

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES**

UNITED STATES,
Appellee,

v.

MICHAEL P. DOOLIN, JR.,
Airman First Class (E-3)
United States Air Force
Appellant.

Crim. App. No. ACM 40745

USCA Dkt. No. 26-0218/AF

SUPPLEMENT TO PETITION FOR GRANT OF REVIEW

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Issue Presented

THE AIR FORCE COURT AGREED THAT THIS COURT’S DECISION IN *AVERY*¹ NARROWED THE APPLICABLE DEFINITION OF INDECENT LANGUAGE FOR AN ARTICLE 120B, UCMJ, OFFENSE AND CONCLUDED THE MILITARY JUDGE’S INSTRUCTION ON THAT PART OF THE ELEMENTS WAS “UNNECESSARILY BROAD.” WAS THE LOWER COURT CORRECT TO “NOT CONSIDER” THE “UNNECESSARY PORTIONS” OF THE INSTRUCTION AND “UNNECESSARY QUESTIONS” BY THE MILITARY JUDGE AS “EXTRANEOUS,” OR DID THEY RENDER THE GUILTY PLEA IMPROVIDENT?

Statement of Statutory Jurisdiction

The Air Force Court of Criminal Appeals (Air Force Court) reviewed this case pursuant to Article 66(d), Uniform Code of Military Justice (UCMJ).² This Court has jurisdiction to review this case pursuant to Article 67(a)(3), UCMJ.

Statement of the Case

On April 23, 2024, a general court-martial composed of a military judge sitting alone tried Airman First Class (A1C) Michael P. Doolin, Jr. at Osan Air Base, South Korea. R. at 1. Consistent with A1C Doolin’s pleas, the military judge found him guilty of one charge and specification of attempted sexual abuse of a child by indecent language, in violation of Article 80, UCMJ, 10 U.S.C. § 880. R. at 73; Entry

¹ *United States v. Avery*, 79 M.J. 363 (C.A.A.F. 2020).

² Unless otherwise noted, all other references to the UCMJ, Rules for Courts-Martial (R.C.M.), and the Military Rules of Evidence (Mil. R. Evid.) reflect the *Manual for Courts-Martial, United States* (2019 ed.) (hereinafter 2019 *MCM*).

of Judgment (EOJ). The military judge sentenced A1C Doolin to a reduction to the grade of E-1, a bad-conduct discharge, 17 months' confinement, and a reprimand. R. at 131; EOJ. The convening authority took no action on the findings or the sentence. Convening Authority Decision on Action, May 16, 2024. The convening authority deferred automatic forfeitures until the military judge signed the EOJ and waived all automatic forfeitures for a period of six months, for the benefit of A1C Doolin's dependent. *Id.*

On April 17, 2026, the Air Force Court issued an unpublished opinion which affirmed the findings and the sentence. Appendix. Specifically, the lower court rejected A1C Doolin's assignment of error that the military judge abused his discretion in accepting A1C Doolin's guilty plea even though the military judge did not provide the proper definition of "indecent language." *Id.* at 6-7. Despite finding that the military judge's instructions were "unnecessarily broad" by including definitions that applied to another UCMJ offense, the Air Force Court refused to "consider [the erroneous portion of the military judge's instructions] for purposes of [its] review of Appellant's convictions." *Id.* at 7.

Statement of Facts

A. A1C Doolin's communications with an undercover agent

In April 2023, A1C Doolin began communicating with a female identified as "Jessie" on the social application, Tinder. Prosecution Exhibit (Pros. Ex.) 1 at 1.

During these conversations, A1C Doolin and Jessie talked about their days and other things like the weather, his job, and the fact that Jessie was a student. R. at 36. But while her Tinder profile indicated that she was a college student at the University of California Irvine, the online profile of “Jessie” was actually a special agent with the United States Army Criminal Investigations Division working under cover. Pros. Ex. 1 at 1-2.

Shortly after beginning to communicate via Tinder, A1C Doolin started talking to Jessie via text messages, at which point Jessie stated that she was “almost 15” years old. *Id.* at 2. A1C Doolin and Jessie then began to communicate on Snapchat, another social media application. *Id.* at 4. A1C Doolin and Jessie discussed things such as taking pictures and whether Jessie would be A1C Doolin’s girlfriend. *Id.* On one occasion, A1C Doolin made the statement that “I gotta see the body I’m gonna be working with so I know exactly what I’m gonna do to you[.]” *Id.* at 4. A1C Doolin sent numerous messages to Jessie over the next few weeks before he stopped responding to Jessie’s messages in May 2023. *Id.* at 6.

B. The charged language versus the military judge’s instruction

The specification of the Article 80, UCMJ, charge against A1C Doolin alleged that he did:

[O]n divers occasions, attempt to commit a lewd act upon a child who had not attained the age of 16 years, by intentionally communicating to

said child indecent language, to wit: “I gotta see the body I’m gonna be working with so I know exactly what I’m gonna want to do to you,” and other sexually driven statements, or words to that effect, with the intent to arouse his sexual desire.

Charge Sheet. A1C Doolin agreed to plead guilty to the charge of attempted sexual abuse of a child by indecent language pursuant to a plea agreement. Appellate Exhibit (App. Ex.) II. Pursuant to the plea agreement, A1C Doolin also agreed to enter into a stipulation of fact. App. Ex. II at 1. The stipulation of fact cited numerous communications between A1C Doolin and Jessie, and included attachments of the conversations that occurred via Tinder, Snapchat, and text message. Pros. Ex. 1.

Prior to accepting A1C Doolin’s guilty plea, the military judge conducted a *Care*³ inquiry. R. at 17-54. The military judge began by instructing A1C Doolin on the elements of the offense of attempted sexual abuse of a child by indecent language. *Id.* at 32-35. Critical here, the military judge instructed A1C Doolin that “indecent language” consisted of the following definition:

[T]hat which is grossly offensive to modesty, decency, or [] propriety, or shocks the moral sense, because of its vulgar, filthy, or disgusting nature, or its tendency to incite lustful thought. Language is indecent if it tends reasonably to corrupt morals or incite libidinous thoughts. The language must violate community standards.

³ *United States v. Care*, 40 C.M.R. 247 (C.M.A. 1969).

Id. at 34. The military judge then asked A1C Doolin to give a factual basis for the plea and explain why he was guilty of the offense listed in the specification of the charge. *Id.* at 35.

A1C Doolin explained how he began communicating with who he understood to be a female named Jessie on Tinder, how they transferred their conversation to text messages, and that he learned that Jessie was supposedly 14 years old, but continued to communicate with her. *Id.* at 36-37. A1C Doolin then recounted several conversations that he had with Jessie on various days. *Id.* at 37-38. He further admitted that the language in the conversations was sexually charged and the conversations he had with Jessie were done to gratify his sexual desires. *Id.* at 38.

The military judge confirmed that A1C Doolin communicated the charged language, namely, “I gotta see the body I’m gonna be working with so I know exactly what I’m gonna want to do to you.” *Id.* at 42; Charge Sheet. But the military judge noted that A1C Doolin was charged with attempted sexual abuse of a child by indecent language on divers occasions. R. at 43. Given this language in the specification, the military judge asked A1C Doolin what “other” statements he made “that were sexually driven statements.” *Id.* at 43.

A1C Doolin responded by identifying four times he made “sexually driven statements” to Jessie. First, A1C Doolin stated that on April 14, 2023, at 1645, he

asked Jessie, “where she’d let me touch her.” *Id.* He also admitted that on that same day at 1725, he communicated to Jessie that if they were lying in bed that they could “explore each other’s bodies.” *Id.* A1C Doolin then admitted that on May 3, 2023, he stated that “you can always find some bathing suits or some cute underwear,” and “[w]e said we were going to show off [] our bodies before you lost your phone.” *Id.* at 44. Finally, A1C Doolin said that on May 3, 2023, he asked Jessie what kind of underwear her mom bought her and that he liked plain underwear. *Id.*

After the military judge confirmed that A1C Doolin intentionally communicated both the charged language and the other statements, *id.* at 45, the military judge delved into what A1C Doolin meant when A1C Doolin initially agreed with the conclusion that all the charged and “other” statements were indecent. *Id.* at 46. When the military judge asked how all these statements were indecent, A1C Doolin at first stated that the statements were “sexual by nature” and had a “tendency to insight [sic] lustful thought.” *Id.* at 46-47. But the military judge continued to inquire from A1C Doolin how the statements were indecent and specifically asked whether the statements were “vulgar, filthy, or disgusting” in nature. *Id.* at 47. In response to the military judge’s questioning, A1C Doolin ultimately concluded that the statements he made were “vulgar.” *Id.* at 50. The military judge accepted A1C Doolin’s plea and found him guilty. *Id.* at 72-73.

The military judge later clarified during presentencing that the indecent language of which the judge found A1C Doolin guilty consisted of only the statements the military judge discussed with A1C Doolin during the *Care* inquiry. Specifically, the military judge stated, “I will say that all the comments [in the stipulation of fact] were considered by the court, but I had communications with the accused about which ones he’s pleading guilty to[] because [the] specification as written is not clear.” *Id.* at 107. The military judge emphasized that there “can be other statements of which could be communications, but not necessarily the communication I explicitly found him guilty of.” *Id.* at 108.

C. The Air Force Court found that the military judge’s instructions were “unnecessarily broad” but declined to consider the incorrect portions for purposes of determining whether A1C Doolin’s plea was provident.

In his assignment of error to the Air Force Court, A1C Doolin argued that the military judge abused his discretion in accepting his guilty plea. Specifically, A1C Doolin alleged that the military judge failed to properly instruct him on the definition of “indecent language.” Appendix at 6.

Notably, while the Air Force Court recognized that A1C Doolin admitted to intentionally communicating several statements in the stipulation of fact and that these statements were an attempt to sexually abuse what he thought was a child, the stipulation of fact did not articulate “what was indecent about his language.” *Id.* at 3. The Air Force Court then detailed that the definition of “indecent language”

that the military judge provided during the *Care* inquiry mirrored the full definition provided in Article 134, UCMJ. *Id.* at 3 n.3. The court further noted that the military judge questioned A1C Doolin about four specific statements and that A1C Doolin admitted the statements were indecent. *Id.* at 4. The court then cited the record of trial where A1C Doolin initially stated that these four statements were indecent because they were “sexual in nature” and had a tendency to incite “lustful thought.” *Id.*, *see also* R. at 46-47. But the Air Force Court did not mention in its recitation of the facts that the military judge went on to question A1C Doolin about whether the statements were “vulgar, filthy, or disgusting” in nature. *Compare* Appendix at 4, *with* R. at 47-50.

In its analysis, the Air Force Court cited this Court’s decision in *United States v. Avery*, which recognized that a lewd act upon a child under Article 120b, UCMJ, is defined as language meant to “gratify the sexual desire of any person.” Appendix at 5 (citing *United States v. Avery*, 79 M.J. 363, 369 (C.A.A.F. 2020)). The Air Force Court again acknowledged that the military judge instructed A1C Doolin on the full definition of indecent language found in Article 134, UCMJ. Appendix at 6. The Air Force Court theorized (without citing any authority) that “indecent language” did not require a definition in Article 120b, UCMJ, cases. *Id.* Nevertheless, the court concluded that it would “heed our superior court’s delineation of indecent language as found in the general article, Article 134,

UCMJ, as opposed to that in Article 120b, UCMJ.” *Id.* The court then noted the uncontroversial point that the definition of “indecent language” in Article 134, UCMJ, contained both the “definition applicable to Appellant’s Article 120b, UCMJ, offense” as well as for cases charged under Article 134, UCMJ. *Id.* The court concluded that it would “follow *Avery*” and that “indecent language” for Article 120(b), UCMJ, purposes meant language that “has a tendency to incite lustful or libidinous thoughts.” *Id.* at 7.

But the Air Force Court’s analysis that followed did not directly address the providency of A1C Doolin’s plea in light of the fact that the military judge (1) read the full definition of indecent language under Article 134, UCMJ—without limiting that definition to whether the charged language had a “tendency to incite lustful or libidinous thoughts” applicable to an Article 120b, UCMJ, offense—and (2) compounded that confusion by then questioning A1C Doolin on the aspects of that definition that did not apply to his case, namely whether the language was “vulgar, filthy, or disgusting.” *Id.* The court noted that the military judge’s instruction on the definition of “indecent language” was “unnecessarily broad.” *Id.* It then declared the military judge’s instruction and subsequent questions, as well as A1C Doolin’s subsequent responses, were “unnecessary” and “extraneous” and that “[w]e do not consider them for purposes of our review of Appellant’s convictions.” *Id.* After refusing to consider the challenged portions of the military

judge's instructions, the Air Force Court concluded that no material prejudice occurred. *Id.* The court concluded that "[c]ombining Appellant's answers to the trial judge's questions, [yet declining to consider A1C Doolin's responses to the military judge's "unnecessarily broad" instructions], we find Appellant well understood the criminality of his communications." *Id.*

Reasons to Grant Review

This Court should grant review because the Air Force Court's decision below that the military judge did not abuse his discretion in accepting A1C Doolin's guilty plea conflicts with this Court's guidance in *United States v. Avery* regarding the scope of indecent language under Article 120b, and also departs from the accepted and usual course of judicial proceedings. C.A.A.F. R. 21(b)(5)(B) and (F).

There are "two alternative definitions" of indecent language, specifically, language that is either "(1) grossly offensive to modesty, decency, or propriety, or shocks the moral sense, because of its vulgar, filthy, or disgusting nature; or (2) grossly offensive because of its tendency to incite lustful thought." *United States v. Green*, 68 M.J. 266, 269 (C.A.A.F. 2010). But this Court has clarified that while the alternative definitions of the element of indecent language can be satisfied for a charge under Article 134, UCMJ, in two different ways, "Article 120b(c), UCMJ, covers only one of them." *Avery*, 79 M.J. at 368. Specifically, Article 120b(c), UCMJ, pertains to lewd acts with children. *Id.* The upshot of *Avery* is that indecent

language under Article 120b(c), UCMJ, must have a “tendency to incite lustful thought.” *Id.*

The military judge incorrectly instructed A1C Doolin on the full definition of indecent language during the *Care* inquiry, without any qualification concerning the aspects of the definition that are necessary to render it applicable to the offense of attempted sexual abuse of a child by indecent language to which A1C Doolin pleaded guilty. By incorrectly instructing A1C Doolin on the full definition of indecent language, the military judge did not ensure that A1C Doolin understood an element of the offense, specifically that the statements A1C Doolin admitted to making had to have a tendency to incite lustful thought. Worse, the military judge ultimately truncated the definition of indecent language by focusing on whether the language was “vulgar, filthy, or disgusting” rather than the aspects of the definition that applied to A1C Doolin.

The military judge’s incorrect instructions resulted in an improvident plea. As an initial matter, reversible error occurred because the elements of the offense were not accurately explained to A1C Doolin. Moreover, the military judge’s error meant there was a substantial basis to question the factual basis of the plea and resulted in A1C Doolin admitting to facts that set up matters inconsistent with his plea. At best, the statements A1C Doolin admitted to making met the elements of Article 134, UCMJ—a different criminal offense than was charged and to which he

agreed to plead guilty.

The Air Force Court's holding finding no abuse of discretion conflicts with this Court's decision in *Avery* concerning the proper scope of the definition of indecent language for a charge under Article 120b, UCMJ. The Air Force Court characterized the military judge's deviation from the governing definition of "indecent language" as the equivalent of going above and beyond, rather than injecting confusion and conflict into the providence inquiry. Appendix at 7. The lower court made this departure from the usual course of judicial proceedings clear by expressly declining to consider the incorrect portions of the military judge's instructions because it felt they were "extraneous." Appendix at 7. Thus, this Court's intervention is not only appropriate, but necessary to resolve this error in A1C Doolin's case and clarify both the correct scope of the definition of indecent language in an Article 120b, UCMJ, case, and what Courts of Criminal Appeals must consider in evaluating the propriety of a guilty plea.

Argument

A1C DOOLIN’S GUILTY PLEA WAS IMPROVIDENT BECAUSE HIS “UNNECESSARY ANSWERS” PRODUCED A COLLOQUY RESPONSIVE TO THE WRONG DEFINITION OF INDECENT LANGUAGE.

A. Standard of Review

This Court reviews a “military judge’s decision to accept a guilty plea for an abuse of discretion and questions of law arising from the guilty plea de novo.”

United States v. Ferguson, 68 M.J. 431, 433-34 (C.A.A.F. 2010) (quoting *United States v. Inabinette*, 66 M.J. 320, 322 (C.A.A.F. 2008)). In conducting such review, this Court applies “the substantial basis test, looking at whether there is something in the record of trial, with regard to the factual basis or the law, that would raise a substantial question regarding the appellant’s guilty plea.” *Id.*

B. The military judge improperly instructed A1C Doolin on the definition of indecent language.

A1C Doolin’s guilty plea to attempted sexual abuse of a child by indecent language was improvident. The military judge abused his discretion here in accepting the guilty plea after he improperly instructed A1C Doolin on an element of the offense. Specifically, the military judge incorrectly instructed A1C Doolin on the definition of indecent language contained in Article 134, UCMJ, without limiting that definition to the narrower construction applicable to the Article 120b, UCMJ, offense to which A1C Doolin pleaded guilty.

A1C Doolin was charged with attempted sexual abuse of a child by indecent language, in violation of Article 80, UCMJ. Charge Sheet. Under Article 120b, UCMJ, sexual abuse of a child requires the government to prove that A1C Doolin committed a lewd act upon a child. *MCM*, pt. IV, ¶ 4.b (1)-(4). A “lewd act,” among other things, is defined as “intentionally communicating indecent language to a child by any means, including via any communication technology, with an intent to abuse, humiliate, or degrade any person, or to arouse or gratify the sexual desire of any person.” Article 120b(h)(5)(c), UCMJ.

This Court has recognized that there are two definitions of indecent language, only one of which applies to the offense with which A1C Doolin was charged. *Avery*, 79 M.J. at 368. While Article 120b, UCMJ, does not define the term “indecent language,” in the context of an Article 134, UCMJ, offense for indecent language, the *MCM* defines the term as follows:

[T]hat which is grossly offensive to modesty, decency, or propriety, or shocks the moral sense, because of its vulgar, filthy, or disgusting nature, or its tendency to incite lustful thought. Language is indecent if it tends reasonably to corrupt morals or incite libidinous thoughts. The language must violate community standards.

MCM pt. IV, para. 105.c.

However, “the nature of indecent language as described in both case law and the *MCM* reveals that the scope of indecent language prohibited under Article 134, UCMJ, extends well beyond that language that constitutes the lewd acts with

children with which Article 120b(c), UCMJ, is concerned.” *Avery*, 79 M.J. at 368. This Court explained that the class of indecent language that is communicated to a child that is “grossly offensive [to modesty, decency, or propriety,] or shocks the moral sense, because of its vulgar, filthy, or disgusting nature” includes some language that is “not sexual” in nature. *Id.* Thus, that definition of “indecent language” applies only to an offense under Article 134, UCMJ, and not Article 120b(c), UCMJ. *Id.* (citation modified).

Article 120b(c), UCMJ, on the other hand, criminalizes “only indecent language that constitutes a ‘lewd act’—that is, a ‘sexually unchaste or licentious’ act.” *Id.* at 369. Thus, the only part of the definition of “indecent language” that applies to an Article 120b, UCMJ, offense would be language communicated to a child that is grossly offensive because of its “tendency to incite lustful thought.” *Id.* at 368.

Contrary to this Court’s guidance in *Avery*, the military judge incorrectly instructed A1C Doolin on the full definition of indecent language during the *Care* inquiry, without the limits to that definition that are necessary to render it applicable to the offense to which A1C Doolin pleaded guilty. *Compare* R. at 34-35, *with* MCM pt. IV, para. 105.c. Critically, the military judge instructed A1C Doolin that indecent language included language that was grossly offensive “because of its vulgar, filthy, or disgusting nature,” but without limiting it to such

language that constitutes lewdness. R. at 34. This was error, as that unqualified definition of indecent language applies only to the charge of indecent language under Article 134, UCMJ. *Avery*, 79 M.J. at 368.

The Air Force Court correctly recognized the military judge's wrong turn and that *Avery* controlled, only to then veer off-course in failing to consider the resulting problems for A1C Doolin's guilty plea. Appendix at 7. The lower court acted as if it could ignore these errors by labeling the military judge's incorrect instruction and subsequent colloquy with A1C Doolin as "extraneous." *Id.* But the Air Force Court's efforts to overlook these problems only further highlighted the military judge's error and demonstrated both that reversible error occurred and that the plea was improvident for several reasons detailed below.

C. The military judge's erroneous instruction alone resulted in reversible error.

By incorrectly instructing A1C Doolin on a definition of indecent language that did not apply to the offense he was charged with, the military judge reversibly erred. "For this Court to find a plea of guilty to be knowing and voluntary, the record of trial 'must reflect' that the elements of 'each offense charged have been explained to the accused' by the military judge." *United States v. Redlinski*, 58 M.J. 117, 119 (C.A.A.F. 2003) (quoting *Care*, 18 C.M.A. at 541). "If the military judge fails to do so, he commits reversible error." *Id.*

The only way such erroneous instruction does not result in reversible error is

if “it is clear from the entire record that the accused knew the elements, admitted them freely, and pleaded guilty because he was guilty.” *Id.* (quoting *United States v. Jones*, 34 M.J. 270, 272 (C.M.A. 1992)). In conducting such a review of the record, this Court “looks at the context of the entire record to determine whether an accused is aware of the elements, either explicitly or inferentially.” *Id.*

Here, there is little dispute that the military judge did not properly explain the elements of the offense to A1C Doolin. Similar to the situation in *Redlinski*, the military judge instructed on the elements of the intended offense of sexual abuse of a child, but failed to correctly define the element of indecent language as it applied to offense for which A1C Doolin was charged. Specifically, the military judge never instructed A1C Doolin that the statements he made had to have a tendency to incite lustful or libidinous thoughts only, as opposed to being vulgar, filthy, or disgusting. Indeed, the Air Force Court realized that the military judge’s instructions on this definition were not correctly narrowed to the Article 120b, UCMJ, offense with which A1C Doolin was charged. Appendix at 7.

Moreover, the context of the entire record demonstrates that A1C Doolin did not know or understand the element of indecent language, and thus, did not knowingly and freely plead guilty to the offense with which he was charged. The record makes this conclusion clear because A1C Doolin ultimately admitted that his statements constituted indecent language (because of the military judge’s

erroneous instruction) under a definition that applied to a different offense.

After improperly instructing A1C Doolin on the full definition of indecent language applicable to Article 134, UCMJ, the military judge engaged in a colloquy with A1C Doolin about the statements he made to Jessie. R. at 36-44. The military judge then asked A1C Doolin if he admitted the language was indecent. *Id.* at 46. A1C Doolin initially responded in the affirmative, stating that the language was sexual in nature and had a tendency to incite lustful thought. *Id.*

But in continuing follow-up questions, the military judge erred by repeating that the definition of indecent language in A1C Doolin's case included language that was "vulgar, filthy, or disgusting," without any qualification. *Id.* The military judge compounded this error by directly asking A1C Doolin if he agreed that the definition of indecent language "talks about this vulgar, filthy, or disgusting nature" and then asked him "which part of [his statement to Jessie] was vulgar, filthy, or disgusting that would shock the moral sense." *Id.* at 47. After a comfort break, A1C Doolin responded to the military judge's questions by stating that his statement "was *vulgar*" because talking about certain subjects with a 14-year-old would shock the moral senses. *Id.* at 50 (emphasis added). The military judge did not ask at this point, nor did A1C Doolin state, how the statement was lewd. *Id.* Yet the military judge accepted A1C Doolin's plea and found him guilty. *Id.* at 72-73.

Thus, the full context of the entire record confirms that A1C Doolin was *not* aware of the elements of the offense to which he was pleading guilty. If A1C Doolin had been aware and properly instructed, he would not have agreed with the military judge that he was guilty of an attempt to commit an Article 120b, UCMJ, offense by admitting to facts that were inapplicable to that offense.

A review of the full record in this case further demonstrates the error in the Air Force Court's analysis. By recognizing the military judge's incorrect instructions, but claiming that it refused to consider them in their analysis, the Air Force Court failed to look at the requisite "context of the entire record." *Redlinski*, 58 M.J. at 119; *see also United States v. Johnson*, 42 M.J. 443, 445 (C.A.A.F. 1995) ("In determining the providence of appellant's pleas, it is uncontroverted that an appellate court must consider the entire record in a case.") (citations omitted). The Air Force Court could not simply ignore the military judge's incorrect instructions: the incorrect instructions elicited what distinguished what A1C Doolin said from being criminal versus non-criminal conduct.

Far from giving the lower court discretion to ignore incorrect instructions, this Court's decision in *Redlinski* required the Air Force Court to review the "entire record." *Id.* The Air Force Court's decision to avoid this review was not only without legal authority, but it highlighted that the court failed to grasp the nuance between different UCMJ offenses and the significance of how definitions relating

to each offense should be applied. Here, a proper review of the entire record reveals both that reversible error occurred and that granting review would underscore the obligations of Courts of Criminal Appeals in considering the providence of guilty pleas.

D. The military judge's erroneous instruction also resulted in a substantial reason to question the factual basis of the plea and, alternatively, set up matters inconsistent with the plea.

The military judge also abused his discretion in accepting A1C Doolin's plea because his erroneous instruction resulted in an improvident plea. Article 45(a), UCMJ, provides that if an accused "after a plea of guilty sets up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect . . . a plea of not guilty shall be entered in the record, and the court shall proceed as though he had pleaded not guilty." The military judge's erroneous instructions created conflicts within A1C Doolin's guilty plea in several ways.

First, the military judge's incorrect instruction resulted in an inadequate factual basis for the finding of guilty to the specification as charged, thus raising "a substantial question regarding the appellant's guilty plea." *Ferguson*, 68 M.J. at 434. "[I]t is an abuse of discretion if a military judge accepts a guilty plea without an adequate factual basis to support it." *United States v. Price*, 76 M.J. 136, 138 (C.A.A.F. 2017) (citation omitted); *see also* R.C.M. 910(e). To determine whether

a military judge abused his discretion in accepting a guilty plea, this Court applies “the substantial basis test, looking at whether there is something in the record of trial, with regard to the factual basis or the law, that would raise a substantial question regarding the appellant’s guilty plea.” *Inabinette*, 66 M.J. at 322.

Here, there was a substantial question regarding the factual basis for A1C Doolin’s guilty plea. Because the government charged A1C Doolin with attempted sexual abuse of a child by indecent language, the definition of indecent language that applied to his case was language that had a tendency “to incite lustful thought.” *Avery*, 79 M.J. at 368. Although the military judge and A1C Doolin had some initial discussion about this definition, the military judge ultimately asked A1C Doolin to admit what statements were “vulgar, filthy, or disgusting,” R. at 47—but without the necessary qualifications to make that definition apply to an attempt to commit the Article 120b(c), UCMJ, offense of sexual abuse of a child rather than an attempt to commit the Article 134, UCMJ, offense of indecent language. *Avery*, 79 M.J. at 368.

When A1C Doolin ultimately admitted his statements to Jessie constituted indecent language because they were “vulgar,” he, at best, provided a factual basis to the offense of indecent language pursuant to Article 134, UCMJ. But A1C Doolin was not charged with nor did he plead guilty to a violation of that offense. Rather, he was charged with and pleaded guilty to violating Article 80, UCMJ, by

attempting to sexually abuse a child by indecent language. Pursuant to that charge, in order to accept A1C Doolin's guilty plea, the military judge was required to establish a factual basis that A1C Doolin made communications, on divers occasions, that have a tendency "to incite lustful thought." *Avery*, 79 M.J. at 368. The military judge failed to do so. Thus, there was an insufficient factual basis to find A1C Doolin guilty of attempted sexual abuse of a child, pursuant to Article 80, UCMJ, as charged.

Based on the military judge's lack of a precise instruction on indecent language, the record suggests that, at best, A1C Doolin provided a factual basis to the offense of indecent language pursuant to Article 134, UCMJ. Because there is "a substantial question regarding the appellant's guilty plea," *Ferguson*, 68 M.J. at 434, this Court should grant review and set aside the conviction.

Finally, at a minimum, the military judge's incorrect instruction also resulted in an improvident plea because this error caused A1C Doolin to provide responses that set up a "matter inconsistent with the plea." Article 45, UCMJ. Specifically, the military judge's muddled instruction on the definition of "indecent language" created conflict and confusion within A1C Doolin's guilty plea. In such circumstances, "the military judge must either resolve the apparent inconsistency or reject the plea." *United States v. Garcia*, 44 M.J. 496, 498 (C.A.A.F. 1996). Because the military judge did neither, he abused his discretion in accepting the

guilty plea.

The military judge initiated the confusion by instructing A1C Doolin on the full definition of indecent language as provided in Article 134, UCMJ, that is relevant to an offense under that article, without limiting the definition to offense to which A1C Doolin was charged. This error immediately caused confusion because the definition of indecent language that applies to an Article 120b, UCMJ offense is narrower than the definition that applies to an Article 134, UCMJ, offense. As the Air Force Court recognized, the offense with which A1C Doolin was charged involves only indecent language that has a “tendency to incite lustful or libidinous thoughts” only. Appendix at 7. Thus, there had to be “factual circumstances as revealed by [A1C Doolin] himself [that] objectively support[ed],” *Garcia*, 44 M.J. at 498, his guilty plea and showed that each of the statements he pleaded guilty to included language that had a tendency to incite lustful or libidinous language.

The military judge’s error created an inconsistency in this required showing. Notably, when asked why these statements were indecent, A1C Doolin initially responded that it was because the statements had a “tendency to insight lustful thought.” R. at 46. It was the military judge who shifted course and began to ask A1C Doolin how the statements were of a “vulgar, filthy, or disgusting nature.” R. at 47. The military judge essentially truncated the definition of indecent language

by focusing on elements that did not apply to A1C Doolin, who was charged with violating Article 80, UCMJ. The military judge's wayward instructions led A1C Doolin to ultimately state that his statements were incident because they were "vulgar." R. at 50.

The result of this conflict and confusion was that the factual circumstances A1C Doolin admitted to during the colloquy set up a matter inconsistent with the plea. Because of the military judge's flawed instructions, the ultimate reasons that A1C Doolin gave for why his statements were indecent (i.e. that they were vulgar) did not meet the elements of the offense for which he was charged. Even if there was an argument that A1C Doolin understood why his communications were indecent after the military judge instructed on the full definition of indecent language that did not apply to his case and after A1C Doolin initially responded that his statements were "sexually charged in nature," R. at 47, that understanding was eliminated when the military judge proceeded to question A1C Doolin on the wrong definition of indecent language. The UCMJ and this Court's precedent required the military judge to "either resolve the apparent inconsistency or reject the plea." *Garcia*, 44 M.J. at 498; citing Article 45(a), UCMJ. Because he did neither, the military judge abused his discretion in accepting A1C Doolin's guilty plea.

E. The Air Force Court’s decision affirmatively and deliberately ignored matters that undermined the conviction as “unnecessary.”

The Air Force Court erred in refusing to consider the incorrect portions of the military judge’s instructions in the *Care* inquiry, A1C Doolin’s responses to those incorrect instructions, and the impact those errors had on the providency of the guilty plea. The court’s extreme effort to ignore the military judge’s errors and salvage the guilty plea resulted in at least two problems in that court’s analysis: (1) it attempted to rely on the stipulation of a fact to buttress deficiencies in the plea colloquy and (2) it acted as if the portions of the plea colloquy that showed A1C was not guilty of the charged offense simply did not occur.

Despite noting that the military judge’s instructions were “unnecessarily broad,” the Air Force did not consider them in its analysis. Appendix at 7. Instead, the court stated that it only considered evidence in the stipulation of fact and in the *Care* inquiry to determine if the military judge abused his discretion in accepting A1C Doolin’s plea. Appendix at 7. The court then noted that A1C Doolin initially responded to the judge that the language was sexual in nature and offensive because of its tendency to incite lustful thought. *Id.* By “combining” A1C Doolin’s answers, the court found that A1C Doolin was properly instructed. *Id.* This flawed analysis resulted in error for at least two reasons.

First, the Air Force Court’s reliance on the stipulation of fact does not

support its conclusion. As the court admitted earlier in its opinion, A1C Doolin stated in his stipulation of fact that his communications were an attempt to commit sexual abuse by indecent language, “without articulating what was indecent about his language.” *Id.* at 3. To be sure, the Air Force Court did not point to any substantive portion of the stipulation of fact in its ultimate analysis. *Id.* at 7. While a military judge may rely upon a stipulation of fact in conjunction with the colloquy with the accused, there must also be sufficient evidence that the accused is “convinced of, and able to describe all the facts necessary to establish guilt.” *United States v. Faircloth*, 45 M.J. 172, 174 (C.A.A.F. 1996) (quoting R.C.M. 910(e)). Like the emperor’s new clothes, it made little sense for the Air Force Court to point out how the stipulation was unable to fulfill that requirement then rely on the stipulation as if it dressed up the *Care* inquiry with something more.

Second, the Air Force Court’s process of “combining” the initially correct portions of the military judge’s instructions and A1C Doolin’s responses to find that the military judge properly instructed A1C Doolin was error because the court failed to consider the rest of the military judge’s incorrect instructions as part of its duty to review “the record as a whole” in determining whether the guilty plea was provident. *Inabinette*, 66 M.J. at 322. The military judge initially discussed with A1C Doolin how the statements might have a tendency to incite lustful thought. R. at 45-46. But the military judge pressed further, asking A1C Doolin to tell him

“which part of it was vulgar, filthy, or disgusting that would shock the moral sense,” without any qualification of how such statements pertain to a lewd act involving a child as required for a conviction under Article 80, UCMJ. R. at 46-47. A1C Doolin ultimately responded to the military judge’s questions by stating that his communications were “vulgar” without further explanation. R. at 50.

Rather than taking this conflict head-on, the Air Force Court selectively examined the record, extracting the “correct definition [that] was contained in the definition” provided and discarding the rest. Appendix at 7. The result was that the Air Force Court looked only at the portions of the record that supported affirmance. *See id.* Observing that there were questions and answers that flowed from the military judge’s flawed instruction, the Air Force Court purported to cut them from the record in the next sentence: “We do not consider them for purposes of our review of Appellant’s convictions.” *Id.* That is not how review of guilty pleas is meant to work, *see, e.g., Inabinette*, 66 M.J. at 322, and sets a dangerous example for future cases to follow.

WHEREFORE, Appellant respectfully requests this Honorable Court grant review of this issue.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Thomas R. Govan, Jr.", with a stylized flourish at the end.

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation of Rule 21 because it contains 6,580 words. I further certify that this brief complies with the typeface and type style requirements of Rule 37 because it has been prepared in Times New Roman font, using 14-point type with one-inch margins.

A handwritten signature in blue ink, appearing to read "Thomas R. Govan, Jr.", is positioned above the printed name and title.

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CERTIFICATE OF FILING AND SERVICE

I certify that an electronic copy of the foregoing was electronically sent to the Court and electronically served on the Air Force Government Trial and Appellate Operations Division at AF.JAJG.AFLOA.Filng.Workflow@us.af.mil on July 20, 2026.

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Appendix

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

No. ACM 40745

UNITED STATES
Appellee

v.

Michael P. DOOLIN, Jr.
Airman (E-2), U.S. Air Force, *Appellant*

Appeal from the United States Air Force Trial Judiciary

Decided 17 April 2026

Military Judge: Christopher D. James.

Sentence: Sentence adjudged on 23 April 2024 by GCM convened at Osan Air Base, Republic of Korea. Sentence entered by military judge on 29 May 2024: Bad-conduct discharge, 17 months' confinement, reduction to E-1, and a reprimand.

For Appellant: Major Megan R. Crouch, USAF; Major Thomas R. Govan, Jr., USAF.

For Appellee: Major Vanessa Bairos, USAF; Major Kate E. Lee, USAF; Captain Donnell D. Wright, USAF; Mary Ellen Payne, Esquire.

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

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

This is an unpublished opinion and, as such, does not serve as precedent under AFCCA Rule of Practice and Procedure 30.4.

DOUGLAS, Senior Judge:

A general court-martial composed of a trial judge found Appellant guilty, in accordance with his pleas and pursuant to a plea agreement, of one specification of attempted sexual abuse of a child by indecent language, on divers occasions, in violation of Article 80, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 880.¹ The trial judge sentenced Appellant to a bad-conduct discharge, 17 months' confinement, reduction to the grade of E-1, and a reprimand. The convening authority took no action on the findings or the sentence and provided the language for the reprimand. The convening authority deferred all automatic forfeitures until the trial judge signed the entry of judgment and then waived them for a period of six months, for the benefit of Appellant's dependent.

Appellant raises two issues on appeal: whether (1) the trial judge abused his discretion by accepting Appellant's guilty plea where Appellant's statements during the *Care*² inquiry did not establish a sufficient factual basis for the plea; and (2) Appellant is entitled to sentencing relief because of the 244-day delay between sentencing and docketing with the court.

We find no error materially prejudicial to Appellant's substantial rights, and we affirm the findings and the sentence.

I. BACKGROUND

Appellant, 26 years old, began communicating with "Jessie" on a social dating application. "Jessie's" profile indicated she was in college. But soon after beginning their communications, Appellant asked "Jessie" her age. "Jessie" explained she was "almost 15!" Unbeknownst to Appellant, "Jessie" was a special agent of the United States Army Criminal Investigation Division (USCID). This agent was posing as a 14-year-old girl as part of an undercover law enforcement investigation. Despite being informed that "Jessie" was only 14 years old, Appellant continued his communications with her for one month, on multiple occasions, through multiple electronic means. Some of these communications resulted in Appellant's charged offense, attempted sexual abuse of a child by indecent language. The Specification of the Charge is written as follows:

In that [Appellant], did, within the Republic of Korea, between on or about 12 April 2023 and on or about 13 May 2023, on divers

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

² *United States v. Care*, 40 C.M.R. 247 (C.M.A. 1969).

occasions, attempt to commit a lewd act upon a child who had not attained the age of 16 years, by intentionally communicating to said child indecent language, to wit: “I gotta see the body I’m gonna be working with so I know exactly what I’m gonna want to do to you” and other sexually driven statements, or words to that effect, with an intent to arouse his sexual desire.

Prior to trial, Appellant entered into a plea agreement with the convening authority. Pursuant to the plea agreement, Appellant agreed to enter guilty pleas at a general court-martial, elect trial by a military judge alone, and enter into a reasonable stipulation of fact sufficient to establish each of the elements of the offense. The stipulation of fact consists of a total of 88 pages and 1 disc. The stipulation of fact recites numerous communications that are supported by nine attachments.

During Appellant’s *Care* inquiry, the trial judge discussed the elements and definitions of the offense with Appellant. Specific to the “lewd act” as charged, the trial judge provided the following definition, correctly:

Intentionally communicating indecent language to a child by any means, including via any communication technology, with an intent to abuse, humiliate, or degrade any person, or to arouse or gratify the sexual desire of any person.

Specific to the term “indecent language,” the trial judge provided the following definition, which is the basis of Appellant’s first issue on appeal.

That which is grossly offensive to modesty, decency, or [p]roprietary- propriety, or shocks the moral sense, because of its vulgar, filthy, or disgusting nature, or its tendency to incite lustful thought. Language is indecent if it tends reasonably to corrupt morals or incite libidinous thoughts. The language must violate community standards.^[3]

Appellant specifically admitted in his stipulation of fact and in his *Care* inquiry that he intentionally communicated the charged words, “I gotta see the body I’m gonna be working with so I know exactly what I’m gonna want to do to you.” In the stipulation of fact, Appellant further admits that this communication, as well as numerous other intentional communications, were an attempt to sexually abuse a child by indecent language, without articulating what was indecent about his language.

³ This language mirrors the definition found in the general article, Indecent language, Article 134, UCMJ, 10 U.S.C. § 934. See *MCM*, pt. IV, ¶ 105.c.

Turning to the charged, but unspecified indecent language, “and other sexually driven statements, or words to that effect,” the trial judge questioned Appellant about four specific statements contained within the stipulation of fact. Appellant admitted each statement was an intentional communication he made to “Jessie”:

- “[W]here do you want me to touch you...;”
- “[B]ut maybe while we’re in bed we could explore each other’s bodies;”
- “[Y]ou could always find some bathing suits? Or some cute underwear,” and “we said we were going to show off our bodies before you lost your phone;” and
- “What kind of undies does your mom buy you? I actually like plain underwear the best [] thongs and stuff like that don’t look good to me...[I don’t know] why [] and one piece swimsuits are cute.”

(Ellipses in original). Both Appellant and trial defense counsel confirmed they agreed the above statements were “sexually driven” and “indecent” as the trial judge had previously defined. The trial judge inquired further into Appellant’s understanding of “indecent.”

[Trial Judge]: All right. How so?

[Appellant]: Your Honor, it was sexual by nature. It was either sexual or just generally indecent language.

....

[Appellant]: Your Honor, the language was grossly offensive because of its tendency to [incite] lustful thought.

The trial judge informed counsel that he had found Appellant guilty of the charged indecent language, “I gotta see the body I’m gonna be working with so I know exactly what I’m gonna want to do to you,” as well as the above four statements, charged as “other sexually driven statements.” Finally, Appellant confirmed all five statements were made with the intent to arouse or gratify his sexual desire.

II. DISCUSSION

A. Providency of Plea

1. Law

We review a trial judge’s decision to accept a guilty plea for an abuse of discretion. *United States v. Saul*, 86 M.J. 30, 33 (C.A.A.F. 2025) (citing *United*

States v. Inabinette, 66 M.J. 320, 322 (C.A.A.F. 2008)). “The military judge must ensure there is a basis in law and fact to support the plea to the offense charged.” *United States v. Soto*, 69 M.J. 304, 307 (C.A.A.F. 2011) (citing *Inabinette*, 66 M.J. at 321–22) (additional citation omitted).

In order to convict Appellant of attempted sexual abuse of a child by indecent language as charged in this case, the Government was required to prove that on divers occasions, between on or about 12 April 2023 and on or about 13 May 2023, within the Republic of Korea: (1) that Appellant did certain overt acts by intentionally communicating to “Jessie” indecent language, to wit: “I gotta see the body I’m gonna be working with so I know exactly what I’m gonna want to do to you” and other sexually driven statements, or words to that effect; (2) that the acts were done with the specific intent to commit the offense of sexual abuse of a child; (3) that the acts amounted to more than mere preparation; and (4) that such acts apparently tended to bring about the commission of the offense. *See Manual for Courts-Martial, United States* (2019 ed.) (*MCM*), pt. IV, ¶ 4.b.(1)–(4).

Sexual abuse of a child in violation of Article 120b, UCMJ, required the Government to prove that Appellant committed a lewd act upon a child. *MCM*, pt. IV, ¶ 62.b.(3). “Lewd act” includes “intentionally communicating indecent language to a child by any means, including via any communication technology, with an intent . . . to arouse or gratify the sexual desire of any person.” *MCM*, pt. IV, ¶ 62.a.(h)(5)(C). “The term ‘child’ means any person who has not attained the age of 16 years.” *MCM*, pt. IV, ¶ 62.a.(h)(4).

Indecent language for purposes of Article 120b(c), UCMJ, is not defined. *See MCM*, pt. IV, ¶ 62.a.(h) (the absence of such definition). Article 120b, UCMJ, “does not criminalize ‘indecent language’ qua indecent language: Instead, Article 120b(c), UCMJ, proscribes ‘lewd act[s]’ upon children, and ‘lewd act[s]’ is defined to include indecent language . . . ‘to gratify the sexual desire of any person.’” *United States v. Avery*, 79 M.J. 363, 369 (C.A.A.F. 2020) (first and second alterations in original). Thus, it “criminalizes neither all indecent language, nor vulgar language as a whole, but only indecent language that constitutes a ‘lewd act’—that is, a ‘sexually unchaste or licentious’ act.” *Id.* (citing WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY UNABRIDGED 1301 (1986) (entry for “lewd”)).

“Unchaste” means “not chaste” or “lacking in chastity.” *Unchaste*, MERIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/unchaste> (last visited 2 Apr. 2026). “Chaste” means “pure in thought and act.” *Id.* at /chaste. “Licentious” means “disregarding sexual restraints.” *Id.* at /licentious. Synonyms include “lustful” and “libidinous.” *Id.* at /lustful, libidinous.

The trial judge may consider both the stipulation of fact and the inquiry with the appellant when determining if the guilty plea is provident. *United States v. Hines*, 73 M.J. 119, 124 (C.A.A.F. 2014).

2. Analysis

Appellant contends the trial judge abused his discretion by accepting the guilty plea in two ways. First, by failing to instruct Appellant properly on the definition of “indecent language,” Appellant claims the trial judge failed to obtain the requisite factual basis to a provident plea. Second, Appellant claims his communicated language to “Jessie” did not constitute indecent language. Appellant primarily relies upon *Avery*, cited *supra*, for his arguments. The Government agrees the trial judge applied the definition of “indecent language” from Article 134, UCMJ, 10 U.S.C. § 934, *Indecent language*, and offers that the definition from Article 134, UCMJ, is applied correctly here. *See MCM*, pt. IV, ¶ 105.c.

The trial judge provided the Appellant with the following definition of indecent language.

[T]hat which is grossly offensive to modesty, decency, or [p]roprietary – propriety, or shocks the moral sense, because of its vulgar, filthy, or disgusting nature, or its tendency to incite lustful thought. Language is indecent if it tends reasonably to corrupt morals or incite libidinous thoughts. The language must violate community standards.

(Emphasis added). This definition mirrors that found in the general article, Article 134, UCMJ, *Indecent language*, *MCM*, pt. IV, ¶ 105.c.

We are not convinced “indecent language” requires a definition in Article 120b, UCMJ, cases. In fact, we do not believe *Avery* asserts a definition is required. Nonetheless, we heed our superior court’s delineation of indecent language as found in the general article, Article 134, UCMJ, as opposed to that in Article 120b, UCMJ. We are convinced “indecent language” as defined in Article 134, UCMJ, contains within it both the definition applicable to Appellant’s Article 120b, UCMJ, offense, as well as for indecent language cases appropriately charged under Article 134, UCMJ.

In its holding in *Avery*, that Article 120b, UCMJ, did not preempt the charged Article 134, UCMJ, offense of indecent language, our superior court asserted that “[t]he Article 134, UCMJ, offense of indecent language is more than a residuum of Article 120b(c), UCMJ,” and that “Congress has not expressly or indirectly indicated that it intended Article 120b(c), UCMJ, to cover the entirety of offenses involving indecent language communicated to children.” 79 M.J. at 370. The indecent language in *Avery* “was simply not a sexual

or lewd act as contemplated in Article 120b(c), (h)(5)(C),” and was “not calculated to ‘incite lustful thought,’ but was a joke—albeit a ‘vulgar, filthy, or disgusting’ one.” *Id.* at 369–70. In that case, Avery was properly charged with violating Article 134, UCMJ, *Indecent language*.

However, in the case before us, Appellant’s indecent language was of a sexual or lewd act, and to the extent a definition of indecent language is required for our review of Appellant’s case, we follow *Avery*. Accordingly, “indecent language” means that which has a tendency to incite lustful or libidinous thoughts. As such, Appellant was properly charged and convicted of violating Article 120b(c), UCMJ. *See id.*

Therefore, the definition, as applied in Appellant’s trial, was unnecessarily broad. Nonetheless, we hold the correct definition was contained within the definition applied. The unnecessary portions of the definition provided, which thereby caused unnecessary questions by the trial judge, and unnecessary answers by the Appellant, are extraneous. We do not consider them for purposes of our review of Appellant’s convictions. Instead, we consider the evidence in the stipulation of fact and in the *Care* inquiry, to determine whether the trial judge abused his discretion when accepting Appellant’s plea. We consider Appellant’s responses to the trial judge’s questions about Appellant’s understanding of why his communication was in fact indecent, as charged. Appellant explained his language was “sexual by nature” and offensive because of its “tendency to incite lustful thought.” While repeating the correct definition of indecent language, Appellant also explained that his communications were “sexual by nature.” Combining Appellant’s answers to the trial judge’s questions, we find Appellant well understood the criminality of his communications. Even if the trial judge erred by asking more questions than required, we find his error is without material prejudice to the substantial rights of Appellant.

As to Appellant’s second concern that his intentionally communicated language to “Jessie” did not constitute indecent communications, we disagree. The trial judge determined Appellant communicated five statements that were indecent. We review those same five statements. Appellant, an adult male, 26 years of age, communicated to a person he believed to be a 14-year-old girl, that he wanted to see certain body parts of hers that he proclaimed an intention to touch and explore with his hands. The communications were intended to arouse his sexual desires, as he explained. The trial judge did not abuse his discretion by accepting Appellant’s guilty pleas. *Saul*, 86 M.J. at 33.

B. Docketing Delay

1. 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 United States Court of Appeals for the Armed Forces (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 [CCA] 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 [CCA].” 63 M.J. 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 the CCA. 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 and 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).

2. Analysis

The record of trial was docketed with this court 244 days after sentencing, exceeding the 150-day *Livak* standard for facially unreasonable delay. Accordingly, we have considered the *Barker* factors, and despite the Government’s lack of explanation of a docketing delay of 110 days, we find no violation of Appellant’s due process rights.

On 27 February 2026, the court granted a Government’s motion to attach a declaration by Captain (Capt) JM, Chief of Litigation at Osan Air Base. In tandem with the court reporter chronology, we consider Capt JM’s declaration.⁴ The trial concluded on 23 April 2024. The record of trial was certified on 1 July 2024. The transcript was certified on 15 July 2024, 83 days after trial.

⁴ *United States v. Jessie*, 79 M.J. 437, 444 (C.A.A.F. 2020).

On 29 August 2024, the assembled record of trial (ROT) was sent for review to the supervising legal office, 7 AF/JA, 128 days after trial. Between 2 and 16 October 2024, the physical ROT was delivered to the supervising legal office. The supervising legal office eventually forwarded the record, and on 17 December 2024, the Appellate Records Branch received it. After directing edits, the Appellate Records Branch forwarded the record to the court, and the court docketed Appellant's case on 23 December 2024, 244 days after trial. Neither the court reporter chronology nor the declaration by Capt JM explains the delay to forwarding the physical ROT from the supervising legal office, from 29 August 2024 through 17 December 2024, which accounts for 110 days of the 244-day delay to docketing. We do not presume *no work* was being done to the record; however, a lack of explanation is not reasonable. The first two *Barker* factors weigh in favor of Appellant.

Appellant did not demand speedy review and did not offer any cognizable prejudice to his case from the delay in docketing with this court. The last two *Barker* factors weigh in favor of the Government.

Absent prejudice, we find the post-trial delay involved in Appellant's case has not been so egregious as to adversely affect the perception of the military justice system. *See Toohey*, 63 M.J. at 362. Furthermore, recognizing our authority under Article 66(d)(2), UCMJ, we have also considered whether relief for excessive post-trial delay is appropriate in this case even in the absence of a due process violation. *See Valentin-Andino*, 85 M.J. at 366 n.4. We conclude such relief is not warranted.

III. CONCLUSION

The findings, as entered, are correct in law. Article 66(d), UCMJ (*Manual for Courts-Martial, United States* (2024 ed.)). In addition, the sentence, as entered, is correct in law and fact, and no error materially prejudicial to the substantial rights of Appellant occurred. Articles 59(a) and 66(d), UCMJ, 10 U.S.C. §§ 859(a), 866(d). Accordingly, the findings and sentence are **AF-FIRMED**.



FOR THE COURT

Carol K. Joyce

CAROL K. JOYCE
Clerk of the Court