

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

No. ACM 25014

UNITED STATES
Appellee

v.

Michael A. PRYCE
Staff Sergeant (E-5), U.S. Air Force, *Appellant*

Appeal from the United States Air Force Trial Judiciary¹

Decided 5 October 2026

Military Judge: Vicki L. Marcus (arraignment); J. Peter Ferrell.

Sentence: Sentence adjudged 23 October 2024 by SpCM convened at Eglin Air Force Base, Florida. Sentence entered by the military judge on 2 December 2024: Hard labor without confinement for 3 months, restriction to the limits of Eglin Air Force Base for 2 months, reduction to E-2, and a reprimand.

For Appellant: Major Jordan L. Grande, USAF.

For Appellee: Colonel G. Matt Osborn, USAF; Major Vanessa Bairos, USAF; Major Kate E. Lee, USAF; Ms. Mary Ellen Payne, Esquire.

Before DOUGLAS, MCCALL, and KUBLER, *Appellate Military Judges*.

Judge KUBLER delivered the opinion of the court, in which Senior Judge DOUGLAS and Judge MCCALL joined.

**This is an unpublished opinion and, as such, does not serve as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

¹ Appellant appeals under Article 66(b)(1)(A), Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 866(b)(1)(A), *Manual for Courts-Martial, United States* (2024 ed.).

KUBLER, Judge:

Officer members at a special court-martial convicted Appellant, contrary to his pleas, of one specification of wrongful use of methylenedioxymethamphetamine (MDMA), a Schedule I controlled substance, in violation of Article 112a, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 912a. The military judge sentenced Appellant to three months hard labor without confinement, restriction to the limits of Eglin Air Force Base for two months, reduction to the grade of E-2, and a reprimand. The convening authority took no action on the findings or the sentence.

Appellant asserts that the Government relied solely on the permissive inference to prove knowledge and failed to prove Appellant knowingly used MDMA, which rendered his conviction factually and legally insufficient. In *United States v. Ford*, the United States Court of Military Appeals (CMA) addressed whether the “[permissive] inference is sufficient by itself to support a finding of wrongfulness beyond a reasonable doubt where the defense subsequently introduces evidence which purportedly undermines or contradicts this inference.” 23 M.J. 331, 332 (C.M.A. 1987) (citations omitted). They determined “evidence which contradicts directly or circumstantially the inference to be drawn does not *per se* bar drawing the inference or require that the prosecution introduce evidence [to rebut Appellant’s innocent ingestion defense].” *Id.* at 336 (footnote omitted). Rather, the Government must “persuade the [trier of fact] beyond a reasonable doubt on credibility and probability grounds that this evidence should be disbelieved and the inference should nonetheless be drawn and given such weight to find knowledge beyond a reasonable doubt.” *Id.* (citation omitted). This is the scenario we have before us.

I. BACKGROUND

To prove Appellant’s wrongful use of MDMA, the Government relied upon the testimony of three witnesses who detailed the urinalysis process and the drug testing report. First, the manager of the Drug Demand Reduction Program, MM, testified about the testing process in Appellant’s case. During cross-examination, the Defense reviewed the testing material with MM and established that when there are any issues or odd behaviors identified with individuals providing a urine sample, a representative of the Program would make a note of it; in Appellant’s case there were no issues noted. Trial defense counsel also confirmed Appellant checked in to provide a urine sample at 0753 and checked out at 0801, completing the process of providing a sample in 8 minutes. The manager also confirmed that Appellant was notified at 0743, which meant Appellant completed the entire process from the time he was notified until the

time he provided a sample in just 18 minutes. Next, the Government called the observer, AO, to describe his role in the urinalysis process for Appellant and that the process went as it should for Appellant's urinalysis. The Defense established with AO that when acting as an observer they are trained to take note of any strange or evasive behavior during the process and that Appellant did not do anything "weird" or "strange" when he provided his sample. The observer explained nothing stood out.

Finally, the Government called an expert from the Air Force Drug Testing Laboratory, EH, who testified about the test results of Appellant's urine sample. EH explained MDMA is usually taken orally in a tablet or in a drink. EH testified that Appellant's sample tested positive for MDMA at a level of 739 ng/mL, which is above the DoD cutoff of 500 ng/mL, and that, based on his review of the documentation, the test was conducted properly. The Defense confirmed EH was aware that there would be testimony that someone else placed MDMA on the pizza that Appellant ate without Appellant's knowledge and asked him, "Do you have any reason to refute the possibility of that?" "No," replied EH. EH testified the drug test does not tell you how the MDMA was ingested, if someone gave it to Appellant, and it does not tell you if Appellant knew that he ingested it. "Right," EH said, "all [the test] says is that the member ingested, knowingly or unknowingly, if that's what you want to know, of MDMA, within our window of detection of 2 to 4 days."

In addition to putting on evidence that Appellant had good military character, an acquaintance of Appellant, JM, testified that he placed MDMA on the pizza without Appellant knowing, raising the innocent ingestion defense. Appellant, his girlfriend, and his girlfriend's coworker, JM, spent the weekend together at Appellant's house where they crafted, listened to music, and ate pizza. The following Tuesday, Appellant provided a urine sample, which tested positive for MDMA and led to this court-martial. At Appellant's trial, JM testified that he secreted MDMA into Appellant's home, crushed the MDMA into a powder, and sprinkled it on several slices of pizza which then dissolved into the pizza. JM planned to eat those slices himself to relax because he was nervous. He explained he put it on the pizza to take it discreetly while also masking the taste. JM stated he did this without telling Appellant or Appellant's girlfriend and testified without immunity to these criminal acts. Appellant asserts this evidence contradicted knowing use and objected to the permissive inference instruction at trial. JM knew Appellant for a short period of time, did not consider him a friend, and had only met him on a few occasions before he testified without immunity.

The Government put on no rebuttal evidence to the innocent ingestion defense and instead tried to establish the innocent ingestion evidence from JM should not be believed. Trial counsel asked JM why he did not put the MDMA

in his water, why he did not take his slices of pizza out of the box before he sprinkled on the MDMA to ensure Appellant would not eat it, and other questions to elicit that there were more intelligent ways for JM to use MDMA on his own. Trial counsel argued JM’s testimony that he sprinkled MDMA on pizza that Appellant then unknowingly ate was “preposterous” and should be disbelieved.

The members apparently agreed with the Government and convicted Appellant. We, however, are not persuaded “beyond a reasonable doubt on credibility and probability grounds that this evidence [of innocent ingestion] should be disbelieved and the inference should nonetheless be drawn and given such weight to find knowledge beyond a reasonable doubt.” *Ford*, 23 M.J. at 336 (citation omitted). Therefore, we conclude Appellant’s conviction is factually insufficient and dismiss the Charge and its specification with prejudice.

II. DISCUSSION

As noted above, Appellant asserts that the Government relied solely on the permissive inference to prove knowledge and failed to prove Appellant knowingly used MDMA, which rendered his conviction factually and legally insufficient.

A. Law

“The test for legal sufficiency is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *United States v. Robinson*, 77 M.J. 294, 297–98 (C.A.A.F. 2018) (quoting *United States v. Rosario*, 76 M.J. 114, 117 (C.A.A.F. 2017)).

For this court’s factual sufficiency review under Article 66(d)(1)(B), UCMJ, 10 U.S.C. § 866(d)(1)(B), *Manual for Courts-Martial, United States* (2024 ed.) (2024 *MCM*), there is “nothing in [the] amended Article 66, UCMJ, [that] either requires or allows a [Court of Criminal Appeals (CCA)] to review the factual sufficiency of the evidence,” unless “two express [threshold] conditions” are met: “appellant (1) asserting an assignment of error, and (2) showing a specific deficiency of proof.” *United States v. Harvey*, 85 M.J. 127, 130 (C.A.A.F. 2024) (citations omitted). The first requirement, asserting an assignment of error, is straightforward and easily measured. The second requirement, showing a specific deficiency of proof, less so. Not defined in Article 66, UCMJ, it has been discussed but not yet defined in our case law.

There remain open questions as to what is required for a specific showing of a deficiency of proof. The United States Court of Appeals for the Armed Forces (CAAF) began to set limits on this second requirement in *United States v. Hunt*, stating to invoke a factual sufficiency review the specific showing of a

deficiency of proof must be “a specific, reasonable, nonfrivolous statement of error as to a particular finding.” — M.J. ___, No. 25-0257, 2026 CAAF LEXIS 661, at *7 (C.A.A.F. 6 Aug. 2026). The dissent in *Hunt* agreed with this point, making clear, that “the new requirement of a specific showing ‘avoids allowing the defense to obtain factual sufficiency review by making a mere boilerplate allegation of factual insufficiency in every case with a contested finding of guilty.’” *Id.* at *18 (Maggs, C.J., dissenting). Chief Judge Maggs’ dissent acknowledges the “Court has not yet had occasion to define exactly what is needed to satisfy this requirement . . . , “[b]ut the requirement of the ‘specific showing’ appears to rest on a principle of judicial efficiency.” *Id.* The dissent further alludes to the fact that CCAs should not “use their limited resources conducting a factual sufficiency review unless such a review is likely to matter.” *Id.*

As we explained in *United States v. Jastal*, this court “make[s] a qualitative assessment informed by our discretionary authority, our judicial experience, an appellant’s assertion, and the record of trial to determine whether an appellant has demonstrated a ‘specific showing of a deficiency of proof’ under Article 66(d)(1)(B)(i), UCMJ.” No. ACM 40823, 2026 CCA LEXIS 426, at *16 (A.F. Ct. Crim. App. 25 Sep. 2026) (unpub. op.). When an appellant (1) requests a factual sufficiency review and (2) asserts a specific showing of a deficiency of proof, we must assess whether the claim constitutes a specific showing of a deficiency of proof. Our review must ensure the claimed specific showing of a deficiency of proof is “a specific, reasonable, nonfrivolous statement of error as to a particular finding,” as required by *Hunt*, 2026 CAAF LEXIS 661, at *7. *See id.* As we stated in *Jastal*,

[we] need to qualitatively assess the deficiency of proof to ensure the specific showing of a deficiency of proof meets these limits set in *Hunt*. We do not articulate an agreed upon algorithm—or test within a test—for determining when these requirements are met. Instead, our court relies upon the judicial discretion of the judges of the court weighing the stated deficiency with the specific facts in the record against the plain meaning of the terms “specific” and “non-frivolous statement of error as to a particular finding,” and “reasonable” in each individual case.

Once satisfied the stated deficiency constitutes a specific showing of a deficiency of proof, we are empowered to conduct a full weight of the evidence review. Conversely, when we determine through our qualitative assessment an appellant has failed to make a specific showing of a deficiency of proof, we lack the statutory authority to proceed further and our analysis ends. Our qualitative assessment of an appellant’s threshold showing is a

mixed question of law and fact. This qualitative assessment, akin to fact finding, is in our view amenable to review by our superior court for an abuse of discretion, while our application of the law is subject to a de novo review.

Id. (citing *Harvey*, 85 M.J. at 130; then citing *United States v. Csiti*, 85 M.J. 414, 419 (C.A.A.F. 2025)²).

Further, once we are authorized to conduct a full factual sufficiency review, the statutory requirement to apply “appropriate deference” depends “on the nature of the evidence at issue.” *Harvey*, 85 M.J. at 130; *Jastal*, unpub. op. at *18. It remains within this court’s discretion to determine what level of deference is appropriate under the circumstances. *Harvey*, 85 M.J. at 131. The ultimate substantive burden remains clear: “the 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.* at 131 (internal quotation marks omitted). 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, we must decide that evidence, as we weigh it, “does not prove that the appellant is guilty beyond a reasonable doubt.” *Id.* Second, we “must be clearly convinced of the correctness of this decision.” *Id.*

The elements of wrongful use of a controlled substance, in violation of Article 112a, UCMJ, are: (1) that an accused used a controlled substance; and (2) that the use by the accused was wrongful. *See* 10 U.S.C. § 912a; *Manual for Courts-Martial, United States* (2024 ed.) (*MCM*), pt. IV, ¶ 50.b.(2)(a)–(b).

“Knowledge of the presence of the controlled substance is a required component of use” and “may be inferred from the presence of the controlled substance in the accused’s body or from other circumstantial evidence.” *MCM*, pt. IV, ¶ 50.c.(10). However, evidence “by an accused that he did not knowingly use drugs and cannot honestly account for its presence in his body is sufficient to raise an issue of innocent ingestion.” *Ford*, 23 M.J. 336.

In *Ford*, the CMA addressed whether the “[permissive] inference is sufficient by itself to support a finding of wrongfulness beyond a reasonable doubt where the defense subsequently introduces evidence which purportedly undermines or contradicts this inference.” *Id.* at 332. The court determined “evidence which contradicts directly or circumstantially the inference to be drawn does

² In *Csiti*, the CAAF explained they “review [our court’s] interpretation of Article 66(d)(1)(B), UCMJ, de novo because that is a question of law [, and] review [our court’s] application of Article 66(d)(1)(B), UCMJ, for abuse of discretion.” 85 M.J. at 419 (emphasis and citations omitted).

not *per se* bar drawing the inference or require that the prosecution introduce evidence [to rebut Appellant’s innocent ingestion evidence].” *Id.* at 336 (footnote omitted). Rather, the Government must “persuade the [trier of fact] beyond a reasonable doubt on credibility and probability grounds that this evidence should be disbelieved and the inference should nonetheless be drawn and given such weight to find knowledge beyond a reasonable doubt.” *Id.* (citation omitted).

Where members at trial do not believe an appellant’s innocent ingestion defense and convict, a service appellate court may still conclude the finding is factually insufficient. *United States v. Downum*, 86 M.J. 200, 207 (C.A.A.F. 2025).

[T]he Government is correct that the panel must have believed the Government witnesses over [the accused] to have found him guilty. But under the new version of Article 66, UCMJ, the service courts are still authorized to “weigh the evidence and determine controverted questions of fact.” Article 66(d)(1)(B)(ii), UCMJ. The new Article 66(d) appropriate deference requirement does not prohibit a service court from concluding that a finding of guilt is factually insufficient simply because the defendant denied that he committed the charged offense. To conclude otherwise would be to impose a presumption of guilt similar to the one that [the CAAF] rejected in *Harvey*, 85 M.J. at 132.

Id.

In *United States v Hall*, the CAAF stated,

[E]vidence of urinalysis tests, their results, and expert testimony explaining them is sufficient to permit a fact-finder to find beyond a reasonable doubt that an accused used contraband drugs. The factfinder may draw a permissible inference of wrongfulness from a circumstantial showing of drug use based on such evidence. This evidence is legally sufficient as long as the defense evidence of innocent ingestion could be reasonably disbelieved by the factfinder.

58 M.J. 90, 94 (C.A.A.F. 2003) (citations omitted).

However, in *Hall*, the CAAF found the trial judge improperly admitted hearsay evidence offered by the Government to undermine the defense theory of innocent ingestion. The CAAF overturned the conviction based on the improper hearsay which undermined the defense’s innocent ingestion defense. *Id.* at 95. The CAAF also made clear that “[u]rinalysis’ is not . . . a synonym for ‘conviction.’” *Id.* at 94. This highlighted the importance of the “other evidence that sought to challenge the Government’s inference of wrongfulness.” *Id.*

B. Analysis

1. Legal Sufficiency

Viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have disbelieved the evidence of innocent ingestion, applied the permissive inference and found Appellant's use of MDMA wrongful beyond a reasonable doubt. The finding of guilty is legally sufficient. *See Robinson*, 77 M.J. at 297–98.

2. Factual Sufficiency- Applying the Threshold for Review Under Article 66(d)(1)(B)(i), UCMJ—Has Appellant (1) Requested Review and (2) Made a Specific Showing of a Deficiency of Proof?

a. Appellant Requested Review

Pursuant to Article 66(d)(1)(B)(i), UCMJ, Appellant requested a factual sufficiency review in his assignments of error brief, thereby satisfying step one of the two-step requirement for this court to be empowered to conduct a factual sufficiency review. *See Harvey*, 85 M.J. at 129.

b. Appellant's Specific Showing of a Deficiency of Proof

In Appellant's opening brief, he alleges, "[Staff Sergeant (SSgt)] Pryce's conviction was factually insufficient because of two specific deficiencies of proof: (1) the Government provided no evidence that SSgt Pryce knew he used MDMA; and (2) the Government provided no evidence that SSgt Pryce actually knew that the substance he used was MDMA or of a contraband nature."

Appellant's claim that the Government provided no evidence Appellant knew he used a controlled substance constitutes a specific showing of a deficiency of proof. *See* Article 66(d)(1)(B)(i), UCMJ. Conducting an initial review, we see the record contains no evidence presented by the Government that Appellant knowingly used MDMA. Instead, the Government relied upon the permissive inference to prove knowledge. The Defense raised the innocent ingestion defense and supported their claim with testimony by JM who said he placed MDMA on slices of pizza unbeknownst to Appellant and his girlfriend. JM testified without immunity and the Government presented no evidence to rebut JM's testimony. "A 'urinalysis' is . . . not a synonym for 'conviction.'" *Hall*, 58 M.J. at 94. "There was present in this case other evidence that sought to challenge the Government's inference of wrongfulness." *Id.* The members' finding of guilt indicates they disbelieved the innocent ingestion evidence and applied the permissive inference. Although this finding was legally sufficient, members could have believed JM's sworn testimony and decided not to apply the permissive inference. After weighing the stated deficiency—the lack of evidence that Appellant knew he used MDMA—with facts in the record described above, we find Appellant's assertion constitutes a specific showing of a

deficiency of proof. Having found Appellant made a specific showing of a deficiency of proof, the court is empowered to conduct a weight of the evidence review.

3. Weight of the Evidence Review

We proceed to conduct a weight of the evidence review in accordance with Article 66(d)(1)(B)(ii), UCMJ. Appellant's claim that the Government failed to prove knowledge in this case is persuasive. The scientific evidence showed a single use and the Government expert agreed he could not rule out the possibility that Appellant ingested the MDMA by eating pizza with MDMA sprinkled on it. The Government's evidence does not "persuade [us] beyond a reasonable doubt on credibility and probability grounds that this evidence [of innocent ingestion] should be disbelieved and the inference should nonetheless be drawn and given such weight to find knowledge beyond a reasonable doubt." *Ford*, 23 M.J. at 336.

We considered that the testimony of innocent ingestion came from an acquaintance, JM, which is fairly construed as more reliable than if it had come from a witness with greater potential biases, such as Appellant's girlfriend or Appellant himself, who would both have seemingly had more to gain from Appellant's acquittal. The Government did not point to anything JM had to gain from his testimony. JM knew Appellant for a short period of time, did not consider him a friend, and had only met him on a few occasions before he testified without immunity.

JM did, however, have something to lose by testifying under oath that he bought the MDMA, secreted it into Appellant's home, and exposed Appellant to MDMA by sprinkling it on pizza. Specifically, JM exposed himself to criminal liability by making this statement.³

JM testified that after he found out Appellant tested positive for MDMA, "I had a terrible sinking pit in my stomach and I disclosed to [Appellant] that I had brought drugs into his house and accidentally caused [Appellant] to take some[.]" JM testified out of a sense of responsibility for what he had done.⁴

³ Of course, the Government's claim that this is a "dubious pizza, MDMA-sprinkling story" would also mean JM committed perjury for an acquaintance. The Government's colorful discounting of JM's sworn testimony lacks any explanation for why JM would perjure himself and testify to criminal acts for an acquaintance.

⁴ Consistent with this sentiment, JM testified on behalf of Appellant in sentencing. After JM acknowledged he knew Appellant was convicted, trial counsel asked, "Do you believe your actions the weekend of March 29th substantially contributed to that

The Government's cross-examination did not impugn the testimony of JM. The Government's cross-examination pointed out that there were more intelligent ways for JM to personally use MDMA. Let us concede that when discussing drug use, we do not expect the pinnacle of wisdom to be consistently applied.⁵ The wise choice would have been not to use at all and not to bring the drug into someone else's home. JM's description of how he placed the MDMA on a pizza as he had done in the past, while admittedly unwise, is plausible enough to create reasonable doubt when considered with the other trial evidence. We would not consider putting MDMA in water, as the Government suggested JM might have during cross-examination, to be an intelligent choice either, or one that would preclude innocent ingestion by someone else.

Attempting to undercut JM's testimony, the Government cross-examined him on his lack of memory regarding pizza toppings and the specific night on which the pizza was consumed. We find lack of memory on these details unpersuasive. We find this lack of memory of unimportant details does not undercut JM's testimony that he placed the MDMA on the pizza without telling Appellant or his girlfriend.

We gave the fact that members saw and heard the witness in this case the appropriate deference and we listened to JM's testimony ourselves in addition

[conviction]?" and JM replied, "Yes." JM also submitted a letter in support of Appellant's clemency request, which stated in part,

I am writing to accept full responsibility for the MDMA that has led to the conviction of [Appellant]. I deeply regret the consequences my actions have brought upon him. [Appellant] was unaware that I brought MDMA into his home, and he certainly did not know he had ingested it. I have repeated this [information] since the first time I was interviewed back in June of this year. This situation is entirely my fault, and I want to again explain how this unfolded, hoping it will bring understanding and justice for [Appellant].

After describing what occurred, he continued, "In my effort to correct the damage I have caused, I have been fully cooperative throughout this process." He then outlined his interviews and trial testimony and said, "I have done so willingly, even knowing the problems it could cause for me, because I am committed to taking responsibility for my actions and making clear that [Appellant] is innocent in all of this." He concluded, "I am dedicated to righting this wrong and not letting someone else take the blame for my actions." We find JM's continued effort to take responsibility for his actions even after trial concluded laudable and consistent with the weight we gave his testimony.

⁵ In another permissive inference case, our superior court pointed out in a footnote that wisdom should not be expected in crime. Judge Sullivan wrote in *United States v. Bond*, "There is an old Danish saying that if lack of money is the mother of crime, its father may well be lack of intelligence. Even Livy, the Latin law moralist, states: 'No crime is founded upon reason.'" 46 M.J. 86, 90 n.1 (C.A.A.F. 1997) (citation omitted).

to reading the transcript. JM's testimony is clear and consistent. Nor do we find we are bound by the members' assessment of credibility when we conduct our fact finding under Article 66, UCMJ. *See Downum*, 86 M.J. at 206. We did not find the cross-examination established more than the normal passage of time's effect on memory and unfortunate choices made by JM that weekend.

The Government's evidence does not "persuade [us] beyond a reasonable doubt on credibility and probability grounds that this evidence [of innocent ingestion] should be disbelieved and the inference should nonetheless be drawn and given such weight to find knowledge beyond a reasonable doubt." *Ford*, 23 M.J. at 336. As a result of our review, we are clearly convinced the finding of guilty is against the weight of the evidence and set aside the findings of guilty to the Charge and its sole specification. *See* 10 U.S.C. § 866(d)(1)(B).

III. CONCLUSION

The findings of guilty and the sentence are **SET ASIDE**. The Specification to the Charge and the Charge are **DISMISSED**. All rights, privileges, and property, of which Appellant has been deprived by virtue of the findings and sentence set aside by this decision, are ordered restored. *See* Articles 58a(b) and 75(a), UCMJ, 10 U.S.C. §§ 858a(b), 875(a).



FOR THE COURT

Carol K. Joyce

CAROL K. JOYCE
Clerk of the Court