

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

No. ACM 40702

UNITED STATES

Appellee

v.

Caleb L. LUCAS

Senior Airman (E-4), U.S. Air Force, *Appellant*

Appeal from the United States Air Force Trial Judiciary

Decided 31 August 2026

Military Judge: Brian M. Thompson.

Sentence: Sentence adjudged 23 July 2024 by GCM convened at Nellis Air Force Base, Nevada. Sentence entered by military judge on 13 August 2024: Bad-conduct discharge, restriction to the confines of Nellis Air Force Base for two months, reduction to E-1, and a reprimand.

For Appellant: Captain John M. Fredericks, USAF; Captain Joyclin N. Webster, USAF.

For Appellee: Colonel G. Matt Osborn, USAF; Lieutenant Colonel Thomas J. Alford, USAF; Major Vanessa Bairos, USAF; Major Kate E. Lee, USAF; Major Jocelyn Q. Wright, USAF; Mary Ellen Payne, Esquire.

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

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

**This is an unpublished opinion and, as such, does not serve as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

MORGAN, Chief Judge:

A military judge sitting alone as a general court-martial convicted Appellant, contrary to his plea, of one specification of knowingly and wrongfully possessing a video depicting child pornography in violation of Article 134, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 934.¹ Consistent with his plea, Appellant was acquitted of one specification of viewing digital images of child pornography, in violation of Article 134, UCMJ. The military judge sentenced Appellant to a bad-conduct discharge, restriction to the confines of Nellis Air Force Base (AFB), Nevada, for two months, reduction to the grade of E-1, and a reprimand. The convening authority took no action on the findings or sentence, and provided the reprimand language.

Appellant raises three issues on appeal, which we have reworded: (1) whether his conviction for knowingly and wrongfully possessing child pornography is legally and factually sufficient; (2) whether the military judge abused his discretion by failing to recuse himself for harboring a bias to convict Appellant; and (3) whether, as applied to Appellant, 18 U.S.C. § 922 is constitutional. We have also considered an additional issue, not raised by Appellant, identified during this court’s Article 66, UCMJ, 18 U.S.C. § 866, review: (4) whether Appellant is entitled to relief for facially unreasonable appellate delay pursuant to *United States v. Moreno*, 63 M.J. 129 (C.A.A.F. 2006).

With respect to issue (3), we have carefully considered this issue and find Appellant is not entitled to relief. *See United States v. Lepore*, 81 M.J. 759, 763 (A.F. Ct. Crim. App. 2021) (en banc) (holding a Court of Criminal Appeals lacks the authority to direct modification of the 18 U.S.C. § 922(g) prohibition noted on the staff judge advocate’s indorsement); *see also United States v. Johnson*, 86 M.J. 8, 14 (C.A.A.F. 2025) (holding Courts of Criminal Appeals lack “authority to modify the [18 U.S.C.] § 922 indication” in the entry of judgment); *United States v. Vanzant*, 84 M.J. 671, 681 (A.F. Ct. Crim. App. 2024) (concluding “[t]he firearms prohibition remains a collateral consequence of the conviction, rather than an element of findings or sentence, and is therefore beyond our authority to review”), *aff’d*, 86 M.J. 356 (C.A.A.F. 2025).

We affirm the findings and sentence and find no error that materially prejudiced Appellant’s substantial rights.

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

I. BACKGROUND

In October 2022, Appellant uploaded a video containing child sexual abuse material (CSAM) to his “Dropbox” account.² Dropbox’s security protocols flagged the video titled “4yo Girl Molested by 15yo Neighbour Teen Boy.[]” and within seconds following the upload, locked Appellant out of his account. Dropbox also notified the National Center for Missing and Exploited Children (NCMEC) about the potential CSAM discovered on their platform.

NCMEC reported the online activity to the Las Vegas Metropolitan Police Department (LVMPD), who began an investigation. The NCMEC report contained the date, time, and IP address associated with the upload of CSAM material. LVMPD gathered additional digital forensic evidence through a subpoena and search warrants from various online platforms and services, as well as open-source digital tools, which all led back to Appellant.

The investigation was transferred from civilian authorities to the Air Force Office of Special Investigations (OSI), who conducted a subject interview of Appellant. During the interview, Appellant made numerous admissions that corroborated knowing and wrongful possession of child pornography.

II. DISCUSSION

A. Legal and Factual Sufficiency of Knowingly Possessing Child Pornography

Appellant asserts, as a specific deficiency in proof, that the element of knowing and wrongful possession of the CSAM, and the terminal element of service discrediting, are not supported by the evidence. For the reasons below, we determine the finding of guilty is not against the weight of the evidence, is factually sufficient, and therefore warrants no relief.

1. Additional Background

a. Digital Evidence

During its case in chief, the Government called Detective MF of the LVMPD, assigned to the Internet Crimes Against Children (ICAC) Task Force, regarding his involvement in the investigation of Appellant. He testified his

² “Dropbox” is an American cloud-based storage platform individuals use to store, sync, and share files. Child pornography “means material that contains either an obscene visual depiction of a minor engaging in sexually explicit conduct or a visual depiction of an actual minor engaging in sexually explicit conduct.” *MCM*, pt. IV, ¶ 95.c.(4). We use the term “CSAM” to carry the same meaning and employ the terms interchangeably in this opinion. *See generally United States v. Guard*, 152 F.4th 375, 381, n.2 (2d Cir. 2025) (using the terms child pornography and CSAM interchangeably).

department opened an investigation following receipt of a report from the NCMEC regarding a CSAM upload to a Dropbox account. Detective MF testified his department then obtained and served search warrants on Dropbox and Google. His department also issued a subpoena to the internet provider associated with the Internet Protocol (IP) address reported by Dropbox.

The search warrant served on Dropbox returned, *inter alia*, subscriber information, to include the account name and email address (CL[*****]@gmail.com); IP address; mobile device model (an “iPhone 11,2”)³ that pinged on the Dropbox account on 22 October 2022; and the device carrier (AT&T). It also indicated that no computer was linked to the account, beyond a cellphone. The IP address matched that from the NCMEC report. Dropbox also provided, as part of the search warrant return, a file activity report showing, *inter alia*, a file uploaded to Dropbox titled, “Polish Peasant Girls 01 – 11yo.[],”⁴ followed by a second upload titled, “4yo Girl Molested by 15yo Neighbour Teen Boy.[],” uploaded less than two minutes later. The report shows the files were not deleted.

The warrant return from Google also disclosed Appellant’s Google account information, to include his name; email address (CL[*****]@gmail.com); birthdate, and IP address activity. Utilizing open-source digital tools and the information obtained from the subpoena and search warrants, Detective MF located an online profile photo of Appellant reflecting his name associated with Appellant’s email address, and geolocation data reflecting account activity in North Las Vegas, Nevada.

Detective MF utilized this information to conduct a search on social media and identified Appellant, by name, as located at Nellis AFB, Nevada. Through a combination of the subpoena return from the internet service provider and additional open-source software, Detective MF located Appellant’s home address, phone number, birthplace, and social security number. He compared this data with the information from the Google search warrant return, which matched Appellant’s location at Nellis AFB. Additionally, the subpoena return from Appellant’s internet service provider contained information about the

³ The Government presented testimony from a digital forensic analyst that iPhone XS is the commercially marketed name of the mobile device, but iPhone 11,2 is the device’s model identifier when data is pulled.

⁴ Detective MF described this file as “an advertisement propaganda video” that is “used to kind of advertise that someone has CSAM.” Detective MF testified the video, however, does not actually contain CSAM. While Appellant was charged with wrongfully possessing “videos” of a minor, the military judge found Appellant guilty of Specification 1 of the Charge, excepting the words “videos” and “was to the prejudice of good order and discipline in the armed forces and,” and substituting therefor the word “video;” to the excepted words “Not Guilty,” to the substituted word “Guilty.”

router used to access the internet including the router's serial number, router type, and media access control (MAC) address, as well as Appellant's home street address. Detective MF then traveled to Appellant's location and matched the MAC address to Appellant's geographic residence location.

Detective MF elaborated that the Google IP address matched the IP address associated with the Dropbox account and the Google return further indicated that an iPhone 11,2 model accessed the Dropbox account at the time of the video upload at issue. Detective MF testified, "[T]hat tells me that this user accessed that Dropbox account with the exact same phone." Google also provided a photo of Appellant in his service dress uniform. Based on this, as well as corroborating data received from a subpoena return served on the internet service provider, Detective MF coordinated further investigative steps with OSI. Detective MF testified he reviewed the videos at issue as part of the investigation, and he laid the foundation for their admission at trial.

Detective MF also testified that, based on how Dropbox operates on an iPhone's operating system, the videos were not automatically uploaded from Appellant's iPhone. Rather, the files were individually selected when prompted by a "pop-up" asking "where you want to put it," and then specifically saved to the Dropbox account. The first file, "Polish Peasant Girls 01 – 11yo.[.]", was uploaded, and approximately two minutes later, the second file, "4yo Girl Molested by 15yo Neighbour Teen Boy.[.]", was uploaded. "Two seconds later, Dropbox pinged the device, the IP address, and shut the account down. There was no way that any further manipulation could occur to that account and to those files specifically." Ten seconds later Dropbox reported the video to NCMEC. Detective MF further stated there was no evidence that the videos in question were part of a mass download but were "individually clicked on and saved."

b. Appellant's Statements

Appellant made a number of inculpatory statements to OSI during his subject interview. OSI Agent AK, an agent who conducted Appellant's subject interview, laid the foundation for Appellant's video-recorded interview as well as his written statement. Appellant explained to the agents he was "a tech guy" and within two weeks of his interview he had "just built [his] first personal rig." His answers also showed he was the exclusive user of his digital devices. He explained he is the only one with controls to his internet service provider account; that he does not believe his mother, with whom he was not living with, had his username to his iCloud account; that his girlfriend does not use his devices; and he confirmed that others "shouldn't" have access to his accounts. He later told the agents he was not aware of anyone who had access to his Dropbox account. He also confirmed his email address as CL[*****]@gmail.com; that his "go to" username is "r[*****]007" or some

variation of it; and that he owned an iPhone XS from 2020 through January of 2024.

OSI agents then posed a series of questions to Appellant regarding his Dropbox account. Appellant initially denied he used Dropbox, then said he had not used Dropbox in two to three years, and later stated, “my Dropbox account, I have not used in a very very very long time. Like I’m looking you in the eyes as a man telling you I have not used that account in a long time.”

When asked specifically about child pornography, Appellant said, “I haven’t uploaded anything like that.” Asked if he could explain the uploaded video OSI referred to as “like 4 years old girl with a 15-years-old teenager,” Appellant answered, “I haven’t uploaded anything like that, like that’s, that’s not me.” However, he later explained, “I remember vaguely, I was drunk and I remember vaguely seeing a title similar to what you said. I was like what the f[**]k and if I remember correctly, I deleted the file,” and later stated, “I have some phantom memory of like the title. It was something about a 15 year old . . . I was drinking a lot.”

When questioned about how the file ended up in his Dropbox account, Appellant told the agents, “I think it went to the files on my phone and then I had to send it to the Dropbox because it wouldn’t open on my phone.” Asked if he saw the video’s title before clicking a link to it, he answered, “I don’t remember seeing it. I remember sending it to my Dropbox, because it downloaded to the files on my phone.” He also explained, “I remember opening the folder and inside the folder was the title broken up into a weird format.”

With respect to the contents of the video, Appellant denied watching it, but described the thumbnail in Dropbox:

I saw like the thumbnail and the title . . . I just remember seeing what looked like a younger kid on top of . . . like naked like a 15 year old’ish looking . . . it was a like a 15 year old or something naked. I remember I saw the title, I looked at the thumbnail and it looked like a young person naked.

In response to a series of questions as to why he uploaded the video to Dropbox, Appellant explained, “I saved it to Dropbox . . . because I couldn’t get it to work.” Later, he said, “I found a link and I downloaded said link and it had the child pornography.” He eventually stated, “If I had to guess I was horny or something like that and I saw that link and I was interested.”

In his written statement, Appellant wrote, “[T]he only time I believe I could have downloaded [the video] was from [T]witter while drunk I have a vague memory of the title and can barely recall the thumbnail I do believe I deleted.”

c. Expert Testimony

In the Defense’s case in chief, trial defense counsel called Dr. JT, an expert clinical and forensic psychologist. He testified how memory generally works, stating it is “fallible and that it’s constructive and that it’s selective.” Dr. JT testified that studies have shown examples of false confessions, and that there are “methods that [one] can do to elicit a false confession.” The substance of his direct testimony specific to this case was less than two full transcript pages. He testified he reviewed the evidence in this case, as well as the OSI interviews of Appellant, and he concluded that it was a “terrible interview” and a “text-book lesson, in how not to do an interview and how to elicit false information.” He elaborated, “[W]hat happened in this case is they’d mention the title of the video, and then, lo and behold, and, you know, some minutes later, the [Appellant] said, oh, well, now I’m starting to remember, maybe it was something with the 15-year-old in the title.” Dr. JT further testified OSI questions could have “jogged [Appellant’s] memory. It could be that he absolutely, that they mentioned it and he thought, of yeah, that did happen, yes, I do remember it. We just don’t know one way or the other.”

The military judge found Appellant guilty of possessing child pornography (Specification 1 of the Charge) by exceptions and substitution, in violation of Article 134, UCMJ, and acquitted him of the offense of viewing child pornography (Specification 2 of the Charge). Appellant now challenges the factual and legal sufficiency of Specification 1 of the Charge.

2. Law

The assessment of legal and factual sufficiency is limited to the evidence that is produced at a trial. *United States v. Dykes*, 38 M.J. 270, 272 (C.M.A. 1993) (citations omitted).

We review issues of legal sufficiency de novo. *United States v. King*, 78 M.J. 218, 221 (C.A.A.F. 2019) (citation omitted).

“The test for legal sufficiency is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *United States v. Robinson*, 77 M.J. 294, 297–98 (C.A.A.F. 2018) (citation omitted). We review questions of factual sufficiency when an appellant (1) asserts an assignment of error and (2) shows a specific deficiency in proof. *United States v. Harvey*, 85 M.J. 127, 130 (C.A.A.F. 2024) (citing Article 66(d)(1)(B)(i), UCMJ, 10 U.S.C. § 866(d)(1)(B)(i)).

The test for factual sufficiency that applies to Appellant’s case comes from the current version of Article 66(d)(1)(B), UCMJ, FACTUAL SUFFICIENCY REVIEW, which states:

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

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

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

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

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

10 U.S.C. § 866(d)(1)(B) (*Manual for Courts-Martial, United States* (2024 ed.) (2024 *MCM*)). This factual sufficiency standard applies to courts-martial in which every finding of guilty in the entry of judgment is for an offense occurring on or after 1 January 2021. *See* William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116–283, § 542(e)(2), 134 Stat. 3388, 3612–13 (2021). “[A] general disagreement with a verdict falls short of a specific showing of a deficiency in proof, and thus will not trigger a full factual sufficiency analysis.” *United States v. Hughes*, No. ACM 24066, 2026 CCA LEXIS 66, at *15 (A.F. Ct. Crim. App. 6 Feb. 2026) (unpub. op.) (quoting *United States v. Valencia*, 85 M.J. 529, 535 (N.M. Ct. Crim. App. 2024), *aff’d*, 86 M.J. 428–29 (C.A.A.F. 2025)). A specific showing of a deficiency of proof must be a “specific, reasonable, nonfrivolous statement of error as to a particular finding.” *United States v. Hunt*, __ M.J. __, No. 25-0257, 2026 CAAF LEXIS 661, at *7 (C.A.A.F. 6 Aug. 2026).

The statutory requirement to apply “appropriate deference” depends “on the nature of the evidence at issue.” *Harvey*, 85 M.J. at 130. This court has discretion to determine what level of deference is appropriate. *Id.* at 131.

“[T]he quantum of proof necessary to sustain a finding of guilty during a factual sufficiency review is ‘proof beyond a reasonable doubt,’ the same as the quantum of proof necessary to find an accused guilty at trial.” *Id.*

For this court “to be ‘clearly convinced that the finding of guilty was against the weight of the evidence,’ two requirements must be met.” *Id.* at 132. First, this court must decide that the evidence, “as [we have] weighed it, does not

prove that the appellant is guilty beyond a reasonable doubt.” *Id.* Second, this court “must be clearly convinced of the correctness of this decision.” *Id.*

In order to convict Appellant of knowingly and wrongfully possessing child pornography as alleged in Specification 1 of the Charge, the Government was required to prove that Appellant: (1) “knowingly and wrongfully possess[ed] child pornography;” and (2) that, under the circumstances, the conduct of Appellant “was to the prejudice of good order and discipline in the armed forces and was of nature to bring discredit upon the armed forces.” Article 134, UCMJ, 10 U.S.C. § 934; *Manual for Courts-Martial, United States* (2019 ed.) (*MCM*), pt. IV, ¶ 95.b.(1). The military judge excepted the words “was to the prejudice of good order and discipline upon the armed forces and,” and found Appellant guilty of only conduct that “was of a nature to bring discredit upon the armed forces.”

“‘Child pornography’ means material that contains either an obscene visual depiction of a minor engaging in sexually explicit conduct or a visual depiction of an actual minor engaging in sexually explicit conduct.” *MCM*, pt. IV, ¶ 95.c.(4). A “visual depiction” includes, *inter alia*, “any digital or computer image, picture, film, or video made by any means . . . even if not stored in a permanent format; or any digital or electronic data capable of conversion into a visual image.” *MCM*, pt. IV, ¶ 95.c.(11).

“‘Possessing’ means exercising control of something.” *MCM*, pt. IV, ¶ 95.c.(8). It “may be direct physical custody like holding an item in one’s hand, or it may be constructive, as in the case of a person who hides something in a locker or a car to which that person may return to retrieve it.” *Id.* “Possession inherently includes the power or authority to preclude control by others.” *Id.* “Possession must be knowing and conscious.” *Id.*

“An accused may not be convicted of possessing . . . child pornography if he was not aware that the images were of minors, or what appeared to be minors, engaged in sexually explicit conduct.” *MCM*, pt. IV, ¶ 95.c.(5). “Awareness can be inferred from circumstantial evidence such as the name of a computer file or folder, the name of the host website from which a visual depiction was viewed or received, search terms used, and the number of images possessed.” *Id.*

“Any facts or circumstances that show that a visual depiction of child pornography was unintentionally or inadvertently acquired are relevant to wrongfulness,” but before determining if wrongfulness can be negated, the trier of fact can look to, *inter alia*, “the method by which the visual depiction was acquired, the length of time the visual depiction was maintained, and whether the visual depiction was promptly, and in good faith, destroyed or reported to law enforcement.” *MCM*, pt. IV, ¶ 95.c.(12).

With respect to the service discrediting element, the “nature” of the conduct, hinges on “whether the [appellant’s] conduct would tend to bring discredit on the armed forces if known by the public, not whether it was in fact so known.” *United States v. Phillips*, 70 M.J. 161, 165–166 (C.A.A.F. 2011). Clause 2 of Article 134, UCMJ, does not require that the appellant’s conduct is public knowledge in every case. *Id.* at 166. Additionally, “[w]hether any given conduct violates clause 1 or 2 is a question for the trier of fact to determine, based upon all the facts and circumstances; it cannot be conclusively presumed from any particular course of action.” *Id.* at 165. In *United States v. Heppermann*, our court addressed service-discrediting conduct as the terminal element:

“[T]he degree to which others became aware of the [appellant’s] conduct may bear upon whether the conduct is service discrediting,” but actual public knowledge is not a prerequisite. “The trier of fact must determine beyond a reasonable doubt that the conduct alleged actually occurred and must also evaluate the nature of the conduct and determine beyond a reasonable doubt that [the appellant’s] conduct would tend to bring the service into disrepute if it were known.”

82 M.J. 794, 801 (A.F. Ct. Crim. App. 2022) (second alteration in original) (quoting *Phillips*, 70 M.J. at 165–66); *see also United States v. Wells*, 85 M.J. 154, 157–59 (C.A.A.F. 2024) (upholding *Phillips*).

Further, “[w]hen the military judge sits as the trier of fact, we presume that the military judge knows the law and applies it correctly.” *Phillips*, 70 M.J. at 166 (citing *United States v. Robbins*, 52 M.J. 455, 457 (C.A.A.F. 2000)).

3. Analysis

We find Appellant’s specific, reasonable, nonfrivolous assertion of a deficiency in proof—that the element of knowing and wrongful possession of the CSAM, and the terminal element of service discrediting, are not supported by the evidence—sufficient to invoke a factual sufficiency review.

a. Knowing and Wrongful Possession

Digital evidence presented by the Government demonstrated the video for which Appellant was convicted of possessing was uploaded to a Dropbox account associated with Appellant’s “go-to” username and personal email account. The video was also uploaded from an iPhone 11,2--the phone model admittedly owned by Appellant at the time the video was uploaded. The iPhone was the only device linked to the Dropbox account. Forensic digital information gathered by Detective MF from various online platforms showed an IP address associated with Appellant’s iPhone 11,2 model that accessed the Dropbox account at the time of the video upload at issue. That IP address matched

the IP address from the NCMEC report. The video was uploaded from the IP address associated with the Appellant's internet service provider at his residence. No individuals other than Appellant had access to his devices beyond his girlfriend, whom he ruled out in his OSI interview. During the subject interview, Appellant confirmed "r[*****]007," or some variant thereof, is his "go to" username for his accounts, his personal email address is CL[*****]@gmail.com, and he previously owned an iPhone XS (*i.e.*, iPhone 11,2), all of which were associated with his Dropbox account.

Evidence also demonstrated that Appellant did not accidentally upload the video for which he was convicted of knowingly and wrongfully possessing. Rather, Detective MF testified there was no evidence that the videos in question were part of a mass download, but were "individually clicked on and saved." Detective MF explained, based on his examination of the evidence and the manner in which Dropbox interacted with Appellant's iPhone operating system, that both videos for which Appellant was charged with possessing, were specifically selected and uploaded to Dropbox. Detective MF testified that, based on how Dropbox operates on an iPhone's operating system, the videos at issue were not automatically uploaded from Appellant's iPhone, but were individually selected and when prompted by a "pop-up" asking "where you want to put it," the files were then specifically saved to the Dropbox account. The first file, "Polish Peasant Girls 01 – 11yo.[]," was uploaded, and, approximately two minutes later the second file, "4yo Girl Molested by 15yo Neighbour Teen Boy.[]," was uploaded. According to Detective MF, "[t]wo seconds later Dropbox pinged the device, the IP address, and shut the account down. There was no way that any further manipulation could occur to that account and to those files specifically." Additionally, Appellant stated he was a "tech guy" who recently built his own computer, which implies a familiarity with digital media and undercuts the argument he accidentally selected and sent the files to his Dropbox account.

This sequence of events syncs with Appellant's own admissions. He stated, "I think [the video] went to the files on my phone and then I had to send it to the Dropbox because it wouldn't open on my phone," and, "I remember sending it to my Dropbox, because it downloaded to the files on my phone."

Appellant initially denied uploading CSAM, maintaining, "I haven't uploaded anything like that." But when OSI agents asked him about a video, describing it as "like 4 years old girl with a 15 years old teenager," Appellant answered, "I remember vaguely, I was drunk and I remember vaguely seeing a title similar to what you said." Nonetheless, he was able to recall, "I saw like the thumbnail and the title," and "seeing what looked like a younger kid on top of . . . like naked like a 15 year old'ish looking." And "it looked like a young

person naked.” He ultimately explained, “If I had to guess I was horny or something like that and I saw that link and I was interested.”

Appellant argues, based on Dr. JT’s testimony, that OSI agents implanted “false memories” during his interview. We disagree. We view Appellant’s evolving admissions as corroborative of the digital evidence linking him to the CSAM and as compelling evidence of his knowing possession. That OSI agents oriented Appellant to the pertinent facts of the investigation does not constitute the coercive or harsh investigative techniques that generally elicit false confessions. Indeed, Appellant’s own expert testified that OSI’s questioning style could have simply “jogged [Appellant’s] memory.” It is true OSI used various interrogation methods, such as telling him he needed to “come clean,” calling him out on his selective and evolving memory, and leaving him alone to think. However, we do not view these techniques as crossing the line into coercing false admissions.

Ultimately, we view Appellant’s shifting explanations as an attempt to obfuscate and minimize criminal liability rather than parroting implanted fabrications by law enforcement. Appellant prevaricated numerous times throughout his interview, to include, in addition to those referenced *supra*, his insistence that he deleted the video at issue. According to Detective MF however, the Dropbox report shows the files were not deleted, and because the account was disabled two seconds after the upload, “there was no way that any further manipulation could occur.”

After weighing the evidence and giving appropriate deference to the fact that the trial court saw and heard the witnesses, the finding that Appellant knowingly and wrongfully possessed child pornography is correct in fact and therefore factually sufficient.

b. Service Discrediting Conduct

The military judge did not rest on a conclusive presumption that Appellant’s conduct was service discrediting. As discussed above, the Government presented evidence Appellant actively uploaded a file containing CSAM entitled, “4yo Girl Molested By 15 yo Neighbor Teen Boy,” propagating through electronic means a video of sexually exploited minors to Dropbox, a commercial online platform.

The investigative chain of events directly demonstrates the service-discrediting nature of his conduct. Dropbox’s security measure immediately flagged the CSAM uploaded by Appellant, disabled his account, and submitted a report to the NCMEC. NCMEC routed the report to the LVMPD, where Detective MF of the ICAC Task Force assumed the investigation. Through the authorized use of warrants, subpoenas, and online open-source search tools Detective MF identified Appellant as an active-duty Air Force member, discovered a

photograph of Appellant in military uniform, and that he was stationed at Nellis AFB, Nevada. Detective MF subsequently coordinated the investigation with OSI.

Wherefore, viewing the evidence in the light most favorable to the Prosecution and drawing every reasonable inference from the evidence of record in favor of the Prosecution, we find Appellant’s conviction legally sufficient.

Additionally, after weighing the evidence and giving appropriate deference to the fact that the trial court saw and heard the witnesses, Appellant’s conviction for knowing and wrongful possession of child pornography is correct in fact and therefore factually sufficient.

B. Military Judge Recusal

1. Additional Background

After Appellant’s court-martial adjourned on 23 July 2024, the military judge encountered Appellant’s mother, grandmother, and sister in the hallway outside the courtroom. A conversation ensued between the military judge and Appellant’s three family members.

On 5 March 2026, Appellant filed his assignments of error brief with the court, accompanied by a motion to attach three declarations by Appellant’s three family members.

On 19 February 2026, Appellant’s mother provided a written declaration claiming that in this conversation the military judge apologized to her saying, “Mrs. [MB], I’m sorry you are going through this, but I can’t let [Appellant] walk out of here a free man because of everything that is going on at Nellis.” Appellant’s mother also stated that the military judge told her to “[a]ppeal [his] decision.” According to Appellant’s mother, this conversation left her with the impression that “the judge felt pressured to convict.”

Also on 19 February 2026, Appellant’s sister provided a written declaration stating that the military judge “was apologetic for how [Appellant] was sentenced” and “strongly encouraged” Appellant to appeal his decision. Appellant’s sister also claimed that the military judge said that “Nellis was being watched” and that “he didn’t want to make it look like they weren’t doing anything about these situations.”

Appellant’s grandmother provided a written declaration on 27 February 2026, asserting that the military judge “apologized and stated that he was frustrated for having to sentence [Appellant] and find him guilty like he did.” Appellant’s grandmother also stated that the military judge told the family to appeal the case and when he was asked his reason he responded, “Because of the lack of evidence”

By order of this court, the military judge provided a declaration on 29 April 2026, responding to the assertions made by Appellant’s family members. In his declaration, the military judge described an incident following adjournment of Appellant’s court-martial, where he encountered Appellant’s family and “elected to stop and attempt to provide them some encouraging words” He explained, “I wanted to reiterate that I appreciated them supporting their family member [Appellant], that I was sure [Appellant] appreciated it as well, and that I understood that trials like this are hard on everyone, including family members.”

When one of Appellant’s family members asked “what happens next,” the military judge referred them to Appellant’s counsel but explained “there would be an appeal where a higher court . . . would decide whether [he] made any errors in the case.” The military judge described the incident as a “brief, one to two minute conversation intentionally short on details of anything [they] discussed.” He did not seek out this encounter, but happened on Appellant’s family by chance while proceeding to his chambers in a common hallway. The military judge stated that he did not advise the family to seek an appeal, noting that Appellant would have an automatic appeal. He further explained that Nellis AFB was not an installation in the military judge’s judicial district and he was not aware of a “spotlight” on this court-martial, emphasizing there was nothing particularly “noteworthy” about this case. Additionally, the military judge stated that he does not know anyone in command at Nellis AFB and that no one in command, the Nellis servicing legal office, or the broader legal community spoke to him about either this case or any other case at Nellis AFB.

The military judge expressed disappointment that their brief encounter was misconstrued as conveying his regret, bias, or outside pressure contributed to a specific trial result. He made clear however, that “[he] had and [has] no regret with the outcome, findings[,] sentence, [he] was not operating with any bias, and no one pressured [him] (or even communicated with [him]) about this case.”

2. Law

a. Ginn Principles and DuBay Hearing

When conflicting post-trial affidavits or declarations are presented, a fact-finding hearing may be authorized by remanding the case to the trial level. *United States v. Dubay*, 17 C.M.A. 147, 149 (C.M.A. 1967). An affidavit submitted by an appellant does not automatically require an evidentiary hearing. *United States v. Ginn*, 47 M.J. 236, 248 (C.A.A.F. 1997). “In most instances in which an appellant files an affidavit in the [CCA] making a claim such as ineffective assistance of counsel at trial, the authority of the Court to decide that legal issue without further proceedings should be clear.” The United States

Court of Appeals for the Armed Forces (CAAF) laid out the principles as follows:

First, if the facts alleged in the affidavit allege an error that would not result in relief even if any factual dispute were resolved in appellant's favor, the claim may be rejected on that basis.

Second, if the affidavit does not set forth specific facts but consists instead of speculative or conclusory observations, the claim may be rejected on that basis.

Third, if the affidavit is factually adequate on its face to state a claim of legal error and the Government either does not contest the relevant facts or offers an affidavit that expressly agrees with those facts, the court can proceed to decide the legal issue on the basis of those uncontroverted facts.

Fourth, if the affidavit is factually adequate on its face but the appellate filings and the record as a whole "compellingly demonstrate" the improbability of those facts, the Court may discount those factual assertions and decide the legal issue.

Fifth, when an appellate claim of ineffective representation contradicts a matter that is within the record of a guilty plea, an appellate court may decide the issue on the basis of the appellate file and record (including the admissions made in the plea inquiry at trial and appellant's expression of satisfaction with counsel at trial) unless the appellant sets forth facts that would rationally explain why he would have made such statements at trial but not upon appeal.

Sixth, the [CCA] is required to order a factfinding hearing only when the above-stated circumstances are not met. In such circumstances the court must remand the case to the trial level for a *DuBay* proceeding. During appellate review of the *DuBay* proceeding, the court may exercise its Article 66 factfinding power and decide the legal issue.

Id. A CCA has the authority not to order a *DuBay* hearing when the fourth principle in *Ginn* is satisfied. *United States v. Singleton*, 60 M.J. 409, 412 (C.A.A.F. 2005). However, if a CCA "determines that a dispute cannot be resolved entirely by applying the *Ginn* framework to post-trial affidavits," a *DuBay* hearing is required. *Id.* at 413.

b. Military Judge Recusal Standard

“[A] military judge shall disqualify himself or herself in any proceeding in which that military judge’s impartiality might reasonably be questioned.” Rule for Courts-Martial (R.C.M.) 902(a).

Absent actual bias or prejudice shown, disqualification under R.C.M. 902(a) is decided under an objective standard: “Any conduct that would lead a reasonable man knowing all the circumstances to the conclusion that the judge’s ‘impartiality might reasonabl[y] be questioned’ is a basis for the judge’s disqualification.” *United States v. Norfleet*, 53 M.J. 262, 270 (C.A.A.F. 2000) (citing *United States v. Kincheloe*, 14 M.J. 40, 50 (C.M.A. 1982)).

If an appellate court determines a military judge erred in failing to recuse himself, reversal is not automatic. *See United States v. Butcher*, 56 M.J. 87, 92 (C.A.A.F. 2001). Instead, a reviewing court must evaluate “whether reversal of a conviction or decision is warranted as a remedy when a judge has erred in failing to recognize that disqualification was required” under a three-part test. *Id.* (citing *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 864 (1988)). “[I]t is appropriate to consider [1] the risk of injustice to the parties in the particular case, [2] the risk that denial of relief will produce injustice in other cases, and [3] the risk of undermining the public’s confidence in the judicial process.” *Id.* (quoting *Liljeberg*, 486 U.S. at 864).

3. Analysis

Appellant argues that the military judge abused his discretion by failing to recuse himself from presiding over his court-martial due to actual bias, or the appearance of bias, stating, *inter alia*, “[i]f the public knew that the military judge felt pressured to convict a servicemember and lightly sentenced that servicemember to compensate for the unlawful conviction, public confidence in the integrity of the judicial process would be destroyed.”

We conclude a *Dubay* hearing is not required as the record compellingly demonstrates the improbability of the facts asserted by Appellant, satisfying the fourth *Ginn* principle. Appellant relies heavily on declarations from family members executed over 18 months after their brief encounter with the military judge.

Appellant alleges the military judge entreated his family members to ensure Appellant appealed his conviction. We find this claim incredible. Appellant’s sentence included a punitive discharge—a bad-conduct discharge (BCD)—which triggered automatic appellate review as the military judge correctly noted in his declaration. We do not accept the premise that the military judge was ignorant of this automatic statutory review, nor that he dispensed unsolicited legal advice to the Appellant’s family members in a public hallway.

Additionally, Appellant’s assertion that the military judge felt pressured to convict is flatly belied by the findings. The military judge acquitted Appellant of one specification and convicted him of the remaining specification by exceptions and substitutions. We concur with the military judge’s statement in his declaration that his “mixed findings were completely consistent with the evidence.”

With respect to Appellant’s argument that the military judge “felt pressured to convict a servicemember and lightly sentenced that servicemember to compensate for the unlawful conviction,” we make two distinct observations.

First, we find the assertion that a punitive discharge is a “light” sentence dubious. . In this case, following trial defense counsel’s request that the trial court impose a BCD in lieu of confinement, the military judge questioned Appellant to ensure he understood its ramifications, asking, *inter alia*, whether Appellant understood that by receiving a punitive discharge he would “lose substantially all benefits from the Department of Veterans Affairs and the military establishment,” and it “will forever adversely stigmatize the character of [Appellant’s] military service and it will limit [Appellant’s] future employment and schooling opportunities.”

Second, as the military judge’s declaration demonstrates, there were no facts about Appellant’s case that would cause him to abandon his judicial impartiality under pressure, to “convict[] a not guilty man” as Appellant contends, only to then publicly unburden himself of having done so to Appellant’s family in a courthouse corridor. We assess the military judge as possessing little to no reason to misrepresent the substance of the conversation at issue. He knew his findings would be automatically reviewed on appeal, and we are unpersuaded that this military judge, with no connection to Nellis AFB, would be influenced by forces or authorities within the command, whereas Appellant’s family members have significant bias in seeing their child, grandchild, and sibling exonerated.

The record as a whole compellingly demonstrates the improbability of Appellant’s factual assertions. The record reveals no evidence of actual bias or circumstances that would lead a reasonable person to question the military judge’s impartiality. The military judge did not abuse his discretion by not recusing himself, as there was no reason for him to do so.

C. Post-trial Delay

Although Appellant did not raise the issue of post-trial delay, we consider the matter, as there was unreasonable post-trial delay during the appellate review process.

1. Additional Background

Appellant's case was docketed with the court on 28 October 2024. There were subsequently fourteen (14) requests for an enlargement of time filed by Appellant and each opposed by the Government.

On 15 December 2024, Appellant moved this court for his first enlargement of time, requesting an additional 60 days in which to file his assignments of error, and thereafter requested thirteen more enlargements of time. On 18 February 2026, Appellant's original counsel requested to withdraw from the case, which the court approved on 2 March 2026. On 5 March 2026, Appellant filed his assignments of error brief. On 30 March 2026, and responsive to Appellant's assignment of error alleging the military judge abused his discretion by failing to recuse himself, the Government filed a motion to compel an affidavit or declaration from the military judge, followed by a request for an enlargement of time associated with the motion to compel. On 7 April 2026, the court granted both Government motions. On 18 May 2026, the Government filed its answer to Appellant's assignments of error brief, and Appellant filed his reply on 26 May 2026. From the date of docketing of the case to Appellant's reply, 575 days elapsed.

2. Law

"[C]onvicted servicemembers have a due process right to timely review and appeal of courts-martial convictions." *United States v. Moreno*, 63 M.J. 129, 135 (C.A.A.F. 2006) (citations omitted). In *Moreno*, the CAAF established a presumption of facially unreasonable delay "where the action of the convening authority is not taken within 120 days of the completion of trial," "where the record of trial is not docketed by the service Court of Criminal Appeals within thirty days of the convening authority's action," or "where appellate review is not completed and a decision is not rendered within eighteen months of docketing the case before the Court of Criminal Appeals." *Id.* at 142. In *United States v. Livak*, this court adapted the *Moreno* standard for cases referred to trial on or after 1 January 2019 and established an aggregated 150-day standard for facially unreasonable delay from sentencing to docketing with this court. 80 M.J. 631, 633 (A.F. Ct. Crim. App. 2020).

Where there is a facially unreasonable delay, we examine the four factors set forth in *Barker v. Wingo*, 407 U.S. 514, 530 (1972): "(1) the length of the delay; (2) the reasons for the delay; (3) the appellant's assertion of the right to timely review and appeal; and (4) prejudice [to the appellant]." *Moreno*, 63 M.J. at 135 (citations omitted).

The CAAF identified three types of cognizable prejudice for purposes of the right to timely post-trial review: (1) oppressive incarceration; (2) "particularized anxiety or concern that is distinguishable from the normal anxiety

experienced by prisoners awaiting an appellate decision;” and (3) impairment of the appellant’s grounds for appeal or ability to present a defense at a rehearing. *Id.* at 138–40 (citations omitted). Where there is no qualifying prejudice from the delay, there is no due process violation unless the delay is so egregious as to “adversely affect the public’s perception of the fairness and integrity of the military justice system.” *United States v. Toohey*, 63 M.J. 353, 362 (C.A.A.F. 2006).

We review de novo an appellant’s entitlement to relief for post-trial delay. *Livak*, 80 M.J. at 633 (citing *Moreno*, 63 M.J. at 135). Independent of an appellant’s due process rights, the Courts of Criminal Appeals have authority to provide “appropriate relief” if an appellant has demonstrated error or excessive delay in the processing of his court-martial and after the entry of judgment has occurred. Article 66(d)(2), UCMJ, 10 U.S.C. § 866(d)(2); *see also United States v. Valentin-Andino*, 85 M.J. 361, 367 (C.A.A.F. 2025) (holding that “although it is within a Court of Criminal Appeal’s discretion to place its reasoning about Article 66(d)(2)[, UCMJ] relief on the record, it is not required to do so.”).

3. Analysis

We issue our opinion more than 21 months after this court docketed Appellant’s record of trial in this case on 28 October 2024. Therefore, under *Moreno*, there is a facially unreasonable delay. Accordingly, we have considered the *Barker* factors and find no violation of Appellant’s due process rights.

While the length of the delay exceeded the *Moreno* standard for facially unreasonable delay, we find it is not an egregious delay. The delay included fourteen (14) requests by Appellant for enlargements of time that amounted to 575 days from the docketing of the case to being fully briefed. Thus, the reason for the delay is largely attributable to Appellant, who did not assert his right to timely review and appeal. We do not discern from the record that he suffered particularized anxiety or concern from the record, nor that his grounds for appeal were impaired by the delay. As such, we do not find Appellant suffered cognizable prejudice.

Absent prejudice, we find the delay has not been so egregious as to adversely affect public perception of the military justice system. Considering the *Barker* factors and the circumstances as a whole, absent prejudice, in light of the CAAF’s guidance in *Toohey*, 63 M.J. at 362, we do not find a violation of Appellant’s constitutional due process rights.

We do not find this case warrants relief for post-trial delay. Article 66(d)(2), UCMJ; *Valentin-Andino*, 85 M.J. at 367.

III. CONCLUSION

The findings as entered are correct in law and fact. Article 66(d)(1), UCMJ, 10 U.S.C. § 866(d)(1) (2024 *MCM*). In addition, the sentence as entered is correct in law and fact, and no error materially prejudicial to the substantial rights of the Appellant occurred. Articles 59(a) and 66(d), UCMJ, 10 U.S.C. §§ 859(a), 866(d). Accordingly, the findings and sentence are **AFFIRMED**.



FOR THE COURT

Carol K. Joyce

CAROL K. JOYCE
Clerk of the Court