

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

**UNITED STATES,**  
*Appellee,*

v.

Airman First Class (E-3)  
**BROCK T. ANDERSON**  
United States Air Force  
*Appellant*

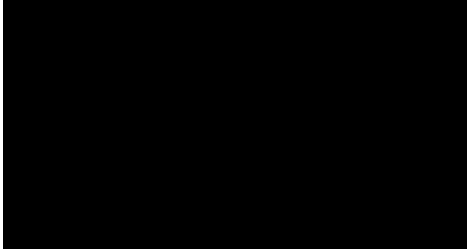
)  
) **UNITED STATES ANSWER TO**  
) **ASSIGNMENTS OF ERROR**  
)  
)  
) Before Panel No. 2  
)  
) No. ACM 40752  
)  
) 8 September 2025

---

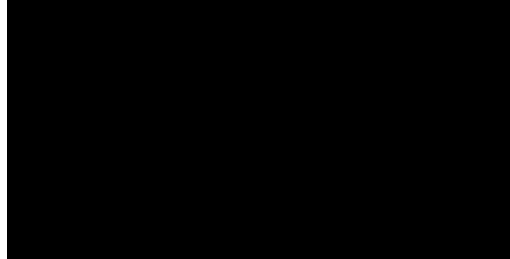
**TO THE HONORABLE, THE JUDGES OF THE UNITED STATES AIR FORCE**  
**COURT OF CRIMINAL APPEALS**

---

REGINA HENENLOTTER, Maj, USAF  
Appellate Government Counsel



MARY ELLEN PAYNE  
Associate Chief



**INDEX**

TABLE OF AUTHORITIES.....v

ISSUES PRESENTED..... 1

STATEMENT OF THE CASE.....2

STATEMENT OF FACTS .....2

ARGUMENT ..... 18

**II.**

**THE MILITARY JUDGE DID NOT ABUSE HIS  
DISCRETION IN ADMITTING EVIDENCE PURSUANT TO  
MILITARY RULE OF EVIDENCE 414.**

*Additional Facts* ..... 18

*Standard of Review* ..... 23

*Law and Analysis* ..... 23

*A. The military judge did not err in concluding  
good cause existed for trial counsel’s delayed  
notice under Mil. R. Ev. 414.*..... 25

*B. The military judge correctly found that the  
proffered evidence qualified as another offense  
of child molestation under Mil. R. Ev. 414.* ..... 27

*C. The evidence was relevant under Mil. R. Ev. 401  
and 402 to show Appellant’s propensity to  
commit the offense of child molestation.*..... 28

*D. The military judge conducted a thorough balancing test  
and reasonably concluded that the probative  
value outweighed the danger of unfair prejudice.*..... 29

*E. There was no prejudice to Appellant.*..... 32

I.

**THE EVIDENCE WAS FACTUALLY AND LEGALLY SUFFICIENT.**

*Additional Facts* ..... 35

*Standard of Review* ..... 35

*Law and Analysis* ..... 36

*A. Appellant has not shown a deficiency of proof in the Government’s case to trigger a factual sufficiency review.* ..... 37

1. **The documentary evidence showed Appellant’s intent to develop a relationship with RR.**..... 37

2. **RR did not lack credibility and any inconsistencies in her testimony were minor.**..... 39

3. **DS, JI, KA, and SH corroborated RR’s allegation of sexual assault.** ..... 41

4. **RR’s familial history did not establish a motive to fabricate wholesale an allegation of sexual assault against Appellant.**..... 42

*B. The weight of the evidence established beyond a reasonable doubt that Appellant committed sexual assault of a child.*..... 45

*C. Appellant’s conviction was legally sufficient.*..... 48

*D. Conclusion.*..... 51

III.

**THE SENTENCE TO CONFINEMENT FOR EIGHT YEARS IS NOT INAPPROPRIATELY SEVERE.**

*Additional Facts* ..... 51

*Standard of Review* ..... 53

*Law and Analysis* ..... 53

A. <i>Eight years of confinement is not inappropriately severe given Appellant’s crime.</i> .....	55
B. <i>There are no mitigating circumstances that rendered Appellant’s sentence inappropriate.</i> .....	56

**IV.**

**THIS COURT LACKS JURISDICTION TO ACT UPON AN  
18 U.S.C. § 922 INDICATION.**

<i>Standard of Review</i> .....	57
<i>Law and Analysis</i> .....	57

**V.**

**THE SENTENCE TO CONFINEMENT FOR EIGHT YEARS  
IS INAPPROPRIATELY SEVERE.**

<i>Standard of Review</i> .....	58
<i>Law and Analysis</i> .....	58
CONCLUSION.....	59
CERTIFICATE OF FILING AND SERVICE.....	60

**TABLE OF AUTHORITIES**

**UNITED STATES SUPREME COURT**

Huddleston v. United States,  
485 U.S. 681, 690 (1988).....24

Ramos v. Louisiana,  
590 U.S. 83 (2020).....58

Weiler v. United States,  
323 U.S. 606 (1945).....46

**COURT OF APPEALS FOR THE ARMED FORCES**

United States v. Acevedo,  
77 M.J. 185 (2018).....48

United States v. Anderson,  
83 M.J. 291 (C.A.A.F. 2023).....51

United States v. Ballard,  
20 M.J. 282 (C.M.R. 1985).....53

United States v. Barner,  
56 M.J. 131 (C.A.A.F. 2001).....49, 51

United States v. Baumann,  
54 M.J. 100 (C.A.A.F. 2000).....34

United States v. Collier,  
67 M.J. 347 (C.A.A.F. 2009).....30

United States v. Dewrell,  
55 M.J. 131 (C.A.A.F. 2001).....25

United States v. Fetrow,  
76 M.J. 181 (C.A.A.F. 2017).....23, 27, 32

United States v. Grostefon,  
12 M.J. 431 (C.M.A. 1982).....1, 2, 57, 58

United States v. Gunkle,  
55 M.J. 26 (C.A.A.F. 2001).....32

<u>United States v. Hamilton,</u> 78 M.J. 335 (C.A.A.F. 2019) .....	23
<u>United States v. Harvey,</u> 85 M.J. 127 (C.A.A.F. 2024) .....	36, 48, 51
<u>United States v. Healy,</u> 26 M.J. 394 (C.M.A. 1988).....	53, 54
<u>United States v. Kerr,</u> 51 M.J. 401 (C.A.A.F. 1999).....	32
<u>United States v. Kuemmerle,</u> 67 M.J. 141 (C.A.A.F. 2009).....	32
<u>United States v. King,</u> 78 M.J. 218 (C.A.A.F. 2019).....	31
<u>United States v. Kloh,</u> 27 C.M.R. 403 (C.M.A. 1959).....	47
<u>United States v. Johnson</u> No. 24-0004/SF (C.A.A.F. 24 June 2025) .....	57
<u>United States v. McAlhaney,</u> 83 M.J. 164 (C.A.A.F. 2023) .....	53
<u>United States v. McElhaney,</u> 54 M.J. 120 (C.A.A.F. 2000) .....	23, 27, 29
<u>United States v. Nerad,</u> 69 M.J. 138 (C.A.A.F. 2010) .....	54
<u>United States v. Rounds,</u> 30 M.J. 76 (C.M.A. 1990).....	41, 45
<u>United States v. St. Jean,</u> 83 M.J. 109 (C.A.A.F. 2023) .....	30
<u>United States v. Rodriguez-Rivera,</u> 63 M.J. 372 (C.A.A.F. 2006).....	46
<u>United States v. Washington,</u> 57 M.J. 394 (C.A.A.F. 2002) .....	35

<u>United States v. Washington</u> , 80 M.J. 106 (C.A.A.F. 2020) .....	34
<u>United States v. Williams</u> , 85 M.J. 121 (C.A.A.F. 2024) .....	57
<u>United States v. Wright</u> , 53 M.J. 476 (C.A.A.F. 2000) .....	25, 28, 30, 58
<u>United States v. Yammine</u> , 69 M.J. 70 (C.A.A.F. 2010) .....	24, 25, 28, 31

### **COURTS OF CRIMINAL APPEALS**

<u>United States v. Parker</u> , 54 M.J. 700 (A. Ct. Crim. App. 2001) .....	26
<u>United States v. Hamilton</u> , 77 M.J. 579 (A.F. Ct. Crim. App. 2017) .....	53
<u>United States v. Joyner</u> , 39 M.J. 965 (A.F.C.M.R. 1994) .....	53, 54
<u>United States v. Walters</u> , 71 M.J. 695 (A.F. Ct. Crim. App. 2012) .....	54

### **FEDERAL CIRCUIT COURTS**

<u>United States v. Brown</u> , 25 F.3d 307 (6th Cir. 1994) .....	58
--	----

### **UNIFORM CODE OF MILITARY JUSTICE**

Article 66 .....	45, 53
Article 120 .....	28
Article 120b .....	passim
Mil R. Ev. 401 .....	21, 24, 27, 28
Mil R. Ev. 402 .....	21, 24, 27, 28
Mil R. Ev. 403 .....	21, 24, 27, 29, 30

Mil R. Ev. 404(b).....	19, 20, 26
Mil R. Ev. 413.....	19, 25, 26
Mil R. Ev. 414.....	passim
R.C.M. 1002(a) .....	53, 54

**OTHER AUTHORITIES**

18 U.S.C. § 922.....	57
National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, Section 542(b), 134 Stat. 3611-12 .....	35

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	ANSWER TO ASSIGNMENTS OF
<i>Appellee,</i>	)	ERROR
	)	
v.	)	Before Panel No. 2
	)	
Airman First Class (E-3)	)	No. ACM 40752
<b>BROCK T. ANDERSON</b>	)	
United States Air Force	)	8 September 2025
<i>Appellant.</i>	)	

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

**ASSIGNMENTS OF ERROR**

**I.**

**THE EVIDENCE IS LEGALLY AND FACTUALLY INSUFFICIENT TO SUSTAIN THE FINDING OF GUILTY FOR SEXUAL ASSAULT OF A CHILD.**

**II.**

**THE MILITARY JUDGE ABUSED HIS DISCRETION IN ADMITTING EVIDENCE PURSUANT TO MILITARY RULE OF EVIDENCE 414 AND THE GOVERNMENT CANNOT PROVE THAT THE ERROR WAS HARMLESS.**

**III.**

**THE SENTENCE TO CONFINEMENT FOR EIGHT YEARS IS INAPPROPRIATELY SEVERE.**

**IV.<sup>1</sup>**

**WHETHER THE GOVERNMENT CAN PROVE 18 U.S.C. § 922 IS CONSTITUTIONAL AS APPLIED TO APPELLANT BY “DEMONSTRATING THAT IT IS CONSISTENT WITH THE NATION’S HISTORICAL TRADITION OF FIREARM**

---

<sup>1</sup> This issue is raised in the appendix pursuant to United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982).

**REGULATION” WHEN APPELLANT WAS CONVICTED OF A NON-VIOLENT OFFENSE AND THIS COURT CAN DECIDE THAT QUESTION.**

**V.<sup>2</sup>**

**APPELLANT’S CONSTITUTIONAL RIGHTS WERE VIOLATED WHEN HE WAS CONVICTED OF AN OFFENSE WITH NO REQUIREMENT THAT THE COURT-MARTIAL PANEL (THE FUNCTIONAL EQUIVALENT OF THE JURY) VOTE UNANIMOUSLY FOR A FINDING OF GUILTY.**

**STATEMENT OF CASE**

On 9 August 2024, Appellant was convicted contrary to his plea of one charge and one specification of sexual assault of a child in violation of Article 120b, UCMJ. (ROT, Vol 1, *Entry of Judgement*, dated 15 October 2024). Appellant elected to be sentenced by the military judge, who sentenced Appellant to eight years of confinement, reduction to the rank of E-1, and the mandatory dishonorable discharge. (Id.) The convening authority took no action on the findings or sentence, but on 13 September 2024, granted Appellant’s request to waive automatic forfeitures for the benefit of KA, Appellant’s wife, and their two dependent children. (Id.)

**STATEMENT OF FACTS**

*Waycross, Georgia*

Appellant was born in September 2001. (R. at 919). RR, Appellant’s future stepsister-in-law, was born in July 2008. (Pros. Ex. 1). SH, RR’s mother, had lived in Waycross, GA for about 13 years. (R. at 636). Her family consisted of herself, her husband RH, her three children from a previous relationship, and her two children with RH. (R. at 636). RH had adopted several children with his previous wife, one of which was KA, Appellant’s wife. (R. at 640).

---

<sup>2</sup> This issue is raised in the appendix pursuant to United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982).

RR first met KA when they were both in elementary school. (R. at 693). They saw each other almost every day and became best friends despite the four-year age gap. (R. at 694). SH, RR's mother, and RH, KA's father, started dating in 2020. (R. at 694). RH and KA moved into SH's house, then KA moved out to live with her sister, KM, about a year later. (R. at 695). At that point, RR did not spend much time with KA because SH told RR that KA used drugs, but RR and KA remained in contact. (Id.) SH agreed that there were times when SH told RR to keep KA at a distance when KA was "using." (R. at 678). According to KA, KA and RR remained close as they became teenagers. (R. at 794). RR testified that they were not as close after KA moved out, but RR had "no beef" with KA. (R. at 698).

KA met Appellant in school, and they started to see each other romantically in 2021. (R. at 696, 795-796). SH met Appellant when KA introduced Appellant as her boyfriend. (R. at 642). RR met Appellant when she was 12 or 13 while KA was staying with him, and KA thought she, Appellant, and RR had "hung out" together a couple of times. (R. at 696, 800). RR was told to put Appellant's phone number in her contacts in case she ever needed anything. (R. at 701). After Appellant joined the Air Force in August 2021, KA became pregnant with his baby. (R. at 796). KA told RR early in the pregnancy about the baby. (R. at 697). In February 2022, KA moved to Altus, OK to be near Appellant. (R. at 797). RR continued to text with KA at least once a day. (R. at 697).

In February 2022, two of Appellant's friends, JI and DS, moved into Appellant's house with KA to "get on their feet." (R. at 603, 797, 899). DS and Appellant were "pretty close. . . close to a best friend." (R. at 602).

KA gave birth to NA on 20 April 2022. (R. at 798). KA texted RR about bringing NA back home for "everybody to meet [her] baby." (R. at 697). KA made the decision that she and

Appellant would take the baby to Georgia to visit with family. (R. at 799). KA, NA, and Appellant stayed at Appellant's parent's house in May 2022. (R. at 699). When KA brought NA to SH and RH's house, the mood was "happy," and SH and RR were both happy for KA. (R. at 699).

RR went to Appellant's parent's house during this visit, to include a few sleepovers. (R. at 700). Throughout the year, SH had been periodically taking RR's phone away, and she took it during KA's visit with NA. (R. at 702). While staying with KA, RR contacted people through her laptop through Instagram, TikTok, and iPhone text messaging. (R. at 702-703).

At 0023 on 7 May 2022 while RR was at Appellant's parents' house, Appellant texted RR "if u want to talk or anything tho I got u." (Pros. Ex. 2). RR replied that she was bored, Appellant texted "[w]ould u rather me go in there and do my work next to u [laughing emoticon]." (Id.) RR said "sure," and Appellant said, "U can tell me no [laughing emoticon]." (Id.) RR replied, "no you can come in here," and Appellant said, "[o]kay weirdo I'll be there in a sec." (Id.) Appellant did come into RR's room and sat on RR's bed beside her, but he did not stay long. (R. at 709).

At 0213 that same morning, Appellant texted RR through Instagram to go to sleep. (Pros. Ex. 2). When RR said she was, Appellant said RR was "[l]earning how to listen." (Id.)

At 0556 that same morning, Appellant texted RR on Instagram from a secondary account different to his main account called [REDACTED]" (Pros. Ex. 3). Appellant said:

[i]f u ever need to tell me something u for some reason don't want [KA] to see send it to this account or tell me in person. I hate that u feel like when u get anxious or depressed or even just bored your go to is chemicals. It doesn't make you a bad person. Your super sweet when u want to be. All I need is a "I'm bored" and I'll be there.

(Id).

When the time came to leave Waycross in May of 2022, KA and SH both decided RR would go with KA and Appellant to Altus, OK. (R. at 808). RR believed KA brought the idea up to SH, who thought it was a good idea. (R. at 712). RR and KA testified they were excited for RR to go to Altus, OK, and SH was supportive of RR going with KA. (R. at 713, 808-809). SH was fine with it because she thought KA was lonely, and she wanted RR “to see her sister.” (R. at 645, 647). RR was 13 years old and in eighth grade at the time. (R. at 748). Appellant was twenty years old. (Id.)

*Jackson, Mississippi*

RR left with Appellant and KA in the backseat of Appellant’s silver truck with NA. (R. at 713). RR did not have her phone because SH had taken it as a punishment, but she had her laptop. (R. at 714, 680). KA said that she and Appellant told RR not to vape in the backseat in front of the baby, and RR did not like being told “no.” (R. at 845). However, RR testified that she was never asked to stop vaping, and KA was “hitting [RR’s] vape as well. (R. at 765). RR also testified that KA and Appellant were often arguing in the car, and RR tried to sleep to pass the time. (R. at 720).

The group stopped for the night in Jackson, MS. (R. at 714). According to RR and KA, the hotel room only had one bed. (R. at 714, 810). RR testified that when KA said she would sleep in the middle, Appellant became frustrated and said he would sleep in the small chair in the room if he could not sleep in the middle. (R. at 715). KA then acquiesced and let Appellant sleep between KA and RR. KA also testified that Appellant slept between KA and RR in the hotel bed that night. (R. at 810).

As RR fell asleep lying on her side, she felt Appellant’s hand around her waist or hip. (R. at 716, 766). His hand moved to RR’s buttock and then her breasts over her clothes. (Id.)

This touching went on for a few minutes. (R. at 716). RR was wide awake again, and Appellant took her hand and placed it on his clothed “private area,” which she clarified meant his penis. (R. at 716-717). RR felt that Appellant was aroused. (R. at 717). As Appellant did this, he whispered to RR “that he needed to get a nut off.” (R. at 716). RR crawled out of bed and went into the bathroom for a few minutes. (R. at 716). She returned to the bed and slept closer to the edge, but it took a while she her to fall asleep because her “[a]drenaline was up.” (R. at 717). RR did not tell anyone what happened the next morning because she was afraid to tell KA. (R. at 718).

*Dallas, Texas*

The group stopped in Dallas, TX the next day. (R. at 721). RR originally testified that they went shopping at a large mall that day, but later said she was not certain if they went to the mall the day they arrived in Dallas or the morning after. (R. at 721, 773). RR testified that Appellant bought her a necklace at the mall. (R. at 721). They stayed at a hotel in Dallas with a bed and a pull-out couch. (R. at 722). RR and KA testified that they ordered food through DoorDash, and RR had a seafood bowl. (R. at 722, 813). Before getting ready to sleep late that night, RR realized she left her laptop in the truck. (R. at 723). RR and Appellant went down to get it and stopped by the hotel gym on the way. (R. at 723). KA testified that she remembered RR and Appellant leaving the hotel room together to get something from the truck. (R. at 813). At the truck, Appellant stood near the front door while RR went into the back door to get her laptop. (R. at 724).

RR grabbed her laptop and started to walk away. (R. at 729). Appellant then grabbed her arm and asked her to get in the truck. (Id.) RR complied and sat down on the back seat. (Id.)

Appellant told RR if she did not “do this,” he would ruin her relationship with KA and NA, as well as Appellant’s and KA’s. (R. at 729). RR “didn’t move” and “didn’t say anything.” (R. at 729). Appellant took RR’s clothes off, which were pajama pants and a T-Shirt. (R. at 729). Appellant leaned on RR’s shoulders and then took her underwear off. (R. at 731). RR was “sort of” lying down in the truck and the doors were shut. (R. at 781). Appellant inserted his penis in RR’s vagina. (R. at 731). Appellant was not wearing any protection, and he put his hands on RR’s shoulders, arms, and breasts. (R. at 731). While this was happening, RR felt disgusted with herself because Appellant was her “brother-in-law.” (R. at 732). RR stated the sexual assault did not cause her physical pain. (R. at 773).

Appellant did not penetrate RR’s vagina for very long. (R. at 731). Appellant ejaculated on RR’s leg and the seat of the truck. (R. at 732). Appellant took a baby wipe and cleaned “his mess up.” (R. at 732). RR dressed, went back to the hotel room, went into the bathroom, and cried. (R. at 732). KA was asleep on the bed or at least lying down, and RR did not tell her anything because it would ruin their relationship and KA’s relationship with Appellant. (R. at 732-733). KA said they were not gone long, and she did not notice anything about them when they came back to the hotel room. (R. at 813). Appellant slept on the couch while RR, KA, and NA slept on the bed. (R. at 722).

RR did not talk to Appellant the next morning. (R. at 733). KA testified that they went to the mall that morning, not the day before, and RR was “fine” while at the mall. (R. at 846). On the remaining drive to Altus, OK, RR did not talk to Appellant and “had a few conversations” with KA. (R. at 734). KA said both Appellant and RR were “fine” in the remaining drive from Dallas, TX to Altus, OK. (R. at 816).

*Altus, Oklahoma*

On arriving in Oklahoma, KA did not think RR was upset or showing any issues or animosity toward her. (R. at 817). JI, one of Appellant's and KA's roommates, testified that when RR first arrived with Appellant and KA, everything "was fine." (R. at 903). DS, the other roommate and Appellant's close friend, thought everyone "seemed fairly normal," if "tired," from the long drive. (R. at 609).

The same day they arrived in Oklahoma, Appellant went to the gym with DS and JI. (R. at 620, 903). While on the way to the gym, Appellant asked them what they "thought of [RR]." (R. at 620, 903). JI testified that Appellant called RR "kinda bad," meaning "hot," and said in "a jokingly way" that "if [RR] wasn't 13, he would fuck her." (R. at 904). DS also testified Appellant mentioned that RR did not "look like she's 13 and if she was older," Appellant "would do her." (R. at 620-21). DS took "do her" to mean "sexual activities." (Id.) Appellant also mentioned that RR had "big boobs." (R. at 621). The conversation made DS uncomfortable and ended shortly thereafter. (Id.) JI testified that he, DS, and Appellant had made "gross or vulgar jokes to each other before" and did not linger on them. (R. at 908-909). But Appellant's comment made JI feel a "bit weirded out." (R. at 914). Even when they joked about "vulgar things," they tried "not to go necessarily young," and Appellant's comments about RR were "[d]ifferent from the typical." (Id.)

RR testified that she slept in the nurse's room with NA that night. (R. at 735). JI thought that KA, RR, and Appellant slept in the same bed the first night RR came back with them from Georgia. (R. at 909). While in Oklahoma, RR would leave the house to walk to the gas station. (R. at 775). KA gave RR Appellant's phone on these walks, so she had a "way to call

somebody.” (R. at 777). RR was often on her laptop or talking to KA. (R. at 737). KA also let RR sign into TikTok on KA’s phone. (R. at 819).

RR felt uncomfortable and wondered how she would tell KA what had happened. (R. at 745). RR felt guilty about what had happened. (R. at 736). RR testified that she texted her friend HA the phrase “I f’d [Appellant]” using TikTok on KA’s phone. (R. at 736, 744). “F” meant “fuck,” but RR was unable to spell out the word due to TikTok’s censorship rules. (R. at 745).

KA thought a few days passed between their return to Altus and learning of RR’s allegation against Appellant. (R. at 819). When KA went to use TikTok on her phone, RR had not signed back out. (R. at 819). KA opened the messages on TikTok because she thought it was her account at first. (R. at 819). KA then saw a message from RR to her friend that RR had “F’d” Appellant. (R. at 820). KA was confused on reading this message. (R. at 823). KA slapped Appellant and argued with him and RR. (R. at 823). Appellant told KA that “it wasn’t true” and that “it didn’t happen.” (R. at 824). Appellant went into RR’s room to confront her, followed by KA, and RR felt the mood in the house turn to “confusion and anger and weirdness like on 10-100.” (R. at 738). KA was yelling “towards [RR], not at [RR].” (Id.)

DS arrived home during this “explosive” argument. (R. at 622). There “was a lot of arguing, yelling back and forth, a lot of verbal slurs back and forth between parties,” meaning KA and RR. (Id.) The argument lasted for about an hour after DS arrived home, calmed down, and then rose again “throughout the night.” (Id.) JI testified that during the argument between Appellant, KA, and RR, JI advised RR “to get a “rape kit” done, but RR said “she didn’t need a rape kit.” (R. at 912). RR testified that she did not remember a conversation with JI about a rape kit, but she did not get one. (R. at 778). JI also heard RR tell KA that RR did not want KA to

have Appellant for herself. (R. at 913). DS described KA as “distraught” and “enraged.” (R. at 623). At one point, Appellant had DS and JI leave to go “grab alcohol for them.” (Id.) When JI and DS returned, the argument had “dialed down a little bit but there was still that air of uncomfortableness.” (Id.)

*Return to Waycross, Georgia*

RR testified that she asked to leave Oklahoma. (R. at 739). SH testified that a few days after RR left Georgia, she received a call from KA saying RR wanted to return home because RR was “bored.” (R. at 648). When SH asked what was wrong, KA did not tell her. (Id.)

Appellant arranged for RR to fly home and originally asked his mother to pick RR up from the airport. (R. at 649). Once SH learned this, SH went to pick RR up from the airport because she did not know Appellant’s mother. (R. at 650). When RR returned home, she “wasn’t very talkative” but gave SH “the biggest, most emotional hug [SH had] ever got from her.” (R. at 650).

When she returned home, RR felt “self-destructive” and ashamed. (R. at 747, 748). She did not tell SH what happened immediately and ran away to HA’s house. (Id.) After returning home, RR told SH what had happened because RR was getting in trouble for being “self-destructive” and SH did not know why RR was acting that way. (R. at 747). SH testified that when she confronted RR about what was going on, RR said “I’ll never tell you.” (R. at 651). After pressing her, SH learned of the allegation against Appellant. (R. at 652). RR told SH “[Appellant] raped me.” (R. at 955). SH told her husband and then she called KA and Appellant. (R. at 654).

While on the phone with Appellant, SH asked if Appellant raped her daughter. (R. at 654). Appellant denied it. (Id.) The phone was then given to KA. (R. at 659). SH spoke with

KA about Appellant raping RR. (R. at 660). During this conversation, SH heard Appellant speaking in the background. (R. at 660). Appellant said, “she wanted it, she was literally begging for it,” or “she begged for it.” (Id.) Appellant said it “wasn’t rape, that it was just sex, that she wanted it.” (R. at 661). SH believed Appellant was speaking to KA, not her on the phone. (R. at 660). After SH had this phone call, RR was relieved to have the incident in the open. (R. at 662). SH then contacted the police in Ware County. (Id.) RR believed she spoke with law enforcement a week or two after, and MS, a child forensic interviewer, testified that she interviewed RR in May of 2022. (R. at 748, 976). When the case was turned over to the Air Force, the Air Force Office of Special Investigations (AFOSI) interviewed RR in September 2022. (R. at 755).

When JI tried to talk to Appellant about the sexual assault during the following week, Appellant “would generally try to avoid” discussing it. (R. at 916). When talking to DS, Appellant told DS that “nothing happened” between him and RR. (R. at 625). Then, Appellant told DS that “while in the bedroom while they were sleeping,” RR “grabbed his penis and that he was not in control so it shouldn’t be something he gets in trouble for.” (R. at 626). When describing this, Appellant was talking about the hotel room he stayed in with KA and RR. (R. at 633). When DS informed Appellant that he was the adult, and he had “full control of her, [and] the situation,” Appellant said that “he didn’t put her hand there; she did it herself, so, it’s not on him.” (R. at 626-627). Appellant also told DS that RR “moved his hand to her breasts.” (R. at 627).

KA testified that she and Appellant never discussed the incident again after the first argument. (R. at 825). KA denied telling JI, DS, and her other sister, KC, that Appellant later told her “all he did was he fucked [RR].” (R. at 829-831). However, for purposes of

impeachment, KC, DS, and JI testified that she originally told them that Appellant confessed to having sex with RR. (R. at 876, 907, 920). KC was told specifically that sex occurred in Appellant's truck (R. at 876), and JI also testified for impeachment purposes that KA told him Appellant admitted to kissing RR in the elevator in the hotel. (R. at 907).

#### *DNA Evidence*

Using a warrant for DoorDash, AFOSI was able to verify the location of the hotel Appellant, KA, and RR stayed in in Richardson, Texas outside of Dallas. (R. at 852-853). AFOSI was unable to find any security footage because the requests to local businesses and the hotel came in too late for footage to be saved. (R. at 853-854).

In August of 2022 and three months after the sexual assault, AFOSI searched Appellant's car for DNA evidence and took photographs of the vehicle. (R. at 857; Pros. Ex. 7). Special Agent AA testified that there was a baby seat in the car in the rear passenger seat. (R. at 866). AFOSI took DNA samples from the backseat of the car to compare to Appellant and RR. (R. at 859-860). Special Agent AA confirmed that Appellant's semen was present in the back seat of the truck. (R. at 867). RR's DNA was not found in Appellant's truck. (R. at 868). The Government also admitted the report from the United States Army Criminal Investigation Laboratory (USACIL), which confirmed the presence of Appellant's DNA in his semen and the absence of RR's DNA. (R. at 888; Pros. Ex. 8). There was a second DNA profile present in the samples collected, but it did not come from RR. (R. at 894). DNA that was collected from "outside the body onto some sort of fabric, . . . it is possible to detect just semen and not the individual where that (sic) possibly was penetrated." (R. at 896). The expert witness from USACIL explained that DNA can be degraded by hot temperatures as well as attempts to clean it with detergent, soap, water, or scrubbing. (R. at 889). In light of this, the expert could not "date

when th[e] semen was deposited in the back of the truck.” (Id.) The expert acknowledged that the semen could have been deposited after 10 May 2022 or a year beforehand. (R. at 892).

From 2021 to 2022, KA and Appellant “were moving around a lot” and sometimes had sex in Appellant’s truck. (R. at 957). KA estimated that they had sex in the truck ten or eleven times before May of 2022. (R. at 958). KA explained that they would have sex in the backseat of the truck by “mutual” agreement because they could be seen through the front window of the truck if they went up front. (R. at 960). KA confirmed that she did not have sex with Appellant for a least six weeks after NA was born on 20 April 2022. (R. at 959).

#### *RR’s Interviews*

MS, a child forensic interviewer, interviewed RR in May of 2022 about Appellant’s sexual assault from earlier that month. (R. at 973). To conduct a child forensic interview, MS will “build rapport” with the child before “transition[ing] to the topic of concern.” (R. at 972). For a child forensic interview, they are trained “not to ask any leading questions” or “directly ask anything.” (R. at 973). This technique is “to help ensure [the] accuracy” of the child’s statements. (R. at 973).

RR was “visibly uncomfortable” during her interview with MS. (R. at 975). She “did not want to answer questions,” and it “was difficult to get her to share details.” (R. at 975-976). RR did not tell MS that Appellant “grabbed her breast in Jackson, Mississippi.” (R. at 974). RR likewise did not tell MS that Appellant had her touch his penis or that Appellant grabbed her buttocks. (R. at 975). However, MS clarified that based on her training she never specifically asked RR if Appellant had touched her in Mississippi. (R. at 976). RR testified that she could not recall if she told MS about the touching in Mississippi. (R. at 766-767).

KT, a retired AFOSI agent, testified that he interviewed RR in September of 2022 before he retired. (R. at 995). As the interview progressed and they tried to talk about the incident, RR became uncomfortable. (R. at 997). KT observed RR “pull her knees up towards her” and “the more closed off her nonverbals became.” (R. at 997). It was difficult to get specific details from RR about the incident. (R. at 997). “Closed off behavior” is a “common characteristic” of children in “similar interviews” that KT has conducted. (R. at 1018).

KT stated that RR said on the night of the sexual assault, about seven to 8 minutes passed between RR leaving the hotel room with Appellant and returning to the hotel room. (R. at 990). RR testified that she did not know how long it took and did not remember what she told AFOSI. (R. at 771). KT said RR said from the time Appellant grabbed her at the truck to when Appellant cleaned himself up, about 20 seconds had passed. (R. at 990). RR testified that she did not remember saying it took 20 seconds and based on her memory at the time of trial it did not take 20 seconds. (R. at 772). KT also testified that RR told the interviewers that Appellant put his hand on the “chair” and the “door” during the sexual assault, and that RR never said Appellant pushed her shoulders down during the sexual assault. (R. at 991). RR clarified that during direct examination, she was not asked about where Appellant touched the truck and that he had touched both the truck and her body during the sexual assault. (R. at 772). When KT asked RR if Appellant had done anything sexual to her before this, KT said RR said no. (R. at 992).

KT testified that RR did not tell KT about a touch to her breast, buttocks, or Appellant’s penis, but she did say Appellant touched her leg. (R. at 992). KT recalled that RR said the touch to her leg made her uncomfortable, so she got up to go to the bathroom. (R. at 993). When KT asked if RR could explain the touch to her leg, RR told him she did not remember. (R. at 998). Based on her mannerisms, KT thought RR was “closed off” at that point of the interview. (R. at

998). KT thought he moved on to the events in Dallas, TX, at that point, which was where the reported incident occurred. (R. at 1000). RR could not remember if she told AFOSI about the touches in Mississippi. (R. at 768-796).

KT also remembered RR asking several times whether or not she could “sue” Appellant for the sexual assault, and said her mother told her to ask AFOSI that question. (R. at 993). However, when asking about a lawsuit, RR was still “closed off.” (R. at 1016). RR began to “open up” in the interview after the interviewer suggested telling them what had happened “for the betterment or to help her sister.” (R. at 1017). RR said she might have talked about suing Appellant “as a joke” and she did not “want nobody’s money.” (R. at 782). KA previously told RR that Appellant’s family “has money,” but neither RR nor her family have filed any lawsuit against Appellant. (R. at 782-783). SH had no recollection of discussing with RR a lawsuit against Appellant for the sexual assault. (R. at 681).

GJ, a paralegal with the base legal office at Altus AFB, testified that he participated in an interview with RR in October 2023. (R. at 962). GJ testified that RR did not inform the Government that Appellant touched RR’s breasts and buttock and that Appellant made RR touch his penis in Jackson, Mississippi, until the interview on 7 July 2024. (R. at 962). RR testified that she did not remember if she told the Government about the touches at that time. (R. at 769).

#### *RR’s Past Struggles*

RR’s younger brother passed away in 2016 when she was about eight years old. (R. at 757). RR cut herself a few times because she was hurt by his passing. (R. at 757). RR spent time at a mental treatment facility in 2020 or 2021, prior to the sexual assault. (R. at 758). RR drank alcohol “one or twice” and smoked marijuana “a little bit” when she was 12. (R. at 758). RR ran away from home when she was 12 or 13. (R. at 759). RR had been suspended a few

different times from school for fighting. 9R. at 760). SH never allowed RR to drink alcohol or smoke marijuana, and RR had gotten in trouble for sneaking out (R. at 760-761). At one point, RR googled the word “promiscuous,” but she did not recall why she looked it up. (R. at 762-763).

KA testified that RR is “a very angry person” who would yell if she was upset. (R. at 845). While together in Oklahoma, Appellant and KA would correct RR’s behavior, and RR would get mad at them. (R. at 848). After RR left Oklahoma, DS found a bottle of alcohol in RR’s bag that was half consumed, and RR said she was not certain if she drank at the house in Oklahoma. (R. at 632, 776).

SH testified that while RR was “a blessing to be around” in elementary school, she started to struggle as a teenager. (R. at 646). SH would often text “all of [her] teenagers. . . to not do drugs, smoke, or have sex.” (R. at 673). SH knew RR had consumed alcohol prior to April 2022. (R. at 674). SH denied knowledge that RR had been doing drugs. (R. at 673). She further denied that RR was ever hospitalized for overdosing on drugs or for a suicide attempt. (R. at 673). RR also denied that she ever attempted to kill herself or overdosed on drugs. (R. at 758). When asked about disciplining RR, SH said she never left any marks on RR. (R. at 681). RR admitted that when RR ran away from home, she told her friends SH bruised her but that was not true. (R. at 759). SH was not surprised to hear that RR had previously said SH left bruises on her because RR is a teenage girl and SH is “in the gunfire a lot.” (R. at 681).

Prior to the trip to Oklahoma, SH texted RR that SH did not “know what’s wrong lately, but you’re completely out of control, it’s time to come back down to earth.” (R. at 675). RR went to a mental treatment facility after the sexual assault and SH participated in group therapy with her. (R. at 676).

*Past Allegations of Sexual Assault Against RH (KA's father and RR's stepfather)*

According to SH, KA's sister KM moved out of RH's home in 2017 or 2018. (R. at 676). KA moved out in 2021 when KA turned 16. (R. at 676). KA testified that when she was 15 or 16, RH grabbed her by the hips and commented positively on her buttocks. (R. at 843).

KM testified that she was sexually abused by RH for a long time, and they fought about it in 2020. (R. at 947). KM stated she moved out, and SH paid her "a couple hundred dollars" not to make an allegation of sexual abuse against RH. (R. at 948). KM further testified that SH paid the downpayment on an apartment for KM and KA to live in. (R. at 948). KM then clarified that she did file a report against RH because she saw him continuing the abusive behavior with KA. (R. at 950). KM said she threatened RH and SH to give her KA, or KM would go forward with the allegation of sexual abuse against RH. (R. at 950). KM also claimed that a text message from KM's phone to RH admitting that the allegations were a lie did not come from her – she stated SH paid KM off to let SH send that message from KM's phone. (R. at 951).

When questioned by trial defense counsel, SH denied that KA, specifically, made an allegation that RH molested her. (R. at 677). SH explained that RH told KM she had to quit smoking marijuana or RH would turn KM's cellphone off. (R. at 677). KM threatened to accused RH of "something" about molestation if RH did not turn her cellphone back on. (Id.) RH told KM to follow his rules or leave, and KM left the home. (Id.)

According to SH, KA told her RH never molested KA. (Id.) SH testified that KA said that RH had "never done anything like that to her" and that KM also later admitted "nothing ever happened [to her] as well." (Id.) SH denied that she and RH paid KA and KM money not to make a report against RH. (Id.) RR testified that KA moved out to live with her grandmother and sister, and SH and RH allowed it. (R. at 763). RR denied any "vendetta" against KA for her

allegations against RH, but she did tell KA in April of 2022 that KA should apologize to RH. (R. at 764).

KA married Appellant in November 2022, although they were separated at the time of trial. (R. at 799, 827). KA was worried that if the allegation against Appellant got out, that she would lose her kids. (R. at 832). KA had a second baby with Appellant approximately ten months before the trial. (R. at 827). KA refused to speak with trial counsel beyond a short discussion they had prior to an earlier hearing. (R. at 826). On one occasion, KA hung up the phone when the Government tried to speak with her. (Id.) At the time of the trial, KA was still married to Appellant and receiving benefits such as TRICARE for herself and her children. (Id.) KA was still worried that Appellant would get in trouble. (R. at 832). KA's sister KC said KA "tends to manipulate things in order to benefit her." (R. at 873).

## **ARGUMENT**

### **II.<sup>3</sup>**

#### **THE MILITARY JUDGE DID NOT ABUSE HIS DISCRETION IN ADMITTING EVIDENCE PURSUANT TO MILITARY RULE OF EVIDENCE 414.**

##### ***Additional Facts***

Appellant's trial on the merits was originally scheduled to begin 8 July 2024. (App. Ex. XXXIV). On 7 July 2024, the senior trial counsel interviewed RR. (Id.) During this interview, the Government learned that the location of the offenses alleged in specifications 1 through 3 was Jackson, Mississippi, rather than within the state of Texas as reflected on the charge sheet.

---

<sup>3</sup> For ease of understanding, the Government reordered Issues I and II of Appellant's brief as the admission of evidence under Mil. R. Evid. 414 goes to the factual and legal sufficiency of Appellant's conviction.

(Id.) The Government moved to amend the charge sheet to the correction location on 7 July 2024. (Id.)

GJ, the government paralegal, testified that RR did not inform the Government that Appellant touched RR's breasts and buttock and that Appellant made RR touch his penis in Mississippi, until the interview on 7 July 2024, which was the day before trial was scheduled to begin. (R. at 144-145, 962). RR testified that she believed she told trial counsel that the offenses took place in Mississippi in the fall of 2023, but she did not have "a specific memory" of doing so. (R. at 309-311, 962). DS, Appellant and KA's roommate, testified at the motions hearing about the comments Appellant made regarding RR touching his penis and putting his hand on her breast while they were in the bedroom of a hotel. (R. at 286-287).

On 9 July 2024, the military judge denied the Government's ruling to amend the charge sheet and found changing the location to Jackson, Mississippi, would be a major change. (Id. at 6). Specifications 1 through 3 of the Charge were dismissed without prejudice. (Id.) Following an RCM 802 conference with the military judge, the trial was continued until the week of 5 August 2024 by joint request of the parties, and trial counsel planned to provide Mil R. Evid. 404(b) notice that afternoon to the parties. (R. at 212).

On 9 July 2024, the Government notified trial defense counsel and the military judge of its intent to offer the following evidence under Mil R. Evid. 404(b) and Mil. R. Evid. 413<sup>4</sup>:

Evidence that the accused touched the breast of RR in a hotel bed while laying in between the victim and [KA] on or about 9 May 2022 at or near Jackson, Mississippi.

---

<sup>4</sup> App. Ex. XLVII originally stated an intent to offer this evidence under Mil. R. Evid. 413.

Evidence that the accused touched the buttocks of RR in a hotel bed while laying between the victim and [KA] on or about 9 May 2022 at or near Jackson, Mississippi.

Evidence that the accused caused RR to touch his penis in the hotel bed while laying between the victim and [KA] on or about 9 May 2022 at or near Jackson, Mississippi.

(App. Ex. XLVII).

The three proffers listed above revolved about the conduct originally charged in Specifications 1 through 3 of the charge. (ROT, Vol 1, *Charge Sheet*, dated 8 May 2023). With respect to Mil. R. Evid. 404(b), the Government informed trial defense counsel and the military judge that they would offer the evidence to show Appellant’s “motive, intent, and plan.” (App. Ex. XLVII). More specifically, that the conduct “evidences an intent to enter a sexual relationship with the victim, it shows a plan to test and break down [RR’s] boundaries and escalate the sexual conduct from a touch to sexual penetration, and is evidence of the Accused’s motive to engage in sexual contact with the victim.” (Id.)

Trial defense counsel moved to exclude the proffered evidence on 9 July 2024 and clarified that the evidence was contested under Mil. R. Evid. 414. (App. Ex. XLVIII at 4). Trial defense counsel argued that because the military judge’s scheduling order had required all notices to be filed by 28 June 2023, and the Government had access to RR to find this information and provide notice sooner, there was “no good cause” for the Government to notify trial defense counsel “on the eve of trial.” (Id. at 5). Trial counsel opposed trial defense counsel’s motion to exclude on 9 July 2024. (App. Ex. XLIX).

The military judge denied trial defense counsel’s motion to exclude the evidence under Mil. R. Evid. 404(b) and 414. (App. Ex. LVIII). The military judge found that the noticed evidence “are the same acts that were litigated . . . on 8 July 2024 regarding the Government’s

[change] (sic) to the charge sheet.” (Id.) The military judge found by a preponderance of the evidence that Appellant touched RR’s breast and buttocks and put RR’s hand on his penis while they were at the hotel in Jackson, MS. (Id.)

The military judge found that the proffered evidence was evidence of the commission of another offense of child molestation. (Id.) He was satisfied by RR’s testimony at a motion’s hearing on the evidence, DS’s testimony at motions, and RR’s child forensic interview. (Id.) This evidence was “sufficient proof whereby the factfinder could conclude by a preponderance of the evidence that the Accused committed another qualifying offense of child molestation.” (Id.) He likewise found the evidence to be relevant under Mil. R. Evid. 401 and 402, was satisfied because the evidence tended to “make it more probable that the Accused would commit sexual assault against RR.” More specifically, the military highlighted that:

The proffered evidence and the allegations in both cases involve the same female victim, close in time and setting (same road trip, occurring during night time at their hotel stops). A common factor is the Accused’s predisposition, and his motive, to engage in sexual acts with this person during their road trip, when they stop for the night at hotels.

(Id.)

The military judge performed a Mil. R. Evid. 403 balancing test regarding the proffered evidence. (Id.) He found there was strong proof of the prior acts from RR’s testimony and her child forensic interview. (Id.) The military judge noted that while RR did not provided details “in spite of repeated attempts by interviewers to clarify,” RR said that Appellant touched her leg. (Id.) The military judge found RR’s details “consistent with the level of detail a child of her age at that time, would share in that setting.” (Id.) The military judge also noted that DS testified that Appellant told DS about “an incident where the Accused’s hand was placed on RR’s breast and there was a moment where [RR] had touched [Appellant’s] genital area and he didn’t push

her away.” While the military judge noted the inconsistency between DS’s belief that this occurred in a Texas hotel versus RR’s testimony that it happened in Jackson, MS, “the substance of what the Accused told [DS] increased the strength of proof of the prior acts.” The factor weighed in favor of admissibility.

Considering the probative weight of the evidence, the military judge found that the “sexual abuse of RR the night before the charged offense in a similar setting, demonstrates [Appellant’s] willingness to engage in sexual acts with this victim on the same road trip.” (Id.) The military judge found the evidence’s high probative weight” was in favor of admissibility. (Id.) The military judge stated it had not identified the potential for less prejudicial evidence, and the temporal proximity of the acts that “allegedly occurred less than a day prior to the charged offense” weight in favor of admissibility.

The noticed acts would not “inject distraction, confusion, and distance in time” to the charged offense. (Id.) The evidence would simply come out through “questioning of RR about what happened during the road trip” while trial defense counsel would “have the opportunity to cross examine [RR] and thereby attack her allegation. (Id.) This factor also weighed in favor of admissibility. (Id.)

The frequency of the acts, which the military judge found were “all essentially a continuing course of conduct . . . less than a day before the charged offense,” weighed in favor of admissibility. (Id.) The military judge also found there were no intervening circumstances. (Id.) Finally, the military found that the relationship between the parties favored admission because the proffered evidence was between Appellant and the named victim. (Id.)

As a result of these factors, the military judge found that the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. (Id.)

With respect to the late notice from the Government, the military judge found good cause existed to excuse the late notice because the evidence “was noticed shortly after the Government discovered it.” (Id.) The military judge further noted that due to the bifurcated motions hearing from 8 July 2024 and trial on 5 August 2024, trial defense counsel had “sufficient time to prepare.” (Id.)

During findings instructions, the military judge advised the panel that the child molestation offenses:

on [their] own, [are] not sufficient to prove the accused guilty of a charged offense. You may not convict the accused solely because you believe he committed another child molestation offense . . . or solely because you believe the accused has a propensity to engage in child molestation offenses. Bear in mind that the government has the burden to prove that the accused committed each of the elements of the charged offense.

(R. at 1035).

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

A military judge's decision to admit evidence is reviewed for an abuse of discretion. United States v. Hamilton, 78 M.J. 335, 340 (C.A.A.F. 2019). Whether “the admitted testimony constitutes evidence that the accused committed another offense of child molestation under M.R.E. 414 is one of law, reviewed de novo.” United States v. Fetrow, 76 M.J. 181, 185 (C.A.A.F. 2017) (internal citation omitted).

### ***Law and Analysis***

“The abuse of discretion standard is a strict one, calling for more than a mere difference of opinion. An abuse of discretion is more than a mere difference of opinion. The challenged action must be arbitrary, fanciful, clearly unreasonable, or clearly erroneous.” United States v. McElhaney, 54 M.J. 120, 130 (C.A.A.F. 2000).

Mil. R. Evid. 414(a) provides that “[i]n a court-martial proceeding in which an accused is charged with an act of child molestation, the military judge may admit evidence that the accused committed any other offense of child molestation,” and that such evidence “may be considered on any matter to which it is relevant.” For purposes of the rule and in relevant part, “child molestation” includes an offense involving “any conduct prohibited by Article 120 and committed with a child, or prohibited by Article 120b.” Mil. R. Evid. 414(d)(2).

Trial counsel must provide notice to the accused of its intent to offer this evidence at least five days prior to entry of pleas “or at a later time that the military judge allows for good cause.” Mil. R. Evid. 414(b).

Under M.R.E. 414, trial counsel is permitted to admit evidence of a prior act of child molestation to show an accused’s propensity to commit a charged act of child molestation. United States v. Yammine, 69 M.J. 70, 73 (C.A.A.F. 2010). To allow evidence under Mil. R. Evid. 414, the military judge must make three threshold findings:

- (1) that the accused is charged with an act of child molestation as defined by Mil. R. Evid. 414(a);
- (2) that the proffered evidence is evidence of his commission of another offense of child molestation, and;
- (3) that the evidence is relevant under Mil. R. Evid. 401 and Mil. R. Evid. 402

Id. at 74.

The military judge must then still apply a balancing test under Rule 403. Id. The military judge must conclude that the panel could find by a preponderance of the evidence that the uncharged offenses of child molestation occurred. Id. at 74 n.3, (citing Huddleston v. United States, 485 U.S. 681, 690 (1988)). Some factors to consider under the balancing test include (1) the strength of proof of the prior act, including the range between a convicted offense or gossip;

(2) the probative weight of the evidence; (3) potential for less prejudicial evidence; (4) distraction to the fact finder; (5) time needed for proof of prior conduct; (6) temporal proximity; (7) frequency of the acts; (8) the presence or lack of intervening circumstances; and (9) the relationship between the parties. United States v. Wright, 53 M.J. 476, 482 (C.A.A.F. 2000) (applying factors to Mil. R. Evid. 413).<sup>5</sup>

“Inherent in [Mil. R. Evid.] 414 is a general presumption in favor of admission.”

Yammine, 69 M.J. at 74 n.4.

***A. The military judge did not abuse his discretion in concluding good cause existed for trial counsel’s delayed notice under Mil. R. Evid. 414.***

The military judge did not abuse his discretion by permitting the Government to introduce evidence under Mil. R. Evid. 414 with late notice. Mil R. Evid. 414(b) says that notice must be given to the accused at least five days prior to the entry of pleas unless the military judge finds good cause to allow for later notice. The military judge did not abuse his discretion by finding good cause in this case.

First, the military judge pointed out that the substance of the notice was about the same acts litigated at a motions hearing on 8 July 2024. (App. Ex. LVIII). These acts had made up the first three specifications against Appellant and he had known of the charges since May 2023. (ROT, Vol 1, *Charge Sheet*, dated 8 May 2023). While those charges were dismissed, that was because the Government learned the charged location of Texas was incorrect. (App. Ex. XXVI). Trial defense counsel still knew the substance of these allegations well in advance of the original 8 July 2024 trial date. The only substantive change to the evidence was that RR would now be

---

<sup>5</sup> “As [Mil. R. Evid.] 413 and 414 are essentially the same in substance, the analysis for proper admission of evidence under either should be the same.” United States v. Dewrell, 55 M.J. 131, 138 n.4 (C.A.A.F. 2001).

testifying that the breast and buttock touch and touch to Appellant's penis happened at a hotel in Jackson, MS, not Texas. There was very little surprise that trial defense counsel would have to contend with, since the other evidence coming from DS (that Appellant stated RR touched his penis and put his hand on her breast) was unchanged. Even if there was surprise, the military judge correctly found that trial defense counsel had nearly four weeks to prepare for trial between the 8 July 2024 notice of trial counsel's intent to offer the evidence as other acts of child molestation (App. Ex. XLVII) and the rescheduled trial on 5 August 2024. (App. Ex. LVIII; *see also* United States v. Parker, 54 M.J. 700, 713 (A. Ct. Crim. App. 2001) (Defense had "more than adequate time to prepare for and meet the evidence" when they received notice of Mil. R. Evid. 413 evidence in mid-March and trial was scheduled for late April)).

This Court's focus is "on the government's compliance with the provisions of the applicable rules." United States v. Wilson, 84 M.J. 383, 389 (C.A.A.F. 2024) (analyzing notice of proffered evidence that was not originally identified under Mil. R. Evid. 404(b)). The day that trial counsel learned the evidence of Appellant's three touches to RR in the hotel in Mississippi would be treated as uncharged conduct, trial counsel filed a notice to offer the evidence as other offenses of child molestation. (App. Ex. XLVII). Because trial on the merits was continued until 5 August 2024 before trial counsel submitted their notice to offer this evidence, trial counsel was within the notice rules required under Mil. R. Evid. 414(b). (R. at 212, App. Ex. LVIII). But the military judge also acknowledged that trial counsel showed good cause for the late notice because trial counsel only "discovered" the change to the evidence on 7 July 2024. (App. Ex. LVIII). In so doing, the military judge found that the notice was sufficient in both timing and for good cause under Mi. R. Evid. 414(b).

The military judge did not act arbitrarily, without reason, or under an erroneous view of the law. McElhaney, 54 M.J. at 130. Therefore, the military judge did not abuse his discretion in allowing the Government to present this evidence after the scheduling order and Mil. R. Evid. 414(b) notice requirements had passed.

***B. The military judge correctly found that the proffered evidence qualified as another offense of child molestation under Mil. R. Evid. 414.***

The second question the military judge must consider is whether the evidence is about the commission of “another offense of child molestation.” United States v. Fetrow, 76 M.J. 181, 185 (C.A.A.F. 2017). Appellant argued that the military judge erred in concluding the evidence was admissible under the second threshold because RR’s statements about the three touches were inconsistent and DS contradicted RR’s statements. (App. Br. at 41). But in so doing, Appellant applied factors to be considered under the third threshold (Mil. R. Evid. 401, 402, and the Mil. R. Evid. 403 balancing test) to the second threshold. As CAAF explained in Fetrow, the second threshold factor asks if the evidence is of “another offense of *child molestation*,” meaning does the evidence show “any offense punishable under the Uniform Code of Military [J]ustice, . . . that involves: (A) any conduct prohibited by Article 120 and committed with a child.” Id. at 185, citing Mil. R. Evid. 414(d)(2)(A) (emphasis added). The second factor is reviewed *de novo* because it is a question of law whether the evidence, as proffered, would legally constitute a qualifying offense of child molestation. Since Fetrow was decided, the Military Rules of Evidence specifically includes the language “any conduct . . . prohibited by Article 120b.” Mil. R. Evid. 414(d)(2)(A).

In relevant part, Article 120b.a.(c) prohibits “sexual abuse of a child.” Sexual abuse is the commission of a “lewd act” upon a child. Manual for Courts-Martial, United States part IV, ¶ 62.a.(c) (2019 ed.) (MCM). A “lewd act” is further defined as “any sexual contact with a

child.” MCM pt. IV, ¶ 62.a.(h)(5)(A). “Sexual contact” under Article 120b has the same definition as under Article 120<sup>6</sup>, which means:

touching, or causing another person to touch, either directly or through the clothing, the vulva, penis, scrotum, anus, groin, breast, inner thigh, or buttocks of any person, with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person. Touching may be accomplished by any part of the body or an object.

MCM pt. IV, ¶ 60.a.(g)(2).

The military judge found that RR’s and DS’s testimony was sufficient proof by a preponderance of the evidence that Appellant committed another qualifying act of child molestation, “specifically Sexual Abuse of a Child in violation of Article 120b, UCMJ.” (App. Ex. At LVIII at 4). The military judge made no analysis based on the Wright factors because it was not appropriate to do so at that time. Appellant does not appear to contest that the evidence at issue *would* qualify as evidence of sexual abuse of a child under Article 120b, and therefore as an offense of child molestation under Mil. R. Evid. 414. The military judge did not abuse his discretion by making an erroneous conclusion of the law in finding that the second threshold under Yammine was satisfied.

***C. The evidence was relevant under Mil. R. Evid. 401 and 402 to show Appellant’s propensity to commit the offense of child molestation.***

Mil. R. Evid. 401 provides that evidence needed to only have “any tendency to make a fact more or less probable than it would be without the evidence” and “the fact is of consequence in determining the action.”

---

<sup>6</sup> MCM, pt. IV, ¶ 62.a.(h)(1).

Appellant argued that the military judge’s finding that the proffered evidence was relevant rests heavily on the inconsistencies between DS’s testimony, RR’s testimony, and RR’s child forensic interview. (App. Br. at 42). But it is not an abuse of discretion for the military judge to find that the commonalities between the charged offense were enough to find the evidence was relevant and “the type of evidence contemplated by [Mil. R. Evid.] 414.” (App. Ex. LVIII). The military judge highlighted that both involved the same victim, same timeframe, and same setting, all of which made it “more probable that the Accused would commit sexual assault against RR.” (Id.) The difference in location of the proffered evidence (Texas versus Mississippi) was enough to create an issue with the charged language in Specifications 1 through 3 because the military judge found constituted a major change that would require re-preferral. (App. Ex. XXXIV). However, that same standard is not applied to evidence offered under Mil. R. Evid. 414. Such an inconsistency did not overpower the commonalities between RR’s testimony that Appellant touched her when she was 13, DS’s testimony that Appellant said RR had him touch her and touched him in a hotel bedroom, and RR’s interview when she said there was a leg touch in a hotel. (R. at 716, 626-627). The military judge did not act arbitrarily or unreasonably in finding that the evidence was relevant because it made it more probable that Appellant would sexually assault RR. McElhaney, 54 M.J. at 130.

***D. The military judge conducted a thorough balancing test and reasonably concluded that the probative value outweighed the danger of unfair prejudice; this was not an abuse of discretion.***

Appellant’s argument that the military judge misapplied the balancing test under Mil. R. Evid. 403 hinges on minor inconsistencies between RR’s testimony, DS’s testimony, and RR’s child forensic interview. (App. Br. at 43-44). However, the military judge focused on the

“substance” of the different evidence and found enough similarities to determine the probative value was not outweighed by the danger of unfair prejudice. (App. Ex. LVIII).

Military judges receive wide discretion in conducting balancing under [Mil. R. Evid.] 403, but military judges' rulings receive less deference if they fail to articulate their analysis on the record. United States v. St. Jean, 83 M.J. 109, 113 (C.A.A.F. 2023) (citing United States v. Collier, 67 M.J. 347, 353 (C.A.A.F. 2009).)

This Court should afford the military judge maximum deference for his detailed Mil R. Evid. 403 balancing test in his ruling on the motion to exclude. (App. Ex. LVIII; St. Jean, 83 M.J. at 113). The military judge outlined all nine factors provided in Wright for the balancing test. (App. Ex. LVIII; 53 M.J. at 482). He explained why each favored admissibility, even while acknowledging that there were minor inconsistencies within RR and DS’s testimony. (App. Ex. LVIII).

For the strength of the proof, while RR did not give details in her child forensic interview the military judge found her disclosures were “consistent with the level of detail a child of her age at that time, would share.” (Id.) The military judge noted that RR testified that the three instances of sexual abuse of a child occurred in the hotel bedroom in Mississippi. (Id.) The military contrasted this with DS’s testimony that Appellant told him that, while in a bedroom in a hotel in Texas, RR touched his genitals and had him touch her breasts, and Appellant did not push her away. (Id.) It was not arbitrary or unreasonable for the military judge to conclude that, “[a]lthough the details don’t overlap precisely,” the “substance” of Appellant’s statements to DS and RR’s testimony strengthen the proof of the prior acts. (Id.)

Throughout his brief, Appellant contends that the location of the prior acts of child molestation cut against admissibility. (App. Br. at 45). He argues that it was more likely that the

uncharged acts were “two separate incidents” in Texas or “as part of a continuing course of conduct” as opposed to a different incident that took place in Mississippi. (Id.) But the location, whether in Texas or Mississippi, was not the loadbearing beam of the evidence’s admissibility. The standard to admit the evidence was that the military judge found the factfinder could conclude the prior acts occurred by a preponderance of the evidence. Yammine, 69 M.J. at 74 n.9. It was reasonable for the judge to find that a confession by Appellant to DS that he touched RR’s breast and let her touch his penis, whether they were in Texas or Mississippi, would be probative of whether Appellant would sexually assault her.

The military judge did not act arbitrarily in finding that temporal proximity supported admission because even if the sexual contact took place in Texas the day of the charged offense instead of Mississippi the day before, it still would have been relevant to determine whether Appellant would have sexual intercourse with RR. (App. Ex. LVIII). It was likewise reasonable for the military judge to call the three separate acts “essentially a continuing course of conduct” when considering the frequency of the uncharged acts occurring across one night in a hotel room. (App. Ex. LVIII).

If courts do not require evidence to be “free from any conflict” to find an accused guilty beyond a reasonable doubt, United States v. King, 78 M.J. 218, 221 (C.A.A.F. 2019), they certainly do not require evidence to be free from conflict under the preponderance of the evidence standard. The military judge did not abuse his discretion in finding that the probative value of the proffered evidence was not outweighed by the danger of unfair prejudice. Inconsistencies between two witnesses and between one witness’s two statements did not diminish the probative value of the evidence to such an extent that they make the evidence inadmissible.

***E. There was no prejudice to Appellant.***

Appellant relies on his argument that the Government's case against him was weak to contend that admission of the proffered evidence under Mil. R. Evid. 414 prejudiced him. "The test for nonconstitutional evidentiary error is whether the error had a substantial influence on the findings." United States v. Fetrow, 76 M.J. 181, 187 (C.A.A.F. 2017), citing United States v. Gunkle, 55 M.J. 26, 30 (C.A.A.F. 2001). "It is the government that bears the burden of demonstrating that the admission of erroneous evidence is harmless." Fetrow, 76 M.J. at 187 (internal citations omitted). This Court uses a four-part test to determine whether the erroneous admission of evidence was harmless: (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., citing United States v. Kerr, 51 M.J. 401, 405 (C.A.A.F. 1999). Focusing on the first two, the Government's case against Appellant was strong, and the Defense's case was weak. Even if this evidence was admitted in error, it did not prejudice Appellant.

Besides evidence of the prior acts, the Government had RR's testimony regarding the night of the sexual assault. (R. at 729, 731-733, 781). The Government also had Appellant's Instagram messages to RR, including the offer to be there for her that was deliberately sent from a separate account that KA would not see. (Pros. Ex. 2, 3). RR disclosed the offense to a close friend close in time to the sexual assault itself. (R. at 736, 744). While KA was still married to Appellant and worried for him, she corroborated RR's testimony in several ways. KA confirmed that they all slept in the same bed in Mississippi with Appellant lying in between them. (R. at 810). She also confirmed that at one point while at the hotel in Texas, RR and Appellant went down to the car together to get something. (R. at 813). KA said that they were not gone long.

(R. at 813). DS and JI both testified that Appellant commented on RR's body and indicated he would have sex with her if she were older. (R. at 620-621, 904). SH overheard Appellant say that RR "wanted it," meaning sex, and so it was not a rape. (R. at 660). This evidence by itself would have been enough to convict Appellant for sexual assault of a child.

In contrast, the Defense's case was weak. It hinged on RR's purported numerous and sometimes contradictory motives to fabricate, which included a convoluted theory that SH and RR made up an allegation of rape against Appellant. (R. at 1058). This lie allegedly came from SH and RR's manufactured desire to get revenge on KA and by extension KM for accusing RH, their father and SH's husband, of sexually abusing them when they were children. (R. at 1053-1054). It also allegedly came from a desire to sue Appellant for his family's money because RR, according to the Defense, "liked [Appellant's] house." (R. at 1056). However, even if RR was not just joking about suing Appellant, she did not bring that up until an interview in September of 2022 with AFOSI. (R. at 993). That interview was about four months after RR made her allegation of sexual assault against Appellant, at which time there was no discussion of a lawsuit. There was no evidence offered to show RR was thinking about suing Appellant beyond the general admission that Appellant's parents had a nice house and money. (R. at 782-783). This argument and the Defense's case was weak.

The Defense also relied on RR's drug and alcohol use to portray her as a troubled girl. (R. at 1054-1055). They also emphasized RR's desire to get out of trouble with her mother (*id.*) and RR's alleged love of drama and excitement. (R. at 1053,1055). As explained in Issue I below, none of these theories were persuasive. RR's mental health issues and use of drugs or alcohol did not make her a less reliable witness, particularly because there was no allegation that she was using either substance at the time of the charged offense. Furthermore, RR had been

struggling with SH over her misbehavior throughout the year. (R. at 675, 758). She never accused anyone else of sexual assault until Appellant came into her life, and she told HA and KA about it before she disclosed it to her mother. (R. at 736, 738). There was no compelling reason provided on the record for RR to target Appellant with a false allegation.

Turning to materiality and quality of the evidence, this Court should conclude the Mil. R. Evid. 414 evidence did not affect the court-martial. United States v. Washington, 80 M.J. 106, 111 (C.A.A.F. 2020). While the evidence was mentioned by several witnesses and in closing argument, it was not the crux of the Government's case. DS testified that, about a day after the sexual assault, Appellant was telling his two good friends and roommates that he found RR attractive and would have sex with her if she weren't 13. (R. at 620-621, 904). SH testified that Appellant *confessed* to having sex with RR while SH was on the phone with KA, only to state that it was not a rape because RR was "begging for it." (R. at 660). In addition, the military judge specifically instructed the panel that the uncharged acts of child molestation were not "sufficient" on their own to prove Appellant committed the charged offense, which would have limited its use in the minds of the panel and mitigated the error. Washington, 80 M.J. at 111, citing United States v. Baumann, 54 M.J. 100, 105 (C.A.A.F. 2000) (an error was harmless in part because the military judge gave "extensive instructions on the proper use" of the evidence).

Since there was neither error nor prejudice, this Court should deny this assignment of error.

I.

**THE EVIDENCE WAS FACTUALLY AND LEGALLY SUFFICIENT.**

*Additional Facts*

RR testified that she was at the trial because:

When people do the wrong thing, you come and tell your truth so that you get justice and people are held accountable. That's why I'm here. And I'm here because he has a daughter. . . He can't even stay away from his wife's sister. It's not right. . . . Either way this trial goes, I'll just be glad I'm here and I did it."

(R. at 786-787).

*Standard of Review*

Issues of legal sufficiency are reviewed *de novo*. United States v. Washington, 57 M.J. 394, 399 (C.A.A.F. 2002).

Factual sufficiency is reviewed using the following standard if every finding of guilty is for an offense occurring on or after 1 January 2021<sup>7</sup>:

(i) In an appeal of a finding of guilty under subsection (b), the Court may consider whether the finding is correct in fact upon request of the accused if the accused makes a specific showing of a deficiency in proof.

(ii) After an accused has made such a showing, the Court may weigh the evidence and determine controverted questions of fact subject to—

(I) appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence; and

(II) appropriate deference to findings of fact entered into the record by the military judge.

---

<sup>7</sup> National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, Section 542(b), 134 Stat. 3611-12.

(iii) If, as a result of the review conducted under clause (ii), the Court is clearly convinced that the finding of guilty was against the weight of the evidence, the Court may dismiss, set aside, or modify the finding, or affirm a lesser finding.

10 U.S.C. § 866(d)(1)(B).

“[T]he degree of deference will depend on the nature of the evidence at issue.” United States v. Harvey, 85 M.J. 127, 130 (C.A.A.F. 2024).<sup>8</sup> This Court has discretion to determine “what level of deference is appropriate.” Id.

### *Law and Analysis*

To sustain a conviction for sexual assault of a child in violation of Article 120b, UCMJ, the evidence must show:

- (1) That Appellant committed a sexual act upon RR; and
- (2) That at the time of the sexual act RR had attained the age of 12 years but had not attained the age of 16 years.

See MCM pt. IV, ¶ 62.(2)(a).

Here, Appellant alleged four deficiencies of proof for his conviction for sexual assault of a child: (a) the documentary evidence “exonerated” Appellant; (b) RR lacked credibility; (c) the corroborating evidence was not enough to establish Appellant’s guilt; and (d) RR’s familial history made testimony in support of RR unreliable. (*See generally* App. Br. at 25-34).

Appellant then argued that his conviction was against the weight of the evidence. (App. Br. at 34-35). For the reasons set forth below, his claims are without merit, and this Court should deny relief.

---

<sup>8</sup> “For example, a CCA might determine that the appropriate deference required for a court-martial’s assessment of the testimony of a fact witness, whose credibility was at issue, is high because the CCA judges could not see the witness testify. In contrast, when the CCA can assess documents, videos, and other objective evidence just as well as the court-martial, the CCA might determine that the appropriate deference required is low.” Harvey, 85 M.J. at 131.

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

Each of Appellant's alleged deficiencies of proof are unsupported by the record based on witness testimony and documentary evidence.

**1. The documentary evidence showed Appellant's intent to develop a relationship with RR.**

While Appellant's Instagram messages to RR did not explicitly request sex from her, they demonstrated a concerning lack of boundaries that a twenty-year-old felt toward a 13-year-old middle schooler he barely knew. (Pros. Ex. 2-3; R. at 696, 800). He was messaging her late at night when his wife KA was already asleep and then went into RR's room and sat on the bed with her. (Pros. Ex. 2-3, R. at 709). Appellant's caveat that RR could tell him "no" does not transform the scenario into an appropriate one; if anything, it demonstrated Appellant's understanding that coming to sit with a minor girl in the middle of the night might make RR uncomfortable. (Pros. Ex. 2). Of even greater concern was the second account Appellant created just to message RR so KA would not see their messages. (Pros. Ex. 3; R. at 703). The messages were flirtatious in nature, but even if the panel *did not* perceive them as flirtatious, they could still find the messages served Appellant's purpose to get closer to RR without KA knowing.

With respect to RR's TikTok message to HA, Appellant argued that RR was trying to be dramatic or create intrigue. (App. Br. at 25). But RR testified that at the time, she felt guilt for what Appellant had done to her, and she did not know how to tell KA that her boyfriend and the father of her child had sex with RR. (R. at 736, 745). It is reasonable for a 13-year-old girl to hesitate to disclose the sexual assault even to a close friend, and to prevaricate before finally

taking the leap and telling HA that she “f’d [Appellant].” (Pros. Ex. 6<sup>9</sup>). RR testified that she *tried* to tell KA what had happened but did not know how to do so. (R. at 745). While RR never testified nor was she asked if she specifically intended for KA to see the message to HA, it would not hurt her credibility if that *was* her intent. RR had tried to tell KA that she needed to tell KA something but had not gotten any further. (R. at 745). So RR turned to HA so that *someone* knew what Appellant had done. (Pros. Ex. 2).

Trial defense counsel’s and Appellant’s attempts to paint RR as promiscuous lack merit and legal relevance. (App. Br. at 26; 1067). It does not matter whether RR went to talk to an older boy at a gas station in Oklahoma or whether she initially referred to what Appellant did to her as a “fuck” instead of an “attack.” (App. Br. at 26-27; R. at 744). It likewise does not matter if JI thought RR told KA that RR did not want KA to have Appellant to herself. (R. at 913). RR was 13 years old at the time and was not legally capable of consenting to sex with Appellant. (Pros. Ex. 1). Furthermore, RR’s choice of words reflected both her young age and the censorship rules in place on TikTok. (R. at 745). It is not a deficiency of proof for a middle schooler to send a text message without finesse.

Finally, while the DNA evidence did not show RR’s presence in Appellant’s truck, the absence did not “refute[] her story,” as Appellant claims. (App. Br. at 27). DNA was not collected from Appellant’s truck until August of 2022, three months after the sexual assault. (R. at 857). KA testified that Appellant had had sex with her in the car on many occasions, and the expert witness testified that DNA can be degraded by many different factors including high

---

<sup>9</sup> Prosecution Exhibit 6, the TikTok messages themselves, was only admitted for the effect on the listener (KA) and the panel was instructed that they could not consider the messages for the truth of the matter asserted. (R. at 822).

temperatures and cleaning. (R. at 889). RR specifically testified that after sexually assaulting her, Appellant cleaned his semen with a “baby wipe.” The car’s messy appearance in August of 2022 does not mean RR’s DNA must have still been there despite the passage of three months, and this does not reflect a deficiency of proof. (App. Br. at 27). If anything, the large sample of Appellant’s semen in the backseat of his truck and KA’s testimony indicated that Appellant is experienced at having sex in his truck. This supports that he could have found a way to do so with RR. The documentary evidence did not exonerate Appellant; it incriminated him.

**2. RR did not lack credibility and any inconsistencies in her testimony were minor.**

Appellant essentially characterized any disagreement between RR’s testimony and another witness’s as lies and her “memory lapses” as “convenient.” (App. Br. at 27). What is more likely is that different people have different recollections of events and sometimes incomplete memories. Moreover, several of the inconsistencies Appellant relies upon had nothing to do with the charged sexual act.

RR denied smoking marijuana with KA and HA but *admitted* to doing it with HA when RR was 12. (R. at 758). RR forgetting that KA may have been there as well is a minor detail. RR said no one told her to stop vaping in the car while KA testified that she told RR not to vape near the baby. (R. at 765, 845). However, RR stated KA was vaping from RR’s vape pen, which KA could not admit to without simultaneously admitting that she was vaping in front of her newborn baby the same as RR was. (R. at 765). In addition, while RR and KA both testified that they decided RR needed to go home, both testimonies could be true: RR could have asked to leave, and KA could have decided she did need to leave. (R. at 739, 849). Neither person claimed the other tried to prevent RR from leaving, which might have put their testimony more in conflict. Contrary to Appellant’s brief (App. Br. at 28), RR did not tell SH she was bored in

Oklahoma. SH testified that *KA* said RR was coming home because she was bored. (R. at 648-649). Finally, that RR did not describe going to HA's house after returning to Georgia as running away from home while SH did is trivial. (R. at 747, 748).

RR did testify that she did not recall *JI*'s comment that she could get a rape kit done (R. at 778), but that is understandable considering the comment was made during the enormous argument between Appellant, *KA*, and RR after the allegation came out. (R. at 912). RR said she did not remember drinking alcohol at Appellant's house, and *KA* testified that RR "stole" alcohol to drink and *DS* found alcohol in RR's bag after she left. (R. at 632, 849). However, *DS* also testified that Appellant specifically sent *DS* and *JI* out to go get them all alcohol during the argument, and implicit in this testimony was the idea that the alcohol was shared with everyone in the household. (R. at 623). Finally, it is not surprising that RR would not remember asking *AFOSI* about suing Appellant when the interview was nearly two years before trial and the question was asked as a joke. (R. at 782).

Appellant argued that RR made up the allegation of sexual assault to her mother to avoid having to admit to stealing alcohol or hanging out with a 21-year-old boy at a gas station. (App. Br. at 28). However, there is no indication that SH was going to learn of those actions whether or not they were true. *KA* had not told SH that RR was misbehaving and needed to go home, and *KA* claimed she did not do so because she did not want to get RR in trouble. (R. at 849). SH said *KA* told SH that RR was bored and that the baby was crying too much for her. (R. at 649). RR said she told SH about the sexual assault because RR *was* being "self-destructive" at home, and RR knew SH did not understand why. (R. at 747). While Appellant wants to push the narrative that SH would be physically violent with RR, both RR and SH denied that SH would do so. (R. at 681, 759).

With respect to details left out of RR's interviews, both Special Agent AA and MS described how uncomfortable RR was with the process and that it was difficult for her to share details of the sexual assault. (R. at 975, 997). RR also said several times that she did not share certain details because she was not specifically asked for them. (R. at 784, 788). At 13 and later 14 years old, it was reasonable for RR to have lacked an understanding about what details would be important to law enforcement.

RR's inconsistencies were minor, and her testimony did not contain a deficiency in proof for Appellant to challenge his conviction on appeal.

### **3. DS, JI, KA, and SH corroborated RR's allegation of sexual assault.**

Appellant argued that his statements to DS and JI at the gym were neither admission of guilt nor evidence of intent. (App. Br. at 30). Despite Appellant's contention, that is precisely how the panel was permitted to consider the evidence, and his disagreement does not create a deficiency of proof. United States v. Rounds, 30 M.J. 76, 80 (C.M.A. 1990) (appellate courts are not required to accept an appellant's view of the record). A statement that Appellant found RR physically attractive and would have sex with her if she were not 13 *is* evidence that Appellant desired RR sexually and could be considered as evidence of his intent to have sex with her, even if made after the sexual assault. (R. at 621, 902). These statements were not in line with DS, JI, and Appellant's usual "vulgar" jokes, to the point that JI and DS were uncomfortable hearing Appellant say them and remembered them two years later. (R. at 621, 914).

DS's testimony that Appellant told him he touched RR's breast and RR touched his penis, regardless of who initiated such contact, was evidence in support of Appellant's conviction. As explained above, the touches in Mississippi were admitted as evidence of child molestation that the panel could consider. (App. Ex. LVIII). The panel was permitted to

consider whether they believed the uncharged sexual abuse occurred and, if it did, whether the uncharged acts made it more likely that Appellant would sexually assault RR. (R. at 1035).

DS's testimony that Appellant admitted to touching RR and Appellant's dismissal of responsibility in the situation (R. at 626-627) bolstered the uncharged sexual abuse, which in turn made it more likely for the panel to conclude that it happened. In so determining, the panel was free to consider that Appellant was more likely to sexually assault RR if he sexually abused her the day before.

KA's testimony was a complicated matter because, at times, she corroborated RR's account of the trip from Georgia to Oklahoma and at other times contradicted it. Appellant is correct that KC, JI, and DS's testimony that KA told them that Appellant admitted to having sex with RR and touching her breast was only admitted for purposes of impeaching KA. (R. at 876, 907, 920). However, their testimony does indicate a strong likelihood that KA was willing to lie for Appellant. KC testified that KA had a tendency to manipulate things to her benefit, and KA currently had two children who relied upon Appellant for financial and medical support. (R. at 826, 873). KA herself testified that she worried Appellant would get in trouble as a result of the trial. (R. at 832).

JI and DS's testimony did corroborate RR's allegation of sexual assault, and KA's testimony did not create a deficiency of proof to attack Appellant's conviction.

**4. RR's familial history did not establish a motive to fabricate wholesale an allegation of sexual assault against Appellant.**

Appellant contended that RR's family's history rendered all of them unreliable witnesses, while KA and KM were more truthful about their family and biases. (App. Br. at 31-33).

First, whether KA personally believed Appellant sexually assault RR was immaterial at court and on appeal, because that decision rested with the panel. (App. Br. at 31). The fact that KA woke up to feed her baby every two hours during the night did not negate the fact that Appellant could have sexually abused RR in the hotel during a period when KA was not awake.

Second, Appellant argues that KA was fed up with RR's conduct and decided RR needed to return to Georgia. (App. Br. at 31). However, this perspective disregards the fact that KA had already learned that RR said Appellant had sex with her through the TikTok message, and there had been an "explosive" fight regarding the allegation witnesses by DS and JI. (R. at 622). RR herself also testified that *she* asked to leave Oklahoma, not the other way around. (R. at 739). But in any event, KA's belief about whether the offense occurred and how she might have acted based on that belief was not relevant to the members' determination of guilt.

Third, KA's decisions to marry Appellant following the sexual assault and have another child with him were not discussed on the record, and KA admitted to financial and medical dependence on Appellant at the time of trial. (R. at 826). The availability of welfare benefits such as the Women, Infants, and Children Program (WIC) would not provide support to the extent as Appellant's paycheck and TRICARE benefits. (App. Br. at 32). And DS, KC, and JI all testified that KA's story about what Appellant told her following the sexual assault was different than her testimony at trial. (R. at 825, 876, 907, 920). This undercut KA's credibility, not RR's.

Turning to SH, Appellant argued that she was unreliable due to her testimony with respect to RR. (App. Br. at 32). While Appellant claimed that SH lied about RR's drug use and hospitalization, the other reasonable conclusion was that SH did not know her 13-year-old daughter was using drugs. (R. at 673). Both RR and SH testified that RR had never overdosed

on drugs or attempted to kill herself. (R. at 673, 758). While SH texted RR not to use drugs or alcohol, SH clarified that she gave that advice to all her teenage children; it was not targeted at RR, and there was no testimony offered to counter the idea that SH's text message was standard motherly advice from her. (R. at 673).

Finally, Appellant's least persuasive argument is that RR and SH's veracity must be doubted because of allegations made by KM and KA that RH (SH's husband) molested them at some point in their childhood. (App. Br. at 31). This amounts to the belief that SH must have held a grudge against KM and KA so severe that she concocted an allegation of rape and told RR to accuse Appellant as a way to get revenge on KA. (App. Br. at 33). However, while trial defense counsel and Appellant argued this point, it was not compelling to the panel and should not be here. SH testified that the allegations were really between KM and RH, and she did not think KA made an allegation at all. (R. at 677). If SH was holding this awful grudge from at least two years before, it is unlikely that she would have helped KA apply for insurance or WIC when KA was pregnant or be happy to meet NA when KA brought the baby to meet her family. (R. at 643, 699).

While Appellant wants this Court to focus on KA and KM's joint allegation against RH, at the same time they wish to disregard their other sister KC's testimony that KA would "manipulate things in order to benefit her." (R. at 873). But even where KA's account disagreed with RR, she agreed in significant ways. KA agreed that Appellant slept between KA and RR on the hotel bed in Mississippi, where RR alleged Appellant sexually abused her. (R. at 716-717) KA agreed that Appellant and RR went to Appellant's truck together in Dallas and that they were not gone long. (R. at 813). KA *corroborated* the circumstances immediately surrounding the uncharged child molestation and the charged sexual assault of a child. That was her most

significant testimony, and the disagreements between her, RR's, and SH's testimony do not amount to a deficiency of proof.

***B. The weight of the evidence established beyond a reasonable doubt that Appellant committed sexual assault of a child.***

If this Court finds that Appellate did show a deficiency of proof under Article 66(d), it should still find that Appellant's conviction was not against the weight of the evidence.

Appellant wishes to paint RR as a manipulative liar who wanted either (1) to get revenge on KA through Appellant for KA's allegation against RH; (2) to sue Appellant because his family had money and she liked his house; or (3) to avoid trouble with SH by fabricating a sexual assault by Appellant. However, appellate courts are not required to accept an appellant's view of the record of trial or the inferences which might be reasonably drawn therefrom.

Rounds, 30 M.J. at 80.

To start with the third theory listed above, if RR was making up a sexual assault allegation to get out of trouble, she apparently had a prime candidate living in her house: RH, who KA and KM testified had molested them in the past. (R. at 843, 947). But despite getting in trouble over the year, RR never accused RH to dodge responsibility. (R. at 759).

Turning back to Appellant, RR testified that when she was 13, Appellant started messaging her on Instagram and sat on her bed starting on 7 May 2022. (R. at 709; Pros. Ex. 2-3). Appellant tried to establish a relationship with RR that was concealed from his girlfriend, KA. (Pros. Ex. 3). The first night of their journey to Altus, OK, Appellant insisted on sleeping between KA and RR and then touch RR's buttocks, breast, and put RR's hand on his erect penis. (R. at 716-717). He whispered in RR's ear that he needed to get a "nut off," meaning he wanted to orgasm. (R. at 716). The next night, Appellant got RR alone at his truck and threatened to ruin her relationships with KA and her niece unless RR let him have sex with her. (R. at 729).

When RR did not do or say anything, Appellant pushed down his girlfriend's 13-year-old-sister and penetrated her vulva with his penis until he ejaculated on her leg and the backseat of his truck. (R. at 732). RR went back up to the hotel room, closed herself in the bathroom, and cried. (Id.)

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

KA confirmed Appellant slept between she and RR in Mississippi. (R. at 810). She confirmed they went to Appellant's truck the night they stayed in Dallas. (R. at 813). DS and JI both testified that Appellant commented on how attractive he found RR and that he would have sex with her if she was not 13 within a day or so of the sexual assault. (R. at 620-621, 902). DS testified that when confronted about the sexual assault, Appellant said he was not responsible because RR put her hand on his genitals and put his hand on her breast. (R. at 626-627). SH testified that when she confronted KA and Appellant over the phone, she heard Appellant say it was not rape because RR “wanted it” and was “begging for it.” (R. at 660).

The minor inconsistencies between RR's testimony, her prior interviews, and the other witnesses do not turn the rest of the evidence on its head. As our superior Court has said, proof beyond a reasonable doubt “does not mean that the evidence must be free from any conflict.” United States v. King, 78 M.J. 218, 221 (C.A.A.F. 2019). While the Government has a heavy

burden of persuasion, it need not prove its case to a mathematical certainty.” United States v. Kloh, 27 C.M.R. 403, 406 (C.M.A. 1959).

While KA disagreed with some portions of RR and SH’s testimony regarding the assault and their family history, she also admitted she was worried he was going to get in trouble. (R. at 832). It is not incredible to believe KA would willingly give AFOSI DoorDash information, since she did not have any doubt or concerns about whether they actually ordered DoorDash that night. Even if KA thought Appellant was not guilty, she would likely not see any harm in providing AFOSI with evidence about their DoorDash order.

Appellant’s unbelievable theory about revenge against KA for RH lacked weight and did not change the sequence of events both KA, RR, and SH testified to at trial. First, Appellant started messaging RR on Instagram and then sat alone with her on her bed. (R. at 709; Pros. Ex. 2). Second, the sexual abuse happened in Mississippi while Appellant was between KA and RR on the bed. (R. at 716-717, 810). Third, Appellant sexually assaulted RR when he was alone with her at his truck. (R. at 731, 813). Fourth, RR texted HA about the sexual assault; not her mother, not RH, her friend. (R. at 736). HA was otherwise unconnected to the situation. (R. at 736). Fifth, KA saw the message to HA and confronted Appellant, including slapping him. (R. at 823). Sixth, KA called SH and told her RR was coming home without mentioning the alleged sexual assault. (R. at 648). Seventh, RR went home, did not immediately tell SH what had happened, and finally disclosed the incident to her mother because RR knew she was being self-destructive. (R. at 652, 747). Nowhere in that sequence of events is there evidence that RR and SH conspired alone or together to frame Appellant for sexually assaulting RR when *Appellant* started trying to build a closer bond with RR before they even made plans to leave for Oklahoma together.

“‘[A]ppropriate deference’ when a CCA ‘weigh[s] the evidence and determine[s] controverted questions of fact’” implies “that the degree of deference will depend on the nature of the evidence at issue.” United States v. Harvey, 85 M.J. 127, 130 (C.A.A.F. 2024). “For example, a CCA might determine that the appropriate deference required for a court-martial's assessment of the testimony of a fact witness, whose credibility was at issue, is high because the CCA judges could not see the witness testify. Id. at 131.

This Court should follow the example offered in Harvey and give substantial deference to the panel’s determination of which witnesses were credible. This Court may give lower deference to the documentary evidence but should still conclude that there was room in Appellant’s truck for him to commit the sexual assault (Pros. Ex. 5, 7) and that he was deliberately trying to create an inappropriate relationship with RR starting with the Instagram messages (Pros. Ex. 2-3).

Accordingly, this Court should not be clearly convinced that the finding of guilt was against the weight of the evidence and should deny Appellant relief under this assignment of error.

***C. Appellant’s conviction was legally sufficient.***

Appellant also argued several bases to find that his conviction was legally insufficient. (App. Br. at 22-24). The test for legal sufficiency of the evidence is “whether, after viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” United States v. King, 78 M.J. 218, 221 (C.A.A.F. 2019) (internal citations omitted). This test does not require a court to ask whether it believes the evidence established guilt beyond a reasonable doubt, but rather, whether any rational factfinder could. United States v. Acevedo, 77 M.J. 185, 187 (2018). In applying

this test, this Court is “bound to draw every reasonable inference from the evidence of record in favor of the prosecution.” United States v. Barner, 56 M.J. 131, 134 (C.A.A.F. 2001).

Appellant’s argument revolves around factual matters such as the length of time the sexual assault took, the physical positions RR and Appellant were in for the assault, and the DNA evidence.

Appellant’s first argument is that RR’s testimony regarding the sexual assault is legally insufficient because it did not match her interview with AFOSI in September of 2022 and that the circumstances of the sexual assault were “nonsensical.” (App. Br. at 23). RR testified that she did not remember telling AFOSI that the sexual assault took 20 seconds. (R. at 772).

Appellant argues that this Court must consider RR’s original statement that the sexual assault took 20 seconds from Appellant grabbing RR to cleaning himself up with the baby wipe. (R. at 732). However, while RR may have said that to AFOSI, Special Agent AA said that his partner asked the question of timing in a confusing way. (R. at 990). Special AA thought the statement was not clarified in a way that made sense to him, (R. at 1002), and RR testified that she did not know how long it took between leaving the hotel room, experiencing the sexual assault, and returning to the room. (R. at 771). But RR did clarify that the sexual assault did not take 20 seconds when specifically asked. (R. at 772). A factfinder could have reasonably believed RR that the sexual assault did not take 20 seconds despite her prior statement, and that someone who underwent a sexual assault, especially a 13-year-old girl, might struggle to accurately estimate the time it took.

Appellant’s argument about the physical positions of the sexual assault fails because it is based on speculation that was not clarified at trial. (App. Br. at 23). RR never said she was

“supine;” she said she was “sort of” lying down on the back seat of the truck, and trial defense counsel did not ask her to explain what she meant. (R. at 781; App. Br. at 23). RR also never said the door to the truck was shut the entire time from Appellant grabbing her to the sexual assault. (R. at 781). With respect to fitting inside together, the Government presented the panel with photographs of the backseat of Appellant’s truck and RR at the time of the sexual assault. (Pros. Ex. 5, 7). From the photograph, RR appears to be a small, thin girl. (Pros. Ex. 5).

Neither RR nor KA testified if NA’s car seat was still in the truck during the sexual assault; trial defense counsel and Appellant only insist it must have been because it was present in August 2022. (R. at 857). Trial defense counsel never asked RR about the car seat. It was possible that the group brought the car seat into the hotel, giving Appellant more room to push RR into the back seat by her shoulders. (R. at 731).

RR testified that during the sexual assault Appellant touched a seat in the truck, the truck door, and RR’s body at different times. (R. at 772). RR did not specifically say which door or which chair Appellant was touching, so there are a myriad of positions Appellant could have assumed during the sexual assault that would allow him to position himself to penetrate her vulva with his penis even with the door closed. (Pros. Ex. 5). Even if Appellant chose an uncomfortable position, that would not stop him from sexually assaulting RR.

Finally, the lack of RR’s DNA evidence and presence of Appellant’s on the backseat of the truck three months after the sexual assault does not leave the conviction legally insufficient, particularly when RR’s testimony was that Appellant ejaculated onto the backseat. (R. at 732). The expert from USACIL also testified that DNA can degrade from high temperatures as well as attempts to clean it with detergent, soap, water, or scrubbing. (R. at 889). A reasonable

inference from this is that RR's DNA was not present because it had already degraded over the three months between the sexual assault and AFOSI's DNA collection.

“[D]rawing every reasonable inference from the evidence of record in favor of the prosecution,” Barner, 56 M.J. at 134, and considering that the conviction met the higher standard for factual sufficiency, Appellant's conviction is also legally sufficient.

***D. Conclusion***

Viewing all the above evidence in the light most favorable to the prosecution, King, 78 M.J. at 221, and drawing every reasonable inference in the prosecution's favor, Barner, 56 M.J. at 134, any rational factfinder could have found the essential elements of sexual assault of a child beyond a reasonable doubt. Acevedo, 77 M.J. at 187. Giving appropriately high deference to the factfinder's assessment of RR, SH, DS, and JI's testimony since this Court “could not see the witness testify,” *see* Harvey, 85 M.J. at 131, this Court should not be clearly convinced that the finding of guilty was against the weight of the evidence. Thus, Appellant's conviction is legally and factually sufficient, and he is unentitled to relief.

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

**III.**

**THE SENTENCE TO CONFINEMENT FOR EIGHT YEARS  
IS NOT INAPPROPRIATELY SEVERE.**

***Additional Facts***

In her unsworn statement, RR stated that she had to listen to Appellant lie about what had happened and say that she “wanted it.” (Ct. Ex. A). She highlighted that she had to listen to Appellant call her a liar and convince her family, including her sisters, that RR was making up the sexual assault. (Id.) RR said that she will “never feel comfortable” about her breasts again

because of what Appellant said about them. (Id.) RR struggled to stop blaming herself and “feeling guilty” for what Appellant did to her. (Id.)

RR then went on to explain that, despite Appellant ruining a part of her childhood, she would not let him ruin her life. (Id.) RR described herself as a survivor who “got justice” and that Appellant would be “held accountable for what [he’s] done.” (Id.) RR stated she would “come out on top and be a stronger young woman because of this,” while Appellant “will have to live with what [he’s] done.” (Id.) RR planned to enlist in the Air Force and use what happened to her to help other people. (Id.)

Appellant provided five character letters from different members of his family: his father, his mother, his two sisters, and his grandmother-in-law. (Def. Ex. B-F). These letters mostly focused on the love Appellant’s family felt for him, his special place as both the “baby” of his family and the only boy, and their belief that he was a good person. (Id.)

In his unsworn statement, Appellant apologized to RR and his family once at the beginning. (Def. Ex. I). The remainder of the two-page document focused on Appellant’s struggles balancing his military commitment with his wife and fatherhood to two children. (Id.) Appellant lamented that his time in technical training took him away from his family, including his sick parents, and that the case has caused him to miss most of his son’s life. (Id.) Appellant stated the “uncertainty of what would happen” began to take a toll on his mental health. (Id.) He concluded with the hope that “whatever comes of this trial, it can allow [him] the opportunity to provide for my small children and family.” (Id.)

Appellant’s newborn daughter was less than a month old in May of 2022 when Appellant sexually assaulted RR. (Def. Ex. F.) Appellant received no special awards during his short service. (Def. Ex. G.)

Trial counsel asked for Appellant to receive 12 years confinement, while trial defense counsel argued for two. (R. at 1105, 1106).

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

This Court reviews the appropriateness of an appellant's sentence *de novo*. See United States v. McAlhaney, 83 M.J. 164, 166 (C.A.A.F. 2023).

### ***Law and Analysis***

Pursuant to Article 66(d), UCMJ, this Court “may affirm only the sentence, or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved.” 10 U.S.C. § 866(d)(1)(A). The purpose of such review is “to ensure ‘that justice is done and that the accused gets the punishment he deserves.’” United States v. Joyner, 39 M.J. 965, 966 (A.F.C.M.R. 1994) (quoting United States v. Healy, 26 M.J. 394, 395 (C.M.A. 1988)).

In assessing sentence appropriateness, this Court considers “the particular appellant, the nature and seriousness of the offense[s], the appellant’s record of service, and all matters contained in the record of trial.” United States v. Hamilton, 77 M.J. 579, 587 (A.F. Ct. Crim. App. 2017) (citations omitted).

“[T]he experienced and professional military lawyers who find themselves appointed as trial judges and judges on the courts of military review have a solid feel for the range of punishments typically meted out in courts-martial.” United States v. Ballard, 20 M.J. 282, 286 (C.M.R. 1985). As an initial matter, the military judge’s sentence of eight years of confinement was within the lawful bounds of the Manual’s sentencing restrictions authorized for the offense, which allowed for 30 years of confinement. MCM, pt. IV, ¶ 62.d.(2). Subject to limitations in the MCM, “the sentence to be adjudged is a matter within the discretion of the court-martial.” R.C.M.

1002(a). “A court-martial may adjudge any punishment authorized in [the] Manual in order to achieve the purposes of sentencing ... including the maximum punishment or any lesser punishment...” Id.

Although this Court has discretion to determine whether a sentence is appropriate, it has “no power to ‘grant mercy.’” 77 M.J. at 587 (citing United States v. Nerad, 69 M.J. 138, 146 (C.A.A.F. 2010)); *see also* United States v. Walters, 71 M.J. 695, 698 (A.F. Ct. Crim. App. 2012) (“[W]e are not authorized to engage in exercises of clemency.”). Unlike the act of bestowing mercy through clemency, which was delegated to other channels by Congress, CCAs are entrusted with the task of determining sentence appropriateness, thereby ensuring the accused gets the punishment he deserves. Healy, 26 M.J. at 395-96.

Thus, as long as a sentence is not inappropriately severe, this Court may affirm it even if it is not what this Court would have adjudged:

By affirming a sentence, we do not necessarily mean that it is the sentence we would have adjudged had we been the sentencing authority. The numerous permutations and combinations of sentencing alternatives available to the sentencing authority are so broad that, normally, there will not be only one sentence that is appropriate for a particular appellant. Thus, it may be more fitting for this Court to find that a particular sentence “is not inappropriate,” rather than “is appropriate.”

Joyner, 39 M.J. at 966.

Here, Appellant asks this Court to set his eight years of confinement aside as “unduly harsh and inappropriately severe.” (App. Br. at 56). For the reasons discussed below, Appellant’s sentence to eight years of confinement is not inappropriately severe and this Court should affirm the sentence.

***A. Eight years of confinement is not inappropriately severe given Appellant's crime.***

On appeal, Appellant reiterates his position that his conviction was neither factually nor legally sufficient. (App. Br. at 56). He then echoes trial defense counsel's argument that two years of confinement was appropriate for his conviction and acknowledges the charge was "unquestionably solemn." (Id.). Appellant also apologized to RR and his family in his unsworn statement, though he stated he "never meant to hurt [her]." (R. at 1101).

Apologizing is not enough to mitigate the severity of Appellant's crime. Appellant penetrated a 13-year-old girl's vulva with his penis following a course of conduct designed to encourage her to have sex with him. (Pros. Ex. 2-3; R. at 709, 731). His crime alone is sufficient justification for eight years of confinement, which was roughly a quarter of the maximum punishment allowed for his conviction. MCM, pt. IV, ¶ 62.d.(2). But more than that, as her sister's boyfriend Appellant was in a position of trust with RR, and her family trusted Appellant to take care of RR. Appellant exploited RR's vulnerability and chance to have a fresh start while she was struggling at home the first night he drove away with her, even while his wife slept behind him in their bed with his newborn. (R. at 716-717, 810).

Furthermore, DS and SH both testified that Appellant confessed to touching RR but took no responsibility for his actions. Appellant, a twenty-year-old, told DS that it was not "on him" if RR, a middle schooler, put his hand on her breast or touched his genitals even if Appellant did not move away. (R. at 626-627). SH heard Appellant yelling that what he did to RR was not "rape" because she was "begging for it," despite the fact that RR was 13. (R. at 660).

Based on his unsworn statement, Appellant tried to obliquely lay blame for his crime on the military itself because it kept him from his wife and child. (Def. Ex. I.) This demonstrated a lack of remorse and accountability for Appellant's crime. (Id.)

Eight years' confinement was an appropriate sentence based on Appellant's conviction and actions immediately before and after he sexually assaulted RR.

***B. There are no mitigating circumstances that rendered Appellant's sentence inappropriate.***

Appellant relies on the same evidence that trial defense counsel offered at sentencing, which was his "short but unblemished career in the Air Force." (App. Br. at 57). Nothing Appellant offers is compelling extenuation or mitigation evidence. Therefore, this Court should not grant sentencing relief.

Appellant joined the Air Force in August of 2021. (Pros. Ex. 9). Less than a year into his service he sexually assaulted RR, a girl of 13 and his girlfriend's sister, by penetrating her vulva with his penis. A lack of other misconduct by Appellant on the record does not heavily bolster his character – it shows that he met the minimum requirements for serving in the Air Force.

That Appellant is loved and relied upon by his family does not mitigate the appropriateness of his sentence. If anything, growing up as a cherished son and brother (Def. Ex. B-I) only highlights the severity of Appellant's offense as he had no reason to believe his actions were acceptable.

At the sentencing proceeding, trial defense counsel highlighted the time Appellant has had to spend away from his two young children. (R. at 1107-1108.) But Appellant was not thinking of his children or how his actions would affect his firstborn daughter when he committed the offense: NA was not even three weeks old when Appellant put RR in the car and penetrated her vulva with his penis. (Def. Ex. H). Appellant's concern for his children is not a compelling reason to reduce his sentence. Furthermore, the convening authority already granted Appellant and his children some mercy under R.C.M. 1103(h): Appellant requested and was

granted waiver of all automatic forfeitures for the benefit of his wife and their two children. (ROT, Vol 1, *Entry of Judgment*, dated 9 August 2024).

Appellant’s sentence should be affirmed as entered on the Entry of Judgment because Appellant received the punishment he deserved, and this Court should deny this assignment of error.

#### IV.<sup>10</sup>

### **THIS COURT LACKS JURISDICTION TO ACT UPON AN 18 U.S.C. § 922 INDICATION.**

#### *Standard of Review*

This Court reviews questions of jurisdiction *de novo*. United States v. Williams, 85 M.J. 121, 124 (C.A.A.F. 2024) (citing United States v. Kuemmerle, 67 M.J. 141, 143 (C.A.A.F. 2009)).

#### *Law and Analysis*

Appellant’s claim fails in light of United States v. Johnson No. 24-0004/SF, slip op. at 2 (C.A.A.F. 24 June 2025). In Johnson, the Court of Appeals for the Armed Forces held that it “lacks authority to act upon a § 922 indication because no Court of Criminal Appeals has the authority to act upon that indication in the first instance,” and that the question of 18 U.S.C. § 922’s constitutionality was therefore “moot.” Id. The same situation is present here. This Court should deny this assignment of error.

---

<sup>10</sup> This issue is raised in the appendix pursuant to United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982).

**APPELLANT HAD NO CONSTITUTIONAL RIGHT TO A UNANIMOUS VERDICT AT HIS COURT-MARTIAL.**

*Standard of Review*

The constitutionality of a statute is a question of law that is reviewed *de novo*. Wright, 53 M.J. at 478 (citing United States v. Brown, 25 F.3d 307, 308 (6th Cir. 1994)).

*Law and Analysis*

In Ramos v. Louisiana, the Supreme Court held that the Sixth Amendment right to a jury includes the right to a unanimous jury. 590 U.S. 83 (2020) The Court further held that the Fourteenth Amendment incorporated this right to criminal proceedings at the state level. Id. at 1396-97. The Supreme Court did not state that this interpretation extended to military courts-martial.

CAAF addressed the applicability of Ramos to courts-martial in United States v. Anderson, 83 M.J. 291 (C.A.A.F. 2023). Our superior Court reaffirmed that servicemembers do not have a Sixth Amendment right to a jury trial. Id. at 295. CAAF rejected the same claims Appellant raises now:

[W]e disagree that [Ramos] further held that [a unanimous verdict] is also an essential element of an impartial factfinder. In the absence of a Sixth Amendment right to a jury trial in the military justice system, Appellant had no Sixth Amendment right to a unanimous verdict in his court-martial.

Id. at 298. CAAF held that Fifth Amendment due process does not require unanimous verdicts in courts-martial. Id. at 300. Further, our superior Court found that non-unanimous verdicts do

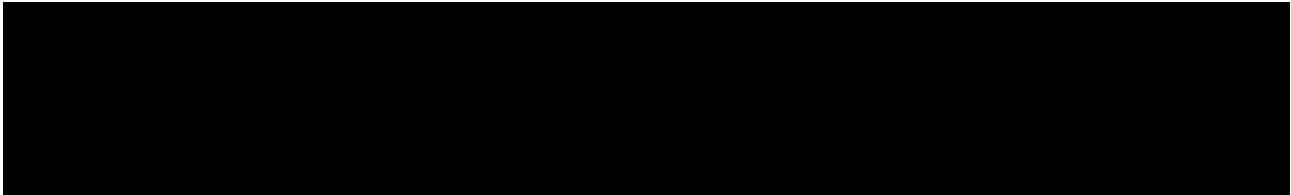
---

<sup>11</sup> This issue is raised in the appendix pursuant to United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982).

not constitute an equal protection violation under the Fifth Amendment. Id. at 302. This Court should follow CAAF's binding precedent and deny Appellant's assignment of error.

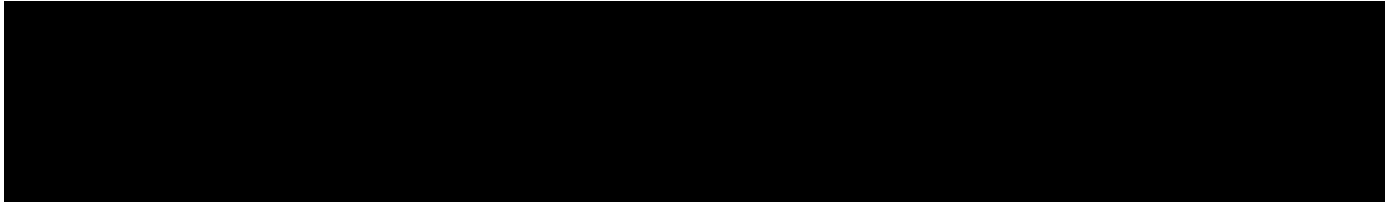
**CONCLUSION**

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.



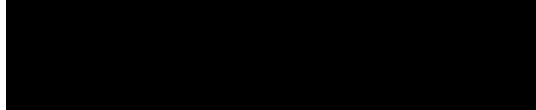
REGINA HENENLOTTER, Maj, USAF  
Appellate Government Counsel,

MARY ELLEN PAYNE  
Associate Chief



**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and the Air Force  
Appellate Defense Division on 8 September 2025.



REGINA HENENLOTTER, Maj, USAF  
Appellate Government Counsel

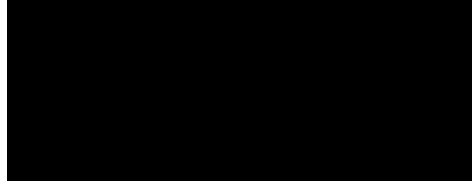


**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

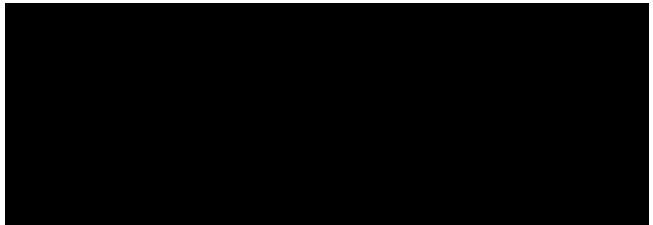
<b>UNITED STATES</b>	)	<b>BRIEF ON BEHALF OF APPELLANT</b>
<i>Appellee</i>	)	
	)	
v.	)	
	)	Before Panel No. 2
	)	
Airman First Class (E-3)	)	No. ACM 40752
<b>BROCK T. ANDERSON,</b>	)	
United States Air Force	)	
<i>Appellant.</i>	)	7 August 2025

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

WILLIAM E. CASSARA, Esq.



JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel



**TABLE OF CONTENTS**

Assignments of Error ..... 1

Statement of the Case..... 2

Statement of Facts..... 3

**I. THE EVIDENCE IS LEGALLY AND FACTUALLY INSUFFICIENT TO SUSTAIN THE FINDING OF GUILTY FOR SEXUAL ASSAULT OF A CHILD ..... 20**

**II. THE MILITARY JUDGE ABUSED HIS DISCRETION IN ADMITTING EVIDENCE PURSUANT TO MILITARY RULE OF EVIDENCE 414 AND THE GOVERNMENT CANNOT PROVE THAT THE ERROR WAS HARMLESS ..... 36**

**III. THE SENTENCE TO CONFINEMENT FOR EIGHT YEARS IS INAPPROPRIATELY SEVERE..... 48**

**IV. WHETHER THE GOVERNMENT CAN PROVE 18 U.S.C. § 922 IS CONSTITUTIONAL AS APPLIED TO APPELLANT BY “DEMONSTRATING THAT IT IS CONSISTENT WITH THE NATION’S HISTORICAL TRADITION OF FIREARM REGULATION” WHEN APPELLANT WAS CONVICTED OF A NON-VIOLENT OFFENSE AND THIS COURT CAN DECIDE THAT QUESTION..... 54**

**V. APPELLANT’S CONSTITUTIONAL RIGHTS WERE VIOLATED WHEN HE WAS CONVICTED OF AN OFFENSE WITH NO REQUIREMENT THAT THE COURT-MARTIAL PANEL (THE FUNCTIONAL EQUIVALENT OF THE JURY) VOTE UNANIMOUSLY FOR A FINDING OF GUILTY. .... 55**

Appendix..... 54

Prayer for Relief..... 57

Certificate of Filing and Service..... 58

**TABLE OF AUTHORITIES**

**Statutes**

18 U.S.C. § 922..... 1, 54  
Article 59, UCMJ, 10 U.S.C. § 859 ..... 38  
Article 66, UCMJ, 10 U.S.C. § 866..... *passim*  
Article 120b, UCMJ, 10 U.S.C. § 920b..... 2, 22  
William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year  
2021, Pub. L. No. 116-283, § 542(b), 134 Stat. 3388 (1 Jan. 2021)..... 21

**Cases**

**Supreme Court of the United States**

*Huddleston v. United States*, 485 U.S. 681 (1988)..... 36

**Court of Appeals for the Armed Forces**

*In re B.M. v. United States and Bailey*, 84 M.J. 314 (C.A.A.F. 2024) ..... 2  
*United States v. Anderson*, 83 M.J. 291 (C.A.A.F. 2023), *cert. denied*, 144 S. Ct.  
1003 (2024)..... 55, 56  
*United States v. Baier*, 60 M.J. 382 (C.A.A.F. 2005)..... 51, 52  
*United States v. Barner*, 56 M.J. 131 (C.A.A.F. 2001)..... 21  
*United States v. Berry*, 61 M.J. 91 (C.A.A.F. 2005)..... 37, 38  
*United States v. Busch*, 75 M.J. 87, 91 (C.A.A.F. 2016) ..... 55  
*United States v. Cabuhat*, 83 M.J. 755, 770 (A.F. Ct. Crim. App. 2023) (*en banc*), *pet.*  
*denied*, 84 M.J. 275 (C.A.A.F. 2024) ..... 20  
*United States v. Ediger*, 68 M.J. 243 (C.A.A.F. 2010)..... 37  
*United States v. Fetrow*, 76 M.J. 181 (C.A.A.F. 2017) ..... 36, 40  
*United States v. Flesher*, 73 M.J. 303 (C.A.A.F. 2014)..... 38  
*United States v. Hale*, 78 M.J. 268 (C.A.A.F. 2019) ..... 54  
*United States v. Harrington*, 83 M.J. 408 (C.A.A.F. 2023)..... 20  
*United States v. Harrow*, 65 M.J. 190 (C.A.A.F. 2007) ..... 38  
*United States v. Harvey*, 85 M.J. 127 (C.A.A.F. 2024) ..... *passim*  
*United States v. James*, 63 M.J. 217 (C.A.A.F. 2006)..... 37  
*United States v. Jasper*, 72 M.J. 276 (C.A.A.F. 2013) ..... 35  
*United States v. Johnson*, \_\_ M.J. \_\_, No. 24-0004, (C.A.A.F. 24 June 2025) ..... 54  
*United States v. Kelly*, 77 M.J. 404 (C.A.A.F. 2018) ..... 51, 52  
*United States v. King*, 78 M.J. 218 (C.A.A.F. 2019) ..... 20  
*United States v. Lacy*, 50 M.J. 286 (C.A.A.F. 1999) ..... 52  
*United States v. Lane*, 64 M.J. 1 (C.A.A.F. 2006)..... 51  
*United States v. Robinson*, 77 M.J. 294 (C.A.A.F. 2018)..... 20  
*United States v. Rosario*, 76 M.J. 114 (C.A.A.F. 2017) ..... 20  
*United States v. Ruppel*, 49 M.J. 247 (C.A.A.F. 1998)..... 37  
*United States v. Solomon*, 72 M.J. 176 (C.A.A.F. 2013)..... 44, 45  
*United States v. Tardif*, 57 M.J. 219 (C.A.A.F. 2002)..... 52  
*United States v. Warda*, 84 M.J. 83 (C.A.A.F. 2023)..... 34  
*United States v. White*, 69 M.J. 236 (C.A.A.F. 2010)..... 36

<i>United States v. Williams</i> , 85 M.J. 121 (C.A.A.F. 2024)	54
<i>United States v. Wilson</i> , 76 M.J. 4 (C.A.A.F. 2017)	54
<i>United States v. Wright</i> , 53 M.J. 476 (C.A.A.F. 2000)	37
<i>United States v. Yammine</i> , 69 M.J. 70 (C.A.A.F. 2010)	<i>passim</i>

**Court of Military Appeals**

<i>United States v. Claxton</i> , 32 M.J. 159 (C.M.A. 1991)	52
<i>United States v. Grostefon</i> , 12 M.J. 431 (C.M.A. 1982)	1, 54
<i>United States v. Healy</i> , 26 M.J. 394 (C.M.A. 1988)	52

**Service Courts of Criminal Appeals/Courts of Military Review**

<i>In re RR</i> , Misc. Dkt. No. 2024-02, 2024 CCA 286 (A.F. Ct. Crim. App. 7 May 2024)	2
<i>In re RR v. Anderson</i> , Misc. Dkt. No. 2024-08, 2024 CCA 293 (A.F. Ct. Crim. App. 22 July 2024)	2
<i>United States v. Anderson</i> , 67 M.J. 703 (A.F. Ct. Crim. App. 2009)	51
<i>United States v. Csiti</i> , ACM No. 40386, 2024 CCA LEXIS 160 (A.F. Ct. Crim. App. 29 April 2024), <i>aff'd</i> , 2025 CAAF LEXIS 349 (8 May 2025)	35
<i>United States v. Hunt</i> , No. ACM 40563, 2025 CCA LEXIS 215 (A.F. Ct. Crim. App. 16 May 2024)	20, 21, 22
<i>United States v. Lips</i> , 22 M.J. 679 (A.F.C.M.R. 1986), <i>aff'd</i> , 77 M.J. 289 (C.A.A.F. 2018)	20
<i>United States v. Moreno</i> , No. ACM 40511, 2025 CCA LEXIS 220 (A.F. Ct. Crim. App. 19 May 2024)	20, 21, 22
<i>United States v. Shirley</i> , ACM No. 40618, 2025 CCA LEXIS 221 (A.F. Ct. Crim. App. 19 May 2025)	51
<i>United States v. Wheeler</i> , 76 M.J. 564 (A.F. Ct. Crim. App. 2017)	20

**Manual for Courts-Martial, United States (2019 ed.)**

Pt. IV, ¶ 60	22
Pt. IV, ¶ 62	22, 51

**Military Rules of Evidence**

Mil. R. Evid. 104	36
Mil. R. Evid. 401	37, 42
Mil. R. Evid. 402	37, 42
Mil. R. Evid. 403	37, 38
Mil. R. Evid. 404	17, 18
Mil. R. Evid. 414	<i>passim</i>
Mil. R. Evid. 603	15
Mil. R. Evid. 807	11, 12

## ASSIGNMENTS OF ERROR

### I.

**THE EVIDENCE IS LEGALLY AND FACTUALLY INSUFFICIENT TO SUSTAIN THE FINDING OF GUILTY FOR SEXUAL ASSAULT OF A CHILD.**

### II.

**THE MILITARY JUDGE ABUSED HIS DISCRETION IN ADMITTING EVIDENCE PURSUANT TO MILITARY RULE OF EVIDENCE 414 AND THE GOVERNMENT CANNOT PROVE THAT THE ERROR WAS HARMLESS.**

### III.

**THE SENTENCE TO CONFINEMENT FOR EIGHT YEARS IS INAPPROPRIATELY SEVERE.**

### IV.<sup>1</sup>

**WHETHER THE GOVERNMENT CAN PROVE 18 U.S.C. § 922 IS CONSTITUTIONAL AS APPLIED TO APPELLANT BY “DEMONSTRATING THAT IT IS CONSISTENT WITH THE NATION’S HISTORICAL TRADITION OF FIREARM REGULATION” WHEN APPELLANT WAS CONVICTED OF A NON-VIOLENT OFFENSE.**

### V.

**APPELLANT’S CONSTITUTIONAL RIGHTS WERE VIOLATED WHEN HE WAS CONVICTED OF AN OFFENSE WITH NO REQUIREMENT THAT THE COURT-MARTIAL PANEL (THE FUNCTIONAL EQUIVALENT OF THE JURY) VOTE UNANIMOUSLY FOR A FINDING OF GUILTY.**

---

<sup>1</sup> Assignments of Error (AOE) IV and V are raised in the Appendix pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

## STATEMENT OF THE CASE

On 4 December 2023, 4 January 2024, 8-10 July 2024, and 5-9 August 2024, Airman First Class [A1C] Brock T. Anderson [Appellant] was tried at Altus Air Force Base [AFB], Oklahoma, by a general court-martial composed of officer and enlisted members. Contrary to his plea, Appellant was convicted of one charge and one specification of sexual assault of a child, in violation of Article 120b, Uniform Code of Military Justice [UCMJ], 10 U.S.C. § 920b.<sup>2</sup> R. at 959; Entry of Judgment [EOJ], dated 15 October 2024. Appellant elected to be sentenced by the military judge. R. at 1091. The military judge sentenced Appellant to a reduction to the rank of E-1, confinement for eight years, and a dishonorable discharge. R. at 982; EOJ. The convening authority took no action on the findings or sentence and granted Appellant's request to waive automatic forfeitures for a period of six months, or release from confinement, or expiration of term of service, whichever is sooner, to be paid to his wife, KA, for the benefit of herself and Appellant's two dependent children. Convening Authority Decision on Action [CADA], 13 September 2024.<sup>3</sup>

---

<sup>2</sup> Unless otherwise indicated, all references to the UCMJ, the Military Rules of Evidence, and the Rules for Courts-Martial are to the *Manual for Courts-Martial, United States* (2019 ed.) [MCM].

<sup>3</sup> On 14 March 2024, the alleged victim filed a petition for extraordinary relief pursuant to Article 6b, UCMJ, in the nature of a writ of mandamus, to vacate the military judge's abatement ruling, to disqualify the military judge, to disqualify the trial counsel who examined the alleged victim's mental health records, and to seal all patient records reviewed to date. Appellant, as the Real Party in Interest, moved to dismiss the petition pursuant to *In re B.M. v. United States and Bailey*, 84 M.J. 314 (C.A.A.F. 2024). This Honorable Court granted the Real Party in Interest's motion to dismiss. *In re RR*, Misc. Dkt. No. 2024-02, 2024 CCA LEXIS 286 (A.F. Ct. Crim. App. 7 May 2024). On 17 May 2024, the alleged victim waived her privilege and agreed to the disclosure and production to trial counsel and trial defense counsel of the four pages of mental health records identified by the military judge as constitutionally required. The military judge lifted the abatement and rescheduled the court-martial for 8 July 2024. The alleged victim filed a second petition for extraordinary relief in the nature of a writ of mandamus essentially seeking the same relief as in the first petition. This Court concluded that the alleged victim did not demonstrate that the right to issuance of the writ is clear and indisputable, such that she failed to show the appropriateness of the requested relief. *In re RR v. Anderson*, Misc. Dkt. No. 2024-08, 2024 CCA LEXIS 293 (A.F. Ct. Crim. App. 22 July 2024).

## STATEMENT OF THE FACTS

### Background

In May 2021, Appellant and KA began dating. R. at 796. Shortly after Appellant joined the Air Force in August 2021, KA learned that she was pregnant. R. at 796. In February 2022, KA moved in with Appellant in his off-base home outside Altus AFB. *Id.* Not long after, Appellant's friends, DS and JI, also moved into the two-bedroom house. R. at 603, 604, 797-98, 900. Appellant and KA shared one bedroom, DS lived in the second bedroom, and JI used the living room as his bedroom. R. at 605.

KA gave birth to a daughter in April 2022. R. at 798-99. Several days later, she and Appellant drove to their hometown, Waycross, Georgia, to introduce their daughter to their families. R. at 799. The trio stayed with Appellant's parents for the duration of the trip. R. at 700, 800. KA's then-thirteen-year-old stepsister, RR, visited often and spent the night on 7 May 2022. R. at 706, 801-802, 803; Pros. Ex. 1.

That night, Appellant, who shared a bedroom with KA and their daughter, sent RR several messages on Instagram from his main account. R. at 707; Pros. Ex. 2. RR viewed the messages on her laptop rather than on her phone because her mother, SH, had confiscated her phone. R. at 679, 702. Appellant wrote, "If u want to talk or anything tho I got u." R. at 708; Pros. Ex. 2. After RR told Appellant that she was bored, he offered to work in the guest bedroom with her. R. at 708; Pros. Ex. 2. She replied, "sure," and Appellant joined her for a while. R. at 709.

At 0556, Appellant sent RR a message from his secondary Instagram account. R. at 709; Pros. Ex. 3. He wrote:

If u ever need to tell me something u for some reason don't want [KA] to see send it to this account or tell me in person. I hate that you feel like when you get anxious or depressed or even just bored your go to is chemicals. It doesn't make you a bad person. Your

super sweet when u want to be. All I need is a “I’m bored” and I’ll be there.

Pros. Ex. 3.

Although KA did not know that Appellant had a second Instagram account, she nonetheless believed that Appellant “was trying to be nice” to RR when he sent this message. R. at 805.

KA invited RR to come to Oklahoma. R. at 645, 807. While KA was four years older than RR, they had been best friends for years before becoming stepsisters in 2022 when KA’s father and RR’s mother, SH, married.<sup>4</sup> R. at 640-41, 679, 693, 694.

SH permitted RR to go to Oklahoma because she thought KA and RR wanted to spend time together. R. at 646. RR admitted that she had been “getting in a little bit of trouble” in Georgia and that a “change of environment” was good for her. R. at 712. SH confirmed that RR

---

<sup>4</sup> RH, the man KA called her father, adopted her and her sister, KM, when the girls were young. R. at 639-40. RH and his family lived two houses away from SH and RR for years. R. at 640. According to SH, “[KA] always had a relationship with us and was under our roof a lot of nights prior to” 2016, when SH and RH started dating. R. at 640-41. SH and RH married in 2022. R. at 641.

KA testified that, when she was fifteen or sixteen years old, RH grabbed her hips, licked his lips, and said “look at that butt.” R. at 843. KA’s sister, KM, testified that she moved out of RH’s house in 2020 when she was fifteen years old because RH had sexually abused her for years. R. at 946-47. KM believed that RH was abusing KA because RH bought KA drugs and alcohol like he had bought her. R. at 950. KM told RH that she did not want to be touched anymore and that she “wanted [KA]” or she would press charges against him. R. at 947, 950. A physical altercation ensued between KM and RH. R. at 947-48. KM testified that RR’s mother, SH, gave her a couple hundred dollars and paid for an apartment for KM and KA. R. at 948, 950. KM testified, “I dropped all charges and allegations against [RH] because I was paid off to do so.” R. at 950. KM claimed that SH later paid her to create a Facebook post apologizing to RH for accusing him of inappropriate behavior. R. at 951-52. SH denied that KM moved out after alleging that RH had molested her; instead, SH maintained that KM moved out when RH told her to stop smoking marijuana or he would turn her cell phone off. R. at 677. SH acknowledged that she knew about KM’s accusations toward RH – “She has mentioned something like that, yes” – but insisted that KM’s accusations “never happened.” *Id.* SH denied giving KA and KM money. R. at 677, 678. While denying any animosity in the home regarding the molestation, RR acknowledged that “those [molestation] allegations happened.” R. at 764.

had “start[ed] to get a little mouthy” and experienced “typical middle school struggles.” R. at 646. These “typical middle school struggles” included running away multiple times, using marijuana, drinking alcohol, getting suspended from school, and telling her friends that her mother hit her hard enough to leave bruises.<sup>5</sup> R. at 672, 758, 759, 760, 841.

On 17 April 2022, SH texted RR not to do drugs, have sex, and smoke. R. at 673. She also texted, “I don’t know what’s wrong with you lately but you’re completely out of control, it’s time to come back down to earth.” R. at 673, 675. On 25 April 2022, RR Googled “how to spell promiscuous.” R. at 761, 763. In April 2022, SH texted RR, “You know you make bad choices and put me in a place where I can’t trust you.” R. at 761.

Although RR admitted that she had used drugs, SH claimed to know nothing about RR using drugs. R. at 673. SH admitted she knew that RR had been drinking alcohol before April 2022. R. at 673, 674.

#### The Drive from Georgia to Oklahoma

For the duration of the drive, Appellant drove and KA sat in the front passenger seat of his four-door GMC crew cab pickup truck.<sup>6</sup> R. at 607, 713, 855. RR sat in the back seat next to one door. R. at 713, 765. The baby’s car seat was installed next to the other door. *Id.* Without a phone, RR did not have much to occupy her on the drive, so she tried to sleep for most of the trip. R. at 720. Sometimes she vaped. R. at 845, 846. KA testified that RR did not like Appellant’s

---

<sup>5</sup> While acknowledging that she told her friends that her mother hit her hard enough to leave bruises, at trial RR testified that her mother’s whoopings did not leave any bruises. R. at 759-60. SH acknowledged that she had spanked RR in the past, but “[n]othing that’s mark-able, no.” R. at 680.

<sup>6</sup> A crew cab pickup truck has four full-size doors for the cab – two in front and two in back. R. at 866.

admonition not to vape in front of the baby. R. at 845, 846. RR maintained, however, that Appellant and KA never asked her to stop vaping around the baby.<sup>7</sup> R. at 765.

At some point, Appellant informed his housemates that RR would live with them for an unknown time because she needed help and a better, safer environment than she had at home. R. at 607, 901. The news about having another housemate shocked DS. R. at 607.

Appellant, KA, RR, and the baby spent the night in a hotel room in Jackson, Mississippi. R. at 714. They slept in one bed, with the baby on one side next to KA, Appellant in the middle, and RR on the other side of the bed. R. at 715, 809. According to RR, as she fell asleep, Appellant placed one of his hands over her clothing on her waist or hip, then moved his hand to her buttocks, and then to her breasts. R. at 716. She woke up and Appellant grabbed her hand, placed it on his erect penis over his clothes, and whispered that he needed to ejaculate.<sup>8</sup> R. at 715, 716-17. She got off the bed and stayed in the bathroom for several minutes. R. at 716. RR returned to the bed, scooted closer to the edge, and fell asleep. R. at 716, 717-18. She did not tell her stepsister about this alleged incident. R. at 718, 847.

RR did not reveal this allegation during the investigation or to anyone else until a pretrial interview with the trial counsel one day before the scheduled start of trial and only because the trial counsel asked “specific questions” of her. R. at 784; App. Ex. XXVI at 2.

Although KA did not specifically remember waking to feed the baby that night, she typically woke every two hours to do so. R. at 811. She also suffered from insomnia, which prevented her from falling asleep quickly. R. at 814. KA did not see RR leave the bed for the bathroom that night. R. at 812.

---

<sup>7</sup> RR claimed that KA smoked RR’s vape in the truck. R. at 765.

<sup>8</sup> RR testified, “he whispered in my ear that he needed to get a nut off.” R. at 716.

The next day, the group drove to Dallas, Texas, where they shopped at a mall. R. at 721, 812. RR bought clothes and tennis shoes, and Appellant bought her a necklace. R. at 721.

That night, they ordered food to be delivered to the hotel via DoorDash and got ready for bed. R. at 722, 813. RR realized that she did not have her laptop in the hotel room, so she and Appellant walked to his truck in the parking lot. R. at 722-23, 813. She grabbed the laptop from the back seat and started to walk away. R. at 729. According to RR, Appellant grabbed her arm and asked her to get in the truck. R. at 729, 730. She lay in the back seat, wearing pajama pants and a t-shirt. R. at 729, 781. She testified, “He tells me if I don’t do this, he’s going to ruin mine and [KA’s] relationship, him and [KA]’s relationship, me and my niece’s relationship. I didn’t move. I didn’t say anything. He took my [clothes] off of me and then he did what he did.” R. at 729. RR claimed that Appellant took her pants off, leaned her shoulders back, removed her underwear, and inserted his penis in her vagina as he touched her shoulders, arms, and breasts with his hands. R. at 731. He did not wear a condom and ejaculated on RR’s leg and the backseat of the truck. R. at 731, 732. Appellant used a baby wipe to clean up. R. at 732. RR testified that she did not know how long the encounter lasted. R. at 731.

RR dressed, returned to the hotel room, and cried in the bathroom as KA lay in the bed with the baby. R. at 732. RR testified that she did not tell KA about the alleged incident because she believed it would ruin her relationship with her sister, her relationship with the baby, and her sister’s relationship with Appellant. R. at 733. Instead, she got into bed next to her sister and fell asleep. *Id.*

#### Five Days in Oklahoma

The next day, 12 May 2022, the group arrived in Oklahoma. R. at 608, 734. Appellant and KA moved out of the primary bedroom and used the second bedroom for themselves. R. at

609. The primary bedroom became the baby's and RR's room. R. at 609, 735. DS moved out of the second bedroom and into the living room. R. at 609, 902. JI moved out of the living room and into the laundry room. *Id.* RR perceived that DS and JI felt aggravated that she had moved in. R. at 736.

That night, Appellant went to the gym with DS and JI. R. at 610. According to DS and JI, Appellant told his friends that RR did not look thirteen years old, that she had big breasts, that she was kind of bad, and that he would have sex with her if she was not thirteen years old. R. at 621, 903, 904. DS and JI felt uncomfortable and believed that Appellant was joking. R. at 621, 903, 904, 908, 914.

Without her phone, RR was bored. R. at 737. On 13 May 2022, She accessed her TikTok account on KA's phone. R. at 745, 819, 905. RR engaged in the following conversation with a friend:

Friend: And you okay?

RR: no not really

Friend: What's going on?

RR: i did something really bad and if it ever gets out my whole family would be ruined

Friend: Whattt?

RR: bro i wanna tell yall so bad but if yall tell this person , literally my whole family would hate me

Friend: I'm not saying shit [RR] you know I'm not like that

Friend: I'm worried now

Friend: I put it on my life, my unborn child, my dad, my mom like everything

RR: i f brock

Friend: Brock??  
Friend: Who's that?  
RR: [REDACTED]bd  
Friend: [REDACTED]dad?  
Friend: Omgggg  
Friend: Wtff  
Friend: Wtf

Pros. Ex. 6.

At trial, RR claimed that she typed “i f brock” because

There's a censor – TikTok used to have a censor on their messages. I could not say the hard R word on there. I also could not say the whole F word. I said in a way that she would understand what I'm trying to say without it being unable to send because of the censor. That's why [I] said it like that.

R. at 745.

A few days after arriving in Oklahoma, KA opened the TikTok app on her phone and saw her sister's messages. R. at 819-20. KA understood the message “i f brock” to mean that RR and Appellant had sex. R. at 822. Angry and confused, KA slapped Appellant and confronted Appellant and RR. R. at 738, 823, 824, 832. Appellant said that nothing happened with RR. R. at 824, 829. KA did not know what to believe and worried about her family. R. at 832.

DS described the scene as “explosive” with “a lot of arguing, yelling back and forth, a lot of verbal slurs thrown back and forth between” KA and RR. R. at 622. JI recalled KA, Appellant, and RR “fighting all over the place” throughout the house. R. at 910. JI heard RR say that she did

not want KA to have Appellant for herself.<sup>9</sup> R. at 913. RR denied that she fought with KA at all. R. at 779.

DS saw Appellant “kind of just standing in the room” while KA cried and screamed at RR. R. at 622, 624, 630. Appellant told DS that nothing had happened with RR but that she had taken his hand to her breast and then grabbed his penis while they were sleeping in a hotel room. R. at 626, 627, 633. DS told Appellant that, as an adult, Appellant had full control of the situation and “that’s not cool.” R. at 636. According to DS, Appellant denied taking RR’s hand and placing it on his penis. R. at 627.

At some point after the fight, JI advised RR to get a rape kit done. R. at 910. RR told JI that she did not need one. R. at 912. RR claimed not to remember this conversation. R. at 778.

In the days after the fight, RR frequently went to a nearby gas station to hang out with a twenty-one-year-old man. R. at 775, 818. Appellant and KA gave RR his cell phone so that she had a way to stay in touch as she walked to the gas station. R. at 777. Appellant and KA complained to RR about her behavior, which angered RR. R. at 847, 848. KA decided to send RR home to Georgia. R. at 849. According to KA,

[W]ell, initially we wanted her to go home because she was stealing alcohol and everything. She told me that she had Xanax in her bag and she took it, and I couldn’t have that around my kid. And we told [SH] that [RR] wanted to go home because she was wanting to hang out with friends, because I didn’t want to tell [SH] that she was doing those things and get [RR] in trouble.

R. at 849.

---

<sup>9</sup> Over objection from the Government, the military judge admitted this testimony for the purpose of impeaching part of RR’s testimony. R. at 913.

KA did not tell her stepmother about RR's allegations. R. at 850. SH recalled that RR wanted to come home because she was bored. R. at 648-49. SH felt surprised that RR wanted to come home so soon. R. at 648.

RR insisted that she alone made the decision to leave Oklahoma. R. at 739.

After RR left the house, DS cleaned her room and discovered a half-empty bottle of alcohol in a bag belonging to RR. R. at 631-32.

JI testified that sometime after RR left Oklahoma, KA told him that Appellant said he had kissed RR in a hotel elevator, that RR grabbed his hand and placed it on her breast, they had sex in his truck, and that RR initiated all the contact.<sup>10</sup> R. at 906, 907. KA denied making this statement. R. at 830. According to JI, Appellant made no such admissions to him. R. at 907.

DS testified that sometime after RR left Oklahoma, KA told him that Appellant had admitted to having sex with RR.<sup>11</sup> R. at 920. KA denied making this statement to DS. R. at 830.

#### RR Returns to Georgia

RR flew home to Georgia on 17 May 2022. R. at 905. SH asked what happened, but RR did not say much. R. at 650.

SH testified that RR had "some pretty extravagant behavior following her coming home," including running away. R. at 651, 680. RR felt "self-destructive" but denied that she ran away upon returning home. R. at 746, 780.

SH believed that something was wrong with RR. She claimed that RR told her, "I'll never tell you." R. at 651. According to SH, once RR was found, RR told SH about the allegations. R.

---

<sup>10</sup> Over defense objection, the military judge admitted this testimony for the purpose of impeaching KA's testimony. R. at 906.

<sup>11</sup> Over defense objection, the military judge admitted this testimony for the purpose of assessing KA's in-court testimony. R. at 920. Additionally, the military judge sustained the defense objection to admitting this evidence as residual hearsay under Mil. R. Evid. 807. R. at 925.

at 652. RR, however, recalled that she told her mother because “I [thought] she was about to whoop me.” R. at 747. At trial, RR stated that she did not fear a whooping, she anticipated that she would get in trouble for being self-destructive, and her mother did not know the reason for her self-destructive behavior, so she told her. *Id.*

SH claimed that she called Appellant and asked if he raped RR. R. at 654. Appellant denied the accusation. *Id.* Appellant gave the phone to KA. R. at 659. SH maintained that she could hear Appellant in the background saying, “she wanted it, she was literally begging for it” and “it wasn’t rape, it was just sex, she wanted it, she begged for it,” or words to that effect. R. at 660, 661, 682.

After ending the call, SH called the county police department. R. at 662.

#### The Investigation

MS, a child forensic interviewer, interviewed RR in May 2022. R. at 969, 974, 976. RR did not allege that Appellant had grabbed her breasts or buttocks, nor did she allege that she had touched Appellant’s penis in Jackson, Mississippi. R. at 974-75.

In a 28 June 2022 interview with the Air Force Office of Special Investigations [OSI], KA said that she did not know if Appellant and RR had sex.<sup>12</sup> R. at 827. In July or August 2022, she told her half-sister, KC, that Appellant had admitted to having sex with RR in his truck in the Dallas area on the night that KA, the baby, Appellant, and RR slept in one bed.<sup>13</sup> R. at 876, 877. KA denied making this statement to her half-sister. R. at 831.

---

<sup>12</sup> Over defense objection, the military judge admitted KA’s testimony on this point for the limited purpose of impeachment. R. at 827-28.

<sup>13</sup> Over defense objection, the military judge admitted this testimony for the purpose of assessing the credibility of KA’s in-court testimony. R. at 876. The military judge sustained the defense objection to admitting this testimony as residual hearsay under Mil. R. Evid. 807. *Id.*

In September 2022, RR told two OSI agents that seven to eight minutes elapsed from the time she and Appellant left the hotel room until they returned to the hotel room. R. at 990, 995. She also said that a total of twenty seconds elapsed from the time Appellant grabbed her to when he cleaned up his ejaculate. R. at 990. When asked whether RR clarified her answer about the twenty-second time frame, the male agent answered, “It was not clarified in a way that made sense to me.” R. at 1002.

RR told the agents that Appellant placed one hand on the chair and the other hand on the door during the alleged incident. R. at 991. Unlike at trial, she did not allege that Appellant pushed her shoulders during the incident. *Compare* R. at 731, *with* R. at 991. She also did not allege that Appellant touched her breasts or buttocks or put her hand on his penis while in the Jackson hotel; instead, she said that Appellant touched her somewhere on her leg and that this act alone made her feel uncomfortable so she went to the bathroom. *Compare* R. at 716-17, *with* R. at 992-93, 998. When an agent asked how Appellant touched her leg, RR said she did not remember. R. at 998.

One of the agents observed that RR appeared uncomfortable when talking about the charged act. R. at 997. He opined that RR’s closed-off demeanor was a common response in child interviews. R. at 1018. RR asked to speak only with the female agent about the incident. R. at 1001. The male agent exited the interview room and observed RR discussing the incident with the female agent from a sperate room. R. at 1001. RR relayed that her mother, SH, wanted to know whether she could sue Appellant for the alleged incident. R. at 993. RR asked three more times about suing Appellant. R. at 993, 1016. She claimed that she “might have said it as a joke,” but that she did not remember asking the agent if she could sue Appellant. R. at 782. RR testified, “I don’t care for his money. I don’t want to sue him.” *Id.* SH testified that she did not recall whether she wanted to sue Appellant. R. at 682.

Three special agents searched and photographed Appellant's truck in August 2022. R. at 855, 890; Pros. Ex. 7. The agents observed clothes and other debris throughout the back seat, a baby's car seat positioned in the rear passenger seat, as well as several stains in the back seat of the truck, specifically on the driver's side and in the center. R. at 858, 862, 865-66; Pros. Ex. 7. The agents removed the car seat and other items prior to taking the photos the Government entered into evidence. R. at 857. Pros. Ex. 7. One of the agents, a forensic science consultant, used an alternate light source to discover additional stains. R. at 855-56, 858-59.

A forensic biologist from the U.S. Army Criminal Investigation Laboratory testified as an expert witness that Appellant's semen and DNA was present in three samples collected from the backseat of his truck. R. at 887, 893-94; Pros. Ex. 8. While another person's DNA was present in the non-semen portion of the samples, RR was excluded as a contributor from the DNA samples.<sup>14</sup> R. at 888, 892, 895-96; Pros. Ex. 8.

The expert witness stated that there was no way to determine when the semen was deposited on the seat, and she could not conclude that the stains were deposited on 10 May 2022. R. at 889, 891-92. Additionally, the stains could have been deposited on different dates. R. at 892. Certain factors, such as the passage of time, the use of cleaning products, or high temperatures, could affect or degrade the amount of DNA present in a location. R. at 888-89. The expert witness stated the samples from Appellant's truck, however, were "robust" and suffered no degradation. R. at 891. KA testified that she and Appellant had sex in the back seat of the truck ten or eleven times before May 2022 and an unknown number of times after May 2022. R. at 958-59.

---

<sup>14</sup> The unknown second person's DNA was present in each of the three DNA profiles. R. at 893-94. This DNA could have come from spit, saliva, vaginal secretions, or other bodily fluids. R. at 894-95.

### Admission of the Dismissed Specifications as Propensity Evidence

On 27 February 2023, the Government preferred one Charge with four Specifications, each alleging a violation of Article 120b, UCMJ, occurring within the state of Texas. *Charge Sheet*.

On 7 July 2024, the day before trial, the Government discovered, through what it called its first pretrial interview with RR, that she claimed that the charged acts in Specifications 1-3 occurred in Jackson, Mississippi, and not in Texas. R. at 138; App. Ex. XXVI at 2. That same day, the Government moved to make minor changes to Specifications 1-3 by changing the location from “within the State of Texas” to “within the continental United States,” pursuant to Mil. R. Evid. 603. App. Ex. XXXIV at 1. The defense opposed the motion and argued that the changes were major, not minor. App. Ex. XXVII.

On 8 July 2024, the military judge presided over an Article 39(a), UCMJ, hearing on the motion. R. at 138. During the hearing GJ, a Government paralegal, testified that he observed interviews of DS and JI by the prosecutors, during which the two witnesses claimed that Appellant told them that he touched RR’s breast and butt and that he let RR touch his penis. R. at 141-44. Neither DS nor JI stated where these alleged acts occurred. R. at 146.

GJ also watched a recording of the OSI interview with RR. R. at 147. He testified that RR discussed these alleged acts and stated that they occurred in a bed with Appellant, KA, and the baby, but she did not disclose where these alleged acts occurred. R. at 144-45, 146. RR also claimed in the OSI interview that Appellant touched her leg somehow in Jackson, Mississippi. R. at 146.

GJ also watched a recording of a May 2022 child forensic interview with RR. R. at 147. RR did not discuss the location of any charged act in that interview. *Id.*

On 7 July 2024, however, RR claimed in her only pretrial interview<sup>15</sup> that these three alleged acts occurred in a bed in Jackson, Mississippi. R. at 145. She told the prosecution team that Appellant touched her on her back, butt, and breast and then grabbed her hand and placed it on his penis as he whispered something in her ear. R. at 149. According to GJ, who was present during the pretrial interview, RR stated that she did not like Appellant's conduct, so she went to the bathroom for a while and returned to the bed, where she scooted away from him and fell asleep. *Id.*

The Government played two excerpts from OSI's interview of RR. R. at 181-86; App. Ex. XXXII. In the first excerpt, RR alleged that Appellant "kept touching" her, but she did not specify where on her body or in which state. R. at 181-82. In the second excerpt, RR alleged that Appellant touched her "legs and stuff" all over with his hand in a Jackson, Mississippi, hotel. R. at 182-86. She did not remember how many times Appellant touched her leg. R. at 185. When asked if anything else happened that night, RR answered, "No, because I scooted away." *Id.* She denied that Appellant said anything to her. *Id.*

After argument by the parties, the military judge denied the Government motion with an oral ruling and dismissed the specifications without prejudice. R. at 187-91, 194. Among other things, the military judge concluded that the change involved not just the location of the charged acts, but also "what the defense was reasonably on notice for was one particular incident, has now been elongated to a continuing course of conduct. What initially all appear to be one event, or one isolated course of conduct at the same time and place, has now stretched out over 350 miles, and hours, and maybe days." R. at 190.

---

<sup>15</sup> According to GJ, he and one of the trial counsel conducted a "soft interview" of RR in September or October 2023. R. at 150-51. The purpose of this conversation was to introduce the trial team but was not "an in-depth interview" in which the allegations were discussed. R. at 150-51.

The Government asked the military judge to reconsider his decision. R. at 191-92. The military judge permitted the Government to consider its options for the remaining specification and inform him of its strategy the following morning. R. at 193, 194. That night, the Government emailed the military judge with a proffer that the charged acts in Specifications 1-3 also occurred as part of part of the *res gestae* for Specification 4. App. Ex. XXXVIII.

On 9 July 2024, the military judge issued a written ruling on the motion. App. Ex. XXXIV. He denied the motion and the Government's request for reconsideration and dismissed Specifications 1-3 without prejudice.<sup>16</sup> App. Ex. XXXIV at 6.

After the military judge issued the ruling, the Government sought to reopen the hearing, present additional evidence, and argue that the specifications could remain on the Charge Sheet. R. at 199-204. The military judge denied the request. R. at 204-208.

The Government elected to proceed with trial on Specification 4 and provided notice to the defense of its intent to introduce evidence that Appellant touched RR's breast and buttocks and that he caused her to touch his penis in a Jackson, Mississippi, hotel bed on or about 9 May 2022 as evidence of Appellant's motive, intent, and plan, pursuant to Military Rules of Evidence [Mil. R. Evid.] 404(b) and 413 [sic].<sup>17</sup> R. at 212; App. Ex. XLVII. The Government's purpose in introducing the uncharged misconduct under Mil. R. Evid. 414 was to prove that Appellant committed "a similar crime in a sexual offense case." App. Ex. XLVII at 2.

---

<sup>16</sup> On 5 August 2024, the military judge re-numbered the Charge Sheet so that Specification 4 of The Charge became The Specification of The Charge. R. at 325-26; Charge Sheet.

<sup>17</sup> The Government also notified the defense of its intent to introduce evidence that Appellant touched RR's breast and buttocks at or near Dallas, Texas, on or about 10 May 2022. App. Ex. XLVII. The defense conceded that these acts constituted *res gestae* of Specification 4 and did not contest the admission of this evidence. App. Ex. XLVIII.

On 9 July 2024, the defense filed a motion to exclude evidence pursuant to Mil. R. Evid. 404(b) and 414. App. Ex. XLVIII. Among other things, the defense argued that the Government did not have good cause for introducing the evidence because of the untimeliness of the Government's notice to the defense. App. Ex. XLVIII at 5. The Government opposed the motion. App. Ex. XLIX.

The military judge presided over an Article 39(a) hearing on the motion. R. at 277. DS testified that after the fight among KA, RR, and Appellant, Appellant stated that he slapped RR's butt in a hotel hallway as a joke in a Texas hotel the day before arriving in Oklahoma. R. at 286, 287.

RR testified that Appellant touched her breasts and buttocks and caused her hand to touch his penis in a Jackson, Mississippi, hotel bed while KA and the baby were also in bed. R. at 293-95, 296-97, 306. She stated that Appellant whispered in her ear, which caused her to go to the bathroom and later return to the edge of the bed to sleep. R. at 296-98.

RR admitted that she did not tell the child forensic interviewer in May 2022 in which city or state the uncharged acts occurred. R. at 307. She testified, "Y'all, everybody kind of assumed it happened in Dallas when it happened. . . . But then I said it happened to Mississippi and also Dallas. So, I don't really think there's new evidence." *Id.* RR claimed that she told the child forensic interviewer that Appellant touched her buttocks and breast and that she did not know if she told the interviewer about Appellant causing her to touch his penis with her hand. R. at 307-308.

During the 7 July 2024 pretrial interview with the prosecution team, RR watched her interviews with the child forensic examiner and OSI, but she insisted she "wasn't paying attention to them" and "didn't really watch [them]" because she was "distracted" by her phone. R. at 314.

Regarding the September 2023 interview with OSI, RR claimed that she told the investigators about the touch on her buttocks but she did not specify in which state the touch occurred. R. at 308. She believed that she told the investigators about Appellant touching her breast and grabbing her hand to touch his penis. R. at 308. RR was sure that she told OSI about these acts, but she did not have a specific memory of doing so. R. at 312, 313.

RR insisted that she told the prosecution team in the fall of 2023 that Appellant touched her breast but she did not specify in which state. R. at 309-10. She believed that she told them about Appellant touching her buttocks and about her touching his penis. R. at 310. RR admitted that she did not have a specific memory of telling the prosecution team about these acts, but she believed she did. R. at 311.

RR testified that she remembered telling the prosecution team on 7 July 2024 about the uncharged acts. R. at 313.

Among other things, the defense argued that the Government did not have good cause for its late filing because the Government notice stated that the prosecution team learned about the allegations in Jackson, Mississippi, the day before trial, but that RR testified that she discussed these acts in the fall of 2023 with the prosecution team. R. at 317-18.

On 21 July 2024, the military judge issued a written ruling denying the defense motion to exclude the evidence under Mil. R. Evid. 414. App. Ex. LVIII.

Additional facts necessary to resolve the assigned errors are contained in the arguments below.

## **ERRORS AND ARGUMENT**

### **I.**

#### **THE EVIDENCE IS LEGALLY AND FACTUALLY INSUFFICIENT TO SUSTAIN THE FINDING OF GUILTY FOR SEXUAL ASSAULT OF A CHILD.**

##### **Standards of Review**

Issues of legal sufficiency are reviewed de novo. *United States v. Harrington*, 83 M.J. 408, 414 (C.A.A.F. 2023) (citing *United States v. King*, 78 M.J. 218, 221 (C.A.A.F. 2019)); *United States v. Moreno*, No. ACM 40511, 2025 CCA LEXIS 220, \*13 (A.F. Ct. Crim. App. 19 May 2025); *United States v. Hunt*, No. ACM 40563, 2025 CCA LEXIS 215, \*11 (16 May 2025).

This Court reviews issues of factual sufficiency de novo. *United States v. Cabuhat*, 83 M.J. 755, 770 (A.F. Ct. Crim. App. 2023) (en banc), *petition denied*, 84 M.J. 275 (C.A.A.F. 2024). This Court reviews questions of factual sufficiency when an appellant asserts an assignment of error and shows a specific deficiency in proof. *United States v. Harvey*, 85 M.J. 127, 129 (C.A.A.F. 2024) (citing Article 66(d)(1)(B)(i), UCMJ, 10 U.S.C. § 866(d)(1)(B)(i)); *Moreno*, 2025 CCA LEXIS at \*13-14; *Hunt*, 2025 CCA LEXIS at \*11.

##### **Tests for Legal and Factual Sufficiency**

“The test for legal sufficiency is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *United States v. Robinson*, 77 M.J. 294, 297-98 (C.A.A.F. 2018) (quoting *United States v. Rosario*, 76 M.J. 114, 117 (C.A.A.F. 2017)). “The term reasonable doubt, however, does not mean that the evidence must be free from conflict.” *United States v. Wheeler*, 76 M.J. 564, 568 (A.F. Ct. Crim. App. 2017) (citing *United States v. Lips*, 22 M.J. 679, 684 (A.F.C.M.R. 1986)), *aff’d*, 77 M.J. 289 (C.A.A.F. 2018). “[I]n resolving questions of legal

sufficiency, we are bound to draw every reasonable inference from the evidence of record in favor of the prosecution.” *United States v. Barner*, 56 M.J. 131, 134 (C.A.A.F. 2001) (citations omitted).

Article 66 (d)(1), UCMJ, 10 U.S.C. § 866(d)(1), provides:

(B) FACTUAL SUFFICIENCY REVIEW.

(i) In an appeal of a finding of guilty under subsection (b), the Court may consider whether the finding is correct in fact upon request of the accused if the accused makes a specific showing of a deficiency in proof.

(ii) After an accused has made such a showing, the Court may weigh the evidence and determine controverted questions of fact subject to –

(I) appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence; and

(II) appropriate deference to findings of fact entered into the record by the military judge.

(iii) If, as a result of the review conducted under clause (ii), the Court is clearly convinced that the finding of guilty was against the weight of the evidence, the Court may dismiss, set aside, or modify the finding, or affirm a lesser finding.

10 U.S.C. 866(d)(1).

The factual sufficiency standard applies to courts-martial, such as Appellant’s, in which every finding of guilty in the entry of judgment is for an offense occurring on or after 1 January 2021. William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, § 542(b), 134 Stat. 3388, 3611 (2021).

The requirement to give “appropriate deference” when weighing the evidence and determining controverted questions of fact depends on the nature of the evidence at issue. *Harvey*, 85 M.J. at 130; *Moreno*, 2025 CCA LEXIS at \*15; *Hunt*, 2025 CCA LEXIS at \*12. This Court

has discretion to determine what level of deference is appropriate. *Harvey*, 85 M.J. at 130; *Moreno*, 2025 CCA LEXIS at \*15-16; *Hunt*, 2025 CCA LEXIS at \*12.

The 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; *Moreno*, 2025 CCA LEXIS at \*16; *Hunt*, 2025 CCA LEXIS at \*12.

Finally, for this Court to be clearly convinced that the finding of guilty was against the weight of the evidence, two requirements must be met. First, this Court must decide that the evidence, as this Court has weighed it, does not prove that the appellant is guilty beyond a reasonable doubt. Second, this Court must be clearly convinced of the correctness of the decision. *Harvey*, 85 M.J. at 132; *Moreno*, 2025 CCA LEXIS at \*16; *Hunt*, 2025 CCA LEXIS at \*12-13.

### **The Elements of Sexual Assault of a Child**

Sexual assault of a child who has attained the age of 12 but has not attained the age of 16, in violation of Article 120b, UCMJ, requires the prosecution to show that (1) the accused committed a sexual act upon a child; and (2) at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years. MCM, pt IV, ¶ 62.b.(2). In relevant part, sexual act is defined as the penetration, however slight, of the penis into the vulva or anus or mouth. *Id.* at ¶ 60.a.(g)(1).

### **Analysis**

#### **A. The evidence is legally insufficient to sustain the conviction.**

The Government accused Appellant of committing a sexual act upon RR by penetrating her vulva with his penis. Charge Sheet. The Government failed to prove this element beyond a reasonable doubt because RR's account of the act was illogical and impossible and because the DNA evidence refuted her narrative.

RR testified that Appellant grabbed her arm and told her to get in the truck; that she lay supine on the back seat as Appellant threatened to ruin her relationship with KA and the baby; that Appellant removed her clothes and penetrated her vulva while he placed his hands on her shoulders, arms, and breasts, that he ejaculated on her leg and the seat; and that she dressed and returned to the hotel room. R. at 729-32. Four months after the alleged incident, when her memory was fresher, RR told OSI that seven to eight minutes elapsed from the time she and Appellant left the hotel room to when they returned to the room and that only twenty seconds elapsed from the time Appellant grabbed her arm to when he cleaned up his ejaculate in the truck. R. at 990, 995. One of the OSI agents who interviewed RR found this account nonsensical. R. at 1002. It was not feasible for the alleged incident to last just twenty seconds. At trial, RR had realized that it was impossible for her story to occur the way she described it, so she lied and said she never said it took around 20 seconds. R. at 771.

Not only was it impossible for the alleged assault to occur within twenty seconds, but it was also impossible for Appellant to assault RR in the manner she described because the baby's car seat was positioned in the rear passenger seat. R. at 713, 866. While RR did not testify whether she and Appellant entered the truck on the driver's side or the passenger side, R. at 724, it was impossible for the assault to occur either way. If they entered the back row on the driver's side and Appellant closed the truck door while RR lay supine on the seat, they did not have the length of the back row to position themselves because the baby's car seat took up one-third of the row. There would not have been room for Appellant to arrange himself so that he could remove RR's clothes, lean her shoulders back, remove her underwear, and penetrate her vulva while touching a front row seat with one hand and holding on to the door with the other hand, as she told OSI. *See* R. at 991. If they entered the back row on the passenger side, then the baby's car seat would have

been directly in front of them and RR would have needed to climb over the car seat to lay on her back. Since she did not testify to this scenario, it can be eliminated, leaving the first scenario as the layout of the alleged assault, but it was impossible for the reasons stated above.

Finally, the nonexistence of RR's DNA refuted her story. RR's DNA was not present in any of the samples taken from Appellant's truck in early August 2022. R. at 855; Pros. Ex. 8. RR testified that Appellant did not use a condom, that he ejaculated on the back seat and on her leg, and that he used a baby wipe to "clean his mess up." R. at 731, 732. She did not clarify if Appellant cleaned her leg, the back seat, or both. Even if Appellant had used a baby wipe on the back row of the truck, it was unlikely that a wipe could affect or degrade the amount of DNA present in the way that cleaning products or high temperatures could. R. at 888-89. Even if Appellant wiped the back row, the samples taken from his truck were "robust" and suffered no degradation. R. at 891. Moreover, even if Appellant and KA had sex in the back seat of the truck multiple times before and after the alleged incident, R. at 958-59, the presence of Appellant's DNA and semen and KA's DNA would not have eliminated or degraded the presence of RR's DNA if there had been any on the seat.

**B. The evidence is factually insufficient to sustain the conviction.**

The Government's documentary evidence consisted of Instagram messages between Appellant and RR; TikTok messages between RR and her friend; photos of the back row of Appellant's truck, which unlike the allegation, had with the car seat removed; and the forensic evidence.<sup>18</sup> The Government's testimonial evidence consisted of testimony from RR, SH, KA, ,

---

<sup>18</sup> Additional documentary evidence consisted of a copy of RR's birth certificate and photos of RR, both of which were irrelevant to the factual insufficiency of the conviction. Pros. Exs. 1, 4, 5.

Appellant's roommates, an OSI agent, and the expert forensic biologist from USACIL. For the following reasons, the proof was deficient.

**1. The documentary evidence exonerated Appellant.**

Appellant sent RR direct messages from two Instagram accounts. Pros. Exs. 2, 3. In the first message, from his main account, Appellant realized that RR was awake and he communicated an offer to talk. Pros. Ex. 2. He let her know that she could tell him "no" if she felt uncomfortable with him working on his laptop next to her. *Id.* After Appellant left RR's bedroom, he sent a message from his secondary account in which he expressed his concern for RR and her tendency to rely on "chemicals" when she felt anxious, depressed, or bored. Pros. Ex. 3. Appellant did not try to "prod" RR into having sex with him, as the Government argued, R. at 1048-49; instead, as KA testified, Appellant was just trying to be nice to his troubled sister-in-law who relied on drugs and alcohol when she felt anxious, depressed, or bored. R. at 805. None of Appellant's messages, whether from the account KA knew about or the one she did not know about, expressed any sexual interest in RR.

Although RR brought her laptop with her to Oklahoma and regularly used it, she sent TikTok messages to her friend via KA's phone. R. at 737, 745, 819, 905. RR told her friend that she "did something really bad" that would ruin her whole family if it became known. Pros. Ex. 6. When her friend demanded to know what happened, rather than state what transpired, RR sought to build some tension by answering, "bro i wanna tell you so bad but if yall tell this person , literally my whole family would hate me." Pros. Ex. 6. Her friend was intrigued by RR's provocative message and swore on her own life, her unborn child's life, and the lives of her parents not to tell anyone. *Id.* Having set the stage for an explosive revelation to her eager audience, RR typed, "i f brock." *Id.*

In typing this bombshell statement on her sister's phone, RR intended for her sister to see the message so that she could provoke KA, whether out of boredom or a desire to shock her. RR had a history of engaging in provocative behavior, so much so that her mother admonished her to stop doing drugs, having sex, and smoking shortly before RR left for Oklahoma. R. at 673. SH thought that RR was "completely out of control," made "bad choices," and put SH in a place where she could not trust RR. R. at 673, 675, 761. RR had also told her friends that SH hit her hard enough to leave bruises, an accusation that SH denied, and which RR recanted at trial. R. at 680, 759-60. SH testified that it did not surprise her that RR claimed that SH bruised her. R. at 681. Clearly, SH knew that RR had a proclivity to exaggerate or lie when it suited her.

RR felt bored on the road trip because there was no wi-fi on her laptop. R. at 737, 774. She felt bored in Oklahoma because living with her sister, Appellant, two "weird" roommates, and a baby who cried too much was not what she expected for her break from life in small town Georgia. *See* R. at 620, 634, 648, 649, 735, 777. Accordingly, RR decided to provoke her sister and her friend with the TikTok messages. She engaged in other shocking behavior in Oklahoma out of boredom: she stole alcohol and hid it, kept Xanax in her bag near the baby, and frequently hung out with a twenty-one-year-old man at a gas station. R. at 631-32, 775, 818, 849.

The language of RR's TikTok messages refuted RR's subsequent story to her mother that Appellant raped her. R. at 955. RR did not tell her friend that Appellant raped her or assaulted her; instead, she told her friend that she had "f Brock," meaning that she had sex with Appellant. She used the active voice and described her own conduct. At trial, RR claimed that she could not use the words "rape" or "fuck" on TikTok because of a "censor" on TikTok messages. R. at 745. Aside from the fact that the Government offered no evidence of a TikTok censor, such as a written policy or testimony from a TikTok official, nothing prevented RR from using another word, such

as “assault” or “attack” to describe what purportedly occurred. Her testimony about the language she chose was disingenuous and duplicitous. RR fabricated the allegation out of boredom and typed it on her sister’s phone to shock KA and to alleviate her perpetual boredom in Oklahoma.

An OSI agent photographed the back row of Appellant’s truck in early August 2022. R. at 855, 890; Pros. Ex. 7. Clothing and trash lay on the back seat before the agents placed them on the floor to search the seat for stains. R. at 857. The agents found multiple stains on the back row, mainly on the driver’s side and in the center position. R. at 858; Pros. Ex. 7. Using a particular flashlight color and lens, the agents found semen stains. R. at 859; Pros. Ex. 7. The photos of the messy back seat refuted any contention that Appellant had ample opportunity to clean the back seat after the alleged incident. Indeed, the OSI agent testified that it did not appear as if the truck had been cleaned. R. at 862. Moreover, had there been any evidence of RR’s DNA in the back seat, it stands to reason that Appellant would not have consented to a search of the truck and he likely would have cleaned it so that it appeared spotless.

Finally, as discussed above, the absence of RR’s DNA refuted her story.

**2. RR lacked credibility because of her lies, convenient memory lapses, and inconsistent accounts.**

RR lied throughout trial, on matters both trivial and consequential. While she was candid about her drug use with a friend, her hospitalization, and other struggles, R. 755-60, RR lied about smoking marijuana with KA at a friend’s house, R. at 756, 840-41; about KA and Appellant telling her not to vape in the truck next to the baby, R. at 845, 846, 765; and fighting with KA after KA discovered the TikTok message, R. at 622, 779. While RR initially testified that she went to her friend’s house soon after returning home and eventually came home, she later testified, “I didn’t run away.” R. at 747, 780. However, her mother, SH, testified that RR ran away. R. at 651, 680.

While RR claimed that she alone made the decision to leave Oklahoma, KA testified that she decided to send RR back to Georgia. R. at 739, 849.

RR also suffered convenient memory lapses when confronted with other witnesses' testimony. Appellant's roommate JI testified that he advised RR to get a rape kit done and that she told him she did not need one. R. at 910, 912. At trial, RR claimed not to remember the conversation, R. at 778, although this seems to be the kind of conversation an alleged victim would recall. She also claimed that she did not know if she drank alcohol while living with Appellant and KA, but KA testified that RR stole alcohol, and DS discovered a half-empty bottle of alcohol in one of RR's bags. R. at 631-32, 776, 849. Finally, although RR told the female OSI investigator that SH wanted to know whether she could sue Appellant, and RR asked three more times about suing Appellant, RR testified that she did not recall whether she wanted to sue Appellant. R. at 682, 993, 1016.

After the huge fight in Oklahoma, RR did not tell her mother that she had been raped; instead, she told SH that wanted to come home because she was bored. R. at 648-49. Once home, RR admittedly engaged in "self-destructive" behaviors. R. at 746. Her mother described it as "some pretty extravagant behavior following her coming home." R. at 651. Which included running away. R. at 651, 680. Whatever RR's "pretty extravagant behavior" was, she knew it was extreme enough to expect a whooping from her mother. R. at 474. Rather than own up to stealing and drinking alcohol and cavorting with a twenty-one-year-old man at a gas station in Oklahoma, among other "extravagant behavior," RR deflected attention from her "self-destructive" behavior and fabricated an allegation that Appellant raped her to avoid a whooping and a confrontation about her behavior.

Because RR fabricated the allegation, it was initially difficult for her to keep her story straight. Accordingly, her early accounts were wildly inconsistent. RR spoke with a child forensic interviewer in May 2022. R. at 974. In this interview, during which the interviewer spent time getting to know RR and building rapport with her, RR did not allege that Appellant had penetrated her vulva with his penis, grabbed her breast and buttocks, or touched his penis. R. at 972, 974-75. Even if RR felt uncomfortable during this interview, as the interviewer surmised, she did not accuse Appellant of sexual assault. R. at 975-76.

In September 2022, four months after the alleged incident, RR told OSI that Appellant had sexually assaulted her in the truck with one hand on the chair – presumably one of the front row seats – and the other hand on a door. R. at 991. She did not say that Appellant had pushed her shoulders down. *Id.* When an agent asked if anything sexual happened with Appellant before the incident at the Dallas hotel, RR answered, “no.” R. at 992. She stated that Appellant had touched her leg as they lay in a Jackson, Mississippi, hotel bed, and it was this touch that made her feel uncomfortable, get out of bed, and go to the bathroom. R. at 992, 993. Even if RR felt uncomfortable during that part of the OSI interview with both agents, R. at 997, and she seemed to feel more comfortable with just the female agent, R. at 1001, the inconsistencies between her story to the agents, her story to the child forensic interviewer, and her testimony at trial were irreconcilable. RR’s story had grown with the passage of time, all the way until the day before the scheduled start of trial when, for the first time, she accused Appellant of touching her breast and buttocks and causing her to touch his penis in the Jackson hotel bed. App. Ex. XLVII.

Not only was RR’s account full of lies, convenient memory lapses, and inconsistencies, but it was also illogical. It defied logic that she did not tell her mother that Appellant allegedly raped her after the huge fight with Appellant and KA. It defied logic that Appellant would give

RR his cell phone after she accused him of rape so she could hang out at the gas station if the accusation were true. R. at 777. It defied logic that KA, and not RR, told the authorities that she, Appellant, and RR had ordered food to be delivered to the Dallas hotel via DoorDash, which allowed OSI to seek a warrant to determine the precise location of where the food was delivered. R. at 854-55. If Appellant had sexually assaulted RR, then KA would not have directed law enforcement personnel toward the purported scene of the crime.

**3. The roommates' testimony did not establish Appellant's guilt.**

The Government argued that Appellant's statements to DS and JI at the gym and his statements to DS at the house after the fight should be "central" to the panel's deliberations. R. at 1038. Appellant's statements to DS and JI at the gym concerned RR's looks, his assessment that she "was kind of bad," and that he would have sex with her if she was not thirteen years old. R. at 621, 903, 904. As inappropriate as these statements were, they were not an admission of guilt, nor were they evidence of Appellant's intent and desires, as the Government argued. R. at 1038. These statements were wholly unconnected to RR's allegations.

Next, DS testified that after the fight, Appellant denied sexually assaulting RR. R. at 626. Appellant told DS that RR had taken his hand to her breast and then grabbed his penis while they slept in a hotel room. R. at 626, 627, 633. DS felt disappointed by Appellant's failure to control the situation. R. at 636. Even so, Appellant's statements concerned the uncharged acts, such that DS's testimony about Appellant's statements did not substantiate the charged act.

DS also testified that KA told him that Appellant admitted to having sex with RR. R. at 920. The military judge admitted this testimony for the purpose of assessing KA's testimony and not as substantive evidence. R. at 906. Accordingly, this testimony did not establish Appellant's guilt.

JI also testified that KA told him that Appellant said he had kissed RR in an elevator, that RR grabbed his hand and placed it on her breast, that they had sex in the truck, and that RR initiated all the contact. R. at 906, 907. The military judge admitted this testimony for the limited purpose of impeaching KA's testimony and not as substantive evidence. R. at 906. Accordingly, this testimony did not establish Appellant's guilt.

**4. The Government's other testimonial evidence did not establish Appellant's guilt.**

The Government's remaining witnesses were KM, KA's half-sister, and RR's mother. KA's half-sister and RR's mother described years-long family drama called into question the veracity and reliability of their testimony.

KA did not believe RR's allegations, partly because KA suffered from insomnia and she woke every two hours to feed the baby, such that she likely would have seen or heard the purported uncharged acts in the hotel bed had they occurred, but she did not. R. at 811, 814. KA also did not believe RR's allegations because RR had a history of provocative, attention-seeking behavior, as described above. After the fight in Oklahoma, RR tired of her stepsister's outrageous conduct and she and Appellant admonished RR for her behavior, which angered RR. R. at 847, 848. Fed up with RR's conduct, especially now that she had a baby, KA decided that RR needed to go home. R. at 849. KA did not tell RR's mother, SH, about RR's allegations because KA did not believe RR. Indeed, KA and Appellant married in November 2022.<sup>19</sup> R. at 799. They welcomed a son in November 2023. R. at 826-27. KA would not have married Appellant if she believed that he assaulted RR.

---

<sup>19</sup> KA professed to be "very bad on dates" and could not conclusively testify as to the date of her daughter's birth or the date of her wedding. R. at 798-99.

The Government insinuated that KA lied at trial because she and the children were financially dependent on Appellant. R. at 826-27. As discussed above, if KA wanted to protect Appellant from prosecution, then she would not have alerted the OSI agents to the DoorDash order, which allowed them to seek a warrant to confirm the date and location of the food order. R. at 854-55. Moreover, KA did not depend entirely on Appellant for her financial stability; to the contrary, SH testified that she helped KA “get set up for her insurance and different things” like WIC, the Woman, Infants, and Children Program, when KA was pregnant with her daughter. R. at 643. KA had no incentive to lie; rather, she did not believe RR’s accusation.

KA’s half-sister, KC, testified that she believed KA tended to “manipulate things in order to benefit her.” R. at 873. She also testified that KA contacted her in July or August 2022 and seemed panicked or distressed because Appellant had admitted to having sex with RR in his truck in Dallas on the night that KA, the baby, Appellant, and RR slept in one bed. R. at 874, 876, 877. KA denied making this statement to her half-sister. R. at 831. The military judge admitted KC’s testimony for the purpose of assessing the credibility of KA’s testimony and not as substantive evidence. R. at 876. Accordingly, this testimony did not establish Appellant’s guilt.

Finally, SH was an exceptionally problematic witness for the Government. Although she told RR to stop doing drugs and smoking, felt like she could not trust RR, accused her of being “completely out of control, and told RR “it’s time to come back down to earth,” SH claimed not to know anything about RR using drugs. R. at 673, 675, 761.

SH’s testimony about RR’s hospitalization in a mental health treatment facility was equally unbelievable. RR acknowledged that she was hospitalized at a treatment facility in 2020 and in 2021. R. at 757-58. Her mother, however, claimed that she did not know if RR had been

hospitalized in those years. R. at 676. It defied logic that a mother would not know when her minor daughter had been treated at an in-patient facility.

SH had a years-long complicated relationship with KA. KA's sister, KM, had accused their adoptive father – SH's husband – of sexually abusing her for years. R. at 946-47. Fed up with the abuse, KM moved out of the house in 2020 when she was fifteen years old. *Id.* KM feared that her father was also abusing then-fourteen-year-old KA and she demanded that SH and her father “give” KA to her. R. at 949, 950. SH gave KM and KA a few hundred dollars and paid for an apartment for them. *Id.* KM considered the money to be a payoff for not pursuing criminal charges against her father. R. at 950. At trial, SH could not or would not concede that her husband had been credibly accused of sexually abusing his daughters; instead, she sought to minimize the conflict by testifying, “[KM] has mentioned something like that, yes.” R. at 677. SH denied giving any money to KM and KA. R. at 678. She also claimed that KA told her that her father had never touched her. R. at 677. RR, however, testified that both KM and KA had accused their father of molesting them. R. at 764. Accordingly, it was clear that SH was not a truthful witness and that she harbored grudges against KM and KA for accusing her husband of sexually abusing them as underage girls.

Because SH lied about RR's drug use and two hospitalizations and about family drama, it was reasonable to assume she lied about other things, including a purported phone call to Appellant and KA. R. at 654. SH claimed that after Appellant denied raping RR, he gave the phone to KA but could be heard in the background saying, “[RR] wanted it,” “she was literally begging for it,” and “it wasn't rape, it was just sex, she wanted it, she begged for it,” or words to that effect. R. at 660, 661, 682. The Government offered no evidence, either testimonial or documentary, to corroborate these alleged statements by Appellant. The Government did not ask KA about this

alleged call, nor did they introduce any phone records demonstrating that SH called Appellant. The OSI agent testified that he seized Appellant's cell phone and conducted a full extraction. R. at 864-65. Had there been evidence of a phone call from SH to Appellant, the Government would have entered it into evidence. SH lied about the phone call. Simply put, she was an unbelievable witness.

**5. The finding of guilty was against the weight of the evidence.**

Under Article 66(d)(1)(B)(i), Appellant has made specific showings of deficiencies in the Government's proof. In assessing what deference to give the court-martial, this Court can assess the objective evidence, that is, the Instagram messages between Appellant and RR, the TikTok message from RR to her friend, the photos of the back row of Appellant's truck, and the DNA evidence just as well as the court-martial, such that the required deference is low. The digital evidence refuted the Government's theory that Appellant primed RR for sex and the complete absence of RR's DNA in the truck repudiated RR's allegations.

This Court may determine that a higher deference is appropriate for the court-martial's assessment of the testimonial evidence, but the testimonial evidence revealed that RR lied, suffered convenient memory lapses, and told inconsistent stories throughout the investigation and the court-martial. Similarly, SH was an unbelievable witness because of the breadth and depth of her lies. DS's and JI's testimony did not establish Appellant's guilt and much of the other testimonial evidence was admitted for the limited purposes of assessing KA's credibility and not as substantive evidence. Moreover, because this was a case with no physical proof of the charged act, the Government's case-in-chief turned on the credibility of the complaining witness. *See generally United States v. Warda*, 84 M.J. 83, 94 (C.A.A.F. 2023) ("In cases such as this one, where there is no substantial evidence supporting the complaining witness's allegation of domestic abuse, the

credibility of the complaining witness is of central importance.”); *United States v. Jasper*, 72 M.J. 276, 281 (C.A.A.F. 2013) (concluding where the victim’s testimony was critical to the government’s case and the defense theory was that she fabricated at least some allegations against the accused, that “the credibility of the putative victim [wa]s of paramount importance”). In cases where the alleged victim was the key witness to the offense, the complaining witness’s credibility is vital. See *United States v. Csiti*, ACM No. 24-0175, 2024 CCA LEXIS 160, at \*20 (A.F. Ct. Crim. App. 29 April 2024), *aff’d*, 2025 CAAF LEXIS 349 (8 May 2025) (“We appreciate that in a case such as the instant one, where the victim cannot remember the charged offense, the victim’s credibility is arguably less vital than in a case where the victim was the key witness to the offense itself or where her testimony was in substantial conflict with other evidence.”). Even though the panel saw RR testify, this Court should give less deference to the court-martial’s assessment of her testimony because she was neither credible nor consistent in her testimony. This Court can, and should, weigh the evidence differently than how the court-martial weighed the evidence and conclude that the finding of guilty was against the weight of the evidence. *Harvey*, 2024 CAAF LEXIS 502, at \*11.

For the foregoing reasons, no reasonable factfinder can conclude beyond a reasonable doubt that Appellant committed a sexual act upon RR. Even with the appropriate deference to the fact that the trial court saw and heard the witnesses and saw the documentary evidence, this Court cannot be convinced that the weight of the evidence supports the finding of guilty. Accordingly, the evidence is legally and factually sufficient to sustain the finding of guilty for sexual assault of a child.

## Conclusion

WHEREFORE, because of error prejudicial to the substantial rights of Appellant, he respectfully requests that this Honorable Court set aside and dismiss the finding of guilty and the sentence and restore all rights, property, and privileges to Appellant.

## II.

### **THE MILITARY JUDGE ABUSED HIS DISCRETION IN ADMITTING EVIDENCE PURSUANT TO MILITARY RULE OF EVIDENCE 414 AND THE GOVERNMENT CANNOT PROVE THAT THE ERROR WAS HARMLESS .**

#### Standard of Review

A military judge's decision to admit evidence under Mil. R. Evid. 414 is reviewed for an abuse of discretion. *United States v. Fetrow*, 76 M.J. 181, 185 (C.A.A.F. 2017) (citing *United States v. Yammine*, 69 M.J. 70, 73 (C.A.A.F. 2010)). The question of whether the admitted testimony constitutes evidence that the accused committed another offense of child molestation under M.R.E. 414 is one of law reviewed de novo. *Id.* "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) (citation and internal quotation marks omitted). Relevance under the third threshold finding is enforced through Mil. R. Evid. 104(b), under which the court "examines all the evidence in the case and decides whether the jury could reasonably find the conditional fact . . . by a preponderance of the evidence." *Yammine*, 69 M.J. at 74 n.3 (citation omitted) (quoting *Huddleston v. United States*, 485 U.S. 681, 690 (1988)).

#### Law

Under Mil. R. Evid. 414, evidence of a prior act of "child molestation" is admissible to show propensity to commit a charged act of "child molestation" provided the military judge makes

three threshold findings: (1) whether the accused is charged with an act of child molestation as defined by Mil. R. Evid. 414(a); (2) whether the proffered evidence is evidence of his commission of another offense of child molestation as defined by the rule; and (3) whether the evidence is relevant under Mil. R. Evid. 401 and 402. *Yammine*, 69 M.J. at 73-74 (citation omitted).

Once a military judge finds that all three threshold factors are met, the military judge must also conduct a Mil. R. Evid. 403 balancing test to determine whether the probative value of the evidence is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by misleading the members, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. *United States v. Wright*, 53 M.J. 476, 482 (C.A.A.F. 2000). The non-exhaustive list of factors to be examined in the balancing test includes the strength of proof of the prior act, the probative weight of the evidence, the potential to use less-prejudicial evidence, the potential to distract the factfinder, the time needed to prove the prior act, temporal proximity, frequency, the presence or lack of intervening circumstances, and the relationship between the parties. *Id.* (citations omitted). “The importance of careful balancing arises from the potential for undue prejudice that is inevitably present when dealing with propensity evidence.” *United States v. Ediger*, 68 M.J. 243, 248 (C.A.A.F. 2010) (quoting *United States v. James*, 63 M.J. 217, 222 (C.A.A.F. 2006)). There is a general presumption in favor of admission in Mil. R. Evid. 414. *Id.* (quoting *United States v. Berry*, 61 M.J. 91, 94-95 (C.A.A.F. 2005)). The courts will not overturn a decision where the military judge properly conducts the balancing test under Mil. R. Evid. 403 unless there is a clear abuse of discretion. *Id.* (quoting *United States v. Ruppel*, 49 M.J. 247, 251 (C.A.A.F. 1998)).

Under Article 59(a), UCMJ, a “finding or sentence of a court-martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial

rights of the accused.” 10 U.S.C. § 859(a) (2012). The appellate courts review de novo whether a nonconstitutional error had a substantial influence on the factfinder’s verdict in the context of the entire case. *United States v. Harrow*, 65 M.J. 190, 200 (CA.A.F. 2007) (citations omitted). In answering this question, the courts consider four factors: (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. *Harrow*, 65 M.J. at 200 (citing *Berry*, 61 M.J. at 98). “When a fact was already obvious from . . . testimony at trial and the evidence in question would not have provided any new ammunition, an error is likely to be harmless. Conversely, when the evidence *does* provide new ammunition, an error is less likely to be harmless.” *Yammine*, 69 M.J. at 78 (emphasis in original) (internal quotation marks, punctuation, and citations omitted). The government that bears the burden of demonstrating that the admission of erroneous evidence is harmless. *United States v. Flesher*, 73 M.J. 303, 318 (C.A.A.F. 2014); *Berry*, 61 M.J. at 97.

If the prosecution intends to offer evidence under Mil. R. Evid. 414, it must disclose it to the accused, including witnesses’ statements or a summary of the expected testimony at least five days prior to entry of pleas or at a later time permitted by the military judge for good cause. Mil. R. Evid. 414(b).

### **Analysis**

The military judge erred in concluding that good cause existed for the Government’s late notice to the defense of its intent to introduce evidence of the uncharged acts and in admitting evidence of the uncharged acts pursuant to Mil. R. Evid. 414. RR’s allegations did not satisfy the threshold requirements of the rule and the proffered evidence failed the Mil. R. Evid. 403 balancing test. Finally, the error had a substantial influence on the panel’s verdict.<sup>20</sup>

---

<sup>20</sup> Appellant does not challenge the military judge’s conclusion regarding the first threshold factor.

**A. The military judge erred in concluding that good cause existed for the Government's late notice.**

The military judge acknowledged that the Government “did not provide notice in accordance with [Mil. R. Evid.] 414(b).” App. Ex. LVIII at 4. Nonetheless, the military judge found good cause for the late notice:

In this case arraignment was bifurcated, and trial is not until 5 August 2024 (nearly four weeks from the time of notice). The trial date was chosen by the Defense, as the continuance was jointly requested. As such, the Defense has sufficient time to prepare. The Court has also considered that the evidenced [sic] was noticed shortly after the Government discovered it (that is, during trial counsel's pretrial interview with the victim on 7 July 2024).

App. Ex. LVIII at 4.

On 1 January 2024, seven days before the scheduled start of trial, the defense moved for a continuance because of “the Government's delayed notices and production of [DNA] evidence.” App. Ex. XVI at 1, 3. As of 30 December 2023, the prosecution did not have the DNA report and litigation package to provide to the defense, even though the defense requested this evidence in its initial and supplemental discovery requests. App. Ex. XVI at 1, 2, Enclosure [Encl.] 1. The Government opposed the motion. App. Ex. XVIII. The military judge granted the motion to continue and scheduled trial to begin on 8 July 2024. App. Ex. XXVI at 2. The day before trial, RR told the Government for the first time that the uncharged acts occurred in Jackson, Mississippi, and not in Dallas, Texas, which prompted the Government to move to amend the Charge Sheet. R. at 138; App. Ex. XXVI at 2; App Ex. XXXIV at 1. Even if the 5 August 2024 trial date was chosen by the defense, as the military judge stated, App. Ex. LVIII at 4, the Government had twice provided late notice to the defense on separate issues.

After the Government sought to reopen the hearing on the military judge's ruling denying the motion to amend the Charge Sheet, the military judge stated, “The problem is – the fundamental

problem here is the government doesn't understand what the evidence is and how you've charged it." R. at 207. The military judge also noted that that he considered "the misleading nature of the information on the accused, but also just the general confusion. And it's the government's change and understanding your own evidence that's created this confusion." *Id.* While the military judge believed that the Government made the motion in good faith, R. at 208, he nonetheless concluded that the Government did not understand its evidence. This was equally true for the Government's intent to introduce the dismissed specifications as Mil. R. Evid. 414 evidence. While the Government maintained that it did not learn until the day before trial of RR's contention that the acts in the dismissed specifications occurred in Jackson, RR's testimony contradicted the Government's proffer and SSgt GJ's testimony. R. at 150-51; App. Ex. XXVI. RR maintained that she told the prosecution team about the uncharged acts – but not where they occurred – in the fall of 2023, but SSgt GJ testified that this "soft interview" did not involve "an in-depth interview" regarding the allegations. R. at 150-51, 309-10. Either the Government was confused about its evidence, as the military judge surmised, or the Government knew about RR's allegations that Appellant had touched her breast and buttocks and caused her to touch his penis as early as September 2023. Either reason is insufficient to find good cause for the late notice to the defense.

**B. The military judge erred in concluding that the proffered evidence was evidence of Appellant's commission of another offense of child molestation.**

The military judge concluded that the second threshold factor was satisfied by, *inter alia*, RR's in-court testimony during the motions hearings, DS's in-court testimony about Appellant's statements, "and to a lesser extent," RR's child forensic interview. App. Ex. LVIII at 3. The second factor is reviewed de novo. *See Fetrow*, 76 M.J. at 185 (citing *Yammine*, 69 M.J. at 73).

Following the dismissal of Specifications 1-3, largely because the Government did not understand its own evidence, R. at 207-208, the Government sought to introduce the dismissed

specifications as propensity evidence. App. Ex. XLVII at 2. In relying on RR's in-court testimony to a greater degree than on her forensic interview, the military judge ignored the convenient recency of RR's claim that Appellant inappropriately touched in Jackson. RR spoke with the child forensic interviewer in May 2022, mere days after the alleged acts, and her memory was fresher and more reliable then. RR's eve-of-trial allegation that Appellant touched her breast and buttocks and caused her to touch his penis in Jackson occurred approximately fourteen months after the child forensic interview in which she did not indicate whatsoever that Appellant touched her on different days and in different states. RR had ample opportunity to fabricate her new allegations and/or to be influenced by the testimony and evidence in the motions hearings held on 4 December 2023 and 4 January 2024. Indeed, RR admitted that she did not tell the forensic interviewer in which city or state the uncharged acts occurred; instead, she accused the Government of assuming these acts occurred in Dallas. R. at 307. The military judge's findings of fact only included references to RR's in-court testimony; he failed to find that RR did not tell the child forensic interviewer where the uncharged acts occurred. Thus, contrary to the military judge's conclusion, RR's testimony and child forensic interview constituted insufficient proof for the factfinder to conclude by a preponderance of the evidence that Appellant committed another qualifying offense of child molestation. App. Ex. LVIII at 4.

Next, DS's testimony contradicted RR's testimony so thoroughly that it did not furnish a separate basis for the admission of the evidence. DS maintained that Appellant told him that Appellant "slapped [RR's] butt in the hallway of the hotel as a joke," that RR caused him to touch her breast with his hand, and that RR touched Appellant's genitals in a hotel bed in a Texas hotel the day before arriving in Oklahoma. R. at 286-87. While DS described touches of RR's buttocks and breast and of Appellant's genitals, he relayed that they occurred in Texas, leading to the

conclusion that these acts were part of a continuous course of conduct in Dallas and not separate acts occurring on a different day and in a different state. Accordingly, contrary to the military judge's conclusion, DS's testimony constituted insufficient proof for the factfinder to conclude by a preponderance of the evidence that Appellant committed another qualifying offense of child molestation. App. Ex. LVIII at 4.

**C. The evidence was not relevant under Mil. R. Evid. 401 and 402.**

The military judge concluded that the proffered evidence was relevant because the proffered evidence and the allegations "involved the same female victim, close in time and setting (same road trip, occurring during nighttime at their hotel stops)" and because a common factor was Appellant's predisposition and motive to engage in sexual acts with RR during their road trip when they stop for the night at hotels. App. Ex. LVIII at 4. The military judge's reasoning was flawed. While RR testified that the uncharged acts occurred in a Jackson hotel bed at night, she did not state a location during her child forensic interview. DS did not testify that the uncharged acts occurred at night. When prompted by the Government to describe a specific time frame for the uncharged acts or whether they occurred when Appellant and RR were awake or asleep, DS did not know. R. at 287. He maintained that Appellant told him that the acts occurred in a Dallas hotel hallway and a bed.

Because of the glaring inconsistencies in RR's in-court testimony, her statements in the child forensic interview, and DS's testimony, the factfinder could not reasonably find the conditional facts, that is, the uncharged acts, by a preponderance of the evidence. *See Yammine*, 69 M.J. at 74 n.3. (citation omitted). In other words, the Government's evidence did not tend to make it more probable that Appellant sexually assaulted RR in Dallas on or about 10 May 2022.

**D. The military judge erred in concluding that the probative weight of the evidence was not substantially outweighed by the danger of unfair prejudice.**

The military judge concluded that the strength of proof of the prior act weighed in favor of admissibility:

The Court also notes that, to a lesser extent there was video evidence made during a child forensic interview, that came from R.R. In the video evidence, R.R. says the Accused touched her leg, but the details were not voluminous even in spite of the repeated attempts by interviewers to clarify, but they appeared to be consistent with the level of detail a child of her age at that time would share in that setting. Finally, [DS] testified at the hearing that the Accused told him about an incident where the Accused's hand was placed on R.R.'s breast and there was a moment where she had touched his genital area and he didn't push her away. [DS] thought it was while they were in the bedroom of a hotel, but thinks it was the hotel in Texas the day before they arrived. *Although the details don't overlap precisely*, the Court finds the substance of what the Accused told [DS] increases the strength of proof of the prior acts.

App. Ex. LVIII at 4-5 (emphasis added).

The military judge minimized the inconsistencies between RR's testimony with her forensic interview and DS's testimony. Contrary to the military judge's reasoning, the details did not sufficiently overlap, such that the strength of proof of the alleged prior act was low.

Next, the military judge concluded that the probative weight of the evidence weighed in favor of admissibility:

As indicated above, R.R. testified in the motion hearing and was subjected to cross-examination. She was able to give the location, how old she was at the time of the acts (eleven years old),<sup>21</sup> and states where and how the Accused touched her. A factfinder could find by a preponderance of the evidence that the acts alleged by R.R. in fact occurred. If true, the facts and circumstances surrounding the Accused's sexual abuse of R.R. the night before the charged offense in a similar setting, demonstrate his willingness to engage in sexual acts with this victim on the same road trip. The finder of fact in this case could use this information, pursuant to [Mil. R. Evid.] 414, to

---

<sup>21</sup> RR was thirteen years old at the time of the alleged acts. Pros. Ex. 1.

inform their deliberations on the charged misconduct on the Accused's propensity, as well as motivation, by the Accused to engage in non-consensual acts [with] R.R.

App. Ex. LVIII at 5.

In focusing on RR's testimony, the military judge omitted any discussion of the inconsistencies between her testimony, her forensic interview, and DS's testimony. Moreover, the setting of the alleged uncharged acts was dissimilar to the charged act. RR originally claimed that Appellant merely touched her somewhere on her leg but gave no details if the touch occurred in a bed or elsewhere. Later, she testified that Appellant touched her breast and butt and caused her to touch his penis with her hand in a Jackson hotel bed. DS testified, however, that Appellant relayed that Appellant touched RR's buttocks in a Texas hotel hallway, but did not state what time of day this touch allegedly happened. DS also testified that Appellant said RR caused him to touch her breast with his hand and that RR touched his genitals in a Texas hotel bed. DS's testimony involved either separate incidents in Texas – a single incident in a hallway and a single incident in a bed – or a continuous course of conduct in Texas. Either way, the alleged acts occurred in Texas and not in Jackson. Because of the inconsistencies in the alleged acts and their locations, the weight and reliability of the evidence was low, contrary to the military judge's reasoning. Furthermore, because the strength of proof was significantly lower than the military judge determined, its probative weight was similarly reduced. *See United States v. Solomon*, 72 M.J. 176, 181 (C.A.A.F. 2013).

When considering the risk of distraction and the time needed for proof of the prior conduct, the military judge concluded that the “dynamics do not drive a ‘trial within a trial’ to litigate whether the acts occurred” and that there would “just be additional questioning of R.R. about what happened during the road trip the day before the charged offense.” App. Ex. LVIII at 5. To the

contrary, the admission of the evidence of the uncharged acts resulted in a mini-trial within the trial. The Government's opening statement contained a lengthy description of the anticipated evidence regarding the alleged acts in Jackson, R. at 594, and Appellant's statements about the uncharged acts to DS and JI, R. at 595. Moreover, contrary to the military judge's reasoning, RR was not the only witness expected to testify about the uncharged acts; DS and JI testified about Appellant's statements during the Government's case-in-chief. R. at 626-27, 906-907. Evidence about the uncharged acts devolved into the kind of "sidetracking of the factfinder that should be avoided" when admitting Mil. R. Evid. 414 evidence. *Solomon*, 72 M.J. at 182.

The military judge concluded that the temporal proximity of the uncharged acts to the charged act weighed in favor of admissibility. App. Ex. LVIII at 5. Once again, because RR's testimony conflicted with her forensic interview and DS's testimony, it was likely that the uncharged acts occurred in Dallas either in two separate incidents or as part of a continuing course of conduct. Accordingly, because of the uncertainty of the timing and location of the uncharged acts, the military judge's reasoning was flawed.

Next, the military judge concluded that the three noticed acts constituted "essentially a continuing course of conduct over a small window of time," and that it was "akin to one prior incident less than a day before the charged offense, such that the frequency of the acts weighed in favor of admissibility. App. Ex. LVIII at 6. The military judge's reasoning was unsound. If the uncharged acts were a continuing course of conduct akin to one prior incident, then the acts were not frequent.

For the foregoing reasons, when balancing the non-exhaustive factors, the probative value of the evidence was substantially outweighed by the danger of unfair prejudice.<sup>22</sup> The military judge's conclusion otherwise constituted an abuse of discretion.

**E. The military judge's error had a substantial influence on the verdict in the context of the entire case.**

For the reasons discussed in Assignment of Error I, *supra*, the Government's case was weak. The evidence was legally insufficient because the Government failed to prove beyond a reasonable doubt that Appellant committed a sexual act upon RR. The evidence was factually insufficient because the documentary evidence exonerated Appellant; RR lied throughout her testimony, told inconsistent stories, and suffered convenient memory lapses; and the other witnesses' testimony did not establish Appellant's guilt. It was physically impossible for the sexual assault to occur in the back seat of the truck as RR alleged and not a scintilla of her DNA was found in the truck. Additionally, the Government's theories regarding the absence of RR's DNA in the truck were implausible. R. at 1046-47.

The defense case was strong. The defense exposed RR's litany of lies, her pattern of provocative behavior, SH's utter unbelievability and absence of credibility, and proved that there was another rational hypothesis: that the charged act did not occur.

Next, the evidence of the uncharged acts was material to the Government's case. Without this evidence, the Government's case-in-chief consisted largely of a series of unreliable witnesses with years-long grievances against each other, Instagram messages that did not demonstrate any intent, an intentionally shocking TikTok message from RR, and forensic evidence excluding RR

---

<sup>22</sup> Appellant does not challenge the military judge's conclusions regarding the potential for less prejudicial evidence, the presence or lack of intervening circumstances, or the relationship between the parties. App. Ex. LVIII at 6.

as a DNA contributor to the stains in the back row of the truck. Evidence of the uncharged acts provided “new ammunition” to the Government’s weak case. *See Yammine*, 69 M.J. at 78.

Finally, in its closing argument, the Government discussed Appellant’s statements to DS and JI and urged the panel to find these statements “central to your deliberations” because “they speak to [Appellant’s] intent, they speak to his desires, his wants, his needs, his desire to groom, to touch, to become very close, at close personal relationship with [RR] and ultimately to sexually assault her, a middle school girl.” R. at 1038. The Government argued that the panel should consider the evidence of the uncharged acts in Jackson on or about 9 May 2022 for its bearing on any matter which is relevant, including its tendency, if any, to show Appellant’s propensity to engage in child molestation offenses. R. at 1044. The Government appealed to the panel to “use it to say he admitted to doing this, and because he did this, he also had sex with her in that truck that next day, hours later. This is probative and strong evidence of the accused[’s] intent, his desire to engage in sexual activity with [RR], an uncontroverted [.]” R. at 1044. The Government made additional references to the corroborative nature of Appellant’s statements to his friends, R. at 1045, and the hotel room in Jackson, R. at 1049, 1071. Considering the Government’s reliance on the evidence of the uncharged acts in the closing argument, it cannot demonstrate that the error did not have a substantial influence on the findings.

### **Conclusion**

WHEREFORE, because of errors prejudicial to the substantial rights of Appellant, he respectfully requests that this Honorable Court set aside and dismiss the finding of guilty and the sentence and restore all rights, property, and privileges to Appellant.

### III.

#### THE SENTENCE TO CONFINEMENT FOR EIGHT YEARS IS INAPPROPRIATELY SEVERE.

##### Additional Facts

###### The Government Sentencing Case

The Government did not introduce any witnesses or other evidence for the pre-sentencing phase of trial, nor did it present any evidence in rebuttal. R. at 1097, 1103. The Government asked the military judge to sentence Appellant to confinement for twelve years. R. at 1105.

###### The Unsworn Statements

SH gave an oral unsworn statement as RR's Article 6b, UCMJ, 10 U.S.C. § 6b, representative. R. at 1097. SH addressed Appellant and chided him for abusing RR. *Id.* She reminded him that RR had a family who loved her. *Id.* SH told Appellant that he was wrong for thinking that he could get away with it and scolded him for making fun of her and mocking her on social media, acts which affected RR mentally.<sup>23</sup> *Id.* SH told Appellant that she prayed waiting for the moment she could tell him that his conduct was pathetic and shameful. R. at 1098. She prayed that God and the panel show Appellant the same [unclear] that he showed RR and the family, which was none. *Id.* RR would overcome, learn, and grow. *Id.*

RR read her written unsworn statement.<sup>24</sup> R. at 1098; Court Ex. A. She accused Appellant of trying to take everything from her, including her truth, but she realized that the only person he

---

<sup>23</sup> Neither the Government nor SH introduced any evidence to support these claims.

<sup>24</sup> The military judge overruled the defense objection to part of RR's unsworn statement. R. at 1099, 1111-12. In overruling the objection, the military judge noted that he agreed with the defense position that Appellant should not face increased punishment because he exercised his right to trial and stated that he would not punish Appellant more severely for exercising his constitutional right. R. at 1011. The military judge also noted that parts of SH's and RR's unsworn statements did not directly relate to or arise from the offense, such as their personal feelings about Appellant, and concluded that those parts generally expressed psychological anguish caused by

took everything from was himself. Court Ex. A. RR alleged that Appellant convinced everyone that she “wanted it,” including her, and that he told people that she initiated all the physical contact between them. *Id.* She would never feel comfortable with her breasts again, she resented the invasion of privacy, and she felt angry about lies regarding her family and the release of her most private information. *Id.* For two years, RR’s family called her a liar and attacked her on Facebook. *Id.* Her sisters turned on her. *Id.* It took a while for RR to stop feeling guilty, but she recently felt the guilt again and struggled not to blame herself for the consequences of Appellant’s actions. *Id.* RR never let Appellant break her, as seen by her testimony which resulted in accountability for Appellant. *Id.* Appellant’s actions ruined part of RR’s childhood, as well as Appellant’s life. *Id.* The pain and suffering strengthened RR, who considered herself a survivor. *Id.* RR vowed to be a stronger woman while Appellant would have to live with his conduct until God decides otherwise. *Id.* RR prayed that God would have no mercy on Appellant. *Id.* RR announced her intent to enlist in the Air Force and help people like her. *Id.* Finally, she asked God to bless Appellant. *Id.*

#### The Defense Sentencing Case

The defense sentencing case consisted of five character letters, information about Appellant’s awards and decorations, a series of personal photographs, and Appellant’s unsworn statement. R. at 1101; Def. Exs. B-I.

The character letters from Appellant’s parents, sisters, and KA’s grandmother portrayed him as a devoted and loving husband and father who felt enormous joy at his daughter’s birth. Def. Exs. B-I. Appellant’s father noted Appellant’s achievements in martial arts, cross-country,

---

Appellant. R. at 1012. He wanted to clarify that those statements were considered only for the general proposition of psychological anguish and that he would sentence Appellant only for the offense of which he was found guilty. R. at 1012.

and other athletic endeavors, as well as Appellant's respectful and hardworking nature, his commitment to his children, and his close relationship with his family. Def. Ex. B. Appellant's mother described him as hardworking, dedicated, goal-oriented, studious, and intelligent. Def. Ex. C. She highlighted Appellant's excellent academic career, scholarly awards, and volunteer time with church and school as indicative of his character. Def. Ex. C. Appellant's mother applauded him for answering his country's call to serve in the Air Force. *Id.* Appellant's sisters discussed his dependability and determination, loyalty, integrity, and goodwill towards others. Def. Exs. D, E. One sister lauded Appellant for being the first one to help when someone needs it, whether a family member or a stranger, and the kind of person who modeled their family's values. *Id.*

Appellant read his unsworn statement. R. at 1101; Def. Ex. I. He apologized to his family, friends, wife, and RR for failing them. *Id.* He detailed his journey in tech school and the delays he faced while waiting for his first assignment. R. at 1102; Def. Ex. I. Appellant described how challenging it was to know that KA was struggling soon after the birth of their son because he was always busy on base and subject to a strict curfew that allowed for little time with his young family. *Id.* Appellant explained that he had missed the majority of his son's life and that his parents had battled cancer for the previous year. *Id.* These circumstances took a toll on his mental health. R. *Id.* Appellant understood that he struggled to uphold his standards as a father, Airman, and person, but was steadfastly committed to the future and to making the most of his life for his young family. R. at 1102; Def. Ex. I. Finally, Appellant expressed his gratitude for his family and his leadership. R. at 1103; Def. Ex. I.

The defense asked the military judge to sentence Appellant to confinement for two years. R. at 1108.

### Maximum Allowable Punishment

The maximum allowable punishment consisted of a mandatory dishonorable discharge, reduction to the grade of E-1, forfeiture of all pay and allowances, and confinement for thirty years. MCM, Pt. IV, ¶ 62.d.(2).

### **Standard of Review**

This Court reviews sentence appropriateness de novo. *United States v. Lane*, 64 M.J. 1, 2 (C.A.A.F. 2006); *United States v. Shirley*, ACM No. 40618, 2025 CCA LEXIS 221, \*10 (A.F. Ct. Crim. App. 19 May 2025).

### **Law**

The Courts of Criminal Appeals [CCAs] have the power to determine whether a sentence is appropriate as a matter of fact. *United States v. Kelly*, 77 M.J. 404, 406 (C.A.A.F. 2018). Article 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1)(A), provides that this Honorable Court “may affirm only the sentence, or such part or amount of the sentence, as the Court finds correct in law and fact and determines, on the basis of the entire record, should be approved.” See *United States v. Anderson*, 67 M.J. 703, 705 (A.F. Ct. Crim. App. 2009). This sentence appropriateness provision is “a sweeping Congressional mandate to ensure a fair and just punishment for every accused.” *United States v. Baier*, 60 M.J. 382, 384 (C.A.A.F. 2005) (citation and internal quotation marks omitted). Indeed, this power over sentence appropriateness “has no direct parallel in the federal civilian sector,” and no other federal appellate court, including the Court of Appeals for the Armed Forces, possesses this power. *Kelly*, 77 M.J. at 407 (quoting *United States v. Lacy*, 50 M.J. 286, 288 (C.A.A.F. 1999) (quotation marks omitted)).

“A [CCA] must determine whether it finds the sentence to be appropriate. It may not affirm a sentence that the court finds inappropriate, but not ‘so disproportionate as to cry out’ for

reduction.” *Baier*, 60 M.J. at 384. “Sentence appropriateness involves the judicial function of assuring that justice is done and that the accused gets the punishment he deserves.” *United States v. Healy*, 26 M.J. 394, 395 (C.M.A. 1988). Sentence appropriateness requires individualized consideration of the particular appellant, the nature and seriousness of the offense, appellant’s record of service, and all matters contained in the record of trial, including matters submitted in clemency. *Anderson*, 67 M.J. at 705 (citations omitted). Sentence appropriateness is distinguishable from clemency, which is the practice of “bestowing mercy—treating an accused with less rigor than he deserves.” *Healy*, 26 M.J. at 395. “The charter of Courts of Criminal Appeals on sentence review is to ‘do justice.’” *United States v. Tardif*, 57 M.J. 219, 223 (C.A.A.F. 2002) (quoting *United States v. Claxton*, 32 M.J. 159, 162 (C.M.A. 1991)).

### **Analysis**

The sentence of confinement for eight years is unduly harsh and inappropriately severe when considering this particular Appellant, the nature and seriousness of the offense, his service record, and all matters contained in the record.

Appellant challenged the sufficiency of proof at trial and argues before this Court that the evidence is legally and factually insufficient to support the finding of guilty, *see* Assignment of Error I, *supra*, as is his right under Article 66, UCMJ, and applicable caselaw, but appellant has never challenged the seriousness of the offenses. The nature and seriousness of the charged act were unquestionably solemn. The defense acknowledged that some punishment was appropriate, recognized that the military judge would likely sentence Appellant to confinement, and urged the military judge to sentence Appellant to no more than two years of confinement. R. at 1107-1108. Should this Court affirm the conviction, the sentence to confinement for eight years is excessive. Appellant apologized to RR during his unsworn statement. R. at 1101; Def. Ex. I. He stated:

To begin with, to my family, my friends, my wife [KA], and most importantly, to [RR], I am sorry. I never meant to hurt you and I regret my actions. I originally joined the military in order to help make my life and other people's lives better. I failed you, and I am sorry.

*Id.*

By all accounts, Appellant was a remarkable person who exuded positivity and commitment to his family and community. Def. Ex B-F. He was a dependable son and friend who frequently helped people in need, whether he knew them or not. *Id.*

This Court may consider the entire record when assessing the appropriateness of the sentence. *Anderson*, 67 M.J. at 705. Therefore, this Court can consider Appellant's Personal Data Sheet, which indicated that Appellant had a short but unblemished career in the Air Force. Pros. Ex. 9.

When considering Appellant's character, service record, the nature and seriousness of the allegations, and Appellant's apology to RR, the adjudged sentence of confinement for eight years was unduly harsh and inappropriately severe. This punishment does not fit this offender. This Court has the power to correct the injustice of the approved sentence.

### **Conclusion**

WHEREFORE, because of error prejudicial to the substantial rights of Appellant, he respectfully requests that this Honorable Court set aside the sentence to confinement and authorize a sentence rehearing.

**PRAYER FOR RELIEF**

WHEREFORE, Appellant respectfully requests that this Honorable Court grant the requested relief.

[REDACTED]

WILLIAM E. CASSARA, Esq.  
Appellate Defense Counsel

[REDACTED]

[REDACTED]

JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel

[REDACTED]

## **APPENDIX**

Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), Appellant, through appellate defense counsel, personally requests that this Court consider the following matters:

### **IV.**

**THE GOVERNMENT CANNOT PROVE 18 U.S.C. § 922 IS CONSTITUTIONAL AS APPLIED TO APPELLANT BY “DEMONSTRATING THAT IT IS CONSISTENT WITH THE NATION’S HISTORICAL TRADITION OF FIREARM REGULATION” WHEN APPELLANT WAS CONVICTED OF NON-VIOLENT OFFENSES AND THIS COURT CAN DECIDE THAT QUESTION.**

#### **Additional Facts**

After his conviction, the Government determined that Appellant’s case met the firearm prohibition under 18 U.S.C. § 922. EOJ. The Government did not specify why, or under which section, his case met the requirements of 18 U.S.C. § 922. *Id.*

#### **Standard of Review**

This Court reviews questions of jurisdiction, law, and statutory interpretation de novo. *United States v. Hale*, 78 M.J. 268, 270 (C.A.A.F. 2019); *United States v. Wilson*, 76 M.J. 4, 6 (C.A.A.F. 2017).

#### **Law and Analysis**

The CAAF has held that neither the CCAs nor itself have statutory authority to act on the 18 U.S.C. § 922 notations. *See United States v. Williams*, 85 M.J. 121 (C.A.A.F. 2024); *see also United States v. Johnson*, \_\_\_ M.J. \_\_\_, No. 24-0004, (C.A.A.F. 14 June 2025). Appellant acknowledges that, absent intervening decisions from the CAAF or the Supreme Court, this Court is bound by the *Williams* and *Johnson* opinions. Nevertheless, Appellant maintains that *Williams* and *Johnson* were wrongly decided and expressly preserves this issue for further appellate review.

## Conclusion

WHEREFORE, this this Honorable Court should remand to correct the EOJ's erroneous firearms prohibition or, in the alternative, provide appropriate relief under Article 66(d)(2), UCMJ.

V.

**APPELLANT'S CONSTITUTIONAL RIGHTS WERE VIOLATED WHEN HE WAS CONVICTED OF AN OFFENSE WITH NO REQUIREMENT THAT THE COURT-MARTIAL PANEL (THE FUNCTIONAL EQUIVALENT OF THE JURY) VOTE UNANIMOUSLY FOR A FINDING OF GUILTY.**

## Additional Facts

The military judge instructed the members:

The concurrence of at least three-fourths of the members present when the vote is taken is required for any finding of guilty. Since we have 8 members, that means 6 members must concur in any finding of guilty. If you have at least 6 votes of guilty of any offense, then that will result in a finding of guilty for that offense.

R. at 1080.

The members found Appellant guilty of the Charge and its specification. R. at 1089. It is unknown and unknowable whether the conviction for each specification was based on a vote of 6-2, 7-1, or 8-0.

## Standard of Review

The standard of review for questions of constitutional law is de novo. *United States v. Busch*, 75 M.J. 87, 91 (C.A.A.F. 2016).

## Law and Analysis

In *United States v. Anderson*, the CAAF held that non-unanimous findings of guilty do not violate an accused's constitutional rights. 83 M.J. 291 (C.A.A.F. 2023), *cert. denied*, 144 S. Ct. 1003 (2024). Appellant acknowledges that, absent intervening decisions from the CAAF or the

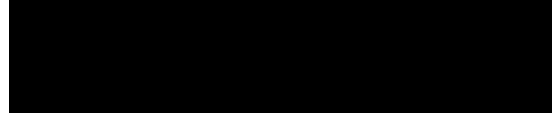
Supreme Court, this Court is bound by the *Anderson* opinion. Nevertheless, Appellant maintains that *Anderson* was wrongly decided and expressly preserves this issue for further appellate review.

### **Conclusion**

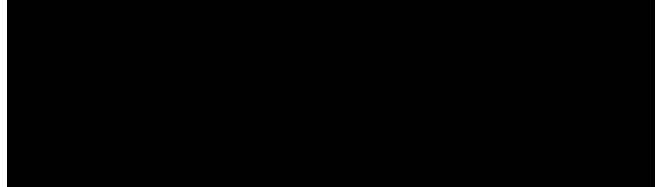
WHEREFORE, this Honorable Court should reverse the findings of guilty to the charge and its specification and the sentence.

**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was sent via email to the Court and served on the Appellate Defense Division and the Appellate Government Division on 7 August 2025.



Appellate Defense Counsel



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

UNITED STATES	)	No. ACM 40752
<i>Appellee</i>	)	
	)	
v.	)	
	)	<b>ORDER</b>
Brock T. ANDERSON	)	
Airman First Class (E-3)	)	
U.S. Air Force	)	
<i>Appellant</i>	)	<b>Panel 2</b>

On 7 February 2025, counsel for Appellant submitted a Motion for Enlargement of Time (First) requesting an additional 60 days to submit Appellant’s assignments of error. The Government opposes the motion.

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

Accordingly, it is by the court on this 7th day of February, 2025,

**ORDERED:**

Appellant’s Motion for Enlargement of Time (First) is **GRANTED**. Appellant shall file any assignments of error **not later than 22 April 2025**.

Counsel should not rely on any subsequent requests for enlargement of time being granted. Each request will be considered on its merits.

Appellant’s counsel is advised that any subsequent motions for enlargement of time shall include, in addition to the 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. Counsel is not required to re-address item (1) in each subsequent motion for enlargement of time if counsel previously replied in the affirmative.

Counsel may request, and the court may order *sua sponte*, a status conference to facilitate timely processing of this appeal. *See* A. F. Ct. Crim. App. R. 23.4.

Appellant's counsel is further advised that any future requests for enlargements of time that, if granted, would expire more than 360 days after docketing, will not be granted absent exceptional circumstances.



FOR THE COURT



OLGA STANFORD, Capt, USAF  
Chief Commissioner

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

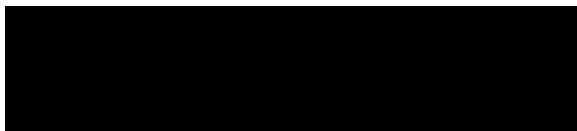
<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee,</i>	)	<b>TIME (FIRST)</b>
	)	
v.	)	Before Panel No. 2
	)	
Airman First Class (E-3)	)	No. ACM 40752
<b>BROCK T. ANDERSON,</b>	)	
United States Air Force,	)	7 February 2025
<i>Appellant.</i>	)	

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

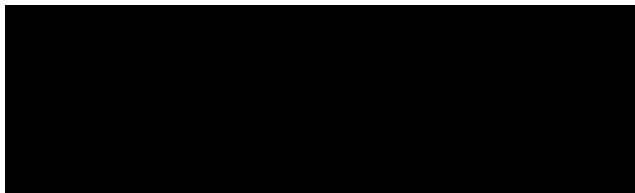
Pursuant to Rule 23.3(m)(1) and (2) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **22 April 2025**. The record of trial was docketed with this Court on 23 December 2024. From the date of docketing to the present date, 46 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,



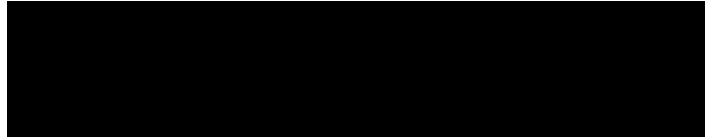
JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel



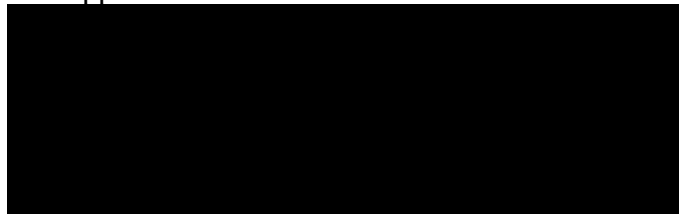
**CERTIFICATE OF FILING AND SERVICE**

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 7 February 2025.

Respectfully submitted,



JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel



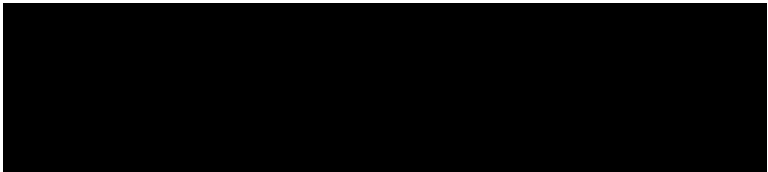
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
v.	)	OF TIME
	)	
Airman First Class (E-3)	)	ACM 40752
BROCK T. ANDERSON, USAF,	)	
<i>Appellant.</i>	)	Panel No.2
	)	

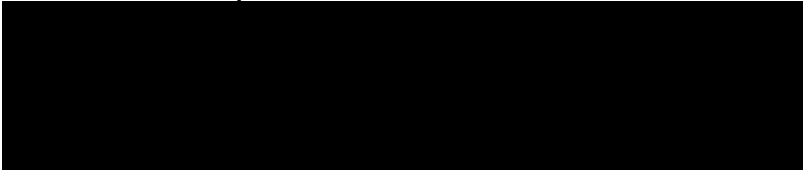
**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

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

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

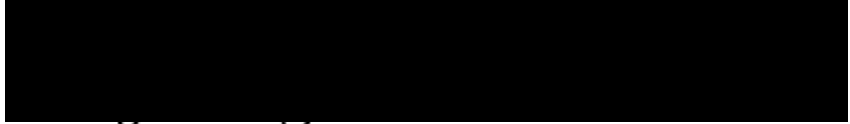


JENNY A. LIABENOW, Lt Col, USAF  
Director of Operations

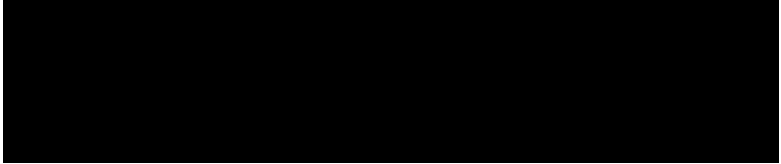


**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 11 February 2025.



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



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

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee,</i>	)	<b>TIME (SECOND)</b>
	)	
v.	)	Before Panel No. 2
	)	
Airman First Class (E-3)	)	No. ACM 40752
<b>BROCK T. ANDERSON,</b>	)	
United States Air Force,	)	14 April 2025
<i>Appellant.</i>	)	

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

Pursuant to Rule 23.3(m)(1) and (3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **22 May 2025**. The record of trial was docketed with this Court on 23 December 2024. From the date of docketing to the present date, 112 days have elapsed. On the date requested, 150 days will have elapsed.

On 9 August 2024, contrary to his pleas, Appellant was convicted at a general court-martial consisting of a enlisted and officer members at Altus Air Force Base, Oklahoma, of one charge with a specification of sexual assault of a child in violation of Article 120b, Uniform Code of Military Justice (UCMJ).<sup>1</sup> Electronic Record of Trial (ROT), Volume 1, Entry of Judgment (EOJ), dated 15 October 2024; Record (R.) at 1089. Appellant was sentenced to be reduced to the grade



be confined for 8 years, and to be discharged from the service with a bad dishonorable R. at 1089.

**GRANTED**

**17 APR 2025**

---

<sup>1</sup> The remaining specifications to the charge were withdrawn and dismissed without prejudice.

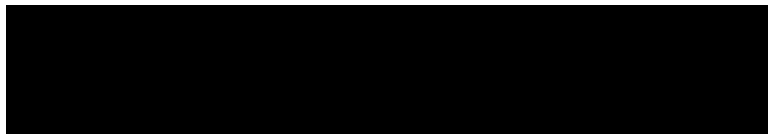
The convening authority took no action on the findings or sentence in this case. ROT, Convening Authority Decision on Action – *United States v. AIC Brock T. Anderson*, undated.

The electronic record of trial is 2 volumes and consists of 9 Prosecution Exhibits, 9 Defense Exhibits, 87 Appellate Exhibits, and 1 Court Exhibit; the transcript is 1112 pages. Appellant is currently confined.

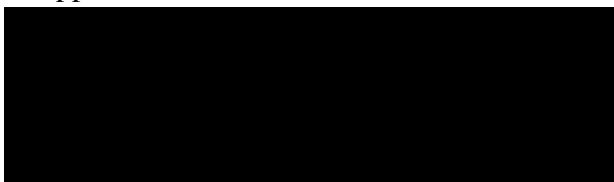
Through no fault of Appellant, undersigned counsel has been unable to complete her review and prepare a brief for Appellant’s case. An enlargement of time is necessary to allow counsel to fully review Appellant’s case and advise Appellant regarding potential errors. Appellant was advised on his right to a timely appeal, was provided an update of the status of counsel’s progress on Appellant’s case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

Respectfully submitted,

A large black rectangular redaction box covering the signature area.

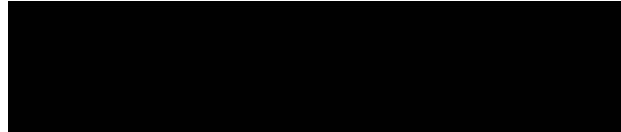
JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel

A black rectangular redaction box located below the name of the defense counsel.

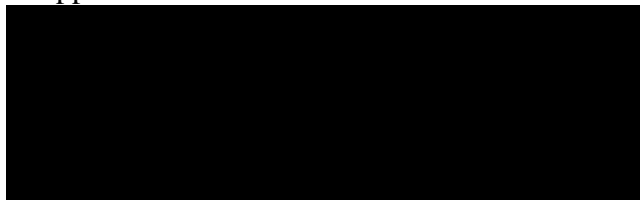
**CERTIFICATE OF FILING AND SERVICE**

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 14 April 2025.

Respectfully submitted,



JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel



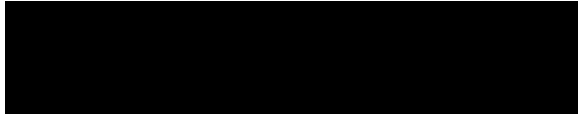
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES,</b>	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
Airman First Class (E-3)	)	Before Panel No. 2
<b>BROCK T. ANDERSON,</b>	)	No. ACM 40752
United States Air Force,	)	
<i>Appellant.</i>	)	16 April 2025

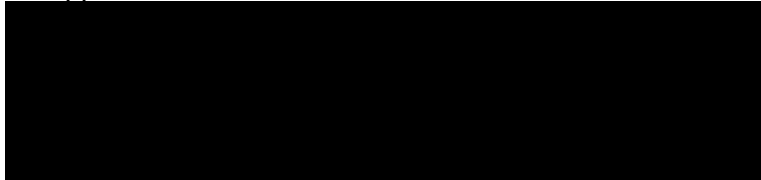
**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

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

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

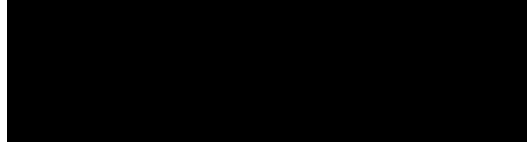


VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel

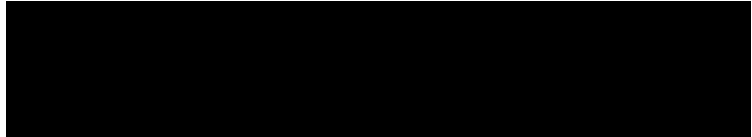


**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 16 April 2025.



VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel



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

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee,</i>	)	<b>TIME (THIRD)</b>
	)	
v.	)	Before Panel No. 2
	)	
Airman First Class (E-3)	)	No. ACM 40752
<b>BROCK T. ANDERSON,</b>	)	
United States Air Force,	)	13 May 2025
<i>Appellant.</i>	)	

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

Pursuant to Rule 23.3(m)(1) and (3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **21 June 2025**. The record of trial was docketed with this Court on 23 December 2024. From the date of docketing to the present date, 141 days have elapsed. On the date requested, 180 days will have elapsed.

On 9 August 2024, contrary to his pleas, Appellant was convicted at a general court-martial consisting of a enlisted and officer members at Altus Air Force Base, Oklahoma, of one charge with a specification of sexual assault of a child in violation of Article 120b, Uniform Code of Military Justice (UCMJ).<sup>1</sup> Electronic Record of Trial (ROT), Volume 1, Entry of Judgment (EOJ), dated 15 October 2024; Record (R.) at 1089. Appellant was sentenced to be reduced to the grade



confined for 8 years, and to be discharged from the service with a bad dishonorable at 1089.

**GRANTED**  
**16 MAY 2025**

---

<sup>1</sup> The remaining specifications to the charge were withdrawn and dismissed without prejudice.

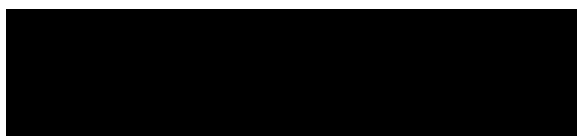
The convening authority took no action on the findings or sentence in this case. ROT, Convening Authority Decision on Action – *United States v. AIC Brock T. Anderson*, undated.

The electronic record of trial is 2 volumes and consists of 9 Prosecution Exhibits, 9 Defense Exhibits, 87 Appellate Exhibits, and 1 Court Exhibit; the transcript is 1112 pages. Appellant is currently confined.

Through no fault of Appellant, undersigned counsel has been unable to complete her review and prepare a brief for Appellant’s case. An enlargement of time is necessary to allow counsel to fully review Appellant’s case and advise Appellant regarding potential errors. Appellant was advised on his right to a timely appeal, was provided an update of the status of counsel’s progress on Appellant’s case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

Respectfully submitted,

A large black rectangular redaction box covering the signature of Joyclin N. Webster.

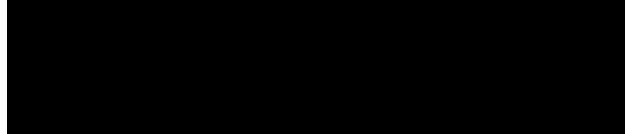
JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel

A large black rectangular redaction box covering the contact information of Joyclin N. Webster.

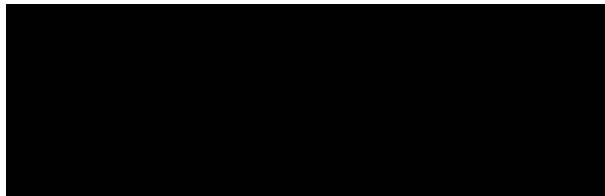
**CERTIFICATE OF FILING AND SERVICE**

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 13 May 2025.

Respectfully submitted,



JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel



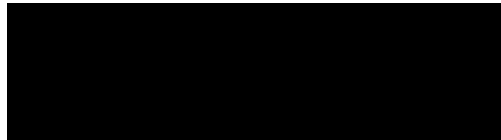
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES,</b>	)	UNITED STATES' GENERAL
<i>Appellee,</i>	)	OPPOSITION TO APPELLANT'S
	)	MOTION FOR ENLARGEMENT
	)	OF TIME
v.	)	
	)	
	)	Before Panel No. 2
Airman First Class (E-3)	)	
<b>BROCK T. ANDERSON,</b>	)	No. ACM 40752
United States Air Force,	)	
<i>Appellant.</i>	)	
	)	15 May 2025

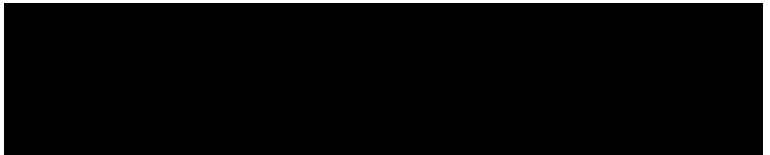
**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

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

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

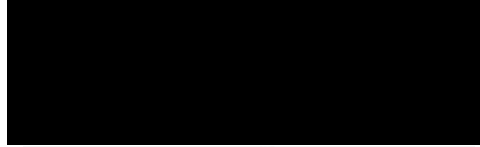


VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel



**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force  
Appellate Defense Division on 15 May2025.



VANESSA BAIROS, Maj, USAF  
Appellate Government Counsel



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

<b>UNITED STATES</b>	)	<b>MOTION FOR ENLARGEMENT OF</b>
<i>Appellee,</i>	)	<b>TIME (FORTH)</b>
	)	
v.	)	Before Panel No. 2
	)	
Airman First Class (E-3)	)	No. ACM 40752
<b>BROCK T. ANDERSON,</b>	)	
United States Air Force,	)	13 June 2025
<i>Appellant.</i>	)	

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

Pursuant to Rule 23.3(m)(1) and (3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **21 July 2025**. The record of trial was docketed with this Court on 23 December 2024. From the date of docketing to the present date, 172 days have elapsed. On the date requested, 210 days will have elapsed.

On 9 August 2024, contrary to his pleas, Appellant was convicted at a general court-martial consisting of a enlisted and officer members at Altus Air Force Base, Oklahoma, of one charge with a specification of sexual assault of a child in violation of Article 120b, Uniform Code of Military Justice (UCMJ).<sup>1</sup> Electronic Record of Trial (ROT), Volume 1, Entry of Judgment (EOJ), dated 15 October 2024; Record (R.) at 1089. Appellant was sentenced to be reduced to the grade of E-1, confined for 8 years, and to be discharged from the service with a bad dishonorable discharge.



**GRANTED**

**18 JUN 2025**

---

<sup>1</sup> The remaining specifications to the charge were withdrawn and dismissed without prejudice.

The convening authority took no action on the findings or sentence in this case. ROT, Convening Authority Decision on Action – *United States v. AIC Brock T. Anderson*, undated.

The electronic record of trial is 2 volumes and consists of 9 Prosecution Exhibits, 9 Defense Exhibits, 87 Appellate Exhibits, and 1 Court Exhibit; the transcript is 1112 pages. Appellant is currently confined.

The undersigned counsel is currently assigned 27 cases; 18 cases are pending before this Court (18 cases are pending AOE). To date, ten cases have priority over the present case.

1. *United States v. Griffin*, No ACM 40641 – The ROT is 6 volumes and consists of 24 Prosecution Exhibits, 29 Defense Exhibits, 30 Appellate Exhibits, and 1 Court Exhibits; the transcript is 605 pages. Appellant is currently confined. Counsel has begun, but not completed, her review of the record of trial.

2. *United States v. Hooker*, No. ACM 40646 – The electronic ROT is 1 volume and consists of 4 Prosecution Exhibits, 16 Defense Exhibits, and 32 Appellate Exhibits; the transcript is 683 pages. Appellant is currently confined.

3. *United States v. Roedel*, No. ACM 40662 – The electronic ROT is 1 volume and consists of 4 Prosecution Exhibits, 16 Defense Exhibits, and 32 Appellate Exhibits; the transcript is 683 pages. Appellant is currently confined.

4. *United States v. Coley*, No. ACM 40675 – The electronic record of trial is 1 volume and consists of 13 Prosecution Exhibits, 1 Defense Exhibit, and 17 Appellate Exhibits; the transcript is 124 pages. Appellant is currently confined.

5. *United States v. Nesbitt*, No. ACM 40679 - The electronic ROT is 6 volumes and consists of 6 Prosecution Exhibits, 0 Defense Exhibits, 65 Appellate Exhibits, and 2 Court Exhibits; the transcript is 373 pages. Appellant is currently confined.

6. *United States v. Osorno*, No. ACM S32792 - The ROT is 2 volumes and consists of 3 Prosecution Exhibits, 4 Defense Exhibits, and 9 Appellate Exhibits; the transcript is 81 pages. Appellant is not currently confined.

7. *United States v. Szabo*, No. ACM 40590 - The ROT is 12 volume and consists of 7 Prosecution Exhibits, 35 Defense Exhibits, and 121 Appellate Exhibits; the transcript is 1495 pages. Appellant is not currently confined.

8. *United States v. Hughes*, No. ACM 24066 - The electronic ROT is 1 volume and consists of 6 Prosecution Exhibits, 8 Defense Exhibits, and 12 Appellate Exhibits; the transcript is 172 pages. Appellant is not currently confined.

9. *United States v. Lucas*, No. ACM 40702 - The electronic ROT is 5 volumes and consists of 11 Prosecution Exhibits, 3 Defense Exhibits, and 16 Appellate Exhibits; the transcript is 187 pages. Appellant is not currently confined.

10. *United States v. Lumm*, No. ACM 40752 - The electronic record of trial is 1 volume and consists of 4 Prosecution Exhibits, 14 Defense Exhibits, 7 Appellate Exhibits, and 1 Court Exhibit; the transcript is 111 pages. Appellant is not currently confined.

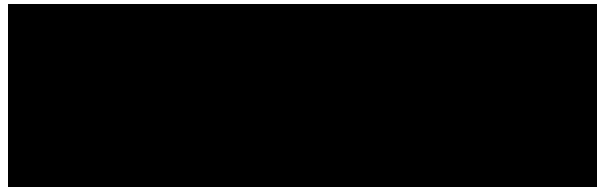
Through no fault of Appellant, undersigned counsel has been unable to complete her review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was advised on his right to a timely appeal, was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

Respectfully submitted,



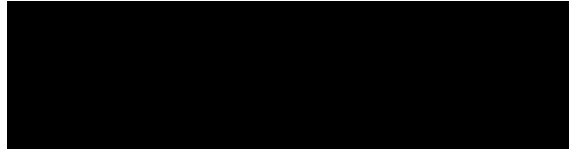
JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel



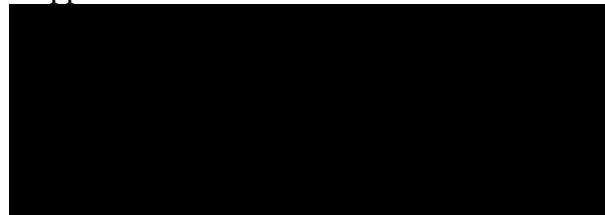
**CERTIFICATE OF FILING AND SERVICE**

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 13 June 2025.

Respectfully submitted,



JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel



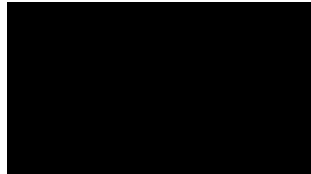
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES,</b>	)	UNITED STATES' GENERAL
	)	OPPOSITION TO
<i>Appellee,</i>	)	APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 2
Airman First Class (E-3)	)	
<b>BROCK T. ANDERSON</b>	)	No. ACM 40752
United States Air Force.	)	
<i>Appellant</i>	)	17 June 2025

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

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

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

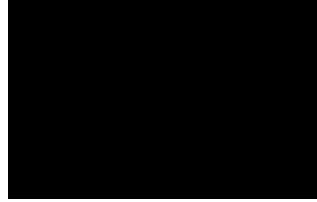


KATE E. LEE, Maj, USAF  
Appellate Government Counsel

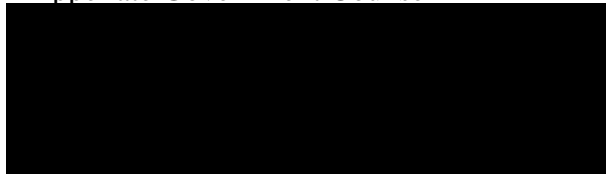


**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 17 June 2025.



KATE E. LEE, Maj, USAF  
Appellate Government Counsel



IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	<b>MOTION FOR ENLARGEMENT OF</b>
	)	<b>TIME (FIFTH)</b>
<i>Appellee,</i>	)	
	)	
v.	)	Before Panel No. 2
	)	
Airman First Class (E-3)	)	No. ACM 40752
<b>BROCK T. ANDERSON,</b>	)	
United States Air Force,	)	12 July 2025
<i>Appellant.</i>	)	

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

Pursuant to Rule 23.3(m)(1) and (3) of this Honorable Court’s Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 30 days, which will end on **20 August 2025**. The record of trial was docketed with this Court on 23 December 2024. From the date of docketing to the present date, 201 days have elapsed. On the date requested, 240 days will have elapsed.

On 9 August 2024, contrary to his pleas, Appellant was convicted at a general court-martial consisting of a enlisted and officer members at Altus Air Force Base, Oklahoma, of one charge with a specification of sexual assault of a child in violation of Article 120b, Uniform Code of Military Justice (UCMJ).<sup>1</sup> Electronic Record of Trial (ROT), Volume 1, Entry of Judgment (EOD) dated 15 October 2024; Record (R.) at 1089. Appellant was sentenced to be reduced to the



to be confined for 8 years, and to be discharged from the service with a bad discharge. R. at 1089.

**GRANTED**

**15 JULY 2025**

<sup>1</sup> The remaining specifications to the charge were withdrawn and dismissed without prejudice.

The convening authority took no action on the findings or sentence in this case. ROT, Convening Authority Decision on Action – *United States v. AIC Brock T. Anderson*, undated.

The electronic record of trial is 2 volumes and consists of 9 Prosecution Exhibits, 9 Defense Exhibits, 87 Appellate Exhibits, and 1 Court Exhibit; the transcript is 1112 pages. Appellant is currently confined.

The undersigned military counsel is currently assigned 29 cases; 24 cases are pending before this Court (20 cases are pending AOE). To date, nine cases have priority over the present case.

1. *United States v. Griffin*, No ACM 40641 – The ROT is 6 volumes and consists of 24 Prosecution Exhibits, 29 Defense Exhibits, 30 Appellate Exhibits, and 1 Court Exhibits; the transcript is 605 pages. Appellant is currently confined. Counsel is finalizing the AOE.

2. *United States v. Roedel*, No. ACM 40662 – The electronic ROT is 1 volume and consists of 4 Prosecution Exhibits, 16 Defense Exhibits, and 32 Appellate Exhibits; the transcript is 683 pages. Appellant is currently confined.

3. *United States v. Coley*, No. ACM 40675 – The electronic record of trial is 1 volume and consists of 13 Prosecution Exhibits, 1 Defense Exhibit, and 17 Appellate Exhibits; the transcript is 124 pages. Appellant is currently confined.

4. *United States v. Nesbitt*, No. ACM 40679 - The electronic ROT is 6 volumes and consists of 6 Prosecution Exhibits, 0 Defense Exhibits, 65 Appellate Exhibits, and 2 Court Exhibits; the transcript is 373 pages. Appellant is currently confined.

5. *United States v. Osorno*, No. ACM S32792 - The ROT is 2 volumes and consists of 3 Prosecution Exhibits, 4 Defense Exhibits, and 9 Appellate Exhibits; the transcript is 81 pages. Appellant is not currently confined.

6. *United States v. Szabo*, No. ACM 40590 - The ROT is 12 volume and consists of 7 Prosecution Exhibits, 35 Defense Exhibits, and 121 Appellate Exhibits; the transcript is 1495 pages. Appellant is not currently confined.

7. *United States v. Hughes*, No. ACM 24066 - The electronic ROT is 1 volume and consists of 6 Prosecution Exhibits, 8 Defense Exhibits, and 12 Appellate Exhibits; the transcript is 172 pages. Appellant is not currently confined.

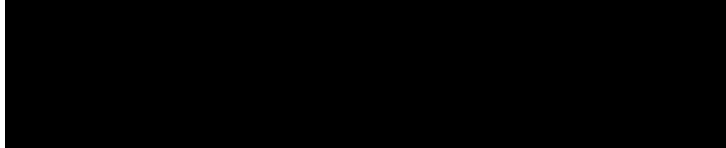
8. *United States v. Lucas*, No. ACM 40702 - The electronic ROT is 5 volumes and consists of 11 Prosecution Exhibits, 3 Defense Exhibits, and 16 Appellate Exhibits; the transcript is 187 pages. Appellant is not currently confined.

9. *United States v. Lumm*, No. ACM 40752 - The electronic record of trial is 1 volume and consists of 4 Prosecution Exhibits, 14 Defense Exhibits, 7 Appellate Exhibits, and 1 Court Exhibit; the transcript is 111 pages. Appellant is not currently confined.

Through no fault of Appellant, undersigned counsel has been unable to complete her review and prepare a brief for Appellant's case. An enlargement of time is necessary to allow counsel to fully review Appellant's case and advise Appellant regarding potential errors. Appellant was advised on his right to a timely appeal, was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

Respectfully submitted,



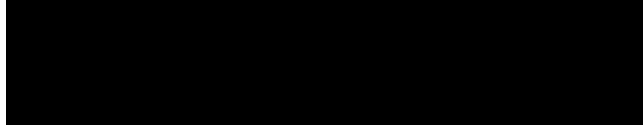
JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel



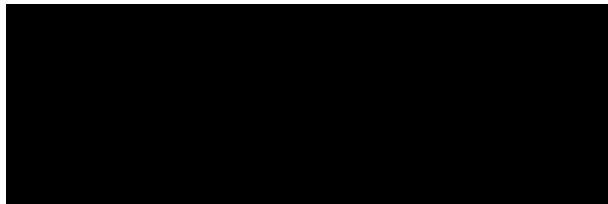
**CERTIFICATE OF FILING AND SERVICE**

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 12 July 2025.

Respectfully submitted,



JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel



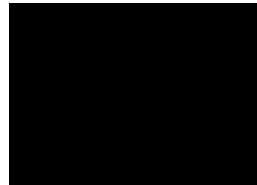
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES,</b>	)	UNITED STATES' GENERAL
	)	OPPOSITION TO
<i>Appellee,</i>	)	APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 2
Airman First Class (E-3)	)	
<b>BROCK T. ANDERSON,</b>	)	No. ACM 40752
United States Air Force.	)	
<i>Appellant</i>	)	14 July 2025

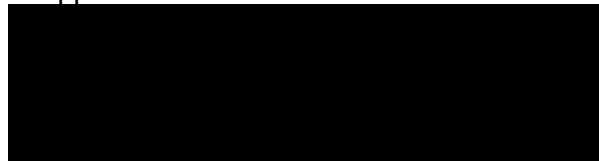
**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

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

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

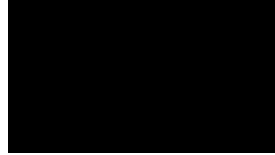


KATE E. LEE, Maj, USAF  
Appellate Government Counsel



**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 14 July 2025.



KATE E. LEE, Maj, USAF  
Appellate Government Counsel



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

<b>UNITED STATES</b>	)	<b>No. ACM 40752</b>
<i>Appellee</i>	)	
	)	
<b>v.</b>	)	
	)	<b>ORDER</b>
<b>Brock T. ANDERSON</b>	)	
<b>Airman First Class (E-3)</b>	)	
<b>U.S. Air Force</b>	)	
<i>Appellant</i>	)	<b>Panel 2</b>

On 28 February 2025, Appellant’s counsel submitted a Motion to Examine Sealed Materials and Transmit to Civilian Counsel; specifically, Mr. William E. Cassara. The Government does not oppose the motion regarding portions “that were released to both parties at trial” and “so long as the United States can also review the sealed portions of the record.”

Appellant requests to examine and transmit the following material:

- Appellate Exhibit XII (privileged records not subject to written waiver and constitutionally required);
- Appellate Exhibit XIII (privileged records not subject to written waiver and not constitutionally required);
- Appellate Exhibits XXVIII–XXX, L–LIII, LVI–LVII, LXIII–LXVI (relating to Mil. R. Evid. 412);
- Appellate Exhibit XXXI (relating to minor changes to specifications);
- Appellate Exhibit LXXI (text message exchange extraction);
- Audio recording of closed sessions; and
- Unspecified sealed transcript pages of closed sessions.

Appellant’s counsel did not state whether any of the material were presented or reviewed by the parties at trial, including Appellate Exhibits XII and XIII which the military judge reviewed in camera.

Appellate counsel may examine sealed materials presented or reviewed by trial-level counsel “upon a colorable showing . . . that examination is reasonably necessary to a proper fulfillment of the appellate counsel’s responsibilities.” Rule for Courts-Martial 1113(b)(3)(B)(i). Appellate counsel may examine other sealed materials for good cause. Rule for Courts-Martial (R.C.M.) 1113(b)(3)(B)(ii).

The court finds Appellant has made a colorable showing that examination of the sealed materials presented or reviewed by trial-level counsel is necessary

to fulfill appellate counsel's responsibilities. Counsel have not demonstrated that Appellate Exhibits XII and XIII were presented or reviewed by trial-level counsel, or that good cause exists for appellate counsel's review. Appellate Exhibit LIII was not ordered sealed.

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

**ORDERED:**

Appellant's Motion to Examine Sealed Materials and Transmit to Civilian Counsel is **GRANTED** as to the following material: **Appellate Exhibits XXVIII-XXX, L-LII, LVI-LVII, LXIII-LXVI, XXXI, and LXXI; audio recordings of closed sessions dated 4 December 2023, 4 January 2024, 10 July 2024, and 7-8 August 2024** in Volume 1 of the record of trial; and **sealed transcript pages 17-46, 116-122, 229-242, 245-276, 544-580, 586-591, and 930-936**. Both appellate defense counsel and appellate government counsel may examine the materials.

Appellant's counsel is permitted to scan a hardcopy of the requested sealed material; transfer a scanned copy of sealed materials to a password-protected or encrypted DVD; email scanned sealed materials using encryption to the email address provided by Mr. William Cassera and transmit files containing sealed materials encrypted or password-protected to Mr. Cassera via DoD SAFE. Appellant's military counsel must label any DVD copies with Appellant's name, ACM number, the date, and the language "CUI – sealed materials under R.C.M. 1113" and place it in a sealed envelope containing the same identifying information. Appellant's military counsel is also permitted to send sealed materials to Mr. Cassera via U.S. mail, Federal Express, or by similar secure means of shipment.

Except as specified in this order, no counsel will photocopy, photograph, or otherwise reproduce the sealed material, nor disclose nor make available its contents to any other individual, without this court's prior written authorization.

Once all pleadings in this case are filed with the court, appellate defense counsel shall destroy all copies of the sealed materials created and transmitted to Mr. Cassera. Appellate defense counsel will provide confirmation to this court and to appellate government counsel that all such copies have been destroyed.

**It is further ordered:**

Appellant's Motion to Examine Sealed Materials and Transmit to Civilian Counsel is **DENIED** as to **Appellate Exhibits XII and XIII**. Upon good cause, appellate counsel may resubmit their request to examine these exhibits.

Appellant's Motion to Examine Sealed Materials and Transmit to Civilian Counsel is **DENIED AS MOOT** as to **Appellate Exhibit LIII**.



FOR THE COURT



CAROL K. JOYCE  
Clerk of the Court

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

<b>UNITED STATES</b>	)	<b>No. ACM 40752</b>
<i>Appellee</i>	)	
	)	
<b>v.</b>	)	
	)	<b>ORDER</b>
<b>Brock T. ANDERSON</b>	)	
<b>Airman First Class (E-3)</b>	)	
<b>U.S. Air Force</b>	)	
<i>Appellant</i>	)	<b>Panel 2</b>

In an order dated 12 March 2025, this court granted Appellant’s Motion to Examine Sealed Materials and Transmit to Civilian Counsel, specifically to Mr. William E. Cassara.

On 28 March 2025, Appellant’s counsel submitted a Motion to Examine Sealed Materials and Transmit to Civilian Counsel, specifically to Ms. Julie Caruso Haines, an associate of Mr. Cassara. The Government does not oppose the motion.

Appellate counsel may examine sealed materials presented or reviewed by trial-level counsel “upon a colorable showing . . . that examination is reasonably necessary to a proper fulfillment of the appellate counsel’s responsibilities.” Rule for Courts-Martial 1113(b)(3)(B)(i). Appellate counsel may examine other sealed materials for good cause. Rule for Courts-Martial (R.C.M.) 1113(b)(3)(B)(ii).

The court finds Appellant has made a colorable showing that examination of the sealed materials presented or reviewed by trial-level counsel is necessary to fulfill appellate counsel’s responsibilities.

Accordingly, it is by the court on this 1st day of April, 2025,

**ORDERED:**

Appellant’s Motion to Examine Sealed Materials and Transmit to Civilian Counsel is **GRANTED** as to the following material: **Appellate Exhibits XXVIII-XXX, L-LII, LVI-LVII, LXIII-LXVI, XXXI, and LXXI; audio recordings of closed sessions dated 4 December 2023, 4 January 2024, 10 July 2024, and 7-8 August 2024** in Volume 1 of the record of trial; and **sealed transcript pages 17-46, 116-122, 229-242, 245-276, 544-580, 586-591, and 930-936.**

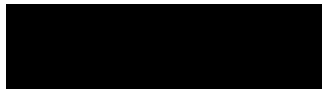
Appellant’s counsel is permitted to scan a hardcopy of the requested sealed material; transfer a scanned copy of sealed materials to a password-protected or encrypted DVD; email scanned sealed materials using encryption to the email address provided by Ms. Julie Caruso Haines and transmit files containing sealed materials encrypted or password-protected to Ms. Caruso Haines via DoD SAFE. Appellant’s military counsel must label any DVD copies with Appellant’s name, ACM number, the date, and the language “CUI – sealed materials under R.C.M. 1113” and place it in a sealed envelope containing the same identifying information. Appellant’s military counsel is also permitted to send sealed materials to Ms. Caruso Haines via U.S. mail, Federal Express, or by similar secure means of shipment.

Except as specified in this order, no counsel will photocopy, photograph, or otherwise reproduce the sealed material, nor disclose nor make available its contents to any other individual, without this court’s prior written authorization.

Once all pleadings in this case are filed with the court, appellate defense counsel shall destroy all copies of the sealed materials created and transmitted to Ms. Caruso Haines. Appellate defense counsel will provide confirmation to this court and to appellate government counsel that all such copies have been destroyed.



FOR THE COURT



CAROL K. JOYCE  
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	APPELLANT’S
	)	MOTION FOR AN
<i>Appellee,</i>	)	ENLARGEMENT OF TIME
	)	(FIRST) TO FILE REPLY OOT <sup>1</sup>
	)	
v.	)	Before Panel 2
	)	
Airman First Class (E-3)	)	No. ACM 40752
<b>BROCK T. ANDERSON,</b>	)	
United States Air Force	)	10 September 2025
<i>Appellant.</i>	)	

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

Pursuant to Rule 23.3(m)(3) and (6) of this Court’s Rules of Practice and Procedure, Appellant hereby moves for his first enlargement of time to file a reply brief to the Government’s Answer. Appellant requests an enlargement for a period of 14 days, which will end on **29 September 2025**. The record of trial was docketed with this Court on 23 December 2024. From the date of docketing to the present date, 261 days have elapsed. On the date requested, 280 days will have elapsed.

On 9 August 2024, contrary to his pleas, Appellant was convicted at a general court-martial

; of a enlisted and officer members at Altus Air Force Base, Oklahoma, of one charge

specification of sexual assault of a child in violation of Article 120b, Uniform Code of

Military Justice (UCMJ).<sup>2</sup> Electronic Record of Trial (ROT), Volume 1, Entry of Judgment (EOJ),

**12 SEP 2025**



<sup>1</sup> This motion for enlargement of time is submitted out of time. Good cause exists for granting this motion because the Governments Answer was electronically served at 2102 on 8 September 2025, outside the duty hours of both the military and civilian counsel, which made it impractical to discuss and file a timely motion for an enlargement of time. This delay was not made in bad faith and prompt action was taken as soon as counsel were able to confer on the Government’s Answer. Appellant bears no responsibility for the delay.

<sup>2</sup> The remaining specifications to the charge were withdrawn and dismissed without prejudice.

dated 15 October 2024; Record (R.) at 1089. Appellant was sentenced to be reduced to the grade of E-1, to be confined for 8 years, and to be discharged from the service with a bad dishonorable discharge. R. at 1089.

The convening authority took no action on the findings or sentence in this case. ROT, Convening Authority Decision on Action – *United States v. AIC Brock T. Anderson*, undated.

The electronic record of trial is 2 volumes and consists of 9 Prosecution Exhibits, 9 Defense Exhibits, 87 Appellate Exhibits, and 1 Court Exhibit; the transcript is 1112 pages. Appellant is currently confined.

Undersigned counsel is currently assigned twenty-nine cases; sixteen cases are pending initial AOE's before this Court. Civilian counsel is currently assigned to twenty-six cases: two cases are pending before this court, eleven cases are before the Army Court of Criminal Appeals, eleven cases are before the Court of Federal Claims, one case is before the Court of Appeals for the Third Circuit, and three cases in various federal district courts. No case for either civilian or undersigned counsel takes priority over this case. No case before any court takes priority over this one for undersigned and civilian co-counsel.

Through no fault of Appellant, the enlargement is necessary to give counsel the opportunity to review the filing, time coordinate with the client, and prepare a reply brief. As the Appellant is confined, additional time is needed to transmit documents and coordinate communications prior to submitting filings in this case.

Appellant was advised on his right to a timely appeal, was provided an update of the status of counsel's progress on Appellant's case, was consulted with regard to enlargements of time, and agrees with necessary requests for enlargements of time, including this request.

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

Respectfully submitted,

[REDACTED]

WILLIAM E. CASSARA, Esq.  
Appellate Defense Counsel

[REDACTED]

[REDACTED]

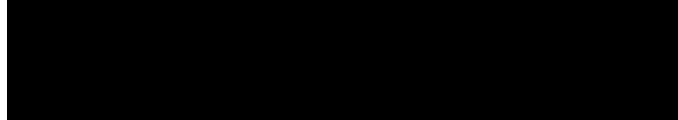
JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel

[REDACTED]

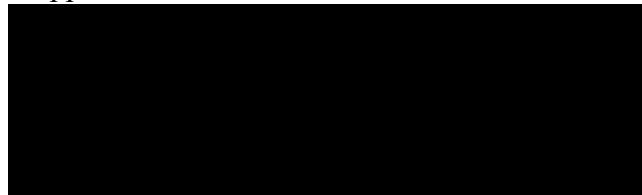
**CERTIFICATE OF FILING AND SERVICE**

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 10 September 2025.

Respectfully submitted,



JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel



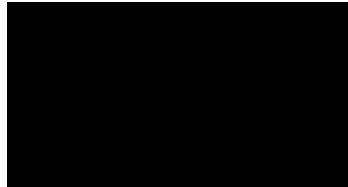
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

<b>UNITED STATES,</b>	)	UNITED STATES' GENERAL
	)	OPPOSITION TO
<i>Appellee,</i>	)	APPELLANT'S MOTION FOR
	)	ENLARGEMENT OF TIME
	)	TO FILE REPLY OUT OF TIME
v.	)	
	)	Before Panel No. 2
Airman First Class (E-3)	)	
<b>BROCK T. ANDERSON,</b>	)	No. ACM 40752
United States Air Force.	)	
<i>Appellant</i>	)	12 September 2025

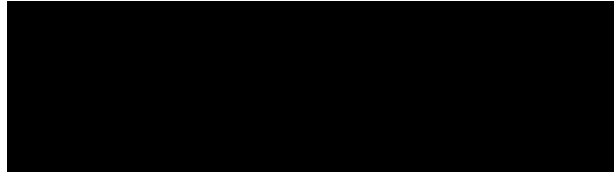
**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States hereby enters its general opposition to Appellant's Motion for Enlargement of Time, Out Of Time, to file a reply brief to the Government's Answer in this case.

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

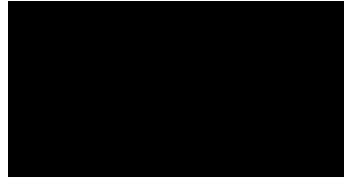


KATE E. LEE, Maj, USAF  
Appellate Government Counsel

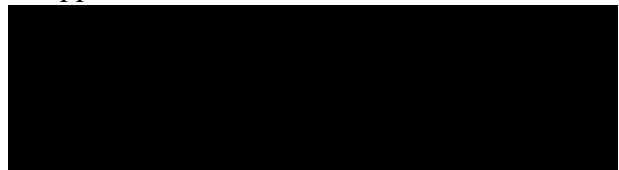


**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 12 September 2025.



KATE E. LEE, Maj, USAF  
Appellate Government Counsel



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

<b>UNITED STATES,</b>	)	<b>MOTION TO EXAMINE</b>
<i>Appellee,</i>	)	<b>SEALED MATERIALS AND</b>
	)	<b>TRANSMIT TO</b>
	)	<b>CIVILIAN COUNSEL</b>
v.	)	
	)	Before Panel No. 2
	)	
Airman First Class (E-3),	)	No. ACM 40752
<b>BROCK T. ANDERSON,</b>	)	
United States Air Force,	)	28 February 2025
<i>Appellant.</i>	)	

**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) and Rules 3.1 and 23.3(f)(1) of this Court’s Rules of Practice and Procedure, undersigned counsel hereby moves to examine the following materials sealed by the military judge:

1. Appellate Exhibits XII – XIII: Privileged Records Not Subject to Written Waiver;
2. Appellate Exhibits XXVIII0-XXX; L-LIII; LVI-LVII; LXIII-LXVI: Military Rule of Evidence 412 motions;
3. Appellate Exhibit XXXI: Government Supplemental Document for Government Motion to Make Minor Changes to Specs I, II, & III of the Charges;
4. Appellate Exhibit LXXI: Text Message Exchange Extraction;
5. Audio recording of closed sessions; and
6. Sealed transcript pages of closed sessions.

In accordance with R.C.M. 1113(b)(3)(B)(i), which requires a colorable showing that examination of these matters is reasonably necessary to appellate counsels’ responsibilities, undersigned counsel asserts that review of the referenced exhibits is necessary to conduct a complete review of the record of trial and be able to advocate competently on behalf of Appellant.

Moreover, a review of the entire record of trial is necessary because this Court is empowered by Article 66, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866, to grant relief based on a review and analysis of “the entire record.” To determine whether the record of trial yields grounds for this Court to grant relief under Article 66, UCMJ, 10 U.S.C. § 866, appellate defense counsel must, therefore, 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).

The sealed materials here must be reviewed for counsel to provide “competent appellate representation.” *Id.* Viewing these exhibits and transcript pages is reasonably necessary to determine whether Appellant is entitled to relief due to errors concerning the substance during any portion of the proceedings—before, during, or after trial. Therefore, undersigned counsel’s examination of the sealed materials is reasonably necessary to fulfill her responsibilities in this case as counsel cannot perform her duty of representation under Article 70, UCMJ, 10 U.S.C. § 870, or fulfill her duty to provide effective assistance of counsel without first reviewing the complete record of trial.

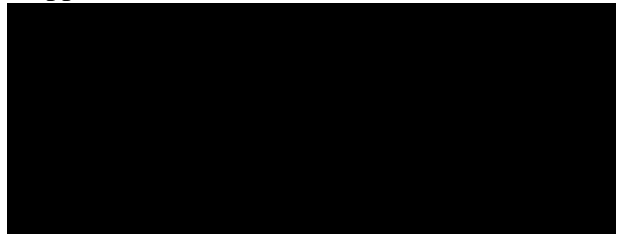
Appellant is represented by undersigned counsel as well as civilian appellate defense counsel, Mr. William E. Cassara. Mr. Cassara’s office is in Evans, GA and he is unable to travel to view the sealed materials in person. Appellant, therefore, further requests this Court authorize undersigned counsel to photocopy, photograph, reproduce, disclose, or make available to Mr. Cassara the sealed exhibits, transcript pages, and audio itemized herein so as to facilitate counsel’s preparation of Appellant’s Assignments of Error. A.F. Ct. Crim. App. R. 23.3(f)(3).

**WHEREFORE**, Appellant respectfully requests this Court grant this motion.

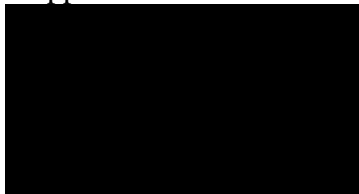
Respectfully Submitted,

A large black rectangular redaction box covering the signature of Joyclin N. Webster.

JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel

A large black rectangular redaction box covering the signature of William E. Cassara.A small black rectangular redaction box covering the signature of William E. Cassara.

WILLIAM E. CASSARA  
Appellate Defense Counsel

A large black rectangular redaction box covering the signature of William E. Cassara.

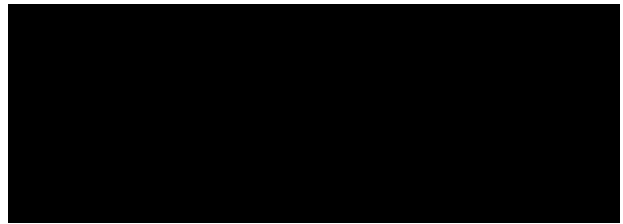
**CERTIFICATE OF FILING AND SERVICE**

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 28 February 2025.

Respectfully Submitted,



JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel



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

UNITED STATES,	)	UNITED STATES' RESPONSE
<i>Appellee,</i>	)	TO APPELLANT'S MOTION
	)	TO EXAMINE AND TRANSMIT
v.	)	SEALED MATERIALS TO
	)	CIVILIAN COUNSEL
	)	
Airman First Class (E-3)	)	ACM 40752
BROCK T. ANDERSON, USAF,	)	
<i>Appellant.</i>	)	Panel No. 2
	)	

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

Pursuant to Rules 3.1 and 23.2 of this Court's Rules of Practice and Procedure, the United States responds to Appellant's Motion to Examine and Transmit Sealed Materials. The United States does not object to Appellant's counsel reviewing any transcript pages or exhibits that were released to both parties at trial, so long as the United States can also review the sealed portions of the record as necessary to respond to any assignment of error that references the sealed materials. The United States respectfully requests that any order issued by this Court also allow counsel for the United States to view the sealed materials.

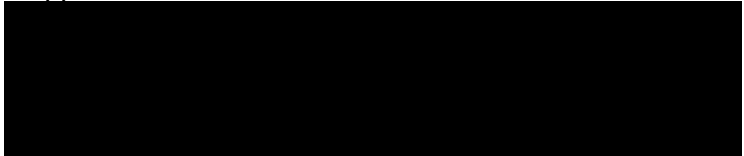
The United States does not oppose Appellant's requests to transmit sealed materials that were released to both parties to civilian appellate defense counsel based on its understanding that civilian counsel resides and practices in Evans, Georgia, and cannot travel to the Court to view the sealed documents in person.

To the extent that any of the items subject to Appellant's Motion to Examine and Transmit include material viewed *in camera* and not released to both parties at trial, the United States does object to Appellant's counsel viewing the same absent a determination from this Court there is good cause under R.C.M. 1113. The United States further objects to electronic transmission of any sealed material not released to the parties at trial.

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



MORGAN L. BREWINGTON, Capt, USAF  
Appellate Government Counsel



MARY ELLEN PAYNE  
Associate Chief

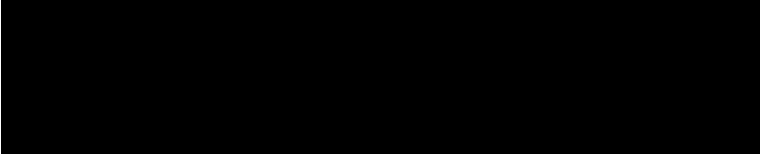


**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 4 March 2025.



MORGAN L. BREWINGTON, Capt, USAF  
Appellate Government Counsel



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

<b>UNITED STATES,</b>	)	<b>MOTION TO EXAMINE</b>
<i>Appellee,</i>	)	<b>SEALED MATERIALS AND</b>
	)	<b>TRANSMIT TO CIVILIAN</b>
	)	<b>COUNSEL</b>
v.	)	
	)	Before Panel No. 2
	)	
Airman First Class (E-3),	)	No. ACM 40752
<b>BROCK T. ANDERSON,</b>	)	
United States Air Force,	)	28 March 2025
<i>Appellant.</i>	)	

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

Pursuant to Rule 23.3(f) of this Honorable Court’s Rules of Practice and Procedure, dated 23 December 2020, Appellant hereby moves for prior written authorization for the undersigned appellate defense counsel to transmit and/or make available access to the sealed materials addressed in this Court’s 12 March 2025 Order to his firm’s associate counsel, Ms. Julie Caruso Haines. *See United States v. Anderson*, No. ACM 40752 (A.F. Ct. Crim. App. 27 Mar. 2025) (order).

On 12 March 2025, this Court granted Appellant’s unopposed Motion to Examine Sealed Materials and Transmit to Civilian Counsel, specifically to the second undersigned counsel, subject to certain conditions, including:

Except as specified in this order, no counsel will photocopy, photograph, or otherwise reproduce the sealed material, nor disclose nor make available its contents to any other individual, without this court’s prior written authorization.

Rule 23.3(f) provides, “No counsel granted access to the materials may photocopy, photograph, reproduce, disclose, or make available their contents to any other individual without the Court’s prior written authorization.”

In accordance with R.C.M. 1113(b)(3)(B)(i), which requires a colorable showing that examination of these matters is reasonably necessary to appellate counsels' responsibilities, the undersigned appellate defense counsel hereby requests that this Court authorize access to the sealed materials to Ms. Haines, who entered a notice of appearance in this case on 3 March 2025, for the necessary research and consideration of the issues contained in the material to conduct a complete review of the record of trial and be able to advocate competently on behalf of Appellant.

Moreover, a review of the entire record of trial<sup>1</sup> is necessary because this Court is empowered by Article 66, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866, to grant relief based on a review and analysis of "the entire record." To determine whether the record of trial yields grounds for this Court to grant relief under Article 66, UCMJ, 10 U.S.C. § 866, appellate defense counsel must, therefore, 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.

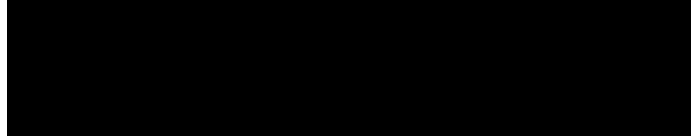
*United States v. May*, 47 M.J. 478, 481, (C.A.A.F. 1998).

The sealed material referenced above must be reviewed by Ms. Haines to ensure undersigned counsel provides "competent appellate representation." *Id.* Accordingly, Ms. Haines' examination of the sealed materials is necessary to fulfill her responsibilities in this case as counsel cannot perform her duty of representation under Article 70, Uniform Code of Military Justice, 10 U.S.C. § 870, or fulfill her duty to provide effective assistance of counsel without first reviewing the complete record of trial.

The undersigned counsel and Ms. Haines acknowledge their professional and ethical obligations to protect the sealed materials and also understand that they may not distribute or use the records for any purpose other than during their legal representation of Appellant.

**WHEREFORE**, Appellant respectfully requests this Court grant this motion.

Respectfully Submitted,



MOTION TO EXAMINE SEALED  
MATERIALS AND TRANSMIT TO  
CIVILIAN COUNSEL

JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel



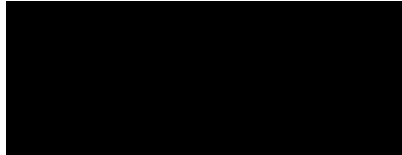
GRANTED: \_\_\_\_\_

DENIED: \_\_\_\_\_

DATE: \_\_\_\_\_



WILLIAM E. CASSARA  
Appellate Defense Counsel



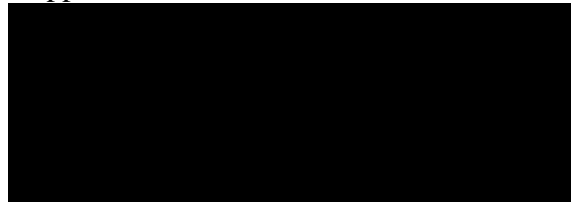
**CERTIFICATE OF FILING AND SERVICE**

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 28 March 2025.

Respectfully Submitted,



JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel



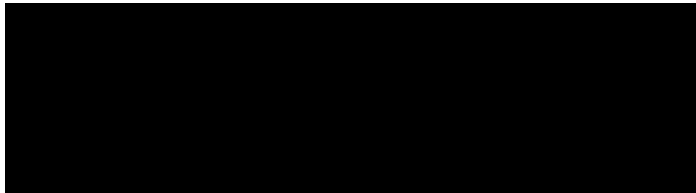
**IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS**

UNITED STATES,	)	UNITED STATES' RESPONSE
<i>Appellee,</i>	)	TO APPELLANT'S MOTION TO
	)	EXAMINE SEALED MATERIALS
v.	)	AND TRANSMIT TO CIVILIAN
	)	COUNSEL
	)	
Airman First Class (E-3)	)	Before Panel No. 2
BROCK T. ANDERSON, USAF,	)	
<i>Appellant.</i>	)	No. ACM 40752
	)	
	)	31 March 2025

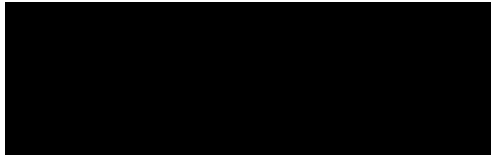
**TO THE HONORABLE, THE JUDGES OF  
THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS:**

Pursuant to Rule 23.2 of this Court's Rules of Practice and Procedure, the United States does not oppose Appellant's Motion to Examine Sealed Materials and Transmit to Civilian Counsel.

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



MARY ELLEN PAYNE  
Associate Chief, Government Trial and

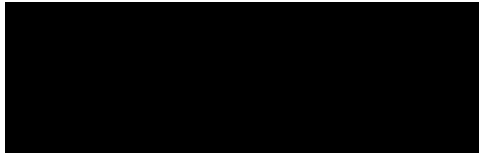


**CERTIFICATE OF FILING AND SERVICE**

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



MARY ELLEN PAYNE  
Associate Chief, Government Trial and



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

<b>UNITED STATES,</b> <i>Appellee,</i>	)	UNITED STATES’ MOTION TO EXCEED PAGE LIMIT
	)	
v.	)	Before Panel No. 2
	)	
Airman First Class (E-3)	)	No. ACM 40752
<b>BROCK T. ANDERSON</b>	)	
United States Air Force	)	8 September 2025
<i>Appellant.</i>	)	

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

Pursuant to Rule 17.3 and 23.3(q) of this Honorable Court’s Rules of Practice and Procedure, the United States moves to exceed this Court’s 50-page limit on filings.

Rule 17.3 provides that “filings shall not exceed either 50 pages or 20,000 words, excluding indices, tables, attachments, and appendices.” There is good cause for exceeding the page limit. Appellant’s brief is 54 pages, totaling 17,756 words<sup>1</sup> (Appellant did not file a motion to exceed the page limit). The United States’ answer to Appellant’s assignments of error—which included three substantive issues and two claims of error pursuant to United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982)—is 60 pages, totaling 18,761 words.

Since Appellant raises legal and factual sufficiency, a detailed exposition of the facts is necessary. Exceeding the page limit was necessary to sufficiently address each issue.



**GRANTED**  
**12 SEP 2025**

---

<sup>1</sup> Pursuant to Rule 17.3, undersigned counsel did not include the two issues raised under Grostefon in the appendix in the page and word count. Including the appendix, Appellant’s brief is 57 pages totaling 18,281 words.

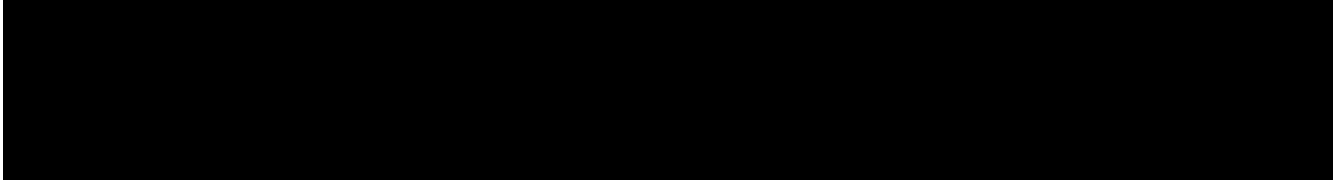
**WHEREFORE**, the United States respectfully requests that this Honorable Court grant this motion to exceed the 50-page limit.



REGINA HENENLOTTER, Maj, USAF  
Appellate Government Counsel



MARY ELLEN PAYNE  
Associate Chief

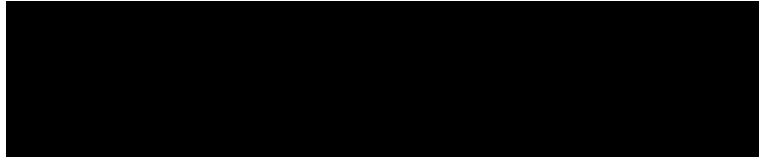


**CERTIFICATE OF FILING AND SERVICE**

I certify that a copy of the foregoing was delivered to the Court and the Air Force  
Appellate Defense Division on 8 September 2025.



REGINA HENENLOTTER, Maj, USAF  
Appellate Government Counsel



UNITED STATES AIR FORCE  
COURT OF CRIMINAL APPEALS

NOTICE OF APPEARANCE

UNITED STATES v. Airman First Class (E-3) Brock Anderson

ACM: 40752

To the Clerk of this Court and all parties of record, the undersigned hereby enters an appearance as the appellate counsel for the appellant in the above-captioned case, pursuant to Rule 13 of the Rules of Practice and Procedure of the United States Air Force Court of Criminal Appeals.

I hereby certify that I am admitted to practice before this court.

3 March 2025

Date

[Redacted Signature]

Julie Caruso Haines

Print Name

[Redacted Bar Number]

Bar Number

[Redacted Address]

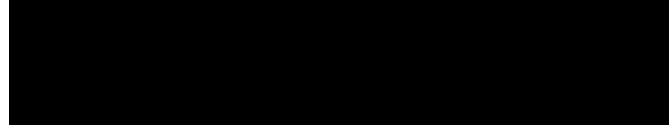
Address

[Redacted Contact Information]

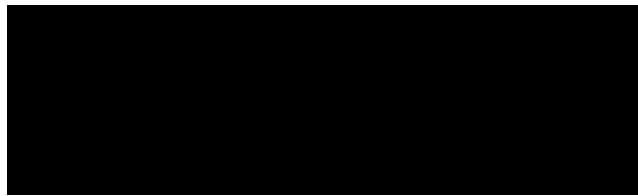
**CERTIFICATE OF FILING AND SERVICE**

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 3 March 2025.

Respectfully submitted,



JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel



---

---

UNITED STATES AIR FORCE  
COURT OF CRIMINAL APPEALS

---

NOTICE OF APPEARANCE

UNITED STATES v. Airman First Class Brock Anderson

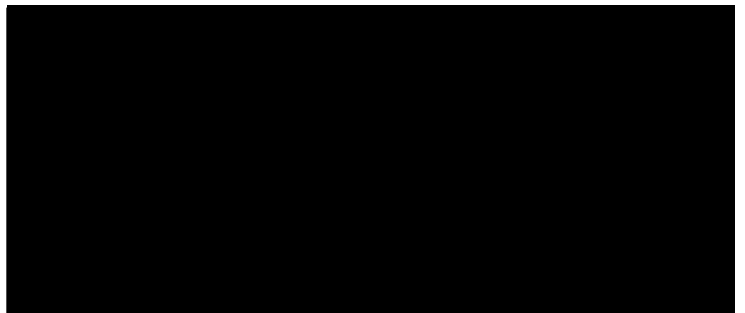
ACM: 40752

To the Clerk of this Court and all parties of record, the undersigned hereby enters an appearance as the appellate counsel for the appellant in the above-captioned case, pursuant to Rule 13 of the Rules of Practice and Procedure of the United States Air Force Court of Criminal Appeals.

I hereby certify that I am admitted to practice before this court.

12 March 2025  
Date

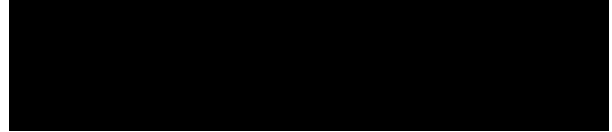
William E. Cassara  
Print Name



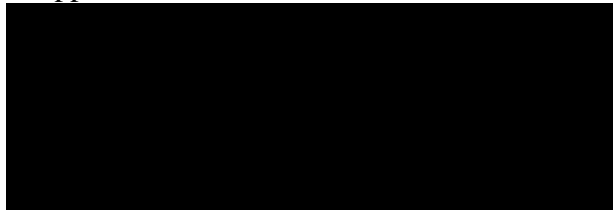
**CERTIFICATE OF FILING AND SERVICE**

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 13 March 2025.

Respectfully Submitted,



JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel



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

<b>UNITED STATES</b>	)	<b>No. ACM 40752</b>
<i>Appellee</i>	)	
	)	
<b>v.</b>	)	
	)	<b>NOTICE OF PANEL</b>
<b>Brock T. ANDERSON</b>	)	<b>CHANGE</b>
<b>Airman First Class (E-3)</b>	)	
<b>U.S. Air Force</b>	)	
<i>Appellant</i>	)	

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

**ORDERED:**

That the Record of Trial in the above-styled matter is withdrawn from Panel 2 and referred to Panel 1 for appellate review.

This panel letter supersedes all previous panel assignments.



FOR THE COURT

[Redacted signature block]

JACOB B. HOEFERKAMP, Capt, USAF  
Chief Commissioner

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

<b>UNITED STATES</b>	)	<b>REPLY BRIEF ON BEHALF</b>
<i>Appellee</i>	)	<b>OF APPELLANT</b>
	)	
v.	)	
	)	Before Panel No. 2
	)	
Airman First Class (E-3)	)	No. ACM 40752
<b>BROCK T. ANDERSON,</b>	)	
United States Air Force	)	
<i>Appellant.</i>	)	29 September 2025

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

Pursuant to Rules 18(d) and 18.3 of the United States Air Force Court of Criminal Rules of Practice and Procedure, dated 23 December 2020, Airman First Class Brock T. Anderson, Appellant, files this Reply to the United States Answer to Assignments of Error [Ans.], filed on 8 September 2025. In addition to the arguments in his opening brief, filed on 7 August 2025, Appellant submits the following additional arguments.

**I.**

**THE EVIDENCE IS LEGALLY AND FACTUALLY  
INSUFFICIENT TO SUSTAIN THE FINDING OF GUILTY  
FOR SEXUAL ASSAULT OF A CHILD.**

**A. The evidence is legally insufficient to sustain the conviction.**

Even after viewing the evidence in the light most favorable to the prosecution, no rational trier of fact could have found beyond a reasonable doubt that appellant committed a sexual act upon RR by penetrating her vulva with his penis. *See United States v. Robinson*, 77 M.J. 294, 297-98 (C.A.A.F. 2018).

Appellant argued that RR’s account of the act was illogical because she told an agent from the Air Force Office of Special Investigations [AFOSI] that only twenty seconds elapsed from the

time Appellant grabbed her arm to when he cleaned up his ejaculate with a baby wipe in the truck. (Appellant Br. at 23). When faced with the obvious impossibility of that time frame, the Government claims that the agent “asked the question of timing in a confusing way.” The Government’s characterization of the exchange is incorrect. The agent asked RR, “and from the time you leaned over and he grabbed you, how long . . . and then to the time he cleaned himself up, how long did that take?” R. at 990. RR answered, “[T]wenty seconds.” R. at 990. If RR had been confused, she would have told the agent that she did not understand or asked the agent to rephrase the question. She did neither. At trial, the Government asked RR, “Your memory today, did [the alleged incident] take 20 to 30 seconds?” and she responded, “No.” R. at 772. RR made her statement to AFOSI in September 2022, only four months after the incident, when her memory was fresher. R. at 990. Her post hoc testimony that the incident lasted longer than twenty seconds was an obvious effort to cure the flaw in her statement to OSI.

Next, despite the well-settled proposition that the Government – “never” the accused – bears the burden of proving each element of the offense, *see United States v. Prather*, 69 M.J. 338, 339 (C.A.A.F. 2011) (quoting *Davis v. United States*, 160 U.S. 469, 487 (1895)), the Government attempts to shift its burden to the defense for its failures of proof. The Government claims that Appellant’s argument about the physical positions of the sexual assault “fails because it is based on speculation that was not clarified at trial.” (Ans. at 49). The Government claims that Appellant’s defense counsel “did not ask [RR] to explain what she meant” when she testified that she was “sort of” lying down in the truck.” (Ans. at 49-50). To the contrary, Appellant’s defense counsel asked RR, “What do you mean by ‘sort of?’” and she answered, “Yes. Yes, I testified to that, I guess. If I said it and I testified to it, yes.” R. at 781. Even if the defense counsel did not

pursue this line of questioning further, the burden to clarify any details in order to obtain a conviction rested with the Government. *Cf.* Ans. at 49.

Similarly, the Government maintains that the defense failed to clarify speculation about the car seat: “Trial defense counsel never asked RR about the car seat. It was possible that the group brought the car seat into the hotel, giving Appellant more room to push RR into the back seat by her shoulders.” (Ans. at 50). The Government could have introduced evidence, either in its case-in-chief or in its rebuttal case, that the group moved the car seat to the hotel room. It did not introduce any such evidence, nor did it argue this scenario in its closing argument. Appellant has highlighted the holes in the Government’s case regarding the legal sufficiency of the evidence. *See, e.g.,* Appellant Br. at 22-24. Try as it might, the Government cannot shift the burden to Appellant by blaming the defense for unasked questions regarding the positions RR claimed that she and Appellant were in, and the amount of space on the back seat because of the size and position of the car seat. The Government asks this Court to overlook these gaps and contradictions, but doing so would set a dangerous precedent—one where speculation and conjecture can substitute for proof beyond a reasonable doubt. That is not, and cannot be, the standard in our justice system.

Finally, the Government posits that “RR’s DNA was not present [on the back seat of the truck] because it had already degraded over the three months between the sexual assault and AFOSI’s DNA collection.” (Ans. at 50-51). The Government’s attempt at explaining away the complete absence of RR’s DNA in the truck is without merit because it ignores the evidence adduced at trial. RR testified that Appellant did not use a condom, that he ejaculated on the back seat and on her leg, and that he used a baby wipe to “clean his mess up.” R. at 731, 732. She did not clarify if Appellant cleaned her leg, the back seat, or both. Even if Appellant had used a baby

wipe on the back row of the truck, it was unlikely that a wipe could affect or degrade the amount of DNA present in the way that cleaning products or high temperatures could. R. at 888-89. Even if Appellant wiped the back row, the samples taken from his truck were “robust” and suffered no degradation. R. at 891. Moreover, even if Appellant and KA had sex in the back seat of the truck multiple times before and after the alleged incident, R. at 958-59, the presence of Appellant’s DNA and semen and KA’s DNA would not have eliminated or degraded the presence of RR’s DNA if there had been any on the seat.

When a person’s liberty and future are at stake, the law demands more than shifting stories and after-the-fact explanations. The consequences for Appellant are profound, and no one should face conviction on such a shaky foundation

**B. The evidence is factually insufficient to sustain the conviction.**

At the outset, the Government’s contention that Appellant has not shown a deficiency of proof to trigger a factual sufficiency review (Ans. at 37) is risible. To trigger a factual sufficiency analysis, an appellant must identify a weakness in the evidence at trial and explain why the evidence – or lack thereof – contradicts a finding of guilt. *United States v. Valencia*, 85 M.J. 529, 535 (N-M. Ct. Crim. App. 2024). Appellant articulated four specific weaknesses in the Government’s evidence at trial and explained – at length – why the evidence, or the absence of evidence, contradicted the finding of guilt: (1) the documentary evidence exonerated Appellant; (2) RR lacked credibility because of her lies, convenient memory lapses, and inconsistent accounts; (3) the testimony of Appellant’s roommates did not establish his guilt; and (4) the Government’s other testimonial evidence did not establish Appellant’s guilt. (Appellant Br. at 25-34).

Regarding the documentary evidence, the Government contends that Appellant's argument regarding RR's choice of words in her TikTok messages to her friend are merely "attempts to paint RR as promiscuous . . . ." (Ans. at 38). Appellant did not "paint RR as promiscuous" because she frequently hung out with an older man at a gas station. (Ans. at 38). To the contrary, Appellant argued that RR engaged in a pattern of shocking and provocative behavior in Oklahoma out of boredom. (Appellant Br. at 25-26). Furthermore, the Government's assertion is a deliberate mischaracterization of Appellant's argument. RR told her friend that she "did something really bad" that would ruin her whole family if it became known. Pros. Ex. 6. When her friend demanded to know what happened, rather than state what transpired, RR sought to build some tension by answering, "bro i wanna tell you so bad but if yall tell this person , literally my whole family would hate me." Pros. Ex. 6. Her friend swore not to tell anyone. Pros. Ex. 6. RR typed, "i f brock." Pros. Ex. 6. RR did not tell her friend that Appellant raped her or assaulted her; instead, she told her friend that she had "f Brock," meaning that she had sex with Appellant. She used the active voice and described her own conduct. At trial, RR claimed that she could not use the words "rape" or "fuck" on TikTok because of a "censor" on TikTok messages. R. at 745. The Government offered no evidence of a TikTok censor, such as a written policy or testimony from a TikTok official, at trial. Here, the Government insists that "RR's choice of words reflected both her young age and the censorship rules in place on TikTok." (Ans. at 38). Appellant avers that young people, including RR, know how to describe an attack as something that happens to them or how to express that they were hurt or violated. Furthermore, the Government continues to offer nothing more than a vague claim about a TikTok censorship policy.

The Government insists that the complete absence of RR's DNA in Appellant's truck "does not reflect a deficiency of proof." (Ans. at 39). This assertion is preposterous. Even if

Appellant used a baby wipe on the back seat of the truck, it was unlikely that a wipe could affect or degrade the amount of DNA present in the way that cleaning products or high temperatures could. R. at 888-89. The Government introduced no evidence that the back seat had been cleaned or that Appellant's truck had been exposed to high temperatures. Even the Government's own expert confirmed the integrity of the DNA samples. (R. at 888-89, 891). She testified that appellant's DNA samples were "robust" and that she "did not observe any degradation." R. at 891.

Next, the Government attempts to paint RR's litany of lies and inconsistencies as merely differences in recollection and "incomplete memories" and asserts that several of RR's inconsistencies "had nothing to do with the charged sexual act." (Ans. at 39). If RR was willing to lie throughout trial about matters unrelated to the charged act, then it is reasonable to conclude that she fabricated the allegation against Appellant. RR did not have a difference in recollection from other witnesses, nor did she suffer from incomplete memories; instead, she lied about matters both trivial and significant. (Appellant Br. at 27-28).

The Government insists that RR's inconsistencies were "minor" (Ans. at 39), but this assertion is absurd. RR's inconsistencies are substantial and cannot be dismissed as minor. Indeed, it was initially difficult for RR to keep her account straight, which resulted in irreconcilable stories. RR spoke with a child forensic interviewer in May 2022. R. at 974. In this interview, during which the interviewer spent time getting to know RR and building rapport with her, RR did not allege that Appellant had penetrated her vulva with his penis, grabbed her breast and buttocks, or touched his penis. R. at 972, 974-75.

In September 2022, four months after the alleged incident, RR told OSI that Appellant had sexually assaulted her in the truck with one hand on the chair – presumably one of the front row

seats – and the other hand on a door. R. at 991. She did not say that Appellant had pushed her shoulders down. R. at 991. When an agent asked if anything sexual happened with Appellant before the incident at the Dallas hotel, RR answered, “[N]o.” R. at 992. She stated that Appellant had touched her leg as they lay in a Jackson, Mississippi, hotel bed, and it was this touch and not any kind of a sexual assault that made her feel uncomfortable, get out of bed, and go to the bathroom. R. at 992, 993. Even if RR felt uncomfortable during that part of the OSI interview with both agents, R. at 997, the inconsistencies between her story to the agents, her story to the child forensic interviewer, and her testimony at trial were incompatible. RR embellished her story until the day before the scheduled start of trial when, for the first time, she accused Appellant of touching her breast and buttocks and causing her to touch his penis in the Jackson, Mississippi, hotel bed. App. Ex. XLVII. These irreconcilable and incompatible stories were not “minor inconsistencies,” as the Government contends. (Ans. at 41). These are material discrepancies which directly undermine the reliability of RR’s testimony and cast doubt on the Government’s case.

Even when applying appropriate deference to the trial court, this Court should be clearly convinced that the finding of guilty was against the weight of the evidence. The “credibility of the putative victim is of paramount importance” when the alleged victim’s testimony was critical to the government’s case and the defense theory was that she fabricated at least some allegations against the accused. *United States v. Jasper*, 72 M.J. 276, 281 (C.A.A.F. 2013). The Government seeks to persuade this Court that RR “did not lack credibility and any inconsistencies in her testimony were minor.” (Ans. at 39). By doing so, the Government is asking this Court to overlook the gaps and contradictions in the evidence presented at trial, but doing so would set a dangerous precedent—one where speculation and conjecture can substitute for proof beyond a reasonable

doubt. For the reasons articulated here and in Appellant’s Opening Brief, RR’s testimony was replete with lies, self-serving memory lapses, and irreconcilable stories. (Appellant Br. at 27-30). Because RR was neither credible nor consistent, this Court should weigh the evidence differently than how the court-martial weighed it and conclude that the finding of guilty was against the weight of the evidence. *See United States v. Harvey*, 85 M.J. 127, 131-32 (C.A.A.F. 2024).

## II.

### **THE MILITARY JUDGE ABUSED HIS DISCRETION IN ADMITTING EVIDENCE PURSUANT TO MILITARY RULE OF EVIDENCE 414 AND THE GOVERNMENT CANNOT PROVE THAT THE ERROR WAS HARMLESS.**

#### **A. The military judge erred in concluding that good cause existed for the Government’s late notice.**

The Government asserts that “[t]he only substantive change to the evidence was that RR would not be testifying that the breast and buttock touch and touch to Appellant’s penis happened at a hotel in Jackson, MS, not Texas,” such that “[t]here was very little surprise that trial defense counsel would have to contend with . . . .” (Ans. at 25-26). This assertion is false. Among other things, the military judge concluded that the change involved not just the location of the charged acts, but also “what the defense was reasonably on notice for was one particular incident, has now been elongated to a continuing course of conduct. What initially all appear to be one event, or one isolated course of conduct at the same time and place, has now stretched out over 350 miles, and hours, and maybe days.” R. at 190. The military judge also stated, “The problem is – the fundamental problem here is the government doesn’t understand what the evidence is and how you’ve charged it.” R. at 207. The military judge also noted that he considered “the misleading nature of the information on the accused, but also just the general confusion. And it’s the government’s change and understanding your own evidence that’s created this confusion.” R. at

207. Just as the Government did not understand its evidence at trial, the Government does not understand the change in the nature of the evidence here. The confusion regarding the Government's own evidence created prejudice and impaired the Defense's ability to prepare. The Government contends that the military judge found good cause for the late notice "because trial counsel only 'discovered' the change to the evidence on 7 July 2024." (Ans. at 26). RR maintained that she told the prosecution team about the uncharged acts – but not where they occurred – in the fall of 2023, but SSgt GJ testified that this "soft interview" did not involve "an in-depth interview" regarding the allegations. R. at 150-51, 309-10. Either the Government was confused about its evidence, as the military judge surmised, or the Government knew about RR's allegations that Appellant had touched her breast and buttocks and caused her to touch his penis as early as September 2023.

**B. The military judge erred in concluding that the proffered evidence was evidence of Appellant's commission of another offense of child molestation.**

To admit evidence of a prior act of child molestation to show the accused's propensity to admit a charged act of child molestation, the military judge must find, *inter alia*, that the proffered evidence is evidence of the commission of another offense of child molestation. Mil. R. Evid. 414(a). *See United States v. Yammine*, 69 M.J. 70, 73-74 (C.A.A.F. 2010). The Government insists that Appellant has "applied factors to be considered under the third threshold (Mil. R. Evid. 401, 402, and the Mil. R. Evid. 403 balancing test) to the second threshold." (Ans. at 27). This is incorrect; Appellant's argument is that the proffered evidence was insufficient proof of another act of child molestation. (Appellant Br. at 40-42).

While the Government alleged that Appellant committed other acts of child molestation in Jackson, Mississippi, namely that Appellant touched RR's breast with his hand, that he touched her buttocks with his hand, and that he caused her to touch his penis with her hand, the proffered

evidence did not constitute evidence of the commission of another act of child molestation. *See* Appellant Br. at 40-42. The proffered evidence consisted of (1) DS's testimony that Appellant told him that he slapped RR's butt in a Texas hotel hallway; (2) RR's eve-of-trial testimony that Appellant committed the other acts; and (3) RR's interview with the forensic interviewer just days after the alleged acts during which she made no allegation that Appellant committed the acts that the Government sought to admit as propensity evidence. R. at 286-87, 293-95, 296-97, 306, 974-75. The proffered evidence plainly did not support the Government's allegation that Appellant committed other acts of child molestation. Additionally, the military judge's findings of fact only referred to RR's in-court testimony, for which she had ample time to fabricate her allegations and/or to be influenced by the testimony and evidence in the December 2023 and January 2024 motions hearings; the military judge failed to find that RR did not describe acts of child molestation in her forensic interview. App. Ex. LVIII. The record does not support a finding by a preponderance of the evidence that Appellant committed another qualifying offense. Accordingly, the military judge erred in finding that there was sufficient proof for the factfinder to conclude by a preponderance of the evidence that Appellant committed another qualifying offense of child molestation. App. Ex. LVIII at 4.

**C. The evidence was not relevant under Mil. R. Evid. 401 and 402.**

The differences between the alleged prior acts and the charged conduct are substantial; the evidence does not meet the threshold for relevance. The Government maintains that any inconsistencies between the proffered evidence and the charged act "did not overpower the commonalities" between the two. (Ans. at 29). In doing so, the Government seeks to convince this Court that the evidence was an apples-to-apples comparison, perhaps a Honeycrisp-to-Granny

Smith comparison, when the glaring inconsistencies between the two were more akin to an apples-to-onions comparison. (Appellant Br. at 42).

**D. The military judge erred in concluding that the probative weight of the evidence was not substantially outweighed by the danger of unfair prejudice.**

Once again, the Government inaccurately characterizes the delta between RR's in-court testimony, her forensic interview, and DS's testimony as "minor inconsistencies." (Ans. at 29). The record clearly undermines the Government's assertion that the inconsistencies in RR's accounts and DS's testimony were "minor." The RR and DC's irreconcilable accounts undermine any claim of a continuing course of conduct and were not proper evidence of the commission of another offense of child molestation. When the facts shift so dramatically from one telling to the next, the risk of convicting an innocent person becomes unacceptably high. Given these deficiencies, the admission of the evidence under Mil. R. Evid. 414 created a substantial risk of unfair prejudice that outweighed any probative value. The error was not harmless.

The Government seeks to persuade this Court that the military judge need not have bothered himself with this delta because the "substance" of the evidence contained "enough similarities to determine the probative value was not outweighed by the danger of unfair prejudice." (Ans. at 29-30). To be clear, the substance of the evidence, namely RR's forensic interview and DS's testimony, did not describe other acts of child molestation, *see supra*, such that there were insufficient similarities to conclude that the probative weight of the evidence outweighed the danger of unfair prejudice. The Government concedes as much when it is forced to acknowledge that, regarding the strength of the proof of the alleged prior act, "RR did not give details in her child forensic interview," and yet "the military judge found her disclosures were 'consistent with the level of detail a child of her age at that time, would share.'" (Ans. at 30). Putting aside for a moment the discrepancy between RR's in-court testimony and her forensic

interview, the military judge concluded, without any factual or legal support, that a child of RR's age at that time would know or not know certain details. This amounted to a quintessential arbitrary conclusion.

The Government contends that "the location, whether in Texas or Mississippi, was not the loadbearing beam of the evidence's admissibility" and that it was reasonable for the military judge to call the three separate acts a continuing course of conduct. (Ans. at 31). The Government misunderstands Appellant's point in focusing on the location of the uncharged acts. In her forensic interview, RR discussed a leg touch but said nothing about where on her leg or whether the touch occurred in a bed or elsewhere. R. at 974-75. DS testified that the butt slapping occurred in a hallway, not in a bed. R. at 286. RR testified that the three touches occurred in a hotel bed. R. at 294-95, 296-97. Thus, according to RR's interview and DS's testimony, the acts did not occur in the same location – a bed – and they were not part of a continuing course of conduct. Moreover, if the uncharged acts were a continuing course of conduct akin to one prior incident, then the acts were not frequent, contrary to the military judge's conclusion otherwise. (App. Ex. LVIII). This Court should conclude that the military judge abused his discretion in admitting the proffered evidence under Mil. R. Evid. 414 and the error had a substantial influence on the verdict in the context of the entire case. *See* Appellant Br. at 46-47.

**PRAYER FOR RELIEF**

WHEREFORE, Appellant respectfully requests that this Honorable Court grant the requested relief.

[REDACTED]

WILLIAM E. CASSARA, Esq.  
Appellate Defense Counsel

[REDACTED]

[REDACTED]

JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel

[REDACTED]

**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 29 September 2025.



JOYCLIN N. WEBSTER, Capt, USAF  
Appellate Defense Counsel

