

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

No. ACM 40439 (rem)

UNITED STATES
Appellee

v.

William C.S. HENNESSY
Airman First Class (E-3), U.S. Air Force, *Appellant*

On Remand from
the United States Court of Appeals for the Armed Forces

Decided 25 August 2026

Military Judge: Sterling C. Pendleton.

Sentence: Sentence adjudged 9 February 2022 by GCM convened at Spangdahlem Air Base, Germany. Sentence entered by military judge on 4 March 2022: Dishonorable discharge, confinement for 34 months, forfeiture of all pay and allowances, reduction to E-1, and a reprimand.

For Appellant: Major Heather M. Bruha, USAF; Captain Joshua L. Lopes, USAF.

For Appellee: Major Kate E. Lee, USAF; Mary Ellen Payne, Esquire.

Before MORGAN, GRUEN, and KUBLER, *Appellate Military Judges*.

Judge KUBLER delivered the opinion of the court, in which Chief Judge MORGAN and Senior Judge GRUEN joined.

**This is an unpublished opinion and, as such, does not serve as
precedent under AFCCA Rule of Practice and Procedure 30.3.**

KUBLER, Judge:

Appellant's case is before this court for a third time. For this third review, the specification at issue remains whether Appellant, "did, at or near

Spangdahlem Air Base, Germany, on or about 8 June 2019, commit a sexual act upon [KE] by penetrating her vulva with his penis, without her consent,” in violation of Article 120(b)(2)(A), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920(b)(2)(A).^{1,2} The question of Appellant’s criminality rests on whether KE consented to the sexual act or whether Appellant had a reasonable mistake of fact as to consent. The United States Court of Appeals for the Armed Forces (CAAF) remanded Appellant’s case for a new factual sufficiency review that applies the three legal principles identified in *United States v. Moore*, 86 M.J. 308 (C.A.A.F. 2026). See *United States v. Hennessy*, 86 M.J. 315, 319 (C.A.A.F. 2026). We review consent and mistake of fact as to consent with the three legal principles identified by the CAAF. The issue before us is best understood after an outline of the procedural history related to our review of this specification of sexual assault without consent against KE.

I. PROCEDURAL BACKGROUND

A. First Opinion (Pre-*Mendoza*³)

In its 20 August 2024 opinion, this court found the conviction for sexual assault both legally and factually sufficient. *United States v. Hennessey*, No. ACM 40439, 2024 CCA LEXIS 343, at *20 (A.F. Ct. Crim. App. 20 Aug. 2024) (unpub. op.). In its analysis, this court said that “[t]he evidence presented supports Appellant’s conviction for sexual assault without consent.” *Id.* at *19. In unequivocal language, the court wrote that the “evidence proved that KE did not consent to sex with Appellant and disproved that Appellant had a reasonable mistake of fact as to consent.” *Id.* at *20. The opinion roundly dismissed the claim “that Appellant was convicted of a theory of criminal liability not squarely and appropriately before the members.” *Id.* at *19. The court reasoned, “Review of the record demonstrates that the military judge, all counsel, and the members were aware that the criminal theory at issue (in fact, the central issue) in this trial was whether Appellant committed the conduct without KE’s consent.” *Id.* After focusing on the issue of consent and whether the correct

¹ Unless otherwise noted, all references in this opinion to the UCMJ and the Rules for Courts-Martial are to the *Manual for Courts-Martial, United States* (2019 ed.).

² A general court-martial found Appellant guilty of several offenses in addition to the one specification at issue of sexual assault without consent in violation of Article 120(b)(2)(A), UCMJ. For discussion of the other offenses and their related procedural history see *United States v. Hennessey*, No. ACM 40439, 2024 CCA LEXIS 503 (A.F. Ct. Crim. App. 25 Nov. 2024) (unpub. op.) (this court’s first opinion), and *United States v. Hennessey*, No. ACM 40439, 2024 CCA LEXIS 343 (A.F. Ct. Crim. App. 20 Aug. 2024) (unpub. op.) (this court’s opinion after granting reconsideration *sua sponte*).

³ *United States v. Mendoza*, 85 M.J. 213 (C.A.A.F. 2024).

theory of proof was charged, the court concluded, “after weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses, we are convinced of the Appellant’s guilt beyond a reasonable doubt.” *Id.* at *20.

Appellant moved this court to reconsider its 20 August 2024 decision, which the Government opposed, and this court denied on 30 September 2024.

B. The Impact of *Mendoza*

This court revisited its conclusion after the CAAF issued its opinion in *United States v. Mendoza*, 85 M.J. 213 (C.A.A.F. 2024), on 7 October 2024.

The CAAF’s holding in *Mendoza* appeared to create two mutually exclusive theories for non-consent: (1) an individual who does not consent when “capable of consenting” and (2) an individual who is “incapable of consenting.” 85 M.J. at 220.

Specifically, the CAAF stated:

[W]e hold that subsection (b)(2)(A) and subsection (b)(3)(A) [of Article 120, UCMJ,] establish separate theories of liability. Subsection (b)(2)(A) criminalizes the performance of a sexual act upon a victim who is capable of consenting but does not consent. Subsection (b)(3)(A) criminalizes the performance of a sexual act upon a victim who is incapable of consenting to the sexual act due to impairment by any drug, intoxicant, or other similar substance when the victim’s condition is known or reasonably should be known by the accused.

Id.

The CAAF interpreted the statute at issue and, as they clarified in subsequent cases, did not create separate exclusive theories of non-consent. The operative language in *Mendoza* explained that the CAAF’s statutory interpretation “does not bar the trier of fact from considering evidence of the victim’s intoxication when determining whether the victim consented.” *Id.* at 222 (citing Article 120(g)(7)(C), UCMJ, 10 U.S.C. § 920(g)(7)(c) (“All the surrounding circumstances are to be considered in determining whether a person gave consent.”)). The CAAF explained what would violate its interpretation of the statute by stating, “[W]hat the Government cannot do is prove the absence of consent under Article 120(b)(2)(A), UCMJ, by *merely* establishing that the victim was too intoxicated to consent.” *Id.* (emphasis added). The CAAF further clarified its *Mendoza* holding in *Moore*. There, in *Moore*, the CAAF repeated its holding in *Mendoza* by again stating that “[t]he Government cannot . . . prove the absence of consent under Article 120(b)(2)(A), UCMJ, by *merely* establishing that the victim’ was incapable of consenting at the time of the sexual act.”

Moore, 86 M.J. at 312 (omission in original) (citing *Mendoza*, 85 M.J. at 222). *Moore* further elucidated the *Mendoza* holding by articulating three legal principles to consider, which we will discuss further below. *See id.*

C. Second Opinion (Post-*Mendoza*)

Two days after the CAAF issued its *Mendoza* decision we *sua sponte* reconsidered our denial of Appellant’s Motion for Reconsideration, granted Appellant’s motion, and vacated our original opinion in this case. *See United States v. Hennessy*, No. ACM 40439, 2024 CCA LEXIS 494 (A.F. Ct. Crim. App. 9 Oct. 2024) (order).

In our 25 November 2024 opinion, this court, “[u]pon reconsideration and in light of *Mendoza*, [found] Appellant’s conviction for sexual assault of KE (Specification 2 of the Charge) factually insufficient.” *United States v. Hennessy*, No. ACM 40439, 2024 CCA LEXIS 503, at *3 (A.F. Ct. Crim App. 25 Nov. 2024) (unpub. op.). This court found the sexual assault factually insufficient “viewing the evidence through the lens of *Mendoza* . . .” *Id.* at *21. The pivotal difference in the analysis between this court’s August 2024 and November 2024 opinions was our application of the CAAF’s language that, in this case, KE was “capable of consenting” contemporaneously with KE’s non-consent to the sexual act.⁴ The November 2024 opinion explained “the evidence leaves significant questions unanswered related to whether KE was capable of consenting.” *Id.* This court *never* stated that we were not convinced beyond a reasonable doubt that KE did not consent.⁵ Rather, looking at the time-period

⁴ This was referred to as a snapshot analysis during oral argument in *Moore* where counsel for the Government alleged that the Courts of Criminal Appeals (CCA’s) analyzed consent by looking for non-consent, capacity to consent, and the sexual act, all to align at a specific moment in time rather than viewing all of the circumstances over a wider period relevant to the allegation. *Moore Oral Argument* (No. 25-0110), at 05:52, <https://www.armfor.uscourts.gov/newcaaf/CourtAudio13/20251021A.mp3>. Though we do not view that position as accurate for every case addressing sexual assault post-*Mendoza*, it provides a useful framework for analysis in *Mendoza*’s wake.

⁵ The CAAF correctly quoted a portion of the background section of our November 2024 opinion stating, the AFCCA concluded: “In the absence of evidence related to that time period, we are not convinced beyond a reasonable doubt that [KE] was, at the time of the sexual act, capable of consenting, but did not consent.” *Hennessy*, 86 M.J. at 318 (quoting *Hennessy*, 2024 CCA LEXIS 503, at *22). However, the CAAF did not include a critical portion of our findings. CAAF misconstrued our opinion by finding, “*The AFCCA accordingly was not convinced beyond a reasonable doubt that K.E. had not given her consent.*” *Id.* at 318 (emphasis added). We highlight this incongruity to make clear we do not find that characterization of our findings during our factual sufficiency review binding on us under a theory of law of the case. *See United States v. Parker*, 62 M.J. 459, 464–65 (C.A.A.F. 2006) (explaining generally the law of the case doctrine).

where KE had no memory and sexual contact began, the court concluded “[i]n the absence of evidence related to that time period, we are not convinced beyond a reasonable doubt that KE was, *at the time of the sexual act, capable of consenting but did not consent.*” *Id.* at *22. (emphasis added). We therefore set aside the finding of guilty to Specification 2 of the Charge and dismissed it with prejudice.

Major General Rebecca R. Vernon, Performing The Duties of The Judge Advocate General, certified the following question to the CAAF: “Whether the Air Force Court of Criminal Appeals erred in applying *United States v. Mendoza*[, 85 M.J. at 220,] to find Appellee’s sexual assault conviction factually insufficient.” *United States v. Hennessy*, 86 M.J. 316–17 (C.A.A.F. 2026). The CAAF answered in the affirmative, and remanded “for a new factual sufficiency review consistent with [its *Hennessy*] opinion.” *Id.*

II. DISCUSSION

A. Factual Background

We explained the facts underlying Appellant’s conviction of sexual assault of KE in our previous opinions and we repeat the pertinent facts here.

KE testified she met Appellant online, and about a week after their initial online interaction, they made plans to meet in person. Appellant invited KE to his dorm room and KE agreed to meet him there. Around 1500 to 1600 on 8 June 2019, KE went to Appellant’s dorm room. They both sat on Appellant’s couch and watched a show. Appellant inched closer to KE and reached to hold her hand. “I felt,” KE testified, “like he was moving too fast.” When Appellant leaned in as if to kiss her, KE pulled away. A few minutes later, Appellant again leaned in as if to kiss her. This time, he used one hand to grab her face and kissed her on the lips. KE again pulled away and Appellant said, “I’m sorry. I know I’m super affectionate.” After the kiss, KE stayed in Appellant’s dorm room for a little under a half hour before she left.

When KE was back in her room, Appellant sent her a message that said, “Hey, I’m sorry if I was moving too fast. I’d like it if we could start over and meet up later tonight for the concert.” Feeling better after Appellant’s apology, KE went to a concert at the club on base that night with Appellant. They had talked about the concert earlier because KE wanted to go and her friends were not available to accompany her. KE arrived at the concert and saw Appellant sitting with his friends. She approached them, sat down, and watched the concert. Towards the end of the evening, while they were still at the club, Appellant asked KE, “So my room or yours?” KE responded, “You go to yours and I’ll go to mine.” Appellant responded, “Okay.”

During the evening, and still at the club, KE received a call from her brother. While KE was on the call, Appellant approached her and started rubbing her back. KE nudged him off. Appellant stopped and KE continued her conversation with her brother.

At the end of the evening, KE was feeling “buzzed or drunk.” She described her experience with alcohol prior to arriving at her new assignment location as “none.” That night, KE drank multiple alcoholic drinks. Appellant offered to give KE a “piggyback ride.” KE, tired and “most likely drunk,” agreed. “I woke up,” KE said, “and we were in his room and he’s having, like, sex with me, but I just opened my eyes and it’s going on.” KE did not know how they got to that point, and she “decided to fake sleep to get him to stop.” She closed her eyes and turned her head to the right to face the wall. Appellant called her name and said, “Oh, no.” He shook her shoulder to get her to wake up or open her eyes. Appellant then stopped penetrating KE, got up, and walked away. After Appellant stepped out, KE got up and started gathering her belongings. She told Appellant that she needed to go and that her friend needed her. Appellant responded by asking KE to stay. He offered KE the option of staying on the bed and offered that he would sleep on the couch. KE declined saying that her friend really needed her. When she was dressed and had her belongings, KE left. She proceeded down to the ground level of the dorm building and ran to her dorm room.

Upon arrival at her room, KE cried and unsuccessfully tried to reach out to one of her friends, SL. However, she was able to reach another friend, KB. She met KB outside the dorm building and told him what happened to her. Not long after meeting with KB, KE was able to contact SL. Within about 15 minutes of the phone call, SL met KE outside KE’s dorm room. The two of them proceeded up to KE’s room. KE was crying and wanted a female to help her.

The same evening, KE reported to the Sexual Assault Response Coordinator (SARC) what had happened. The SARC told KE about the possibility of completing a sexual assault kit. KE agreed to have a forensic medical examination. During this examination, DNA samples were collected. At trial, an “expert in the field of DNA analysis” testified that the DNA collected from KE’s cervical swab was 1 quintillion—1,000,000,000,000,000—times more likely if it originated from a DNA mixture that included Appellant’s DNA than if it originated from KE and an unknown individual. The expert opined that the DNA found on the swab was Appellant’s.

B. Law and Analysis

We review issues of factual sufficiency de novo. *United States v. Washington*, 57 M.J.394, 399 (C.A.A.F. 2002) (citation omitted).

“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. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000) (quoting *United States v. Turner*, 25 M.J. 324, 325 (C.M.A. 1987)). “We take ‘a fresh, impartial look at the evidence,’ applying ‘neither a presumption of innocence nor a presumption of guilt’ to ‘make [our] 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) (alteration in original) (quoting *Washington*, 57 M.J. at 399).

Article 120(b)(2)(A), UCMJ, establishes the offense of sexual assault without consent. This article provides: “Any person subject to this chapter who— . . . (2) commits a sexual act upon another person—(A) without the consent of the other person . . . is guilty of sexual assault and shall be punished as a court-martial may direct.” Based on this language, the [G]overnment must prove two elements beyond a reasonable doubt: “(i) That the accused committed a sexual act upon another person; and (ii) That the accused did so without the consent of the other person.”

Hennessy, 86 M.J. at 318 (omissions in original) (citations omitted).

The CAAF identified three legal principles to clarify its opinion in *Mendoza* and “resolve disputes about the legal and factual sufficiency of evidence to prove the ‘without . . . consent’ element.” *Id.* (omission in original) (citing *Moore*, 86 M.J. at 312).

The CAAF found we erred when we “did not consider all applicable legal principles, [and remanded] for a new factual sufficiency review consistent with [its *Hennessy*] opinion.” *Id.* at 317.

The question of Appellant’s criminality rests with whether KE consented to the sexual act or whether Appellant had a reasonable mistake of fact as to consent. We review consent through the three legal principles identified by the CAAF in *Moore*.

1. The First Legal Principle

In *Hennessy*, the CAAF explained the first legal principle, from its holding in *Mendoza*, as follows: “that ‘[t]he Government cannot . . . prove the absence of consent under Article 120(b)(2)(A), UCMJ, by *merely* establishing that the victim’ was incapable of consenting at the time of the sexual act.” *Id.* at 318 (omission in original) (quoting *Mendoza*, 85 M.J. at 222).

Applying the first legal principle, the lack of consent was not established *merely* through evidence of incapacity. Rather, the Government established

that on the day in question KE consistently rebuffed Appellant's advances, and that when KE "woke up while the sexual act was occurring . . . she undertook efforts 'to get [Appellant] to stop' the sexual act," then KE immediately reported being sexually assaulted and subjected herself to an invasive Sexual Assault Forensic Examination. See *Hennessy*, 86 M.J. at 319. Rather than merely establishing a lack of consent attributable to her incapacity, the Government presented evidence before, during, and after the sexual act that was consistent with KE not consenting to sexual intercourse with Appellant. The Government did not prove the absence of consent by merely establishing the victim was incapable of consenting, which is in accord with the first legal principle.

2. The Second Legal Principle

The CAAF, in its holding in *Moore*, identified a second legal principle.

If a rational trier of fact could find from the evidence *both* that the victim did not consent before falling asleep *and* that the sexual act subsequently occurred while the victim was asleep, the evidence is legally sufficient to prove the "without . . . consent" element of Article 120(b)(2)(A), UCMJ.

Id. (omission in original) (quoting *Moore*, 86 M.J. at 313). "But even though the evidence may be legally sufficient, a [court of criminal appeals (CCA)] could still find the evidence to be factually insufficient." *Id.* (citing *Moore*, 86 M.J. at 313).

In *Moore*, the CAAF added:

[T]his second legal principle logically flows from the definition of consent found in Article 120(g)(7)(B), UCMJ, which states: "A sleeping, unconscious, or incompetent person cannot consent." Put simply, if a victim did not consent to a sexual act before falling asleep, and the victim later could not consent to a sexual act while asleep, then a sexual act occurring while the victim is asleep is "without . . . consent."

86 M.J. at 313 (omission in original) (footnote and emphasis omitted).

Applying the second legal principle identified in *Moore*, and restated by the CAAF in *Hennessy*, we find KE did not consent to Appellant's sexual act. "KE repeatedly rebuffed Appellant's physical advances from the first time they met each other in person. KE rebuffed Appellant when he asked, "So my room or yours?" KE responded, "You go to yours and I'll go to mine." Prior to KE's loss of memory as to the facts leading up to Appellant sexually penetrating her, KE did not consent to any intimate contact between her and Appellant, so there is no reason to believe Appellant thought the victim consented to being

penetrated when she was sleeping or passed out. The evidence presented on the events before, during, and after the sexual act convince us beyond a reasonable doubt that at no time since KE met Appellant did she consent to having sex with Appellant. It appears our superior court misconstrued our opinion to say the opposite and therefore did not ask us to analyze the second principle. Applying the second principle we are convinced beyond a reasonable doubt that KE did not consent and then lost capacity to consent. Under the second principle the Government established KE did not consent.

3. The Third Legal Principle

The CAAF articulated a third legal principle as follows:

The third legal principle identified in *Moore* [is derived from its] holding in *United States v. Casillas*, 86 M.J. 94 (C.A.A.F. 2025). In *Casillas*, the Court held that evidence may be legally sufficient to prove the “without . . . consent” element if the evidence shows that the victim was asleep when the sexual act began but awoke before the sexual act was complete and, while awake, did not consent to the ongoing sexual act. 86 M.J. at 102. But again, even though the evidence may be legally sufficient, a CCA could still find the evidence to be factually insufficient.

Hennessy, 86 M.J. at 318–19 (omission in original) (first citing *Moore*, 86 M.J. at 314; then citing *Casillas*, 86 M.J. at 102).

Applying the third legal principle — “evidence may be legally sufficient to prove the “without . . . consent” element if the evidence shows that the victim was asleep when the sexual act began but awoke before the sexual act was complete and, while awake, did not consent to the ongoing sexual act”—also established a lack of consent. “I woke up,” KE testified, “and we were in his room and he’s having, like, sex with me, but I just opened my eyes and it’s going on.” KE did not consent. KE did not know how they got to that point but decided to pretend that she was asleep to get Appellant to stop penetrating her sexually. She closed her eyes and turned her head. Appellant called her name and said, “Oh, no.” He shook her shoulder to get her to wake up or open her eyes. Appellant then stopped penetrating KE, got up, and walked away. KE’s subsequent actions, including running away from Appellant’s room and immediately and emotionally relaying to her friends what had happened, as well as the results of the forensic testing, substantially corroborate her testimony. When KE awoke, she did not consent and the sexual act did not immediately end until she took steps to stop it. This established a lack of consent satisfying CAAF’s third legal principle, identified in *Moore*, and derived from the holding in *Casillas*: the consent element may be proven where the evidence shows the victim was asleep or incapacitated when the sexual act began, but “awoke

before the sexual act was complete and did not consent to the ongoing sexual act.” *Id.* at 318 (citing *Casillas*, 86 M.J. at 102). We are not persuaded by Appellant’s claim that the evidence does not establish she was asleep when the sexual act began. She awoke from a condition of sleep or other incapacity and had not and did not consent to Appellant sexually penetrating her.

In essence, the Government presented evidence before, during, and after the sexual act that established the without-consent element. This convinced the members beyond a reasonable doubt and convinces us beyond a reasonable doubt that Appellant committed this sex act without KE’s consent. We read the three principles from *Moore* to be illustrative non-statutory guidance to assist with analyzing the legal and factual sufficiency of evidence to prove the without-consent element. Applying these principles, we find the evidence established the without-consent element.

4. Mistake of Fact

“[I]t is a defense to an offense that the accused held, as a result of ignorance or mistake, an incorrect belief of the true circumstances such that, if the circumstances were as the accused believed them, the accused would not be guilty of the offense.” Rule for Courts-Martial (R.C.M.) 916(j)(1). If the mistake goes to an element requiring general intent or knowledge, it “must have existed in the mind of the accused and must have been reasonable under all the circumstances.” *Id.* Therefore, an honest and reasonable mistake that the victim consented to the charged sexual act is an affirmative defense to the charged offense. *See, e.g., United States v. McDonald*, 78 M.J. 376, 379 (C.A.A.F. 2019) (considering the defense of mistake of fact to a charge of sexual assault). Once raised, the Government bears the burden to prove beyond a reasonable doubt that the defense does not exist. R.C.M. 916(b)(1); *McDonald*, 78 M.J. at 379.

In considering whether the defense of mistake of fact as to consent was raised at trial, we “consider the totality of the circumstances at the time of the offense” and also consider “whether the record contains some evidence of an honest and reasonable mistake to which the [factfinder] could have attached credit if they had so desired.” *United States v. Hibbard*, 58 M.J. 71, 75 (C.A.A.F. 2003) (citations omitted).

With respect to the mistake of fact as to consent argument made by Appellant, we also return to our original analysis from our 20 August 2024 opinion. Appellant’s reaction of saying “Oh, no” when he saw KE with her eyes closed and then shaking her shoulder to get her to wake up or open her eyes is some evidence that Appellant may have had a mistake of fact as to consent. However, the evidence convinces us that if Appellant had such a mistake of fact as to consent, such a mistake would have been unreasonable under the circumstances. KE repeatedly rebuffed Appellant’s physical advances from the first

time they met each other. Furthermore, KE rebuffed Appellant when he asked, “So my room or yours?” and KE responded, “You go to yours and I’ll go to mine.” The evidence proved that KE did not consent to sex with Appellant and disproved that Appellant had an honest and reasonable mistake of fact as to consent.

5. Summary

We vacated our original decision based upon our understanding of *Mendoza* prior to the CAAF elucidating their position in follow-on cases relevant to the case at bar. With CAAF’s additional clarification and legal principles as to their holding in *Mendoza*, we return to our original conclusion.

After weighing all the evidence and having given appropriate deference to the fact that the trial court saw and heard the witnesses, we are convinced that the finding of guilty to Specification 2 of the Charge is factually sufficient. *See* Article 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1).⁶

III. CONCLUSION

The findings of guilty for Specifications 1 and 3 of the Charge and the Charge were previously affirmed. *See Hennessy*, 2024 CCA LEXIS 503, at *24. The finding of guilty for Specification 2 of the Charge, as entered, is correct in law and fact. Additionally, the sentence as entered is correct in law and fact, and no error materially prejudicial to the substantial rights of Appellant occurred. Articles 59(a) and 66(d), UCMJ, 10 U.S.C. §§ 859(a), 866(d). Accordingly, the finding of guilty and the sentence, are **AFFIRMED**.



FOR THE COURT

Carol K. Joyce

CAROL K. JOYCE
Clerk of the Court

⁶ Now that we find the sexual assault of KE (Specification 2 of the Charge) factually sufficient, the two issues we previously held as moot in our November 2024 opinion—issue (2), whether Appellant’s Due Process rights were violated because he was convicted of a theory of criminality not on the charge sheet, and issue (4), whether trial counsel’s findings argument was improper—are no longer moot. *Hennessey*, 2024 CCA LEXIS 503, at *3. We have carefully considered issues (2) and (4) and find they do not require discussion or relief. *See United States v. Matias*, 25 M.J. 356, 361 (C.M.A. 1987). We note that we resolved issue 2 in a like manner in our August 2024 opinion. *Hennessey*, 2024 CCA LEXIS 343, at * 2. This court addressed issue 4 in that opinion which requires no further discussion or relief. *Id.* at *21–31.