101 (2025), arguing for the *Naupe* test. Under this view, evidence should be considered material if it could help a defendant *present a stronger factual narrative* that the factfinder (jury or judge)

might reasonably adopt in deciding the case. *See Id.* They want the focus to shift from “could this impact the outcome,” to “could this false testimony reasonably have influenced the jury at all.” *See Id.*

*Even if* the court accepts this new, liberal interpretation of *Brady*, it would not be satisfied by the facts of the case at hand. Where the jury already knew a witness had strong incentives to testify one way or another, additional impeachment evidence may not undermine confidence in the verdict; a jury’s common-sense inference is enough. *See United States v. Alahmedalabdaloklah*, 94 F.4th 782, 829 (9th Cir.), where defense argued that withheld evidence could have impacted the government’s key eye-witness’s credibility, however, the court held that the nature of the case was enough for the jury to assume these “flaws” in credibility and that the evidence would not “have left the jury with a materially different impression” of the witness.); *see also, United States v. Shorts*, 76 M.J. 523, 523-33 (A. Ct. Crim. App. 2017), where the court held that where the evidence is simply cumulative, it is not material. Further, “there is no constitutional duty of a prosecutor to disclose “everything that might influence a jury.” *Agurs*, 427 U.S. at 109. Here, even under an explanatory model, the withheld civil litigation evidence would not have meaningfully strengthened the factual narrative or supplied the factfinder with a new, coherent explanation of the collision.

“[*Brady*’s] purpose is not to displace the adversary system as the primary means by which truth is uncovered, but to ensure that a miscarriage of justice does not occur.” *Bagley*, 473 U.S. at 675. The focus of the inquiry is whether suppression

undermines confidence in the verdict, not whether the defense might have preferred additional material. Here, confidence in the verdict remains. As in *Strickler*, “there was sufficient evidence to establish guilt aside from the evidence that was not disclosed by the prosecution.” *Strickler* 527 U.S. at 282. The verdict did not hinge on the impeachment of a witness, their testimony, or nonessential evidence from outside civil litigation.

Moreover, lowering the prejudice threshold in this context would erode the carefully crafted limits of *Brady*. As Justice Blackmun cautioned in *Bagley*, treating every suppression of arguably favorable evidence as constitutional error, “would impose an impossible burden on the prosecutor and would undermine the interest in the finality of judgements.” *Bagley*, 473 U.S. at 675. “Due process does not require undermining the adversarial system by mandating discovery of all or most of the evidence in the prosecutor’s file.” See Christopher Deal, *Brady Materiality Before Trial: The Scope of the Duty to Disclose and the Right to a Trial by Jury*, 82 N.Y. L. REV. 1780, 1785 (2007). The standard remains high for a reason. Jurors should be privy to evidence necessary to determine guilt or innocence, not collateral information that merely invites irrelevant speculation.

Ultimately, Appellant’s asserted uses of the civil litigation evidence all share a common defect: they rely on speculation that additional impeachment or cumulative expert disagreement might have shifted the panel’s weighing of contested facts. But *Brady* requires more than speculation. It requires a reasonable probability that the result would have been different. When the undisclosed

evidence is assessed collectively with the full record, it neither negates an essential element nor substantially weakens the Government's case. The military judge therefore acted well within his discretion in concluding that the civil litigation evidence was immaterial under Brady.

**B. The judge reasonably concluded that the civil litigation evidence was not favorable.**

The military judge reasonably concluded that the civil litigation evidence was not favorable because it neither exculpated Appellant nor provided constitutionally meaningful impeachment; at most, it would have supplied marginal, speculative support for arguments already before the panel.

Favorable evidence may make the difference between conviction and acquittal. *Bagley*, 473 U.S. 676. It is crucial to understand that evidence can be helpful to a defense without being "favorable" in the *Brady* sense. The standard is not that evidence is simply "relevant and helpful," rather that it is favorable. *See United States v. Amawi*, 695 F.3d 457, 471 (6th Cir. 2012), where the court held that "while Brady information is plainly subsumed within the larger category of information that is 'at least helpful' to the defendant, information can be helpful without being 'favorable' in the *Brady* sense." All evidence that is "favorable" under *Brady* will necessarily be relevant and helpful, but not all evidence that is relevant and helpful rises to the level of being "favorable" in the constitutional sense. *Id.* Even if favorable in some way, "all '*Brady*' evidence is by definition material," therefore, if it's not material, its favorability is irrelevant. *Shorts*, 76 M.J. at 532.

Further, “the government has no duty to disclose evidence that is neutral, speculative, or inculpatory, or evidence that is available to the defense from other sources.” *United States v. Pendleton*, 832 F.3d 934, 940 (8th Cir. 2016). Speculation can be defined as “the thought process of substituting generalizations or factual hypotheses for facts that are missing or unsupported by evidence.” See David Schwartz, *An Excess of Discretion? “Thayer’s Triumph” and the Uncodified Exclusion of Speculative Evidence*, 105 CAL. L. REV. 591, 591-598 (2017). Ultimately, “the character of a piece of evidence as favorable will often turn on the context of the existing or potential evidentiary record.” *Kyles*, 514 U.S. at 439.

First, the existence of EE’s civil litigation does not constitute favorable impeachment evidence. While the defense claims it would show financial motive, *Brady* does not require disclosure of information that is merely “interesting.” As in *Hanna*, the financial interest here falls even further from constitutional favorability. The possibility that EE may recover damages does not exculpate Appellant, nor does it meaningfully undermine corroborated testimony supported by other eyewitness accounts and objective vehicle data. At most, it would have provided an additional line of cross-examination. But the prosecutor’s duty is not so broad as to disclose any information that might affect a jury’s view of credibility.

More importantly, the defense theory cannot withstand scrutiny when considered in light of the surrounding context, the evidentiary record as a whole, and the procedural timeline of this case. EE’s account has remained materially consistent from his initial statement on the night of the accident through his sworn

testimony at trial. (R. at 1142.) The alleged financial motive is chronologically disconnected from the events in question; any civil litigation arose only after the night of the collision. It is therefore implausible to suggest that EE fabricated his account in anticipation of proceedings that had not yet begun. This argument is not only speculative and unsupported by the record, but also logically impossible.

Moreover, introducing this alleged financial motive would have simply allowed the Government to emphasize that EE's version of events has been consistent from the start (R. at 1142.)

Second, the civil litigation expert's opinion allegedly attributing fault to EE is not favorable evidence. Similar to the analysis under materiality, the panel heard and weighed competing expert interpretations. An additional opinion from a civil proceeding does not negate Appellant's culpability, and is only slightly helpful to reinforce, again, an already speculative narrative.

Third, the civil litigation expert testimony would not offer something substantively new, let alone something favorable to the appellant. At most, it would reiterate the uncontested narrative of uncertainty surrounding the mechanics of the collision. But as discussed in the materiality analysis, evidence suggesting possible shared or comparative fault does not negate Appellant's culpability for crossing into the opposing lane of traffic. Such neutral evidence does not meet the threshold for favorability under *Brady*.

Finally, although the withheld evidence may be contextually interesting, it is not favorable within the meaning of *Brady*. It does not meaningfully advance any of

the defense theories, nor does it provide exculpatory or impeachment value. Even assuming that some limited degree of favorability could be inferred, it is not material to the outcome of the case, and no amount of favorability can make up for lack of materiality.

### CONCLUSION

For these reasons, Amici respectfully request that this Honorable Court deny Appellant's claims and affirm the findings of the court below.

Respectfully submitted,

  
PIOTR BANASIAK  
SUPERVISING ATTORNEY



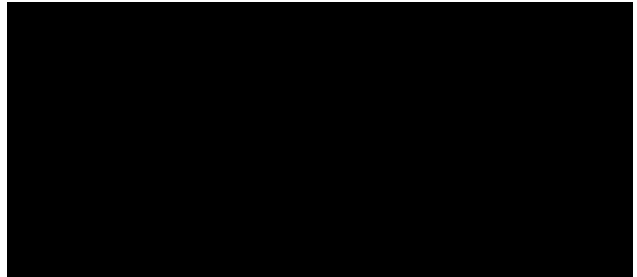
**CERTIFICATE OF FILING AND SERVICE**

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 and the Air Force Appellate Division on 18 February 2026.

Respectfully submitted,

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PIOTR BANASIAK

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

<b>UNITED STATES</b>	)	<b>APPELLANT’S</b>
<i>Appellee</i>	)	<b>REPLY BRIEF</b>
	)	
v.	)	Before Panel No. 1
	)	
Staff Sergeant (E-5)	)	No. ACM 24069
<b>SASCHA D. REESE</b>	)	
United States Air Force	)	17 November 2025
<i>Appellant</i>	)	

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

Pursuant to Rule 18(d) of this Honorable Court’s Rules of Practice and Procedure, Staff Sergeant (SSgt) Sascha D. Reese replies to the United States’ Answer filed on 31 October 2025. SSgt Reese primarily rests on the arguments contained in her initial brief, filed on 8 September 2025, and submits the following additional arguments for the issues identified below.

**Assignment of Error I.**

**This Court should reject the Government’s attempt to reframe on appeal its trial argument that “This case is about four victims and how the accused . . . drove recklessly *by speeding with enough alcohol in her system to impair her judgment.*” R. at 381 (emphasis added).**

The Government argued that SSgt Reese was guilty of driving recklessly because she was speeding and had alcohol in her system. R. at 381, 947-48. It went beyond simply presenting “surrounding circumstances” to the factfinder.

The Government’s theory of the case could not be clearer. In its opening statement, it told the members exactly what that theory was: “This case is about four victims and how the accused, Staff Sergeant Reese, drove recklessly *by speeding with enough alcohol in her system to impair her judgment.*” R. at 381 (emphasis added).

Then, in closing argument, the prosecution reminded the members what “reckless mean[s]” in SSgt Reese’s case:

It doesn’t mean that [SSgt Reese] intended to harm the victims. It’s that *her actions, drinking before driving and speeding*, those were not accidental, and those were done when [SSgt Reese] knew full well that her actions could cause harm to herself and to others. And here they did. Her actions caused her to crash into the victim’s car.

R. at 947-48 (emphasis added).

Understanding the prosecution’s theory of liability does not require, as the Government argues, “a selective reading of the record.” Gov. Ans. at 8. Instead, the prosecution plainly laid it out for the members: SSgt Reese was guilty of driving recklessly because she was speeding and had alcohol in her system. The only problem is that *speeding* and *drinking* is not how the prosecution chose to charge its case. *See United States v. Reese*, 76 M.J. 297, 301 (C.A.A.F. 2017) (holding that “There is no dispute that the government controls the charge sheet.”).

Here, the prosecution did exactly what *United States v. Mendoza* prohibits: It “charge[d] one offense under one factual theory and then argue[d] a different offense and a different factual theory at trial.” 85 M.J. 213, 220 (C.A.A.F. 2024). The Government charged reckless driving under 10 U.S.C. § 913(a)(1) with a theory of *reckless* control by *crossing into the opposing lane of traffic*, but at trial argued a charge of reckless driving under 10 U.S.C. § 913(a)(1) with a theory of *impaired* control by *drinking alcohol and speeding*.

At the 21 October 2025 oral argument for *United States v. Moore*, a case in which this Court found a conviction for sexual assault legally and factually insufficient based on *Mendoza*, the Government’s appellate counsel, in discussing the difference between

relying on “surrounding circumstances” and shifting theories of liability in a case, stated:

[I]f trial counsel would have said in this case, we know there is a question about whether the victim’s lying . . . we know that she let him lay in her lap and that it seems like maybe she was interested in him, you don’t have to resolve that, don’t even worry about whether there was consent or not . . . you can ignore all that evidence you don’t even have to consider it because she was asleep, and if she’s asleep that proves she didn’t consent- that’s improper after *Mendoza*.

Oral Argument at 12:05-12:31, *United States v. Moore*, No.25-0010/AF (C.A.A.F. Oct. 21, 2025), <https://www.armfor.uscourts.gov/newcaaf/CourtAudio13/20251021A.mp3>.

The Government’s counsel went on to explain that if the prosecution had made that argument, this would have been improper after *Mendoza* and it would be a violation of considering all the surrounding circumstances. *Id.* at 12:31-12:37. Yet, that is exactly what the Government did in SSgt Reese’s case. It a) told the members that this case was about SSgt Reese driving recklessly *by speeding and having alcohol in her system*, without mentioning the actus reus that it actually charged; b) presented a case focused heavily on SSgt Reese’s speed and whether she had alcohol in her system; and c) in closing told the members that if they found SSgt Reese drunk before driving and was speeding, that meant she drove recklessly, again leaving out the actus reus it charged. By the Government’s own admission, that is a violation of *United States v. Mendoza*, and it has “always been improper.” *Id.*

#### **Assignment of Error IV**

**This Court should reject the Government’s attempt to argue that withholding key impeachment evidence was justified because evidence that the Government’s key witness had a financial stake in the outcome of the case was material and favorable.**

The Government is required to turn over evidence favorable to SSgt Reese “as

soon as practicable.” See R.C.M. 701(a)(6). Evidence that the Government’s key eyewitness, E.E., the driver of the only other vehicle involved in the car accident, had an ongoing financial stake in a civil case involving the same car accident was both material and favorable.

The Government committed prosecutorial misconduct. See *United States v. Fletcher*, 62 M.J. 175, 178 (C.A.A.F. 2005) (“Trial prosecutorial misconduct is behavior by the prosecuting attorney that oversteps the bounds of that propriety and fairness which should characterize the conduct of such an officer in the prosecution of a criminal offense.”). The prosecutor was aware of the civil case between E.E. and SSgt Reese, and at the very least, a case paralegal was aware of a defense-favorable expert opinion. R. at 1024-25, 1147-48. In its Answer, the Government skirts around the fact that it was aware of this evidence. On the one hand, it claims trial counsel was unaware that there “might be an accident reconstructionist involved” in E.E.’s pending civil case, but on the other hand, admitted that trial counsel learned about E.E.’s civil suit in the days before trial. Gov. Ans. at 21-22. The Government claims that E.E.’s pretrial interview was the first time it “was explicitly made aware” of an ongoing civil matter, which begs the question of whether it was other than “explicitly” made aware prior to this pre-trial interview. Trial counsel’s comments to the military judge show that at least the case paralegal was aware of the experts in the civil suit prior to trial. R. at 1024-25; App. Ex. XLIV. Regardless of whether the Government was aware of the civil suit one year before trial or one day before trial; it withheld exculpatory information from the defense. The fact this information was disclosed in response to the Government’s first line of questioning of its first sentencing witness, but not disclosed during the

Government's direct examination of the same witness during findings, gives the appearance of strategic withholding, akin to the gamesmanship that the military's discovery rules are designed to prevent. *United States v. Jackson*, 59 M.J. 330, 333 (C.A.A.F. 2004) (citing *Manual for Courts-Martial, United States* (2002 ed.), Analysis of Rules for Courts-Martial A21-32).

Likewise, it does not matter who within the legal office was aware of the civil suit. In *United States v. Roan*, the Court of Appeal for the Armed Forces (CAAF) recently reiterated that the legal office may not "compartmentalize information" known within the legal office. No. 24-0104, 2025 LX 418269 at \*16 (C.A.A.F. Sep. 15, 2025). The CAAF chastised the prosecutor in that case for "under the most charitable interpretation . . . remain[ing] willfully ignorant" of exculpatory information in the possession of investigators. *Id.*

The bears directly on this case because, regardless of who in the legal office was aware of certain aspects of civil litigation, the defense was not made aware of even the existence of E.E.'s financial motive, which the Government concedes was information it withheld from the defense. Gov. Ans. at 21-22. The Government had an independent duty under *United States v. Stellato*, 74 M.J. 473 (C.A.A.F. 2015), to inquire further into the civil litigation once it was made aware of the existence of the case. However, the Government acknowledged it declined to inquire further even when given this information during a pretrial interview. Even so, it "was not required to dig further into the particularities" to find out about the experts in this case because at least the case paralegal was already aware of the expert – further investigation was not necessary, only disclosure, which did not happen until *after* SSgt Reese was convicted.

Gov. Ans. at 22. Prosecutors may not assert the “ostrich” defense, i.e., claim “ignorance of the facts – ignorance prompted by the government lawyers closing their eyes to the facts which should have prompted them to investigate.” *Stellato*, 74 M.J. at 487 (citing *United States v. Burnside*, 824 F.Supp. 1215, 1256 (N.D. Ill. 1993)). In *Stellato*, the CAAF held that the prosecutor wrongfully remained willfully ignorant by not disclosing exculpatory evidence “as soon as practicable” and that trial counsel cannot fulfill the Government’s *Brady* obligation when “the facts known not only warrant disclosure but should prompt further investigation.” 74 M.J. at 487-88 (citing *Burnside*, 824 F.Supp. at 1258).

The Government on appeal falls victim to the same error as the Military Judge, arguing that the withheld evidence was not favorable because SSgt Reese could not prove that, if disclosed, it could “make the difference between conviction and acquittal.” Gov. Ans. at 26-27 (quoting *United States v. Bagley*, 473 U.S. 667, 676 (1985)). The Government attempts to defend the Military Judge’s erroneous decision using the same logic that the CAAF found unpersuasive in *Roan*. “The question is not what was raised at trial, but what could have been raised had this information been disclosed.” *Roan*, 2025 LX 418269, at \*13. The Government claims that SSgt Reese’s explanation of the aspects of her defense that could have been raised if the Government had properly disclosed the exculpatory evidence are an “alternate universe,” which is exactly the point. Gov. Ans. at 25. Had the Government disclosed that E.E. had a financial motive to assert that he was not at fault for the accident, the trial would have looked markedly different. The Government engages in a long speculative analysis about whether the civil litigation expert’s testimony about “scatter patterns” would have been

“scientifically reliable” because “there was no evidence before the military judge about what ‘scatter pattern’ analysis involved” in an attempt to diminish the usefulness of this evidence to SSgt Reese’s case, for which there is no basis to support. Gov. Ans. at 25-26. As the CAAF stated in *Roan*, “[T]he very reason this information is not in the record is because it was withheld.” *Roan*, 2025 LX 418269, at \*17 n.2.

The Government mischaracterizes the defense’s expert testimony at trial, without even a citation to the record. Gov. Ans. at 26 (“[T]he defense’s own expert admitted that there was ‘no question’ that [SSgt Reese]’s vehicle crossed into the other lane to some degree.”). A full reading of the record reveals that both experts testified that they could not determine “the exact spot on the road where the collision occurred,” R. at 750, and testified only about “possible position[s]” of the vehicles upon impact and a “range” of where the accident may have occurred. R. at 750-52. The Government’s expert even testified that he could not determine “which driver reacted first” and that some of the possible variations of where the cars may have collided showed E.E.’s car more in SSgt Reese’s lane. R. at 744, 769. The Government characterizes the evidence in this case as conclusively establishing that SSgt Reese was at fault for the accident in an attempt to diminish the value of the financial-incentive impeachment evidence, but this “alternate universe” is not reflected in the record.

### **Assignment of Error V**

**In arguing that the Military Judge did not err in admitting Staff Sergeant Reese’s prior speeding tickets, the Government asks this Court to ignore the Military Judge’s misapprehension of the required intent for reckless driving.**

While the Government argues that SSgt Reese’s history of speeding tickets was “admissible as evidence of [SSgt Reese]’s knowledge regarding the repercussions of

unsafe driving,” that is not the purpose the Military Judge articulated in ruling the speeding tickets admissible. The Government paints the Military Judge’s reliance on *United States v. Leonard*, 439 F.3d 648 (10th Cir. 2006), as only a passing reference to “malice aforethought” that does not represent “the actual basis under which he was admitting the evidence.” Gov. Ans. at 32. Furthermore, the Military Judge erred when finding previous speeding tickets, on different roads, with no indication of danger to others, as relevant to the charged conduct.

- a. The Military Judge abused his discretion by allowing the Government to present evidence of Staff Sergeant Reese’s driving record to prove “malice aforethought” when reckless driving requires no specific intent.

The Military Judge expressly equivocated “malice aforethought” with the Government’s intended use of the evidence. The Military Judge stated that the Government sought to highlight SSgt Reese’s “lack of care [while driving] and disregard for safety’ (*i.e.* malice aforethought).” App. Ex. XXXIII at 4 (emphasis in original). The Military Judge then went on to apply the definition of “malice aforethought” to SSgt Reese’s case. He held, “An Accused acts with malice aforethought when [she] engages in ‘conduct which is *reckless* and wanton, and a gross deviation from a reasonable standard of care, of such a nature that the jury is warranted in inferring that [the] defendant was aware of a serious risk of death or serious bodily harm.’” *Id.* (alteration in original) (quoting *Leonard*, 439 F.3d at 651)

The Military Judge recognized that the *Leonard* court admitted driving records as evidence that Mr. Leonard had knowledge that his driving conduct posed a serious risk to others but that he continued to engage in that risky driving anyway. *Id.* The *Leonard* court found that aspect of Mr. Leonard’s knowledge relevant to the crime’s

intent element, malice aforethought for second degree murder, which requires, in part, that the “defendant was aware of a serious risk of death or serious bodily harm.” *Leonard*, 439 F.3d at 651. The Military Judge’s analysis did not match the *Leonard* court’s because he allowed the evidence not to support “awareness,” but rather to support “recklessness.” The Military Judge drew a false equivalence, which was in error.

The glaring defect in the Government’s argument is charting a new course for how abuse of discretion should be analyzed, focusing not on what the Military Judge actually said, but on what he allegedly meant to say. Gov. Ans. at 32. Use of such a speculative, after-the-fact analysis is far from resolving the judge confusing one word with its opposite, *see, e.g., United States v. Brown*, 13 M.J. 276, 277 (C.M.A. 1982) (finding it “evident what the military judge meant to say” in mixing up increasing for decreasing), and is not the law. The Government encourages this Court to overlook the Military Judge’s improper reliance and application of the “malice aforethought” standard to SSgt Reese’s case and engage in a scavenger hunt to find the “actual basis” for which this evidence was admitted. *Id.* It states that “the actual basis” the Military Judge described in admitting the evidence was to show that SSgt Reese was “‘on notice of the dangers of speeding and unsafe movement, [but] continued (sic) drive in a manner that put herself and others at risk,’ which made a fact of consequence – the element of recklessness – more or less likely.” *Id.* There is no need for this Court to look beyond the Military Judge’s plain writing to uncover the “actual basis” for why he admitted this evidence- to prove SSgt Reese’s “malice aforethought.” This was an abuse of discretion because malice aforethought is not an element of reckless driving.

Moreover, the factual differences from this case versus *Leonard* make the latter a particularly poor analogue for SSgt Reese's. In *Leonard*, the Court specifically found that a jury could infer that a defendant "with a record like that of Mr. Leonard's 'knows better than most' that his conduct is illegal and unsafe." *Leonard*, F.3d at 651. Mr. Leonard's lengthy history of convictions for operating a vehicle while under the influence "tend[ed] to show, even if only slightly, that Mr. Leonard acted with malice aforethought." *Id.* The District Court made this finding based on *that* defendant's specific driving record; which was only relevant for its *slight* probative value in proving that he acted with malice aforethought. *Id.* The facts of SSgt Reese's case are wholly inapposite, and this evidence cannot pass prong two of the *Reynolds* test. SSgt Reese had several traffic citations for speeding, none of which amounted to reckless driving and none which were for speeding on the road where the accident occurred. And SSgt Reese was not charged with speeding.

- b. The Military Judge abused his discretion by finding that the evidence met the second *Reynolds* prong.

The Government's next argument highlights exactly the issue that SSgt Reese raised in Assignment of Error I – the Government did not charge SSgt Reese with reckless driving by speeding. It did not charge SSgt Reese with reckless driving by crossing into the oncoming lane of traffic *and* speeding. It charged *only* that she was reckless by crossing into the oncoming lane of traffic.

Yet, the Government's entire argument for why the evidence is admissible, regardless of the Military Judge's erroneous reliance on *Leonard*, is that SSgt Reese's prior speeding tickets could show that she "[knew] better than most that her conduct was illegal and unsafe." Gov. Ans. at 33. The Government did not charge SSgt Reese

with driving recklessly by speeding, likely because, as its own expert testified, speed was not a factor in this car accident. R. at 766-67. SSgt Reese was driving at a speed that was safe for that road. R. at 833-34. Just as malice aforethought was not an element the Government had to prove here, neither was whether SSgt Reese was speeding.

If the Government had evidence that, for example, SSgt Reese received a speeding ticket on the same curve at which the accident occurred, the Government's argument might stand a better chance if it could prove that she had notice of the dangers of speeding around that curve. But here, the Government paints over this fact – it argues that members could infer from SSgt Reese's "history of speeding tickets" that she was aware that "her conduct was illegal and unsafe, continued to engage in it, in defiance of that risk, and harbored this same disregard" on the night of the accident. Gov. Br. at 33. But the entirety of SSgt Reese's "conduct" on the night of the accident is not a "fact of consequence," because the Government chose to charge specific conduct, alleging recklessness. Speeding was not charged, nor was there evidence that the speed at which SSgt Reese was traveling a) led to the crash; or b) was unsafe. *United States v. Reynolds*, 29 M.J. 105, 109 (C.M.A. 1989) (holding that the second prong of the test for admissibility under Military Rule of Evidence 404(b) is whether "any fact of consequence" – other than the accused's propensity for wrongdoing – is made more or less probable by the existence of the evidence).

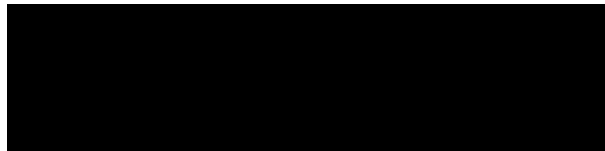
The Government's own expert stated repeatedly that speed was not a factor in the crash. R. at 766-67, 770. The defense's expert determined that the cause of the accident was the result of both vehicles reacting to each other. R. at 823. SSgt Reese's

speed here was not a “fact of consequence” and if the Government believed it was, it should have charged SSgt Reese with speeding.

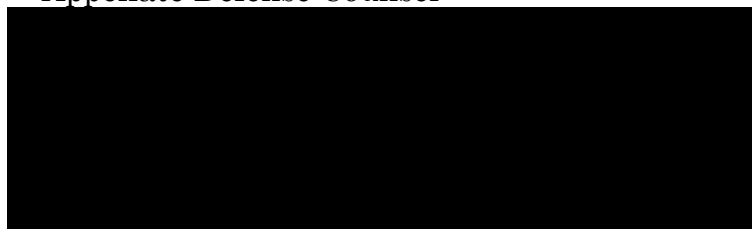
The Government seeks safe harbor in the Military Judge’s flawed instruction, seemingly to suggest that the members did not improperly consider SSgt Reese’s driving record. Gov. Ans. at 30. But the Military Judge did not make things better because he instructed the members that they could consider SSgt Reese’s driving record “for the limited purpose of its tendency, if any, to prove [SSgt Reese]’s knowledge of the repercussions of unsafe driving.” R. at 941; Gov. Ans. at 30. The problem with this instruction, again, highlights the Government’s shifting theories of liability. Where the Government did not allege that SSgt Reese was negligent because of her speed, her driving history of speeding in areas other than the road where the accident occurred had no probative value because it was irrelevant to any fact of consequence. Therefore, it was an abuse of discretion for the Military Judge to admit it.

This Court should set aside the finding of guilty and the sentence.

Respectfully submitted,



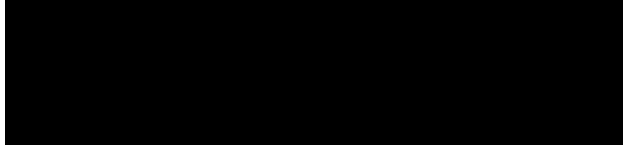
JORDAN L. GRANDE, Maj, USAF  
Appellate Defense Counsel



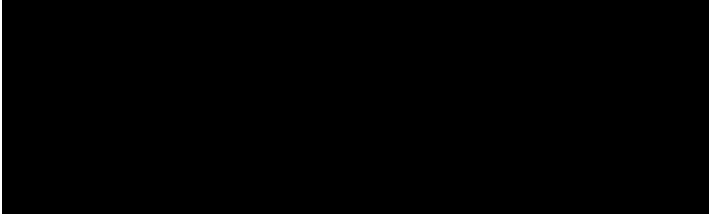
**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 17 November 2025.

Respectfully submitted,



JORDAN L. GRANDE, Maj, USAF  
Appellate Defense Counsel



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

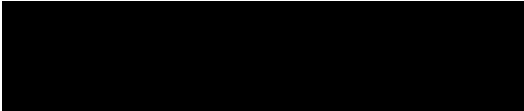
<b>UNITED STATES,</b>	)	<b>NOTICE OF DIRECT</b>
<i>Appellee,</i>	)	<b>APPEAL PURSUANT TO</b>
	)	<b>ARTICLE 66(b)(1)(A), UCMJ</b>
v.	)	
	)	
Staff Sergeant (E-5)	)	No. ACM XXXXX
<b>SASCHA D. REESE,</b>	)	
United States Air Force,	)	31 October 2024
<i>Appellant.</i>	)	

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

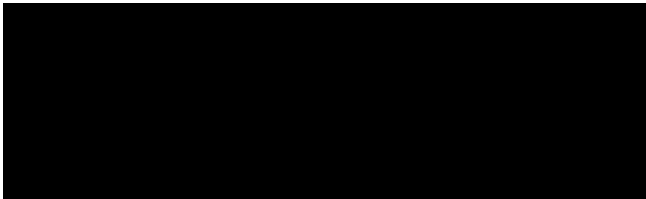
On 12 and 18-23 March 2024, and 17-18 April 2024, Appellant, Staff Sergeant (SSgt) Sascha D. Reese was tried by a panel of officer and enlisted members, sitting as a special court-martial at Spangdahlem Air Base, Germany. R. at 1, 19, 201, 1066-1067, 1310. Contrary to her plea, Appellant was convicted of one charge and one specification of reckless driving, in violation of Article 113, Uniform Code of Military Justice (UCMJ). R. at 1006. The members sentenced Appellant to be reduced to the grade of E-3 and to perform hard labor without confinement for 90 days. R. at 1309.

On 4 September 2024, the Government mailed Appellant the required notice of her right to appeal within 90 days. Pursuant to Article 66(b)(1)(A), UCMJ, 10 U.S.C. § 866(b)(1)(A), Appellant files her notice of direct appeal with this Court.

Respectfully submitted,

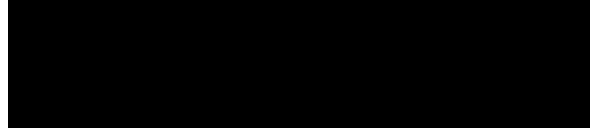


JORDAN L. GRANDE, Capt, USAF  
Appellate Defense Counsel



**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 31 October 2024.



JORDAN L. GRANDE, Capt, USAF  
Appellate Defense Counsel



UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,

*Appellee,*

v.

Staff Sergeant (E-5)  
**SASCHA D. REESE**  
United States Air Force  
*Appellant.*

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**BREIF OF AMICUS CURIAE,  
IN SUPPORT OF APPELLANT**

Before Panel No. 1

No. ACM 24069

27 February 2026

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

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ALYSSA S. KIM  
[REDACTED]

BESS MURAD  
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THOMAS M. LEITH, Director  
Syracuse University College of Law,  
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## **INTEREST OF AMICUS CURIAE**

Amici are Professor Thomas Leith and law students Bess Murad, Madison Mahar, and Alyssa Kim, members of the Criminal Defense Clinic at Syracuse University College of Law. Amici submit this brief to assist the Court in its consideration of the constitutional principles governing *Brady v. Maryland* and the proper application of the materiality standard within the military justice system.

Amici have an academic and professional interest in the fair administration of criminal justice. Amici submit this brief with a focus on the consistent application of *Brady* as a due process safeguard and to assist the Court in evaluating whether the undisclosed evidence at issue was favorable to the accused and material under established *Brady* jurisprudence. This case presents an opportunity for the Court to clarify the proper analytical framework for assessing materiality and favorability, and to provide guidance to military judges addressing *Brady* claims in courts-martial. Amici do not address whether prosecutorial misconduct occurred; this brief focuses on the favorability and reasonable probability standards.

## **ISSUE PRESENTED**

WHETHER THE MILITARY JUDGE ERRED IN RULING  
THAT WITHHELD EVIDENCE ABOUT THE ONGOING  
CIVIL LITIGATION INVOLVING E.E., THE OTHER DRIVER,  
WAS NOT MATERIAL NOR FAVORABLE TO THE FACT  
FINDING IN APPELLANT'S CASE.

## **STATEMENT OF FACTS**

In this court-martial, the defense first learned after findings were announced that civil litigation existed and had generated accident-reconstruction evidence bearing on fault. Appellant's Br. at 20, *United States v. Reese*, No. 24-0069 (C.A.A.F.).

The civil litigation first surfaced during the sentencing testimony of the Government's key witness, E.E.. Appellant's Br. at 20; R. at 1021. On cross-examination, E.E. testified that he had not yet received payment from the vehicle's insurance and therefore remained financially responsible for the Toyota Corolla. R. at 1022. This was the defense's first indication that civil proceedings related to the accident were ongoing.

To seek clarification, defense counsel requested an R.C.M. 802 conference and 39(a) session. *Id.* In that exchange, the defense learned for the first time that an accident reconstructionist had been retained in the civil matter and had concluded that E.E. was at fault for the crash. R. at 1022–23. The defense promptly filed a motion to dismiss for a discovery violation. R. at 1040. The military judge granted an unopposed Government motion for continuance. R. at 1067-69.

Three witnesses testified in support of the defense motion, including SSgt Reese, who explained that she was never aware of pending civil litigation regarding the accident and thus was unaware of any experts outside the instant case. R. at 1072-73.

Ms. E.H., the defense translator present during the defense's pre-trial interview with E.E., corroborated that SSgt Reese had no knowledge of the civil litigation. R. at 1083-85. She further testified that E.E. never informed the defense that he had an attorney for an insurance claim for his vehicle and said nothing about his financial situation regarding his vehicle. *Id.*

The defense next called SrA E.L., its paralegal. R. at 1091. She testified that she attended the defense interview of Mr. F., a German attorney in the accident's civil insurance litigation, conducted the day before the Article 39(a) session. *Id.* Mr. F. confirmed that SSgt Reese was a witness in the civil case but explained that his team did not contact her because German civil procedure places responsibility for contacting witnesses on the court, not counsel. R. at 1093–94.

He further stated that the court claimed it had attempted to summon SSgt Reese before the court-martial. SrA E.L. testified that SSgt Reese nonetheless remained unaware of any civil summons or civil litigation at the time of trial. R. at 1094.

Testimony by SrA E.L. further revealed that the expert hired by Mr. F concluded that E.E. was at fault for the crash “based on the photos and scatter patterns of the wreck.” R. at 1095-96. Mr. F. also explained that SSgt Reese “did not know and could not have known about the civil litigation case.” R. at 1097. Additionally, he discussed a written statement provided to the insurance company by SSgt Reese that read, “there was a curve in the road and that she was following the curve on the road, that she was met with high beams, blinded, and crashed.” *Id.* The defense was unaware of Mr. F.’s existence until it received the Government’s response to the defense’s motion to dismiss. R. at 1091-92.

The defense contends that the withheld discovery impacted its ability to (1) impeach E.E. based on a financial motive, (2) call this third-party expert to testify about the scatter patterns and that expert’s opinion about fault for the accident, and (3) impeach other witnesses in the case based on their involvement in the insurance litigation. Appellant’s Br. at 20; R. at 1112-13. The Government acknowledged that it was aware of the civil matter since 13 March 2024 and actively withheld the subpoena for SSgt Reese until about a week later during trial. R. at 1147-49. However, it disputed having an obligation under *Brady* to disclose based on a lack of materiality, while also claiming that there was no reasonable probability of a different result had the evidence been turned over. R. at 1142-46.

The military judge ruled against the defense, finding that the evidence in dispute was neither material nor favorable to its case. Appellant’s Br. at 22. The judge further explained that although “[e]vidence of civil litigation in the government’s possession is discoverable and should

have been turned over pursuant to R.C.M. 701,” there was no evidence of prosecutorial misconduct. *Id.* Additionally, the court concluded that proper disclosure of the evidence would not have created a reasonable probability of a different outcome and that the evidence presented against SSgt Reese was “considerable.” *Id.*

The judge determined that Mr. F. was “not a neutral party” and further reasoned that the expert opinion attributing fault for the accident to E.E. overlapped with the testimony offered by the defense’s expert. *Id.* Reasoning that even though this “additional testimony” that E.E. was at fault for the accident “might have been helpful to the defense,” the judge nonetheless concluded that there was no reasonable probability that disclosure of this information would have resulted in a different outcome. *Id.*

### **SUMMARY OF ARGUMENT**

*Brady v. Maryland* protects the fairness of the adversarial process, not the durability of convictions obtained without full disclosure. *Brady v. Maryland*, 373 U.S. 83, 87 (1963). As the Supreme Court framed the inquiry succinctly: “The United States wins its point whenever justice is done its citizens in the courts.” *Brady*, 373 U.S. at 87. When the prosecution suppresses evidence favorable to the defense, the constitutional violation occurs at the moment of nondisclosure, regardless of intent or whether the conviction later appears defensible. *Id.*; *Kyles v. Whitley*, 514 U.S. 419, 435–36 (1995). That principle reflects the prosecutor’s distinct constitutional role. Prosecutors act not to secure convictions, but to ensure that “justice shall be done.” *Berger v. United States*, 295 U.S. 78, 88 (1935). *Brady* gives that obligation practical force by requiring disclosure of favorable evidence so that guilt is determined through informed adversarial testing rather than informational asymmetry. When disclosure is withheld, the defense litigates in ignorance, and the factfinder resolves the case on a record shaped by

suppression—precisely the distortion *Brady* prohibits. *Kyles*, 514 U.S. at 434–36; *Wearry v. Cain*, 577 U.S. 385, 392–93 (2016).

Despite this settled framework, *Brady* errors persist when courts assess materiality by asking whether the trial record still supports the verdict. The Supreme Court has repeatedly rejected that approach, emphasizing that materiality must be evaluated *ex ante*—by asking what timely disclosure would have enabled the defense to do. *Kyles*, 514 U.S. at 434–36; *Wearry*, 577 U.S. at 392–93. The Court of Appeals for the Armed Forces (CAAF) recently reaffirmed the same principle in *United States v. Roan*, holding that *Brady* materiality turns on the fairness of the trial that should have occurred, not the adequacy of a record shaped by suppression. *United States v. Roan*, 86 M.J. 159 (C.A.A.F. 2025).

This case fits squarely within that rule. The Government withheld evidence that was plainly favorable to the defense: it revealed a financial interest that bore directly on the credibility of the Government’s key witness on fault, and it included accident-reconstruction analysis supporting an alternative theory of fault. The evidence was both classic impeachment and substantive exculpatory proof, and its suppression deprived the defense of the ability to challenge the Government’s case on the central issue before the factfinder.

The military judge nonetheless denied relief, measuring materiality not by what the defense could have done with the evidence, but by what it managed to do without it. That reasoning collapses *Brady* into a post-verdict sufficiency inquiry. Because materiality must be evaluated from the perspective of a fully informed defense and a trial conducted on equal footing, this Court should reverse the *Brady* ruling and remand for a new trial.

## STANDARD OF REVIEW

Whether suppressed evidence is favorable and material under *Brady* is a question of law reviewed de novo. *United States v. Roberts*, 59 M.J. 323, 326 (C.A.A.F. 2004). This Court reviews the lower court’s underlying factual findings for clear error but owes no deference to its legal conclusions. *United States v. Pugh*, 77 M.J. 1, 5 (C.A.A.F. 2017).

## ARGUMENT

This brief proceeds in three parts. Part I explains that *Brady*’s governing standard requires that favorability and materiality be assessed prospectively by asking whether timely disclosure would have altered the defense’s ability to test the Government’s case. Part II shows that the decision below did what *Kyles*, *Wearry*, and *Roan* forbid. It evaluated materiality by looking backward on the remaining trial record shaped by nondisclosure. The lower court concluded that the evidence against SSgt Reese was “considerable,” and treating that sufficiency finding as a reason to deny relief. Part III applies the correct standard and shows the civil-litigation evidence was favorable and material because it (1) provided powerful impeachment of the Government’s key fault witness by exposing his financial stake, and (2) supplied substantive expert support for an alternative theory of fault. In a case that turned on credibility and the disputed point of impact, the suppression of this evidence undermines confidence in the findings and warrants reversal.

### **I. BRADY LEGAL STANDARD**

*Brady* establishes that the Government must disclose evidence in its possession that is favorable to the accused and material to guilt or punishment. *Brady*, 373 U.S. at 87. The suppression of this evidence by the prosecution “violates due process . . . irrespective of the good faith or bad faith of the prosecution.” *Id.* at 87.

To establish a *Brady* violation, an appellant must show three elements: (1) the evidence was favorable to the accused; (2) the evidence was suppressed by the Government, either intentionally or inadvertently; and (3) the suppression resulted in prejudice, meaning the evidence was material. *Strickler v. Greene*, 527 U.S. 263, 281–82 (1999). These elements operate together to protect the fairness of the adversarial process. As courts have recognized, prejudice is inherent in a *Brady* violation. *United States v. Ellis*, 77 M.J. 671, 675 (A. Ct. Crim. App. 2018). Accordingly, once a *Brady* violation is established, courts do not conduct a separate harmlessness analysis. *Kyles*, 514 U.S. at 435–36.

#### **A. Favorable Evidence**

Under *Brady*, evidence is favorable to the accused if it is either exculpatory or impeaching. *Bagley*, 473 U.S. at 676; *Giglio v. United States*, 405 U.S. 150, 154 (1972).

Exculpatory evidence consists of information that tends to negate guilt or supports an alternative theory of innocence by undermining the prosecution’s account of the charged conduct. *Bagley*, 473 U.S. at 676. Evidence suggesting another perpetrator, weakening a critical factual inference, or casting doubt on the prosecution’s narrative may be exculpatory because it provides the defense with a viable alternative explanation of events. *Kyles*, 514 U.S. at 441–54 (holding that suppressed evidence pointing to an alternative perpetrator and undermining the State’s investigative narrative was favorable where disclosure would have produced “a markedly weaker case for the prosecution and a markedly stronger one for the defense”).

Impeachment evidence is likewise favorable because it allows the defense to challenge the reliability of the Government’s proof. This includes information exposing bias, motive, inconsistency, or unreliability in a witness’s testimony or the prosecution’s evidentiary foundations. *Giglio*, 405 U.S. at 154; *Bagley*, 473 U.S. at 676. The Supreme Court has repeatedly

emphasized that credibility determinations often determine guilt or innocence, and the suppression of evidence bearing on a key witness’s reliability violates due process. *Giglio*, 405 U.S. at 154; *Napue v. Illinois*, 360 U.S. 264, 269 (1959).

Favorability does not require evidence that conclusively disproves guilt. It includes any information that would meaningfully assist the defense in challenging the prosecution’s case—whether by supporting an alternative account of events or by undermining the credibility of the Government’s proof, particularly where the case turns on a single witness or central factual pillar. *Kyles*, 514 U.S. at 434–45; *United States v. Bagley*, 473 U.S. at 667, 682 (1985).

## **B. Material Evidence**

Evidence is material if “there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different.” *Bagley*, 473 U.S. at 675–76. A “reasonable probability” is one sufficient to undermine confidence in the verdict—not proof that disclosure would have produced acquittal. *Kyles*, 514 U.S. at 434. Military courts apply this standard with a defense-protective lens: the *Bagley* test “gives the benefit of any reasonable doubt to the military accused.” *United States v. Green*, 37 M.J. 88, 90 (C.M.A. 1993).

### **1. The *Kyles* Framework**

The Supreme Court’s decision in *Kyles v. Whitley* supplies the governing framework for analyzing *Brady* materiality. *Kyles*, 514 U.S. at 419. *Kyles* articulates three controlling principles for *Brady* materiality. First, the defendant need not show “by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant’s acquittal.” *Kyles*, 514 U.S. at 434. Second, courts do not ask whether the remaining evidence could still support conviction; “*Bagley* materiality is not a sufficiency of evidence test.” *Id.* Instead, the question is whether disclosure could reasonably have affected how the case was tried and evaluated. *Id.* at

434–35. Third, materiality is assessed cumulatively: the disclosure obligation turns on the collective effect of all suppressed favorable evidence, not a piece-by-piece review. *Id.* at 436–38.

## **2. How *Kyles* Applied These Rules**

*Kyles* demonstrates how these principles operate in practice. The State suppressed evidence that would have allowed the defense to challenge the reliability of the investigation and advance an alternative suspect theory centered on an informant known as “Beanie,” including inconsistent eyewitness descriptions and evidence suggesting the informant may have planted incriminating items. *Id.* at 441–54.

Applying its framework, the Court did not ask whether disclosure would have guaranteed acquittal. Instead, it found materiality because the suppressed evidence would have enabled “withering cross-examination,” exposed investigative weaknesses, and supported an alternative narrative of the crime. *Id.* at 445–46, 453–54. The Court rejected the State’s reliance on the apparent strength of the remaining evidence and instead focused on whether disclosure could have altered the jury’s evaluation of the prosecution’s case. *Id.* at 434–35, 441–46. Considering the suppressed evidence cumulatively, the Court concluded the jury could have viewed the investigation as incomplete and the State’s theory as unreliable. Because suppression foreclosed those conclusions, “fairness” could not “be stretched to the point of calling this a fair trial.” *Id.* at 454.

## **3. *United States v. Roan* Reaffirms the Principles in *Kyles***

Less than a year ago, CAAF reversed a decision of this Court in *United States v. Roan*, holding that the Court misapplied *Kyles*’s materiality standard by focusing on what appeared in the trial record rather than on what the defense could have presented with timely disclosure.

*Roan*, 86 M.J. at 13. That error, CAAF explained, is incompatible with *Brady*'s core concern: whether suppression altered the adversarial testing of the Government's case.

In *Roan*, the accused was convicted of cocaine use based solely on a positive urinalysis, with no corroborating evidence. *Roan*, 86 M.J. at 2. The Government withheld evidence that a pre-workout powder containing a banned substance could cause a false positive, and that a Medical Review Officer had confirmed this possibility to investigators. *Id.* at 3–4. The Court ultimately deemed the evidence immaterial, reasoning that there was “no indication in the record that Appellant used his roommate's supplement.” *Id.* at 10.

CAAF reversed, holding that this analysis committed a fundamental error. “The question is not what was raised at trial, but what could have been raised had this information been disclosed.” *Roan*, 86 M.J. at 13. As the Court emphasized, “[t]he very reason this information is not in the record is because it was withheld.” *Id.* at 17 n.2. Courts may not fault the defense for failing to present evidence it never possessed, nor speculate that counsel would not have made effective use of it. *Id.* In this respect, *Roan* directly operationalizes *Kyles*, which prohibits courts from using a trial record shaped by suppression as the benchmark for determining whether suppression mattered. *Kyles*, 514 U.S. at 434–36.

Applying that principle, CAAF rejected the Government's contention that the evidence was “speculative” because the defense could not prove actual ingestion. The accused “need only point to it as a potential source” to support an innocent ingestion theory sufficient to alter how members evaluated the Government's case. *Roan*, 86 M.J. at 14. The withheld evidence “denied [him] a potent defense strategy” that could have rebutted the Government's theory, even though it did not guarantee acquittal. *Id.* at 13. Consistent with *Kyles*, CAAF held the evidence material because it could have enabled the defense to present a fundamentally different case—not because

it ensured a different outcome. *See Kyles*, 514 U.S. at 435 (“The question is not whether the defendant would more likely than not have received a different verdict.”).

*Roan* therefore confirms that *Brady* materiality turns on what disclosure would have enabled the defense to do, rather than post-hoc speculation about whether those efforts would have succeeded. That forward-looking framework governs this case.

## **II. THE DECISION BELOW DISTORTS *BRADY*'S STRUCTURAL FUNCTION**

The military judge's materiality analysis departed from *Brady*'s governing framework. Rather than asking how timely disclosure would have shaped the defense's investigation, cross-examination, and theory of the case, the court assessed the suppressed evidence against a trial record already shaped by nondisclosure, weighed it against the Government's remaining proof, and discounted its significance because the defense mounted partial challenges despite lacking critical information. By focusing on the apparent strength of the Government's case after trial, the decision transformed *Brady* from a protection of fair process into a post-verdict sufficiency review, precisely the approach *Kyles*, *Wearry*, and *Roan* forbid.

### **A. The Military Judge Assessed Materiality from a Post-Verdict Perspective**

In ruling on the motion to dismiss, the trial court concluded that it could “precisely assess materiality given the current case posture” – that is, after the close of proof, and after the rendered verdict. App. Ex. LI at 10. By framing the inquiry in that way, the analysis treated the completed trial as the optimal vantage point for assessing materiality. That reveals the backward-looking perspective *Roan* prohibits. Materiality does not turn on the strength of a verdict already rendered; it turns on the reasonable probability that timely disclosure would have altered the evidentiary picture before the members. *See Roan*, 86 M.J. at 13; *Kyles*, 514 U.S. at 434–36.

The Government’s own statements at trial reflect the same misapprehension. When the defense raised the nondisclosure, trial counsel dismissed it as “all to do about nothing,” emphasizing “where we are with the case.” R. at 1029. Trial counsel further highlighted that the Government had “just received a conviction,” invoking the verdict itself as a reason the nondisclosure should not disturb the outcome. R. at 1038. That perspective is antithetical to *Brady*. A verdict does not cure a due process violation, and materiality cannot be assessed by treating conviction as a reason the Constitution matters less. *Kyles*, 514 U.S. at 435–36.

**B. The Military Judge Applied a Sufficiency-of-the-Evidence Test Instead of *Brady*’s Adversarial Impact Standard**

The military judge’s reliance on the “considerable” remaining evidence reflects a sufficiency-driven approach that *Kyles* expressly forbids. Courts should not ask whether the Government could still sustain a conviction despite suppression. *Kyles*, 514 U.S. at 434. They should ask whether the suppressed evidence “could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.” *Id.* at 435. By weighing the withheld evidence against the Government’s remaining proof and declaring the latter “considerable,” the military judge converted *Brady* from a protection of fair process into a post-verdict justification exercise. *Id.* at 434–36; *Wearry*, 577 U.S. at 392–93.

That error drove the materiality ruling. The military judge concluded there was “no reasonable probability” of a different outcome in light of what he characterized as the “considerable” evidence against SSgt Reese. App. Ex. LI at 10. He emphasized SSgt Reese’s speed, her BAC, testimony about headlights, and E.E.’s assertion that he “never left his traffic lane.” *Id.* at 10. He reasoned that even if E.E.’s credibility had been impeached based on his financial interest, “the addition of this potential information would not have risen to meet the

materiality standard.” While admitting the civil expert’s conclusion “might have been helpful,” he discounted it as “largely consistent” with the defense expert’s testimony. *Id.*

The Appellee echoes the error by labeling SSgt Reese’s materiality as “speculative” and an “alternate universe,” contending that because the suppressed evidence does not appear in the trial record, the claim fails. Reply Br. at 25. But *Roan* squarely rejects that reasoning: “The very reason this information is not in the record is because it was withheld.” *Roan*, 86 M.J. at 17 n.2. Courts “cannot fault the defense for failing to present evidence they never had access to, nor can we speculate that defense counsel would not have made effective use of it.” *Id.* *Brady* materiality necessarily requires examining the world in which disclosure occurred. The Government’s “alternate universe” is simply the constitutional inquiry itself.

Moreover, the Appellee invokes *United States v. Agurs* for the proposition that “[t]he mere possibility that an item of undisclosed information might have helped the defense.” 427 U.S. 97, 109–10 (1976). But *Agurs* predates *Bagley* and *Kyles* and addressed redundant character evidence in a self-defense case where the jury already knew the core facts. *Id.* at 99–101, 112–14 (finding no *Brady* violation where the withheld evidence, the victim’s prior record, merely duplicated what the jury already knew about his violent character from trial testimony). Here, unlike in *Agurs*, the withheld material here was neither redundant nor marginal: the panel heard nothing about E.E.’s substantial financial exposure, nothing about the imminence of the civil trial, and nothing about an expert analysis attributing fault to E.E.

**C. “Overlap” Does Not Defeat Materiality Where Withheld Evidence Sharpens Case-Specific Impeachment.**

The military judge also erred by discounting materiality based on perceived “overlap” between the civil expert’s conclusion and the defense expert’s testimony. App. Ex. LI at 10. *Brady* does not ask whether suppressed evidence overlaps in subject matter with evidence the

defense managed to present despite nondisclosure. *Kyles*, 514 U.S. at 441–46; *Roan*, 86 M.J. at 13.

CAAF rejected the “overlap” reasoning the military judge relied on. In *United States v. Jackson* the defense had attacked laboratory procedures generally, yet the Court still found Brady prejudice when the Government withheld a discrepancy report revealing a false positive from the same lab. 59 M.J. 330, 335–36 (C.A.A.F. 2004). The Court made clear the question is not whether the defense managed some critique with the information it had, but whether timely disclosure would have provided specific, case-linked evidence capable of meaningfully impeaching the Government’s central proof. *Id.*

That is precisely what happened here. The defense challenged fault and reconstruction in the abstract, but disclosure would have provided concrete expert analysis arising from the same collision that affirmatively contradicted the Government’s theory and directly impeached its principal fault witness. Under *Jackson*, the absence of that case-specific evidence is prejudice, not harmless overlap.

### **III. UNDER THE CORRECT *BRADY* FRAMEWORK: THE WITHHELD EVIDENCE WAS BOTH FAVORABLE AND MATERIAL**

Having clarified the proper *Brady* framework and the analytical errors that distorted its application below, the conclusion here follows directly. When *Brady* is applied as the Supreme Court and CAAF require, by asking what disclosure would have enabled the defense to test, contest, and counter, the suppressed evidence in this case is both favorable and material. The Government withheld evidence that directly impeached its principal fault witness and enabled a competing theory of causation grounded in expert analysis of the same collision. In a prosecution that turned on credibility and fault, that suppression deprived the defense of a meaningful opportunity to challenge the Government’s narrative before the factfinder. Under *Brady*, *Kyles*,

and *Roan*, once the suppressed evidence undermines confidence in the verdict in this way, the constitutional violation is complete.

**A. The Military Judge Erred in Finding the Evidence “Not Favorable”**

The withheld evidence was favorable for two independent reasons. First, it supplied classic impeachment evidence demonstrating that the Government’s principal fault witness had a concrete financial motive to shift blame. Second, it provided substantive support for an alternative theory of causation grounded in independent expert analysis. Although these categories overlap in effect, each independently satisfies *Brady*’s definition of favorability.

**1. The Evidence Established E.E.’s Financial Motive (Impeachment)**

The suppressed evidence constituted classic impeachment because it demonstrated that E.E. had a concrete financial stake in the acceptance of his version of events. The military judge found that E.E. had an ongoing civil case arising from the same collision; that fault in that litigation was disputed; that the civil trial was scheduled approximately one month after SSgt Reese’s court-martial; and that E.E. had more than €12,500 at stake. App. Ex. LI at 1–2; R. at 1020–21.

Those findings establish bias. A witness who stands to gain financially from the factfinder’s acceptance of his account has a tangible incentive to shift blame, and the factfinder is entitled to consider that incentive when assessing credibility. The military judge discounted this interest, reasoning that the civil litigation “merely reflects the common practice of competing insurance companies’ attempt to reach a monetary settlement.” App. Ex. LI at 11. But the routine nature of insurance settlements does not speak to its relevance to bias. Where liability in a pending civil action turns on the same disputed question of fault, evidence of that financial stake

is precisely the kind of motive evidence *Giglio* recognizes as favorable. *Giglio*, 405 U.S. at 154; *Bagley*, 473 U.S. at 676.

## **2. The Civil Expert's Analysis Supported an Alternative Theory of Fault**

The withheld evidence was also independently favorable because it supplied substantive support for an alternative theory of causation. The civil litigation included an expert who concluded that E.E.—not SSgt Reese—caused the collision. App. Ex. LI at 2; R. at 1095–96. That the expert was retained in connection with SSgt Reese's insurance litigation does not diminish the evidence's *Brady* value. The source of the opinion goes to weight and cross-examination, not to favorability or materiality, and the defense was entitled to decide how to use it. That opinion did more than merely contradict E.E.'s testimony. It provided technical analysis of the same crash reaching the opposite conclusion. Even apart from calling the expert at trial, the defense was entitled to use the existence and substance of that opinion to argue that qualified analysis did not support the Government's theory of fault. *Brady* encompasses evidence that supports an alternative perpetrator theory or weakens the prosecution's narrative. *Kyles*, 514 U.S. at 441–54.

## **3. The Expert Evidence Also Undermined E.E.'s Certainty**

The civil expert's conclusion served a dual purpose: it was both substantive evidence and impeachment. A qualified crash analyst's determination that E.E. caused the collision directly contradicted E.E.'s categorical assertion that he never left his lane, and by extension exposed the Government's acceptance of that account in the face of contrary technical analysis. Therefore the defense could have used it not merely to challenge E.E.'s credibility, but to show that the Government's entire fault determination rested on a witness whose version of events a qualified expert had already rejected.

## **B. The Military Judge Erred in Finding the Evidence “Not Material”**

Having established favorability, the only question is materiality and whether suppression created a reasonable probability of a different result. *Kyles*, 514 U.S. at 434–36. The trial turned on a single, dispositive factual issue: who crossed the center line. The Government’s failure to disclose this evidence deprived the defense of the ability to test that question at every stage of trial and therefore undermines confidence in the verdict.

### **1. The Government’s Proof Left a Critical Gap That Only E.E. Purported to Fill**

The Government had to prove SSgt Reese crossed into the opposing lane, yet the record contained no independent proof that fixed lane position at impact. Both reconstruction experts testified they could not determine the precise point of impact and could identify only possible collision ranges. R. at 750–52. The Government’s expert conceded he could not exclude the possibility that E.E.’s vehicle crossed into SSgt Reese’s lane, acknowledged scenarios placing more of E.E.’s vehicle in her lane than in his, and could not reconstruct the drivers’ steering inputs or determine who reacted first. R. at 744, 774. The defense expert likewise concluded: “we don’t know what happened here.” R. at 766.

The remaining evidence did not resolve the gap. The physical evidence did not fix lane position. Pros. Ex. 5; R. at 823–24. Passenger testimony was compromised and inconclusive. One passenger claimed to observe Appellant’s car “in [E.E.’s] lane,” R. at 562, but admitted he had consumed four drinks shortly before the collision and had no memory of the impact itself. R. at 562–63, 570. He also could not exclude that what he saw was roadway illumination as SSgt Reese rounded a curve at night. R. at 572. Another passenger recalled only “brightness” and did not recognize it as headlights until days later; she also had no memory of the collision. R. at 591–92.

Against that uncertainty, only E.E. supplied certainty. He testified categorically that SSgt Reese crossed into his lane and that he “never left his traffic lane.” R. at 533–34. The military judge relied heavily on that assertion. App. Ex. LI at 10. In short, the Government’s case depended on the panel crediting E.E. to resolve what the physical evidence and reconstruction could not. Materiality must be assessed in that posture.

## **2. Timely Disclosure Would Have Altered the Defense Investigation and Trial Preparation**

Timely disclosure would have materially changed the defense’s pretrial investigation and strategic preparation. Had the civil litigation been disclosed, the defense would have obtained the civil expert’s report, secured the underlying reconstruction data and measurements, reviewed the expert’s methodology, and evaluated whether additional site inspection or testing was warranted. The defense could have analyzed the civil reconstruction alongside the existing crash evidence, identified areas of agreement or divergence, and refined its litigation strategy accordingly.

Disclosure also would have permitted coordinated preparation with the defense expert. With advance knowledge that another qualified reconstructionist had attributed fault to E.E., the defense could have assessed whether supplemental analysis, additional calculations, or expanded demonstrative exhibits were necessary before trial. Instead, the defense prepared and proceeded without awareness that a professional reconstruction already existed attributing fault to E.E. Pretrial disclosure further would have shaped voir dire and opening statement. The defense could have framed the case from the outset around a concrete alternative-causation theory supported by professional reconstruction, rather than developing that theme without the benefit of the civil findings. *Brady* materiality turns on what the defense could have done with disclosure, not what it managed to do without it. *Roan*, 86 M.J. at 13-17.

### **3. Timely Disclosure Would Have Transformed Cross-Examination of the Government's Principal Fault Witness.**

Timely disclosure would have fundamentally changed the cross-examination of the Government's key fault witness. The suppressed evidence established that E.E. had a substantial personal financial stake in civil litigation arising from the same collision, scheduled approximately one month after the court-martial, with more than €12,500 at issue. App. Ex. LI at 1–2; R. at 1020–21. That stake was not abstract. Liability in that case turned on the same disputed question of fault: if E.E. crossed the center line, he faced financial consequences; if SSgt Reese did, he did not.

Where a prosecution resembles a “house of cards,” even modest impeachment can change how the evidence is understood. *Wearry*, 577 U.S. at 392–93. And when the prosecution turns on a single witness's account of the dispositive fact, impeachment is not peripheral, it is central. *Giglio*, 405 U.S. at 154–55; *California v. Green*, 399 U.S. 149, 158 (1970). This was not generalized bias or background impeachment. It was a direct financial incentive aligned precisely with the factual finding the Government needed the panel to make. Disclosure would have allowed the defense to confront E.E. with the imminence of the civil trial, the amount at issue, and the fact that his sworn testimony here would bear directly on his financial exposure there.

That is classic *Giglio* impeachment viewed through the forward-looking materiality framework reaffirmed in *Roan*. See *Roan*, 86 M.J. at 14–16 (recognizing that undisclosed personal stakes tied directly to related litigation provide a reason for a witness to shape testimony). As in *Kyles*, where suppressed evidence would have enabled effective cross-examination of the State's key witness, 514 U.S. at 445–46, disclosure here would have equipped

the defense with a powerful, fact-specific motive theory tied directly to the dispositive issue of fault.

Disclosure would have equipped the defense to cross-examine E.E. on at least three additional fronts: (1) the timing and development of his financial stake; (2) pretrial candor in his defense interview; and (3), prior civil/insurance statements and materials bearing on lane position and impact.

First, timely disclosure would have allowed the defense to probe the timing and evolution of E.E.'s financial stake, including when he learned he remained financially responsible for the vehicle and when he pursued civil relief. That chronology would have anchored bias impeachment in concrete events and supplied a focused framework for testing the reliability of his categorical account.

Second, disclosure would have enabled a separate line of inquiry regarding whether E.E. was candid when he spoke directly with the defense before trial. The defense translator testified that in the defense's pretrial interview, E.E. did not disclose that he had an attorney for an insurance claim and said nothing about his financial situation regarding the vehicle. R. at 1084-85. Without disclosure, counsel had no case-specific basis to know of retained civil counsel or the related civil litigation, and *Brady* does not require the defense to guess about government-known impeachment. *See Banks v. Dretke*, 540 U.S. 668, 696 (2004) (“[a] rule thus declaring ‘prosecutor may hide, defendant must seek,’ is not tenable in a system constitutionally bound to accord defendants due process.”). Presented with the civil context, the panel could have viewed E.E.'s “never left my lane” testimony as more strategic than transparent.

Moreover, disclosure would have opened an additional, case-linked avenue of impeachment that was unavailable at trial. Civil and insurance litigation arising from a collision

routinely generates recorded interviews, written statements, claim materials, and other accounts addressing how the crash occurred, including lane position, point of impact, speed, visibility, and evasive action. Because the Government did not disclose that such proceedings were ongoing, the defense had no fair opportunity to seek those materials before trial or exploit any inconsistencies in E.E.'s otherwise categorical account of the dispositive fact.

#### **4. Timely Disclosure Would Have Transformed Expert Testimony and the Defense Theory of the Case.**

Suppression also deprived the defense of affirmative, technical evidence supporting an alternative theory of fault. In the related civil litigation, a retained reconstruction expert analyzed the same crash evidence and affirmatively concluded that E.E., not SSgt Reese, caused the collision. R. at 1095–96. That is materially different from what the panel heard. At trial, reconstruction testimony confirmed uncertainty but did not provide a definitive attribution of responsibility. Timely disclosure would have introduced a competing expert account grounded in professional analysis of the same event.

The withheld expert opinion makes this case even closer to *Kyles*. There, the Court found materiality in part because suppressed evidence would have allowed the defense to present an alternative narrative of the crime and challenge the reliability of the investigation. *Kyles*, 514 U.S. at 441–54. The same is true here. Disclosure would not merely have provided incremental support for cross-examination; it would have supplied affirmative, professional reconstruction testimony attributing fault to E.E.

Critically, the withheld evidence would have allowed the defense to present a single, coherent theme: a professional reconstruction blamed E.E., and E.E. had a direct financial incentive to deny it. Considered cumulatively, that evidence does more than incrementally assist

the defense, it reshapes the central factual dispute and undermines confidence in the verdict.

*Kyles*, 514 U.S. at 436.

### **5. Suppression Undermined Confidence in the Verdict.**

*Brady* materiality concerns the reliability of the verdict as a whole—whether the defense had a full opportunity to test the Government’s case before the factfinder. *Kyles* asks whether the suppressed evidence could reasonably be taken to put the entire case in a different light. 514 U.S. at 435. Here the panel resolved the dispositive question without knowing that (1) a retained reconstruction expert attributed fault to E.E., and (2) E.E. faced substantial financial consequences tied to that attribution. The defense was denied the ability to integrate those facts into cross-examination, expert presentation, and closing—precisely the sort of “withering” credibility challenge *Kyles* recognizes as material. 514 U.S. at 445–46. Evidence that simultaneously supplies an alternative causal theory and exposes the principal fault witness’s financial incentive to reject it puts the entire case in a different light.

Federal courts are uniform on this point: in credibility-dependent prosecutions, the suppression of impeachment or contradictory evidence alters the structure of the trial by preventing the defense from exposing bias, testing reliability, and presenting a competing narrative essential to adversarial truth-seeking.<sup>1</sup> Military courts have repeatedly recognized the same principle. *See United States v. Jackson*, 59 M.J. 330, 335–36 (C.A.A.F. 2004) (finding *Brady* prejudice where the Government relied on the apparent strength of its proof and the defense’s inability to identify a specific flaw in laboratory procedures, an argument made

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<sup>1</sup> *See, e.g., Avilés-Colón v. United States*, 536 F.3d 1 (1st Cir. 2008); *Leka v. Portuondo*, 257 F.3d 89 (2d Cir. 2001); *Wilson v. Beard*, 589 F.3d 651 (3d Cir. 2009); *United States v. Parker*, 790 F.3d 550 (4th Cir. 2015); *Jackson v. Wainwright*, 390 F.2d 288 (5th Cir. 1968); *Clark v. Abdallah*, 131 F.4th 432 (6th Cir. 2025); *Sims v. Hyatte*, 914 F.3d 1078 (7th Cir. 2019); *Reasonover v. Washington*, 60 F. Supp. 2d 937 (E.D. Mo. 1999); *Mellen v. Winn*, 900 F.3d 1085 (9th Cir. 2018); *Douglas v. Workman*, 560 F.3d 1156 (10th Cir. 2009); *Arnold v. McNeil*, 622 F. Supp. 2d 1294 (11th Cir. 2009).

possible only because the Government failed to disclose a false-positive quality-control report directly bearing on the reliability of its central evidence); *see also United States v. Doroteo*, No. ACM 40363, 2024 CCA LEXIS 539, at \*30 (A.F. Ct. Crim. App. 7 Feb. 2025).

The same dynamic occurred here. The Government emphasized the strength of its case and the absence of concrete contradictory evidence while withholding the most powerful evidence contradicting its theory: a professional reconstruction attributing fault to E.E. and evidence that E.E. had a financial motive to deny it. As in *Jackson* and *Doroteo*, the nondisclosure deprived the factfinder of evidence bearing on a pivotal issue it was required to resolve.

*Brady* does not ask whether this Court is persuaded of Appellant's innocence or whether the panel might still have convicted after hearing the suppressed evidence. It asks whether the verdict was reached through the adversarial process the Constitution requires. When the factfinder resolves the central factual dispute without hearing evidence that both impeaches the Government's principal witness and supports an alternative account of the charged conduct, the trial ceases to function as a reliable mechanism for determining guilt. Because the panel decided who crossed the center line without the adversarial testing that timely disclosure would have enabled, the resulting verdict cannot be trusted as a reliable determination of guilt. That is the constitutional harm *Brady* forbids.

### **PRAYER FOR RELIEF**

Amici respectfully request that this Honorable Court reverse the military judge's ruling and grant such other relief as this Court deems just and proper. Under *Brady*, once suppressed evidence is found material, reversal is the required remedy. *Brady*, 373 U.S. at 87. The Supreme Court has repeatedly vacated convictions and remanded for new trial where nondisclosure

undermined confidence in the verdict. *Wearry*, 577 U.S. at 392–94; *Strickler*, 527 U.S. at 289–90. When the *Bagley* materiality standard is satisfied, the conviction cannot stand. *Bagley*, 473 U.S. at 682. Military appellate courts apply the same rule. Where evidence is material under *Brady*, the findings must be set aside. *Jackson*, 59 M.J. at 335–36; *Doroteo*, 2024 CCA LEXIS 539, at \*30.

### CONCLUSION

For these reasons, Amici respectfully request that this Honorable Court reverse the findings and sentence in this case and remand for a new trial.

Respectfully submitted,

THOMAS M. LEITH, Director  
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**CERTIFICATE OF FILING AND SERVICE**

I certify that the original and copies of the foregoing were emailed to the Court and served on all recipients on February 18, 2026.



THOMAS M. LEITH, Director  
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