

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES,	)	APPELLANT’S MOTION FOR
<i>Appellee,</i>	)	RECONSIDERATION
	)	
v.	)	
	)	Before a Special Panel
Airman Basic (E-1)	)	
JULIUS VONGPHACHANH,	)	No. ACM 40741
United States Air Force,	)	
<i>Appellant.</i>	)	26 June 2026

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

Pursuant to Rule 31(b) of the Joint Rules of Appellate Procedure for Courts of Criminal Appeals and Rule 31.2 of this Court’s Rules of Practice and Procedure, Appellant moves for reconsideration of this Court’s opinion of 29 May 2026. *United States v. Vongphachanh*, No. ACM 40741, 2026 CCA LEXIS 252 (A.F. Ct. Crim. App. May 29, 2026).

Jurisdiction

Appellant’s counsel received a copy of this Court’s opinion on 29 May 2026. The Court of Appeals for the Armed Forces has not obtained jurisdiction over this case. On 2 June 2026, the Military Justice Law and Policy Division (AF/JAJM) requested that the convening authority “return to AF/JAJM the original and six copies of the EOJ/STR/CADAM and the original and two copies of any other documents completed in this new post-trial process by **6 July 2025.**” AF/JAJM, MEMORANDUM FOR USAFWC/J (2 June 2026).

Basis for Reconsideration

This Court’s opinion overlooked or misapplied significant facts and legal argument relevant to whether the prosecution proved beyond a reasonable doubt that Appellant carried a concealed firearm and, if so, that carrying the concealed firearm was unlawful. Additionally, the opinion improperly relied on guilt by association, which controlling precedent condemns as “a

principle alien to American standards of justice.” *United States v. Jacobs*, 2 C.M.R. 115, 117 (C.M.A. 1952). This Court should reconsider its opinion and set aside the finding of guilty to the carrying a concealed weapon specification, which the prosecution failed to prove beyond a reasonable doubt.

Facts

Appellant was charged with and found guilty of, *inter alia*, violating Article 114, Uniform Code of Military Justice, by, “at or near Las Vegas, Nevada, on or about 3 July 2022, unlawfully carry[ing] on or about his person a concealed weapon, to wit: a handgun.” Charge Sheet, Charge I, Specification 2; Trial Tr. 1687. The evidence proved that Appellant possessed a handgun at a house party in North Las Vegas, Nevada, on 2 July 2022. Appellant’s opening and reply briefs challenged both whether the prosecution proved beyond a reasonable doubt that the handgun was concealed and whether the prosecution proved beyond a reasonable doubt that the carrying was unlawful. Appellant’s Br. at 9-14; Appellant’s Reply Br. at 1-7.

The prosecution’s evidence concerning the manner in which Appellant carried the handgun at the party was limited to the testimony of IM-A. Trial Tr. at 948, 951, 953, 978.¹ IM-A testified that he has saw Appellant at the party, which was “pretty crowded.” *Id.* at 948. When asked, “Did you see a weapon on him?,” IM-A responded, “No, I hadn’t, not that night.” *Id.* IM-A testified that there was a fight at the party, during which Appellant was “on the side of me, kind of, behind on the side.” *Id.* at 951. IM-A testified that he did not see whether Appellant participated in the fight. *Id.* He subsequently agreed that Appellant was right next to him when the fight started. *Id.* at 953. IM-A later answered no when asked, “Do you know if Airman Basic

¹ While the prosecution presented the testimony of six individuals who were at the party, IM-A is the only person who testified that he saw Appellant there. *See* Trial Tr. 849-66 (testimony of JT-C), 868-904 (testimony of WC-Q), 905-18 (testimony of VC-D), 918-40 (testimony of JA-L), 946-88 (testimony of IM-A), 990-98 (testimony of JN).

Vongphachanh had a gun?” *Id.* at 978. That was the entirety of the prosecution’s evidence that Appellant carried a concealed handgun. On the other hand, the evidence established that: (1) the party was both dark and crowded, (2) the area where IM-A saw Appellant was particularly dark, (3) the handgun Appellant carried was black, (4) the handgun appeared to be made of non-reflective materials, (5) the handgun’s dimensions were approximately five-by-eight inches, and (6) Appellant was wearing a dark-colored shirt when photographed later that night. Trial Tr. 881, 887-89, 928 (testimony that the area where IM-A saw Appellant was “very dark”), 948, 951, 953, 978; Pros. Exs. 15, 26.

Analysis

A. The opinion misconstrued the testimony of the only witness who saw Appellant at the site of the alleged offense.

In concluding that the evidence proved beyond a reasonable doubt that Appellant did not carry his handgun in a visible fashion, the opinion misconstrued IM-A’s testimony. The opinion stated that IM-A testified “that Appellant was at the party and not openly carrying his handgun.” *Vongphachanh*, 2026 CCA LEXIS 252, at *11. IM-A did not testify that Appellant did not openly carry his handgun. Rather, he answered no when asked, “Did you see a weapon on him?” Trial Tr. at 948. The prosecution failed to clarify with IM-A his opportunity to observe Appellant and the extent to which it was probable that he would have seen a handgun if Appellant carried it openly. Thus, the Government, as the party bearing the burden of proof, failed to disprove the reasonable possibility that Appellant was openly carrying his handgun but IM-A did not see it.

The following hypothetical demonstrates the opinion’s misconstruction of IM-A’s testimony. Hypothesize that IM-A had been asked, “Did you see if Appellant’s eyes were blue?” and IM-A responded, “No.” That could hardly be characterized as IM-A testifying that Appellant’s eyes were not blue—much less proving beyond a reasonable doubt that his eyes

were not blue. That testimony would be just as consistent with IM-A not noticing the color of Appellant's eyes. Here, IM-A's testimony is consistent with not noticing the areas of Appellant's body where he might openly carry a firearm, such as Appellant's waist.

IM-A's testimony establishes only that he saw Appellant at a crowded party, that Appellant was to his side in a particularly dark area in the backyard, and that IM-A did not notice a fairly small flat-black handgun against Appellant's dark shirt. The evidence establishes that at the only point IM-A testified to seeing Appellant, Appellant was situated to IM-A's side. Trial Tr. 951, 958. If Appellant was on IM-A's right side, facing the same direction as IM-A, and wearing his handgun openly on his right hip, IM-A would not have seen it. Amid the crowded party, the evidence does not even establish whether IM-A saw any portion of Appellant's body other than, presumably, his face. That is not proof beyond a reasonable doubt.

Without the misconstruction of IM-A's testimony as a statement that Appellant was "not openly carrying his handgun," *Vongphachanh*, 2026 CCA LEXIS 252, at *11, the evidence the opinion cited concerning two *other* individuals carrying concealed firearms and the host's boyfriend checking for weapons at the party's entry point for a limited portion of the evening would not come close to proving beyond a reasonable doubt that Appellant concealed his handgun. *See id.* at *11-12. According to the host, her boyfriend sporadically checked bags of those arriving for "maybe like an hour" of a party that started at 9 p.m. Trial Tr. 868; Pros. Ex. 3. When Appellant was pointed out to him in the courtroom, the boyfriend testified that he did not know him. Trial Tr. 938. There is no reason to assume that Appellant arrived at the party during one of the interludes during which the boyfriend was checking bags; in fact, the odds are against it.

Moreover, Appellant objects to the opinion’s suggestion of guilt by association, “a principle alien to American standards of justice.” *Jacobs*, 2 C.M.R. at 117. Jay and Ace carrying their firearms in a concealed manner is not legitimate evidence that Appellant carried his handgun in a concealed manner. *See Vongphachanh*, 2026 CCA LEXIS 252, at *12 (reasoning that because Jay and Ace kept their firearms hidden under their shirts until they approach AM, “[i]t stands to reason their friend, Appellant, would have also kept his weapon concealed, at least for some period of time, for similar motivations.”).

B. The opinion mistakenly claims that Appellant did not make an argument to which Appellant’s reply brief devoted two pages.

This Court’s opinion erroneously states that “[o]n appeal, Appellant does not suggest the Government failed to disprove he was lawfully entitled to carry a concealed weapon on the night in question.” *Id.* at *9. Appellant did far more than suggest such an absence of proof; he devoted two pages of his reply brief to making that very argument. Appellant’s Reply Br. at 6-7. That discussion concluded with the statement, “Based on the actual evidence at Appellant’s trial, the prosecution failed to prove beyond a reasonable doubt that, even if the weapon was concealed, such concealment was unlawful because the prosecution failed to prove the absence of a concealed carry permit from a jurisdiction to which Nevada extended reciprocity.” *Id.* at 7. That statement clearly belies the opinion’s assertion that “Appellant does not suggest the Government failed to disprove he was lawfully entitled to carry a concealed weapon on the night in question.” *Vongphachanh*, 2026 CCA LEXIS 252, at *9. It is apparent that this argument was overlooked. That alone makes reconsideration appropriate. *See* A.F. Ct. Crim. App. R. 31.2(b)(1).

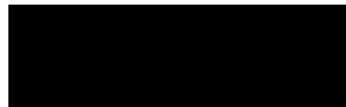
Moreover, the opinion’s synopsis of the evidence concerning a permit to carry a concealed weapon demonstrates why the evidence was insufficient to prove unlawfulness beyond a reasonable doubt. As the opinion notes, “[T]he Government introduced evidence that

carrying a concealed firearm without a permit was illegal in Nevada, and that Appellant did not have a Nevada permit.” *Vongphachanh*, 2026 CCA LEXIS 252, at *9. Those facts are insufficient to prove guilt beyond a reasonable doubt because the evidence also established that Nevada has “reciprocity with another state, if someone has a CCW² in another state.” Trial Tr. 1256. While the evidence indicated that Nevada does not have reciprocity with California, *id.*, no evidence was presented at trial concerning reciprocity with any other state. Nor did the evidence establish that Appellant did not have a concealed weapons permit from some other state. Accordingly, the evidence was insufficient to prove unlawfulness beyond a reasonable doubt.

Conclusion

For the foregoing reasons, this Court should reconsider its opinion, set aside the finding of guilty to Charge I, Specification 2, dismiss that specification with prejudice, and reassess the sentence.

Respectfully submitted,



Dwight H. Sullivan
Appellate Defense Counsel



Counsel for Appellant

² Sergeant AS of the Las Vegas Metropolitan Police Department testified that the term “CCW permit” means a concealed weapons permit. Trial Tr. at 1226.

CERTIFICATE OF FILING AND SERVICE

I certify that the original and copies of the foregoing were sent via email to the Court and served on the Government Trial and Appellate Operations Division on 26 June 2026.

Respectfully submitted,

A solid black rectangular box used to redact the signature of Dwight H. Sullivan.

Dwight H. Sullivan
Air Force Appellate Defense Division

IN THE UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES, <i>Appellee,</i>	)	UNITED STATES' ANSWER
	)	TO APPELLANT'S MOTION FOR
	)	RECONSIDERATION
v.	)	
	)	Before Special Panel
Airman Basic (E-1)	)	
JULIUS VONGPHACHANH,	)	No. ACM 40741
United States Air Force	)	
<i>Appellant.</i>	)	2 July 2026

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

Pursuant to Rule 31(c) of this Court's Rules of Practice and Procedure, the United States respectfully request this Honorable Court deny Appellant's Motion for Reconsideration dated 26 June 2026.

Reconsideration is unnecessary in this case because Appellant has not shown that this Court overlooked or misapplied a material legal or factual matter. Appellant reiterates largely the same arguments covered in the initial briefs that have already been litigated before this Court. Thus, reconsideration is unwarranted.

Facts

A panel found Appellant guilty of unlawfully carrying a concealed firearm in violation of Article 114, UCMJ. (*Entry of Judgment*, 22 July 2024, eROT, Vol. 1.) On 2 July 2023, Appellant went to a party at a residential home in North Las Vegas, Nevada. (Pros. Ex. 3.) A fight broke out at the party, quickly escalating to gunfire. (R. at 1084-85.) Appellant mentioned that "everybody started running, pushing, shoving. . . ." (R. at 1085.) During the chaos Appellant fired shots in the air because he thought that the "best option was to shoot into the sky" to stop the shooting. (R. at 1085-86.)

IM-A, Appellant's friend, testified that he saw Appellant at the party. (R. at 947.) When asked whether he saw Appellant possess a firearm, IM-A said, "No I hadn't, not that night." (R. at 948.) IM-A remembered "a fight breaking out." (R. at 949.) When the fight broke out, IM-A said, "[Appellant] was, like on the side of me, kind of, behind, but on the side, if that makes sense." (R. at 951.) IM-A clarified that during the fight Appellant was next to him during the fight. (Id.)

IM-A's brother "Jay" was also at the party. IM-A testified that he did not see his brother carry a firearm that night. (R. at 977.) IM-A did, however, testify that his brother was involved in the fight. (R. at 978.) WC-Q testified that "Jay" and "Ace" (Appellant's friends) concealed a gun underneath their shirt. (R. at 872.)

AS, a law enforcement agent, testified that Appellant did not have a concealed carry weapons permit, and he did not apply for a permit in the state of Nevada. (R. at 1229.)

Law and Analysis

A. This Court gave appropriate deference to the panel who heard and saw IM-A testify.

This Court correctly found that IM-A credibly testified that "Appellant was at the party and not openly carrying his handgun." United States v. Vongphachanh, 2026 CCA LEXIS 252, at *11 (A.F. Ct. Crim. App. 29 May 2026) (unpub. op.) Consistent with his initial briefs, Appellant devotes substantial efforts disputing IM-A's testimony, contending that this Court misconstrued that evidence. (Mot. Recon. at 3-4.) Appellant is incorrect.

This Court correctly found that it could not be "clearly convinced that the finding of guilty was against the weight of the evidence." *See* Article 66(d)(1)(B)(iii), UCMJ; Vongphachanh, unpub. op. at *12. Contrary to Appellant's contention, IM-A's testimony was sufficient as presented to prove concealment. As this Court specifically noted, "When trial

counsel asked IM-A, “[D]id you see a weapon on [Appellant],” IM-A responded, “No, I hadn’t, not that night.” Id. at *10. This negative answer – from a witness who both stood beside and interacted with Appellant that night – reasonably indicated that Appellant was not openly displaying a handgun. This Court did not err when stating that IM-A’ testified that Appellant was “not openly carrying his handgun” that night. Id. at *11. This Court did not misconstrue IM-A’s testimony.

Appellant offers a hypothetical, arguing that if IM-A had answered, “No,” to the question, “Did you see if Appellant’s eyes were blue,” that response could then “hardly be characterized as IM-A testifying that Appellant’s eyes were not blue.” (Mot. Recon. at 3.) But this hypothetical misses the mark. A handgun is not an obscure detail like eye color. A handgun is a large, distinct object that would be readily noticeable if openly carried on one’s waist – especially at a crowded party where the hosts were checking bags for weapons. (R. at 857.) A far better analogy would ask, “Did you see Appellant’s eyes?” followed by a “no” response. In that scenario, the negative response from a close observer would reasonably indicate the eyes were not openly visible or prominently displayed. The same logic applies here to Appellant’s weapon. Appellant’s attempt to equate failing to notice eye color with failing to notice an openly carried firearm is unpersuasive.

Appellant further emphasizes that Appellant was “situated to IM-A’s side” in a dark crowded party. (Mot. Recon. at 4.) In other words, Appellant argues that IM-A’s vantage point of Appellant did not prove beyond a reasonable doubt that Appellant was concealing a weapon, which renews an argument previously made to this Court. (Id., *see also* App. Br. at 13.) To start, IM-A was not a distant or casual observer, but instead was Appellant’s friend who, based on his answer of “No, I hadn’t, not that night,” presumably had seen Appellant brandish a

firearm in the past. (R. at 948-48.) Thus, the members and this Court had testimony from a friend who (1) had seen Appellant with a weapon before, (2) saw Appellant at the party, (3) stood right next to Appellant at the party, and (4) testified that he did not see Appellant with a weapon that night.

However, Appellant disregards this evidence and instead asks this Court to focus on a narrow set of circumstances – Appellant perfectly positioned to the side of IM-A such that IM-A could not see an openly carried firearm on Appellant’s hip. Yet even if this Court was limited to the narrow circumstances proposed by Appellant, his argument is still unpersuasive.

There was no dispute that IM-A was next to Appellant during the fight that resulted in shots being fired. (R. at 951.) Applying common sense and an understanding of the ways of the world, when a fight ensues, people are not going to remain stagnant. Accordingly, Appellant, as well as others, would have moved around. With this logic, IM-A would have had other vantage points of Appellant in which he would have had the view of a weapon – if the weapon was visible to the public. Considering IM-A’s testimony, Appellant’s argument does not show that the conviction was against the weight of the evidence.

In addition to IM-A’s testimony, the government admitted other evidence to prove that Appellant unlawfully carried a concealed weapon. There was no dispute that Appellant carried a firearm on the night of 2 July 2022 at the birthday party given that Appellant admitted to law enforcement that he fired shots “into the sky.” (R. at 1086.) Further, Appellant did not have a concealed carry weapon permit in Nevada or any other state for that matter. (R. at 1229.) This Court considered all these facts in its analysis and therefore had a factual predicate finding Appellant’s conviction for unlawfully carrying a firearm factually sufficient. Vongphachanh, unpub. op. at *10-11.

This Court addressed IM-A’s credibility and noted that IM-A testified that his brother “Jay” did not have a gun that night, which was contradicted by WC-Q’s testimony who saw “Jay” and “Ace” with a gun that night. Id. at *10. Still this Court said that although IM-A had “some incentive to downplay any awareness that [‘Jay’ and ‘Ace’] were armed on the night of the fatal shooting, the court members heard and observed the testimony of the witnesses and concluded that Appellant did carry his weapon concealed.” Vongphachanh, unpub. op. at *10. The Court gave appropriate deference to this outcome – which was fitting under factual sufficiency review. As mandated by United States v. Harvey, this Court must give “appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence.” 85M.J. 127, 130 (C.A.A.F. 2024); *see also* United States v. Zavala, 2026 CCA LEXIS 230 (N-M. Ct. Crim. App. 12 May 2026) (unpub. op.) (“We afford a high degree of appropriate defense to the fact that the members saw and heard witnesses. . . .”). Appellant’s briefs and motion for reconsideration disregarded this standard, which this Court properly applied. Thus, there is no need for this Court to reconsider.

B. Appellant’s conviction rests on independent evidence, not mere guilt by association.

Appellant argues that this Court’s opinion suggests guilt by association because “Jay” and “Ace” carried firearms in a concealed manner so Appellant also concealed his weapon. (Mot. Recon at 5, citing United States v. Jacobs, 2 C.M.R. 115, 117 (C.M.A. 1952)). This Court did not find Appellant guilty by association but rather stated a reason why Appellant would have a motivation to conceal his weapon based on inferences derived from evidence admitted at trial:

JT-C [the party host] testified she asked her boyfriend, JA-L, to check guests’ bags and purses for guns when the first guests were arriving at the party. Although at some point JA-L discontinued these inspections, this evidence suggests that Appellant and his friends openly bringing weapons to the party would not have been welcome or socially acceptable. This is particularly so given that,

unlike AM [Appellant's friend], there was little evidence Appellant and his friends were socially connected to the hosts of the party. JT-C's boyfriend JA-L testified he and AM had been good friends in the past. In contrast, a reasonable factfinder could conclude Appellant and his friends "Jay" and "Ace" were not friends of the party hosts. In addition, the Government introduced text messages between Appellant and "Jay" on the night of the party indicating they anticipated a possible confrontation with AM that night. Moreover, WC-Q's testimony indicated "Jay" and "Ace" were keeping guns hidden under their shirts until they approached AM. It stands to reason their friend, Appellant, would have also kept his weapon concealed, at least for some period of time, for similar motivations.

Vongphachanh, unpub. op. at *11-12. This discussion merely explained the context regarding why Appellant would have the motivation to possess a firearm in the first place. This motivation – paired with IM-A's testimony that he saw no firearm and the evidence that Appellant lacked a valid permit – established beyond a reasonable doubt that Appellant unlawfully concealed a weapon. Appellant's claim that this Court's opinion had a "suggestion of guilt by association" is unsupported.

C. This Court considered all arguments and did not overlook issues presented by Appellant.

This Court said that "[o]n appeal, Appellant does not suggest that Government failed to disprove that he was lawfully entitled to carry a concealed weapon on the night in question. However, Appellant contends his conviction for unlawfully carrying a concealed weapon is factually insufficient because the Government introduced no insufficient evidence the handgun was concealed." Vongphachanh, unpub. op. at *10-11. Based on this language, Appellant claims this Court overlooked an issue discussed in his reply brief. (Mot. Recon. at 5 citing Reply Br. at 6-7.) Specifically, Appellant argued in his reply brief, "Based on the actual evidence at Appellant's trial, the prosecution failed to prove beyond a reasonable doubt that, even if the weapon was concealed, such concealment was unlawful because the prosecution failed to prove

the absence of a concealed carry permit from a jurisdiction to which Nevada extended reciprocity.” (Id.)

Appellant is incorrect. As he essentially concedes in his motion, Appellant raised his reciprocity argument for the first time in his reply brief to this Court. (Id.) Indeed, he raised no reciprocity issue within his factual sufficiency issue in his initial brief to this Court. (See App. Br. at 10-14.) Instead, Appellant’s factual sufficiency issue claims in his initial brief rested solely on whether his handgun was concealed. It was only in his reply brief that Appellant for the first time argued that Government failed to prove the absence of a concealed carry permit from a jurisdiction other than Nevada. (See App. Reply Br. at 6-7.)

Our sister Court has declined to consider the merits of an argument raised for the first time in a reply brief. See United States v. Ramirez, ARMY 20210376, 2022 CCA LEXIS 667 (Army. Ct. Crim. App. 16 November 2022) (unpub. op.) (citing United States v. Ozbirn, 81 M.J. 38, 44 (C.A.A.F. 2021). In Ozbirn, our superior Court stated that the Court “will not revive a forfeited argument simply because [an appellant] gestures toward it in [his] reply brief.” Ozbirn, 81 M.J. at 43 (quoting Republic of Argentina v. NML Capital, Ltd., 573 U.S. 134, 140 n.2, 134 S. Ct. 2250, 189 L. Ed. 2d 234 (2014)). Thus, this Court was correct in stating that Appellant did not suggest that Government failed to disprove that he was lawfully entitled to carry a concealed weapon on the night in question, as he did not raise it in his initial brief to this Court.

Yet, even if this Court were to consider Appellant’s contention, evidence at trial showed that he lacked a license to carry a concealed weapon in Nevada. (R. at 1228-29.) Further, Nevada did not have reciprocity with the state of California – Appellant’s home state. (R. at 1228.) There was no evidence in the record that Appellant possessed a valid permit from Nevada or any reciprocating jurisdiction. Accordingly, the evidence was factually sufficient to

establish that the carrying was unlawful. In sum, Appellant has not articulated a basis for this court to reconsider its decision.

WHEREFORE, this Court should deny Appellant's motion and not reconsider its 29 May 2026 decision in this case.

[REDACTED]

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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing was delivered to the Court and to the Appellate
Defense Division on 2 July 2026

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