IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	**NOTICE OF DIRECT APPEAL**
Appellee,	)	**PURSUANT TO ARTICLE**
	)	**66(b)(1)(A), UCMJ**
v.	)	
	)	
	)	
Staff Sergeant (E-5),	)	No. ACM XXXXXX
Kyshown D. Campbell,	)	
United States Air Force,	)	15 July 2024
Appellant.	)	

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

On 3 November 2023, a general court-martial convened at Luke Air Force Base, Arizona, convicted Staff Sergeant (SSgt) Kyshown D. Campbell, contrary to his pleas, of one charge and specification of domestic violence in violation of Article 128b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 928. (Entry of Judgment.) The military judge sentenced SSgt Campbell to 60 days of confinement and forfeitures of $836.00 pay per month for six months. (*Id.*)

On 25 June 2024, the Government purportedly sent SSgt Campbell the required notice by mail of his right to appeal within 90 days. Pursuant Article 66(b)(1)(A), UCMJ, SSgt Campbell files his notice of direct appeal with this Court.

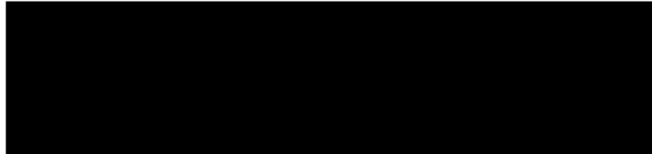
Respectfully submitted,

MICHAEL J. BRUZIK, 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 Government Trial and Appellate Operations Division on 15 July 2024.

Respectfully submitted,



MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM ________**
Appellee	)	
	)	
v.	)	
	)	**NOTICE OF**
Kyshown D. CAMPBELL	)	**DOCKETING**
Staff Sergeant (E-5)	)	
U.S. Air Force	)	
Appellant	)	

On 15 July 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 15th day of July, 2024,

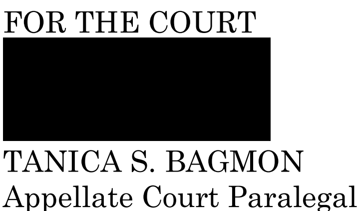
ORDERED:

The case in the above-styled matter is referred to Panel 1.

It is further ordered:

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

FOR THE COURT



TANICA S. BAGMON
Appellate Court Paralegal

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

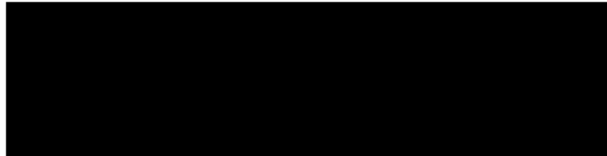
UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (FIRST)**
	)	
v.	)	Before Panel 1
	)	
Staff Sergeant (E-5), **KYSHOWN D. CAMPBELL,**	)	No. ACM 40652
United States Air Force, *Appellant.*	)	6 September 2024

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

Pursuant to Rule 23.3(m) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his first enlargement of time to file an Assignment of Errors (AOE). Appellant requests an enlargement for a period of 60 days, which will end on 12 November 2024. This case was docketed with this Court on 15 July 2024. This Court appears to have acknowledged receipt of the record of trial on that same day. From the date of that receipt to the present date, 53 days have elapsed. On the date requested 120 days will have elapsed.

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

Respectfully submitted,

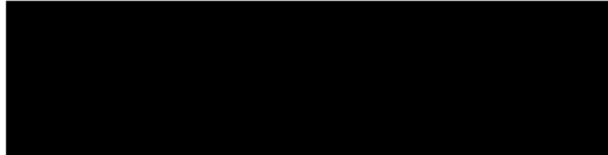


MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel

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 Appellate Government Division on 6 September 2024.

Respectfully submitted,



MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel

10 September 2024

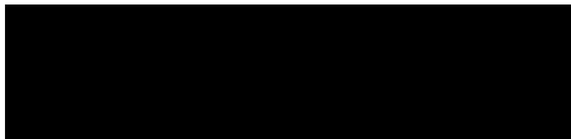
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) KYSHOWN D. CAMPBELL., USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40652 Panel No. 1

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.

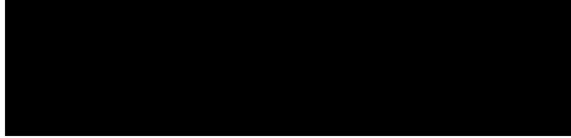
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



MARY ELLEN PAYNE
Associate Chief, Government Trial and

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 10 September 2024.



MARY ELLEN PAYNE
Associate Chief, Government Trial and

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*	)	**No. ACM 40652**
v.	)	**ORDER**
Kyshown D. CAMPBELL **Staff Sergeant (E-5)** **U.S. Air Force** *Appellant*	)	**Panel 1**

On 6 September 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.

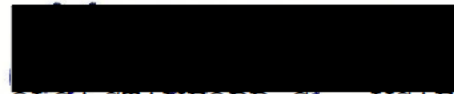
Accordingly, it is by the court on this 11th day of September 2024,

ORDERED:

Appellant's Motion for Enlargement of Time (First) is **GRANTED**. Appellant shall file any assignments of error not later than **12 November 2024**.

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

FOR THE COURT



OLGA STANFORD, Capt, USAF
Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5), **KYSHOWN D. CAMPBELL,** United States Air Force, *Appellant.*	)))))))))	**MOTION FOR ENLARGEMENT OF TIME (SECOND)** Before Panel 1 No. ACM 40652 5 November 2024

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

Pursuant to Rule 23.3(m) and (4) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his second enlargement of time to file an Assignment of Errors (AOE). Appellant requests an enlargement for a period of 30 days, which will end on 12 December 2024. This case was docketed with this Court on 15 July 2024. This Court appears to have acknowledged receipt of the record of trial on that same day. From the date of that receipt to the present date, 113 days have elapsed. On the date requested 150 days will have elapsed.

On 2 November 2023, a general court-martial convened at Luke Air Force Base, Arizona, convicted Staff Sergeant (SSgt) Kyshown D. Campbell, contrary to his pleas, of one specification of domestic violence in violation of Article 128b, Uniform Code of Military Justice (UCMJ). (R. at 781.) The military judge sentenced SSgt Campbell to be reprimanded, to forfeit $836.00 pay per month for 6 months, and to be confined for 60 days. (R. at 892.) The convening authority took no action on the findings or sentence. (Convening Authority Decision on Action.)

The record of trial includes an 892 page transcript. There are 11 prosecution exhibits, 19 defense exhibits, 18 appellate exhibits, and one court exhibit. SSgt Campbell is not currently in confinement. SSgt Campbell has been advised of the right to speedy appellate review, as well as this request for an enlargement of time. SSgt Campbell agreed to the request. Additionally, undersigned counsel has been in communication with SSgt Campbell concerning the status of the case. Counsel asserts attorney-client privilege over the substance of those communications.

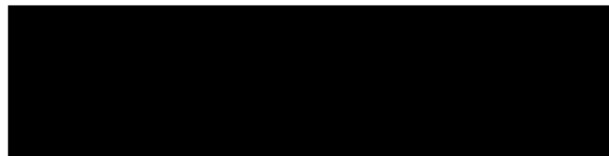
Undersigned counsel is currently assigned 20 cases; 11 cases are pending initial AOEs before this Court. Undersigned counsel's top priorities are as follows:

1) *United States v. Hilton*, ACM 40500 – The record of trial consists of 15 volumes. The transcript is 2747 pages. There are 29 prosecution exhibits, 22 defense exhibits, two court exhibits, and 102 appellate exhibits. This case is on its thirteenth enlargement of time. Counsel has completed reviewing the record of trial and has begun drafting and assignment of errors.
2) *United States v. Jenkins*, ACM S32765 – The record of trial consists of three volumes stored in electronic format. The transcript is 138 pages. There are four prosecution exhibits, one defense exhibit, four appellate exhibits, and one court exhibit. This case is on its ninth enlargement of time.
3) *United States v. Titus*, ACM 40557 - The record of trial consists of four volumes. The transcript is 142 pages. There are five prosecution exhibits, five defense exhibits, 31 appellate exhibits, and five court exhibits. This case is on its eighth enlargement of time.

Through no fault of appellant, counsel has been working on other assigned matters and has been unable to begin reviewing the record of trial in this case. Accordingly, an enlargement of time is necessary for counsel to fully review SSgt Campbell's case and advise on potential errors.

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

Respectfully submitted,

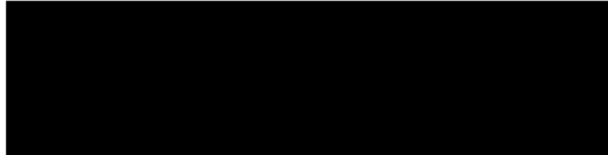


MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel

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 Appellate Government Division on 5 November 2024.

Respectfully submitted,



MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel

7 November 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) KYSHOWN D. CAMPBELL., USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40652 Panel No. 1

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

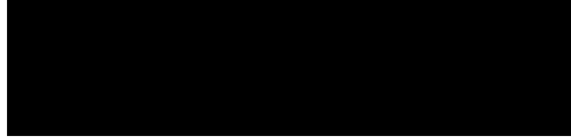
Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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

MARY ELLEN PAYNE
Associate Chief, Government Trial and

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 7 November 2024.



MARY ELLEN PAYNE
Associate Chief, Government Trial and

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5), **KYSHOWN D. CAMPBELL,** United States Air Force, *Appellant.*	)))))))))	**MOTION FOR ENLARGEMENT OF TIME (THIRD)** Before Panel 1 No. ACM 40652 5 December 2024

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

Pursuant to Rule 23.3(m) and (4) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his third enlargement of time to file an Assignment of Errors (AOE). Appellant requests an enlargement for a period of 30 days, which will end on 11 January 2025. This case was docketed with this Court on 15 July 2024. This Court appears to have acknowledged receipt of the record of trial on that same day. From the date of that receipt to the present date, 143 days have elapsed. On the date requested 180 days will have elapsed.

On 2 November 2023, a general court-martial convened at Luke Air Force Base, Arizona, convicted Staff Sergeant (SSgt) Kyshown D. Campbell, contrary to his pleas, of one specification of domestic violence in violation of Article 128b, Uniform Code of Military Justice (UCMJ). (R. at 781.) The military judge sentenced SSgt Campbell to be reprimanded, to forfeit $836.00 pay per month for 6 months, and to be confined for 60 days. (R. at 892.) The convening authority took no action on the findings or sentence. (Convening Authority Decision on Action.)

The record of trial includes an 892 page transcript. There are 11 prosecution exhibits, 19 defense exhibits, 18 appellate exhibits, and one court exhibit. SSgt Campbell is not currently in confinement. SSgt Campbell has been advised of the right to speedy appellate review, as well as this request for an enlargement of time. SSgt Campbell agrees to the request. Additionally, undersigned counsel has been in communication with SSgt Campbell concerning the status of the case, but does not have a substantive update at this time. Counsel asserts attorney-client privilege

over the substance of those communications.

Undersigned counsel is currently assigned 20 cases; 11 cases are pending initial AOEs before this Court. Undersigned counsel's top priorities are as follows:

1) *United States v. Hilton*, ACM 40500 – The record of trial consists of 15 volumes. The transcript is 2747 pages. There are 29 prosecution exhibits, 22 defense exhibits, two court exhibits, and 102 appellate exhibits. This case is on its fourteenth enlargement of time. Counsel has completed reviewing the record of trial and has begun drafting an assignment of errors along with civilian counsel.

2) *United States v. Jenkins*, ACM S32765 – The record of trial consists of three volumes stored in electronic format. The transcript is 138 pages. There are four prosecution exhibits, one defense exhibit, four appellate exhibits, and one court exhibit. This case in its tenth enlargement of time. Counsel is working towards completion of an assignment of errors.

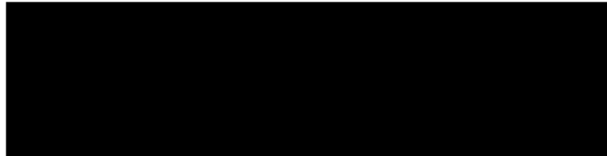
3) *United States v. Titus*, ACM 40557 - The record of trial consists of four volumes. The transcript is 142 pages. There are five prosecution exhibits, five defense exhibits, 31 appellate exhibits, and five court exhibits. This case is on its ninth enlargement of time.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters and has yet to complete an in-depth review of Appellant's case. Counsel has been busy working towards completion of an assignment of errors for *United States v. Jenkins*. The brief for that case is due to this Court on 12 December 2024, and Counsel worked on it through the Thanksgiving weekend. Additionally, counsel has been working with civilian counsel in *United States v. Hilton*, which required him to dedicate time to coordinate the transmission of sealed exhibits. Counsel has had to balance his work before this Court with other priorities before the Court of Appeals for the Armed Forces (CAAF). On 13 November 2024, counsel submitted a supplement for petition for review to the CAAF in *United States v. Bates*. This supplement addressed five issues. Additionally, counsel submitted a supplement for petition for review and a response to motion to

dismiss to the CAAF in *United States v. Vargo* on 20 November 2024. Counsel worked through the weekend on 16 November 2024 in order to comply with the deadline set by the CAAF, while tending to a lingering illness that required him to go home from the office on multiple days. Additionally, counsel was on leave between 30 October 2024 and 5 November 2024. These circumstances and priorities have prevented counsel from being able to dedicate the time necessary for this case beyond a preliminary review. Accordingly, an enlargement of time is necessary to allow undersigned counsel to fully review Appellant's case and advise Appellant regarding potential errors.

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

Respectfully submitted,

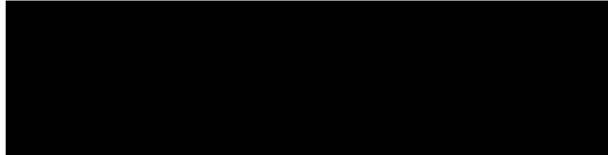


MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel

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 Appellate Government Division on 5 December 2024.

Respectfully submitted,



MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel

6 December 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) KYSHOWN D. CAMPBELL., USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40652 Panel No. 1

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

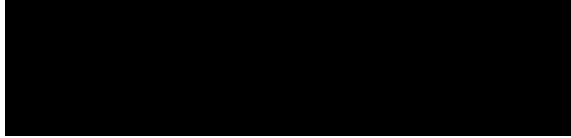
Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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

MARY ELLEN PAYNE
Associate Chief, Government Trial and

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 6 December 2024.



MARY ELLEN PAYNE
Associate Chief, Government Trial and

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (FOURTH)**
v.	)	Before Panel 1
Staff Sergeant (E-5), **KYSHOWN D. CAMPBELL,** United States Air Force, *Appellant.*	)	No. ACM 40652
	)	3 January 2025

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

Pursuant to Rule 23.3(m) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his fourth enlargement of time to file an Assignment of Errors (AOE). Appellant requests an enlargement for a period of 30 days, which will end on 10 February 2025. This case was docketed with this Court on 15 July 2024. This Court appears to have acknowledged receipt of the record of trial including the verbatim transcript on that same day. From the date of that receipt to the present date, 172 days have elapsed. On the date requested 210 days will have elapsed.

On 2 November 2023, a general court-martial convened at Luke Air Force Base, Arizona, convicted Staff Sergeant (SSgt) Kyshown D. Campbell, contrary to his pleas, of one specification of domestic violence in violation of Article 128b, Uniform Code of Military Justice (UCMJ). (R. at 781.) The military judge sentenced SSgt Campbell to be reprimanded, to forfeit $836.00 pay per month for 6 months, and to be confined for 60 days. (R. at 892.) The convening authority took no action on the findings or sentence. (Convening Authority Decision on Action.)

The record of trial includes an 892 page transcript. There are 11 prosecution exhibits, 19 defense exhibits, 18 appellate exhibits, and one court exhibit. SSgt Campbell is not currently in confinement. SSgt Campbell has been advised of the right to speedy appellate review, as well as this request for an enlargement of time. SSgt Campbell agrees to the request. Additionally, undersigned counsel has been in communication with SSgt Campbell concerning the status of the

case. Counsel asserts attorney-client privilege over the substance of those communications.

Undersigned counsel is currently assigned 20 cases; 10 cases are pending initial AOEs before this Court. Undersigned counsel's top priorities are as follows:

1) *United States v. Rodriguez*, ACM 40565 – The record of trial consists of two volumes. The transcript is 86 pages. There are two prosecution exhibits, six defense exhibits, and five appellate exhibits. This case is on its ninth enlargement of time.
2) *United States v. Sanger*, ACM S32773 – The record of trial consists of two electronic volumes. The transcript is 141 pages. There are four prosecution exhibits, one defense exhibit, and four appellate exhibits. This case is on its seventh enlargement of time.
3) *United States v. Licea*, ACM 40602 - The record of trial consists of seven electronic volumes, and the transcript is 173 pages. There are 12 prosecution exhibits, five defense exhibits, 22 appellate exhibits, and one court exhibit. This case is on its sixth enlargement of time.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters which has prevented him from completing an in-depth review of the record of trial. Counsel was occupied with the completion of an assignment of errors for *United States v. Jenkins*, which counsel worked on through the Thanksgiving weekend and submitted to this Court on 12 December 2024. Additionally, counsel worked through his leave over the Christmas holiday to complete work on an assignment of errors for *United States v. Hilton*, which was submitted to this Court on 27 December 2024. Counsel is also occupied with the completion of a supplement for petition for review for the Court of Appeals for the Armed Forces in *United States v. Scott* which is due on 7 January 2025, which counsel worked on through the New Year holiday. Accordingly, an enlargement of time is necessary for counsel to continue reviewing the record of trial and to advise appellant on potential errors.

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

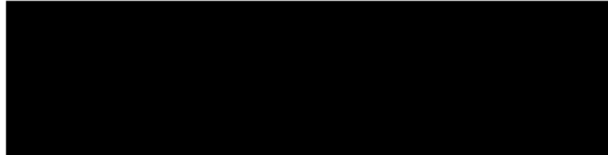
Respectfully submitted,

MICHAEL J. BRUZIK, 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 Appellate Government Division on 3 January 2025.

Respectfully submitted,



MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel

7 January 2025

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) KYSHOWN D. CAMPBELL., USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40652 Panel No. 1

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

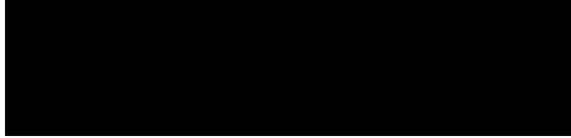
Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

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

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division

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 7 January 2025.



MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (FIFTH)**
v.	)	Before Panel 1
Staff Sergeant (E-5), **KYSHOWN D. CAMPBELL,** United States Air Force, *Appellant.*	)	No. ACM 40652
	)	1 February 2025

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

Pursuant to Rule 23.3(m) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his fifth enlargement of time to file an Assignment of Errors (AOE). Appellant requests an enlargement for a period of 30 days, which will end on 12 March 2025. This case was docketed with this Court on 15 July 2024. This Court appears to have acknowledged receipt of the record of trial including the verbatim transcript on that same day. From the date of that receipt/docketing to the present date, 201 days have elapsed. On the date requested 240 days will have elapsed.

On 2 November 2023, a general court-martial convened at Luke Air Force Base, Arizona, convicted Staff Sergeant (SSgt) Kyshown D. Campbell, contrary to his pleas, of one specification of domestic violence in violation of Article 128b, Uniform Code of Military Justice (UCMJ). (R. at 781.) The military judge sentenced SSgt Campbell to be reprimanded, to forfeit $836.00 pay per month for 6 months, and to be confined for 60 days. (R. at 892.) The convening authority took no action on the findings or sentence. (Convening Authority Decision on Action.)

The record of trial includes an 892 page transcript. There are 11 prosecution exhibits, 19 defense exhibits, 18 appellate exhibits, and one court exhibit. SSgt Campbell is not currently in confinement. SSgt Campbell has been advised of the right to speedy appellate review, as well as this request for an enlargement of time. SSgt Campbell agrees to the request. Additionally, undersigned counsel has been in communication with SSgt Campbell concerning the status of the

case, but does not have a substantive update at this time. Counsel asserts attorney-client privilege over the substance of those communications.

Undersigned counsel is currently assigned 20 cases; 9 cases are pending initial AOEs before this Court. Undersigned military counsel's top priorities before this Court are as follows:

1) *United States v. Sanger*, ACM S32773 – The record of trial consists of two electronic volumes. The transcript is 141 pages. There are four prosecution exhibits, one defense exhibit, and four appellate exhibits. This case is on its eighth enlargement of time.
2) *United States v. Licea*, ACM 40602 - The record of trial consists of seven electronic volumes, and the transcript is 173 pages. There are 12 prosecution exhibits, five defense exhibits, 22 appellate exhibits, and one court exhibit. This case is on its seventh enlargement of time.
3) *United States v. Torres Gonzalez*, ACM 24001 - The record of trial consists of six volumes and a 608-page transcript. There are 46 prosecutions exhibits, eight defense exhibits, and 25 appellate exhibits. This case is on its seventh enlargement of time.

Through no fault of Appellant, undersigned counsel has been working on other assigned matters which has prevented him from completing an in-depth review of the record of trial. Undersigned military counsel has recently been detailed to *United States v. Cook*, a case which the C.A.A.F. granted for review on 29 January 2025. The grant brief and joint appendix are due for that case on 19 February 2025. Additionally, counsel has been hard at work on an Assignment of Errors in *United States v. Sanger*. That case has presented wide complexity, and counsel anticipates raising five errors before this Court. Given this, counsel has worked through the previous two weekends on it. These efforts have been strained by medical issues that one of counsel's close family members has experienced which has required counsel to drive to the Walter Reed Medical Center three days a week for treatment during hours of operation. Accordingly, an enlargement of time is necessary for counsel to continue reviewing the record of trial and to advise appellant on potential errors.

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

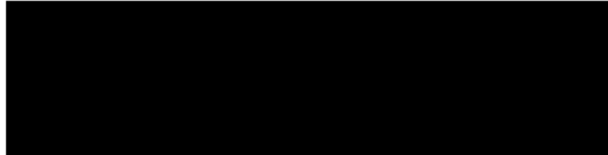
Respectfully submitted,

MICHAEL J. BRUZIK, 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 Appellate Government Division on 1 February 2025.

Respectfully submitted,



MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel

4 February 2025

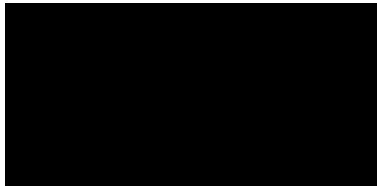
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) KYSHOWN D. CAMPBELL, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40652 Panel No. 1

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.

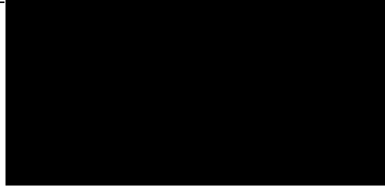
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



JOCELYN Q. WRIGHT, 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 4 February 2025.



JOCELYN Q. WRIGHT, Maj, USAF
Appellate Government Counsel

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (SIXTH)**
v.	)	Before Panel 1
Staff Sergeant (E-5), **KYSHOWN D. CAMPBELL,** United States Air Force, *Appellant.*	)	No. ACM 40652
	)	5 March 2025

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

Pursuant to Rule 23.3(m) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his sixth enlargement of time to file an Assignment of Errors (AOE). Appellant requests an enlargement for a period of 30 days, which will end on 11 April 2025. This case was docketed with this Court on 15 July 2024. This Court appears to have acknowledged receipt of the record of trial including the verbatim transcript on that same day. From the date of that receipt/docketing to the present date, 233 days have elapsed. On the date requested 270 days will have elapsed.

On 2 November 2023, a general court-martial convened at Luke Air Force Base, Arizona, convicted Staff Sergeant (SSgt) Kyshown D. Campbell, contrary to his pleas, of one specification of domestic violence in violation of Article 128b, Uniform Code of Military Justice (UCMJ). (R. at 781.) The military judge sentenced SSgt Campbell to be reprimanded, to forfeit $836.00 pay per month for 6 months, and to be confined for 60 days. (R. at 892.) The convening authority took no action on the findings or sentence. (Convening Authority Decision on Action.)

The record of trial includes an 892 page transcript. There are 11 prosecution exhibits, 19 defense exhibits, 18 appellate exhibits, and one court exhibit. SSgt Campbell is not currently in confinement. SSgt Campbell has been advised of the right to speedy appellate review, as well as this request for an enlargement of time. SSgt Campbell agrees to the request. Additionally,

undersigned counsel has been in communication with SSgt Campbell concerning the status of the case, but does not have a substantive update at this time. Counsel asserts attorney-client privilege over the substance of those communications.

Undersigned counsel is currently assigned 18 cases; 7 cases are pending initial AOEs before this Court. Undersigned military counsel's top priorities before this Court are as follows:

1) *United States v. Torres Gonzalez*, ACM 24001 – The record of trial consists of six volumes and a 608-page transcript. There are 46 prosecution exhibits, eight defense exhibits, and 25 appellate exhibits. This case is on its eighth enlargement of time
2) *United States v. Licea*, ACM 40602 – The record of trial consists of seven electronic volumes, and the transcript is 173 pages. There are twelve prosecution exhibits, five defense exhibits, twenty-two appellate exhibits, and one court exhibit. This case is on its seventh enlargement of time.
3) *United States v. Quinones Reyes*, ACM 40636 – The record of trial consists of seven volumes with a 199-page transcript. There are four prosecution exhibits, 19 defense exhibits, 25 appellate exhibits, and one court exhibit. This case is on its sixth enlargement of time.

Through no fault of appellant, undersigned counsel has been working on other assigned matters and has been unable to complete an in-depth review of the record of trial. During the previous enlargement of time, counsel was occupied with the completion of a grant brief before the Court of Appeals for the Armed Forces in *United States v. Cook*, which counsel submitted on 19 February 2025. Counsel also submitted a reply brief to this Court in *United States v. Hilton* on 24 February 2025 and an assignment of errors to this Court for *United States v. Sanger* on 28 February 2025. Additionally, counsel was in preparation for oral arguments before this Court in *United States v. Jenkins* which was scheduled to take place on 5 March 2025. These various priorities have

prevented counsel from being able to dedicate the time necessary to work on this case. Accordingly, an enlargement of time is necessary for counsel to fully review Appellant's case and advise on potential errors.

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

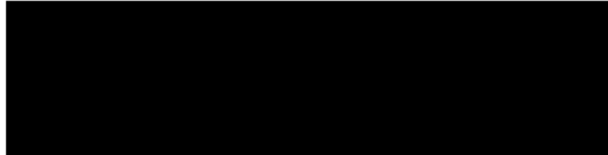
Respectfully submitted,

MICHAEL J. BRUZIK, 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 Appellate Government Division on 5 March 2025.

Respectfully submitted,



MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel

7 March 2025

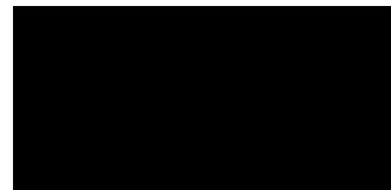
IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) KYSHOWN D. CAMPBELL., USAF, *Appellant.*	))))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME Before Panel No. 1 No. ACM 40652

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.

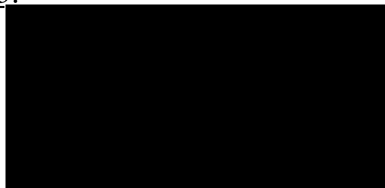
WHEREFORE, the United States respectfully requests that this Court deny Appellant's enlargement motion.



JOCELYN Q. WRIGHT, 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 7 March 2025.



JOCELYN Q. WRIGHT, Maj, USAF
Appellate Government Counsel

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)))	**MOTION FOR ENLARGEMENT OF TIME (SEVENTH)**
v.	))	Before Panel 1
Staff Sergeant (E-5), **KYSHOWN D. CAMPBELL,** United States Air Force, *Appellant.*	))))	No. ACM 40652 4 April 2025

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

Pursuant to Rule 23.3(m) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his seventh enlargement of time to file an Assignment of Errors (AOE). Appellant requests an enlargement for a period of 30 days, which will end on 11 May 2025. This case was docketed with this Court on 15 July 2024. This Court appears to have acknowledged receipt of the record of trial including the verbatim transcript on that same day. From the date of that receipt/docketing to the present date, 263 days have elapsed. On the date requested 300 days will have elapsed.

On 2 November 2023, a general court-martial convened at Luke Air Force Base, Arizona, convicted Staff Sergeant (SSgt) Kyshown D. Campbell, contrary to his pleas, of one specification of domestic violence in violation of Article 128b, Uniform Code of Military Justice (UCMJ). (R. at 781.) The military judge sentenced SSgt Campbell to be reprimanded, to forfeit $836.00 pay per month for 6 months, and to be confined for 60 days. (R. at 892.) The convening authority took no action on the findings or sentence. (Convening Authority Decision on Action.)

The record of trial includes an 892 page transcript. There are 11 prosecution exhibits, 19 defense exhibits, 18 appellate exhibits, and one court exhibit. SSgt Campbell is not currently in confinement. SSgt Campbell has been advised of the right to speedy appellate review, as well as this request for an enlargement of time. SSgt Campbell agrees to the request. Additionally,

undersigned counsel has been in communication with SSgt Campbell concerning the status of the case. Counsel asserts attorney-client privilege over the substance of those communications.

Undersigned counsel is currently assigned to represent eighteen service members; seven cases are pending initial AOEs before this Court. Undersigned counsel's priorities are as follows:

1) *United States v. Adams*, ACM 22018 – The record of trial consists of four volumes and a 299-page transcript. There are two prosecution exhibits, three defense exhibits, and seventeen appellate exhibits. This case is on its seventh enlargement of time. A brief is due to this Court on 16 April 2025.

2) *United States v. Torres Gonzalez*, ACM 24001 – The record of trial consists of six volumes and a 608-page transcript. There are forty-six prosecution exhibits, eight defense exhibits, and twenty-five appellate exhibits. This case is on its ninth enlargement of time. A brief is due to this Court on 14 April 2025.

3) *United States v. Licea*, ACM 40602 – The record of trial consists of seven electronic volumes, and the transcript is 173 pages. There are twelve prosecution exhibits, five defense exhibits, twenty-two appellate exhibits, and one court exhibit. This case is on its ninth enlargement of time. A brief is due to this Court on 18 April 2025.

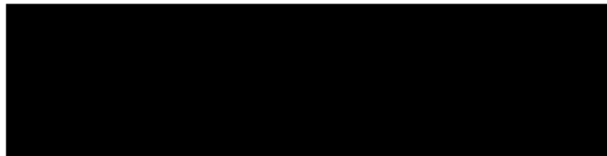
4) *United States v. Quinones Reyes*, ACM 40636 – The record of trial consists of seven volumes with a 199-page transcript. There are four prosecution exhibits, nineteen defense exhibits, twenty-five appellate exhibits, and one court exhibit. This case is on its seventh enlargement of time. A brief is due to this court on 21 April 2025.

Through no fault of appellant, counsel has been working on other assigned matters and has been unable to complete an in-depth review of the record of trial. On 21 March 2025, this Court denied undersigned counsel's request for enlargement of time in *United States v. Copp*, ACM 24029 without explanation and without an opportunity to file a timely renewed request due to the 27 March

2025 filing deadline for an assignment of errors. This forced counsel to reorient all of his priorities to comply with the 27 March 2025 deadline. Prior to this, counsel was occupied with completing a reply brief in *United States v. Hilton* on 24 February 2025 and an assignment of errors in *United States v. Sanger* on 28 February 2025. Counsel also submitted a supplemental brief to this Court in *United States v. Jenkins* on 12 March 2025, which was originally scheduled for oral arguments the week prior. Additionally, counsel was at work on a reply brief before the Court of Appeals for the Armed Forces in *United States v. Cook* which was due to on 2 April 2025. Counsel's current priority is completion of a reply brief before this Court in *United States v. Sanger* which is due to this Court on 7 April 2025. Following this, Counsel will be working towards completion of assignments of error in both *United States v. Adams* and *United States v. Torres Gonzalez* which are due in close succession. If this Court is not inclined to grant this request for enlargement of time, counsel requests a status conference. Accordingly, an enlargement of time is necessary for counsel to fully review Appellant's case and advise on potential errors.

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

Respectfully submitted,

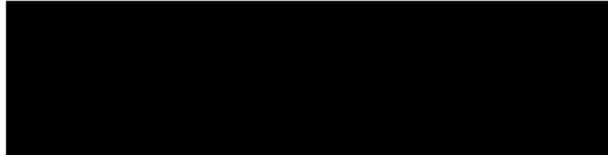


MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel

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 Appellate Government Division on 4 April 2025.

Respectfully submitted,



MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) **KYSHOWN D. CAMPBELL,** United States Air Force, *Appellant.*	)))))))))))))	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME Before Panel No. 1 No. ACM 40652 8 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 opposition to Appellant's Motion for Enlargement of Time to file an Assignment of Error in this case.

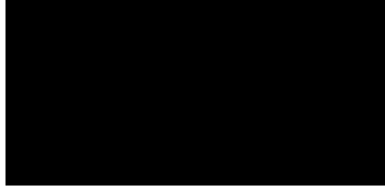
The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 300 days 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 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. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

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

JOCELYN Q. WRIGHT, 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 8 April 2025.



JOCELYN Q. WRIGHT, Maj, USAF
Appellate Government Counsel

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**MOTION FOR ENLARGEMENT OF TIME (EIGHTH)**
v.	)	Before Panel 1
Staff Sergeant (E-5), **KYSHOWN D. CAMPBELL,** United States Air Force, *Appellant.*	)	No. ACM 40652 4 May 2025

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

Pursuant to Rule 23.3(m) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his eighth enlargement of time to file an Assignment of Errors (AOE). Appellant requests an enlargement for a period of 30 days, which will end on 10 June 2025. This case was docketed with this Court on 15 July 2024. This Court appears to have acknowledged receipt of the record of trial including the verbatim transcript on that same day. From the date of that receipt/docketing to the present date, 293 days have elapsed. On the date requested 330 days will have elapsed.

On 2 November 2023, a general court-martial convened at Luke Air Force Base, Arizona, convicted Staff Sergeant (SSgt) Kyshown D. Campbell, contrary to his pleas, of one specification of domestic violence in violation of Article 128b, Uniform Code of Military Justice (UCMJ). (R. at 781.) The military judge sentenced SSgt Campbell to be reprimanded, to forfeit $836.00 pay per month for 6 months, and to be confined for 60 days. (R. at 892.) The convening authority took no action on the findings or sentence. (Convening Authority Decision on Action.)

The record of trial includes an 892 page transcript. There are 11 prosecution exhibits, 19 defense exhibits, 18 appellate exhibits, and one court exhibit. SSgt Campbell is not currently in confinement. SSgt Campbell has been advised of the right to speedy appellate review, as well as this request for an enlargement of time. SSgt Campbell agrees to the request. Additionally,

undersigned counsel has been in communication with SSgt Campbell concerning the status of the case, but does not have a substantive update at this time. Counsel asserts attorney-client privilege over the substance of those communications.

Undersigned counsel is currently assigned to represent eighteen service members; five cases are pending initial AOEs before this Court. Undersigned counsel's priorities are as follows:

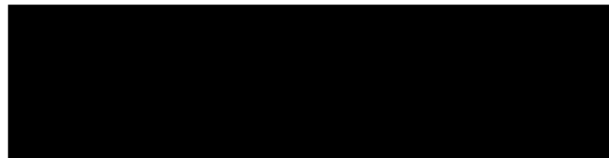
1) *United States v. Licea*, ACM 40602 – The record of trial consists of seven electronic volumes, and the transcript is 173 pages. There are twelve prosecution exhibits, five defense exhibits, twenty-two appellate exhibits, and one court exhibit. This case is on its tenth enlargement of time. A brief is due to this Court on 18 May 2025.
2) *United States v. Quinones Reyes*, ACM 40636 – The record of trial consists of seven volumes with a 199-page transcript. There are four prosecution exhibits, nineteen defense exhibits, twenty-five appellate exhibits, and one court exhibit. This case is on its eighth enlargement of time. A brief is due to this Court on 21 May 2025.
3) *United States v. Campbell*, ACM 40642 – This is the instant case.

Through no fault of appellant, counsel has been working on other assigned matters and has been unable to complete an in-depth review of the record of trial. Over the previous thirty days, counsel was diligently at work completing an assignment of error in *United States v. Adams*, a case which counsel made his highest priority given this Court's original denial of request for enlargement of time past 9 April 2025. This Court later granted a short enlargement of time, and counsel submitted an assignment of errors on 16 April 2025. Additionally, counsel submitted an assignment of errors to this Court in *United States v. Torres Gonzalez* on 28 April 2025. Both of these cases presented multiple issues and required considerable time for counsel to bring to completion. Looking ahead, counsel has arranged his top priorities based on the number of enlargements that have been granted for his cases. This includes *United States v. Licea*, which is currently on its tenth enlargement of

time, and for which counsel intends to complete without seeking additional enlargements times. Following this, counsel will be working to complete work on both *United States v. Quinones Reyes* and the instant case. However, counsel will have to balance that with preparations for oral arguments before the Court of Appeals for the Armed Forces in *United States v. Cook* which is scheduled to take place on 20 May 2025. Following resolution of these competing priorities, counsel looks forward to zealously advocating on behalf on SSgt Campbell and completing and assignment of errors for this case. Should this Court be inclined to deny the request for enlargement of time, counsel requests a status conference. Accordingly, an enlargement of time is necessary for counsel to fully review Appellant's case and advise on potential errors and begin working on an assignment of errors.

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

Respectfully submitted,

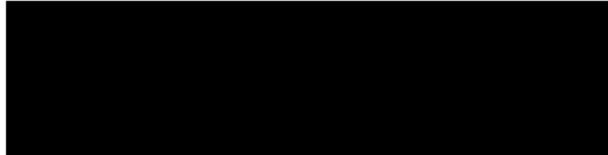


MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel

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 Appellate Government Division on 4 May 2025.

Respectfully submitted,



MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

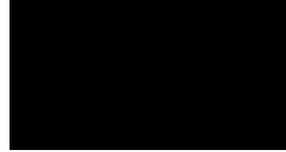
UNITED STATES, *Appellee,*	)	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 1
Staff Sergeant (E-5) **KYSHOWN D. CAMPBELL,** United States Air Force, *Appellant.*	)	No. ACM 40652
	)	6 May 2025

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 opposition to Appellant's Motion for Enlargement of Time, Out 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 330 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 7 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

WHEREFORE, the United States respectfully requests that this Court deny 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 6 May 2025.

KATE E. LEE, Maj, USAF
Appellate Government Counsel

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)))	**MOTION FOR ENLARGEMENT OF TIME (NINTH)**
v.	))	Before Panel 1
Staff Sergeant (E-5), **KYSHOWN D. CAMPBELL,** United States Air Force, *Appellant.*	))))	No. ACM 40652 3 June 2025

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

Pursuant to Rule 23.3(m) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his ninth enlargement of time to file an Assignment of Errors (AOE). Appellant requests an enlargement for a period of 30 days, which will end on 10 July 2025. This case was docketed with this Court on 15 July 2024. This Court appears to have acknowledged receipt of the record of trial including the verbatim transcript on that same day. From the date of that receipt/docketing to the present date, 323 days have elapsed. On the date requested 360 days will have elapsed.

On 2 November 2023, a general court-martial convened at Luke Air Force Base, Arizona, convicted Staff Sergeant (SSgt) Kyshown D. Campbell, contrary to his pleas, of one specification of domestic violence in violation of Article 128b, Uniform Code of Military Justice (UCMJ). (R. at 781.) The military judge sentenced SSgt Campbell to be reprimanded, to forfeit $836.00 pay per month for 6 months, and to be confined for 60 days. (R. at 892.) The convening authority took no action on the findings or sentence. (Convening Authority Decision on Action.)

The record of trial includes an 892 page transcript. There are 11 prosecution exhibits, 19 defense exhibits, 18 appellate exhibits, and one court exhibit. SSgt Campbell is not currently in confinement. SSgt Campbell has been advised of the right to speedy appellate review, as well as this request for an enlargement of time. SSgt Campbell agrees to the request. Additionally,

undersigned counsel has been in communication with SSgt Campbell concerning the status of the case, but does not have a substantive update at this time. Counsel asserts attorney-client privilege over the substance of those communications.

Undersigned counsel is currently assigned to represent eighteen service members; four cases are pending initial AOEs before this Court. Undersigned counsel's priorities are as follows:

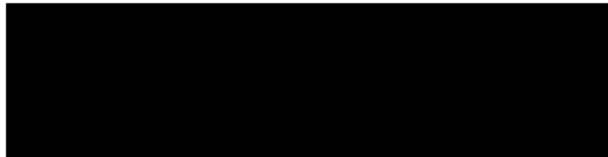
1) *United States v. Martinez*, ACM 39903 (f rev) – The record of trial from the remanded hearing consists of three volumes. The transcript is 134 pages. There are five prosecution exhibits, one defense exhibit, and 15 appellate exhibits. The record of trial from the initial trial consists of 11 prosecution exhibits, 24 defense exhibits, 85 appellate exhibits, and includes a 134 page transcript. This case is on its first enlargement of time. A brief is due to this Court on 5 June 2025.
2) *United States v. Campbell*, ACM 40642 – This is the instant case.
3) *United States v. Waddell*, ACM 24061 – The record of trial includes a transcript that is 148 pages in length. There are three prosecution exhibits, 11 defense exhibits, and four appellate exhibits. This case is on its seventh enlargement of time. A brief is due to this court on 8 July 2025.

Through no fault of appellant, counsel has been working on other assigned matters and has been unable to complete an in-depth review of the record of trial. Over the previous enlargement of time, counsel was occupied with several competing priorities that interfered with his ability to work on this case. This included preparations for oral arguments before the Court of Appeals for the Armed Forces in *United States v. Cook* which took place on 20 May 2025. Counsel also submitted reply briefs to this Court in *United States v. Copp* on 8 May 2025 and *United States v. States v. Adams* on 23 May 2025. Counsel anticipates filing an assignment of errors to this Court in *United States v. Martinez* on 5 June 2025. Following that, this case will become counsel's top priority. However, counsel must balance his attention towards this case with completion of a supplement brief to this

Court in *United States v. Sanger* which is due on 15 June 2025. Accordingly, an enlargement of time is necessary for counsel to complete his review of the record of trial, advise SSgt Campbell on potential errors, and submit an assignment of errors. Should this Court be disinclined to grant this motion, counsel respectfully requests a status conference.

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

Respectfully submitted,

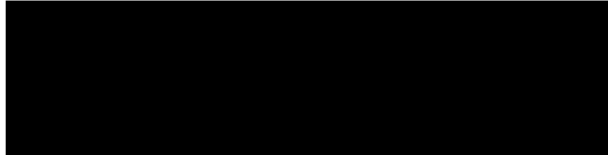


MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel

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 Appellate Government Division on 3 June 2025.

Respectfully submitted,



MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) **KYSHOWN D. CAMPBELL,** United States Air Force, *Appellant.*	)	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME Before Panel No. 1 No. ACM 40652 4 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 opposition to Appellant's Motion for Enlargement of Time, Out of Time, to file an Assignment of Error in this case.

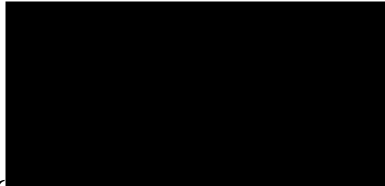
The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 360 days 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 6 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

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

JO 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 4 June 2025.



JO USAF
Appellate Government Counsel

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5), **KYSHOWN D. CAMPBELL,** United States Air Force, *Appellant.*	)))))))))	**MOTION FOR ENLARGEMENT OF TIME (TENTH)** Before Panel 1 No. ACM 40652 3 July 2025

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

Pursuant to Rule 23.3(m) and (6) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for his tenth enlargement of time to file an Assignment of Errors (AOE). Appellant requests an enlargement for a period of 7 days, which will end on 17 July 2025. This case was docketed with this Court on 15 July 2024. This Court appears to have acknowledged receipt of the record of trial including the verbatim transcript on that same day. From the date of that receipt/docketing to the present date, 353 days have elapsed. On the date requested 367 days will have elapsed.

On 2 November 2023, a general court-martial convened at Luke Air Force Base, Arizona, convicted Staff Sergeant (SSgt) Kyshown D. Campbell, contrary to his pleas, of one specification of domestic violence in violation of Article 128b, Uniform Code of Military Justice (UCMJ). (R. at 781.) The military judge sentenced SSgt Campbell to be reprimanded, to forfeit $836.00 pay per month for 6 months, and to be confined for 60 days. (R. at 892.) The convening authority took no action on the findings or sentence. (Convening Authority Decision on Action.)

The record of trial includes an 892 page transcript. There are 11 prosecution exhibits, 19 defense exhibits, 18 appellate exhibits, and one court exhibit. SSgt Campbell is not currently in confinement. SSgt Campbell has been advised of the right to speedy appellate review, as well as this request for an enlargement of time. SSgt Campbell agrees to the request. Additionally,

undersigned counsel has been in communication with SSgt Campbell concerning the status of the case. Counsel asserts attorney-client privilege over the substance of those communications.

Undersigned counsel is currently assigned to represent eighteen service members; four cases are pending initial AOEs before this Court. Undersigned counsel's priorities are as follows:

1) *United States v. Campbell*, ACM 40642 – This is the instant case.
2) *United States v. Waddell*, ACM 24061 – The record of trial includes a transcript that is 148 pages in length. There are three prosecution exhibits, 11 defense exhibits, and four appellate exhibits. This case is on its eighth enlargement of time. A brief is due to this court on 7 August 2025.

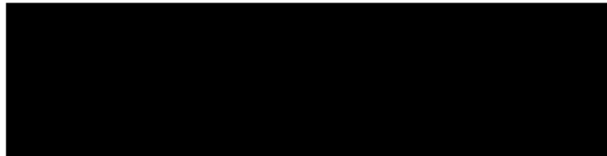
Through no fault of appellant, counsel has been working on other assigned matters and has been unable to complete an assignment of errors in this case. Exceptional circumstances warrant this enlargement of time because undersigned counsel has been task saturated. Over the last thirty days counsel submitted to this Court an assignment of errors in *United States v. Martinez* and a reply brief in *United States v. Torres Gonzalez*, and a supplemental brief in *United States v. Sanger*. Counsel also submitted an Article 69 request for relief in *United States v. Vargo* to the Judge Advocate General. Counsel currently has multiple deadlines falling close proximity to the one currently set for this case. Before the Court of Appeals for the Armed Forces, counsel has a deadline to submit a supplement for petition of review in *United States v. Hilton* on 8 July 2025, and a deadline to submit a supplement for petition of review in *United States v. Jenkins* on 9 July 2025.

Counsel has begun drafting an assignment of errors in this case which he is working diligently to complete. Counsel anticipates that it will address multiple issues and therefore require significant effort. Counsel intends to work on the assignment errors over the Fourth of July weekend. However, his ability to complete it with the current deadline is strained by the two deadlines he has before the Court of Appeals for the Armed in the same week. These exceptional circumstances will interfere with counsel's ability to zealously advocate in all three cases. Accordingly, an enlargement of time

is necessary for counsel to complete drafting an assignment of errors, ensure that it aligns with SSgt Campbell's interests, and submit through internal review. Should this Court be disinclined to grant this motion, counsel respectfully requests a status conference.

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

Respectfully submitted,

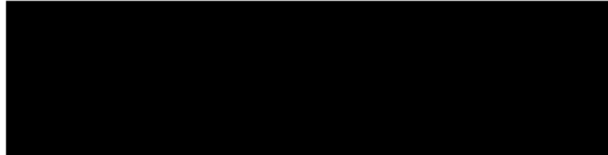


MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel

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 Appellate Government Division on 3 July 2025.

Respectfully submitted,



MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	UNITED STATES'
Appellee,	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
	)	Before Panel No. 1
Staff Sergeant (E-5)	)	
KYSHOWN D. CAMPBELL,	)	No. ACM 40652
United States Air Force,	)	
Appellant.	)	
	)	8 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.

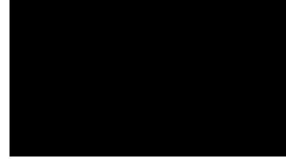
The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant over a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 367 days in length. Appellant's over 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 two-thirds of the 18-month standard for this Court to issue a decision, which only leaves about 6 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

WHEREFORE, the United States respectfully requests that this Court deny 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 8 July 2025.



KATE E. LEE, Maj, USAF
Appellate Government Counsel

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	**APPELLANT'S MOTION TO**
Appellee,	)	**EXAMINE SEALED**
	)	**MATERIALS**
v.	)	
	)	Before Panel No. 1
Staff Sergeant (E-5)	)	
KYSHOWN D. CAMPBELL,	)	No. ACM 40652
United States Air Force	)	
Appellant	)	1 July 2025

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

Pursuant to Rule for Courts-Martial (R.C.M.) 1113(b)(3)(B)(i) and Rule 23.3(f)(1) of this Honorable Court's Rules of Practice and Procedure, undersigned counsel hereby moves to examine the following sealed items:

- Preliminary Hearing Officer (PHO) Exhibit 8 – Digital Video File: "0424150939.mp4," (5:08 mins)
- PHO Exhibit 9 – Digital Video File: "[redacted] Doggy.mp4" (0:29 mins)
- PHO Exhibit 10 – Digital Video File: "pick her up.mp4" (0:37 mins)
- PHO Exhibit 11 – Digital Video File: "2016222_205420.mp4" (3:04 mins)
- PHO Exhibit 12 – Digital Video File: "20161222 205830.mp4" (1:57 mins)

In accordance with R.C.M. 1113(b)(3)(B)(i), which requires a colorable showing that examining these materials is reasonably necessary to fulfill appellate counsel's responsibilities, undersigned counsel asserts that viewing the referenced materials is reasonably necessary to assess whether the record of trial is complete and whether trial defense counsel was effective during the preliminary hearing. The sealed portions

raise the potential for appellate issues. The sealed items were available to both trial counsel and trial defense counsel, and were not subject to in-camera review.

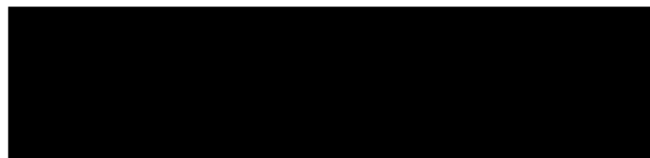
To determine whether the record of trial yields grounds for this Court to grant relief under Article 66(d), UCMJ, 10 U.S.C. § 866(d), appellate defense counsel must examine "the entire record."

> Although Courts of Criminal Appeals have a broad mandate to review the record unconstrained by an appellant's assignments of error, that broad mandate does not reduce the importance of adequate representation. As we said in *United States v. Ortiz*, 24 M.J. 323, 325 (C.M.A. 1987), independent review is not the same as competent appellate representation.

United States v. May, 47 M.J. 478, 481 (C.A.A.F. 1998). Undersigned counsel must review the sealed materials to provide "competent appellate representation." *See id.* Accordingly, good cause exists in this case since undersigned counsel cannot fulfill his duty of representation under Article 70, UCMJ, 10 U.S.C. § 870, without first reviewing these exhibits.

WHEREFORE, Appellant respectfully requests that this Honorable Court grant his motion.

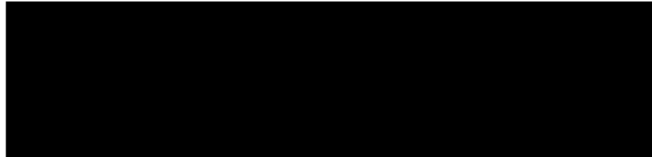
Respectfully submitted,



MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing was sent via email to the Court and served on the Appellate Government Division on 1 July 2025.



MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	UNITED STATES' RESPONSE TO APPELLANT'S MOTION TO EXAMINE SEALED MATERIAL
v.	)	Before Panel No. 1
Staff Sergeant (E-5) **KYSHOWN D. CAMPBELL,** United States Air Force, *Appellant.*	)	No. ACM 40652 3 July 2025

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

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States responds to Appellant's Motion to Examine Sealed Material. The United States does not object to Appellant's counsel reviewing Prosecution Exhibits 8, 9, 10, 11, and 12, provided the United States is also permitted to review the sealed exhibits as necessary to respond to any assignment of error that refers to the sealed materials. The United States respectfully requests that any order issued by this Court also allow counsel for the United States to view the sealed materials.

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

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 3 July 2025.

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

United States Air Force Court of Criminal Appeals

UNITED STATES	)	**No. ACM 40652**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Kyshown D. CAMPBELL	)	
Staff Sergeant (E-5)	)	
U.S. Air Force	)	
Appellant	)	**Panel 1**

On 1 July 2025, counsel for Appellant submitted a Motion to Examine Sealed Materials. Specifically, Appellant requests Appellate Defense counsel be permitted to examine the following materials sealed by the preliminary hearing officer: Preliminary Hearing Officer (PHO) Exhibits 8–12. These materials were viewed by trial counsel and trial defense counsel at trial.

On 3 July, Government Counsel responded to Appellant's motion, not opposing Appellant's motion but requesting equal access to view the same sealed materials.

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

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

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

ORDERED:

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

Appellate defense counsel and appellate government counsel may view **PHO Exhibits 8-12**.

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

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

FOR THE COURT

OLGA STANFORD, Capt, USAF
Chief Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,
Appellee,

v.

KYSHOWN D. CAMPBELL,
Staff Sergeant (E-5),
United States Air Force
Appellant.

No. ACM 40652

BRIEF ON BEHALF OF APPELLANT

MICHAEL J. BRUZIK, Capt, USAF
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Counsel for Appellant

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Whether the record of trial should be remanded for correction to produce missing components of Prosecution Exhibits 5 through 9 1

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**BRIEF ON BEHALF OF APPELLANT**
	)	
v.	)	Before Panel No. 1
	)	
Staff Sergeant (E-5), **KYSHOWN D. CAMPBELL,**	)	No. ACM 40652
United States Air Force, *Appellant.*	)	17 July 2025

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

Assignments of Error

I.

Whether the finding of guilty for domestic violence was factually and legally sufficient where the Government's case relied on a single impeached and uncredible witness who denied on body camera that any domestic violence took place.

II.

Whether the military judge abused his discretion by allowing the Government to present evidence of Staff Sergeant Campbell's alleged propensity to respond to R.C. with violence when confronted with accusations of infidelity.

III.

Whether the military judge erred by allowing video clips contained in Prosecution Exhibits 5 through 9 to be admitted without a proper foundation.

IV.

Whether the record of trial should be remanded for correction to produce missing components of Prosecution Exhibits 5 through 9.

V.

Whether the Government violated Staff Sergeant Campbell's right under Article 13 to be free from conditions of pretrial confinement more rigorous than necessary to ensure his presence at trial when he was placed in confinement at a civilian facility after the Air Force took exclusive jurisdiction over the charged offenses from the State of Florida.

Statement of the Case

On 2 November 2023, a general court-martial convened at Luke Air Force Base, Arizona, convicted Staff Sergeant (SSgt) Kyshown D. Campbell, contrary to his pleas, of one specification of domestic violence in violation of Article 128b, Uniform Code of Military Justice (UCMJ). (R. at 781.) SSgt Campbell was acquitted of three specifications of sexual abuse of a child in violation of Article 120b, UCMJ, and one specification of indecent recording in violation of Article 120c, UCMJ. (R. at 781.) The military judge sentenced SSgt Campbell to a reprimand, forfeiture of $836.00 pay per month for six months, and confinement for sixty days. (R. at 892.) The convening authority took no action on the findings or sentence. (Convening Authority Decision on Action, dated 5 January 2024.)

Statement of Facts

SSgt Campbell testified at trial that he met R.C. while the two were stationed at Hulbert Field, Florida, in 2015. (R. at 528.) They married in August 2017 and lived together along with R.C.'s child, P.C., from R.C.'s previous relationship. (R. at 529.) Their marriage was rocky throughout its duration, although SSgt Campbell maintained a good relationship with P.C., with whom he assumed the role of father figure. (R. at 529-30.) Despite their difficulties, SSgt Campbell never physically harmed R.C. (R. at 531, 546.)

On 30 June 2021, R.C. texted SSgt Campbell while he was at a medical appointment. (R. at 548.) She called him a "piece of shit" and explained that she had discovered an SD card

containing videos of SSgt Campbell engaged in sex acts with other women. (*Id.*) This left SSgt Campbell in a state of shock and embarrassment as he returned home. (R. at 550.) Once SSgt Campbell arrived back at their house, he found that the electronic locks had been disabled so that he could not open the door. (R. at 551.) He was able to enter by wiggling the sliding glass door on the backyard entrance. (*Id.*) SSgt Campbell found R.C. on a speaker phone with G.G., a special agent with the Air Force Office of Special Investigations (AFOSI). (R. at 553.) SSgt Campbell asked R.C. to get off the phone so that they could talk, which R.C. refused to do. (*Id.*) SSgt Campbell took the phone and held it over his head. (R. at 554.) SSgt Campbell's intent was to end the call with Special Agent G.G. so that he could speak with R.C. privately, which he did by hanging up the phone. (R. at 555.) Special Agent G.G. called back on the same phone and told SSgt Campbell to give it back to R.C. or else Special Agent G.G. would call the police. (R. at 556.) SSgt Campbell told her to do what she "got to do" and ended the call. (R. at 31, 556.) SSgt Campbell denied ever having any violent interaction with R.C., and denied ever striking her to retrieve the phone. (R. at 524.)

B.M. testified that she was contacted by R.C. through a mutual friend and asked B.M. to come to the house and pick up P.C. (R. at 393-94, 411.) When B.M. arrived, R.C. did not appear to be acting any different than normal. (R. at 397.) R.C. did not appear flustered or to have any injuries. (R. at 412.) Civilian police arrived as B.M. was leaving. (R. at 396, 558.) The officer's entire interaction at the residence was captured on body camera footage. As the police officer approached the front door, he asked B.M. if everything was alright as she departed through the driveway. (Pros. Ex. 1 at 00:50.) B.M. calmly replied, "I have no idea." (*Id.*) R.C. answered the door for the police officer and invited him in. (*Id.* at 01:10.) R.C. explained that the reason the police were called is because Special Agent G.G. overheard the conversation about SSgt

Campbell's cheating. (*Id.* at 01:15.) The officer asked if their previous confrontation was just a verbal argument or if anything physical had taken place. (*Id.* at 02:35.) R.C. denied that anything physical had occurred while motioning with her arms to show a lack of injury. (*Id.* at 02:40.) R.C. stood upright while speaking with the officer with her arms at her side. (*Id.*) The officer explained that he was investigating domestic violence, to which R.C. replied "there is no domestic violence." (*Id.* at 03:20.) After the officer clarified what he meant by domestic violence, R.C. moved her hands in a shrugging motion and said, "I don't understand." (*Id.* at 03:35.) After taking their personal information, the officer once again asked if it was just a verbal argument, and R.C. said "yeah." (*Id.* at 04:45.) R.C. also clarified that the basis of the argument was about whether to end the phone call with Special Agent G.G. "so people can stop hearing our business." (*Id.* at 05:30.) The officer explained that nothing illegal had happened so long as there was no property damage and no one got hurt, which R.C. agreed had not taken place. (R. at 06:05.)

Special Agent G.G. testified that she also contacted her friend S.S. and asked her to go to the Campbell residence to perform a welfare check. (R. at 497.) Based on her conversation with Special Agent G.G., S.S. did not believe that any physical violence had taken place. (R. at 497.) S.S. arrived just as police were escorting SSgt Campbell away from the property to spend the night elsewhere. (R. at 498.) He was not under arrest or placed in handcuffs. (*Id.*) S.S. did not see any injuries on R.C. (R. at 499.) R.C. explained to S.S. what she found on the video card, but did not say anything about being physically abused. (R. at 502.) Although S.S. was a mandatory reporter, she did not make any report of domestic violence following the welfare check. (R. at 504.)

SSgt Campbell testified that he voluntarily left the home and spent the night at a friend's home. (R. at 564.) R.C. contacted SSgt Campbell the next day and asked him to come home and spend time with P.C. before he left for his deployment. (R. at 565.) P.C. was excited for SSgt

Campbell to return. (R. at 566.) SSgt Campbell slept in the guest bedroom away from R.C. (R. at 567-68.) The following day, R.C. drove SSgt Campbell to the airport and offered to reconcile with him. (R. at 569.) While on deployment, R.C. continued attempting to contact SSgt Campbell. (R. at 571.) However, SSgt Campbell decided to file for divorce. (R. at 572.) This upset R.C., who proceeded to make threats against him, including handing over the SD card to law enforcement. (*Id.*) R.C. began sharing the videos with the women who were in them, who contacted SSgt Campbell. (R. at 576.) R.C. also sent them to his sisters and grandmother, which was highly embarrassing for him. (R. at 577.)

SSgt Campbell testified that after returning from deployment, he and R.C. continued to struggle through the divorce process and to divide their property. (R. at 580.) At one point, R.C. sought a protective order against SSgt Campbell in civilian court based on allegations of domestic violence, which were dismissed as unsubstantiated. (R. at 581-82.) Within an hour of the dismissal order, SSgt Campbell's first sergeant contacted him and explained that he was being placed on a military protective order for the same allegations. (R. at 582.) R.C. posted on social media that SSgt Campbell was on a protective order and that the "monster is going down." (R. at 583.)

While separated during the deployment, R.C. began to tell a different story about 30 June 2021. Although she initially denied any physical violence when speaking with B.M., she later told B.M. that SSgt Campbell "had beat her, threatened her life, and pulled a knife on her." (R. at 405.) R.C. alleged to B.M. that SSgt Campbell had smashed her phone. (R. at 416.) During a conversation months after the alleged incident, R.C. also told S.S. that SSgt Campbell had hit her on the side. (R. at 503.)

SSgt Campbell testified on his own behalf and denied that any domestic violence had ever taken place. (R. at 522-24.) R.C. testified as the Government's only direct witness of the alleged

domestic violence. She agreed that she remained in contact with SSgt Campbell after he went on his deployment to try to fix things between them. (R. at 295-96.) R.C. constantly texted him and became frustrated when he would not text back for several hours. (*Id.*) She begged him to pick up the phone and talk to her. (*Id.*) R.C. admitted responding to the divorce by threatening SSgt Campbell that she would go to his first sergeant and harm his career. (R. at 297.) These threats included turning in the SD card to law enforcement. (R. at 297-98.) When the two started to have disagreements about the division of marital property, R.C. told SSgt Campbell to "watch his back." (R. at 299.) She also admitted telling SSgt Campbell that the terms of the divorce were "bullshit" and that she was going to go to his squadron and take his career. (*Id.*) R.C. confirmed that she did not make criminal accusations against SSgt Campbell until after her attempt to get a protective order against him in civil court was dismissed for lack of evidence. (R. at 333.) When she finally did report SSgt Campbell, her report included the false allegation that SSgt Campbell possessed depictions of actual sex acts with children. (R. at 173.) R.C. reiterated this false accusation on social media. (R. at 312.) When asked whether she had sent the contents of the SD card to SSgt Campbell's associates and family, she merely stated "I don't recall." (R. at 302.)

During a motions hearing, R.C. provided another version of the alleged incident on 30 June 2021. This time, R.C. alleged that SSgt Campbell had chased her into the guest bedroom where he pushed her onto her back, lifted her off the ground and then punched her twice in the left rib-cage. (R. at 30-31.) R.C. also claimed that P.C. had been in the room at the time, hitting SSgt Campbell and screaming "I just want my family to be happy" and "Stop, dad. Stop." (R. at 31.) P.C. offered no account of that when interviewed by AFOSI, instead referring to SSgt Campbell as a "cool guy." (Report of Investigation, dated 23 August 2022, at 19-20.) R.C. then described SSgt

Campbell as putting down a knife in the kitchen, having not previously mentioned a knife in her testimony. (*Id.*)

R.C. said that Special Agent G.G. was on the speaker phone throughout this incident, ending only after SSgt Campbell threw the phone on the ground and stomped on it. (R. at 32-33; 129.) R.C. testified that SSgt Campbell cut up her common access card after the physical altercation by taking it off the kitchen counter and shredding it. (R. at 31.) At trial, R.C. changed her story again. This time, R.C. testified that SSgt Campbell threatened to cut up R.C.'s common access card to coerce her to hand over the phone, and that he did so before the physical altercation. (R. at 126.) R.C. reiterated her claim that P.C. was in the room at the time of the incident, although she denied that when she previously spoke with AFOSI. (R. at 274, 445.) R.C. said that after the incident, she went to her neighbors' house to see J.B. and K.B. and tell them what happened. (R. at 138-39.) While there, she applied Icy Hot to her side and wrapped it. (R. at 139.) Importantly, J.B. and K.B. were never presented by the Government as witnesses. R.C. described the pain as excruciating and said that it interfered with her sleep. (R. at 39, 338.) She did not appear to be in any pain, much less excruciating pain, in the body camera footage of the responding officer. (Pros. Ex. 1.) She also testified that her method of managing the pain was to lift weights. (R. at 39.) R.C. explained that she put on a hoodie before the officer arrived to hide the bruises. (R. at 288-89.) R.C. was not wearing a hoodie in the body camera footage, nor did she appear to have any bruises – even going so far as to show her arms to the officer to show that she was not injured. (Pros. Ex. 1.)

R.C. testified that when Special Agent G.G. threatened to call the police, SSgt Campbell replied "call the cops, bitch." (R. at 131.) Special Agent G.G. disagreed with this, merely indicating that SSgt Campbell told her to do what he felt was appropriate. (R. at 355, 368.) R.C.

also claimed that Special Agent G.G. was on the speaker phone up until the point that it was allegedly smashed. (R. at 277.) However, Special Agent G.G. testified that she was on the phone until it was hung up and that she was able to call it back and speak to SSgt Campbell. (R. at 353.) Before the first time that the phone was hung up, Special Agent G.G. was able to make out voices and heard sounds like "the phone was rubbing against something." (R. at 354.) Special Agent G.G. did not hear SSgt Campbell until he answered the phone, to include any observation of him threatening R.C. or any conversation about her common access card. (R. at 365-66.) Nor did Special Agent G.G. describe hearing P.C. screaming as R.C. had testified. (R. at 364.) Based on what she heard on the phone, Special Agent G.G. did not have any "concrete indication that anything was truly wrong at the Campbell residence." (R. at 369.)

SSgt Campbell agreed with G.G. and the body camera footage in his testimony, explaining that he merely took the phone from R.C. and held it above her head so they could talk privately. (R. at 553) ("I kept on saying, you know, get off the phone, G.G. could hear me. I proceeded to grab the phone from her right in front of her face, just took it away. She attempted to get it back from me, but I j just held it over my head for a while until I could get to hanging it up.") SSgt Campbell clarified that he was able to take the phone without any physical harm. (R. at 554) ("She was holding it outwards, not to her mouth, just outwards on speakerphone. And I don't think she was expecting me to grab it, but I just grabbed it straight out of her hands."). SSgt Campbell affirmed that he did not smash the phone, explaining that G.G. was able to call the phone back. (R. at 556.) SSgt Campbell flatly denied ever hitting R.C. (R. at 547) ("Q. Did you ever punch [R.C.] in the ribs in order to gain possession of her cell phone? A. No, sir.").

Argument

I.

The finding of guilty was factually and legally insufficient because the Government's case relied primarily on a single impeached and uncredible witness who, at the time of the alleged offense, denied on body camera that any domestic violence took place.

Standard of Review

Factual insufficiency is reviewed de novo with "appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence." Article 66(d)(1)(B)(ii)(I), U.C.M.J., 10 U.S.C. § 866(d)(1)(B)(ii)(I); *United States v. Harvey*, 85 M.J. 127, 130 (C.A.A.F. 2024). The degree of deference depends "on the nature of the evidence at issue." *Harvey*, 85 M.J. at 130. Less deference is afforded where the reviewing court can assess challenged evidence such as "documents, videos, and other objective evidence just as well as the court-martial." *Id.* at 131. 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. King*, 78 M.J. 218, 221 (C.A.A.F. 2019).

Law & Analysis

Factual sufficiency review is triggered where an appellant "makes a specific showing of a deficiency in proof." 10 U.S.C. § 866(d)(1)(B)(i). Factual insufficiency is present where this Court "is clearly convinced that the finding of guilty was against the weight of the evidence." 10 U.S.C. § 866(d)(1)(B)(iii). To reach this determination, this Court may weigh the evidence and determine controverted questions of fact of fact. 10 U.S.C. § 866(d)(1)(B)(ii). "[T]he quantum of proof necessary to sustain a finding of guilty during a factual sufficiency review is 'proof beyond a reasonable doubt.'" *Harvey*, 85 M.J. at 131. SSgt Campbell submits the following deficiencies in the factual and legal sufficiency of his conviction.

SSgt Campbell could only be convicted of domestic violence under Article 128b, UCMJ, if the Government proved beyond a reasonable doubt that SSgt Campbell committed a violent offense against his then-spouse, R.C. 10 U.S.C. § 928b. The military judge determined that the relevant underlying offense was assault consummated by a battery. (R. at 700.) SSgt Campbell could only be convicted of that underlying offense if the Government proved the following elements:

(a) That SSgt Campbell did bodily harm to a certain person;

(b) That the bodily harm was done unlawfully; and

(c) That the bodily harm was done with force or violence

Manual for Courts-Martial (M.C.M.), United States (2019 ed.), ¶ 77.b.(2).

This case principally revolved around a credibility battle between SSgt Campbell's and R.C.'s competing testimonies. Crucially, SSgt Campbell's testimony is supported by body camera footage and the testimony of law enforcement officers while R.C.'s is starkly inconsistent with that compelling evidence.

SSgt Campbell flatly denied all of the allegations that R.C. levied against him when he testified coherently and without contradiction. (R. at 522-24, 553.) By contrast, R.C.'s testimony was impeached, uncorroborated by any testimony from third-party witnesses or other evidence, and tainted by her motive to fabricate based on the contentious divorce that triggered her to come forward with the accusations. In light of these defects, the military judge should have afforded much greater weight to SSgt Campbell's testimony, which severely undercut the factual sufficiency of the conviction. *See United States v. Harris*, 9 C.M.R. 814, 818 (A.F.B.R. 1953) ("a reviewing court is not justified in disregarding the uncontradicted testimony of the accused, unless it is improbable or unworthy [of] belief.").

Although R.C. testified that SSgt Campbell struck her on the side in order to get her phone, which appeared to contain the SD card, this allegation was flatly contradicted by her immediate interaction with the law enforcement officer who had arrived on the scene. The officer's body camera footage disproves R.C.'s testimony. R.C. did not just deny that any domestic violence had taken place, she appeared confused when the police officer even suggested the possibility of it. (Pros. Ex. 1 at 03:20.) At trial, R.C. testified that she was in excruciating pain such that she could not even sleep normally as a result of the attack, but in the body camera footage, she is standing casually with her arms at her side, not once appearing to show even an iota of discomfort. (R. at 39, 338.) R.C. said that she wore a hoodie to hide her injuries, but the body camera footage shows otherwise. R.C. was not wearing a hoodie, and in fact moved her arms around to show that she had no injuries. (Pros. Ex. 1.)

R.C.'s testimony was also discredited by the other witnesses. R.C. testified that Special Agent G.G. remained on the speaker phone up until the point that SSgt Campbell supposedly struck her. (R. at 129.) But Special Agent G.G. did not overhear anything that made her believe that SSgt Campbell had done anything violent or that anything "truly wrong" had occurred. (R. at 369.) Nor did G.G. corroborate P.C.'s supposed screaming during the encounter. (R. at 364.) R.C.'s testimony about SSgt Campbell threatening her or intending to destroy her common access card was also contradicted by Special Agent G.G. (R. at 365-66.) Rather, Special Agent G.G.'s testimony was consistent with the account that R.C. had originally given before the court-martial, which is that domestic violence had not actually taken place. R.C.'s testimony that the call with Special Agent G.G. ended when SSgt Campbell smashed the phone was disproved by Special Agent G.G.'s testimony that she was able to call the same phone back and speak with SSgt Campbell. (R. at 353.) R.C. also testified that she told her neighbors, J.B. and K.B., about SSgt

Campbell attacking her and that they assisted her in treating the injuries. (R. at 138-39.) Yet, the Government did not call either of those individuals as witnesses. R.C.'s testimony was also internally inconsistent, offering two different accounts of when the alleged destruction of her common access card took place in her motion testimony and her findings testimony. (R. at 31, 129.)

Given all of these inconsistencies, the most coherent interpretation of the evidence is that R.C. raised her accusations against SSgt Campbell in response to their contentious divorce. R.C. admitted that she wanted to salvage her marriage with SSgt Campbell, making repeated attempts to communicate with him while he was deployed. (R. at 295-96.) After SSgt Campbell filed for the divorce, R.C. responded by threatening SSgt Campbell and by turning over the SD card to law enforcement. (R. at 297-98.) R.C.'s vindictive motivation was shown by the false and misleading nature of her initial accusations. When R.C. first reported the SD card to SSgt Campbell's leadership, it was based on the false accusation that SSgt Campbell was in possession of depictions of actual sex acts with children, a claim on which she doubled down with a social media post. (R. at 173.) Additionally, her initial version of the encounter on 30 June 2021 with B.M. was that SSgt Campbell "had beat her, threatened her life, and pulled a knife on her." (R. at 405.) Her testimony at trial lacked this embellishment. R.C. also embellished the detail of SSgt Campbell's conversation with G.G. on the phone, false claiming that SSgt Campbell encouraged Special Agent G.G. to call the police by saying "call them, bitch." (R. at 131.) Special Agent G.G. denied that this had taken place. (R. at 368.) Given this, R.C.'s testimony lacked sufficient credibility for the military judge to convict SSgt Campbell.

SSgt Campbell's testimony remained credible and was consistent with the other evidence adduced at trial. His testimony aligned with Special Agent G.G. This is crucial because Special

G.G. was the only third-party witness to the incident that testified at trial, and she would have had a vested interest in reporting criminal activity because of her position in law enforcement. Although she was on the speakerphone, she denied having reason to believe that anything "truly wrong" had taken place. (R. at 369.) This testimony aligns with SSgt Campbell's version in that he only took the phone away from R.C. (R. at 553.) SSgt Campbell denied threatening R.C., and Special Agent G.G. agreed. (R. at 365-66, 563.) SSgt Campbell denied that P.C. was yelling at him, and Special Agent G.G. agreed. (R. at 364, 561-62.) SSgt Campbell denied smashing the cell phone, and Special Agent G.G. agreed, with both witnesses affirming that Special Agent G.G. was able to call back on the same phone. (R. at 353, 557.) SSgt Campbell's testimony was also corroborated by the body camera footage which utterly contradicts R.C.'s testimony. SSgt Campbell's explanation of R.C.'s motive to fabricate was also corroborated by R.C.'s own testimony. SSgt Campbell testified that R.C. made threats against SSgt Campbell after their divorce proceedings began. (R. at 572.) R.C. agreed and admitted that she told him to "watch his back" and that she would go after his career. (R. at 299.) All of these important details demonstrate the coherency of SSgt Campbell's testimony, which contrasts with R.C.'s inconsistent and contradictory account of what took place. SSgt Campbell credibly denied ever striking R.C., explaining that he just took the phone, held it away from R.C., and hung it before G.G. called back. (R. at 553-54.)

In this case, it is far more likely that the offense did not occur than that it did. There is more than reasonable doubt, thus requiring that the finding of guilty be set aside as factually insufficient. Nor could any reasonable factfinder conclude *beyond a reasonable doubt* that the offense occurred, thus rendering the conviction legally insufficient. Accordingly, this Court should

find that the Government did not meet its burden beyond a reasonable doubt, set aside the conviction, and dismiss the charge and specification with prejudice.

II.

The military judge abused his discretion by allowing the Government to present evidence of Staff Sergeant Campbell's alleged propensity to respond to R.C. with violence when confronted with accusations of infidelity.

Additional Facts

On 19 July 2023, the Government noticed its intent to admit matters under Mil. R. Evid. 404(b), principally to include the following uncharged allegations:

- "In approximately March 2018, while driving, [SSgt Campbell] grabbed R.C.'s head with his hand and slammed her head into the vehicle windows when she tried to grab his phone." (App. Ex. I at 16.) The Government offered this to show SSgt Campbell's supposed intent to physically control R.C., his overall pattern of "hitting R.C. and will to dominate R.C.," and his plan "to control and scare R.C. when she did things he did not like." (*Id.*)
- "On or about 20 August 2018, [SSgt Campbell] grabbed R.C.'s neck with his hand and she could not breath. He let go and punched the frame, shattering it." (*Id.*) The Government offered this to show SSgt Campbell's supposed intent to physically control R.C., his overall pattern of his "will to control and dominate R.C.," and his plan to "control and scare R.C. when she did things he did not like." (*Id.* at 16-17.)
- "On or about 30 June 2021, when [SSgt Campbell] found out R.C. had his SD card, he smashed her phone and destroyed her military ID card." (*Id.* at 17.) The Government offered this show SSgt Campbell's supposed "will to dominate H.F. [sic]," and his plan to "control and intimidate her into acting the way he wanted her, to return his SD card." (*Id.*)

The Government also offered charged offenses as "evidence of intent, motive and common scheme under [*United States*] v. Hyppolite, [79] M.J. 161 (C.A.A.F. 2019)." (App. Ex. I at 17.)

Trial defense counsel moved to exclude those matters as impermissible propensity evidence. (App. Ex. I at 6.) The Government response highlighted the theory that the uncharged allegations "showed [SSgt Campbell's] violent reactions to being confronted with allegations of infidelity." (App. Ex. II at 5.) The Government reiterated this theory while discussing the probative value of the matters against unfair prejudice by explaining:

> Evidence that [SSgt Campbell] engaged in violent behavior towards R.C. when confronted with evidence of his infidelity has high probative value indicating [SSgt Campbell's] intent and absence of mistake to violently attack on R.C. on the day of the charged offense when she confronted him with evidence of his infidelity.

(*Id.*)

The military judge was persuaded by the Government position and denied the defense motion, thereby allowing for the admission of the uncharged matters. (App. Ex. VIII at 15.) The military judge found that the matters went to the Government's motive theory. He held that "[t]he common thread among all physical assaults alleged by R.C. is that they came in response to her confronting [SSgt Campbell] in some way about his infidelity." (*Id.*) The military judge found that the prior incidents were relevant to the domestic violence charge because each situation involved a reactive response from SSgt Campbell. (*Id.*) The military judge further determined that this reactive response made it "more likely [SSgt Campbell] committed domestic violence." (*Id.*) He thus allowed it to come in "for the limited purpose to show that when confronted with a very specific trigger from his wife (i.e., evidence of infidelity), [SSgt Campbell] reacts in a very specific way – with physical violence." (App. Ex. VIII at 16.) Finally, the military judge addressed the Mil. R. Evid. 403 balancing test and determined that the admissible purpose had a high probative value not outweighed by any prejudice. (App. Ex. VIII at 17.)

R.C. testified about each of these matters during findings. (R. at 99-101, 103-07, 126-27.) The Government leaned into these uncharged matters from the very beginning of its closing argument, placing them into the theme "When is enough, enough?" and describing R.C.'s marriage with SSgt Campbell as one that "involved a lot of violence from him to her." (R. at 700.) Before discussing any of the charged offenses, the trial counsel talked about the uncharged allegations and used them to suggest that SSgt Campbell was lying when he denied physically harming R.C. (R. at 701.) The trial counsel then reiterated the theory used for admission—"similar to the two instances in 2018, here we have [SSgt Campbell] being confronted with some form of proof or suspicion of infidelity"—before describing the domestic violence. (R. at 702-03.) The Government also argued, "But the facts are what they are. [SSgt Campbell] beat [R.C.] that day. Just like he has in the past." (R. at 704.)

Standard of Review

This Court reviews a military judge's decision to admit Mil. R. Evid. 404(b) evidence under the abuse of discretion standard. *United States v. Wilson*, 84 M.J. 383, 390 (C.A.A.F. 2024).

Law & Analysis

The uncharged acts that the military judge allowed the Government to introduce constituted impermissible propensity evidence. "Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." Mil. R. Evid. 404(b)(1). The Military Rules of Evidence encompass a prohibition on evidence of propensity to commit a crime being introduced against an accused. *United States v. Burton*, 67 M.J. 150, 152 (C.A.A.F. 2009). "[O]ne of the most basic precepts of American jurisprudence: 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). While motive may be a permissible basis for admitting evidence of uncharged acts, a military judge must always be "on guard against the wolf of propensity that comes dressed in the sheep's clothing of motive." *Wilson*, 84 M.J. at 392.

Uncharged acts are inadmissible unless the Government can establish the following: (1) the evidence reasonable supports a finding by a factfinder that the accused committed the uncharged acts; (2) the evidence of the uncharged act makes a fact of consequence to the instant offense more or less probable; and (3) the probative value of the evidence of the other act is not substantially outweighed by the danger of unfair prejudice under Mil. R. Evid. 403. *United States v. Reynolds*, 29 M.J. 105, 109 (C.M.A. 1989). The military judge abused his discretion by failing to establish the second and third prongs of the *Reynolds* test.

a. The uncharged acts were not relevant to any permissible basis for admission under Mil. R. Evid. 404(b)(2).

Uncharged acts may be relevant to a fact of consequence if they fall into one of the permitted uses outlined in Mil. R. Evid. 404(b)(2). The military judge allowed the uncharged acts to come into evidence under the theory of showing motive. (App. Ex. VIII at 15.) However, this was an abuse of discretion because the military judge failed to apply the standard for establishing motive. Had the military judge done so, it would have yielded a finding that the uncharged acts were not relevant to motive and instead inadmissible as propensity evidence.

Motive is that which incites and stimulates the formation of the intention to commit a criminal act. *United States v. Kastner*, 17 M.J. 11, 13 (C.M.A. 1983). Importantly, motive is not a question of external stimuli, but a matter of the accused's internal emotional state which compels them to act in accordance with their desire. *United States v. Watkins*, 21 M.J. 224, 227 (C.M.A. 1986). Evidence offered to show motive must be relevant to demonstrating an internal emotional need that served as the stimulus for the person to "act in satisfaction of that emotion." *United*

States v. Whitner, 51 M.J. 457, 461 (C.A.A.F. 1999). To establish motive, the military judge must find that (1) the prior acts of conduct are the type which could be reasonably viewed as the expression and effect of existing internal emotion, and (2) the same motive existed in the accused at the time of the charged conduct. *Id.* ("Motive evidence shows the doing of an act by a particular person by evidencing an emotional need in that person which could have incited or stimulated that person to do that act in satisfaction of that emotion.").

Although the military judge recognized some of the controlling authorities regarding motive, the military judge did not apply their standards to the facts of this case. While motive depends on evidence and findings of an internal nature, the military judge focused entirely on SSgt Campbell's alleged tendency to react towards accusations of infidelity with violence. (App. Ex. VIII at 15.) The military judge went so far as to explain that SSgt Campbell was apparently disposed to react violently "when confronted with a very specific trigger." (App. Ex. VIII at 16.) This amounted to a sort of physical cause-and-effect type reaction based on external stimuli that squarely fits in the concept of propensity. The uncharged acts could only be relevant to motive if the military judge found that they tended to reflect an internal emotional state which also existed at the time of the charged conduct. But the military judge made no such findings. Instead, the military judge emphasized SSgt Campbell's apparent physical reaction to external stimuli without any discussion of whether there was satisfaction of an internal emotional need. These were irrelevant considerations under *Whitner*.

Without relevance under *Whitner*'s definition of motive, the military judge's analysis and use of the uncharged acts squarely fit in the definition of propensity. Namely, the military judge took the uncharged acts to mean that it was more likely for SSgt Campbell to act violently towards R.C. on 30 June 2021 because he had a disposition "when confronted with accusations of

infidelity." (App. Ex. VIII at 15.) Put differently, the military judge allowed the evidence to come in to show that SSgt Campbell was inclined towards violence. This violates the principle that uncharged acts may not be admitted where they are used to "demonstrate the accused's predisposition to crime and thereby to suggest that the factfinder infer that he is guilty, as charged, because he is predisposed to commit similar offenses." *United States v. Castillo*, 29 M.J. 145, 150 (C.M.A. 1989).

The military judge's reasoning in this case has been soundly rejected in many other cases. E.g., *United States v. Rappaport*, 22 M.J. 445, 446 (C.M.A. 1986) (finding that evidence of previous uncharged affair with patient where accused was charged with "alleged improprieties" involving other patients was inadmissible propensity where it was offered to show that the accused was inclined to "take advantage of his female patients."); *United States v. Morrison*, 52 M.J. 117, 123 (C.A.A.F. 1999) (rejecting admissibility of evidence that the accused had engaged in previous conduct with minor on the basis that it would amount to evidence of the accused's propensity towards pedophilia), *overruled in part by Wilson*, 84 M.J. at 383; *United States v. Thompson*, 63 M.J. 228, 231 (C.A.A.F. 2006) (holding admission of preservice drug use impermissible where it only tended to show that accused was a habitual drug user and therefore guilty of unlawful drug charge); *United States v. Logan*, 18 M.J. 606, 608 (A.F.C.M.R. 1984) (holding that military judge erred by finding that "members were entitled to infer that if the accused stole items not charged, it could be inferred that he had requisite intent with regard to the items charged."); *United States v. McDowell*, 30 M.J. 796 (A.F.C.M.R. 1990) (holding that cross-examination of accused based on his "alleged unnatural attraction to another teenage boy" not charged in molestation case was improper evidence of criminal disposition). This Court should similarly find that the uncharged acts that the military judge allowed to come into evidence amounted to propensity.

b. The military judge failed to appropriately consider the evidence under Mil. R. Evid 403.

The military judge's failure to consider the prejudicial nature of the evidence created error in his assessment under Mil. R. Evid. 403. Although the military judge considered the uncharged acts to have substantial probative value, this was undermined by their nature as propensity evidence. "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 Campbell had a seemingly reflexive disposition to react violently. The military judge's admission of this evidence for that impermissible use was inherently prejudicial.

The military judge's erroneous treatment of this issue under Mil. R. Evid. 403 is further shown by his misapplication of the factors under *United States v. Barnett*, 63 M.J. 388 (C.A.A.F. 2006). These factors include "the strength of the proof of the prior act; the probative weight of the evidence; the potential to present less prejudicial evidence; the possible distraction of the fact-finder; the time needed to prove the prior conduct; the temporal proximity of the prior event; the frequency of the acts; the presence of any intervening circumstances; and the relationship between the parties." *Id.* at 397. The uncharged acts were a considerable distraction because the military judge seemingly admitted them to show propensity. Moreover, the most recent of the uncharged acts took place two years prior to the charged domestic violence. Finally, the relationship between SSgt Campbell and R.C. was considerably strained by their martial problems and divorce, which appeared to influence the veracity of R.C.'s inconsistent testimony. Accordingly, the uncharged

acts had no permissible use beyond propensity, which totally undermined the idea that they could have a probative value not outweighed by the danger of prejudice.

c. SSgt Campbell was prejudiced by the admission of propensity evidence.

The inclusion of this evidence was prejudicial under the factors laid out in *United States v. Washington*, 80 M.J. 106, 110 (C.A.A.F. 2020). The test for the prejudice in the admission of evidence is shown by (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. *Id.* at 110. The Government's case was fairly weak, depending in large part on R.C.'s impeached and highly inconsistent testimony. (*Supra.* at 9.) Her testimony was discredited by SSgt Campbell's coherent testimony. (R. at 522.) Consequently, the propensity evidence likely tipped the scales in the Government's favor. Given the weakness of the Government's case and R.C.'s defective testimony, the military judge's overt reliance on propensity evidence is alarming. This is especially so given that the Government relied heavily on the uncharged acts to show a pattern of violence, which seems to suggest that the military took it to have a high level of materiality and quality. This Court should conclude that the admission of the uncharged acts was an abuse of discretion and should set aside the finding of guilt.

III.

The military judge erred by allowing video clips contained in Prosecution Exhibits 5 through 9 to be admitted without a proper foundation.

Additional Facts

During the testimony of R.C., the Government moved to admit Prosecution Exhibits 5 through 9. (R. at 155.) Each separate exhibit consisted of a single video file purportedly showing SSgt Campbell engaged in sexual acts. Prosecution Exhibits 5 and 6 included a woman identified as J.S., while Prosecution Exhibits 7, 8, and 9 included a woman identified as B.U. (R. at 194.)

Trial defense counsel objected based on foundation and authentication. (*Id.*) R.C. was the first witness to testify in the Government's findings case and served as the sole witness in their attempt to admit the video clips. The Government's theory of admission was that the video clips had been derived from the SD card that R.C. encountered on 30 June 2021. (R. at 158.) The military judge initially sustained the defense objection based on a lack of foundation showing the chain between the SD card and the individual video clips. (R. at 166, 171) ("we don't even know that she can testify that these recordings came off of the SD card."). Following this, the Government attempted to lay additional foundation. (R. at 171.)

R.C. testified that the SD card was not her personal possession and that she did not record any of the video clips. (R. at 120.) Nor was she present when any of the video clips were recorded. (R. at 204.) After first discovering the SD card, R.C. placed it in a cell phone to browse its contents. (R. at 120.) The card contained a substantial number of video clips which she described as "tons" of files. (R. at 190.) R.C. first viewed the files in a gallery mode in which they were organized into file directories labeled by the female names. (R. at 187.) R.C. did not open all of the files, and mostly just skimmed through them. (R. at 191.) In fact, she only looked in the subdirectories bearing the names B.U. and C.J. (R. at 190.) Of those, she only focused on three specific video clips, and she could not recall which ones they actually were. (R. at 190, 138.) However, R.C. did not watch any video clips in their entirety, but only the "first couple of seconds." (R. at 139, 192, 195.) R.C. later clarified that she did watch an entire clip with a woman named C.J. which was not contained in any of the exhibits. (R. at 193.)

Before her confrontation with SSgt Campbell, R.C. hid the SD card under a television stand. (R. at 171.) After SSgt Campbell left, R.C. retrieved the SD card and skimmed its contents with S.S. (R. at 192.) R.C. could not recall watching any specific videos with S.S. and could not

"confirm or deny" reviewing any video in its entirety. (*Id.*) Importantly, R.C. testified that she did not watch any videos on the SD card with B.U. or J.S. on 30 June 2021. (R. at 194-95.)

That day, R.C. relinquished custody of the SD card by placing it in a pouch and tendering it to S.S. (R. at 171, 195.) The Government did not present S.S. as a witness to lay any foundation about what she did with the SD card before admission. R.C. explained that S.S. returned the SD card to her some time later. (R. at 172.) R.C. did not examine the SD card to see if its digital contents had been altered in any way, instead placing the SD card directly in a locked safe in her home. (*Id.*) R.C. testified that the SD card remained in the safe until she provided it to AFOSI. (R. at 173.) At the time, R.C. still did not know what was actually in the video clips forming the five exhibits. Her initial impression based on her cursory look on 30 June 2021 was that they just contained evidence of "cheating." (R. at 219.) After talking with B.U. and C.L., the mother of SSgt Campbell's daughter, R.C. began to speculate that the SD card contained more than just that. (R. at 197-98.) This speculation included the mistaken and false belief that it contained videos of "actual sexual acts with children." (R. at 173.)

Of the five video clips forming Prosecution Exhibits 5 through 9, R.C. did not actually review them until two days before the court-martial. (R. at 139, 205.) At that point, the video clips had been transferred to compact discs that R.C. signed and dated after reviewing. (R. at 142-46, 176, 178, 180-81.) R.C. did not testify that she reviewed the clips in their entirety on the SD card before they were transferred to compact discs. R.C. also did not testify that the exhibits fairly and accurately reflected any clips that she had reviewed on the SD card on 30 June 2021 before tendering the chain-of-custody for the SD card to S.S. or later, after S.S. had returned them to R.C., to AFOSI. Finally, R.C. did not testify that the exhibits fairly and accurately reflected any events that she had personally witnessed.

After hearing argument from the parties, the military judge made findings of fact and law before admitting the exhibits. The military judge cited Mil. R. Evid. 901(a) for the principle that "the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is." (R. at 226.) He also referred to Mil. R. Evid. 901(b), which permits admission where a witness with knowledge claims the item is what it is claimed to be. (*Id.*) Based on those citations, the military judge found that R.C. had provided "significant foundational testimony." (R. at 225.) This included R.C.'s testimony that could show the approximate time the recordings were produced based on the timestamps and the contents of the clips. (R. at 225.) Additionally, the military judge concluded that R.C. had "viewed enough of all of the recordings on the SD card to identify the accused and the other people in the recordings, their voices, and the locations where the recordings were made." (R. at 228.)

To reach these conclusions, the miliary judge relied on *United States v. Poole*, a case dealing with a forfeited objection, for the idea that sufficient foundation for videos taken from an accused's cell phone could be laid by testimony from the investigator showing that the clips admitted were a "'fair and accurate depiction of the videos' found on the [accused's] cell phone." No. ACM 39308, 2019 CCA LEXIS 235, at *22 (A.F. Ct. Crim. App. May 15, 2019); (R. at 227). Regarding the chain-of-custody, the military judge acknowledged that R.C. did not maintain exclusive control. (R. at 229.) The military judge dismissed this as a concern by finding that R.C. had "reviewed the exhibits prepared by the government and testified that the recordings [were] a fair and accurate representation of the videos she watched on the SD card." (*Id.*)

The military judge also addressed the relevance of the exhibit to the domestic violence charge by finding that "on the day she found the SD card, she told the accused she found it. The accused rushed home, entered the house, and told R.C. to give him back the SD card. This led to

a physical altercation and the police were called." (R. at 224.) This echoed R.C.'s testimony that SSgt Campbell's alleged physical actions towards her were to retrieve the SD card. (R. at 126.) The military judge recognized that the exhibits were prejudicial to SSgt Campbell, but only because they tended to prove his guilt. (R. at 230.) The Government leaned into this during closing argument by asserting that SSgt Campbell's concern about the SD card and its contents were his motive to physically attack R.C. (R. at 703, 710.)

Standard of Review

This Court reviews a military judge's decision to admit evidence over objection for an abuse of discretion. *United States v. Lubich*, 72 M.J. 170, 173 (C.A.A.F. 2013). "An abuse of discretion occurs when the trial court's findings of fact are clearly erroneous or the court's decision is influenced by an erroneous view of the law." *United States v. Freeman*, 65 M.J. 451, 453 (C.A.A.F. 2008).

Law & Analysis

The military judge erred by allowing the admission of Prosecution Exhibits 5 through 9 to be used against SSgt Campbell without a proper admission. At trial, "the Government bears the burden of establishing an adequate foundation for admission of evidence against the accused." *United States v. Maxwell*, 38 M.J. 148, 150 (C.M.A. 1993). The Government's burden to admit the recordings required the production of "evidence sufficient to support a finding that the item[s are] what" the Government claimed them to be. Mil. R. Evid. 901(a). The military judge has a "serious responsibility to insure that the Government meets its fundamental burden of proof depending upon . . . the particular circumstances in which [evidence] is offered." *United States v. Parker*, 10 M.J. 415, 417 (C.M.A. 1981). Heightened scrutiny for the authentication of digitally stored images is warranted by recent developments in technology that allow such images to be

easily created and altered. John P. LaMonaga, *A Break From Reality: Modernizing Authentication Standards for Digital Video Evidence in the Era of Deepfakes*, 69 AM. UNIV. L. REV. 1945, 1977 (2020). The authentication of video evidence traditionally has fallen into two theories of admission: "pictorial testimony" theory and the "silent witness" theory. 2 MILITARY RULES OF EVIDENCE MANUAL § 901.02[h]; *United States v. Richendollar*, 22 M.J. 231, 232 (C.M.A. 1986); *United States v. Harris*, 55 M.J. 433, 436 (C.A.A.F. 2001). The Government failed to meet its burden to establish a foundation under either theory of authentication.

The Government failed to lay a sufficient foundation under the pictorial testimony theory. This theory relies on the principle that an image "may be authenticated by the testimony of a witness who is familiar with the scene depicted and states that the [image] is an accurate representation of that scene." *Richendollar*, 22 M.J. at 232. Evidence admitted under this theory becomes adjunctive to the witness's testimony as an illustration of what the witness testifies about from their recollection of the event depicted. *Id.* To satisfy this burden, the witness must have personal knowledge of the scene depicted and be able to testify that it fairly and accurately portrays that scene. *United States v. Rembert*, 863 F.2d 1023, 1026 (D.C. Cir. 1988); Mil. R. Evid. 901(b)(1) (requiring testimony of a witness with knowledge to support a finding that the item is what it is claimed to be). Put differently, the video must be a fair and accurate representation of what the witness is testifying about. *United States v. Reichart*, 31 M.J. 521, 523 (A.C.M.R. 1990) (cited in *United States v. Baker*, 43 M.J. 736, 739 (A.F. Ct. Crim. App. 1995)).

The Government presented R.C. as the sole witness in its attempt to lay the foundation for Prosecution Exhibits 5 through 9. But R.C. denied the essential elements necessary to establish the pictorial testimony foundation. Specifically, R.C. testified that she did not record any of the video clips and that she was not present when they were created. (R. at 120, 204.) This undermined

any potential for her to testify that the videos were a fair and accurate representation of a scene of which she had actual, personal knowledge. Despite this glaring deficit in the foundation, the military judge appeared to rely on aspects of the pictorial testimony theory through the general principles of Mil. R. Evid. 901. (R. at 211-12) ("We're not dealing with the case of the silent witness theory . . . [trial defense counsel] tells me that only leaves [the] pictorial option."). The military relied on R.C.'s testimony that she could identify the subjects in the video clips, the places they were recorded, and the general timeframe that the clips appeared to take place. (R. at 225-26.)

However, even if R.C. could testify that the video clips fairly and accurately captured those elements, she could not testify about the foundational elements which were relevant to the purpose for which the Government was seeking the exhibit's admission. In particular, the Government presented the clips – in part – for the proposition that they depicted SSgt Campbell engaged in sexual acts with other women. (R. at 151.) R.C. had no personal knowledge to explain whether the clips were a fair and accurate depiction of that salient issue. The limited foundation that R.C. was able to provide was insufficient to establish the admissibility of the recordings for the purpose that the military judge deemed them relevant. Authentication is a component of relevance, and evidence admitted can have no probative value unless it is what it is purported to be. *United States v. Blanchard*, 48 M.J. 306, 309 (C.A.A.F. 1998). Although the Government offered the video clips – in part – to prove that acts of infidelity had been carried out by SSgt Campbell, R.C. could not testify that the clips accurately portrayed that because she lacked personal knowledge. Without that, the threshold issue of authentication to show them as relevant to proving infidelity was not established. *See Baker*, 43 M.J. at 739-40 (holding that the relevancy of a video tape to prove the events depicted depended on a foundation showing it was authentic and accurate in its depiction).

But the Government and the military judge relied on the idea that the video clips depicted infidelity as part of the theory that SSgt Campbell physically attacked R.C. in response to the accusation that he had been unfaithful. (R. at 224, 703, 710.)

Given that R.C. did not produce the video clips or witness the events they depicted, the Government was required to show that the videos were authentic by virtue of the process through which they were created in line with the so-called "silent witness" theory. Crucially, this would require demonstrating that the manner that the SD card and video clips had been handled was adequate to prevent tampering. *Harris*, 55 M.J. at 436. "Evidence of the integrity of the [image] can be established through testimony showing that the tapes or phonographs have not been altered and have not been the subject of tampering." *Id.* at 439. In *Harris*, the Court of Appeals for the Armed Forces (C.A.A.F.) explained the importance of storage and chain of custody procedures that create the reasonable probability that video clips are unaltered. *Id.* at 440. In this case, the SD card changed hands multiple times with no accounting of how it was handled and whether it was in the same condition each time it changed hands. This included R.C. tendering the SD card to S.S., who then returned it to R.C. sometime later, who in turn placed it in a safe before giving it to an unidentified AFOSI agent. No logs were presented at trial to account for each time the SD card changed possession. S.S. was not presented as a foundation witness. No AFOSI agent was presented as a foundation witness. This undermines a finding of reasonable probability that the SD card and the videos ultimately produced at trial were unaltered.

Nor was R.C. able to show that the video clips were unaltered from the time that she first recovered them until they were presented at trial. Importantly, the Government offered no testimony that R.C. had ever reviewed the clips until two days before trial, after they had been copied to compact discs. (R. at 139, 205.) The military judge's finding that R.C. had reviewed

them on the SD card was clearly erroneous and inconsistent with R.C.'s own testimony. When asked if she had reviewed any of the video clips offered at trial on 30 June 2021, R.C. said she "could not confirm or deny." (R. at 192.) R.C. could not recall watching any specific videos, and flatly denied watching any clips with B.U. or J.S. (R. at 194-95.)

Before reviewing the clips on the compact discs, R.C. had only reviewed certain unspecified clips on the SD card, and not for more than a couple of seconds. (R. at 190-95.) This showed that R.C. did not actually have personal knowledge of the SD card's contents such that she could testify that Prosecution Exhibits 5 through 9 were a fair, accurate, and unaltered version of whatever was on the SD card. *United States v. Yarborough*, 50 C.M.R. 149, 156 (A.F.C.M.R. 1975) (evidence must be shown to be in substantially the same condition it was at the time of recovery before admission). Nor could she testify that the clips on compact discs were the same as those on the SD card. *United States v. Rivera*, 153 F.3d 809, 812–13 (7th Cir. 1998) (holding that a duplicate must be shown to be unaltered from the original). R.C. therefore was not able to testify that whatever was on the compact discs was substantially the same as whatever was on the SD card.

This contrasts with *Parker*, where the witness was able to establish the authenticity of evidence despite potential flaws in the chain custody through testimony from the recovering agent showing that the evidence was in the same condition based on unique characteristics of the item. 10 M.J. at 416. R.C. could not testify about any of the features of the videos at the time the SD card was recovered because she did not review any of them until two days before trial, after the SD card had exchanged hands multiple times and been transferred to compact discs. The Government may have been able to overcome this through testimony from S.S., another AFOSI agent, or a digital forensics expert. But the Government chose not to present any such testimony

to establish the foundation, instead relying exclusively on R.C. *See United States v. Gardi*, 6 M.J. 703, 704 (N-M.C.M.R. 1978) ("The Government cannot rely solely upon the presumption that a law enforcement officer has properly maintained custody of real evidence.").

Finally, the military judge misplaced his reliance on this Court's unpublished opinion in *Poole*, 2019 CCA LEXIS 235. The military judge cited this case for the principle that video clips could be authenticated by testimony establishing the identity of the video's subject, the scene of the depiction, and unique identifying characteristics of the accused's arm as they held the camera and recorded the clip. *Id.* at *22. However, the military judge overlooked a crucial distinction between that case and the one at bar. In *Poole*, the Government presented testimony from the investigating agent who had directly extracted the clips from the accused's cell phone. That case did not have the chain of custody issues present here. Given that the clips were extracted directly from the accused's cell phone, with internal evidence that the accused had filmed them, that case had more positive indications of authentication. *Id. See also United States v. Kandiel*, 865 F.2d 967, 973 (8th Cir. 1989) (identifying lesser authentication requirements where the recording is directly found in a defendant's possession). That meant that the manner that the clips had been recovered, coupled with their internal features, was able to effectively show how the clips were created, namely by the accused themself with their phone. Moreover, the agent's testimony created a reasonable probability that they were unaltered from the time that they were recovered. This Court found it significant that the agent could testify that the video clips offered were a fair and accurate depiction of the videos found in the accused's cell phone. *Poole*, 2019 CCA LEXIS 235, at *22. No such testimony was presented here. To the contrary, R.C.'s testimony revealed numerous instances where the video clips were unaccounted for through chain of custody, and she denied reviewing the clips sufficiently until two days before trial. These gaps in the chain of

custody undermine the foundation offered by the Government, which is especially alarming in the age of digital manipulation. LaMonaga, 69 AM. UNIV. L. REV. at 1977.

The admission of the video clips was prejudicial to SSgt Campbell. The test for prejudice in the admission of evidence is shown by (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. *Washington*, 80 M.J. at 110. The Government's case was fairly weak, depending in large part on R.C.'s impeached and highly inconsistent testimony. (*Supra.* at 9.) Her testimony was discredited by SSgt Campbell's coherent testimony. (R. at 522.) Consequently, the inadmissible videos likely tipped the scales in the Government's favor. The military judge took the exhibits to be material to the SSgt Campbell's alleged motive. (R. at 224, 703, 710.) Accordingly, the video's admission without a proper foundation was error, and this Court should set aside and dismiss the finding of guilt.

IV.

The record of trial should be remanded for correction to produce missing components of Prosecution Exhibits 5 through 9 which are essential to the disposition of this case.

Additional Facts

The Government presented a series of compact discs labelled Prosecution Exhibits 5 through 9 which the military judge admitted into evidence through R.C. (*Supra.* at 21.) R.C. testified that the discs contained some sort of written evidence log with dates and initials showing the when she had reviewed them before trial. (R. at 142-46.) The record of trial does not contain any documentation with the exhibits that matches R.C.'s testimony.

Standard of Review

Whether a record of trial is incomplete or not substantially verbatim is reviewed de novo. *United States v. Henry*, 53 M.J. 108, 110 (C.A.A.F. 2000).

Law & Analysis

The record of trial is "the very heart of the criminal proceedings and the single element essential to [] meaningful appellate review." *United States v. Credit*, 4 M.J. 118, 119 (C.M.A. 1977). The record of trial must be assembled and maintained in accordance with regulations as prescribed by the President. Article 54, UCMJ, 10 U.S.C § 854. A record of trial must contain the court-martial proceedings and any evidence or exhibits considered by the court-martial in determining the findings or sentence. R.C.M. 1112(b). Here, the record of trial is incomplete because it does not contain the complete version of Prosecution Exhibits 5 through 9 as described on the record. In particular, the version in the record of trial does not contain the documents with R.C.'s signature and dating. The absence of these documents is prejudicial because they directly go to the issue raised in the third assignment of error, which is whether the exhibits were properly authenticated, especially after they apparently changed hands a number of times before trial. Accordingly, this Court should remand this case in order for the record of trial to be corrected.

V.

The Government violated Staff Sergeant Campbell's right under Article 13, Uniform Code of Military Justice, to be free from conditions of pretrial confinement more rigorous than necessary to ensure his presence at trial when he was placed in confinement at a civilian facility after the Air Force took exclusive jurisdiction over the charged offenses from the State of Florida.

Additional Facts

On 8 September 2022, the Government requested exclusive jurisdiction from the State of Florida for all offenses forming the charges in this court-martial, including indecent recording in violation of Article 120c and domestic violence in violation of Article 128b. (App. Ex. XVI at 7.) The State of Florida complied with this request by relinquishing all jurisdiction to the United States Air Force and promising to rescind any arrest warrants pending against SSgt Campbell. (App. Ex. XVI at 9.) Despite this, on 29 June 2023, SSgt Campbell was arrested and placed in confinement in Nevada based on a warrant that was issued by the State of Florida. (App. Ex. XV at 5, 25.) The warrant specifically mentioned charges related to the same ones that were the subject of this court-martial. (App. Ex. XVI at 10.) SSgt Campbell remained in custody in Nevada until 18 July 2023, when he was transferred to a facility in Florida. (App. Ex. XV at 29.) SSgt Campbell was released from confinement in Florida on 21 July 2023. (App. Ex. XV at 27.) While confined in Nevada, SSgt Campbell was never permitted to go outside, released from his cell only once every five days, restricted to showering once every five days, kept in a cell with civilians, and wore a jumpsuit. (App. Ex. XV at 5.) While confined in Florida, SSgt Campbell was not permitted to go outside, kept in a cell with civilians where he had to sleep on the floor, and wore a jumpsuit. (*Id.*) SSgt Campbell never received a Rule for Courts-Martial (R.C.M.) 305 hearing.

Trial defense counsel moved for relief under Article 13, UCMJ, including the argument that the conditions of confinement were "more rigorous than necessary to ensure his presence at trial." (App. Ex. XV at 6.) The military judge denied this request on the basis that the specific

charges listed on the warrant were those related to the unlawful broadcast charges that SSgt Campbell had been acquitted of, not the domestic violence charge that he was convicted of. (App. Ex. XVIII at 4.) The military judge also determined that the confinement was solely at the direction of the state authorities and therefore not at the direction of the Air Force such that it could be responsible for the confinement. (*Id.*) The military judge made no analysis under the second Article 13 prong, which is whether the conditions were more rigorous than necessary to ensure SSgt Campbell's appearance at trial.

Standard of Review

This Court reviews claims for additional sentencing credit arising from violations of Article 13, UCMJ, de novo. *United States v. Fischer*, 61 M.J. 415, 418 (C.A.A.F. 2005). This presents a mixed question of law and fact, with the military judge's findings of fact warranting being overturned where clearly erroneous. *Id*.

Law & Analysis

SSgt Campbell was entitled to relief after he was confined under conditions more rigorous than necessary to ensure his presence at trial. Article 13, UCMJ, 10 U.S.C. § 813, is violated when (1) an accused is subject to punishment or penalty before trial; or (2) the conditions of arrest or pretrial confinement "are more rigorous than necessary to ensure the accused's presence for trial." *United States v. King*, 61 M.J. 225, 227 (C.A.A.F. 2005). Violations of Article 13 can be addressed through a variety of appropriate remedies including credit against the adjudged confinement, disapproval of a punitive discharge, or complete dismissal of the charges. *United States v. Zarbatany*, 70 M.J. 169, 175 (C.A.A.F. 2011). The relief warranted is context specific. *Id.* Moreover, the conditions of confinement are a relevant consideration for sentence appropriateness. *Id.* at 171.

SSgt Campbell was entitled to relief under Article 13 because he was confined in conditions more rigorous than necessary to ensure his presence at trial. To qualify as "rigorous" within the meaning of Article 13, UCMJ, the conditions must be "sufficiently egregious [to] give rise to a permissive inference that an accused is being punished, or the conditions [were] so excessive as to constitute punishment." *King*, 61 M.J. at 227-28. Comingling with civilian inmates and being forced to wear the same uniform as civilians is a form of pretrial punishment. *United States v. Adcock*, 65 M.J. 18, 22 (C.A.A.F. 2007). Rigorous conditions without an individualized demonstration of cause or practical necessity are indicative of conditions that exceed those necessary to ensure an accused's presence at trial. *United States v. Cassaberry-Folks*, No. ACM 40444, 2024 CCA LEXIS 500, at *28 (A.F. Ct. Crim. App. Nov. 22, 2024). Importantly, prong two of Article 13 is a separate provision under the statute which cannot be conflated with the first prong. *Id.* at *29. Put differently, relief may be warranted for conditions more rigorous than necessary even if no pretrial punishment took place. *Id.*

The military judge's ruling is silent on whether the conditions imposed against SSgt Campbell were necessary to ensure his appearance at trial. To the contrary, the conditions of confinement were sufficiently egregious to warrant relief. This case is analogous to *United States v. Cassaberry-Folks*, where the appellant was held in a civilian facility and confined to his cell for 23-hour intervals. 2024 CCA LEXIS 500, at *12. Here the conditions are even more egregious because SSgt Campbell was only allowed to leave his cell once every five days, at times even having to sleep on the floor. Additionally, SSgt Campbell was housed with civilians and not permitted to wear his uniform. *Adcock*, 65 M.J. at 22. The Government did not advance any justification for these conditions to ensure his presence at trial, nor did the military judge make any findings to that effect. No R.C.M. 305 hearing was held which could provide any insight or

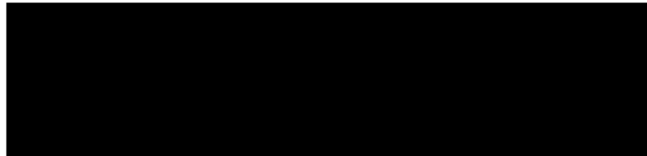
consideration into this issue. Rather, this case fits into the same "set and forget it" paradigm that this Court condemned in *Cassaberry-Folks*. 2024 CCA LEXIS 500 at *28. In fact, no confinement was necessary to ensure SSgt Campbell's appearance because there was no evidence that he was a flight risk.

The military judge's determination that no credit could be awarded because of the distinction between the offenses listed on the warrant compared to the ones of which he was convicted was erroneous. This is because the military judge overlooked two crucial issues. First, Article 13 embodies a flexible approach to remedies, which may include confinement credit for specific offenses, but also call for a more wholistic and equitable remedy depending on the circumstances. *Zarbatany*, 70 M.J. at 175. This Court, too, maintains broad authority to fashion a remedy for Article 13 violations based on the broad authority to review sentence appropriateness under Article 66. *Id.* at 171. A remedy per the second prong of Article 13 is available in a case such as this based on the bare text of the statute. Unlike the first prong, the second prong is not limited in focus to specific charges to which there may have been pretrial punishment. Rather, the second prong is concerned with the trial itself for which confinement has been ordered. This is not charge specific, but trial specific. In this case the trial encompassed the domestic violence charge, and so it was incumbent on the military judge to analyze whether the conditions were necessary to produce SSgt Campbell's appearance for all charges that the court-martial encompassed, not just the ones listed on the warrant.

Second, to determine whether the confinement was ordered in relation to any specific charges, the military judge had to more than just analyze the warrant itself. Instead, the military judge had to "look to the confinement order and related documents." *United States v. Cooley*, 75 M.J. 247, 258 (C.A.A.F. 2016). Had the military judge done so, it would have demonstrated that

the confinement was pursuant to all of the charges for which the Air Force chose to court-martial SSgt Campbell. Importantly, the request for jurisdiction maintained the Air Force's authority over all of the offenses on the charge sheet including domestic violence. (App. Ex. XVI at 7.) The State of Florida ceded jurisdiction on all of those offenses. (App. Ex. XVI at 9.) By the time SSgt Campbell was placed in pretrial confinement, it was strictly for military offenses such that the Air Force was accountable for it and SSgt Campbell was entitled to the protections of Article 13. *United States v. Lamb*, 47 M.J. 384, 385 (C.A.A.F. 1998) (holding that the Air Force is accountable for civilian confinement where it is commissioned solely for military offenses). For this reason, SSgt Campbell was entitled to relief for the egregious conditions that he faced. Accordingly, this Court should find that SSgt Campbell was entitled to receive administrative credit or alternatively that the sentence was inappropriately severe for failing to account for the unlawful confinement. This remedy should include setting aside the adjudged forfeitures and

Respectfully submitted,



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CERTIFICATE OF FILING AND SERVICE

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

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	**ANSWER TO ASSIGNMENTS OF ERROR**
Appellee,	)	
	)	
v.	)	Before Panel No. 1
	)	
Staff Sergeant (E-5)	)	No. ACM 40652
KYSHOWN D. CAMPBELL,	)	
United States Air Force,	)	18 August 2025
Appellant.	)	

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

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Staff Sergeant (E-5) **KYSHOWN D. CAMPBELL,** United States Air Force *Appellant.*	)))))))))	ANSWER TO ASSIGNMENTS OF ERROR Before Panel No. 1 No. ACM 40652 18 August 2025

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

ISSUES PRESENTED

I.

WHETHER THE FINDING OF GUILTY FOR DOMESTIC VIOLENCE WAS FACTUALLY AND LEGALLY SUFFICIENT WHERE THE GOVERNMENT'S CASE RELIED ON A SINGLE IMPEACHED AND UNCREDIBLE WITNESS WHO DENIED ON BODY CAMERA THAT ANY DOMESTIC VIOLENCE TOOK PLACE.

II.

WHETHER THE MILITARY JUDGE ABUSED HIS DISCRETION BY ALLOWING THE GOVERNMENT TO PRESENT EVIDENCE OF APPELLANT'S ALLEGED PROPENSITY TO RESPOND TO R.C. WITH VIOLENCE WHEN CONFRONTED WITH ACCUSATIONS OF INFIDELITY.

III.

WHETHER THE MILITARY JUDGE ERRED BY ALLOWING VIDEO CLIPS CONTAINED IN PROSECUTION EXHIBITS 5 THROUGH 9 TO BE ADMITTED WITHOUT A PROPER FOUNDATION.

V.[1]

WHETHER THE GOVERNMENT VIOLATED APPELLANT'S RIGHT UNDER ARTICLE 13 TO BE FREE FROM CONDITIONS OF PRETRIAL CONFINEMENT MORE RIGOROUS THAN NECESSARY TO ENSURE HIS PRESENCE AT TRIAL WHEN HE WAS PLACED IN CONFINEMENT AT A CIVILIAN FACILITY AFTER THE AIR FORCE TOOK EXCLUSIVE JURISDICTION OVER THE CHARGED OFFENSES FROM THE STATE OF FLORIDA.

STATEMENT OF CASE

A military judge, sitting alone, convicted Appellant, contrary to his pleas, of one specification of domestic violence in violation of Article 128b, UCMJ (Charge III). (*Entry of Judgment*, 16 January 2024, ROT, Vol. 1.) Appellant was acquitted of three specifications of sexual abuse of a child in violation of Article 120b, UCMJ, (Charge I) and one specification of indecent recording in violation of Article 120c, UCMJ (Charge II). (Id.) The military judge sentenced Appellant to a reprimand, forfeiture of $836.00 pay per month for six months, and 60 days of confinement. (Id.) The convening authority took no action on the findings and sentence. (*Convening Authority Decision on Action*, 5 January 2024, ROT, Vol. 1.)

Relevant to the assignment of errors raised in this appeal, Appellant was convicted of the following charge and specification of domestic violence.

> [Appellant] did, at or near Buckeye, Arizona, on or about 30 June 2021, commit a violent offense against [R.C.], the spouse of the Accused, to wit: unlawfully strike her ribcage with his fists.

(*Entry of Judgment*, 16 January 2024, ROT, Vol. 1.)

---

[1] Appellant withdrew his fourth assignment of error. (*Motion to Amend Pleading*, 15 August 2025.)

STATEMENT OF FACTS

R.C.'s Testimony

R.C. met Appellant in fall of 2015, and married Appellant in August 2017. (R. at 98; R. at 235.) They were married for five years. (R. at 99.) R.C. joined the Air Force and moved to Luke Air Force Base, Arizona with Appellant and her son, P, in November of 2018. During her marriage, R.C. testified at findings that Appellant physically abused her. (R. at 99.) R.C. described three accounts of physical abuse.

March 2018 Assault[2]

In March 2018, R.C. and Appellant were driving home from dinner. (R. at 99.) While in the car, Appellant's phone was connected to the vehicle and all incoming calls and text messages appeared on the vehicle screen. (R. at 99-100.) R.C. saw a message appear from someone that she did not recognize. (R. at 100.) When R.C. asked about the message, Appellant did not open the message and did not discuss the matter. (R. at 100.) R.C. was suspicious that it was another woman texting Appellant because "this issue had come up before in [their] relationship" – another woman texting Appellant. (R. at 239.) The cellphone was on Appellant's lap, and R.C. was trying to grab the phone. (R. at 100.) Next, Appellant aggressively pushed R.C.'s head against the glass on the passenger side door with his right hand. (R. at 100.) As they were driving down the highway, R.C. wanted to get out of the vehicle. (R. at 100.) R.C. could not unlock the car door, so she rolled down the window and considered getting out the window. (R. at 100.) At this point, Appellant stopped and exited the vehicle. (R. at 100-01.) Appellant then came around the vehicle, grabbed R.C., and pushed her back into the vehicle and slammed the door. (R. at 101.) During this altercation, R.C.'s son was in the back seat of the car. (R. at 100.)

[2] This incident was admissible under Mil. R. Evid. 404(b).

Once Appellant began driving, he broke the rearview mirror glass and told R.C. that "[she] is just making it worse." (R. at 101.) R.C. explained that even after this incident she did not want to leave Appellant because her son, P, did not have his biological father in his life and said, "[Appellant] was all [P] had." (R. at 102-03.)

August 2018 Assault[3]

From March to August 2018, Appellant deployed. (R. at 103.) When he returned from deployment, R.C. described that another incident of physical abuse occurred. In August 2018, R.C. and Appellant celebrated their one-year wedding anniversary. (R. at 103.) Appellant let R.C. access his phone for a photo for a picture collage R.C. was working on. (R. at 103.) R.C. noticed an album called WhatsApp, and at the time R.C. did not know what WhatsApp was. (R. at 103.) R.C. then explained that WhatsApp is a texting application and a form of communication a lot of people use during deployments. (R. at 104.) R.C. saw a picture of a woman that she did not recognize. (R. at 104.) R.C. then downloaded WhatsApp on Appellant's phone and restored his previous message threads. (R. at 104.) R.C. saw messages between a woman and Appellant in which Appellant asked for nude pictures. (R. at 104.) R.C. confronted Appellant and this confrontation led to another physical assault. (R. at 106.) R.C. said "I'm leaving," and then all of a sudden Appellant grabbed her. (R. at 106.) Appellant held R.C.'s neck and squeezed. (R. at 106.) Appellant stopped after applying pressure to R.C.'s neck for about 15-20 seconds. (R. at 107.) P was around during the incident. (R. at 107.) Appellant walked away and punched the collage frame that R.C. had worked on and then took it off the wall and slammed it against a vase. (R. at 107.) Appellant continued punching things with P present. (R. at 107-08.) R.C. explained that she did not leave Appellant after this incident

[3] This incident was admissible under Mil. R. Evid. 404(b).

because she loved him and thought "it was normal for you to go through [sic] people that you love and stay with them." (R. at 109.)

After this incident, R.C. and Appellant exchanged messages about what had occurred. (R. at 109; Pros. Ex. 3.) Appellant admitted that he "made some mistakes in the past that I have learned from ok. You bringing up putting hands on you is so fucked up and disrespect [sic] to bring up but I guess you are just venting idk… sorry." (Pros. Ex. 3.)

Charged Assault

Next, R.C. testified about the conduct charged. (R. at 118.) In June 2021, while still married and living together, R.C. helped Appellant prepare for another deployment. (R. at 118.) While Appellant was out-processing, he called R.C. asking if she saw his deployment folder at home. (R. at 118-19.) R.C. found a folder and put it in Appellant's backpack. (R. at 119.) R.C. found a wireless headphone, looked inside and found an SD card. (R. at 119-20.) This caught R.C.'s attention because she and Appellant had SD cards located in their safe, so she could not understand why Appellant had a single SD card in his backpack. (R. at 120.)

R.C. then reviewed the contents of the SD card and saw a document tab labeled "My Bitches." (R. at 120.) R.C. scrolled through the files and saw videos of Appellant cheating on her in her home. (R. at 265-66.) R.C. then hid the SD card under the TV ledge in the living area. (R. at 121.) R.C. then called G.G., a friend of Appellant and R.C. (R. at 121.) R.C. then called Appellant and told him that she found the SD card and hung up the phone. (R. at 123.)

R.C. was back on speaker phone with G.G., and very emotional. (R. at 124.) While still on the phone with G.G., Appellant entered the house. (R. at 124.) Appellant wanted R.C. to hang up the phone and wanted the SD card. (R. at 126.) Appellant kept approaching R.C. trying to grab the phone. (R. at 126.) Appellant demanded the SD card or said, "I'm going to destroy

your CAC card." (R. at 126.) Appellant picked up scissors and cut R.C.'s CAC card. (R. at 126.)

R.C. headed towards the master bedroom. (R. at 127.) As she attempted to shut the door, Appellant puts his foot in the doorway. (R. at 127.) Appellant again asked her to hang up and give him the SD card. (R. at 127.) R.C. continued towards the master bedroom bathroom to get away from Appellant. (R. at 128.) As R.C. walked towards the bathroom, Appellant pushed R.C. from behind and towards the dresser. (R. at 128.) Next, R.C. headed towards the bed. (R. at 128.) Appellant then pulled the blanket and tried to grab R.C. (R. at 128.) R.C. then jumped off the bed and left the master bedroom. (R. at 128.) Appellant pushed R.C. to the ground, and she ended up on her back. (R. at 128.) Appellant tried very hard to grab the phone, and R.C. told him that the SD card was not on the phone. (R. at 128.) R.C. described that she felt two punches to her left side, and she released the phone. (R. at 128.) Appellant threw the phone on the tile floor and stomped and shattered the phone. (R. at 128-29.) R.C. testified that the only reason she released the phone was because Appellant punched her in the ribcage multiple times. (R. at 338.) R.C. described the pain as excruciating and testified that she had a bruise. (R. at 338.)

During this incident, R.C. was sad and scared, especially scared as to how far Appellant was willing to go. (R. at 129.) R.C. testified that P was present during the incident and that P told Appellant to stop.[4] (R. at 131.) Appellant's phone rang, he answered it, and it was G.G. (R. at 131.) G.G. asked to speak to R.C., and if R.C. would not come to the phone G.G. would call the cops. (R. at 131.) R.C. testified that Appellant said, "call the cops, bitch," and hung up the

[4] B.M., R.C.'s friend, testified that she picked up P on 30 June 2021 after the incident. (R. 393, 395.) During the car ride, P started to cry. (R. at 398.)

phone. (R. at 131.) R.C. explained that while the cops were on the way, Appellant said for her not to take his career away and that his career is how he provided for his daughter. (R. at 132.)

R.C. explained during her testimony at the court-martial why she did not tell the police that Appellant had hit her:

> [Appellant] has had some prior issues in his career and I never wanted to – to harm his career. And even though I was in pain and I should have been more concerned with myself and my son, I was more concerned with causing him pain. So, I knew he was getting ready to go on a deployment and we weren't mentally good at all. And I loved him so much that every time in the past he had hurt me, I had made excuses for him. And I had to convince myself that this is what love was. And when the cops got there, I told them that he didn't hit me. And there was no phone because I had hit it. But I told them that he couldn't stay there that night.

(R. at 133.) R.C. then said, " I wasn't strong enough to leave him. So, I knew he was going on a deployment, and I knew [what] that meant that I was guaranteed six months apart from him. And we needed that." (R. at 134.)

R.C. acknowledged that she was dishonest with law enforcement. (R. at 135.) At the time, she did not want anyone in the military to know what she had gone through. (R. at 135.) R.C. needed time to process what had happened and told the police to leave the night of the incident without reporting the assault. (R. at 135.)

After the police left, R.C. put a hoodie on and went across the street to her neighbor's house (J and K's house). (R. at 138.) R.C. told them about the assault and her injures. (R. at 138.) The neighbors then retrieved Icy Hot, a pain reliever, and gauze for R.C.'s injuries, and told R.C. that she needed to tell someone, but R.C. said no. (R. at 138-39.) The day after the assault, R.C. received a new CAC card. (Pros. Ex. 2; R. at 427.) Prosecution Exhibit 2 was documentary evidence demonstrating R.C.'s receipt for her replacement CAC card – DD Form 2842, *Department of Defense (DoD) Public Key Infrastructure (PKI) Certificate of Acceptance*

and Acknowledgement of Responsibilities, dated 1 July 2021. Appellant deployed two days after the June 2021 assault. (R. at 294.)

R.C. described being very hurt by the contents on the SD card, which were videos of Appellant cheating on her. (R. at 219.) Appellant's deployment allowed R.C. to move on, and she surrounded herself with a good support system. (R. at 219.) While Appellant was deployed, R.C. wanted to file for divorce but was unable to serve him with the paperwork. (R. at 296.) So in August 2021, Appellant filed for divorce and served papers on R.C. (R. at 296-97.) R.C. admitted that she threatened to ruin Appellant's career. (R. at 296.) But regarding the SD card, R.C. stated that she never threatened Appellant that if he went through with the divorce she would turn in the SD card to law enforcement. (R. at 297-98.) R.C. did admit that she brought up the SD card during the civilian domestic violence proceedings, but not the divorce proceedings. (R. at 301.)

R.C. reported the charged conduct to her First Sergeant and Air Force Office of Special Investigations (OSI) in June 2022, which was after Appellant filed for divorce. (R. at 218-19; 285; 303.) When R.C. decided to turn in the SD card to law enforcement, she came forward with the physical abuse allegation. (R. at 219.) R.C. said, "I needed to tell my leadership what let up to me finding that [SD card] so they weren't blindsided. Because I owe it to my commander and first sergeant, to be honest." (R. at 219.)

During her testimony, R.C. admitted that after the OSI interview she made a post on Facebook that said, "[o]nly time will show that [Appellant] is a monster and God will expose him." (R. at 308.) R.C. also acknowledged that she posted on Facebook "that after [she] lost in civilian court, [she] gave the military the SD card, and exposed [Appellant] of adultery and child pornography." (R. at 312.)

G.G.'s Testimony

G.G. was a special agent with OSI at the time of the assault. (R. at 349.) On 30 June 2021, G.G. received a call from R.C., who sounded distraught. (R. at 352.) Normally R.C. sounded cheerful, but not during this incident. (R. at 352.) G.G. remembered that R.C. was upset because R.C. found an SD card with Appellant having sex with women. (R. at 353.) During the phone call, there was a period of time where G.G. and R.C. were not talking. (R. at 354.) G.G. heard shuffling – similar to someone who put something in their pocket or hiding their phone under some cloth. (R. at 354.) G.G. knew that whatever went out was not good even though she could not make out what R.C. was saying even though R.C. was yelling. (R. at 354.) G.G. testified that she was going to call the First Sergeant, and after that the phone hung up. (R. at 353.) G.G. called back several times, and Appellant answered the phone. (R. at 353.) G.G. told Appellant to give R.C. the phone back or she would call the police. (R. at 355.) Appellant responded, "do what the fuck you got to do." (R. at 355.)

As a result, G.G. reached out to her OSI detachment and requested a health and welfare check. (R. at 355-56.) R.C. did tell G.G. that Appellant was physical with R.C. "months after." (R. at 356; 372-73.) G.G. remembered R.C. telling her that she found the SD card videos, that Appellant took her cell and cut up her CAC, and that the altercation got physical. (R. at 356.)

Appellant's Testimony

Appellant acknowledged growing close to P. (R. at 530.) Appellant's relationship with P was important because Appellant grew up without a father and "stuck around for P." (R. at 530.) P's "biological father was out of the picture." (R. at 531.)

Appellant denied assaulting R.C. on 30 June 2021. (R. at 524.) Regarding the incidents that occurred in March and August of 2018, Appellant denied those allegations. (R. at 531-546.)

Appellant denied that he punched R.C. on the ribs on 30 June 2021. (R. at 547.) Further, Appellant denied destroying or cutting her CAC card in half. (R. at 547.) In fact, Appellant denied ever seeing or discussing the CAC card during that day. (R. at 562.)

When R.C. contacted Appellant about finding the SD card, Appellant admitted that he felt shocked and embarrassed. (R. at 548-49.) Appellant acknowledged that he got caught cheating, and admitted that the SD card contained videos of him having sex with other women. (R. at 549-550.) Appellant denied assaulting R.C. and claimed that instead he snatched the phone from R.C. when she was holding the phone outwards on speakerphone. (R. at 553-54.) Appellant clarified and said that he grabbed the phone straight out of her hands. (R. at 554.) Appellant testified that both he and R.C. told law enforcement that they only had an argument and that no one was hit and there was no property damage. (R. at 559.)

Appellant denied all other allegations of child sexual abuse and indecent recording, and he was acquitted of those charges and specifications. (R. at 588-620, 781.)

ARGUMENT

I.

APPELLANT'S CONVICTION FOR DOMESTIC VIOLENCE WAS FACTUALLY AND LEGALLY SUFFICIENT.

Standard of Review

This Court reviews factual and legal sufficiency is de novo. United States v. Washington, 57 M.J. 394, 399 (C.A.A.F. 2002).

Law and Analysis

Courts of Criminal Appeals (CCAs) "may affirm only such findings of guilty as the Court finds correct in law, and in fact in accordance with [Article 66(d)(1)(B)]." Article 66(d)(1)(A),

UCMJ (2024 ed.); United States v. Harvey, 85 M.J. 127, 130 (C.A.A.F. 2024). Factual sufficiency review is triggered only if an appellant (1) asserts it as an assignment of error, and (2) shows "a specific deficiency in proof." Article 66(d)(1)(B)(i), UCMJ; Harvey, 85 M.J. at 130. If both threshold elements are met, a CCA may "weigh the evidence and determine controverted questions of fact." Article 66(d)(1)(B)(ii). The CCA must give "appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence." Id. "[T]he degree of deference will depend on the nature of the evidence at issue." Harvey, 85 M.J. at 130-131. Then, the CCA must be "clearly convinced that the finding of guilty was against the weight of the evidence" before they may "dismiss, set aside, or modify the finding, or affirm a lesser finding." Article 66(d)(1)(B)(iii), UCMJ.

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 whether any rational factfinder could. United States v. Acevedo, 77 M.J. 185, 187 (C.A.A.F. 2018).

Article 128b, UCMJ, criminalizes violent offenses against a spouse, intimate partner, or immediate family member of that person, otherwise known as domestic violence. Article 128b(1)-(5), UCMJ. The underlying violent offense for domestic violence here was assault consummated by battery. (R. at 700.) The elements for assault consummated by battery under Article 128, UCMJ, are: 1) that the accused did bodily harm to a certain person; 2) that the bodily harm was done unlawfully; and 3) that the bodily harm was done with force or violence. Manual for Courts Martial United States part IV, para. 77.b.(2) (2019 ed.) (MCM).

A. Appellant's conviction was factually sufficient because R.C. was a credible witness, and there was corroborating evidence to support that Appellant physically assaulted R.C. on 30 June 2021.

Appellant's conviction is factually sufficient, and Appellant fails to allege a specific deficiency in proof, even though Appellant went to great lengths to attack R.C.'s motive to fabricate and credibility in his brief. (App. Bt. at 9.) Even if Appellant meets his burden of describing a specific deficiency in proof, which the government does not concede, the finding of guilty was not against the weight of the evidence because R.C. was a credible witness. For the following reasons, Appellant fails to meet his burden in proving that his conviction was factually insufficient.

1. R.C. had a reasonable explanation for why she reported the incident months later reinforcing that she did not have a motive to fabricate.

Appellant argues that R.C. had a motive to fabricate due to the contentious divorce. (App. Br. at 10, 12.) Appellant's argument fails. First, it is important to note that R.C. had a valid explanation for why she did not initially report the incident to law enforcement. Appellant abused R.C. twice before the charged 30 June 2021 incident, and after the final assault R.C. simply wanted Appellant out of the house. R.C. knew that if she reported the domestic violence the night of the incident that would have halted Appellant's deployment. At the time, R.C. said what she needed was for Appellant to leave on deployment for six months. (R. at 134.)

R.C. also testified that even after the May and August 2018 assaults, she did not end her marriage because P and Appellant were close. (R.at 102-03.) Appellant admitted as much in his testimony and said he felt bad for P because like him, P had no father figure in his life. (R. at 530.) R.C. had her son's relationship with Appellant in mind when deciding not to leave Appellant after one of the earlier instances of physical abuse. (R. at 102-03.) R.C.'s explanation concerning P was a valid reason why R.C. did not initially leave her relationship with Appellant.

Second, the divorce proceedings did not give R.C. a belated motive to fabricate the allegations. Although Appellant contends that R.C. had a motive to fabricate the allegations to support the contentious divorce proceedings (App. Br. at 10, 12), his testimony on the other hand admitted that R.C. only brought up the SD card in the civilian domestic violence proceedings, not the civilian divorce proceedings. (R. at 301.) This admission by Appellant negated any notion that R.C. had a motive to fabricate to support a contentious divorce when her allegations related to the SD card was never brought up in the divorce proceedings to begin with. In fact, R.C. testified that she asked for a divorce first, but could not serve Appellant papers while deployed. As a result, Appellant initiated divorce proceedings instead. (R. at 296.)

Also negating any motive to fabricate stemming from the divorce was R.C.'s report to her neighbors. On 30 June 2021, after the police left her house, R.C. went to her neighbor's house and told them about her injuries to her ribcage. (R. at 138.) Her neighbors gave her Icy Hot and gauze for pain relief (R. at 138-39.) R.C. reported injuries to her neighbors before any contentious divorce proceedings undercutting R.C.'s that the later divorce proceedings motivated her to fabricate the allegations. A factfinder could conclude R.C. did not notify anyone in the military right away about her injuries because she wanted Appellant to proceed with his deployment instead of remaining in the home where he abused her.

In sum, although R.C. did not report the incident to law enforcement right away, that fact does not support the claim that R.C. fabricated the offense to support the contentious divorce proceedings.

2. <u>R.C. was a credible witness because much of her testimony was corroborated by other evidence, and she had no motive to fabricate.</u>

Appellant highlights that R.C.'s testimony was not credible and not corroborated. (App. Br. at 10.) This was not the case. Other evidence introduced at trial significantly bolstered the

credibility of R.C.'s allegations. G.G.'s testimony confirmed that there was an altercation between Appellant and R.C. on 30 June 2021. On 30 June 2021, G.G. testified that she was on the phone with R.C., and described that R.C. was upset because R.C. found an SD card that had videos of Appellant having sex with other women – corroborating R.C.'s testimony that she found an SD card that had videos of Appellant cheating. (R. at 265-66, 353.) G.G. also testified that R.C. had her on speaker phone, and although there were times when she and R.C. were not talking, G.G. still heard R.C. yell in the background – corroborating R.C.'s testimony that described R.C.'s and Appellant's fight over the SD card. (R. at 127-29, 354.) Both R.C., and G.G. testified that after the call dropped between G.G. and R.C., G.G. called multiple times and Appellant answered the phone. (R. at 131, 355.) During this phone call, G.G. asked to talk to R.C. or she would call the police. (R. at 355.) Both G.G. and R.C. described Appellant's response as either "do what the fuck you got to do" or "call the cops bitch," respectively. (R. at 131, 355.) In any event, Appellant did not allow G.G. to talk to R.C. As a result, G.G. contacted her local OSI detachment and requested a health and wellness check. (R. at 354-55.) "Months after" the assault G.G. testified that R.C. did tell her that on 30 June 2021 Appellant assaulted her. (R. at 356, 372-73.) Lastly, G.G's testimony confirmed that Appellant destroyed R.C.'s CAC card because on the night of the incident G.G. remembered trying to help R.C. get on base the next day. (R. at 356.)

R.C. and Appellant both testified that the SD card contained videos of Appellant having sex with other women. (R. at 265-66, 549-550.) Even Appellant's testimony corroborated R.C.'s tale of events because there was in fact a SD card that instigated the argument leading up to the physical assault.

R.C. testified that during the incident, Appellant cut her CAC card with scissors. This was corroborated by Prosecution Exhibit 2, which was a receipt that showed that the very next day after the incident R.C. had to obtain a replacement CAC card. This weighed in favor of R.C.'s credibility because the administrative logistics to get a new CAC card are tedious. The fact that R.C. needed a new CAC card corroborated her line of events in that it supported the claim that Appellant was very upset that R.C. found the SD card and Appellant eventually destroyed her CAC card in retaliation. It strains reason to believe that a victim would cut up her own military identification needed to access the base and any military network system just to make up a false allegation of domestic violence several months in the future. Instead, logic dictates that R.C. applied for a replacement CAC card because Appellant, in addition to assaulting her, destroyed it because he was mad that R.C. found evidence of his infidelity.

R.C. obtaining a new CAC card the day after the incident supports that her account about Appellant cutting the CAC card was not a made up story. Further, it shows that R.C. did not make up the allegation regarding the CAC card in retaliation for Appellant filing for divorce, since the CAC card was replaced the day after the alleged incident and well before Appellant filed for divorce. R.C. obtaining a new CAC card the day after the incident also supported that Appellant lied under oath during his own trial testimony because Appellant denied cutting R.C.'s CAC card. (R. at 562.) In all, evidence of R.C.'s CAC card replacement corroborated her testimony and suggested that Appellant lied on the stand. Thus, a reasonable factfinder (and this Court) could believe that R.C. was a credible witness.

Notably, the military judge had the opportunity to observe both Appellant and R.C. testify. "[F]actfinders may believe one part of a witness' testimony and disbelieve another." United States v. Harris, 8 M.J. 52, 59 (C.M.A. 1979.) And the military judge did not believe

Appellant when he denied physically assaulting R.C. Appellant's denial of ever physically abusing R.C. was not credible, as demonstrated by Prosecution Exhibit 3, text messages between R.C. and Appellant, in which Appellant admitted to making mistakes and alluding to physically abusing R.C. in the past. (Pros. Ex. 2.) Our superior Court has observed that "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. Harvey, 85 M.J. at 131. The military judge found R.C. credible given her testimony and its corroborating evidence. This Court should give significant deference to the military judge's findings and ability to observe both Appellant and R.C. testimony in conjunction with the other evidence presented in this case.

In sum, Appellant has not met his burden of proving a deficiency in proof. In fact, Appellant's assignment of error does not specifically allege a deficiency in proof. Even if there was a deficiency in proof, the finding of guilty was not against the weight of the evidence. R.C. testified credibility and her testimony was corroborated. There was no dispute that R.C. and Appellant had an argument about the SD card that had evidence of Appellant's infidelity. For these reasons, this Court should not be *clearly* convinced that the conviction for domestic violence was against the weight of the evidence and did not prove that Appellant was guilty beyond a reasonable doubt. *See* Harvey, 85 M.J. at 132 (finding that to be clearly convinced, the CCA must decide that the evidence does not prove that an appellant is guilty beyond a reasonable doubt). The degree of deference owed to the factfinder, the military judge, is substantial given that the military judge had the opportunity to observe the witnesses testimony and credibility. Thus, this Court should find Appellant's conviction for domestic violence factually sufficient.

B. Appellant's conviction was legally sufficient.

"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." King, 78 M.J. at 221. Because Appellant's conviction is factually sufficient, it meets the lower standard for legal sufficiency. After reviewing the evidence most favorably to the prosecution, including R.C.'s testimony and corroborating evidence, any rational factfinder could have found all of the elements of assault consummated by a battery beyond a reasonable doubt, as the factfinder did in this case. Therefore, Appellant is unentitled to relief. This Court should deny this assignment of error.

II.

THE MILITARY JUDGE DID NOT ABUSE HIS DISCRETION BY ADMITTING EVIDENCE UNDER MIL. R. EVID. 404(B) TO DEMONSTRATE APPELLANT'S MOTIVE.

Additional Facts

The government provided notice of intent to admit evidence of uncharged acts related to Charge III (domestic violence):

> a. In approximately March 2018, while driving, [Appellant] grabbed R.C.'s head with his hand and slammed her head into the vehicle window when she tried to grab his phone. [Appellant] struck her mouth with his hand. When R.C. got out of the vehicle, [Appellant] moved her back into the vehicle, punched the rearview mirror, and told her, "You are just fucking making it worse, stop."
>
> b. On or about 20 August 2018, [Appellant] grabbed R.C.'s neck with his hand and she could not breathe. He let go and punched [a picture] frame, shattering it.

c. On or about 30 June 2021, when [Appellant] found out R.C. and had his SD card, he smashed her phone and destroyed her military ID card.[5]

(App. Ex. VIII at 2.) The defense filed a motion in limine to preclude admission of the evidence, arguing that the noticed uncharged acts were inadmissible evidence under Mil. R. Evid. 404. (App. Ex. 1.) The government filed a response arguing that the evidence was admissible under Mil. R. Evid. 404(b) to demonstrate Appellant's intent, motive, plan and common scheme to abuse R.C. (App. Ex. II at 1.)

As discussed infra, the military judge applied the 3-prong framework outlined in United States v. Renyolds, 29 M.J. 109 (C.M.A. 1989), to conclude that the March and August 2018 acts, related to Charge III, were admissible to prove Appellant's motive. (App. Ex. VIII at 15.) The military judge rejected the government's intent and common plan theories of admissibility. (Id.) The military judge did not find that the prior physical assaults "almost identical to the charged offense.[6]" (Id.) The military judge explained that the evidence suggested that the prior physical assaults were reactions to specific triggers, which was the opposite of a plan or intent to control or dominate R.C. (Id.)

But the military judge found that the March and August 2018 incidents were admissible under Mil. R. Evid. 404(b) to show Appellant's motive in that when he was confronted by R.C.

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[5] The military judge found that this act was relevant and admissible as it was res gestae of the charged offense and tended to show Appellant's motive to react violently when confronted with evidence of infidelity. (App. Ex. VIII at 17.)

[6] At the time of Appellant's trial, the military judge did not have the benefit of United States v. Greene-Watson, 85 M.J. 340, 347 (C.A.A.F. 2025) in which CAAF rejected the appellant's argument that the "uncharged conduct must be virtually identical to the charged conduct to be admissible as evidence of a common plan or scheme under [Mil. R. Evid.] 404(b)."

with evidence of infidelity, Appellant reacted or responded with physical violence. (App. Ex. VIII at 15.)

The military judge noted that the government provided sufficient evidence that a factfinder could find that the March and August 2018 physical assaults occurred by a preponderance of the evidence (Reynolds prong 1). (App. Ex. VIII at 15.) As for Reynolds prong 2, the military judge provided the following analysis:

> As explained above, "motive" is something, especially willful desire, that leads to one act. The common thread among all physical assaults alleged by R.C. is that they came in response of her confronting [Appellant] in some way about his infidelity. In March 2018, R.C. saw [Appellant] receiving text messages from an unknown female and as she confronted [Appellant], he reacted with physical violence by pushing her head into the window, forcing her back in the car and smashing the rearview mirror of the car. Similarly, in August 2018, with R.C. confronted [Appellant] about the evidence of infidelity that she had discovered on his phone, [Appellant] reacted once again with physical violence by choking R.C. and then punching and shattering a nearby frame. Finally during the charged event on 30 June 2021, R.C. once again confronted [Appellant] about evidence of infidelity that she had found an SD card. In response, and when R.C. would not return the SD card, [Appellant] once again reacted with physical violence by punching R.C. in the ribcage two or three times. Additionally, after this physical assault, [Appellant] smashed R.C.'s cell phone.

(App. Ex. VIII at 15.)

Finally, regarding Reynolds prong 3, the military judge concluded, in a detailed analysis, that the probative value of the evidence was not outweighed by unfair prejudice by referencing the factors outlined in United States v. Barnett, 63 M.J. 388 (C.A.A.F. 2006).[7] (App. Ex. VIII at

[7] The Barnett factors include: 1) the strength of the proof of the prior act; 2) the probative value of the evidence; 3) the potential to present less prejudicial evidence; 4) the possible distraction of the fact-finder; 5) the time needed to prove the prior conduct; 5) the temporal proximity of the prior event; 7) the frequency of the act; 8) the presence of intervening circumstances; and 9) the relationship between the parties. Barnett, 63 M.J. at 396.

16-17.) The military judge noted that the probative value of the evidence was high given that the uncharged acts showed a very specific response by Appellant (physical violence) to a very specific trigger (R.C. confronting Appellant with infidelity). (Id.) The military judge also found that the evidence would not distract the factfinder because the evidence here was "limited and clear" and an appropriate instruction would instruct the members to apply this evidence correctly. (Id.) Further, the military judge was not concerned about the time it would take the government to prove the 404(b) evidence given that R.C. was already a key witness in the case. (Id.) Regarding the time between the uncharged acts and charged misconduct, the military judge noted that "[Appellant reacted the same way to the same trigger three times over the course of three years of marriage." (Id.) Finally, the military judge did not identify any relevant intervening factors weighing against the admission of the prior uncharged acts, but noted that the relationship between Appellant and R.C. were identical in March-August 2018 and June 2021 in that Appellant and R.C. were a married military-to-military couple. (Id.)

The military judge concluded that the Barnett factors favored the government, and the probative value was not substantially outweighed by unfair prejudice. (App. Ex. VIII at 17.) The military judge emphasized in his ruling that he was not admitting the evidence to show that Appellant was a bad person who cheated on his wife or that he was a mean and violent person, but admitted the evidence for a limited purpose in accordance with Mil. R. Evid. 404(b). (App. Ex. VIII at 16-17.)

Standard of Review

This Court reviews a military judge's decision to admit or exclude evidence for an abuse of discretion. Greene-Watson, 85 M.J. at 345"A military judge abuses his discretion when: (1) the findings of fact upon which he predicates his ruling are not supported by the evidence of

record; (2) if incorrect legal principles were used; or (3) if his application of the correct legal principles to the facts is clearly unreasonable. United States v. Ellis, 68 M.J. 341, 344 (C.A.A.F. 2010) (citing United States v. Mackie, 66 M.J. 198, 199 (C.A.A.F. 2008)). "When judicial action is taken in a discretionary matter, such action cannot be set aside by a reviewing court unless it has a definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached upon weighing of the relevant factors." Id. (quoting United States v. Sanchez, 65 M.J. 145, 148 (C.A.A.F. 2007) (internal citations and quotations omitted)).

Law and Analysis

The military judge applied applicable law in a detailed analysis to determine the admissibility of the uncharged acts related to R.C.'s allegation outlined in Charge III for domestic violence. Thus, the military judge did not abuse his discretion.

A. The military judge properly found that the uncharged acts of physical assault were admissible for the limited purposes to show Appellant's motive to assault R.C.

Evidence of crimes, wrongs, or other acts may not be used to establish character or propensity, but may be admissible for other purposes, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or lack of accident. Greene-Watson, 85 M.J. at 346.

Military courts test the admissibility of uncharged misconduct under Mil. R. Evid 404(b) under a three-prong test: (1) does the evidence reasonably support a finding by the factfinder that an appellant committed prior crimes, wrongs, or acts; (2) does the evidence make a fact of consequence more or less probable; and (3) does the probative value survive a Mil. R. Evid 403 balancing test – is the evidence substantially outweighed by the danger of under prejudice. Reynolds, 29 M.J. at 109. Here, the military judge did not abuse his discretion in finding that

prong 1 was satisfied. R.C. testified in a motions hearing and the military judge considered her law enforcement interview that described the prior uncharged acts. (App. Ex. VIII at 15.) The evidence reasonably supported a finding by a factfinder that Appellant committed the uncharged acts. (Id.)

The military judge did not abuse his discretion in admitting evidence under Mil. R. Evid. 404(b) as evidence of Appellant's motive to act violently against R.C. because it made a fact more or less probable – Appellant assaulting R.C. on 30 June 2021. The military judge properly admitted the uncharged acts as evidence of motive under Mil. R. Evid. 404(b). Recently, our superior Court in United States v. Wilson, 84 M.J. 383, 393 (C.A.A.F. 2024) found Mil. R. Evid. 404(b) evidence admissible under the theory of motive. The Court explained: "Motive evidence shows the doing of an act by a particular person by evidencing an emotional need in that person which could have incited or stimulated that person to do that act in satisfaction of that emotion." Id. at 392 (quoting United States v. Whitner, 61 M.J. 457, 461 (C.A.A.F. 1999)). The military judge cited Whitner in his ruling. (App. Ex. VIII at 7.) Further, the military judge cited United States v. Watkins, 21 M.J. 224, 227 (C.M.A. 1986) where the court noted:

> Evidence of motive is relevant with the meaning of MRE 401 to show the doing of an act by a person as an outlet for that emotion. However, the prior acts of conduct must be the type of which reasonable could be viewed as 'the expression and effect of the existing internal emotion' [and] the same motive must be shown to have existed in the appellant at the time of the subsequently charged acts.

(App. Ex. VIII at 7.) The military judge here applied the correct law in his analysis. The previous incidents showed that Appellant assaulted R.C. because R.C. confronted him about his infidelity. So when R.C. accused Appellant of infidelity after reviewing the SD card, the

previous incidents showed that Appellant had a reason (motive) to assault R.C. because she once again accused him of infidelity.

Admitting prior assaults involving the same victim to prove motive has been a common practice among other federal courts, demonstrating that the military judge did not abuse his discretion. In United States v. Varela, the defendant's prior instances of domestic violence were "relevant to motive by illustrating the history of domestic violence between the parties and that when the victim tries to tell the defendant that she does not want to be with him, he attacks her." 2022 U.S. Dist. LEXIS 07046, at *21 (D. Ariz. 2022). Prior assaults involving the same victim are admissible as evidence of "rising animosity" that "could easily provide the motive for an assault." United States v. Lewis, 780 F.2d 1140, 1142 (4th Cir. 1986). "Other acts of domestic violence involving the same victim are textbook examples of evidence admissible under [Fed. R. Evid.] 404(b), and courts have permitted this evidence under a variety of theories." United States v. Dawes, 544 F. Supp. 3d 1044, 1046 (D. Mont. 2021). Evidence of "additional assaults are admissible as a 'critical part of the story' that clarifies the motive behind the charged crimes." United States v. Berckmann, 971 F.3d 999, 1002 (9th Cir. 2020). These cases show that admitting the Mil. R. Evid. 404(b) evidence in Appellant's case was well within accepted federal practice and well within the range of reasonable choices available to the military judge.

Appellant is wrong in asserting that "[a]lthough the military judge recognized some of the controlling authorities regarding motive, the military judge did not apply their standards to the facts of this case." (App. Br. at 18.) The military judge did apply the correct standards even if he did not use word for word verbiage from authorities cited. In all, the military judge understood what a motive was – a "willful desire that leads one to act." (App. Ex. VIII at 7, 15 (citing Blacks Law Dictionary, 7th Ed. 1999)). Whitner and Watkins discusses the emotional

element behind a motive, which the military judge captured in his analysis. (App. Ex. VIII at 15.) The commonality among all the physical assaults described by R.C. came in response to R.C. confronting Appellant about his infidelity. This confrontation "triggered" a response and led Appellant to respond in a violent way. In other words, the confrontation about infidelity triggered an emotional response in which Appellant resorted to physical violence in both March 2018 and August 2018, as well as in June 2021 (charged conduct). The military judge went to great lengths to describe the similarities among all the prior physical assaults – when Appellant was confronted by his wife with infidelity, Appellant reacted or responded with physical violence. (Id.) Contrary to Appellant's assertions, the uncharged acts was relevant to his motive because the military judge in essence found that R.C.'s confrontation about infidelity reflected an internal emotional state in Appellant that also existed at the time of the charged conduct. (App. Br. at 18.) The military judge's ruling articulated that the prior assaults in 2018 demonstrated Appellant's motive to assault his wife in June 2021 and therefore made a fact more probable in that Appellant physically assaulted R.C.

Appellant cites a string of cases indicating that the military judge's reasoning has been rejected in many other instances. (App. Br. at 19.) Those cases discuss the improper use of character evidence used for propensity. Here, the military judge in his ruling made clear that the admission of evidence was not for the purposes of propensity. (App. Ex. VIII at 16.) Appellant fails to acknowledge that the military judge's ruling made a very specific finding as to motive. The ruling highlighted that the physical assaults – both charged and uncharged – were reactions "to a specific trigger" (confrontation about infidelity) that was the opposite of a plan. (Id. at 15.)

Here the military judge found evidence admissible under one theory (motive), but inadmissible under other theories (intent and common scheme or plan). This demonstrated that

the military judge understood the different theories of admissibility under Mil. R. Evid. 404(b), applied the correct law, and made a specific finding that the uncharged acts were relevant to motive. Importantly, the military judge noted that he did not find the evidence admissible for impermissible purposes – bad character evidence. Thus, the military judge did not abuse his discretion in admitting Mil. R. Evid. 404(b) evidence to prove motive.

Moreover, Appellant claims that the admission of the uncharged acts were inherently prejudicial and therefore should have been excluded under Mil. R. Evid. 403. (App. Br. at 20-21.) Appellant's claims are not persuasive because other than arguing that the military judge admitted propensity evidence (App. Br. at 20), Appellant's analysis lacks any explanations as to why this evidence should not have survived a Mil. R. Evid. 403 balancing test. Appellant attempts to undermine the military judge's application of the Barnett factors, and once again states that the uncharged acts were a distraction because "the military judge seemingly admitted them to show propensity." (App. Br. at 20.) Appellant fails to acknowledge that the military judge did a thorough Barnett analysis that ultimately concluded that throughout the three years of marriage when R.C. confronted Appellant with infidelity, Appellant reacted with violence. (App. Ex. VIII at 16.) This evidence was probative of Appellant motive and such evidence was not substantially outweighed by the danger of unfair prejudice or any other factor outlined in Mil. R. Evid. 403. (App. Ex. VIII at 15-17.) The military judge's Mil. R. Evid. 403 balancing test analysis deserves substantial deference. United States v. Manns, 54 M.J. 164, 166 (C.A.A.F. 2000) ("When a military judge conducts a proper balancing test under Mil. R. Evid. 403, the ruling will not be overturned unless there is a "clear abuse of discretion.'"). Regardless, the "risk of relevant evidence causing unfair prejudice in a bench trial is nonexistent because the risk

addressed…is eliminated by the absence of a members panel." Greene-Watson, 85 M.J. at 349 (Sparks, J., concurring).

Military judges are presumed to know and follow the law, and the military judge here mentioned that he admitted evidence of uncharged acts for the limited purpose of motive. United States v. Robbins, 52 M.J. 455, 457 (C.A.A.F. 2000) (App. Ex. VIII at 15). In sum, the military judge did not abuse his discretion in admitting evidence of uncharged acts for a purpose other than propensity.

B. Even if the military judge erred in admitting evidence of motive under Mil. R. Evid. 404(b), Appellant was not prejudiced.

To determine whether prejudice arises from nonconstitutional evidentiary errors, this Court weighs: 1) the strength of the government's case; 2) the strength of the defense's case; 3) the materiality of the evidence in question; and 4) the quality of the evidence in question. Greene-Watson, 85 M.J. at 348.

Appellant contends that he was prejudiced by the admission of propensity evidence. (App. Br. at 21.) Appellant alleges that the government's case was weak, and the admission of the Mil. R. Evid. 404(b) evidence "tipped the scales in the government's favor." (App. Br. at 21.) As mentioned in the prior assignment of error, Appellant's conviction was factually sufficient, and to the evidence satisfied the burden of proof beyond a reasonable doubt. Even if the factfinder did not consider Appellant's past physical assaults, R.C.'s testimony was corroborated and therefore sufficient to prove domestic violence beyond a reasonable doubt. Regarding Charge III, Appellant's defense was not strong. Even though he testified on behalf of his defense, the military judge did not find him credible for reasons discussed in Assignment of Error I. .

Our superior Court in Greene-Watson noted that regarding the materiality and quality of the evidence courts consider the factual circumstances of each case. Greene-Watson, 85 M.J. at 348. Courts assess "how much the erroneously admitted evidence may have affected the court-martial." Id. CAAF noted that the prejudicial impact of erroneously admitted evidence is minimal if it was the same nature of the conduct charged. Greene-Watson, 85 M.J. at 348 (citing Wilson, 84 M.J. at 396; United States v. Washington, 80 M.J. 106 111 (C.A.A.F. 2020); United States v. Hursey, 55 M.J. 34, 36 (C.A.A.F. 2001)). Here, the nature of the uncharged acts were the same nature of the charged conduct reducing the risk of prejudice. Given that Appellant was tried by a military judge alone and the uncharged conduct was the same nature as Appellant's crime, demonstrated that he suffered no prejudice. *See* Greene-Watson, 85 M.J. at 352 (recognizing that "the risk of prejudice to Appellant was extremely low in this military judge-alone case in which the military judge expressly stated that he would only consider the evidence of the uncharged acts for the limited purpose of establishing a common scheme or plan and not as improper propensity evidence.") (Hardy, J., concurring).

During a discussion about Mil. R. Evid. 404(b) with trial defense counsel, the military judge acknowledged the impermissible uses of the rule: "I can affirmatively tell you I'm not going to consider any of the uncharged acts as, you know, evidence of general criminal or bad behavior on the part of the accused, and distribute that to him, if that makes sense?" (R. at 328.) And the military judge in his Mil. R. Evid. 404(b) ruling state that he found the evidence admissible for purposes of motive and "will craft an instruction that will inform the members how they are to use this evidence, and also its prohibited uses." (App. Ex. VIII at 16-17.) So it logically followed that if the military judge was prepared to craft a findings instruction on the permissible and prohibited uses of Mil. R. Evid. 404(b) evidence, then the military judge applied

the proper uses of Mil. R. Evid. 404(b) in his deliberations and did not consider evidence of uncharged acts as propensity evidence. In short, the military judge did not consider the uncharged acts for propensity purposes to find Appellant guilty.

Since this Court can be confident that the military judge only used Appellant's past acts as evidence reinforcing his motive for the charged conduct, the evidence did not have a substantial influence on the verdict. For these reasons, the admission of Mil. R. Evid. 404(b) evidence, even if error, was not prejudicial. This Court should deny this assignment of error.

III.

THE MILITARY JUDGE DID NOT ABUSE HIS DISCRETION IN FINDING THE GOVERNMENT HAD MET THE LOW BAR OF AUTHENTICATION FOR PROSECUTION EXHIBITS 5 THROUGH 9.

Additional Facts

Appellant's Assault of R.C.

R.C. found an SD card hidden in a headphones case in Appellant's backpack while helping him prepare for deployment. (R. at 119.) She knew the backpack was Appellant's because she saw him pack items in it, and it was the same backpack he carried with his name tape on the front. (Id.) R.C. put the SD card in her phone and discovered it contained a folder titled "My Bitches" with subfolders labeled with women's names. (R. at 120, 188.) She opened the folders of the names she recognized – B.U. and J.S. – and saw videos of Appellant having sex with the women. (R. at 190.)

When Appellant called, R.C. told him she found something. (R. at 123.) R.C. hid the SD card by taping it under the TV stand. (R. at 120-121.) She secured all the doors because she was afraid of what Appellant would do. (R. at 121-122.) Appellant bypassed the lock on the back door and confronted R.C. while she was on the phone with her friend G.G., an Office of

Special Investigations (OSI) agent. (R. at 121, 124.) He reached for R.C.'s phone and told her to give him the SD card. (R. at 124, 126, 127.) Appellant followed R.C. around the house and cornered her in the bedroom. (R. at 128.) She climbed over the bed, and he pulled at the blanket trying to grab her. (R. at 128.) When she escaped the room, Appellant pushed her to the ground. (R. at 128.) He stood over her and grabbed at her phone as she told him the SD card was not in it. (R. at 128.) Appellant punched R.C. twice on her left side and she released the phone. (R. at 128). He left the room, threw her phone on the ground, and stomped on it. (R. at 128-129.)

G.G. called Appellant and asked to talk to R.C. (R. at 355.) When he refused, G.G. called OSI and asked for their help in getting local police to conduct a welfare check at R.C.'s home. (R. at 355-356.) Local police responded to the home, and Appellant agreed to leave the house for the night. (R. at 131.)

Chain of Custody of the SD Card

G.G. also called S.S., a first sergeant and mutual friend, and asked her to check on R.C. (R. at 353). S.S. arrived just as Appellant was leaving. (R. at 497-498.) After Appellant left, R.C. retrieved the SD card from under the TV stand and watched some of the videos with S.S. (R. at 137.) She then put the SD card in a pouch with her wedding ring and gave the pouch to S.S. to hold. (R. at 137-138). S.S. put the pouch in the glove compartment of her car – that only she had access to – and then returned it to R.C. a few days later. (R. at 490-492.) S.S. returned the pouch to R.C. in the same condition as when she gave it to her. (R. at 172.) S.S. testified that she never went into the pouch or tampered with the SD card. (R. at 492.)

R.C. put the SD card in a safe only she and Appellant had access to. (R. at 172.) To ensure Appellant did not get access to the SD card, R.C. would take the safe with her whenever

she was leaving the house. (R. at 294.) R.C. gave the SD card to OSI when she made a report approximately a year later. (R. at 173, 433, 439, 440.)

R.C.'s Review of the SD Card

R.C. confirmed that before her review with the prosecution team prior to trial, she had watched at least the beginning of the five videos that were admitted as Prosecution Exhibits 5 through 9. (R. at 176, 177, 195.) The videos showed Appellant having sex with women. (Pros. Exs. 5-9.) R.C. watched the videos of B.U., Prosecution Exhibits 7, 8, and 9, again in May 2022 after she was told by Appellant's ex-wife that there were children in the videos with B.U. (R. at 197.) At trial, R.C. identified all the people in the videos, the location of the videos, the approximate timeframe the videos were taken and the voices in the videos based on her personal knowledge. (R. at 150-151.)

The five videos the Government introduced, Prosecution Exhibits 5 through 9, were short – three minutes and 14 seconds, 58 seconds, five minutes and eight seconds, 29 seconds, and 45 seconds respectively. At trial, R.C. confirmed that all the videos on the CDs encompassing Prosecution Exhibits 5 through 9 were the same videos that were on the SD card that she had seen previously. (R. at 148-149, 174, 182, 184, 205-206.)

R.C.'s Testimony Regarding Prosecution Exhibits Five and Six

For Prosecution exhibits five and six, R.C. identified all three people in the video – Appellant, J.S. and N.L. (R. at 174, 175, 177, 323.) R.C. identified Appellant – her husband – because she saw his full body, including his face. (R. at 175, 323.) R.C. identified J.S. because she saw her face in the video, and they had mutual friends. (R. at 175, 323.) She identified that Appellant's daughter, N.L. because she had known her since shortly after she was born and

purchased the clothes she was wearing. (R. at 175, 202-203, 322-323, 345.) R.C. further identified that N.L. was between one and two years old. (Id.)

R.C. identified the location of the videos as the living room of her Florida residence based on a specific sticker that was hung around the clock in the living room, the mirror, the dining room table, and the couch. (R. at 174, 175 , 177, 178, 323, 324.) R.C. identified that the video was taken around 2015-2016 based on her approximation of N.L.'s age. (R. at 125,176.) R.C. identified that the video on prosecution exhibit six was taken around December 2016 because of the Christmas tree that she had set up in the left corner of the video. (R. at 324.) R.C. confirmed that the video on Prosecution exhibits five and six were a fair and accurate representation of what she saw on the SD card. (R. at 176, 178.)

R.C.'s Testimony Regarding Prosecution Exhibits 7, 8, and 9.

R.C. identified all three people in the videos contained in Prosecution Exhibits 7, 8, and 9 – Appellant, B.U., and R.D. (R. at 179, 182.) R.C. identified her husband, Appellant, by his voice. (R. at 180, 184, 321.) R.C. was able to identify B.U. in the video because their families were friends, and they had spent time together. (R. at 180, 183-184, 319.) R.C. was also able to identify R.D. – her son's best friend – in the video based on time she spent with him. (R. at 180, 184, 203, 318.) She was able to identify that R.D. was between three and four years old in the video because he had a pink pacifier which she knew his father had taken from him when he returned from deployment. (R. at 180, 185, 318.) This informed her opinion that the video in Prosecution Exhibits 7 and 8 was taken in approximately 2015. (R. at 180, 182, 185, 320.)

R.C. identified the location of the video in Prosecution Exhibit 7 as B.U.'s bedroom in B.U.'s home in Florida based on her memory of the room. (R. at 180, 320.) R.C. identified the location of the video on Prosecution Exhibit 8 as the master bedroom of her house in Florida.

(R. at 182). R.C. identified the location of the video on Prosecution Exhibit 9 as the living room of B.U.'s home based on her personal knowledge of the room. (R. at 185.) R.C. confirmed that the video on the CD was the same content that she saw on the SD card. (R. at 180, 181, 183.)

The Military Judge's Findings of Fact

Trial defense counsel objected to admission of Prosecution Exhibits 5 through 9. (R. at 155.) Trial defense counsel requested the military judge not view the videos contained in the exhibits before ruling on the objection. (R. at 156.) He argued that R.C. could not authenticate the videos because she was not present when they were recorded. (R. at 160-164, 206-208.) Initially, the military judge granted trial defense counsel's motion, but allowed the Government to elicit additional information from R.C. to support authentication. (R. at 170.) Following additional testimony from R.C., detailed above, and consideration of the issue overnight, the military judge overruled trial defense counsel's second objection and admitted Prosecution Exhibits five through nine. (R. at 206.)

In his ruling, the military judge made the following findings of fact. (R. at 224.)

> In June 2021, R.C. was helping [Appellant] pack for deployment. While doing so, R.C. found an SD card in the accused's backpack. She placed the SD card in her phone and viewed several recordings. R.C. viewed at least, in part, all of the recordings, making up Prosecution Exhibits 5 through 9 for identification.
>
> On the day she found the SD card, she told the accused she found it. The accused rushed home, entered the house, and told R.C. to give him the SD card. This led to a physical altercation and the police were called.
>
> After the police left unbeknownst to [S.S.], R.C. provided [S.S.] a pouch that contained her wedding ring and the SD card. R.C. retrieved the pouch from [S.S.] a few days later, and after the accused had deployed. R.C. then kept the SD card in a locked safe that only she had access to for many months. At some time later, R.C. provided the SD card to OSI. Prosecution Exhibits 5 through 9 for identification are recordings from the SD card. R.C. reviewed

> these exhibits a couple of days before trial. R.C. testified the exhibits are a fair and accurate representation of what she saw on the SD card.
>
> As for the recordings themselves, R.C. provided significant foundational testimony. Including, one, most importantly, she identified her husband, the accused, in each of the recordings. Two, additionally, she identified the other adults and children captured in the several recordings. Three, she testified in detail that she knew where the recordings were made, specific rooms inside her home, specific rooms in her friend's home, etc. Four, she testified that she also recognized the voices in the videos as her husband's and the children she knew well. And five, she testified that she knew approximately when the recordings must have been taken based on timestamps, but also the approximate age of the child, based on other factors that she was able to observe in the recordings themselves, the items in and condition of the rooms where the recordings were taken, etc.

(R. at 224-225).

The military judge applied these facts to M.R.E. 901 and M.R.E. 1003. (R. at 226.) He found R.C. laid sufficient foundation to authenticate the recordings in Prosecution Exhibits 5 through 9 saying,

> She viewed enough of all of the recordings on the SD card to identify the accused and the other people in the recordings, their voices, and the locations where the recordings were made. When she compared the recordings on the discs marked as Prosecution Exhibits 5 through 9 for identification to what she had previously seen on the SD card. She noted the exhibits were a fair and accurate representation of what she saw on the SD card.

(R. at 228.)

The military judge analogized Appellant's case to United States v. Poole, 2019 CCA LEXIS 235 (A.F. Ct. Crim. App. 15 May 2019) where an OSI agent extracted videos from an appellant's cell phone and authenticated the video at trial by identifying distinctive characteristics and people. (R. at 229.) He found "R.C. basically did the same thing as the OSI agent in Poole" because she found the recordings on Appellant's SD card, identified Appellant

and others in the video as well as the locations where the recordings were made and confirmed the videos were a fair and accurate depiction of the recordings from the SD card. (R. at 229-230.)

OSI Agent's Testimony

The OSI agent tasked with running the investigation of the contents of the SD card, SA. J.F. testified at trial. (R. at 448.) A forensic copy of the SD card was made. (R. at 449.) SA J.F. watched all the videos on the SD card. (R. at 449-450.) SA J.F. confirmed that the videos did not appear to be edited or altered in any way. (R. at 450.) OSI employed a digital forensics consultant to review the underlying data. The only change the consultant identified in the data was that some videos – not connected to Prosecution Exhibits 5 through 9 – had been deleted from the SD card. (R. at 469.) SA J.F. confirmed that the videos on Prosecution Exhibits 5 through 9 were the videos that were extracted from the SD card. (R. at 451-455.)

Appellant's Testimony

Appellant admitted on the stand at trial that the SD card R.C. found was his. (R. at 588.) He confirmed that he had 1500 videos and images of him having sex with women on the SD card. (R. at 550, 571, 588.) Appellant admitted that Prosecution Exhibits 5 and 6 contain videos of him having sex with J.S. (R. at 607-608.) He confirmed that the videos were taken in December 2016. (R. at 608.)

He also admitted that Prosecution Exhibits 7 through 9 contained videos of him having sex with B.U. in across three days in 2015 in his Florida residence and B.U.'s residence. (R. at 591-592.) Appellant explained that after recording the videos, he transferred them from his phone to the SD card. (R. at 607, 632.) Appellant testified that after R.C. told him she found the SD card he was shocked and "a little embarrassed" because he got caught cheating (R. at 549-

550.) Appellant believed he was going to get in trouble for adultery and for having the videos. (R. at 563.)

The charged altercation with R.C. occurred because Appellant wanted his SD card back. (R. at 627-628). When Appellant returned home after R.C. told him she found the SD card, he discovered the doors to his home were locked, he picked up the back door and bypassed the lock. (R. at 552). As soon as he got into the home, he started looking for the SD card and asking R.C. where his SD card was. (R. at 552, 556-557.)

Standard of Review

A military judge's decision to admit evidence is reviewed for an abuse of discretion. United States v. Lubich, 72 M.J. 170, 173 (C.A.A.F. 2013) (citation omitted). "An abuse of discretion occurs when the trial court's findings of fact are clearly erroneous or if the court's decision is influenced by an erroneous view of the law." Id.

Law

"The abuse of discretion standard is a strict one, calling for more than a mere difference of opinion. The challenged action must be arbitrary, fanciful, clearly unreasonable, or clearly erroneous." United States v. White, 69 M.J. 236, 239 (C.A.A.F. 2010) (quoting United States v. Lloyd, 69 M.J. 95, 99 (C.A.A.F. 2010)). The abuse of discretion standard recognizes that a military judge has a range of choices and will not be reversed so long as the decision is within that range. Lubich, 72 M.J. at 173.

"To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is." M.R.E. 901(a). M.R.E. 901(b) provides a non-exhaustive list of evidence that satisfies the authentication requirement including:

- Testimony of a witness with knowledge that an item is what it is claimed to be. M.R.E. 901(b)(1).

- The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances. M.R.E. 901(b)(4).

- An opinion identifying a person's voice. M.R.E. 901(b)(5).

To authenticate evidence the government "need only show by direct or circumstantial evidence a reasonable probability that the evidence is authentic." United States v. Harris, 55 M.J. 433, 440 (C.A.A.F. 2001) (internal citation and quotation omitted). Authentication "requires a preliminary determination by the judge that sufficient evidence of authenticity exists to present the authenticity question to the members for their ultimate factual determination." Lubich, 72 M.J. at 174 (internal quotation and citations omitted).

Once the proponent has shown a reasonable probability that the evidence is authentic the evidence should be admitted "in spite of any issues the opponent has raised about flaws in the authentication." Id. (citation omitted). Any flaws in the authentication "go to the weight of the evidence instead of its admissibility." Id. When meeting the low bar of authentication, "[t]he Government is not required to present evidence overcoming every possible claim of inaccuracy, especially when none is raised." United States v. Neill, 2017 CCA LEXIS 761, at *8 (A.F. Ct. Crim. App. Dec. 19, 2017) (unpub. op).

The same principles of the parallel federal rules of evidence apply at courts-martial and federal court of appeals decisions applying the principles are "most helpful." Lubich, 72 M.J. at 174.

Federal Courts' Application of the Parallel Federal Rule of Evidence

"There is no single way to authenticate evidence. In particular, the direct testimony of a custodian or a percipient witness is not a *sine qua non* to the authentication of a writing. . . .

Thus, a document's appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances, can, in cumulation, even without direct testimony, provide sufficient indicia of reliability to permit a finding that it is authentic." United States v. Holmquist, 36 F.3d 154, 167 (1st Cir. 1994) (citations and quotations omitted). In Holmquist, the First Circuit, like this court in Neill, rejected the notion that the photograph lacked authentication because it could have been altered. Authentication does not require proof beyond a reasonable doubt but merely a reasonable likelihood based on the judge's evaluation of all the circumstances, that the evidence is what it purports to be. Id. at 168.

"Authentication may be established solely through the use of circumstantial evidence." United States v. Broomfield, 591 F. App'x 847, 851 (11th Cir. 2014) (citing United States v. Smith, 918 F.2d 1501, 1510 (11th Cir. 1990)); *See also* United States v. Smith, 2025 U.S. App. LEXIS 1114, *9-10 (4th Cir. 17 Jan 2025) (per curiam) (finding the appellant ignored the ample circumstantial evidence supporting authentication of the video) (citing United States v. Vidacak, 553 F. 3d 344, 350 (4th Cir. 2009).

Analysis

The military judge did not abuse his discretion in finding the Government met the low bar of authentication based on the testimony of R.C. His findings of fact are supported by R.C.'s testimony and are not clearly erroneous. He correctly noted that R.C. provided significant foundational testimony including identifying Appellant, the women and children in the videos, the specific location the videos were filmed, and the approximate timeframe of the recording. (R. at 224-225). He then correctly recognized that he was not bound by the pictorial or silent witness methods and applied those facts to M.R.E. 901 to find that R.C. satisfied subparagraphs one, four, and five in her authentication of the video and explained how the case was analogous

to this Court's unpublished decision in Poole. (228-229). Finding an abuse of discretion requires more than a difference of opinion, and the military judge's findings of fact and application of those facts was not clearly erroneous and within a reasonable range of choices. White, 69 M.J. at 239.

A. Appellant's claim that "heightened scrutiny" should be applied to authentication of digital evidence due to technological advancement conflates the low bar of authentication with the factfinder's determination of reliability and weight.

This Court should reject Appellant's argument that the Government must meet a heightened standard for authentication of digital evidence because of evolving technology. (App. Br. at 25-26). Evidentiary reliability is a question for the fact-finder to answer. This Court has held that the Government does not have to overcome every possible claim of inaccuracy when authenticating evidence – especially where there was no evidence presented that the recording was altered. Neill, 2017 CCA LEXIS at *8. So long as the government establishes a "reasonable probability" that the evidence is what it purports to be authentication is satisfied. Harris, 55 M.J. at 440. Whether the videos are reliable, even as technology evolves, is a matter of weight – not admissibility. Lubich, 72 M.J. at 174.

B. Gaps in the chain of custody do not invalidate R.C.'s authentication of the videos.

Contrary to Appellant's claim, United States v. Poole, 2019 CCA LEXIS 235 (A.F. Ct. Crim. App. 15 May 2019), is not meaningfully distinguishable from his case. (App. Br. at 30). In Poole, incriminating videos were found in an appellant's cell phone when OSI searched the phone. 2019 CCA LEXIS at *20. At trial, to authenticate the video, the OSI agent who conducted the search testified that he had reviewed the videos contained in the prosecution exhibits, that they were a fair and accurate depiction of the videos found on the appellant's phone, and that he could identify the woman in the videos, the location of the videos, and the appellant. Id. at *22. This Court found "that testimony satisfied the requirements of [M.R.E.]

901. Id. at *22-23. While Appellant is correct that the chain of custody in Poole was clearer, "gaps in the chain [of custody] normally go to the weight of the evidence rather than its admissibility." Melendez-Diaz v. Massachusetts, 557 U.S. 305, 311 n.1 (2009)009).

The Government acknowledges that the chain of custody by R.C. was imperfect. However, her personal knowledge of the contents of the videos – corroborated by Appellant's own admissions – supports authentication. The reliability of the videos due to gaps in the chain of custody – which importantly is not in question in this case given Appellant's admissions – is instead for the fact finder to weigh in consideration of the gaps in the chain of custody.

C. The Government properly authenticated the videos with circumstantial evidence.

Appellant incorrectly argues that authentication must be established through either the pictorial method or the silent witness method. (App. Br. at 26.) While these are recognized approaches, they are not exclusive. Authentication can be accomplished through a broad range of direct or circumstantial evidence, some examples of which are given in M.R.E. 901.[8] Harris, 55 M.J. at 440. The military judge properly considered all the circumstances and the methods of authentication specifically contemplated by M.R.E. 901 when he found the low bar of authentication was met. As his finding was supported by the evidence and within a range of reasonable choices, this Court should not overturn his ruling.

Federal courts have upheld authentication based on circumstantial evidence in similar circumstances. In Broomfield, 591 F. App'x at 851, the Eleventh Circuit found sufficient authentication of a Youtube video where witnesses, who were not present when the video was

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[8] The pictorial method is merely a name given to direct evidence of authenticity as the witness who was present at the scene testifies as to its authenticity. The silent witness method is merely an explanation of a type of nuanced circumstantial evidence relying on the technical surety of the recording device.

recorded, testified identifying the appellant and the location where the video was captured. In Smith, the Fourth Circuit found a Snapchat video of the accused possessing a firearm during a highspeed chase was authenticated by circumstantial evidence of the date of the video despite none of the witnesses observing the firearm during the chase. Smith, 2025 U.S. App. LEXIS 1114 at *2-5. Because there was evidence that identified the appellant in the video waving a black firearm, that he was involved in a car chase that day, that a black firearm was found in his car, and the appellant admitted he had a firearm in the car the court found "ample" evidence that the video was from the date at issue and therefore authenticated. Id. at *10.

The authentication of the evidence in Appellant's case is like both Smith and Broomfield. While R.C. was not present when the video was recorded, her testimony clearly identified the people in the video, the location of the recording, and the approximate timeframe. (R. at 159). The military judge's finding of fact on this point is supported by the record. (R. at 224-229). R.C. provided detailed testimony as to the distinctive characteristics of all the videos encompassing Prosecution Exhibits 5 through 9 including identifying Appellant's face and voice, details in the background like the presence of a Christmas tree, and identification of the women and children in the video based on personal knowledge. (R. at 174-189, 202-205, 318, 320 – 323, 345.) The military judge also properly considered the circumstances of R.C.'s discovery of the SD card in his analysis. (R. at 224.) R.C. discovered the SD card containing the videos in Appellant's backpack. (Id.) When she told Appellant about the SD card, he rushed home and told R.C. to give him his SD card back, which led to a physical altercation. (Id.)

The military judge properly relied on M.R.E. 901 and its examples to find a reasonable probability that the videos were authentic. (R. at 212.) His decision was not an abuse of discretion.

Finally, contrary to Appellant's claim, R.C. testified that the videos on the CD were the videos on the SD card and even at times used the talismanic words "fair and accurate" to confirm their similarities. (R. at 143, 145, 146, 147, 176, 178, 180-181, 183, 228.) Therefore, there is no issue with the use of duplicates. While on cross examination R.C. affirmed that she had not watched the videos "in completion" prior to S.S. coming over, she confirmed that she skimmed through the videos and watched at least the beginning of each of the videos. (R. at 195.) Despite this, R.C. watched the videos long enough to identify the distinguishing characteristics needed to authenticate the video as detailed above. She also confirmed that the videos on the disc matched the videos she saw on the SD card. (R. at 176, 178, 180-181, 183, 228.) This sufficiently satisfies that the videos were in "substantially the same condition" as it was on the SD card. United States v. Yarborough, 50 C.M.R. 149, 156 (A.F. C.M.R. 1975). Any flaw in the authentication from R.C. not watching the entirety of the video on the SD card goes to weight rather than admissibility. Lubich, 72 M.J. at 174.

R.C.'s testimony regarding distinctive characteristics within the video which taken together with all the circumstances established sufficient circumstantial evidence to meet the low bar that there was a reasonable probability that the videos depicted Appellant having sex with the identified women in the identified locations during her approximated timeframe. As this Court concluded in Poole, the testimony satisfied the requirements of M.R.E. 901 and "there was no error." 2019 CCA LEXIS at *23.

D. Appellant suffered no prejudice from the admission of the videos.

Even if R.C. had not properly authenticated the videos, Appellant was not prejudiced because there was ample evidence in the record that corroborated that the videos were authentic – including the testimony of Appellant. The government bears the burden to show that erroneous

admission of evidence did not materially prejudice the substantial rights of Appellant. United States v. Washington, 80 M.J. 106, 110 (C.A.A.F. 2020) (citation omitted). "For non-constitutional evidentiary errors, the test for prejudice is whether the error had a substantial influence on the findings." Id. (quotations and citations omitted). Under Washington, this Court considers: (1) the strength of the Government's case, (2) the strength of the defense case, (3) the materiality of the evidence, and (4) the quality of the evidence. Id.

As explained in Issue I above, the Government's case that Appellant assaulted R.C. was strong. Appellant corroborated R.C.'s testimony surrounding the circumstances of the assault. but also that the SD card was his, that it depicted him having sex in the locations and with the women R.C. identified, and that he broke into the home to retrieve the SD card. (R. at 550, 571, 588, 591-592, 607-608, 632.) His self-serving denials that he assaulted R.C. should be afforded little weight.

What is critical to the prejudice analysis in this case though are the final two factors: the materiality and quality of the evidence in question. In examining these factors, the Court assesses "how much the erroneously admitted evidence may have affected the court-martial." Washington, 80 M.J. at 111.

While it is relevant that Appellant instigated the altercation with R.C. in his frantic panic to retrieve the SD card and save himself from the repercussions of his infidelity, that fact did not depend only on admission of the contents of the videos. Even without the videos, R.C.'s testimony – and Appellant's own testimony – that she found an SD card with incriminating content would support Appellant's motive to assault her while attempting to retrieve the evidence.

Importantly, the record was "replete with admissible evidence" through Appellant's own testimony that established the altercation occurred because Appellant wanted his SD card back. United States v. Hursey, 55 M.J. 34, 36 (C.A.A.F. 2001). Appellant admitted on the stand that the SD card was the reason for the altercation. (R. at 552, 556-557, 627-628.) He confirmed that the concern for the embarrassment and repercussions of his actions is what drove him to attempt to recover the SD card. (R. at 549-550, 563.) Where Appellant admitted the same motive for his actions as was established through the existence of the SD card, his claim that he suffered prejudice from its admission is unpersuasive.

Another factor this Court should consider is the extent to which trial counsel addresses the evidence in closing argument. Washington, 80 M.J. at 111 (citation omitted). Trial counsel referred to the contents of the SD card primarily when arguing the acquitted specifications. Trial counsel only briefly argued the *context* of the assault – that R.C. wouldn't give Appellant his SD card back – in his argument that Appellant assaulted R.C. Rather than rely on the content of the videos, trial counsel predominately relied on the history of abuse and the credibility of R.C.'s testimony about the assault to support the conviction. (R. at 700-716.) Even trial defense counsel was unconcerned with contesting the contents of the SD card when arguing the charged assault. Instead, he focused on highlighting any inconsistencies between R.C.'s testimony and the testimony of Appellant and other witnesses as well as R.C.'s motive to fabricate. (R. at 748-774 generally.) The nature of the argument by both sides should leave this Court convinced that the contents of did not substantially influence the finding of guilt for Appellant's assault of R.C. Washington, 80 M.J. at 110.

The quality and materiality of the contents of the SD card was less than other evidence admitted to show Appellant assaulted R.C. Because the admission of the contents did not have a

substantial influence on the finding of guilt, Appellant was not prejudiced by the admission of the contents of the videos and this Court should deny his requested relief.

V.[9]

APPELLANT WAS NOT ENTITLED TO PRETRIAL CONFINEMENT CREDIT FOR BEING ARRESTED BY STATE AUTHORITIES AGAINST THE AIR FORCE'S WISHES.

Additional Facts

Appellant's charged offenses spanned across Florida and Arizona. (*EOJ*). Charge I, Specifications 1-3 and Charge II and its specification occurred in Florida and did not involve R.C. (Id.) They instead involved a friend's child, and Appellant's daughter – R.C.'s stepdaughter. (R. at 185, 332, 507.) Charge III and its specification, the assault on R.C., occurred at least four years later, in Arizona, and did not involve any of the children named in the previous specifications.(Id.) Appellant was acquitted of Charges I and II and their specifications but convicted of Charge III, the assault on R.C. (Id.)

In his ruling on Appellant's motion for pretrial confinement credit, the military judge found the following facts. The allegations involving R.D., Charge I, Specifications 1 and 2, and Charge II and its specification, occurred in Florida and were first reported to Florida authorities. (App. Ex. XVIII). Prior to turning jurisdiction over to military authorities, the state of Florida issued an arrest warrant for Appellant. (Id.). When Florida authorities relinquished jurisdiction over the offense to military authorities, they informed the Air Force that they would take action to rescind the warrants. (Id. at para. 5). Despite this, Florida retained an active warrant against Appellant for the allegations of crimes against R.D. for months. (Id.) When Appellant went on

[9] Appellant withdrew his fourth assignment of error. The United States' answer follows the numbering on his filed brief for clarity. (*Motion to Amend Pleading*, 15 August 2025.)

leave to Nevada, he was arrested based on that Florida warrant, held in jail by civilian authorities, and extradited to Florida causing him to spend 22 days in civilian confinement across both Nevada and Florida. (Id.) The military judge found:

> The United States was not involved in the issuance of the warrant, the failure to rescind such warrants, the enforcement of the warrants, nor the confinement in Las Vegas or Florida. Nonetheless, when the [Appellant] kept getting stopped at the gate, Air Force officials attempted to resolve the problem by reaching out to authorities in Florida. Additionally, when the [Appellant] was confined, the Government made efforts to resolve the situation.

(Id. at para. 6). Appellant was never arrested by civilian authorities for the domestic violence incident against R.C. – which eventually became Charge III and its specification – that occurred in Arizona, nor was he incarcerated for it. (Id. at para. 7.)

Orally, the military judge found that confinement by civilian authorities "was solely related to the actions by the state of Florida." He found that those actions "didn't have anything to do with the Air Force." (R. at 832). Finally, the judge concluded that "the time spent in Nevada jail and Florida jail was completely unrelated to the offense which the accused has been found guilty . . . that took place in the state of Arizona. And so, given the confinement was not related to the offense of which the accused was convicted [Charge III and its specification], he's not entitled to pretrial confinement credit." (R. at 832.)

During argument on their motion, trial defense counsel conceded that they had "no reason to believe that the government or the United States Air Force did not do its due diligence" in attempting to address the civilian warrant when they were notified. (R. at 825.) Trial defense counsel also conceded that the incarceration by Florida and Nevada had "nothing to do with the assault consummated by a battery against [Appellant's] spouse that happened in the state of Arizona" – the crime which Appellant was ultimately convicted of. (R. at 826.)

Standard of Review

This Court reviews the question whether an appellant is entitled to pretrial confinement credit de novo. United States v. Harris, 78 M.J. 434, 436 (C.A.A.F. 2019) (citing United States v. Smith, 56 M.J. 290, 292 (C.A.A.F. 2002).

Law

In reviewing pretrial confinement issues, courts defer to the military judge's findings of fact unless they are clearly erroneous. United States v. Harris, 66 M.J. 166, 168 (C.A.A.F. 2008). Courts review the military judge's application of those facts de novo. Harris, 78 M.J. at 436 (internal citation omitted).

A military judge's findings of fact are clearly erroneous when there is no evidence in the record to support the finding or when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made. Id. (citing United States v. Criswell, 78 M.J. 136, 141 (C.A.A.F. 2018)).

"Allen" credit involves sentencing credit for time lawfully spent in pretrial confinement. It originates from United States v. Allen, 17 M.J. 126 (C.M.A. 1984), in which our superior Court interpreted of the Department of Defense Instruction on confinement credit in effect at the time. Harris, 78 M.J. at 435 n.2. That instruction has since been superseded by DoDI 1325.07, *Administration of Military Correctional Facilities and Clemency and Parole Programs*, effective 11 March 2013. As our sister services have recognized, the DoD instructions "have changed dramatically since Allen and courts must apply the current DoDI to compute sentencing credit. United States v. Harris, 78 M.J. 521, 524 (A. Ct. Crim. App. 2018) (citing United States v. Atkinson, 74 M.J. 645, 648 (N.M. Ct. Crim. App. 2015)).

Interpretation begins with the plain language of the text. United States v. Lewis, 65 M.J. 85, 88 (C.A.A.F. 2007) (citing United States v. Ron Pair Enters., 489 U.S. 235, 241-242 (1989)). DoDI 1325.07[10], Enclosure 2, para. 3.a., mandates that sentence computation be calculated in accordance with DOD 1325.7-M[11], *DoD Sentence Computation Manual*. Paragraph C2.4.2 of DoD 1325.7-M,. states, "The judge will direct credit for each day spent in pretrial confinement or under restriction tantamount to confinement ***for crimes for which the prisoner was later convicted***." (emphasis added).

Where an appellant was confined by civilian authorities for their own convenience, not at the request of military authorities, he is not entitled to confinement credit. United States v. Harkins, 1992 C.M.R. LEXIS 806, *3 (A.F. C.M.R. 1992).

Article 13, UCMJ, reads, "No person, while being held for trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him, nor shall the arrest or confinement imposed upon him be any more rigorous than the circumstances required to insure his presence, but he may be subjected to minor punishment during that period for infractions of discipline." It prohibits (1) illegal pretrial punishment and (2) pretrial confinement conditions more rigorous than necessary to ensure the accused's presence at trial. United States v. Inong, 58 M.J. 460, 463 (C.A.A.F. 2003).

[10] This instruction was superseded by the 21 November 2024 version of DoDI 1325.07 and the above paragraph was replaced but the updated version of the instruction was not effective at the time of Appellant's sentencing and therefore does not apply to his case.

[11] DoD 1325.7-M was superseded by DoDM 1325.08 on 12 July 2024 but was not effective at the time of Appellant's sentencing and therefore does not apply to his case.

Analysis

Appellant's analysis of his time in civilian confinement under an Article 13 "more rigorous than necessary" lens fails because it ignores that "[t]he United States was not involved in the issuance of the warrant, the failure to rescind such warrants, the enforcement of the warrants, nor the confinement in Law Vegas or Florida." (App. Ex. XVIII.)

The UCMJ applies only to the military. (*See* Article 2, UCMJ, listing those who are subject to the chapter). State authorities are not constrained by the requirements of Article 13. When the State acts contrary to Article 13 against the wishes of the military, there is no violation of Article 13, and Appellant is not entitled to relief. This Court has explained, that where Appellant was confined by civilian authorities for their own convenience and not at the request of military authorities, he is not entitled to relief. Harkins, 1992 C.M.R. LEXIS at *3.

Appellant's reliance on United States v. Lamb, 47 M.J. 384 (C.A.A.F. 1998) is misplaced. In Lamb, our superior Court held that R.C.M. 305 must be followed "if a military member is confined by civilian authorities for a military offense *and with notice and approval of military authorities*." Id. at 385 (emphasis added). Appellant was not confined with either notice or approval of military authorities. In fact, military authorities acted to secure Appellant's release upon notification that he was being confined against the Government's wishes. (App. Ex. XVIII). Because Appellant was not confined by the military or at the military's approval, no R.C.M. 305 hearing or justification by the Air Force that the confinement complied with Article 13 was required and Appellant is not entitled to relief.

Further, the military judge correctly found that Appellant was not held by civilian authorities for the crimes he was later convicted of, and so he was not entitled to Allen credit for lawful pretrial confinement. Appellant was acquitted of the alleged crimes involving R.D. for

which Florida confined him. (*EOJ*). He was convicted of entirely unrelated crimes against his ex-wife, R.C., in Arizona. Appellant "was never arrested for this DV incident, nor was he incarcerated for this offense." (App. EX. XVIII, para. 7.) Since DoD 1325.7-M only directs credit for confinement for crimes which the Appellant is later convicted, the military judge was correct in not awarding Appellant credit. DoD 1325.7-M, para. C2.4.2.

Civilian authorities held Appellant at the protest of the Air Force for crimes wholly unrelated to the offenses for which he was later convicted. Therefore, this Court should deny Appellant's requested relief.

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.

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel

MARY ELLEN PAYNE
Associate Chief

HEATHER R. BEZOLD, Capt, 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 Appellate Defense Division on 18 August 2025.

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	**MOTION TO AMEND**
Appellee	)	**PLEADING**
	)	
v.	)	
	)	Before Panel No. 1
Staff Sergeant (E-5)	)	
KYSHOWN D. CAMPBELL	)	No. ACM 40652
United States Air Force	)	
Appellant	)	Filed on 15 August 2025

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

Pursuant to Rule 23.3(n) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves to amend his Brief on Behalf of Appellant, dated 17 July 2025. Appellant respectfully withdraws AOE IV which is argued on pages 31-32 of the pleading and is captioned as follows:

IV.

> **Whether the record of trial should be remanded for correction to produce missing components of Prosecution Exhibits 5 through 9.**

Appellant explicitly maintains the remaining assignments of error in the pleading.

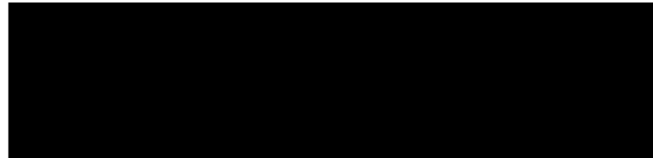
WHEREFORE, Appellant respectfully requests this Honorable Court grant his motion to amend pleading.

Respectfully submitted,

MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel

CERTIFICATE OF FILING AND SERVICE

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



MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*	)	**REPLY BRIEF ON BEHALF OF APPELLANT**
v.	)	Before Panel No. 1
Staff Sergeant (E-5) **KYSHOWN D. CAMPBELL** United States Air Force *Appellant*	)	No. ACM 40652 25 August 2025

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

Appellant, Staff Sergeant (SSgt) Kyshown D. Campbell, pursuant to Rule 18(d) of this Court's Rules of Practice and Procedure, files this Reply to the Government's Answer (Ans.), dated 18 August 2025. In addition to the arguments in his opening brief (Opening Br.), filed on 17 July 2025, SSgt Campbell submits the following arguments for the issues below.

I.

The conviction for domestic violence was factually and legally insufficient because the testimony of the Government's primary direct witness, the alleged victim R.C., was vastly contradicted throughout the court-martial.

The Government's sole direct evidence of the alleged domestic violence was the testimony of R.C. That testimony is insufficient to affirm SSgt Campbell's conviction because it was fraught with contradiction from the other evidence adduced at trial. The Government chalks this up to a mere issue of credibility that the factfinder weighed in favor of the Government. (Ans. at 12.) But that assessment severely misapprehends the issues with R.C.'s testimony. The Government goes so far as to suggest that R.C. was a credible witness because certain portions of her testimony were corroborated by other evidence. (Ans. at 13.) This overlooks the blatant contradictions that vastly undermine her assertions.

The body-camera footage that was captured almost immediately after the alleged incident powerfully undermines R.C.'s account. She not only denied that domestic violence had taken place, but appeared visibly and naturally confused when the responding officer mentioned the possibility of it. (Pros. Ex. 1 at 03:35.) While R.C. testified that she sustained injuries that were so severe and excruciating that she could not sleep (R. at 39, 338), on the body camera she demonstrated no signs of injury and even motioned with her arms to show the police that she had not been hurt. (Pros. Ex. 1.) This footage, captured with much greater recency than her eventual trial testimony, raises considerable doubt about her allegations of domestic violence.

The Government gives no explanation for how R.C.'s trial testimony was believable in light of that footage, as specified in SSgt Campbell's assignment of errors. Nor does it explain why the military judge's apparent disregard of the body camera footage as highly exculpatory evidence should be afforded heightened deference. During factual sufficiency review, this Court assigns appropriate deference depending on the nature of the evidence. *United States v. Harvey*, 85 M.J. 127, 130-31 (C.A.A.F. 2024). Objective evidence like the body camera footage calls for much less deference to the factfinders' determinations because this Court can assess it themselves, as opposed to live testimony that the factfinder personally observed. *Id.* at 131. Indeed, "[t]ape recordings, whether video or audio, are powerful evidence." *United States v. Washington*, 417 F.3d 780, 787 (7th Cir. 2005). This Court should assign a high level of probative value to the body camera footage and acknowledge its tendency to contradict R.C.'s later claim of domestic violence.

Instead of dealing with R.C.'s denial of any abuse, The Government suggests that R.C.'s testimony is credible because it was corroborated by herself. (Ans. at 13.) It doubles down on R.C.'s assertion that she went to her neighbors after SSgt Campbell left their home to receive treatment for her injuries. (*Id.*) The Government presents this as a prior statement that apparently

preceded a motive to fabricate. (*Id.*) But this analysis fails because the neighbors, not even mentioned by name in the Government's brief, never testified at trial. In fact, the only evidence of this was R.C.'s own testimony about a hearsay conversation with the neighbors. (R. at 138-39.) Had the neighbors testified, they might have corroborated R.C. But R.C. merely claiming to have said something to the neighbors is not corroboration; it is just another unsupported claim by R.C. Because the military judge was unable to personally observe testimony from the neighbors describing the conversation, any weight that the military judge may have assigned the neighbors as outcry witnesses towards the finding of guilty should be afforded very little deference. This is especially so given that R.C.'s description of her injuries and treatment were flatly contradicted by her appearance on the body camera footage.

Nor was R.C.'s testimony corroborated by Special Agent G.G. (Ans. at 14.) In fact, Special Agent G.G.'s testimony as the only other direct witness to an altercation between SSgt Campbell and R.C. – albeit over the speakerphone – was further contradiction against R.C.'s testimony. Special Agent G.G. denied hearing any type of physical abuse taking place between the two. (R. at 354.) Crucially, Special Agent G.G. contradicted R.C.'s assertion that SSgt Campbell had smashed her phone because Special Agent G.G. testified that she was able to call back on the same phone. (R. at 353.) Other details of R.C.'s testimony were also contradicted by Special Agent G.G., such as SSgt Campbell's alleged verbal threats and P.C. screaming. As a friend of R.C. – whose only potential bias was towards R.C. – this Court should assign considerable weight to Special Agent's G.G.'s testimony, especially her assertion that she did not have any "concrete indication that anything was truly wrong at the [SSgt Campbell's] residence." (R. at 369.) While a "factfinder[] may believe one part of a witness' testimony and disbelieve another," there is no sound basis for disregarding Special Agent G.G.'s testimony that no domestic violence took place,

especially in light of the body camera footage. *United States v. Harris*, 8 M.J. 52, 59 (C.M.A. 1979). Special Agent G.G.'s testimony raises more than a reasonable possibility that the conviction was factually and legally insufficient. Taken together with the lack of meaningful corroboration, R.C.'s substantial credibility deficiencies, and the objective contradiction of R.C. from the body camera footage, this Court should set aside the findings and the sentence.

II.

The military judge erred by admitting uncharged acts of prior domestic violence as proof of motive because his analysis demonstrated that the acts were entered to show propensity.

Although the military judge used the term "motive" to describe the admission of the uncharged domestic violence allegations, his analysis fit within the rubric of propensity, which was an impermissible basis. Mil. R. Evid. 404(a)(1). The Government acknowledges that the military judge did not use the specific terms that the Court of Appeals for the Armed Forces (C.A.A.F.) has used when analyzing motive, but suggests that military judge still applied the right standard. (Ans. at 23.) This is incorrect. The standards for admitting evidence of motive are precise and important because the distinction between motive and propensity is crucial for protecting the integrity of the proceedings. *United States v. Hogan*, 20 M.J. 71, 73 (C.M.A. 1985). The failure of the military judge to properly assess the uncharged acts introduced "the wolf of propensity that comes dressed in the sheep's clothing of motive." *United States v. Wilson*, 84 M.J. 383, 392 (C.A.A.F. 2024).

For uncharged acts to be probative of motive the military judge must make a finding of the accused's internal emotional state. *United States v. Watkins*, 21 M.J. 224, 227 (C.M.A. 1986). The military judge did not do this, instead only identifying a causal relationship based on SSgt Campbell's supposed tendency to respond to accusations of infidelity with violence. Without

findings related to an internal emotional state, this causal relationship fits squarely within the definition of propensity. The Government reinforces this line of thinking by agreeing with the military judge's conclusion that SSgt Campbell was "triggered" to act violently under certain circumstances as a seeming disposition towards cause and effect. (Ans. at 24.)

The need for the military judge to identify an internal emotional state for uncharged acts to be admitted for motive is reinforced by the cases cited by the Government. The Government point out "rising animosity" – cited by the Fourth Circuit – as if the mere presence of "[p]rior assaults involving the same victim" are enough to show motive under Mil. R. Evid. 404(b). (Ans. at 23) (quoting *United States v. Lewis*, 780 F.2d 1140, 1142 (4th Cir. 1986)). Not only would this over-simplification of the Fourth Circuit's analysis suggest disregard for Mil. R. Evid. 404(b)(1)'s prohibition, but the full quotation – that the Government omits – actually identified "rising animosity, evidence by racial slurs, broken glasses, and a recent scuffle." *Lewis*, 780 F.2d at 1142. What the Fourth Circuit was referencing was an escalating series of confrontations between the victim and the appellant that resulted in substantial bad blood, with the victim using racial epithets, the appellant responding with a scuffle, and the victim breaking the appellant's glasses in the process, all of which generated the appellant's "resentful" attitude towards the victim. *Id.*

In its broader contest, that case more neatly fits into the standards for motive found in *Watkins* because it identifies the specific actions – racial slurs, broken glasses, and a recent scuffle – and connects them to the internal emotional state of "animosity." In this case, the military judge did not identify any internal state in SSgt Campbell, nor did the nature of the uncharged acts readily speak to any particular emotion in the way that the actions in *Lewis* were probative of "resentfulness." Unlike *Lewis*, this left the military judge with just a causal relationship of mere propensity for SSgt Campbell to act violently.

Similarly, in *United States v. Berckmann*, the Ninth Circuit recognized that "prior . . . acts of violence towards the identical victim can shed light on the *mindset* of the defendant." 971 F.3d 999, 1002 (9th Cir. 2020) (emphasis added). However, the Ninth Circuit also acknowledged that the uncharged acts had to be shown as relevant to some particular aspect of the accused's internal state "such as whether there was a grudge between the two, a desire for payback of some sort, or that the defendant had the intent to exert control over [the] particular victim through violence." *Id.* The military judge's determination in this case establishes no such connection. In fact, the military judge dispensed with the notion that the uncharged acts were relevant to show an intent to exert control. (App. Ex. VIII at 15) ("the court does not find evidence of these prior physical assaults is admissible to show [SSgt Campbell]'s intent to control or dominate R.C."). Rather, the military judge simply concluded that SSgt Campbell was triggered by accusations of infidelity. (*Id.*) The military judge did not make any findings, nor did the evidence show, that those accusations were relevant to an internal motivation like the ones articulated in *Berckmann*. While the Government attempts to insert an emotional assessment into the military judge's ruling, there was no such analysis at the trial level. (Ans. at 24.) Without this, the military judge's determination did not meet the standards for showing motive and therefore amounted to inadmissible propensity evidence. Accordingly, the admission of the uncharged acts was erroneous and prejudicial given the weaknesses in the Government's case. (Opening Br. at 21.)

III.

The Government was unable to authenticate the videos on Prosecution Exhibits 5 through 9 because no witness could testify that the videos found on the SD card on 30 June 2021 were the same as the ones assembled on the compact discs and the SD card was exchanged through a broken chain of custody.

The authentication of Prosecution Exhibits 5 through 9 was undermined by the broken chain of custody and the lack of any witness that could testify that the videos presented on compact disc were a fair and accurate reflection of any videos found on the SD drive on 30 June 2021. As a threshold matter, Mil. R. Evid. 901(a) requires that the proponent of the evidence "produce evidence sufficient to support a finding that the item is what the proponent claims it is." The Government presented no witness that was able to demonstrate that the videos offered at trial on compact disc were the same as any videos located on the SD card that R.C. discovered on 30 June 2021.

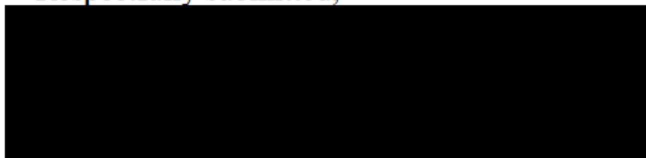
While the Government suggests that R.C. could do so, this is undermined by her testimony that she did not review any of the video clips on the SD card for more than a couple of seconds. (R. at 139, 192, 195.) The Government points out that R.C. "confirmed that the videos on the disc marched the videos she saw on the SD card." (Ans. at 41.) But R.C.'s testimony was conclusory and without a proper foundation because she only viewed the clips in their entirety just two days before trial, and only on the compact discs. (R. at 149-50.) This meant that she was unable to say whether the video clips were in "substantially the same condition" as they were on the SD card. While the Government suggests that R.C.'s failure to view the video clips goes to weight, not admissibility, this is untrue. Authentication is a perquisite to admissibility. *United States v. Browne*, 834 F.3d 403, 405 (3rd Cir. 2016).

The Government misconstrues this foundational principle by arguing that authentication boils down to whether R.C. could identify the subjects of the videos, the places they were filmed, and the approximate timeframe of the recording. (Ans. at 37.) This fundamentally misunderstands the specific issues of authentication, which are not just whether the contents of the clips were fair and accurate portrayals of what they captured, but whether they were fair and accurate portrayals of what was found on the SD card. This is because the Government explicitly tried to admit the videos as fair and accurate representations "the same videos that were on the SD card." (R. at 146, 147, 149.) The Government echoed this theory of relevance during its closing argument by suggesting that the videos found on the SD card went to SSgt Campbell's motive for the alleged domestic violence. (R. at 703, 710.) Authentication thus required the Government to establish that the videos on the compact disc were the same videos on the SD card. This is because authentication is a function of relevance, wherein the relevance of the evidence offered depends on it actually being what it is offered as. *Browne*, 834 F.3d at 410. The Government had to authenticate the video clips as originating from the SD card because that's what the Government purported them to be. Mil R. Evid. 901(a). R.C. could not testify to whether the compact discs were fair and accurate reflections of anything recovered from the SD card because she did not know what was on the SD card.

This gap in the authentication could not be cured through reference to a chain of custody tending to show that the contents of the SD card were unaltered because the chain of custody for the SD card fatally flawed. The Government acknowledges that the chain of custody for the SD card was "imperfect," but this understates the issue. (Ans. at 39.) Other cases, including those cited by the Government, which lack a witness to testify about the contents of a video clip from personal knowledge, have allowed for admission based on much more stringent chains of custody

than seen here. This Court's decision in *United States v. Poole* is most emblematic of this because the agent that directly recovered video clips from the accused's phone was able to testify that the same clips presented at trial were the same as the ones he recovered from the accused's phone. *United States v. Poole*, No. ACM 39308, 2019 CCA LEXIS 235, at *22 (A.F. Ct. Crim. App. May 15, 2019). The cases cited by the Government are of similar accord. *See United States v. Broomfield*, 591 Fed. Appx. 847, 852 (11th Cir. 2014) (admitting video from YouTube where testimony showed that Government did not produce the video such that it was subject to alteration by law enforcement and the video presented at trial matched the one first found on YouTube); *United States v. Smith*, 2025 U.S. App. LEXIS 1114, at *4, *9 (4th Cir. Jan. 17, 2025) (admitting Snapchat video where the defendant admitted that the recording of Snapchat video appeared to be the same as the original video clip that was lost). But in this case, there was no testimony that the video clips on the compact discs were the same as any video clips found on the SD card. Without this, the Government did meet the threshold burden of showing that the videos were what the Government claimed they were. Mil. R. Evid. 901(a). Accordingly, admission of Prosecution Exhibits 5 through 9 was improper.

Respectfully submitted,

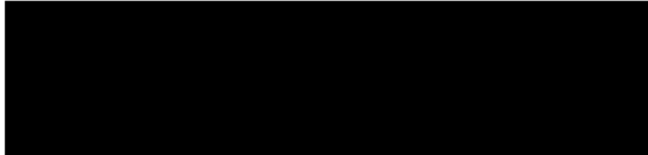


MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel

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 Government Trial and Appellate Operations Division on 25 August 2025.

Respectfully submitted,



MICHAEL J. BRUZIK, Capt, USAF
Appellate Defense Counsel

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40652**
Appellee	)	
	)	
v.	)	
	)	**NOTICE OF**
Kyshown D. CAMPBELL	)	**PANEL CHANGE**
Staff Sergeant (E-5)	)	
U.S. Air Force	)	
Appellant	)	

It is by the court on this 12th day of September, 2025,

ORDERED:

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

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

GRUEN, PATRICIA A., Colonel, Senior Appellate Military Judge
MASON, BRIAN C., Lieutenant Colonel, Appellate Military Judge
MORGAN, CHRISTOPHER S., Colonel, Appellate Military Judge

This panel letter supersedes all previous panel assignments.

FOR THE COURT

JACOB B. HOEFERKAMP, Capt, USAF
Chief Commissioner

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40652**
Appellee	)	
	)	
v.	)	
	)	**NOTICE OF**
Kyshown D. CAMPBELL	)	**PANEL CHANGE**
Staff Sergeant (E-5)	)	
U.S. Air Force	)	
Appellant	)	

It is by the court on this 20th day of October, 2025,

ORDERED:

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

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

GRUEN, PATRICIA A., Colonel, Senior Appellate Military Judge
KEARLEY, CYNTHIA T., Colonel, Appellate Military Judge
MORGAN, CHRISTOPHER S., Colonel, Appellate Military Judge

This panel letter supersedes all previous panel assignments.

FOR THE COURT

JACOB B. HOEFERKAMP, Capt, USAF
Chief Commissioner

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40652**
Appellee	)	
	)	
v.	)	
	)	**NOTICE OF PANEL CHANGE**
Kyshown D. CAMPBELL	)	
Staff Sergeant (E-5)	)	
U.S. Air Force	)	
Appellant	)	

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

ORDERED:

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

This panel letter supersedes all previous panel assignments.

FOR THE COURT

JACOB B. HOEFERKAMP, Capt, USAF
Chief Commissioner