IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*	)	**MOTION FOR ENLARGEMENT OF TIME (FIRST)**
v.	)	Before Panel No. 2
Master Sergeant (E-7) **KENNETH M. GRIFFIN** United States Air Force *Appellant*	)	No. ACM 40642 29 August 2024

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

Pursuant to Rule 23.3(m)(1) and (2) of this Honorable Court's Rules of Practice and Procedure, Appellant hereby moves for an enlargement of time to file an Assignments of Error (AOE). Appellant requests an enlargement for a period of 60 days, which will end on **9 November 2024**. The record of trial was docketed with this Court on 12 July 2024. From the date of docketing to the present date, 48 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,

[redacted]

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: joyclin.webster.1@us.af.mil

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 August 2024.

Respectfully submitted,

Appellate Defense Counsel
Air Force Appellate Defense Division
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4 September 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Master Sergeant (E-7) KENNETH M. GRIFFIN, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40642 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.

[redacted]

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 4 September 2024.

MARY ELLEN PAYNE
Associate Chief, Government Trial and
Appellate Operations Division
Military Justice and Discipline
United States Air Force
(240) 612-4800

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40642**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Kenneth M. GRIFFIN	)	
Master Sergeant (E-7)	)	
U.S. Air Force	)	
Appellant	)	**Panel 2**

On 29 August 2024, counsel for Appellant submitted a Motion for Enlargement of Time (First) requesting an additional 60 days to submit Appellant's assignments of error. The Government opposes the motion.

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

Accordingly, it is by the court on this 5th day of September, 2024,

ORDERED:

Appellant's Motion for Enlargement of Time (First) is **GRANTED**. Appellant shall file any assignments of error not later than **9 November 2024.**

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.

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

[redacted]

OLGA STANFORD, Capt, USAF
Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*	)	**MOTION FOR ENLARGEMENT OF TIME (SECOND)**
v.	)	Before Panel No. 2
Master Sergeant (E-7) **KENNETH M. GRIFFIN,** United States Air Force *Appellant*	)	No. ACM 40642 30 October 2024

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

Pursuant to Rule 23.3(m)(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 **9 December 2024**. The record of trial was docketed with this Court on 12 June 2024. From the date of docketing to the present date, 140 days have elapsed. On the date requested, 180 days will have elapsed.

On 29 February 2024, Appellant was tried before a Military Judge sitting as a general court-martial at Vandenberg Space Force Base, California. Record of Trial (ROT), Vol. 1, Entry of Judgment, dated 28 March 2024. Appellant was charged with one charge and four specifications of sexual abuse of a child in violation of Article 120(b), Uniform Code of Military Justice (UCMJ). *Id.* Contrary to his pleas, Appellant was found guilty of Specification 2 of the Charge, except the words "on diver occasions," Appellant was found not guilty of the excepted words; Appellant was also found guilty of Specification 4 of the Charge. Record (R.) at 555. Consistent with his pleas, Appellant was found not guilty of Specification 1 and

Specification 3 of the Charge. *Id*. The military judge sentenced Appellant to be reprimanded, reduced to the grade of E-1, and confined for 30 months[1]. R. at 605.

In accordance with Appellant's request, the Convening Authority deferred the Appellant reduction in grade until the entry of judgement was signed. The Convening Authority also deferred all automatic forfeitures for a period of six months, Appellant's release from confinement, or Appellant's expiration of term of service, whichever is soonest. The deferred pay and allowances were directed to be paid for the benefit of Appellant's dependent children. ROT, Vol. 1, Convening Authority Decision on Action – *United States v. Master Sergeant Kenneth M. Griffin*, dated 22 Mar 2024.

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.

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.

[1] For Specification 2 of the Charge, Appellant was sentenced to 30 months confinement. For Specification 4 of the Charge, Appellant was sentenced to 30 months confinement. Confinement for all Specifications is to run concurrently.

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

Respectfully submitted,

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: joyclin.webster.1@us.af.mil

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 30 October 2024.

Respectfully submitted,

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
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31 October 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Master Sergeant (E-7) KENNETH M. GRIFFIN, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40642 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.

[redacted]

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 31 October 2024.

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*	)	**MOTION FOR ENLARGEMENT OF TIME (THIRD)**
v.	)	Before Panel No. 2
Master Sergeant (E-7) **KENNETH M. GRIFFIN,** United States Air Force *Appellant*	)	No. ACM 40642 27 November 2024

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

Pursuant to Rule 23.3(m)(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 **8 January 2025**. The record of trial was docketed with this Court on 12 July 2024. From the date of docketing to the present date, 138 days have elapsed. On the date requested, 180 days will have elapsed.

On 29 February 2024, Appellant was tried before a Military Judge sitting as a general court-martial at Vandenberg Space Force Base, California. Record of Trial (ROT), Vol. 1, Entry of Judgment, dated 28 March 2024. Appellant was charged with one charge and four specifications of sexual abuse of a child in violation of Article 120(b), Uniform Code of Military Justice (UCMJ). *Id.* Contrary to his pleas, Appellant was found guilty of Specification 2 of the Charge, except the words "on diver occasions," Appellant was found not guilty of the excepted words; Appellant was also found guilty of Specification 4 of the Charge. Record (R.) at 555. Consistent with his pleas, Appellant was found not guilty of Specification 1 and

Specification 3 of the Charge. *Id*. The military judge sentenced Appellant to be reprimanded, reduced to the grade of E-1, and confined for 30 months[1]. R. at 605.

In accordance with Appellant's request, the Convening Authority deferred the Appellant reduction in grade until the entry of judgement was signed. The Convening Authority also deferred all automatic forfeitures for a period of six months, Appellant's release from confinement, or Appellant's expiration of term of service, whichever is soonest. The deferred pay and allowances were directed to be paid for the benefit of Appellant's dependent children. ROT, Vol. 1, Convening Authority Decision on Action – *United States v. Master Sergeant Kenneth M. Griffin*, dated 22 Mar 2024.

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.

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.

[1] For Specification 2 of the Charge, Appellant was sentenced to 30 months confinement. For Specification 4 of the Charge, Appellant was sentenced to 30 months confinement. Confinement for all Specifications is to run concurrently.

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

Respectfully submitted,

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: joyclin.webster.1@us.af.mil

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 27 November 2024.

Respectfully submitted,

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
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3 December 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Master Sergeant (E-7) KENNETH M. GRIFFIN, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40642 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.

[redacted]

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 3 December 2024.

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
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(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*	)	**MOTION FOR ENLARGEMENT OF TIME (FORTH)**
v.	)	Before Panel No. 2
Master Sergeant (E-7) **KENNETH M. GRIFFIN,** United States Air Force *Appellant*	)	No. ACM 40642 27 December 2024

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

Pursuant to Rule 23.3(m)(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 **7 February 2025**. The record of trial was docketed with this Court on 12 June 2024. From the date of docketing to the present date, 168 days have elapsed. On the date requested, 210 days will have elapsed.

On 29 February 2024, Appellant was tried before a Military Judge sitting as a general court-martial at Vandenberg Space Force Base, California. Record of Trial (ROT), Vol. 1, Entry of Judgment, dated 28 March 2024. Appellant was charged with one charge and four specifications of sexual abuse of a child in violation of Article 120(b), Uniform Code of Military Justice (UCMJ). *Id.* Contrary to his pleas, Appellant was found guilty of Specification 2 of the Charge, except the words "on diver occasions," Appellant was found not guilty of the excepted words; Appellant was also found guilty of Specification 4 of the Charge. Record (R.) at 555. Consistent with his pleas, Appellant was found not guilty of Specification 1 and Specification 3

of the Charge. *Id*. The military judge sentenced Appellant to be reprimanded, reduced to the grade of E-1, and confined for 30 months[1]. R. at 605.

In accordance with Appellant's request, the Convening Authority deferred the Appellant reduction in grade until the entry of judgement was signed. The Convening Authority also deferred all automatic forfeitures for a period of six months, Appellant's release from confinement, or Appellant's expiration of term of service, whichever is soonest. The deferred pay and allowances were directed to be paid for the benefit of Appellant's dependent children. ROT, Vol. 1, Convening Authority Decision on Action – *United States v. Master Sergeant Kenneth M. Griffin*, dated 22 Mar 2024.

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.

The undersigned counsel is currently assigned 19 cases; 17 cases are pending before this Court (16 cases are pending AOEs). To date, three case have priority over the present case.

1. *United States v. Gray*, No. ACM 40648 –The ROT is 4 volumes consisting of 7 Prosecution Exhibits, 9 Defense Exhibits, and 20 Appellate Exhibits. The verbatim transcript is 399 pages. Counsel has finished reviewing the record of trial and is drafting the AOE.

2. *United States v. Cabrie*, No ACM 40615 – The ROT is 3 volumes and consists of 5 Prosecution Exhibits, 6 Defense Exhibits, and 12 Appellate Exhibits; the transcript is 138 pages. Appellant is not currently confined. Counsel has begun, but not completed her review of the record of trial.

[1] For Specification 2 of the Charge, Appellant was sentenced to 30 months confinement. For Specification 4 of the Charge, Appellant was sentenced to 30 months confinement. Confinement for all Specifications is to run concurrently.

3. *United States v. Capers*, No ACM 40641 – The electronic ROT is 1 volume and consists of 3 Prosecution Exhibits, 5 Defense Exhibits, 14 Appellate Exhibits, and 4 Court Exhibits; the transcript is 405 pages. Counsel has begun, but not completed, her review of the record of trial.

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
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 27 December 2024.

Respectfully submitted,

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
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30 December 2024

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Master Sergeant (E-7) KENNETH M. GRIFFIN, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40642 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.

[redacted]

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 30 December 2024.

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*	)	**MOTION FOR ENLARGEMENT OF TIME (FIFTH)**
v.	)	Before Panel No. 2
Master Sergeant (E-7) **KENNETH M. GRIFFIN,** United States Air Force *Appellant*	)	No. ACM 40642 23 January 2025

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

Pursuant to Rule 23.3(m)(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 **9 March 2025**. The record of trial was docketed with this Court on 12 July 2024. From the date of docketing to the present date, 195 days have elapsed. On the date requested, 240 days will have elapsed.

On 29 February 2024, Appellant was tried before a Military Judge sitting as a general court-martial at Vandenberg Space Force Base, California. Record of Trial (ROT), Vol. 1, Entry of Judgment, dated 28 March 2024. Appellant was charged with one charge and four specifications of sexual abuse of a child in violation of Article 120(b), Uniform Code of Military Justice (UCMJ). *Id.* Contrary to his pleas, Appellant was found guilty of Specification 2 of the Charge, except the words "on diver occasions," Appellant was found not guilty of the excepted words; Appellant was also found guilty of Specification 4 of the Charge. Record (R.) at 555. Consistent with his pleas, Appellant was found not guilty of Specification 1 and Specification 3

of the Charge. *Id*. The military judge sentenced Appellant to be reprimanded, reduced to the grade of E-1, and confined for 30 months[1]. R. at 605.

In accordance with Appellant's request, the Convening Authority deferred the Appellant reduction in grade until the entry of judgement was signed. The Convening Authority also deferred all automatic forfeitures for a period of six months, Appellant's release from confinement, or Appellant's expiration of term of service, whichever is soonest. The deferred pay and allowances were directed to be paid for the benefit of Appellant's dependent children. ROT, Vol. 1, Convening Authority Decision on Action – *United States v. Master Sergeant Kenneth M. Griffin*, dated 22 Mar 2024.

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.

The undersigned counsel is currently assigned 26 cases; 19 cases are pending before this Court (17 cases are pending AOEs). To date, two case have priority over the present case.

1. *United States v. Cabrie*, No ACM 40615 – The ROT is 3 volumes and consists of 5 Prosecution Exhibits, 6 Defense Exhibits, and 12 Appellate Exhibits; the transcript is 138 pages. Appellant is not currently confined. Counsel has begun, but not completed her review of the record of trial.

2. *United States v. Capers*, No ACM 40641 – The electronic ROT is 1 volume and consists of 3 Prosecution Exhibits, 5 Defense Exhibits, 14 Appellate Exhibits, and 4 Court

[1] For Specification 2 of the Charge, Appellant was sentenced to 30 months confinement. For Specification 4 of the Charge, Appellant was sentenced to 30 months confinement. Confinement for all Specifications is to run concurrently.

Exhibits; the transcript is 405 pages. Counsel has begun, but not completed, her review of the record of trial.

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
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: joyclin.webster.1@us.af.mil

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 23 January 2025.

Respectfully submitted,

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: joyclin.webster.1@us.af.mil

27 January 2025

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Master Sergeant (E-7) KENNETH M. GRIFFIN, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME ACM 40642 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.

[redacted]

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 27 January 2025.

JENNY A. LIABENOW, Lt Col, USAF
Director of Operations
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*	)	**MOTION FOR ENLARGEMENT OF TIME (SIXTH)**
v.	)	Before Panel No. 2
Master Sergeant (E-7) **KENNETH M. GRIFFIN,** United States Air Force *Appellant*	)	No. ACM 40642 28 February 2025

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

Pursuant to Rule 23.3(m)(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 **8 April 2025**. The record of trial was docketed with this Court on 12 July 2024. From the date of docketing to the present date, 231 days have elapsed. On the date requested, 270 days will have elapsed.

On 29 February 2024, Appellant was tried before a Military Judge sitting as a general court-martial at Vandenberg Space Force Base, California. Record of Trial (ROT), Vol. 1, Entry of Judgment, dated 28 March 2024. Appellant was charged with one charge and four specifications of sexual abuse of a child in violation of Article 120(b), Uniform Code of Military Justice (UCMJ). *Id.* Contrary to his pleas, Appellant was found guilty of Specification 2 of the Charge, except the words "on diver occasions," Appellant was found not guilty of the excepted words; Appellant was also found guilty of Specification 4 of the Charge. Record (R.) at 555. Consistent with his pleas, Appellant was found not guilty of Specification 1 and Specification 3

of the Charge. *Id*. The military judge sentenced Appellant to be reprimanded, reduced to the grade of E-1, and confined for 30 months[1]. R. at 605.

In accordance with Appellant's request, the Convening Authority deferred the Appellant reduction in grade until the entry of judgement was signed. The Convening Authority also deferred all automatic forfeitures for a period of six months, Appellant's release from confinement, or Appellant's expiration of term of service, whichever is soonest. The deferred pay and allowances were directed to be paid for the benefit of Appellant's dependent children. ROT, Vol. 1, Convening Authority Decision on Action – *United States v. Master Sergeant Kenneth M. Griffin*, dated 22 Mar 2024.

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.

The undersigned counsel is currently assigned 23 cases; 20 cases are pending before this Court (17 cases are pending AOEs). To date, two cases have priority over the present case.

1. *United States v. Cabrie*, No ACM 40615 – The ROT is 3 volumes and consists of 5 Prosecution Exhibits, 6 Defense Exhibits, and 12 Appellate Exhibits; the transcript is 138 pages. Appellant is not currently confined. Counsel has begun drafting the AOEs.

2. *United States v. Capers*, No ACM 40641 – The electronic ROT is 1 volume and consists of 3 Prosecution Exhibits, 5 Defense Exhibits, 14 Appellate Exhibits, and 4 Court Exhibits; the transcript is 405 pages. Counsel has begun, but not completed, her review of the record of trial.

[1] For Specification 2 of the Charge, Appellant was sentenced to 30 months confinement. For Specification 4 of the Charge, Appellant was sentenced to 30 months confinement. Confinement for all Specifications is to run concurrently.

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
Air Force Appellate Defense Division
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Email: joyclin.webster.1@us.af.mil

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
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: joyclin.webster.1@us.af.mil

4 March 2025

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Master Sergeant (E-7) KENNETH M. GRIFFIN, USAF, *Appellant.*	)))))))))	UNITED STATES' GENERAL OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME No. ACM 40642 Before 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.

[redacted]
JO USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

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

[redacted]
JO USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*	)	**MOTION FOR ENLARGEMENT OF TIME (SEVENTH)**
v.	)	Before Panel No. 2
Master Sergeant (E-7) **KENNETH M. GRIFFIN,** United States Air Force *Appellant*	)	No. ACM 40642 31 March 2025

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

Pursuant to Rule 23.3(m)(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 **8 May 2025**. The record of trial was docketed with this Court on 12 July 2024. From the date of docketing to the present date, 262 days have elapsed. On the date requested, 300 days will have elapsed.

On 29 February 2024, Appellant was tried before a Military Judge sitting as a general court-martial at Vandenberg Space Force Base, California. Record of Trial (ROT), Vol. 1, Entry of Judgment, dated 28 March 2024. Appellant was charged with one charge and four specifications of sexual abuse of a child in violation of Article 120(b), Uniform Code of Military Justice (UCMJ). *Id.* Contrary to his pleas, Appellant was found guilty of Specification 2 of the Charge, except the words "on diver occasions," Appellant was found not guilty of the excepted words; Appellant was also found guilty of Specification 4 of the Charge. Record (R.) at 555. Consistent with his pleas, Appellant was found not guilty of Specification 1 and Specification 3

of the Charge. *Id*. The military judge sentenced Appellant to be reprimanded, reduced to the grade of E-1, and confined for 30 months[1]. R. at 605.

In accordance with Appellant's request, the Convening Authority deferred the Appellant reduction in grade until the entry of judgement was signed. The Convening Authority also deferred all automatic forfeitures for a period of six months, Appellant's release from confinement, or Appellant's expiration of term of service, whichever is soonest. The deferred pay and allowances were directed to be paid for the benefit of Appellant's dependent children. ROT, Vol. 1, Convening Authority Decision on Action – *United States v. Master Sergeant Kenneth M. Griffin*, dated 22 Mar 2024.

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.

The undersigned counsel is currently assigned 23 cases; 20 cases are pending before this Court (17 cases are pending AOEs). To date, two cases have priority over the present case.

1. *United States v. Cabrie*, No ACM 40615 – The ROT is 3 volumes and consists of 5 Prosecution Exhibits, 6 Defense Exhibits, and 12 Appellate Exhibits; the transcript is 138 pages. Appellant is not currently confined. Counsel has begun drafting the AOEs.

2. *United States v. Capers*, No ACM 40641 – The electronic ROT is 1 volume and consists of 3 Prosecution Exhibits, 5 Defense Exhibits, 14 Appellate Exhibits, and 4 Court Exhibits; the transcript is 405 pages. Counsel has begun, but not completed, her review of the record of trial.

[1] For Specification 2 of the Charge, Appellant was sentenced to 30 months confinement. For Specification 4 of the Charge, Appellant was sentenced to 30 months confinement. Confinement for all Specifications is to run concurrently.

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
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: joyclin.webster.1@us.af.mil

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 31 March 2025.

Respectfully submitted,

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: joyclin.webster.1@us.af.mil

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME
v.	)	Before Panel No. 2
Master Sergeant (E-7) **KENNETH M. GRIFFIN,** United States Air Force, *Appellant.*	)	No. ACM 40642
	)	2 April 2025

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

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

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

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

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 2 April 2025.

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*	)	**MOTION FOR ENLARGEMENT OF TIME (EIGHTH)**
v.	)	Before Panel No. 2
Master Sergeant (E-7) **KENNETH M. GRIFFIN,** United States Air Force *Appellant*	)	No. ACM 40642 30 April 2025

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

Pursuant to Rule 23.3(m)(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 **7 June 2025**. The record of trial was docketed with this Court on 12 July 2024. From the date of docketing to the present date, 292 days have elapsed. On the date requested, 330 days will have elapsed.

On 29 February 2024, Appellant was tried before a Military Judge sitting as a general court-martial at Vandenberg Space Force Base, California. Record of Trial (ROT), Vol. 1, Entry of Judgment, dated 28 March 2024. Appellant was charged with one charge and four specifications of sexual abuse of a child in violation of Article 120(b), Uniform Code of Military Justice (UCMJ). *Id.* Contrary to his pleas, Appellant was found guilty of Specification 2 of the Charge, except the words "on diver occasions," Appellant was found not guilty of the excepted words; Appellant was also found guilty of Specification 4 of the Charge. Record (R.) at 555. Consistent with his pleas, Appellant was found not guilty of Specification 1 and Specification 3

of the Charge. *Id*. The military judge sentenced Appellant to be reprimanded, reduced to the grade of E-1, and confined for 30 months[1]. R. at 605.

In accordance with Appellant's request, the Convening Authority deferred the Appellant reduction in grade until the entry of judgement was signed. The Convening Authority also deferred all automatic forfeitures for a period of six months, Appellant's release from confinement, or Appellant's expiration of term of service, whichever is soonest. The deferred pay and allowances were directed to be paid for the benefit of Appellant's dependent children. ROT, Vol. 1, Convening Authority Decision on Action – *United States v. Master Sergeant Kenneth M. Griffin*, dated 22 Mar 2024.

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.

The undersigned counsel is currently assigned 23 cases; 20 cases are pending before this Court (17 cases are pending AOEs). To date, only one case has priority over the present case: *United States v. Capers*, No ACM 40641 – The electronic ROT is 1 volume and consists of 3 Prosecution Exhibits, 5 Defense Exhibits, 14 Appellate Exhibits, and 4 Court Exhibits; the transcript is 405 pages. Counsel has completed her review of the record of trial.

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. Since the last granted enlargement of time, counsel has had eye surgery and was on convalescent leave,

[1] For Specification 2 of the Charge, Appellant was sentenced to 30 months confinement. For Specification 4 of the Charge, Appellant was sentenced to 30 months confinement. Confinement for all Specifications is to run concurrently.

ending 30 April 2025, due to the procedure. 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
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: joyclin.webster.1@us.af.mil

CERTIFICATE OF FILING AND SERVICE

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

Respectfully submitted,

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME
v.	)	Before Panel No. 2
Master Sergeant (E-7) **KENNETH M. GRIFFIN,** United States Air Force, *Appellant.*	)	No. ACM 40642
	)	2 May 2025

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 330 days in length. Appellant's nearly a year long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two thirds of the 18 month standard for this Court to issue a decision, which only leaves about 7 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

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

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 2 May 2025.

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES	)	**CONSENT MOTION**
Appellee	)	**TO EXAMINE SEALED**
	)	**MATERIALS**
v.	)	
	)	Before Panel No. 2
Master Sergeant (E-7)	)	
KENNETH M. GRIFFIN,	)	No. ACM 40642
United States Air Force	)	
Appellant	)	27 May 2025

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

Pursuant to Rules 3.1 and 23.3(f) of this Court's Rules of Practice and Procedure and Rule for Courts-Martial (R.C.M.) 1113(b)(3(B)(i), the Appellant moves for both parties to examine sealed Defense Exhibit I – Mental Health Record. All parties at trial reviewed the exhibit. R. at 487. 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 exhibit is necessary to conduct a complete review of the record of trial and be in a position 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 material referenced above

must be reviewed to ensure undersigned counsel provides "competent appellate representation." *Id*. Accordingly, examination of these exhibits is reasonably necessary since undersigned counsel cannot fulfill their duties of representation under Article 70, UCMJ, 10 U.S.C. § 870, without first reviewing the complete record of trial.

Appellate Government Counsel have been consulted about this motion and consent to the relief sought by Appellant.

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

Respectfully submitted,

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: joyclin.webster.1@us.af.mil

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 27 May 2025.

Respectfully submitted,

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: joyclin.webster.1@us.af.mil

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40642**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Kenneth M. GRIFFIN	)	
Master Sergeant (E-7)	)	
U.S. Air Force	)	
Appellant	)	**Panel 2**

On 27 May 2025, counsel for Appellant submitted a Consent Motion to Examine Sealed Materials, requesting both parties be allowed to examine Defense Exhibit I which was reviewed by trial counsel and trial defense counsel at Appellant's court-martial.

Appellate counsel may examine sealed materials released to counsel at trial "upon a colorable showing . . . that examination is reasonably necessary to a proper fulfillment of the appellate counsel's responsibilities . . . ." Rule for Courts-Martial 1113(b)(3)(B)(i), *Manual for Courts-Martial, United States* (2024 ed.).

The court finds Appellant has made a colorable showing that review of sealed materials is reasonably necessary for a proper fulfillment of appellate counsel's responsibilities. This court's order permits counsel for both parties to examine the materials.

Accordingly, it is by the court on this 28th day of May 2025,

ORDERED:

Appellant's Consent Motion to Examine Sealed Materials dated 27 May 2025 is **GRANTED**.

Appellate defense counsel and appellate government counsel may view **Defense Exhibit I** subject to the following conditions:

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

No counsel granted access to the materials may photocopy, photograph, reproduce, disclose, or make available the content to any other individual without the court's prior written authorization.

FOR THE COURT

[redacted]

CAROL K. JOYCE
Clerk of the Court

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40642**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Kenneth M. GRIFFIN	)	
Master Sergeant (E-7)	)	
U.S. Air Force	)	
Appellant	)	**Panel 2**

On 29 May 2025, counsel for Appellant submitted a Motion for Enlargement of Time (Ninth) requesting an additional 30 days to submit Appellant's assignments of error. The Government opposes the motion.

On 6 June 2025, the court held a status conference to discuss the progress of this case. Appellant was represented by Captain Joyclin N. Webster; Lieutenant Colonel Allen S. Abrams and Mr. Dwight H. Sullivan from the Appellate Defense Division were also present. Ms. Mary Ellen Payne represented the Government. In response to questions from the court, Captain Webster provided additional information regarding Appellant's motion. *Inter alia*, Captain Webster expected that, if the present motion was granted, Appellant would require no further enlargements of time in order to file his assignments of error. Ms. Payne did not specifically challenge or dispute any written or oral representation by the Defense.

The court has considered Appellant's motion, the Government's opposition, prior filings and orders in this case, case law, and this court's Rules of Practice and Procedure. Accordingly, it is by the court on this 6th day of June, 2025,

ORDERED:

Appellant's Motion for Enlargement of Time (Ninth) is **GRANTED**. Appellant shall file any assignments of error not later than **7 July 2025**.

FOR THE COURT

[redacted]

CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*	)	**MOTION FOR ENLARGEMENT OF TIME (NINTH)**
v.	)	Before Panel No. 2
Master Sergeant (E-7) **KENNETH M. GRIFFIN,** United States Air Force *Appellant*	)	No. ACM 40642 29 May 2025

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

Pursuant to Rule 23.3(m)(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 **7 July 2025**. The record of trial was docketed with this Court on 12 July 2024. From the date of docketing to the present date, 321 days have elapsed. On the date requested, 360 days will have elapsed.

On 29 February 2024, Appellant was tried before a Military Judge sitting as a general court-martial at Vandenberg Space Force Base, California. Record of Trial (ROT), Vol. 1, Entry of Judgment, dated 28 March 2024. Appellant was charged with one charge and four specifications of sexual abuse of a child in violation of Article 120(b), Uniform Code of Military Justice (UCMJ). *Id.* Contrary to his pleas, Appellant was found guilty of Specification 2 of the Charge, except the words "on diver occasions," Appellant was found not guilty of the excepted words; Appellant was also found guilty of Specification 4 of the Charge. Record (R.) at 555. Consistent with his pleas, Appellant was found not guilty of Specification 1 and Specification 3

of the Charge. *Id*. The military judge sentenced Appellant to be reprimanded, reduced to the grade of E-1, and confined for 30 months[1]. R. at 605.

In accordance with Appellant's request, the Convening Authority deferred the Appellant reduction in grade until the entry of judgement was signed. The Convening Authority also deferred all automatic forfeitures for a period of six months, Appellant's release from confinement, or Appellant's expiration of term of service, whichever is soonest. The deferred pay and allowances were directed to be paid for the benefit of Appellant's dependent children. ROT, Vol. 1, Convening Authority Decision on Action – *United States v. Master Sergeant Kenneth M. Griffin*, dated 22 Mar 2024.

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 reviewed over 90 percent of the ROT in this case.

The undersigned counsel is currently assigned 25 cases; 22 cases are pending before this Court (20 cases are pending AOEs). To date, two cases before the Court of Appeals for the Armed Forces take priority over this case: *United States v. Grey* and *United States v. Menard*. Counsel is finalizing the supplement in *Grey*. Counsel will continue drafting the supplement in *Menard* next, which is due 17 June. No other cases have priority over the present case.

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

[1] For Specification 2 of the Charge, Appellant was sentenced to 30 months confinement. For Specification 4 of the Charge, Appellant was sentenced to 30 months confinement. Confinement for all Specifications is to run concurrently. R. at 605.

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
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: joyclin.webster.1@us.af.mil

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 May 2025.

Respectfully submitted,

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: joyclin.webster.1@us.af.mil

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME
v.	)	Before Panel No. 2
Master Sergeant (E-7) **KENNETH M. GRIFFIN,** United States Air Force, *Appellant.*	)	No. ACM 40642
	)	2 June 2025

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant nearly a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 360 days in length. Appellant's nearly a year long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed almost two thirds of the 18 month standard for this Court to issue a decision, which only leaves about 6 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

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

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 2 June 2025.

VANESSA BAIROS, Maj, USAF
Appellate Government Counsel
Government Trial and Appellate Operations Division
Military Justice and Discipline Directorate
United States Air Force
(240) 612-4800

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee*	)	**MOTION FOR ENLARGEMENT OF TIME (TENTH)**
v.	)	Before Panel No. 2
Master Sergeant (E-7) **KENNETH M. GRIFFIN,** United States Air Force *Appellant*	)	No. ACM 40642 23 June 2025

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

Pursuant to Rule 23.3(m)(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 **6 August 2025**. The record of trial was docketed with this Court on 12 July 2024. From the date of docketing to the present date, 346 days have elapsed. On the date requested, 390 days will have elapsed.

This enlargement request is made out of an abundance of caution to allow sufficient time for internal review of the AOE in light of the Fourth of July holiday and the upcoming family day. Counsel is requesting a 30 enlargement but will make every effort to submit the AOE to this Court as soon as possible.

On 29 February 2024, Appellant was tried before a Military Judge sitting as a general court-martial at Vandenberg Space Force Base, California. Record of Trial (ROT), Vol. 1, Entry of Judgment, dated 28 March 2024. Appellant was charged with one charge and four specifications of sexual abuse of a child in violation of Article 120(b), Uniform Code of Military Justice (UCMJ). *Id.* Contrary to his pleas, Appellant was found guilty of Specification 2 of the Charge, except the words "on diver occasions," Appellant was found not guilty of the excepted words; Appellant was also found guilty of Specification 4 of the Charge. Record (R.) at 555.

Consistent with his pleas, Appellant was found not guilty of Specification 1 and Specification 3 of the Charge. *Id*. The military judge sentenced Appellant to be reprimanded, reduced to the grade of E-1, and confined for 30 months[1]. R. at 605.

In accordance with Appellant's request, the Convening Authority deferred the Appellant reduction in grade until the entry of judgement was signed. The Convening Authority also deferred all automatic forfeitures for a period of six months, Appellant's release from confinement, or Appellant's expiration of term of service, whichever is soonest. The deferred pay and allowances were directed to be paid for the benefit of Appellant's dependent children. ROT, Vol. 1, Convening Authority Decision on Action – *United States v. Master Sergeant Kenneth M. Griffin*, dated 22 Mar 2024.

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. Except for one exhibit, Counsel has reviewed the entire ROT in this case.

The undersigned counsel is currently assigned 25 cases; 22 cases are pending before this Court (20 cases are pending AOEs). No other cases have priority over the present case.

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.

[1] For Specification 2 of the Charge, Appellant was sentenced to 30 months confinement. For Specification 4 of the Charge, Appellant was sentenced to 30 months confinement. Confinement for all Specifications is to run concurrently. R. at 605.

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

Respectfully submitted,

JOYCLIN N. WEBSTER, Capt, USAF
Appellate Defense Counsel
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
Office: (240) 612-4770
Email: joyclin.webster.1@us.af.mil

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 23 June 2025.

Respectfully submitted,

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	UNITED STATES' OPPOSITION TO APPELLANT'S MOTION FOR ENLARGEMENT OF TIME
v.	)	
	)	Before Panel No. 2
Master Sergeant (E-7) **KENNETH M. GRIFFIN,** United States Air Force, *Appellant.*	)	No. ACM 40642
	)	24 June 2025

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

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

The United States respectfully maintains that short of a death penalty case or other extraordinary circumstances, it should not take any appellant over a year to submit an assignment of error to this Court. If Appellant's new delay request is granted, the defense delay in this case will be 390 days in length. Appellant's over a year long delay practically ensures this Court will not be able to issue a decision that complies with our superior Court's appellate processing standards. Appellant has already consumed more than two thirds of the 18 month standard for this Court to issue a decision, which only leaves about 5 months combined for the United States and this Court to perform their separate statutory responsibilities. It appears that Appellant's counsel has not completed review of the record of trial at this late stage of the appellate process.

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

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

I certify that a copy of the foregoing was delivered to the Court and to the Air Force Appellate Defense Division on 24 June 2025.

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

UNITED STATES	)	**No. ACM 40642**
Appellee	)	
	)	
v.	)	
	)	**NOTICE OF PANEL CHANGE**
Kenneth M. GRIFFIN	)	
Master Sergeant (E-7)	)	
U.S. Air Force	)	
Appellant	)	

It is by the court on this 4th day of August, 2025,

ORDERED:

That the Record of Trial in the above-styled matter is withdrawn from Panel 2 and referred to Panel 3 for appellate review.

This panel letter supersedes all previous panel assignments.

FOR THE COURT

[redacted]

A

Commissioner

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee* v. Master Sergeant (E-7) **KENNETH M. GRIFFIN** United States Air Force *Appellant*	**BRIEF ON BEHALF OF APPELLANT** Before Panel No. 3 No. ACM 40642 6 August 2025

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

ASSIGNMENTS OF ERROR

I. WHETHER THE FINDINGS OF GUILT ARE FACTUALLY INSUFFICIENT.

II. WHETHER THE MILITARY JUDGE ABUSED HIS DISCRETION BY ADMITTING LA'S PRIOR CONSISTENT STATEMENTS UNDER MIL. R. EVID. 801(d)(1)(B)(i), WHICH PREJUDICED APPELLANT.

III. WHETHER APPELLANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL WHERE DEFENSE COUNSEL FAILED TO CALL MATERIAL WITNESSES AND FAILED TO ADEQUATELY PREPARE AND ADVISE APPELLANT REGARDING HIS RIGHT TO TESTIFY.[1]

IV. WHETHER THE SENTENCE IMPOSED WAS APPROPRIATE IN LIGHT OF THE SUBSTANTIAL MITIGATION EVIDENCE THAT RENDERED THE SENTENCE UNDULY SEVERE.

V. WHETHER APPELLANT'S CONSTITUTIONAL RIGHTS WERE VIOLATED AS HIS POST-TRIAL PROCESSING WAS IMPROPERLY COMPLETED WHEN THE STAFF JUDGE ADVOCATE FOUND 18 U.S.C. § 922 APPLIED TO APPELLANT'S CONVICTION OF A NON-VIOLENT OFFENSE.

STATEMENT OF THE CASE

On 29 February 2024, Appellant was tried before a military judge sitting as a general court-martial at Vandenberg Space Force Base (SFB), California. Record of Trial (ROT), Vol.

[1] Assignments of Error (AOE) III, IV, and V are raised in the appendix pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982).

1, Entry of Judgment, dated 28 March 2024. The military judge convicted Appellant, contrary to his pleas, of two specifications of sexual abuse of a child in violation of Article 120b, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920b.[2] *Id.* The military judge sentenced Appellant to be reprimanded, reduced to the grade of E-1, and confined for thirty months.[3] R. at 605.

In accordance with Appellant's request, the Convening Authority deferred Appellant's reduction in grade until the entry of judgement was signed. ROT, Vol. 1, Convening Authority Decision on Action – *United States v. Master Sergeant Kenneth M. Griffin*, dated 22 March 2024. The Convening Authority also deferred all automatic forfeitures for a period of six months, Appellant's release from confinement, or Appellant's expiration of term of service, whichever is soonest. *Id*. The deferred pay and allowances were directed to be paid for the benefit of Appellant's dependent children. *Id*.

STATEMENT OF FACTS

LA did not have much of a relationship with her father, which was marked by frequent arguments and tension. R. at 95, 123, 277. LA's father separated from LA's mother, JA, around late 2016 or early 2017. With LA living primarily with her siblings and JA, LA's relationship further eroded after her father's deployment in 2017. R. at 94-95, 123, 278.

But the absence of a father figure in LA's life changed when LA's mother, JA, met Appellant while picking up their respective children from the Davis-Monthan Air Force Base school age program. R. at 97. Appellant and JA became friends, and their children began spending time together outside the program. R. at 97-98. The two families— Appellant with his children KG

[2] Unless otherwise noted, all references to the UCMJ and Rules for Courts-Martial (R.C.M.) are to the *Manual for Courts-Martial, United States* (2019 ed.) (*MCM*).
[3] For Specification 2 of the Charge, Appellant was sentenced to 30 months' confinement. For Specification 4 of the Charge, Appellant was sentenced to 30 months' confinement. Confinement for all Specifications was ordered to run concurrently. R. at 605.

and JG,[4] and JA with her children LA, SA, and DA—would go to lunch or the arcade at least every other week. R. at 98. Appellant treated JA's children as though they were his own, forming a particularly close relationship with LA, who was nine years old. R. at 98, 193-94, 377-78.

Appellant and JA dated on and off for four years, never officially becoming boyfriend and girlfriend. R. at 201, 289. Despite this, LA viewed Appellant as a father figure and referred to him as her "stepfather.". R. at 102, 104, 201-02, 377.

In 2018, Appellant deployed overseas. R. at 123. While away, Appellant initially kept in touch with JA and her children. R. at 284. But as the deployment progressed, Appellant became distant. *Id*. When he returned, around August 2018, he did not inform JA, stopped calling or texting her, and ceased contact with LA. R. at 210, 213-14. This change upset both JA and LA, and LA blamed her mother for Appellant's absence. R. at 210, 212-13, 284. Appellant and JA reconnected in November 2018, but LA was not as close to Appellant after that. R. at 213-14.

On 9 June 2019, Appellant left the Tucson area for a yearlong deployment. R. at 287-88. During this deployment, he and JA's family stayed in touch through calls and messages. R. at 215-16. While he was away, LA sent Appellant a Father's Day message, telling him he was the only father figure she had. R. at 216. After Appellant returned, Appellant was stationed at Vandenberg SFB, California, while JA and her family remained in Arizona. R. at 289. But after Appellant returned from deployment, the relationship between him, JA, and her children became strained. When both families visited Appellant at Vandenberg SFB in June 2020, Appellant was described as distant—he did not join in family activities and spent much of his time on his phone. R. at 296,

[4] JG's actual initials are KG. R. at 96. To avoid confusion with the multiple other witnesses with the same initials, he will be referred to as JG throughout this brief.

299, 315, 353. The communications between JA and Appellant continued to dwindle after the visit. R. at 300.

LA was expecting to see Appellant for Christmas. R. at 217. However, the final end of Appellant and JA's relationship came in late 2020. In October, Appellant expressed his desire to retire, which JA did not support. R. at 325. In November 2020, Appellant ended all contact with JA and her family. R. at 217. Throughout October, November, and December of 2019, LA watched as JA was affected by Appellant's lack of contact. *Id*. JA later learned that Appellant began a new relationship and got engaged. R. at 249. JA learned about Appellant's new relationship through a social media post. R. at 319, 321-22. In January 2021, JA told LA that Appellant had cheated on her and was in a new relationship and engaged. R. at 217, 249, 319, 321-22. Consequently, LA removed Appellant from her social media account. R. at 218. JA continued to reach out to Appellant via email and text, with her last message sent on 25 February 2021. R. at 318-19, 322. JA let LA know what was going on regarding Appellant and did not keep secrets from LA. R. at 217.

In at some point in February 2021, LA told AH, a close friend from school, that she had been inappropriately touched by her mother's boyfriend. R. at 250, 387, 390. AH told LA to tell her mother. R. at 390. When LA made her disclosure to AH, they were no longer close friends. R. at 393. LA and AH's friendship ended towards the end of 2020, with the pair no longer talking after August 2021. R. at 389, 393. AH described LA as highly prone to exaggeration, untruthful, attention seeking, and manipulative. R. at 399-400.

SH and LA were friends since sixth grade. R. at 370. The two were inseparable and would spend time together both in and out of school. *Id*. LA disclosed to LA that she had been touched sexually by an adult. R. at 371. SH and LA stopped being friends when they were in eighth grade.

R. at 370. SH described LA as untruthful, manipulative, attention-seeking, and prone to exaggeration. R. at 379-80.

On 1 March 2021, four days after JA's last contact with Appellant, LA and SH, arrived at LA's house, the two were discussing issues involving LA's boyfriend at the time. R. at 159. While sitting on a bench near the front door inside the LA's house, SH asked LA "Are you not going to tell her what he did to you?" R. at 160. The LA's mother overheard this conversation questioned the LA about what had happened. *Id*. When first questioned, LA denied any abuse. *Id*. But after further questioning by her mother, LA stated that someone had hurt her. R. at 160-61, 305. LA did not initially say who she was talking about. *Id*. JA then began listing names with LA saying no after each name, until JA asked LA if she was talking about Appellant. *Id*. LA then nodded her head. *Id*. Law enforcement was contacted, and LA gave multiple interviews. R. at 170, 175-80, 184, 244.

Specification 2: Tucson, Arizona (January–June 2019)

During his relationship with JA, Appellant stayed at LA's home a few times a month. R. at 125. LA testified that, during one visit in 2019, Appellant carried her into her room, tossed her onto her sister's bed, and put his hand down her pants, touching her vagina over her underwear. R. at 131-32.

Following her disclosure to her mother, LA gave multiple interviews to law enforcement concerning this allegation. Every statement contradicted not only the others but also her trial testimony.

In the first law enforcement interview, LA was interviewed by an officer in her home. R. at 168. During this interview, LA did not limit herself to the single instance of alleged misconduct to which she would later testify occurred that day. Instead, the alleged crime was still on one day,

but, instead of being touched one time, she claimed she was assaulted "two or three times that day," specifying times as "4:00 PM, 7:00 PM, and 9:00 PM." R. at 169, 175-76.

In the second interview with local civilian law enforcement, LA described only a single touching, abandoning her initial claim of occasions. R. at 177. During this interview, she described Appellant touching her vagina in a wave like motion. R. 252-53.

In a third interview with Air Force Office of Special Investigations (OSI), LA alleged that Appellant assaulted her weekly for two months, always on her sister's bed, with "literally nothing" different from one week to the next. R. 179-80, 184. During this interview, LA told the OSI agent that Appellant would start touching her by tickling her. R. at 483.

At trial, LA further altered her allegations by asserting that she was only assaulted once on SA's bed. R. at 168. LA also changed her description of how Appellant touched her to Appellant's touching her in a "circular motion." *Compare* R. at 133, *with* 252-53. LA also acknowledged that the waive and circular motions were different. R. at 252-53. Contrary to her earlier trial testimony, LA later could not recall if the conduct happened more than once. *Compare* R. at 168, *with* R. at 184. At trial, she did not remember stating in her first interview that she had been assaulted "two or three times that day," specifying times as "4:00 PM, 7:00 PM, and 9:00 PM," even after being shown the video. R. at 175-76. For the first time at trial, LA claimed that Appellant would touch her legs and vagina all around the house at various times. R. at 168. Information she did not provide during any of her other interviews.

LA also stated that the alleged sexual assault took place sometime between June and July 2019. R. at 165. LA testified that LM had lived with the family from spring 2019 until moving out in May 2019. R. at 164-65. After LM moved out, Appellant came to stay at the residence. R. at 165. LA stated that it was during this period—after LM had left and Appellant had moved in—

that the alleged offenses occurred, specifically between June and July 2019. *Id*. LA stated she was sure of the timeline because it was a month after LM moved out. R. at 164-65. Appellant left the area on 9 June 2019, due to his upcoming deployment. R. at 287.

LA claims the alleged incident took place on SA's bed. R. at 131. During cross-examination, LA confirmed that it only happened once and that it was in SA's bed at the house. R. at 168. On the day LM moved out, SA's belongings were moved back into her own room. R. at 189-90. However, despite this, SA continued to sleep in LA's room, and LA and SA shared a bed. R. at 190.

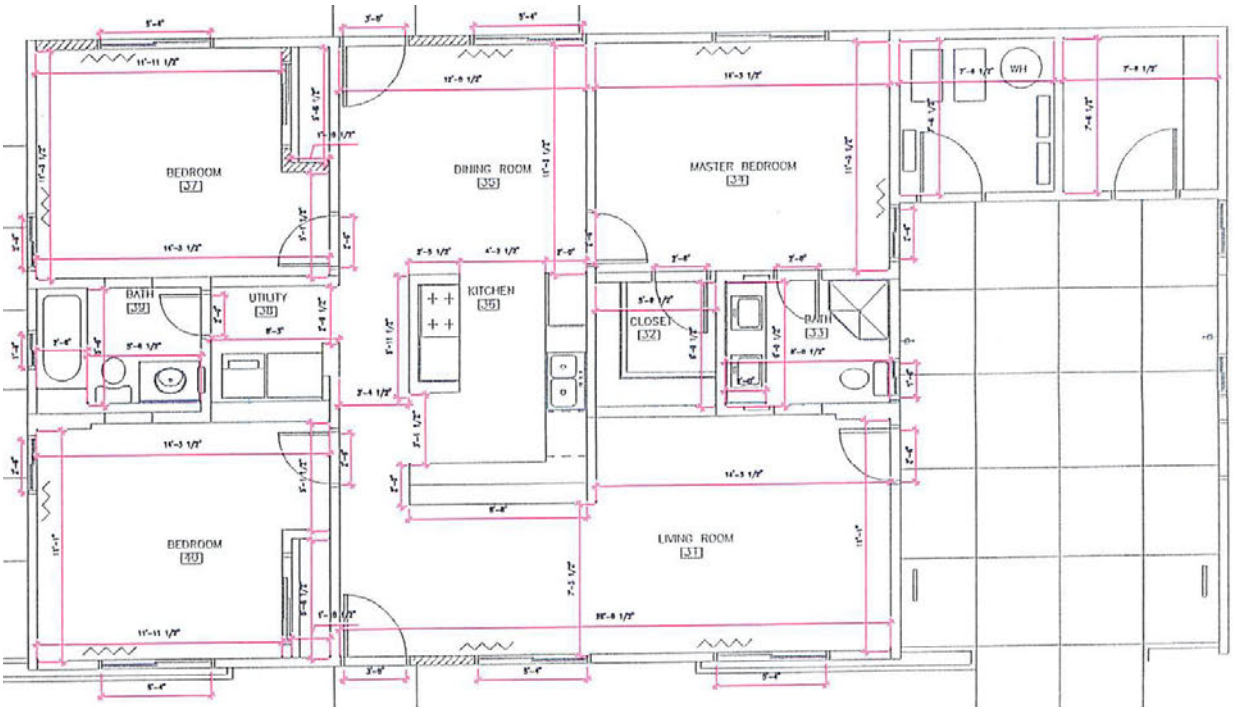
Based on the evidence presented at trial, the military judge found Appellant not guilty of the language in Specification 2 of the Charge "on divers occasions." R. at 555. However, the military judge specified that he was convicting Appellant of Specification 2 of the Charge, based only on:

> the event where [LA] testified the accused carried her into her room, which was in her mother's Tucson, Arizona residence, tossed her on [SA's] bed, put his hand down her pants and touched her vagina over her underwear. This event happened during the charged timeframe just shortly before the accused deployed in June of 2019.

R. at 555-56.

Specification 4: Vandenberg SFB, California (June–July 2020)

In June 2020, JA and her children visited Appellant at Vandenberg SFB. R. at 216, 237, 289-90. At the time, Appellant and his daughter were staying at the base's temporary lodging facility (TLF). R. at 238. The following is a diagram of Appellant's accommodations at that time:



Prosecution Ex. 8. During the visit, LA, SA, and KG shared the room in the bottom left-hand corner of the diagram. R, at 139, 350.

LA testified that at one point during the visit, everyone—including herself, her siblings, KG, her mother, and Appellant—came into LA's bedroom. R. at 149. LA stated that after a period of everyone "messing with each other," everyone except for herself and Appellant left the room with the door closed. R. at 149-50, 240. LA states that everyone left for the living room. R. at 149. LA's account of who closed the door changed over time. In her OSI interview, LA stated the door "basically shut on its own." R. at 242. At trial, LA first stated that her sister and KG closed the door. R. at 149-50. Then, when confronted with her statement to OSI, LA said she did not know who closed it, and R. at 241-43.

According to LA, while alone in the bedroom, she described Appellant sitting at the foot of her sister's bed while she was positioned on top of him, facing away, with her hands forward and her body hanging off the bed in a "doggie style" position with her hands on the floor. R. at

150-51, 154. LA alleged that, while in this position, Appellant placed his hand inside her shorts but outside her underwear and touched her vagina. R. at 156.

LA alleged Appellant touched her for a minute or two, after which she moved away. R. at 155-56. LA's recollection of whether she told Appellant "no" or "stop" varied across her statements and testimony. R. at 244-45. JA noted that when LA initially disclosed her allegations, LA told her mother that she yelled "No!" and "Stop!" R. at 316. On direct examination, LA could not remember if she said anything to Appellant at the time. R. at 156. On cross-examination, she admitted that she told investigators that she said "no" and "stop." R. at 244. However, LA also admitted she did not "remember what . . . happened exactly." R. at 244.

Appellant's daughter, KG, testified that she did not see her father alone with LA in the bedroom she shared with LA and SA during the family's visit to Vandenberg SFB. R. at 353. KG also stated that she did not close the door with just LA and Appellant left inside the bedroom. R. at 353. According to KG, the group did not spend time together in the TLF's living room area; when the children were together, it was usually just KG, SA, and LA in their shared room. R. at 353-54. No other witnesses testified seeing Appellant alone with LA in the TLF bedroom, nor did anyone report hearing any commotion or outcry during the time of the alleged incident. R. at 324, 353, 366-67. The government's video evidence from the TLF showed only the children in the room, with Appellant absent from the footage. R. at 366-67; Prosecution Ex. 15.

Prior consistent statements under Mil. R. Evid. 801(d)(1)(B)(i)

The military judge admitted two sets of statements as prior consistent statements under Mil. R. Evid. 801(d)(1)(B)(i). The first set came from AH, a former friend of LA, who testified that LA disclosed she was assaulted by her mother's boyfriend. R. at 390. The second set came from HC, another friend of LA, who stated that LA told him, at some point in 2021, that she had

previously been touched inappropriately by Appellant. R. at 412. The defense objected to both sets of statements as improper hearsay. R. at 389, 412

AH's Account

AH testified that she met LA in sixth grade, and they became close friends, spending time together mostly during school. Their friendship ended before eighth grade, and they did not talk at all during eighth grade or freshman year. R. at 387-88. Outside of school, they hung out less than five times; it was rare for them to see each other outside of school. R. at 388.

AH stated that when they were friends, LA did confide in her. R. at 388. AH recalled that LA told her an adult in her life had inappropriately touched her, but she could not recall the exact time of this disclosure. R. at 389. AH was certain it was not when they were very close in sixth grade in 2018, but rather when their friendship was ending, toward the end of seventh grade. *Id*; Prosecution Ex. 1. After extensive questions aiming to establish when LA made her disclosure, AH placed this conversation before the start of eighth grade, which would have been before August 2020. R. at 393-94. However, as the questioning went on, AH stated she could not be certain whether LA actually disclosed while she was in eighth grade. R. at 398. She was only sure that the conversation did not happen during freshman year, which started in the fall of 2021, as they were no longer in contact by then. R. at 394, 398; Prosecution Ex. 1. LA's own testimony placed her disclosure to AH in February 2021. R. at 395.

AH described the disclosure as occurring over text message and a phone call. R. at 390. LA did not provide details about how she was touched, only that someone—identified as her mom's boyfriend—had touched her inappropriately. *Id*. AH advised LA to tell her mother or someone else, as she felt unable to help. *Id*. AH recalled that LA cried during the call, and that this was a one-time conversation; it was not brought up again. R. at 389, 397.

The defense argued that, for purposes of Mil. R. Evid. 801(d)(1)(B), the timing of any prior consistent statement is critical, and the record did not establish that the statement to AH was made before the alleged motive to fabricate arose. R. at 395.

HC's Account

HC met LA in 2021, but could not recall exactly when, other than it was more than a week before the law enforcement came to JA's house to interview LA. R. at 410. LA also made a general disclosure about being touch inappropriately by Appellant to HC, a friend of LA's. R. at 401, 413. During an Article 39(a) session on the objection, HC was unable to say whether it was less than a month before that date. *Id*. HC remembered LA telling him about the events she later discussed with law enforcement but was not sure when she discussed the allegations with him. *Id*. He was unable to say whether it was less than a week or a month before that date. *Id*

HC could not recall when LA told him about being touched sexually by Appellant, only that it was closer in time to when law enforcement came to interview LA than to when he first met her. R. at 411. He remembered LA expressing concern about telling her mother and about reporting the incident to police. R. at 413.

HC did not recall if LA had already told her mother at the time of their conversation. R. at 413-414. He confirmed that LA expressed concern about telling both her mother and the authorities, understanding that disclosure to her mother would likely lead to police involvement. R. at 414.

The Ruling

During argument on the objections, defense counsel argued that the timing and content of LA's statement to HC did not predate the alleged motive to fabricate, which the defense contended developed between November 2020 and February 2021. R. at 417. The defense maintained that

the statement to HC occurred within the same period the defense identified as the window for the development and expression of the alleged fabrication. R. at 417-18.

Ultimately, the military judge found that LA's statement to HC was a prior consistent statement admissible under Mil. R. Evid. 801(d)(1)(B). R. at 419. The military judge also found that by a preponderance of the evidence that LA's disclosure to AH "happened around August of 2020." R. at 395.

The military judge addressed the defense theory that LA had a motive to fabricate her allegations against the accused, specifically identifying the period between fall 2020 and the 1 March 2021 report as the relevant window for the alleged motive to arise. *Id*. The military judge found that LA's statements to HC—disclosing the alleged abuse before telling her mother and before her mother reported the matter to the local law enforcement—were consistent with her trial testimony. *Id*. The military judge ruled that these statements qualified as prior consistent statements and were admissible to rebut the defense's theory of recent fabrication. *Id*.

The military judge further clarified that this ruling applied to both HC and AH, finding that LA's statements to each were admissible as prior consistent statements under Mil. R. Evid. 801. R. at 419-20. The military judge found these statements relevant in light of the defense's theory and considered their probative value to be high, particularly as they directly addressed the issue of recent fabrication. R. at 420.

In considering Mil. R. Evid. 403, the military judge determined that while the evidence was prejudicial, it was not unfairly so, and its probative value was not substantially outweighed by any risk of unfair prejudice, confusion, delay, or cumulativeness. *Id*. The military judge noted that, as the fact finder in a judge-alone trial, he was confident in his ability to weigh the evidence appropriately and place it in proper context. *Id*.

When called as a defense witness, LA reiterated that she told AH about the allegations in February 2021. R. at 479.

ARGUMENT

I. The findings of guilt are factually insufficient.

Standard of Review

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

Law and Analysis

The offenses for with Appellant was found guilty all occurred before 1 January 2021. EOJ; *Charge Sheet*. Therefore, this court has traditional factual sufficiency authority under Article 66(d), UCMJ, 10 U.S.C. § 866(d) (2019).

A traditional factual sufficiency inquiry requires this Court to determine "whether, after weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses, the members of [the Court] are themselves convinced of the accused's guilt beyond a reasonable doubt." *United States v. Walters*, 58 M.J. 391, 395 (C.A.A.F. 2003) (citation omitted). A review for factual sufficiency "involves a fresh, impartial look at the evidence, giving no deference to the decision of the trial court on factual sufficiency beyond the admonition . . . to take into account the fact that the trial court saw and heard the witnesses." *Washington*, 57 M.J. at 399. This is an "impartial look at the evidence, applying neither a presumption of innocence nor a presumption of guilt to make its own independent determination as to whether the evidence constitutes proof of each required element beyond a reasonable doubt." *United States v. Wheeler*, 76 M.J. 564, 568 (A.F. Ct. Crim. App. 2017) (cleaned up).

This Court's authority "provide[s] a source of structural integrity to ensure the protection of service members' rights within a system of military discipline and justice where commanders

themselves retain awesome and plenary responsibility." *United States v. Jenkins*, 60 M.J. 27, 29 (C.A.A.F. 2004). To be sure, this Court has the power to "judge the credibility of witnesses, determine controverted questions of fact . . . and substitute its judgment for that of the military judge." *United States v. Col*e, 31 M.J. 270, 272 (C.M.A. 1990).

The government's case rises and falls on the testimony of LA. There is no physical evidence, no reliable corroboration, and no confession—only the word of a single witness whose credibility was repeatedly and seriously called into question. This is not a matter of minor inconsistencies or the ordinary frailties of memory. The record establishes that LA's motive to fabricate her allegations is closely tied to her relationship with Appellant and the upheaval in her family life. LA's biological father was not present, and Appellant had become the only father figure she knew. R. at 217. This bond was significant—Appellant had already left LA's life abruptly once before, and his sudden departure in November 2020 marked the second time she experienced this loss, again with no notice. *Id*.

LA was expecting to see Appellant for Christmas, but instead, he cut off all contact. *Id*. In the months leading up to this, LA observed her mother, JA, struggling with Appellant's lack of communication. *Id*. The situation escalated when JA discovered, through a social media post, that Appellant had started a new relationship and was engaged. R. at 249, 319, 321-22. In January 2021, JA told LA that Appellant had cheated on her and was now engaged to someone else. R. at 217, 249, 319, 321-22. This revelation was significant for LA, who responded by removing Appellant from her social media account. R. at 218. It is against this backdrop that LA's disclosures surfaced—only after Appellant's final departure when she was dealing with the loss of the only father figure she had ever known. The timing is telling: LA's allegations arose after learning of Appellant's new relationship and engagement, and after being told by her mother that Appellant

had cheated. R. at 217, 249, 319, 321-22. The record also shows that LA's biological parents reconciled only after these allegations were made, further complicating the family dynamic. R. at 275.

Those serious questions are particularly weighty here because multiple witnesses described LA as manipulative, attention-seeking, and untruthful. R. at 379-80, 399-400. These characterizations were not isolated; they were supported by testimony from individuals who knew LA well and had observed her behavior over time. This evidence of LA's character for untruthfulness and manipulativeness directly impacts her credibility as the government's central witness. Taken together, LA's motive and character provide reasons why LA would provide an untruthful and unreliable account claiming misconduct by Appellant—they are a means to quench her own feelings of resentment and interests.

That said, reasons why LA might not provide a credible account would mean on their own. But the reasons why LA might make unsupported accusations were not in isolation here. Rather, they were supported in spades by LA's shifting accounts. LA's statements about key facts, such as the timing, frequency, and circumstances of the alleged incidents, change from one telling to the next. At critical junctures, she either cannot recall basic details or contradicts herself outright. R. at 150, 156, 165, 184, 244. Where there are reasons to believe an accuser would offer a fabricated and self-serving account, then reinforces those reasons with actually doing so with irreconcilable and self-serving stories, there is no basis for ascribing credibility to that witness. LA is just such a witness and this Court should reject the convictions predicated on her unreliable and suspect testimony.

Specification 2 – 2019 Incident

There are irreconcilable conflicts in the timeline LA provides related to Specification 2. LA testified the alleged assault occurred between June and July 2019, after LM moved out and SA's bed was moved back into LA's room. R. at 189-90, 263, 286. The problem is that, if the offense occurred in June or July, as LA stated, then the scene of the alleged crime—SA's bed—would no longer have been in LA's room because the bed was removed after LM left the residence in May. *See* R. at 164-65, 189-90. In other words, at least aspect of LA's story has to be completely wrong: either (a) the offense occurred in May, contrary to LA's assertion that it was in June or July, in order for the bed where the crime allegedly happened to be there, or (b) the offense occurred in June or July after LM was gone, consistent with LA's assertion as to the timing, with the knock-on effect being that the bed was gone, too. No matter which, at least one aspect of LA's account fails to hold water. Yet somehow the military judge's findings went with both, going with on SA's bed but in June. R. 555-56.

The problems with LA's testimony—and the findings embracing it—do not end with the timeline. LA's account of who was present, the sequence of events, and the circumstances surrounding the alleged incident shifted with each retelling. The irreconcilable variability in LA's accounts to law enforcement underscore the point, varying from two or three times in one day at hyper-specific times but in different places throughout LA's home, R. at 169, 175-76, to only one instance of touching, R. at 177, then back again to multiple unlawful contacts, albeit now spread as carbon copy occurrences at a weekly interval over two months. R. at 179-80, 184. When pressed for specifics that might explain the gaps in her testimony, LA's narrative changed or she professed not to remember. R. at 150, 156, 165, 184, 244. This is not a witness struggling to recall minor details; it is a witness whose story cannot withstand even basic recollection or resulting scrutiny.

The record is clear that LA's statements about the timing, frequency, and circumstances of the alleged conduct are not just inconsistent—they are irreconcilable. R. at 150, 156, 165, 184, 244.

Where the government's case depended entirely on a witness whose testimony was riddled with contradictions that served only to reinforce her dubious motives, character for truthfulness, and overall reliability, this Court cannot reasonably be convinced beyond a reasonable doubt. Therefore, the evidence on Specification 2 is factually insufficient.

Specification 4 – 2020 Incident

As with Specification 2, LA's description of the events in the TLF room at Vandenberg SFB at issue in Specification 4 changed multiple times and, worse, were contradicted by extrinsic evidence.

The three main inconsistencies pertained to who was present, how LA claimed the door was shut to leave her alone in the room with Appellant, and LA's response to the alleged conduct.

With regard to who was present, LA first testified that she could not recall what she and Appellant were doing in the room. R. at 149. But when later confronted by the defense, she testified that "everyone came in and we were all [] collectively [] messing with each other," R. at 240, and then everyone left for the living room, which was only four yards away. R. at 149, 243. Yet KG, who was present at the TLF, did not recall her father "messing around" with the group in the room. R. at 253. Moreover, the government's own evidence, Prosecution Exhibit 15, showed only the children in the room, not Appellant. R. at 366. Taking all of the evidence together, LA's two accounts fail to square with each other and boil down to a claim that "somehow" she was alone together with Appellant.

But the circumstance that rendered LA and Appellant alone could not hold steady, either. LA first testified that her sister and KG closed the door. R. at 149-50. KG denied this. R. at 253.

So, when confronted with her prior statements, LA changed her story to: "Well, I don't know who closed the door, but the door was closed." R. at 241-42. In her 2021 OSI interview, LA seemed to ascribe the door closing to something mechanical as it "basically shut on its own." R. at 242. Again, LA put forth notions of what happened—they just kept changing with what seemed to suit her audience.

And then there's the matter of LA's response to the alleged conduct. LA declined to testify at first about saying "no" or "stop" to Appellant. But she told investigators she said that. R. at 245. When confronted by the defense with this omission in her trial testimony, LA claimed to not remember if she said them or told her mother she said them. R. at 244.

Of course, even if LA had yelled "no" or "stop" at Appellant, a different problem with LA's account emerges. The proximity of the living room, four yards away, and the presence of multiple people in the suite make it implausible that such an incident could have occurred without detection, as no one else heard "no" or "stop" or anything else. R. at 324.

These discrepancies in LA's testimony are not mere lapses in memory. The identity of who was present, who closed the door, and what was said are central to the government's theory of the case. LA's inability to provide a consistent account on these basic facts undermines her reliability as a witness—something that was already in doubt due to her motives and character. The shifting narrative is not explained by the passage of time or the stress of testifying; it is a pattern that repeats throughout her testimony and is fatal to the government's case. Therefore, the evidence on Specification 4 is factually insufficient.

Even assuming arguendo that LA's prior consistent statements were properly admitted under Mil. R. Evid. 801(d)(1)(B)(i), their presence alone does not render the conviction factually sufficient. Factual sufficiency requires that, after weighing all the evidence in the record and

making allowances for not having observed the witnesses, the court is convinced of the appellant's guilt beyond a reasonable doubt. Here, the only evidence supporting the government's case was LA's testimony, which was riddled with inconsistencies and lacked clarity as to which incident, if any, she was describing. The prior consistent statements, being vague and non-specific, do not meaningfully corroborate her account or resolve the credibility issues I. Thus, even if the admission the admission was proper, the record as a whole does not establish guilt beyond a reasonable doubt, and the conviction cannot be deemed factually sufficient on this basis alone.

Conclusion

After a fresh, impartial review of the entire record, and making allowances for not having personally observed the witnesses, the evidence is not factually sufficient to convince this Court of Appellant's guilt beyond a reasonable doubt. Here, LA's motives to fabricate or exaggerate, her established character for untruthfulness and manipulativeness, and her inability to provide a consistent account of the alleged incidents all point in the same direction. When her testimony is measured against the objective facts—timelines, living arrangements, the presence or absence of other witnesses—it simply does not hold up. The Court should exercise its independent fact-finding authority and As such, this Court should set aside the convictions for Specifications 2 and 4.

II. The military judge abused his discretion in admitting prior consistent statements under Mil. R. Evid. 801(d)(1)(B)(i), which prejudiced appellant.

Standard of Review

A military judge's decision to admit evidence is reviewed for an abuse of discretion. *United States v. Ayala*, 81 M.J. 25, 27 (C.A.A.F. 2021) (citing *United States v. Frost*, 79 M.J. 104, 109 (C.A.A.F. 2019). "A military judge abuses his discretion when his findings of fact are clearly erroneous, the court's decision is influenced by an erroneous view of the law, or the decision is

outside the range of choices reasonably arising from the applicable facts and the law." *Ayala*, 81 M.J. at 27-28.

The test for prejudice is whether the error had a substantial influence on the findings. In conducting the prejudice analysis, this Court weighs: (1) the strength of the Government's case, (2) the strength of the defense case, (3) the materiality of the evidence in question, and (4) the quality of the evidence in question. *Id* at 29. (alteration to original) (internal quotation marks omitted) (citing *Frost*, 79 M.J. at 111).

Law and Analysis

Under Mil. R. Evid. 801(d)(1)(B)(i), a prior consistent statement is admissible only if it is consistent with the witness's testimony and is offered "to rebut an express or implied charge of recent fabrication or improper influence or motive." Critically, for admission under subsection (B)(i), the prior statement must precede any alleged motive to fabricate. *Id*. The proponent of the evidence bears the burden of demonstrating that the statement is admissible and relevant to the grounds of attack. *Ayala*, 81 M.J. at 28 (citing *United States v. Finch*, 79 M.J. 389, 394 (C.A.A.F. 2020)).

The military judge abused his discretion by admitting prior consistent statements under Mil. R. Evid. 801(d)(1)(B)(i), and this error prejudiced Appellant. The improper admission of these statements allowed the government to bolster a witness whose credibility was already in serious doubt, papering over the weaknesses in the government's case and undermining the fairness of the proceedings.

Ayala makes clear that for a prior consistent statement to be admissible under Mil. R. Evid. 801(d)(1)(B)(i), the statement must have been made before the alleged motive to fabricate arose. "A key question in considering admission under (B)(i) is whether the prior statements came before

or after the alleged motive to fabricate; . . . [i]f the statement occurred after the motive arose, then the declarant's consistency signifies nothing." *Ayala*, 81 M.J. at 28-29.

Here, the defense theory was that LA's motive to fabricate developed between fall 2020 and March 2021, after Appellant ended his relationship with her mother and ceased contact with LA's family. R. at 419. The military judge found that LA's statement to AH occurred "around August of 2020," R. at 395, but AH and LA's testimony shows significant uncertainty about the timing. AH herself could not recall the exact date, only that it was before freshman year, and she was not certain it happened during eighth grade. R. at 393-94, 398. Prosecution Exhibit 1 shows that LA would have been in the eighth grade going to ninth grade in fall 2021. Prosecution Ex. 1. LA's own testimony placed her disclosure to AH in February 2021, about a week before telling her mother, after the alleged motive to fabricate had already arisen. R. at 250, 395. Under *Ayala*, a statement made after the motive to fabricate arose is not admissible under Mil. R. Evid. 801(d)(1)(B)(i) and does not rehabilitate the witness's credibility. *Ayala*, 81 M.J. at 28. Here, as there is sufficient evidence to conclude that LA statements were made after the motive to fabricate arose. Therefore, the military judge abused his discretion by admitting LA's statement to AH as non-hearsay under Mil. R. Evid. 801(d)(1)(B)(i), despite the clear confusion as to when the statement was made.

Second, the record does not support a clear finding that the statement to HC were made before the motive to fabricate. *Ayala* emphasizes that the proponent of the evidence bears the burden of establishing that the prior consistent statement predates the motive to fabricate. *Id*. at 28. HC was not clear on when the disclosure occurred. The only thing the Government was able to established was that it happened in 2021 and prior to law enforcement coming to interview LA.

R. at 410. This timeline does not establish that LA disclosed to HC before her motive to fabricate arose, as the motive to fabricate arose in the fall of 2020.

The military judge's decision to admit the Mil. R. Evid. 801(d)(1)(B)(i) statements was erroneous and prejudicial to Appellant, as the strength of the government's case, the defense's case, and the materiality and quality of the evidence all weigh in favor of finding prejudice.

1. Strength of the Government's Case

The government's case was not strong. It relied almost entirely on LA's credibility. There was no physical evidence, no eyewitness corroboration, and the timeline and details of LA's allegations shifted across her statements and testimony. The government's case rose and fell on whether the factfinder believed LA, and, as set out in Issue I, her credibility was lacking.

2. Strength of the Defense Case

The defense presented substantial impeachment evidence. Multiple witnesses testified about LA's character for untruthfulness, exaggeration, and manipulation. R. at 379-80, 393, 399-400. The defense also highlighted inconsistencies in LA's accounts and pointed to a clear motive to fabricate that arose after Appellant ended his relationship with LA's mother and ceased contact with the family. The defense was able to establish that the allegations surfaced only after this rupture.

3. Materiality of the Evidence in Question

The record does not clarify which specific incident, if any, LA was referencing in her statements to either HC or AH. This ambiguity undermines their probative value: if the statements do not clearly tie to the charged conduct, they cannot meaningfully corroborate LA's testimony or rebut the defense's fabrication theory.

Moreover, LA was a weak witness. As detailed in Issue I, her testimony was inconsistent, leaving her credibility in serious doubt. The government's case hinged almost entirely on LA's

word, and these prior consistent statements were the only evidence offered to bolster her account. Without clear, detailed, and incident-specific statements, their capacity to rehabilitate LA's credibility is minimal. The judge's finding that these statements were "highly probative" overlooks their lack of specificity and the fact that, in a case resting solely on LA's credibility, such vague statements do little to resolve the central factual dispute. *See* R. at 420.

4. Quality of the Evidence in Question

The quality of the evidence was problematic. Under *Ayala*, a prior consistent statement is only admissible under Mil. R. Evid. 801(d)(1)(B)(i) if it was made before the motive to fabricate arose. Here, the timing of LA's statements to AH and HC was, at best, uncertain and, according to LA's own testimony, occurred after the alleged motive to fabricate had arisen. R. at 395. The government did not meet its burden to show the statements predated the motive, as required by *Ayala*. When a prior consistent statement is admitted after the motive to fabricate, "the declarant's consistency signifies nothing" and "statements made after an improper influence arose do not rehabilitate a witness's credibility" *Ayala*, 81 M.J. at 29.

In sum, the admission of LA's prior consistent statements to AH and HC under Mil. R. Evid. 801(d)(1)(B) was an abuse of discretion under *Ayala* because the government failed to show the statements were made before the alleged motive to fabricate arose, and the error was prejudicial given the centrality of LA's credibility and the judge's reliance on these statements as substantive evidence. As such, this Court should set aside the convictions for Specifications 2 and 4.

CONCLUSION

For all the reasons set forth above, the findings of guilt in this case are factually insufficient under Article 66(d), UCMJ. The government's case was not overwhelming and was marked by significant contradictions and credibility issues. The military judge's erroneous admission of prior consistent statements under Mil. R. Evid. 801(d)(1)(B)(i) further prejudiced Appellant by

improperly bolstering a witness whose credibility was already in serious doubt. When the record is weighed as a whole, these errors undermine confidence in the outcome. This Court should set aside the findings and the sentence.

Respectfully submitted,

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APPENDIX A

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

ARGUMENT

III. Appellant was denied effective assistance of counsel where defense counsel failed to call material witnesses and failed to adequately prepare and advise appellant regarding his right to testify.

Additional Facts

The appellant provided defense counsel with the contact information for two witnesses, both of whom the appellant dated and was with during the time frame relevant to the charges. Decl. of Appellant. Defense counsel did not contact or call either individual as a witness. *Id*.

The defense team also did not call SA as a witness. *Id*. SA had previously informed law enforcement that her mother had stated, "We don't like Griff no more." *Id*.

When it came time to decide whether Appellant would testify, defense counsel met with him for only ten minutes before advising him not to take the stand, citing concerns that his testimony would harm his case. *Id*. Appellant told the military judge he did not wish to testify. R. at 500.

Standard of Review

This Court reviews allegations of ineffective assistance of counsel de novo. *United States v. Palik*, 84 M.J. 284, 288 (C.A.A.F. 2024).

Law and Analysis

To prevail, Appellant must demonstrate both (1) that counsel's performance was deficient, and (2) that this deficiency resulted in prejudice. *Id*. at 288-89.

The CAAF applies a three-part test: (1) Are appellant's allegations true, and is there a reasonable explanation for counsel's actions? (2) If so, did defense counsel's advocacy fall measurably below the performance ordinarily expected of fallible lawyers? (3) If defense counsel was ineffective, is there a reasonable probability that, absent the errors, there would have been a different result? *Id*. at 289 (quoting *United States v. Gooch*, 69 M.J. 353, 362 (C.A.A.F. 2011)).

While there is a presumption of competence, an appellant can overcome it by showing specific defects in counsel's performance that were unreasonable under prevailing professional norms. *United States v. Carter*, 79 M.J. 478, 480 (C.A.A.F. 2020). Strategic choices must be objectively reasonable and made after a thorough and appropriate investigation. *United States v. Akbar*, 74 M.J. 364, 379 (C.A.A.F. 2015); *United States v. Hammer*, 60 M.J. 810, 820 (A.F. Ct. Crim. App. 2004), *aff'd*, 62 M.J. 390 (C.A.A.F. 2005) (citing *Kimmelman v. Morrison*, 477 U.S. 365 (1986); *Strickland v. Washington*, 466 U.S. 668, 690-91 (1984); *Wiggins v. Smith*, 539 U.S. 510, 521 (2003)).

Based on the Fourteenth, Fifth, and Sixth Amendments to the Constitution, a criminal defendant has a constitutional right to testify on his own behalf at his trial. *Porter v. Singletary*, 883 F. Supp. 660, 663 (M.D. Fla. 1995). However, "the Due Process Clause of the Fifth Amendment rather than that of the Fourteenth Amendment that applies to the military justice system, an instrument of the federal government rather than the states." (citing *United States v. Meakin*, 78 M.J. 396, 401 n.4 (C.A.A.F. 2019)).

Application of the Three-Part Test

1. Are Appellant's Allegations True, and Is There a Reasonable Explanation for Counsel's Actions?

The record shows that Appellant and his family provided defense counsel with the names and contact information of several witnesses, including SH, who was present during the alleged

TLF incident and could have testified about the environment, the presence of others, and whether any outcry or unusual behavior was observed. "SH's account was material because the government's theory relied on the idea that the alleged incident would have caused a commotion, yet SH did not recall any such event." R. at 374, 379-80. Other witnesses could have addressed the family dynamics, the timeline of the allegations, and the complainant's behavior before and after the incident. R. at 217-18, 249, 321-22. Despite this, defense counsel did not contact or call these witnesses, and the record is silent as to any reasonable strategic explanation for this omission.

Regarding Appellant's right to testify, the record reflects that when it came time for Appellant to decide whether to testify, defense counsel met with him for only ten minutes and advised him not to take the stand, stating that his testimony would harm his case. Decl. of Appellant at 1. "This advice was given without a thorough exploration of Appellant's potential testimony or a meaningful opportunity for him to participate in his own defense." Decl. of Appellant at 1. There is no indication that counsel discussed the potential benefits of testifying, explored what Appellant's testimony would be, or prepared him for cross-examination. R. at 500. There is no reasonable explanation for this approach, especially in a case hinging on credibility.

2. Did Defense Counsel's Level of Advocacy Fall Measurably Below the Performance Ordinarily Expected of Fallible Lawyers?

Failing to contact or call material witnesses provided by the client, without a strategic reason, falls measurably below prevailing professional norms. The duty to investigate and present material evidence is fundamental, and the failure to do so—especially when witnesses are identified and available—cannot be justified as strategy where the record is silent. The defense case was thus limited to cross-examination of government witnesses and a handful of exhibits, depriving the factfinder of critical context and a direct challenge to the prosecution's theory. R. at 301, 374.

Similarly, counsel's perfunctory advice regarding Appellant's right to testify—delivered after only a brief meeting and without meaningful preparation—did not equip Appellant to make an informed decision. The right to testify is fundamental, and effective assistance requires that counsel ensure the client's decision is knowing, voluntary, and intelligent. Here, the record is devoid of any indication that counsel explored the potential benefits of Appellant's testimony or prepared him for the risks of cross-examination. This is not the level of advocacy expected of even fallible lawyers. The Supreme Court in *Strickland* and the CAAF in *Palik* and *Carter* make clear that effective assistance of counsel requires reasonable investigation and informed advice, not perfunctory or dismissive guidance.

3. Is There a Reasonable Probability That, Absent the Errors, There Would Have Been a Different Result?

The government's case was not overwhelming and was marked by contradictions and a lack of corroboration. *See supra* Issue I. SH's testimony and that of other client-provided witnesses could have directly contradicted the government's narrative and provided critical context, especially in a case hinging on credibility. The absence of both material defense witnesses and Appellant's own testimony deprived the factfinder of essential context and alternative explanations. There is a reasonable probability that, but for these errors, the result would have been different.

Conclusion

Because defense counsel's failures deprived Appellant of a fair trial, these errors—individually and collectively—undermine confidence in the verdict and require that the findings and sentence be set aside.

IV. The sentence imposed was unduly severe in light of the substantial mitigation evidence.

Additional Facts

At sentencing, the defense presented substantial evidence of Appellant's positive character and the impact a severe sentence would have on his family and community. Multiple witnesses testified to Appellant's role as a devoted father and a supportive presence in the lives of his children and stepchildren. AG,[5] Appellant's ex-wife and the mother of KG, described Appellant as an "amazing and involved father," emphasizing his consistent presence and support for his children. R. at 457. ZD, who grew up with Appellant as a father figure, echoed this sentiment, describing Appellant as a "sweet person and a good parent." R. at 463, 466. KJ, Appellant's ex-fiancée and the mother of JG and ZD, testified that Appellant raised her three other children as his own and described him as a "great father." R. at 470.

Throughout his career, Appellant consistently exceeded expectations, as reflected in his performance evaluations and the testimony of supervisors and colleagues who described him as a dedicated leader and a positive influence on those around him. R. at 457, 463, 466, 470; Pros Ex. 22, 23; Def Ex. L- N. Multiple witnesses, including family members and those who served with him, attested to his character, integrity, and the positive impact he had on both his family and the Air Force community. R. at 457, 463, 466, 470.

The record contains no evidence of prior criminal conduct, and the government did not present any truly aggravating evidence beyond the charged offenses.

[5] AG's actual initials are KG. R. at 455. To avoid confusion with the multiple other witnesses with the same initials, he will be referred to as AG throughout this brief.

Standard of Review

Sentence appropriateness is reviewed de novo. *United States v. Lane*, 64 M.J. 1, 2 (C.A.A.F. 2006).

Law and Analysis

A sentence must be appropriate for both the offense and the offender, and should not be so severe as to be unjust under the circumstances. Appellate courts have the authority to grant sentence relief if the punishment is found to be inappropriately severe, considering the nature of the offense, the character of the accused, and all matters in extenuation and mitigation. *See United States v. Healy*, 26 M.J. 394 (C.M.A. 1988); *United States v. Baier*, 60 M.J. 382 (C.A.A.F. 2005).

Appellant's sentence of thirty months' confinement, reduction to E-1, and a reprimand stands in stark contrast to his more than twenty-two years of distinguished service in the Air Force. The sentence imposed fails to account for these substantial mitigating factors and instead imposes a punishment that is disproportionate to both the offense and the individual before the court. The record demonstrates that Appellant's conduct, while the subject of serious allegations, is not accompanied by aggravating circumstances that would justify such a severe sentence in light of his otherwise unblemished record and the strong support from those who know him best. R. at 457, 463, 466, 470; Pros Ex. 22, 23; Def Ex. L- N.

Given Appellant's exemplary service and positive character evidence the sentence imposed is unduly severe and should be set aside or reduced to reflect a just and appropriate outcome under the circumstances.

V. Appellant's constitutional rights were violated as his post-trial processing was improperly completed when the staff judge advocate found 18 U.S.C. § 922 applied to appellant's conviction of a non-violent offense.

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.

Prior to his court-martial, Appellant possessed multiple firearms. Decl. of Appellant at 1. Appellant used shooting firearms a way to deal with his post-traumatic stress disorder and destress generally. *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 Courts of Criminal Appeals nor the CAAF itself has 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. Jun 24, 2025). Appellant acknowledges that, absent intervening CAAF or Supreme Court case law, 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.

WHEREFORE, 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.

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were electronically delivered to the Court and served on the Air Force Government Trial and Appellate Operations Division on 6 August 2025.

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UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40642**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Kenneth M. GRIFFIN	)	
Master Sergeant (E-7)	)	
U.S. Air Force	)	
Appellant	)	**Panel 3**

On 6 August 2025, Appellant submitted a motion to attach a declaration signed by Appellant regarding ineffective assistance of counsel and information regarding possession of firearms. On 12 August 2025, the Government partially opposed the motion to attach, specifically "the portion of Appellant's declaration concerning his ability to possess firearms."

The court has considered Appellant's motion, the Government's opposition, and the applicable law. The court grants Appellant's motion; however, it specifically defers consideration of the applicability of *United States v. Jessie*, 79 M.J. 437 (C.A.A.F. 2020), and related case law to the attachment until it completes its Article 66, UCMJ, 10 U.S.C. § 866, review of Appellant's entire case.

Accordingly, it is by the court on this 13th day of August, 2025,

ORDERED:

Appellant's Motion to Attach is **GRANTED**.

FOR THE COURT

Carol K. Joyce

CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES *Appellee* v. Master Sergeant (E-7) **KENNETH M. GRIFFIN** United States Air Force *Appellant*	**MOTION TO ATTACH DOCUMENT** Before Panel No. 3 No. ACM 40642 6 August 2025

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

Pursuant to Rules 23.3(b) of this Honorable Court's Rules of Practice and Procedure, Appellant moves to attach the Declaration of the Appellant fond at the Appendix to the Record of Trial. This declaration is relevant and necessary to this Court's evaluation of Appellant's assignments of error concerning ineffective assistance of counsel assignment and possession of firearms arising from the Entry of Judgment.

In *United States v. Jessie*, 79 M.J. 437, 445 (C.A.A.F. 2020), the Court of Appeals for the Armed Forces continued the practice of allowing consideration of matters outside the record to resolve issues reasonably raised by materials in the record but not fully resolvable by those materials.

WHEREFORE, Appellant requests this Court grant this motion to attach.

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 6 August 2025.

Respectfully submitted,

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	**UNITED STATES' PARTIAL OPPOSITION TO APPELLANT'S MOTION TO ATTACH**
v.	)	Before Panel No. 3
Master Sergeant (E-7) **KENNETH M. GRIFFIN,** United States Air Force *Appellant.*	)	No. ACM 40652
	)	12 August 2025

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

Under Rule 23.2 of this Honorable Court's Rules of Practice and Procedure, the United States partially opposes Appellant's motion to attach his declaration, Appendix, to the Record of Trial, dated 23 June 2024. Specifically, the United States opposes the portion of Appellant's declaration concerning his ability to possess firearms.

Appellant was convicted, contrary to his pleas, of one charge and two specifications of sexual abuse of a child in violation of Article 120b, UCMJ.

Appellant asserts under United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982), that 10 U.S.C. § 922 (firearms prohibition) is unconstitutional as applied to him. (App Br. at 1). The crux of his argument is that the CAAF's decisions in United States v. Williams, 85 M.J. 121 (C.A.A.F. 2024) and United States v. Johnson, No. 24-0004/SF (C.A.A.F. 24 June 2025) were "wrongly decided" and this Court has jurisdiction to invalidate the collateral consequence of the firearms prohibition through Article 66(d)(2), UCMJ. (Id. at 7a).

This Court requires a motion to attach filed under Rule of Practice and Procedure (Rule) 23.3 to set forth the basis for which the filing shall be permitted. Rule 23.3(b) further requires

the proponent to state the "relevance and necessity to the case."

The record of trial contains the entry of judgement (EOJ) and all the facts supporting Appellant's finding of guilt for sexual abuse of a child in violation of Article 120b, UCMJ. (ROT Vol. 1, *EOJ; First Indorsement to EOJ*; Pros. Ex. 1-21; R. at 91-555).

Appellant's declaration does not address the legal argument of the court's jurisdiction or any information to support his claim that sexual abuse of a child was not a crime of violence. It only explains that prior to his conviction he used to own firearms and he would like to own firearms again but he is subject to a firearms restriction.

ANALYSIS

This Court should partially deny Appellant's motion to attach the Appendix because Appellant has failed to comply with this Court's rules and the declaration that Appellant would like to possess firearms is not "necessary for resolving issues raised by materials in the record." United States v. Jessie, 79 M.J. 437, 444 (C.A.A.F. 2020).

Whether this Court has jurisdiction to invalidate the firearms prohibition collateral consequence, and whether the firearms prohibition is constitutional as applied to Appellant are "fully resolvable by the materials in the record." Jessie, 79 M.J. at 443. This Court need only look to the law, the EOJ, stipulation of fact and transcript to evaluate the issues of jurisdiction and constitutionality of the firearms prohibition. *See* Johnson, slip op. at 2, (the CAAF "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.")

WHEREFORE, the United States respectfully requests this Court partially deny Appellant's motion to attach Appendix with respect to the portion concerning his ability to possess firearms.

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CERTIFICATE OF FILING AND SERVICE

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

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UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40642**
Appellee	)	
	)	
v.	)	
	)	**ORDER**
Kenneth M. GRIFFIN	)	
Master Sergent (E-7)	)	
U.S. Air Force	)	
Appellant	)	**Panel 3**

On 6 August 2025, Appellant, through counsel, submitted an assignment of error brief. In the brief, Appellant alleges, *inter alia*, trial defense counsel were ineffective by failing to adequately advise and prepare Appellant regarding his right to testify, and by failing to contact or call material witnesses.

On 25 August 2025, the Government filed a Motion to Compel Declarations and contemporaneously filed a Motion for Enlargement of Time (First). The Government requests this court compel Appellant's trial defense counsel—Major Amanda B. Anderson, Major Steven M. Garman, and Major Luke A. Harle—to provide affidavits or declarations in response to the claimed ineffective assistance of counsel. According to the Government's request, Appellant's trial defense counsel indicated they will only provide affidavits or declarations upon order by this court. In the motion for enlargement of time, the Government requests 14 days after the court's receipt of declarations or affidavits to submit its answer. Appellant did not oppose Government's request.

The court has examined the claimed deficiencies and finds good cause to compel a response. The court cannot fully resolve Appellant's claims without piercing the privileged communications between Appellant and trial defense counsel. Moreover, in light of the court's order, it finds the Government's requested enlargement of time is appropriate.

Accordingly, after considering the Government's motions and the deficiencies alleged by Appellant, it is by the court on this 5th day of September 2025,

ORDERED:

The Government's Motion to Compel Declarations is **GRANTED**. Major Amanda B. Anderson, Major Steven M. Garman, and Major Luke A. Harle are each ordered to provide an affidavit or declaration to the court that is a specific and factual response to Appellant's claims they failed to adequately advise and

prepare Appellant regarding his right to testify, and failed to contact or call material witnesses.

A responsive declaration by each counsel will be provided to the court not later than **6 October 2025.** The Government shall deliver a copy of the responsive affidavits or declarations to Appellant's counsel.

It is further ordered:

The Government's Motion for Enlargement of Time (First) is **GRANTED**. The Government's answer to Appellant's assignments of error brief will be filed not later than **20 October 2025**.

FOR THE COURT

[redacted]

CAROL K. JOYCE
Clerk of the Court

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	UNITED STATES' MOTION TO COMPEL DECLARATIONS
v.	)	Before Panel No. 3
Master Sergeant (E-7) **KENNETH M. GRIFFIN** United States Air Force *Appellant.*	)	No. ACM 40642 25 August 2025

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

Pursuant to Rule 23.3(e) of this Court's Rules of Practice and Procedure, the United States hereby requests this Court order Appellant's trial defense counsel, Major Amanda B. Anderson[1], Major Steven M. Garman[2], and Major Luke A. Harle[3] to each provide a declaration in response to Appellant's allegation that they provided ineffective assistance of counsel. The United States has requested a declaration from each counsel to address the alleged ineffective assistance of counsel, and each counsel responded that they require an order from this Court before they would do so.

[1] There is a typographical error in the transcript identifying Maj Anderson's middle initial. (R. at 2). Undersigned counsel has confirmed that Maj Anderson's middle initial is "B" as indicated later in the transcript. (R. at 15).

[2] There is a typographical error in the transcript identifying Major Garman as "Major Steven M. Garland" at the time of the court-martial. (R. at 15). Major Garman was correctly identified as counsel at the time of arraignment. (R. at 2). Appellant confirmed that all defense counsel present at the time of trial were present at the time of arraignment. (R. at 17).

[3] Maj Harle was a captain at the time of Appellant's court-martial. He has since promoted to major.

Major Anderson, Maj Garman, and Maj Harle represented Appellant at his trial. Appellant filed his Assignments of Error with this Court on 6 August 2025, raising in Issue III, pursuant to United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982), that his trial defense counsel were ineffective by failing to call material witnesses and failing to adequately prepare and advise Appellant regarding his right to testify. Specifically, Appellant claims three witnesses, two women he previously dated and the victim's sister, were material witnesses that trial defense counsel did not contact or call as a witness. (App. Br. at Appendix A, 1a-4a). He also alleges that trial defense counsel only met with him for ten minutes before advising him not to testify on his own behalf. (Id).

The United States requires a declaration from Maj Anderson, Maj Garman, and Maj Harle to respond adequately to Appellant's brief and his ineffective assistance of counsel claim. *See* United States v. Rose, 68 M.J. 236, 236 (C.A.A.F. 2009); United States v. Melson, 66 M.J. 346, 347 (C.A.A.F. 2008). In fact, this Court cannot grant Appellant's ineffective assistance of counsel claim without first obtaining a declaration from trial defense counsel. *See* Rose, 68 M.J. at 237; Melson, 66 M.J. at 347.

Declarations are necessary in this case, because the allegation of ineffective assistance of counsel implicates whether there was a strategic decision in advising Appellant against testifying, calling witnesses and whether witnesses were contacted – information only trial defense counsel knows. "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable." Strickland v. Washington, 466 U.S. 668, 690 (1984) Therefore, whether decisions of counsel were strategically made is a crucial factor in evaluating whether trial defense counsel's performance fell measurably below that

expected of ordinary fallible lawyers and declarations of Appellant's trial defense counsel are necessary.

Accordingly, the United States respectfully requests this Court order Maj Anderson, Maj Garman, and Maj Harle each to provide a declaration with specific, factual responses to Appellant's claim of ineffective assistance of counsel within 30 days of the Court's order.

WHEREFORE, the United States requests this Court grant this Motion to Compel Declarations.

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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 25 August 2025.

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	UNITED STATES' MOTION FOR ENLARGEMENT OF TIME (FIRST)
v.	)	Before Panel No. 3
Master Sergeant (E-7) **KENNETH M. GRIFFIN** United States Air Force *Appellant.*	)	No. ACM 40642 25 August 2025

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

Pursuant to Rule 23.3(m)(5), the United States respectfully requests that it be given 14 days after this Court's receipt of a declaration or affidavit from trial defense counsel to submit its answer so that it may incorporate statements provided by Appellant's trial defense counsel in response to the specified ineffective assistance of counsel issue.[1]

This case was docketed with the Court on 12 July 2024. Since docketing, Appellant has been granted ten enlargements of time. Appellant filed his brief with this Court on 6 August 2025. This is the United States' first request for an enlargement of time. As of the date of this request, 409 days have elapsed since docketing. Undersigned counsel is detailed to argue United States v. Braum, No. 25-0046/AF, before the Court of Appeals for the Armed Forces on 8 October. Since being assigned Appellant's case, undersigned counsel has: filed a motion to transmit sealed materials and an answer to this Court's show cause order in United States v. Bush, No. ACM 40783, on 12 August; drafted the Answer to Assignments of Error for two issues in United States v. Campbell, No. ACM 40652, filed on 18 August; filed a notice of status

[1] The United States is filing a motion to compel a declaration or affidavit from Appellant's trial defense counsel contemporaneously with this motion.

of compliance in United States v. Raines, No. ACM 40765, on 4 August; filed the Answer to the appellants seven assignments of error in United States v. Patterson, No. ACM 40651, on 1 August. Undersigned counsel is currently responding to this Courts specified issue in United States v. Roberts, No. ACM 40608, which is due on 28 August. Undersigned counsel has already completed review of Appellant's brief and the record of trial and has begun drafting the answer to Appellant's other four assignments of error. This brief is undersigned counsel's second priority brief after Roberts.

There is good cause for the enlargement of time. Appellant claims his trial defense counsel were ineffective in contacting and calling "material" witnesses and in their advice to him that he should not testify on his own behalf (App. Br. at Appendix A, 1a-4a). The United States cannot prepare its answer to the allegation of ineffective assistance of counsel without a statement from the trial defense counsel. An enlargement of time is necessary to ensure trial defense counsel has time to review the allegation before they draft and submit a statement to the Court, and to give the United States sufficient time to incorporate trial defense counsel's statement into its answer. Moreover, additional time is needed for drafting and supervisory review before the United Staes files its answer. The United States respectfully requests that, to avoid confusion, any order from this Court identify the specific due dates for both the declarations and brief.

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

[redacted]

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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 25 August 2025.

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	UNITED STATES' MOTION TO ATTACH
v.	)	Before Panel No. 3
Master Sergeant (E-7) **KENNETH M. GRIFFIN** United States Air Force *Appellant.*	)	No. ACM 40642 6 October 2025

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

Pursuant to Rule 23.3(b) of this Court's Rules of Practice and Procedure, the United States moves the Court to attach the following documents:

- Appendix A – Declaration – Major Luke Harle, 5 October 2025 (2 pages)
- Appendix B – Declaration – Major Amanda Anderson, 4 October 2025 (1 page)
- Appendix C – Declaration – Major Steven Garman, 3 October 2025 (2 pages)

Matters outside the record may be considered "when doing so is necessary for resolving issues raised by materials in the record." United States v. Jessie, 79 M.J. 437, 444 (C.A.A.F. 2020). Such "'extra-record fact determinations' may be 'necessary predicates to resolving appellate questions.'" Id. at 442 (quoting United States v. Parker, 36 M.J. 269, 272 (C.M.A. 1993)). The attached declarations are responsive to this Court's order directing Maj Luke Harle, Maj Amanda Anderson, and Maj Steven Garman to provide declarations. (*Order*, dated 5 September 2025). Additionally, the attached declarations are relevant and necessary for this Court to resolve Appellant's assignment of error alleging his counsel were ineffective.

WHEREFORE, the United States requests this Court grant this Motion to Attach.

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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 6 October 2025.

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	UNITED STATES' MOTION FOR ENLARGEMENT OF TIME (SECOND)
v.	)	
	)	Before Panel No. 3
Master Sergeant (E-7) **KENNETH M. GRIFFIN** United States Air Force	)	No. ACM 40642
Appellant.	)	8 October 2025

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

Pursuant to Rule 23.3(m) of this Court's Rules of Practice and Procedure, the United States requests a 4-day enlargement of time, to respond in the above-captioned case. This is the United States' second request for an enlargement of time.

The record of trial was docketed with this Court on 12 July 2024. As of the date of this request, 453 days have elapsed since docketing. The United States' brief is currently due on 20 October 2025. If the enlargement of time is granted, the United States' response will be due on 24 October 2025, and 470 days will have elapsed since docketing.

Appellant was charged with one charge and four specifications of sexual abuse of a child in violation of Article 120b, UCMJ. Contrary to his pleas, Appellant was convicted of Specification 2, except the words "on divers occasions," and Specification 4. Appellant was acquitted of Specifications 1 and 3. Appellant was sentenced, by military judge, to a reprimand, reduction to the grade of E-1, and confinement for 30 months. The Convening Authority deferred Appellant's reduction in grade until the entry of judgment was signed. The Convening Authority also deferred all automatic forfeitures for six months, until Appellant's release from

confinement, or Appellant's expiration of term of service, whichever was soonest. The deferred pay and allowances were directed to be paid for the benefit of Appellant's dependent children.

The record of trial is six volumes. It contains 24 Prosecution Exhibits, 29 Defense Exhibits, 30 Appellate exhibits, and 1 Court exhibit. The transcript is 605 pages. Appellant is currently confined.

Since being assigned Appellant's case, undersigned counsel has: filed a motion to transmit sealed materials and an answer to this Court's show cause order in United States v. Bush, No. ACM 40783, on 12 August; drafted the Answer to Assignments of Error for two issues in United States v. Campbell, No. ACM 40652, filed on 18 August; filed a notice of status of compliance in United States v. Raines, No. ACM 40765, on 4 August; filed the Answer to the appellants seven assignments of error in United States v. Patterson, No. ACM 40651, on 1 August; responded to this Courts specified issue in United States v. Roberts, No. ACM 40608, on 28 August; filed an opposition to the appellant's motion for enlargement of time in United States v. Fundis, No. ACM 40689, on 25 September; filed the United States' answer to the appellants supplement to his petition for grant of review at the Court of Appeals for the Armed Forces, No. ACM 2025-01, on 30 September; argued United States v. Braum, No. 25-0046/AF, before the CAAF on 8 October.

Undersigned counsel has completed review of Appellant's brief and the record of trial, and trial defense counsel's declarations addressing Appellant's allegation of IAC. Undersigned counsel has begun drafting the answer to Appellant's assignments of error. This brief is undersigned counsel's first priority.

There is good cause for enlargement of time because an additional four days is needed to conduct supervisory review. JAJG, as a whole, currently has 16 briefs (answer briefs and

motions for reconsideration) with due dates pending at this Court and three briefs with pending due dates at CAAF. Both JAJG's Chief and Associate Chief are presenting oral arguments at CAAF on 21 and 22 October respectively and need to participate in four moot courts the week of 13 October for JAJG's four CAAF oral arguments on 21-22 October 2024. This preparation, in addition to JAJG's director of operations and another supervisory attorney, Lt Col Liabenow, being reassigned out of the office in August 2025 without a replacement, establishes good cause for the four-day enlargement of time to allow for supervisory review. Also, JAJG has 8 total briefs currently due the week of 20 October, although it is submitting motions for enlargement of time for several cases. Due to oral argument preparation, it will be very difficult for JAJG leadership to accomplish supervisory review of this brief until oral argument is over. Four additional days will allow for proper supervisory review.

WHEREFORE, the United States requests this Court grant this Motion for Enlargement of Time.

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CERTIFICATE OF FILING AND SERVICE

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

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IN THE UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	ANSWER TO ASSIGNMENTS OF ERROR
v.	)	Before Panel No. 3
Master Sergeant (E-7) **KENNETH M. GRIFFIN** United States Air Force *Appellant.*	)	No. ACM 40642 24 October 2025

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

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,*	)	ANSWER TO ASSIGNMENTS OF ERROR
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Master Sergeant (E-7) **KENNETH M. GRIFFIN** United States Air Force *Appellant.*	)	No. ACM 40642 24 October 2025

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

ISSUES PRESENTED

I.

WHETHER THE FINDINGS OF GUILT ARE FACTUALLY INSUFFICIENT.

II.

WHETHER THE MILITARY JUDGE ABUSED HIS DISCRETION BY ADMITTING L.A.'S PRIOR CONSISTENT STATEMENTS UNDER [M.R.E.] 801(d)(1)(B)(i), WHICH PREJUDICED APPELLANT.

III.[1]

WHETHER APPELLANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL WHERE DEFENSE COUNSEL FAILED TO CALL MATERIAL WITNESSES AND FAILED TO ADEQUATELY PREPARE AND ADVISE APPELLANT REGARDING HIS RIGHT TO TESTIFY

[1] Appellant personally raised issues III, IV, and V under United States v. Grostefon, 12 M.J. 431 (C.M.A. 1982).

IV.

WHETHER THE SENTENCE IMPOSED WAS APPROPRIATE IN LIGHT OF THE SUBSTANTIAL MITIGATION EVIDENCE THAT RENDERED THE SENTENCE UNDULY SEVERE.

V.

WHETHER APPELLANT'S CONSTITUTIONAL RIGHTS WERE VIOLATED AS HIS POST TRIAL PROCESSING WAS IMPROPERLY COMPLETED WHEN THE STAFF JUDGE ADVOCATE FOUND 18 U.S.C. 922 APPLIED TO APPELLANT'S CONVICTION OF A NON-VIOLENT OFFENSE.

STATEMENT OF CASE

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

STATEMENT OF FACTS

When the victim, L.A., was nine years old, she became friends with Appellant's daughter, K.G., through an after-school program on base. (R. at 92, 96). Through this friendship, L.A.'s mother, J.A., began an uncommitted romantic relationship with Appellant. (R. at 97, 322-323). L.A. viewed Appellant as a father and called him her stepdad. (R. at 102).

Appellant's Sexual Abuse of L.A. in 2019

L.A. turned 12 in late May 2019. (R. at 124). Her mother, J.A., and biological father were separated; so, L.A. split her time between her mother's apartment and her father's home. (R. at 124). J.A. shared her apartment with another woman, L.M., from February until around 6 May 2019. (R. at 164-165, 286). During that time, L.A. and her younger sister shared a room. (R. at 130, 164-165, 189-190). Between May, before L.M. moved out, and Appellant's deployment on 9 June, he was often at the apartment; sometimes he would stay overnight. (R. at 125, 286).

L.A. testified that one time, between February 2020 and 9 June 2020, while L.A. and her sister were still sharing a room, Appellant sexually abused her. (R. at 126, 134, 168, 184). She was around 12 years old. (Pros. Ex. 1). Appellant picked L.A. up over his shoulder as he normally would when roughhousing. (R. at 131, 135). He carried L.A. to her room and tossed her on to the middle of her sister's bed. (R. at 131-132). Appellant got in between her legs and put his hand in her pants, touching her vagina over her underwear while rubbing his fingers in a circular motion for around thirty seconds. (R. at 132-133). L.A. quietly told Appellant to stop because she did not want her family to hear and walk in on Appellant touching her. (R. at 133-134). She testified that she did not tell anyone what was going on because it was a "weird topic," and she didn't understand what was happening. (R. at 135).

L.A. testified that there were other occasions when Appellant touched her butt, legs, and vagina around their home at "any opportunity" but she did not have any specific recollection of individual events apart from the one incident on her sister's bed. (R. at 126, 134, 168). She only clearly remembered the one incident of sexual abuse on her sister's bed that she testified to in detail. (R. at 184).

L.A.'s Interviews with Law Enforcement Regarding the 2019 Sexual Abuse

Trial defense counsel admitted an excerpt from L.A.'s interview with the local police department in March 2021 which consisted of these two sentences:

> Officer Ramirez: When it happened here in your room, was it just once that it happened?
>
> [L.A.]: No, it was like two or three times that day.

(R. at 172; Def. Ex. A).

Trial defense counsel admitted a second excerpt of the same interview which consisted of the following statements:

> Officer Ramirez: Do you know like the timeframe when that happened?
>
> [L.A.]: Umm, I think the first time it happened [inaudible] was like around 4:00 to 5:00. And the like —
>
> Officer Ramirez: 4:00 to 5:00 in the afternoon or —
>
> [L.A.]: Yeah: 4:00 or 5:00 in the afternoon. And then the second time, that would be like 7:00 to 8:00 at night. And the last time it happened is like 9:00 pm.

(R. at 176; Def. Ex. B).

During L.A.'s second interview with law enforcement, she told the Tucson Police Department officer that the sexual abuse occurred on her sister's bed one time. (R. at 177).

L.A.'s final interview was with OSI. During that interview, she alleged that Appellant's sexual abuse of her on her sister's bed occurred weekly for two months. (R. at 179).

Appellant's Sexual Abuse of L.A. in 2020

Around 9 June 2019, Appellant deployed to Qatar for about a year. (R. at 135). When he returned, he was stationed at Vandenberg SFB in California. (R. at 289). During that time, J.A. and Appellant remained romantically involved. (Id.) Around 25 June 2020, J.A. drove L.A. and her two other children to Vandenberg to see Appellant and his daughter, K.G. (R. at 135-136). L.A. and her family stayed with Appellant and his daughter in an apartment style temporary lodging unit with three bedrooms, a living room, bathroom, and kitchen. (R. at 138; Pros Ex. 8). L.A. was 13 years old. (R. at 137).

L.A. testified that the day of the sexual abuse they went shopping at the outlet stores. (R. at 140). L.A. remembered going to Zumiez, and both she and J.A. remembered L.A. bought a pair of gray Nike shorts, white, high-top Converse shoes, and a pink t-shirt that had the word

"practice" on it. (R. at 140-141, 292). On 27 June 2020, L.A. recorded a video of her sister, Appellant, and K.G. at the outlet stores. (R. at 145-148; Pros. Exs. 10, 11).

When they returned to the temporary lodging, L.A. went to her room by herself and started doing her hair. (R. at 148-149). She was wearing the clothes she had just bought. (R. at 155). Eventually, everyone else came into the room (R. at 149). On direct examination, L.A. testified that she didn't remember what everyone was doing in her room. (R. at 149, 240). When everyone else left the room, L.A. was alone with Appellant. (R. at 149). The door was closed. (Id.) L.A. tried to explain how the door closed but eventually admitted that she did not remember how it happened. (R. at 150, 241-242).

L.A. testified that Appellant was sitting at the foot of the bed closest to the door, and she was on top of him in a "doggie style position" with her hands on the floor and her legs on each side of Appellant. (R. at 150-155; Pros. Ex. 12 at pg. 3). She did not remember how she got into this position. (R. at 150, 155). Appellant put his hand inside the "sleeve" of her shorts on the right side. (R. at 156). He touched her vagina through her underwear and moved his hand up and down. (R. at 156). L.A. pulled herself away from him but at the time of trial could not remember what she did after that. (R. at 156).

L.A., at 13 years old, understood what Appellant was doing to her. (R. at 157). She thought it was wrong and it was "not going to stop." (R. at 157). L.A. testified that she didn't report Appellant at that time because she "didn't know how to go about the topic," was worried her mom might not believe her, and didn't want to ruin her mom's relationship. (R. at 157).

L.A.'s First Outcry to A.H.

A.H. and L.A. were school friends who met in fall of 2018 when they were in the sixth grade. (R. at 387; Pros. Ex. 1). Although they were very close while at school, they rarely spent

time together outside of school. (R. at 388). But their school friendship was short-lived and went "downhill" after the first year. (R. at 387-388). They stopped talking all together by the start of eighth grade in August 2020. (R. at 387-388, 394, 395-396).

As their friendship was ending, but before August 2020, L.A. texted A.H. and said, "something had happened, and she needed to call A.H." (R. at 389, 395-396). L.A. told A.H. that her "mom's boyfriend" "touche[d] her." (R. at 390). L.A. cried while talking to A.H. (R. at 397). A.H. felt that she "couldn't help her the way [she] [knew] that [L.A.] needed to be (sic)." (Id.) So she told L.A. to tell her mom or somebody else. (Id.)

While L.A. summarily testified that this conversation with A.H. occurred in February 2021, A.H. scrutinized the timeline to conclude that it happened before August 2020. (R. at 250, 389, 392-395). A.H. used major life events, including school years, the COVID-19 pandemic, and her parents' marital troubles, to reach this conclusion. (R. at 389, 392-395).

L.A.'s Second Outcry to H.C.

In 2021, L.A. met H.C. (R. at 403). Sometime between 1 January 2021 and 1 March 2021, L.A. told H.C. that Appellant sexually abused her. (*See* R. at 159; 403, 421) (L.A. told her mother on 1 March 2021; H.C. testified he met L.A. in 2021 and that L.A. was worried about telling her mom what occurred). L.A. told H.C. that she was worried about telling her mother because she was concerned that she would not be believed by her mother or anyone else she told. (R. at 413).

L.A.'s Third Outcry to S.H.

L.A. and S.H. met in the sixth grade. (R. at 370). From the sixth grade until the eighth grade, they were "inseparable." (Id.) They lived in the same neighborhood and saw each other every day. (Id.) Before L.A. reported to her mother on 1 March 2021, L.A. told S.H. that an

adult sexually touched her. (R. at 371-373). S.H. told L.A. that she should tell her mom, and L.A. responded, "I don't know if I should." (R. at 372).

L.A.'s Report to Her Mother

On 1 March 2021, L.A. and S.H. were hanging out at L.A.'s home. (R. at 159). L.A. was talking to S.H. about L.A's boyfriend. (Id.) S.H. asked L.A., "Are you not going to tell her what he did to you?" or words to that effect. (R. at 159, 302). L.A.'s mother, J.A., overheard this and interjected by asking who they were talking about. (Id.) L.A.'s response conveyed that she did not want to talk about it. (R. at 160, 302). But J.A. brought L.A. and S.H. into her room and pushed her to answer. (R. at 159, 160, 304). J.A. began listing names to L.A. and when she said Appellant's name, L.A. nodded her head. (R. at 305). J.A. asked L.A. if she wanted to make a report. (R. at 162). J.A. told L.A. that she was "pretty sure [she] was going to make a report" and so L.A. felt like she "didn't really have a choice" in making a report. (Id.)

The End of J.A. and Appellant's Relationship

Over the years, Appellant and J.A.'s relationship ebbed and flowed from talking often to not talking at all. (R. at 312). By October 2020, Appellant had stopped communicating with J.A. as much. (R. at 325). By November 2020, the family had stopped hearing from Appellant entirely. (R. at 217). On 22 January 2021, J.A. found out that Appellant had been cheating on her. (Def. Ex. E). She told L.A. (R. at 217). From 22 January until 25 February 2021, J.A. sent Appellant a series of texts expressing her anger and sadness. (Def. Ex. E).

L.A.'s Character for Truthfulness

Two witnesses – A.H. and S.H. – testified that, in their opinion, L.A. had a character for untruthfulness, exaggeration, attention seeking, and manipulation. (R. at 379-380, 399-400). They were both around 16 years old at the time of trial. (*See* R. at 91, 370, 387) (L.A. testified

she was 16 at the time of trial; S.H. described meeting L.A. at school in the sixth grade; A.H. testified to her birthday).

S.H. was friends with L.A. from the sixth grade until they had a "fallout" in the middle of eighth grade. (R. at 370). A.H. and L.A. were only close school friends for a year and stopped being friends before the start of the eighth grade. (R. at 388-389). All three girls would have been around 11 years old at the start of their friendship and 12-13 years old at the end. (Pros. Ex. 1).

Impeachment of S.H.

During a pretrial interview with the government about a year before trial, S.H. had repeatedly denied that L.A. had told her that she was touched sexually by an adult. (R. at 431; App. Ex. XXII). A case paralegal was present for the interview. (App. Ex. XXII). He confirmed that trial counsel asked S.H. the question multiple ways during the interview, and S.H. said that L.A. "never told her about being touched in a sexually inappropriate manner ever." (Id.)

Yet S.H. testified on direct examination at trial on the merits that L.A. had told her an adult sexually touched her. (R. at 371). When confronted with the inconsistency between her pretrial interview and testimony on redirect, S.H. denied making those statements to trial counsel during the pretrial interview. (R. at 382).

ARGUMENT

I.

THE FINDINGS OF GUILT ARE FACTUALLY SUFFICIENT.

Standard of Review

This Court reviews factual sufficiency de novo. United States v. Washington, 57 M.J. 394, 399 (C.A.A.F. 2002). All of Appellant's offenses occurred before 1 January 2021 and so the factual sufficiency standard from the 2019 version of Article 66(d), UCMJ applies.

Law

The test for factual sufficiency is "whether, after weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses, [this Court is] convinced of the [appellant']s guilt beyond a reasonable doubt." United States v. Rodela, 82 M.J. 521, 525 (A.F. Ct. Crim. App. 2021) (quotation and citation omitted). The term "reasonable doubt" does not mean evidence free from conflict. United States v. King, 78 M.J. 218, 221 (C.A.A.F. 2019).

"The factfinder at the trial level is always in the best position to determine the credibility of a witness." United States v. Peterson, 48 M.J. 81, 83 (C.A.A.F. 1998). While this Court has "the independent authority and responsibility to weigh the credibility of the witnesses" this Court has "recognize[d] that the trial court saw and heard the testimony. United States v. Helpingstine, 2021 CCA LEXIS 223, *7 (A.F. Ct. Crim. App. 10 May 2021) (unpub. op.) (citing United States v. Moss, 63 M.J. 223, 239 (C.A.A.F. 2006).

"Inconsistencies such as [timing and locations] are not uncommon when child abuse victims testify[. . .]'Any person who suffers from some type of traumatic experience, adult or child, may have difficulty relating that experience in a chronological, coherent and organized manner.'" United States v. Cano, 61 M.J. 74, 77 (C.A.A.F. 2005) (quoting Paramore v. Filion, 293 F. Supp. 2d 285, 292 (S.D.N.Y. 2003)).

The charge of sexual abuse of a child who has not yet attained the age of 16 years under Article 120b, UCMJ, required that the Government prove: (1) the accused committed a lewd act on a child and (2) that the child had not yet attained the age of 16 years. *Manual for Courts-Martial*, Part IV, para. 62(a)(c)-(d)(2). A lewd act is defined as any sexual contact with a child. *Id.* at para. 62(h)(5)(a). Sexual contact includes touching, either directly or through the clothing, the vulva 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. *Id.* at para. 60(g)(2); para. 62(h)(1).

Analysis

L.A. was between 12 and 13 years old when Appellant sexually abused her. (R. at 124-125, 287; Pros. Ex. 1, 10, 11). She was consistent that in 2019 and 2020 Appellant put his hands in her pants and rubbed her vulva with his fingers through her underwear. (R. at 124-134, 135-147). Her testimony detailed Appellant's sexual abuse of her on her sister's bed in 2019 and in the temporary lodging on Vandenberg SFB in 2020, and many of those details were corroborated. (Id.) This Court, recognizing that the trial court saw and heard the testimony and that the fact finder at the trial level is always in the best position to determine the credibility of a witness, should be convinced of Appellant's guilt beyond a reasonable doubt. Peterson, 48 M.J. at 83; Helpingstine, 2021 CCA LEXIS at *7.

1. Appellant's conviction for sexually abusing L.A. in 2019 is factually sufficient because L.A. was corroborated and largely consistent.

L.A. explained that Appellant's sexual abuse in 2019 occurred on her sister's bed when she was in sixth grade going on seventh grade; 11 going on 12. (R. at 125, 124-134). This would be between approximately May and August 2019. (*See* Pros. Ex. 1). J.A. corroborated not only that L.A. and her sister shared a room until around 6 May but also that Appellant was frequently at their apartment before his deployment on 9 June. (R. at 135, 287-288). This means

Appellant had the opportunity to sexually abuse L.A. on her sister's bed, as she described, between May and June 2019.

Even if there were any inconsistencies in L.A.'s testimony and prior statements, they would not render Appellant's conviction factually insufficient because reasonable doubt does not mean free from conflict. King, 78 M.J. at 221. Instead, those conflicts were the opportunity for the trial court, when observing and hearing the witnesses, to judge their credibility in a way this Court cannot. Because this case relied heavily on the credibility of L.A.'s testimony, this Court, in "making allowances for not having personally observed the witnesses" should give the trial Court's finding greater deference. Rodela, 82 M.J. at 525.

"Inconsistencies such as [timing and locations] are not uncommon when child abuse victims testify [. . .]Any person who suffers from some type of traumatic experience, adult or child, may have difficulty relating that experience in a chronological, coherent and organized manner." Cano, 61 M.J. at 77 (quotation and citation omitted).

L.A. was a child. She was around 12 years old the first time Appellant sexually abused her in 2019. (R. at 124-125, 287; Pros. Ex. 1). She was 13 years old when Appellant sexually abused her in 2020. (Pros. Exs. 1, 10, 11). She was 13 years old when she was interviewed by three investigative agencies. (R. at 168, 177, 179; Pros. Ex. 1). She was only 16 years old when she testified. (R. at 91). Her detailed testimony about how Appellant sexually abused her was not invalidated because there were minor inconsistencies in her recitation of the events over five years. Further, many of the inconsistencies Appellant points to are not clearly inconsistent. Therefore, this Court should not have reasonable doubt as to Appellant's guilt.

a. L.A.'s statements to law enforcement were largely consistent with her testimony.

Trial defense counsel tried to impeach L.A. with her prior statements to law enforcement. This attempted impeachment is unpersuasive for three reasons: (1) the short clips that supposedly showed an inconsistency were not useful because they lacked any context; (2) L.A.'s testimony was consistent with her statements to the Tucson Police Department; and (3) L.A.'s testimony was consistent with parts of her statement to OSI.

i. The clips of L.A.'s statement to Officer Ramirez lacked necessary context.

On 3 March 2021, a police officer, Officer Ramirez, interviewed L.A. Trial defense counsel introduced small clips from this interview. (Def. Ex. A). In the first clip, the officer asked, "[W]hen it happened here in your room, was it just once that it happened?" L.A. responded, "No, it was like two or three times that day." (R. at 172). It is unclear from that two-sentence clip what "it" is referring to – roughhousing or inappropriate touching generally or the detailed sexual abuse allegation L.A. testified to at trial.

It is also unclear what L.A. – a 13-year-old child – may have understood "it" to mean when providing her answer. It is likely that L.A. understood the question to be asking about every time Appellant touched her inappropriately, including what she characterized as "subtle gestures" because she answered a similarly vague question by explaining the "subtle gestures" instead of the sexual abuse on her sister's bed at trial. (R. at 126, 134). Without the context of the video, it is unclear whether L.A. was inconsistent and so this evidence does little, if anything, to undermine L.A.'s credibility at trial.

Trial defense counsel admitted a second short clip from the same interview that occurred more than 15 seconds later. (Def. Ex. B). The defense did not include the 15 seconds of context in between. In the excerpted clip, the officer asked, "Do you know like the timeframe when that

happened?" and L.A. provided times. (R. at 176). Again, it is unclear from the short excerpt what "that" in the officer's question is referring to – was L.A. talking about the abuse on the bed or the other touching or some other interaction entirely? Without the context from the interview, it is impossible to tell whether the interview contradicts L.A.'s trial testimony or if this is merely the kind of variance one should expect when a child abuse victim explains her trauma. Cano, 61 M.J. at 77.

These intentionally excerpted clips lack any context and do not support the claim that L.A.'s account was "shifting." Instead, these appear to align with her trial testimony that Appellant touched her multiple times aside from sexually abusing her on her sister's bed.

ii. L.A.'s statements to the Tucson Police Department were consistent with her trial testimony.

Appellant seemingly admits that L.A.'s report to Tucson Police department aligned with her trial testimony by saying she "described only a single touching." (R. at 177; App. Br. at 6). This consistent statement bolsters the credibility of L.A.'s trial testimony. While Appellant asserts that L.A.'s description of the abuse as a "wave" instead of "circular motions" is an important inconsistency, it is not. It is merely a minor variance that is to be expected when a child explains a traumatic incident years later. Cano, 61 M.J. at 77.

iii. One inconsistency in between L.A.'s statement to OSI and her testimony does not create reasonable doubt.

Trial defense counsel elicited that L.A. told OSI the first time Appellant sexually abused her in 2019 was "the first week he moved in." (R. at 166). L.A. confirmed that this was when her parents had a split schedule around the "June/July timeframe." (R. at 167). This is consistent with both her and her mother's testimony. L.A. and J.A. testified that Appellant moved his belongings into the home before his deployment on 9 June 2019. (R. at 135, 287-288). J.A. testified that in the month before Appellant left, he spent a lot of time at her house

because his home was staged to sell. (R. at 287). It is reasonable that L.A., a 12-year-old child at the time of the sexual abuse, perceived Appellant moving things into the home in May, a month before the deployment and when she was still sharing a room with her sister, as Appellant moving into their home.

The only inconsistency between L.A.'s trial testimony about the 2019 sexual abuse and her law enforcement interviews occurred during her interview with OSI. While L.A. testified the sexual abuse on her sister's bed occurred one time, she told OSI it happened weekly for two months. (R. at 179-180). But this does not invalidate her trial testimony because L.A. readily admitted she made this inconsistent statement to OSI three years earlier but was unequivocal that she did not remember it happening more than once on her sister's bed. (R. at 179, 184). She was clear "I remember the main event and that's it. The one that I said." (R. at 184).

The inconsistency between L.A.'s statement to OSI and her testimony does not create reasonable doubt. At worst, in her third law enforcement interview at 13-years-old, L.A. was less than honest. The inconsistency, along with the evidence corroborating her testimony it happened one time, may have created doubt in her statement to OSI that it occurred more than once – as the judge found by excerpting the words "on divers occasions" from Specification 2. But it does not create reasonable doubt in her largely consistent trial testimony because at the time of trial three years later, while under oath, L.A. was consistent and forthright.

This Court, making allowances for having not observed the witnesses, should not invalidate Appellant's conviction based on a single inconsistency between a child victim's third account to law enforcement and her testimony three years later.

b. The date L.M. moved out of the apartment does not undermine L.A.'s testimony.

There are not irreconcilable conflicts in L.A.'s testimony as Appellant claims. (App. Br. at 16). In fact, L.A.'s testimony is consistent with J.A.'s testimony about when she had a roommate and Appellant's presence in the apartment.

L.M. was J.A.'s roommate and lived in the family's apartment from February 2019 until around 6 May 2019. (R. at 286). While L.M. was living with the family, L.A. and her sister shared a bedroom. (R. at 130). Appellant went to the family's apartment a few times a month, even when L.M. was living there, and would sometimes stay over. (R. at 125, 286). From May until his PCS on 9 June, Appellant was at the apartment "pretty frequently." (R. at 286). This established that in early May, within the charged timeframe, Appellant had the chance to sexually abuse L.A. in her room, on her sister's bed, as L.A. described – exactly what the military judge explained he found Appellant guilty of. (R. at 555-556)[2].

While L.A. agreed with trial defense counsel's statement on cross-examination that the offense occurred "some time in between June and July 2019," on direct examination she merely affirmed the offense occurred when she was in the sixth grade going into seventh grade – which was approximately May to August 2019. (R. at 128; Pros. Ex. 1). A child's acquiescence to months proposed by an attorney during cross-examination is not strong evidence that her memory of the dates, as opposed to the general timeframe, is correct. Further, L.A.'s testimony that the offense occurred after L.M. moved out is a reasonable error for a child to make when

[2] Appellant misinterprets the judge's findings by stating he found the sexual abuse occurred in June. (App. Br. at 16). The judge said, "This event happened during the charged timeframe just shortly before the accused deployed in June of 2019." (R. at 556). This does not mean the sexual abuse occurred in June as Appellant claims, but rather that the sexual abuse occurred shortly before Appellant deployed on 9 June 2019 which includes at least May.

recalling an event that occurred five years earlier when she was around 12 years old. (R. at 165). Our superior Court has explained that minor inconsistencies in the timeline of events "are not uncommon when child abuse victims testify." Cano, 61 M.J. at 77.

The evidence supports that Appellant sexually abused L.A. in her room, on her sister's bed, in May, before L.M. moved out. A child's misperception of when her mother's roommate moved out or the exact month of sexual abuse five years earlier should not cause this Court to have reasonable doubt as to Appellant's guilt.

2. **Appellant's conviction for sexually abusing L.A. at Vandenberg SFB in 2020 is factually sufficient because Appellant only raises minor inconsistencies in the circumstances leading up to the sexual abuse.**

L.A. described how Appellant's sexual abuse in 2020 occurred in the temporary lodging on Vandenberg SFB including the trip to Vandenberg, how the family went shopping at the outlet mall earlier in the day, how she was wearing the clothes she bought that day, and the specifics of Appellant's sexual abuse. (R. at 140-156). L.A.'s testimony was corroborated by J.A.'s testimony about when they went on the trip and what L.A. bought that day, as well as the video of everyone at the outlet mall. (R. at 140-141, 292; Pros. Ex. 10, 11). Any gaps in her memory about minor details – like what was happening in the room before the sexual abuse, how the door closed, and what she said while Appellant touched her – when she was testifying four years after the sexual abuse do not create reasonable doubt. (App. Br. at 17).

a. L.A.'s testimony about what was happening in the room before Appellant sexually abused her does not create reasonable doubt as to his guilt.

L.A. testified that she could not remember why everyone came into her room after the trip to the outlet mall. (R. at 149). But during cross-examination she agreed that everyone was "messing with each other" in the room. (R. at 240). This is consistent with multiple witnesses'

testimony that it was normal for L.A.'s family and Appellant's family to roughhouse with each other. (R. at 193, 327, 378).

Contrary to Appellant's argument, K.G.'s lack of memory that her father was "messing around" with the kids during the trip does not negate L.A.'s specific memory that Appellant sexually abused her. (App. Br. at 17). K.G., Appellant's daughter, was a highly biased witness. (R. at 365). Not only would K.G. be devastated if her father was convicted, it was proved that she was willing to fill in gaps in her memory in favor of the defense. (R. at 365). During the defense's examination, K.G. affirmed that there had not been any roughhousing in the temporary lodging and that she did not hear anyone say "no" or "stop" during the trip. (R. at 353). K.G. repeated this false assertion to trial counsel and only rephrased her testimony after she was confronted with a video of her and L.A. saying "no" and "stop" while roughhousing in the temporary lodging. (R. at 360-361; Pros. Ex. 15).

b. L.A.'s speculation about how the door closed before Appellant sexually abused her does not create reasonable doubt as to his guilt.

Who closed the door before Appellant sexually abused L.A. was not "central to the government's theory of the case" as Appellant claims. (App. Br. at 18). Instead, it was a minor, irrelevant detail that was only elicited by the defense on cross-examination. L.A.'s attempt to fill in her memory gaps about how the door closed before Appellant sexually abused her does not create reasonable doubt as to Appellant's guilt.

On direct examination, L.A. only testified that the door closed – she did not speculate. (R. at 149-150). Closer in time to the crime, L.A. described to OSI that it seemed to shut on its own. (R. at 242). On cross-examination, trial defense counsel goaded L.A. to speculate about how the door closed by asking if the dog closed the door. (R. at 241). Only then did L.A.

speculate about the irrelevant detail by saying, "I think somebody – my dog left and then Sophie and Kyra were like the last person – people to leave and then they closed the door." (R. at 241).

L.A. was clear and consistent that the door was closed, no matter who closed it. She repeatedly admitted that she didn't know who closed the door or how it shut but never wavered on the fact that it was shut. (R. at 241-242). Any inconsistency as to the irrelevant detail of who shut the door does not create reasonable doubt because it does not undermine the critical facts of her testimony – her detailed memory of Appellant sexually abusing her by touching her vulva as she was bent off the edge of the bed with her hands on the floor. (R. at 150-156).

c. L.A.'s admission that she could not remember saying "no" or "stop" bolster's her credibility.

L.A. remembered telling investigators that she had told Appellant, "No, stop." (R. at 244). But at the time of trial, she was clear that she could not remember if she said that to Appellant or not. (R. at 244). This makes her more credible. She knew what she told law enforcement and easily could have adopted that statement at trial to try to be consistent, but instead she was honest and testified that she could not remember telling Appellant "No, stop." She even stayed true to her memory as trial defense counsel misquoted her direct examination testimony by asserting that she said that she "didn't say anything" as Appellant sexually abused her. (R. at 245). This shows that the variance in her testimony was not a lack of honesty, but a true memory gap.

L.A. never testified or affirmed that she *yelled* "no" or "stop" at Appellant – in fact she denied it. She explained that if she did say "no" or "stop" it was quiet. (R. at 266). J.A.'s testimony supports this because she could not remember hearing L.A. yell "no" or "stop" during that time. (R. at 324). Therefore, contrary to Appellant's claim, these facts do not create reasonable doubt as to Appellant's guilt. (App. Br. at 18).

3. The timing of L.A.'s outcry reports support L.A.'s credibility by undermining the defense's alleged motive to fabricate.

L.A.'s first outcry further supports her testimony. After Appellant sexually abused L.A. for a second time, before August 2020, L.A. reached out to an estranged friend, A.H., for support. (R. at 390). Despite having negative opinions of L.A., A.H. testified that L.A. cried as she told her she was sexually abused by Appellant. (R. at 397). A.H. brushed her aside by telling her to tell her mom or somebody else because A.H. decided she could not help her. (Id.) Their friendship ended shortly after. (R. at 394). This first outcry undermines Appellant's theory that L.A. fabricated her allegation after Appellant cut ties with her mother in November 2020, and she found out he had cheated on her in January 2021. (App. Br. at 14; R. at 217; Def. Ex. E).

While Appellant relies on L.A.'s brief testimony to claim this outcry to A.H. happened in February 2021, the trial judge appropriately gave A.H.'s detailed timeline more weight. A.H. thoughtfully evaluated major life events like the COVID-19 pandemic and her parents' marital hardship, on the record to conclude that this conversation with L.A. occurred before August 2020. (R. at 389, 392-395). In contrast, L.A. merely gave brief, conclusory responses to leading questions in claiming it occurred in February 2021. (R. at 250). A.H.'s thoughtful analysis gives her timeline more credibility and this Court should not doubt that the conversation happened before L.A.'s alleged motive to fabricate.

L.A.'s second and third outcries further supports her testimony that Appellant abused her. Later, L.A. told two more friends – S.H. and C.H. (R. at 371-373, 413, 421). These conversations must have happened before L.A. told her mother and was under any pressure to report Appellant because they both encouraged her to tell her mother what happened and she worried about doing so. (Id.)

On 1 March 2021, J.A. overheard a conversation between L.A. and S.H. about L.A.'s boyfriend – not Appellant. (R. at 159). Only after she injected herself in the conversation and pressured L.A. to tell her what happened did L.A. finally report. (R. at 159-160, 302-305). This further undermines Appellant's theory that L.A. was a scorned child who sought revenge against Appellant. If this was a plot against Appellant, driven by his relationship transgressions against J.A., then L.A. would not have withheld the information from J.A. (App. Br. at 14).

4. Neither A.H. nor S.H.'s opinion about L.A. creates reasonable doubt.

Both A.H. and S.H.'s opinion about L.A.'s character should be afforded little weight. Both girls were only friends with Appellant from the sixth grade until the eighth grade. (R. at 370, 388-389). Then, presumably from a juvenile pre-teen dispute, they had a falling out. Their schoolyard opinions, without context, do little, if anything, to inform this Court about whether L.A. was being truthful when testifying under oath about a serious criminal allegation. These opinions therefore do not create reasonable doubt as to Appellant's guilt.

L.A. was a young girl who was repeatedly sexually abused by Appellant, a father figure in her life. (R. at 102). She provided consistent and detailed testimony of how Appellant, in 2019 and 2020, put his hand in her pants and touched her vulva to gratify his sexual desire. The opinion of two teen girls who had a falling out with L.A. in middle school does not create reasonable doubt as to her truthfulness while testifying to Appellant's sexual abuse under oath. Any inconsistencies in her testimony are minor and what one would expect as a child sexual abuse victim recounts her traumatic experience to law enforcement and at trial years later. Cano, 61 M.J. at 77. This Court, in consideration of the fact that the trial court heard and saw the witnesses and is in the best position to judge their credibility, should find Appellant's convictions factually sufficient. Peterson, 48 M.J. at 83.

II.

THE MILITARY JUDGE DID NOT ABUSE HIS DISCRETION BY ADMITTING L.A.'S PRIOR CONSISTENT STATEMENTS UNDER M.R.E. 801(d)(1)(B)(i).

Additional Facts

The Government sought to introduce prior consistent statements that L.A. made to her friends A.H. and H.C. Trial defense counsel admitted that their cross-examination of witnesses implied that L.A. fabricated the allegation. (R. at 391). Trial defense counsel characterized L.A.'s motive to fabricate as a "anger and frustration towards [Appellant]" that formed from "November [2020] through February [2021]." (R. at 417).

During cross-examination of J.A., the defense elicited that Appellant stopped talking to J.A. without explanation in November 2020 despite saying he would visit her and the children for Christmas. (R. at 317-318). This caused J.A. to have to tell her children that Appellant was not going to be around anymore. (R. at 318). Around January 2021, J.A. found out that Appellant had been "cheating on [her] for a few months." (R. at 319, 321). She was hurt. (R. at 321-322). Over four years, J.A. wanted to build a relationship with Appellant, but he would not commit to her. (R. at 323). In January and February 2021, J.A. texted Appellant expressing her feelings to him even though he was not responding. (Id.) She sent her final message to him on 25 February 2021. (R. at 324).

J.A. testified about the circumstances surrounding L.A.'s report to her four days later on 1 March 2021. She testified that she overheard L.A. saying she wanted to talk to someone but "doesn't want to talk to him because he is at the park with […] them." (R. at 302). S.H. then said, "Oh, that's right. You wanted to talk to him about what he did." (Id.) At that point, J.A. interjected and asked, "What who did?" (Id.) Despite L.A. indicating that she didn't want to

talk about it, J.A. pressed her about the issue. (R. at 305). When L.A. finally said that someone hurt her, J.A. started listing off names to find out who it was. (Id.) Eventually, J.A. said Appellant's name and L.A. nodded her head. (Id.) On 3 March, J.A. reported the incident to the Tucson Police Department. (R. at 306).

Judge's Ruling on L.A.'s Statement to A.H.

A.H. testified that L.A. told her that "her mom's boyfriend" inappropriately touched her. (R. at 388-389). A.H. said the conversation happened towards the end of seventh grade in 2020. (R. at 389). Trial defense counsel objected based on hearsay. (Id.) Trial counsel offered L.A.'s statement to A.H. that Appellant had touched inappropriately as a prior consistent statement under M.R.E. 801(d)(1)(B)(i). (R. at 390, 391).

The judge explained that one of trial defense counsel's theories was that L.A. fabricated the allegation after seeing Appellant upset her mother by "ghost[ing] her in the fall of 2020 and ultimately leading into the winter months of 2021." (R. at 392). The judge began to explain his finding that L.A.'s conversation with A.H. occurred in May/June 2020 and is a prior consistent statement when trial defense counsel asked to be heard further. (Id.) The judge then began a colloquy with the witness to identify the date of the conversation. (R. at 393-395). As described in the Statement of Facts above, A.H. confirmed the conversation occurred before August 2020 and the judge found the date of the conversation as fact. (R. at 395-396). Because the conversation occurred before the motive to fabricate in November 2020 when Appellant "ghosted" J.A., and it was consistent with L.A.'s testimony that Appellant sexually abused her, the judge admitted the statement under M.R.E. 801(d)(1)(B)(i). (R. at 395-396).

Judge's Ruling on L.A.'s Statement to H.C.

H.C. testified that when L.A. reported to him, she was afraid to tell her mother or anyone. (R. at 413). After the defense objected to the admission of the statement, the judge summarized trial counsel's argument that it was offered to rebut the express or implied charge that L.A. recently fabricated the allegation. (R. at 415). Trial counsel specifically argued that the conversation "directly rebuts the claim that the defense has put forward of a conspiracy between mother and daughter, of [sic] the dissolution of the mother's relationship with [Appellant]." (R. at 418). He highlighted trial defense counsel's use of the angry text message J.A. sent Appellant on 25 February 2021 and explained L.A.'s statement to H.C. "rebuts this claim that there is this conspiracy between mother and daughter to make up this allegation." (Id.)

The trial judge took care to determine the timeline of events. He explained,

> So, Defense Counsel, based on the testimony that I've heard from this witness, the conversation with [L.A.] would have had to have happened prior to her telling her mother. Because she told this witness that she had been abused by the accused and that she was concerned about telling her mom because she knew if she told her mom the authorities would be notified, right? That's what this witness has said, right?

(Id.)

Trial defense counsel agreed with both the recitation of the witness' testimony and the logic. (Id.) Later the judge again clarified, "Based on the testimony that we've heard from the witness, [the conversation] was before – before [L.A.] told her mom. Which would have been what, March 1st?" (R. at 417). Trial defense counsel agreed. (Id.) A third time, the judge said, "[The conversation] was before March 1, 2021." (Id.) Trial defense counsel agreed again. (Id.)

The judge determined that because this statement to H.C. preceded L.A.'s report to her mother, it was a prior consistent statement admissible under M.R.E. 801. (R. at 418-419). He said,

> I do believe that the defense counsel challenged both [L.A.] and her mother basically on this idea that – basically establishing the theory of motive to fabricate on their part between the fall of 2020 and the time of the report on the 1st of March 2021. So, as I did with the other witness, I find that the fact that this witness, [H.C.], will testify that [L.A.] told her – told him that the accused had abused her before she told her mom, and before her mom reported these things to Tucson Police Department. I find that that is a prior consistent statement. In other words, she's telling [H.C.] the accused sexually abused me, and that's exactly what her testimony was in trial yesterday. So, I find that those statements are consistent. I find that the statement made to [H.C.] was a prior consistent statement, and it's proper for the government to offer this to rebut the defense's theory of recent fabrication.

(R. at 418-419).

Standard of Review

A judge's decision on the admission of evidence is reviewed for an abuse of discretion. United States v. Finch, 79 M.J. 389, 394 (C.A.A.F. 2020) (citation omitted).

Law

An abuse of discretion involves far more than a difference in opinion. United States v. Mosley, 42 M.J. 300, 303 (C.A.A.F. 1995) (citation and quotation omitted). "A military judge abuses his discretion when his findings of fact are clearly erroneous, the [judge's] decision is influenced by an erroneous view of the law, or the military judge's decision . . . is outside the range of choices reasonably arising from the applicable facts and the law." United States v. Kelly, 72 M.J. 237, 242 (C.A.A.F. 2013) (citation omitted).

"A finding of fact is clearly erroneous when there is no evidence to support the finding [. . .], or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." United States v. Criswell, 78 M.J. 136, 142 (C.A.A.F. 2018) (citations and quotation omitted).

"Hearsay statements—out of court statements offered into evidence to prove the truth of the matter asserted—usually are inadmissible in courts-martial." United States v. Norwood, 81

M.J. 12, 17 (C.A.A.F. 2021) *cert. denied*, 141 S. Ct. 2864, 210 L. Ed. 2d 966, 2021 U.S. LEXIS 3528 (28 Jun. 2021) (citing M.R.E. 801(c)).

M.R.E. 801(d)(1)(B) provides that a statement is not hearsay if it is consistent with the declarant's testimony and is offered to rebut an express or implied charge that the declarant recently fabricated their testimony or acted from a recent improper influence or motive in so testifying. There are three requirements for admitting a prior consistent statement as substantive evidence: (1) the declarant of the statement must testify at the court martial; (2) the declarant must be subject to cross-examination; and (3) the statement must be consistent with the declarant's testimony. Norwood, 81 M.J. at 17 (citation omitted).

The prior consistent statement must precede the alleged motive to fabricate. United States v. Ayala, 81 M.J. 25, 29 (C.A.A.F. 2021). But "where multiple motives to fabricate or multiple improper influences are asserted, the statement need not precede all such motives or influences, but only the one it is offered to rebut." United States v. Frost, 79 M.J. 104, 110 (C.A.A.F. 2019) (citations omitted).

Even if the trial judge erred in his analysis for why the evidence was admissible, "there could not be prejudice when the [prior consistent statement] still was admissible." Norwood, 81 M.J. at 18. This principle, sometimes dubbed "the tipsy coachman" doctrine, requires the reviewing court to affirm the lower court's ruling if it reached the right result for the wrong reason. *See, e.g.*, United States v. Robinson, 58 M.J. 429, 433 (C.A.A.F. 2003) (" . . . the military judge's error was harmless, because the military judge reached the correct result, albeit for the wrong reason."); United States v. Leiffer, 13 M.J. 337, 345 n.10 (C.M.A. 1982) ("however, '[I]n the review of judicial proceedings the rule is settled that, if the decision below is

correct, it must be affirmed, although the lower court relied upon a wrong ground or gave a wrong reason.'").

Our sister service has applied this doctrine to prior consistent statements under M.R.E. 801(d) to uphold the admission of evidence where the trial judge arrived at the correct result, even if for the wrong reason. United States v. Heath, 76 M.J. 576, 578 (A. Ct. Crim. App. 2017). There, the defense's cross-examination implied the witness was influenced by her trial preparation the Sunday before trial but the trial judge's analysis in admitting the evidence incorrectly focused on whether the statement offered predated the Article 32 hearing. Id. at 578-579. The court, applying the tipsy-coachman doctrine, upheld the judge's ruling on admissibility because the facts established that there was an implied improper influence that the statement preceded. Id.

Analysis

Appellant claims that M.R.E. 801(d)(1)(B)(i) requires that "for admission under subsection (B)(i), the prior statement must precede any alleged motive to fabricate." (App. Br. at 20). This is correct, but not for the reason Appellant argues. The statement need not precede *all* motives to fabricate, "only the one it is offered to rebut." Frost, 79 M.J. at 110. But even if the statement does not precede the motive it was offered to rebut, if it precedes *any* express or implied motive to fabricate or improper influence that the record supports, this Court must affirm the admission of the evidence despite the judge reaching the right result for the wrong reason. Norwood, 81 M.J. at 12; Heath, 76 M.J. at 579.

With that foundation, this Court should begin its analysis by identifying what motives to fabricate and improper influences were expressed or implied at trial. Contrary to Appellant's claim, there were at least two: one express and one implied. (App. Br. at 21). The express

allegation of a motive to fabricate arose after Appellant ended his relationship with L.A.'s mother and ceased contact with the family causing alleged "anger and frustration towards the accused" from "November [2020] through February [2021]." (R. at 417). The implied allegation of an improper influence was that J.A.'s anger towards Appellant, as shown through her texts ending in February 2021 influenced L.A. to make a false report on 1 March. (R. at 418, 529).

The judge correctly found that L.A.'s prior consistent statements to A.H. and H.C. preceded each of the alleged motives to fabricate that they were offered to rebut. L.A.'s statement to A.H. from around August 2020 preceded the express motive that L.A. fabricated her allegation because she was angry with Appellant from November 2020 through February 2021. (R. at 417). L.A.'s statement to H.C. preceded the implied improper influence that J.A.'s anger towards Appellant, culminating on 25 February 2021, influenced L.A. to make a false report on 1 March 2021. (R. at 418, 529). Therefore, admission of the statement was not error, and this Court should deny Appellant's requested relief.

1. **L.A.'s prior consistent statement to A.H. around August 2020 preceded the express motive that L.A. fabricated her allegation because she was angry with Appellant from November 2020 through February 2021.**

The judge found as fact that L.A.'s statement to A.H. occurred around August 2020. (R. at 395). "A finding of fact is clearly erroneous when there is no evidence to support the finding [. . .], or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." Criswell, 78 M.J. 136, 141 (citations and quotation omitted). This finding of fact is not clearly erroneous because the record supports it, and this Court should not have a definite and firm conviction that a mistake has occurred.

A.H. provided thoughtful testimony detailing the timeline of her relationship with L.A. in consideration of major life events like the COVID-19 pandemic and her parents' marital troubles. (R. at 388-395). This analysis led her to determine that the conversation with L.A. occurred before August 2020. (R. at 394-395). Prosecution Exhibit 1, corroborates A.H.'s timeline. It shows the COVID-19 pandemic would have started when L.A. was in the seventh grade. (Pros. Ex. 1). A.H. testified that she and L.A. stopped talking in the middle of seventh grade and "did not talk after COVID." (R. at 393). So by August 2020, the beginning of L.A.'s eighth grade year, A.H. and L.A. were no longer speaking, and so the conversation must have preceded that date.

By contrast, L.A.'s testimony that the conversation happened in February 2021 lacked any detail. L.A. merely responded to trial defense counsel's leading questions that asserted she told A.H. what happened in February 2021 with one-word affirmations. (R. at 250). One word acquiescence by a 16-year-old girl in response to trial defense counsel's leading questions is not more reliable than A.H.'s comprehensive analysis of the timeline.

As a result, the judge correctly gave A.H.'s analysis more weight when he concluded that L.A.'s statement occurred before August 2020. His finding of fact is supported by the record and not clearly erroneous. The Supreme Court has stated, "[w]here there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." Anderson v. Bessemer City, 470 U.S. 564, 574 (1985).

Because August 2020 predated the defense's express allegation that L.A. had a motive to fabricate because of her anger at Appellant that began when he ended his relationship with her mom in November 2020, the judge did not abuse his discretion by admitting L.A.'s statement to

A.H. as a prior consistent statement under M.R.E. 801(d)(1)(B)(i). (R. at 417). So this Court should deny Appellant's requested relief.

2. L.A.'s prior consistent statement to H.C. preceded the implied improper influence from J.A.'s anger towards Appellant, culminating on 25 February 2021, that allegedly influenced L.A. to make a false report on 1 March 2021.

The judge found as fact, and the defense agreed, that L.A.'s statement to H.C. occurred before L.A. told her mother on 1 March 2021. (R. at 415). This finding is supported by H.C.'s testimony that when L.A. told him about Appellant touching her inappropriately she was afraid to tell her mother. (R. at 413).

Trial defense counsel's cross-examination of L.A. and J.A. implied that L.A. was improperly influenced to make an allegation on 1 March 2021 after J.A. gave up on her relationship with Appellant on 25 February 2021. Through cross-examination, the defense implied that L.A.'s report was improperly influenced by her mother's feelings towards Appellant by repeatedly highlighting that L.A. did not report anything to J.A. before 1 March 2021, that J.A. was upset with Appellant for "ghosting" her in November 2020, that J.A. found out Appellant cheated on her in January 2021, but despite all of that J.A. tried to talk to Appellant until she sent her final angry text message to Appellant four days before L.A.'s report. (R. at 318-320, 321-322, 323, 324, 328; Def. Ex. E.). In closing argument, the defense emphasized this alleged influence saying, "[L.A.] is reacting to her mom. You can see how strong her mom's emotions are in those text messages from 2021" (R. at 529). This implied that J.A.'s emotions, which only came to a peak on 25 February 2021, influenced L.A. to make an allegation against Appellant on 1 March 2021. This implied improper influence opened the door for the Government to introduce L.A.'s prior consistent statement to H.C., "within a week or two before 1 March 2021" M.R.E. 801(d)(1)(B)(i). (R. at 417).

While Appellant frames this influence as a continuous motive to fabricate that began in November 2020 when Appellant ceased communicating with J.A. and ended in the report on 1 March 2021, this ignores the specific influence that only arose on 1 March 2021. (App. Br. 21). Trial defense counsel implied that J.A. was still upset with Appellant four days after her last text message when L.A. reported to her. This implied that those emotions influenced L.A. on 1 March 2021 when J.A. pressured L.A. to tell her who hurt her and – when L.A. would not tell her a name – and mentioned Appellant's name. (R. at 304, 305). This implied improper influence was separate from the alleged motive to fabricate because L.A. would not have been influenced by her mother's emotions to make a report without J.A.'s specific actions on 1 March 2021. This conclusion is supported by the fact that from November 2020 to 28 February 2021 L.A. did not report Appellant to her mother despite her mother being upset with Appellant.

Because there was an implied improper influence that arose only on 1 March 2021 when J.A. offered Appellant's name to L.A., L.A.'s prior consistent statement to H.C. before 1 March 2021 predated the motive to fabricate it was offered to rebut. Therefore, the judge properly admitted L.A.'s report of abuse to H.C. as a prior consistent statement. (R. at 419).

"Military judges are presumed to know the law and to follow it absent clear evidence to the contrary." United States v. Erickson, 65 M.J. 221, 225 (C.A.A.F. 2007) (citation omitted). There is not clear evidence that the judge did not know and follow the law. The trial judge's ruling does not clearly articulate the motive to fabricate he found the statement to H.C. predated. (R. at 418-419). Although he identified the defense's broad theory of a motive to fabricate because of the end of the relationship between "fall 2020" and L.A.'s report on 1 March 2021, this is not clear evidence that he did not follow the law by accepting a statement that came after

that supposedly continuous motive. (Id.) This does not mean he erred and accepted the statement to rebut the defense's broad theory.

In fact, the evidence shows that he knew and applied the law. First, the judge knew the statement had to predate the motive to fabricate because he had just applied that law to A.H.'s testimony when he explained the statement was admissible as a prior consistent statement because it occurred before the motive to fabricate. (R. at 392, 395-396). Then, the judge's conversations with counsel about H.C.'s testimony show he was committed to determining the sequence of events. (R. at 414-418). He would have no reason to determine the sequence of events with such precision if it was not determinative. Finally, his ruling shows he applied the sequence of events to the requirement that the statement predates the motive to fabricate or improper influence because, in reaching his conclusion that the statement was admissible, he explained that the statement that L.A. made to H.C. occurred before she told her mom on 1 March 2021. (R. at 419). As a result, he must have found a precise motive to fabricate or improper influence arose on 1 March 2021 that was distinct from the continuous motive to fabricate from L.A. being upset with Appellant from November 2020 to 25 February 2021. Based on these facts, and the presumption that judges know and follow the law, this Court should find the judge's ruling that L.A.'s prior consistent statement to H.C. was admissible was not an abuse of discretion.

3. Appellant was not prejudiced by the admission of L.A.'s statements to A.H. or H.C.

If a judge has erred in admitting evidence, the Government bears the burden of establishing that the erroneous admission was harmless. United States v. Frost, 79 M.J. 104, 111 (C.A.A.F. 2019). The test for preserved nonconstitutional evidentiary errors is "whether the error had a substantial influence on the findings." Id. (citation omitted). This Court weighs; (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.

a. As explained in Issue I, the Government's case was strong.

While Appellant is correct that there was no physical evidence or eyewitness corroboration, that is not unusual because "[u]nfortunately, crimes of this nature [sexual abuse of children] are committed in secrecy and privacy." United States v. Munoz, 32 M.J. 359, 366 (C.M.A. 1991) (Cox, J. concurring). L.A. was a child both when she was sexually abused by Appellant and when she testified. Minor inconsistencies "are not uncommon when child abuse victims testify." Cano, 61 M.J. at 77. Despite any minor inconsistencies, L.A.'s detailed testimony about how Appellant sexually abused her on her sister's bed in 2019 and in temporary lodging in 2020 was consistent.

b. The defense's case was not strong.

The defense's evidence seeking to discredit L.A. was not substantial as Appellant claims. (App. Br. at 22). The opinion of two teenage girls about L.A.'s character when they were only friends from the sixth to the eighth grade is not substantial for whether L.A. is testifying credibly, under oath, in a serious criminal matter.

Appellant's claim that the defense case was strong because there was a "clear" motive fabricate because of the "rupture" in the relationship is also unpersuasive. (App. Br. at 22). The defense's "clear" motive to fabricate required believing that L.A., at 13 years old, harbored significant malice towards Appellant over his relationship transgressions with her mother that she would falsely accuse him of a crime. Then, one must believe that she feigned fear of telling her mother – the woman Appellant scorned – to two witnesses. And finally, that she coordinated her mother overhearing an unrelated conversation, interjecting, and pressuring her to report to law enforcement.

The defense's theory about L.A.'s motive to fabricate was unbelievable, the alleged inconsistencies were minor, and the opinion evidence was uncompelling. Therefore, the defense's case was not strong.

c. The materiality of the evidence was less than that of other evidence.

Evidence is material if it is of consequence to determining the appellant's guilt. United States v. Dorsey, 16 M.J. 1, 6 (C.M.A. 1983). Appellant seems to concede that L.A.'s statements to A.H. and H.C. were not highly material by arguing that the ambiguity of the statements undermined their "probative value." (App. Br. at 22). He concedes that the "statements do little to resolve the central factual dispute." (App. Br. at 23). Compared to the other evidence – L.A.'s detailed testimony about both the 2019 and 2020 incidents of sexual abuse and J.A.'s corroboration of the circumstances that would've given Appellant the opportunity to sexually abuse L.A. as she described – L.A.'s statements to A.H. and H.C. had less materiality to the central factual dispute of Appellant's guilt. Therefore, this factor weighs in favor of the Government.

d. The quality of the evidence was lower than the other evidence introduced.

Appellant seems to concede that the evidence was lower quality by arguing that the quality was "problematic." (App. Br. at 23). The Government agrees the basic testimony that was offered by A.H. and H.C. was lower quality than the other evidence introduced. Both witness' testimony had less detail than L.A.'s detailed testimony of how Appellant sexually abused her on her sister's bed in 2019 and in the temporary lodging in 2020. Because the evidence was lower quality than the other evidence introduced, it could not have had "a substantial influence on the findings." Frost, 79 M.J. 111.

The defense's case relied on establishing reasons why L.A. would lie about such a heinous crime, but their theories were weak and required suspending reasonable belief. Even without the basic testimony from A.H. and H.C. about L.A.'s consistent outcry reports, the factfinder likely would not have found the defense's case created reasonable doubt when none of their explanations for L.A.'s testimony were grounded in reality. Therefore, even if the admission of the statements was erroneous, it did not substantially impact the findings and this Court should deny Appellant's requested relief.

III.[3]

APPELLANT WAS NOT DENIED EFFECTIVE ASSISTANCE OF COUNSEL.

Additional Facts

Appellant had the benefit of three trial defense counsel at his court-martial –Major (Maj) Luke Harle, Maj Steven Garman, and Maj Amanda Anderson. (*Declaration of Maj Luke Harle, Declaration of Maj Steven Garman, Declaration of Maj Amanda Anderson*). All three trial defense counsel provided declarations in response to Appellant's allegation of ineffective assistance of counsel. (Id.)

Maj Harle and Maj Garman represented Appellant over multiple years. During that time, the potential for Appellant to testify was discussed several times. (*Declaration of Maj Luke Harle; Declaration of Maj Steven Garman*). The week before trial all three of Appellant's trial defense counsel performed a mock direct and cross-examination of Appellant that lasted at least 90 minutes. (*Declaration of Maj Luke Harle; Declaration of Maj Amanda Anderson; Declaration of Maj Steven Garman*). Based on this session, all three trial defense counsel

[3] Appellant personally raises this issue under Grostefon, 12 M.J. 431.

determined that Appellant did not present well and that it would likely not be beneficial for him to testify. (Id.) They advised him against testifying. (*Declaration of Maj Steven Garman*).

The night before trial, trial defense counsel met with Appellant for a short time and maintained their recommendation that he should not testify (*Declaration of Maj Luke Harle; Declaration of Maj Steven Garman*). While Appellant decided not to testify, consistent with the advice of his counsel, he knew testifying was his right and that he could change his mind if he wanted. (Id.)

Appellant's trial defense counsel did not contact Ms. Markie Campbell or Ms. Brittany Benberry. (*Declaration of Maj Luke Harle; Declaration of Maj Amanda Anderson; Declaration of Maj Steven Garman*). Appellant proffered the two women as character witnesses who could testify about his law-abiding character and respect towards women. (*Declaration of Maj Luke Harle* at para. 2). Neither woman knew any of the facts in the case, L.A., or J.A. (Id.) Trial defense counsel weighed the probative value of their proffered testimony against the prejudicial effect of allowing the Government to introduce "highly prejudicial" evidence, including the facts of an inappropriate relationship Appellant had that involved facts similar to the case, in rebuttal and determined their case was stronger without their testimony. (Id.)

Appellant's trial defense counsel requested to interview S.A., the victim's younger sister, but because she was a minor they needed her mother's consent. (Id. at para. 3). S.A.'s mother denied their request. (Id.) Without a pretrial interview, trial defense counsel were not confident that her answers on direct examination would favor their case, especially because her older sister was the victim. (*Declaration of Maj Luke Harle; Declaration of Maj Steven Garman; Declaration of Maj Amanda Anderson*). Trial defense counsel considered the "normal course of

familial relationships and bonding" and presumed her answers would be supportive of her sister and detrimental to their case. (*Declaration of Maj Steven Garman* at para. 3).

Standard of Review

Allegations of ineffective assistance of counsel are reviewed de novo. United States v. Gooch, 69 M.J. 353, 362 (C.A.A.F. 2011) (citation omitted).

Law

The Sixth Amendment guarantees an accused the right to effective assistance of counsel. U.S. CONST. amend. VI; Strickland v. Washington, 466 U.S. 668, 686 (1984). "In order to prevail on a claim of ineffective assistance of counsel (IAC), an appellant must demonstrate both (1) that his counsel's performance was deficient, and (2) that this deficiency resulted in prejudice." United States v. Green, 68 M.J. 360, 361 (C.A.A.F. 2010) (citing Strickland, 466 U.S. at 698). If an appellant has made an "insufficient showing" on one of the elements, this Court need not address the other. Strickland, 466 U.S. at 697.

On appeal, there is a "strong presumption that counsel was competent." United States v. Grigoruk, 56 M.J. 304, 306-307 (C.A.A.F. 2002) (citation and quotation omitted). This Court applies a three-part test to determine whether the presumption has been overcome: (1) are Appellant's allegations true, and if so, is there a "reasonable explanation" for counsel's actions; (2) if the allegations are true, did trial defense counsel's level of advocacy "fall measurably below the performance. . . [ordinarily expected] of fallible lawyers"; and (3) if trial defense counsel were deficient, is there a "reasonable probability that, absent the errors," there would have been a different result. United States v. Gooch, 69 M.J. 353, 362 (C.A.A.F. 2011) (alteration and omission in original) (citation and quotations omitted).

Appellant bears the burden to demonstrate both deficient performance and prejudice. United States v. Datavs, 71 M.J. 420, 424 (C.A.A.F. 2012) (citation omitted). "[C]ourts 'must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance.'" Id. (quoting Strickland, 466 U.S. at 689) (additional citation omitted).

"Scrutiny of counsel's performance should be highly deferential." United States v. Metz, 84 M.J. 421, 428 (C.A.A.F. 2024) (citing Strickland, 466 U.S. at 689). Appellate courts "will not second-guess the strategic or tactical decisions made at trial by defense counsel." United States v. Anderson, 55 M.J. 198, 202 (C.A.A.F. 2001) (citation omitted). Counsel's performance is not deficient "when they make a strategic decision to accept a risk or forego a potential benefit, where it is objectively reasonable to do so." Datavs, 71 M.J. at 424. "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable." United States v. Dewrell, 55 M.J. 131, 133 (C.A.A.F. 2001) (quoting Strickland, 466 U.S. at 690).

"[A] particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Id. (quoting Strickland, 466 U.S. at 691) (alteration in original). The appellant must "overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." United States v. Murphy, 50 M.J. 4, 33 (C.A.A.F. 1998) (quoting Strickland, 466 U.S. at 691). Trial defense counsel are not ineffective for not personally interviewing every potential witness in a case. United States v. Akbar, 74 M.J. 364, 380-381 (C.A.A.F. 2015). Instead, the critical point is "whether counsel made a good faith and substantive effort to identify those individuals who might be most helpful at trial, and to implement means for obtaining

information about and from these potential witnesses, thereby allowing counsel an opportunity to make an informed decision about their value for Appellant's court-martial." Id.

Analysis

1. Appellant's allegation that his trial defense counsel only met with him once, for ten minutes, before advising him against testifying is not true.

All three of Appellant's trial defense counsel decisively contradict Appellant's claim that they met with him only once, for ten minutes, before advising him not to testify. (*Declaration of Maj Luke Harle, Maj Steven Garman, Maj Amanda Anderson*). Maj Harle and Maj Garman not only repeatedly broached the topic of testifying with Appellant several times over their years long representation of him, but all three counsel conducted at least a 90-minute mock direct and cross-examination of Appellant before advising him against testifying. (Id.) They thoroughly explored his potential testimony and found him to be "unsympathetic and shifty" and identified that his answers contradicted the evidence. (Id.) Appellant had at least a week after this 90 minute mock trial to determine whether he wanted to accept that advice. He was advised that it was his right to decide whether to testify. (Id.) The night before trial, the defense team met with Appellant to discuss his decision to testify again, and he chose to accept his counsel's strategic advice. (Id.) Because Appellant's allegation is not true, he has failed to satisfy the first prong of IAC and this Court should deny his requested relief. Strickland, 466 U.S. at 697.

2. Trial defense counsel's decision to not investigate character witnesses was a reasonable and strategic decision.

Appellant is correct that his trial defense counsel did not interview his prior romantic partners – Ms. Markie Campbell and Ms. Brittany Benberry – but in consideration of "all the circumstances, applying a heavy measure of deference to counsel's judgments" this decision was reasonable. Dewrell, 55 M.J.at 133 (quoting Strickland, 466 U.S. at 690).

First, trial defense counsel implemented means to obtain information about potential witnesses by obtaining proffers from Appellant. Akbar, 74 M.J. at 381. Appellant identified these women as character witnesses who did not know the facts of the case or the two main Government witnesses, L.A. and J.A. (*Declaration of Maj Luke Harle; Declaration of Maj Steven Garman; Declaration of Maj Amanda Anderson*). No evidence supports Appellant's post-hoc claim that these were "material witnesses" who would have offered a "direct challenge to the prosecution's theory." (App. Br. at 3a).

After receiving the proffer from Appellant, trial defense counsel made a "good faith and substantive effort to identify those individuals who might be most helpful at trial" by analyzing the effects of introducing the witness' testimony at trial to make an "informed decision" about the value of the testimony. Akbar, 74 M.J. at 381. They recognized that introducing Ms. Campbell or Ms. Benberry's testimony would open the door to highly prejudicial evidence of Appellant's other misconduct in rebuttal that would otherwise be inadmissible. (*Declaration of Maj Luke Harle; Declaration of Maj Steven Garman; Declaration of Maj Amanda Anderson*). Potentially opening the door to highly prejudicial evidence outweighed the "limited probative value" that may have come from two of Appellant's romantic partners who did not know the facts of the case. (Id.)

This thoughtful analysis shows trial defense counsel made "[s]trategic choices" "after thorough investigation of law and facts relevant to plausible options" and so their decision to not interview Ms. Campbell and Ms. Benberry is "virtually unchallengeable." Dewrell, 55 M.J. at 133. The decision was also "objectively reasonable" and so trial defense counsel's performance was not deficient. Datavs, 71 M.J. at 424. Because Appellant has failed to establish that his trial defense counsel's performance was deficient, this Court should deny his requested relief.

3. Trial defense counsel decision to not call the victim's sister as a witness was strategic.

Trial defense counsel were prevented from interviewing the victim's younger sister, S.H., by her mother. (*Declaration of Maj Luke Harle; Maj Steven Garman; Maj Amanda Anderson*). Because of this, they had no way of knowing what she remembered and whether she would present favorably for their case. (Id.) In consideration of their inability to prepare, and the likelihood that S.H. would support her younger sister, trial defense counsel made the strategic decision to forego the speculative benefit of her testimony to avoid the risk of harming Appellant's case. Not only was this decision "objectively reasonable" but it is "virtually unchallengeable" and so trial defense counsel were not ineffective. Datavs, 71 M.J. at 424; Dewrell, 55 M.J. at 133.

4. Appellant has not established a reasonable probability that there would have been a different result.

Even if Appellant established his counsel were deficient, he has not established a "reasonable probability that, absent the errors," there would have been a different result. Gooch, 69 M.J. at 362. First, Appellant does not allege that if he had been advised differently that he would have chosen to testify – let alone that his testimony would have changed the outcome of his case. Given trial defense counsel's analysis that Appellant did not present well in the mock direct and cross-examination and that his testimony contradicted the evidence, the notion that he would have swayed the verdict positively is far from a reasonable possibility.

Second, Appellant has presented no evidence that the testimony of Ms. Campbell or Ms. Benberry would have changed the outcome of his case. His conclusory argument that these witnesses would have "contradicted the government's narrative and provided critical context" is unpersuasive considering trial defense counsel's explanation that these character witnesses did

not know the facts of the case and would have opened the door to highly prejudicial evidence in the possession of the Government.

Finally, Appellant has presented no evidence that S.H.'s testimony would have changed the outcome. It is not reasonable to believe, without evidence, that the younger sister of the victim would have testified adversely to her family and supported Appellant's narrative.

Because Appellant has not established that he was prejudiced by trial defense counsel's decisions, this Court must deny his requested relief.

IV.[4]

APPELLANT'S SENTENCE TO A REPRIMAND, REDUCTION TO THE GRADE OF E-1, AND CONFINEMENT FOR 30 MONTHS FOR TWICE SEXUALLY ABUSING A CHILD IS NOT INAPPROPRIATELY SEVERE.

Standard of Review

This Court reviews issues of sentence appropriateness de novo. United States v. Lane, 64 M.J. 1, 2 (C.A.A.F. 2006). This Court may affirm only as much of the sentence as it finds correct in law and fact and determines should be approved based on the entire record. Article 66(d), UCMJ.

Law

This Court assesses sentence appropriateness by considering the particular appellant, the nature and seriousness of the offense, the appellant's record of service, and all matters contained in the record of trial. United States v. Sauk, 74 M.J. 594, 606 (A.F. Ct. Crim. App. 2015) (citation omitted).

[4] Appellant personally raises this issue under Grostefon, 12 M.J. 431.

Although this Court is empowered to "do justice" with reference to some legal standard, it does not have the authority to "grant mercy." United States v. Guinn, 81 M.J. 195, 203 (C.A.A.F. 2021) (citation omitted). "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." United States v. Joyner, 39 M.J. 965, 966 (A.F.C.M.R. 1994).

Analysis

Appellant's conviction for two specifications of sexually abusing a child resulted in *only* 30 months of confinement, reduction to the grade of E-1, and a reprimand. (*EOJ*). This is not inappropriately severe. Appellant committed a heinous crime by twice sexually abusing a child who trusted him as a father figure. (*EOJ*; R. at 591). Because of his actions, she suffered reoccurring nightmares so terrible that she would force herself to stay awake for days on end. (R. at 567). As a result, she became depressed and suicidal. (Id.) While those in Appellant's life who did not have to suffer his heinous sexual abuse viewed him positively, that does not negate the harm he caused L.A.

Appellant has presented no new facts about his particular circumstances or his record of service that would mitigate his actions. The Government argued Appellant deserved 12 years of confinement and a dishonorable discharge, but Appellant received only 30 months of confinement and no punitive discharge. This drastic disparity reveals that the trial judge considered Appellant's service record, witness' testimony, and any other mitigating evidence in crafting an appropriate sentence.

While Appellant touts 22 years of service, that does not render his sentence inappropriately severe considering his serious crimes. (App. Br. at 6a). Even where a service

member had four overseas deployments that negatively impacted him, this Court found that to be insufficient to render his "significant" sentence to 48 months of confinement and a dishonorable discharge inappropriately severe in consideration of his serious crimes. United States v. Schauer, 83 M.J. 575, 580 (A.F. Ct. Crim. App. 2023). As in Schauer, "Appellant's request is one in the nature of clemency, which [this Court is] barred from granting." Id. Therefore, this Court should deny Appellant's requested relief.

V.[5]

THIS COURT DOES NOT HAVE JURISDICTION TO DECIDE WHETHER THE FIREARM PROHIBITION IN THE GUN CONTROL ACT OF 1968, 18 U.S.C. § 922, IS CONSTITUTIONAL BECAUSE IT IS A COLLATERAL ISSUE NOT SUBJECT TO REVIEW UNDER ARTICLE 66, UCMJ.

Additional Facts

The maximum amount of confinement for Appellant's convictions was 40 years. (R. at 593).

Both the Staff Judge Advocate's first indorsement to the Statement of Trial Results (STR) and Entry of Judgment (EOJ) in Appellant's case contains the following statements: "Firearm Prohibition Triggered Under 18 U.S.C. § 922: Yes." (*STR* and *EOJ*, ROT, Vol. 1.)

Standard of Review

The scope and meaning of Article 66, UCMJ, is a matter of statutory interpretation, which is reviewed de novo. United States v. Lepore, 81 M.J. 759, 760-61 (A.F. Ct. Crim. App. 2021).

[5] Appellant personally raises this issue under Grostefon, 12 M.J. 431.

Law and Analysis

The Courts of Criminal Appeals possess "limited jurisdiction, defined entirely by statute." United States v. Arness, 74 M.J. 441, 442 (C.A.A.F. 2015) (citation omitted).

Appellant acknowledges that the Court of Appeals for the Armed Forces recently rejected the argument that Courts of Criminal Appeals have jurisdiction to address the firearms prohibition notation in the STR under Article 66(d)(1), UCMJ, in United States v. Williams, 82 M.J. 121, 126 (C.A.A.F. 2024). (App. Br. at 7a).

Appellant also acknowledges that the Court of Appeals for the Armed Forces also concluded that neither Article 67(c) nor Article 66(d)(2), UCMJ, could give our superior court or the Courts of Criminal Appeals the authority to modify the §922 indication in the EOJ. United States v. Johnson, __ M.J. __, No. 24-0004/SF, 2025 CAAF LEXIS 499, *13-14 (C.A.A.F. 24 June 2025). (App. Br. at 7a).

Since our superior Court has ruled that this Court neither has jurisdiction to modify the notation on Appellant's STR or EOJ under Article 66, UCMJ, this Court should deny Appellant's claim.

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.

[redacted]

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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and the Air Force Appellate Defense Division on 24 October 2025.

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IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, *Appellee,* v. Master Sergeant (E-7) **KENNETH M. GRIFFIN,** United States Air Force, *Appellant.*	**REPLY BRIEF ON BEHALF OF APPELLANT** Before Panel No. 3 No. ACM 40642 31 October 2025

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

Appellant, Master Sergeant Kenneth M. Griffin, pursuant to Rule 18(d) of this Court's Rules of Practice and Procedure, files this Reply Brief to the Appellee's Answer (Gov. Ans.), dated 24 October 2025. In addition to the arguments in his opening brief, filed on 6 August 2025 (App. Br.), Appellant submits the following arguments.

Background

Appellant and JA met while picking up their children at Davis-Monthan Air Force Base and began spending time together with their families. R. at 97-98. Appellant became close with JA's children, especially LA, who saw him as a father figure and called him her "stepfather." R. at 102, 104, 201-02, 377. After Appellant's deployments and eventual move to Vandenberg Space Force Base, the relationship became strained, and in late 2020, Appellant ended all contact with JA and her family. R. at 210, 212-14. LA felt the loss deeply, and the allegations against Appellant surfaced only after this final break in their relationship. R. at 160-61, 217.

I. The findings of guilt are factually insufficient.

"For factual sufficiency, the test is whether, after weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses, [a Court of Criminal Appeals is] convinced of the [Appellant]'s guilt beyond a reasonable doubt." *United States v.*

Turner, 25 M.J. 324, 324 (C.M.A. 1987). A Court of Criminal Appeals takes "a fresh, impartial look at the evidence, giving no deference to the decision of the trial court" applying "neither a presumption of innocence nor a presumption of guilt" to "make its own independent determination as to whether the evidence constitutes proof of each required element beyond a reasonable doubt." *United States v. Washington*, 57 M.J. 394, 399 (C.A.A.F. 2002).

"When weighing the credibility of a witness, [a Court of Criminal Appeals], like a fact finder at trial, examines whether discrepancies in witness testimony resulted from an innocent mistake, such as a lapse of memory, or a deliberate lie." *United States v. Patrick*, 78 M.J. 687, 715-16 (N-M. Ct. Crim. App. 2018) (quoting *United States v. Berger*, No. 201500024, 2016 CCA LEXIS 322, at *36 (N-M. Ct. Crim. App. May 26, 2016), *rev'd on other grounds*, 76 M.J. 128 (C.A.A.F. 2017)).

Here, the record is devoid of physical evidence, reliable corroboration, or any confession—leaving the Government's case to rise and fall on a single witness whose reliability is deeply compromised. Despite the Government's assertions, Gov. Ans. at 15-18, this is not a situation where minor inconsistencies can be dismissed as the natural frailties of memory. Rather, the record is replete with irreconcilable contradictions, shifting narratives, and clear evidence of motive to fabricate, all of which undermine the standard of proof required for a conviction. *See, e.g., United States v. Clark*, 75 M.J. 298 (C.A.A.F. 2016) (holding that the CCA properly exercised its Article 66(c) factual-sufficiency authority where it set aside the findings and sentence based on credibility and weight of the evidence, noting that the Government's case relied almost entirely on the alleged victim's delayed and partial memories); *United States v. Wilson*, No. NMCCA 201800022, 2019 CCA LEXIS 276, at (N-M. Ct. Crim. App. July 1, 2019) (concluding the evidence was factually insufficient where the Government presented no physical evidence or corroborating eyewitnesses

and, until the alleged victim's late disclosure, no one observed any signs of abuse, leaving a fair and rational hypothesis other than guilt.)

It is well established that child witnesses may struggle to recall details, especially in cases involving trauma. *See United States v. Cano*, 61 M.J. 74, 77 (C.A.A.F. 2005). However, the inconsistencies in LA's account go far beyond minor lapses in memory. They concern the core facts of the alleged offense—when it occurred, how frequently, and under what circumstances. The Government attempts to excuse these contradictions by pointing to LA's age and trauma, yet selectively relies on her memory when it supports the Government's theory. Gov. Ans. at 11-18, 20. This approach is fundamentally flawed; it is not reasonable to dismiss inconsistencies as the product of trauma only when they undermine the Government's case, while accepting LA's recollections as reliable when they favor conviction. Such selective reasoning does not provide a sound basis for evaluating the sufficiency of the evidence or the credibility of the witness.

Specification 2 – 2019 Incident

At trial, LA claimed she was sexually assaulted once—just a single incident on her sister's bed. R. at 179, 184. In her previous law enforcement interview, she alleged weekly assaults over two months. R. at 179-80. The difference between one event and as many as eight is not a minor inconsistency—it is a glaring inconsistency that cannot be explained away by appeals to childhood memory or trauma. It goes directly to the reliability of LA's account and the sufficiency of the evidence.

When LA cannot remember whether the alleged assault happened in May, June, or July, or whether it happened once or weekly for two months, these are not peripheral details—they are the very facts that determine whether a crime occurred at all. The Government tries to stretch the timeline, suggesting that LA's general recollection of the timeframe is more reliable than her

specific memory of the month. *See* Gov. Ans. at 14-16. Yet, if the assault happened in May, the bed was present, but LA's testimony about June or July is demonstrably incorrect. If it happened in June or July, the bed was gone, making the alleged location impossible. The Government cannot reconcile these facts; its reliance on opportunity and peripheral corroboration is misplaced.

The material inconsistencies in LA's account—regarding timing, frequency, and location—create reasonable doubt that cannot be brushed aside by appeals to childhood memory or trauma. The record shows that LA's recollection of the most critical facts is not just imperfect, but fundamentally inconsistent in ways that go directly to whether a crime occurred at all.

Specification 4 – 2020 Incident

In the 2020 incident, LA's account of how she ended up alone with Appellant and who closed the door was anything but consistent. At various points, she stated her sister and KG closed the door, later conceded she did not know, and elsewhere suggested the door shut on its own. App. Br. at 8-9. The sequence of events and the mechanism by which LA and Appellant were left alone in the room are critical to the Government's theory, yet LA's narrative on these points shifted repeatedly under scrutiny. These are not minor inconsistencies—they are central to understanding whether the alleged abuse could have occurred as described.

This pattern of changing explanations is especially concerning, given the context: the Government's own video evidence from the temporary lodging facility (TLF) shows only the children in the room, with Appellant absent from the footage. R. at 366-67; Pros. Ex. 15. No other witness corroborated LA's version of events, and KG specifically denied closing the door or seeing her father alone with LA in the bedroom. R. at 353. The absence of a clear, consistent account of how LA and Appellant were left alone—combined with objective evidence contradicting her story—undermines the reliability of her testimony on the most fundamental facts of the alleged

incident. The Government's attempt to minimize these discrepancies as inconsequential, Gov. Ans. at 10-16, ignores their direct bearing on whether the charged conduct could have occurred at all.

Multiple inconsistencies in contextual details—such as who closed the door, who was present in the room, or what was said during the alleged incident—are not trivial. Rather, they are indicative of a witness whose memory is unreliable and whose narrative shifts in response to questioning and external pressures. The record is replete with examples of LA changing her account on key facts. App. Br. at 14-19. These discrepancies, when considered together, undermine the reliability of her entire testimony.

LA had a motive to fabricate her allegations.

The motive to fabricate in this case centers on the breakdown of the relationship between LA's mother, JA, and Appellant. After Appellant ended contact with JA and her family, LA learned that Appellant had started a new relationship and was engaged to someone else. R. at 217, 249, 319, 321-22. This led to emotional fallout within the family, including LA removing Appellant from her social media and JA openly discussing the situation with. R. at 217-18, 249, 319, 321-22. The timing is critical: LA's initial disclosures about the alleged abuse occurred after these events, at a point when she had a clear reason to be angry or hurt by Appellant's actions and the family's changed circumstances. App. Br. at 5.

The Government's answer tries to sidestep the motive to fabricate by obfuscating the timing of LA's disclosures and the context in which they were made, insisting that her prior consistent statements were admissible because they supposedly predated any motive to fabricate. Gov. Ans. at 19-20. Implying her initial outcry was pure and unaffected by the family turmoil. Gov. Ans. at 11, 33.

However, the disclosures occurred after LA learned of Appellant's new relationship and after significant family upheaval, which is precisely when a motive to fabricate would have been strongest. The Government's attempt to sidestep this issue by focusing on peripheral facts does not resolve the core problem: the motive to fabricate was present before LA's statements to AH and HC, making their admission as prior consistent statements improper under Mil. R. Evid. 801(d)(1)(B)(i). App. Br. at 14, 21-23.

LA had a character for manipulativeness, attention-seeking, untruthfulness, and exaggeration.

Multiple witnesses testified that LA exhibited patterns of manipulativeness, attention-seeking, untruthfulness, and exaggeration. R. at 379-80, 393, 399-400. These assessments were not fleeting impressions or the result of isolated encounters; they came from individuals who interacted with LA over extended periods and observed her conduct in various settings. *Id.* Their testimony was grounded in direct experience, not mere rumor or adolescent rivalry. *Id.*

By dismissing these witnesses solely on the basis of their age and prior friendship, *see* Gov. Ans. at 14-16, the Government implicitly calls into question the reliability of LA herself, who was also a teenager at the time of the alleged events and when she testified. If the opinions of two teenage girls are to be disregarded, it follows that LA's testimony—offered from the same vantage point—should be subject to the same skepticism. The Government cannot have it both ways: relying on LA's account to secure a conviction while simultaneously discounting the testimony of other young witnesses who challenge her credibility.

Conclusion

While the Government attempts to minimize each inconsistency as a minor lapse, the cumulative effect is a pattern of unreliability that cannot be ignored. Individually, each inconsistency might be dismissed as a minor detail. However, when considered together—

alongside other shifting elements of LA's testimony—such as who was present, what was said, and how the alleged incident unfolded—they form a pattern that undermines the reliability of her entire account. The Government's answer attempts to piece together consistency from isolated fragments of LA's testimony, but the overall narrative remains riddled with contradictions.

Ultimately, the Government's case is built on the word of a single witness whose credibility is deeply compromised. There is no physical evidence, no reliable corroboration, and no confession. The shifting, contradictory, and self-serving nature of LA's testimony—combined with her motive to fabricate and character for untruthfulness—renders the charges factually insufficient.

This Court should set aside the convictions for Specifications 2 and 4.

II. The military judge abused his discretion in admitting prior consistent statements under Mil. R. Evid. 801(d)(1)(B)(i), which prejudiced Appellant.

Mil. R. Evid. 801(d)(1)(B)(i) only permits the admission of a prior consistent statement if it was made *before* the alleged motive to fabricate or improper motive arose. *United States v. Ayala*, 81 M.J. 25, 28-29 (C.A.A.F. 2021), holds that "[a] key question in considering admission under (B)(i) is whether the prior statements came before or after the alleged motive to fabricate . . . If the statement occurred after the motive arose, then the declarant's consistency signifies nothing." This makes sense, as it prevents the parties from rehabilitating a witness whose credibility is challenged by showing consistency only after the witness had a reason to lie.

The sequence of events leading up to LA's allegations cannot be dismissed as a mere coincidence. The defense theory, supported by the evidence, is that LA's motive to fabricate developed around November 2020. App. Br. at 10-12. The record shows that LA's own testimony placed her disclosure to AH in February 2021, R. at 395—well after the motive to fabricate had arisen.

Her disclosures emerged only after Appellant abruptly severed ties with her mother, cut off contact with the family, and began a new relationship. *See* R. at 217, 249, 319, 321-22. This was a period marked by emotional upheaval: LA's mother learned of Appellant's alleged infidelity and subsequent engagement and shared this with LA, who responded by removing Appellant from her social media. *Id*. The family was in turmoil, but notably, LA's biological parents reconciled only after the allegations surfaced. R. at 275. These circumstances are not peripheral—they go directly to the heart of LA's potential motive to fabricate, whether out of a desire to restore her family or as a reaction to Appellant's perceived abandonment. The convergence of family breakdown, emotional distress, and the emergence of allegations against Appellant is simply too significant to ignore or explain away as happenstance; they all bear on LA's motive to fabricate.

LA's statements to AH

The Government and the military judge failed to offer a sufficient explanation for why AH's broad, non-specific timeline was favored over LA's detailed account. The record shows that LA was firm about when she disclosed the alleged abuse to AH, placing it in February 2021, R. at 479, around the same time as her other disclosures, R. at 470. AH, on the other hand, struggled to recall the timing, ultimately providing only a general sense that the conversation occurred before August 2020, but without any firm memory of the timeline. R. at 393-94, 398. The Government's answer attempts to justify this preference by suggesting that AH's thoughtful review of life events lends credibility to her timeline, Gov. Ans. at 19-20, yet this rationale is unconvincing.

If, as the Government argues, memory gaps are to be expected from child witnesses due to trauma or the passage of time, then those same gaps should apply doubly to AH, who was not the one making the disclosure and who, in the Government's words, "brushed [LA] aside," Gov. Ans. at 19, during the conversation. This approach creates a false dichotomy: when LA's memory is

specific and conflicts with the Government's narrative, it is dismissed as unreliable, but when her memory is vague or aligns with the Government's theory, it is accepted without question.

The Government's explanation is not reasonable—it is opportunistic, patching holes in the Government's case rather than promoting truth-seeking. The obvious reason for favoring AH's vague account is that LA's specific timeline would undermine the Government's theory of the case, while the vagueness somehow serves to rehabilitate LA's credibility when it is otherwise in doubt.

LA's statements to HC

The same defect applies to LA's statements to HC. The only established fact is that the disclosure occurred in February 2021 and prior to law enforcement involvement, R. at 401, 413, but this does not establish that it predated the motive to fabricate, which arose in November of 2020. The Government's answer suggests that the judge "must have found a precise motive to fabricate or improper influence arose on 1 March 2021," Gov. Ans. at 31, but this is speculation unsupported by the record, which shows family rupture in November 2020.

The Government's attempt to create a second motive to fabricate, which arose on 1 March 2021, and isolate LA's disclosure to this new motive, Gov. Ans. at 30, should be seen as unpersuasive. *Ayala* is unequivocal: the burden is on the proponent to show that the statement predates the motive. In this case, the motive to fabricate started in November 2020 and continued throughout LA's disclosure to HC.

In sum, the military judge abused his discretion by admitting LA's prior consistent statements under Mil. R. Evid. 801(d)(1)(B)(i) without a clear showing that they were made before the motive to fabricate arose. This error is not cured by speculation or by the Government's attempt

to redefine the timeline. *Ayala* requires strict adherence to the rule, and the record here does not support the admission of these statements.

The admission of the Mil. R. Evid. 801(d)(1)(B)(i) statements were prejudicial to Appellant

The military judge's admission of LA's prior consistent statements under Mil. R. Evid. 801(d)(1)(B)(i) was not only erroneous but also prejudicial. In a case where the Government's evidence was limited almost entirely to LA's testimony, the credibility of the sole witness was determinative. By admitting prior consistent statements that did not meet the requirements of Mil. R. Evid. 801(d)(1)(B)(i), the military judge allowed the Government to bolster LA's credibility in a manner that the law expressly forbids.

"In conducting the prejudice analysis, this Court weighs: (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." *Ayala*, 81 M.J. at 29 (internal quotation marks omitted) (citing *United States v. Frost*, 79 M.J. 104, 111 (C.A.A.F. 2019)).

First, the strength of the Government's case was weak. The Government relied almost exclusively on the testimony of LA, whose credibility was repeatedly called into question due to significant inconsistencies in her accounts, a lack of physical evidence, and the absence of reliable corroboration. The record demonstrates that LA's narrative shifted across interviews and trial testimony, with irreconcilable conflicts regarding the timing, frequency, and circumstances of the alleged incidents. "[T]he credibility of the complaining witness is of central importance." *United States v. Warda*, 84 M.J. 83, 94 (C.A.A.F. 2023) (citation omitted); *see also United States v. Jasper*, 72 M.J. 276, 281 (C.A.A.F. 2013) (where the Government's proof rested principally on the complainant's testimony and the defense contended she had fabricated aspects of her allegations, the complainant's credibility was a matter "of paramount importance"). The Government's case,

therefore, rose and fell on whether the factfinder believed LA, and her credibility was far from robust.

Second, the defense case was strong. Multiple witnesses described LA as untruthful, prone to exaggeration, and manipulative. R. at 379-80, 393, 399-400. The defense also established a clear motive for LA to fabricate her allegations, tied to the breakdown of her relationship with Appellant and her mother, and the resulting family upheaval. App. Br. at 14, 21-23. Importantly, the defense highlighted numerous inconsistencies in LA's accounts. App. Br. at 16-18. Her statements about when, how often, and under what circumstances the alleged incidents occurred shifted repeatedly across interviews and at trial. *Id.* These contradictions, combined with the timing of the allegations surfacing only after Appellant ended contact with the family, should have given the factfinder compelling reasons to doubt LA's credibility and reinforced the defense's theory of fabrication

Third, the materiality of the evidence was lacking. The only evidence offered to reinforce LA's account was her prior consistent statements to AH and HC. App. Br. at 10-11. However, these statements were vague and failed to clearly reference any specific charged conduct. Their lack of specificity rendered them incapable of meaningfully corroborating LA's shifting narrative or rebutting the defense's theory of fabrication, which was rooted in the breakdown of LA's relationship with Appellant and her mother. In a case where the factfinder's decision turned on LA's truthfulness, the admitted statements did not resolve the central factual dispute and instead unfairly bolstered a weak case.

The quality of the evidence was equally deficient. The record demonstrates substantial uncertainty regarding when LA made these disclosures. App. Br. at 9-12, 21. AH could not recall the exact date, and LA herself placed her disclosure to AH in February 2021, R. at 10—after the motive to fabricate had already arisen, following the end of Appellant's relationship with LA's

mother and the revelation of his new engagement. The Government failed to meet its burden to show that the statements predated the motive, as required by *Ayala*. When a prior consistent statement is made after the motive to fabricate arises, it does not rehabilitate the witness's credibility; rather, its timing undermines the reliability of the evidence, suggesting that LA's statements could have been influenced by the same motive the defense alleged.

Taken together, these factors demonstrate that the admission of these statements was not a harmless error. Instead, it permitted the Government to improperly bolster a witness whose credibility was already in serious doubt, masking the weaknesses in its case. In a trial where the outcome depended on the factfinder's assessment of LA's veracity, admitting vague, non-specific statements from after the motive to fabricate arose was prejudicial. This error undermined the fairness of the proceedings and eroded confidence in the verdict, warranting reversal of the findings and sentence.

This Court should set aside the findings and the sentence.

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 31 October 2025.

Respectfully submitted,

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UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40642**
Appellee	)	
	)	
v.	)	
	)	**NOTICE OF PANEL**
Kenneth M. GRIFFIN	)	**CHANGE**
Master Sergeant (E-7)	)	
U.S. Air Force	)	
Appellant	)	

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 3 and referred to Panel 2 for appellate review.

This panel letter supersedes all previous panel assignments.

[redacted]

JACOB B. HOEFERKAMP, Capt, USAF
Chief Commissioner

UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS

UNITED STATES	)	**No. ACM 40642**
Appellee	)	
	)	
v.	)	
	)	**NOTICE OF**
Kenneth M. GRIFFIN	)	**PANEL CHANGE**
Master Sergeant (E-7)	)	
U.S. Air Force	)	
Appellant	)	

It is by the court on this 14th day of January, 2026,

ORDERED:

The record of trial in the above-styled matter is withdrawn from Panel 2 and referred to a Special Panel for appellate review.

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

DOUGLAS, KRISTINE M., Colonel, Senior Appellate Military Judge
MASON, BRIAN C., Lieutenant Colonel, Appellate Military Judge
KUBLER, JOSEPH J., Colonel, Appellate Military Judge

This panel letter supersedes all previous panel assignments.

FOR THE COURT

[redacted]

TANICA S. BAGMON
Appellate Court Paralegal