IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES,
Appellee,

v.

JAQUAN Q. GREENE-WATSON,
Senior Airman (E-4),
United States Air Force,
Appellant

USCA Dkt. No. 24-0096/AF

Crim. App. Dkt. No. ACM 40293

REPLY BRIEF ON BEHALF OF APPELLANT

HEATHER M. BRUHA, Maj, USAF
Appellate Defense Counsel
U.S.C.A.A.F. Bar No. 36722
Air Force Appellate Defense Division
1500 W. Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762
(240) 612-4770
heather.bruha@us.af.mil

Counsel for Appellant

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Pursuant to Rule 19(a)(7)(B) of this Honorable Court's Rules of Practice and Procedure, Senior Airman (SrA) Jaquan Q. Greene-Watson, the Appellant, hereby replies to the Government's Answer concerning the granted issue, filed on July 26, 2024.

ARGUMENT

SrA Greene-Watson responds to the Government's Answer with several distinct points: (1) the Government—not the Defense—strategically offered the uncharged domestic violence acts as Mil. R. Evid. 404(b) evidence; (2) the military judge wrote in his decision the uncharged domestic violence acts did not relate to SrA Greene-Watson's intent at the time of the charged offenses; (3) the military judge abused his discretion by allowing in the uncharged domestic violence acts as evidence of a common scheme or plan by not considering both the temporal gap between the charged and uncharged acts and the sequence of each, inter alia; and (4) Mil. R. Evid. 404(b) is not admitted in all domestic violence cases.

1. The Government strategically noticed its intent to admit the uncharged domestic violence acts as Mil. R. Evid. 404(b) evidence. It was not an "attempt[] to rebut the Defense strategy."

The uncharged domestic violence acts occurred February 6, 2022, and the Government provided notice of its intent to use such evidence as Mil. R. Evid. 404(b) evidence only two days later—about a month before trial. JA at 200-01. The Government on appeal asserts that the "Defense argued that when [SrA Greene-

Watson] threatened his wife, he was not *planning* to intimidate her or to harm her. Accordingly, the Government marshalled, and the judge admitted, the available evidence of Appellant's actual *plan*: to control his wife and intimidate her into not reporting his conduct." Ans. at 17 (emphasis in original). But the timing contradicts the Government's position. The military judge's decision allowing in most of the noticed evidence was signed February 28, 2022—the same day opening statements were made. JA at 49, 224.

The Government did not "marshal" the evidence of SrA Greene-Watson's "actual *plan*" because the Defense argued there was no plan. Ans. at 17. Instead, the Government, with less than a month before trial, having knowledge of the much later in time incident, chose to offer it as Mil. R. Evid. 404(b) evidence as opposed to preferring charges. The Defense was then left with adapting to the military judge's ruling. Had the military judge ruled differently, the Defense would have adapted its strategy to ensure the Defense did not open the door to any excluded evidence. The Government offering evidence of a very recent report of alleged uncharged domestic violence acts with more aggravating facts was not an attempt to rebut the Defense strategy as the Government's brief argues. Ans. at 8-9, 17. Instead, the Government offered evidence of uncharged domestic violence acts for various reasons and the military judge allowed them in to show a common scheme or plan to control M.G.W. 17 months earlier without identifying what fact of

consequence was made more or less probable, without identifying what the potential prejudice was, and without performing a proper Mil. R. Evid. 403 balancing test.

2. The military judge explicitly stated he found evidence of the uncharged domestic violence acts did not relate to SrA Greene-Watson's intent at the time of the charged offenses.

The military judge did not find a basis to relate the uncharged domestic violence acts to SrA Greene-Watson's intent at the time of the charged threat. JA at 229. The Government reads language into the military judge's ruling that is not there. Specifically, the Government asserts that when the military judge ruled that he would not admit evidence of intent, he was doing so only as to the Government's "revenge theory." Ans. at 24-25. However, a reading of the judge's ruling demonstrates the opposite:

> While trial counsel argued that [SrA Greene-Watson's] actions on [February 6, 2022] are related to [M.G.W.'s] participation in this court-martial and his feelings about these pending charges, no evidence before the Court makes that connection by showing that the accused sought to intimidate [M.G.W.] or take revenge on her for making the initial report that led to the charged offenses. Similarly, [t]he Court does not find a basis under these facts to relate this incident, occurring after the charged incident, to [SrA Greene-Watson's] intent at the time of the charged offenses.

JA at 229. Based on the facts presented, the military judge did not find a basis to connect the uncharged domestic violence acts to the intent SrA Greene-Watson had during the charged offenses, which occurred earlier in time. The military judge addressed the revenge theory in the first sentence in the above quoted language. The

next sentence started with "similarly" and then explicitly addresses intent separate and apart from intimidation or revenge. *Id.* Yet, the Government reframes the military judge's findings to say he did let the uncharged domestic violence acts in as intent evidence. This reflects the same tactic the Air Force Court adopted in its decision—seeking a better argument for admission than the military judge actually relied upon. In actuality, the military judge failed to articulate a fact of consequence that was made more or less probable by the admission of the Mil. R. Evid. 404(b) evidence, which is an abuse of discretion.

3. The military judge abused his discretion under these facts when he allowed evidence of the uncharged domestic violence acts in as proof of a common scheme or plan.

While the military judge did not find any clearly erroneous facts, he omitted any finding of the critical facts and circumstances surrounding the charged offenses. The military judge abuses his discretion when he (1) bases his ruling on findings of fact which are not supported by the evidence; (2) uses incorrect legal principles; (3) applies the correct legal principles to the facts in a clearly unreasonable way; or (4) fails to consider important facts. *United States v. Tapp*, __M.J.__, 2024 CAAF LEXIS 419, at *15 (C.A.A.F. July 24, 2024) (citing *United States v. Rudometkin*, 82 M.J. 396, 401 (C.A.A.F. 2022)). The Government presumes SrA Greene-Watson "wisely does not challenge the military judge's factual findings," but SrA Green-Watson made no concession. Ans. at 21. In fact, the military judge's findings of

fact do not discuss the facts and circumstances surrounding the charged offenses. JA at 224-25. The only facts found by the military judge regarding the charged offenses were:

> On [July 29, 2021], one charge and a single specification of communicating a threat under Art 114, UCMJ, and one charge and a single specification of assault consummated by a battery under Art 128, UCMJ[,] were referred to trial by general court-martial. Ms. M.G.W. is the named victim of the specification charged under Art 115, and J.G.W., a minor, is the named victim of the specification charged under Art 128. M.G.W. is the spouse of the accused and the mother of J.G.W. Each of the charged offenses relates to an incident that occurred on or about [September 19, 2020], at the shared residence of [SrA Greene-Watson], M.G.W., and J.G.W. in Albuquerque, NM.

JA at 224. The rest of the facts found by the military judge were a verbatim list of what the Government served Defense in its supplemental notice of its intent to introduce evidence under Mil. R. Evid. 404(b). *Compare* JA at 224-25, *with* JA at 200-02.

The military judge failed to consider important facts, which is the fourth factor considered by this Court in deciding whether a military judge abused his discretion. *Tapp*, 2024 CAAF LEXIS 419, at *15 (citation omitted). The military judge failed to identify what fact of consequence was made more or less probable by the existence of the uncharged domestic violence acts. See *United States v. Reynolds*, 29 M.J. 105, 109 (C.M.A. 1989). He also failed to perform a proper Mil. R. Evid. 403 balancing test. *Id.* So, the only facts clearly found by the military judge were those offered under Mil. R. Evid. 404(b). However, the only way to determine if

there were sufficient similarities between the two events was to include the facts the military judge considered regarding the charged offenses as well. The relevance and prejudice analyses do not end there—they simply start there. The military judge needed to consider not just the similarities between the facts and circumstances of the charged offenses and offered uncharged domestic violence acts, he should have also considered the sequence of both events and the gap of time in between the two. The military judge failing to consider these important facts establishes an abuse of discretion. This is not a new argument but merely an expansion of SrA Greene-Watson's argument in his opening brief as *Tapp* provides additional grounds that the military judge's failure to account for certain important facts amounted to an abuse of discretion.

a. Both the gap of time between the charged conduct and the uncharged conduct and the sequence of each must be considered together.

Depending on the facts, subsequent conduct may be used as Mil. R. Evid. 404(b) evidence showing either a common scheme or plan or to prove intent. However, the facts in SrA Greene-Watson's case do not establish a common scheme or plan nor do the facts support use of the uncharged domestic violence acts as proof of his intent 17 months earlier. Contrary to the Government's assertion, SrA Greene-Watson did not "incorrectly suggest[] that evidence of intent as demonstrated by a plan cannot be revealed by acts subsequent to the charged incident." Ans. at 14

(citing App. Br. at 23-27). Instead, SrA Greene-Watson explained that the numerous cases cited by the Air Force Court were not on point. App. Br. at 23-27. The Government's position is that the "similarity between the episodes creates the relevance—not the order they occur in nor the time between them." Ans. at 14-15. The gap of time between the Mil. R. Evid. 404(b) evidence and the charged offenses *and* the order of occurrence must be considered together in determining admissibility. Further, both the gap of time and the sequence of events play a large role in conducting the Mil. R. Evid. 403 balancing test, which the military judge failed to do in this case.

b. The cases cited by the Government regarding gaps of time all involve the uncharged misconduct occurring before the charged misconduct and are not persuasive in SrA Greene-Watson's case.

On the point of temporal gaps alone, the Government argued this Court and federal courts have allowed more significant gaps in time between charged offenses and the Mil. R. Evid. 404(b) conduct. Ans. at 15-16. However, all of the cases cited involve uncharged conduct occurring prior to the charged conduct and then coming in under the exception subject to a 403 balancing test. Specifically, the Government cited to *United States v. Munoz*, 32 M.J. 359 (C.M.A. 1991) (15 years[1]); *United Staes v. Mann*, 26 M.J. 1 (C.M.A. 1988) (5 years); *United States v. Johnson*, 49 M.J.

[1] The Government's Answer incorrectly states the uncharged conduct was from six year earlier, but it was 15 years earlier. 32 M.J. at 360.

467 (C.A.A.F. 1998) (12 years); *United States v. Wacker*, 72 F.3d 1453 (10th Cir. 1995) (13 years); *see also, e.g.*, *United States v. Luger*, 837 F.3d 870 (8th Cir. 2016) (25 years); *United States v. Sterling*, 738 F.3d 228 (11th Cir. 2013) (15 years); *United States v. Rodriguez*, 215 F.3d 110 (1st Cir. 2000) (15 years). *Id.* In this case, however, the uncharged domestic violence acts occurred 17 months after the charged offenses, the military judge did not make findings of fact regarding the charged offenses, and then failed to conduct a Mil. R. Evid. 403 balancing test. The below is a breakdown of the cases cited by the Government demonstrating the clear differences and failure of the military judge in this case.

Munoz, *Mann*, *Johnson*, and *Luger* all involved evidence of prior sexual abuse of a child. While society has historically found a special interest in protecting children resulting in the clear exception to not allowing propensity for child sexual abuse offenses, those facts are not present in SrA Greene-Watson's case. Further, the commonalities found in cases of child sexual abuse are much more probative than an independent incident occurring 17 months after the charged offenses in this case.

In *Munoz*, the Court of Military Appeals (CMA) found the military judge did not abuse his discretion in allowing the uncharged misconduct in as evidence of a plan to sexually abuse his daughters due to the common factors of the victims' ages, the situs, and the nature of the offenses. 32 M.J. at 360. There the military judge

originally ruled that evidence regarding the sexual abuse by appellant of his two other daughters could come in as a plan because of the similarity of the acts (fondling of breasts and vagina), common location (in the home of the family), similar ages of the victims at the time (9-11), the fact that other people were in the house at the time, and the fact that the appellant had been drinking each time. *Id.* at 361. The military judge found that despite the time in between each occurrence, they were still relevant. *Id.* However, after hearing testimony from the two daughters, the military judge reconsidered his ruling and excluded the testimony from one daughter since there was only one incident involving her and the military judge thought there was "a 403 problem." *Id.* In SrA Greene-Watson's case, aside from the date of the charged offenses, there was also only one incident not a long history of similar misconduct amounting to a common scheme or plan. However, the military judge did not perform a proper Mil. R. Evid. 403 balancing test and this Court cannot be assured he considered this fact.

Mann also involved a similar offense of committing indecent acts with the appellant's minor daughter. 26 M.J. at 1. There the CMA held the error in admitting the testimony of the appellant's son regarding earlier sexual acts committed upon him by the appellant was harmless in view of the overwhelming evidence of guilt. *Id.* The CMA believed that based on the facts of the uncharged indecent acts and the timeline of them occurring over a 5-year period, the evidence was relevant. 26

M.J. at 5. However, this Court's predecessor found that, while relevant, the evidence should have been excluded under Mil. R. Evid. 403. *Id.* The difference between relevance—a low bar—and the required balancing test of Mil. R. Evid. 403 is important and contemplated by the *Reynolds* test. Unlike the uncharged indecent acts occurring over a long period of time as in *Mann* and *Munoz*, the uncharged domestic violence acts here all occurred in one instance 17 months after the charged offenses with no intervening conduct establishing a common scheme or plan. Any arguable relevance would have been outweighed by the risk of unfair prejudice.

Johnson also involved Mil. R. Evid. 404(b) evidence regarding past uncharged sexual crimes introduced to show a scheme or plan of the appellant to abuse both his daughters. 49 M.J. at 468. There this Court cited to *Munoz* and *Mann* in determining the statements by both daughters were very similar in detailing the pattern of abuse, which started in the children's preteen years, involving masturbation and oral sodomy and progressed to partial penetration. 49 M.J. at 474-75. This Court then turned to the military judge's Mil. R. Evid. 403 balancing test and agreed the probative value was not outweighed by any prejudice. 49 M.J. at 475. Unlike in *Johnson*, this case did not involve a pattern of controlling behaviors or abuse. There were two independent incidents separated by 17 months as opposed to the same recurring characteristics occurring over a long span of time and progressing in the same manner.

In *Luger*, the court found prior sexual assaults were admissible under Fed. R. Evid. 413 and 414 as they were similar enough to the charged offenses and any prejudice was insubstantial and not outweighing the probative value. 837 F.3d at 872. The propensity evidence offered was testimony from five different women who claimed the appellant had sexually abused or assaulted them from more than 25 years earlier. *Id.* The court allowed testimony from the two who had been young teenagers at the time and excluded testimony from the three women who were adults at the time. *Id.* The court found the issue to be a "close question," but gave deference to the district court given it "conducted a commendably thorough analysis of the admissibility of the propensity testimony" finding "'greater similarity'" between the uncharged assaults of young teenagers with the charged offenses and that the prejudice was not substantial enough to justify excluding the evidence. 837 F.3d at 874. No such Mil. R. Evid. 403 balancing test was conducted in SrA Greene-Watson's case.

Wacker and *Rodriguez* both involve conspiracy charges in relation to distribution of drugs and the courts specifically discussed intent. However, the military judge in this case did not allow the evidence in as intent. The *Wacker* case involved charges of conspiracy with intent to distribute marijuana and possession with intent to distribute marijuana. 72 F.3d at 1459. There, the judge admitted testimony that the appellants were involved "since the late 1970s in a marijuana

trafficking conspiracy operating out of Kansas," as it showed their "intent and plan in the context of a conspiracy prosecution." *Id.* at 1469. The court considered the temporally remoteness of the uncharged acts and declined to adopt a bright line rule on the number of years that can separate offenses, but instead applied a reasonableness standard, which takes into consideration the facts and circumstances of each case. *Id.* The military judge in SrA Greene-Watson's case did not make findings of fact on the charged offenses. Nor did the military judge discuss how the temporal remoteness of the uncharged domestic violence acts impacted the relevance or weight to be given said evidence in the context of a Mil. R. Evid. 403 balancing test.

Rodriguez involved a conspiracy to import more than 5,000 pounds of marijuana. 215 F.3d at 114. The court noted the "striking similarity" between the acts charged and the prior incidents of participation in other drug offenses. *Id.* The court stated evidence of other criminal acts are "specially relevant" when it tends to prove an element of the crime. *Id.* at 119. Participation in other previous drug offenses were relevant, at minimum, in *Rodriguez* to prove the defendant's knowing and willful participation in the charged conspiracy and not as an innocent bystander. *Id.* The court noted, "the probative value of evidence could be attenuated by the passage of time," but since there was no per se rule, the court uses a reasonableness standard requiring the court to evaluate the particular facts of every case. 215 F.3d

at 120-21 (citations omitted). In applying the reasonableness standard, the court explained the evidence showing regular, non-criminal contacts with those in other previous drug offenses, then the nefarious purpose to the association on any certain time would have been attenuated. 215 F.3d at 121. The opposite was true in *Rodriguez* in that "the very rarity of their association tended to suggest that when they got together each of them understood that the purpose was to import drugs." *Id.* In comparison, SrA Greene-Watson and M.G.W. lived together, seemingly seeing each other daily between the charged offenses and the uncharged domestic violence acts, and yet there were only two instances separated by 17 months. The two of them had regular, non-controlling contact so the purpose of the common scheme or plan of the evidence was attenuated and should not have been admitted for that purpose.

Finally, the *Sterling* case involved the admission of defendants' prior convictions for robbing a bank together. 738 F.3d at 232. Crimes that clearly involve a plan or scheme that are not clear in SrA Greene-Watson's case. Both defendants in *Sterling* were charged with armed bank robbery, use of a firearm during that crime, and possession of a firearm by a convicted felon. *Id.* The prior bank robbery was 15 years earlier during which the defendants "brandished a silver firearm, vaulted the counter of the bank, wore masks, and used a getaway driver." 738 F.3d at 232-33. The district court instructed the members they could consider

the evidence for the purposes of intent, plan, preparation, and lack of accident or mistake. 738 F.3d at 237. The court noted that while the prior convicted bank robbery was 15 years ago, the defendants had been incarcerated for 8 of those years. 738 F.3d at 239. The prior bank robbery also directly showed one defendant's knowledge that the other would use a gun in the robbery. *Id.* Additionally, the evidence was relevant to the second defendant's intent to use the gun during the robbery. *Id.* The court found even if the evidence was overly prejudicial, the error was harmless given the otherwise overwhelming evidence of guilt—physical evidence in the vehicle, eyewitness's descriptions, and the second defendant's unexplained behavior. *Id.* In stark contrast, the military judge in SrA Greene-Watson's case failed to identify even one fact of consequence that was made more or less probable by the admission of the uncharged domestic violence acts. Courts have not adapted a bright line rule establishing a specific timeframe from when evidence under 404(b) may or may not be admitted, but instead have conducted a case by case analysis. The military judge here should have conducted an analysis that considered not just the gap in time between the charged offenses and the uncharged domestic violence acts, but also the timing between the two.

c. The Error had a Substantial Influence on the Findings.

The military judge's admission of the uncharged domestic violence acts had a substantial influence on the findings, because the military judge considered it as

evidence of a common scheme or plan that SrA Greene-Watson followed after becoming frustrated with his wife. As for the Government's argument on prejudice, it cuts against the relevance and probative value of the evidence of the uncharged domestic violence acts. If the Government "simply did not need the [Mil. R. Evid.] 404(b) evidence" (Ans. at 45) because the threat was recorded, then the evidence would fail the Mil. R. Evid. 403 balancing test.

The Government argues that the military judge allowed the evidence to show a common scheme or "plan to 'frustrate [M.G.W.'s] ability or willingness to report,' and to 'increase his control over her,' and to 'undercut . . . [M.G.W.'s] report to authorities'" revealing his wrongful intent. Ans. at 28 (quoting portions from JA at 229). However, the literal words communicated by SrA Greene-Watson told M.G.W. to not come back to the house without the police. The Government argued M.G.W.'s "response demonstrated her genuine concern that [SrA Greene-Watson] was denying her access to her home on threat of death." Ans. at 46. This Court has Prosecution Exhibit 1 and can listen to the recording made by M.G.W. when SrA Greene-Watson was unaware. JA at 190. Not only does M.G.W. not sound fearful, but she is also fighting back. When told she could not return home without the police, M.G.W. argues, "This is my house. My name is on this house. This is my house." JA at 054; JA at 190. The tone of M.G.W.'s voice and the words she uses are not those of a fearful woman, but of an angry person in the middle of an

argument. She later voluntarily leaves the house. The Defense had a strong argument that the communication was not intended to intimidate her but was reactive in the heat of the argument. *United States v. Kohlbek*, 78 M.J. 326, 334 (C.A.A.F. 2019) (citation omitted).

The evidence of the uncharged domestic violence acts was of great quality for the Government. *Id.* The uncharged domestic violence acts included much more aggravating facts like SrA Greene-Watson allegedly (1) threatening to put a bullet in M.G.W.'s back; (2) getting on top of her and physically assaulting her by twisting her side and causing a 9 out of 10 level of pain; (3) pounding on the windows of the car with his foot behind the wheel of the vehicle so M.G.W. could not leave for safety; (4) turning off all the credit cards and utilities; and (5) removing money from their joint accounts. JA at 229-30, referencing 200-01. As such, the military judge's error of considering this evidence did have a substantial influence on the findings.

4. Mil. R. Evid. 404(b) evidence occurring after the charged offense(s) is not always admitted in domestic violence cases.

There is no binding precedent to support the admission of domestic violence incidences occurring after the charged misconduct in all cases. And even persuasive authorities fall short. The Government asserts that "[f]ederal courts have long recognized the important similarities involved in any repeated instances of domestic violence: same victim, same relationship, same situs, shared history, etc.," but then only cites to one federal circuit case. Ans. at 15 (citing *United States v. Berckmann*,

971 F.3d 999, 1002 (9th Cir. 2020)). However, *Berckmann* is distinguishable from this case. In *Berckmann*, the Ninth Circuit held that the evidence of a physical attack that occurred about one year prior to the charged assault and evidence of a physical attack which occurred about two months after the charged assault were admissible under Fed. R. Evid. 404(b), to demonstrate the appellant's intent during the charged assault. 971 F.3d at 1004.

The Government first claims that the *Berckmann* opinion stated it does not matter if events brought under Mil R. Evid. 404(b) occurred prior to or after the charged offense. Ans. at 33. However, the Ninth Circuit used the test from *United States v. Romero*, for determining if evidence was admissible under Fed. R. Evid. 404(b). 282 F.3d 683, 688 (9th Cir. 2002) (explaining that Rule 404(b) evidence "may be admitted if: (1) the evidence tends to prove a material point (materiality); (2) the other act is not too remote in time (recency); (3) the evidence is sufficient to support a finding that defendant committed the other act (sufficiency); and (4) . . . the act is similar to the offense charged (similarity)"). *Berckmann*, 971 F.3d at 1002. The Ninth Circuit in *Berckmann* did not distinguish between the prior or subsequent attack because neither party challenged the recency or sufficiency prongs. *Id.* In a single line of dicta, *Berckmann*, states "prior (and subsequent) acts of violence towards the identical victim can shed light on the mindset of the defendant during the charged crime." *Id*. However, the Ninth Circuit, is forced to place "and

subsequent" acts in parentheses because the case law used to support the "textbook examples of evidence" were cases that exclusively introduced prior events as evidence. *Id*. at 1002 (citing *United States v. Covington*, 565 F.3d 1336, 1341 (11th Cir. 2009) (evidence of a prior domestic violence assault admitted to help demonstrate motive for murder for hire charge); *United States v. Farish*, 535 F.3d 815, 819 (8th Cir. 2008) (evidence of prior domestic violence incidents admitted to help explain motive for arson charge); *United States v. Johnson*, 860 F.3d 1133, 1141 (8th Cir. 2017) (evidence of prior convictions of domestic violence and assault used to demonstrate intent for charged offense of domestic violence); *United States v. Lewis*, 780 F.2d 1140, 1142 (4th Cir. 1986) (evidence of an altercation a month prior admitted to help demonstrate motive for charged assault)). Thus, *Berckmann* provides no real insight on the introduction of solely subsequent acts.

The Government also claims that *Berckmann* supports the use of subsequent events to establish a plan at a prior event. Ans. at 36. This is incorrect as *Berckmann* does not evaluate the use of Fed. R. Evid. 404(b) to examine a preexisting plan, but rather focuses on its use to establish intent. *Berckmann*, 971 F.3d at 1003. The evidence in *Berckmann* of the prior and subsequent assaults were admitted to demonstrate the defendant's intent to assault and strangle. *Id*.

However, in SrA Greene-Watson's case, the military judge's ruling explicitly denied such use, when they stated, "[t]he Court does not find a basis under these

facts to relate this incident, occurring after the charged incident, to the accused's intent at the time of the charged offenses." JA at 229. Thus, the analysis contained in *Berckmann* does not support the use of solely subsequent acts to establish a preconceived plan in a prior charged offense. In this case, the military judge did not articulate what fact of consequence was made more or less probable by the admission of the evidence and also failed to perform a Mil. R. Evid. 403 balancing test.

5. Conclusion.

The military judge did not make a finding of facts regarding the charged offenses. Further, he did not identify what fact of consequence of the charged offenses was made more or less probable by admission of the uncharged domestic violence acts. The military judge should have considered both the lapse of time between the charged offenses and the uncharged domestic violence acts and the subsequent timing of the uncharged domestic violence acts together. He did not. Finally, he did not identify what the risks of unfair prejudice were and then he failed to conduct a proper Mil. R. Evid. 403 balancing test. The military judge should not be given deference and this Court should utilize the de novo standard of review when looking at the Air Force Court's inserted grounds for admission of the uncharged domestic violence acts.

WHEREFORE, SrA Greene-Watson respectfully requests this Court set aside his conviction.

Respectfully submitted,

HEATHER M. BRUHA, Maj, USAF
Appellate Defense counsel
U.S.C.A.A.F. Bar No. 36722
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762
(240) 612-4770
heather.bruha@us.af.mil

CERTIFICATE OF FILING AND SERVICE

I certify that an electronic copy of the foregoing was electronically sent to the Court and served on the Air Force Appellate Government Division on August 15, 2024.

Respectfully submitted,

HEATHER M. BRUHA, Maj, USAF
Appellate Defense Counsel
U.S.C.A.A.F. Bar No. 36722
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762
(240) 612-4770
heather.bruha@us.af.mil

Counsel for Appellant

CERTIFICATE OF COMPLIANCE
WITH RULES 24(b) AND 37

This Reply Brief complies with the type-volume limitation of Rule 24(b) because it contains 4,920 words. This Reply Brief complies with the typeface and type style requirements of Rule 37.

Respectfully submitted,

HEATHER M. BRUHA, Maj, USAF
Appellate Defense Counsel
U.S.C.A.A.F. Bar No. 36722
Air Force Appellate Defense Division
1500 West Perimeter Road, Suite 1100
Joint Base Andrews NAF, MD 20762-6604
(240) 612-4770
heather.bruha@us.af.mil

Counsel for Appellant